Chapter Six

TRACE (II): Utopia and Late Scholasticism

My central task has been to establish that the over-arching rhetorical stratagem of *De Indis* is one of migration, replicating in miniature Koskenniemi’s more general critique of International Law as a repetitive oscillation between ascending (Positivism) and descending (Naturalist) modes of argumentation. In the previous chapter, I have shown that Grotius’ Civic Humanism, the discursive formation with which he is most commonly associated, could not provide a self-grounding foundation for the sort of textual project evidenced in *De Indis*. The ‘thin’ ontology of the Text had to be repeatedly supplemented by a ‘thick’ ontology at certain crucial rhetorical junctures. In this chapter, I shall undertake a similar critique of what is commonly viewed as the Text’s ‘repressed’ pole of *differance*, Late Scholasticism. As I have already established, virtually all of the primary discursive objects of *De Indis*—divisible sovereignty, *res extra commercium*, Corporate Sovereignty, international Just War—all embedded within the trans-national juridical landscape of the early Modern World-System of the ‘long’ 16th century, requiring consideration of the juridical dimensions of the items of concern within the terms of heterogeneity and pluralism. While I intend to prove that it is a mistake to interpret *De Indis* as a predominantly Humanist Text—a point that I have already alluded to in Chapters Four and Five—I will also be highlighting the various ways in which Grotius was equally unable to hold to a consistently descending, or ‘utopian’, form of rhetoric. Expressed in somewhat more prosaic terms, the issue here is the ‘real’ reason for the Author’s express and considerable reliance upon Late Scholastic authority.

The appearance of certain key terms within *De Indis* de-noting Law as a ‘metaphysical system’; such as *lex divina* or *lex aeterna*, signify both the absence of the ‘thin’ ontology of secular Civic Humanism and the presence of the ‘thick’ ontology of theological Late Scholasticism; within the Grotian Text, the presence of Divine and Eternal Law, or Right, ‘opens the way for a celestial dimension of legal obligations and a corresponding heavenly reward for obedience.’\(^1\) For Aquinas, Law


\(^{2}\) Ibid. 97.
is ‘fundamentally and primarily connected with reason, ratio’, which is identical with Providential Being that governs creation: ‘the eternal law [lex aeterna] is nothing other than the ratio of divine wisdom, in its aspect as directing all actions and all motions’.\(^3\) The sheer proliferation of Grotian theological treatises composed throughout the period of the juvenilia—the Meletius sive de his Quae inter Christianos Conveniunt Epistola (1611), De Imperio Summarum Potestatum circa sacra (1614), and Defensio Fidei Catholicae de Satisfactione Christi (1617)—all signify an Author immersed in the imaginary of the theological.\(^4\)

Natural Right [ius naturale] as a distinct category of Divine Right [ius divina] presents the overarching category in Grotius’ theology of International Right: the principles of Natural Right have their source in the rationality of God’s creation; consequently, matters of divine truth, which had only been revealed subsequent to creation, remain outside its scope. Thus Natural Right for Grotius does not represent the full divine truth, though it certainly is fully compatible with the divine will in its entirety.\(^5\)

The question that now emerges is why a ‘young Humanist’ such as Grotius felt compelled to make such a strong and arresting shift towards the ‘thick’ ontology of the Salamanca School. This is all the more surprising when we consider that the greater portion of the republican treatises published during the period of the Grotian juvenilia unambiguously evidence a favouring of Civic Humanism as the dominant pole of discourse. This is clearly evidenced by the most important political treatises published by the early Grotius, De Antiquitate Reipublicae Batavicae (1610). In her powerful assessment of the republican motif within the Grotian corpus, Brett makes clear the preponderance of the Author’s rhetorical inclination towards the signs of Humanist discourse, political monism and ‘thin’ ontology, culminating in the master-sign of civitas.

[Grotius’] focus is always on a humanly created order which transcends the individual: the civitas or respublica (the ‘city’) governed by civil law [ius civile], and the international order governed by the law of nations. The first goal of Grotius’ political inquiry is to analyse the structure of the city—more specifically, the city understood as a cohesive

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4 In a somewhat a-political manner Stumpf has argued that it probably belies human nature to conceive of a scholar who is fully devoted to proposing a return to the fundamental dogmatics of the church fathers in elaborated theological treatises on one day, just to free himself of any such theological preconditioning in order to display himself as the avant-garde of a secular jurisprudence the next day. Ibid. 5. Once again, the problem here is Authorial Presence. I would argue that the real question is not one of Authorial belief or intent but of discourse. Where Stumpf is undeniably correct is in arguing for the ‘controlling’ presence of the Theological within Grotian jurisprudence.
5 Ibid. 15.