The Patristic Context in Early Grotius

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Abstract
The use of patristic texts was tightly bound up with the needs of the contemporary discussion which provided Grotius with sources for his patristic citations. His use of ancient texts especially in *Ordinum Hollandiae ac Westfrisiae pietas* proved to be highly controversial.

Grotius’s advocacy of tolerance with respect to various forms of Christianity determines his use of patristic texts as well. He looks for examples of moderation in the Early Church and by this accomplishes a significant shift of perspective. He points out the diversity of expressions in the Early Church and therefore replaces questions of dogmatic definition with the question of how to handle orthodoxy and heresy in society. In doing so, he implies requirements for the proper reading of patristic texts in his own times. Grotius’s notion of Christian liberty is connected to awareness of context and intrinsically linked to a historical understanding. In his writings, contextualisation involves both religious-historical comparison and the integration of general sources from antiquity. With regard to early Christian sources, this means that Grotius understands them as deeply rooted in the broader ancient context. This approach to early Christian literature is already visible in *De iure praedae*. His sensibility for cultural variation, his comparative method and historical interest in ancient institutions are outstanding, and Grotius has these characteristics in common with legal humanists like François Baudouin.

Keywords
Grotius, patristics, historical method, development of doctrine, tolerance, legal humanism, *De iure praedae*, *Ordinum pietas*, *De imperio*

At first glance the handling of patristic sources by Grotius in his Dutch period seems hardly to differ from what can be found in the writings of theologians who wrote in the second half of the sixteenth century, as for example Bullinger – Grotius calls him ‘one of the more recent commentators’¹ – or on the other hand Brentz or Chemnitz. As they do, Grotius draws on Augustine, Ambrose,

¹ Hugo Grotius, *De imperio summimarum potestatum circa sacra*. Critical edition with introduction, English translation and commentary, ed. by Harm-Jan van Dam, Studies in the History of Christian Thought 102 (Leiden: Brill, 2001), 11,6 (p. 534.20). *De imperio* will be cited from this edition, by section (and page and line number).
Cyprian, Lactantius, somewhat less often on Athanasius, Justin, and the historians Eusebius, Socrates and Theodoret, and occasionally on Chrysostom. After 1613, Grotius cites Greek authors more extensively. Unlike Bullinger, Grotius refers to the Greek editions that had been printed in the meantime. But other than this, did nothing change in the fifty years separating Bullinger and Grotius regarding the reading of patristic texts?

In his Dutch period Grotius uses patristic sources most extensively in two writings, *Ordinum Hollandiae ac Westfriesiae pietas* of 1613 and *De imperio summarum potestatum circa sacra*, finished in 1617. The citations in these works serve to display academic erudition, and Grotius meets thereby the scholarly expectations of his time. But one man’s meat is another man’s poison. His direct opponent, Sibrandus Lubbertus, speaks of *arrogantia* in describing *Ordinum pietas*, and Lubbertus’ own writings appear rather plain in comparison to Grotius’.

As the reactions to *Ordinum pietas* quickly demonstrated, Grotius’s efforts to show intellectual mastery did lasting damage to the reception of the book and to his reputation. However, Grotius had reason to do as he did, and he continued to use all the intellectual and rhetorical means at his disposal in *De imperio*, though more carefully. His competence, as a *jurisconsult*, to consider religious matters was sharply disputed, reflecting the broader conflict between State and Church. Showing familiarity with the tools of scholarly discourse was an attempt to demonstrate his qualifications in religious affairs.

The ongoing debate shaped its canon of quotations. A quotation supports argumentation only insofar as there is agreement on the value and importance of its author. The use of patristic texts was therefore tightly bound up with the needs of the contemporary discussion. This is evident as long as patristic references served merely to support partisan positions within a normative

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3 van Dam, *De imperio*, introduction, p. 19. *De Imperio* was published only in 1647.


5 Lubbertus’ principal writings show clearly the limitation of his knowledge, being based mainly on a collection of the acts of councils and a number of quotations of Augustine, and using Stephanus’ *Thesaurus* for broader ancient material; cf. Sibrandus Lubbertus, *De conciliis libri quinque, Scholastice & Theologice collati cum disputationibus Roberti Bellarmini* (Geneva: Petrus Rouerianus, 1601).

discourse. However, this also holds for a debate in flux, a debate that became cognizant of other texts that were relevant from a new point of view and no longer followed exclusively the pattern of the already known. It has already been recognized that Grotius depended heavily on the writings of his contemporaries as a source for his patristic citations. In their editions, Rabbie and van Dam have identified numerous examples of patristic quotations present in Grotius that can also be found in the contemporary literature. It may be concluded that these quotations do not indicate Grotius's own reading of ancient texts but rather originated in the books of his contemporaries.

More interesting, however, is the way in which the quotations in Grotius are embedded in the contemporary debate. For example, Grotius cites Gregory of Nazianzus, ep. 130, as follows: ‘Gregory of Nazianzus spoke rather harshly of synods, for he said that he “avoided any assembly of bishops” since he had seen no meeting that did not cause rather “an increase than a solution of trouble, for contentiousness and lust of power are stronger than reason”’. At the time of Grotius's writing, the authority of the State in matters of religion was being challenged, and the call for a synod on the predestination controversy was in the air. Grotius supports his reservations concerning a synod by quoting Gregory of Nazianzus. The context shows clearly that Grotius was relying on William Whitaker. However, the quotation is found not only in Whitaker’s book but also in the first chapter of the treatise De conciliis by Sibrandus Lubbertus, Grotius’s opponent.

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7 Rabbie (‘L’Eglise et l’Etat’, p. 113) mentions in particular three books that Grotius may have purchased in London: William Whitaker, Praelectiones de conciliis; Thomas Bilson, De perpetua ecclesiae Christi gubernatione; Lancelot Andrewes, Tortura Torti.

8 Gregory of Nazianzus, ep. 130,1-2 ad Procopium (GCS, 53, p. 95.20-23, Haelewyck).

9 Ordinum pietas, 74. Here and in the following, Rabbie’s (cf. fn. 1) translation is cited.

10 Grotius continues by citing Hilary of Poitiers, ad Const. 2.5, (CSEL, 65, p. 200.9-13, Feder), as does Whitaker. But Grotius quotes a longer passage.

11 William Whitaker, Praelectiones, in quibus tractatur controversia de conciliis contra Pontificios inprimis Robertum Bellarminum (Cambridge: James Allenson, 1600).


13 Sibrandus Lubbertus, De Conciliis, p. 2. ep. 130 ad Procopium.
Grotius was not one to introduce new texts into the debate, but all the same, his use of ancient texts in *Ordinum pietas* proved to be highly controversial. Lubbertus called Grotius’s choice of texts ‘unfortunate’.\(^{14}\) Johannes Bogerman, who wrote a rebuttal to *Ordinum pietas* in the form of annotations, addressed Grotius’s use of patristic texts as well. In Bogerman’s critique can be read the reproach that in his readers’ best interest, Grotius should have indicated his sources more precisely;\(^{15}\) a point in a debate *de usu patrum* that was hardly justified by Grotius’s actual handling of citations or by his dependence on Whitaker. Rather, the criticisms levied by Lubbertus and Bogerman show that the controversy had affected the reading of patristic sources.

The task presents itself to describe transitions in the debate in the beginning of the seventeenth century and their effect on the reading of patristic sources. Grotius’s own observations concerning the use of patristic sources in *Ordinum pietas* and *De imperio* shall serve as a starting point. Even though in Grotius clusters of proofs can be found that draw on the normative discourse, attention will be given to passages that reflect a certain contextualization of patristic texts within antiquity. In the second part of the essay, this line will be traced back to Grotius’s earlier work, *De iure praedae*.

I. Examples of modestia in History

*Patristic References in Ordinum Pias (1613) and De Imperio (1616)*

In *Ordinum pietas* and *De imperio* there are a few passages where Grotius reflects on the use of patristic texts. Without using the technical term, Grotius situates himself in the *consensus patrum*.\(^{16}\) Confronting his addressees and opponents, he points to the very quantity of citation: ‘How many examples of this does Antiquity provide!’\(^{17}\) ‘What are you going to reply to this mass of examples – Sibrandus?’\(^{18}\) What is meant are references to the Early Church. Continuity with the Old Faith, and legitimation through the same, remain


\(^{15}\) Bogerman, *Annotationes*, p. 61.

\(^{16}\) For example, in *Ordinum pietas* 64 (p. 152). The argument of *consensus patrum* was very common and was even adapted to the Protestant context in the form of a consensus of the Reformed Churches. Sibrandus Lubbertus writes: *Huc accedit omnes reformatas Ecclesias hanc opinionem improbare. Vnanimi enim consensus docent ..., Responsio Ad Pietatem Eugonis Grotii*, p. 5, cf. pp. 109, 132, 159.

\(^{17}\) *Ordinum pietas*, 85 (p. 166.3f.).

\(^{18}\) *Ordinum pietas*, 151 (p. 208.31f.).
the undisputed basis of the debate. The claim to be in agreement with the ancient Church was made over and over again on all sides, and Grotius is no exception in this respect. Nevertheless, he differs in his approach from, for example, his opponent Sibrandus Lubbertus. Various parties could claim the authority of the Early Church only because contradictory things were said by ancient writers. But how should one deal with this diversity? Or how should it be interpreted? In contrast to Sibrandus Lubbertus, these questions are important to Grotius. Consider a statement like the following: ‘Do not Calvin and others when they loudly protest against the freedom of will often repeat, in this respect the Fathers should not be listened to? 19 Grotius disagrees with both content and method, but his alternative is not simply to follow the Early Church in every respect. On the contrary, he recognizes the variety of expression in the Early Church. This is the point of departure for developing a picture of Grotius’s conception of the Early Church.

Grotius’s advocacy of moderation and tolerance with respect to various forms of Christianity is a major purpose in Ordinum pietas and De imperio and determines his use of patristic texts as well. It was precisely this modestia or moderation that Grotius insisted upon and that he found to be lacking in his opponents’ treatment of the Vorstius affair. 20 For his opponents, it was merely a matter of proscribing certain forms of public speech. Yet at the same time they held themselves to be tolerant in religious affairs. 21 Grotius was familiar with the distinction being made here and quotes the unique relevant sentence from the Theodosian Code 16,5 De haereticis in De Imperio: 22 ‘He shall have the right to know such noxious doctrines only for himself but shall not reveal them to others to their hurt’. 23 Grotius, however, employs this quotation from the Theodosian Code primarily as a reference to the freedom of opinion

19 Ordinum pietas, 52 (p. 142.17f.).
22 De Imperio 3,9 (p. 218.1, v.D.). Here and in the following, van Dam’s translation (cf. fn. 1) is cited.
23 CTh, 16, 5.5.4f (p. 856, Mommsen/ Meyer). In De imperio, 8.3 (p. 378.19-25) Grotius gives a summary of the laws against heretics in CTh, 16, 5 and Augustine’s response: ‘In the same way the Christian emperors forbade assemblies of heretics and schismatics; they ordered them to give up their basilicas to the Catholic Church, they prevented heretics and schismatics from gaining access to high offices; they even took away the right to acquire anything by testament. All these things are defended extensively by Augustine against the Donatists. For the ancient Church did not disapprove of the kind of punishment that left time for repentance to those who

24 This principle was put forward by the Donatists against Augustine, Augustine, ep. 185,22 (CSEL, 57, p. 21.9f, Goldbacher), cf. ep. 173, 1-3.
25 CTh, 15, 1.2 (p. 833, Mommsen/ Meyer).
26 Ordinum pietas, 31-33 (pp. 128-130).
27 Eusebius of Caesarea, h.e. 7.30.4-5 (GCS, Eusebius II/2, p. 706.17-708.3, Winkelmann).
28 Ordinum pietas, 33 (p. 130.1-3): ‘For Firmilian and other bishops did not cease to be orthodox even though, for a very long time, they tolerated Paul of Samosata’.
which is of course closely connected to Grotius’s own role in the controversy. He states most clearly: ‘But the opposite method: “He disagrees with me on predestination, I cannot tolerate him. He is heterodox, he is a heretic, he is a Pelagian. He is a Socinian” should be given up as quickly as possible’. This way of going about things – the sharp drawing of lines, the habit of separation – Grotius identifies as ‘the spirit of Donatus’. By identifying his opponents with the ‘heretic’ opponents of Augustine, he skewers them on their own weapons.

Moderation was not merely a much visited topos and a general call for good sense; moderation, peace and tolerance – ‘concept van de moderatie, vrede ende dulding’ – were the subject of a burning debate in the Netherlands, as can be seen in the writings of Jacobus Trigland, 1615 but also in the reactions to Grotius’s Ordinum pietas. For Trigland, as much as for Lubbertus, tolerance in matters of doctrine is inadmissible. Characterizing the situation by the question ‘Of twee strijidhge Leeringen in een Kercke geduld/ ende de Leeraers vande selve voor Leeraers der Waerheyt/ ende getrouwe Herders vande Kudde Christi erkent moghen worden’, Trigland explained to his readers the concept of moderatie as he understood it. Lubbertus also wanted to hold on to the notion of tolerance. It is not the act of tolerating itself that is in question, writes Lubbertus in response to Grotius: ‘Non enim in quaestionem venit, An tolerandus sit, qui diversum credit?’ This was doubly true; for one, because a person cannot be forced to believe against his own convictions, and for another, because there are times and circumstances that make tolerance a matter of practical necessity.

30 Ordinum pietas, 91 (p. 170.17-19).
31 Ordinum pietas, 92 (p. 170.30).
32 See the introduction in Jacobus Trigland, Den Recht-gematigden Christen: Ofte vande waere Moderatie (Amsterdam: Paulus van Ravesteyn, 1615) repr in Het Eerste Deel Vervatende die Boeken ende Schriften Jacobi Triglandii, de welcke handelen vande vijf Artyckelen Ende vande Moderatie (Amsterdam: M.J. Brandt, 1639), pp. 25-67; see also Jacobus Triglandi, Advys Over een Concept van moderatie (Amsterdam: M.J. Brandt, 1615; Kn. 2192), repr. in Het Eerste Deel, pp. 3-24.
34 The question is ‘whether two conflicting doctrines can be tolerated in one Church, and whether the teachers of these doctrines can be acknowledged as teachers of truth and faithful shepherds of the flock of Christ’ (Trigland, Den Recht-gematigden Christen, p. 29).
35 Lubbertus, Responso, p. 109.
However, toleration, according to Lubbertus, was only the *libertas credendi*, which did not include the freedom to make thoughts public. The public sermon leaves no room for heterodoxy. One cannot be a heretic with heretics and at the same time be recognized by the orthodox as orthodox. Thus Lubbertus introduces the element of deceit, relevant in part because Vorstius was blamed for interpolating heretical texts and then recommending them under his own authorship to unsuspecting readers.

The motto ‘deceit’ gave Lubbertus the opportunity to refer to the passage from Eusebius’ Church history that Grotius had cited, one of the very few patristic references in *Ordinum pietas* that caught his attention. For Lubbertus, as for Grotius, the postponed trial of Paul of Samosata corresponds to the case of Vorstius, but it does so in a fundamentally different way. For Lubbertus, Firmilian does not exemplify moderate and careful judgement; rather, it was the deceit in the two cases that serves as the point of comparison. In taking this position Lubbertus was correcting Grotius by invoking the interpretation given in Eusebius, who emphasized repeatedly that it was Paul of Samosata’s trickery that explains Firmilian’s hesitation in judgement. In Grotius’s paraphrase of Eusebius, the element of deceit still appears, but Grotius’s point of reference is different. Grotius distinguishes historical facts and their interpretation. Thus he tries to extract a historical example from Eusebius while leaving behind its interpretation.

For Grotius Firmilian’s example stakes out a space for moderation, as Firmilian’s postponement of the condemnation of somebody later seen as a heretic did not result in his own orthodoxy being questioned. The moderation exhibited here entails a self-limitation that affects doctrinal condemnations but also the stringency of doctrine itself: ‘Since when has it been a heresy to say less?’ But Grotius could have found examples in the history of the fourth century, where to say less was indeed not enough and further clarification proved to be necessary, and Bogerman refers to this very point in his critique.

In the texts of the fourth century, however, Grotius finds two threads that he takes up here, namely, the conviction that matters of religion are fundamentally simple, and the requirement not to be too curious in matters

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38 Ibid., p. 101.
39 Ibid., p. 100.
40 Ibid., p. 104.
41 *Ordinum pietas*, 43 (p. 136.31f).
of religion, not to raise too many questions. Both values are often referred to in the Early Church. The prohibition of curiosity in religious matters was specifically aimed at the Eunomians, a rather intellectual, speculative group to whom a particularly high degree of curiosity was attributed. Grotius knows of these themes through a small number of quotations of Gregory of Nazianzus, who reappears significantly in this connection.

It is tempting to ask whether Grotius’s notion of ancient moderation was influenced by his interest in this particular figure of the Early Church, Gregory of Nazianzus, who challenged Julian’s notion of hellenism and formulated philosophical requirements for Christian leadership. However, the quotations in *De imperio* do not lead to the conclusion that Grotius had studied Gregory on his own. It is clear that many of them could be found in secondary sources that Grotius had at his disposal.

To deepen his argument Grotius returns to the Theodosian and Justinian Codes. For example, he refers to the prohibition of public discussion of the Christian faith imposed by Marcian after the Synod of Chalcedon. Grotius adds further evidence, such as the law of Leo and Anthemius, which he paraphrases as forbidding those who leave their monasteries from discussing faith and doctrine. What is meant here is that monks who have business outside the monastery are forbidden to walk about through Antiochia and other cities arguing matters of doctrine. By referring to the Theodosian and Justinian Codes, Grotius introduces historical information. This leads to a second aspect, Grotius’s historical approach to patristic sources.

Grotius uses concepts from the fourth century to discuss the handling of orthodoxy in ancient times. In doing so, he puts to practice requirements for

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45 Grotius cites some phrases of Gregory’s speeches in Greek, others in Latin. It remains unclear whether he knew the Greek edition by Johannes Herwegen of Basel published in 1550.

46 *CJ*, I.1.4 (p. 6, Krüger).

the proper reading of patristic texts in his own times. In *Ordinum pietas* as well as in *De imperio*, Grotius identifies self-restriction, or the liberty to say less, with Augustine’s admonition to the Christian rhetorician spelled out in *De Doctrina Christiana*,\(^{48}\) that it is not appropriate to say everything everywhere, but rather it is necessary to adapt oneself to the context of the listeners and their possibly limited understanding, as well as to consider the customs of the land. Grotius’s notion of moderation or Christian liberty is connected to awareness of context and thereby intrinsically linked to a historical understanding. Grotius still explains Firmilian’s false estimation of Paul of Samosata by pointing out that Paul spoke in riddles and thereby led Firmilian astray. But underlying this is the idea that doctrine and orthodoxy undergo a process of development, which implies the requirement to assess historical circumstances and personalities according to the conditions of their time. Anything else leads to the *arrogantia* of false standards: ‘Was Chrysostom a Socinian, was Ambrose, were so many other ancient Fathers? If they lived now, would they not be acceptable in our Church? These questions I would like to see answered. If someone says they are not to be tolerated, his arrogance will be intolerable to all pious people; if he thinks that they should be tolerated, let him not be a respecter of persons; let there be equity, which requires equal treatment in equal cases’.\(^{49}\) Grotius’s argument points out the anachronism that would arise if Justin, Chrysostom and Ambrose were to be judged under the Augustinian paradigm. Using these and similar formulations, he shows that orthodoxy exists in time and is therefore subject to development. As a result, anti-Nicene ideas became an object of interest in their own context, but above all, the era of orthodoxy came to be understood as an historical era.

It is this aspect of Grotius’s use of patristic sources that was most controversial and that Bogerman took pains to argue against in his response. Bogerman’s argumentation shows that Grotius did not develop his arguments against opponents entirely lacking in historical insight. Certainly Bogerman would have agreed that orthodoxy exists in time. However, this does not lead Bogerman to conclude that orthodoxy is one thing at one time and something else at another time. History provides examples of manifold and even contradictory ideas. Bogerman knows that Augustine condemned many things in Pelagius that can also be found in the writings of Origen and Tertullian, but also Clement, Justin, Irenaeus and Epiphanius. According to Bogerman, however, historical variation comes into being only through mistakes, which


\(^{49}\) *Ordinum pietas*, 49 (p. 140.23-29).
in the course of time are corrected through progress and learning. Bogerman therefore concludes that there are many instances of error in history, but these do not result in a continuity of error. If an error happens to occur, that does not mean that the mistake persists or is to be tolerated. According to Bogerman there is no equation between Justin, Ambrose, Chrysostom and Augustine. If Chrysostom had lived only a few decades later, he would have followed the example of Augustine. Orthodoxy puts an end to the history of error, and the history of error does not support a call for tolerance.  

Bogerman sees progress and change in history as the mechanism by which orthodoxy comes into being, but this does not entail that orthodoxy itself is subject to development. Precisely that, however, would be the precondition for finding exemplary models of tolerance in history.

Bogerman’s concept of orthodoxy implies distance from the historical Chrysostom. The Chrysostom for whom there would be a place in Bogerman’s Church would be a different one from the real-life bishop of Constantinople, with his problems with the empress and the aristocracy. Grotius’s work also exhibits historical distance, but in his case the distance comes from his interest not only in the history of ideas and their context but also in historical events and circumstances.

There are many examples, particularly in De imperio, where Grotius switches to a descriptive, historical language and develops historical argumentation. In line with his own point of view, he describes the emperors of the fourth to sixth centuries as being involved in matters of religion: ‘It was not the Church of Alexandria that sent Dioscur to the Synod of Chalcedon, but the Emperors Theodosius and Valentinianus themselves who ordered him to attend’. Here Grotius is clearly shifting to a descriptive perspective. He singles out significant events that he finds in the writings of the historians, particularly in Socrates and Theodoret, in the acts of the councils, and finally in ancient legal sources. By referring to the decree that forbade monks to leave their monasteries and stir up unrest by provoking doctrinal debates and to the decree forbidding the clergy to play dice or attend the theatre, Grotius illustrates his points with historical vividness. The question of jurisdiction over sacred matters, particularly episcopal jurisdiction, leads him to quote from the

50 Bogerman, Annotationes, esp. praef. and pp. 122-127.
51 Ordinum pietas, 105 (p. 180.7-9), cf. ACO, II.1.1, (p. 68.18-24, Schwartz).
52 De Imperio, 8.7 (p. 382.22f.); CJC, Nov. 123, 10.1 (pp. 602f., Schoell/ Kroll).
pertinent texts in the *Codex Theodosianus* and the *Leges novellae*. Grotius sets the quotations in a historical framework and invokes them as evidence for his theses: ‘It was only after the emperors had embraced Christianity that a part of jurisdiction was given to the pastors’. In another passage Grotius differentiates between two concepts, found in the *Codex Theodosianus*, namely, the ἀρχισυνάγωγοι and the patres synagogarum, identifying the latter with elders or seniors. And again, his conclusions are interesting: first, that there was a hierarchy in which the ἀρχισυνάγωγοι were subordinate to the elders, and second, that these ‘remarks serve *ad illustrandam episcoporum originem*’.

Raising the question of the roots of the office of bishop is a shift from description to explanation. For Grotius, explanation means, first of all, that he places historical matters in context. He relates the office of bishop to the offices of the synagogue; he places Christian institutions in relation to pagan Roman customs. After distinguishing various forms and extents of episcopal jurisdiction involved, Grotius turns to regulations concerning jurisdiction within the ancient Jewish community. Laws concerning Jewish privileges serve as an explanatory background. Grotius has even more material at his disposal: he brings in remarks by Caesar concerning Druids in *The Gallic War* and by Plutarch concerning the Athenians, and he takes this line even further into the Old Testament, pursuing the notion of ancient usage, *vetustissima consuetudo*. Grotius relates the ancient Christian practice of publicly proclaiming the name of the man to be elected as bishop to analogous practices concerning imperial offices. In his writings, contextualisation involves both religious-historical comparison and the integration of general sources from antiquity. This juxtaposition of sources, typical for Grotius, always reflects a historical context.

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54 *De Imperio*, 9.12 (p. 412.8f.). Here and in the following van Dam’s (cf. fn. 1) translation is cited.

55 *De Imperio*, 11.8 (pp. 544.16-25; 546.2), CJC, Nov. 146 (p. 716.22/23, Schoell/Kroll).

56 *De Imperio*, 9.16 (p. 418.12-14): ‘We must not be surprised by the fact that this right was granted to Christian pastors by the Christian emperors, since the same emperors gave the Jews permission not to receive anyone into their sect or help him to be reconciled with it as long as their own primates were against it’.

57 Grotius cites a chapter from Lampridius, *Life of Alexander Severus* 18.45.6-7 (SHA, 1, 287.18-26, Hohl) in *De Imperio*, 10.8 (p. 466.19-24): ‘Whenever Alexander (Severus) desired to name any man governor of a province, or to make him an officer in the army, he always announced his name publicly and charged the people, in case anyone wished to bring an accusation against him, to prove it by irrefutable evidence, and he used to say it was unjust that, when Christians and Jews observed this custom in announcing the names of those who were to be ordained priests, it should not be similarly observed in the case of governors of provinces.’ The quotation was used by Bilson, but its inclusion shows Grotius’s interest in the comparison of ancient secular and early Christian references.
dimension for him. With regard to early Christian sources, this means that
Grotius understands them as deeply rooted in the broader ancient context.

Grotius’s drawing of connections between Christianity and other ancient
traditions does not only serve to search for the old, fundamental truths or to
find in the concord between Christianity, Judaism and Antiquity an indica-
tion of ‘right reason’, common to humankind, or existing before the corrup-
tion of the old faith. 58 Much more to the point, there is a historical aspect to
the juxtaposition of these religious sources, and, as when Grotius speculates
on a relationship between the patres synagogarum and the origin of the office
of bishop, it can create a historical context.

The historical context serves as an explanation, and this implies that Grotius
was aware of historical problems and participated in raising historical ques-
tions. This becomes clear from the following example. Grotius discusses the
formal procedures of the synods of the Early Church, and, in this context,
their convocation by the emperor. This last point leads to the question of
synods during the time of pagan emperors. Grotius concludes that ‘no permis-
sion was needed where no imperial edicts stood against it’. 59 To prove this,
Grotius refers to attestations of the existence of religious associations, collegia,
which he finds in the Digests 60 and of associations in general, betatoria, in Asia
Minor, which he deduces from the letters of Pliny to Trajan. 61 To apply this
historical information to the legal situation of Christians at the end of the first
century, he uses material on the Jews given by Philo. In this passage Grotius
presents a historical argument of several steps, a part of which is his reading of
the Pliny letters. 62

A further element that bespeaks a historical approach is Grotius’s notion of
change. Although Grotius is only concerned to show that a certain way of
electing pastors cannot be taken as the general practice in the time of the Early
Church (a very common mode of argumentation), it is remarkable that
Grotius emphasized that change affected even apostolic institutions, that
requirements of canon law were not always followed, and that the rules laid

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58 Cf. De Imperio, 1.9 (p. 170.1-5).
59 De Imperio, 7.3 (p. 330.13-15).
60 D 47.22.1.1 (840, Mommsen/Krueger).
62 The information about the Christians in Asia Minor to be found in Pliny, was common
knowledge at the time of Grotius. Cf. G. Vossius, In Epistolam Plinii de Christianis et Edicta
Caesarum Romanorum adversus Christianos, Commentarius (Amsterdam: Valckenier, 1656);
François Baudouin, Ad Edicta Veterum Principum Romanorum de Christianis (Basel: Joannes
Oporinus, 1557).
down by Justinian differed from earlier custom. Grotius concludes: ‘For whether we look at ancient or more modern times, we find enormous variation in the method of election; not only across centuries and provinces, but also over years and individual cities’.63 These few remarks show that the idea of change is an integral part of Grotius’s picture of the Early Church; the last quotation makes it particularly clear that he was aware of context.

Ordinum pietas and De imperio show elements of a historical approach that has much in common with the French method of teaching law, the mos gallicus. A sense for cultural variation, the notion of change, the question of origins, but above all the comparative method and a historical interest in offices and institutions have characterized legal humanism since Guillaume Budé. It is evident that methods of humanist jurisprudence appear in Grotius’s writings on ecclesiastic and religious matters. The interest of philologists in Roman law from a historical perspective led to the French convergence of legal and historical studies and to the historicization of the studies of Roman law. Budé insisted that not only lawyers but also philologists be admitted to legal studies.64 Grotius took this route by studying the Early Church as a lawyer and philologist. His comparative method brought together diverse sources to explain historical circumstances. He uses Roman legal texts as a historical source in the context of Church history. This corresponds to the practise of François Baudouin in his Constantine of 1556,65 which Grotius later mentions having read.66 Baudouin was the one who most clearly spelled out the need to study history alongside law and who gave shape to the historicization of law.67 Even more significant for reading Grotius, however, is Baudouin’s insistence on not separating civil history and Church history.68 This position was part of

63 De Imperio, 10.31 (p. 516.27-30).
66 Ep. 2134, June 5th, 1635 (BW, VI, p. 10).
his concept of a universal history, one that encompasses civil, religious and military spheres.\textsuperscript{69} This integrative approach to history is founded on the observation of concrete particulars and circumstances.

Grotius’s comparative approach assumes a similar connection between civil history and Church history and requires a corresponding breadth of scope. This breadth is illustrated by a list given by Gerardus Vossius in his \textit{Ars Historica} of 1623, consisting of elements such as regions, cities, customs, institutions, philosophical teachings, military exploits and the public and private life of individuals. Grotius acquired many books on ancient times from Vossius,\textsuperscript{70} and they conducted an intensive exchange while Grotius was working to justify his position by writing \textit{De imperio}. The comparison with Vossius’s \textit{Ars historica}, which can serve to illustrate the state of reflection on method in Grotius’s immediate circle, underlines the impact of legal humanism on Grotius. Vossius’s \textit{Ars historica} is still in the rhetorical tradition that describes the \textit{ars} and \textit{techne} of historical craft and seeks a balance between a history that risks degenerating to a \textit{nuda narratio}, and a history in the sense of \textit{notitia} or \textit{cognitio} of what is useful to remember for the sake of a good and happy life. Vossius can define the goal of history thus: \textit{ut ex singularibus universale praeceptum observetur}.\textsuperscript{71} Keckermann had a similar formulation: ‘History, therefore, is the explanation and knowledge of particular or individual things, undertaken in order that through them we may understand universal truths more clearly and find them confirmed’.\textsuperscript{72} In contrast to Vossius and Keckermann however, Grotius’s interest in historic institutions and details was not subservient to his allegiance to universal truths; rather, his sources provide historical evidence of the practice and customs in question.

\textsuperscript{69} \textit{De Institutione Historiae Universae}, esp. pp. 618, 626.


\textsuperscript{71} Vossius, \textit{Ars historica, sive de historiae et historicis natura, historiaeque scribendae praeceptis} (Leiden: Marie, 1623), p. 25.

II. Comparative Method and Patristic Texts in De Iure Praedae

Reading through *De iure praedae* (*IPC*),\textsuperscript{73} the juxtaposition of patristic and other classical sources again catches the attention. This contextualization of Christian texts, which later largely characterized Grotius's reading of early Christian literature, is already visible in *IPC*.\textsuperscript{74} His approach to early Christian literature had therefore already been formed before he came into contact with Vossius in 1613 and before the debate required him to engage himself with patristic sources. This may be illustrated through examples, beginning with chapter four of *IPC*. There, Grotius shifts to his main topic, the question of prize and booty. After Grotius has deduced from legal principles that the institution of prize and booty must be considered as part and parcel of warfare, and that it is in accordance with the law of nature, as well as the law of nations, he must address Christian objections. Grotius seeks to persuade the reader through examples, and the interpretation of Scripture plays a role here. The copious material concerning warfare in the Old Testament (OT) clearly exhibits the taking of booty as a practice of the Israelites. But the pertinent passages in the OT, for example Deut. 20.14, seem to be contradicted by John the Baptist’s dictum in Luke 3.14, ‘And the soldiers likewise demanded of him, saying, And what shall we do? And he said unto them, Do violence to no man, neither accuse any falsely; and be content with your wages’. Grotius gives a historical explanation of the verse that is interesting, above all, against the background of western exegesis.

Grotius understands the verse as a potential objection and in response states that the situation assumed in Luke 3.14 was fundamentally different from the situation of the taking of booty, as John the Baptist’s addressees were not soldiers at war but instead occupation troops stationed in Judaea, and their potential victims were provincials, tenants and farmers. John called upon the soldiers to spare them and not to rob innocent peasants. According to Grotius, John says nothing more than what was already anchored in law. Grotius echoes thereby a broad consensus, but it turns out that the consensus is limited to the understanding that the verse is not to be taken as an admonition to give up soldiery. In fact, Luke 3.14 was generally interpreted against the background of western exegesis.

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\textsuperscript{74} Cf. David J. Bederman, ‘Reception of the Classical Tradition in International Law: Grotius’ *De Jure Belli ac Pacis*, *Grotiana*, 16/17 (1995/96), 3-34.
of a strong tradition epitomized by the often quoted words *Militare non est delictum*, found in a homely that was printed in the sixteenth-century editions among the works of Augustine. But who is intended in Luke 3.14 under *miles*? The answer often given is: whoever receives wages (*stipendia*), and this includes the cleric, so that the lemma is often found in connection with ecclesiastical offices and simony. The tradition reaches from Ps.-Augustine to Ivo of Chartres and Gratian. In the East as well, Luke 3.14 finds application, being integrated into general ethical instructions. These instructions do concern soldiers, but they are far from the real soldiers of Grotius in the winter station in Judaea. Grotius’s historical reasons for stating that the verse is not concerned with *res hostium* are clearly distinct from the Augustinian tradition of exegesis. In his interpretation, Grotius merges different lines of thought. As Grotius indicates in the margin, he was led to mention the Judean peasants by Cajetan, who still wrote in the tradition of ethical instructions. Later, in the *Annotationes ad Lucam*, Grotius collected extensive material concerning soldiers in Judaea, particularly from Josephus. In *IPC* these historical explanations bring Grotius to the conclusion that in Luke 3.14 nothing is required that is different from what is in Roman law.

Grotius comes to the same conclusion when he turns to the example of Abraham. Abraham’s conduct in war appears to coincide with Roman legal principles. Genesis 14, which recounts Abraham’s campaign to free Lot and to recover his possessions from the Sodomites, serves as a classical reference for questions of waging war. Indeed, Abraham relinquished his share of the booty, but according to Grotius, he does thereby nothing other than what Plutarch ascribes to Pericles, Fabius, Fabricius, Valerius Publicola and Marcus

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75 The spurious character of the attribution to Augustine was already recognized in the sixteenth-century editions. It was printed as part of a collection of homilies *De verbis Domini in Evangelio secundum Matthaem in Tomus Decimus Operum D. Aurelii Augustini* (Basel: Froben, 1529, 59B; Basel: Froben, 1543, 88D; Venice, 1550, 20rE). An editorial note casts doubt on the attribution of this collection. In an appendix it was printed in *Tomus Decimus Operum D. Aurelii Augustini* (Antwerp: Chr. Plantinus, 1576, 642C). The quotation *Militare non est delictum* actually comes from Maximus of Tyre, ‘De id quod scriptum est: Reddite quae Dei sunt Deo, et De militantibus’ (CChr, 23, 101.9-10, Mutzenbecher), and is found in *Decretum Gratiani*, II.23. qu.1.c.5 (Corpus Iuris Canonici I, 893, Friedberg).

76 Abbo Floriacensis, Hugo Francorum, Robertus Francorum Canones, PL, 139, 506D.507A.508A.

77 *Annotationes ad Lucam*, in *Opera Omnia Theologica* II/I (Amsterdam: Joannis Blaev, 1679), pp. 359-362.

78 Plutarch, *Vitae*: Pericles 16.


This pattern of comparison occurs repeatedly. Three examples will illustrate the point. According to Grotius, Abraham’s expedition described in Gen. 14 falls under the category of *bellum privatum*, which, however, did not make Abraham hesitate to take away spoils, as it also did not prevent Caesar from taking booty from the pirates that he captured. Grotius finds the Caesar episode again in Plutarch, as he notes in the margin. Abraham ‘instructs his allies in regard to the justice of his cause’: a similar accounting was required by Achilles. As source, Grotius refers to Statius. The justification given in the campaign of the Israelites against the men of Gibeah bore comparison to that given to Minos in his expedition of revenge against the Athenians, according to Diodor of Sicily.

Abraham and Pericles, Abraham and Caesar, Achilles or Minos are placed alongside each other. Most of these examples from Plutarch Grotius is still citing in his *Annotationes ad Genesin*. Plutarch, Dionysios Halicarnassos and Diodor of Sicily appear on the exegetical horizon of the OT. This means nothing more than that Grotius uses his own resources to interpret Gen. 14, namely classical literature, as he cannot draw on the patristic or scholastic tradition of exegesis. Accounts in the OT become plausible in the context of classical antiquity; they become comparable to non-biblical sources. Here the ‘juxtaposition of sources’ later elaborated by Grotius is already present, without Grotius actually developing a historical argument. However, he gives a certain emphasis to the historical parts of the OT. He returns to Deut. 20.14 and especially to Gen. 14 in various chapters in *IPC*. He draws a certain historical thread through the text. But what about the patristic texts? How does he bring them into play?

This question is particularly pressing because Grotius cannot draw on the strongly allegorical patristic or scholastic tradition of interpretation of the texts mentioned above (Luke 3.14, Deut. 20 and Gen. 14), as represented by Hrabanus Maurus or Bede, for example. When one considers that the five kings against whom Abraham fights in Gen. 14 represent for Bede the five senses, or that for Ambrose, the *virtus* and faith of Abraham bring about the victory, the distance to Grotius becomes clear. Yet still Grotius tries to integrate patristic sources into *IPC* when he depicts Abraham not only

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82 *IPC*, X (p. 134.5-11, H.).
83 *IPC*, VII (p. 70.25-27, H.).
alongside Caesar but also next to Constantine. The manuscript shows that Grotius later inserted the example of Theodosius, then a quotation of Ambrose on justice, followed by Seneca, which then led him back to Cicero and to his original text.

Patristic texts, and there are only a few examples in IPC, are also brought into the exegetical argument. Here the names of Ambrose and Augustine come up through two short excerpts, one from Ambrose’s work on Abraham and another from Augustine’s Quaestiones in Heptateuchum; both are cited in Decretum Gratiani. From Ambrose’s work, only the first book is cited and not the second, far more allegorical book. But the first book also pursues a theological aim in its exegesis of Gen. 14, where Ambrose treats the question raised by Abraham’s refusal of the spoils. Why did Abraham choose to forgo the spoils? According to Ambrose, Abraham was aware that he owed the victory not to his own efforts but to God. Ambrose then uses the principle that reckons wage labour as a form of slavery, so that the choice arises, either to lower oneself to the level of a mercenary or to preserve one’s honour. This line of thought, which connects the taking of spoils with wage dependence, did not interest Grotius.

For Grotius, the Abraham story establishes the right to take spoils, for Abraham could not in good conscience have given to his men something to which he himself had no claim. Grotius mentions a tradition according to which Abraham had taken a vow before the campaign to forgo all booty. What is meant here is Ambrose’s explanation, which Grotius paraphrases as involving a vow. Such a self-imposed disclaimer necessarily entails there being something to which one is entitled. But do the spoils really belong to Abraham? Ambrose, who depicts Abraham as an example of virtue, encounters a further problem when he raises the question of why the King of Sodom offers part of the spoils to Abraham. This question leads Ambrose to point out the duty to share the spoils among allies, and Grotius concludes that this principle was in force up to the time of the Maccabees.

Ambrose’s last-mentioned explanation is the only text that Grotius actually quotes later, which he does in connection with the Roman customs depicted by Livy and Dionysius of Halicarnassus. Grotius singles out details from the Ambrose text and arranges them in such a way that they are relatable to

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86 IPC, IX (p. 124.24-27, H.)
87 Ambrose, De Abraham, I.3.16-17 (CSEL, 32, p. 514, C. Schenkl).
88 Decretum Gratiani, II.23.qu.2.c.3 (Corpus Iuris Canonici 1, 895, Friedberg); II.23. qu.5.c.25 (Corpus Iuris Canonici 1, 938, Friedberg).
Plutarch, Livy and Dionysius of Halicarnassus, and as mentioned he can move from the *virtus* of Abraham as described by Ambrose to the motives of Pericles and Marcus Cato. The same bridging can be seen in Grotius’s quoting of Augustine’s comment on the war of the Israelites against the Amorites in *Quaestiones in Heptateuchum*. Grotius explains the right of transit with the words of Augustine as a ‘law of human fellowship’. As such, the denial of this right was seen as a just reason for war by Augustine, referring to the war of the Israelites against the Amorites, and by others, as illustrated by further examples that Grotius found in Sophocles, Tacitus and again in the Crusades.

These two examples – the dictum of John the Baptist and the figure of Abraham – may suffice, first, to illustrate a certain continuity in Grotius’s approach to ancient texts through the juxtaposition of Christian and other ancient sources in *IPC*, second, to draw attention to hints that reveal Grotius’s development of a historical approach, and third, to show his contextualization of patristic texts within the framework of antiquity.

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90 Augustine, *Quaestiones in Heptateuchum*, IV,44 (CSEL, 28, 2, p. 353.2-5, Zycha), *IPC*, XII (p. 207.5-9, H.).