

At the Crossroads: Justus Lipsius and the Early Modern Development of International Law

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Abstract

Justus Lipsius (1547–1606) was among the most famed intellectuals in his time, but was largely forgotten during the Enlightenment. Intellectually, he stood at an important crossroads, his thought incorporating both late Renaissance traits and precursors of the early modern age. In this article I give a brief intellectual background to Lipsius's thought before concentrating on his thought regarding the lawful interaction between polities, with a focus on lawful government, dissimulation, war, and empire. I then detail the way in which Lipsian thought critically informed later theory and practice. It contained an eclectic mix of divine law, natural law, and positive human law, with some elements borrowed and popularized from earlier writers and others being more original. In the end, his work stands out both as an important inspiration for later theorists and practitioners, and as an example of the many idiosyncrasies and possible trajectories that early international law could have adopted.

Key words

dissimulation; empire; Grotius; history of international law; Justus Lipsius; Tacitus; war

I. INTRODUCTION

Today, Justus Lipsius (1547–1606) is probably best known for having given name to the building that houses the European Commission in Brussels. This has not always been the case. He was among the most famed intellectuals of his own time, widely read and respected among philosophers and practitioners alike during the seventeenth century. He influenced thinkers such as Grotius, Hobbes, Pufendorf, and Spinoza, and his guides for statecraft were read and followed by the central statesmen of the era, such as Richelieu and Olivares. Nevertheless, he was largely forgotten during the Enlightenment and has remained a marginal figure, outside the confines of classical scholarship.

In many important respects, Lipsius stood at a crossroads. His life and thought defies easy categorization, incorporating both late Renaissance traits and precursors of the early modern age. Lipsius stood at the midpoint of what Toulmin has analysed as the broader move 'from *practical* philosophy, whose issues arose out of

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clinical medicine, juridical procedure, moral case analysis, or the rhetorical force of oral reasoning, to a *theoretical* conception of philosophy'.¹ He drew extensively on practical metaphors from trade, seafaring, and medicine, couched his arguments in the classical rhetorical tradition and stressed prudence, a case-specific concept, as a guideline for action. On the other hand he was striving to create some sort of overarching synthesis between Christian morality and Stoic ethics, incorporating Machiavellian themes; he saw his prescriptions as universally valid, the very idea of prudence resting on a knowledge of history that would enable the practitioner to act in an appropriate way regardless of the specific case. With regard to lawful interaction between polities, Lipsius's thought contained an eclectic mix of divine law, natural law, and positive human law. His work was thus both an important inspiration for later theorists and an example of the many idiosyncrasies and possible trajectories that early international law could have adopted.²

The main reason why Lipsius was forgotten seems to be his preference for practice rather than institutions.³ He produced guidelines for governing and being governed rather than discussing abstract and 'eternal' problems, and, as Waszink points out, the reason of state-tradition of which Lipsius was part was 'closer to an antidote to political theory than a theory itself'.⁴ Lipsius's writings were driven by a desire to see peace, and to discipline subjects and princes alike so that war would not break out. Those writers who did mention Lipsius tended to see his thought as inward-looking and ephemeral,⁵ and himself as 'little more than the troubadour of Baroque autocracy'.⁶ With a growing interest in Lipsian political thought over the last decades, the picture has become a lot more nuanced.⁷ Such reconsideration is long overdue, since Lipsius provides an important theoretical link and synthesis between earlier thinking on reason of state and natural law and later theories of

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1. S. Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (1990), 34.
 2. Discussing 'international law' in the sixteenth century is anachronistic in at least two ways. 'International' was not coined as a term until 1780 by Jeremy Bentham; furthermore, distinctions between the inside and outside of states had different meanings then from what they do now, if they had any meaning at all. A concept such as sovereignty, frequently seen as the underpinning of international law and international relations in general, has, for instance, undergone significant changes over the last five hundred years, not least due to the practice of 'international law'. See J. Bartelson, *A Genealogy of Sovereignty* (1995), and A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005). Applying 'the law of nations' or '*jus gentium*' only creates added etymological confusion. What I am discussing here is what has been later appropriated as international law, and which was concerned with issues that regularly brought princes in contact with other princes and/or subjects or peoples other than their own.
 3. See R. Tuck, *Philosophy and Government 1572–1651* (1993); and R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (1999). Cf. Evans's comment that 'Lipsius seems less interested in abstract "systems" than in the fallible but malleable individuals who comprised them. [He was] promoting the practical moral reform of princes and their subjects.' R. C. Evans, *Jonson, Lipsius and the Politics of Renaissance Stoicism* (1992), 20–1.
 4. J. Waszink, 'Introduction', in J. Lipsius, *Politica. Six Books of Politics or Political Instruction*, ed. J. Waszink (2004), 3 at 3.
 5. See, e.g. F. Meinecke, *Machiavellism – The Doctrine of Raison d'Etat and its Place in Modern History* (1957), at 26, 197; Q. Skinner, *The Foundations of Modern Political Thought* (1978), Vol. II, at 278–83. See also the critical discussion in A. McCrea, *Constant Minds: Political Virtue and the Lipsian Paradigm in England, 1584–1650* (1997), at xxii.
 6. C. Ford, 'Preaching Propriety to Princes: Grotius, Lipsius and Neo-Stoic International Law', (1996) 28 *Case Western Reserve Journal of International Law* 313.
 7. See, e.g., Tuck, *supra* note 3; A. Shifflett, *Stoicism, Politics, and Literature in the Age of Milton* (1998); Ford, *supra* note 6; and McCrea, *supra* note 5.

absolutism and international law, while also throwing up important challenges for the latter. Studying Lipsius thus sheds light on both his predecessors and his successors.⁸ Lipsian ideas also greatly influenced political practice in the seventeenth century, through his enormously popular political guidebooks.

The last decade has witnessed a virtual boom of studies of Lipsian thought and his influence in different countries and on later thinkers. Researchers have dealt with Lipsius's key treatise, the *Politica*, from a host of different perspectives,⁹ but have also branched out from the *Politica* and tried to make sense of Lipsius's other writings, both the political and the philosophical and philological.¹⁰ As yet, most attention has been paid to Lipsius's domestic political thought, although incorporating themes such as war and military organization, while there has been less focus on international issues. However, a growing literature has dealt with Lipsius in the process of elucidating later theorists, such as Hobbes¹¹ and, in particular, Grotius.¹² There is thus a growing appreciation of Lipsius's place in the development of international law.¹³ The main reason for his exclusion up until now seems to be that international law, like political science and international relations, has continued to consider the peace of Westphalia in 1648 as the true starting point of the modern state system that enabled the development of that field of study.¹⁴ Regardless of whether the history of international law has been studied through epochs or individuals,¹⁵ Lipsius has been omitted. Even though an interest in the forerunners of Grotius can be traced back more than a hundred years,¹⁶ encouraging detailed

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8. In this article I focus mainly on Lipsian ideas pertaining to international law. I discuss Lipsian ideas of statecraft and his influence on the early absolutist states in another article ('Justus Lipsius, Neostoicism and the Disciplining of 17th-Century Statecraft', submitted to the *Review of International Studies*).
 9. E.g. Evans, *supra* note 3; A. Moss, 'The *Politica* of Justus Lipsius and the Commonplace-Book', (1998) 59 *Journal of the History of Ideas* 421; Waszink, *supra* note 4.
 10. E.g. J. De Landtsheer, 'Justus Lipsius's *De Militia Romana*: Polybius Revived or How an Ancient Historian Was Turned into a Manual of Early Modern Warfare', in K. Enenkel, J. L. de Jong, and J. de Landtsheer (eds.), *Recreating Ancient History. Episodes from the Greek and Roman Past in the Arts and Literature of the Early Modern Period* (2001), 101; J. Papy, 'Lipsius's Prophecy on the New World and the Development of an "American" Identity at the University of Lima?', in E. G. y González and L. P. Puente (eds.), *Colegios y universidades II: del antiguo regimen al liberalismo* (2001), 272; J. Papy, 'An Unpublished Dialogue by Justus Lipsius on Military Prudence and the Causes of War: The "Monita et exempla politica de re militari" (1605)', (2003) 65 *Bibliothèque d'Humanisme et renaissance* 135; K. A. E. Enenkel, 'Ein plädoyer für den imperialismus: Justus Lipsius' kulturhistorische monographie *Admiranda sive de magnitudine romana* (1598)', (2004) 33 *Daphnis* 583.
 11. D. Burchell, 'The Disciplined Citizen: Thomas Hobbes, Neostoicism and the Critique of Classical Citizenship', (1999) 45 *Australian Journal of Politics and History* 506.
 12. See Ford, *supra* note 6; A. Eyffinger, "'Amoena gravitate morum spectabilis" Justus Lipsius and Hugo Grotius', (1998) 68 *Bulletin de l'Institut historique belge de Rome* 297; and in particular the articles in H. Blom and L. Winkel (eds.), *Grotius and the Stoa* (2004), originally published as special issue 22/23 *Grotiana* (2001/2002), where the links between Lipsius and Pufendorf are also discussed. Finally, although Lipsius pre-dates his main theme, Tuck, *supra* note 3, provides important insights into Lipsian ideas of war and peace and how they relate to later thought on these issues.
 13. Compare this to one of the main readers on Grotius, produced fifteen years ago, where Lipsius was not mentioned at all: H. Bull, B. Kingsbury and A. Roberts (eds.), *Hugo Grotius and International Relations* (1990).
 14. Challenges of this 'myth' have been made by, e.g., (in the field of international relations) S. Krasner, 'Westphalia and All That', in R. Keohane and J. Goldstein (eds.), *Ideas and Foreign Policy* (1993); and A. Oslander, 'Sovereignty, International Relations, and the Westphalian Myth', (2001) 55 *International Organization* 251; and (in international law) Anghie, *supra* note 2; and S. Beaulac, 'The Westphalian Model in Defining International Law: Challenging the Myth', (2004) 8 *Australian Journal of Legal History* 181.
 15. M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2002), 6–9.
 16. See B. Kingsbury and A. Roberts, 'Introduction: Grotian Thought in International Relations', in Bull, Kingsbury, and Roberts, *supra* note 13, at 1.

research into, for example, Vitoria, Suarez, and Gentili,¹⁷ Lipsius has been largely neglected. This omission is regrettable, since Lipsius provides both continuities and challenges to our understanding of the history of international law. On one hand he ties together the Spanish scholastics and Grotius, while on the other he rearticulates the Machiavellian challenge to lawful interaction between sovereigns by his Tacitean emphasis on conflict and his discussion of might and right.

Balancing might and right and avoiding war weighed heavily in Lipsius's thought. It could well be argued that his central concern was peace: peace of mind for the individual, domestic peace within the commonwealth, and peace among princes or principalities. Such conflation of the levels of analysis made good sense in the Netherlands of the golden age, where 'the ideal of the good family was a miniature of the ideal commonwealth'.¹⁸ Peace demanded order, and to achieve order discipline had to be enforced at all levels. Lipsius's main conceptual innovation lies here, in his stress on discipline, and in his invoking prudence as the guideline for action at all levels. Another particularly Dutch feature of Lipsius's thought that further enhanced the necessity of peace and order was his stress on the importance of trade for the commonwealth, and thus his emphasis on the sanctity of contracts. As Schama has pointed out, the Dutch ideal of the burgher was diametrically opposed to the 'Aristocratic obsessions and fanatical dogma' that informed the Spanish empire against which the Dutch revolted from 1568 on, by and large 'indifferent or hostile to the feudal preoccupations of war, land and honor it took to be the reigning values of the Spanish court'.¹⁹ One thus looks in vain for the nobility in Lipsius's writings; the relevant agents are the prince and his subjects, in a framework which supported growing absolutism, at least in a moderate form, and where princes interacted with each other unhampered by aristocratic loyalties. In this latter respect, with the focus on absolutism rather than an aristocratic republic, Lipsius departed from the Dutch consensus, and chose peace and stability over freedom.²⁰

Lipsius's thought is complex, and it could be argued that to give a full account of his legal thought one would have to incorporate his coupling of Stoic physics and ethics. This is not the place for such an undertaking.²¹ The intention is not to recreate any sort of grand Lipsian system of thought, but to establish the relevance of Lipsian ideas in the history of international law. In this, my approach is less the hagiography of Lipsius than a contextual exploration of continuities and discontinuities in the

17. See, e.g., P. Haggemacher, 'Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture', in Bull, Kingsbury, and Roberts, *supra* note 13, 133; G. I. A. D. Draper, 'Grotius' Place in the Development of Legal Ideas about War', in Bull, Kingsbury and Roberts, *supra* note 13, at 177; and Anghie, *supra* note 2.

18. S. Schama, *The Embarrassment of Riches – An Interpretation of Dutch Culture in the Golden Age* (1987), 4, and see also 211.

19. *Ibid.*, at 83. Cf. van Gelderen's comments about the way in which Dutch republicanism coupled together liberty and prosperity, e.g. presenting 'merchandise', 'manufacture' and 'negotiations' as the sisters of 'liberté'. M. van Gelderen, 'The Machiavellian Moment and the Dutch Revolt: The Rise of Neostoicism and Dutch Republicanism', in G. Bock, Q. Skinner, and M. Viroli (eds.), *Machiavelli and Republicanism* (1990), 205 at 211.

20. It could be tempting to interpret Lipsius's own physical relocation from the northern to the southern Low Countries in this light.

21. Elements of such an account can be found in J. Papy, 'Lipsius's (Neo-)Stoicism: Constancy between Christian Faith and Stoic Virtue', in Blom and Winkel, *supra* note 12, 47.

field of international law.²² I begin with a sketch of the life and times of Lipsius which is followed by more thorough discussions of the central ideas of international law in Lipsius's thought and of the influence of Lipsius.

2. THE LIFE AND TIMES OF LIPSIUS

2.1. An intellectual nomad

Justus Lipsius (or Joest Lips, if one prefers the vernacular) was born a Roman Catholic in the small town of Overijse, between Louvain and Brussels, in the southern part of the Low Countries, in 1547. He led a nomadic scholarly life, studying with the Jesuits in Cologne and studying classical learning in Rome, then working as a professor successively at the Lutheran university of Jena, the Calvinist university of Leiden and the Catholic university of Louvain.²³ These movements seem to a large extent to have been motivated by a desire for personal peace, and to avoid the active warfare that plagued the Netherlands on and off during his adult life. Although his writings were political interventions, and he knew and corresponded with people in prominent political positions, including heads of state, Lipsius seems to have preferred to stay out of current politics. There are few explicit references to current affairs and debates in his work.

Lipsius first won the attention of European intellectuals as a leading scholar and interpreter of the classics, particularly Tacitus and Seneca.²⁴ He was, for instance, the first to distinguish Tacitus's writings as the *Annales* and the *Historiae*,²⁵ and while at Jena 'laid the first foundations of Tacitism in Germany'.²⁶ He is still considered to be a leading Tacitus scholar. By the time he arrived in Leiden, in 1578, Lipsius was already sufficiently famous to add intellectual credence to the new university, founded in 1575.²⁷ Lipsius stayed in Leiden until 1591, and produced both his main political treatises there. These years were also the most politically active of Lipsius's life. He played a prominent part in the intellectual life of Leiden, acting as rector of the university for four years, and became engaged in both local and national political issues. He taught Prince Maurice of Orange at the university, and was involved with the circles around Robert Dudley, Earl of Leicester, in 1586–7.²⁸

22. On such an approach see Koskenniemi, *supra* note 15, at 6–9.

23. Waszink, *supra* note 4, provides a current and very useful introduction, both to Lipsius's life and to the scholarly debate about Lipsius's most influential book, the *Politica*.

24. Of these, the most important guide to ethics, particularly at the personal level, was Seneca. However, in his writings on the affairs of principals, Lipsius relied largely on Tacitus. The focus here is thus primarily on Tacitus, with references made to Seneca chiefly in the context of Stoic ideas about natural law.

25. J. Papy, 'Justus Lipsius', in E. N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2004), accessible at <http://plato.stanford.edu/archives/fall2004/entries/justus-lipsius/> (last visited 9 March 2006).

26. J. Papy, 'Justus Lipsius and the German Republic of Letters: Latin Philology as a Means of Intellectual Exchange and Influence', paper presented at the conference 'Germania latina – latinitas teutonica' (2001), accessible at <http://www.phil-hum-ren.uni-muenchen.de/GermLat/Acta/Papy.htm> (last visited 31 March 2006).

27. The information about the years in Leiden is based on Waszink, *supra* note 4, at 21–3. Further discussions about Lipsius's time in Leiden can be found in K. A. E. Enenkel and C. L. Heesakkers (eds.), *Lipsius in Leiden: Studies in the Life and Works of a Great Humanist* (1997); and R. Dusoier, J. de Landtsheer, and D. Imhof (eds.), *Justus Lipsius (1547–1606) en het Plantijnse Huis* (1997).

28. The connection with Lord Leicester, and particularly Sir Philip Sidney, would provide the first inroad for Lipsian thought in England, and explains some of its popularity in English oppositional circles, like that

After discussing the classics in their own right, Lipsius expanded his repertoire, applying classical learning to the conduct of current life. The resulting set of ideas was what later became known as neo-Stoicism.²⁹ While in Leiden, Lipsius produced his main treatises: *De Constantia*,³⁰ dealing with the ethics of individual life in times of turmoil – how the citizens should endure and obey – and the *Politica*,³¹ dealing with how to rule principalities. After moving to Louvain in 1591, Lipsius also wrote two introductions to Stoic philosophy,³² and several expositions of Roman military and civil life. He was widely considered to be among the greatest intellectual lights of his period, and corresponded with some seven hundred people, including leading scholars, artists, and statesmen. During the age of Enlightenment, however, his name was forgotten.

2.2. Tacitism, political humanism, and practical government

The current interest in Lipsian thought can largely be traced back to the seminal work of Gerhard Oestreich.³³ In contrast to different materialist explanations of the emergence of the post-feudal/early modern state, Oestreich emphasized political theory and practices. Even though he does not explicitly criticize the literature on the development of the fiscal–military state, he does lament the fact that

The elaboration of army organization and state finance, two of the most important instruments at the state's disposal in the sixteenth and seventeenth centuries, are held to have resulted from military and political necessity and to have evolved by themselves in response to the requirements of the real world . . . Hence, the theories of practical government which were current at the time have been left largely unexamined, as opposed to those which are interesting from the standpoint of legal and constitutional philosophy.³⁴

Thus, according to Oestreich, the materialist determinism inherent in much historical sociology decontextualizes the military and fiscal practices that were crucial in enabling the early absolutist states. One could also add that in their earlier instantiations, such theories tended to overstate the exploitative quality of these states, through the concept of the coercion–extraction cycle, where armies were raised in order for the state to extract resources more easily from the population, resources that were then employed to raise larger armies. Later explorations of the emerging fiscal–military states have paid more attention to cultural factors,

around the Earl of Essex. See J. H. M. Salmon, 'Stoicism and Roman Example: Seneca and Tacitus in Jacobean England', (1989) 50 *Journal of the History of Ideas* 199; McCrea, *supra* note 5; M. Dzelzainis, 'Shakespeare and Political Thought', in D. S. Kastan (ed.), *A Companion to Shakespeare* (1999), 100; M. Healy, 'Curing the "Frenzy": Humanism, Medical Idiom and "Crises" of Counsel in Sixteenth-Century England', (2004) 18 *Textual Practice* 333.

29. Several authors have also stressed the elements of classical scepticism in Lipsius's thought. See, e.g., P. Burke, 'Tacitism, Scepticism, and Reason of State', in J. H. Burns and M. Goldie (ed.), *The Cambridge History of Political Thought 1450–1700* (1991), 479–98.

30. Or, to be precise, *De constantia libri duo qui alloquium praecipue continent in publicis malis*.

31. *Politiorum sive Civilis doctrinae libri sex*.

32. These treatises remained the state of the art on Stoicism until the early twentieth century; see Papy, *supra* note 21.

33. See G. Oestreich, *Neostoicism and the Early Modern State*, ed. B. Oestreich and H.G. Koeningsberger, trans. David McLintock (1982).

34. *Ibid.*, at 36.

and concluded that consensual and bargaining processes were more common than outright coercion.³⁵ However, there still seems to be little interest in the political ideology (or doctrine of action) that guided the princes and their advisers. Following Oestreich, this is where Lipsian neo-Stoicism fits in the picture.

Approaching the age of Lipsius from the point of view of philosophy and political theory provides further incentive for studying his thought, and illustrates that he was not the only thinker to be forgotten; that was a destiny that befell quite a few of his contemporaries. Following Toulmin,³⁶ who uses Montaigne as his main illustration, the reason for the omission was that there occurred a substantial shift in scientific and philosophical thinking in the first half of the seventeenth century. Thinkers and scientists such as Descartes, Galileo, and Grotius gradually came to be seen as the founders of modernity, and their immediate predecessors were confined to the historical scrapheap. Where Toulmin made a broad argument about the importance of the transitional years around 1600 for the development of philosophy,³⁷ Tuck, dealing more specifically with political philosophy, produced what has become the most influential reappraisal of Lipsius's age.³⁸ Tuck paid particular attention to the shift in inspirational sources for humanism in the late sixteenth century. Whereas Italian thinkers of the early Renaissance drew largely on Cicero, and furthered a republican ideal where personal freedom and living a life of service to the republic were central, disillusionment with religious warfare and the Spanish empire in the second half of the sixteenth century shifted intellectual debate 'from rhetoric and philosophy to politics and history',³⁹ and towards Tacitus.⁴⁰ The civic humanism of the Renaissance gave way to the political humanism of the Baroque.

Interest in Tacitus's writings had already started to grow in German lands at the beginning of the sixteenth century, mostly based on patriotic readings of the *Germania*.⁴¹ However, Tacitus would become even more important as a vehicle for dealing with the most controversial thinker of the age, Machiavelli. The brand of reason of state that Machiavelli presented in *The Prince* was widely and routinely criticized for being atheist and utterly immoral, but later political theorists nonetheless 'could not do without his ideas'.⁴² The solution was to find some other way of dealing with the subject matter. Here, Tacitus proved useful. He provided a sceptical and disenchanting view of politics, and, just as important, Machiavelli had not drawn on him at all. Machiavellian themes could thus be discussed without acknowledging Machiavelli. Partly for this reason, during the 1570s an

35. See, e.g., J. Glete, *War and the State in Early Modern Europe. Spain, the Dutch Republic and Sweden as Fiscal–Military States, 1500–1660* (2002).

36. See *supra* note 1, *passim*.

37. *Ibid.*

38. Tuck, *supra* note 3. For the Dutch context, see also the work of van Gelderen; M. van Gelderen, *The Political Thought of the Dutch Revolt 1555–1590* (1992).

39. J. H. M. Salmon, 'Cicero and Tacitus in 16th Century France', (1980) 85 *American Historical Review* 307, at 317.

40. A thorough, if a bit dated, discussion of the place of Tacitus in the thought of the time is K. C. Schellhase, *Tacitus in Renaissance Political Thought* (1976).

41. D. R. Kelley, 'Tacitus Noster: The *Germania* in the Renaissance and Reformation', in T. J. Luce and A. J. Woodman (eds.), *Tacitus and the Tacitean Tradition* (1993), 152.

42. Burke, *supra* note 29, at 483.

interest in Tacitus as a political thinker was awakened, first among Italian exiles in France.⁴³

Tacitean thought also had a particular appeal in the tumultuousness of the times, particularly the war-torn France and Netherlands. Adding to his importance in the Netherlands was the patriotic value of Tacitus. In both *Germania* and *Historiae* he wrote at length about the Batavians of the Low Countries, and even saw the Batavian revolt against the Roman Empire in a positive light. In late sixteenth-century Holland, fighting for its existence against the Spanish Habsburgs, Tacitus must have been a tremendously fitting writer to turn to. As Schama points out, the turn of the century witnessed how ‘a succession of more austere and critical histories . . . stayed close to Tacitus and other dependable Roman sources like Pliny and Strabo to relate the history of the Batavians and their undefeated war against Roman imperial tyranny’.⁴⁴

Tacitus had the added benefit of ambiguity, allowing him to be used as inspiration for just about any policy. He would be used by monarchists and anti-monarchists alike, but at a more general level was appreciated particularly for his brutally honest depiction of power politics and reason of state. Overall, then, the move from Cicero to Tacitus was parallel to the move from rhetoric and philosophy to politics and history, and, crucially, also potentially a move from republicanism to an endorsement of absolute government. Republican virtues and community spirit were superseded by virtues that fitted in more centralized states, with individual subordination and standing armies.⁴⁵ Where Cicero furthered republican virtues, the Tacitean state saw its citizens as conquered enemies, importing ‘ideas about war into *civil* life: all politics was now seen as at least potentially civil war, and our fellow citizens were no different from enemies with whom we lived in uneasy peace’.⁴⁶ Such a conflation of levels of analysis necessarily also implied that the instruments of policy were interchangeable, but, likewise, that the laws, regulations, and limitations put on policy at one level could influence the others. A vision of a law-regulated domestic sphere also necessarily influenced how one could think about law in the external realm.

3. LIPSIAN THOUGHT AND INTERNATIONAL LAW

Starting from the work of Oestreich, later studies of specific countries tend to criticize some of his conclusions, but they are modified rather than refuted.⁴⁷ Current

43. Tuck, *supra* note 3, at 40.

44. Schama, *supra* note 18, at 75.

45. See Tuck, *supra* note 3, at 346–8.

46. *Ibid.*, at 10.

47. See, e.g., McCrea, *supra* note 5; Shifflett, *supra* note 7; Papy, *supra* note 26; and B. Lindberg, *Stoicism och stat. Justus Lipsius och den politiska humanismen* (2001). Most of the critics will claim that Lipsius himself was not as important as Oestreich holds, and/or that he was less of a neo-Stoic (at least in the *Politica*) than Oestreich claims. As all the critics acknowledge the importance of the set of ideas associated with Lipsius, the critique makes little difference to this article, where we trace Lipsian thought more broadly. It should also be stressed that the very concept of Stoicism at the time of Lipsius must have differed from ours, since there existed no agreed-upon ‘Stoic’ corpus of texts until the early twentieth century. To Lipsius and his contemporaries, Stoicism was ‘not necessarily a school in philosophy, nor a self-contained system of thought’. H. Blom and

studies have confirmed that Lipsius was indeed the most important figure in the restoration of Tacitus,⁴⁸ and that he ‘preferred to draw universal lessons from the examples of history, which he found to be more valuable than the general precepts of philosophers. On these terms the *prudencia* of Tacitus contained more valuable doctrine than the precepts of Aristotle and Plato.’⁴⁹ Drawing style and cynicism from Tacitus and practical ethics from Seneca, Lipsius established what has later become known as neo-Stoicism.⁵⁰ The key concepts borrowed from the classical Stoics were ‘authority, self-control, constancy, obedience and discipline’,⁵¹ but to them were added a political activism drawn from Tacitus. However, Tacitus was in general more useful for pithy quotations and examples than specific doctrine. As Morford comments with regard to prudence,

Tacitus himself seldom used the word, and his *prudencia* is to be found in his narrative. Therefore the definition of the word depends on the intelligence and judgement of each reader. . . . The prudence of Tacitus is to be found in his knowledge of the realities of power, his psychological insights, his brilliant accounts of the nobility and meanness of human character, his perception of the subtle relationship between the ruler and those closest to him. The *prudencia* of Tacitus lies as much in what he does not reveal as in what he does display in his narrative. . . . Tacitean *prudencia* therefore is the foundation of doctrines that are those of Lipsius, not necessarily of Tacitus.⁵²

To Lipsius, Tacitus had grasped some essential quality of human life, and his writings were thus a key source of insights. Nevertheless, this insight could only be grasped through examples and quotations, not through abstract concepts.

Tacitus, furthermore, had little to add on morality and law. On these issues, his contribution was indirect – morality continuously had to be tested against the disillusioned realities of statecraft that he described. When discussing ethics more specifically, Lipsius thus turned to Seneca and the earlier Stoics. The key task for Lipsius here was to create a workable synthesis of Stoic ethics and Christian

L. Winkel, ‘Grotius and the Stoa: Introduction’, in Blom and Winkel, *supra* note 12, 3 at 5. It should also be noted, as Burke comments, that (neo)Stoicism ‘was not so much a political theory in the strict sense of the term as an attitude or set of attitudes’, Burke, *supra* note 29, at 491.

48. Although there are clear influences from e.g. Aquinas, Vitoria, and Bodin in Lipsius’s work, he hardly ever referred to any contemporary thinkers in his publications.

49. M. Morford, ‘Tacitean *Prudencia* and the Doctrines of Justus Lipsius’, in Luce and Woodman, *supra* note 1, 129 at 136.

50. Classical Stoicism was developed in Hellenistic Greece, and emphasized that the passions be subsumed and that one should live ascetically, in harmony with both physical nature and one’s own human nature. Virtue and obedience were central points, as was the insistence that the individual had to be subsumed under the universal order. D. Baltzly, ‘Stoicism’, in Zalta, *supra* note 25.

51. See Oestreich, *supra* note 33, at 96.

52. Morford, *supra* note 49, at 150–1. Prudence, as Lipsius defined it, was ‘an understanding & discretion of those things which we ought either to desire or refuse, in public, & in privat’. J. Lipsius, *Six Books of Politiques or Civil Doctrine*, trans. W. Jones (1970 [1594]), 11. The quotations from Lipsius are from the first English version of the *Politica*, a translation that is reported to be faithful to the original text, apart from the, as it were quite prudent in late Elizabethan England, omission of a few paragraphs on the advisability of female rulers. See Evans, *supra* note 3, at 12. This translation has been preferred to Waszink’s more textually accurate one, since we are interested in the influence and reception of Lipsian thought, rather than establishing some sort of definitive authorial intent. Lipsius, *supra* note 4. I have used Waszink’s translation to establish modern meanings of some sixteenth-century English terms, as well as the original Latin. The *Politica* is a remarkable quilt of quotations from antiquity and Lipsian insights, and I have, for reasons of brevity, chosen not to detail when Lipsius quotes and when he comments.

morality, where God was inserted as prior to fate, and where humans were supposed to endure adversity through constancy – living their lives in accord with nature.⁵³ To Lipsius, as to earlier Stoics, there existed laws of nature that were accessible to human rationality.⁵⁴ Even though such natural laws were seen ultimately to stem from God, the shift in emphasis implied that the basic law governing all things could now logically be deduced from nature. This, in turn, made it possible to make non-Christians subjects of this law, and to make legal arguments without recourse to religious authority.⁵⁵

The arguments about natural law were first and foremost made in the context of personal ethics, and Lipsius's works contain little explicit reference to what has become known as international law. However, he discussed in detail the possibility of a morally sound reason of state, as well as the two overriding themes of 'international' law of his age: war and empire. Furthermore, as noted above, Lipsius conflated the personal, national, and interstate levels of action and analysis, and thus his general thinking about law also pertains to the international. In the section that follows, I start by briefly outlining the sources of law that can be found in Lipsius's work before moving on to discussing Lipsius's view of law in general and the importance of stability and law for ensuring commerce. This is followed by a discussion of the general practice of interstate politics, approached by Lipsius through a discussion of degrees of deceit, and then the specific issues of war and empire.

3.1. Sources of law in Lipsius's work

Even though Lipsius spent a lot of time creating an ethical framework based on natural rather than divine law, there were still some issues where he referred to the will of God. Actions that were in clear breach of the Ten Commandments were, for example, classified as sins, for which one must be prepared to face judgement. A more specific example regards tyranny, which Lipsius defined as rule 'besides the customs and laws',⁵⁶ thus violating customary and civil law, as well as constitutional law. Lipsius nevertheless argued that it should be endured, rhetorically asking, 'Do not kings come from God?'⁵⁷ The legitimacy of the existing government was thus based, if not on divine law, then at least on divine authority. Natural law, on the other hand, underlies both what Lipsius refers to as civil prudence (regarding domestic affairs) and mixed prudence (regarding external policies). Pursuing the common good was, importantly, seen to be according to the law of nature. The law of nature also supports more specific conduct in interstate affairs, particularly in warfare and imperial expansion. Nevertheless, in the discussions of both domestic and external affairs we also find arguments based on voluntary or customary law, and human

53. See Papy, *supra* note 21, particularly 63–70.

54. Thus the close connection between physics and ethics – by understanding what existed in nature, one could understand how to act.

55. Systematic Christianized ideas about natural law are traceable to Aquinas, while the Spanish scholastics, particularly Vitoria, made natural-law arguments in the context of 'international' law. See Anghie, *supra* note 2. The neo-Stoic contribution was to provide a systematic philosophical argument about the centrality of natural law.

56. Lipsius, *Politickes*, *supra* note 52, at 198.

57. *Ibid.*, at 200.

law, for example in the form of contract law, clearly dominates Lipsius's discussions on domestic law.

3.2. Lawful government and the sanctity of contracts

To the extent that Lipsius provided guidelines for prudent action partly inspired by Machiavelli, he could be said to privilege politics over law.⁵⁸ And he did indeed argue that the prince could break laws inside his state and treaties with other princes. However, he stressed again and again that law and treaties could only be broken for reasons of survival, never for enrichment. In all other instances he stresses the sanctity of laws, treaties, and contracts as essential for upholding the much-sought-after order and peace. The laws discussed in this part of Lipsius's argument were all of the human kind.

The type of government best suited for the task of securing order was, according to Lipsius, monarchy, 'but onely that which is true, and lawfull, which I define to be the government of one, imposed according to custome, and lawes, undertaken & executed for the good of the subiects'.⁵⁹ To be lawful, the monarchy had to be established through a constitutionally accepted process – election or succession – even if this process was not codified. The prince also, according to this definition, should act to the benefit of the commonwealth. Lipsius even suggested that the prince should subordinate his own desires to the needs of the people, and treat them to the same standard accorded to himself: 'The prince then, ought not only to observe Iustice to him selfe, but as I added, towards others likewise.'⁶⁰ He also explicitly notes that 'the thraldome of thy subiects is not committed unto thee, but their libertie, defence and protection'.⁶¹ As Oestreich comments, 'The prince stands above his people, but at the same time he must be the servant of all.'⁶² However, among the benefits of moderate and lawful behaviour by the prince was the didactic effect: 'A prince, by doing that which is lawfull and right, teacheth his subiects to do the like.'⁶³ Doing what is right must be taken here to indicate that which is prescribed by civil and customary law.

The main purpose of the prince was to ensure stability, which could best be ensured by sticking to established laws. Lipsius implores the prince to 'Observe constantly those lawes which are once established; neyther do thou alter any of them.'⁶⁴ If changes were necessary, they should be modest and incremental. Lipsius nevertheless stressed that there should not be too many laws, as the creation of new laws leads to 'the arte of pleading', and a rapidly growing number of lawyers, conducting 'a lawfull robbie or theft'.⁶⁵ While a state should be founded on law,

58. On the other hand, as we shall see below, according to Lipsius, law was essential to civil life, and thus the very possibility of politics.

59. Lipsius, *Politickes*, *supra* note 52, at 19.

60. *Ibid.*, at 29.

61. *Ibid.*, at 23.

62. Oestreich, *supra* note 33, at 41.

63. Lipsius, *Politickes*, *supra* note 52, at 27. Governing by example was considered to be a kind of unwritten or 'hidden' law.

64. *Ibid.*, at 80.

65. *Ibid.*, at 30.

the prince should make sure that it was not overthrown by law, and as 'In former age commonwealthes, have bene happily governed without lawyers, . . . so they may well be hereafter.'⁶⁶ The respect for the law was not extended to those who practised it.

The preoccupation with laws and lawful government was closely related to Lipsius's emphasis on trade and commercial interests. At the very beginning of the *Politica* he set out the object of study as such: 'I define Civill life, to be that which we leade in the societie of men, one with another, to mutuall commoditie and profit, and common use of all.'⁶⁷ A little later he expounded, 'Civil life consisteth in societie, societie in two things, Traffique, and Governement.'⁶⁸ Traffic here had the original meaning of trade or commerce. Without trade there would be no community, and thus commercial activities must be supported and protected: 'Let it be permitted to violate, and infringe the law of contracts, and you may take away the use of trafficke from amongst men. It is then a most wicked and treacherous part, to breake faith, sith that it preserveth our life.'⁶⁹ The upkeep of civil law and contracts was of particular importance for a trading state like the Netherlands, where the merchants above all wanted freedom from arbitrariness, and stable conditions for trade.⁷⁰ According to Lipsius, a law-abiding monarchy could ensure just that, which gives sense to the quote that being ruled was not only necessary, 'but amongst those [things] likewise that are profitable'.⁷¹ In the emphasis on trade and contracts, Lipsius clearly draws not only on the civil law, but also on the customary law that could be found in the *lex mercatoria*.

The adherence to law was nevertheless not inevitable; prudence, a central Lipsian concept, could dictate a different course. When the life of the prince was endangered, the law could be broken. The supreme power of the prince might in the final equation be more important than the interests of the population and the sanctity of human law. However, Lipsius stressed explicitly that the prince could only break the law for the sake of preservation, whereas crimes committed for the sake of enhancing glory were tyrannical (and were the only possibly legitimate cause for rebellion). This marks an important point where Lipsius differs from, for example, Machiavelli, by constraining princely freedom of action.

3.3. Dissimulation

The possible necessity of deviating from laws and treaties was even more pronounced when attention was directed towards external affairs. Writing at a time of blurry borders and before sovereignty had achieved any coherent meaning, Lipsius did not distinguish between domestic and foreign politics, other than distinguishing between policies directed against one's own subjects and policies directed at other

66. Ibid.

67. Ibid., at 1.

68. Ibid., at 16.

69. Ibid., at 35.

70. Cf. Hirschman's argument about the same period, that what a world governed by interests rather than passions could provide was predictability and constancy. A. O. Hirschman, *The Passions and the Interests. Political Arguments for Capitalism before Its Triumph* (1977), 48–56.

71. Lipsius, *Politickes*, *supra* note 52, at 16.

princes. As a general rule of conduct, prudence also applied at the interstate level, where Lipsius defined it to be ‘a skill to governe externall matters quietly and safely’.⁷² However, the need to conduct external matters safely was what led Lipsius to modify his otherwise strict moral guidelines underlying prudence. He notes that there are some political thinkers who refuse to entertain notions of a mixed prudence, and comments that ‘They seeme not to know this age, and the men that live therein, and do give their opinion, as if they lived in the commonwealth of Platon and not in the dregs of the state of Romulus.’⁷³ Here, as elsewhere in the text, Lipsius offers some support to Machiavelli, even borrowing his rhetoric when discussing foreign princes, who are ‘for the most part of this number [craftie and malicious persons, who seeme to be made of fraude, deceit, and lying]: and although they shewe themselves to be like Lyons, yet are they in their corrupt hearts, dissembling Foxes’.⁷⁴ Thus,

The Prince may . . . sometimes having to deale with a foxe, play the foxe, especially if the good and publike profit, which are always conioyned to the benefit, and profit of the Prince doe require it . . . the forsaking of the common profit is not onely against reason, but likewise against nature.⁷⁵

As noted above, the only thing that could legitimate a breach of human law was the common profit, and here Lipsius makes the protection of the common profit an element of natural law. This is a key to the ensuing discussion, as the laws that Lipsius suggests might be broken by deceit are, at least at the outset, clearly human laws. Breaches of human law in the external realm could thus be legitimated by recourse to natural law.

Lipsius assures the reader that he only suggests an indirect course, not a rejection of the right course, and stresses that he does not forsake the honourable. However, some measure of deceit might be necessary and even encouraged:

Decept in generall as it serveth for my purpose, is a subtile councill, which swarveth from vertue or the lawes for the good of the Prince and the estate. There are three sorts thereof, . . . 1. Light deceit is that, which paceth not farre from vertue, being slightly watered with the dewe of evill. Of this kinde I holde distrust and dissimulation. 2. Middle decept, which withdraweth it selfe from vertue, and approacheth neere to the confines of vice: in the which I put purchasing of favour and decept. 3. The third is that, which not only separateth it selfe from vertue, but likewise from the lawes, by a forcible and perfect malice, of which kind trechery, and iniustice are. The first sort of decept I persuade, the second I tolerate, and the third I condemne.⁷⁶

The prince simply should not be too trusting, and might even with good conscience buy the services of foreign courtiers, particularly if it could hinder war. Deviating from the law by treason or injustice, such as instigating assassinations or coups, however, could not be tolerated.

72. *Ibid.*, at 66.

73. *Ibid.*, at 112.

74. *Ibid.*, at 113.

75. *Ibid.*

76. *Ibid.*, at 115. There is a clear distinction between law and virtue in Lipsius's thought. Whereas law was divine, natural, or human, virtue consisted of two parts, faith and goodness, the latter defined as ‘an upright life, as well in the carriage of our selves, as in all our actions ruled by honestie’. *Ibid.*, at 10. Virtue was thus a concept of honesty and integrity, of morals rather than law.

The relevant measure of the deeds was thus not necessarily their internal moral status, but the reasons for doing them and the effects thereof:

There are certaine kind of lies, in which there is no great offence, yet are they not without fault. And in this ranke we deeme that light corruption and deceit are only then, when a good and lawfull king useth them against the wicked, for the good of the commonwealth. Otherwise it is not onely an offence, but a great sinne.⁷⁷

The main thrust of these passages is that human law can be breached, if natural law, in the form of self-protection or protection of the common good, deems it necessary. Codified human law might even be broken with reference to customary law, as when Lipsius accepts light deceit with reference to the fact that it is widely employed. It should nevertheless be noted that there seems to be a slippage in the conception of law in the discussion of deceit. In the general definition we find a repetition of the figure that natural law (protection of the interests of prince and estate) could overrule virtue and human law. The same goes for light and middle deceit:

The prince in desperate matters, should alwaies follow that which were most necessarie to be effected, not that which is honest in speech. Then I say, let him decline gently from the lawes, yet not except it be for his own conservation, but never to enlarge his estate.⁷⁸

These laws are the human laws (*humanis legibus*), and the legitimation is the classical: ‘necessitie . . . doth breake all lawes’.⁷⁹ Even grave deceit is exemplified by broken treaties, and thus breaches of human law. On the other hand, treachery and injustice (grave deceit), as well as lying for one’s own profit (middle deceit), are condemned as sins, with explicit reference to divine law, even if widely practised. The fact that they were customary did not make them lawful; on the contrary, Lipsius clearly indicates that they would invoke the wrath of God, and only the need for securing the good of the commonwealth leads him to suggest that one could stray from divine law. This tension should not lead one to the conclusion that Lipsius held natural law higher than divine law. On the other hand, the art of governing might sometimes create an irresolvable conflict between the self-interested dictates of natural law and the commandments of divine law, and in those cases, the prince must do what was necessary, but be prepared to face the ultimate consequences.

What emerges in Lipsius is thus a *raison d’état* that is not only concerned with the survival of the state, but where balance, peace, and order are central components, and where law of different kinds and lawful conduct are prescribed as necessary components of international interaction.⁸⁰ Whereas ends might justify means, it was important not to travel too far down that road, and the concepts of dignity, self-constraint, and discipline underlay the *prudencia mixta* that is prescribed for dealing

77. Ibid., at 120.

78. Ibid., at 123.

79. Ibid.

80. As Hirschman notes, the ideal of statecraft in the late sixteenth and early seventeenth centuries was the rational, individual pursuit of one’s interests, which would lead to gains for all parties, and would be vastly superior to earlier, more passionate policies; see *supra* note 70, at 50–1.

with external affairs: 'He [Lipsius] stresses the fact that he is talking of mixing prudence and deception; he is not recommending a complete departure from what is honourable. . . . What he wishes to recommend is a detour, not a false path.'⁸¹ The wisely administered power, exercised with moderation and within the limits of human as well as divine law, was the ideal.

3.4. War and peace

Moving now from the general pursuit of external affairs, to be guided by mixed prudence, we find that law also mattered in Lipsius's more specific discussions about war and empire. It should be noted that Lipsius was a lot more detailed in his dealings with military organization, discipline, tactics, and strategy than in his description of the juridical aspects of warfare. He also repeatedly stressed that the best course was to avoid all but the absolutely necessary war. Nevertheless, although not employing these terms, he discussed aspects of warfare relating not only to *jus ad bellum*, but also to *jus in bello* and *jus post bellum*.

Before even getting to war, Lipsius admonishes rulers to avoid warfare altogether, and particularly so the rulers of smaller states: 'It were better for you by councell and pollicie to attempt forrain matters, and not to meddle with weapons.'⁸² He then starts his discussion of war by stressing the need for military prudence in government: 'A mere naked force, is not avayleable to bring this matter [the conservation of himself, his goods and his subjects] to passe, if it be not tempered with certaine industrie and counsel: that is, with militarie prudence.'⁸³ Moving on to the subject matter itself, Lipsius declares that when starting a war, its justness is of prime importance:

In the enterprising [i.e. starting] of warre, I do admonish thee to have care of these two things, that all iniustice, and temeritie, be eschued, but especially iniustice: neyther oughtest thou ever begin any warre, but such as use [i.e. custom] and reason doth admit. For there are lawes belonging unto warre, as well as to peace; and thou oughtest to make warre with no lesse iustice, than fortitude.⁸⁴

Again, power and justice should be balanced, and Lipsius here introduces both the idea of just war (*justum bellum*) and the existence of laws of warfare (*jura (sunt) belli*). He went on to stress the importance of the laws of war:

in every Commonwealth, the lawes concerning warre ought especially to be observed: For to runne headlong to fight, and rashly to come to handy strokes with your enemy, carryeth with it a spice of cruelty, and resembleth the brute beastes. Which custome if we admit, what other thing shall we beholde, then warre amongst all nations? And after the manner of barbarous people, we shall recompence death with death, and satisfie bloud with bloud.⁸⁵

Here Lipsius brings in ideas about sociability and civilization, and suggests that the community of states is indeed not equal to a state of nature. At least with regard

81. Oestreich, *supra* note 33, at 48.

82. Lipsius, *Politickes*, *supra* note 52, at 84.

83. *Ibid.*, at 127.

84. *Ibid.*, at 128.

85. *Ibid.*

to the laws of warfare, the conception of law in these two quotes could thus be seen as positive, laws existing as a result of customary practices in the societal interaction between principalities. To the extent that barbarians were not expected to follow these laws, they could hardly be seen as natural laws, even though the reference to reason could be read as an appeal to natural law, and divine law is not mentioned at all.

Before detailing further what makes war just, Lipsius quickly establishes that wars fought out of ambition or greed or in anger are always unjust.⁸⁶ He then goes on to declare that ‘These three things maketh the warre lawfull, the author thereof, the cause, the ende.’⁸⁷ Although not acknowledged by Lipsius, he must have borrowed this tripartite organization of the theme from St Thomas Aquinas, and many of his further points can also be traced to the earlier thinkers on just war, particularly St Augustine and Cicero. The debt to earlier writers, as well as the structure of the following argument, suggests that Lipsius considered just war to be grounded in natural law.

Lipsius quickly establishes that the prince or the highest magistrate is the only lawful instigator of war, and then lists his four just causes. The first two come under the heading defence. The first is classical self-defence – the defence of oneself and one’s subjects. The second form of defence is the defence of strangers, and this can again be subdivided into the defence of allies and the defence of the oppressed. The latter Lipsius justified by ‘the common bond of societie’,⁸⁸ which demanded that one should help one’s fellow man. It was, however, important that such defence of strangers was not used as a pretext for expansion. The two other main just causes are grouped forms of invasion (or aggressive war). The first form of lawful invasion is one where ‘thou doest revenge iniuries done unto thee, and by the lawe of Nations recover thine owne’.⁸⁹ Nevertheless, for such an invasion to be just, one first had to attempt to have the wrongs redressed through peaceful means. Other forms of just invasion could be undertaken, even if there had been no wrongdoing, ‘as against Barbarians, or those who do altogether abhorre our manner of life, and religion, especially if they be mightie, and eyther have, or do invade others: The reason hereof is the punishment, and correction of evill.’⁹⁰ Having thus numbered the just causes, Lipsius finished by declaring that the only acceptable just ends of war were peace and defence (protection).

Ideas of dignity and self-constraint also underlay Lipsius’s ideas about the right way to conduct war. He stressed the need for faithfulness as the basis of justice, and elaborated that faith should be kept even with the unfaithful, and even in war: ‘He is a right souldier, that setteth downe this for his first, and last, resolution, to

86. In one of his last, unfinished, works, Lipsius listed greed, ambition, wrath, lust for revenge, and other personal vices as the *true* causes of war, but admonished that wars *should* only be waged for a just cause. See Papy, ‘Unpublished Dialogue’, *supra* note 10, at 139. Again, this is an argument in favour of natural law, rather than customary law arising from the practice of states, as what makes a war just.

87. Lipsius, *Politickes*, *supra* note 52, at 130.

88. *Ibid.*, 131.

89. *Ibid.* Lipsius uses the term *iure gentium*.

90. *Ibid.*, at 132. On the relation of this argument to Vitoria’s thought, see the next section.

be true of faith in battell.⁹¹ Apart from fighting honourably, Lipsius stressed that the soldiers should be disciplined so as to 'refrain from all force and pillage, and to have pure hands. Permit not the souldiers to be insolent against the possessors of the house they lodge in.'⁹² Such an admonition was clearly caused by the brutality of the mercenaries in the religious wars. However, as in peacetime, deceit could be employed: 'When lawfull warre is undertaken, it importeth nothing in respect of justice, whether the enemy be assayed openly, or by ambush.'⁹³ The limit was again 'vile, and villanous deceit',⁹⁴ such as assassination or the breach of faith. Deceit should not lead to the abandonment of treaties, contracts, or alliances.

Having thus described what made war and warfare just, Lipsius turned to the conclusion of warfare. Victory, he wrote, should be used 'discreetlie, moderatlie, and modestlie',⁹⁵ and to establish a peace that is stable and honest, and not 'a contract of bondage', even if the most unjust peace 'is to be prefered before a most just warre'.⁹⁶ Applying a just peace increased the likelihood of its permanence. And, just as with any other contract or treaty, the treaties of peace should not be broken: 'hold inviolably the treaties of peace you make, and let faith be more precious unto you then your Empires'.⁹⁷

3.5. Empire

Lipsius's ideas about empire in general seem to have been mixed, combining his admiration of Rome, the possibilities for peace that would be provided by universal empire, and the need for Spanish goodwill in latter parts of his life with his dislike of war and conquest and his suspicion of the nobility. The comments about just invasion of barbarians cited above must also necessarily be understood in the context of the ongoing debates about imperialism, particularly relating to the legitimacy of the Spanish expansion,⁹⁸ but also the wars against the Turks. In this argument Lipsius seems to follow Vitoria, in putting forward that even a war against savages and heathens had to be justified, and that such justification could be found if the 'Indians' denied the Christians free practice of their religion or the right to carry out missionary activities. As Anghie has convincingly shown, it is through the discussion of the Indians' rational abilities and the legitimization of war against them (and the Saracens/Turks) through their ostensible misuse of that ability that Vitoria makes the move from earlier conceptions of divine law to natural law, what he calls *jus gentium*, in the process establishing a concept of sovereignty for the Spanish, as opposed to the non-sovereign Indians.⁹⁹ Although Lipsius was never concerned with the status of different cultural collectives, as Vitoria was, and in general dealt

91. *Ibid.*, at 35.

92. *Ibid.*, at 158.

93. *Ibid.*, at 177.

94. *Ibid.*

95. *Ibid.*, at 178.

96. *Ibid.*, at 182.

97. *Ibid.*, at 35.

98. See, e.g., A. Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800* (1995); M. C. Ortega, 'Vitoria and the Universalist Conception of International Relations', in I. Clark and I. B. Neumann (eds.), *Classical Theories of International Relations* (1996), 99; Draper, *supra* note 17, at 186–9.

99. Anghie, *supra* note 2, at 17–28.

with European affairs, by appropriating Vitoria's ideas about legitimate imperial expansion he also, again, underwrote an idea of natural law accessible through reason.

Turning more specifically to empire at a general level, Lipsius noted that 'It is a harder matter to conserve Provinces, then to make them thine; they are gotten by force, and kept by iustice.'¹⁰⁰ In addition to treating newly conquered populations justly, Lipsius recommended colonies, in the classical sense of the settlement of subjects outside the community, as a way of maintaining control in foreign, and particularly newly conquered, areas. The duality in Lipsius's view of empire is nevertheless clear in two quotes from *Admiranda sive de magnitudine Romana*, provided by Pocock. On the one hand,

The fear some have that a colony may grow stronger than its mother city, being at a distance, is of no weight; certainly it did not happen in the Roman empire. Nor will it in the Spanish, I judge it altogether prudent that they have filled the New World with colonies.¹⁰¹

On the other hand, this quote is followed by another one, where Lipsius criticizes kings 'who are forever exhausting themselves, by sending out armies and colonies, without adding to their resources; how can this fail to drain the spring and run it dry? This is a problem to be most seriously provided against.'¹⁰² Furthermore, the providential granting of America to Spain 'had its moral dangers, for the old Spanish vigor was almost carried away by avarice, luxury and greed', so that Lipsius concisely concluded his letter to a Spanish friend with the following observation: 'the New World conquered by you, has conquered you in its turn'.¹⁰³

It should, however, be noted that the overseas empire was not really what concerned Lipsius most. Even though Papy claims that 'America appears to be continuously present in Lipsius's mental world', he almost immediately recants, and notes that 'the New World was certainly not a central point of interest to Lipsius'.¹⁰⁴ To the extent that he commented on America, it was in the context of comparing the Roman and Spanish empires.¹⁰⁵ The key to Lipsius's thought on empire is Europe, where he stressed the positive developments that would follow from a universal empire. In a passage from the *Admiranda*, Lipsius complains about the current situation, where taxes must be paid not only to the prince but to estates, magistrates, lords, and church, and where undisciplined soldiers loot and crave provisions. Pocock reads this as a 'criticism of modern and post-feudal extensive monarchy, forced to bargain with a host of regional lordships and the competing authority of the Church, and unable to control its armies by the monopoly of their effective maintenance'.¹⁰⁶ One could furthermore read it as a pleading for empire. In the *Admiranda* Lipsius stressed that a universal European empire would create effective and efficient rule, support

100. Lipsius, *Politickes*, *supra* note 52, at 83.

101. J. G. A. Pocock, *Barbarism and Religion: The First Decline and Fall* (2003), 287.

102. *Ibid.*, at 289.

103. Papy, *supra* note 10, at 274.

104. *Ibid.*, at 272.

105. *Ibid.*, at 272–3.

106. Pocock, *supra* note 101, at 292.

trade and communications, create security and peace, provide a universal language and religion, and bring civilization to the world.¹⁰⁷ The book was, in short, a work of political propaganda.¹⁰⁸

In the overseas context, Lipsius followed Vitoria in providing a natural-law legitimation of imperial expansion, through the concept of just war against heathens. Such an approach would not do in the European context. Whereas Lipsius drew on legal reasoning in recommending the just treatment of conquered populations, his general appraisal of universal empire in Europe seems to be based solely on considerations of utility – the benefits that would follow from imperial rule. This goal must then be understood as thoroughly embedded in a political, not legal, reasoning.

4. THE INFLUENCE OF LIPSIUS

As noted above, Lipsius influenced international law both directly, through influencing later thinkers, and indirectly, through influencing practice that in due time was codified as law.¹⁰⁹ To the extent that the two can be separated, we shall start with practice, before turning to theory.

Starting with the numbers, *De Constantia* was printed forty-four times in Latin and fifteen times in French, and was translated into Dutch, English, German, Spanish, Italian, and Polish, totalling over eighty editions between the sixteenth and eighteenth centuries.¹¹⁰ And even that was to be surpassed by the *Politica*, which was printed in ninety-six editions from 1589 to 1751, in Latin, Dutch, French, English, Polish, German, Spanish, Italian, and Hungarian.¹¹¹ When we compare this with, for example, the twenty-nine editions of Bodin's *Six livres* between 1576 and 1753, Lipsius's influence on political thinking and practice can hardly be overstated.

The rapid and sustained popularity of the *Politica* seems to have stemmed from its practical orientations and usability; it could be put to a host of different, and even contradictory, uses. Style and format made it attractive in itself, but the main appeal seems to have come from Lipsius's 'emphasis on the realities and practicalities of political life',¹¹² and on the ambiguities that allowed for multiple interpretations. In one of the most detailed textual and contextual readings of the *Politica*, Moss stresses that the work's character of a commonplace-book implies a lot more ambiguity and several more layers of meaning than are usually attributed to it.¹¹³ If we follow her reading, Lipsius might well have *intended* his book to be of use to a host of different

107. Enenkel, *supra* note 10, at 619.

108. *Ibid.*

109. This argument does not hinge on a direct causal connection between Lipsian thought and political practice. Rather, following Foucault, we could see Lipsius's texts as furthering the conduct of conduct; not what to do, but how to do what one does.

110. See Oestreich, *supra* note 33, at 13. The average print run of Lipsius's books, at least the first printings in Latin, seems to have been 1,500 copies.

111. On top of this, the *Politica* was frequently copied, if not outright plagiarized, and referenced by other authors, such as Charron, du Vair, and Quevedo. *Ibid.*, at 90, 102–9, 162; cf. Morford, *supra* note 49, at 151.

112. See Evans, *supra* note 3, at 10.

113. See Moss, *supra* note 9.

political positions.¹¹⁴ The goal was to set out the parameters of discourse, the *via media* between Machiavellian power and Senecan/Christian ethics, but not to effect closure by privileging one position over the other.¹¹⁵

Even if Lipsius's writings presented readers with different options for action, his position on the sort of moral guidelines that constrained behaviour in the international realm was relatively straightforward. His position was denounced as too Machiavellian, but he found willing readers in the courts of the day, and to the extent that princes and advisors followed his advice, Lipsian thought helped to form the behaviour that gradually became codified as international law during the seventeenth and eighteenth centuries. His work greatly influenced the military practices of the House of Orange in the late sixteenth and early seventeenth centuries, practices which were in turn widely imitated across Europe, to the greatest extent in Germany.¹¹⁶ Lipsius's works could also be found in the libraries of the leading men of the most powerful states of the day: Richelieu and Olivares.¹¹⁷

In what was probably *the* most important textbook for diplomats of the seventeenth and early eighteenth centuries, Juan de Vera y Figueroa's *Embaxador*, published in 1620, the author drew heavily on Lipsius's ideas on prudence and constancy. Figueroa explicitly based his discussion of the possible deceptions that an ambassador could engage in on Lipsius's argument in the *Politica*, in particular the division that Lipsius made between the dissimulation and deceit that could be necessary in the public life of princes (and ambassadors) and the strict morality that should govern their private lives.¹¹⁸ Lipsius also corresponded directly with several prominent Spanish statesmen, leading Corbett to comment that

among statesmen in Spain, the most powerful state of this period, Lipsius's combination of scholarship, religious piety, and sophisticated statecraft made him far more popular than any politician, including Niccolò Machiavelli. Thus, during the late sixteenth and early seventeenth centuries, Lipsius's writings more than those of any other figure were responsible for the triumphs and tribulations of Spanish statecraft.¹¹⁹

Lipsius's particular popularity in Spain could be explained partly by his affinity with the Spanish scholastics such as Vitoria and partly, as Corbett stresses, by the double strand of militarism and piety that dominated Spanish statecraft¹²⁰ and led to a search for theories that harmonized Machiavellian themes and religious values, of which Lipsian thought was such a prime example. Lipsian themes are also abundant in the writings of Diego Saavedra Fajardo, a Spanish diplomat who, writing in 1639, claimed that the Spanish monarchy could be defended on the basis of its ability to

114. Related comments, also tied to the oral practice of rhetoric at the time, can be found in Dzelzainis, *supra* note 28.

115. This reading differs from the one presented by Waszink, who sees the *Politica* as driven by one specific authorial intent; *supra* note 4, at 74–8.

116. De Landtsheer, *supra* note 10, at 103–4, 119.

117. See Burke, *supra* note 29, at 493. On the influence of Lipsius on Richelieu's practical policies and political writings, see Oestreich, *supra* note 33, at 108–9.

118. G. A. Davies, 'The influence of Justus Lipsius on Juan de Vera y Figueroa's *Embaxador*', (1965) 42 *Bulletin of Hispanic Studies* 160, at 161, 164–7.

119. T. G. Corbett, 'The Cult of Lipsius: A Leading Source of Early Modern Spanish Statecraft', (1975) 36 *Journal of the History of Ideas* 139, at 139.

120. *Ibid.*, at 140–1.

provide security for its inhabitants, who quoted Lipsius on the perils of empire and expansion, and argued that power could not be detached from 'economic prudence' – trade rather than expansion was to be the goal.¹²¹ He later represented Spain at the Peace of Westphalia.¹²² There are also clear affinities between Lipsius's thought on just war and just warfare and Suarez's ideas on the same subjects. Suarez's thoughts were published posthumously in 1621, but it is likely that they were written after the *Politica*. The parallels in the work could be explained by similar sources, but given the massive popularity of Lipsius in Spain, it is likely that Suarez was at least familiar with Lipsius's ideas. When listing what made a war just, Suarez included legitimate power, just cause, and proper conduct.¹²³ The first two points are similar to Lipsius (and Aquinas for that matter), but the last could be read as a more systematic approach to *jus in bello* themes that Lipsius had brought up.

For reasons of physical and ideological proximity, Grotius is still the thinker to whom Lipsius is most often linked. There are several interpretations of the relationship between the two men, varying according to what is seen as the defining traits of their respective thought.¹²⁴ Tuck points out that Grotius's father was a pupil and close friend of Lipsius, and that Grotius held Lipsius in high esteem.¹²⁵ Both men were inspired by the earlier Spanish scholastic thinking about law and the role of the state, and not least by classical Stoicism. Eyffinger is more cautious. He notes that the two shared a distinctly social and political outlook, but sees Lipsius as a pessimistic absolutist and Grotius as a more optimistic contractual thinker. Nevertheless, he also notes how Grotius, in one of his few forays into political analysis, draws on the Lipsian idea of 'power tempered by prudence'.¹²⁶ Based on the above discussion of Lipsius's thought, Eyffinger's dismissal of the connection between the two thinkers seems unwarranted. Lipsius as presented here is not so much a pessimist as a cautious realist, trying to establish some attainable moral basis for princely conduct.

Focusing less on personal contact and more on the political discourse of the period, Ford makes a strong case for seeing the two thinkers as closely linked. They both drew heavily on Tacitus and earlier Stoicism and focused on 'naturalistic individual obligation' rather than political institutions, and strong, although law-bound, authority, preaching 'virtue and self-restraint to princes . . . a message of Stoic forbearance and self-control addressed not just to subjects, but to their sovereigns'. In Ford's perspective, Grotius is rooted not so much in the quest for a new international order as in Stoic moral reasoning.¹²⁷ He sees Grotius as adhering to a natural law derived from right reason, and claims that this idea of natural law was drawn from the Stoics, through Lipsius, rather than from the Christian tradition, through

121. See Pagden, *supra* note 98, at 45, 69, 115.

122. See Oestreich, *supra* note 33, at 103.

123. See Kingsbury and Roberts, *supra* note 16, at 20.

124. The differing interpretations matter greatly. As Burke points out, although scepticism, Stoicism, and reason of state offered solutions to the same types of problems, 'Stoics, for example, believed in natural law; sceptics undermined it; reason of state overrode it', *supra* note 29, at 498.

125. See Tuck, *supra* note 3, at 155, 159.

126. See Eyffinger, *supra* note 12, at 323.

127. See Ford, *supra* note 6.

the Spanish scholastics.¹²⁸ This distinction seems exaggerated. Even if Lipsius's adherence to natural law in general drew on his neo-Stoic synthesis of Christianity and Seneca, he clearly followed the scholastics in his more specific natural-law arguments about just war and empire.

Tuck for his part plays up the scepticism the two had in common, and how it critically informs Grotius's synthetic view of international law. Put simply, Tuck argues that whereas Lipsius would argue that necessity could dictate self-preservation rather than adhering to the law, Grotius constructed self-preservation as a universal right, and thus the basis of international law:

If this is correct, then the old dichotomy between *raison d'état* and modern natural law was more or less the reverse of the truth: the natural lawyers saw that the ideas of the sceptics and *raison d'état* theorists could be put into a juridical or ethical form simply by construing self-preservation as a universal right. Furthermore, this allowed them to construct moral systems which were immune to this kind of scepticism, for the assumptions of the Renaissance sceptic had already been built into their theories.¹²⁹

Constructing necessity as a right thus became a way of forging an acceptable consensus on the basis of international morality. Tuck's analysis seems convincing, but he might be overstating the difference between Lipsius and Grotius. As we have seen, Lipsius legitimated breaches of human law by reference to the common profit, and the protection of the common profit was presented as grounded in natural law. The systematic application of self-preservation as a universal right only came with Grotius, but Lipsius had clearly carried out important parts of the groundwork. Tuck then adds to the picture by claiming, in contrast to most ideas about the emergence of modern political thought, that the idea of the autonomous agent was first developed in thinking about international affairs, and then brought by the Tacitists 'into *civil* life: all politics was now seen as at least potentially civil war, and our fellow citizens were no different from enemies with whom we lived in uneasy peace'.¹³⁰ Such a reading indeed makes Lipsius an important forerunner of Grotius and different varieties of modern liberal thought. It could also be strengthened by emphasizing the conflation of levels of action so prevalent in Lipsian thought (and in the Netherlands more generally).

The relationship between Lipsius and Grotius can further be elucidated by looking at their context. They were both part of what might be termed the emerging Dutch bourgeois–scientific discourse, what Oestreich, drawing on Dilthey, refers to as 'the Netherlands movement'.¹³¹ In the ongoing war of liberation against Spain, developing the military and mobilizing the full resources of the state became a matter of survival, and underpinning the action with some sort of doctrine became necessary. Lipsius, Grotius, and others were in this respect significant in the development of the doctrines that legitimated dramatic increases in the power of the state, in peace as in war. Oestreich has also stressed the strong burgher element in

128. The writers in the recent special issue of *Grotiana* on Stoicism also pay particular attention to Stoic traits in Grotian thought, in particular the Stoic ideas about natural law. See Blom and Winkel, *supra* note 12.

129. See Tuck, *supra* note 3, at 6.

130. *Ibid.*, at 10.

131. See Oestreich, *supra* note 33, at 34 *et passim*.

this movement, for example through the use of metaphors from trade and seafaring. Such a bias is evident in the emphasis that was placed on economics, trade, and regularity. There was a strong desire in the bourgeoisie for less unpredictability on the part of the nobility and the kings, and a strong emphasis on the sanctity of contracts. The development of natural law and international law are expressions of this at the international level. In this perspective it is hardly coincidental that the Grotian emphasis on the sanctity of contracts and free trade was developed in the Netherlands, the strongest bourgeois bastion of the day. The idea of inalienable rights was vital for keeping trade unfettered. Discussing the same issues, Tuck emphasizes the international context (colonies, maritime rights, international trade) rather than the domestic growth of the bourgeoisie,¹³² but these developments were obviously closely interconnected. Tuck's argument would have been even more convincing if he had also included the idea of inalienable rights in the domestic context out of which they grew, particularly since he has already made the argument about the close connection between these levels of action. Lipsius's *prudencia mixta* and Grotius's later development of international law can in any case be seen as attempts at transferring the disciplining of domestic society to the external realm.

5. CONCLUSIONS

International law as we know it has a winding genealogy. However, regardless of whether one wants to highlight the scholastic or the humanist tradition or whether one wants to emphasize natural law or voluntary law, Lipsius has a role to play. Since Lipsius scholarship on international law is in its relative infancy, however, there is little agreement on what exactly his role is. This has thus been an exploratory piece, but even so, some broad conclusions can be suggested.

Lipsius's contribution to the theoretical developments of international law can be found both in his elucidation and combination of previous themes and in his development of new themes. He borrowed arguments about natural law from earlier scholastics, but through his grounding of natural law in Stoic thought, he seems to have had an individual enabling effect on later developments of doctrines of international natural law, particularly through his definition of the defence of the common good as grounded in natural law. Lipsius's thought is also noteworthy for its emphasis on positive human law. In the highly original discussions on the mixture of power and morality, most of the laws that can be broken in states of emergency are human laws. This implies that outside such emergencies, human laws, in Lipsius's view, regulated not only domestic life, but also interaction with other princes and peoples. Laws of contract regulated external as well as internal trade, and parallel customary law dictated that treaties should be kept. Laws of warfare, on the other hand, seem to have arisen mainly out of voluntary law – the general practice of civilized states. Current scholarship gravitates towards seeing Lipsius as a key source of inspiration and ideas for Grotius, and thus for modern

¹³². See Tuck, *supra* note 3.

international law more generally. Such a conclusion is supported by the discussions above. However, alternative trajectories could also be imagined based on Lipsian thought. His ideas on human law could conceivably have been elaborated more systematically into a system of positive law, in a customary law/case law perspective. The reasons for the subsequent privileging of the natural-law elements of Lipsius's thought rather than the human-law elements must be sought partly in the internal developments of international law itself and partly in the general shift in political thought during the first half of the seventeenth century, as noted above.

Lipsius also had an indirect influence on international law, through influencing early modern statecraft. It is obviously impossible to measure such an influence, but the political guidebooks of Lipsius and his followers enable us to say something concrete about the way in which power was thought about and actually used in early modern Europe. Thus we can understand the consensual agenda that did exist in the international system, even before 1648, not only in behavioural terms, but in theoretical terms as well. Rather than understanding the politics of the first half of the sixteenth century as exhibiting an untrammelled reason of state, we can see that notions of prudence and morality did matter. Pursuing one's self-interest was supposed actually to benefit the entire system of states, by ensuring adherence to natural law. Furthermore, the states were not seeking to maximize power at all times; consensus about the autonomous status of the existing members of the system meant that there were limits to the use and maximization of power. Maximizing power was imprudent, since it transgressed the consensual agenda.

Lipsius stood at the threshold of modernity, trying to tie together a set of different traditions of political and legal thought in order to provide princes and population alike with practical advice for leading lives that were both morally sound and politically effective. As the international society today seems to be leaving modernity behind, we again try to find the right mix of politics and law. In the same way as for Lipsius, questions about international trade, war, and empire are at the top of the agenda. There is thus every reason to pay more attention to Lipsius's role in the development of international law, not because his solutions should be our solutions or because we are moving into the 'new Middle Ages', but because understanding his position can help us understand how we arrived at where we are now, and what our possibilities are.