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PREACHING PROPRIETY TO PRINCES: GROTIUS, LIPSIUS, AND NEO-STOIC INTERNATIONAL LAW

Christopher A. Ford*

INTRODUCTION

THE REPUTATION OF HUGO GROTIUS in international legal scholarship, and the degree of his influence upon its development is rivaled by few scholars of any period and perhaps equaled by none. So towering is his shadow perceived to be — and so vast the sea of ink spent on explaining him and his legacy — that we must approach the study of his work with some caution.¹ Grotius' great treatise on international law has been called "the most beneficent of all volumes ever written not claiming divine inspiration,"² and a "great marvel . . . [for] its rapid, complete, and universal success."³ King Henry IV of France called him "the miracle of Holland," and Sweden's Gustavus Adolphus was said to have carried a copy of Grotius' work with him on campaign (though James I of England, after meeting him, dismissed the Dutch scholar as a "pedant, full of words").⁴ His work is said to have convinced the great German

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¹ See, e.g., C.G. Roelofsen, *Grotius and International Law*, in GROTIIUS READER (L.E. van Holk & C.G. Roelofsen, eds. 1983) [hereinafter Roelofsen I], at 3, 5 n.8 (warning that "exaggerated claims on Grotius' behalf are frequent"); see also Y. Dinstein, *Commentary*, in INTERNATIONAL LAW AND THE GROTIAN HERITAGE (T.M.C. Asser Instituut, ed. 1985) [hereinafter GROTIAN HERITAGE], at 229, 229 (warning that many scholars try to read into Grotius "certain ideas which would be quite alien there").

² See E. Jiménez de Aréchaga, *The Grotian Heritage and the Concept of a Just World Order*, in GROTIAN HERITAGE *supra* note 1, at 5, 5 (quoting Andrew White).

³ See W.E. Butler, *Grotius' Influence in Russia* [hereinafter Butler I] in HUGO GROTIUS AND INTERNATIONAL RELATIONS (Hedley Bull, Benedict Kingsbury & Adam Roberts eds. 1990) [hereinafter INTERNATIONAL RELATIONS], at 257, 260 (quoting HENRY MAINE, ANCIENT LAW 111 (1861)).

⁴ Georg Schwarzenberger, *The Grotius Factor in International Law and Relations:*

universities to establish chairs of international law,⁵ to have influenced the development of Prussian notions of the *Rechtsstaat*,⁶ and to have provided the intellectual underpinnings of the Peace of Westphalia.⁷ It was once even invoked in order retroactively to justify England's "Glorious Revolution" of 1688.⁸

In modern times, scholars have invoked the name of Hugo Grotius as an early pioneer of innumerable pet causes: human rights,⁹ international peace-keeping institutions,¹⁰ the law of the sea,¹¹ the legal equality of all sovereign states,¹² the supremacy of international law over national enactments,¹³ the protection of non-combatants in warfare,¹⁴ principles of *jus cogens*,¹⁵ humanitarian intervention,¹⁶ and even — without blinking — nothing less than the entirety of "modern constitutional law and contemporary international law."¹⁷ For those who identify with what they perceive to be Grotius' role as "a thinker 'engagé'" who

A Functional Approach, in INTERNATIONAL RELATIONS, *supra* note 3, at 301, 301.

⁵ See Butler I, *supra* note 3, at 261 (citing work of F.F. Martens).

⁶ GERHARD OESTREICH, NEOSTOICISM AND THE EARLY MODERN STATE 127-28 (David McLintoc trans., 1982).

⁷ See Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in INTERNATIONAL RELATIONS, *supra* note 3, at 75.

⁸ Benedict Kingsbury & Adam Roberts, *Grotian Thought in International Relations*, in INTERNATIONAL RELATIONS, *supra* note 3, at 1, 62 (citing SIMON SCHAMA, *THE EMBARRASSMENT OF RICHES* 81 (1989)).

⁹ See R.J. Vincent, *Grotius, Human Rights, and Intervention*, in INTERNATIONAL RELATIONS, *supra* note 3, at 241, 246 (citing Hersch Lauterpacht, *The Law of Nations, the Law of Nature and the Rights of Man*, 29 TRANSACTIONS OF THE GROTIUS SOCIETY 24 (1944)).

¹⁰ See CHARLES S. EDWARDS, HUGO GROTIUS: THE MIRACLE OF HOLLAND 165 (1981) (speculating that "Grotius might tend toward approval of some kind of international machinery with some coercive authority for controlling resort to war"); A.H. Tabibi, *Commentary*, in GROTIAN HERITAGE *supra* note 1, at 109, 127 (invoking Grotian theory to argue that "the 'auctoritas' to use violence thus now only accrues to mankind as a whole, as organized in the United Nations").

¹¹ See W.E. Butler, *Grotius and the Law of the Sea* [hereinafter Butler II], in INTERNATIONAL RELATIONS, *supra* note 3, at 209, 220.

¹² Hidemi Suganami, *Grotius and International Equality*, in INTERNATIONAL RELATIONS, *supra* note 3, at 221, 225.

¹³ See de Aréchaga, *supra* note 2, at 17.

¹⁴ See Rosalyn Higgins, *Grotius and the Development of International Law in the United Nations Period*, in INTERNATIONAL RELATIONS, *supra* note 3, at 267, 275 (quoting Geoffrey Best).

¹⁵ See Kingsbury & Roberts, *supra* note 8, at 1, 40.

¹⁶ See Vincent, *supra* note 9, at 247 (citing Hersch Lauterpacht).

¹⁷ de Aréchaga, *supra* note 2, at 9.

criticized abuses of his time and struggled to create "the genuine and generous ideas that his society badly needed,"¹⁸ Grotius is said to offer a "sense of mission . . . [of] pleading a cause, the cause of moderation, of humanity, [and] of justice."¹⁹ "The Grotian quest," it has grandly been said, "remains our best hope."²⁰ Right or wrong,²¹ an enormous responsibility has clearly been laid at his feet.

It was long believed that Hugo Grotius was "the father" of modern international law, a view some have traced back to Grotius' mid-seventeenth-century German successor Samuel Pufendorf.²² This claim was prominently disputed by Thomas Holland in 1874, who attacked this traditional view and argued that Grotius in fact followed the lead of Alberico Gentili (1552-1608), an Italian Protestant exile who occupied the Regius Chair of Civil Law at Oxford.²³ Others have advanced arguments that the principal influence upon the Grotian scheme came from sixteenth-century Spanish neo-Thomist scholars such as Francisco de Vittoria, Fernando Vasques de Manchaca, or (perhaps most of all) Francisco Suarez.²⁴ By the 1920s, it had been accepted that "the foundational

¹⁸ S. Belaid, *The Double Message of Grotius*, in GROTIAN HERITAGE, *supra* note 1, at 285, 288.

¹⁹ M.C. Pinto, *The New Law of the Sea and the Grotian Heritage*, in GROTIAN HERITAGE, *supra* note 1, at 54, 57.

²⁰ Richard A. Falk, Introductory Essay to EDWARDS, *supra* note 10, at xxi. So much a cult of personality has accumulated around "the miracle of Holland" that L.E. van Holk's biography of "Grotiana" contains a listing of "iconography." See L.E. van Holk, *Selective Biography*, in GROTIAN READER (L.E. van Holk & C.G. Roelofsen eds. 1983), at 45, 46-48. Upon the 400th anniversary of Grotius' birth, a commemorative colloquium held in the Peace Palace at the Hague in honor of the Dutch scholar reprinted in its proceedings a full-color print of a specially bred orchid commissioned for the occasion: *Cymbidium Hugo Grotius* — accompanied by a fold-out chart detailing the pedigree of the flower back to 1889. See GROTIAN HERITAGE, *supra* note 1, at 317-21.

²¹ And there has indeed been no shortage of not just overly ambitious but likely spurious readings. Rosalyn Higgins and A.H. Tabibi, for example, insist that Grotius limited the right to use force exclusively to the sovereign state. See Higgins, *supra* note 14, at 276; Tabibi, *supra* note 10, at 127. This, as we shall see, is probably incorrect. See *infra* text accompanying notes 197-201; see also Peter Haggemacher, *On Assessing the Grotian Heritage* [hereinafter Haggemacher I], in GROTIAN HERITAGE, *supra* note 1, at 150, 153 (arguing that Grotius "did not give [such a monopoly] any clear expression and it is not consistent with the general structure of the treatise").

²² See EDWARDS, *supra* note 10, at 10 (citing work of A.P. D'Entreves). The University of Heidelberg created a chair for Pufendorf in 1661 for the purpose of teaching "the *jus naturae et gentium* along the lines of the Grotian treatise." Haggemacher I, *supra* note 21, at 166 n.115.

²³ Haggemacher I, *supra* note 21, at 133.

²⁴ See generally Kingsbury & Roberts, *supra* note 8, at 31; Bull, *supra* note 7, at

structure of modern international law emerged over a long period, doctrinal responsibility being collegiate and owing a great deal to other historical developments."²⁵

Nevertheless, the work of Hugo Grotius remains enormously important — for its actual content and direct place in the development of international legal theory, for the tremendous influence it has had as the purported fountainhead of international jurisprudence, and for the remarkable enthusiasm and variety of its contemporary disciples. Modern scholars of international relations no less distinguished than Hedley Bull, Adam Roberts, and Benedict Kingsbury, for example, still find Grotius to have exercised an enormous influence over the development of contemporary thought. Bull says:

[Grotius] state[d] one of the classical paradigms that have since determined both our understanding of the facts of inter-state relations and our ideas as to what constitutes right conduct therein. This is the idea of international society: the notion that states and rulers of states are bound by rules and form a society or community with one another, of however rudimentary a kind.²⁶

For Roberts and Kingsbury, similarly,

[T]he issues that Grotius addressed, the concepts and language he used, even the propositions he advanced, have become part of the common currency of international debate about war in general, and about particular wars. These concepts and terms are used so widely, and have developed so considerably, that their connection with Grotius is easily, and often, overlooked.²⁷

The solitary and towering “father of international law” Grotius might not be said to be, but he must surely be accorded a pivotal place in its development.

With Grotius having played such an important role in legal history — and with so much energy being expended upon the task of discerning a “Grotian heritage” relevant to our own day²⁸ — it is particularly

65; Peter Haggemacher, *Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture* [hereinafter Haggemacher II], in *INTERNATIONAL RELATIONS*, *supra* note 3, at 133, 136 & 136 n.19; *see also id.* at 137 (noting that some scholarship on Spanish scholastics “sometimes [makes Grotius] appear[] to be merely their late follower”).

²⁵ Kingsbury & Roberts, *supra* note 8, at 3.

²⁶ Bull, *supra* note 7, at 71.

²⁷ Kingsbury & Roberts, *supra* note 8, at 26.

²⁸ *See, e.g.*, GROTIAN HERITAGE, *supra* note 1.

important that we understand exactly what it was that Grotius was about. This Article seeks to paint a somewhat different picture than the traditional view of Grotius as a forward-looking innovator whose prescient vision of international legality directly presaged our own. Whatever his subsequent influence, I will argue, Hugo Grotius was a thinker whose systematic approach to legal theorizing may have been quite modern but whose animating vision is more appropriately understood as being rooted less in the quest for a new and progressive international order than in the moral reasoning of a Stoic philosophy significantly predating Grotius' own Christian faith.

The key to understanding the Stoic roots of Grotian natural law may be found in the person of the great Dutch philologist Justus Lipsius, whose work in political theory drew him away from many of the traditions of sixteenth-century Renaissance scholarship and whose articulation of a distinctive "Neo-Stoic" political philosophy helped develop ideas that would become core elements of the Grotian scheme.

I. JUSTUS LIPSIUS AND HIS SERMON TO THE PRINCE

A. Lipsius' Role in Renaissance Thought and Politics

Joest Lips — a Dutchman who would become the toast of the scholarly world of the European Renaissance under the fashionably Latinized name of Justus Lipsius — was born in 1547 to a Catholic family in a small town between Brussels and Louvain.²⁹ Born only a year after the first Council of Trent affirmed the papacy's vehement rejection of Lutheranism, Lipsius emerged into a Europe tumbling into the catastrophic religious warfare of the Counter-Reformation. This tumultuous period of conflict between Protestantism and the Roman Catholic orthodoxy of Cardinal Caraffa (who became Pope Paul IV in 1555) lasted until the Peace of Westphalia almost a century later, which ended the particularly savage period of the Thirty Years' War and established the principle that secular sovereigns could determine the religion of their subjects.³⁰

The religious conflict that convulsed his homeland — particularly in the period of Catholic and Protestant tension in the Low Countries that

²⁹ Quoting J.L. Saunders' biography of Lipsius, JASON LEWIS SAUNDERS, *JUSTUS LIPSIUS: THE PHILOSOPHY OF RENAISSANCE STOICISM* 3 (1955), Robert Evans recounts his birthplace as "Overysse (Isque), a small town between Brussels and Louvain." ROBERT C. EVANS, *JONSON, LIPSIUS AND THE POLITICS OF RENAISSANCE STOICISM* 1 (1992).

³⁰ This was known as the doctrine of *cuius regio eius religio*. See generally JOHN A. GARRATY & PETER GAY, *THE COLUMBIA HISTORY OF THE WORLD* 540-66, 584-91 (1972).

followed the Netherlands' revolt against Spain after 1568 — left its mark also upon the career of Justus Lipsius. In an age conspicuously obsessed by religious orthodoxy of various varieties, Lipsius displayed a notable inconstancy in his formal professions of faith. Though he began his academic career as a professor at the University of Jena by converting to Lutheranism and giving an opportunistically bombastic anti-Catholic diatribe in his inaugural lecture in 1572,³¹ his sincerity was disbelieved. He returned to Catholicism at the University of Louvain from 1573 to 1578, in fact, but by 1578 professed himself a Calvinist while teaching at Leiden — at least until his arguments favoring stability over the toleration of religious heterodoxy caused him in 1591 to be forced from that University as well. Returning a final time to Catholicism once more at Louvain, Lipsius was by this time understandably distrusted by the papacy as well, even as Catholic theologians like Laevenius Torrentius put his scholarly expertise to good use in “training leaders, secular and ecclesiastical, in the Catholic state.”³² Not for nothing, it seems, did Thomas Sagittarius lampoon Lipsius as *Lipsius Proteus*, after the mythical sea god of Homer's *Odyssey* able to change its form at will.³³

Yet Lipsius was not faithless: he simply put little stock in the warring orthodoxies of his century.³⁴ He was, rather, an apostle of the classically focused, vaguely Christian “humanism” which had its origins in fourteenth-century Italy but by Lipsius' time had spread widely among Europe's educated elite. Originally a literary movement focused upon poetics and rhetoric, humanism powerfully influenced scholars and scholarship across the breadth of contemporary knowledge, including the arts, medicine, geography, architecture, astronomy, jurisprudence, and even warfare and military organization.³⁵ During the course of the 1500s, France, Germany, and the Netherlands took over from Italy as the locus of humanist thought,³⁶ and by the last quarter of the century it was the

³¹ See KENNETH C. SCHELLHASE, *TACITUS IN RENAISSANCE POLITICAL THOUGHT* 117-19 (1976).

³² MARK MORFORD, *STOICS AND NEOSTOICS* 99, 104, 122 (1991); SCHELLHASE, *supra* note 31, at 135-36.

³³ MORFORD, *supra* note 32, at 129.

³⁴ Partly also, however, Lipsius may have regarded his continual liturgical transfiguration as mere expediency, hoping to continue his work without molestation by conforming outwardly to the religion of the realm. In a 1575 letter, for example, he invoked the praise given Lepidus, a courtier to the Roman Emperor Tiberius in the first century A.D., by the historian Cornelius Tacitus as providing an example of how to “travel[] the middle road between total opposition and shameful servitude.” *Id.* at 152.

³⁵ See OESTREICH, *supra* note 6, at 1.

³⁶ See Arnaldo Momigliano, *Polybius' Reappearance in Western Europe*, in *ESSAYS IN ANCIENT AND MODERN HISTORIOGRAPHY* 79, 90 (Arnaldo Momigliano ed. 1977)

Netherlands that had become "the University of Europe."³⁷ Lipsius was not just an adherent of this humanism; he was also one of its greatest scholars, considered to be — with Joseph Juste Scaliger and Isaac Casaubon — one of the academic "Triumvirs" of his age.³⁸

In his scholarship, Lipsius helped bring about what Arnaldo Momigliano called "a revolution in historical outlook"³⁹ by reviving and popularizing the Roman historian Publius Cornelius Tacitus (56-c.117 A.D.) — prized by Lipsius over all other historians of antiquity save perhaps Caius Sallustius Crispus Sallust⁴⁰ — both among scholars and among the European leadership elites who learned the all-important classical canon at the scholars' knees. Though Lipsius refused to write an expressly political commentary upon Tacitus,⁴¹ his preparation of the

[hereinafter Momigliano, *Polybius*]; OESTREICH, *supra* note 6, at 34 (describing the seminal "Netherlands movement" at the vanguard of humanist scholarship in late 16th century).

³⁷ EDWARD DUMBAULD, *THE LIFE AND LEGAL WRITINGS OF HUGO GROTIUS* 18 (1969) (quoting John N. Figgis).

³⁸ SCHELLHASE, *supra* note 31, at 135.

³⁹ Arnaldo Momigliano, *The First Political Commentary on Tacitus*, in *ESSAYS*, *supra* 36, at 205, 225 [hereinafter Momigliano, *Tacitus*].

⁴⁰ Morford attributes this view to him during Lipsius' Lutheran period, when teaching at Jena. See MORFORD, *supra* note 32, at 149-50.

⁴¹ Momigliano, *Tacitus*, *supra* note 39, at 224. Though Lipsius clearly felt the study of Tacitus to be valuable to the contemporary age, he recognized that Tacitus could be quoted for any number of contradictory purposes.

Look well! He presents kings and monarchs to you — in a word, the theater of our life to-day. I see in one place a ruler attacking the laws and constitution, and in another subjects rebelling against the ruler. I find the ways and means of destroying liberty; I find ill-fated efforts to recover lost liberty . . . Tacitus, good God!, is a great and useful writer. He should be in the hands of those in whose hand are the rudder and tiller of the state.

MORFORD, *supra* note 32, at 154 (quoting JUSTUS LIPSIUS, *ANNALES* (1581)). As a consequence, he appears to have "thought it vulgar to expound Tacitus for the advantage of politicians." Momigliano, *Tacitus*, *supra* note 39, at 216. Indeed, in addition to seeming to support the theoreticians of seventeenth-century absolute monarchy, Tacitus was invoked by eighteenth-century revolutionaries as well. See generally SCHELLHASE, *supra* note 31, at 167-68 (discussing influence of Tacitus upon various Enlightenment revolutionaries from Benjamin Franklin and Thomas Jefferson to André Chenier, poet of French Revolution); EVANS, *supra* note 29, at 12 (quoting English poet John Milton that Tacitus was "of all others the greatest Enemy to Tyrants," but quoting F.J. Levy that "Tacitus was a weapon that could cut both ways . . ."). It fell to Carlo Pasquali (Carolus Paschalius), "a Piedmontese Christian Stoic who became a French diplomat and civil servant," SCHELLHASE, *supra* note 31, at 122, to publish the first expressly political commentary upon Tacitus in 1581. This work, which based itself upon Lipsius' own 1574 edition of Tacitus, was followed by a commentary

definitive editions of the great historian had the effect of offering Renaissance Europe a new “guide . . . for political leaders”⁴² that “supplied the basis for the scientific treatment of practical politics” and helped make “[t]he political and moral values of Rome . . . fundamental to the historico-political thinking of the age.”⁴³

Even beyond his more strictly philological endeavors — which of themselves, as we have seen, significantly influenced European intellectual history — Lipsius contributed more directly to shaping late Renaissance political consciousness through his authorship of works addressed specifically to Europe’s rulers, offering advice upon moral living and proper governance.⁴⁴ Central to this endeavor was Lipsius’ attempt to revive the old Roman philosophy of Stoicism and to offer it as a model for modern Europe. His 1584 book *De constantia libri duo qui alloquium praecipue continent in publicis malis* (or just *De Constantia*) — which Lipsius’ offered as “a consolation for my afflicted homeland”⁴⁵ — represented his attempt to reconcile Stoicism with the basic tenets of Christian faith.⁴⁶ With several other works, including his enormously popular 1589 manual of advice for princes, *Politiorum sive civilis doctrinae libri sex* (*The Six Books of Politics or Civil Doctrine*, or just the *Politiorum*), Lipsius

by Annibal Scoto in 1589 undertaken with the patronage of Pope Sixtus V. See generally Momigliano, *Tacitus*, *supra* note 39, at 207-10.

⁴² MORFORD, *supra* note 32, at 148.

⁴³ OESTREICH, *supra* note 6, at 5-6. After about 1590 or so, the study of Tacitus exploded from “behind the iron gates of erudition” and into “boisterous publicity,” Momigliano, *Tacitus*, *supra* note 39, at 214, so that “for a century Tacitus became the most popular writer on history and politics.” OESTREICH, *supra* note 6, at 16. Lipsius’ “contributions to the reputation and popularity of Tacitus cannot be exaggerated. Lipsius set ‘Tacitismo’ in motion in as much as nobody declared so frequently, so emphatically, and so authoritatively that Tacitus was ‘*quasi theatrum hodiernae vitae*’ [like a performance of our own times].” Momigliano, *Tacitus*, *supra* note 39, at 206 (alteration added) (author’s translation).

⁴⁴ Gerhard Oestreich feels Neo-Stoicism also to have given European governments a powerful philosophy to guide the re-organization of state power, and especially of military organization and warfare. OESTREICH, *supra* note 6, at 7. Lipsius, for example, wrote learnedly on military affairs, powerfully influencing the military reformers of the House of Orange, one of whom (Prince Maurice) had studied as one of Lipsius’ pupils in 1583-84. See *id.* at 4, 50, 77; see generally *id.* at 7. So dramatic was the impact of Neo-Stoic philosophy, Oestreich grandly claims, that its emphasis upon “social discipline and self-discipline, and the consequent self confidence [it] inculcated” played an important role — alongside the spread of rationalization and the Protestant ethic so famously articulated by Max Weber — in making possible the eventual triumph of industrialism and political democracy. See *id.* at viii.

⁴⁵ MORFORD, *supra* note 32, at 159.

⁴⁶ *Id.* at 161.

attempted to “reconstruct Roman stoicism on a sound philological basis . . . [as] a new anthropological discipline which [could] serve as a foundation for the natural system of the humanities in the seventeenth century.”⁴⁷

Though “Neo-Stoicism” has been, as a movement, “known to historians . . . mainly in its French literary and philosophical form,” its influence in the realm of politics and philosophy — derived from Lipsius and other luminaries teaching in the Netherlands — “was enormously powerful.”⁴⁸ Neo-Stoicism had been propounded by humanist scholars before Lipsius, but he helped enunciate its political doctrine and gave it much of the enormous currency and potency it enjoyed amongst educated persons at the turn of the seventeenth century.

The Netherlands movement [of which Justus Lipsius was one of the foremost thinkers] set out to provide a comprehensive rule of life informed by Roman Stoicism, a political philosophy, a *philosophia practica* Neostoicism formed the essential basis for the humanist *political* system.⁴⁹

As Robert Evans has phrased it, Lipsius’ success in his efforts on behalf of Stoicism made him “perhaps the central figure in the little-studied neo-stoic movement, [and] . . . one of the most influential political theorists of the age”⁵⁰ It was in part through his work, in fact, that “[s]toicism became the ideology, almost the religion, of educated men.”⁵¹

⁴⁷ OESTREICH, *supra* note 6, at 14. Mark Morford describes Lipsius as “the first systematic reviv[er] of Roman stoicism since antiquity.” MORFORD, *supra* note 32, at xiii. According to Kenneth Schellhase, Lipsius’ real religion was “a form of Christian Stoicism — a synthesis of [Roman philosopher Lucius Annaeus] Seneca and [the Stoic philosopher] Epictetus with early Christian theology similar to the one he had seen in the Latin Fathers, especially Tertullian [Quintus Septimius Florens Tertullianus].” SCHELLHASE, *supra* note 31, at 137-38.

⁴⁸ OESTREICH, *supra* note 6, at vii. The “French literary and philosophical form” to which Gerhard Oestreich refers is the work of French humanists associated with Michel de Montaigne, whose *Essays* preached a Stoic forbearance in the face of adversity that proved quite popular in the strife-torn Netherlands and in his own native France (which had recently suffered the horrors of the St. Bartholomew’s Day Massacre of Huguenot Protestants by the French king in 1572). See generally QUENTIN SKINNER, 2 THE FOUNDATIONS OF MODERN POLITICAL THOUGHT 276-78 (1978) [hereinafter SKINNER, FOUNDATIONS II].

⁴⁹ *Id.* at 35 (emphasis in original).

⁵⁰ EVANS, *supra* note 29, at xii.

⁵¹ OESTREICH, *supra* note 6, at 37. The revival of Roman political ethics and the Roman concept of the state brought into prominence such concepts as authority, self-control, constancy, obedience and discipline. Seneca and Tacitus became authoritative

B. Lipsius' *Message to the Prince*

Above all, Lipsius addressed his message to the rulers of the strife-torn Europe of his age. His brilliant 1574 edition of Tacitus' writings had already made possible Europe's reintroduction to Tacitus as a source of lessons and examples pertinent to contemporary life, but Lipsius' most immediately politically influential work,⁵² the *Politicorum*, spoke to European leaders directly.

I intend to instruct thee, how thou mayst safely set forward in the way of *Civill life*, and finish thy journey without wandering, & that, not by my owne sayings, but by the precepts of ancient authors, delivered also in their own wordes.⁵³

Designed to be "of service to practicing statesmen,"⁵⁴ this *Six Books of Politickes or Civil Doctrine* (as was the title of its first English translation in 1594)⁵⁵ purported to offer not just a guide to expedient politics — as had the infamous *The Prince* of Niccolo Machiavelli⁵⁶ — but a guide to right living tailored to the concerns of rulers. It was, in fact, "Lipsius' main statement of his Neo-Stoic political philosophy."⁵⁷ In it, therefore, Lipsius advanced a guide to life and governance that claimed for itself the merits of both prudence and propriety.

figures in Baroque culture and the Baroque mentality, taking their place beside Aristotle and Thomas Aquinas. *Id.* at 96.

⁵² The *POTICORUM* was first published in Latin in 1589, translated into English five years later, and "for a time enjoyed an enormous vogue." SKINNER, *FOUNDATIONS II*, *supra* note 48, at 278.

⁵³ JUSTUS LIPSIUS, *SIXE BOOKS OF POLITICKES OR CIVIL DOCTRINE* (William Jones trans. 1594), bk. I, ch. I, at 1 (emphasis in original). Citations to this work hereinafter will follow the convention of giving book and chapter numbers in addition to page numbers. In quoting from this work, this Article will follow the archaic spelling conventions of William Jones' 1594 translation with three exceptions: the use of a "u" character to indicate a modern "v" will be abandoned in the interests of clarity, the letter "j" will be used where a modern would do so in place of the original "i," and the more modern symbol "s" will be used in place of the original character in order to prevent confusion with the letter "f."

⁵⁴ *Id.* at 41.

⁵⁵ See LIPSIUS, *supra* note 53.

⁵⁶ NICCOLO MACHIAVELLI, *THE PRINCE* (Harvey C. Mansfield, Jr. trans. 1985).

⁵⁷ SKINNER, *FOUNDATIONS II*, *supra* note 48, at 278.

1. Renaissance Stoicism

Stoic philosophy traces its origins to Zeno of Citium (336-264 B.C.), a Greek philosopher who believed that principles of natural justice and natural law constituted "guiding principles immanent in the universe" derived from and ascertainable through the exercise of human reason.⁵⁸ Zeno adopted the dualism of Cynic philosophers such as Diogenes, who divided mankind into the wise and the unwise. The latter were doomed to lack enlightenment and could not truly live the moral life, but the former, wise men everywhere, were capable of meaningful citizenship of a distinctive world society, the *cosmopolis* of reason.⁵⁹ The elitism of this dualist Cynical approach limited the appeal of the early Greek Stoics, but the core precepts of Stoic philosophy were adopted by Panaetius of Rhodes (c.185-109 B.C.) — who became head of the Stoic school in Athens in 129 B.C. — and shaped it into a more egalitarian philosophy that found wide appeal among the Roman elite.⁶⁰ This philosophy, which became known as that of the "Middle Stoa,"⁶¹ rejected Zeno's division of humanity into wise and unwise, stressing instead the values of the moral life as (potentially, at least) livable by any thinking human being.

The famous Roman orator Marcus Tullius Cicero (106-43 B.C.) followed up on these Stoic themes, articulating a compelling ethic of natural law as "a 'law' of order visible in nature and . . . perceived by man through the use of his reason."⁶² In Cicero's *De Republica*, written as a dialogue between friends of the great Roman statesman Scipio Africanus the younger employed the figure of Carneades as a foil, having his character Laelius offer a reason-derived naturalist refutation of Carneades' articulation of the traditional Sophist view that self-interest and expediency must take precedence over justice and law.⁶³ It was this

⁵⁸ EDWARDS, *supra* note 10, at 31.

⁵⁹ See generally *id.*

⁶⁰ See MORFORD, *supra* note 32, at 14-15; see also EDWARDS, *supra* note 10, at 31-32.

⁶¹ MORFORD, *supra* note 32, at 14.

⁶² G.I.A.D. Draper, *Grotius' Place in the Development of Legal Ideas About War*, in INTERNATIONAL RELATIONS, *supra* note 3, at 177, 180.

⁶³ See, e.g., EDWARDS, *supra* note 10, at 32. Similarly, on a more individual level, Cicero took pains to distinguish genuine friendship from "the 'interest' theory" of personal association, which held that "friendships should be sought solely for the sake of the assistance they give." Marcus Tullius Cicero, *On Friendship*, in LETTERS OF MARCUS TULLIUS CICERO (E.S. Shuckburgh trans. 1909), at 7, 24-26. Indeed, eliding his consideration of personal relations with a consideration of affairs of state upon the implicit assumption that virtue in governance was simply a by-product of the personal

focus upon natural law derived from right reason (*cognito veri*)⁶⁴ and the personal virtues possessed of any man who would exercise his mind to comprehend it — the virtues of *constantia*, *patientia*, and *firmitas*⁶⁵ — that Lipsius and the Renaissance Neo-Stoics built into the core of their political philosophy.⁶⁶

2. Stoicism and the Subject

To the extent that his *Politicorum* spoke at all to subjects of the prince, Lipsius' Neo-Stoicism took on a somewhat authoritarian cast. For ordinary people, living according to the virtues of *constantia*, *patientia*, and *firmitas* meant enduring with dignity and quiet fortitude all that their sovereign might inflict upon them. Fundamentally, Lipsius believed, the state was best ordered when governed by a single monarch. There were, for him, three possible forms of government: "Principalitie, Of the best and worthiest men, and the Popular estate."⁶⁷ Of these three, "I . . . do expresly prefer principalitie," which was not only the oldest form of government but that "most agreeable to nature . . . [and to] reason. For we see one bodie is ruled by one mind, even as one ship, is governed by one Pilote."⁶⁸ Sometimes seeming downright contemptuous of common folk,⁶⁹ Lipsius argued against government by the People itself:

virtue of the price — a working assumption that, as we shall see, is central to properly understanding the work of both Justus Lipsius and Hugo Grotius, *see infra* Parts I(B)(3) & II(C)-(D) — Cicero compared "interest"-minded seekers of "friendship" to tyrants.

[W]ho, in heaven's name would choose a life of the greatest wealth and abundance on condition of neither loving nor being beloved by any creature? That is the sort of life tyrants endure. They, of course, can count on no fidelity, no affection, no security for the goodwill of any one. For them all is suspicion and anxiety; for them there is no possibility of friendship.

Cicero, *supra* at 27.

⁶⁴ See, e.g., MARCUS TULLIUS CICERO, *DE OFFICIIS*, chs. I, VI, *et seq.* quoted by L.E. van Holk, *Hugo Grotius, 1583-1645, A Biographical Sketch*, in *GROTIUS READER supra* note 1, at 23, 36 n.30.

⁶⁵ That is, steadfastness (constancy), patience, and firmness in the pursuit of an upright and moral life, the endurance of misfortune, and in magnanimity towards one's fellow man.

⁶⁶ See OESTREICH, *supra* note 6, at 13.

⁶⁷ LIPSIVS, *supra* note 53, bk. II, ch. I, at 17 (emphasis deleted). William Jones' 1594 translation makes use of italics to a degree that moderns will probably find annoying. As a consequence, except in block quotations, this emphasis will hereinafter be deleted.

⁶⁸ *Id.* at 18 (emphasis deleted).

⁶⁹ See *id.* bk. IV, ch. V, at 68-70 (describing common people as unstable, un-

I say it breedeth confusion: even as if there were two Sunnes in the firmament, all things should be in danger to be consumed with fire. For, it is a hard thing to find the power of many, and concord to dwell always together in one place. Wherefore, it concerneth the common quiet of all, that power and authoritie be given to one.⁷⁰

The order and tranquility necessary for proper governance, therefore, depended upon the singularity of authority in the person of the prince.

Lipsius' attitude to religion reflected his reaction to the bitter religious warfare of his day. Though Lipsius felt that personal inward belief should be unregulable by the state⁷¹ — a belief which angered the Catholic Church and resulted in several passages from the *Politicorum* being placed on the papal *Index* of proscribed books throughout the seventeenth century⁷² — he believed that the ruling prince should be given authority to enforce outward compliance with the dictates of the state religion. As to those “who offend in matter of Religion . . . publicly,” Lipsius exhorted the sovereign thus:

*Let them be punished by thee, least thou suffer affliction for them: especially if they move sedition: For it is farre better that one do perish, then a whole multitude Here is no place for clemencie, burne, sawe asunder, for it is better that one member be cast away then that the whole body runne to ruyn. For what outrage soever is done to holy religion, all in general are wronged thereby.*⁷³

He thus marked himself as a steadfast adherent of the principle of *cuius regio eius religio*, later adopted by the governments of Europe:⁷⁴ that ensuring observance of the state religion was one of the responsibilities of the sovereign.

For Lipsius, Stoic principles counseled forbearance for a people

predictable, envious, suspicious, gossipy, immoderate, quarrelsome, greedy, etc.).

⁷⁰ *Id.* bk. II, ch. I, at 18 (emphasis in original).

⁷¹ See, e.g., *id.*, bk. IV, ch. IV, at 65 (arguing that “those who do offend privately in matter of religion” ought not to be punished because “[i]t is the least freedom that can be demanded of a Prince to have license to hold ones peace”).

⁷² See MORFORD, *supra* note 32, at 109. The passages in question were from the fourth book of the *Politicorum*, and though offered the opportunity, Lipsius apparently refused to revise them sufficiently to escape the papal proscription. MORFORD, *supra* note 32, at 109.

⁷³ LIPSIVS, *supra* note 53, bk. IV, ch. III, at 64 (emphasis in original). Lipsius showed “that he believed that the principle of *una religio — un roi, une loi, une foit* — was essential to the well-ordered state.” MORFORD, *supra* note 32, at 108.

⁷⁴ See *supra* note 30.

confronted with oppressive misbehavior by their prince: patience and obedience were his watchwords,⁷⁵ and no right of resistance against an unjust sovereign was permitted. Indeed, he could hardly have expressed his disgust with the idea more vehemently:

I define civill warre to bee: *The taking of armes by the subjects, either against the Prince, or amongst them selves.* Then the which, nothing is more miserable, nothing more dishonorable, which I may rightlie terme, the verie sea of calamities.⁷⁶

Seeing "the interests of the people as fully met within a strong, well organized community under the guidance of a wise, pious and just prince,"⁷⁷ Lipsius was horrified at the idea that this domestic order might be challenged from within — as if mere deckhands vied with the "Pilote" to control the course of the ship of state.⁷⁸ As addressed to subjects, therefore, the Stoic virtues meant obedience and discipline.

Because of this notable emphasis upon the Stoic forbearance required of subjects, Lipsius is commonly taken as having been little more than an apologist for power — and the strain of Neo-Stoic philosophy he exemplified as having provided the legitimating rationalizations for the absolute monarchies of the subsequent two centuries. For Quentin Skinner, for example, "[t]he chief lesson the[] [Stoic] moralists preach[ed] is the need to remain steadfast in the face of Fortune's changeability."⁷⁹

This outlook carried with it a distinctive set of political implications, the most important being the idea that everyone has a duty to submit himself to the existing order of things, never resisting the prevailing government but accepting and where necessary enduring it with fortitude.

...

[T]he cardinal duty of submission which the Stoic moralists emphasize is the need to remain obedient at all times to the powers that be, however imperfectly they may happen to discharge their offices.⁸⁰

⁷⁵ See generally OESTREICH, *supra* note 6, at 35.

⁷⁶ LIPSIVS, *supra* note 53, bk. VI, ch. I, at 187 (emphasis in original).

⁷⁷ OESTREICH, *supra* note 6, at 35-36.

⁷⁸ See *supra* text accompanying note 39.

⁷⁹ SKINNER, FOUNDATIONS II, *supra* note 48, at 278; see also *id.* at 279 (noting that Neo-Stoics preached "the need to hold fast to the existing form of religion established in the commonwealth").

⁸⁰ *Id.* at 279 & 281. See also OESTREICH, *supra* note 6, at 55 ("Probably no one has appealed more strongly for obedience to authority than this Neostoic philosopher, who describes so vividly the terrors of anarchy").

For scholars like Skinner and Anthony Grafton,⁸¹ the message of Lipsian Neo-Stoicism is that of authoritarianism, and an apologia — offered in advance — for absolute autocracy.

3. A Doctrine of Princely Obligations

But while submit-to-authority-with-Stoic-grace themes are obviously present in Lipsius' writing (and may well have been adopted with enthusiasm by European autocrats⁸²) to see such ideas as forming the core of the Lipsian political ethic would be a misunderstanding. He did indeed seem to think it the role of subjects to submit, but a Skinnerian reading of Lipsian Neo-Stoicism overlooks the fact that the *Politicorum* is only incidentally and implicitly addressed to the subjects of a sovereign's authority. Rather, as we have seen,⁸³ its primary audience — one to which Lipsius addresses himself, both literally and figuratively — was the community of Christian princes itself. And when it came to addressing the prince, Lipsius cast his lot with Stoic doctrine and sharply distinguished himself from Machiavelli by counseling the observance of justice and virtue by European rulers. His was not a gospel of shrewd expedience, but rather one of virtuous restraint. The prince, too, must show Stoic virtue in submitting to authority: the authority of principles of justice grounded in and observable through the exercise of what Cicero had called "right reason."⁸⁴

Lipsius defined "civill life" — in the ways of which he aimed to instruct the prince⁸⁵ — in classically Stoic terms, as "that which we leade in the societie of men, one with another, to mutuall commoditie and profit, and common use of all."⁸⁶ Above all else, such a proper life is governed by virtue, "the proper good appertaining to man,"⁸⁷ and prudence, "an understanding & discretion of those things which we ought either to desire or refuse, in publicke, & in privat."⁸⁸ The monarch,

⁸¹ See EVANS, *supra* note 29, at 15-16 (describing Skinner and Grafton as seeing Lipsius as a Machiavellian apologist for power).

⁸² See, e.g., OESTREICH, *supra* note 6, at 131 (arguing that Lipsian philosophy "smoothed the way morally, politically and militarily for seventeenth-century absolutism"); EVANS, *supra* note 29, at 11 (noting that Lipsius appealed to conservatives in Renaissance scholarship).

⁸³ See *supra* text accompanying note 53-54.

⁸⁴ See *supra* text accompanying note 64.

⁸⁵ See LIPSIVS, *supra* note 53, at bk. I, ch. I, at 1 ("I intend to instruct thee, how thou mayst safely set forward in the way of *Civill life* . . .") (emphasis in original).

⁸⁶ *Id.* (emphasis deleted).

⁸⁷ *Id.* (emphasis deleted).

⁸⁸ *Id.* bk. I, ch. VII, at 11 (emphasis deleted).

therefore, should be governed not by self-interest, but rather subject himself to the dictates of this virtue and prudence, ruling “for the good of his subjects, for which he ought to set aside his own private benefit.”⁸⁹ While it was the mark of a tyrant to “regardeth only, & seeketh after his own commoditie,” a true king sought “the profit and good of his subjects, [acting as] the right pastor of the people.”⁹⁰ Lipsius, in other words, preached virtue to the prince, so that the authority to which a properly Stoic citizen was to submit might be that not of the tyrant, but of the wise and just father.

Lipsius continually stressed the importance of princely virtue to the maintenance of order and prosperity in the kingdom, emphasizing that the ruler ought to “cloath himself with vertue, for his subjects sake likewise, and communicate the same unto them, without the which, no societie is either honest or permanent.”⁹¹ “Doth he leade us the way to vertue? we followe. To vice: we encline thither. Liveth he an honest, and blessed life? we flourish. Is he unfortunate? we decline, or runne to ruine with him.”⁹² For Lipsius, it was the moral example of the king that set the tone for politics and society in his kingdom. It was, he felt, in the nature of every subject to

*[F]ashioneth himselfe after the example of the king . . . which is the cause that we have less need of government then of good example, which doth work more effectually then the lawes themselves. For, the desire to follow and imitate the Prince, is of greater force then the punishment of lawes*⁹³

Virtue demanded — and the survival and prosperity of the kingdom required — Stoic restraint and moderation from the prince: “Doest thou imagine to rule onely by force? thou art deceived Force that is not assisted with advise, of it owne selfe destroyeth itself Contrarily, God alwaies encreaseth moderate power.”⁹⁴ Even the horror of civil war, which Lipsius found to be among the greatest of all evils,⁹⁵ was best prevented or brought to its conclusion by “agreement” rather than by princely “victorie,” since “[a]ll kinde of peace with the Cittizens seemeth unto me more profitable then civill warre: yea even that temporarie peace,

⁸⁹ *Id.* bk. II, ch. VI, at 22 (emphasis deleted).

⁹⁰ *Id.* at 23 (emphasis deleted).

⁹¹ *Id.* bk. II, ch. VIII, at 25 (emphasis deleted).

⁹² *Id.* from author’s epistle.

⁹³ *Id.* bk. II, ch. IX, at 26 (emphasis in original).

⁹⁴ *Id.* bk. III, ch. I, at 39-40 (emphasis deleted).

⁹⁵ See *supra* text accompanying note 76.

which hath no sure ground."⁹⁶

This, then, is not a doctrine abjectly apologizing for power,⁹⁷ but rather a philosophy of virtue and Stoic self-restraint applicable to subject and sovereign alike.

The basic stress on harmony that dictates his interest in peace and social order also seems reflected in his emphasis upon moderation, both in ethics and in government The good prince is good largely because he is willing to check his own impulses and moderate his own selfish desires, submitting to the higher authorities of God, reason, and virtue.⁹⁸

Thus, while Lipsius vehemently "oppose[d] the monarchomachs [of his day], with their doctrines of tyrannicide and popular sovereignty,"⁹⁹ he also loathed tyranny and expounded a political philosophy that aspired to eradicate it by teaching the prince to understand virtue and reason.

This thrust, it must be said, was not wholly unqualified, nor did it in this respect amount to a full-blown articulation of "law" such as that which Grotius would subsequently provide. Lipsius to some degree, for example, followed the late-sixteenth-century tendency of humanist political theorists, remarked upon by Quentin Skinner, to permit the prince some freedom to be deceitful in the interest of state.¹⁰⁰ Thus, in his fourth book of the *Politicorum*, Lipsius took issue with those who preached that a prince should *never* practice deceit, for "[t]hey seeme not to knowe this age, and the men that live therein, and do give their opinion as if they lived in the commonwealth of Plato"¹⁰¹ Rather, "right and perfect

⁹⁶ LIPSIVS, *supra* note 53, bk. VI, ch. VII, at 205 (emphasis deleted).

⁹⁷ In contrast, for example, one might suggest the work of Jean Bodin, "a virtually unyielding defender of absolutism, demanding the outlawing of all theories of resistance and the acceptance of a strong monarchy as the only means of restoring political unity and peace." SKINNER, FOUNDATIONS II, *supra* note 48, at 284.

⁹⁸ EVANS, *supra* note 29, at 22.

⁹⁹ OESTREICH, *supra* note 6, at 40. Lipsius also opposed three doctrines commonly advocated by some in the political and religious turmoils of the Reformation and Counter-Reformation: political murder, removal of the privileges of the subject, and the conquest of a province or town solely for purposes of expediency for the state. *See id.* at 49. By the 1530s, the leaders of the German Reformation — confronted with increasingly militant Catholic efforts to reimpose papal orthodoxy upon the Lutheran confession — had adopted an ethic of forcible resistance to kings (among them the Holy Roman Emperor) who attempted to impose their Catholicism upon Protestants. *See SKINNER, FOUNDATIONS II, supra* note 48, at 199; *see generally id.* at 189-238.

¹⁰⁰ *See* QUENTIN SKINNER, 1 FOUNDATIONS OF MODERN POLITICAL THEORY 251-53 (1978) [hereinafter SKINNER, FOUNDATIONS I].

¹⁰¹ LIPSIVS, *supra* note 53, bk. IV, ch. XIII, at 112 (emphasis deleted).

reason hath not alwayes the upper hand . . . [and] the Prince [must] . . . be able to interminge that which is profitable, with that which is honest."¹⁰² The occasional and limited use of deception in a good cause, he felt, need not make the prince wholly evil — merely intelligent.

Wine, although it be somewhat tempered with water, continueth to be wine: so doth prudence not change her name, albeit a few drops of deceit be mingled therewith: for I alwayes meane but a small deale, and to a good end; Mothers, and Phisitions, doe they not often deceive little children, *to the end they might beguile their improvident age by a deceitfull taste* And why should not a Prince do the like towards the simpler people, or towards some other Prince his neighbour?¹⁰³

Thus it seems that Lipsius the Stoic moralist felt it necessary to concede at least something to Machiavelli. Nevertheless, Lipsius remained emphatic, as we have seen, that the basic requirements of sovereign duty required restraint and benevolence: any such "deceit" must be rare and only reluctantly undertaken with the best of ultimate purposes in mind. The central innovation of the Lipsian scheme — the prince's obligation to follow the dictates of a Neo-Stoic "right reason" — was perhaps slightly tarnished by this concession, but it was by no means betrayed.

4. Lipsius and Institutions

Because his focus was so sharply upon the exercise of individual virtue by the prince in his capacity as sovereign, however, Lipsius remained quite unconcerned with political institutions. While very much dedicated to the achievement of virtuous order within the state — and, as we have seen, convinced of the advisability of monarchical rule¹⁰⁴ — Lipsius nonetheless concentrated more upon winning over the hearts of individuals (namely, those who happened to be kings)¹⁰⁵ than in pre-

¹⁰² *Id.* at 113 (emphasis deleted). "My meaning," Lipsius wrote, "is onely that it be of the affayres of the world . . ." *Id.* at 114 (emphasis deleted).

¹⁰³ *Id.* at 114. Indeed, Lipsius devoted the subsequent chapter to a description of various types of deceptions. *See id.* bk. IV, ch. XIV, at 115-23.

¹⁰⁴ *See supra* text accompanying notes 67-70.

¹⁰⁵ Lipsian political philosophy was, above all, an exhortation to *individual* virtue. As the Stoic philosopher — and Roman Emperor — Marcus Aurelius (121-180 A.D.) had written, so too Lipsius advised in effect:

Take care that thou art not made into a Cæsar, that thou art not dyed with this dye; for such things happen. Keep thyself then simple, good, pure, serious, free from affectation, a friend of justice, a worshipper of the gods, kind, affectionate, strenuous in all proper acts. Strive to continue to be such as philosophy wished to make thee.

THE MEDITATIONS OF MARCUS AURELIUS (George Long trans. 1909) [hereinafter

scribing any sort of constitutional order.

For Lipsius, . . . naked virtue seems to have been more important than legalistic fine points or the details of political structures. Whatever enhanced this virtue would, by its very nature, enhance the social and political welfare of the community. The study of statecraft should promote the common good, in all the various senses of that term. The [*Politicorum*] is, to a great degree, simply an elaboration of Lipsius' basic concern with virtue.¹⁰⁶

Indeed, compared to this great project of inculcating Stoic virtue, Lipsius appears to have thought questions of formal political organization quite unimportant. After all, he "wanted men to be, in the Stoic sense, citizens of the world, not just of their own countries."¹⁰⁷ As Lipsius himself proclaimed, "we have lesse need of government then of good example."¹⁰⁸

This was not, of course, a political philosophy that promised its adherents an easy road. As the ancient Stoic philosophers themselves had realized, it was difficult to live a life of proper Stoic virtue.¹⁰⁹ Nor did Lipsius imagine any form of international institution that could force an unruly prince into compliance with the dictates of right reason. Quite to the contrary. Lipsius was quite clear that his philosophy had only its own weight to recommend it, and he pleaded with princes to lend him their ears so that he might win over their hearts.

Give us the hearing. Neither do you for this reason despise our counsels, because you are above our commandments. For as it is a most happie thing in a prince, not to be compelled, so is it a miserable thing

MEDITATIONS], at ch. VI, ¶30.

¹⁰⁶ EVANS, *supra* note 29, at 21 (emphasis deleted).

¹⁰⁷ OESTREICH, *supra* note 6, at 28.

¹⁰⁸ LIPSIVS, *supra* note 53, bk. II, ch. IX, at 26 (emphasis deleted).

¹⁰⁹ As the Stoic philosopher Epictatus (born c.50 A.D.) put it,

Who then is a Stoic — in the sense that we call that a statue of Phidias which is modeeled after that master's art? Show me a man in this sense modelled after the doctrines that are ever upon his lips So help me Heaven, I long to see *one* Stoic! . . . Show me him! — Ah, you cannot!

THE GOLDEN SAYINGS OF EPICETUS (Hastings Crossley trans., 1909), § LXXVIII. As Marcus Aurelius warned, living a virtuous life required constant attention and dedication. *See, e.g.*, MEDITATIONS, *supra* note 105, at ch. V, ¶1 ("In the morning when thou risest unwillingly, let this thought be present — I am rising to the work of a human being"); *id.* ch. IV, ¶22 ("Do not be whirled about, but in every moment have respect to justice, and on the occasion of every impression maintain the faculty of comprehension").

in him, not to be persuaded.¹¹⁰

A princely abandonment of virtue and prudence would, to be sure, adversely affect the social and political health of the country,¹¹¹ but the only actual punishment that would be levied against such an evil prince was an inward one.¹¹²

Following the great Stoic thinkers of antiquity,¹¹³ Lipsius seems to have felt virtue to be its own best reward: both the end and the means of proper human living.

The Common-wealth by God, and men, is delivered into your bosome: yea it is in deed laid in your bosome, but to th'end it may be cherished O rightly is that Prince just, & lawful, who in his greatest felicitie, had not rather heare men say, that he is mightie, then that he is good: and who knoweth, how to conjoyne two most diverse things, *Modestie*, and *Prudence* together. Who when he walketh abroad, men to strive to behold, as it were some favourable, and beneficiall godhead: and being indifferent between love, and awe, and changing of their judgments, do doubt, whether they should salute him as their Lord, or as their father. These are those worthie things (ô Princes) which bring safetie, to the which both those of former age, & my selfe do call you.¹¹⁴

The Neo-Stoic political philosophy articulated by Lipsius was not “politi-

¹¹⁰ LIPSIUS, *supra* note 53, from author's epistle.

¹¹¹ See, e.g., *supra* text accompanying notes 92-94.

¹¹² Cf. MEDITATIONS, *supra* note 105, at ch. II, ¶16 (“The soul of man does violence to itself, first of all when it becomes an abcess and, as it were, a tumour on the universe, so far as it can”).

¹¹³ It is also possible that Lipsius was encouraged in his eagerness to promote virtuous living and in his unconcern for political institutions by more immediate influences — themselves perhaps spiritually linked to the Stoic philosophy of Greece and Rome. Anthony Grafton has suggested, for example, that Lipsius may have been involved with a mysterious sect in Antwerp that called itself the “Family of Love” and met from time to time in the house of Christopher Plantin (who printed some of Lipsius' work). See generally EVANS, *supra* note 29, at 6-7. According to Robert Evans:

[This group] eschewed doctrinal wrangling and placed great emphasis upon simple charity, practical piety, and freedom from denominational tangles. They denied the importance of institutional churches and emphasized a mystical communion between individual believers and God . . . They showed little interest in radically changing ‘the existing world order,’ and their indifference to the fine points of conflicting dogmas allowed them to adapt themselves outwardly, with a clear conscience, to whatever creed happened to prevail . . .

Id. at 6-7.

¹¹⁴ LIPSIUS, *supra* note 53, from author's epistle.

cal" in the modern sense, in that it did not really concern itself with political institutions of any sort. Rather, it was "political" because it offered a code of behavior to individuals who happened to be the sovereign heads of states — a code to which they were obliged to conform both in personal life and in the conduct of those affairs of state that are the daily diet of kings.

This lack of concern for political institutions was, perhaps, why the Lipsian incarnation of Stoic political philosophy proved so congenial to seventeenth-century autocrats. His preachings about the duty of subjects to obey the dictates of Authority, perhaps inevitably, had a much more immediate impact upon Baroque politics than any of his invocations of virtue or airy warnings about a tyrant's inward spiritual corruption. But it would still be wrong, however, to number Lipsius among the "'black' Taciteans" — as Giuseppe Toffanin and others have called those theorists who invoked Tacitus and Neo-Stoic thought in support of "disguised Machiavellianism."¹¹⁵ Nor, naturally, can Lipsius be placed with "what has been called the 'red' Tacitus of the French Revolution,"¹¹⁶ since nothing could clearly be further from his mind than allowing subjects a right of revolution or a Lutheran "duty of resistance."¹¹⁷ Lipsius' position is neither of these — nor even what Peter Burke has called that of "'pink' Tacitism . . . [that of] 'supporters of limited monarchy in an age of absolutism.'"¹¹⁸ The powers of a Lipsian prince are not "limited" in any external way, but depend instead only upon the restraints of his own wisdom and virtuous conscience.

Because of his unconcern for institutions — that is, his unwillingness to conceive of external constraints upon the authority of princes — Lipsius, in practical effect, may have given aid and succor to the Machiavellians. Our understanding of the Stoic moralist thrust of the *Politicorum*, however, suggests that Lipsius himself would have been horrified at this result. His emphasis, above all, was to provide a system of moral restraint binding against monarchs and tying the exercise of their authority to principles deriving from the dictates of right reason. He preached directly to the hearts of princes, rather than about means by which their bodies might be constrained, but his political philosophy was fundamentally one of *law*, of structured and systematic formal restraint upon Authority.

Significantly, it was this philosophy of Stoic, virtuous restraint upon authority that powerfully informed the work of Lipsius' even more

¹¹⁵ See EVANS, *supra* note 29, at 13.

¹¹⁶ Momigliano, *Tacitus*, *supra* note 39, at 217; see also EVANS, *supra* note 29, at 13 (discussing "'red' Tacitism ('disguised republicanism')").

¹¹⁷ See *supra* note 99.

¹¹⁸ EVANS, *supra* note 29, at 13 (quoting Peter Burke).

famous follower, Hugo Grotius. It was Grotius' project, so to speak, to pick up the Lipsian baton of princely obligation and run with it, seizing upon this approach and building it into a comprehensive theory of natural law binding upon rational men across the entire spectrum of human relations. Most importantly, perhaps, it was for Grotius to extend this rationalist Stoic naturalism, in a systematic way, not just to the relations between a prince and his subjects, but also to relations *between* princes — that is, to international law.

5. Cracking the "Mirror of the Prince"

Lipsius' approach to political philosophy also represented something of a break with the traditions of Renaissance scholars' attempts to give advice to princes. Earlier "civic" humanists, as Quentin Skinner and others have termed them,¹¹⁹ had directed their exhortations and political advice to the broad body of a citizenry assumed to be analogous to that of Republican Rome. Humanist scholars in the fifteenth century, however, had come to presume monarchy as the governmental scheme of default, and offered their counsel more directly to princes.¹²⁰ This genre of advice-giving was not wholly new even then, and there existed both a long-established tradition of writing advice-books for city magistrates and a "far more ancient conceit of holding up a 'mirror' to princes, presenting them with an ideal image and asking them to seek their reflection in its depths."¹²¹ This "mirror-of-princes" tradition had stressed that (1) the proper ambition for the heroic character of the prince was personal honor, glory, and illustriousness; (2) the greatest obstacle to the achievement of such glory was the fickleness of Fortune itself; and (3) the cultivation in the prince of the qualities of virtue that enable him to combat fortune requires a broad, humanist education in the wisdom of antiquity.¹²²

The late-Renaissance practitioners of this "mirror-of-princes" genre, however, added to these themes a distinctive emphasis of their own. To begin with, in contrast to the preference of earlier "civic" humanists for liberty and justice, fifteenth century "mirror-of-princes" writers favored the

¹¹⁹ See SKINNER, FOUNDATIONS I, *supra* note 100, at 116.

¹²⁰ *Id.* at 116-17. The most famous work of this genre was, of course, Machiavelli's THE PRINCE, *see supra* note 56, though as Skinner has observed, this work broke with the humanist value-system of its predecessors by emphasizing the need for the prudent prince to take account of the factor of power in human affairs, of the need occasionally to practice deceit, and of the fact that it might sometimes be more useful to have the reputation of virtue than such virtue itself. *See generally* SKINNER, FOUNDATIONS I, *supra* note 100, at 129-38.

¹²¹ SKINNER, FOUNDATIONS I, *supra* note 100, at 118.

¹²² *Id.* at 118-23.

maintenance public tranquility and peace at virtually any cost.¹²³ Secondly, these writers came to believe that the qualities of virtue that must be possessed by the prince in order to vanquish Fortune differed from those needed by common people — a belief which led them to develop for the prince “an increasingly heroic list of individual moral qualities” which encompassed elements from both Christian doctrine and Greco-Roman philosophy, including the virtues of prudence, temperance, liberality and magnificence, clemency, and honor.¹²⁴

In Lipsius’ work, to be sure, may be seen echoes of this tradition. Like the “mirror of princes” writers, he did describe the prince as locked into a continual struggle against Fortune: “[t]he government of all is a heave burthen, and subject to fortune. And like as the tops of high moutains are alwaies beaten with the winds, so the mightiest empires, are the object of fortune”¹²⁵ He advised the prince to cultivate “a laudable affection of the king, or towards, the king, profitable to the whole estate,”¹²⁶ by showing “Lenitie, Boutifulnesse, and Indulgence”¹²⁷ in governance that still managed to be “seveare, constant, and restrained.”¹²⁸ Perhaps reflecting the sub-genre of “mirror of princes” literature devoted to offering advice to royal courtiers,¹²⁹ Lipsius offered also advice to the prince about the need to retain wise counselors,¹³⁰ on how to pick such advisors,¹³¹ and how best to seek their advice¹³²— as well as a brief primer for the counselors themselves, detailing both their duties¹³³ and some common mistakes for them to avoid.¹³⁴

Yet Lipsius’ *Politiorum* is much more than a late-sixteenth century genre piece of the “mirror-of-princes” variety. Even in his consideration, for example, of the prince’s great foe Fortune, he elaborated a whole host of other dangers: the hatred of one’s subjects, one’s own pride or that of

¹²³ *Id.* at 123-24. This led many — though by no means all — such writers to prefer the consolidation of power in the hands of single prince to more republican forms of government. *Id.*

¹²⁴ *Id.* at 125-28.

¹²⁵ LIPSIUS, *supra* note 53, bk. IV, ch. VI, at 70 (emphasis deleted).

¹²⁶ *Id.* bk. IV, ch. VIII, at 74 (emphasis deleted).

¹²⁷ *Id.* at 75 (emphasis deleted).

¹²⁸ *Id.* bk. IV, ch. IX, at 78 (emphasis deleted). The prudent prince, he also advised, should use “Wealth, Weapons, Counsell, Alliances, and Fortune” in order to purchase the power necessary to achieve his glory. *Id.* at 82.

¹²⁹ See SKINNER, FOUNDATIONS I, *supra* note 100, at 117.

¹³⁰ LIPSIUS, *supra* note 53, bk. III, ch. II, at 43-44.

¹³¹ *Id.* bk. III, ch. III, at 44-45.

¹³² *Id.* bk. III, chs. VIII-IX, at 51-53.

¹³³ *Id.* bk. III, ch. V, at 47-48.

¹³⁴ *Id.* bk. III, ch. VI, at 48-49.

others, conspiracies, the rash temptations of jealousy, and misperceptions of one's own power.¹³⁵

[M]eere and naked felicitie is fraile: neither can *aniething be durable, that reason doth not underprop. Albeit that fortune seeme to breathe on these her favorites, yet in the ende she shall not be able to satisfied their unadvisednesse.*¹³⁶

For Theodore Corbett, Lipsius' "concern for blunt realism, his efforts to penetrate to the inner motivations of men and states, [and] his acceptance of dissimulation, carried his studies far beyond previous 'mirror of the prince' literature."¹³⁷

More fundamentally, however, we have seen that the core of the Lipsian project is a task very different from that undertaken by the "mirror of princes" tradition. Lipsius' conception of virtue was not simply the prince's pursuit of fame and glory. It would await Grotius for the moral obligations of princely restraint to be explicitly cast as a law of nature — fortifying the conventional notion of "virtue" as a quality of character both desirable and praiseworthy with the admixture of a strong notion of legal obligation — but in Lipsius we clearly see the power of the prince constrained by the requirement that it be exercised in conformity with the dictates of right reason. Lipsius also followed the mirror-of-princes writers in prizing domestic order and tranquility, but he added to this the articulation of a Neo-Stoic doctrine of sovereign restraint. Lipsius, in other words, followed some of the forms of the advice-book literature and echoed some of its themes, but he steered this genre in a different direction. He did not merely give "advice" to the prince about what was beneficial and helpful in the business of governance, but actually preached him a sermon. Lipsius indeed addressed himself to the sovereign, but he had begun to speak with a vocabulary derived from Stoic philosophy — a discourse less of prudence and expedience than of law and obligation. It remained only for Hugo Grotius, a generation later, to develop this vocabulary into a full-fledged language of natural legal philosophy.

¹³⁵ *Id.* bk. IV, ch. VI, at 70-72.

¹³⁶ *Id.* bk. IV, ch. IX, at 85 (emphasis in original).

¹³⁷ EVANS, *supra* note 29, at 10 (quoting Theodore Corbett). By Corbett's reference to "dissimulation" is probably meant Lipsius' discussion of the "deceit" occasionally required of princes in pursuit of the good. *See supra* text accompanying notes 101-03.

II. HUGO GROTIUS AND THE NEO-STOIC PROJECT

Born in the Dutch city of Delft in 1583, Huig de Groot — or Hugo Grotius in the Latinized form popular among educated men of the Renaissance¹³⁸ — made a name for himself as a child prodigy¹³⁹ and then as one of the most respected humanist scholars of his day when teaching at the University of Leiden during perhaps its most dynamic period.¹⁴⁰ In addition to the writing for which he is most famous, Grotius also served prominently as a diplomat and public official in his native Holland from 1607 to 1618. In this capacity, he was conspicuous as the protégé of Johan van Oldenbarnevelt, the Grand Pensionary of Holland and leader of one of the two principal political factions there,¹⁴¹ the Arminian or “Remonstrant” party within Dutch Calvinism — a group favoring religious toleration, the decentralization of power in favor of provincial Dutch sovereignty, and a conciliatory peace with Counter-Reformation Spain.¹⁴² Grotius was appointed *Avocaat-Fiscall* of Holland

¹³⁸ The “Grotius” rendering of “de Groot” was apparently adopted by Hugo’s father, Johan (or, in Latin form, “Janus”), himself a well-educated man trained by prominent Dutch humanists. W.S.M. KNIGHT, *THE LIFE AND WORK OF HUGO GROTIUS* 1-2 & 12-13 (1925).

¹³⁹ Grotius entered the University of Leiden to study under the great Joseph Scaliger, *cf. supra* text accompanying note 38, at the age of only 11. Bull, *supra* note 7, at 67. King Henry IV of France, upon introduction, described the young Grotius as “*le miracle de Hollande*”; *see, e.g.*, Schwarzenberger, *supra* note 4, at 301, a description which Charles Edwards took as the title of his 1981 philosophical biography. *See EDWARDS, supra* note 10.

¹⁴⁰ Under the stewardship of Janus Dousa (Jan van der Does in the humbler Dutch rendering), the University of Leiden had attracted an unusually diverse group of scholars of both the Catholic and the Protestant persuasion. These men helped make the university one of Europe’s most important late-Renaissance centers of learning, at least until the faculty was purged after the triumph of orthodox Calvinism in Holland in 1619. *See, e.g.*, MORFORD, *supra* note 32, at 92; *see also infra* text accompanying notes 144-45.

¹⁴¹ Bull, *supra* note 7, at 68.

¹⁴² *See EDWARDS, supra* note 10, at 3. The opposing “Counter-Remonstrants” were an orthodox Calvinist group favoring, respectively, a “pure” Calvinist state church, a centralized and unified Dutch republic, and aggressive prosecution of the war against Spain under leadership of the House of Orange. *Id.* The two factions also differed over matters of religious doctrine, with the Remonstrants seeking some compromise between notions of human free will and orthodox Calvinist teachings about predestination. *See generally* C.G. Roelofsen, *Grotius and the International Politics of the Seventeenth Century* [hereinafter Roelofsen II], in *INTERNATIONAL RELATIONS, supra* note 1, at 95, 112-13; G.H.M. Posthumus Meyjes, *Hugo Grotius as an Irenicist*, in *THE WORLD OF HUGO GROTIUS (1583-1645)* (colloquium of Royal Neth. Acad. of Arts & Sciences,

in 1607, the second highest office in Holland under the Arminians, and in 1617 became a member of the important Committee of Councilors (*College van Gecomitteerde Raden*), which alongside the *Landsadvocaat*, van Oldenbarnevelt himself, ran the public business of the province.¹⁴³

His intimate association with the Remonstrant party, however, cost Grotius dearly. In 1619, a coup by the Dutch *Stadtholder*, Prince Maurice, brought about the defeat of van Oldenbarnevelt's faction and the triumph of the Counter-Remonstrants,¹⁴⁴ leading to the execution of the deposed *Landsadvocaat* and Grotius' own imprisonment in Loevestein castle.¹⁴⁵ After a dramatic escape in 1621 arranged with the help of his wife,¹⁴⁶ Grotius fled to France where he received the protection of Cardinal Richelieu and King Louis XIII — who had formerly backed van Oldenbarnevelt's ill-fated Dutch faction.¹⁴⁷ This period of exile saw the publication of his most famous work, the *Law of War and Peace*,¹⁴⁸ and a new diplomatic career for the Dutch scholar as Swedish ambassador to the court of Louis XIII.¹⁴⁹ Grotius died in 1645.¹⁵⁰

April 6-9, 1983) [hereinafter THE WORLD OF HUGO GROTIUS], at 43, 56-60.

¹⁴³ DUMBAULD, *supra* note 37, at 11.

¹⁴⁴ See *supra* note 142 (describing Counter-Remonstrant politics and doctrine).

¹⁴⁵ See, e.g., Haggemacher II, *supra* note 24, at 133, 144.

¹⁴⁶ Grotius was hidden in a trunk of books and carried to freedom, unknowingly, by his own guards. As Knight recounts, "[t]he escape of Grotius exercised the pens of the most famous poets of that period, and Grotius himself wrote some verses on the subject . . ." KNIGHT, *supra* note 138, at 162.

¹⁴⁷ The Arminians had "had excellent relations with the French government," Roelofsens II, *supra* note 142, at 117, so that "Grotius could be reasonably certain of a good reception from the French government, which considered him one of the leading members of the Francophile party." *Id.* at 121. Indeed, the French government even appears to have awarded the exiled Dutch scholar a royal pension, *id.*, and to have given him the right to publish his work in France without fear of censorship. See KNIGHT, *supra* note 138, at 281. Grotius' most important work *De Jure Belli ac Pacis Libri Tres* (1625) (THE LAW OF WAR AND PEACE IN SIX BOOKS) is therefore perhaps not surprisingly dedicated to Louis XIII. See HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES (Francis W. Kelsey trans. 1925) [hereinafter GROTIUS, JBP], at 3 (dedication "To The Most Christian King of France and Navarre, Louis XIII").

¹⁴⁸ GROTIUS, JPB, *supra* note 147.

¹⁴⁹ Grotius' career in Swedish service, however, was not illustrious. Despite his backing for the Dutch Remonstrants and hospitality to Hugo Grotius, Cardinal Richelieu is said to have "detested" Grotius personally — and even his Swedish employers snubbed him by refusing to appoint him to their delegation to the Westphalia conference in 1643. Bull, *supra* note 7, at 69; see also KNIGHT, *supra* note 138, at 274. But see *id.* (recounting that King Louis XIII himself seems to have liked Grotius). After meeting with Grotius in London in 1613, King James I of England — though impressed with his scholarship — dismissed Grotius as a "pedant, full of words."

A prodigious scholar well-trained in the classically focused methods of his time,¹⁵¹ Grotius wrote widely on many subjects. The works for which he is best remembered today, however, are those pertaining loosely to matters of international law. The first of these, *De Praedae Commentarius* (Commentary on the Law of Prize) grew out of Grotius' work as an advocate for the interests of the Dutch East India Company in its dispute with Portugal over the seizure of a Portuguese carrack in 1603 (and, more generally, over Portuguese claims to exclusive control of the eastern Indian Ocean sea lanes). This work — in which Grotius defended the Company's efforts to wage "private war on its own account to redress injuries and protect its legal rights"¹⁵² and mounted a staunch general defense of the principle of freedom of the seas — was unpublished until its discovery in 1864, but one chapter of it was released in 1609 as Grotius' book *Mare Liberum* (Freedom of the Seas).¹⁵³ Though this emphatic freedom-of-the-seas position would come back to haunt Grotius when he was subsequently hired to defend Dutch claims to exclusive East Indian trading rights against the English in 1613,¹⁵⁴ *Mare*

Schwarzenberger, *supra* note 4, at 301. As Voltaire later put it, Grotius was distinguished more for his writing than for the calibre of his diplomacy. Kingsbury Roberts, *supra* note 8, at 1, 2 (quoting Voltaire that Grotius was "*plus illustré par ses ouvrages que par son ambassade*"). For a general account of Grotius' diplomacy from 1635-45, see KNIGHT, *supra* note 138, at 224-44.

¹⁵⁰ For a romantic (though perhaps not romanticized) account of Grotius' death, see KNIGHT, *supra* note 138, at 288-89.

¹⁵¹ As Butler recounts, for example, Grotius set about finding the law

[B]y mixing together a vast assemblage of historical events from remotest antiquity to the seventeenth century quotations from or reference to poets, orators, politicians, statesmen, lawmakers, and princes from all historical eras, leavened with his own views as appropriate — a dazzling display of learning and erudition in his own day.

Butler II, *supra* note 11, at 215.

¹⁵² DUMBAULD, *supra* note 37, at 28.

¹⁵³ See generally Butler II, *supra* note 11, at 209-10; Roelofsen II, *supra* note 142, at 104-07. For an account of the Portuguese-Dutch problems underlying the *De Praedae* dispute, see KNIGHT, *supra* note 138, at 80-82.

¹⁵⁴ See generally FRANS DE PAUW, GROTIVS AND THE LAW OF THE SEA 45 (P.J. Arthern trans. 1965), sections reprinted in GROTIVS READER, *supra* note 1, at 144, 145 (describing Dutch controversies with English over spice trade from the Moluccas); Charles Wilson, *Hugo Grotius and His World*, in THE WORLD OF HUGO GROTIVS, *supra* note 142, at 1, 5-7. Confronted with Dutch claims to exclusivity, the English delegates responded that

[W]e return[] this answer [T]he Spaniard maketh the same argument to prohibit all other nations from the Trade of the East and West Indies which is used by the Hollanders for the appropriating to themselves of the sole Trade of those places in the Indies whereof they are possessed

Liberum and *De Jure Praedae* are regarded today as seminal works in the development of modern approaches to international law of the sea.

The most important of Grotius' works, however, was his *Law of War and Peace*, which, published in 1625, became enormously popular and influential.¹⁵⁵ It is this work which secured Grotius' soaring fame in subsequent thinking about international relations and international law,¹⁵⁶ and to which we shall turn in our attempt to understand the Lipsian and Neo-Stoic roots of Grotian thought.

Report of the English Delegates to the Privy Council of May 10, 1613, Annex 39, reprinted in G.N. Clark & W.J.M. van Eysinga, *The Colonial Conferences Between England and the Netherlands in 1613 and 1615*, 15 BIBLIOTHECA VISSERIANA (1940), Part I, at 117, 121 reprinted in GROTIUS READER, *supra* note 1, at 97, 103. The English claimed themselves to have "a just right to free Trade into the East Indies and every part thereof, as well by the Law of Nations as by the admittance of the Kings and Princes there, with whom we have made Contracts and Covenants." *Id.* at 118/100, and invoked Grotius' MARE LIBERUM against the Dutch:

And do not the Hollanders deny this argument [of exclusive appropriation] propounded by the Spaniard, and declare themselves in the behalf of free Trade, and to all nations, with as much liberty and freedom as *mare liberum*?

Id. at 120/102; see also *id.* at 122/104 (citing same passage of Seneca in support of free trade that Grotius himself had cited in MARE LIBERUM); cf. HUGO GROTIUS, THE FREEDOM OF THE SEAS 8 (Ralph van Deman Magoffin trans. 1916) [hereinafter GROTIUS, MARE LIBERUM], in GROTIUS READER, *supra* note 1, at 60 (citing Seneca).

In response to these arguments, Grotius claimed that while the natural liberty required free trade and freedom of the seas, the Dutch had reached treaties of exclusive dealing with the rulers of the spice islands and that this contractual law — combined with the long-established custom of European trading in the region — had displaced the natural rules upon which the English delegates relied. While a number of writers have tried to excuse Grotius of inconsistency, the suggestion that voluntary law can supersede the requirements of the law of nature is patently at odds with Grotius' theory of natural law at the core of both *Mare Liberum* and *De Jure Pacis ac Belli*. Cf. *infra* text accompanying notes 174-84 & 188. See J.K. OUDENDIJK, STATUS AND EXTENT OF ADJACENT WATERS 38 (1970), in GROTIUS READER, *supra* note 1, at 177, 202; DE PAUW, *supra*, at 59-60/158-59; Clark & van Eysinga, *supra*, at 72/132; see generally G. Ladreit de Lacharrière, *The Controversy Surrounding the Position Adopted by Grotius*, in GROTIAN HERITAGE, *supra* note 1, at 207, 210-13.

Grotius the advocate seems simply to have gotten the better of Grotius the scholar during that conference in 1613. See also Schwarzenberger, *supra* note 4, at 304-05 (noting that Grotius, when in the employ of Swedish government, was conspicuously silent about claims by Sweden's King Gustavus Adolphus to large sections of Baltic Sea).

¹⁵⁵ As Edward Dumbauld recounts, several new editions were published during Grotius' lifetime in 1631, 1632, 1642, and 1646. By 1929, no less than 78 editions and translations had appeared. DUMBAULD, *supra* note 37, at 57-58.

¹⁵⁶ See *supra* text accompanying notes 2-20.

A. Grotius and Lipsius

That Grotius — a prominent member of the illustrious “Netherlands movement” of late-Renaissance humanism,¹⁵⁷ prize pupil of the great Joseph Scaliger at Leiden,¹⁵⁸ and family friend of Janus Dousa (Jan van der Does), under whose guidance that university had attracted many of the brightest figures of the Dutch Renaissance¹⁵⁹ — should have been so powerfully influenced in his natural law writing by Justus Lipsius is not surprising. Grotius did not explicitly cite to Lipsius in his *Law of War and Peace*,¹⁶⁰ but he cited Tacitus no less than 125 times,¹⁶¹ and we must remember that Lipsius’ editions of Tacitus were regarded as the definitive ones of the day.¹⁶² It was, moreover, customary in Grotius’ day to rely heavily upon ancient authors,¹⁶³ but to downplay one’s reliance upon their more contemporary interpreters in the interest of cultivating the impression of having “drunk at [the] very spring [of wisdom], [rather than] from some intermediary vessel.”¹⁶⁴ And Lipsius’ *Politicorum*, published in 1589, was a smashing success around Europe just as the young prodigy from Delft began his university studies.

More obviously, Grotius and Lipsius were personally and professionally quite well-acquainted. Justus Lipsius, in fact, was a family friend of the de Groots, having become acquainted with Hugo’s father Johan some years before. According to some accounts, Johan de Groot actually

¹⁵⁷ See *supra* note 36.

¹⁵⁸ Scaliger, for example, highly praised his new pupil Hugo Grotius in a letter to his colleague, the famous scholar and Neo-Stoic Isaac Casaubon. KNIGHT, *supra* note 138, at 26.

¹⁵⁹ See KNIGHT, *supra* note 138, at 10; see generally MORFORD, *supra* note 32, at 92.

¹⁶⁰ See GROTIUS, JPB, *supra* note 147, at 912 (from the index).

¹⁶¹ *Id.* at 926 (indicating Grotius’ citation of Tacitus’ AGRICOLA four times, the ANNALES 60 times, the GERMANIA 19 times, the HISTORIAE 41 times, and the DIALOGUS DE ORATORIBUS once).

¹⁶² See *supra* text accompanying note 39-43. Clearly consciously echoing Tacitus’ own ANNALES ET HISTORIAE, Grotius himself also wrote a work of history entitled the ANNALES ET HISTORIAE, about his own homeland (the full title was ANNALES ET HISTORIAE DE REBUS BELGICIS), in Book I of which he did indeed cite Justus Lipsius. See KNIGHT, *supra* note 138, at 74-75.

¹⁶³ See, e.g., Kingsbury & Roberts, *supra* note 8, at 63 (quoting Sir Edward Coke as exemplary: “Let us now peruse our ancient authors, for out of the old fields must come the new come.” 4 INSTITUTES OF THE LAWS OF ENGLAND 109 (1797)).

¹⁶⁴ Haggemacher II, *supra* note 24, at 148 (“Humanist vanity and ‘elegance’ induced scholars to hide their real, direct sources, in order to show only the pure wisdom of antiquity . . .”).

studied under Lipsius,¹⁶⁵ but even if this were not the case, as W.S.M. Knight recounted in his biography of Grotius, “during [Johan’s] earlier years he and Lipsius did meet, and established an acquaintance which ripened into firm friendship.”¹⁶⁶ When Hugo Grotius arrived at Leiden to begin his studies under Scaliger, Lipsius himself — though having been forced to leave that university¹⁶⁷ — was “never out of touch. . .with his old friends of Leyden and Delft”¹⁶⁸ and for years afterwards numbered Grotius among those eminent scholars with whom he corresponded.¹⁶⁹ All in all, inhabiting an environment so suffused with Renaissance humanism and Neo-Stoic philosophizing,¹⁷⁰ it would have been perhaps more surprising if Grotius had *not* been influenced by Lipsius and the models of Stoic virtue he articulated.

¹⁶⁵ See KNIGHT, *supra* note 138, at 13-14. Knight, however, finds this implausible, since Johan apparently attended university at Douay rather than at Louvain (where Lipsius was then teaching). *Id.*

¹⁶⁶ *Id.* at 14.

¹⁶⁷ See *supra* text accompanying notes 31-32.

¹⁶⁸ KNIGHT, *supra* note 138, at 24. In 1600, Johan de Groot assisted with the publication of Hugo’s edition of the PHENOMENA of Aratus, a Greek physician of the 3d century B.C. and a contemporary of the Greek pastoral poet Theocritus. This work, which, with one other book, was Grotius’ only attempt at philology and criticism during this period, was greatly praised by Lipsius. See *id.* at 46. Altogether, Knight writes, “[t]he death of Lipsius . . . must have been at once a shock and sincerely grievous to the Leyden group of scholars, and to Grotius in particular.” *Id.* at 72.

¹⁶⁹ See OESTREICH, *supra* note 6, at 60. In fact, Lipsius’ correspondence was prodigious, encompassing, and, according to Gerhard Oestreich, “almost the whole learned world of Europe” — some 700 persons in all. *Id.*

¹⁷⁰ Grotius had, it might be added, another more indirect acquaintance with Lipsian Neo-Stoicism by virtue of his acquaintance with and admiration for the Dutch painter Peter Paul Reubens. Cf. KNIGHT, *supra* note 138, at 19 (noting that Grotius “was something of an art critic in his earlier days, and a warm admirer of Reubens”). Reubens was strongly influenced by Lipsius’ Neo-Stoicism, which his brother Philip had learned as the pupil of Lipsius himself. MORFORD, *supra* note 32, at 3. In fact Reubens admired Lipsius and painted the scholar’s portrait on several occasions, OESTREICH, *supra* note 6, at 95, and though he drifted somewhat away from Neo-Stoic philosophy in his later years, Reubens commonly inserted Neo-Stoic themes into his work, see generally MORFORD, *supra* note 32, at 203-05, 211-23. In an age when humanist philosophy was spread “not as an organized movement, but as a method of thinking, a style, conveyed by one individual to the other by means of books, correspondence, teaching at the universities and by works of art,” van Holk, *supra* note 64, at 23, 23. This may have been yet another window through which Lipsian Neo-Stoicism influenced Grotius.

B. Grotian Natural Law and Individual Obligation

In the natural law theory articulated by Hugo Grotius in *The Law of War and Peace*,¹⁷¹ we find powerful echoes of Lipsius' Neo-Stoic political philosophy. Grotius went much further than his illustrious predecessor in producing a theoretically rigorous and systematic account of this natural law — and, of course, he also explicitly extended its ambit so as more clearly to include relations between sovereigns in the international arena (particularly, though not at all exclusively, in matters of war) — but much of its basic skeleton can be seen in Lipsius' own *Politicorum* that had so transfixed Europe a generation before.

1. The Doctrine of Natural Law

Grotius' doctrine of law rested upon a four-fold concept of legal obligation. The most basic law of nature that governs the order of the world, he wrote, is that of self-preservation: nature itself strives to sustain itself, and so also does every living thing in it. This natural law is common to all of Creation, and in it we find the core principle justifying recourse to war: man has the right to defend his own life.¹⁷² Grotius followed the Stoics in terming such basic rules "first principles of nature — 'first according to nature,' as the Greek phrased it."¹⁷³

More important than this core principle, however, was the second category of rule, what Grotius (citing Cicero) called

[A] notion of the conformity of things with reason, which is superior to the body . . . [T]his conformity, in which moral goodness becomes the paramount object, ought to be accounted of higher import than the things to which alone instinct first directed itself, because the first principles of nature commend us to right reason, and right reason ought to be more dear to us than those things through whose instrumentality we have been brought to it.¹⁷⁴

¹⁷¹ Reference will also be made hereinafter to DE JURE PRAEDAE where appropriate to help explain Grotius' legal philosophy.

¹⁷² GROTIUS, JBP, *supra* note 147, bk. I, ch. II, §1, ¶1, at 51 ("[E]very animal from the moment of his birth has regard for itself and is impelled to preserve itself"); see generally DE PAUW, *supra* note 154, at 53-54/152-53. In citations to THE LAW OF WAR AND PEACE hereinafter, I shall give book, chapter, section and page numbers as Grotius included them, with the addition of an actual page number in the modern style, as indicated above.

¹⁷³ GROTIUS, JBP, *supra* note 147, bk. I, ch. II, §1, ¶1, at 51.

¹⁷⁴ *Id.* ¶2, at 51.

This second category represents Grotius' adoption of the Stoic law of nature, which is the set of requirements imposed upon man by his possession of reason and which derive from his essentially social nature.¹⁷⁵

[A]mong the traits characteristic of man is an impelling desire for society, that is, for the social life — not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his own kind; this social trend the Stoics called “sociableness”

. . .

This maintenance of the social order . . . which is consonant with human intelligence, is the source of law properly so called.¹⁷⁶

As Charles Edwards recounts, this approach “revealed . . . [Grotius'] dependence upon the Stoics and upon Cicero who embraced basic Stoic concepts In keeping with the Stoics and Cicero, he held to the belief that within every man was a spark of the divine which enabled him to discover universally binding rules of right conduct.”¹⁷⁷ For Grotius, the “law of nature,” in other words, was a Stoic “dictate of right reason,”¹⁷⁸ apparent *a priori* to every rational and mature human through the exercise of that reason.¹⁷⁹

The third category of law in the Grotian scheme was that of human volitional or “positive” law. This category of volitional law included the

¹⁷⁵ Compare *supra* text accompanying notes 58-65.

¹⁷⁶ GROTIUS, JBP, *supra* note 147, from the *Prolegomena* (Prologue), §§ 6, 8, at 11-12.

¹⁷⁷ EDWARDS, *supra* note 10, at 140.

¹⁷⁸ GROTIUS, JBP, *supra* note 147, bk. I, ch. I, § X, ¶1, at 38.

¹⁷⁹ See generally PETER PAVEL REMEC, THE POSITION OF THE INDIVIDUAL IN INTERNATIONAL LAW ACCORDING TO GROTIUS AND VATTTEL (1960) (excerpted in GROTIUS READER, *supra* note 1, at 239, 241). The fact that he believed natural law rules to be visible *a priori* through the exercise of reason further encouraged Grotius' humanist reliance upon vast surveys of the classical literature.

[W]hen many at different times, and in different places, affirm the same thing as certain, that ought to be referred to as a universal cause; and this cause, in the lines of inquiry we are following must be either a correct conclusion drawn from the principles of nature, or common consent. The former points to the law of nature; the latter, to the law of nations.

GROTIUS, JBP, *supra* note 147, from the *Prolegomena*, § 40, at 23-24. In other words, “the wide diversity in the origin of [cited] opinions and in the epochs and places where they had been stated was for him conclusive evidence of the natural law character of such views.” de Aréchaga, *supra* note 2, at 16.

entire scope of man-made jurisprudence — both domestic and international — grounded in express or tacit agreement.¹⁸⁰ Since it was, Grotius said, “a rule of the law of nature to abide by pacts (for it was necessary that among men there be some method of obligating themselves to one another, and no other natural method can be imagined), out of this source the bodies of municipal law have arisen.”¹⁸¹ While natural law was binding upon all humans precisely because of their status as humans, volitional human or positive law could (and did) vary enormously from one community to the next.¹⁸² As a result, Grotius limited his treatise to a consideration of natural law.

[T]he principles of the law of nature, since they are always the same, can easily be brought into a systematic form; but the elements of positive law, since they often undergo change and are different in different places, are outside the domain of systematic treatment, just as other notions of particular things are.¹⁸³

Indeed, “outside the sphere of the law of nature . . . there is hardly any law common to all nations.”¹⁸⁴ Of human laws and institutions, therefore, Grotius followed Lipsius in having little to say.

The final category of law in the Grotian scheme was that of divine volitional law, which consisted of rules not obvious through the exercise of reason, but which were valid simply by virtue of a decision of God’s own will. While laws of nature concerned things “which in themselves and by their own nature are obligatory or not permissible,” Grotius wrote, divine volitional law simply “by forbidding things makes them unlawful, and by commanding things it makes them obligatory.”¹⁸⁵ This category

¹⁸⁰ Cf. GROTIUS, JBP, *supra* note 147, bk. I, ch. I, § XIII, at 44 (“[A]nother kind of law is volitional law, which has its origin in the will.”); *see generally* de Aréchaga, *supra* note 2, a 14.

¹⁸¹ *Id.* from the *Prolegomena*, § 15, at 14.

¹⁸² This distinction between natural and human volitional law was, for example, why Grotius could insist that while it was unlawful for Christians to war against non-Christians solely on account of the latter groups’ rejection of the Gospel, *see id.* bk. II, ch. XX, § XLVIII, non-Christians still did not possess the same legal rights as Christians. Natural law — binding upon all humans as humans — dictated a certain underlying legal equality between Christian and infidel, but human volitional law (or perhaps also divine volitional law, *see infra* text accompanying note 185) might provide for special rights and privileges among the inhabitants of Christian nations. *See Bull, supra* note 7, at 81-82.

¹⁸³ GROTIUS, JBP, *supra* note 147, from the *Prolegomena*, § 30, at 21.

¹⁸⁴ *Id.* bk. I, ch. I, § XIV, ¶1, at 44. “Not infrequently, in fact, in one part of the world there is a law of nations which is not such elsewhere . . .” *Id.*

¹⁸⁵ *Id.* bk. I, ch. I, § X, ¶2, at 39.

suggests the uneasy coexistence of Christian faith and Stoic philosophy among Renaissance Neo-Stoics such as Grotius and Lipsius. Though Grotius was by most accounts quite devout and wrote extensively on religion — achieving no small fame in his day as a Christian theologian and biblical exegete¹⁸⁶ — it remained awkward for him to fit Gospel commandments into his scheme of Stoic-inspired naturalism.

Part of this accommodation was achieved by conceptualizing Christian virtues along clearly Stoic lines,¹⁸⁷ but the tension went deeper than that. For how could natural law, binding of its own character and solely of itself, coexist with a scheme of Divine authority in which a rule could be binding by simple commandment, even that of God Himself? Grotius clearly recognized this tension, and sometimes seemed to resolve it in favor of natural law (rather than God):

The law of nature, again, is unchangeable — even in the sense that it cannot be changed by God. Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend; for things of which this is said are spoken only, having no sense corresponding with reality and being mutually contradictory. Just as even God, then, cannot cause that two times two should not make four, so He cannot cause that which is intrinsically evil be not

¹⁸⁶ KNIGHT, *supra* note 138, at 181; *see generally id.* at 245-66. In his early exile in Paris, for example, Grotius published his Christian apologetic *DE VERITATE CHRISTIANI RELIGIONIS* (1622), written as a handbook of religion in verse, with the intent of facilitating the maintenance of Christian faith among believers scattered widely throughout the world, especially seafarers and those in heathen lands. *Id.* at 167-70.

Grotius, however, propounded an unusual religious theory which rejected both the Socinian theory of “Moral Influence” (whereby the Passion of Jesus was interpreted as a declaration of God’s love for mankind and “a mere incentive to lead men to seek salvation”) and St. Anselm’s vision of God as a Creditor (who exercised His forgiveness by allowing Christ to “pay” for our sins in our place) in favor of the view of God as a Ruler possessing the attributes of sovereign authority and exercising His royal prerogative in order to make Christ pay the penalty for human sin. *See generally id.* at 268-70. This “Governmental Theory” was not well-received, and was little followed even among Grotius’ fellow Remonstrant Calvinists — though some authors attribute to it an influence upon the theology of English Arminians and through them upon English and American Unitarians, upon John Wesley and Jonathan Edwards, and even upon American Congregational and Presbyterian doctrine. *See, e.g., id.* at 270; DUMBAULD, *supra* note 37, at 14-15.

¹⁸⁷ In his 1622 *DE VERITATE*, *see supra* note 186, Grotius lauded the Christian virtues of prudence, courage, justice, and moderation as being symptoms of our inclination toward the good, as virtues earned by their exercise. In this, Grotius was “obviously referring to the four cardinal virtues, as described by the stoic and other classical philosophers.” van Holk, *supra* note 64, at 36 n.30.

evil.¹⁸⁸

In his prologue to *The Law of War and Peace*, Grotius suggested further that “[w]hat we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of man are of no Concern to Him.”¹⁸⁹

Yet, Grotius shied away from positing a God who was Himself bound by natural law. Rather, Grotius’ response to this tension between Stoa and Sacristy seems to have been one similar to that of his contemporary, the Spanish scholar Francisco Suarez (1548-1617), who suggested that to proclaim that something would be true if God did not exist “was only a hypothetical way of saying that what God himself had willed he would not change.”¹⁹⁰ Thus Grotius could claim — though perhaps not entirely persuasively — to have reconciled Christian theology with Stoic philosophy: natural law was binding upon God and Man alike, in a sense, *through* the will of God,

[B]ecause of His having willed that such traits [of reason] In this sense, too, Chrysippus and the Stoics used to say that the origin of law should be sought in no other source than Jupiter himself.¹⁹¹

The typical methodology of *The Law of War and Peace* would consist of

¹⁸⁸ GROTIUS, JBP, *supra* note 147, bk. I, ch. I, § X, ¶5, at 40.

¹⁸⁹ *Id.* from the PROLEGOMENA, § 11, at 13. Grotius quickly noted, however, that he had no intention of making such a wicked claim: there was, he said, indeed a God. *Id.* Though not at all doctrinaire in his Christianity, Grotius appears to have been genuinely faithful after his own fashion. It is therefore very unlikely — though perhaps conceivable — that he was a secularist led to advocate religious belief (in others) solely out of an awareness of its beneficial effects upon public order and tranquility. Cf. ROBERT L. WILKIN, *THE CHRISTIANS AS THE ROMANS SAW THEM* 6 (1984) (quoting Cicero that “[the] most distinguished citizens safeguard religion by the good administration of the state, and safeguard the wise conduct of religion”). Such a view would probably not reflect Grotius’ true position, though it is certainly true that he felt religious toleration to reach its limit where one’s disagreement with the state religion threatened public order. See *infra* text accompanying note 221. Justus Lipsius, by contrast, appears likely to have permitted a more thorough-going freedom of the sovereign to enforce religious belief, see *supra* text accompanying notes 73-74, a position which — given Lipsius’ own doctrinal flexibility, see *supra* text accompanying notes 31-33 — clearly reflects a preference for public order over theological propriety.

¹⁹⁰ EDWARDS, *supra* note 10, at 59; see generally *id.* at 48-49, 61-65 (discussing Suarez’ middle position between theological voluntarists who believed natural law to be no more than divine positive law, and rationalists stressing the permanence of natural law).

¹⁹¹ GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 12, at 13.

a general proposition of natural law, followed by a historical exegesis demonstrating the agreement of antiquity with the proposition, and capped by an examination of Christian theology demonstrating that Holy Writ did not otherwise prescribe.¹⁹² As this methodology suggests, however, Grotius' primary concern was the elucidation of the framework of natural law. Divine volitional law was, in this context, significant to him only as something that needed to be reconciled with the prescriptions of Stoical right reason (which, in his account, it invariably was).

2. Natural Law and the Individual

As with Lipsius' *Politicorum*, so the work of Hugo Grotius — though typically more clear and more systematic — also takes the individual human being as its primary subject and is relatively unconcerned with political or international institutions. From the very first page of the first book of *The Law of War and Peace*, Grotius defines the scope of his treatise as covering all “[c]ontroversies among those who are not held together by a common bond of municipal law.”¹⁹³ Natural law, in other words, applies to all humans as humans and is the sole regulator of their relations in the absence of volitional lawmaking.

Such controversies may arise among those who have not yet united to form a nation, and those who belong to different nations, both private persons and kings; also those who have the same body of rights that kings have, whether members of a ruling aristocracy, or free peoples . . . [T]here is no controversy which may not give rise to war. In undertaking to treat the law of war . . . it will be in order to treat such controversies, of any and every kind, as are likely to arise.¹⁹⁴

The centrality of natural law to relations between states derived from the fact that “[p]rinces are persons, and states or peoples are collections of persons; a basic reason why relations among princes and states are subject to law is that they are subject to the rules of natural law, which bind all persons in the great society of all mankind.”¹⁹⁵ As Peter Haggenmacher

¹⁹² Compare *id.* bk. I, ch. II, § I, at 51-54 (advancing general proposition that “war is not in conflict with the law of nature”) with *id.* § II, at 54-57 (arguing that “[t]hat war is not in conflict with the law of nature is proved from history”), with *id.* § V, at 57-61 (arguing that “war was not in conflict with the divine volitional law before the time of the Gospel”), and with *id.* § VII, at 63-70 (offering “[a]rguments drawn from Holy Writ on behalf of the . . . view, that war is not in conflict with the law of the Gospel”).

¹⁹³ GROTIUS, JBP, *supra* note 147, bk. I, ch. I, § 1, at 33.

¹⁹⁴ *Id.*

¹⁹⁵ Bull, *supra* note 7, at 78; see also *id.* at 83 (“International society for Grotius

has observed, therefore, though he was obviously well-aware of “the importance of independent nations and their sovereigns in international life, . . . [Grotius’] ultimate frame of reference remain[ed] the Ciceronian *humani generis societas* inherited from Stoicism, a society of mankind rather than states.”¹⁹⁶

As the above passage from *The Law of War and Peace* suggests, for example, Grotius believed the category of “war” to include conflicts between organized collectivities of humans and between individual humans alike. War, he wrote, might be “public war,” “private war,” or “mixed war.”

A public war is that which is waged by him who has lawful authority to wage it; a private war, that which is waged by one who has not the lawful authority; and a mixed war is that which is on one side public, on the other private.¹⁹⁷

Since, as we have seen, the use of force to ward off injury to one’s person was a fundamental law of nature,¹⁹⁸ it was clear that “private wars in some cases may be waged lawfully, so far as the law of nature is concerned.”¹⁹⁹ Grotius’ examination of the legitimate causes of war also illustrate his conception of natural law as a body rules applicable to human relations across the continuum of association: justifiable reasons for war between states are discussed only by analogy to such things as “self-defense” against “an attack by violence . . . on one’s person,”²⁰⁰

is not just the society of states, it is the great society of all mankind”).

¹⁹⁶ Haggemacher II, *supra* note 24, at 172.

¹⁹⁷ GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § 1, ¶1, at 91. By “lawful,” Grotius here means only that the authority to wage war (*e.g.*, on behalf of the state) has been properly given by human volitional law. Indeed, Grotius entitled one chapter *On War that is Lawful or Public According to the Law of Nations. Id.* bk. III, ch. III, at 630-41. The key to “lawfulness” in this context was whether or not the power initiating the war was a properly constituted state actor — a question quite independent of whether or not warring in those circumstances was permissible under the law of nature.

¹⁹⁸ See *supra* text accompanying note 172-73.

¹⁹⁹ GROTIUS, JBP, *supra* note 147, at ¶ 2, at 91. This is the principle that underlay Grotius’ defense of Dutch interests in 1604 against the Portuguese, see *supra* text accompanying note 154, for the Dutch East India Company had, in effect, “been created with the express purpose of waging war against the Spanish/Portuguese Empire in Asia, to deny the important resources springing from Asian trade to Spain as well as to tap them for the Dutch.” Roelofsen I, *supra* note 1, at 12. The Dutch claims to wage this private war centered around the injuries suffered from Portuguese warships when trying to exercise their natural right to liberty of the seas.

²⁰⁰ GROTIUS, JBP, *supra* note 147, bk. II, ch. I, § III, at 172.

or to a pre-emptive striking-out to prevent "injury to a part of the body."²⁰¹

Similarly, contractual obligations — which when they occur between sovereigns are called international treaties — must also be kept between persons irrespective of their sovereign or private status. Good faith dealings, Grotius believed, should even be kept between enemies, since "[t]hose who are enemies do not in fact cease to be men . . . [and] all men who have attained to the use of reason are capable of possessing a right which has its origin in a promise."²⁰² The right to enter treaties, after all, was "common to all men,"²⁰³ and agreements should be kept even with groups of bandits or pirates, "because their authors are human beings [and] have a common share in the law of nature."²⁰⁴ All in all, we see in Grotius a systematization of and elaboration upon Lipsius' vision²⁰⁵ of naturalist individual obligation. For Grotius, long lauded as the "father of international law,"²⁰⁶ the law governing relations between sovereign states was actually "international" only incidentally, by virtue of its binding force upon the human beings who happened to be rulers.

C. Grotius and Authority

Like Lipsius before him, Grotius' philosophy incorporates notably authoritarian elements in the form of sharp limitations upon the right of a people to resist their sovereign. Nevertheless, it revolves not around this theme, but around a doctrine of restraint upon the exercise of authority, through the binding character of natural law upon the rulers of the sovereign state.

1. Stoicism of the Subjects

Grotius' view of the state was quite a hierarchical one, and he took pains to refute the misconception that "sovereignty resides in people, so that it is permissible for people to restrain and punish kings whenever they make a bad use of their power."²⁰⁷ Though it might well be possible to organize a government of the people in which kings played no

²⁰¹ *Id.* § IV, at 175.

²⁰² *Id.* bk. III, ch. XIX, § 1, ¶2, at 792.

²⁰³ *Id.* bk. II, ch. XI, § VIII, at 397.

²⁰⁴ *Id.* bk. III, ch. XIX, § II, ¶2, at 794; see generally Hidemi Suganami, *Grotius and International Equality*, in INTERNATIONAL RELATIONS, *supra* note 3, at 234-36; Hagenmacher II, *supra* note 24, at 165-66; DUMBAULD, *supra* note 37, at 61.

²⁰⁵ See *supra* text accompanying notes 85-99.

²⁰⁶ See, e.g., *supra* text accompanying note 22.

²⁰⁷ GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § VIII, ¶1, at 103.

role,²⁰³ there existed all sorts of legitimate ways, he believed, for a government to be structured which rely not at all upon notions of “popular sovereignty.”²⁰⁹ Government, therefore, certainly need not necessarily be “established for the benefit of those who are governed, [rather than for that] of those who govern.”²¹⁰ Like Lipsius,²¹¹ he conceived a well-ordered state — “the most perfect society” — to be analogous to a household headed by a father: an association in which “many fathers of families unite into a single people and state,” in which the “corporate body” possesses “the greatest right . . . over its members.”²¹² His image of society was

[P]redominantly a hierarchical, as opposed to an egalitarian, one. The types of social relationship which he took to be primordial were father and son, husband and wife, master and slave, king and subjects, patron and clients, older and younger brothers, and male and female children.²¹³

Where there were kings, they would inherently be in a position of superior authority over their subjects, for “clearly kings who are subject to the people are not properly called kings,”²¹⁴ and “guardianship was instituted for the sake of the ward, and yet guardianship includes both a right and power over the ward.”²¹⁵

As Lipsius had urged Stoic endurance upon a people subjected to injustice by their sovereign,²¹⁶ so Grotius invoked both Tacitus and the Stoic philosopher-Emperor Marcus Aurelius in arguing that it was the

²⁰³ See, e.g., *id.* bk. I, ch. III, § VIII, ¶¶ 9-11, at 107-08 (giving examples of forms of government alternative to kingship). Even here, however, Grotius noted the tendency of some peoples to adopt “a kind of temporary kingship which is not subject to the people.” *Id.* ¶12, at 108 (footnote omitted), such as the occasional appointment of a dictator in Republican Rome.

²⁰⁹ See, e.g., *id.* ¶¶2-5, at 104-06; *id.* ¶7, at 106; *id.* ¶11, at 108.

²¹⁰ *Id.* ¶14, at 109.

²¹¹ See *supra* text accompanying note 68.

²¹² GROTIUS, JBP, *supra* note 147, bk. II, ch. V, § 23, at 253.

²¹³ Suganami, *supra* note 12, at 229.

²¹⁴ GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § 8, ¶11, at 108.

²¹⁵ *Id.* § 14, at 110; see generally Vincent, *supra* note 9, at 245. Sovereignty was the quality of power such that it could not be overridden by another human will. GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § VIII, ¶1, at 102. As with a people under the control of its own sovereign, Grotius believed that peoples under the control of another people did not possess sovereignty: this position of subjugation made them not a state, but rather “inferior members of a great state, just as slaves are members of a [Roman] household.” *Id.* ¶2, at 102.

²¹⁶ See *supra* text accompanying notes 75-81.

duty of the people to suffer tyranny with dignity:

'Endure,' Tacitus very well says, 'Endure the luxury or avarice of those who govern, just as you put up with unfruitfulness or too heavy rains, and other scourges of nature. There will be faults so long as there shall be men; but they are not continuous, and are offset from time to time by better things.' Marcus Aurelius said that private persons are judged by the magistrates, magistrates by the emperor, and the emperor by God.²¹⁷

Such emperors are obliged by the natural law to live and govern virtuously, but should they fail to do so Grotius clearly denied the people the right actively to resist.

Some imagine that . . . the king who governs badly should be made subject to the people. If they who hold this opinion should say that anything which is manifestly wrong should not be done because the king commanded it, they would be saying what is true and is acknowledged among all good men; but such a refusal implies no curtailing of power or any right to exercise authority.²¹⁸

No person, as a rule, could legitimately war against his sovereign, since although "[b]y nature all men have the right of resisting in order to ward off injury . . . as civil society was instituted in order to maintain public tranquility . . . [t]he state, therefore, in the interest of public peace and order can limit the right of resistance."²¹⁹

This is not to say, however, that Grotius counseled absolute obedience. Also following Lipsius,²²⁰ Grotius felt inward beliefs unregulable by the sovereign — making religious toleration possible, at least so long as non-belief in the state religion²²¹ did not threaten the public order in

²¹⁷ GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § VIII, ¶15, at 110.

²¹⁸ *Id.* § IX, ¶1, at 111.

²¹⁹ *Id.* bk. I, ch. IV, § II, ¶1, at 139. Grotius also made it clear that simple defection was no option either:

[T]hat the nationals of a state cannot depart in large bodies is quite clear from the necessity underlying its purpose, which in moral matters takes the place of law. for if such migrations were permissible the civil society could not exist.

Id. bk. II, ch. V, § XXIV, ¶2 at 253-54 (footnote omitted).

²²⁰ See *supra* text accompanying note 71.

²²¹ Grotius, joined by notable contemporary luminaries such as Isaac Casaubon, appears to have harbored a deep admiration for the English approach to religion, in which the ruling secular sovereign doubled as the head of the state church. See generally Meyjes, *supra* note 142, at 59-60. Grotius' arguments in a 1622 book defending the Dutch constitution, for example, closely paralleled the Anglican approach

some way.

[P]urely internal acts, even if they should come to the attention of others by some chance, as by subsequent confession, cannot be punished by men, because . . . it is not in accord with human nature that a right or an obligation should arise among men from purely internal acts.²²²

Moreover, though he generally admitted no right to rebel against one's sovereign, he did admit "a tacit exception in case of extreme necessity" which would allow resistance — apparently based upon the fundamental natural right of self-preservation — "in case of extreme and imminent peril."²²³ To the extent necessary to forestall such a thing, one might also resist a king who sought to place his own kingdom in subjection,²²⁴ or war against a king who "sets out with a truly hostile intent to destroy a whole people."²²⁵ Such kings had apparently forfeited their privileged status as guardians of the people by exceeding even the enormous authority accorded them by the Grotian scheme.²²⁶ Furthermore, though subjects had a general duty to fight on their sovereign's behalf in the state's wars, Grotius permitted conscientious objection by persons asked to go to war "if it is clear to them that the cause of the war is unjust."²²⁷ And while "large bodies" of subjects could not be permitted to leave the

to religion embodied in the Act of Supremacy adopted under King Henry VIII in 1534. DUMBAULD, *supra* note 37, at 118 n.104. Indeed, Grotius appears to have corresponded with Casaubon — who was teaching at Oxford at the time — and with King James I himself about the possibility of organizing a General Synod of all the various Reformed Churches for the purpose of consolidating their congregations according to the English model. See generally Clark & Eysinga, *supra* note 154, at 79/139; KNIGHT, *supra* note 138, at 127-32.

²²² GROTIUS, JBP, *supra* note 147, bk. II, ch. XX, § XVIII, at 487.

²²³ *Id.* bk. I, ch. IV, § VII, ¶1, at 148.

²²⁴ *Id.* § X, at 157.

²²⁵ *Id.* § XI, at 158.

²²⁶ Grotius emphasized, however, that in no such circumstances could war against the sovereign extend to the point of actually killing the king. *Id.* § VII, § 6, at 151. Grotius would not tolerate regicide.

²²⁷ *Id.* bk. II, ch. XXVI, § III, ¶1, at 587. It is worth noting, however, that since Grotius conceived of natural law as being evident *a priori* to all rational humans, his permitting conscientious objection does not seem to have amounted to the modern value-relativist account of such objection. Subjects, in a sense, could refuse to serve not simply when they *believed* the cause to be unjust — in the sense that modern objectors need only prove their sincerity — but when it genuinely *was* unjust in the *a priori* naturalist sense. It is not clear, therefore, exactly what this Grotian right might have meant in practice.

state,²²⁸ Grotius also admitted an *individual* right to withdraw, with certain qualifications.²²⁹

Fundamentally, however, Grotius regarded subjects' natural rights²³⁰ in ways similar to Lipsius. Though he admitted, as we have seen, a sharply qualified right of resistance, the bottom line was the same: "[As] Favonius used to say, 'Civil war is a worse evil than unlawful government.' 'To me,' Cicero declared, 'peace on any terms between citizens seems more advantageous than civil war.'"²³¹ As had been the case for his Neo-Stoic predecessor, for Grotius "[t]he preservation of the social order must be maintained above all other considerations."²³² For this reason, some scholars have placed Grotius, too, among the ranks of

²²⁸ See *supra* note 219.

²²⁹ GROTIUS, JBP, *supra* note 147, bk. II, ch. V, § XXIV, ¶2, at 253-54 (footnote omitted).

²³⁰ His scheme admitted, of course, that human volitional law might give subjects greater rights than those accorded them under natural law, but his treatise declined to deal with the subject of such man-made rules. Cf. *supra* text accompanying note 183.

Grotius did not believe the power of sovereigns over their subjects to be inexorably absolute. It was indeed the nature of kingship to be wholly sovereign, see *supra* text accompanying note 214, but the powers of rulers might lawfully be limited by human volitional law as long as this limit had been established at the point of the express vesting of sovereignty in the ruler. It was thus possible, for example, for "several states to be bound together by a confederation . . . while nevertheless the different members do not cease in each case to retain the status of a perfect state." GROTIUS, JBP, *supra* note 147, bk. I, ch. III, § VII, ¶2, at 103. This was the legal basis, indeed, upon which Grotius vehemently defended Dutch struggles for independence. See Kingsbury & Roberts, *supra* note 8, at 62. In his *DE ANTIQVITATE REPVBLICAE BATAVICAE* (1610), for example, Grotius claimed to have proven a direct constitutional link between contemporary Holland and the ancient Batavian princes of Roman times. See generally S. Krislov, *Grotius as a Private Lawyer and Legal Historian*, in *GROTIAN HERITAGE*, *supra* note 1, at 290, 290; Wilson, *supra* note 154, at 9; Roelofsen II, *supra* note 142, at 101-03; van Holk, *supra* note 64, at 27.

Twelve years later, Grotius also wrote his *VERANTWOORDINGH VAN DE VVETTELICKE REGIERINGH VAN HOLLANDT ENDE WEST-VRIESLAND* (1622), arguing that the sovereignty of the United Netherlands had vested in its original provinces rather than in the central government of the States-General. DUMBAULD, *supra* note 37, at 96. By arguing that the Dutch provinces had never accorded sovereignty to the Spanish Crown, Grotius tried to justify his homeland's revolt against Spanish domination. Similarly, by invoking his theory of limitable sovereignty within the Netherlands itself, he was able to defend the federalist ambitions of the defeated Remonstrant party of van Oldenbarnevelt.

²³¹ GROTIUS, JBP, *supra* note 147, bk. I, ch. IV, § XIX, ¶1, at 161 (also quoting other sources).

²³² EDWARDS, *supra* note 10, at 133.

late-Renaissance apologists for absolutism. As Hedley Bull put it,

[Grotius'] view of the relationship between man and the state, was an "absolutist" or "Hobbesian" [one]. The subjects of the state, he says, have no right of rebellion by natural law. Sovereignty, he says, does not reside in the people. The desire of a subject people for freedom, he tells us, is not a just cause for war. Sovereign princes, according to Grotius, in some circumstances at least, may enjoy a right of patrimony, that is, of disposing of subject peoples irrespective of their will.²³³

No less a thinker than Jean-Jacques Rousseau took time in his *Social Contract* to accuse Grotius of favoring tyrants,²³⁴ even going so far as to impugn Grotius' motives in this respect by suggesting that the Dutch scholar intended to obtain royal patronage by deliberately slighting the rights of the individual.²³⁵

What I have argued with respect to Lipsius, however, I believe also to be true of Grotius: the "apology for power" contained in his political philosophy cannot be viewed in isolation from the rest of his scheme. Properly understood, the Grotian system of natural law — while in practice doubtless favoring rulers over the ruled,²³⁶ who have no terrestrial appeal against all but the most appalling injustice — was not one concerned, at its core, with constraining subjects as much as it was with restraining their sovereigns.

2. Law and the Man Who Happens to be Prince

²³³ Bull, *supra* note 7, at 85 (footnotes omitted).

²³⁴ See M.C. Pinto, *The New Law of the Sea and the Grotian Heritage*, in GROTIAN HERITAGE, *supra* note 1, at 54, 56.

²³⁵ See Falk, *supra* note 20, at xvii. As we have seen *supra* text accompanying notes 2-27, Grotius' reputation has perhaps survived better in this respect than that of Lipsius — who by virtue of his less immediate association with "international law" has been denied much of the hagiography enjoyed by Hugo Grotius. Grotius is often seen as the father-figure of modern international legality, while Lipsius has tended to be understood, politically at least, as little more than the troubadour of Baroque autocracy. See *supra* text accompanying notes 79-81. This essay, however, suggests that the two thinkers ought more properly to be understood as having undertaken very much the same project.

²³⁶ See, e.g., B.V.A. Röling, *Are Grotius' Ideas Obsolete in an Expanded World?*, in INTERNATIONAL RELATIONS, *supra* note 3, at 297 ("[K]ings and governments could accept Grotius' teachings with eagerness. For they alone were called upon to interpret these rules").

Like Lipsius' *Politicorum*, the fundamental task of Grotius' *The Law of War and Peace* was to preach virtue and self-restraint to princes. It was, in essence, a message of Stoic forbearance and self-control addressed not just to subjects, but to their sovereigns²³⁷ — as suggested by his dedication of the work to King Louis XIII of France, who he praises for exhibiting the qualities of religious tolerance, compassion, mercy, kindness, and devotion to duty in both public and private life.²³⁸ In this depiction, the French king became a model Neo-Stoic monarch, exercising an awesome power over his subjects, but wielding it with restraint and with the interests of his people at heart, so as to be “now everywhere known by the name of Just no less than that of Louis.”²³⁹

In this respect, Grotius emphatically distinguished himself from the writings of Machiavelli, who by the late sixteenth century was widely reviled for having offered evil advice to princes.²⁴⁰ Grotius did not explicitly refute Machiavelli, but following the example of Cicero himself,²⁴¹ he set up as his foil the ancient character of Carneades, who felt that “there is no justice, or, if there be, it is supreme folly, since one does violence to his own interests if he consults the advantage of others.”²⁴² Such phrasing — closely paralleling a famous passage from Machiavelli's *The Prince*²⁴³ — could have left few of Grotius' readers wondering about whose views Carneades really represented.

On the lips of men quite generally is the saying of Euphemus, which

²³⁷ See, e.g., GROTIUS, JBP, *supra* note 147, bk. III, ch. XXV, §§ IV-V (advising constant consideration of importance of good faith and peace by both conquered peoples and by their conquerors).

²³⁸ *Id.* from the dedication, at 3-4 (“In order to complete the sum of virtues comprised in justice, to your acts of a public nature we must add the blamelessness and purity of your private life . . .”).

²³⁹ *Id.* at 3.

²⁴⁰ See, e.g., SKINNER, FOUNDATIONS I, *supra* note 100, at 250-51 (describing sixteenth century scholarly reaction to Machiavelli and the ill-repute into which he fell); SCHELLHASE, *supra* note 31, at 126-27. As Schellhase points out, however, whatever Machiavelli's endorsement of expedient and amoral politics, he should not be seen as an apologist for monarchy: throughout Machiavelli's DISCOURSES the author shows himself to believe firmly that “the best monarchy [was] inferior to a good republic.” *Id.* at 76; see also *id.* at 71 (noting that “[t]hroughout the DISCOURSES . . . Tacitus, unlike other ancient authors, is used for one purpose only: the condemnation of monarchy”).

²⁴¹ See *supra* text accompanying note 63.

²⁴² GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 5, at 11; see also *id.* §§ 16-18, at 15-16.

²⁴³ MACHIAVELLI, *supra* note 56, at 61 (“[A] man who wants to make a profession of good in all regards must come to ruin among so many who are not good”).

Thucydides quotes, that in the case of a king or imperial city nothing is unjust which is expedient. Of like implication is the statement that for those whom fortune favours might makes right, and that the administration of a state cannot be carried on without injustice.²⁴⁴

With such views Grotius disagreed wholeheartedly, and to their refutation he devoted his treatise on *The Law of War and Peace*. Let kings, he wrote, never “doubt that those who instill in them the arts of deception are doing the very thing which they teach. For that teaching cannot prosper which makes a man anti-social with his kind and also hateful in the sight of God.”²⁴⁵

Grotius devoted himself to articulating a doctrine of the limits virtue places upon expediency, even for rulers engaged in that most bloody and desperate of activities, military conflict.

Far from admitting that in war all legal rights cease, Grotius asserts that war is not to be undertaken except for the enforcement of law, nor is it to be waged, when undertaken, except within the limitations prescribed by law and good faith.²⁴⁶

Thus, for example, can he devote a chapter to “general rules from the law of nature regarding what is permissible in war,”²⁴⁷ and can spend several chapters also urging “moderation” in a warring sovereign’s treatment, for example, of captured property,²⁴⁸ prisoners of war,²⁴⁹ and the acquisition of sovereignty over vanquished peoples.²⁵⁰

Indeed, as his emphasis upon such “moderation” suggests, the virtues of Stoic forbearance Grotius asks the sovereign go beyond simply the dictates of natural right. Even in the midst of a terrible war, “a sense of honor may be said to forbid what the law permits,”²⁵¹ and a king’s conduct must be restrained by a “sense of shame signif[ying] not so much a regard for men and reputation as a regard for what is just and

²⁴⁴ GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 3, at 9; *cf.* THUCYDIDES, *THE PELOPONNESIAN WAR* 402 (1984) (recounting speech of Athenian delegation to Melians, arguing that there is no role for principles of right and wrong in dealings between states, but only for power and expediency).

²⁴⁵ GROTIUS, JBP, *supra* note 147, bk. III, ch. XXV, § I, at 860-61.

²⁴⁶ DUMBAULD, *supra* note 37, at 73.

²⁴⁷ GROTIUS, JBP, *supra* note 147, bk. III, ch. I, at 599-622.

²⁴⁸ *Id.* bk. III, ch. XIII, at 757-60.

²⁴⁹ *Id.* ch. XIV, at 761-69.

²⁵⁰ *Id.* ch. XV, at 770-77.

²⁵¹ *Id.* bk. III, ch. X, § 1, at 716; *see also id.* ¶2, at 716 (quoting character of Agamemnon from Seneca’s play *THE TROJAN WOMEN*: “What law permits, this sense of shame forbids to do”).

good, or at any rate what is more just and better."²⁵²

For the law of nature, in so far as it has the force of a law, holds in view not only the dictates of expletive justice, as we have called it, but also actions exemplifying other virtues, such as self-mastery, bravery, and prudence, as under certain circumstances not merely honourable, but even obligatory. And to such actions we are constrained by regard for others.²⁵³

Quoting the Stoic philosophers in defining bravery as virtue fighting on behalf of equity, Grotius opined that "kings who measure up to the rule of wisdom make account not only of the nation which has been committed to them, but of the whole human race, and [are thus] . . . 'friends of mankind.'"²⁵⁴

Thus, while the law itself imposed certain restrictions upon a ruler's freedom of action, his own personal sense of honor and duty to mankind should restrain him even further. This was, perhaps, the analogue to the subject's duty of Stoic obedience: just as the liberty of the governed may have to be constrained in the interests of order and public tranquility, so may the governors sometimes have to forego even the lawful vindication of their rights in the interests of peace.²⁵⁵ And just as an individual might have to forego slaying a vicious assailant whose continued life is "useful to many" others,²⁵⁶ so may the king have to exercise restraint even when he has the lawful right to act. Thus Grotius devotes a chapter to "warnings not to undertake war rashly, even for just causes,"²⁵⁷ rebutting the view that

[W]here a right [to war] has been adequately established, either war should be waged forthwith, or even that war is permissible in all cases. On the contrary, it frequently happens that it is more upright and just to abandon one's right

. . . .

At times the circumstances of the case are such that to refrain from the exercise of one's right is not merely praiseworthy but even obligatory, by reason of the love which we owe even to men who are our enemies

. . . .²⁵⁸

²⁵² *Id.* ¶2, at 716.

²⁵³ *Id.* bk. II, ch. I, § IX, ¶1, at 176.

²⁵⁴ *Id.* from the PROLEGOMENA, § 24, at 18.

²⁵⁵ *Id.* bk. II, ch. XXIV, § VI, ¶5, at 574.

²⁵⁶ *Id.* bk. II, ch. I, § IX, ¶1, at 176.

²⁵⁷ *Id.* bk. II, ch. XXIV, at 567-77.

²⁵⁸ *Id.* bk. II, ch. XXIV, ¶¶1, 3, at 567, 568-69.

This virtuous moderation and restraint by the sovereign, then, is Grotius' answer to accusations that he has unjustly required subjects to submit to tyranny. A monarchy, he wrote, was "not on that account to be called tyrannical, since tyranny, at any rate as the word is now understood, connotes injustice."²⁵⁹ It was the precisely the purpose of *The Law of War and Peace* to inculcate in the sovereign the wisdom and Stoic forbearance to rule absolutely, but without injustice.

D. Grotius and International Institutionalism

This focus upon the individual virtue of the ruler and his obligations under the dictates of right reason helped lead Grotius, like Lipsius, to avoid serious consideration of human volitional rules and institutions of governance — that is, of "law" and "politics" as we usually understand them today. A prince who violated the natural law was not answerable to earthly institutions,²⁶⁰ but in true Ciceronian fashion Grotius expected him to be meaningfully held to account by his own conscience: he who abandons right reason abandons his better self and denies his true nature as a human, which is the most severe of penalties even if accompanied by no other consequences.²⁶¹ In a clear invocation of this Stoic ideal, leavened with an admixture of Christian piety, Grotius wrote that

[L]aw, even though without a sanction, is not entirely void of effect. For justice brings peace of conscience, while injustice causes torments and anguish, such as Plato describes in the breast of tyrants. Justice is approved, and injustice condemned, by the common agreement of good men. But, most important of all, in God injustice finds an enemy, justice a protector. He reserves His judgments for the life after this . . .

²⁶²

There were, he felt, "two divinely created tribunals which never cease to function among men — that of Conscience, or the innate estimation of

²⁵⁹ *Id.* bk. I, ch. III, § VIII, ¶14, at 109.

²⁶⁰ See, e.g., *supra* text accompanying note 217. Analogously, Grotius felt that an individual induced by duress to make a contract is not released from that agreement under natural law (though municipal law might legitimately so provide). GROTIUS, JBP, *supra* note 147, bk. II, ch. XI, § VII, ¶2, at 334. At the same time, however, he took care to argue that "if the person to whom the promise [was] made has inspired a fear, not just but unjust, even though slight, and the promise has resulted therefrom, he is bound to release the promisor, if the latter so wishes" *Id.*

²⁶¹ See, e.g., EDWARDS, *supra* note 10, at 33 (recounting position of Cicero on this subject).

²⁶² GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 20, at 16-17.

one-self, and that of Public Opinion, or the estimation of others."²⁶³ It was, therefore, "all the more the duty of kings to cherish good faith scrupulously, first for conscience's sake, and then also for the sake of the reputation by which the authority of the royal power is supported."²⁶⁴ In effect, Grotius hoped to realize an international legal order simply "by activating the Christian conscience of rulers."²⁶⁵

Thus did Grotius aim to "establish a legal order between independent sovereign states without the institution of [any] international political authority."²⁶⁶ His four-fold categorization of law²⁶⁷ admitted the possibility of such institutions — for, like all persons, sovereigns were capable of making promises binding under natural law — but the natural law of which Grotius exclusively wrote²⁶⁸ had nothing to say about such things.²⁶⁹ Grotius explicitly eschewed "political" commentary on the

²⁶³ See KNIGHT, *supra* note 138, at 91 (quoting Grotius' MARE LIBERUM); see also GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 27, at 19-20 (noting that even though unjust causes sometimes prosper, "it is enough that the fairness of the cause exerts a certain influence, even a strong influence upon actions, although the effect of that influence, as happens in human affairs, is often nullified by the interference of other causes").

²⁶⁴ GROTIUS, JBP, *supra* note 147, bk. III, ch. XXV, at 860-61. As this phrasing suggests, Grotius was not above invoking a more pedestrian variety of prudence where it might be useful, and was willing to suggest that following a virtuous path would also offer the king tangible real-world benefits. "It is, in truth," he wrote, "not strictly a part of our purpose to inquire at this point what is advantageous . . . Nevertheless, virtue itself, in low esteem in the present age, ought to forgive me if, when of itself it is despised, I cause it to be valued on account of its advantages." *Id.* bk. III, ch. XII, § VIII, ¶1, at 754.

For just as the national, who violates the law of his country in order to obtain an immediate advantage, breaks down that by which the advantages of himself and his posterity are for all future time assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace.

Id. from the PROLEGOMENA, § 18, at 16; see also *id.* § 18 n.1, at 16 (also citing Marcus Aurelius to this effect). In phrasing revealing the clear influence of the Spanish scholar Francisco Suarez, see, e.g., Kingsbury & Roberts, *supra* 8, at 10 (quoting Suarez), Grotius argued that no state was so powerful that it "may not some time need the help of others outside itself," GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 22, at 17, making good-faith dealing important even for the most unvirtuous and expedient of sovereigns.

²⁶⁵ Falk, *supra* note 20, at xvi.

²⁶⁶ C.F. Murphy, *Commentary*, in GROTIAN HERITAGE, *supra* note 1, at 25, 27.

²⁶⁷ See *supra* text accompanying notes 172-85.

²⁶⁸ See *supra* text accompanying note 183.

²⁶⁹ See, e.g., Kingsbury & Roberts, *supra* note 8, at 28 (arguing that because Grotius conceived of international society "as having no superior body with coercive power,"

ancient sources of the variety that might be devoted to developing institutions of human volitional law. Though such institutional theorizing had indeed been the project of Renaissance political theorists such as the Frenchman Jean Bodin,²⁷⁰ Grotius assigned himself a different task. Certain French writers, he wrote, "have tried . . . to introduce history into their study of laws."²⁷¹

I have [however] refrained from discussing topics which belong to another subject, such as those that teach what may be advantageous in practice. For such topics have their own special field, that of politics, which Aristotle rightly treats by itself, without introducing extraneous matter into it. Bodin, on the contrary, mixed up politics with the body of [natural] law with which we are concerned.²⁷²

As Hedley Bull put it, Grotius envisioned, rather, that "[e]ven without central institutions, rulers and peoples might constitute a society among themselves, an anarchical society or society without government."²⁷³

The only enforcement mechanism which Grotius described as operating according to natural law with respect to relations between sovereigns was that deriving by analogy from all persons' capacity to defend the rights of others under the natural law — a power resulting from "the mutual tie of kinship among men."²⁷⁴ He rejected the view of those who

[I]n justification of war seem to demand that he who undertakes it should have suffered injury either in his person or his state, or that he should have jurisdiction over him who is attacked. For they claim that the power of punishing is the proper effect of civil jurisdiction, while

his theory has little to offer students of problems of international organization).

Grotius' aim was certainly not to set up . . . a new international order. It is a widespread illusion to suppose that his treatise was above all concerned with political conditions and crises of his day. His was not what we would today call a political scientist's or an internationalist's outlook, but a Christian humanist's

Haggemacher I, *supra* note 21, at 151; *see also* Bull, *supra* note 7, at 89 (noting that Grotius "takes little or no account of international institutions").

²⁷⁰ In 1566, for example, Bodin — "perhaps the most learned of Renaissance political theorists," SCHELLHASE, *supra* note 31 — had published a treatise in which he sought "to discover principles of government for the creation of necessary laws. He want[ed] to find agreement between political philosophers and historians — to ground political philosophy in history and, at the same time, history in philosophy." *Id.* at 110.

²⁷¹ GROTIUS, JBP, *supra* note 147, from the PROLEGOMENA, § 56, at 29.

²⁷² *Id.* § 57, at 29.

²⁷³ Bull, *supra* note 7, at 72.

²⁷⁴ GROTIUS, JBP, *supra* note 147, bk. II, ch. XXV, § VI, at 582.

we hold that it is also derived from the law of nature²⁷⁵

Sovereigns, in fact, have the right of "demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever."²⁷⁶ This natural right of third-party enforcement did not necessarily suggest (let alone require) any system of international institutions of human volitional law: it was a radically decentralized enforcement regime in which the conscience and good sense of sovereign rulers played the pivotal — and perhaps the sole — part.²⁷⁷

As Grotius' phrasing suggests,²⁷⁸ however, he did make allowance for the *possibility* of an international human volitional law. Under natural law, as we have seen, individual humans possess the right to enforce "excessive"²⁷⁹ violations of the dictates of right reason. Nevertheless — though obviously not entirely consistently with his doctrine about the supremacy of natural law over the mere dictates of human will²⁸⁰ — Grotius felt that the organization of individuals into states displaced ordinary persons' individual right of punishment and lodged it in the judicial apparatus.²⁸¹ Where "judicial process" was available for the resolution of conflicts, the law of nature actually prohibited war for the vindication of one's rights.²⁸² Analogously, he seems to have contemplated

²⁷⁵ *Id.* bk. II, ch. XX, § XL, ¶4, at 506.

²⁷⁶ *Id.* bk. II, ch. XX, § XL, ¶1, at 504.

²⁷⁷ His concession of such a right only where someone "excessively violates" the law of nature presumably meant that a sovereign's exercise of this right — even where wholly justified — should be qualified by considerations of moderation and restraint at least as powerful as those he recommended to persons considering engaging in warfare for more personal reasons. *See supra* text accompanying notes 251-58. Indeed, Grotius felt that this right of third-party punishment was the very *first* that a sovereign might have to give up in the interests of international Stoic forbearance. *See* GROTIUS, JBP, *supra* note 147, bk. II, ch. XXV, § VI, at 582.

²⁷⁸ *See id.* bk. II, ch. XX, § XL, ¶1, at 504 (admitting right of third-party enforcement "on account of injuries which do not directly affect them but excessively violate the law of nature *or of nations*") (emphasis added).

²⁷⁹ *See supra* note 277.

²⁸⁰ *See supra* text accompanying notes 174-84 and 188.

²⁸¹ While normally, wrote Grotius,

[L]iberty to serve human society through punishments . . . rested with individuals, now after the organization of states and courts of law is in the hands of the highest authorities . . . in so far as [these authorities] are subject to no one. For subjugation has taken this right away from others.

GROTIUS, JBP, *supra* note 147, bk. II, ch. XX, § XL, ¶1, at 504-05.

²⁸² *Id.* bk. I, ch. III, § II, ¶1, at 92.

that where human volitional law²⁸³ might bring about some sort of “judicial process” between sovereigns — that is, where there might develop a workable positive international enforcement regime — so might kings be obliged by the dictates of right reason to submit their disputes thereto.²⁸⁴ “[P]ublic wars do not arise except where there are no courts, or where courts cease to function”²⁸⁵ While several commentators have seized upon Grotius’ doctrine of third-party intervention as a crucial intellectual antecedent of modern “humanitarian intervention” or *jus cogens* doctrines,²⁸⁶ it is perhaps rather this secondary theme of the displacement of the natural law right of warfare by “judicial process” that represents a more significant proto-institutionalist element in Grotian thinking.

²⁸³ The institutional relationship of punisher to miscreant was not set by natural law, Grotius believed, but by that established among humans by their will:

“[I]n the case of corporal chastisement and other punishments that contain an element of compulsion, the distinction between those who may or may not apply them is not made by nature (for this could not be the case, except in so far as reason entrusts to parents in a special sense the exercise of this right over their children on account of the tie of relationship) but by the laws which have limited that common connection to the human race to the nearest relationships for the sake of obviating quarrels.

Id. bk. II, ch. XX, § VII, ¶1, at 470-71 (footnote omitted).

²⁸⁴ It should be noted, however, that Grotius allowed exceptions to his rule requiring resort to “judicial process” where, for example, the delay caused by awaiting a judicial result would endanger those seeking to subject their disputes to this process, or where the conflict was outside of the jurisdiction of existing courts. *Id.*

²⁸⁵ *Id.* bk. II, ch. I, § XVI, at 184.

²⁸⁶ See, e.g., Kingsbury & Roberts, *supra* note 8, at 40 (suggesting that this idea “finds a modern resonance in the notions of *erga omnes* obligations and of *jus cogens*”); Vincent, *supra* note 9, at 247 (noting that Hersch Lauterpacht and others have taken Grotian third-party punishment as embryonic doctrine of humanitarian intervention). The idea of *jus cogens*, or “peremptory law,” is a doctrine enshrined most prominently in Articles 53 and 64 of the Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), 63 AM. J. INT’L L. 875 (1969), 8 I.L.M. 679 (1969), by the terms of which agreements between states are considered void if they conflict with “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” *Id.* at Art. 53. Grotius’ idea of natural law, however, should be sharply distinguished from the modern conception of *jus cogens*, however, in that while Grotian natural law derives from our possession of reason itself — and is thus presumably eternal and unchanging so long as we have minds — norms of *jus cogens* change as does the conscience of the international community. See generally Christopher A. Ford, *Adjudicating Jus Cogens*, 13 WIS. INT’L L.J. 145 (1994).

CONCLUSION

On the whole, therefore, though he greatly elaborated upon, systematized, and internationalized the ideas of his predecessor, Grotius' scheme of natural law follows the basic contours of the Neo-Stoic political philosophy articulated by Justus Lipsius. It finds all individuals — sovereign and subject, brigand and burgher alike — bound by the dictates of a Ciceronean natural law deriving from the dictates of right reason and discernible *a priori* by all thinking human beings. This law governs all relations between persons, from the most personal varieties of day-to-day contact to the tumultuous clashings of sovereign powers on the battlefield. Both ruled and ruler are deemed subject to this natural law of reason, and while it is the subject's duty to submit to Authority with Stoic forbearance it is equally the sovereign's duty to exercise restraint, virtue, prudence, and wisdom in his governance. And because of the individual locus of this naturalist obligation, neither Lipsius nor Grotius spend much time thinking about the proper structuring of political institutions, either domestic or international. While both articulate a powerful ethic of moral law firmly embedded in the tradition of Stoic philosophy, therefore, they are essentially unconcerned with positive "law" as we conceive it today — and to the extent that they have anything to say about "international law" it is only incidentally, a result of the fact that certain of the individuals who are subject to natural law happen to be kings.²⁸⁷

These parallels, and the roots of both scholars in the Neo-Stoic tradition, must be borne in mind if we are to understand the place occupied by Hugo Grotius and Justus Lipsius in the history of ideas, and in the development of modern international legal philosophy. Since Thomas Holland's initial attack upon Grotius' reputation as the father figure of modern international legal theory,²⁸⁸ it has been commonplace to depict Lipsius as coming by his Stoic natural law theories only rather indirectly, through the genealogical chain of medieval Christian theology and the Thomist musings of Spanish scholastics such as Francisco Suarez.²⁸⁹ I believe Grotius, however, to have come by his Stoicism

²⁸⁷ As Grotius hinted in the Prologue to his *THE LAW OF WAR AND PEACE*, it was the innovation of his scheme to extend the concept of law to relations between sovereigns, "which are quite devoid of significance according to the point of view of those who confine law within the boundaries of states." GROTIVS, JBP, *supra* note 147, from the *PROLEGOMENA*, § 22, at 17. See also Kingsbury & Roberts, *supra* note 8, at 62 ("Grotius' political theory and his international theory are inextricably linked: in many respects he treated them as a unified body of thought").

²⁸⁸ See *supra* text accompanying note 23.

²⁸⁹ See, e.g., EDWARDS, *supra* note 10, at 47; KNIGHT, *supra* note 138, at 89.

more directly, having drunk it closer to its sources in antiquity with the assistance of Justus Lipsius. This view has been suggested in passing by Gerhard Oestreich, who urged further investigation into the Neo-Stoic and Lipsian “philosophical background against which Grotius worked and which was partly responsible for his unique success.”²⁹⁰

The ideological foundations of natural law, which dominated the jurisprudence of the seventeenth and eighteenth centuries — even where Grotius is concerned — are to be sought not so much in scholasticism as in the direct revival of the Stoa.²⁹¹

To this author’s knowledge, however, no one has yet given an account of Lipsius’ influence upon the hugely influential naturalism of Hugo Grotius. It is the ambition of this Article thus to help point the way to a proper understanding of Grotius and Lipsius in their Neo-Stoic context — to rescue the latter from his consignment to the ranks of autocratic apologists, to offer an account of the “internationalism” of the latter clearer for its location within the Stoic tradition, and to place both scholars in perspective as the moralists they were.

In this context, except for his intriguing aside about the possibility that sovereigns’ right to war might be displaced by any such effective “judicial process” they might be able to organize among themselves²⁹² — a theme apparently neglected by even the most enthusiastic of modern Grotian hagiographers — Hugo Grotius comes to seem less like a clairvoyant looking forward to our modern notions of international jurisprudence than a sage and philosopher looking backward to the wisdom of the ancients. Properly understood, both he and Lipsius are brilliant and compelling Renaissance incarnations of the Stoic moralist of Greco-Roman antiquity.²⁹³

It would, of course, be disingenuous indeed to deny the influence that Grotius has had upon the development of modern international legal theory. The very fact that he was so long revered as the “father of

²⁹⁰ OESTREICH, *supra* note 6, at 130-31.

²⁹¹ *Id.* at 38.

²⁹² See *supra* text accompanying notes 281-86.

²⁹³ Indeed, Arthur Eyffinger has even observed that Grotius followed the example of Seneca in writing dramatic works for the moral edification of his audience. Grotius did write several plays and works of poetry, convinced that “the poet has a *social* function. He was a teacher, or even a propagandist.” Arthur Eyffinger, *Hugo Grotius, Poet and Man of Letters*, in *THE WORLD OF HUGO GROTIUS*, *supra* note 142, at 83, 95 (emphasis in original). This was very much in keeping with Renaissance humanists’ general belief — a distinct rejection of the abstractions of the scholastics — that knowledge ought to be “for use.” SKINNER, *FOUNDATIONS I*, *supra* note 100, at 107.

international law" is testimony to the inspiration that many generations of jurists and scholars found in his work. This Article, however, suggests an irony in this inspiration: though providing such a powerful stimulus for the development of modern conceptions of internationalism, Hugo Grotius appears to have been himself embarked upon a different task altogether.²⁹⁴ What was it about the resurrection by Lipsius and Grotius of a philosophy then already nearly nineteen centuries old that so enthralled jurists of subsequent generations and so contributed to shaping the international jurisprudence of the present day? There is room here only to pose the question, but why it is that an emergent and dynamic European modernity should find such a tonic in the wisdom of Panaetius of Rhodes is surely a subject deserving of further study.

At its core, *The Law of War and Peace* is a sermon directed to the individual heart, as reflected in the prayer with which Grotius brought his famous treatise to its close:

May God, who alone hath the power, inscribe these teachings on the hearts of those who hold sway over the Christian world. May He grant to them a mind possessing knowledge of divine and human law, and having ever before it the reflection that it hath been chosen as a servant for the rule of man, the living thing most dear to God.²⁹⁵

Though his apostles in the centuries to come may thus not fully have understood the Grotian project, the astonishing influence he has had upon the development of international jurisprudence suggests that in some small sense. Therefore, it might well be said of Hugo Grotius that in some sense his plea was answered.

²⁹⁴ C.G. Roelofsen goes so far as to suggest that

[S]ince *De Jure Belli ac Pacis* exercised an undoubted influence towards the general adoption of the "Law of Nations", the *jus gentium*, as the expression of a legal relationship between the members of the community of states, Grotius' own views matter much less than his intellectual parenthood of the ideas that go by his name.

Roelofsen II, *supra* note 142, at 97. This perhaps dismisses the actual content of Grotius' thought too cavalierly, however, as clearly there was *something* about it that helped set modern international legal scholarship afire.

²⁹⁵ GROTIUS, JBP, *supra* note 147, bk. III, ch. XXV, § VIII, at 862 (footnote omitted).