

[p. 76]Hugo Grotius on trust, its causes and effects

Hans Blom (Erasmus University Rotterdam)

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Introduction

Trust is most present when it goes unnoticed.¹ He who is wary that relevant others take his own interest into account when they (inter)act is distrustful, a situation that calls for trust restoring actions. In a fundamental sense, trust is the absence of distrust. He who trusts counts on others taking his interest into account, something that is built into the relationship. The same applies to ‘bona fides’ in agreements. When we contract we understand the other party to be interested in having the terms of the contract materialize, without subterfuge or cheating. To contract involves in one sense or another a joint belief in a positive outcome. But in our analytical, self-interested world we tend to dissect this trust into a) a perception on the part of the trustor, and b) a motivation on the part of the trustee. ‘Pacta sunt servanda’ is one way to express this relationship. The trustor can trust, because the norm for the trustee is to perform his contracts. We look for guarantees and the guarantee of trust is here a strong theory of obligation, be it in terms of a moral or a political theory. Who doesn’t perform his contracts goes to hell, c.q. to prison. That will make them behave!

¹ Among the thriving literature on trust I am most inspired by the work of Olli Lagerspetz. See his *Trust, Ethics and Human Reason* (London: Bloomsbury Academic, 2015), and Olli Lagerspetz and Lars Hertzberg, ‘Trust in Wittgenstein’, in: Pekka Mäkelä and Cynthia Townley (eds), *Trust: Analytic and Applied Perspectives* (Amsterdam: Rodopi, 2013) pp. 31-51. “Thus by invoking the language of trust and betrayal, we do not simply identify facts, possibilities, or risks that exist out there. Instead we take up a certain perspective. In the sequel, it will be argued that this perspective is an ethical one. ... My faith that you will not betray me goes beyond expecting you to do, or refrain from doing, certain specific things; it involves resting assured that you will be mindful of my well-being. Trust, in this sense, is an open-ended relation between two individuals.” (p. 39-42).

This is not Grotius's view. It is not that Grotius does not believe in punishment.² Yet, he does not believe that trust can be built by threat or fear. This is a consequence of his wish to overcome the scepticism inherent in the reason of state politics of his days that had produced the terror of the Spanish inquisition [p. 77] and related warfare in the Low Countries.³ To talk about trust is to confront cases of perfidy. In this chapter I will therefore first discuss Grotius on 'fides et perfidia', then on scepticism and justice, in order to show – via a digression on consensus and concordia – the structural role of trust in his understanding of what makes out successful co-operation among men.

Grotius's youthful research project

In his youth, Grotius was very much engaged with the issue of trust. Yet, if one puts next to each other the various statements on trust in his writings from the first decade of the seventeenth century – a period that grosso modo coincided with the first ten years of his literary creation – it may seem not easy to decipher the argumentative structure underlying them. In its most elaborate version – in the chapter 'de fide et perfidia' of his 1602-manuscript *Parallelon rerum publicarum* – trust is presented in a multi-faceted way, bringing together different sorts of arguments for different manifestations of trust.⁴

At the end of the chapter "De fide et perfidia" of his *Parallelon* Grotius wrote in praise of the commercial nation that the Dutch republic was:

² Grotius actually had a very sophisticated theory of punishment, see Andrew Blom, 'Owing Punishment: Grotius on Right and Merit', *Grotiana*, 36 (2015), pp. 3-27.

³ On the historical circumstances, see e.g. James Tracy, *The Founding of the Dutch Republic. War, Finance, and Politics in Holland, 1572-1588* (Oxford UP, 2008), and Henk Nellen, *Hugo Grotius, A lifelong Struggle for Peace in Church and State 1583-1645* (Leiden: Brill, 2015).

⁴ The chapter 'De fide et perfidia' has been published from the Ms, with introduction and translation by Arthur Eyffinger in *Grotiana* 36 (2005), 79-171; J. Meerman published his transcription from the Ms, with Dutch translation and annotations in 1801-03 in 4 volumes: *Hugonis Grotii, Batavi, Parallelon rerumpublicarum liber tertius: De moribus ingenioque populorum Atheniensium, Romanorum, Batavorum*, 4 vols, ed. by J. Meerman (Haarlem: Loosjes, 1801-1803).

Everywhere else, the public interest is undermined by the quest for private profit, whereas with us harmony [concordia] prevails through never ending loyalty [perpetua fide]. No way, for sure, will any other nation be able to snatch from us these achievements of the first order, which have only become possible by the joint efforts of all. Other nations may perhaps prove themselves a match to us in commercial shrewdness; but they will never equal us in justice, that unique linchpin of society.⁵

[p. 78] “Perpetua fide” is maybe a bit of a hyperbole, but in this passage we find it all together: commercial acumen, public interest and concordia, thanks to an outstanding justitia that ties together the society.

We might more fully understand this from the youthful research program that Grotius set out for himself. When the young Grotius was charting out his publishing ambitions, he had a clear view of the broad range that he wanted to cover, and by and large his announcements were not just the stuff ambition is made of, but did indeed point forward to later publications. In the letter to the reader in *Sacra in quibus Adamus exul* we find a list of intended publications with items such as a poem on the Institutes of Justinian.⁶ Of these writings on law, only the paraphrase of the Institutes was published in part, in a volume of poetry that his brother Willem edited.⁷ The annotations on Papianus can be traced in the marginalia in a copy

⁵ *alibi commune corrumpi privatis commodis; hic perpetua fide contineri concordiam. Quare certissimum est, res maximas & quae non nisi junctis opibus geri possunt, haudquaquam nobis praeripi posse ab aliis gentibus, quae, ut pares sint mercaturae solertia, vincuntur certe justitia, quod unicum societatis est vinculum.* (*Parallelon*, caput VI.77 (p. 170-1)).

⁶ ‘Commentarius in sex leges difficillimas, quas damnatas vocant, iam ante biennium absolutus. Pandectarum eclogae indigestae sunt et tertia parte imperfectae. Institutionum Iustinianearum ἔμμετρος μετάφρασις dimidio sui ante annos aliquot expedita est. His accedant in Papianum posterioris aevi iurisconsultum, et ea quae apud Isidorum de iure traduntur, notae. Ad civilem scientiam spectant nostratis reipublicae cum aliis olim nobilibus successuumque inter se comparatio; et alia, ut spero, ad historiam eorum quae in mea patria meo aevo aut circiter illud accidere.’, *Briefwisseling* vol. 17, Letter 22A (summer 1601), p. 19; Cf. A. Eyffinger, Introduction, in: *De dichtwerken van Hugo Grotius*, II, 5A-B, ed. by B. L. Meulenbroek (Assen: Van Gorcum, 1978), pp. 23-36.

⁷ *Poemata collecta et magnam partem nunc primum edita à fratre* (Leiden, 1617). The annotations on Papianus can be traced in the marginalia in a copy of the Codex Theodosianus

of the Codex Theodosianus;⁸ the contributions to the ‘scientia civilis’ finally are the *Parallelon rerumpublicarum*, and the *Annales et historiae*.

This scholarly programme of the young Grotius belies the received opinion that he got involved in legal discourse only on the occasion of the prize taking in February 1603 of the Portuguese carrack Santa Catarina and its justification in *De iure praedae* of 1604-5. Then Grotius started reading, it is said, the authors of the second scholastics in order to collect the arguments for his first juridical treatise. But in another early work – the *Parallelon rerumpublicarum* –, which Grotius finished working on in 1602 – we find three announcements of future [p. 79] publications – on the nature and right of war, on the Dutch revolt, and on state and religion according to the ius divine and the ius gentium.⁹

I destined a separate book to inspect the causes and the right of war. We have as we do always in all our actions, undertaken the present war with the fullest right, as if something that is to be done out of necessity could ever be unjust. But also for this a separate book will serve.¹⁰

On the war with Spain:

This will be more seemly done in a book that expressly is destined for this purpose.¹¹

– see P.J. Verdam, *Een commentaar van Hugo de Groot op de Lex Romana Burgundionum*, Amsterdam 1963 –; the contribution to the scientia civilis finally are the *Parallelon rerumpublicarum*, and the *Annales et historiae*.

⁸ See P.J. Verdam, *Een commentaar van Hugo de Groot op de Lex Romana Burgundionum*, Amsterdam 1963.

⁹ For ‘De fide et perfidia’ I refer to page and paragraph numbers in the Eyffinger edition in Grotiana, for the rest of *Parallelon*, I give references to the foliation of the Ms. and to the pages of its edition by Johan Meerman. The translations of the latter quotations are mine.

¹⁰ ‘Librum enim destinavimus caussarum et iuris [belli] examini. Nos ut alia semper, ita hoc bellum summo iure suscepimus, nisi iniuste id fieri potest quod sit necessario; sed hoc etiam singulari libro servabitur.’ (Fol. 101r; I, p. 113).

¹¹ ‘Id autem commodius fiet libro quem huic rei singillatim destinavimus.’ (fol. 173r; II, p. 75).

On church politics, and toleration in religion:

But what in this matter is regarded as forbidden or permitted by divine law and the law of nations, shall be the topic of another treatise. Also the political events that pertain thereto will be more seemly integrated into this other exposition.¹²

This time the announcements are of what apparently are meant to be book-length monographs, not poetical paraphrases. Grotius must have hit upon a new perspective in these years, and is considering the lacunae in his present study. All three works are on legal matters, reinforcing the impression from the *Adamus exul* that (natural) law is certainly on his mind in these years. The *Parallelon* itself is written in a combination of the style of Tacitus, the [p. 80] philosophy of Cicero and the theology of Junius,¹³ and it provides a comparison ‘de moribus ingenioque’ of the Athenian, Roman and Batavian republics. Historically well informed, with strong statements about the recent years of Spanish fury, the text analyzes the customs and institutions of these three states on a series of topics, following a partly Aristotelian, partly Ciceronian classification of the virtues. It is worthwhile to look at the civil philosophy of this early work. What was Grotius’s project in these early years, and how are his ideas about the fitness of man for social life developing?

Against perfidy, and the reification of distrust

His Tacitean language shows in many a memorable phrase, as when he summarises his story of the workings of the Spanish inquisition in the Low Countries – with its confiscation of

¹² ‘Sed quid in hac caussa iure divino et gentium praecipui videatur atque permitti, alia erit dissertatio. Res etiam gestas, quae huc pertinent, caeterae narrationi commodius erit attexere.’ (Fol. 301v-302r; III, p. 97). See A. Eyffinger, ‘Hugo Grotius’ *Parallelon rerumpublicarum*’, in: *De Hollandse jaren van Hugo de Groot 1583-1621* Ed. by H.J.M. Nellen and J. Trapman (Hilversum: Verloren, 1996), pp. 87-95.

¹³ On his teacher Franciscus Junius (1545-1602), Grotius wrote in an epitaph (in Grotius, *Poemata, collecta*, p. 257): ‘Ille triumphato toties errore, quadrigis / invectus docuit relligionis iter. /... /Orba parente domus, pubes studiosa magistro / Quod dolet & lachrymat, ne putet esse suum, / Privati non sunt in tanto funere questus.’

property –, by remarking that the greatest heresy apparently was being wealthy,¹⁴ or criticising the Anabaptists who refuse to carry arms or perform political functions, unless the opportunity of an adventure came up.¹⁵ Such inconstant and inconsequent behaviour, Grotius characterises as perfidy, no other sect is more perfidious than this one.¹⁶ In other words, the inquisition acts on false pretences, and the Anabaptists are a licentious bunch, breaking concord and not willing to act by civil and Christian principles. Notwithstanding these and similar Tacitean fireworks, the argument of the book might appear a bit tame. Holland is praised on the major aspects of its by now well-known self-image: freedom-loving, enterprising and entrepreneurial, modest, courageous, trustworthy, just and industrious. But this tameness is in appearance only.

The comparative set-up of the book allows Grotius to develop a political theory by implication: by expanding on the shortcomings of Athenian perfidy and Roman corruption, Grotius can indicate what Holland is not, without thereby necessarily having to develop a full-fledged positive political theory. This tendency is reinforced by the historical take on customs and institutions. In what might look like a tautology, Grotius claims that the basic characteristics of a [p. 81] country exist because they can show a long history.¹⁷ The love of freedom of the Germanic people, the governance contracts with the rulers, the commercial orientation close to erasing the public-private distinction with the inclusion of the merchants' wives in running the shop,¹⁸ living according to one's means, modest desires, readiness for public service as a magistrate, capacity to co-operate in complex economic activities (Indian

¹⁴ Erit maxima omnium Haeresis, esse locupletem (Fol. 299r; III, p. 94).

¹⁵ [N]isi cum audendi occasio est. (Fol. 296r; III, p. 91).

¹⁶ Non alterius cuiusque sectae magis metuenda perfidia est. (Ibid.)

¹⁷ Cf. Hugo Grotius, *Liber de antiquitate reipublicae Batavae* (Leiden, 1610), Proemium [4v]: 'Certissimum enim argumentum imperii bene constituti est diuturnitas: hinc maior eius fiducia amorque civibus: nec aliam magis ob causam durat republica, quam quia duravit'; 'De fide et perfidia', par. 38; my 'The great Privilege (1477) as 'Code of Dutch Freedom: the political role of privileges in the Dutch Revolt and after', in *Das Privileg im europäischen Vergleich*, ed. by Barbara Dölemeyer and Heinz Mohnhaupt (Frankfurt a/M: Klostermann, 1997), pp. 233-247.

¹⁸ For a practical reason: the husband is away for business for long periods, thus his wife has to be acquainted with the husband's trade.

trade, land reclaim, Spanish revolt). It might appear to be a self-congratulatory rhetorical exercise to help identify the identity of the new Dutch state under construction.¹⁹

Tacitus's *Germania* provides the disinterested support when e.g. he is quoted saying that the Batavians always elected their own captains, who were called kings, or that Tacitus calls the Batavian nation also a commonwealth,²⁰ and therefore Holland was 'sui iuris Respublica', not subject to 'externis legibus' it was even a 'liberissime respublica'. But for Grotius long-lasting is basically re-enactment of the past, and tradition is kept alive by re-confirmation, as we see expressed in his discussion of the validity of constitutional arrangements in chapters 3 and 4 of book I of *De iure belli ac pacis*.²¹

The opposite of distrust and perfidy thus is a well-organised, free state, where justice reigns and concord rules. Of course, such a state is supported by 'eternal trust'. Another important example of *fides* provides the self-sacrifice of Regulus (or Regius, as Grotius writes in *Parallelon*) in his dedication to live up to his promises and serve the public good. In the midst of the First Punic War, the Roman consul M. Atilius Regulus returned to Rome on parole from his captivity in Carthago, to plea for the release of Carthagian prisoners in Rome. Instead he urged the Senate not to release the prisoners, and returned [p. 82] to Carthago to be tortured to death. This at least is how Grotius understood the available sources:

Now as regards observing of the terms of treaties, can there ever be a more shining example than M. Atilius Regius? Even though, all things said and done, with him it is not so much his good faith we admire, however famous and renowned in its own right, but with even more justice his firmness. Without breach of word he could have simply pronounced the verdict that the prisoners of war should be released. In that case his authority, or otherwise sheer compassion, would no doubt have prevailed. But he advised against it, even though he read the enemy's cruelty well enough and had long divined their sophisticated torture techniques. With him, clearly, the pledge he had

¹⁹ Cf. Leo Braudy, *The Frenzy of Renown: Fame & Its History* (New York: Oxford University Press, 1986).

²⁰ 'Gentem Batavam & Civitatem vocat Tacitus', *Parallelon*, Fol. 14v; I, p. 28. Cf. Tac. *Germania*, 13.

²¹ Hugo Grotius, *De iure belli ac pacis ... curavit B.J.A. de Kanter-Van Hettinga Tromp* (Leiden: Brill, 1939); photomechanical reprint with annotations by Robert Feenstra et al. (Aalen: Scientia, 1993) [hereafter IBP].

made in his private capacity even prevailed over the national interest, just like the national interest prevailed over his good faith, and either of these over the apprehension of being tortured.²²

This case of ancient honour surpasses any consideration of fame or self-interest, making service to the public good as well as constancy of character the dominant motive for action. It is the concentration in the moral psychology of one person, what the dedication to never ending loyalty [perpetua fide] was on the part of the Hollanders. Yet, these two exempla are exceptions in a sea of distrust and perfidy in the *Parallellon*, and its main thrust is to decry the shortcomings of politics, to the point of doubting the very possibility of just and fair societies in this world.

Why the laws of nature obligate, and what therefore the laws of nature comprise

If Carneades was right that we have as good arguments for as against the existence of justice, then Grotius's attempt to defuse this scepticism by a method of Cartesian doubt was perhaps the only way for him to save justice. The price, however, was high: Grotius's justice had to be a minimal one, and other moral considerations, like happiness, were necessarily left aside. This minimal justice was founded on trust, reflecting a Roman heritage, and contemporary political argument. Between 1605 and 1625, Grotius further developed his thoughts on trust, justice and morality, and created the first modern theory of sociability. [p. 83] And in the end, maybe the greatest happiness is achieved by not explicitly aiming at it, in that happiness figures as an unintended consequence of justice being achieved.

Scepticism was a major challenge in Grotius's early years.²³ But it was always combined with a belief in the possibility of morality, an attitude that might be best described

²² 'De fide et perfidia', par. 15.

²³ The classical argument for Grotius's concern for Carneades is in Richard Tuck's publications, especially *Philosophy and Government, 1572-1651* (Cambridge: Cambridge University Press, 1993), see also his 'Grotius, Carneades and Hobbes', *Grotiana* 4 (1983), pp. 43-62. I distinguish between Grotius's engagement with the skeptical challenge and Tuck's claim that Grotius answered the challenge with an Epicurean social theory. My reading of Grotius emphasizes on the one hand his eclecticism (i.e. his proposal of a 'Rawlsian'

as sceptical humanism, in Grotius's case a combination of Tacitus and Cicero, as exemplified in the Tacitism in his *Annales et Historiae de Rebus Belgicis*, and in the Ciceronean *Parallelon rerumpublicarum*.²⁴ Grotius was not a sceptic like Montaigne, nor a philosopher like Descartes. Yet he addressed the sceptical issue that marred political thought in his days in a strong and effective way. Not unlike Edward Herbert he questioned the problem of religious truth, not unlike Lipsius he saw the complicated relationship between political prudence and political wisdom. Therefore, Grotius was interested in establishing his ethos as a political writer by addressing scepticism head-on, by referring to Carneades – and thereby to the classical case of Cicero's discussion of him –, who had argued one day in defence of justice and the next day denying its possibility. Doubting the very grounds of justice is – Grotius rightly perceived – equivalent to undermining its role in politics and opening the way for Machiavellian power politics, as Grotius perceived it in Spanish and later French international politics, where all is allowed in name of some allegedly superior principle.²⁵ Grotius himself agreed to the principle that if God has set us a goal, he also provides the instruments to achieve that goal (a theological version of the principle that 'ought implies can'),²⁶ as well as the notion of 'nihil [p. 84] frustra': the idea that the elements of creation are all to a purpose.²⁷ These are basic principles of naturalism²⁸ – of Grotius and of many of his followers – which

overlapping consensus), but on the other the Stoic elements in his understanding of natural law.

²⁴ In 1601 Grotius was appointed by the States of Holland to write a history of the Dutch Revolt, of which the *Parallelon* was a first specimen. As the official historian of the States, since 1604, the *Annales et historiae* were written.

²⁵ See on such justification of Machiavellian politics by allegedly anti-Machiavellians: Robert Bireley, *The Counter Reformation Prince: Anti-Machiavellianism or Catholic Statecraft in Early Modern Europe* (Chapel Hill: University of North Carolina Press, 1990).

²⁶ *De iure praedae commentarius*. Ex auctoris codice descripsit et vulgavit H.G. Hamaker (Den Haag: Nijhoff, 1868) [hereafter IPC] II (p. 11).

²⁷ IPC III (p. 35): 'Deus, qui nihil frustra, nihil perperam faciat', God, who does nothing without purpose or erroneously.

²⁸ Even though the *nihil frustra* and the means and ends arguments stem ultimately from Aristotle's *Politika*, I prefer to call them naturalist, as the seventeenth century will generally do. That is notwithstanding the important role that reinterpretations of Aristotle played in the coming about of this naturalism. See my *Causality and morality in politics* (Utrecht, 1995).

might of course also be used to justify a Machiavellian instrumentalism. To counter such misuse, Grotius set out to purify the discussion about the goals, on the basis of the functionalist teleology inherent in his naturalism. It is a move that has elements in common with philosophical transcendentalism:²⁹ i.e. to formulate the necessary preconditions for social life itself. Some moral principles must be true, even on account of a sceptic, because without them social life could not take place to start with. In Cartesian analogy: ‘I live in society, therefore I am moral (in some sense)’. No reference to ultimate goals, no greatest happiness for the greatest number, no eudaimonia, no city of God, only a peaceful and ordered life with others. Of course, there are again many different answers to the quest for a peaceful social life, from religious – sectarian – convictions to diverse grand philosophical schemas. Grotius puts these alternatives effectively aside by searching for what John Rawls will call the overlapping consensus.³⁰ There are two formulations on this aspect that merit our attention. The first is the statement that all philosophical sects agree on one point: that man’s self-preservation is recommended to him. Even the Academics, these masters of ignorance, agree here, says Grotius, thereby underlining his strategy as anti-sceptic.³¹ Self-interest, he seems to say, is nothing special, because it is also defensible within the other philosophical traditions, not just among the sceptics. Moreover, precisely for this reason, self-preservation is not automatically anti-social. So the classical Carneades argument that ‘there is no justice, or, if such there be, it is extreme folly’³² is really jumping to conclusions. Of course this argument from overlapping consensus is not the only argument for justice in Grotius, yet it demonstrates nicely the extent to which Grotius is not after grand foundations, but first of all looks for justifications in terms of *consensus omnium*, more specifically in a Rawlsian sense.

[p. 85] This trumping of the sceptics’ argument is already fully developed in *De iure praedae*, written in 1604-5, where it obtained also a general justificatory theoretical envelope, i.e. a general Christian-Stoic ontology – according to which the world is created by God(s) and in this creation we can find the moral perspective we are looking for. More in particular, we have to search human nature as created in order to understand man’s rights and

²⁹ This is why the story of Grotius in many histories ends with Kant, who put an accolade to the concepts of reason, and history.

³⁰ J. Rawls, *Political liberalism* (New York: Columbia University Press, 1993).

³¹ IPC II (p. 11, 13).

³² IBP Prol. 5.

obligations. Self-preservation (a decent *amor sui*)³³ and *ratio & oratio*³⁴ are the two main characteristics of this human nature; on the one hand the almost animal spirits or instincts that make us distinguish good from bad for ourselves, on the other the capacity of self-commitment and self-command – later called the capacity to live according to rules –, mediated by a basic fellow-feeling that tells us that reciprocity is part of our survival strategy. When I claim the right to fend for myself, I must allow others to do the same.

Grotius does not deny the desirability of a fuller morality than just the minimal one of *amor sui*, reciprocity and self commitment. Basically there is no difference between *amor sui* and *amor alteri*; both are cases of *amor*, of taking something to heart. We can as well expound on the one as on the other. Christianity, Grotius will claim in *De veritate religionis Christianae*, and in its predecessor *Bewijs van de ware godsdienst*, has the fullest developed morality of benevolence, and its cultivation is an individual's duty.³⁵ That is not to say, that this Christian morality is an objectively existing thing. It is for that very reason that religious convictions are not objectively ascertainable. And the flip side of this is that both creed and morality in the broad sense are so effective because they are personal, the expression of the person's conscience and self-imposed norms. This is the kind of person that I am, c.q. that I believe God wants me to be, and thus the strongest moral motivator that one can think of. And precisely for this reason no fixed set of moral norms on this level can be [p. 86] essential to social order, unless, that is, these norms are universally accepted to be so. We will see this moment of subjectivity as motivating factor return in the so-called *regula fidei* in IPC.

³³ IPC II (p. 11).

³⁴ On reason, see IPC I (p. 7); on speech see Meletius 83 (p. 131): 'Words too have their own law, which is not to deviate from the truth. This is easy to defend, for instance against Plato, who in some case justifies people lying. But this is an inadmissible perversion. For God has given speech to man in order that human society should be more closely knit by people sharing their very thoughts. And once the license to lie has been given it is bound to overstep all limits and to remove that which is the most important in human relationships, namely mutual trust'. On the connection with Cicero, cf. Benjamin Straumann, *Roman Law in the State of Nature. The Classical Foundations of Hugo Grotius' Natural Law* (Cambridge/New York: Cambridge University Press, 2015), p. 95.

³⁵ Cf. *Hugo Grotius – Theologian. Essays in Honour of G.H.M. Posthumus Meyjes*, ed. by Henk Nellen and Edwin Rabbie (Leiden: Brill, 1994).

Grotius deploys a second strategy to argue for reciprocity,³⁶ based on what exactly it is to fend for oneself as explained in the *De iure praedae*, VII, p. 67ff and in *De iure belli ac pacis*, Prolegomena 8:

This maintenance of the social order, which we have roughly sketched, and which is consonant with human intelligence, is the source of law properly so called. To this sphere of law belong the abstaining from that which is another's, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfil promises, the making good of loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.³⁷

Benjamin Straumann has put forward the interpretation that this enumeration of *ius naturae*, or justice in the strict sense, describes the legal remedies allotted by the Roman Praetor. Whether or not Grotius was really referring to this institution of Roman law, and/or whether he understood it correctly, is of lesser importance than that one might indeed understand right in the strict sense as legal actions, i.e. as institutionally available ways of proceeding for the regulation of those aspects of social interaction where individuals might experience conflicts with others. One might argue that there is no proof that these four legal remedies comprise the only institution for the purpose, but this one seems to befit human nature (instinct of self-preservation, *ratio & oratio*) reasonably well, in particular as being compatible with the empirical observation that living together is regularly conflictual rather than harmonious. Moreover, it coheres with the Ulpian definition of justice:

D. 1.1.10 Iustitia est constans et perpetua voluntas ius suum cuique ... sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.

³⁶ IPC III (p. 3): 'Quae tibi velis fieri, alteri feceris: quae nolis, ne feceris.'

³⁷ Haec vero quam rudi modo iam expressimus societatis custodia humano intellectui conveniens, fons est eius iuris, quod proprie tali nomine appellatur: quo pertinent alieni abstinentia, et si quid alieni habeamus aut lucri inde fecerimus restitutio, promissorum implendorum obligatio, damni culpa dati reparatio, et poenae inter homines meritum.

[p. 87] With one difference, though, as Grotius himself remarked: obligation arising from contract or tort –had not been part of the standard definition of justice, yet it belongs there.³⁸ In the context of defining just war, this new understanding of justice allows him the following claim

Indeed, in so far as we are concerned with subject-matter[i.e. the *causa materialis* of just intervention], which is the same in warfare and in judicial trials, we may say that there should be precisely as many kinds of execution as there are kinds of legal action.

The actual existence of such an institution for the establishing of justice by legal actions is a very strong argument for its validity, especially since Rome is known for its exceptionally well-developed sense of law, as Grotius noticed in *Parallelon*. The logical priority of warfare and judicial trial might pose a problem, and to sort out that problem Grotius had developed a sophisticated argument from natural law as he also applied in the matter of property. Distinguishing between the world before and after the introduction of government, and arguing that some institutions can be regarded as a natural sequel to the laws of nature, Grotius had shown that modern property is a human perfection or adaptation of the original law of nature to the conditions of man in history. This applies as well to the instruments of justice. Before the Fall, Adam had ruled his wife, after the Fall the ‘patres familias’ had decided on the respective rights of the members of their household. After the Flood gradually government arose, based on consensus (about how to sort out conflicts) and commitment to one’s own decisions (*fides*). Indeed, the second chapter of *De iure praedae* reads as a conjectural history of state formation, once mankind decided to leave behind their ‘simple and innocent life, but turned their thoughts to various kinds of knowledge’,³⁹ and left that ‘primitive state which might have lasted if men had continued in great simplicity, or had lived on terms of mutual affection such as rarely appears’.⁴⁰ Thus similarly as the institution of property adapted the natural law principle of the use of the world given to mankind in common to the situation of growing population, so the institution of legal actions adapted the natural law principle of mutual respect for life, liberty and property.

³⁸ IPC VII (p. 67, 69).

³⁹ IBP II.2.2.2.

⁴⁰ IBP II.2.2.1.

[p. 88] **How to distinguish concordia from consensus**

As a humanist jurist, Grotius was driven by Ciceronian concepts such as justitia, honestum and utile, adiafora, and the civic virtue of the aristocrats.⁴¹ Natural law, Grotius had been taught by Franciscus Junius, is cosmopolitan law, that is, valid for all, on grounds that are recognizable by all. That was why Junius would not deny that the Ten Commandments comprise principles of natural law, but nonetheless denied that the Ten Commandments are the source of natural law.⁴² This universal, invariable part of right can be looked upon as the expression of human consensus, as well as the conclusions of reason; of course willed by God who has created mankind in this way. A crucial concept here is consensus, much misunderstood by later critics like Pufendorf and Heineccius. For Grotius, however, consensus was an essential element of sociability. All well-ordered *societates*, societies – from a business cooperation to a full-fledged body politic, and ultimately to that great society of mankind – exhibit this characteristic of agreement, i.e. a modicum of coordination of thought and action for the furtherance of the goals of the particular society in question.

In the chapter of *Parallelon* on concupiscence – ‘de venere’ – Grotius describes temperantia as a form of concordia, a Pythagorean harmony.⁴³ There are other uses of concordia, as in ‘publica Concordia’ that is maintained by organising dinner parties for neighbourhoods, guilds or learned societies.⁴⁴ To the ancient Franks – who were so similar to the Batavians – the historian Agathias attributes ‘the greatest civility, incredible religiosity,

⁴¹ Cf. Tuck, *Philosophy and Government*, p. 159.

⁴² See Franciscus Junius [pater], *De politiae Mosis* (1593). See esp. Tobias Sarx, *Franciscus Junius d. Ä. (1545–1602). Ein reformierter Theologe im Spannungsfeld zwischen späthumanistischer Irenik und reformierter Konfessionalisierung* (Göttingen: Vandenhoeck & Ruprecht, 2007).

⁴³ ‘Postremo vero, cum temperantia non tantum in tuenda mediocritate consistat, sed in concordia quadam et concentu vitae, quem Pythagoraei harmoniam dicerent, videor hic non importuno loco inserere posse morum tenaciam constantiamque propositi.’, (*Parallelon*, Fol. 117v; II, p. 18).

⁴⁴ [*Parallelon*, Fol. 134v; II, p. 36.

also justice and concord among themselves'.⁴⁵ In the latter case, *concordia* is used as what one might term sustainable alliance, as it is in Grotius's description of the Compromise of Nobles of 1566, and its petition in defence of the old privileges. [p. 89] Thus, the start of the Dutch revolt is qualified by *concordia*.⁴⁶ Furthermore we find use of *concordia* as 'agreement',⁴⁷ 'the pact of the people in the defence of freedom',⁴⁸ '*concordiae leges*',⁴⁹ de 'admirable agreeing of the minds' in the war against Spain.⁵⁰ Grotius also contrasts civil discord with a certain bond of humanity: 'for what prevents in a civil disagreement and opposition of parts, such that each of them sees as it were in the chances of war a compromise?',⁵¹ the union of Gand is a *concordia*,⁵² and in Holland the harmony is maintained by way of a perpetual trust: '*hic perpetua fide contineri concordiam*', as we had seen above.⁵³

This idea of a basic understanding among *socii* is often related to the notion of concentric circles, to capture the Stoic origins of this cosmopolitan preconception of a natural law. Mankind's humanity expresses itself in a fundamental agreement that on a daily basis is discovered from the agreement in the small societies of family and similar. The agreement becomes more abstract when the concentric circles widen, until at the end only the quintessence of humanity remains.⁵⁴ This consensus, maybe not directly discernible in more inclusive societies, may seem to contain the seeds of natural law.

It is valid without reference needed to particular persons or circumstances. Trust is a relationship that holds independent of the utility involved, that is, independent from the

⁴⁵ '*civilitatem maximam, pietatem incredibilem, iustitiam deinde et inter se concordiam Agathias tribuit*', *Parallelon*, Fol. 168v; II, p. 71-2.

⁴⁶ *Parallelon*, Fol. 299r-v; III, p. 94.

⁴⁷ *Parallelon*, Fol. 3r; I, p. 15.

⁴⁸ '*genti pro libertate concordia*', *Parallelon*, Fol. 18r; I, p. 31.

⁴⁹ *Parallelon*, Fol. 46v; I, p. 60.

⁵⁰ '*mira animorum concordia*', *Parallelon*, Fol. 57r; I, p. 70.

⁵¹ '*Quid igitur vetat in civili dissensione partiumque discordia, ut utrinque veluti in belli fortunam compromissum videatur?*', *Parallelon*, Fol. 60r; I, p. 74.

⁵² *Parallelon*, Fol. 86v; I, p. 98.

⁵³ *Parallelon*, Fol. 89r; I, p. 101.

⁵⁴ Fonna Forman-Barzilai, *Adam Smith and the Circles of Sympathy. Cosmopolitanism and Moral Theory* (Cambridge UP, 2010) is a book-length discussion of the topic.

particular persons or the circumstances, at least in the ideal case. Because if trust were to depend on family ties, business ties, nationality or religion, it would not be trust, but something else. And precisely since trust is this utility-independent relationship, it is by necessity an abstract thing. It is about fundamental expectations, not about what makes quid-pro-quo such a more precise relationship. At the same time, trust is a normative concept: it is about what humans should do in so far as they are part of humanity. We should not lay in ambush for our fellowman, as Lactantius is quoted by Grotius in *De iure praedae*. Yet, ambushes are laid and fellowmen are violated.

[p. 90] The challenge to this humanist perspective of a social life made to man's measure is of course its disruption by violence, fraud and war. There is no denying to the empirical reality of this, but the scholarly and political issue of course is: how do we understand such disruption? Is it a consequence of original sin, of the unavoidable limitations of the earthly city, or is it a demonstration as well as a reaction to a loss of consensus, that is, a disappearance of that basic understanding that allows the proper functioning of societies to some goal? A first answer had been given in his *Parallelon*.

The Tacitean style reinforces such an approach: the examples of failure are summarised in a flashy paradox, like when Grotius turns his derision of Greek ostracism into a hyperbole, by referring to the case of an ostracised politician who really was a crook, upon which his ostracisers felt unhappy and considered undoing their verdict, so much were they accustomed to expel innocent citizens. This stands in opposition to the 'successful state', the state in which civic probity and public wellbeing go hand in hand, recognizing the legitimate interests of citizens, whose actions are described as *sui iuris*, or *suo iure*. The harmony of interests, the *concordia*, is what the state is about, contrary to the Athenian and Roman cases, where institutional deadlocks produced *discordia* and a dysfunctional opposition of interests. This *concordia* is a continuum therefore, from the agreement on the mutual advantages in exchange up to the recognition of the equivalent though unequal contributions of all members of society.

Looking at Holland one should take the long run perspective of the transformation of trade and trades from the era of the Hansa to the trade revolution of late sixteenth and seventeenth centuries in order to understand what Grotius is referring to. As Clé Lesger has shown,⁵⁵ Dutch trade had developed in the shade of the dominant Hansa centre of Antwerp,

⁵⁵ Clé Lesger, *The rise of the Amsterdam market and information exchange : merchants, commercial expansion and change in the spatial economy of the Low Countries, c.1550-1630*

by specialisation in product-destination combinations, a capacity that supported the new role of Amsterdam after the 1685 fall of Antwerp. Amsterdam thus could become the co-ordination node of a large network that relied as much on the traditional intra-European trade as on the new Indian one. Information networks and co-operation through specialisation are the catchwords of this [p. 91] new development, that i.a. helps to explain the complicated structure of the East-India Company (V.O.C.), with its five chambers and federal headquarters in Amsterdam.⁵⁶ Grotius is very much aware of this link between trade and political organisation. In the *Annales et Historiae*, on which he started working while writing the *Parallelon*, he discusses the destructive policies of Robert Dudley earl of Leicester in the period 1585-87, upsetting the fine-grained interdependencies of the trade system by outlawing trade with Spain, Portugal, and then France. This trade ban forced many merchants to leave the Netherlands. The subsequent chasing away of Leicester in 1587 was only a matter of time, lest the whole war effort would collapse.⁵⁷ Grotius claims in his *Annales* that the Dutch had been able to pay for the war, thanks to engaging even more cities in the government of Holland by giving these a seat in the province's States.⁵⁸ This 'military-economic complex' will be brought to further perfection by the co-operation between the States' pensionary Johan van Oldenbarneveltdt, responsible for the commercial strategy, and prince Maurice who professionalised siege warfare. Together they professionalised the smoothening of the 'nerves

(Aldershot: Ashgate, 2006); see also Oscar Gelderblom, *Cities of commerce : the institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton: Princeton University Press, 2013); and now: Werner Scheltjens, *Dutch Deltas. Emergence, Functions and Structure of the Low Countries' Maritime Transport System, ca. 1300-1850* (Leiden: Brill, 2015).

⁵⁶ Oscar Gelderblom, Abe de Jong and Joost Jonker, 'The Formative Years of the Modern Corporation : The Dutch East India Company VOC, 1602–1623', *The journal of economic history*, 73 (2013), pp. 1050-1076.

⁵⁷ Hugonis Grotii *Annales et Historiae de rebus Belgicis* (Amsterdam: J. Blaeu, 1657), book V of the *Annales*, pp. 10ff.; See for the interaction between financial, economic and political interests in that period: see especially the last chapter of James D. Tracy, *The Founding of the Dutch Republic. War, Finance, and Politics in Holland, 1572-1588* (Oxford: Oxford University Press, 2008).

⁵⁸ Book II, p. 40 of the *Annals*, on the enfranchisement of 12 voting cities in the States of Holland, in addition to the previous six.

of war', by integrating the financial capabilities of the merchants into the military strategy. The Dutch troops were paid on time, or the cities where they were encamped were indemnified directly, thereby preventing the politically and otherwise costly effects of the troops living off the countryside. Contrasting this in political propaganda with the predatory behaviour of Spanish troops, allowed the burgeoning republic to create the support needed to prevent defection to Spanish authority. The V.O.C. demonstrated a comparable military-commercial mix. A corollary of these developments was the change in the financing of national debt towards a bond market.⁵⁹ Even while all these [p. 92] things happened, and Grotius understood their importance, he evidently was not a neo-liberal, or even a liberal for that matter, but certainly a proto-liberal in his mature theory of civil society. In the early years, Grotius incited the Holland elite to be honourable, keep up concord and justice, especially in the face of the military challenge of the perfidious enemy.

'Concordia, for Cicero, always revolved around cooperation'.⁶⁰ Concordia is the harmonious balancing of different interests, leading to peace and political stability. The promise of cooperation is success, as Sallust has it: 'Concordia parvae res crescunt, discordia maximae dilabuntur',⁶¹ and this motto had been acquired by the States General in 1580, to adorn its coat of arms, upon the abjuration of Philip II. The rich scale of meaning that concordia demonstrated, reflects this understanding of a well-ordered society, in the absence of civil strife. How is this harmony achieved?

If we look at the *Parallelon* from this political perspective, it is clearly noticeable that Grotius does not want to allow any exception for his Batavian republic.

⁵⁹ See Marjolein 't Hart, *The Dutch wars of independence : warfare and commerce in the Netherlands 1570-1680* (London: Routledge, 2014); Idem, *The making of a bourgeois state : war, politics and finance during the Dutch revolt* (Manchester: Manchester University Press, 1993) and the comparative study by David Stasavage, *States of Credit. Size, Power, and the Development of European Politics* (Princeton: Princeton University Press, 2011).

⁶⁰ Jonathan Zarecki, *Cicero's Ideal Statesman in Theory and Practice*(London: Bloomsbury Academic, 2014), p. 60.

⁶¹ Sallustius, *Jugurtha*, 10.

Populus Atheniensis, Populus Romanus, Populus Batavus, celebres omnes, quod probamus, & liberi. Nam alias non fieret comparatio τῶν συνονυμῶν, cum alia sit virtus servi, alia liberi.⁶²

His compatriots have as much right to a place under the sun as other peoples that are sovereign, i.e. *sui iuris*, or in other terms: a *respublica perfecta*, which are the defining characteristics of a *civitas*. Grotius considered the republic, already in 1602, to be an autonomous republic, at least in origin – ‘Batavia was a free republic, for that is the meaning of commonwealth [*civitas*]’,⁶³ – one of the invariant elements of his civil philosophy. It is also on the authority of Tacitus, who – in line with Roman practice, considers as a rule the allied tribes of the Romans to be *civitates*. Grotius leaves aside this historical nicety, in his endeavour to deploy the vocabulary of autonomy, if not autarky.⁶⁴ So the Dutch are a free commonwealth on an equal footing with the other two nations in the [p. 93] comparison. What is more, we see Grotius claim time and again, that the Batavians, i.e. Dutch exhibit in reality all these qualities that other peoples only can pretend to have: the Batavian Dutch are brave, prudent, trustworthy, just, and have a fair share of the intellectual virtues. They are also religious, in the simple, upright way of the early Christians, the Christians under the cross.

Here as in *De antiquitate* Grotius exalts the consensus and concordia of the Hollanders, also by emphasizing the aristocratic character of the republic, in which the different parts of society each performed their role. By hindsight from *De iure belli ac pacis*, what is notably absent from the argument is any reference to *appetitus societatis*. If anything the driving force behind this blissful state of the Dutch is the *fides perpetua*.

***Fides* is the foundation of justice**

Writing two years later, Grotius apparently puts *fides* to yet another use, when he claims in *De iure praedae* that there is a further regulatory principle, next to that of God willing the law of nature (regula 1) and that of the consensus omnium (regula 2). This third principle is regula 3:

⁶² *Parallelon*, I, p. 5 (Breviarium hujus liber tertii).

⁶³ *Parallelon*, Fol. 14v; I, p. 28 ‘Batavia [fuit] sui iuris respublica. Hoc enim sonat civitatis vocabulum’.

⁶⁴ *De antiquitate* I.2 (p. v): ‘Est igitur hoc iustissimum liberae reipublicae initium: quippe quam populus origine sua liber in libero solo constituit’.

what each individual has indicated to be his will, that is law with respect to him. (p.18).

Grotius calls this the *regula fidei*, the rule of faith, and says that he derived this rule from ‘the foregoing considerations’. This rather vague reference seems to refer to a cascade of arguments, rather than any of these in particular. We have to take a closer look.

Starting from the second rule of the *consensus omnium*, the laws of inoffensiveness and of abstinence – two laws ‘relating to the good of others’ – are introduced, that together embody distinctions of ownership and of the Mine and Thine. “In this principle of confidence, so to speak, lies the origin of human society. That social impulse was the source of *ta symbolaia* [agreements, contracts], that is to say, of reciprocal acts and sentiments, and of the intermingling of one’s own goods and ills with the goods and ill of others.” Of the two forms of justice that of expletive justice is the most important here, because it concerns obligations, those of contract and those out of delictum, as expressed in the next two laws of nature: good deeds must be recompensed, and evil deeds must be corrected.

Upon that chord, Grotius starts talking about natural liberty, nothing ‘other than the power [potestas] of each individual to act in accordance with his own will’. The Roman law term here is ‘sui iuris’, which is the legal state of being a free citizen and hence being eligible to own property. As Daniel Lee argued, this identification of *libertas* and *potestas* stemmed from Accursius, and Grotius [p. 94] accordingly will later introduce the *potestas in se* as description of liberty in IBP.⁶⁵ Here in *De iure praedae* it is still an analogy: “liberty in regard to actions is equivalent to ownership in regard to property”, and the extension to persons (dominion over subjects, household, slaves) is absent. The subjective nature of property rights Grotius expresses in the saying (NB. from the Codex article on mandates Cod. IV.35.21) ‘every man is the governor and arbiter of affairs relative to his own property’.

The aim of the disquisition on liberty is to substantiate the claim that ‘the extent of credit involved [in the obligations] is measured by the will of the creditor ... since the exchange of good things is voluntary.’ That is an indication that the main concern here of Grotius is to find out how subjective rights (where each actor sets his own evaluation while managing his things) can be coherently put together in a society. In a successful exchange the creditor determines the value, the debtor accepts it. The point is that the subjective evaluation is crucial in the exchange, yet at the same time inaccessible for others. When expressed in an

⁶⁵ Daniel Lee. ‘Popular Liberty, Princely Government, and the Roman Law in Hugo Grotius’s *De Jure Belli ac Pacis*’, *Journal of the History of Ideas*, 72 (2011), pp. 371-392, at p. 377.

agreement, however, the exchange value is “objectified”. If we for that reason abstract from the subjective value once the exchange has been achieved we would choose the so-called instrumentalism, a methodology connected with the name of the Chicago economist Milton Friedman, for whom subjective value is but a construct on the basis of exchange data. We would do *as if* persons have a valuation. How to stick to the basic principle of natural liberty that essentially involved subjective evaluation? Grotius’s answer is: by taking what an individual has expressed as his will to be a law unto him. Liberty is a normative concept that has as its main implication the demand of consistency on its owner. And Grotius calls this moral demand of consistency *fides*, trustworthiness. This interpretation coheres well with what we found in the *Parallelon*. This *fides* is not in the first place about the performance of contracts, but about the preconditions of contracts in a world populated with free human beings. To be free is to be one’s own master, what Grotius later will call ‘potestas in se’, power over one self.⁶⁶ Thus Grotius can conclude: ‘fidem esse fundamentem iustitiae’, trust is the foundation of justice.⁶⁷

⁶⁶ Facultatem Iurisconsulti nomine Sui appellant: nos posthac ius proprie aut stricte dictum appellabimus: sub quo continentur Potestas, tum in se, quae libertas dicitur, tum in alios, ut patria, dominica: Dominium, plenum sive minus pleno, ut ususfructus, ius pignoris: et creditum cui ex adverso respondet debitum. IBP I.1.5.

⁶⁷ In previous publications I argued that while the substance of the natural law in *De iure praedae* and *De iure belli ac pacis* is largely the same, an important difference is in the pretended foundation of that natural law. In the former text, Grotius points to *fides* as the foundation of justice in the strict sense, whereas in the latter, written 20 years after, *appetitus/custodia societatis* is said to be the fountain of justice in the strict sense. At the same time, *fides* seems to be present in *De iure belli ac pacis* in a strictly delineated role, as the main mechanism to restore peace between belligerents that is as part of the *jus post bellum*. Here *fides* takes the form of the demonstration of a care for humanity and benevolent impartiality, magnanimity and fidelity. Cf. my ‘The Meaning of Trust: Fides between self-interest and appetitus societatis’, in Pierre-Marie Dupuy – Vincent Chetail (eds.), *The Roots of International Law / Les fondements du droit international: Liber Amicorum Peter Hagenmacher*, Studies in the History of International Law 11/5 (Leiden - Boston: Brill, 2013), pp. 39-58; ‘Grotius and Sociability’, *History of European Ideas*, 41 (2015), pp. 589–604.

[p. 95] **Self-command and the standard interpretation**

This distinction between the obligatory character of the will and the obligatory character of agreements is supported by the chapter ‘De interpretatione’ in IBP. There Grotius starts out distinguishing between meaning and its expression. He does that in a characteristically Grotian way.⁶⁸

If we consider only the one who has promised, he is under obligation to perform, of his own free will, that to which he wished to bind himself. ‘In good faith [in fide] what you meant, not what you said, is to be considered,’ says Cicero. But because internal acts are not of themselves perceivable, and some degree of certainty must be established, lest there should fail to be any binding obligation, in case every one could free himself by inventing whatever meaning he might wish, natural reason demands that the one to whom the promise has been made should have the right to compel the promisor to do what the correct interpretation suggests. For otherwise the matter would have no outcome, a condition which in morals is held to be impossible.⁶⁹

[p. 96] Notice the qualification ‘in fide’, a term that Kelsey translated with ‘good faith’, and that John Morrice in 1738 believed to have rendered as follows: ‘When you promise, says Cicero, we must consider rather what you mean than what you say’. And Jean Barbeyrac, in his footnote to this quote, remarks that such a statement is nowhere to be found in Cicero, yet Grotius gives the reference, to Off. I.13 (§ 40), where the history of Regulus that we have seen in *Parallelon*, is presented. So Grotius is referring to his interpretation of the Regulus case as a case of exemplary *fides*.

⁶⁸ Characteristic is that Grotius loves putting his readers on the wrong foot, by implying more than he says, as we will see from the reactions by Morrice and Barbeyrac to this passage.

⁶⁹ (IBP, II.16.1.1: *Ipsium qui promisit solum si spectamus, sponte id praestare obligatur in quod obligari voluit. In fide quid senseris non quid dixeris cogitandum*, inquit Cicero: Sed quia interni actus per se spectabiles non sunt, et certi aliquid statuendum est, ne nulla sit obligatio si quisque sensum quem vellet sibi affingendo liberare se posset, ipsa dictante naturali ratione ius est ei cuiquid promissum est promissorem cogere ad id quod recta interpretatio suggerit. nam alioqui res exitum non reperiret: quod in moralibus pro impossibili habetur.

Barbeyrac and Morrice clearly want to miss the point: what obliges a person are the determinations of his will and Regulus does what he agreed to, even though by defending the interest of the Romans he forfeits his life.

This is an extreme case, where everyone would have considered it understandable to change course, except that Regulus had a strong sense of self-imposed duty, and even revelled in his own consistency, one might add. The rule of fides is a normative ideal, not always reachable, maybe only to be found in extraordinary characters. But actually that is not the point. It is not about the enforceability of promises, but about the meaning for the actor of free choice: that one shouldn't cheat oneself, by choosing something and then by being fickle, choose something else.

So Grotius is also referring back to his arguments in his youthful writings. Moreover, he now confronts the determination of one's will with the enforceable promise. Regulus's promise to return to Carthago for all practical purposes was not enforceable. He did what he had set out to do, not considering the enforceability of his promise nor the possible harm he would have done to his promisee if he would have changed course.

'In fide' determinations of the will (its content, or meaning) oblige, yet in practical life what counts is 'the right [of the promisee] to compel the promisor to do what the correct interpretation [of the promise] suggests'. That is why the paragraph of 'De interpretatione' that we are dealing with is titled 'quomodo promissa obligent exterius', how promises are outwardly binding. They become outwardly binding by engaging in a shared understanding of promises, most famously described by the *stipulatio* of Roman law, on which Grotius's brother Willem wrote one of his academic dissertations. In actual life of course differences easily arise, and the choice is between more details in the written contract, or a reference to 'common use' or similar, or the introduction of arbitrage, or some combination thereof. The purpose is to find out what the parties intended to conclude when they concluded the contended contract. In the rest of the chapter 'De interpretatione', one finds provisions to promote such a standard interpretation, preventing surprises or idiosyncrasies, in other words with a view to promote intersubjective understanding.

[p. 97] This brings us back to the starting point and the place of fides in *Parallelon* and *De iure praedae*. Fides is arguably a constant feature of Grotius's understanding of what makes human cooperation fruitful and flourishing. Olli Lagerspetz recently argued that trust defies a general definition, and proposed that we should look rather for the conditions in which trust and distrust become topics for discussion.

‘Trust’ should not be seen as a word with a stable reference but as an organizing tool for human relations, used in a reasoning context where we wish to justify or challenge behaviour.⁷⁰

In his writing career Grotius started out challenging the Roman-Spanish-Portuguese perfidy, and came in IBP to argue for the importance of trust promoting mechanisms in cases of distrust. These mechanisms are context-dependent. In war one abstains from killings and dispossessions even when formally justified. In contracts you should stick with the standard interpretation.

In this chapter, we have presented Grotius’s concept of *fides* in context, demonstrating its importance, as well as its flexibility, standing between *amicitia* and cosmopolitanism, operating on the border of personal self-determination and public duty, connecting private interest and social harmony, and representing the magnanimity required for transforming wars into peace. For all its elusiveness, trust is the quintessence of the larger social order that reaches beyond the small area of friendships and family ties. It brings out the stubbornness of those who want to be true to their self-determination in the public eye. It is significant that Grotius doesn’t use the concept of honour, or *honnêteté*. His moral world is not a market place, even while it seems formulated to support the market place of the modern world. To be happy in this world, Grotius’s women and men are well aware of the opportunities and challenges that the human free will brings along.

Societies where people are (generally) trusting cannot be other than societies in which people are (generally) true to themselves in articulating and planning and living up to their social engagements. Interactions can always go wrong though, and the language of rights is there to mediate disagreements, because the basic character of a peaceful society is its *concordia*, a Rawlsian overlapping consensus. Such a *concordia* does not exclude a lot of disagreements on minor points, but the points are minor, since the language of rights, together with this elusive thing called ‘*fides*’ can handle the disagreements that might threaten to unsettle the peace. Thus, for Grotius, trust is something internal to [p. 98] the person, of which the external, the social relations that are upheld by the adagio ‘*pacta sunt servanda*’, are somehow a product. But the devil is in the details, and not all societies manage to be peaceful and trusting, and some are even outright perfidious. It is human nature to fight against such

⁷⁰ Lagerspetz, *Trust, Ethics and Human Reason*, p. 22-23.

perfidy, if necessary by waging war. And it will be honourable to answer perfidy with trust, even when in war. How else could peace be re-established?