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Introduction

Grotius's Contribution to Commercial and Maritime Law

On 10 February 2023 a workshop was held at Tilburg University that addressed the theme of Grotius and commercial and maritime law. The thematic issue presented here is the outcome of this event. In four contributions Grotius's views on the issues of pledge, insolvency, representation and limited liability are analyzed. The focus of the workshop was concerned with Grotius's contribution to commercial and maritime law. Because the Roman-Dutch law that came after Grotius has been researched in many publications, the papers that are published hereafter focus foremost on the sources which Grotius used. For the mentioned themes, in particular the *Inleidinge tot de Hollandsche Rechtsgeleertheyt* (1631) is scrutinized and compared with the legislation that was in force in the county of Holland at the time when Grotius was writing.

Grotian thought on commercial and maritime law, in particular with regard to private mercantile arrangements, has remained understudied. For some mercantile topics, local law and statutory law have been identified as sources of the *Inleidinge*. Robert Lee, and after him Herman Fischer and Karl Wellschmied, pointed to the influence of the printed Antwerp *costuymen* of 1582 on the chapter on bills of exchange (III.13).[1] Robert Lee in his English translation of the *Inleidinge* (1936) and also Wellschmied listed the articles of princely statutes of 1549, 1551 and 1563 that served as basis for the chapters on maritime law (III.20, III.22-23, III.29).[2] Other chapters of the *Inleidinge*

1 Herman F.W.D. Fischer, 'Het oud-vaderlandse handelsrecht en Hugo de Groot', *Rechtsgeleerd Magazijn Themis* (1952), p. 606; *The Jurisprudence of Holland*, ed. by Robert W. Lee (Oxford, Clarendon, 1936), vol. 2, p. 286; Karl Wellschmied, 'Zur Inleidinge tot de Hollandsche Rechtsgeleerdheid des Hugo Grotius', *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), p. 408.

2 *The Jurisprudence of Holland*, ed. by Robert W. Lee, vol. 2, xxxix–xli; Wellschmied, 'Zur Inleidinge', pp. 399–400.

referring to mercantile contracts are the ones on bottomry (III.11) and insurance (III.24). Also in *De iure belli ac pacis* (*IBP*, 1625) Grotius mentions arrangements of trade, such as limited liability (II.11.13) and bills of exchange (II.12.3). Both the *Inleidinge* and *IBP* are extensive on the taking of interest in loans (*Inl.* III.10.8-10; *IBP* II.12.20-22) and investment in partnerships (*Inl.* III.21.5-8; *IBP* II.12.24).

Both in the *Inleidinge* and in *IBP* Grotius presents some rules as specifically applicable to merchants, such as for example proportional external liability (*Inl.* III.1.31; *IBP* II.11.13) or the interest rate of 12 per cent (*Inl.* III.10.10 *in fine*). These rules are considered as exceptions to more general rules of civil law. In this regard, the *Inleidinge* reflects the Low Countries' tradition that did not take commercial law as a separate, autonomous body of rules but as a part of private law, much as had been the case in Roman times. There were no separate commercial courts, for example.[3]

For many of the aforementioned themes, how Grotius's ideas related to practice has not been studied in depth. Only the comparison of the *Inleidinge* with statutes and local law has been made. To what extent Grotius integrated judicial practice and customs into his work is in large part unknown. Grotius had been advocate-fiscal at the Court of Holland (1607–1613) and in that position had access to compilations of Hollandic customs. Therefore, he must have had a good knowledge of them.[4] However, during his captivity at Loevenstein (June 1619-March 1621) Grotius did not have access to all relevant sources. He mentioned in a letter to his children that he had assembled rules of statutes and local law into the *Inleidinge* but only for as much they were known to him through 'old *hantvesten*, judgments and other sources'. Grotius added that he regretted that he had not been able to consult practitioners while writing the *Inleidinge* 'to talk about the Hollandic customs and usages'. Therefore, he advised to seek contact with 'experienced lawyers' to supplement what he had missed. Even though afterwards experts read the manuscript of

3 It was only under the influence of French law that in the early nineteenth century Dutch codes of commercial law were issued. See René J.Q. Klomp, *Opkomst en ondergang van het handelsrecht: over de aard en de positie van het handelsrecht – in het bijzonder in verhouding tot het burgerlijk recht – in Nederland in de negentiende en twintigste eeuw* (Nijmegen: Ars Aequi, 1998); Boudewijn Sirks, 'Sources of Commercial Law in the Dutch Republic and Kingdom', in *Understanding the Sources of Early Modern and Modern Commercial Law: Courts, Statutes, Contracts and Legal Scholarship*, ed. by H. Pihlajamäki, A. Cordes, S. Dauchy, and D. De ruysscher (Leiden: Brill, 2018), pp. 182–4.

4 Wouter Druwé, 'Grotius' Introduction to Hollandic Jurisprudence', in *The Cambridge Companion to Hugo Grotius*, ed. by R. Lesaffer and J.E. Nijman (Cambridge: Cambridge University Press, 2021), pp. 409–32, at p. 412.

the *Inleidinge*, and apparently did not make many suggestions for changes,[5] it seems that Grotius was unsure about some of the Hollandic rules mentioned in his work.

It is possible that Grotius's efforts of synthesis and interpretation of rules from their underlying purposes resulted in novel views. This could be the case with regard to rules of local law.[6] And innovative interpretations could amend the civilian and canon-law traditions, as well as the neoscholastic (Thomist) literature with which Grotius was well acquainted.[7] There are several examples of Grotius going beyond the legal-scholarly consensus.[8] And, also, it has been found out that Grotius's ideas, even when considered within the framework of the *Inleidinge* only, were not always entirely consistent.[9]

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5 The letter, which was only published for the first time in 1720, can be found in the editions of van Apeldoorn (1939, vol. 1, pp. xii–xiii) and Meijers-Dovring-Fischer (1952, pp. xxvii–xxviii). This letter was altered and then added to the first edition of 1631. The parts on Grotius's doubts were left out, also because in the period 1629–1630 the manuscript had indeed been read and commented on by legal experts. See further, Robert Feenstra, 'Een handschrift van de Inleidinge van Hugo de Groot met de onuitgegeven *Prolegomena Juri Hollandico Praemittenda*', *Tijdschrift voor Rechtsgeschiedenis* 35 (1967), pp. 460–2; Robert Fruin, 'Geschiedenis der Inleidinge tot de Hollandsche Rechts-geleerdheid gedurende het leven des auteurs', in *Inleidinge tot de Hollandsche Rechts-geleerdheid*, ed. by S.J. Fockema Andreae, vol. 1 (Arnhem: Quint, 1895), pp. xx–xxii.

6 See for example the rules in *Inl.* II.5.14, II.48.29 and III.15.4, which construe the right of the unpaid seller in assets delivered to the buyer as ownership, whereas before it was a lien. See Dave De ruysscher and Ilya Kotlyar, 'Local Traditions v. Academic Law: Collateral Rights on Movables in Holland (c. 1300–c. 1700)', *Tijdschrift voor Rechtsgeschiedenis* 86 (2018), pp. 392–8.

7 For the law of contract, see Wim Decock, *Theologians and Contract Law: The Moral Transformation of the Ius Commune* (*ca. 1500–1650*) (Leiden: Brill, 2013), pp. 208–12, 324, 644–5; Robert Feenstra, 'L'influence de la scolastique espagnole sur Grotius en droit privé: quelques expériences dans des questions de fond et de forme, concernant notamment les doctrines de l'erreur et de l'enrichissement sans cause', in *La seconda scolastica nella formazione del diritto private moderno* (Milan: Giuffrè, 1973), pp. 377–402; Joe Sampson, *The Historical Foundations of Grotius' Analysis of Delict* (Leiden: Brill, 2017). On the influence of scholastic authors on Grotius with regard to property concepts, see Robert Feenstra, 'Der Eigentumsbegriff bei Hugo Grotius im Licht einiger mittelalterlicher und spätscholastischer Quellen', in *Festschrift für Franz Wieacker zum 70. Geburtstag*, ed. by O. Behrends (Göttingen: Vandenhoeck und Ruprecht, 1978), pp. 219–26, and Robert Feenstra, 'Expropriation et dominium eminens chez Grotius', in *L'expropriation*, ed. by L. Waelkens (Brussels: De Boeck, 1995), vol. 1, pp. 133–53.

8 For example, on stipulated rights for third parties, Paolo Astorri, 'The Law of Contract and Treaties', in *The Cambridge Companion to Hugo Grotius*, ed. by R. Lesaffer and J.E. Nijman (Cambridge: Cambridge University Press, 2021), pp. 513–34, at pp. 521–2.

9 One example relates to *Inl.* III.1.52-53. III.1.52 seems to evoke a generalized legal effect of promises, whereas III.1.53 is restrictive, in line with the Roman law on *stipulatio*. See Robert Feenstra, 'Pact and Contract in the Low Countries From the 16th to the 18th Century', in

For many aspects of commercial law, rules were in flux around 1619. With regard to bills of exchange, in the first decades of the seventeenth century the technique of endorsement, rendering bills of exchange fully negotiable, was slowly given support, for example in the law of Antwerp.[10] Because of the development of rules, for many themes of commercial and maritime law, the number of rules which Grotius could select from was high, and they could be connected to different circumstances. For example, rules of the late-medieval maritime law, standing in the tradition of the *Rôles d'Oléron*, had considered the shipmaster as owner of the ship, whereas in the course of the fifteenth and sixteenth centuries it had become more common, at least in Holland, that the shipmaster was an agent and only had a part of the ship in property.[11]

The papers published hereafter provide early answers to some of these questions. Vincent Van Hoof demonstrates how Grotius combined *ius commune* with local rules of pledge, and how Grotius following on the latter distinguished between movables and immovables. For movables rights of tracing were restricted when third parties acquired the asset under pledge (*mobilia non habent sequelam*). The rules of local law were the most important, which resulted in a minimal influence of Grotius's *Inleidinge* on the Roman-Dutch law for the theme. Maurits den Hollander analyzes the references to insolvency and *cessio bonorum* in the *Inleidinge* and *IBP*. He argues that Grotius was somewhat stricter than the statutes on the matter, but at the same time acknowledged possibilities for the debtor to receive protection from the sovereign. In doing so, Grotius blended rules of Roman law on *dilatio* and through his connection to sovereignty created the legal basis for majority compositions, which became accepted in the 1640s. For the themes

Towards a General Law of Contract, ed. by J. Barton (Berlin: Duncker & Humblot, 1990), pp. 207–8. Another example relates to *Inl.* III.1.36 and III.3.38. The first text states that assignment of a claim or right (*inschuld*) is not possible outside the scope of mandate, whereas the latter text mentions that claims promised to a third party can be accepted by the latter (no restriction connected to mandate is mentioned). In *IBP* II.11.18 there are the additional elements of a natural right of acceptance on behalf of the third party, in combination with a declaration by the promissee to the third party, but it is unsure whether according to Grotius these rules pertained only to natural law or also to the law of Holland. See Reinhard Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition* (Oxford: Clarendon, 1996), pp. 43–4, and also the article by Wouter Druwé hereafter.

10 Dave De ruysscher, 'L'acculturation juridique des pratiques commerciales à Anvers. L'exemple de la lettre de change (XVIe–XVIIe siècle)', in *L'acculturation juridique. Actes des Journées de la Société d'Histoire du Droit*, ed. by B. Coppein, F. Stevens and L. Waelkens (Brussels: Academy Palace, 2011), pp. 158–9.

11 Edda Frankot, *'Of Laws of Ships and Shipmen'. Medieval Maritime Law and its Practice in the Towns of Northern Europe* (Edinburgh: Edinburgh University Press, 2012), p. 8; Marinus Th. Goutsmit, *Geschiedenis van het Nederlandsche zeerecht* (The Hague: Nijhoff, 1882), p. 110.

of representation and agency, Wouter Druwé demonstrates that Grotius in the *Inleidinge* and *IBP* largely confirmed the opinions found in the contemporary *ius commune*, but also went beyond them, by referring to a more general possibility of promises for third parties. Dave De ruysscher then shows that Grotius's ideas on proportional and limited liability digressed from the *ius commune* in several ways and that he combined local and maritime sources before arriving at his own views. Grotius's interpretations were stretched and not entirely coherent, and it is argued that his opinion was not crucial for the development of limited liability in the county of Holland.

This thematic issue provides insights that may become anchoring points for future research. Considering the novelty of some of Grotius's views, the assumption that the *Inleidinge* is a mere compilation of rules that were in force in the county of Holland seems unjustified. Moreover, Grotius's position in the economic history of the Dutch Republic deserves more attention. His scholarly views could have impact but others were subject to debate. For matters of public international law, Grotius's writings have been considered as supportive of the Dutch Republic and its merchants.[12] His *De iure praedae* (1604) and, arguably also, *IBP* served the commercial interests of the Dutch,[13] but it is not entirely sure to what extent one can draw the same conclusion when it comes to private commercial and maritime law. Did Grotius legitimate the Great Transformation, the 'capitalistic' revolution, that was taking place in the sixteenth and seventeenth centuries? In the future, hopefully, a closer examination of Grotian thought in comparison with mercantile developments and legal practice will provide more answers.

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12 On Grotius's admiration of merchants, see Martti Koskenniemi, 'Imagining the Rule of Law: Rereading the 'Grotian' Tradition', *The European Journal of International Law* 30 (2019), pp. 25–6.

13 Martine J. van Ittersum, *Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615* (Leiden: Brill, 2006); Martti Koskenniemi, *To the Uttermost Parts of the Earth. Legal Imagination and International Power, 1300–1870* (Cambridge: Cambridge University Press, 2022), pp. 280–345; Eric Wilson, *The Savage Republic: De Indis of Hugo Grotius. Republicanism and Dutch Hegemony within the Early Modern World-System* (*c. 1600–1619*) (Leiden: Nijhoff, 2008).