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Hugo Grotius's *De societate publica cum infidelibus*, Justifying overseas expansionism or religious toleration?

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Summary

This article provides an analysis of an unpublished manuscript of Hugo Grotius, entitled *De societate publica cum infidelibus*, 'On public partnership with infidels'. In the text, Grotius examines the legal conditions under which Christians may enter into treaties and alliances with non-Christians. Grotius's text has been interpreted by Peter Borschberg and Martine van Ittersum as a justification of the Dutch commercial and military policies in the East Indies. However, as this article shows, Grotius probably conceived of *De societate* as a more general treatise, which related not only to the East Indian context, but also to the domestic debate about the legal position of non-Christians in the Dutch Republic. The same arguments that served as a justification for overseas expansionism could thus serve as a justification for religious toleration in the domestic context.

Keywords

Grotius – natural law – East Indies – religious toleration – Jews – slavery

Introduction

The Leiden University Libraries possess an unpublished manuscript of Hugo Grotius, entitled *De societate publica cum infidelibus*, 'On public partnership

with infidels¹. It was acquired at the famous Nijhoff auction in The Hague in 1864², and first described and analyzed by Peter Borschberg in the late 1990s³. The manuscript is an autograph. It consists of only eight pages of text, including reading notes and references to sources (the pages are numbered fols 314r-318v; two pages are unnumbered)⁴. Borschberg recognizes *De societate* as an early work of Grotius, which was probably written in the first decade of the seventeenth century in relation to his more famous *De jure praedae*, 'On the Law of Booty'⁵. In *De societate*, Grotius addresses several questions that are also discussed in *De jure praedae*, such as whether it is permissible for Christians to enter into treaties or alliances with non-Christians. For this reason, Borschberg believes that *De societate* should be understood in relation to the Dutch commercial and military policies in the East Indies⁶. Like Borschberg, Martine van Ittersum suggests that *De societate* was written alongside *De jure praedae*: in her view, Grotius's aim was to demonstrate that 'non-aggression pacts between Christians and unbelievers were a logical consequence of the natural law which dictated inoffensiveness'⁷.

- 1 Leiden University Libraries, MS. Cod. BPL 922. I am grateful to Prof. Henk Nellen for helping me to prepare a transcription of Grotius's text. I would also like to thank Dr. Diederik Burgersdijk, Dr. Guus van Nifterik, Prof. Laurens Winkel and the anonymous referees for their valuable comments and suggestions. An earlier version of this article appeared in Dutch in the *liber amicorum* offered to Prof. Kees Cappon, a longtime colleague and friend, on the occasion of his retirement from the University of Amsterdam: M. de Wilde, *Hugo de Groot's De societate publica cum infidelibus, Pleidooi voor tolerantie of rechtvaardiging van kolonialisme?*, in: *De achterkant van Minerva, Opstellen aangeboden aan prof. Kees Cappon ter gelegenheid van zijn afscheid van de Universiteit van Amsterdam*, ed. G.P. van Nifterik, J. de Vries and M. de Wilde, Amsterdam 2019, p. 115-128.
- 2 *Catalogue de manuscrits autographes de Hugo Grotius dont la vente a eu lieu à la Haye le 15 novembre 1864 sous la direction et au domicile de Martinus Nijhoff*, ed. W.J.M. van Eysinga and L.J. Noordhoff, The Hague 1952 [1864], p. 27 (lot 78).
- 3 P. Borschberg, *De societate publica cum infidelibus, Ein Frühwerk von Hugo Grotius*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 115 (1998), p. 355-393. On *De societate* see also P. Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies*, Singapore 2011, p. 56-64.
- 4 The text itself can be found on fols 314, 315 and 316; notes and references to sources have been placed on fols 316 (1)r, 316 (2)r and 318v.
- 5 Borschberg, *De societate* (*supra*, n. 3), p. 356.
- 6 *Ibid.*, p. 356: 'On the basis of parallels that can be drawn with other texts of Grotius, in particular with *De jure praedae*, the text [*De societate publica*, MdW] can be understood against the background of Dutch policies regarding trade and alliances'. A similar interpretation can be found in Borschberg, *Hugo Grotius* (*supra*, n. 3), p. 56 and 64.
- 7 M.J. van Ittersum, *Profit and principle, Hugo Grotius, Natural Rights and the rise of Dutch power in the East Indies (1595-1615)*, Leiden 2006, p. 49-50.

However, apart from treaties and non-aggression pacts with non-Christians, Grotius also addresses several other questions in *De societate*, which are not discussed in *De jure praedae*, such whether mixed marriages between Christians and non-Christians are permissible, or whether a Christian government is allowed to accept a non-Christian population under its authority. These questions seem to be more closely related to some of Grotius's other writings that deal with the legal position of religious minorities in the Dutch Republic, and, more particularly, his *Remonstrantie* or draft regulations for Jews residing in Holland and West-Friesland (1615)⁸. Although Borschberg notices these similarities⁹, he proposes to understand *De societate* primarily in relation to Dutch policies in the East Indies¹⁰. However, as I will argue in this article, *De societate* can also be read as a general treatise on the legal conditions under which Christians may enter into a 'public partnership' (*societas publica*) with non-Christians, whether it be a 'partnership' of states (*e.g.*, in the East Indian context), or the 'partnership' of a particular state (*e.g.*, the Dutch Republic)¹¹. More

8 Hugo de Groot, *Remonstrantie nopende de ordre dije in de landen van Hollandt ende Westvrieslandt dijent gestelt op de joden* [Remonstrations on the Regulations to Be Instituted in Holland and West-Friesland regarding the Jews], Ets Haim Library Amsterdam, MS EH 48 A 02. The manuscript was first published by Jaap Meijer (Amsterdam 1949). A new edition has recently appeared: D. Kromhout and A. Offenbergh, *Hugo Grotius's Remonstrantie of 1615, facsimile, transliteration, modern translations and analysis*, Leiden 2019. The manuscript can be consulted online at: <<http://etshaimmanuscripts.nl/manuscripts/eh-48-a-02/>> For an analysis of Grotius's *Remonstrantie* and its reception in the literature see my *Offering hospitality to strangers, Hugo Grotius's draft regulations for the Jews*, *Tijdschrift voor Rechtsgeschiedenis*, 85 (2017), p. 391-433.

9 Borschberg, *De societate* (*supra*, n. 3), p. 363 and 376-377.

10 *Ibid.*, p. 356 and 385.

11 The legal concept of *societas* originates from Roman law: it was one of the consensual contracts of private law, whereby two or more persons agreed to associate in a common venture for their mutual benefit (often a business association). Roman law did not know the concept of *societas publica*. The closest term was the *societas publicanorum*, an association established for the collection of taxes. In his philosophical writings, Cicero used the legal metaphor of partnership (*societas*) to describe the state, for instance in *De re publica*, where he defined it as an 'assemblage of people in large numbers associated (*sociatus*) with one another in an agreement about law and community of interest' (cf. Cicero, *De re publica*, 1, 39). It was on the basis of these Roman sources that medieval scholastics developed the general concept of *societas publica*. For instance, in his *Liber contra impugnantes Dei cultum et religionem*, Thomas Aquinas distinguished between a *societas privata*, which was formed for private purposes such as trade, and a *societas publica*, which was created when men assembled to establish a state (pars 2, c. 2, corp.). While Aquinas used the term *societas publica* to describe a state community (*e.g.*, a kingdom or city), Grotius gave it a more general meaning: for him, *societas publica* referred to any partnership with a public purpose, whether it was the 'unity of a state', which he characterized as the 'highest public partnership [*summa publica societas*]' (Grotius, *De*

particularly, my aim is to show that for Grotius, legal questions regarding the permissibility of alliances with non-Christian peoples in the East Indies were directly relevant to the debate on the legal position of religious minorities in the Dutch Republic itself. The same arguments that served as a justification for overseas expansionism (e.g., the duty to protect infidels from injustice) could thus serve as a justification for religious toleration in the domestic context (e.g., the duty to protect Jews, who had fled from persecution in Spain and Portugal and taken refuge in the Dutch provinces).

Structure and content of the text

De societate consists of a short introduction, followed by ten premises, nine propositions and nine conclusions. The text appears to be a draft: it presents an argumentative structure, which is not yet written out or fully developed. Borschberg therefore suspects it was meant as the outline of a more extensive treatise¹². The purpose of this treatise remains unclear. Was it meant as a preparatory study for *De jure praedae* or for another work on the legal relations between Christians and non-Christians? In his introduction, Grotius explains that his aim is to shed new light on an old question, namely 'if, and to what extent, it should be permissible for Christians to enter into a partnership with infidels or even heretics'¹³. As Grotius points out, others have asked this ques-

societate (*supra*, n. 1), fol. 317r), or pacts and alliances between states (which he sometimes described as *societas* and sometimes as *foedus*. See, e.g., *ibid.*, fol. 314r and fol. 314v prop. 1). In *De jure belli ac pacis*, Grotius would famously define human nature itself in terms of an 'impelling desire for society [*appetitus societatis*]', relating it to the Stoic doctrine of 'sociability [*οἰκεῖωσις*]' and identifying it as source of natural law (Grotius, *De jure belli ac pacis libri tres* (Amsterdam 1720 [1625]), prol., 6-8). On the concept of *societas publicanorum*: W. Kunkel, *Roman legal and constitutional history*, trans. J.M. Kelly, Oxford 1966, p. 40. On Cicero's definition of the state as *societas*: E. Asmis, *The state as a partnership, Cicero's definition of res publica in his work on the state*, *History of Political Thought*, 25 (2004), p. 569-599. On Aquinas's distinction between *societas publica* and *societas privata*: N. Aroney, *Subsidiarity, federalism, and the best constitution*, *Thomas Aquinas on city, province and empire*, in: Aquinas and Modern Law, ed. R.O. Brooks and J.B. Murphy, Abingdon 2016, p. 444. On Grotius's concepts of *appetitus societatis* and sociability: L. Winkel, *Les origines antiques de l'appetitus societatis de Grotius*, *Tijdschrift voor Rechtsgeschiedenis*, 68 (2000), p. 393-403; B. Straumann, *Oikeiosis and appetitus societatis*, *Hugo Grotius' Ciceronian argument for natural law and just war*, *Grotiana*, 24-25 (2003-2004), p. 41-66 and H. Blom, *Sociability and Hugo Grotius*, *History of European Ideas*, 41 (2015), p. 589-604.

¹² Borschberg, *De societate* (*supra*, n. 3), p. 365.

¹³ Grotius, *De societate* (*supra*, n. 1), fol. 314r: 'an et quatenus hominibus Christianis liceat cum infidelibus, aut etiam Haereticis inire societatem'.

tion, yet they have not addressed it in a systematic manner: they have limited themselves to discussing examples without clearly distinguishing the underlying principles. Unlike his predecessors, Grotius wants to address the question if, and to what extent, 'public partnerships' with infidels are permissible in a more systematic manner. For this reason, he proposes an argument structured by premises, propositions and conclusions.

According to Grotius's first premise, human societies have a double character: on the one hand, they originate in a *natural* community between men, which is governed by primary and secondary natural law, and, on the other, they derive from a community of *faith*, which is directed towards the revealed will of God. As Grotius explains, an *error in fide*, an error of faith, does not change the community between men that exists by nature¹⁴. This implies that under natural law, Christians can have legal obligations to infidels and even to heretics. To support his premise, Grotius invokes the authority of Thomas Aquinas, who, in his *Summa theologiae*, observes that divine law does not cancel the obligations that exist under the law of nature¹⁵. However, according to Grotius's second premise, the faithful should avoid anything that appears to be directed against the glory of God and the true religion, and, instead, observe the commandment of the Gospel: 'first seek the kingdom of heaven [*quaerite primum regnum caelorum*]'¹⁶. Grotius therefore concludes that the faithful are permitted to enter into a public partnership with infidels, but that they should avoid any contacts that may undermine the glory of God or the true religion.

In subsequent premises, Grotius specifies the rights and obligations that exist between Christians and non-Christians under natural and divine law. Under natural law, all men have an obligation to refrain from harming others without cause, whether they are Christians or non-Christians. Grotius mentions several such causes, for instance, when 'extreme necessity' (premise 4) or a 'special vocation' (premise 5) forces a man to do what is otherwise not allowed. Moreover, Grotius distinguishes between those who belong to the Christian church and those who do not (premise 7). He suggests that only those who belong to the church can be judged according to its laws¹⁷. Premises

14 *Ibid.*, fol. 314r: 'sciendum est errorem in fide nihil eorum immutare quae ad ius Naturae et universalis illius societatis tuitionem pertinent'.

15 Thomas Aquinas, *Summa theologiae*, 2a 2ae, Q. 10, Art. 10, resp.: 'Ius autem divinum, quod est ex gratia, non tollit ius humanum, quod est ex naturali ratione'.

16 Grotius, *De societate* (*supra*, n. 1), fol. 314r: 'Omnia ea quae apparent adversatura divinae gloriae et verae religioni adeo distincte sunt cavenda, ut neque spes, neque metus ullus contra persuadeat: sed maneat illud: Quaeite primum regnum caelorum'. Cf. Mat. 6, 33.

17 In support of this distinction, Grotius elsewhere refers to 1 Cor. 5, 12: 'For what have I to do to judge them also that are without? do not ye judge them that are within?' (*ibid.*, fol. 315v).

8-10 relate to partnerships with non-Christians. In his eighth premise, Grotius distinguishes between various types of partnerships: private and public (*privata – publica*), equal and unequal (*equalis – inequalis*), superior and inferior (*superior – inferior*)¹⁸. His ninth premise is that a partnership for war, or a military alliance (*societas bellica*), can be just. Elsewhere, Grotius distinguishes between two types of such alliances: *ἐπιμαχίαι* and *συμμαχίαι*. The first are defensive alliances (derived from the natural right to self-defense), the second offensive alliances (*e.g.*, for punishing violations of natural law)¹⁹.

On the basis of these premises Grotius develops nine propositions. His first is that it is not only allowed, but even necessary for Christians to abstain from harming infidels and heretics. This follows from the natural law of inoffensiveness, which is confirmed by the Gospel: 'The law of nature prescribes that no one should inflict evil on another, a [message] which Christ impresses on us a thousand times'²⁰. Grotius's second proposition goes further: not only should Christians abstain from harming infidels and heretics, they should even treat them in friendly ways. As Grotius observes, '[g]ood deeds, favors, commerce, charity, civility and utility are therefore cultivated between the faithful and infidels or heretics. For these, too, are the products of nature and are consequently the common property of all mankind'²¹. To support his proposition, Grotius refers to examples from Scripture which suggest that Jews were allowed to maintain ties of friendship with non-Jews. He even considers their tendency to avoid such contacts with non-Jews as a shortcoming of Judaism itself, which has been corrected by the Gospel. In this context, Grotius quotes from the Sermon on the Mount: 'that you may be children of your Father in heaven. He causes his sun to rise on the evil and the good, and sends rain on the righteous and the unrighteous' (Mat. 5, 45). On Grotius's reading, the commandment to

18 As Borschberg points out, these distinctions are also discussed elsewhere in Grotius's work: see, *e.g.*, Grotius, *De jure belli ac pacis* (*supra*, n. 11), 1.3.1 and 2.15.6.

19 Grotius, *De societate* (*supra*, n. 1), fol. 317r. Cf. Grotius, *De jure belli ac pacis* (*supra*, n. 11), 2.16.16.3. Borschberg, *De societate* (*supra*, n. 3), p. 370.

20 Grotius, *De societate* (*supra*, n. 1), fol. 314v: 'I. Prop. Abstinere a noxa in infideles, et haereticos universaliter non modo licet Christianis sed etiam necesse est; ex primo praemisso. Nemini enim inferendum malum lex naturae praecipit, idque Christus millies inculcat'. To support his proposition, Grotius refers to examples from Scripture, such as the pact between Abraham and Isaac with Abimelech (Gen. 21, 27 and 26, 29), the pact between Jacob and Laban (Gen. 31, 49), and the treaties between David and Salomon with Hiram, King of Tyre (2 Sam. 5, 11 and 1 Reg. 5, 12). Cf. Borschberg, *Hugo Grotius* (*supra*, n. 3), p. 64.

21 *Ibid.*, fol. 314v (trans. Borschberg, *Hugo Grotius* (*supra*, n. 3), p. 58, translation modified): 'II. Prop. Beneficia, officia, commercia, charitatis, civilitatis et utilitatis ergo inter fideles et infideles aut haer. ultro citroque recte colantur. Sunt enim et haec ex natura prodeuntia, atque ideo cunctis hominibus communia, ut in 1 praem.'

treat other human beings as children of God is not limited to Christians, but includes non-Christians as well²².

However, for Grotius, the duty to provide charity to infidels and heretics is not without limitations. Referring to the Apostle Paul (Gal. 6, 10), he maintains that 'greater charity should be demonstrated to the faithful than to infidels'²³. 'Similarly,' he asserts, 'greater friendship and familiarity should be cultivated with the faithful than with infidels'²⁴. Elsewhere, he relates these limitations to the distinction between infidels (*i.e.*, those who never belonged to the church, such as Jews and Muslims) and *ἑτεροδοξους* (*i.e.*, those who have fallen from the true faith or have been expelled by the church itself, such as apostates and heretics). While ties of friendship with infidels are permitted, and even desirable in light of the commandment to brotherly love, Christians should abstain from associating with *apostates* and *heretics*²⁵. They should engage with the latter only to the extent that it is necessary to 'bring them to good sense' through the example of a virtuous life and instruction in the true religion²⁶. While apostates and heretics threaten the unity of the Christian religion, this does not apply to infidels, who have never belonged to the church in the first place.

22 *Ibid.*, fol. 315r: 'An Christus certissimo argumento docet beneficia nostra etiam ad alienissimos porrigenda cum ipse Deus Optimus Maximus solem suum oriri faciat [et pluatur] super bonos et malos: ubi per solem et pluviam cuncta naturae bona intelligi voluit'. Grotius quotes the same passage from the Sermon on the Mount in his *Remonstrantie* to demonstrate 'that all people including those of other creeds, are our neighbours [*dat alle menschen, oock van andere gesintheit, ons even naesten zijn*]'. Grotius, *Remonstrantie* (*supra*, n. 8), fol. 6v (ed. Kromhout and Offenberg, p. 80-81/202, trans. Van Heertum). On this passage in *De societate* and the *Remonstrantie*, see my *Seeking refuge, Grotius on exile, expulsion and asylum*, *Journal of the History of International Law*, 20 (2019), p. 484.

23 Grotius, *De societate* (*supra*, n. 1), 315r: 'Maior charitas erga fideles quam erga infideles demonstranda est'. As Borschberg points out, these passages have been influenced by Thomas Aquinas, who argued that Christians should love their fellow human beings, yet may bestow more charity on those close to themselves than on strangers. Aquinas, *Summa theologiae*, 2a 2ae Q. 26 Art. 7 and Q. 32 Art. 9. Borschberg, *De societate* (*supra*, n. 3), p. 361.

24 Grotius, *De societate* (*supra*, n. 1), fol. 315r: 'Similiter maior amicitia ac familiaritas cum fidelibus quam cum infidelibus coli debet'. This idea can also be found in the *Remonstrantie*, where Grotius holds that the Apostle Paul 'does presume a closer bond between the believers, but does not exclude unbelievers from that bond of love'. Grotius, *Remonstrantie* (*supra*, n. 8), fol. 6v (ed. Kromhout and Offenberg, p. 80-81/202, trans. Van Heertum).

25 Grotius, *De societate* (*supra*, n. 1), fol. 315v: 'Qui ab ecclesia defecerunt, aut eius iudicio condemnati sunt ab horum familiari coniunctu et consuetudine abstinere Christiani debent'.

26 *Ibid.*, fol. 315v: 'ad sanam mentem perducere'. Cf. Borschberg, *De societate* (*supra*, n. 3), p. 375.

Therefore, Christians are allowed to treat infidels in a friendly manner, while contacts with heretics and apostates should be avoided as much as possible.

Against this background, Grotius formulates his first conclusion that it is permissible under natural law to enter into alliances with infidels and heretics with the aim not to harm each other²⁷. According to his second conclusion, it is even allowed to maintain ties of friendship with infidels, as is also suggested by Scripture²⁸. These ties of friendship include treaties to promote commerce and trade, but also alliances of war. Grotius observes that these alliances may either have a defensive or an offensive aim. However, a just cause for war is always required. In his third conclusion Grotius mentions one *justa causa belli*: protection of infidels. Christians have a right, and under certain circumstances a duty, to protect infidels from injustice: 'In a just war, however, the infidels are rightly defended by the faithful, even if those who oppress the infidels want to be considered as faithful [*etiamsi ii qui infideles opprimunt fideles haberi velint*]. Indeed, this work is not only permitted, but it is also most praiseworthy, and because of the circumstances often necessary'²⁹. Thus, according to Grotius, Christians have a *right* to defend non-Christians from injustice, even against those who want to be considered as Christians. Moreover, in some circumstances, for instance, when they have entered into a defensive alliance with non-Christians, they have a *duty* to support their (non-Christian) allies if they are attacked or oppressed by other Christians.

As Borschberg points out, the protection of non-Christians was a central topic in the work of the Spanish scholastics, in particular, that of the jurist-theologian Francisco de Vitoria, to whom Grotius refers in this context³⁰. In his first lecture on the American Indians, Vitoria had identified lending military assistance to (non-Christian) allies as a *justa causa belli*. He had given the example of a Christian ruler (*e.g.*, the king of Spain) offering military assistance to a non-Christian ally (*e.g.*, the Tlaxcaltecs) against a non-Christian enemy (*e.g.*, the Mexicans)³¹. Apart from lending military assistance to allies, Vitoria had recognized the 'protection of the innocent' as a just cause for war: the

27 *Ibid.*, fol. 314v: 'Tum privatis tum publicis personis licet inire foedus cum Infidelibus aut Haereticis de non offendendo utrinque'.

28 In this context, Grotius refers, among other examples, to the friendship between Salomon and Hiram, the King of Tyre (1 Reg. 5, 11 and 10, 22). *Ibid.*, fol. 317r.

29 *Ibid.*, fol. 317r: 'Concl. III. In bello autem iusto infideles [deleted: oppressi] recte a fidelibus defenduntur: etiamsi ii qui infideles opprimunt fideles haberi velint. Imo hoc opus non modo licitum, sed et summe laudabile et ex circumstantiis saepe necessarium est. ex 2 Prop'. Borschberg, *De societate* (*supra*, n. 3), p. 379.

30 Borschberg, *De societate* (*supra*, n. 3), p. 379-380. See the references to Vitoria in Grotius, *De societate* (*supra*, n. 1), fol. 316v (2).

31 Vitoria, *De Indis*, 3.7.17.

Spaniards had a right to declare war on local Indian rulers in the Americas, in order to protect their subjects from tyranny and inhuman practices of cannibalism and human sacrifice³². In *De societate*, Grotius refers to these passages³³ to conclude that the faithful have a right to defend infidels from injustice. However, he goes one step further than Vitoria by suggesting that infidels may even be defended against those who want to be regarded as Christians³⁴. Had Vitoria considered the protection of non-Christians as a possible justification of the Spanish war *against the Indians* (e.g., against the Mexicans), Grotius recognizes it as a possible justification of the war that is waged *on behalf of the Indians against other Christians* (e.g., against the Spaniards and Portuguese).

In the final part of his text, Grotius considers the possible coexistence of Christians and non-Christians *within* a Christian state. His fifth conclusion is that 'the highest form of a public partnership is the unity of the state. However, there is no doubt that a faithful people can live together with infidels in one state'³⁵. According to Grotius, Christians are allowed to live together with non-Christians in one state so long as it does not undermine the Christian faith. This danger exists especially in relations of subordination. Grotius gives the example of slavery. According to his sixth proposition, Christians are allowed to have non-Christian servants and slaves³⁶. However, according to his eighth proposition, the Magistrate may prohibit the possession of Christian slaves by non-Christian owners³⁷. To support this proposition, Grotius refers to two provisions of Roman law, according to which 'no heretic, infidel or Jew may keep, possess, or circumcise a Christian as slave'³⁸. As Borschberg explains, in his discussion of slavery, Grotius's aim was to protect the Christian religion: as slaves were accustomed (and sometimes forced) to adopt the faith of their owner, it was generally allowed for Christians to possess non-Christian slaves, but not for non-Christians to possess Christian slaves³⁹.

32 *Ibid.*, 3.5.15.

33 Grotius refers to Vitoria's *De Indis*, 3.5.15 and 3.7.17. The page numbers (368 and 370) correspond with those of the 1557 edition of Vitoria's *Relectiones theologicae XII* published in Lyon. *Ibid.*, fol. 316v (2).

34 Grotius, *De societate* (*supra*, n. 1), fol. 317r.

35 *Ibid.*, fol. 317r: 'Concl. V. Summa publica societas est unio reipublicae. Quin an autem populus fidelis cum infideli in una republica manere possit dubium non est'.

36 *Ibid.*, fol. 317r: 'Prop. vi. Fidelibus licet habere ministros atque etiam servos infideles'.

37 *Ibid.*, fol. 317v: 'Potest tamen fidelis magistratus lege lata dominium infidelium in homines fideles in ditionib. suis impedire, quae lex iustam habet rationem'.

38 *Ibid.*, fol. 317v: C. ne Christ. Manc. L. unicam (C.1.10.1-2): 'Ne christianum mancipium haereticus vel paganus vel iudaeus habeat vel possideat vel circumcidat'.

39 Borschberg, *De societate* (*supra*, n. 3), p. 383. Interestingly, an instruction of the Dutch East India Company (VOC) of 1617 required Christian owners of slaves in the East Indies to

In *De societate*, the example of slavery prepares the way for a discussion of relations of subordination between different peoples. According to Grotius's seventh conclusion, 'a Christian magistrate or people is allowed to accept an infidel people under its authority'⁴⁰. Grotius recognizes a parallel between the enslavement of individuals and the subjection of entire populations: an individual can either voluntarily submit to slavery (*e.g.*, by selling himself as a slave), or be enslaved by someone else⁴¹. In a similar vein, an entire population can either voluntarily submit to the authority of a foreign ruler, or be subjected in warfare. As Grotius explains, if a Christian people is defeated in war, the faithful have an obligation to obey their new (infidel) ruler. However, they are *not* allowed to submit themselves to the authority of an infidel ruler *voluntarily*. For Grotius, the protection of the Christian faith is decisive. This explains why the prohibition on the voluntary subjection of Christians to non-Christian rulers applies only if these rulers do not allow any other religion than their own. However, if they tolerate the Christian religion, the faithful are allowed to voluntarily submit to their authority on the condition that they can freely exercise their religion (and, by doing so, induce the infidels to convert to Christianity by their good example)⁴². In this context, Grotius emphasizes the central principle of his text, namely that it is allowed for Christians to enter into a 'public partnership with infidels' on the condition that it does not undermine the glory of God and the true religion.

Justifying overseas expansionism or religious toleration?

Why did Grotius write *De societate*? On Borschberg's and Van Ittersum's interpretation, *De societate* was written alongside *De jure praedae* to demonstrate

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- provide religious instruction to their slaves. Moreover, they were not allowed to sell their slaves to non-Christians. *Instructie voor den Gouverneur en de Raden van Indië* (1617), in: J.A. van der Chijs, *Nederlandsch-Indisch Plakaatboek, 1602-1811*, Batavia 1885, vol. 1, p. 47.
- 40 Grotius, *De societate* (*supra*, n. 1), 317v: 'Concl. VII. Pariter magistratui aut populo fideli licet populum infidelem in ditionem suam accipere.'
- 41 In *De jure belli ac pacis* Grotius distinguishes between two grounds for slavery under natural law: one could either become a slave by consent (for instance, by selling oneself into slavery), or as punishment for a crime (for instance, a violation of natural law). Under the *ius gentium*, one could become a slave by being defeated in a just war. For an analysis of Grotius's ideas on slavery, see G.P. van Nifterik, *Hugo Grotius on Slavery*, Grotiana, 22 (2001), p. 233-243.
- 42 Grotius mentions two other exceptions to the prohibition on voluntary submission to non-Christian rulers: voluntary submission is permissible if God has expressly commanded it, or if an 'extreme necessity' forces the faithful to submit to a non-Christian ruler. Grotius, *De societate* (*supra*, n. 1), fol. 317v.

that the Dutch commercial and military policies in the East Indies were justified under the law of nature⁴³. As is well-known, Grotius wrote *De jure praedae* on behalf of the Dutch East India Company (VOC): his aim was to develop a legal justification *ex post facto* of the seizure of a Portuguese ship, the *Santa Catarina*, by Jacob van Heemskerck in 1603⁴⁴. In chapters 12 and 13 of *De jure praedae*, Grotius presents the seizure of the Portuguese carrack as a justified act of public and private warfare: as agent of the Estates General and as representative of the VOC Van Heemskerck was authorized to punish the Portuguese for crimes committed against the Dutch and their allies. At the end of chapter 11, Grotius explains how in 1602, Van Heemskerck had entered into an alliance with a local ruler, the Sultan of Johore: under the terms of this alliance, the VOC had been granted access to local trade in exchange for protecting the Sultanate. However, as soon as the Portuguese had heard of the alliance, they had sent warships to Johore to block its harbors and terrorize its population. In response, the Sultan had turned to Van Heemskerck to request military assistance⁴⁵.

In *De jure praedae*, the alliance with the Sultan of Johore and his request for military assistance serve as important arguments for justifying the seizure of the *Santa Catarina* as an act of public warfare. According to Grotius, the Dutch have a right to enter into treaties and alliances with foreign rulers, including non-Christian ones. Moreover, they have a duty to support their (non-Christian) allies even against other Christians such as the Portuguese. As Grotius argues towards the end of chapter 13, 'not only is it universally admitted that the protection of unbelievers from injury (even injury by Christians) is never unjust, but it is furthermore maintained, by authorities who have examined this particular point, that alliances and treaties with unbelievers may in many cases be justly contracted for the purpose of defending one's own rights, too'⁴⁶.

43 Borschberg, *De societate* (*supra*, n. 3), p. 356 and 385 and Van Ittersum, *Profit and Principle* (*supra*, n. 7), p. 49-50.

44 In 1868, the Dutch historian Robert Fruin was the first to point out that Grotius had been commissioned by the VOC to write *De jure praedae*. According to Fruin, Grotius's task had been to take away concerns among the VOC's Mennonite shareholders about the seizure of the *Santa Catarina*. Modern historians emphasize that the shareholders' concerns were not primarily caused by religious or moral reasons, as Fruin had suggested, but rather by the limited proceeds of their investments. For a more extensive discussion of Fruin's thesis as well as the context that led to *De jure praedae*: Van Ittersum, *Profit and Principle* (*supra*, n. 7), p. 105-188.

45 Hugo Grotius, *De jure praedae commentarius*, ed. H.G. Hamaker, Hague Comitum 1868, p. 202-203. Trans.: Hugo Grotius, *Commentary on the law of prize and booty*, ed. M.J. van Ittersum, Indianapolis 2006, p. 296-297.

46 *Ibid.*, p. 298/ 434: 'Unde cum infideles tueri adversus injurias etiam Christianorum numquam non justum omnes fateantur, tum illud praeterea asseverant, qui hoc argumentum

In this passage, Grotius uses a Latin phrase that echoes the title of *De societate: 'cum infidelibus societas et foedera juste ineantur'*. Moreover, to support his argument, he refers to two just causes of war which he had also mentioned in *De societate*: the protection of infidels from injustice and the right to support (infidel) allies. As we have seen, Grotius had adopted these just causes of war from Vitoria⁴⁷. However, unlike Vitoria, Grotius attributed to Christians (the Dutch Estates General and the VOC) the right to lend military assistance to a non-Christian ally (the Sultan of Johore) against a common Christian enemy (the Portuguese).

According to Van Ittersum, these were startling claims in Grotius's day and age⁴⁸. In the eyes of Grotius's contemporaries, the Dutch had much less in common with the non-Christian populations of the East Indies than with their fellow-Christians, whether or not they were at war with them (as with the Portuguese). Grotius even maintained that 'by natural law the right to that prize [the *Santa Catarina*, MdW] was vested in the ruler of Johore himself', who had only ceded his right to Van Heemskerck and the VOC as a compensation for the expenses they had incurred by lending military assistance to the Sultan⁴⁹. The implication that a non-Christian ruler such as the Sultan of Johore could be regarded as a legitimate sovereign, who could wage a just war on a Christian ruler, was controversial and not self-evident. Van Ittersum therefore suggests that Grotius's aim in writing *De societate* was to support his arguments in *De jure praedae*: he wanted to demonstrate that the right to enter into non-aggression pacts with non-Christian rulers was the logical consequence of the natural obligation not to harm others, irrespective of religious beliefs. According to Van Ittersum, the parallels between *De societate* and *De jure praedae* are 'striking': not only do both texts refer to the natural law of inoffensiveness to conclude that legal obligations to infidels should be observed even at the expense of (other) Christians, the same biblical and legal sources are invoked to support this conclusion⁵⁰.

In view of these similarities, Borschberg's and Van Ittersum's interpretation that *De societate* was written alongside *De jure praedae* does indeed seem plausible. However, some questions that are discussed in *De societate* are more

tractarunt, multis casibus evenire posse, ut juris etiam sui defendendi gratia cum infidelibus societas et foedera juste ineantur'. This passage is also quoted in Borschberg, *De societate* (*supra*, n. 3), p. 390.

47 Vitoria, *De Indis*, 3.5.15 and 3.7.17.

48 Van Ittersum, *Profit and principle* (*supra*, n. 7), p. 54.

49 Grotius, *De jure praedae* (*supra*, n. 45), p. 299.

50 Van Ittersum, *Profit and principle* (*supra*, n. 7), p. 50: 'The same references to biblical patriarchs and kings who had allied themselves with unbelievers – Abraham, Isaac, David and Salomon – are found in both *De jure praedae* and *De societate cum infidelibus*'.

difficult to explain from the East Indian context. This is especially true of questions pertaining to the coexistence of Christians and non-Christians *within* a Christian state. As we have seen, Grotius believes it is possible that Christians live together with non-Christians in one state without the unity of the state or the Christian religion being threatened. However, on Grotius's view, this requires that relations between Christians and non-Christians are well regulated. An example is the regulation of mixed marriages, a topic that is discussed in *De societate*, but not in *De jure praedae*. Grotius considers marriage the 'highest bond'⁵¹, yet he also suggests that it may contribute to apostasy if, for instance, a Christian wife adopts the religion of her non-Christian husband. In *De societate*, Grotius therefore distinguishes between marriages that have been concluded and those that are still to be concluded⁵². Referring to 1 Cor. 7, 12, he observes that marriages that have been concluded (*i.e.*, *existing* marriages) between Christians and non-Christians are legally binding; therefore, a Christian wife is not allowed to separate from her infidel husband, nor a Christian husband from his infidel wife⁵³. However, invoking Ezra 10, Grotius explains that the Magistrate may enact a statute declaring such marriages null and void. As Grotius specifies, the Magistrate is allowed, but not obligated, to invalidate existing marriages between Christians and non-Christians. However, marriages with non-Christians that are still to be concluded (*i.e.*, *future* marriages) should not be permitted. According to Grotius, the Magistrate should prohibit such marriages, because they can lead to apostasy and undermine the Christian religion.

It is unclear how Grotius's argument for the prohibition of *future* marriages between Christians and non-Christians relates to his attempt to justify Dutch commercial and military policies in the East Indies. Perhaps Grotius was referring to marriages between Christians and the local, non-Christian population of the East Indies. According to early regulations of the VOC, its (former) employees were allowed to marry local 'Indian' women on the condition that they converted to Christianity and were baptized⁵⁴. However, these regulations date

51 Grotius, *De societate* (*supra*, n. 1), fol. 315r: 'Iv. Prop. Summa coniunctio est in matrimonio'.

52 *Ibid.*, fol. 315v: 'Agitur autem aut de contracto aut de contrahendo'. Borschberg, *De societate* (*supra*, n. 3), p. 376.

53 *Ibid.*, fol. 315v: 'Contracto non licet ab infideli divertere. 1 Cor. 7.12'. and fol. 316r (2): 'Uxor a viro infideli divertere non debet'.

54 *Instructie voor den Gouverneur en de Raden van Indië*, Art. 6o, in: Van der Chijs, *Nederlandsch-Indisch Plakaatboek*, vol. 1 (*supra*, n. 39), p. 46-47: 'Dat geene den vrijen handel genietende personen, noch derzelver kinderen, vermogen zullen zich bijzonder aan eenige Indiaansche vrouwen ten huwelijk te begeven, zonder consent van den Gouverneur-Generaal, Vice-Gouverneur of andere hooge Overheid, die in de voorschreven plaats kommanderen zal, en dat alleenlijk aan diegenen, die alvorens gedoopt zullen zijn en de

from 1617, that is, several years after Grotius wrote *De societate*⁵⁵. It is therefore more likely that Grotius referred to the domestic debate about mixed marriages. The prohibition on mixed marriages is explicitly mentioned in Art. 27 of Grotius's *Remonstrantie*, his draft regulations for Jews residing in Holland and West-Friesland, which prescribes that 'no Jewish man shall marry a Christian woman, nor a Christian man a Jewish woman'⁵⁶. In a note, Grotius explains that it applies only to *future* marriages, not to marriages that have *already* been concluded (he refers to the same biblical sources that are mentioned in *De societate*: 1 Cor. 7 and Ezra 10). According to Grotius, the Magistrate is authorized to dissolve *existing* marriages only 'in case one of the spouses should abuse the other in regard of religion'⁵⁷.

In *De societate*, Grotius also briefly discusses the position of children born from mixed marriages: because of an error of their parents, they are at risk of remaining unbaptized and losing their chance to salvation. Grotius believes that the main purpose of marriage is to raise children *ad gloriam Dei*⁵⁸. Marriages that prevent a Christian education should therefore be avoided. The same provision is mentioned in Grotius's draft regulations for the Jews, but here it is formulated in a more nuanced way: Grotius thus expressly rejects the canon *De Iudaeis*, according to which Jewish children may be taken away from their parents to be brought up by Christians⁵⁹. According to Grotius, the Magistrate may only take away children from Jewish parents if they are 'treated

Christelijk religie aangenomen hebben, in dewelke zij ook gehouden zullen wezen hunne kinderen op te brengen'. The author thanks Prof. Jos Gommans of Leiden University for this reference. See also: P. Emmer and J. Gommans, *Rijk aan de rand van de wereld, De geschiedenis van Nederland overzee, 1600-1800*, Amsterdam 2012, p. 293.

- 55 As mentioned above, Grotius probably wrote *De societate* in the first decade of the seventeenth century. His distinction between existing and future marriages cannot be found in the VOC regulations.
- 56 Grotius, *Remonstrantie* (*supra*, n. 8), fol. 17r (Kromhout and Offenbergh, p. 122-123/ 207, trans. Van Heertum).
- 57 Sub Art. 36, *ibid.*, fol. 28 (29)v and 29 (30)r (Kromhout and Offenbergh, p. 172-175/ 213-214, trans. Van Heertum). Early seventeenth-century notarial deeds from Amsterdam contain several examples of mixed Jewish-Christian marriages. Mixed marriages were officially prohibited by the Amsterdam ordinance of 8 November 1616. R.G. Fuks-Mansfeld, *De Sefardim in Amsterdam tot 1795, Aspecten van een joodse minderheid in een Hollandse stad*, Hilversum 1989, p. 54.
- 58 Grotius, *De societate* (*supra*, n. 1), fol. 315v.
- 59 This canon of the Fourth Council of Toledo can be found in Gratian's *Decretum*, C.28.q.1.c.11: 'A parentum infidelium separentur consortio fideles filii, ne eorum involvantur erroribus'. Cf. Grotius, *Remonstrantie* (*supra*, n. 8), fol. 29 (30)r, sub Art. 36 (Kromhout and Offenbergh, p. 174-175/ 214).

badly in the matter of religion'⁶⁰. However, if a child has not been baptized, but is brought up according to the Jewish religion, and if it is not maltreated, there is no ground for depriving the parents of their authority. Indeed, Grotius suggests that parental authority rests on a natural right, which may not be limited on religious grounds: 'it would seem that parents must not be deprived of their natural right on the grounds of religion'⁶¹. Instead of dissolving Jewish-Christian marriages, or depriving the parents of their authority, Grotius prefers that the faithful induce the Jews to convert to Christianity *voluntarily* by the example of their righteousness⁶².

Grotius's discussion of these questions in *De societate* – questions regarding the validity of mixed marriages and the legal status of children born from such marriages – appears to be more closely related to topics discussed in his draft regulations for the Jews than to those discussed in *De jure praedae*. Although it is possible that Grotius understood these questions also in relation to Dutch policies in the East Indies, it seems more plausible that he wanted to intervene in the domestic debate on the legal position of religious minorities in the Dutch Republic itself: in his draft regulations for the Jews he would thus make the same distinctions (*e.g.*, between existing and future marriages) and refer to the same sources (*e.g.*, 1 Cor. 7 and Ezra 10). Also, Grotius's conclusion in *De societate* that 'a Christian magistrate or people is allowed to accept an infidel people under its authority'⁶³ is difficult to explain from the East Indian context (at a time when the Dutch only had trading posts, but not yet seized territorial control)⁶⁴. However, it can be understood in the context of the debate on the legal status of religious minorities in the Dutch provinces: thus, in his *Remonstrantie*, Grotius argues that the States of Holland and West-Friesland have a duty under natural and divine law to offer a refuge to Jews who have fled from

60 Grotius, *Remonstrantie* (*supra*, n. 8), fol. 29 (30)r, sub Art. 36 (Kromhout and Offenbergh, p. 174-175/ 214).

61 *Ibid.*, fol. 29 (30)v, sub Art. 36 (Kromhout and Offenbergh, p. 176-177/ 214, trans. Van Heertum): 'zoo schijnt dat het recht vande macht vande ouders spruijtende vuyjt de natuijre door de religie nijet en behoort wech genomen te werden'.

62 *Ibid.*, fol. 29 (30)v, sub 36: '[i]t is rather to be hoped (as the Apostle also says) that the believer may turn the unbeliever to the road of salvation through their good example' (Kromhout and Offenbergh, p. 176-177/ 214, trans. Van Heertum).

63 Grotius, *De societate* (*supra*, n. 1), fol. 317v: 'Concl. VII. Pariter magistratui aut populo fideli licet populum infidelem in ditionem suam accipere'.

64 The VOC started shipping Dutch settlers to the East Indies in 1612, and, only by the end of that decade, it started to occupy native territories. The VOC regulations mentioned above are from 1617, that is, after the first settlers had arrived in the East Indies. However, as we have seen, Grotius's *De societate* was probably written in the first decade of the seventeenth century.

religious persecution. In this context, he invokes the same biblical sources he had invoked in *De societate* to argue that the commandment to love one's neighbor does not remain limited to other Christians, but also includes non-Christians⁶⁵.

Moreover, for some questions, it is impossible to say if they relate primarily to the East Indian context, or to the domestic debate on the legal position of religious minorities in the Dutch Republic. An example is the question of slavery. As we have seen above, in *De societate*, Grotius maintains that it is generally permissible for Christians to possess non-Christian slaves, but not for non-Christians to possess Christian slaves. The reason is that slaves tend to adopt the religious beliefs of their master, so that the possession of Christian slaves by non-Christian owners can lead to apostasy and undermine the Christian faith. At first sight, the question of slavery seems to be more relevant to the East Indian context than to the domestic context of the Dutch provinces⁶⁶. However, Grotius returns to this question in his draft regulations for the Jews, where he suggests that rules relating to slavery should be applied analogously to domestic servants⁶⁷. He thus proposes to include a provision that '[n]o Jew shall have Christians live in his household in any way, whether men, women or children, young or old'⁶⁸. Apparently, for Grotius, reflections on the permissibility of slavery (*e.g.*, whether it is permissible for non-Christians to possess

65 Grotius, *Remonstrantie* (*supra*, n. 8), fol. 6v (Kromhout and Offenber, p. 80-81/ 202). Grotius refers to the Apostle Paul, the Sermon on the Mount, and the 'example of the Samaritan'.

66 The first instruction of the VOC relating specifically to slavery in the East-Indies dates from 1622 (although the text mentions that it was meant to 'renew and improve' an older instruction for the Moluccas, Ambon and Banda): it prohibited Christians from selling slaves to non-Christians and non-Christians from buying slaves from Christians. See: *Voorschriften nopens 't verhandelen, regeren en opvoeden van slaven* (4 May, 1622), in: Van der Chijs, *Nederlandsch-Indisch Plakaatboek*, vol. 1 (*supra*, n. 39), p. 96-97. As Grotius probably wrote *De societate* in the first decade of the seventeenth century, it is unlikely that he was referring to these regulations of the VOC. Instead, his proposition that non-Christians were not allowed to possess Christian slaves was probably informed by Roman legal sources (see *supra*, n. 38). Grotius, *Remonstrantie* (*supra*, n. 8), fol. 27 (28)r.

67 In a note to Articles 29-31, Grotius explains that '[i]t was expressly forbidden by the ancient emperors that Jews kept Christians as their slaves. Afterwards, when the use of slaves began to decline, and it became customary to employ domestic servants, the Popes and the Councils for the same reason forbade Jews to hire Christians as their domestics, either as servants, housemaids, or wet nurses, or in any other domestic role. This is codified accordingly in canon law'. Grotius, *Remonstrantie* (*supra*, n. 8), fol. 27 (28)r, sub Articles 29, 30, 31 (Kromhout and Offenber, p. 166-169/ 213, trans. Van Heertum).

68 Grotius allows for an exception in the case of Christian midwives who may assist Jewish women at their delivery. *Ibid.*, fol. 17v, Art. 29 and 30 (Kromhout and Offenber, p. 124-125/ 207).

Christian slaves) are directly relevant for the debate on the legal position of Jews in the Dutch Republic (*e.g.*, whether Jews are allowed to employ Christian domestic servants).

Conclusion

In *De societate*, Grotius addresses the question whether it is permissible for Christians to enter into a 'public partnership with infidels'. Grotius believes that entering into such partnerships is permissible on the condition that relations between Christians and non-Christians are well regulated. His starting point is the community that exists between all men by nature, from which originate certain natural duties, including the duty not to harm others without cause, irrespective of religious beliefs. These natural duties are supported by the commandment to love one's neighbor and to treat other human beings as children of God, which, according to Grotius, is not limited to other Christians, but also includes non-Christians and even heretics. The most important restriction is that relationships between Christians and non-Christians may not undermine the glory of God and the Christian religion, a danger which exists especially in relations of subordination, as, for example, in the case of Christian slaves belonging to non-Christian owners. Such relations in which Christians are subordinate to non-Christians should be avoided, because they may contribute to apostasy, while more equal relations between Christians and non-Christians (as well as relations in which non-Christians are dependent on Christians) should be allowed, as they may contribute to the latter's (voluntary) conversion to Christianity.

According to Borschberg and Van Ittersum, Grotius wrote *De societate* alongside *De jure praedae* to support his argument that the Dutch policies in the East Indies were justified under natural law. However, as I have showed in this article, Grotius's text can also be read in a different way, namely as a general treatise on the legal conditions under which Christians may enter into a public partnership with non-Christians, whether it be a partnership of states (*e.g.*, in the East Indian context), or the partnership of a particular state (*e.g.*, the Dutch Republic). I have thus discussed several similarities between *De societate* and Grotius's draft regulations for the Jews, including his proposals regarding mixed marriages and the legal status of children born from such marriages. Moreover, I have pointed out that some of Grotius's arguments in *De societate*, which were apparently developed in view of the East Indian context – for instance, arguments regarding slavery –, also played a role in domestic debates on the legal position of Jews in the Dutch provinces. Hence,

I conclude that it is plausible that Grotius conceived of *De societate* as the outline of a more general treatise on the legal conditions under which Christians could enter into public partnerships with non-Christians, which related not only to Dutch policies in the East Indies, but also to questions pertaining to the legal status of religious minorities in the Dutch Republic itself. It was this more general work 'on the public partnership with infidels', which Grotius later used to draft his legal regulations for the Jews.