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Offering hospitality to strangers: Hugo Grotius's draft regulations for the Jews

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Summary

In 1615, the States of Holland and West-Vriesland commissioned Hugo Grotius to draft a set of legal regulations for the Jews in their province. This article analyzes Grotius's draft, entitled *Remonstrance*. It examines how Grotius understood and justified the rights of Jews and to what extent his approach was novel. More particularly, it shows how Grotius developed the concept of a natural duty to offer hospitality to strangers to advocate admission and toleration of Jews. He borrowed this concept from the sixteenth-century jurist and theologian Francisco de Vitoria, who had used it to justify the Spanish colonization of the Americas. While Vitoria had suggested that the Indians had violated their natural duty to offer hospitality to strangers by refusing to admit the Spanish merchants to their lands, Grotius argued that the provinces of Holland and West-Vriesland had a natural duty to offer hospitality to the Jews who had been expelled from their communities for religious reasons. Unlike Vitoria, Grotius recognized the natural duty to offer hospitality to strangers as the natural foundation of the right to

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asylum, which applied irrespective of religion. This enabled him to argue that these Jews, as religious exiles, had to be admitted to the provinces of Holland and West-Vriesland, and granted particular rights, including the freedom of (private) worship.

Keywords

Grotius – Vitoria – rights of the Jews – natural law – toleration – asylum – freedom of religion

Introduction

In 1615, the States of Holland and West-Vriesland commissioned the Pensionary of Rotterdam, Hugo Grotius, to draft a set of legal regulations for the Jews in their province. These Sephardi Jews had fled from religious persecution in Spain and Portugal and had first arrived in the towns of Holland and West-Vriesland towards the end of the sixteenth century¹. Grotius's draft, entitled *Remonstrance*², is a unique historical document describing the legal position of

1 R.G. Fuks-Mansfeld, *De Sefardim in Amsterdam tot 1795, Aspecten van een joodse minderheid in een Hollandse stad*, Hilversum 1989, p. 38.

2 The full title is: *Remonstrantie nopende de ordre dije in de landen van Hollandt ende Westvrieslandt dijen gestelt op de joden* [Remonstrance concerning the order to be imposed upon the Jews in the lands of Holland and West-Vriesland]. The manuscript is kept in the library of the Portuguese Synagogue in Amsterdam, Ets Haim, Livraria D. Montezinos, MS EH 48 A 02. It is accessible online at <<http://etshaimmanuscripts.nl/manuscripts/eh-48-a-02/>>. At the initiative of the Morasha Foundation, a new facsimile edition of Grotius's manuscript – the first since Jaap Meijer's edition of 1949 – is currently being prepared by David Kromhout and Adri Offenbergh. This edition will also include a historical introduction, a Dutch transcription and English translation of the manuscript. It is scheduled to appear in 2019 with Brill publishers in Leiden. In 1864, the Rotterdam tobacco merchant Christiaan Snelleman (who had purchased a large collection of manuscripts of Grotius from Jean Regouin, who had acquired them from Hugo Cornets-De Groot, a direct descendant of Hugo Grotius himself) offered the manuscript for sale at the auction of Nijhoff in The Hague, together with other relevant documents, including a copy of Haarlem's Jewish charter of 1605, an undated resolution of the States of Holland and West-Vriesland concerning the relations between Jews and Christians, copies of imperial decrees against the 'new Christians' of 1549 and 1550, and an anonymous letter containing a response to the draft regulations on behalf of the Portuguese Jewish Community. See *Catalogue des manuscrits autographes de Hugo Grotius*, ed. W.J.M. van Eysinga and L.J. Noordhoff, The Hague 1864, p. 25-26 (lots 73, 74 and 75) and L.J. Noordhoff, *Beschrijving van het zich in Nederland bevindende en nog onbeschreven gedeelte der papieren*

Jews in the relatively tolerant Dutch Republic. It consists of three parts: (a) an introduction in which Grotius gives arguments for admitting these Jews and granting them freedom of religion; (b) the draft regulations, consisting of 49 articles, specifying the rights and duties of the Jews, and (c) an explanation of these articles, indicating their legal sources. What makes Grotius's *Remonstrance* exceptional is that it not only contains a proposal for a concrete set of rights and duties of Jews, but also an extensive justification of these duties and rights based on general ideas about natural law, the right of asylum, tolerance and the freedom of religion. It thereby provides important insights into how the legal position of Jews was understood and justified by one of the leading natural lawyers of the seventeenth century.

Grotius's draft has received quite a lot of attention in scholarship ever since it was first published by the Dutch historian Jaap Meijer in 1949³. Two interpretations have been proposed in the literature. According to the first, which has been proposed, amongst others, by Meijer himself, Grotius's draft stands out as a remarkably tolerant document, which should be read in light of emerging discourses of 'natural' human rights⁴. Thus Meijer characterized it as a 'synthe-

afkomstig van Huig de Groot welke in 1864 te 's-Gravenhage zijn geveild, Groningen 1953, p. 12-13 and 54-56. These documents were eventually acquired by Ets Haim (MS EH 48 A 02 and MS EH 48 A 05), with the exception of the response of the Jewish community, which was acquired by the Bibliotheca Rosenthaliana of the Amsterdam University Library Rare Book Department (MS ROS 350/1), and the copy of the Haarlem charter, which has not been rediscovered (the original version of this document is kept in the Provincial Archive North-Holland, City Administration Record Haarlem 1573-1813, Resolutions of the City Council 1602-1609, access 3993, inv. 325, fol. 162v-166r (Dutch text) and fol. 166v-169v (French text).

- 3 Hugo de Groot, *Remonstrantie*, ed. J. Meijer, Amsterdam 1949. Meijer also published an English summary of the text: J. Meijer, *Hugo Grotius' Remonstrantie*, Jewish Social Studies, 17, no. 2 (April 1955), p. 91-104. As early as the 1920s, Izak Prins had attempted to publish Grotius's *Remonstrance*. However, as Meijer suspects, a 'certain fear' prevented Prins from publishing Grotius's text, as it 'not only took a critical position with regard to the Jewish question, but also presented concrete proposals for limiting the constitutional position of Jews in the Netherlands'. De Groot, *Remonstrantie*, ed. Meijer, p. 7-8. The inventory of Prins's personal archive shows that he was indeed preparing an edition of Grotius's *Remonstrance* between 1925 and 1935; Central Archives for the History of the Jewish People, Jerusalem, inv. RP087 Prins, Private Collection Izak (Isaac) Haim Prins, p. 23-24.
- 4 Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 91-104. Similar interpretations can be found in: S.W. Baron, *A social and religious history of the Jews*, New York 1973, vol. xv, p. 25-33; W.J.M. van Eysinga, *De Groots Jodenreglement*, Mededelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afdeling Letterkunde, nieuwe reeks, deel 13, no. 1 (1950), p. 1-8; and A.K. Kuhn, *Hugo Grotius and the emancipation of the Jews in Holland*, Publications of the American Jewish Historical Society, 31 (1928), p. 173-180. A more critical interpretation was

sis between the opportunism of the Dutch ruling class and a religious-historical feeling, ennobled by the best traditions of the Arminians [also called Remonstrants, MdW]. Throughout his draft his central thought remains that a place, guaranteed by inviolable “natural” human rights, should be made in society for these immigrant Jews⁵. To support his interpretation Meijer refers to Grotius’s proposal to grant the Jews freedom of religion and the right to participate in public life on more or less equal footing with other inhabitants of the Dutch cities. More particularly, Meijer emphasizes that the draft is exceptional in not requiring the Jews to live in closed quarters (ghettos) or to wear distinguishing marks on their clothes. For these reasons, Meijer concludes that Grotius’s draft was remarkably tolerant, especially compared to proposals of Calvinists, who ‘saw the arrival of the Jews with disfavor and elaborately sabotaged the growth of their community’⁶.

By contrast, more recently, scholars have argued that Grotius’s draft reveals a hostile attitude towards Jews, citing traditional anti-Jewish sources to propose restrictions on their rights, and being relatively intolerant compared to privileges that had already been granted to Jews in several Dutch cities⁷. For instance, Joseph Michman argues that ‘both the motivations and the clauses of the proposed statute breathed an anti-Jewish spirit, when compared with the liberal views of his compatriots’⁸. To support his interpretation Michman refers to Grotius’s proposal to introduce in Holland one of the most hated measures of the Counter Reformation, the obligation of Jews to listen to conversionist sermons. Moreover, he observes that in the explanatory remarks to Grotius’s regulations (although not in the regulations themselves), Grotius proposed to prohibit the use of the Talmud, referring to the burning of the Talmud in Rome (1601), another notorious measure of the Counter Reformation. Finally, he points at Grotius’s proposal for a limitation of the number of Jews to be admitted – a maximum of 200 families per city and 300 families in

proposed by J.S. da Silva Rosa: ‘Although the tolerant spirit expressed in this *Remonstrance* seems relatively favorable compared to similar Jewish regulations everywhere else, its provisions, had they been adopted by the States of Holland, would have affected the humanity of the Jews in Holland as well’. J.S. da Silva Rosa, *Geschiedenis der Portugeesche Joden te Amsterdam, 1593-1925*, Amsterdam 1925, p. 11.

5 Meijer, *Hugo Grotius’ Remonstrantie* (*supra*, n. 3), p. 104 and De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 95.

6 De Groot, *Remonstrantie*, ed. J. Meijer (*supra*, n. 3), p. 21.

7 J. Michman, *Historiography of the Jews in the Netherlands*, in: Dutch Jewish History, Jerusalem 1984, p. 17-22; D.M. Swetschinski, *Reluctant cosmopolitans, The Portuguese Jews of seventeenth-century Amsterdam*, London 2000, p. 33-39.

8 Michman, *Historiography* (*supra*, n. 7), p. 19.

Amsterdam – arguing that it ‘constituted virtually an immigration-stop for Amsterdam, since at that time already much more than two hundred [sic] families were living there’⁹. Michman concludes that, ‘[f]ortunately for the Jews, the Remonstrants were defeated and eliminated from power in the central government of the cities’, such that ‘not even one of the hateful measures proposed by Grotius’ was included in the regulations that were eventually adopted by the States of Holland and West-Vriesland in 1619¹⁰.

Notwithstanding the important work these historians have done, I believe that neither of these interpretations is satisfying. Meijer’s idea that Grotius’ draft testifies to the emerging discourse of inviolable ‘natural’ human rights is misleading, since Grotius does not refer to inviolable natural rights at all, let alone to *equal* rights. Rather, as I hope to show, Grotius focuses on the privileges and duties of the collective, the ‘Portuguese nation’, while clearly marking its *unequal* legal position as compared to other (Christian) inhabitants. However, that Meijer projected the concept of inviolable ‘natural’ human rights onto Grotius’s proposed statute is understandable from his own historical context, writing in 1949, after having survived the ‘lawlessness’ of Nazism and its racist denial of equality, and a year after the adoption of the Universal Declaration of Human Rights. Still, reading Grotius’s text from the perspective of human rights prevents us from perceiving the historical peculiarities of his understanding of the legal position of the Jews, which had little to do with human rights, nor with ideas about legal equality. One of the aims of this article is, therefore, to show how in Grotius’s proposed statute, the legal protection of the Jewish community did not depend on the language of inviolable ‘natural’ *rights*, although it was informed by universalist ideas based on natural law and Christian theology.

The second interpretation proposed by Michman, that ‘both the motivations and clauses of [Grotius’s] proposed statute breathed an anti-Jewish spirit, when compared with the liberal views of his compatriots’, is not entirely convincing either. First of all, in giving evidence for his thesis, Michman tends to misrepresent the facts. For instance, his claim that the number of Jews to be admitted ‘constituted virtually an immigration-stop for Amsterdam, since at that time already much more than two hundred families were living there’ is incorrect, not only because Grotius makes an exception for Amsterdam, allowing for three hundred, instead of two hundred families, but also because this number was probably not met¹¹. More importantly, Michman does not provide

9 Ibid., p. 20.

10 Ibid., p. 21.

11 It has been estimated that about 164 Portuguese families – perhaps 550 persons – were living in Amsterdam in 1615. However, the exact number of families is uncertain and

evidence for his claim that Grotius's attitude towards the Jews, and more generally the attitude of the Remonstrant faction to which he belonged, was more hostile than that of his compatriots (apart from the rather circumstantial evidence that the Jewish charter of Rotterdam of 1610, which granted Jews extensive rights, was revoked after the Remonstrants had taken to power in 1612, and one year before Grotius was appointed as pensionary of that town, which is presented by Michman as 'clear proof' of their hostile attitude towards the Jews)¹². By contrast, as I will show in this article, there is no reason to believe that Grotius's attitude towards the Jews was more hostile than that of his compatriots, nor that his proposed statute deviated in any significant way from the existing charters of Rotterdam, Alkmaar and Haarlem. Of course, Grotius may not have been free of anti-Jewish prejudices, but this did not prevent him from proposing substantial legal protections for the Jews.

In this paper, I will examine how Grotius understood and justified the rights of the Jews and to what extent his approach was novel. I will focus on the main arguments Grotius gives for admitting the Jews and granting them civil rights, including freedom of worship (albeit in private houses). Among other things, I will show that Grotius adopted the concept of a natural duty to offer hospitality to strangers to justify admission of the Jews. He borrowed this concept from the sixteenth-century theologian and jurist Francisco de Vitoria, who had used it to justify the Spanish colonization of the Americas. While Vitoria had suggested that the Indians had violated their natural duty to offer hospitality to strangers by refusing to admit the Spanish merchants to their lands, Grotius argued that the cities of Holland and West-Vriesland had a natural duty to offer hospitality to Portuguese Jews, who had been expelled for religious reasons. However, as I will show, unlike Vitoria, Grotius recognized the natural duty to offer hospitality to strangers as legal foundation of the right to asylum, which applied irrespective of religion. This enabled him to argue that the Jews, as religious exiles, had to be admitted to the provinces of Holland and West-Vriesland, and granted particular civil rights, including the freedom of (private) worship. What is striking is that Grotius, in spite of his own anti-Jewish feelings, thereby developed a legal framework for the effective protection of these Jewish 'merchant-refugees'.

subject to debate. See M. Bodian, *Hebrews of the Portuguese nation, Conversos and community in Early Modern Amsterdam*, Bloomington 1999, p. 46, 54 and 179, n. 84.

- 12 By contrast, Arend Huussen suggests that the Rotterdam charter was revoked because the agreed minimum of 30 resident Jewish families was not met: A.H. Huussen, *Legislation on the position of the Jews in the Dutch Republic, c. 1590-1796*, *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), p. 48.

I will begin by describing the legal context, focusing on Jewish charters which were adopted in Dutch cities in the early seventeenth century (§ 1). I will then analyze Grotius's main arguments for admission of the Jews (§ 2) and for granting them freedom of religion (§ 3). Next, I will turn to Grotius's draft statute itself, and examine how he justified its main provisions (§ 4). And I will end by briefly describing the impact of Grotius's draft, both on legal theory and practice (§ 5).

1 Background

In the 1590s, the first merchants of the 'Portuguese nation' arrived in the towns of Holland and West-Vriesland. They included many so-called 'new Christians' or 'conversos', whose families had been forced to convert to Christianity generations ago, but who had maintained the stigma of being Jewish and were persecuted by the Inquisition¹³. From the 1540s on, Charles v had issued several edicts against these 'new Christians', who were suspected of secretly being Jewish and were persecuted as enemies of the Catholic Faith¹⁴. In 1536, the Portuguese Inquisition had been established with the specific aim to interrogate these converts, suspected of being insincere Christians¹⁵. Religious persecution and economic opportunity led many of them to take refuge in Northern Europe, first in Antwerp, and, after its conquest by Spanish troops in 1585, in harbor cities more to the North such as Middelburg and Amsterdam (or German cities such as Hamburg or Emden). Amsterdam, in particular, became an economically advantageous city for the Portuguese merchants to settle, as it was developing into the main entrepôt for colonial goods, such as tobacco, sugar and spices¹⁶.

13 Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 20-21.

14 Imperial edicts against the new Christians of 1549 and 1550, Ets Haim, MS EH 48 A 05, fol. 38r-41r and 46r-48r. Huussen, *Legislation* (*supra*, n. 12), p. 48.

15 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 4.

16 Bodian, *Hebrews* (*supra*, n. 11), p. 28 and 48. Martine van Ittersum has pointed out that Grotius's writings on natural law, in particular his *De iure praedae* of 1608 (which was written at the request of the Dutch East-India Company or VOC), primarily served to justify Dutch colonial expansion. There are reasons to believe that Grotius's draft regulations for the Jews should also be understood in this colonial context (for instance, in 1615, when Grotius drafted his regulations, he also negotiated on the Company's behalf with the English East-India Company). In subsequent years, Portuguese Jews would come to play an important role in facilitating Dutch colonial expansion by setting up trading colonies in Dutch Brazil, Surinam, Curacao and other places. It is therefore significant that Grotius

Apart from economic opportunities, an important reason for their settlement in the Low Countries appears to have been its relatively tolerant religious climate. In previous years, persecution of Dutch protestants by the Spanish Inquisition had caused the Dutch provinces to revolt against their ruler, king Philip II of Spain. In 1579, seven Northern provinces, including Holland and West-Vriesland, had concluded a defensive treaty, the Union of Utrecht, which, in Article 13, explicitly recognized the freedom of conscience¹⁷. Although this provision had been intended to prevent disorder between Protestants and Catholics, it also served as legal basis for protecting religious minorities. The burgomasters of Amsterdam, in particular, conducted a policy of religious toleration in accordance with the principles of the Union of Utrecht: dissenting religious groups were thus generally tolerated, although they were not allowed to publically exercise their faith (authorities turning a blind eye, for instance, to Catholic worship in private houses)¹⁸. This may have been one of the reasons why Portuguese Jews expected to find a more favorable religious climate

first began to reflect on the rights of non-Christian peoples (including Jews) in a short, unpublished treatise, entitled *De societate publica cum infidelibus*, which has been found among the preparatory notes for his *De iure praedae*; Grotius, *De societate publica cum infidelibus*, Leiden University Library, Ms. BPL, 922, fol. 314r–317v. M.J. van Ittersum, *The making of a founding father of international law*, in: *The Oxford Handbook of the theory of international law*, ed. A. Orford, F. Hoffmann and M. Clark, Oxford 2016, p. 85 and M.J. van Ittersum, *Profit and principle, Hugo Grotius, natural rights theories and the rise of Dutch power in the East Indies, 1595-1615*, Leiden 2006. On the involvement of Portuguese Jews in Dutch colonialism: W. Klooster, *The Dutch Moment, War, trade, and settlement in the seventeenth-century Atlantic world*, Leiden 2016, p. 220-233.

17 Article 13 of the Union of Utrecht prescribed that 'every private person shall be allowed to remain free in his religion and no one shall be seized or examined because of his religion'.

18 Although Catholics were not allowed to worship in public, it was generally tolerated that they convened in so-called 'schuilkerken', clandestine churches hidden in (or behind) private houses. Characteristic of these *schuilkerken* was their invisibility: they could not be identified as churches from the streets, nor did they have any legal status (appearing as private houses, warehouses or barns in legal documents). Officially, religious gatherings of Catholics were proscribed as 'conventicles'. However, in practice, the *schuilkerken* were tolerated under the fiction that they merely involved private or domestic worship (which was allowed under the Union of Utrecht) and provided that a 'recognition fee' was paid to the local bailiff. According to Benjamin Kaplan, these clandestine churches served as a 'crucial mechanism for the accommodation of religious dissent', as they contributed to maintaining the semblance of religious unity: 'Keeping dissent out of sight, stripped of any symbolic presence, preserved the monopoly of the Reformed Church over public religious life. It thus maintained a semblance, or fiction, of religious unity'; B.J. Kaplan, *Divided by faith, Religious conflict and the practice of toleration in Early Modern Europe*, Cambridge, MA, 2007, p. 172-183. Cf. H.F.K. van Nierop, *Sewing the bailiff in a blanket, Cath-*

in the Dutch provinces. Indeed, in a letter addressed to the authorities and written around 1616, a representative of the Portuguese Nation emphasized that they had ‘fled from the fire of the Inquisition and other cruelties committed against her, trusting in the freedom of conscience granted in these lands’¹⁹.

The legal status of the Portuguese merchants was that of strangers. In the cities, some individuals (not all) were granted ‘poortersrecht’, the right to live within the city gates, which entitled them not only to legal protection but also to membership of guilds, which monopolized the main crafts and trades²⁰. On 31 March 1597, Manuel Rodrigues became the first Portuguese merchant to obtain poortersrecht in Amsterdam²¹. A year later, the burgomasters of Amsterdam adopted a resolution in which they explicitly granted Portuguese merchants the right to purchase poortersrecht, ‘trusting that they are Christians and will live an honest life as good burghers’²². For the time being, the burgomasters appeared to be willing to accept the Portuguesees’ claim that they were Christians at face value. However, they also seem to have had some doubts, since they decided that ‘before making the oath, [the Portuguese merchants] be warned that in this city no other religion can nor may be practiced than that practiced publicly in the churches’²³. As the burgomasters may have suspected they were dealing with Jews, they probably intended to warn them that their rights were restricted in the way Catholics’ were. This implied that they were not allowed to exercise their religion in public synagogues, yet they might practice Judaism in private²⁴. Indeed, fairly soon after their arrival, sev-

olics and the law in Holland, in: Calvinism and religious toleration in the Dutch Golden Age, ed. R. Po-Chia Hsia and H.F.K. van Nierop, Cambridge 2002, p. 102-111.

- 19 MS ROS 350/1 (*supra*, n. 2), fol. 1. In this letter, addressed to the States of Holland and West-Vriesland, an anonymous author responds on behalf the Portuguese community to the draft regulations. A transcription of the letter was published in De Groot, *Remonstrantie*, ed. J. Meijer (*supra*, n. 3), p. 141-143. Grotius received Portuguese and Dutch copies of the letter. *Catalogue des manuscrits autographes de Hugo Grotius* (*supra*, n. 2), p. 26 (lot. 75).
- 20 Huussen, *Legislation* (*supra*, n. 12), p. 45 and R. Feenstra and H. Klomp maker, *Le statut des étrangers aux Pays-Bas*, in: *Receuil de la Société Jean Bodin*, Vol. 10: L'étranger, Brussels 1958, p. 333-373.
- 21 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 10.
- 22 Resolution of 4 September 1598, in: H. Bontemantel, *De Regeering van Amsterdam, soo in 't civiel als crimineel en militaire, 1653-1672*, ed. G.W. Kernkamp, The Hague 1897, vol. 1, p. CXXXII. English translation in Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 11.
- 23 *Ibid.*, p. CXXXII. Compare also: Huussen, *Legislation* (*supra*, n. 12), p. 48 and A.H. Huussen, *The legal position of the Sephardi Jews in Holland, circa 1600*, in: Dutch Jewish history, Proceedings of the fifth symposium on the history of the Jews in the Netherlands, Jerusalem, November 25-28, 1991, Assen 1993, p. 20-21.
- 24 Bodian, *Hebrews* (*supra*, n. 11), p. 58.

eral of the Portuguese merchants began to openly manifest themselves as Jews. True to the principle of the freedom of conscience, the burgomasters did not put any real obstacles in the way of their return to Judaism²⁵. Yet, they declined their request to build a synagogue, and freedom of public worship was not formally granted to the Jews of Amsterdam until 1639 (although from 1612 on, the use of a private building as synagogue was silently tolerated)²⁶.

It was probably for this reason that Portuguese merchants began to examine possibilities for settling outside Amsterdam. By negotiating with the city magistrates of Alkmaar in 1604, Haarlem in 1605 and Rotterdam in 1610, they succeeded in obtaining permission to settle in these towns under more favorable conditions²⁷. Most importantly, the Jewish charters of these cities explicitly recognized the Jews' freedom of worship. Thus, on May 10, 1604, the city council of Alkmaar decided that '[a]t the request of Philips de Jode, on behalf of several Jews of the Portuguese and other nations who live in the east [*oostwaerts*] and elsewhere, it is permitted that these people settle down in Alkmaar to live there in peace like the other inhabitants, have their religious worship [*haer geloofs beleven*], provide for their families in the ways they are permitted in other places among the Christians – on the condition that they submit themselves to the laws of the town and bear the same contributions and taxation as other citizens and inhabitants. They will, however, be exempted from personally participating in the civic guard, provided that they pay the guard tax the burgomasters levy on them'²⁸. The Alkmaar charter not only explicitly recognized the freedom of worship, but it also seemed to place the Jews legally on a par with other inhabitants: they were subjected to the same laws and taxes as other inhabitants (with the important exception of their exemption from participating in the civic guard, which effectively barred them from

25 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 4.

26 In 1612, members of the Portuguese nation hired a carpenter to build a house which they apparently intended to use as a synagogue. Brought to the attention of the City Council by elders of the Reformed Church, the councilors prohibited its use as a synagogue under the penalty of demolition. However, notwithstanding this prohibition, the building was finished and used as a synagogue. To prevent demolition, the ownership of the building was transferred to Nicolaes van Campen, himself a respected member of the City Council. Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 12; Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 52; Bodian, *Hebrews* (*supra*, n. 11), p. 59.

27 Huussen, *Legal position* (*supra*, n. 23), p. 22.

28 A transcription of the Alkmaar charter can be found in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 38. For the English translation: Huussen, *Legal position* (*supra*, n. 23), p. 22.

public office)²⁹. However, this did not mean that the Jews were actually considered as equals in practice. For instance, it is not very likely that they were intended to be equally admitted to guild membership. Nor it is it likely that the city magistracy considered their religious status as equal to that of the Calvinists. As Huussen explains, in practice, the status of the Jews probably resembled that of other religious minorities such as the Catholics³⁰. This implies that they were allowed to exercise their religion, but only in private, not in public.

Even more interesting is the Jewish charter of Haarlem, which was negotiated in 1605 by Portuguese merchants from Amsterdam on behalf of what they described as 'the Portuguese and Spanish nation descending from the oriental and western Hebrews or Jews, living and exercising the Jewish religion in Italy and various places in Turkey'³¹. These merchants had requested permission to settle in Haarlem on the condition that they be allowed the 'free public exercise of their religion and doctrine in their synagogue'³². However, the city council feared that granting this request would lead to discontent among Catholics, who were not permitted to publicly exercise their religion. Therefore, the burgomasters were authorized to grant the Jews only the right to private worship, but no public synagogue³³. However, the Portuguese merchants rejected this offer, arguing that they already enjoyed more religious freedom elsewhere, and that they had no reason to leave Amsterdam without the right to build a synagogue. After consulting with political and ecclesiastical authorities in the Hague, including Johan van Oldenbarnevelt and Johannes Uytenbogaert (both personal acquaintances of Grotius), the Haarlem magistracy finally decided to grant their request³⁴. On November 10, 1605, the Jewish charter of Haarlem was

29 Huussen, *Legal position* (*supra*, n. 23), p. 22.

30 *Ibid.*, p. 22.

31 Provincial Archive North-Holland, City Administration Record Haarlem 1573-1813, Resolutions of the City Council 1602-1609, access 3993, inv. 325, fol. 162v-166r (Dutch text) and fol. 166v-169v (French text). The Dutch text of the Haarlem charter was first published in: M. Wolff, *De geschiedenis der joden te Haarlem, 1600-1815*, Haarlem 1917, p. 57-63. It was republished in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 40-43. The official French version of the text was published by Huussen, *Legal position* (*supra*, n. 23), p. 30-35.

32 City Administration Record Haarlem 1573-1813, access 3993, inv. 325, fol. 136v (city council meeting of 16 April 1605). The text of the relevant resolutions of the city council has been published in A.H. Huussen, *De toelating van Sefardische joden in Haarlem in 1605*, in: *Jaarboek Haerlem* 1991, Haarlem 1992, p. 55-57.

33 *Ibid.*, fol. 137r (city council meeting of 16 April 1605). Cf. Huussen, *Legal position* (*supra*, n. 23), p. 23.

34 Huussen, *Legal position* (*supra*, n. 23), p. 23 and Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 46 and 48. The advice of Van Oldenbarnevelt has been recorded in some detail by

formally adopted³⁵. Among other things, it granted the Jews the right to exercise their religion and build a synagogue, provided that they did not blaspheme or insult Christ or the Christian religion and refrained from marrying Christians³⁶. However, the right to build a synagogue was made dependent on the condition that at least 50 families would settle in Haarlem – a condition which was apparently not met during that century³⁷.

In 1610, the magistracy of Rotterdam received a similar petition from ‘merchants of the Portuguese nation’ who wished to settle in that city. On August 10, 1610, the burgomasters were authorized by the city council to negotiate the conditions for their settlement³⁸. Once again, the core of the Portuguese request seems to have been the right to freely exercise their religion and to build a synagogue. The city magistracy decided to grant these rights on the condition that at least 30 families would settle in the city and that they refrained from admitting or attempting to convert Christians to their religion³⁹. Moreover, the Portuguese merchants were entitled to elect ‘two or more consuls’, responsible for the internal government of their community and having jurisdiction in

Haarlem’s secretary Michiel van Woerden. According to Van Oldenbarnevelt, the decision to grant the Portuguese Jews freedom of religion depended on both political and ecclesiastical considerations. Politically, the city magistracy had the right to attract these prosperous merchants to promote the welfare of the city, provided that it did not cause discord among the population or (religious) alteration in the city. Ecclesiastically, Van Oldenbarnevelt observed that allowing the Jews freedom of religion might lead to discontent among Calvinist preachers, or among Catholics who were not allowed to worship in public. However, Van Oldenbarnevelt rejected this objection, referring to the fact that Christian emperors as well as the pope himself had always allowed the Jews the free exercise of their religion and their synagogues, and that reformed theologians and preachers also advocated toleration of the Jews. In this context, he concluded that ‘observing that the Pope admits them [the Jews, MdW] to Rome, while refusing the evangelical and reformed, persecuting them with fire and sword, it is not strange that the Jews shall be admitted here and not the papists’; City Administration Record Haarlem 1573-1813, access 3993, inv. 36, fol. 13v–14v. The complete text of Van Woerden’s report has been published in Huussen, *Toelating* (*supra*, n. 32), p. 57-62.

35 City Administration Haarlem 1573-1813, access 3993, inv. 325, fol. 161r–169v (city council meeting of 10 November 1605). Huussen, *Legal position* (*supra*, n. 23), p. 23-24.

36 Haarlem charter, in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 41-43.

37 Huussen, *Legal position* (*supra*, n. 23), p. 25.

38 City Record Office Rotterdam (GAR): Oud Archief Stad No. 18 (Resolutions of the town council 1608-1621); inventaris Boom and Woelderink, 1976, 52 (reference mentioned in Huussen, *Legal position* (*supra*, n. 23), p. 40, n. 16). The complete text of the Rotterdam charter can be found in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 45-46.

39 *Ibid.*, p. 45.

civil disputes arising between Jews. They were also granted the same economic 'freedoms which other citizens enjoy or may enjoy'. They were even exempted from particular taxes, including the guard tax (contrary to the Alkmaar charter). As the city magistracy frankly admitted in the very first sentence of its charter, it had decided to grant these extensive privileges to the Portuguese merchants 'to promote traffic and trade in the city'. However, the charter also gave the city magistracy the possibility to revoke the residency rights of the Portuguese Jews, provided that it would declare its intention two years in advance, thereby allowing the Jews to settle their affairs and freely transport or sell their goods. The manuscript of the Rotterdam charter does indeed contain a marginal note, dated September 14, 1612, which announces the termination of the charter⁴⁰.

Analyzing these Jewish charters, Arend Huussen explains that they had the legal character of *contracts*. They were not unilaterally imposed, but negotiated between parties, *i.e.*, the city magistracies and representatives of the Portuguese community⁴¹. They consisted of rights and obligations, as well as terms and conditions, and, in the case of the Rotterdam charter, even contained clauses for terminating the contract. What is striking is the relatively strong negotiating position of the Portuguese merchants. Apparently, the city magistrates of Alkmaar, Haarlem and Rotterdam believed that the settlement of these distinguished merchants, with their international trading contacts, was vital to the economic prosperity of their cities. The Portuguese therefore succeeded in negotiating their settlement under favorable conditions. The cities even seem to have competed for their settlement by offering the most favorable terms. For instance, while the Alkmaar magistracy offered exemption from participation in the civic guard under the condition that a guard tax was paid, Rotterdam's magistrates offered exemption not only from the civic guard, but also from the guard tax. More importantly, while Alkmaar's magistrates offered the Portuguese merchants freedom of worship, Haarlem's magistrates went further by offering not only freedom of *private* worship, but also the right to build a *public* synagogue, provided that 50 families settled in the city. However, they were outbid by Rotterdam, which committed itself to accepting a synagogue with a mere 30 families settling in that city. In some cases, the Portuguese expressly invoked the freedoms they enjoyed elsewhere to negotiate more favorable terms, as was the case in Haarlem, where they rejected the burghomasters' offer of private worship, arguing that they already enjoyed the free-

40 Huussen, *Legal position* (*supra*, n. 23), p. 26.

41 *Ibid.*, p. 25.

dom of public worship elsewhere, referring to Amsterdam and Rotterdam amongst other examples⁴².

Preventing competition between cities – and a ‘race to the bottom’ regarding Jewish settlement conditions – was probably one of the main motives for the States of Holland and West-Vriesland to seek regulation of the rights of the Jews at the provincial level. However, apparently, the States also intended to end what they considered a series of ‘scandals’ involving Christians converting to Judaism. Thus, in 1614, the authorities in Hoorn had discovered that three Mennonites had converted to Judaism, a matter which was promptly brought to the attention of the States⁴³. On March 4, 1615, the States formally commissioned the pensionaries of Rotterdam and Amsterdam, Hugo Grotius and Adriaan Pauw, to draft a ‘set of regulations [*reglement*] with which the Jews (residing in these lands) will have to comply for the prevention of all scandals, offences and sanctions [*tot weeringhe van alle schandalen, ergernissen ende sancties*]⁴⁴. In addition, they ‘authorized the Gecommitteerde Raden, with consent of the burgomasters and governors of Hoorn, to impose such order on the Jews held captive there as they deem fit’⁴⁵. Grotius and Pauw were probably chosen for this task because the first had already written about the rights of non-Christians⁴⁶ and the second was pensionary of the city with the largest Jewish community. They also represented different religious factions, Grotius being a prominent Arminian and Pauw a leading Calvinist. However, unfortunately, Pauw’s proposal was lost, or at least has not yet been rediscovered⁴⁷, and only

42 Ibid., p. 12. In Amsterdam, freedom of worship was not officially recognized, but religious services in private houses were accepted in practice (see *supra*, n. 26).

43 Meijer describes this case in detail in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 48–50. Compare also the insightful analysis of this case in A. Van der Haven, *Conversion on trial, Toleration of apostasy and the trial of three converts to Judaism in the Dutch Republic, 1614–1615*, in: *Contesting inter-religious conversion in the Medieval world*, ed. Y. Fox and Y. Yisraeli, London 2017, p. 41–60. Similar cases of Christians converting to Judaism were reported in Amsterdam in 1614. These sources are quoted in J. Zwarts, *De eerste rabbijnen en synagogen van Amsterdam*, Amsterdam 1929, p. 121 and De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 50, n. 88.

44 *Resolutien van de Staaten Hollandt ende West-Vriesland, 1613–1619*, p. 127 (4 March 1615), quoted in De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 50.

45 Ibid. (17 March 1615).

46 Grotius, *De societate publica cum infidelibus* (*supra*, n. 16), fol. 314r–317v. Cf. P. Borschberg, *De societate publica cum infidelibus, Ein Frühwerk von Hugo Grotius*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 115 (1998), p. 355–393.

47 Izak Prins has suggested that the manuscript of the undated resolution of the States of Holland and West-Vriesland concerning the relations between Jews and Christians, which belonged to Grotius (Nijhoff auction, lot 74), can be identified as Pauw’s proposal.

Grotius's draft is still available to us. Therefore, claims in the literature that their different religious backgrounds led them to submit different proposals – Pauw's being 'evidently rather intolerant'⁴⁸ – seem to be unfounded⁴⁹.

It should be noted that Grotius's draft referred to Jews in general ('de Joden'). In doing so, it differed from the Jewish charters of Alkmaar, Haarlem and Rotterdam, which expressly referred to 'Jews of the Portuguese nation', thereby apparently excluding Ashkenazi Jews from the East⁵⁰. This can perhaps be explained by the fact that these Jewish charters were the result of particular requests and negotiations with representatives of Portuguese communities from Amsterdam⁵¹. By contrast, Grotius's draft did not originate in such particular requests, but in a general commission of the States, and it is doubtful whether representatives of particular (Portuguese) communities were involved in negotiating its terms. More importantly, in 1615, when Grotius was commissioned to draft his regulations, Ashkenazi Jews were still a relatively small minority among the more visible and economically successful Sefardi majority. In fact, it was only after the outbreak of the Thirty Years War in 1618, that is, three years after Grotius drafted his regulations, that larger groups of Ashkenazi immigrants from Central Europe started to arrive in Holland and West-Vriesland⁵². Even then, there was little opportunity for their permanent settlement, and

However, Meijer has convincingly argued that the undated resolution was probably the result of deliberations about Grotius's and Pauw's proposals. This is suggested by the fact that its phrasing is sometimes very similar, even identical, to that of Grotius's *Remonstrance* (compare, for instance, Arts. 27 and 38). However, unlike Grotius's proposal, the undated resolution contains only restrictions, no rights or privileges, for the Jews. Resolution of the States of Holland and West-Vriesland concerning the relations between the Jews and the Christian population (undated), Ets Haim, ms 48 A 05, fols. 25-27. Cf. De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 95-98.

48 Baron, *Social and religious history* (*supra*, n. 4), p. 25.

49 Cf. Huussen, *Legal position* (*supra*, n. 23), p. 29.

50 An exception may be the Alkmaar charter, which refers to 'several Jews of the Portuguese and other nations who live in the east and elsewhere'. However, it is unclear if the phrase 'other nations who live in the east and elsewhere' refers to Ashkenazi Jews. For instance, it may also refer to Sephardim living in Turkey (a group which is expressly mentioned in the Haarlem charter).

51 In this respect, too, the Alkmaar charter is exceptional. Since the first Portuguese community in Amsterdam did not have its own rabbi, it solicited Uri Halevi, an Ashkenazi rabbi from Emden. It was apparently Halevi – who in official documents used his Dutch name Philips de Jode – who negotiated the Alkmaar charter on behalf of the Portuguese community. Cf. Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 44-45.

52 J.I. Israel, *De Republiek der Verenigde Nederlanden tot omstreeks 1750, Demografie en economische activiteit*, in: *Geschiedenis van de Joden in Nederland*, ed. H. Blom, D. Wertheim,

leaders of the Sefardi communities in Amsterdam actively stimulated them to emigrate to other parts of Europe⁵³. However, it seems that when larger groups of Ashkenazi immigrants did settle in Holland and West-Vriesland towards the end of the 1620s, they were able to profit from the extensive economic privileges and religious freedoms which Portuguese Jews had negotiated in previous decades. It was thus their strong economic position which had enabled these Portuguese Jews to negotiate favorable Jewish charters with several cities, which in subsequent decades would also benefit the relatively poor Ashkenazi Jews⁵⁴.

2 Grotius's arguments for admission of the Jews

In the extensive introduction to his draft regulations, Grotius begins by emphasizing that he has been forced by necessity to examine the question of the Jews⁵⁵. The Jews, he explains, have arrived and settled in these lands (*i.e.*, the provinces of Holland and West-Vriesland) in large numbers, without a statute regulating their legal status, and in violation of previous edicts⁵⁶. Grotius probably refers to the edicts of 1549 and 1550 against the 'new Christians', copies of which were found among his personal papers⁵⁷. Moreover, he observes that

H. Berg and B. Wallet, Amsterdam 2017, p. 102 and J.I. Israel, *European Jewry in the age of mercantilism, 1550-1750*, Oxford 1985, p. 87-102.

- 53 This was especially true after hostilities with Spain and Portugal had resumed in the early 1620s, which made trade with the Iberian peninsula more difficult, causing a decline of economic activity, which affected Portuguese merchants in particular: they sought to prevent the settlement of impoverished Ashkenazi immigrants, since they were barely able to support their own poor; Israel, *Republiek* (*supra*, n. 52), p. 101-102.
- 54 In 1635, they were able to found a separate Ashkenazi synagogue in Amsterdam; *ibid.*, p. 103.
- 55 Hugo de Groot, *Remonstrantie*, manuscript Ets Haim, MS EH 48 A 02, 1; De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 107. Grotius's *Remonstrance* is hereafter cited in the main text with folio numbers of the manuscript and page numbers of Meijer's transcription between brackets. English translations are mine, unless otherwise indicated.
- 56 In his *Nederlandsche Jaerboeken en Historiën*, Grotius refers to the arrival of the Portuguese Jews in the year 1598: 'In addition, refugees from Portugal, being part of the remaining Jews in that realm, led by fear for inquisition of their ancestral religion, and others by hope for more profit, have also preferred the greatness of the city of Amsterdam above others'. Hugo de Groot, *Nederlandsche Jaerboeken en Historiën, sedert het jaer MDLV tot het jaer MDCIX*, Amsterdam 1681, p. 330.
- 57 Imperial edicts against the new Christians of 1549 and 1550 (*supra*, n. 14). Cf. *Catalogue des manuscrits autographes de Hugo Grotius* (*supra*, n. 2), p. 25 (lot 74). According to

several cities have welcomed the Jews ‘with promises of great freedoms and privileges, each considering its private gain and trade, less the honor of God and the public good [*gemeene beste*]’ (fol. 1r, 107). Grotius probably has in mind the Jewish charters of Haarlem and Rotterdam – having been pensionary of Rotterdam, Grotius must have been familiar with its Jewish charter, and a copy of the charter of Haarlem was found among his personal papers⁵⁸. The fact that these cities, driven by the prospect of economic profit, had sought to attract the Portuguese merchants by offering favorable conditions for their settlement causes Grotius to call upon ‘those who are commanded, not by the particular, but by the common [*good*]’ to take responsibility and ‘prevent worse’ (fol. 1r-1v, 107). This leads him to formulate three questions: ‘First, whether the Jews should be tolerated here in this land. Second, whether they should be allowed exercise of their religion. Third, by what means it may best be prevented that their presence and exercise of religion become harmful to the Christian religion as well as the public order [*Politie*]’ (fol. 1v, 107).

In considering the first question, Grotius begins by presenting several arguments against toleration of the Jews. His main argument is that it undermines the unity of religion, from which the state derives its strength: ‘Since the main strength of the State is Unity in questions of religion, it is ill-advised to admit to a country some persons whose faith differs from ours to such extent: because the mere perception of their persons brings the weak to doubt and uncertainty regarding the principle points that are necessary for salvation’ (fol. 2r, 107). As Grotius suggests, this is especially true in a country such as Holland where ‘many people are prone to novelties and all too curious examination of things which are beyond human understanding, as (God forbid) there are too many of here in this land’ (fol. 2r, 107)⁵⁹. A second argument against admitting the Jews is their supposed ‘aversion and hatred towards Christians’, from which, according to Grotius, ‘nothing than disunity, unrest and other inconveniences

Meijer, the copies of these edicts are written in the same hand as Grotius’s *Remonstrance*, which supports his conclusion that they served as source material. Although Meijer’s conclusion seems correct (see below, n. 83), the handwriting of these manuscripts is clearly different. Cf. De Groot, *Remonstrantie*, ed. J. Meijer (*supra*, n. 3), p. 70.

58 Meijer, *Hugo Grotius’ Remonstrantie* (*supra*, n. 3), p. 93. The charter of Haarlem was part of lot 74 at the Nijhoff auction; *Catalogue des manuscrits autographes de Hugo Grotius* (*supra*, n. 2), p. 25, lot. 74.

59 As Meijer observes, Grotius probably refers to contacts between Portuguese Jews and dissident Christian groups, and, more particularly, to religious disputations between Marranos and Christian theologians which were organized in Amsterdam between 1605 and 1608, and which, apparently, attracted quite substantial audiences; *ibid.*, p. 93-94 and De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 68-69 and 72.

may be expected' (fol. 2r, 107). Citing a large number of anti-Jewish sources from Antiquity and the Middle-Ages, Grotius claims that 'for several thousand years', the Jews have demonstrated their implacable hostility towards Christians. He even asserts that the Jews are instructed by their religious writings, the Talmud in particular, to treat Christians badly, and that they pray three times a day 'for the destruction of the Christians' (fol. 3r, 108). Moreover, he accuses the Jews of numerous massacres of Christians and invokes the infamous blood libel, claiming that it not only served to satisfy their hatred, but also to mock the Christian religion.

Admirers of Grotius may be shocked by these anti-Jewish passages: it is particularly disturbing to note how Grotius invokes the blood libel, which originated in a strongly anti-Jewish Catholic tradition⁶⁰. However, Meijer warns us not to confuse these anti-Jewish passages with Grotius's own convictions. To support his view, he refers to the fact that in his private letters, Grotius expressed himself very differently when he was asked to give his opinion about a ritual murder trial in Lublin in 1636: citing the same anti-Jewish sources, he explains that he does not believe in the accusation, and that it was probably caused by hatred against the Jews. Although he argues that the Jews are not innocent, he also stresses that it is the judges' responsibility to prevent that witnesses are forced by torture to give false testimony. More particularly, he emphasizes that the judges should consider that 'it is better to acquit a criminal than to convict an innocent person'⁶¹. Although Meijer is right to point out that Grotius's opinion expressed in private about the ritual murder trial in Lublin suggests a different and more nuanced understanding of the position of the Jews, I believe that it does not imply that he was free of anti-Jewish prejudices. More particularly, I would not go so far as Meijer to suggest that Grotius presented his anti-Jewish arguments merely to cut the grass from under the Calvinists' feet⁶². Rather, it is significant that, in spite of Grotius's anti-Jewish prejudices, he advocates legal protections for Jews accused of ritual murder.

Nor are these anti-Jewish passages in Grotius's *Remonstrance* proof of his incomparably hostile attitude towards the Jews, as Michman has claimed⁶³.

60 Compare also his reference to the common place of medieval Catholicism that the Jews 'through their evil zeal' had brought about the death of Christ and persecuted his apostles (fol. 4v–5r, 109).

61 De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 73 and Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 94. The source to which Meijer refers is M. Balaban, *Hugo Grotius und die Ritualmord-Prozesse in Lublin (1636)*, in: *Festschrift zu Simon Dubnov's siebzigstem Geburtstag*, ed. I. Elbogen, J. Meisl and M. Wischnitzer, Berlin 1930, p. 87.

62 De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 74.

63 Michman, *Historiography* (*supra*, n. 7), p. 19.

The problem is that Michman seems to ignore the legal structure of Grotius's text. The *Remonstrance* is a lawyer's text, structured according to legal conventions and mirroring the order of legal proceedings (accusation, defense, decision). Imitating the scholastic structure of Vitoria's lecture on the American Indians, Grotius's presentation of the case against the Jews is thus followed by a *sed contra*: 'But there are excellent arguments for the other side as well, which should perhaps prevail over the previous ones' (fol. 5r, 110). Thus, the anti-Jewish arguments in support of the accusation are followed by arguments in defense of the Jews. As Grotius explains, these include not only pragmatic reasons for tolerating the Jews, such as the expectation of economic profit, but also, and more importantly, principled reasons based on theology and natural law: 'Reasons which are not based on the hope of trade and profit (which, to be honest, may be taken into account as well), but on God's Word and the nature of the right love' (fol. 5r-5v, 110). With these words Grotius announces his main arguments for admitting and tolerating the Jews, which are exceptional for their principled justification.

So what are these arguments? Grotius's first argument is that admitting and tolerating the Jews may contribute to their voluntary conversion to Christianity: 'although the Jews, considered collectively, appear to be rejected by the Lord God until this day, due to their unbelief, yet each time certain individuals convert to the true religion, as the Prophets have predicted of old that the remaining would be saved' (fol. 5v, 110). As Meijer suggests, Grotius's remark that conversion of individual Jews takes place regularly may have been based on his own observation, since at the time, there were notable cases of baptism of Jews⁶⁴. However, in this context, Grotius also refers to the Apostle Paul's eschatological prediction that before the end of time, the Jews will collectively convert to Christianity (fol. 5v, 110). He explains that, according to the Apostle, God has maintained the Jewish nation 'on its own and separate from other people' for this very purpose, to demonstrate the truth of his promises. It is therefore a duty of every Christian to contribute to the conversion of the Jews, both individually and collectively, which is not possible 'if the Jews are cut off [from] the conversation with the Christians [*indijen men den Joden affsnijt de conversatie van de Christenen*]' (fol. 5v, 110). With this remarkable turn of phrase, Grotius suggests that the duty to convert the Jews requires their admission and toleration in the Dutch cities, and, more particularly, a 'conversation' between Christians and Jews, which makes possible the latter's voluntary conversion to Christianity⁶⁵.

64 De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 74.

65 Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 95.

In this context, Grotius gives an additional argument for admitting and tolerating the Jews: it is preferable that the Jews settle in the Protestant provinces of Holland and West-Vriesland, instead of the Catholic lands of the South. More particularly, Grotius explains that it is preferable that the Jews reside among Protestants, who recognize the 'true religion', than among Catholics, whose religion is 'mixed with idolatry and, more particularly, iconolatry, which is expressly forbidden by the inviolable Law of God' (fol. 6r, 110). Grotius thereby suggests that only members of the Reformed Church can be expected to convince the Jews to voluntarily convert to Christianity: 'It is thus necessary, to approach God's will, that the Jews may reside among Christians who have dissociated themselves from idolatry and iconolatry, and who are therefore rightly called reformed' (fol. 6r, 110). By contrast, it cannot be expected that the Jews are brought to Christianity by those 'who do not recognize the truth of God' (fol. 6r, 110). In this context, Grotius suggests that the Jews are closer to divine truth than Catholics, because, unlike the latter, they observe the laws prohibiting idolatry and iconolatry. The Jews should, therefore, be admitted to the provinces of Holland and West-Vriesland, because the example of the reformed will induce them to voluntarily convert to Christianity.

These theological considerations cause Grotius to turn to a second argument in favor of admitting and tolerating the Jews. He argues that states have an obligation under natural law to offer hospitality to strangers. Citing a passage from the *Digest*⁶⁶, he points out that a 'certain kinship is established between all human beings by nature', the existence of which is confirmed by both Christian and pagan sources: 'From this natural community, which exists between all human beings, originates the hospitality, which is recommended to us not only by Scripture, but also by pagan writers, which consists in receiving foreigners and treating [them] well. The nations that have excluded foreigners from their midst are decried everywhere as barbarians and unnatural men'

66 D. 1,1,3 (Florentinus), where the argument is used to justify that a man may not ambush another man. Grotius also refers to this fragment in the *prolegomena* to *De iure belli ac pacis* [On the law of war and peace, 1625], where he explains that religion serves to strengthen the social feelings that man has by nature. Hugo Grotius, *De iure belli ac pacis libri tres*, ed. R. Feenstra and B.J.A. de Kanter van Hettinga Tromp, Aalen 1993, prol. 14. In addition, Grotius refers to the same passage in *De iure praedae* [On the law of booty, 1608], where he invokes it to refute the argument of the Academics that the kind of justice that derives from nature looks solely to personal advantage. Hugo Grotius, *De iure praedae commentarius*, ed. H.G. Hamaker, The Hague, 1868, p. 13. Cf. H. Blom and L. Winkel, *Grotius and the Stoa: Introduction*, *Grotiana*, 22-23 (2001-2002), p. 11-12.

(fol. 6r–6v, 110–111)⁶⁷. Returning to the same passage from the *Digest*, Grotius will later explain in *De iure belli ac pacis* that man is by nature invested with an *appetitus societatis*, an inclination to live in well-ordered communities with others, from which the laws of nature originate. In this context, he famously argues that the laws of nature would remain valid even if God would not exist or would not take care of human affairs⁶⁸. A similar argument can be found in his *Remonstrance*: ‘Belief, which is above nature, does not take away that which belongs to nature’ (fol. 6r, 110). In other words: the natural obligation to offer hospitality to strangers, which is part of the law of nature, exists independently of religious belief.

Grotius’s argument that the duty to offer hospitality to strangers exists independently of religious belief is crucial, for it implies that hospitality should be offered, not only to Christians, but also to Jews. Grotius emphasizes that this natural obligation is confirmed and strengthened by Christian precepts: ‘If the Apostle Paul wants us to do good to all persons, in particular to those belonging to the same Belief [*de huijsgenoten des Gelooffs*], he demands a higher level of love between the believers, yet he does not exclude unbelievers from this love. Our Lord himself, where he reprimands the Jews, gives us instruction as to what we ought to do, teaching us by the example of the Samaritan that all human beings, those of other religions too, are equally dear to us. “Act”, he says, “like your Father, who lets his sun shine and his rain fall on the good and the evil”’ (fol. 6v, 111). On Grotius’s understanding, these biblical precepts demand

67 Trans. Meijer, *Hugo Grotius’ Remonstrantie* (*supra*, n. 3), p. 95 (trans. modified). For this sentence, the manuscript contains a marginal note referring to several places in the Bible: Deut. 10:19, Nom. 12:13 and Hebr. 13:2 (‘Do not neglect to show hospitality to strangers, for thereby some have entertained angels unawares’). Meijer has suggested that ‘Nom. 12:13’ should be read as Num. 12:13 (referring to leprosy of Miriam) or Num. 12:1–3 (referring to Miriam and Aaron reproaching Mozes for taking a Cushite woman as his wife). However, these references cannot support Grotius’s argument that the duty to offer hospitality to strangers is recommended to us by Scripture. As Adri Offenbergh has pointed out, it is more likely that the reference to ‘Nom. 12:13’ should be read as Rom. 12:12–13: ‘Be joyful in hope, patient in affliction, faithful in prayer. Share with the Lord’s people who are in need. Practice hospitality’. Meijer also misreads the reference to Deut. 10:19 as Deut. 20:3–9. However, the correct reference seems to be Deut. 10:19: ‘Love the sojourner, therefore, for you were sojourners in the land of Egypt’.

68 Grotius, *De iure belli* (*supra*, n. 66), prol. 11. He carefully adds that the assertion that God would not exist ‘cannot be granted without the greatest wickedness’. On the theological foundations of Grotius’s theory of natural law and the law of nations: J.E. Nijman, *Grotius’ Imago Dei anthropology, Grounding ius naturae et gentium*, in: *International law and religion, Historical and contemporary perspectives*, ed. M. Koskeniemi, M. García-Salmones and P. Amoroso, Oxford (forthcoming).

that the faithful should demonstrate their 'natural love' to their fellow human beings, including those with different religious beliefs. They imply that exile, and more particularly, the expulsion of people for religious reasons, 'conflicts with nature, cutting off the community which nature establishes, and is therefore a punishment which should not be imposed without a prior crime' (fol. 7r, 111). As Grotius suggests, the Jews had been collectively expelled from their communities, yet without committing a crime: at least, no crime had been established by a court of law, and, therefore, their expulsion was unjustified and contrary to the law of nature⁶⁹.

Grotius suggests that the duty to offer hospitality to strangers has been recommended by Scripture as well as pagan sources, citing, amongst others, Virgil's *Aeneid*⁷⁰. However, a more direct source appears to have been Francisco de Vitoria's *De Indis* (ca. 1532), to which Grotius often refers in his writings⁷¹. In this work, Vitoria criticized the various ways in which the Spanish colonization of the Americas had been justified. More particularly, he rejected the claim of the emperor that, prior to the arrival of the *conquistadores*, the Indians had lacked the public and private dominion of their lands. This implied, amongst other things, that the emperor could not claim their land by right of discovery. After systematically refuting the various justifications for the Spanish conquest of the Americas, Vitoria turned to the 'just titles by which the barbarians of the New World passed under the rule of the Spaniards'⁷². It is in this context that he introduced the notion of a natural duty to offer hospitality to strangers. Arguing that the Spaniards had a right to travel and dwell in the Americas as long as they did no harm to the Indians, he observed that '[a]mong all nations it is considered inhuman to treat strangers and travelers badly without some special cause, [and] humane and dutiful to behave hospitable to strangers'⁷³. As

69 In *De iure belli ac pacis*, Grotius would return to the question of exile, arguing that the legal concept of exile would be meaningless if other communities would not be allowed to offer refuge to exiles, and claiming that the right to asylum should be considered part of the 'common law of men [*ius commune hominum*]'; Grotius, *De iure belli* (*supra*, n. 66), 3.61.1. On Grotius's understanding of exile: E. Tiessler-Marenda, *Einwanderung und Asyl bei Hugo Grotius*, Berlin 2002, p. 210-211.

70 Virgil, *Aeneid*, 1,539-540: 'Quod genus hoc hominum, quaeve hunc tam barbara morem. Permittit patria? Hospitio prohibemur harenae [What race of men is this? What land is so barbarous as to allow this custom? We are debarred the welcome of the beach].'

71 Francisco de Vitoria, *De Indis*, in: Francisco de Vitoria, *Political writings*, ed. and trans. A. Pagden and J. Lawrance, Cambridge 1991, p. 231-292. Compare Grotius's many references to Vitoria's *De Indis*, in his *Mare liberum*, Leiden 1609, p. 3, 7, 8, 9, 10, 12, 13, 37, and 59.

72 Vitoria, *De Indis* (*supra*, n. 71), 3.

73 *Ibid.*, 3.1.2. I thank Laurens Winkel for bringing this passage to my attention.

Vitoria argued, the duty to offer hospitality to strangers was part of the law of nations, which derived from natural law – therefore, it was binding for Christians as well as Indians. More particularly, Vitoria suggested that by refusing to allow Spanish merchants to travel and dwell in their lands, the Indians had violated their obligation under natural law to offer hospitality to strangers. According to Vitoria, this could even constitute a just cause for war if the Indians continued to refuse admission and ‘deny the Spaniards what is theirs by the law of nations’⁷⁴.

To justify the existence of a natural duty to offer hospitality to strangers Grotius refers to the same sources as Vitoria. For instance, he quotes the same verses from Virgil’s *Aeneid* and refers to the same biblical passages, including the parable of the Samaritan⁷⁵. It is therefore not unlikely that Grotius derives these sources directly from Vitoria’s text. Grotius follows Vitoria in arguing that the duty to offer hospitality to strangers is part of both natural and divine law: it is a natural duty that applies independently of religion, even though it is supported by biblical precepts. While Vitoria argues that the Indians, as non-Christians, have a natural duty to admit the Spanish merchants, Grotius suggests that the Dutch cities have a natural obligation to offer hospitality to the Portuguese Jews, irrespective of their religion. Grotius also follows Vitoria in relating the duty to offer hospitality to strangers to the question of exile. Vitoria had argued that ‘exile is counted amongst the punishments for capital crimes, and therefore it is not lawful to banish visitors who are innocent of any crimes’⁷⁶. He thereby referred to the expulsion of ‘harmless’ Spanish merchants from Indian lands. By contrast, Grotius suggests that the Portuguese Jews have been expelled from their communities without a prior crime, and in violation of natural law. Therefore, the States of Holland and West-Vriesland have a duty to admit the Jews to their lands. Grotius thus recognizes the natural duty to offer hospitality to strangers as legal foundation of the right to asylum, which applies to refugees, who have been collectively expelled from their communities for religious reasons.

Moreover, unlike the Indians, the Jews have a special status for Grotius: they are not just any strangers, to whom hospitality should be offered, but the ‘children of Abraham, Isaac and Jacob’ (fol. 7r, 111). He thus emphasizes that the Jews are the chosen people, who ‘partake in the glory, the covenants, the laws, the religion and promises’ of God (fol. 7r, 111). They are forefathers of Christ in blood and direct relatives of the Apostles. It is to the Jews that God’s oracles

74 Ibid., 3.1.6.

75 Ibid., 3.1.2 and De Groot, *Remonstrantie* (*supra*, n. 3), fol. 6v, 111.

76 Ibid., 3.1.2.

have been entrusted, and it is to the Jews that Christians turn to determine what books of the Old Testament should be considered canonical. According to Grotius, the Jews are enemies of the Christian faith to the extent that they refuse to accept the Gospel, but they are also 'beloved for the sake of their forefathers, who were specifically chosen by God' (fol. 7r, 111)⁷⁷. He concludes that 'The pagans have false gods. The Muslims a false prophet. The Jews have to some extent the right God and the right prophets' (fol. 7r, 111-112). This explains why the Christian emperors have never expelled the Jews, but allowed them to settle in their empire, offering them legal protection instead (fol. 7v, 112). Grotius claims that the Jews hate Christians, but, since their hate stems from ignorance, he believes they should be forgiven. He even considers the possibility that the hatred of the Jews has been caused by the way they were maltreated by Christians: 'Let God grant that the Christians were not partly the cause of the hatred which the Jews bear against them. It is known how they are treated in many places. They are mocked, abused, pulled at, beaten, thrown at, not only with knowledge, but to a certain extent with approval of the authorities' (fol. 7v-8r, 112).

These are striking phrases that seem to anticipate a novel understanding of the relation between Jews and Christians, critical not only of Jewish, but also of Christian attitudes and, more particularly, the role of political authorities. Grotius thus criticizes 'many princes' for allowing the Jews to enrich themselves before 'squeezing [them] like sponges'— apparently, a reference to practices of discriminatory taxation (fol. 8r, 112). Although he believes that 'the Jews have done the Christians a great deal of harm', he also suggests that 'the Christians being masters, this can be prevented by good laws and close supervision, without it being necessary to expel the Jews altogether for offenses which cannot be attributed to each individually, but only to their race' (fol. 8r-8v, 112)⁷⁸. Once again, Grotius criticizes the fact that the Jews have been *collectively* expelled from their communities, without *individual* offences being proved before a court of law, which he considers a violation of natural law. However, more importantly, he now adds that, in spite of the Jewish hatred of Christians, it is the responsibility of the political authorities to ensure peaceful relations between Jews and Christians. This can be done by 'good laws and close supervision', implying that the Jews should be tolerated on the condition that their rights and duties are specified in a statute.

Having criticized the manner in which the Jews have, 'without form of Justice, [been] deprived of their lives and goods', Grotius concludes that 'good

77 Trans. Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 95.

78 Trans. *ibid.*, p. 96 (trans. modified).

regulations' as well as the 'diligence of the Preachers' may prevent their presence from causing harm. In this context, he even emphasizes the advantages of their presence for Christians: thus, the conversation with Jews may enable Christians to improve their knowledge of Hebrew, the persistence of Jews in their religion may serve as an example of the certainty of Scripture, and the unbelief of the Jews may cause Christians to 'thank God all the more for the boundless mercy he has shown to the pagans, grafting us onto them' (fol. 9r, 113). Finally, Grotius suggests that different religions are already being tolerated in these lands, and that those religions that differ most constitute the least danger to the true Christian faith. Apparently, he regards dissenting Christian denominations as a greater risk for the unity of Christian religion than Judaism⁷⁹. He concludes that 'without harm to the Christian belief', the Jews 'can and should be admitted to these lands', provided that 'good regulations' are adopted, which specify their rights and duties. This leads him to turn to the second question: whether the Jews should be allowed freedom of religion.

3 Grotius's arguments for freedom of religion

Addressing this question, Grotius once again begins by considering the case *against* the Jews (the accusation). Those opposed to freedom of religion for the Jews had presented two arguments. First, they had invoked 'God's law, according to which it is strictly forbidden to allow idolatry among the people, with severe reprimands for the kings who allowed it, and praise for those who forbade and effectively prevented it' (fol. 9v, 113). Second, they had argued that by granting freedom of religion to the Jews the Dutch authorities risked causing offense and a 'great scandal' among their Catholic subjects, if 'the Jews are allowed what is refused to the Papists in our [lands]' (fol. 9v, 113-114). In his discussion of whether the Jews should be admitted to the Dutch provinces, Grotius had already rejected the first argument, suggesting that, contrary to Catholics, the Jews observed the 'inviolable law of God' prohibiting iconolatry and idolatry (fol. 6r, 110). He now rejects it in even more explicit terms: 'The argument regarding the prohibition of idolatry cannot be applicable here. For

79 As Swetschinski observes, for Dutch authorities, it was easier to tolerate a minor sect (such as Judaism) than rival denominations (such as Remonstrants and Calvinists). Grotius's assessment may also have been informed by a remark of his friend Johannes Uytenbogaert: 'You [Hollanders] are a strange kind of people; you bear harder upon those that differ but little from you than upon those who differ much'. Quoted in Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 26.

worship of the Jews is not idolatry, but worship of God, albeit mixed with unbelief [*een dijenst Godes, doch gemenght met ongelooft*] (fol. 10v, 114). In other words: although the Jews rejected the Gospel, they did believe in the right God and prophets. Therefore, the prohibition of idolatry could not serve as an argument for refusing them freedom of religion.

Grotius equally rejects the second argument that by granting Jews freedom of religion, the authorities risked causing a 'great scandal' among their Catholic subjects. He thus argues, perhaps somewhat naively (and in stark contrast to his earlier observations regarding the expulsion of Jews from Catholic lands) that 'Papists will have no reason to reproach us for tolerating the Jewish religion, since they do the same' (fol. 11r, 114). In this context, he points at 'papal decrees' allowing the Jews free exercise of their religion (unlike 'those Christians who feel differently from them') (fol. 11r, 114)⁸⁰. The implication is that Catholics will accept Jewish freedom of worship, since it is allowed by the pope himself. However, more importantly, Grotius rejects the argument regarding Catholic discontent by claiming that congregations of Catholics are 'incomparably more dangerous' to the state than congregations of the Jews. He thus claims that the pope is 'a notorious enemy of this state', who is suspected of conspiring with several foreign 'potentates' against the Dutch provinces, whereas the Jews 'have neither a head, nor a prince of their religion' (fol. 11r, 115). In other words: unlike Catholics, the Jews do not constitute a danger to the state and, therefore, they may be allowed what is refused to Catholics, *i.e.*, freedom of religion⁸¹.

However, these are not Grotius's main arguments for granting the Jews freedom of religion. Once again the case against the Jews (the accusation) is followed by a *sed contra*, announcing the main arguments of the defense: 'but that to the contrary [*maer dat ter contrarie*], the Jews, being admitted to the land, ought to be free in exercising their religion [*vrij behoort te zijn haer religie*

80 Interestingly, in his response to the Haarlem burgomasters, Johan van Oldenbarnevelt had used a similar argument, observing that 'the Pope himself admits [the Jews] to Rome in Italy, while refusing the Evangelical and Reformed, persecuting them with fire and sword, and therefore it is not strange that the Jews are admitted here and not the Papists'. City Administration Record Haarlem 1573-1813, access 3993, inv. 36, fol. 14v. Cf. Huussen, *Toelating* (*supra*, n. 32), p. 60. In view of their close contacts, it cannot be excluded that Grotius consulted Van Oldenbarnevelt about his draft regulations for the Jews.

81 From the 1580s on, fears about Catholic plots had caused the States of Holland to issue a constant flow of legislation outlawing Catholic practices. For instance, in 1581, the States of Holland had issued an edict prohibiting all Catholic congregations, arguing that they 'might easily give rise to unrest and sedition, and cause deceitful assaults' (the edict was reissued in 1622, 1629, 1641, and 1649). Van Nierop, *Sewing* (*supra*, n. 18), p. 106.

te exerceren], can be strongly asserted with this argument that, if one were not to allow this, one of these must occur: either that one forces them to accept our religion, or that one leaves them without any practice of worship of God at all' (fol. 9v–10r, 114). Before deciding whether the Jews should be allowed freedom of religion, one needs to consider the alternatives: one could either *force* them to convert to Christianity, or one could prohibit them from practicing any religion at all. Both alternatives, Grotius suggests, are undesirable. The first must be considered 'improper and inadmissible to all those of common sense, for religion may not be forced [*aengezijen de religie nijet en mach gedwongen werden*]' (fol. 10r, 114). The main reason for this is that 'it is more sinful to God to simulate the profession of true religion and to accept it against one's conscience, than to hold an erroneous opinion in ignorance' (fol. 10r, 114)⁸². In other words: forcing the Jews to convert to Christianity merely causes them to become *insincere* Christians, who publically present themselves as Christians, while continuing to secretly adhere to their Jewish belief. According to Grotius, such insincere Christian belief would not only be sinful to God (even more so than Judaism itself, an 'erroneous opinion' stemming from 'ignorance'), but also conflict with the freedom of conscience as guaranteed by the Union of Utrecht. Of course, the Jews had already been forced to convert to Christianity in Spain and Portugal, and the suspicion that they were insincere Christians had caused them to seek refuge in the Dutch provinces in the first place⁸³.

However, Grotius also rejects the second alternative: prohibiting the Jews from practicing religion altogether would 'open the road to complete godlessness, incomparably worse than Judaism. No nation has ever been so obdurate not to perceive that in order to remain God-fearing it is necessary to practice religion' (fol. 10r, 114)⁸⁴. According to Grotius, the fear of God is an important guarantee for social order: it is the fear of God which motivates believers to

82 Trans. Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 97.

83 In referring to the risk of *insincere* belief, Grotius may have thought of the new Christians, who were suspected of having *simulated* the Christian faith. Thus, the imperial edict against the new Christians of 1549, which probably served as source material for Grotius's *Remonstrance* (see above, n. 57), had blamed the new Christians for 'secretly observing the Jewish ceremonies, not having the faith of the Christians, and merely *dissimulating* the same [faith] from fear of punishment, which the king of Portugal imposes for their crime'. Edict against the new Christians of 1549, Ets Haim, MS EH 48 A 05, fol. 46r (my italics). In his *Nederlandtsche Jaerboeken*, Grotius returned to the new Christians, referring to 'Jews and Moors, who, being forced by the Kings to accept the church practices [*kerkseeden*] of the Christians, secretly fell back to the errors they had renounced'; De Groot, *Nederlandtsche Jaerboeken* (*supra*, n. 56), p. 11.

84 Trans. Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 97.

observe their duties towards others and towards the state. Therefore, godlessness is not only a threat to the Christian religion, but to the social order itself. For this reason, Grotius suggests that it is better to allow the Jews to exercise their own religion than to prohibit them from practicing any religion at all. To support his argument he not only refers to the 'special affection which we owe the Jews on account of the dignity of their race and on account of the dawning of the truth found with them', but also to the examples of Christian emperors who have expressly allowed them to freely exercise their religion. This is proved by imperial legislation allowing the Jews to have their own synagogues and protecting them from being molested because of their faith. It is also demonstrated by the dignity and authority attributed to the teachers and leaders of the Jews. According to Grotius, this shows that the Christian emperors, too, recognized that Judaism was not merely a form of idolatry, but rather a 'worship of the true God, albeit mixed with unbelief' (fol. 10v, 114).

Swetschinski recognizes in Grotius's arguments for Jewish freedom of worship 'the sentiments of the Arminians, who as a religious minority sought the same freedom of worship and who like Barlaeus, recognized in Judaism at least some form of piety'⁸⁵. Characteristic of the Arminian approach was their rejection of the *forced* conversion of the Jews and attempts to convince them to *voluntarily* convert to Christianity. This approach was advocated, for instance, by Franciscus Junius, a theology professor at the university of Leiden, with whom the Grotius had boarded as a student. According to Junius, the Jews had to be esteemed for having received and retained part of the word of God⁸⁶. The fact that they accepted the Holy Scriptures 'at least in part' made them susceptible to their eventual, voluntary conversion to Christianity⁸⁷. This implied that the Jews were to be allowed freedom of worship, while at the same

85 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 35.

86 *Ibid.*, p. 35.

87 Gerard Brandt records the answer Junius gave to his students, a little while before his death in 1602, to a question concerning the Jews: "To a question concerning the Jews, he replied: "That they ought to be tolerated among *Christians*; *First*, Because they are poor ignorant creatures, and that *no man living ought to be extirpated from the earth on account of Religion, since Faith is the gift of God, and since all men are by nature our brethren. Secondly*, That although the Body of the Jews is in general rejected by God, yet it is not to be inferred from thence, that the particular Members of that Body are not to be tolerated among *Christians*; for the Church must be gathered out of both. Consequently they are to be tolerated, not only on account of *Nature*, but of *Grace*. From their unfruitful works we ought indeed to abstain. There is much said about their synagogues, but there is nothing to be found in them that so greatly wounds the reputation of Religion"; Gerard Brandt, *The History of the Reformation and Other Ecclesiastical Transactions in and about the Low-*

time exposing them to Christian teaching. In a similar vein, Caspar Barlaeus, a philosophy professor in Amsterdam and close friend of Grotius, suggested that the Jews were endowed with a natural knowledge of God, and actively engaged in a dialogue with Jewish intellectuals such as Menasseh Ben Israel⁸⁸. Although Grotius hardly seems to have engaged in any personal dialogue with Jews (apart from a brief correspondence with Menasseh in the 1630s)⁸⁹, he essentially advocated the same approach, allowing the Jews freedom of worship, while seeking to promote their *voluntary* conversion to Christianity.

However, once again a more direct source for Grotius's arguments in favor of Jewish freedom of religion appears to have been Vitoria's *De Indis*. Addressing the question whether the Indians' persistent refusal to accept the Christian faith constitutes a just cause for the war against them, Vitoria inserts a lengthy passage on the forced conversion of the Jews. Citing Thomas Aquinas (*Summa theologiae*, 2 2ae 10.8) he argues that unbelievers such as pagans and Jews 'are by no means to be compelled to believe'⁹⁰. As Vitoria explains, the reason is that belief should be a matter of will, not fear. Indeed, if the Jews were to accept the 'mysteries and sacraments of Christ merely out of servile fear', this would amount to a 'sacrilege'. Vitoria cites several sources from canon law, including Gratian's commentary on *De Iudaeis* (*Decr. D.* 45.5), in support of his argument that 'threats and terror should not be used to bring the Jews to the faith'⁹¹. He even claims that those who use force to 'tear [the Jews] from their accustomed religious observances and rites under this pretext are serving only their own ends, not God's'⁹². As proof of his case against forced conversion of the Jews, Vitoria refers to the fact that no Christian emperor has ever declared war on unbelievers simply because of their refusal to accept the Christian faith. Vitoria concludes that the Indians, like the Jews, cannot be forced to convert to Christianity. Indeed, 'the barbarians cannot be moved by war to believe,

Countries, London 1721 [1674], vol. 2, p. 20 (ital. in original). The passage is also quoted in *ibid.*, p. 29.

88 *Ibid.*, p. 31.

89 E. Rabbie, *Hugo Grotius and Judaism*, in: Hugo Grotius theologian, Essays in honour of G.H.M. Posthumus Meyjes, ed. H.J.M. Nellen en E. Rabbie, [Studies in the history of Christian thought, 55], Leiden etc. 1994, p. 118. Cf. De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 62-63 and A.K. Offenbergh, *Some remarks regarding six autograph letters by Menasseh Ben Israel*, in: Menasseh Ben Israel and his world, ed. Y. Kaplan, H. Méchoulan and R.H. Popkin, Leiden 1989, p. 191-198.

90 Vitoria, *De Indis* (*supra*, n. 71), 2.4.39.

91 *Ibid.*, 2.4.39.

92 *Ibid.*, 2.4.29.

but only to pretend that they believe and accept the Christian faith, and this is monstrous and sacrilegious⁹³.

Although Grotius does not explicitly refer to Vitoria, he uses the same argument as Vitoria to reject the forced conversion of the Jews: it will cause the Jews to become *insincere* Christians, who merely *pretend* that they believe and accept the Christian faith, while in fact they continue to secretly adhere to Judaism. Grotius also seems to follow Vitoria in arguing that such insincere Christian belief is sacrilegious: it is thus more sinful to God to simulate the profession of the true belief, against one's own conscience, than to continue to adhere to Judaism from ignorance. Of course, for Grotius, as for Vitoria, this does not imply that Jews should be allowed to remain Jewish. Instead, all Christians have a duty to contribute to the individual and collective conversion of the Jews. However, instead of forced conversion, the Jews should be convinced – through 'conversation' with Christians – to convert to the true religion *voluntarily*. For Grotius and Vitoria, the ideal is the same: voluntary conversion through a peaceful dialogue with the Jews. However, Grotius takes Vitoria's case against forced conversion one step further by arguing that there are no alternatives to allowing the Jews freedom of worship – an implication which Vitoria himself does not seem to have accepted⁹⁴.

Having concluded that the Jews should be admitted and granted freedom of religion, Grotius turns to the third and final question: how can it be prevented that their presence and exercise of religion become harmful to the Christian religion and the state? Grotius's answer is to propose an 'order [*ordre*]' regulating the legal status of the Jews. Everything that does not conflict with this order, he adds, should be allowed to the Jews 'to let them taste the Christian benevolence', implying – on a more practical note – that the Jews should have the same freedoms and privileges as Christian inhabitants, unless specific restrictions have been imposed on them.

93 Ibid., 2.4.39 (italics MdW).

94 Vitoria acknowledges that the Jews may not be violently 'torn from their accustomed religious observances and rites' (2.4.39), but he does not argue (positively) that they should be free to exercise their religion, nor (negatively) that authorities have a legal obligation to abstain from prohibiting, or interfering with, their religion. Instead, Vitoria merely criticizes the use of violence, or war, to convert the Jews and Indians, which, he claims, is not allowed under the laws of God and nature.

4 Grotius's draft regulations

Grotius's draft regulations for the Jews consist of 49 articles, specifying the freedoms and privileges, as well as obligations, of Jewish inhabitants of the province of Holland and West-Vriesland. The Jews are, first of all, obliged to register their names with the magistracy of the city of their residence (Art. 1), an obligation which is also included in the charter of Haarlem⁹⁵. They are, moreover, obliged to make a declaration of faith (Art. 2), professing their belief that there is one God, that Moses and the prophets have testified to His truth, and that there is another life after death, in which the good will be rewarded and the bad punished. In a note, Grotius explains that 'the Jews should have no objection to making this declaration of faith, as it is an extract from their own customary confession of faith' (fol. 22r, 122, ad 2). This remark has prompted Meijer to suggest somewhat speculatively that Grotius's formulation of this confession of faith 'evidently derived from his early contacts with Portuguese Jews'⁹⁶ – contacts of which no evidence is available. According to Grotius, Jews are prohibited from teaching, either in public or private, anything that conflicts with the above mentioned declaration of faith (Art. 13)⁹⁷. In addition, they are required to make an 'oath of allegiance to this land' (Art. 3), a provision also included in the Rotterdam charter, and referring to their political, rather than religious, loyalty⁹⁸.

According to Grotius's draft, the Jews should take residence in closed cities, rather than towns or countryside (Art. 4), and a maximum of 200 Jewish families will be admitted to each city, with the exception of Amsterdam, where 300 families are allowed to settle (Art. 5). In a note, Grotius explains that these restrictions are imposed 'to prevent conspiracy which may be conceived in solitary places or also in towns, if they were allowed to become too numerous'

95 Haarlem Charter, in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 41.

96 De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 79. In this context, Meijer points at similarities between Grotius's formulation and the three principles of faith proposed by the 15th-century Jewish philosopher Joseph Albo.

97 In 1623, the board of the Portuguese congregation, the Mahamad, imposed a ban (*herem*) on Uriel da Costa for heretical views. Da Costa had attacked the Jewish doctrine of the immortality of the soul: he had claimed that this doctrine did not find any basis in Scripture. As Miriam Bodian observes, Da Costa was in effect punished for denying one of the three beliefs that were central to Grotius's declaration of faith, *i.e.*, the belief in 'another life after death, in which the good will be rewarded and the bad punished'; Bodian, *Hebrews* (*supra*, n. 11), p. 120.

98 De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 45 and 80.

(fol. 22v, 123, ad 3, 4 and 5)⁹⁹. At the time Grotius drafted his regulations, Amsterdam was the only city with a substantial Jewish population, such that the proposed restrictions on Jewish presence had little practical relevance to other cities (as we have seen, the *minimum* numbers of families required for the Jewish charters of Haarlem and Rotterdam to become effective, 50 and 30 families respectively, were not met). However, in 1615, even in Amsterdam, the maximum number of 300 families was probably not yet reached¹⁰⁰. Moreover, because nowhere in the other cities the lower number of 200 families was even remotely reached, Grotius's proposal came down, not to an immigration-stop, but rather to a re-distribution of Jewish presence over the cities of Holland and West-Vriesland once the maximum number of families in Amsterdam would be met.

Turning to economic freedoms and privileges, Grotius proposes that the 'Jews may live freely in the towns of their residence and be at liberty to trade, do business and manufacture, enjoying freedom, exemptions and privileges in the same way as other burghers and citizens without being encumbered with any special tribute' (Art 6)¹⁰¹. Because of the extensive freedoms allowed to the Jews in this article, Meijer recognizes it as 'the most revolutionary (...) of its sort made in the seventeenth and even in the eighteenth century'¹⁰². By contrast, Swetschinski is more critical, suggesting that Grotius had no interest in economic affairs and that his proposal testifies to 'a magnanimity inspired by economic ignorance rather than a modern spirit of toleration'¹⁰³. However, contrary to these interpretations, Grotius's article does not differ in any significant way from provisions in existing Jewish charters. For instance, both the

99 Trans. Meijer, *Hugo Grotius's Remonstrantie* (*supra*, n. 3), p. 98.

100 Thus, in its response to the draft regulations, addressed to the States of Holland and West-Vriesland, and written ca. 1616, the Portuguese community itself mentions a Jewish presence of 'more than 200 hundred families'. Letter on behalf of the Portuguese Jewish Community (*supra*, n. 2). A transcription of the Dutch version of this letter can be found in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 141.

101 Trans. Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 99. In a note, Grotius explains that the popes had introduced special taxation for the Jews, in which he recognizes 'tyranny and avarice' (fol. 22v, 123). By contrast, he explains that the Roman emperors had never imposed such discriminatory taxation, but instead treated the Jews on a par with other citizens. To justify allowing the Jews freedom of trade Grotius refers to C.1.9.9 (Impp. Arcadius et Honorius AA. ad Iudaeos): 'Nemo exterus religionis Iudaeorum Iudaeis pretia statuet, cum venalia proponuntur [No person outside the religion of the Jews shall establish prizes for the Jews when they offer their goods for sale]'.

102 *Ibid.*, p. 99.

103 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 37.

charters of Haarlem and Rotterdam, which seem to have served as Grotius's model, also granted the Jews extensive economic freedoms, in particular, the liberty to trade, and rejected special taxation. What we should keep in mind though is that these charters did not regulate admission to the guilds which, as semi-private associations, decided about their own membership. In practice, most of the guilds denied membership to Jews, with the exception of those guilds that had little to fear from Jewish competition, such as the brokers', physicians', surgeons', apothecaries' and bookdealers' guilds, as Jews working in these professions tended to have an almost exclusively Jewish clientele¹⁰⁴.

Perhaps the most important provisions of Grotius's draft regulations are Articles 7 and 8, which grant the Jews freedom of worship. Thus, according to Article 7, the Jews are allowed the 'free exercise of their religion [*vrij exercitie van haere religie*]'. This is specified in Article 8, granting the Jews the right to request the city magistracy to designate 'one, two, three or more' houses, in which they may gather for their religious services. In a note Grotius refers to Roman law (C. 1,9,18(19) and CTh. 16.8.22 and 27), explaining that the emperors had allowed the Jews to build their own synagogues, which was later restricted in that they were allowed to renovate existing synagogues, but not to build new ones. According to Grotius, these restrictions were meant to prevent the impression that the Jewish religion was officially authorized by the state, which the building of *public* synagogues suggested. Moreover, in the unified Dutch provinces, only one public religion, the reformed, was allowed, while others had to remain private. As Grotius explains, 'as it has always been understood here in this land that there ought to be but one public religion, it seems best to allow the Jews their [religious] exercise, not in public, but in private houses, which attracts less the attention of the common people' (fol. 23r, 123, ad 8)¹⁰⁵. As we have seen, the fact that the Amsterdam city magistracy had officially denied the freedom of worship had been an important motive for Portuguese

104 Ibid., p. 21. In 1632, the Amsterdam magistrates adopted an ordinance stipulating that, unlike other *poorters*, the Jews were no longer to be admitted to retail and guild trades, with the exception of the brokers' trade. Hermanus Noordkerk, *Handvesten ofte Privilegien ende Octroyen der Stad Amstelredam*, Amsterdam 1748, vol. 1, p. 138 (9 March 1632). Cf. Bodian, *Hebrews* (*supra*, n. 11), p. 58.

105 Grotius's explanation differs from Van Oldenbarnevelt's response to Haarlem's burgomasters that, although the Union of Utrecht allowed the *public* exercise of only one religion in the unified provinces, *i.e.*, the reformed, this did not exclude the Jewish religion, because 'there was no question of the Jews yet at the time of the [conclusion of] the Union and no disadvantage or danger was to be expected from meetings of Jews in contrast to those of others'. Memoriaal Michiel van Woerden, City Administration Record Haarlem 1573-1813, access 3993, inv. 36, fol. 13v.

Jews to investigate whether it was possible to settle in other cities under more favorable conditions. In Alkmaar's charter of 1604, they had been offered the freedom of *private* worship, yet without the right to have a *public* synagogue. By contrast, in 1605, the city magistracy of Haarlem had expressly allowed the Jews the 'use of their public synagogue [*gebruyk van heure publycke Synagoge*]', provided that at least 50 families settled in that city. Grotius's proposal is more restrictive than the Haarlem charter, in prescribing that Jewish religious services may only take place in *private* houses, yet it is more extensive in allowing the Jews to use *several* houses for their services, without minimum settlement requirements.

Grotius proposes other restrictions on Jewish worship: thus, no more than 100 persons are allowed to gather for religious services in each house (Art. 9), these services may not take place at other locations or times than those registered with the magistracy (Art. 10), nor is it allowed to bring any weapons (Art. 11). Moreover, with the exception of members of the city magistracy (or those authorized by them), no Christian may attend Jewish religious services (Art. 12). As Grotius explains, these provisions are intended to prevent crowds (*oplo-op*), and to guarantee supervision by the magistracy. Yet apparently, they are also meant to prevent Christians from coming into contact with Jewish worship, and to prevent the risk of their conversion. In this regard, Grotius's proposal seems to be in line with the Rotterdam charter of 1610, which allows the Jews to 'buy or build a house to exercise their religion in all quietness [*in alle stillicheydt*]', prohibiting them from 'inviting or admitting any one from these regions for discussing or disputing matters of religion'¹⁰⁶. Another important restriction proposed by Grotius is the prohibition of blasphemy. Thus, the Jews are not allowed to insult Christ or the Christian religion, whether in public or private (Art. 14), and if they do so during religious services, their synagogue is to be demolished (Art. 15). Interestingly, in a note, Grotius explains that under canon law, the usual penalty for blasphemy is death, but that this penalty should not be imposed on the Jews, due to their ignorance (fol. 23v, 123, ad 14 and 15).

According to Grotius, the Jews should also have the freedom to 'print any books', except those 'containing words of blasphemy or insult as mentioned before' (Art. 16). The latter restriction proves to be an important one, for, in a note, Grotius explains that it applies to the Talmud, referring to Novella 146 and the burning of the Talmud in Rome in 1601 (fol. 24r, 124, ad 16). Grotius's proposal is in line with the Haarlem charter, which had also allowed the Jews

106 Rotterdam charter, in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 45. Cf. Meijer, *Hugo Grotius' Remonstrantie* (*supra*, n. 3), p. 99.

to print 'all kinds of books, whether in Hebrew or in other languages', provided that they did not cause 'scandal, sedition, blasphemy, insults and contempt of the Christians and the Christian religion'¹⁰⁷. However, by expressly identifying the Talmud as a blasphemous book, Grotius's draft seems to be more restrictive than the Haarlem charter. Yet, it is unclear whether Grotius's belief that the Talmud was a blasphemous book (which does not seem to originate in any profound knowledge of the Talmud itself) deviated from the prevailing views of his compatriots; for instance, it is unclear whether the Talmud was considered a blasphemous book under the Haarlem charter. More importantly, Grotius distinguishes between, on the one hand, the printing and, on the other, the possession and use of blasphemous books, proposing relatively mild penalties for possession and use (confiscation of the books and a fine). As a lawyer, he must have realized that the prohibition for the Jews to possess and use the Talmud was difficult to enforce in practice.

Grotius's draft regulations also regulate other aspects of Jewish religious life. The Jews are thus exempted from the obligation to appear before a court of law on the Sabbath or Jewish holidays (Art. 17)¹⁰⁸ (on the other hand, under Art. 26, they are required to close their shops on Sundays and Christian holidays), they are allowed to circumcise their children according to their customs (Art. 18) and to have their own butchers (Art. 19)¹⁰⁹. The religious 'teachers' of the Jews (or others appointed for this purpose) are even granted the right to excommunicate members of the Jewish community, provided that those who are falsely accused have the possibility of appeal to the city magistrates (Art. 20). In proposing to grant the Jewish 'teachers' the right of excommunication, Grotius follows the Haarlem charter, which had granted the *parnassim* the right to 'excommunicate and ban from their synagogue and gathering those among them who lead a scandalous and offensive life'¹¹⁰. However, compared to the Haarlem charter, Grotius's proposal is more restrictive, at least from the perspective of Jewish leaders, by providing the possibility of appeal to the city magistracy¹¹¹. In a note, Grotius explains that this restriction serves to prevent the

107 Haarlem charter, in: *ibid.*, p. 41.

108 The same provision can be found in the charters of Haarlem and Rotterdam. De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 41 and 45. Apparently, this provision goes back to Roman law, C. 1,9,13 and C.Th. 16.8.20 (cf. fol. 24r–24v, 124).

109 The Haarlem charter contains a provision which is formulated in similar terms, referring to 'a butcher, being of their nation, to slaughter their animals and accommodate the meat in their manner and according to their customs', where Grotius refers to a 'butcher to slaughter and accommodate the meat in their manner'. Haarlem charter, in: *ibid.*, p. 41.

110 Haarlem charter, in: *ibid.*, p. 42.

111 Cf. De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 88.

teachers of the Jews from ‘usurping among them a too extensive and exorbitant authority, which often proves a great hindrance for the Jews to come to Christianity’ (fol. 25v, 125, ad 20). In other words, although the Jewish teachers may excommunicate members of their community, they are not allowed to excommunicate those who seek to convert to Christianity – the potential conversion of Jews to Christianity being of course one of the main reasons for Grotius to advocate their admission in the first place.

Article 21 limits the freedom of worship in an even more fundamental way: ‘The Ministers of the Christian religion will be allowed to enter the assembly of the Jews with the knowledge of the Magistrate and after the worship of the Jews, to instruct and admonish them in the Christian religion, while the Jews are obliged to listen and remain present; under a penalty of 100 guilders for every person who leaves’¹¹². Michman and Swetschinski interpret Grotius’s proposal to introduce these conversionist sermons as revealing the ‘full force of his traditional and negative attitude towards Judaism’¹¹³. However, we should not forget that, for Grotius, these conversionist sermons served to make possible the *voluntary* conversion of the Jews, in sharp contrast to practices of *forced* conversion in Spain and Portugal (or the more restrictive proposals of Calvinists such as Coster and Voetius, who demanded the prohibition of Jewish worship¹¹⁴). Moreover, in allowing Jewish freedom of worship, Grotius’s contemporaries – for instance, men like Gerard Vossius and his son Dionysius – also sought to actively ‘refute the Jews and thereby convert them’¹¹⁵. However, here too, Grotius’s proposal may have been informed by Vitoria. In *De Indis*, Vitoria had thus concluded that the Indians, although they could not be *forced* to convert to Christianity, could ‘be obliged at least to listen’ to the Christian missionaries, for their own good and salvation¹¹⁶. In a similar vein, Grotius

112 Trans. Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 36.

113 Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 36. Cf. Michman, *Historiography* (*supra*, n. 7), p. 19.

114 Compare, for instance, Abraham Coster’s rejection of Jewish worship: ‘I had also understood that these unclean people had requested a synagogue here in this land, where they could practice their foolish and ridiculous ceremonies, and where they may also spit out their horrible blasphemies against Christ and his Gospel, as well as their curses against the Christians and Christian authorities; which the God blessed authorities of this place have very fairly and with good right refused’. Abraham Coster, *Historie der Joden die t’sedert de verstooringe Jerusalems in alle landen verstroijt zijn, In drij deelen beschreven*, Amsterdam 1649 [1608]. Cf. J. van den Berg, *Joden en Christenen in Nederland gedurende de zeventiende eeuw*, Kampen 1969, p. 20 and *ibid.*, p. 31.

115 Dionysius Vossius, quoted in Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 30.

116 Vitoria, *De Indis* (*supra*, n. 7), 2.3.

proposes that the Jews can be required at least to listen to the Christian Ministers, who instruct them in the 'true religion', even though they cannot be brought to Christianity by force.

The remaining articles of Grotius's draft regulate the position of Jews in a Christian society. The Jews are thus free to buy or rent houses without restriction (Art. 23). Thereby, Grotius rejects the formation of ghettos, which, as he himself observes, still existed in other European cities (fol. 25av, 126, ad 23 and 24). He also expressly rejects external marks to distinguish Jews from Christians (Art. 24), such as the infamous yellow badge which had been introduced by Pope Innocent III in 1215¹¹⁷. As Grotius explains in a note, 'experience teaches that the wearing of a mark serves to mock the Jews rather than other purposes' (fol. 25av–26r, 126, ad. 23 and 24). In addition, he points out that there are political considerations for prohibiting ghettos and distinguishing marks, for these may cause the Jews to conspire against the state (*ibid.*). Furthermore, the Jews should be allowed to have contact and converse with Christians, provided that they refrain from inducing Christians to convert to Judaism (Art. 25). Grotius thus proposes an asymmetrical relationship between Jews and Christians, in which Jews are not allowed to induce Christians to convert to Judaism, while Christians are allowed and, indeed, expected to induce Jews to convert to Christianity. This asymmetry is also reflected in Grotius's proposal to punish Christians who convert to Judaism with banishment (Art. 33), while offering legal protection to Jews who convert to Christianity (Art. 34).

Grotius proposes other restrictions on Jewish-Christian relations. Most importantly, Jews are not allowed to marry (Art. 27) or have sexual relations with Christians (Art. 38) – provisions which are also included in the Haarlem charter and the Amsterdam ordinance of 1616¹¹⁸. They may not even hire Christian servants (Art. 29), with the exception of midwives and wet nurses for their children (Art. 31 and 32)¹¹⁹. Here the Haarlem charter seems to be less restrictive,

117 The Haarlem charter of 1605 had also prohibited the wearing of distinguishing marks and allowed the Jews to live among Christians, or among themselves as they so desired. Haarlem charter, in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 41 and 42.

118 *Ibid.*, p. 43 and Statute of 8 November 1616 in Noordkerk, *Handvesten* (*supra*, n. 104), vol. 2, p. 472. Of course, Jewish law also prohibited mixed marriages between Jews and gentiles. However, several examples of mixed marriages have been recorded in notarial deeds, and in some cases, they were even officially registered with the city magistracy; Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 54. Apart from biblical sources, Grotius mentions C. 1,9,6 as legal source for this provision, observing that, under Roman law, mixed marriages between Jews and Christians were punished with the death penalty (fol. 26v–27r, 126).

119 These provisions were probably informed by fears that Christian servants, being in a position of dependence on their Jewish masters, would be induced to Judaism or engage in

allowing Jews to hire not only Christian wet nurses, but also domestic servants¹²⁰. Moreover, according to Grotius's draft, Jews are strictly forbidden from circumcising Christians or children from Christian parents (Art. 28) and if a child were born of mixed Jewish-Christian parents, the child, once baptized, cannot be circumcised (Art. 37)¹²¹. In addition, Jewish children are not allowed to attend Christian schools and should, instead, be instructed at special Jewish schools (Art. 32) – a provision which, as Grotius explains, serves to prevent Christian children from being 'infected' by their Jewish schoolmates (fol. 27v, 127, ad 32). Moreover, Grotius proposes to include several provisions protecting Jewish family members and friends who have converted to Christianity. Thus, Jewish testaments excluding Christians 'from hatred' are to be declared null and void (Art. 35) and wives and children who are molested by their Jewish husbands or fathers for converting to Christianity, will be allowed by the magistrate to live on their own or with other Christians (Art. 36). Interestingly, Grotius justifies the latter provision on the basis of natural law, arguing that 'the right and authority of the parents, originating in nature, cannot and should not be taken away because of religion' (fol. 29v, 129, ad 36). As Grotius explains, this implies that Jewish parents cannot be deprived of their parental authority, unless they maltreat their children because of their religion.

Grotius ends his draft regulations by specifying the relation between the city magistracy and its Jewish subjects. Thus, the Jews are to be subjected to the

sexual contact. However, they were not always effective in practice. Thus, in the period between 1600 and 1623, thirteen cases of sexual relations between Jewish men and Christian women, often maid servants, have been recorded. Of course, such cases were only recorded when something went wrong, for instance, when the maid servant had become pregnant; Bodian, *Hebrews* (*supra*, n. 11), p. 114-115. The only provision that appears to have been enforced by the city authorities was the prohibition on adultery, in which case the man was fined and exiled from Holland. For instance, in 1616, the pharmacist Abraham Israel was fined and exiled from Holland after having committed adultery with his Christian maid servant Maria Grandjean. Afterwards his wife requested that he was pardoned, which was apparently accepted (Israel is recorded to have been a member of the congregation Neve Salom afterwards); Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 54.

120 Haarlem charter, in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 41.

121 Sensitive to Dutch fears, the Portuguese community's statutes of 1639 expressly prohibited circumcision 'of anyone not belonging to our Hebrew nation'; Bodian, *Hebrews* (*supra*, n. 11), p. 62. For the prohibition on circumcising Christians, Grotius mentions several sources in Roman law, including C. 1,9,16 and C.Th.16.8 (cf. fol. 27r, 127) and D. 48,8,11. For the prohibition on circumcising children from mixed marriages, Grotius mentions a source from canon law (he quotes from canon 63 of the Fourth Council of Toledo, which is included in Gratianus, *Decretum*, C.28 q.1 c.10: 'ut filii nati ex Judaeis Christianas mulieres in coniugio habentibus, fidem atque conditionem matris sequantur').

same laws and taxes as other inhabitants (Art. 39) – a provision also included in the Alkmaar charter¹²². They are not to hold any public offices, including those of justice, the police and finance (Art. 40). They may, on the other hand, exercise the office of notary, if only amongst themselves and subject to prior authorization by the court (Art. 41). Moreover, the Jews will not be admitted to participate in the civic militia (*schutterijen*) or guards, yet are required to pay the guard tax like other inhabitants (Art. 42). As we have seen, the Rotterdam charter went further on this point by exempting the Jews from the guard tax¹²³. Moreover, like the Rotterdam charter, Grotius proposes to allow the Jews to appoint ‘arbiters’ to settle their civil disputes, provided that appeal to the magistracy remains possible (Art. 43). In addition, the Jews are required to register the names of their deceased (Art. 44) and Jewish marriages are also to be registered and ‘solemnized’ by the city magistracy (Art. 45). Jewish men are allowed to divorce from their wives, provided that their divorce is registered with the magistracy (Art. 46). The Jews are not permitted to purchase any lands or manors outside the city gates (Art. 47), with the exception of one or two tracts of land per city to be used as cemeteries (Art. 48). Finally, the Jewish community as such cannot receive any gifts or inheritances, or own any collective possessions, or collect any funds other than those to be distributed among their poor (Art. 49).

5 Impact

Due to political and religious struggles, it took the States of Holland and West-Vriesland four years to decide about Grotius’s draft regulations¹²⁴. In the meantime, in August 1618, Prince Maurits of Orange had seized power in an attempt to curb the influence of the States of Holland and its Remonstrant regents. Holland’s Advocate Johan van Oldenbarnevelt was arrested and executed for high treason. Being a prominent Arminian and close aid of Van Oldenbarnevelt, Grotius, too, was arrested. He was convicted to ‘eternal imprisonment’ and detained in Loevenstein Castle, from which he escaped – hidden in a book chest – two years later. While Grotius was still in detention, the Amsterdam burgomaster Reinier Pauw (father of Adriaan) requested the States of Holland, in its meeting of 8 July 1619, to finally decide about the regulations for the Jews. Among other things, he pointed out that the population had complained about

¹²² Alkmaar charter, in: Huussen, *Legal position* (*supra*, n. 23), p. 22.

¹²³ Rotterdam charter, in: De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 45.

¹²⁴ Huussen, *Legal position* (*supra*, n. 23), p. 27.

sexual relations between Jews and Christians, and that the toleration of the Jews had caused unrest and discontent among the Arminians, whom the authorities had forbidden to worship in public, while tolerating the synagogues of the Jews¹²⁵. On December 13, 1619, the States of Holland and West-Vriesland finally agreed on a resolution regarding the Jews: referring to the drafts of Grotius and Pauw, they decided that each city would be free to make its own regulations for the Jews, provided that they did not require them to wear distinguishing marks¹²⁶. The cities were, moreover, free to decide for themselves whether the Jews should live in closed quarters or dispersed among the city's other inhabitants. A copy of the resolution was given to the deputies of Haarlem and Alkmaar¹²⁷.

As Huussen observes, the resolution of the States, which would serve as a guiding principle for nearly two centuries, came as an anti-climax, especially compared to Grotius's elaborate draft¹²⁸. From a Jewish perspective, it must also have been disappointing, because, contrary to Grotius's proposal, the freedom of worship and the right to build synagogues (if only in private houses) were not officially recognized by the States. The only provision in Grotius's draft which was actually adopted by the States was the prohibition on distinguishing marks, which had also been included in the Haarlem charter. By contrast, the States expressly rejected Grotius's proposal to prohibit ghettos, even if no city would actually require Jews to live in ghettos in practice. However, the most important issue of religious worship was left for the cities to decide. In 1616, the Amsterdam city magistracy had already issued a new set of regulations concerning the Jews, which, in characteristically evasive fashion, ignored the issue of Jewish worship altogether¹²⁹. Instead, it merely warned the Jews

125 Ibid., 27. In 1618, the Arminians had addressed a petition and complaint to the Prince of Orange: 'Judge yourself, Illustrious Prince, if it be not a deplorable and unaccountable manner of proceeding, that the Jews, open enemies and blasphemers of our Saviour, are permitted to enjoy the free exercise of their Religion in the most powerful City in *Holland*, whereas we, who are Christians, and of the *Reformed* Religion too, cannot be tolerated either there or elsewhere? Shall it be accounted for the advantage of our Country, that such may hold religious assemblies, who teach our people that our Lord was a Seducer; and will anyone pretend, that it would be prejudicial to the State, that we who acknowledge *Christ Jesus* for our Redeemer, should enjoy liberty of Conscience?'; Brandt, *History of the Reformation* (*supra*, n. 87), vol. 2, p. 578 (italics in original).

126 *Resolutien van de Heeren Staten van Hollandt ende Westvrieslandt, 1613-1619* (*supra*, n. 44), p. 1165 (13 December 1619); De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 101; Huussen, *Legal position* (*supra*, n. 23), p. 27-28 and 40, n. 25.

127 *Resolutien* (*supra*, n. 44), p. 1165 (13 December 1619).

128 Huussen, *Legal position* (*supra*, n. 23), p. 28.

129 Bodian, *Hebrews* (*supra*, n. 11), p. 61.

not to blaspheme against the Christian religion, not to induce Christians to convert to Judaism, or to have sexual relations with Christian women, including those of ill repute¹³⁰. However, in practice, the building and use of synagogues in private houses was silently allowed (the first synagogue had been built in a private house at the Houtburgwal in 1612)¹³¹.

This raises questions with regard to the impact of Grotius's draft regulations. Huussen is probably right to conclude that Grotius's draft had 'no demonstrable influence on the resolution of the States of 13 December 1619'¹³². Apart from the prohibition on distinguishing marks (which had not been introduced in practice anyway), no other provision of Grotius's draft was adopted by the States, and its decision to leave regulation of the rights of the Jews to the cities ran counter to the guiding idea behind Grotius's project, *i.e.*, that the rights and obligations of the Jews had to be regulated at the provincial level (to prevent competition between cities). Indeed, outside the States, Grotius's draft was probably little known at all – it was never published and rediscovered only in the nineteenth century. It is, therefore, unlikely that Grotius's draft had any direct influence on legal practice, whether at the provincial or city level. More particularly, Izak Prins's claim that 'Hugo de Groot's *Remonstrance* has been *massgebend* for the Jewish politics of the Amsterdam city government' cannot be proven¹³³. Even if some of the measures proposed by Grotius were eventually also adopted by the Amsterdam magistracy, such as, for instance, the right to excommunication, it cannot be proven that they were actually informed by Grotius's draft, because such provisions had also been included in existing Jewish statutes¹³⁴.

130 Statute of 8 November 1616, in Noordkerk, *Handvesten* (*supra*, n. 104), vol. 2, p. 472.

131 Fuks-Mansfeld, *Sefardim* (*supra*, n. 1), p. 52; Swetschinski, *Reluctant cosmopolitans* (*supra*, n. 7), p. 12; Bodian, *Hebrews* (*supra*, n. 11), p. 59.

132 Huussen, *Legal position* (*supra*, n. 23), p. 28.

133 I. Prins, *Over der verhouding tusschen Joden en niet-Joden*, Nieuw Israëlitisch Weekblad, 4 (30 June 1922), p. 12. Leo de Wolff, who tragically perished in Tröbitz in 1945, came to a more nuanced conclusion, observing similarities between Grotius's proposal and official policies, yet without claiming any causal connection: 'without being legally bound, the treatment of the Jews has generally been in agreement with the principles proposed by the drafter of the regulations, Hugo de Groot. However, we may assume that it has been preferable for the Jews themselves not to be bound by a given set of regulations, however tolerant these regulations may have been. At least, it did not give them the sense of being "second rank citizens" from the start'. L. de Wolff, *De rechtspositie der Portugeesche Joden van 1597-1795 in Amsterdam*, Amsterdam 1934, p. 12.

134 For instance, the right of excommunication was also included in the Haarlem charter. De Groot, *Remonstrantie*, ed. Meijer (*supra*, n. 3), p. 42.

However, we need to distinguish between the influence of Grotius's draft on legal practice and its impact on legal theory, which seems to be more significant. Thus, in *De iure belli ac pacis*, Grotius himself returned to the 'sacrosanct law of hospitality', which he now recognized as a foundation of the right to asylum, arguing that *'perpetua habitatio his qui sedibus suis expulsi receptum quaerunt deneganda non est externis, dum et imperium quod constitutum est subeant, et quae alia ad vitandas seditiones sunt necessaria'*¹³⁵. Of course, Grotius's *De iure* soon became a classic of natural law theory, and it was probably through this channel¹³⁶ that the concept of a natural duty to offer hospitality to strangers was picked up and further developed by other natural lawyers such as Samuel Pufendorf¹³⁷, until it was eventually included by Immanuel Kant in his articles for perpetual peace¹³⁸. However, while Grotius had invoked the duty to offer hospitality to strangers to advocate *permanent* residency for refugees and exiles, Kant limited its scope significantly, arguing that, under natural law, states merely had an obligation to admit refugees as *temporary* visitors¹³⁹.

Finally, it is not unlikely that Grotius's ideas about tolerance and freedom of religion – again through the channel of his later writings (for instance, the chapter on tolerance in his *Apologeticus* of 1622) – influenced other thinkers, such as John Locke, although here, *direct* influences are more difficult to prove¹⁴⁰. Thus, in his *Letter Concerning Toleration* – written in Amsterdam in 1685 – Locke explains (without referring to Grotius) that forced conversion can only lead to a false *pretense* of belief, which, rather than assisting salvation,

135 Grotius, *De iure belli* (*supra*, n. 66), 2.2.16 (trans. F.W. Kelsey): 'permanent residence ought not to be denied to foreigners who, expelled from their homes, are seeking a refuge, provided that they submit themselves to the established government and observe any regulations which are necessary in order to avoid conflict'. On Grotius and the right to asylum: Tiessler-Marenda, *Einwanderung* (*supra*, n. 69).

136 Or, alternatively, through Grotius's *Mare liberum* where he refers to the 'sacrosanct law of hospitality'. H. Grotius, *De mare liberum* (*supra*, n. 71), 1 [97].

137 Samuel Pufendorf, *De iure naturae et gentium libri octo*, Amsterdam 1688, 3.3.9.

138 Immanuel Kant, *Zum ewigen Frieden, Ein philosophischer Entwurf*, Königsberg 1795, 2.3. The development of this concept from Vitoria to Kant has been described by G. Cavallar, *The rights of strangers, Theories of international hospitality, the global community and political justice since Vitoria*, Aldershot 2002. However, Cavallar does not discuss Grotius's draft regulations for the Jews.

139 Kant, *Zum ewigen Frieden* (*supra*, n. 138), 2.3.

140 Locke's personal library included many works of Grotius, including a copy of his *Apologeticus*; J. Harrison and P. Laslett, *The library of John Locke*, Oxford 1971, p. 148, no. 1340.

‘positively hinders it’¹⁴¹. Just like Grotius, Locke uses this argument to justify freedom of worship for the Jews. However, while Grotius had argued that ‘it seems best to allow the Jews their [religious] exercise, not in public, but in private houses, which attracts less the attention of the common people’ (fol. 23r, 123, ad 8), Locke goes a step further by suggesting that the Jews be allowed freedom of *public* worship: ‘The Jews are allowed to live among you and have private houses: why are they refused a synagogue? Is their doctrine more false, their worship more offensive, or their loyalty less assured in a public meeting than in their private homes?’¹⁴².

141 John Locke, *A letter concerning toleration*, in: *Locke on Toleration*, ed. R. Vernon, Cambridge 2010, p. 7.

142 *Ibid.*, p. 41.