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The Act of Abjuration Inspired and Inspirational

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[Handwritten text in Dutch, likely a preface or introduction, written in cursive script. The text is partially obscured by the printed title and author information.]

Freedom Fighters:

The Act of Abjuration, Hugo Grotius and Dutch Debates on Liberty¹

Martin van Gelderen

Introduction

The composition of the current parliament, residing in The Hague, suggests that in the summer of 2011 the Dutch are deeply in love with freedom. The two leading parties of the moment, the VVD and PVV, carry the banner of freedom in their very names. Both parties proclaim to be true lovers of liberty – and both parties have considerable problems in explaining what it is they love so much.

The VVD is the traditional liberal party in the Netherlands, seeking its roots in the great liberal texts and traditions of the 19th century.² In their appeal to texts and traditions Dutch liberals were – and still are – eclectic and ecumenical. On the one hand, when discussing freedom at a slightly more theoretical level – not a forte of Dutch politicians – there is a strong appeal to classical Anglophone liberal thinkers, not only to John Stuart Mill, whose 1859 essay *On Liberty* was fundamental to Dutch 19th-century discussions,³ but also, more recently, to Friedrich von Hayek, Ralf Dahrendorf and Isaiah Berlin, who in direct dialogue with Mill, formulated the modern liberal definition of freedom. In his most famous essay, *Two Concepts of Liberty*, Berlin argued that ‘I can normally said to be free to the degree to which no man or body of men interferes with my activity.’⁴ According to this conception of what, following Berlin, is usually called ‘negative liberty’, freedom means to be free from coercion, free from intervention with the choices one has decided to make and the actions one has decided to take. The choices and actions of the individual person are at the heart of Berlin’s definition. His kind of freedom allows the individual to develop her or his own version of the good life and to live life as he or she wants it to be. Liberals do not favour any specific version of the good life, unlike, as Berlin saw it back in 1969, nationalists, fascists and marxists. Liberals accept, indeed celebrate a plurality of personal lifestyles and favour a strong degree of toleration vis-à-vis the alternative life choices of our fellow human beings.

As Mill put the argument in *On Liberty*, ‘if a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it his own mode.’⁵ Mill hastens to add that the freedom of one individual should not go at the cost of another. In the chapter that addresses ‘the limits of the authority of society over the individual’, Mill formulates what has come to be known as the harm-principle, arguing that in pursuing our own interests, we should not be ‘injuring the interests of one another.’⁶ Moreover, Mill and many other Victorian liberals felt strongly that individual freedom entailed that elusive and so very British notion of ‘character’, urging liberals to rise above the ‘narrow

minds and timid souls' of their surroundings, to excel in 'strenuous self-assertion', and to do so with education, eloquence and of course politeness.⁷ In a recent variation of the argument the VVD is keen to underline that freedom entails a sense of responsibility mainly defined, in the spirit of Mill, as respect for 'the freedom of others' and for 'the free society as a whole.'⁸

Whilst Mill and Berlin are looming large here, the VVD also makes reference to Dutch history, most notably to the works of the founding father of Dutch liberalism, Johan Rudolf Thorbecke, professor of constitutional law, 'a philosopher in politics' – as the title of a recent biography puts it – and perhaps closer to German and French liberals, in particular Guizot, than to Mill.⁹ Often seen as the father of modern Dutch constitutionalism, liberals like Thorbecke emphasised the links between freedom and the rule of law, seeing the constitution as protecting freedom from too much encroachment by the state, whilst at the same time underscoring that freedom should be within the limits and the spirit of the rule of law.

Such notions have remained fundamental to Dutch liberal reflections on freedom, but in recent publications the VVD casts its net even wider, well beyond the 19th-century European founding fathers. In 2005 the party's 'liberal thinktank', the Teldersstichting, published a study of 'the Dutch tradition of freedom', that goes back to the 16th- and 17th-centuries. The opening chapter of the 2004 collection of essays, *Ode to Freedom*, starts with reflections on the importance of Hugo Grotius and Spinoza, the two most celebrated intellectuals of the Dutch Golden Age.¹⁰

The PVV is even more direct and straightforward in its appeal to Dutch history. Right in the opening lines of its successful 2010 election manifesto the PVV takes us back to the Act of Abjuration.¹¹ Most explicitly the party puts itself in the tradition of the Dutch Revolt, of the Eighty Years' War to gain and defend Dutch freedom, which in the PVV's view is now in imminent danger, threatened by the 'European superstate' and, as the party claims relentlessly, by Islam. If I understand it correctly, the PVV feels the urgent need to defend Dutch freedom against the somewhat unlikely pair of the European Commission and Al-Qaida. When put on trial for insult, the party's leader, Geert Wilders, put himself in his closing statement on 1 June 2011 most explicitly in the tradition of Johan van Oldenbarnevelt and Johan de Witt, two key leaders of the Dutch Republic and – an ironic point – both losing their lives in the hands of groups and forces that had the support of the House of Orange, of Maurits of Nassau and William III, forefathers of course of the current royal family. Quoting Oldenbarnevelt's last words, Wilders sees himself as an 'honest' and 'good patriot', acting in truth and protecting the 'freedom of the Dutch provinces.'¹² In short, Wilders and the PVV want to be real freedom fighters, in the tradition of the Dutch Revolt and the Act of Abjuration.

Freedom in the Act of Abjuration

In 1581, the Dutch were engaged in real fighting and in the views of both contemporary and later historians the main reason for their armed revolt against the government in the Low Countries of Philip II was, as the Bolognese Cardinal Guido Bentivoglio put it in 1611, the great Flemish love of liberty, 'l'amor della libertà.'¹³ The importance of 'l'amor della libertà' as the key motive of the Dutch Revolt has continued to feature prominently, also in more recent historiography.

The appeal to freedom was prominent in the Act of Abjuration. In this sense it belonged to a long series of Dutch pamphlets, published in ever growing numbers since the beginning of the 1560s. In the course of the decades the debates on freedom opened up a series of fundamental lines of contestation, some mainly religious, others more straightforwardly political and constitutional. Religious faultlines were about the freedom of conscience, freedom of public worship, the acceptance of religious pluriformity and, after 1600, the freedom of the human will. Political and constitutional debate initially focused on the interpretations of privileges. Charters such as the Brabant Joyous Entry, first agreed in 1356, and the 1477 Grand Privilege were presented as protecting the liberties of towns and provinces. Soon the debate shifted from liberties to liberty, to claims of self-government in particular.

In the view of the Dutch rebels, Philip II wanted to rule the Low Countries 'freely and absolutely', just as he was doing in the Kingdoms of Naples and Sicily, in Milan and in the Indies. In the Apology of the leader of the Dutch Revolt, William the Silent, another memorable text from 1581, Philip II was presented as the tyrant of all tyrants, 'an incestuous king, the slayer of his sonne, and the murtherer of his wife.'¹⁵ Tyranny meant slavery. The spectre of 'enslavement' was raised relentlessly in the about 800 pamphlets that were published between 1560 and 1590. In the words of a group of 300 nobles in 1565, the Dutch feared that the policies of Philip II would make 'the citizens and inhabitants of these countries eternal and miserable slaves of the Inquisition.'¹⁶ The Act of Abjuration followed this line of argument. In comparison with many pamphlets, including William's Apology, the Act tried to strike a tone of prudence. Its first move was to argue that if a prince started 'to oppress and molest' his subjects, depriving 'them of their ancient liberty, privileges and customs' and commanding, indeed using 'them like slaves', he should be regarded as a tyrant.¹⁷ In such a case the subjects were fully entitled to renounce their prince. The Act added that this principle applied in particular to those countries which – like the Dutch provinces – had been 'governed (as they should be) in accordance with the oath taken by the prince at this inauguration and in conformity with the privileges, customs and old traditions of these countries which he swears to maintain.'¹⁸ The Act referred to the conditions on which the prince had been accepted, including most notably the clause that if the prince were to break these conditions, he was legally forfeiting his rule.

The second move was to argue that, in the strong words of the main justification of the Act, the 1582 treatise *Political Education*, Philip II 'has sought by all means to take away the ancient freedom from these Countries and to bring them into a miserable slavery under the government of the Spanish bloodhounds'.¹⁹ The Act tried to argue the case with a touch of sobriety. It underpinned the claim that Philip II 'has been trying to deprive these Countries of their ancient freedom'²⁰ with a long overview of Dutch grievances, taking its readers from the early days of Granvelle to the dreadful tyranny of the Duke of Alba in the late 1560s and the misconduct of another Spanish governor, Philip's brother Don Juan, in the 1570s. All of them, including Philip II himself, had violated 'the privileges, traditional immunities and liberties of the fatherland', which were seen as the constitutional and legal guarantees of Dutch freedom. The Apology of William of Orange stated more clearly how the Dutch saw the position of Philip II within the constitution of the Low Countries: 'Let him be a King in Castile, in Arragon, at Naples, amongst the Indians, and in every place where he commaundeth at his pleasure: yea let him be a king if he will, in Ierusalem, and a peaceable governour in Asia and Africa, yet for all that I will not acknowledge him in this countrey, for any more

than a Duke and a Countie, whose power is limited according to our privileges, which he sware to observe, at his gladsome entraunce.²¹

The third and final move of the Act was to conclude that the States General, acting in accordance with their duty as virtuous guardians of Dutch constitutional arrangements, now had to abjure their overlord. As the Act put it, 'despairing of all means of reconciliation and left without any other remedies and help' in the face of Philip II's tyranny, the States General had been forced to abjure and abandon their Duke, Count and overlord, 'in conformity with the law of nature and for the protection of our own rights and those of our fellow countrymen, of the privileges, traditional customs and liberties of the fatherland, the life and honour of our wives, children and descendants so that they should not fall into Spanish slavery.'²²

Grotius on being free and sui iuris

This appeal to liberties, ancient freedom and natural rights opened up a problematic force field. The coherence of their connections, their foundations and the scope of their political ramifications were deeply contested around 1581. Problems were amplified by the rich Dutch appeal to the freedom of conscience. In 1579 the Union of Utrecht, went as far as to state in Article 13, that within the United Provinces no one was to be persecuted because of her or his religious beliefs. This minimal understanding of freedom of conscience became a foundational principle of the Dutch Republic and an issue of ongoing, almost permanent debate throughout the late sixteenth and seventeenth century. One of the key bones of contention was the relationship between freedom of conscience and freedom of public worship. In 1581 the national Synod of Middelburg fully affirmed the Presbyterian organization and doctrine of the Dutch church.²³ Three years earlier, the National Synod of Dordrecht had decided that church ministers should not be appointed by town magistrates, but by the consistory in cooperation with the deacons and the classis. This bold assertion of the independence of the Reformed Protestant church was unacceptable to a majority of the towns and States of Holland. From the beginning the coalition between Dutch Calvinists and the civic magistrates of Holland was frail and uneasy.

In the following decades the debates on issues such the nature of 'conscience', the 'freedom of the will' and 'predestination' brought the Dutch Republic on the brink of ruin. These 'Arminian troubles' owe their name to Jacobus Arminius, who was appointed to one of the chairs of theology at Leiden University in 1602. Arminius raised fundamental questions concerning the proper understanding of the doctrine of predestination and the role of God's and man's free will within Calvinist theology.²⁴ These theological debates had a distinct political edge. The main question was whether the church, as Calvinists argued, was autonomous and free in deciding its theological controversies. Should theological questions be settled by a national synod of the church or should diversity be accepted, as long as the fundamentals of Protestantism were not at stake? Who should decide? Was it the church itself, was it the States General as the highest federal institution or was each province free and sovereign in decreeing its own solution? In highly complex ways the 'Arminian troubles' deepened the Dutch debates of freedom.

One way forward in these debates was to go back backwards. In the best traditions of humanist scholarship, pamphleteers, poets, painters, and philosophers turned to antiquity in order to find the classical roots of Dutch freedom. As early as 1587 Willem Verheyden published a pamphlet that urged the Dutch to persist in the armed struggle with Philip II, to fight on and to uphold the 'exceptional freedom which we have inherited from our ancestors', as it had been retained 'since the time of Julius Caesar.'²⁵ This line of argument had been pioneered by Janus Dousa, one of the founding fathers of Leiden University. In the *Odes to Leiden*, Dousa had already made an elaborate comparison between the 1574 siege of Leiden and the Batavian uprising, putting admiral Boissot on a par with Claudius Civilis, the leader of the Batavian revolt against the Romans.²⁶ Beginning with the publication in 1588 of the *Batavia*, written by his close friend Hadrianus Junius, Dousa initiated a series of studies by himself, by Petrus Scriverius, Paulus Merula, and by Hugo Grotius into the classical origins of the Dutch Revolt as a fight for freedom. According to the 'Batavian myth'²⁷ the freedom of the Dutch provinces, of Holland in particular, had been raised by the Batavians, the classic and direct ancestors of the Dutch. Thanks to Tacitus, who told the story of the Batavian revolt against the Romans in the fourth book of the *Histories*, the Batavians, – in particular their leader Claudius Civilis – became the heroes of the Dutch Golden Age, celebrated in the works of Grotius, Vondel and Rembrandt. As Grotius argued in a classic statement of the myth, the 1610 *Treatise of the Antiquity of the Batavian now Hollandish Republic*, the Batavian resistance against the Romans was 'the just beginning of a free republic, constituted in freedom by a people of free origin.'²⁸ Celebrating the Batavians as 'the authors of freedom' Grotius drew a sharp contrast between *libertas* and *regnum*. He claimed that Tacitus had described the people, assemblies and citizenship of the Batavians in terms of 'what we nowadays call a free *respublica*, what Caesar called the *civitas* of the Helvetians, a republic.'²⁹ It was a bold statement of Holland as free commonwealth – with a little touch of anti-monarchism.

Another way forward was to complement this turn to classical antiquity with attempts to embed the Dutch defence of freedom in the wider European literature on freedom. In 1581 the Frisian humanist Aggaeus van Albada became the first author to give a full account of popular sovereignty as the foundation of the free constitution of the Low Countries. Educated in Paris, Orleans, Bourges and Italy,³⁰ Albada underpinned his arguments with references to Plato, Aristotle, and Cicero, to the great commentators on Roman Law Bartolus, Baldus, and Salomonio, to the 1579 *Vindiciae contra Tyrannos*, one of the hallmarks of French Huguenot political thought and, perhaps most astutely, to the work of Domingo de Soto and Fernando Vázquez de Menchaca, Castilian counsellors to Charles V and Philip II and key figures in the political thought of Spanish neo-scholasticism. Hugo Grotius took up this line of argument. After his studies in Leiden in the 1590s, where he was part of the select group of young scholars around Europe's leading humanist Joseph Justus Scaliger, Grotius quickly became the main political and intellectual confidante of the political leader of the young Dutch Republic, Johan van Oldenbarnevelt. On the most important political issues it was Grotius, who framed the language of the Dutch debates on law, politics, and religion. In a sense Grotius was to Oldenbarnevelt what, later in the century in England, another canonical figure of European political thought, John Locke, was to the Earl of Shaftesbury. As a humanist Grotius saw himself, in order of his own priority, as a theologian, a moral and civil philosopher, a historian and a – not too bad – poet. His engagement with legal and political issues was deeply embedded not just in the European traditions of the study of Roman Law, but also, and perhaps above all, in the humanist debates on moral and political philosophy.

Grotius started to discuss and analyse freedom as one of the foundations of civil philosophy from at least as early as 1603, when he was asked to write a legitimisation of the actions of Jacob van Heemskerck, who, sailing the 'East Indian' seas at the behest of the new East India Company (VOC), had seized a Portuguese vessel and taken prize and booty. Heemskerck grabbed more than three million guilders. Whilst many shareholders of the new VOC may have been delighted, others were worried: had Van Heemskerck not simply acted like a pirate?

Grotius wrote his manuscript, now known as *De Iure Praedae*, though he himself called it *De rebus Indicis opusculum*³¹ at the request of the Amsterdam Chamber of the VOC. In 1609, following a request from the Zeeland part of the VOC, he reworked parts of it – in particular chapter 12 – and published *Mare Liberum*.³² In other words Grotius had strong connections with the East India Company and it is hardly surprising that he has been seen as a VOC-'lobbyist'.³³ Indeed, many scholars have interpreted both *De Iure Praedae* and *Mare Liberum* and in fact also Grotius' main work on the rightful laws of war and peace, *De Iure Belli ac Pacis*, first published in 1625, as highly ideological justifications not just of Dutch commerce and trade, but of Dutch and European colonialism and imperialism as a whole.

As Grotius and his contemporaries saw it, the actions of Van Heemskerck should be interpreted within the framework of the war with Spain, as started by the Duke of Alba in the 1560s. In a lengthy historical chapter Grotius put *De Iure Praedae* staunchly within the conventional narrative of the Dutch Revolt and he explicitly hailed the Act of Abjuration as a defence of Dutch 'downtrodden liberty',³⁴ a major moment in the defensive war that was still ongoing. Indeed, since the Abjuration, with Philip II seeking to recover the authority he had lost by means of war, the Dutch had been fighting on the basis of 'the strongest just cause of war, the defence of their life, their goods and rightful freedom.'³⁵ In other words, principally *De Iure Praedae* was not about defending colonialism or overseas expansion, but a reflection on the lawfulness of the ongoing war with Spain and Portugal. As the doubts concerning Van Heemskerck's actions indicated, the nature of this war was changing. Grotius not only needed to clarify the role of the Portuguese – Philip II had become King of Portugal in 1580 – but also of the new East India Company, presented here as subservient to the States General. Moreover fighting a battle at Nieuwpoort, as happened in 1600, was one thing; engaging in acts of war in 'East Indian' seas was quite another.

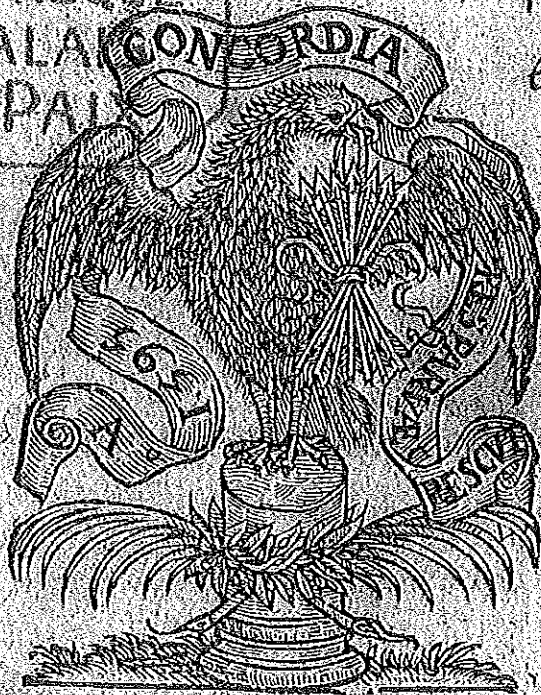
As Grotius recognised boldly right at the start of *De Iure Praedae*, these new problems of war and peace cannot be analysed and resolved 'solely on the basis of written laws' – 1603 was fundamentally different from 1581. To settle questions of war and peace a turn to the *ratio naturae*, to natural reason was required. Grotius urged his readers to turn to the 'jurists of antiquity', especially to Cicero, who 'refer the art of civil government back to the very fount of nature.'³⁶ In itself this turn to natural reason was hardly novel. Ever since the days of Thomas Aquinas, Thomists, Scholastics, neo-scholastics and neo-thomists had emphasised that law was a function of reason, as the great Iberian theologian Francisco Vitoria had put it in his lectures on Aquinas' discussion of the law on the *Summa Theologiae*: 'It is clear that law belongs to our rational nature, and can exist only in the senses or in the intellect. It does not exist in the senses, *ergo*.'³⁷ In a striking move, Grotius started to construct his philosophy in permanent dialogue not only with Cicero, Aristotle and the sources of Roman Law but also with leading Iberian Neoscholastics, including Vitoria, but also Domingo de

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MARE LIBERVM
SIVE
DE IVRE QVOD BATAVIS
COMPETIT AD INDICA
NA COMMERCIA
DISSERTATIO.

BIBLIOTHÈQUE
DU PALAIS
DE LA PAIX

457 a. l. c.
Trinit. m.
C. v. p. l. d. l.
67. v. l. c.
Alti.



LUGDUNI BATAVORVM,
Ex officinâ Ludovici Elzevirij.
ANNO MDCLXIX.

Mare liberum, the famous book on the right of a free sea, written by Hugo Grotius, 1609.

Soto and above all Fernando Vázquez, who is celebrated as ‘the pride of Spain’ in *De iure Praedae*³⁸ and much later praised for his frankness and candour in the Prolegomena to Grotius’s most famous work, *De iure Belli ac Pacis*.³⁹ *De iure Praedae* contains 68 references to Vitoria and 74 to Vázquez.

The appeal to natural reason impelled Grotius to explore the ‘natural properties’ which every single part of the creation has received from God. As Grotius saw it, ‘true and divinely inspired self-love’ is the basic ‘principle of the whole natural order’, ‘for all things in nature, as Cicero repeatedly insists, are tenderly regardful of self, and seek their own happiness and security.’⁴⁰ In paragraphs that are now seen as the beginning of modern natural law theory⁴¹ Grotius presented the primacy of life and therefore of self-preservation, as the main characteristic of human beings in the state of natural liberty.

In a seminal move Grotius went on to argue that ‘God made man ‘*autechousios*’, *liberum sui iuris*’, perhaps best translated ‘free and on his own right.’⁴² It is a quintessential Grotian sentence, presenting the principle as profoundly Christian, steeped in Greek philosophy with a term claimed to be derived from Aristotle and Plato and built on one of Roman Law’s most classic phrases. At this point the concepts of freedom and of being *sui iuris* were set up as cornerstones of Grotian thought – and Grotius claimed he had done so in a way that carried the ‘consent’ of all mankind.

Grotius’s line carried less consent than he may have hoped. To begin with, from a theological point of view the idea of man as ‘*autechousios*’, as fully autonomous, was highly problematic. In the theses which he wrote for a public disputation on the free will – part of the 1604-1607 cycle – even Arminius insisted that this idea of freedom as ‘perfect independence, or complete freedom of action... appertain to God alone.’⁴³ Whilst Grotius started his analysis of human freedom with pointing out that God had created man ‘free and on his own right’, he did not go on to explain how human freedom squared with divine providence. *De iure Praedae* maintained silence on the very issue that for years to come was at the heart of Dutch debates on freedom.

Second, whilst the notions of being ‘free’ and ‘on one’s own right’ seem to go hand in hand, they were also regarded as analytically quite distinct. Both the Greek term ‘*autechousios*’ and the Roman Law definition of ‘*libertas*’ carry the connotation that being naturally free means to be independent, master of one’s own actions. In the classical texts of Roman Law, Justinian’s Institutes and the Digest, *libertas* is defined as the natural faculty to act as one pleases.⁴⁴ Grotius took up this definition and argued that the familiar concept of ‘natural liberty’ refers to ‘the faculty to act’. To be free, he argued, means that in our actions and in our use of the things that belong to us we are not subject to any other human will. Thus, right from the start, Grotius explicitly associated the concept of freedom, of *libertas*, with notions of ownership and property, or, in his in own Latin language, with the rich and complicated concept of *dominium*.

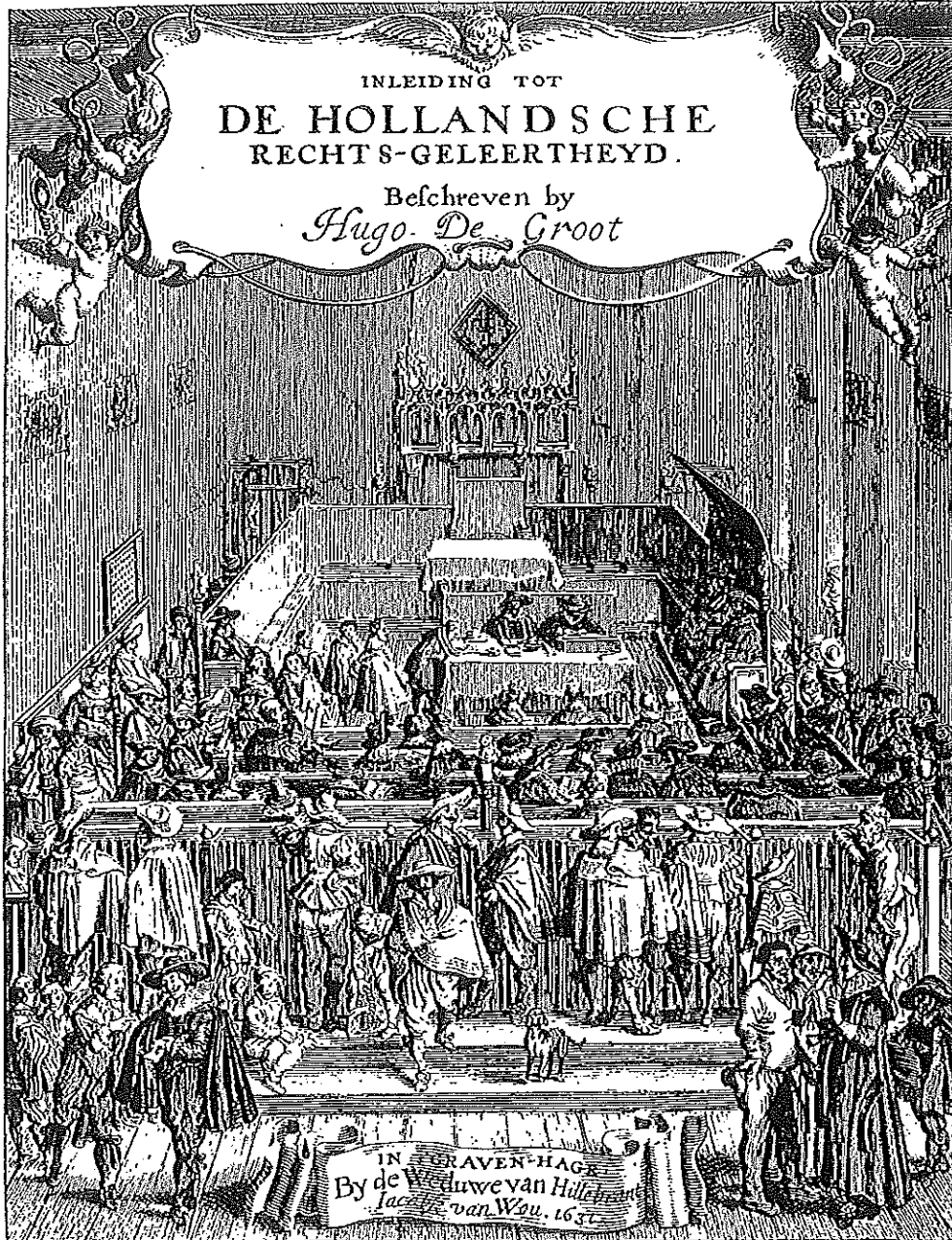
Whilst the division of human beings into free men and slaves (*omnes homines aut liberi sunt aut servi*) is the first fundamental distinction in the Roman Law of Persons [*ius personarum*], taking up the concept of *sui iuris* referred to another key juxtaposition governing the Roman Law conception of the person, namely the opposition between those who, in the legal sense, are and act

on their own right and those who are *'alieni iuris'*, who live under the control and jurisdiction of another person. To be *'aliena iuris'* meant to be *'in potestate'*, to be within the power of someone else. By contrast, as Grotius still insisted in *De Iure Belli ac Pacis* to be *sui iuris* and to be free meant to have power over oneself, to have *potestas in se*.⁴⁵

How to square the notion of humans as naturally free with the legal institution of servitude had been a problem for many commentators on Roman Law, including Mattheus Wesembeke, whose commentary on Roman Law Grotius praised as the leading authority for any law student and as the commentary from which he himself had learnt so much.⁴⁶ Wesembeke had indeed pointed out that whilst *libertas* is a 'natural faculty', servitude was a human creation, a *constitutio iuris gentium*.⁴⁷ Like other commentators Wesembeke suggested that war, taking opponents as prisoners, had brought about the distinction between free men and slaves in terms of legal status.⁴⁸ Grotius did not follow this line. In strong contrast, he argued that God had created man both 'free and *sui iuris*' – being 'on one's own right' was elevated to a distinct, indeed defining characteristic of man as God's creation. This controversial move strengthened Grotius's analysis of man's natural state as one of independence, as one of acting according to one's own will and of having power over oneself.

There seems a strong move here towards an analysis of human freedom in terms 'of subjective power and right',⁴⁹ perhaps even, as some might be tempted to claim, towards a liberal notion of rights allowing man to act as he or she likes. In fact Grotius's analysis of 'natural liberty' culminates in the derivation of the rule 'that what someone has signified to will, that is *ius* with respect to him.'⁵⁰ Later, in *De Iure Belli ac Pacis*, Grotius went on to argue that in relation to the person, *ius* should be seen as a 'moral quality [...] enabling [a person; MvG] to have, or do something justly.'⁵¹ As the use of the verb 'enable' indicates, this notion of *ius* meant first of all that man had power over himself '*potestas in se*', which, as Grotius added, 'is called liberty'. Hence, the emphasis in this conception of liberty is not so much, as in modern liberal notions, on being free from coercion and interference, but on the moral quality of the person to be fully independent and to be self-governing, to act at one's own will.

As the emphasis on 'moral' indicated, *ius* should not be seen as something 'individualistic' in modern liberal senses of the word. Grotius' idea of *ius* is a rich and complex one. As Grotius insisted right at the beginning of *De Iure Belli ac Pacis*, *ius* means nothing else but 'what is just, and this in a more negative than assertive sense, so that *ius* shall be what is not unjust and indeed the unjust clashes with the nature of the society of those of us who use reason.'⁵² Readers familiar with Roman Law were reminded of the very first definition of *ius* in the Digest, in the famous title *De Iustitia et Iure*, where Ulpian, following Celsus, states that '*ius*' is the '*ars boni et aequi*', 'the art of goodness and equity'. For Grotius these notions of *ius* and therefore of *iustitia* are at the heart of all issues concerning war and peace, indeed of all civil philosophy. But they were neither civil in origin, nor 'individualistic' in nature. It was God who made man 'free and *sui iuris*'. God was the origin of our natural reason, natural liberty, our sense of natural justice and natural rights. From our natural, God given instinct to preserve life, above all our own life, Grotius went on to derive what may be seen as two absolutely foundational natural rights. First, he claims that it is permissible to defend (one's own) life and to shun that which threatens to prove injurious. Second, as Grotius put it, it is 'permissible to acquire for oneself, and to retain, those things which are useful for life.'⁵³



NIEUWE UITGAVE

DOOR

MR. S. J. FOCKEMA ANDREAE.

Te Arnhem, bij P. GOUDA QUINT.

1895.

BOEKVERKRIJF

BOVENHAGE

The book *Inleiding tot de Hollandsche Rechts-geleerdheid*, written by Hugo Grotius, was used in Dutch universities for ages, as to be seen in the title page of this study book of 1895.

The free commonwealth

However controversial this fundamental notion of man as naturally 'free and sui iuris' may have been, it provided Grotius with the foundations for a conception of freedom that goes in – at least – two striking directions. First, Grotius developed a strong defence of the free commonwealth. As he explains in *De Iure Praedae*, for reasons of demographic growth, better protection and greater economic convenience the free human beings of the state of nature start to create smaller societies, which are 'formed by general consent for the sake of the common good.'⁵⁴ The *respublica* refers to a multitude of private persons, who have come together to increase their protection through mutual aid and to assist each other in acquiring the necessities of life. At their own free will these human beings unite by way of civil contract – Grotius uses the term *foedus* – in a 'unified and permanent body' with its own set of laws. From private persons, *singuli* they turn themselves into *cives*, citizens.

The laws of the commonwealth emanate from its will as a unified body based on consent. Grotius argues that 'civil power, manifesting itself in laws and judgements, resides primarily and essentially in the bosom of the commonwealth itself.'⁵⁵ For Grotius the commonwealth, the *respublica*, – sometimes also referred to the *civitas* – is the basic unit of civil law, and of all forms of authority. Both city and citizenship are civic creations – more precisely they are the creations of private persons, who on the basis of considerations of utility decide to create the commonwealth. Of course not everybody has the time to devote himself to the administration of civil affairs. The exercise of lawful power is therefore entrusted to a number of magistrates, who act for the common good. The explicit use of the concept of *magistratus* emphasises that those who exercise civil power, be they king, princes, counts, States assemblies or town councils, are mere administrators, who have to respect the boundaries of their office, as set by the popular mandate. At this very point, Grotius takes up the grievances listed in the Act of Abjuration to argue, once again, that Philip II had overstepped the limits of his authority and in doing so had stepped out of his office. Grotius fully endorsed the conventional Dutch view that the Act of Abjuration was a legitimate act of last resort to defend Dutch 'downtrodden freedom.'⁵⁶

Later, living in Paris and benefiting from (unreliable) royal support, Grotius accepted in *De Iure Belli ac Pacis* that there may be sound reasons for people to relinquish their natural liberty and put themselves into the subjection of a monarch. But whilst accepting the legitimacy of absolute monarchy, Grotius still drew strong parallels between slavery and monarchy, asserting that 'as then personal liberty excludes the Dominion of a Master, so does civil Liberty exclude royalty, and all manner of Sovereignty properly so called.'⁵⁷ Right at this point Grotius quoted Livy, who, in Grotius's poignant summary of the crux of republican argument, 'oppose those Peoples that were free, to them that lived under Kings'. Livy is joined by Cicero and of course Tacitus. To top it all, Grotius reminded his readers that 'even the Stoics acknowledge there is a kind of servitude in subjection and in the Holy Scriptures the Subjects of Kings are called their servants.'⁵⁸

All of this sounds much less 'liberal' in any modern sense of the word, than 'republican' in its full early modern riches. It was – and still is⁵⁹ – one of the fundamentals of republican theories of government to see the commonwealth as a civic creation of free and rational human beings who choose to come together and who make the laws that bind them. There is indeed great belief here in

human freedom, not so much in the liberal sense as freedom from interference and coercion, but in the stronger republican sense as freedom from any kind domination or dependence, as freedom to govern ourselves in the republic of our making.

The Rights of Others

But freedom does not only concern us, it also concerns the 'other'. In a striking and particularly rich line of argument, Grotius claimed that the most principal natural right, the right to live and preserve oneself, implies the freedom to move and travel and the freedom to communicate with others. In turn, this freedom to communicate implies the freedom of economic traffic: of commerce and trade. These are strong and rich claims, which need some unpacking and elucidation.

First of all, Grotius argued, trade and commerce are simply necessary for human survival, for self-preservation. As it happens, human beings live across the entire earth. As they all produce distinct and different goods and products, the things human beings need for life are unevenly distributed across the earth. Some grow potatoes, others have olive trees in their gardens. Trade and commerce have been invented by human beings in order to ensure 'that the needs of one person can be remedied by the affluence of another'. In a crucial passage of *Mare Liberum*, Grotius argued that 'for all of mankind the faculty to engage in commerce with each other is free; it cannot be taken away by anybody.'⁶⁰ This fundamental principle continues to play a vital role in Grotius's writings. In *De Iure Belli ac Pacis*, he took up the argument, refined and strengthened it. Grotius now referred to the writings of Plutarch in order to argue that without trade and commerce mankind would have remained wild and barbarian. So commerce and trade are not only useful because they enable human beings to remedy their own shortcomings in goods and to meet each other's needs. Commerce and trade are at the very heart of human sociability, of civilisation, of human friendship. In the Latin phrase of Grotius: '*permutatione rerum societatem amicitiamque concilians*.'⁶¹ This means, as Grotius goes on to argue with yet another quote from a classical author, the Roman jurist Florus, that 'who stops trade, disrupts the bounds that keep mankind together.'⁶²

In all these quotes the emphasis is very much on 'together', on human beings belonging together. The use of words such as together, mutual, inter ipsos suggests a reciprocal dependence, an interdependence amongst human beings. This suggestion seems hard to square with the idea that *De Iure Prædæ*, *Mare Liberum* and *De Iure Belli ac Pacis* are simply and mainly propagating the one way street of European colonialism. After all mankind does not only consist of rich and prospering merchants, but also of the poor, of vagabonds, of beggars, of refugees.⁶³ As Grotius insisted, the most basic human right to live, derived from the necessity of self-preservation, pertains to all of us – and it overrules all civil laws. Like us, the poor, the beggars, the refugees, indeed all fellow human beings who find themselves in a state of dire need and necessity have the right to do all they can in order to live. As Grotius put it in *De Iure Belli ac Pacis*, 'in case of absolute necessity, that ancient right of using things, as if they still remained common, must revive and be in full force.'⁶⁴ In a striking move Grotius took one of his main examples from trade, from seafaring practices. 'At Sea', he wrote, 'when there is a Scarcity of Provisions', the goods which 'each Man has reserved in store, ought to be produced for common Use'. This seafaring rule is not introduced by Civil Law. It only

explains, Grotius insisted, 'by such Regulations, the Maxims of natural Equity, and enforces them by its authority.' Maxims of natural equity override 'all Laws of human Institution'. One of these maxims is that whoever shall take from another what is absolutely necessary for the preservation of his own Life, is not from thence to be accounted guilty of Theft.'⁶⁵

This specific rule applies solely, as Grotius insisted with force, to cases of absolute necessity, when, as in cases of great hunger and starvation, our sheer preservation, our very life is at stake. Of course human beings may want more than the bare necessities of life. Indeed, as Grotius saw it, they are entitled to more. Each human being has the right to acquire for her- or himself those goods and commodities that are needed to be able to lead a *vita commoda*, a life of comfort. When we are talking about goods such as food, clothing or medicines, no one should be obstructed or hindered in her or his attempt to seek and acquire the comforts of life. Here each of us has what Grotius called the *ius actus*. This right forms the very foundation of the human freedom to act, indeed to act freely. Each person is free to act and to perform those actions that contribute to the comfort of life. At the most basic and fundamental level this means that, as long as people do no harm to others, each person is free to go and move and travel wherever he or she wants and to engage joyfully in the communication and traffic with other human beings. This notion of *ius actus* covers a wide range of human activities and actions, including perhaps most prominently, the freedom of commerce and trade. Trade and commerce not only form the very foundation of human civilisation, they also embody the core of human freedom at its most fundamental level.

The consequences of this idea of *ius communicandi* reach far. What is at stake is not merely the right to free trade – the *ius mercandi* – of Batavian merchants, but also the rights of refugees and exiles – a category to which, as he saw it, Grotius belonged himself ever since his dramatic escape in the famous book chest from the fortress of Loevestein in 1621. In a much discussed passage, Grotius argued in *De Iure Belli ac Pacis* that we should welcome 'those who have been forced out' of their house, their city, their country'. Indeed we should grant them the right to permanent residence amongst us,⁶⁶ on condition that they accept and endorse the law of their new homeland and will refrain from any kind of action that might give rise to faction and discord.

Epilogue

At this point at least some members of the VVD and the PVV, indeed all those loudly proclaiming freedom in current Dutch politics, should start to feel uneasy. In the Netherlands, and in many other parts of the European Union we worry about the democratic deficits of our democracies and union and we struggle with the question what to do with immigrants, who come to us out of necessity, to save themselves from starvation or mortal threat and to look for decent livelihood. Of course the Act of Abjuration and the civil philosophy of Hugo Grotius do not provide us with recipes to solve contemporary problems. But as we stand today, in their mirror, historical reflection urges us to rethink our own principles, to clarify our own civil philosophy, to look at ourselves from perspectives that have been cast aside.

If we do so, then, first, we need to ask ourselves whether Dutch democracy and the European Union live up to the republican understanding of legitimate self-government by citizens that our founding mothers and fathers struggled to articulate, as they fought for freedom back in 1581. Back then Dutch 'freedom fighters' put full emphasis on man's moral quality and our 'faculty' to civil responsibility, governing ourselves and our free commonwealth with civic virtue, above all with justice. That was the key to freedom. This understanding of freedom was rich and complex, at times paradoxical – and in all this miles away of what current Dutch politics has to offer. In many ways the current appeal to the debates on freedom of which the 1581 Act of Abjuration was a key moment is simply shallow. Wilders is not De Witt.

And second, thinking of freedom, we need to take note of Grotius's fundamental argument that the right of life is the cornerstone, the fertile rock from which every reflection on human rights and civil life should grow. Life 'as such' is a precondition of being able to have any right whatsoever, to enjoy civil life and participate in governing a free commonwealth. To grant human beings the right to live means, first and foremost – acknowledging their right to try and continue to live – to find the means and ways to preserve and sustain themselves. The recognition of this principal natural right lies at the heart of Grotius' defence of the freedom of the sea, the freedom of commerce and trade, the freedom of migration and the free movement of exiles and refugees. All this is built on the recognition of the right to life. In the face of death, due to starvation or the hazards of warfare, of torture and violence, all human beings are fully entitled to try and preserve their lives and to move, if need be, to other parts of the world where they just might have a chance to find a life, perhaps even a life of comfort. As Grotius taught, nobody has the authority to stop, to obstruct human beings in protecting their right to life – neither, in the days of the Act of Abjuration, the King of Spain, nor, in our own days, those who govern the Netherlands.

- 1 With thanks to Antoinette Saxer for her guidance in Roman Law – and much more.
- 2 For a fine recent overview in English see H. te Velde, 'The Organization of Liberty: Dutch Liberalism as a Case of the History of European Constitutional Liberalism', in: *European Journal of Political Theory*, vol. 7, no. 1 (2008), pp. 65-79.
- 3 See R. Aerts, *De Letterheren: Liberale cultuur in de negentiende eeuw* (Amsterdam 1997). The literature on Mill is vast. Important introductions include J. Burrow, *Whigs and Liberals: Continuity and Change in English Political Thought* (Oxford 1988); J. Gray, *Mill on Liberty: A Defence* (London 1983); S. Collini, *Public Moralists. Political Thought and Intellectual Life in Britain, 1850-1930* (Oxford 1991); A. Ryan, *The Philosophy of John Stuart Mill* (Basingstoke 1998); D. Winch, *Wealth and Life. Essays on the Intellectual History of Political Economy in Britain, 1848-1914* (Cambridge 2009; especially part I) and G. Varouxakis & P. Kelley (eds.), *John Stuart Mill – Thought and Influence* (London 2010).
- 4 I. Berlin, 'Two Concepts of Liberty', in: *Four Essays in Liberty* (Oxford 1969), p. 122. For Berlin see J. Gray, *Isaiah Berlin* (London 1995); M. Ignatieff, *Isaiah Berlin: A Life* (Vintage 2000) and D. Kelly, 'The political thought of Isaiah Berlin', in: *British Journal of Politics and International Relations*, vol. 4, no. 1 (April 2002), pp. 25-48
- 5 J. S. Mill, 'On Liberty', ed. S. Collini (Cambridge 1989), p. 67.
- 6 *Ibid.*, p. 75.
- 7 J. Burrow, *The Crisis of Reason. European Thought, 1848-1914* (New Haven/London 2000), p. 154.
- 8 <http://www.vvd.nl/standpunt/291/vrijheid-en-verantwoordelijkheid>
- 9 For a recent biography see J. Drentje, *Thorbecke: een Filosoof in de Politiek* (Amsterdam 2004) and for the link with Guizot, H. te Velde, 'Onderwijzers in parlementaire politiek: Thorbecke, Guizot en het Europese doctrinaire liberalisme', in: *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, vol. 113 (1998), pp. 322-343.
- 10 D. de Neef (ed.), *Ode aan de Vrijheid: De Liberale Traditie* (Veen magazines 2004).
- 11 http://www.pvv.nl/images/stories/Webversie_VerkiezingsProgrammaPVV.pdf, p. 5.
- 12 <http://www.pvv.nl/index.php/comonent/content/article/36-geert-wilders/4375-laatste-woord-geert-wilders-proces-amsterdam-1-juni-2011.html>
- 13 G. Bentivoglio, *Relatione delle Provincie Unite* (1632), eds. S. Mastellone, E.O.G. Haitsma Mulier (Florence 1983), especially pp. 121-123.
- 14 For a fine recent overview see H. van Nierop, 'De troon van Alva. Over de interpretatie van de Nederlandse Opstand', in: *Bijdragen en mededelingen betreffende de Geschiedenis der Nederlanden*, 110 (1995), pp. 205-223.
- 15 W. of Orange, *The Apologie of Prince William of Orange against the proclamation of the King of Spaine* (1581) (Leiden 1969), p. 44.
- 16 'Compromise' (1565) in: J. van Wesembeke, *De beschrijvinge van den geschiedenissen in der Religien saken toeghedragen in den Nederlanden*, 1569, p. 348.
- 17 References are to the translation in: E.H. Kossmann & A.F. Mellink (eds.), *Texts concerning the Revolt of the Netherlands* (Cambridge 1974), p. 217. Key studies of the political and constitutional thought of the Act are M.E.H.N. Mout, *Plakkaat van verlatinge 1581. Inleiding, transcriptie en vertaling in hedendaags Nederlands* (The Hague 1979) and J.P.A. Coopmans, 'De herkomst van het plakkaat van Verlatinge' in: G. van Dievoet & G. Marcours (eds.), *Justicie ende gerechticeyt* (Antwerp 1983), pp. 36-52. The following paragraphs take up the argument of M. van Gelderen, *The Political Thought of the Dutch Revolt, 1555-1590* (Cambridge 1992), especially chapter 4.
- 18 *Act of Abjuration*, p. 217.
- 19 'Political Education' in: M. van Gelderen (ed.), *The Dutch Revolt, Cambridge Texts in the History of Political Thought* (Cambridge 1993), p. 205
- 20 *Act of Abjuration*, p. 218.
- 21 W. of Orange, *Apology*, p. 48.
- 22 *Act of Abjuration*, p. 225.
- 23 See W. van't Spijker, 'De Acta van de synode van Middelburg (1581)' in: J.P. van Dooren, *De nationale synode te Middelburg*, pp. 64-128 and R.H. Bremmer, 'De nationale synode van Middelburg (1581): politieke achtergronden van kerkelijke besluitvorming' in: Van Dooren, pp. 1-63.
- 24 For a biography of Arminius see C. Bangs, *Arminius. A Study in the Dutch Reformation*, 2nd ed. (Grand Rapids, Mich. 1985). Important recent studies of Arminius's theology include R.A. Muller, *God, Creation, and Providence in the Thought of Jacob Arminius. Sources and Directions of Scholastic Protestantism in the Era of Early Orthodoxy* (Grand Rapids, Mich. 1991), and E. Dekker, *Rijker dan Midas. Vrijheid, genade en predestinatie in de theologie van Jacobus Arminius (1559-1609)* (Zoetermeer 1993). For a fine study of Arminius's thinking on free will and predestination see E. Dekker, 'Theologische en filosofische vrijheid in de vroege zeventiende eeuw' in: E. Haitsma Mulier & W. Velema (eds.), *Vrijheid. Een geschiedenis van de vijftiende tot de twintigste eeuw* (Amsterdam 1999), pp. 53-69.

- 25 W. Verheyden, *Considerations nécessaires sur un traité avec l'espagnol* (1587), fol C3.
- 26 J. Dousa, *Nova Poemata* (Leiden 1575), fol. Ciiij. For the Odes to Leiden see C.L. Heesakkers, 'Janus Dousa, dichter van Leidens beleg en ontzet', in: *Jaarboekje voor Geschiedenis en Oudheidkunde van Leiden en Omstreken*, LXIX (1977), pp. 104-120.
- 27 See I. Schöffner, 'The Batavian myth during the Sixteenth and Seventeenth Centuries', in: J.S. Bromley & E.H. Kossmann (eds), *Britain and the Netherlands*, vol 5: *Some political mythologies* (The Hague 1975), pp. 78-101 and S. Schama, *The Embarrassment of Riches. An Interpretation of Dutch Culture in the Golden Age* (London 1987), pp. 75-85.
- 28 H. Grotius, *Liber de Antiquitate Reipublicae Batavae* (Leiden 1610), v.
- 29 *Ibid.*, 18.
- 30 For Albada see W. Bergsmå, *Aggaeus van Albada* (c. 1525-1587), *schwenckfeldiaan, staatsman en strijder voor verdraagzaamheid* (Meppel 1985).
- 31 P.C. Molhuysen (ed.), *Briefwisseling van Hugo Grotius. Eerste deel, 1597-17 augustus 1618* (The Hague 1928), p. 72.
- 32 For the differences between *Mare Liberum* and the twelfth chapter of *De Iure Praedae* see M. van Ittersum, 'Preparing *Mare Liberum* for the Press: Hugo Grotius' Rewriting of Chapter 12 of *De Iure Praedae* in November-December 1608', in: *Grotiana*, vol. 26-28 (2005-2007), pp. 246-280, which builds on M. van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595-1615)* (Leiden/Boston 2006). See also C.G. Roelofsen, 'Grotius and the International Politics of the Seventeenth Century' in: H. Bull, B. Kingsbury & A. Roberts (eds.), *Hugo Grotius and International Relations* (Oxford 1995), pp. 108-12 and F. de Pauw, *Grotius and the law of the sea* (Brussels 1965), pp. 14-22.
- 33 Van Ittersum, *Profit and Principle*, p. 359ff.
- 34 H. Grotius, *De Iure Praedae Commentarius*, ed. H.G. Hamaker (The Hague 1868), 165, from now on abbreviated as DIP. I will also give references to the recent reprint of the English translation *De Iure Praedae Commentarius. Commentary on the Law of Prize and Booty*, Volume 1, eds. G.L. Williams & W.H. Zeyde (Oxford/London 1950) reprinted and published by the Liberty Fund in 2006. See H. Grotius, *Commentary on the Law of Prize and Booty*, ed. M. van Ittersum, Indianapolis 2006, p. 246. Abbreviated as Commentary.
- 35 DIP, p. 274; *Commentary*, p. 400.
- 36 DIP, p. 6; *Commentary*, p. 17.
- 37 F. de Vitoria, 'On Law', in: *Political Writings*, ed. A. Pagden & J. Lawrance (Cambridge 1991), p. 155.
- 38 Grotius, DIP, p. 236; *Commentary*, p. 346. For Vazquez see A.S. Brett, *Liberty, Right and Nature. Individual rights in later scholastic thought* (Cambridge 1997) and G. van Nifterik, *Vorst tussen Volk en Wet. Over volksoevereiniteit en rechtsstatelijkheid in het werk van Fernando Vazquez de Menchaca (1512-1569)* (Rotterdam 1999). For the relationship with Grotius see also M. van Gelderen, 'From Domingo de Soto to Hugo Grotius. Theories of Monarchy and Civil Power in Spanish and Dutch political thought', in: G. Darby (ed.), *The Origins and Development of the Dutch Revolt* (London/New York 2001), pp. 151-170.
- 39 H. Grotius, *De Iure Belli ac Pacis*, eds. J.A. de Kanter-Van Hettinga Tromp, repr. Aalen, 1993, Prolegomena 55. All further references are to this standard edition, abbreviated as DIBP.
- 40 Grotius, DIP, p. 9; *Commentary*, p. 21.
- 41 See amongst others the seminal studies of R. Tuck, *Philosophy and Government, 1572-1651* (Cambridge 1993); K. Haakonssen, *Natural Law and Moral Philosophy: from Grotius to the Scottish Enlightenment* (Cambridge 1996); J.B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge 1998).
- 42 Grotius, DIP, p. 18; *Commentary*, p. 33.
- 43 J. Arminius, 'De Liberis hominis arbitrio' in: *Opera Theologica*, Leiden, 1629, p. 262. The English translation is J. Arminius, 'On the free will of man and its powers', in: *Works*, vol. 2 (Grand Rapids, Mich. 1986), p. 190.
- 44 See *Justinian's Institutes*, eds. P. Birks & G. McLeod (London 1987): I, 3: 'Et libertas quidem est, ex quam etiam liberi vocantur, naturalis facultas eius quod cuique facere libet, nisi si quid aut vi aut iure prohibetur'. See also Digest, 1, 5, 4.
- 45 Grotius, DIBP, Book 1, Chapter 1, § V.
- 46 See M. Ahsmann, *Collegia en Colleges. Juridisch Onderwijs aan de Leidse Universiteit, 1575-1630, in het bijzonder het disputeren* (Groningen 1990), pp. 249-252.
- 47 M. Wesembeke (Wesembecius), *In Pandectas Iuris Civilis et Codicis Iustiniani Libros Commentarii: Olim Paratitla dicti* (Cologne 1611), p. 54
- 48 For the general problem see A. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Law* (Princeton, NJ 2011), especially p. 100.
- 49 See most recently D. Lee, 'Popular Liberty, Princely Government, and the Roman Law in Hugo Grotius's *De Iure Belli ac Pacis*', in: *Journal of the History of Ideas*, vol. 72, no. 3 (2011), p. 378 taking up a line of argument that found its pioneering statement in R. Tuck, 'The 'modern' theory of natural law', in: A. Pagden (ed.), *The languages of*

- political theory in early modern Europe (Cambridge 1987), especially pp. 109-111. For a fine analysis see Brett, *Changes of State*, pp. 102-107.
- 50 Grotius, *DIP*, 18: 'Quod se quisque velle significaverit, id in eum just est', translated in *Commentary* – with a bit of liberal twist – as 'what each individual has indicated to be his will, that is law with respect to him'. (p. 34).
- 51 Grotius, *DIBP*, Book 1, Chapter 1, § IV.
- 52 *Ibid.*, Book 1, Chapter 1, § III.
- 53 Grotius, *DIP*, p. 10; *Commentary*, p. 23.
- 54 *DIP*, p. 19/20; *Commentary*, p. 36.
- 55 *DIP*, p. 25; *Commentary*, p. 43. These paragraphs take up the argument of M. van Gelderen, 'The State and its Rivals in early-modern Europe', in: Q. Skinner & Bo Strath (eds.), *States & Citizens. History, Theory, Prospects* (Cambridge 2003), pp. 79-96.
- 56 *DIP*, 165; *Commentary*, p. 246.
- 57 Grotius, *DIBP*, Book 1; Chapter 3, § XII.
- 58 *Ibid.*
- 59 The two 'classic' texts are Ph. Pettit, *Republicanism. A Theory of Freedom and Government* (Oxford 1997) and Q. Skinner, *Liberty before Liberalism* (Cambridge 1998). For the early modern riches of republicanism see M. van Gelderen & Q. Skinner (eds.), *Republicanism: A shared European Heritage*, 2 vols. (Cambridge 2002).
- 60 H. Grotius, *Mare Liberum* (Leiden 1609), ed. Robert Feenstra (Leiden 2009), Chapter VIII, p. 52 (p. 127). The first page reference is to the original 1609 edition; the second page number (between brackets) refers to Feenstra's wonderful new edition and translation that supersedes all previous ones.
- 61 Grotius, *DIBP*, Book 2, Chapter 2, § XIII.
- 62 *Ibid.*: *Sublatiis commerciis, rupto federe generis humani.*
- 63 For the earlier scholastic debate see Brett, *Changes of State*, pp. 12-36. For Grotius and the earlier Dutch debate see M. van Gelderen, 'Trots op Nederland: Hugo de Groot en het natuurlijk recht op immigratie', in: M. Damen & L. Sicking (eds.), *Bourgondië voorbij. De Nederlanden 1250-1650, Liber alumnorum Wim Blackmans* (Hilversum 2010), pp. 409-418.
- 64 Grotius, *DIBP*, Book 2, Chapter 2, § VI. Grotius refers to the works of Aquinas, Soto and Covarruvias.
- 65 *Ibid.*
- 66 *Ibid.*, Book 2, Chapter 2, § XVI: *Sed et perpetua habitation his qui sedibus suis expulsi receptum quaerunt denganda non est externis, dum et imperium quod constitutum est subeant, et quae alia ad vitandas seditiones sunt necessaria.* See E. Tiessler-Marenda, *Einwanderung und Asyl bei Hugo Grotius* (Berlin 2002).