Problems of Legal Systematization from
De iure praedae to De iure belli ac pacis

De iure praedae Chapter II and the Prolegomena
of De iure belli ac pacis Compared¹

Laurens Winkel
Professor of legal history, Erasmus University Rotterdam
winkel@frg.eur.nl

Abstract
A comparison between the Prolegomena of Chapter II of De iure praedae and the Prolegomena of
De iure belli ac pacis leads to the conclusion that the ideas of Grotius on legal systematization
have changed considerably between 1604 and 1625. Whereas Grotius starts in IPC with general
principles with a rather unclear distinction between leges and regulae, in IBP he gives first the
philosophical and theological basis of international law, intertwined by a concise set of general
legal rules (IBP, Prol., 8), mostly derived from Roman law after its reception in Western Europe.
The general outlines of legal systematization in the early-modern period are expounded. In the
attempts of legal systematization the concept of subjective rights is essential. These subjective
rights are not, as is sometimes assumed, a medieval renewal of legal technique, but can be found
essentially already in classical Roman law of the first centuries AD.

The institutional system is not yet visible in De iure praedae, it might be different for De iure
belli ac pacis. Significant here are possibly the expressions ius ad bellum and ius in bello.

Keywords
Grotius, De iure praedae, De iure belli ac pacis, legal systematization, Institutes, subjective
rights, prolegomena

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English style.
Introduction

In the preface of the translation of *De iure praedae* which was published in 1950 we read: ‘In spite of the cordial welcome accorded the manuscript of the Commentary by a few scholars, interest in the work has never become widespread. The similarity between the content and that of Grotius’s two most famous works naturally gave rise to the question: Since the same doctrines are more thoroughly expounded in other treatises by the same author, long available in many editions and various languages, what is to be gained by further study of the youthful composition which Grotius himself did not trouble to publish?’

All this could have been true if it had been Grotius’s own decision not to publish *De iure praedae*, but in fact it was never published for political reasons with the exception of Chapter XII, which was printed anonymously in 1609 under the title *Mare liberum*. Besides, a good reason for studying *De iure praedae* independently from other works is the insight a surviving manuscript of an early work gives us about Grotius’s way of writing and thinking. After all, we do not have the manuscript of *De iure belli ac pacis*!

The treatise *De iure praedae* of which the manuscript was discovered as recently as 1864 and which was printed in 1868 is said to have had several purposes: It was written as a defense against the capture of the Santa Catarina with the intention of showing that the practice was in accordance with natural law, first of all defending the capture of the Portuguese vessel Santa Catarina on February 25, 1603 by showing that this practice was in accordance with natural law. A further aim could have been to justify this practice on behalf of the Mennonite shareholders of the VOC who were basically pacifist and opposed to extending hostilities towards Spain (and Portugal) outside Europe and who were about to establish another, more peaceful East India Company in France under the protection of King Henry IV. This question is extensively dealt with in the recent book by Van Ittersum, who stresses the French aspects more than the Mennonite ones.

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