THEOLOGICAL Studies

Article

Theologically Shoring Up the Law of the Sea

Theological Studies
2023, Vol. 84(2) 265–292

DOI: 10.1177/00405639231169965
journals.sagepub.com/home/tsj
Sage

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Abstract

In *Laudato Si'*, Pope Francis highlights the oceans as integral to our threatened common home and stresses the need for more effective ocean governance. Theologians can help to meet that need. By turning their attention to the UN Convention on the Law of the Sea (UNCLOS) and its further development, and by practicing "ocean empathy," they can join ocean scientists, NGOs, international lawyers, and others in caring for the oceans by shoring up the law of the sea.

Keywords

comparative theology, deep incarnation, *Laudato Si'*, law of the sea, ocean empathy, ocean governance, UN Convention on the Law of the Sea

In *Laudato Si'*, Pope Francis pays considerable attention to the oceans as integral to the common home for which he urges everyone to care. His concern is more than justified since the "oceans not only contain the bulk of our planet's water supply, but also most of the immense variety of living creatures, many of them still unknown to us and threatened for various reasons." As he explains, ocean ills include carbon dioxide pollution, coral reef degradation, fishing-related problems such as bycatch, and threats to marine organisms, including plankton, "which we tend to overlook."[1]

1. Francis, *Laudato Si'* (May 24, 2015), §40, http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (hereafter cited as *LS*).

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Yes, there are hopeful developments, such as "progress in establishing [ocean] sanctuaries."[2] But the situation is still serious, in part because "every intervention in nature can have consequences" that may eventually reach the ocean floor.[3]

Since, for Francis, "everything is connected,"[4] and, as one ocean advocate argues, "the sea connects all things,"[5] there is much in *Laudato Si'* that relates to the oceans, even when the focus is elsewhere. But the parameters of this article are set by these remarks:

> Let us also mention the system of governance of the oceans. International and regional conventions do exist, but fragmentation and the lack of strict mechanisms of regulation, control and penalization end up undermining these efforts. The growing problem of marine waste and the protection of the open seas represent particular challenges. What is needed, in effect, is an agreement on systems of governance for the whole range of so-called "global commons."[6]

If "the system of governance of the oceans," with its legal and institutional components, is integral to care for our common home, then, with all due respect to Francis, it deserves more than a mention. Among theologians and scholars of religion, however, this topic too rarely rises even to that level.[7] The aim of this article is to encourage theologians to join others in advancing the law of the sea. To that end, I will first say something about Catholic—or, as I will explain, "catholic"—theological engagement of international law, of which the law of the sea is but one significant part. Second, I will focus on the UN Convention on the Law of the Sea (UNCLOS)[8] as the "root stock" for a "new law of the sea," informed by a new consciousness that theologians may share, but a law that requires further development or shoring up.[9] Third, I will discuss "ocean empathy," an attitude and practice that can, on the one hand, strengthen the law of the sea and, on the other, connect theologians to that law. Finally, having laid this groundwork—or maybe seabed—I will suggest ways in which two of several possible strands of contemporary theology might respond to Francis's call for enhanced ocean governance if they are not already doing so. These chosen examples are: (1) deep incarnation theology and (2) comparative theology.

2. *LS*, §37.
3. *LS*, §41.
4. *LS*, §117.
5. Peter Neill, *The Once and Future Ocean: Notes toward a New Hydraulic World* (Sedgewick, MN: Leete's Island Books, 2015), 32.
6. *LS*, §174.
7. Entering "law of the sea" into the American Theological Library Association (ATLA) database search returns only twenty-seven titles of books and articles, most published in the 1980s or early 1990s.
8. United Nations Law of the Sea Convention, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (hereafter cited as UNCLOS).
9. As used in this article, "law of the sea" refers to a range of treaties, customs, legal norms, and other aspects of international law (e.g., "soft law") that, along with various institutions, contribute to "ocean governance." UNCLOS is a key, if not the key, component of the law of the sea, but it is not the whole of it.

Leaving a more explicit focus on theology to the end may seem at best odd in a journal devoted to theological studies. But theological engagement of international law and the law of the sea requires more than a few introductory remarks about these complex topics. Furthermore, theology will not really be left to the end. For reasons that I hope will become clear, international law, even in largely secular form, may qualify as a veritable *locus theologicus.*

Theological Engagement of International Law

Though international law affects human relations in multiple ways,[10] its importance and especially its inner workings may not be fully appreciated by everyone, theologians included. War and peace, trade and commerce, human rights, the environment, climate change, biodiversity, migration, genocide, slavery, cultural identities and artifacts, radio frequencies, gender issues, and more, each area with its contestations and complexities, are dealt with in international law. Its history is long and complex,[11] and sophisticated theoretical approaches to or "ways of thinking" about international law abound.[12] As an area of study and practice, international law can appear as vast, possibly as mysterious, as the world ocean—or perhaps outer space, with which international law also deals. So, engagement of international law by those outside the field can be a challenge.

But theologians need not be international legal experts to grasp the importance of the law of the sea or to engage it. The renowned ocean advocate Sylvia A. Earle's specialty is science, not law, but like Francis, she understands that good law is integral to care for the sea. So, in *The World Is Blue: How Our Fate and the Ocean's Are One*, she devotes several pages to "governing the ocean."[13] And if in the same book she can turn to the Gospels—where, unfortunately in her view, birds of the air may get "better press" than does the throw-away bycatch of Jesus's fishing disciples[14]—then theologians concerned about ecology, climate change, species extinction, marginalized people, global equity, peace among nations, and more might turn their attention not only to ocean science but also to the law of the sea. Or, to cite an example of border-crossing from within international law itself, the eminent jurist Manfred Lachs explained years ago that "international law has entered into fields of a scientific and theological

10. See, for example, American Society of International Law, "Int'l Law: 100 Ways It Shapes Our Lives," (2018), https://www.asil.org/resources/100Ways.
11. As one leading scholar points out, "there cannot be any such thing as a history of international law as a single unitary thing" because "conceptions of what international law is have changed so much over time." See Stephen C. Neff, *Justice among Nations: A History of International Law* (Cambridge, MA: Harvard University Press, 2014), 481.
12. Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford: Oxford University Press, 2016). Bianchi discusses at least thirteen "different ways of thinking" about international law.
13. Sylvia A. Earle, *The World Is Blue: How Our Fate and the Ocean's Are One* (Washington, DC: National Geographic, 2011), 203–21.
14. Earle, *The World Is Blue*, 70.

character, and it cannot be made, interpreted or applied without taking into account almost all the sciences."[15] One might ask whether, conversely, the theologically informed vision one finds in *Laudato Si'*—but not only there—can be fully realized or even grasped "without taking into account" not only "almost all the sciences" but also international law, including the law of the sea.

From Salamanca to Sri Lanka: A C/catholic Reconception of International Law

Theological engagement of international law may also pose a particular challenge to theologians due to international law's largely secular character. And there may be good reasons for that character, starting with the wars of religion that, prior to the Peace of Westphalia (1648), rendered religion an obstacle to relative peace and concord. But theology, including "natural theology," was at one time very much at the center of international law. To give an example pertinent to our topic, in Hugo Grotius's (1583–1645) influential treatise *The Freedom of the Seas*, the words "God" and "divine"—as in "divine law"—occur multiple times and are integral to the argument of the text.[16] Grotius is often identified as a key founder, if not the founder, of modern international law, even as he is also portrayed, or mis-portrayed, in standard textbooks as contributing to its secularization.[17] But it serves present purposes to recall that, nearly ninety years ago, a prominent American legal scholar, teacher, and practitioner, James Brown Scott (1866–1943), argued that it was not the Protestant Grotius who should be identified as the founder of international law but rather the Dominican Francisco de Vitoria (1483–1546), a theologian at the University of Salamanca. Together with Francisco Suárez (1548–1617) and others, Vitoria represented what Scott, a Protestant, termed "the Catholic conception of international law."[18]

Scott's views on international law's origins met with sharp resistance from others in the field, and as Christopher R. Rossi explains, Scott was prone to misreading,

15. Manfred Lachs, "The Grotian Heritage, the International Community, and Changing Dimensions of International Law," in *International Law and the Grotian Heritage: A Commemorative Colloquium*, ed. T. M. C. Asser Instituut (The Hague: T. M. C. Asser Instituut, 1985), 204–5.

16. Hugo Grotius, *The Freedom of the Seas* (Latin and English version, Magoffin translation, 1609), Books Published by Liberty Fund, Online Library of Liberty, https://oll.libertyfund.org/title/scott-the-freedom-of-the-seas-latin-and-english-version-magoffin-trans.

17. This alleged secularizing tendency is traced to a single line from the prolegomena to his famous treatise *De Jure Belli Ac Pacis Libri Tres* (*On the Law of War: Three Books*). I say "alleged" because some have argued that Grotius had no intention of severing international law from theology. See William P. George, "Grotius, Theology, and International Law: Overcoming Textbook Bias," *Journal of Law and Religion* 14 (Winter 2001): 101–25, https://doi.org/10.2307/3556583.

18. James Brown Scott, *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations; Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations* (Washington, DC: Georgetown University Press, 1934).

parochialism, and prejudices of various kinds.[19] But Rossi is also sympathetic toward him, and under the controlling notions of "plenitudinism"[20] and the "great chain of being,"[21] he stresses Scott's desire to ground international law in morality, to preserve its connections to natural law, as opposed to an increasingly positivistic turn, and to promote its universal reach. Rossi's observations about parochialism notwithstanding, I would also stress Scott's readiness to seek out truth in religious traditions other than his own.

While Scott's many contributions to international law are worth exploring, here I simply light upon his notion of a "Catholic conception of international law" to suggest that what is needed today is a Catholic—or better, catholic—*re*conception of international law, to which theologians may contribute if they are not already doing so. It will be catholic in the sense of being ever-more inclusive and universal, drawing on the Catholic tradition, yes, but drawing on, or originating in, other religious and nonreligious traditions, too. Such a reconception is not a pure abstraction. It is arguably embodied, for instance, in the life and work of Christopher Weeramantry (1926–2017), a Catholic layman who grew up in multicultural and multireligious Ceylon before it became Sri Lanka. Weeramantry excelled as a lawyer, scholar, law professor, prolific writer, and, eventually, International Court of Justice (ICJ) judge and vice president. The title of his remarkable three-volume memoir, *Towards One World*, well describes his life's mission. Here, I simply note that the "one world" he sought would connect law and religion; involve interfaith and intercultural dialogue; seek to further develop and universalize international law; educate even children in the basics of that law; and engage such challenging topics as nuclear weapons and war, the environment, new technologies, concern for future generations, colonialism and postcolonialism, and the ways and welfare of indigenous people.[22]

I cannot say that ocean governance was for Weeramantry a primary focus, but, calling to mind Pacific islands threatened today by climate change, it is worth noting that he dealt at great length with an international legal case regarding Nauru, a small dot in the Pacific once called Pleasant Island, with its indigenous population, before it was devastated by phosphate mining at the hands of foreign powers.[23] And later, as an ICJ judge, he wrote a wide-ranging separate opinion in a maritime delimitations case that

19. Christopher R. Rossi, *Broken Chain of Being: James Brown Scott and the Origins of Modern International Law* (The Hague: Kluwer Law International, 1998).
20. Philosophically, plenitudinism conveys the notion of a gap-free, universal normative order—which Scott believed international law ought to be. See Rossi, *Broken Chain of Being*, vii–x, 20, 110.
21. Rossi, *Broken Chain of Being*, ix, x, 138–39.
22. For a remembrance of Weeramantry, see William George, "Love and the Law: C. G. Weeramantry's View of Catholic Global Justice," *Commonweal*, January 5, 2018, https://www.commonwealmagazine.org/love-law.
23. Christopher Weeramantry, *Nauru: Environmental Damage under International Trusteeship* (Melbourne: Oxford University Press, 1992); and William P. George, "Nauru: From Pleasant Island to Phosphate Plunder," chap. 4 of *Mining Morality: Prospecting for Ethics in a Wounded World* (Lanham, MD: Lexington Books/Fortress Academic, 2019), 103–43.

focused on equity, which he viewed as key to effective ocean governance and environmental law.[24] In these and other ways, he was practicing and promoting a catholic reconception of international law to which theologians can surely contribute, especially if they journey intellectually from Salamanca to Sri Lanka and beyond.

"Subjects" and "Sources" of International Law

There are several points of connection between theology and international law,[25] not least of which are the many principles and norms of the latter, one of which, echoing Francis regarding the "commons," we will encounter below. Here, I focus on two questions central to this vast carrier of meaning and value: First, who, or what, are the "subjects" of international law? And, second, what are its "sources"? Both questions are matters of debate among international lawyers, which I cannot discuss here. But in both cases, we might distinguish between subjects or sources formally recognized—let us call them *de jure* subjects or sources—and those *de facto* subjects or sources that may not be named as such in "legal materials" but nonetheless impact the actual workings, and sometimes the failures, of international law.

Addressing the first question, a subject of international law may be defined as "a person (entity) who possesses international legal personality, i.e., capable of possessing international rights and obligations and having the capacity to take certain types of action on the international level."[26] While traditionally only states were recognized as subjects, the possible list has grown, especially after the Second World War, to include international organizations, national liberation movements, special cases such as the Holy See, and individual persons. Some would also place future generations in this category. Each of these and other possible subjects, such as transnational corporations and indigenous peoples, could be discussed in detail. But here I put forward for consideration two questions.

First, if the list of subjects has grown over time, might it be possible to consider entities other than human beings or their organizations as subjects of international law? After all, over thirty years ago, two prominent international lawyers argued that whales might have "rights" and "entitlements," then further argued that "to move from 'preservation' to 'entitlement' is not just a way of talking. Rather, it acknowledges the creation of a new subject of international law."[27] Other ocean advocates go beyond

24. Separate Opinion of Judge Weeramantry, Maritime Delimitation in the Area between Greenland and Jan Mayen (*Denmark v. Norway*), International Court of Justice, https://www.icj-cij.org/public/files/case-related/78/078-19930614-JUD-01-08-EN.pdf.

25. For instance, I have argued that much of what Lonergan understands by "method" is common both to theology and to the practice of international law. See William P. George, "International Law as Horizon," in *Lonergan Workshop*, vol. 23, ed. Frederick Lawrence (Boston: Boston College, 2012), 195–226; and George, *Mining Morality*, 47–49.

26. "Subjects of International Law," Lawyers and Jurists (website), https://www.lawyersnjurists.com/article/subjects-of-international-law/.

27. Anthony D'Amato and Sudhir K. Chopra, "Whales: Their Emerging Right to Life," *American Journal of International Law* 85, no. 1 (January 1991): 53, https://doi.org/10.2307/2203067.

whales, arguing for the "rights of nature" more broadly.[28] In an especially provocative article, British environmental lawyer Emily Jones joins the rights of nature movement to posthuman theory to challenge more generally the anthropocentric construal of subjects of international law.[29] She stresses that renouncing this anthropocentrism in international law would require a genuine paradigm shift,[30] or what theologians and others might call a "conversion."

Second, even if whales, or jellyfish, or plankton, or nature more generally, are not formally counted as subjects, do they not remain agents or actors whose behavior affects the ocean and ocean governance, or the lack thereof? Migratory fish stocks regularly cross international boundaries, lobsters move from warming waters, and invasive species hitch rides on ships traversing the seas—all of which pose challenges to ocean governance. Human beings, of course, are also subjects in the sense of being agents or actors, and they can have positive and negative effects on the ocean and its governance. For instance, since every piece of garbage that finds its way into the ocean "has an owner,"[31] and since ocean pollution is a focus of international law, billions of people might be acting subjects of international law even if they have never given the matter a moment's thought. More positively, NGOs, sometimes faith-based, can have a real impact on the development of international law, as was the case with the Neptune Group during the UNCLOS negotiations.[32] Theologians who take ocean governance seriously and encourage others to do the same may count themselves as acting subjects of international law as well.

The question of what counts as a "source" of international law may seem more straightforward, given the oft-cited listing of sources found in Article 38 of the ICJ Charter. In deciding cases, the court may draw upon: (1) "international conventions" (treaties); (2) "international custom"; (3) "the general principles of international law recognized by civilized nations"; (4) "judicial decisions" (as subsidiary sources); and (5) "the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." Theologians would benefit from exploring what each of these sources entails, as well as the questions they raise—such as the meaning and implications of the term "civilized nations." But here I suggest a

28. Harriet Harden-Davies, Fran Humphries, Michelle Maloney, Glen Wright, Kristina Gjerde, and Marjo Vierros, "Rights of Nature: Perspectives for Global Ocean Stewardship," *Marine Policy* 122 (December 2020), https://www.sciencedirect.com/science/article/pii/S0308597X20303365, https://doi.org/10.1016/j.marpol.2020.104059.
29. Emily Jones, "Posthuman International Law and the Rights of Nature," *Journal of Human Rights and the Environment* 12 (December 2021): 76–102, https://doi.org/10.4337/jhre.2021.00.04.
30. Jones, "Posthuman International Law," 97.
31. British environmentalist Andrea Crump, quoted in Earle, *The World Is Blue*, 115.
32. Ralph B. Levering and Miriam B. Levering, *Citizen Action for Global Change: The Neptune Group and the Law of the Sea* (Syracuse, NY: Syracuse University Press, 1999). More generally, see C. S. Alihusain, "The Influence of NGOs on International Law," November 9, 2010, Blogs, Peace Palace Library (website), https://peacepalacelibrary.nl/blog/2010/influence-ngos-international-law.

broader meaning of "sources"—closer, perhaps, to "influences" or "influencers," recent or from the distant past. Such sources surely include religion, for as international legal scholar James Nafzinger explains, religion has served, and can still serve, at least four functions—"creative," "aspirational," "custodial," and "mediative"—vital to the development of international law.[33] So, for instance, Weeramantry—surely a creative, aspirational, custodial, and mediative presence in the international legal world—was influenced by his Catholic faith and brought this into his legal practice. But he also grew up with and found wisdom in other traditions. Indeed, he wrote an important treatise on Islamic jurisprudence[34] a decade before publishing *The Lord's Prayer: Bridge to a Better World* with a Catholic press.[35] And in his dissent from an important ICJ advisory opinion regarding nuclear weapons, he drew upon a Hindu epic, the *Ramayana*, and its clear denunciation of a weapon the use of which could "destroy the entire race of the enemy, including those who could not bear arms."[36] Furthermore, for Weeramantry, it was likely neither the Catholic Vitoria nor the Protestant Grotius who should lay claim to being the founder of international law, but rather Al-Shābayī and other Muslims several centuries before.[37]

There are other *de facto*, if not *de jure*, sources of international law as well. Social movements focused on race, gender, class, the environment, and of course global climate change have all impacted international law. But I especially stress that teachers of international law and allied disciplines—and here I hope theology might be included—can be a great source of ideas and inspiration for students, within the classroom and beyond.[38] So, Christopher Weeramantry not only greatly influenced his law students at Monash University;[39] he was also honored by UNESCO for his broader commitment to peace education. And decades before him, James Brown Scott pushed to have international law widely taught to children and college-aged youth in public schools as well as "in the various education institutions of the Society of Jesus."[40] Such desired instruction might have at least touched on laws regarding warships,

33. James A. Nafzinger, "The Functions of Religion in the International Legal System," in *Religion and International Law*, ed. Mark W. Janis and Carolyn Evans (The Hague: Kluwer Law International, 1999), 155–76.
34. C. G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (London: Macmillan; New York: St. Martin's, 1988).
35. C. G. Weeramantry, *The Lord's Prayer: Bridge to a Better World* (Liguori, MO: Liguori/Triumph, 1998).
36. Dissenting Opinion of Judge Weeramantry, Legality of the Threat or Use of Nuclear Weapons Advisory Opinion of July 8, 1996, International Court of Justice, https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-12-EN.pdf.
37. Weeramantry, *Islamic Jurisprudence*, 109–10.
38. See Manfred Lachs, *The Teacher in International Law: Teaching and Teachings*, 2nd rev. ed. (Dordrecht; Boston: Martinus Nijhoff, 1987).
39. On this influence, see George, *Mining Morality*, 129–35.
40. Ross, *Broken Chain of Being*, 39–40nn170–71. Brown enjoyed close relations with the Society of Jesus, especially since for twenty years he taught international law in Georgetown University's School of Foreign Service.

blockades, and piracy—topics discussed by Scott in *The Catholic Conception of International Law*[41]—along with other aspects of the law of the sea.

UNCLOS as "Root Stock" for a "New Law of the Sea"

The history of sea law is long and complex,[42] but it may be said that, at least since the seventeenth century, ocean governance rested in large part on two customary principles. First, coastal states would have jurisdiction over a narrow strip of water, usually three miles or so, based on the "cannon shot rule."[43] Then, beyond those few offshore miles, "freedom of the seas" (*mare liberum*) would prevail. This norm, promoted most famously with theological backing by Hugo Grotius, gave seagoers freedom to travel, trade, and fish the high seas so long as, in Lockean fashion, they left "enough and as good for others."[44]

The twentieth century presented several anomalies that this binary legal paradigm could not handle. These included (1) recognition that the resources of the sea were not inexhaustible; (2) ocean dumping, including of biological and nuclear wastes; (3) new technologies (sonar, refrigeration, etc.) that led to overfishing, disruption of ecosystems, and conflict over fishing rights; (4) individual nations claiming jurisdiction over continental shelves and other offshore waters; (5) the presence of vast quantities of mineral resources, especially polymetallic nodules on the deep seabed, raising questions regarding rights over and benefits from these resources; (6) the ocean floor as a possible site for nuclear weapons placement; and (7) newly emergent states not always anxious to abide by rules they had little or no say in establishing.

It is now over forty years since UNCLOS, a monumental achievement in international law, was opened for signing.[45] The multilateral treaty was the result of one of the largest and most complex negotiation processes in history, involving a formal conference with eleven sessions spread out over several years (1973–1982), with preparatory work conducted before that time. But the oft-cited spark for the negotiations occurred on November 1, 1967, when Arvid Pardo, UN representative from Malta, delivered a speech to the UN General Assembly that galvanized that body to push for an updated,

41. Scott, *Catholic Conception of International Law*, 104–18. For further reflections on why international law should be widely taught beyond law schools, see William P. George, "Why Catholic Universities Should Engage International Law," *Journal of Catholic Higher Education* 27, no. 1 (Winter 2008): 173–93.

42. For a brief overview, see Tulio Treves, "Historical Development of the Law of the Sea," in *The Oxford Handbook of the Law of the Sea*, ed. Donald R. Rothwell, Alex G. Elferink, Karen Scott, and Tim Stephens (Oxford: Oxford University Press, 2015), 24–45 (hereafter cited as *Oxford Handbook*).

43. H. S. K. Kent, "The Historical Origins of the Three-Mile Limit," *American Journal of International Law* 48, no. 4 (October 1954): 537–53, https://doi.org/10.2307/2195021.

44. Alexandra Merle Post, *Deepsea Mining and the Law of the Sea* (The Hague: Martinus Nijhoff Press, 1983), 93.

45. The convention was opened for signing on December 12, 1982, and took full legal effect in 1994, one year after the treaty-required sixty nations had filed depositions of ratification. To date, there are 168 parties to UNCLOS. The United States is not among them.

more effective, and more comprehensive law of the sea. In his address he reminded representatives of the world community that

> the dark oceans were the womb of life. From the protecting oceans, life emerged. We still bear in our bodies—in our blood, in the salty bitterness of our tears—the marks of this remote past. Retracing the earth, man is now returning to the ocean depths. His penetration of the deep could mark the beginning of the end for man, and indeed for life as we know it on this earth: it could also be a unique opportunity to lay solid foundations for a peaceful and increasingly prosperous future for all nations.[46]

Clearly, Pardo viewed the assembled nations to be at an existential crossroads or, perhaps, sea-lanes crossing. Now, over fifty years later, the anthropogenic threats to the world ocean and thus to the human community are known to be graver and the choices more consequential.[47]

In his speech, Pardo discussed several topics. But key among them was the proposal that the seabed beyond national jurisdiction be declared the "common heritage of mankind." In negotiations leading up to UNCLOS, this principle carried at least the following meanings: (1) the area so designated must not be appropriated by individual states or other entities; (2) the area must be rationally managed; (3) such management must be to the benefit of "mankind as a whole," with special regard for less developed nations; and (4) the area could be used for "peaceful purposes" only. A further meaning associated with the principle was concern for future generations.[48]

Recalling Francis's claim that "what is needed, in effect, is an agreement on systems of governance for the whole range of so-called 'global commons,'" I would stress that "common heritage" fell far short of that, even as it suggested just such a system.[49] Pardo had originally hoped that the principle could be applied to most of

46. UN General Assembly, Official Record, 22nd Session, 1st Committee, 1515th meeting, November 1, 1967, https://digitallibrary.un.org/record/800578?ln=en.
47. See, for example, United Nations Division for Ocean Affairs and the Law of the Sea, "The Second World Ocean Assessment: World Ocean Assessment II," vol. 2, https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/2011859-e-woa-ii-vol-ii.pdf.
48. UN General Assembly, Resolution 2749 (XXV), Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, 1933rd plenary meeting (December 1970), *Official Records of the General Assembly*, 25th Session, Supplement No. 28 (New York: United Nations, 1971), https://digitallibrary.un.org/record/201718.
49. For instance, the Outer Space Treaty of 1966 had already referred to "the exploration and use of outer space, including the moon and other celestial bodies" as the "province of all mankind," a phrase close in legal meaning to "common heritage of mankind." United Nations Office for Outer Space Affairs, "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies," Article 1, 1966, https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html. The 1979 Moon Treaty is more explicit: "The moon and its natural resources are the common heritage of mankind." United Nations Office for Outer Space Affairs, "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies," 1979, Article 11, https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html.

ocean space, not just to the "seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction." But he knew that such broad application would never gain acceptance. It was difficult enough to reach agreement on even this limited application of the concept, especially to the degree that it involved some sort of governing authority to which individual nations would be accountable. Arguably, this is all that could be achieved at the time.

Although "common heritage" was a key component of the treaty, since "everything is connected" (Francis), it is crucial to stress that UNCLOS dealt with multiple issues other than those having to do with the "area" covered by the principle. Thus, it was negotiated as a "package," for as the preamble puts it, those working on the treaty were "*conscious* that the problems of ocean space are closely interrelated and need to be considered as a whole." The treaty dealt with such matters as the limits of the territorial sea; exclusive economic zones; safe passage; rules applicable to ships, commercial and otherwise; the regime of islands; enclosed or semi-enclosed seas; protection of the marine environment; marine scientific research; development and transfer of marine technology; the movement of navies; and the settlement of disputes.[50] With so many legal issue-areas, and increased focus today on threats such as ocean acidification, dead zones, and microplastics, it is understandable that some, like Francis, might ask with regards to ocean governance: Just how far have we gotten, and where do we go from here?

"Mare Nostrum": "Our Sea" as Participation, Not Possession

In 1992, a decade after UNCLOS was open for signing and two years before it would enter into force, Philip Allott, a Cambridge University law professor and participant in the law of the sea negotiations, published a historically, philosophically, and legally dense and detailed article in the *American Journal of International Law* entitled "*Mare Nostrum*: A New International Law of the Sea."[51] In this article, Allott argued that in the "new law of the sea" for which UNCLOS serves as the "root stock," the sea will be considered neither the *mare liberum* ("free sea") of Hugo Grotius, nor the *mare clausum* ("closed sea") of John Selden and others, ruled by this powerful nation or that, but rather *mare nostrum*, "our sea"—not in the sense of possession but rather of participation.

While Allott has a secure place within the world of international law, he may also, like Judge Weeramantry, provide bridges linking theology to international law. Indeed, historian of international law Stephen C. Neff finds Allott's ideas to be "reminiscent of the French theologian and philosopher Teilhard de Chardin, who set out a grandiose scheme of human development" ending in the "unification of all human consciousness

50. For an exhaustive listing of topics and subtopics addressed by the treaty, see UNCLOS, "Contents," 7–20.

51. Philip Allott, "*Mare Nostrum*: A New International Law of the Sea," *American Journal of International Law* 86, no. 4 (October 1992): 764–87, https://doi.org/10.1017/S0002930000010927.

into one, including union with God."[52] What, then, does Allott say about this "new law of the sea" for which UNCLOS was "the root stock" and to which his thought may be a "quasi-religious or mystical counterpart"?[53] Even to summarize his reflections is a challenge. But we can highlight some major points.

First, not unlike Francis, Allott emphasizes "integration"—"natural integration," he calls it.[54] Thus he finds traditional sea law, which treated land and sea as two separate realities—fortressed land and free seas—to be anachronistic. UNCLOS presents "a more complex legal interface of land and sea, with many areas of mediation between all-power and all-freedom: territorial sea, contiguous zone, international strait, archipelagic sea, exclusive economic zone, fisheries zone, continental shelf, safety zone, exclusion zone, deep seabed and ocean floor, superjacent high seas. One may say that the shared zone has now become the rule rather than the exception."[55] Just as iron-clad notions of state sovereignty have been broken down, for instance through an emphasis on human rights, so, too, "preconceptions of exclusive political control over naturally communal sea areas must tend to become anomalous to the same extent."[56] The integrative character of UNCLOS was evident even as it was emerging. Again, it was negotiated as "a package."

Second, after offering a compact but nuanced historical review of "property" that might be applied to sea law, Allott describes converging views of the human community's "natural" relationship to the sea that the law of the sea should reflect. "Other cultures," he says, "have conceived of the natural relationship between humanity and the sea and its resources" in ways other than relations between states or in terms of property rights.[57] "Interestingly, these conceptions often have a significantly numinous aspect," he continues, "leading to attitudes such as humility, respect, fellow feeling, and an absence of a sense of domination and exploitation, and of *meum* and *tuum*."[58] Allott notes further that modern cosmology and science seem "to be leading human consciousness on a path that at least parallels that of those many religious traditions which have taught the metaphysical and moral integration of the human being in the universe of all-that-is." Furthermore, he remarks, "evolutionary biology suggests that human beings may, in some sense, be descendants of animals that actually inhabited the sea, so that the profound feelings humanity has always had in relation to the sea, revealed in art and myth and analytical psychology, may have some profound

52. Neff, *Justice among Nations*, 464–65.
53. Neff, *Justice among Nations*, 465.
54. While "integration" appears but three times in *LS*, the adjective "integral" appears twenty-five times. Allott's stress on *natural* integration is in accord with his natural-law approach.
55. Allott, "*Mare Nostrum*," 767.
56. Allott, "*Mare Nostrum*," 768.
57. Allott, "*Mare Nostrum*," 764.
58. Allott, "*Mare Nostrum*," 773. A current example of that to which Allott may be referring is the organization Ocean Revolution, which professes that "effective interactions between indigenous people and other stakeholders make the difference in the success or failure of oceans conservation." See "About Us," Ocean Revolution (website), https://oceanrevolution.org/.

source other than the awe naturally inspired by its power and wealth." And finally, he contends, "The integrity of the total system of the earth has been forcing itself into human consciousness throughout the world, as humanity is made aware of the mutual dependence of everything on earth, living and nonliving."[59] As Francis says, "everything is connected."

Third, Allott sees the emerging law as a means of realizing a wide range of social objectives. He explains that, when states are the primary subjects of international law, and when state-interest diplomacy is the primary means of moving law forward, the true "public interest"—for instance, the health of the environment, affecting all—may not be adequately represented. But "by means of a newly conceived law of the sea . . . humanity can participate in and with the sea space of the world with unlimited sophistication and sensitivity, not stifled by the artificial bonds of *meum* and *tuum*, not condemned to the rule of the past over the future, but free to create a social future of material and moral progress."[60]

Finally, until now, in Allott's view, a very small number of people have been making decisions on behalf of all. But "once again, the international law of the sea offers eloquent testimony in favor of fundamental change."[61] The new law of the sea is more of a *process* than an event, a process in which all of humanity is involved. International law of the sea is more a system of effective management, accountable to the future and to all of humanity, than it is a system of legal control. A worldview that is geocentric, zoocentric, and anthropocentric "will shape the form of all social objectives concerning the world's sea space and of all legal relations of the international law of the sea in the direction of a truly universal public interest of the world."[62]

Assessing the 1982 convention in view of these features of a "new law of the sea," Allott finds that "the international law of the sea and, perhaps, international law in general have set off on a journey of self-discovery and self-regeneration."[63] The treaty emerged "as if the collective consciousness of the state systems were being turned toward a previously hidden source of light . . . which will transform the human social world." Indeed, Allott finds novel developments in sea law pointing to a sort of "communitarianism" on a global scale,[64] a communitarianism that would promote social objectives such as a healthy environment and global equity. And recalling what was said above about "subjects" of international law—theologians included—Allott asserts that, in its actual workings, the new law envisions not just states but "every kind of actor and activity associated with the sea."[65]

59. Allott, "*Mare Nostrum*," 773.
60. Allott, "*Mare Nostrum*," 779.
61. Allott, "*Mare Nostrum*," 781.
62. Allott, "*Mare Nostrum*," 782.
63. Allott, "*Mare Nostrum*," 783.
64. Allott, "*Mare Nostrum*," 785.
65. Allott, "*Mare Nostrum*," 786.

Shoring Up the Law of (Our) Sea

The law of the sea is so extensive that there is no question of discussing in detail the trajectory of that law since Allott wrote "*Mare Nostrum*," or since UNCLOS entered into force. But it may be possible to give a few examples of how it has continued to develop along the lines envisioned by Allott, on the one hand, and why it needs shoring up, on the other.

To begin with, UNCLOS was not so much the end of lawmaking (e.g., treaties, custom) as it was a heuristic framework for further development.[66] This development has included additional treaties, such as the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks.[67] UNCLOS also gave birth to new governing institutions, such as the International Tribunal for the Law of the Sea, the International Seabed Authority, and several others, suggesting that, together, these institutions were coalescing into a system.[68] Thus, as Allott projected, more and more actors have become involved as new institutions and agreements have emerged. And the "integrative" character of the law that Allott stressed has been clearly visible in the law's development. This is especially the case when it comes to the conservation of living resources and the protection of the marine environment, wherein an ecosystem approach is often taken.[69] Furthermore, the notion of a common heritage has continued to inspire scholars and activists to advocate for the ocean—including the high seas—as a commons and to advocate for other commons as well.[70]

But if there has been progress when it comes to the law of the sea, there have also been unresolved issues and other challenges. For instance, Allott likely underestimated the degree of resistance to parts of the treaty, especially part 11, which dealt with the area with its International Seabed Authority and lessened the sovereignty of individual states. Martti Koskenniemi, one of the most influential voices in international law today, expressed his disillusionment with the way things have gone:

> Can one still be enthusiastic about a Common Heritage of Mankind after the redistributory goals of the III UN Convention on the Law of the Sea were watered down in the 1994 Implementation Agreement, concluded under the grandiose banner of the "securing the universality of the Convention," but in fact underwriting the demands of the developed West to create a cost-effective and market-oriented platform for private enterprise in the deep seabed?[71]

66. Robin R. Churchill, "The 1982 Convention on the Law of the Sea," *Oxford Handbook*, 24–45.
67. The *Oxford Handbook* lists over forty treaties, integral to or in some way related to the law of the sea, established between 1994, when UNCLOS entered into force, and 2015, when the handbook was published.
68. James Harrison, "The Law of the Sea Convention Institutions," *Oxford Handbook*, 390–92.
69. Karen N. Scott, "Integrated Oceans Management: A New Frontier in Marine Environmental Protection," *Oxford Handbook*, 462–90.
70. David Bollier and Silke Helfrich, eds., *The Wealth of the Commons: A World beyond Market and State*, Commons Strategies Group (Amherst, MA: Levellers Press, 2012).
71. Martti Koskenniemi, *The Politics of International Law* (Oxford and Portland, OR: Hart Publishing, 2011), 271.

Even with these changes in the convention, the United States has yet to ratify the treaty.[72] Some detractors, worried about what the United States would lose if it did become a party, have referred to the convention as the Law of the Sea Treaty, or LOST.[73]

The regional approach to responsible management of the world ocean, noted by Francis, is certainly a positive development, but some regional efforts are less effective than others.[74] Efforts to protect straddling and highly migratory fish stocks have also been less than successful because these fish fail to respect human-made boundaries, tend to mix with other fish, or in other ways flout human laws. But even the norms themselves can be a problem. So, for instance, the standard of "maximum sustainable yield" (MSY), written into UNCLOS, is regarded by some as terribly inadequate[75] or, if adequate, subject to abuse.[76] To give another example of possible legal shortfalls, when the deep seabed was discussed during the negotiations, some thought there was little life there, and thus threats to biodiversity and ecosystem disruption due to mining were not taken fully into account. Now we know better, and opposition to seabed mining can be intense.[77]

The high seas, that vast ocean space beyond national jurisdiction, presents an especially serious challenge. Ineffectively governed, it has been described as "the outlaw ocean," where crimes ranging from illegal fishing to slavery go unaddressed.[78] In partial response to problems in this massive ocean space, in March 2023 nearly 200 nations agreed on a draft of a high seas treaty, binding under UNCLOS, to protect marine biodiversity.[79] This was a truly remarkable achievement of multilateralism in a

72. It should be stressed that even though the United States is not a party to the treaty, it accepts most of it as a codification of binding customary law.
73. See, for example, William F. Jasper, "LOST: Law of the Sea Treaty," *New American*, February 18, 2009, https://www.thenewamerican.com/usnews/politics/item/2526-UNCLOSt-law-of-the-sea-treaty.
74. Scott, "Integrated Oceans Management," 473–80.
75. Sylvia Earle finds MSY faulty for at least twelve reasons. See Earle, *The World Is Blue*, 56–59.
76. Daniel Pauly, "What's maximum sustainable yield?," OCEANA (website), May 15, 2014, https://oceana.org/blog/whats-maximum-sustainable-yield/.
77. See, for example, "DSCC's Response to 60 Minute's Segment on Deep Seabed Mining," Deep Sea Conservation Coalition (website), November 19, 2019, http://www.savethehighseas.org/2019/11/19/dsccs-response-to-the-60-minutes-segment-on-deep-seabed-mining/.
78. Ian Urbina, *The Outlaw Ocean: Journeys across the Last Untamed Frontier* (New York: Alfred A. Knopf, 2019).
79. United Nations, "UN delegates reach historic agreement on protecting marine biodiversity in international waters," UN News, March 5, 2023, https://news.un.org/en/story/2023/03/1134157. For the text of the treaty see United Nations General Assembly, "Draft Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction," March 4, 2023, extension://elhekieabhbkpmcefcoobjddigjcaadp/https://www.un.org/bbnj/sites/www.un.org.bbnj/files/draft_agreement_advanced_unedited_for_posting_v1.pdf (hereafter cited as BBNJ).

divided world, and thus cause for hope and celebration. But it took about twenty years to reach this point of agreement, and more time will pass before the treaty enters into force, 120 days after the requisite 60 nations have ratified it.[80] Furthermore, the treaty does not go as far as some who welcome it believe is necessary,[81] and even when the treaty does take legal effect enforcement will remain a challenge.

And there are systemic weaknesses aside from UNCLOS to consider. Francis notes the problem for ocean governance of "fragmentation and the lack of strict mechanisms of regulation." But these problems can extend to the entire body of international law.[82] Since "everything is connected"—or sometimes disconnected—weaknesses in one area of international law, say human rights or trade law, will negatively affect others. The silver lining in this problem is that if people—say, international organizations, NGOs, or someone like Christopher Weeramantry—are working to strengthen the international rule of law as a whole, even as they focus on areas other than sea law, this may help indirectly to refine and strengthen the law of the sea as well. Not everyone must be focused on the law of the sea to make it better. And even if UNCLOS was negotiated as a "package," "perhaps the fragmentation of the long negotiations, dividing tasks and topics between committees and sub-committees and working groups, also helped."[83] A holistic approach to the ocean or ocean law does not mean ignoring the particularities of its many parts. Finally, as Francis is aware, when it comes to ocean governance, the real challenge in a sharply divided world is getting parties to come to agreement on solutions to vexing problems such as climate change, species extinction, and failing oceans. This is especially the case when, as the *Bulletin of Atomic Scientists* with its Doomsday Clock has stressed, a "new abnormal" of a denial of facts and even of truth makes difficult problems even more difficult to solve.[84]

In any event, the law of the sea requires refinement, expansion, strengthening. In brief, it requires shoring up, and it may help to explain my choice of these words rather than others, such as "transformation." One reason is simply that, on the face of it, "shoring" and "ocean" seem to go together. But shoring up is fitting for at least two other reasons. First, it honors and builds on the tremendous achievement that UNCLOS represents (shoring up is not starting anew), even as it stresses the need, recognized by Francis and others, for ever-more effective lawmaking. And here, I define shoring up

80. BBNJ, Art. 61(1). The United States is especially slow to ratify such multilateral treaties, if they do so at all—a practice evidenced in the case of UNCLOS.

81. See "At Last, a New Deal for the High Seas," The Nature Conservatory Newsroom, March 4, 2023, https://www.nature.org/en-us/newsroom/new-high-seas-treaty/.

82. Martti Koskenniemi and Päivi Leino, "Fragmentation of International Law? Postmodern Anxieties," *Leiden Journal of International Law* 15, no. 3 (September 2002): 553–79, https://doi.org/10.1017/s0922156502000262.

83. Vaughan Lowe, "Preface," in *Law of the Sea: UNCLOS as a Living Treaty*, ed. Jill Barrett and Richard Barnes (London: British Institute of International and Comparative Law, 2016), 5.

84. See "A new abnormal: It is still 2 minutes to midnight," 2019 Doomsday Clock Statement, Science and Security Board, *Bulletin of the Atomic Scientists*, https://thebulletin.org/doomsday-clock/2019-doomsday-clock-statement/.

generously—not just crudely reenforcing the law of the sea to keep it from falling apart but creatively caring for it the way one might protect and nurture a "root stock" or a "living treaty" by means of proper fertilization or, better, cross-fertilization of ideas, strategies, realistic proposals, limited agreements, and other positive contributions emerging from across the global community and from the sea itself.[85]

Second, "shoring" may connote the meeting point of land and sea. As Allott insists, we must regard the two not as totally separate entities but as making up one larger whole. What happens on land—on farms around the world, in corporate board rooms, government offices, factories, court rooms, open-pit mines, law schools, universities, private residences, and on and on—has much if not everything to do with the fate of the ocean. And this may be the place to stress a perennial question in international law: What is the relationship between, on the one hand, international law, and, on the other, the "domestic" laws of individual nations and, within nations, jurisdictions of various kinds? Within the United States, one need only utter the words "states' rights" to see how contentious such jurisdictional questions can be. Let me simply say that, if the law of the sea requires shoring up, this will need to occur at various levels, from the local to the global. And it would help matters greatly if, at each level or within each sphere, was found ocean empathy, a topic to which we now turn.

Ocean Empathy to Shore Up the Law of the Sea

By empathy, I simply mean an understanding of the other, or others, and a capacity or at least the attempt to regard the world from the other's, or others', point of view. While often distinguished from "sympathy," it may be similar since understanding can have its affective dimensions. Indeed, as used here, empathy is perhaps not all that different from "compassion." And keeping in mind the importance of images, often affect-laden, for generating insights needed for understanding, empathy has much to do with imagination, a point to which we will return. Since Allott has defined "our sea" in terms of participation rather than possession, we should also note that theological ethicist James M. Gustafson found empathy to contribute, in a limited way, to "participation" as a "religious worldview."[86]

As for ocean empathy, I mean primarily, but not exclusively, seeking to understand the ocean and its diverse beings, living and nonliving, and trying to regard the world from their point of view. We get a glimpse of such empathy in Charles Darwin's report on his nearly five-year voyage around the world on the *Beagle*, when he thinks the Galapagos Islands iguana staring at him might be asking, "What made you pull my tail?"[87] Of course, as Gustafson stresses, "empathy" does not mean "fully to become

85. For numerous examples of such fertilization and cross-fertilization, see Barrett and Barnes, *Law of the Sea.*

86. James M. Gustafson, "Participation: A Religious Worldview," *Journal of Religious Ethics* 44, no. 1 (March 2016): 155, https://doi.org/10.1111/jorse.12135.

87. Charles Darwin, *The Origin of Species and The Voyage of the Beagle*, with an introduction by Richard Dawkins, Everyman's Library (New York: Alfred E. Kopf, 1906), 400.

one of them."[88] Darwin did not become an iguana even as he gained insight into these remarkable animals. Nor does it mean simply projecting human attitudes, intentions, and behaviors on to other beings—as even nature TV shows sometimes do.[89]

But the simple example of Darwin does suggest that ocean empathy has to do with self-transcendence, of moving beyond oneself and giving the other a voice. Introducing a 2018 reprint of Rachel Carson's 1951 classic *The Sea Around Us*, Sylvia Earle highlights Carson's great sense of wonder and her uncanny ability to see the ocean and the world from sea creatures' point of view.[90] Earle tells of her own up-close encounters with whales, and how, over time, she came to see them in new ways—a "conversion," one might say. It is not just that we like to watch whales, she notes; whales are watching us, too.[91] Another fitting example is the scuba-diver/filmmaker of *My Octopus Teacher*, the title of which may say it all.[92] Nor does this empathy stop when, because of some sea creatures' "strangeness," anthropomorphism—legitimate to a point—breaks down. Sabrina Imber, writing about sea life, believes that "building these connections with strange, baffling or even discomfiting organisms is a practice of radical empathy you can try in your everyday life—offering openness, wonder and care toward other creatures' incomprehensibility."[93]

But ocean empathy is not just an individual affair—a Jacques Cousteau here, a David Attenborough there. Numerous organizations, often with an educational orientation, are committed to understanding and caring for the sea. In fact, inspired by the "United Nations Decade of Ocean Science (2021–2031)," the Hydrous, "an international community of scientists, divers, designers, filmmakers, and technologists on a mission to create open access oceans," has been promoting the "Decade of Ocean Empathy," which "seeks to bring a human element into marine science to generate ocean connection and stewardship."[94]

Nor does ocean empathy as understanding stop with the sciences, as ocean scientists are themselves aware. So, Rachel Carson begins chapter-length segments of *The Sea Around Us* with epigraphs gleaned from the Bible, from poets, from Melville and Shakespeare. Together, these signal Carson's broad-minded approach to her subject, and they enlarge our view of what ocean empathy might entail. And the organization Interfaith Oceans demonstrates that ocean empathy can be an explicitly religious—and interreligious—way of being with and acting toward the sea.[95]

88. Gustafson, "Participation," 155. His reference here is to "other human groups and their way of life."
89. Ed Yong, "The Wondrous World That Only Animals See," *New York Times*, June 21, 2022.
90. Sylvia Earle, introduction to *The Sea Around Us*, by Rachel Carson (1951; New York: Oxford University Press, 2018), xi.
91. Earle, *The World Is Blue*, 38–41.
92. *My Octopus Teacher*, directed by Pippa Ehrlich and James Reed (2020), Netflix, https://www.imdb.com/title/tt12888462/.
93. Sabrina Imber, "Are You Really So Different from the Blue Sea Blob?," *New York Times*, November 24, 2022, https://www.nytimes.com/2022/11/24/opinion/sea-creatures-blue-blob.html.
94. The Hydrous, "The Decade of Ocean Empathy," https://www.oceanempathy.org.
95. "About Us," Interfaith Oceans (website), https://www.interfaithoceans.org/about-us.

Empathy and Imagination

Whether we are thinking of ocean empathy in relation to science or poetry or religion or international law, we should stress again the role of imagination. "Most remarkable for me," says Sylvia Earle, "is what Rachel Carson did imagine. Her writings are so sensitive to the feelings of fish, birds, and other animals that she could put herself in in their place, buoyed by air or by water, gliding over or under the ocean's surface."[96] And imagination can take various forms. Scientists concerned with sustainability have investigated the degree to which "future scenarios can promote greater empathy for the oceans."[97] As for connecting ocean empathy to the law of the sea, our primary focus, consider *Blue Legalities: The Life and Laws of the Sea*, a volume of collected essays mostly by women who cross boundaries between international law and other disciplines and who help us to view the ocean and ocean governance in new ways.[98] In this volume the words "image," "imaginary," "imaginaries," or "imagination" occur well over one hundred times, and the title of the introductory chapter, "Blue Legalities: Governing More-than-Human Oceans," suggests just where the various contributors' fertile imaginations lead.[99]

Ocean Empathy Also Embraces Human Beings

While ocean empathy is, of course, focused on the world ocean, it does not exclude human beings, trying to understand where they are coming from and why they do what they do: enjoy an ocean sunset, drill for offshore oil, cast miles of nets from fishing fleets, or course under the water in nuclear-powered submarines.[100] Why should ocean empathy not extend to human friends and neighbors, near and far—enemies, too? After all, humans have their remote origin in "the ocean depths" (Pardo). Philip Allott insists that the sea and the land, and what transpires there, must be legally joined. For Philip Neill, it is a big mistake to regard the ocean as a "wilderness"; the stamp of human activity is far too wide and deep.[101] And as Sylvia Earle insists, our fate and the ocean's fate are one. So, to empathize with the one we must empathize with the other.

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96. Earle, introduction to Carson, *Sea Around Us*, xi.
97. Jessica Blythe, Julia Baird, Nathan Bennett, Gillian Dale, Kirsty L. Nash, Gary Pickering, and Colette C. C. Wabnitz, "Fostering Ocean Empathy through Future Scenarios," *People and Nature*, September 4, 2021, https://besjournals.onlinelibrary.wiley.com/doi/10.1002/pan3.10253.
98. Irus Braverman and Elizabeth R. Johnson, eds., *Blue Legalities: Governing More than Human Oceans* (Durham, NC: Duke University Press, 2019).
99. It should be noted that "imagination" also plays a significant role in Philip Allott's *Eutopia: New Philosophy and New Law for a Troubled World* (Northampton, MA: Edward Elgar Publishers, 2016), 100–25.
100. The book and later the film *Das Boot* may leave the reader or viewer empathetic toward the crew of U-96 (a pre-nuclear submarine), even if one begins—and ends—the book or film not at all sympathetic to the German cause.
101. Neill, *Once and Future Ocean*, 32–33.

For an example of ocean empathy inclusive of human beings that may serve as a nexus linking ocean ecology, the law of the sea, international trade, geopolitical tensions, military presence, and more, consider the argument of James Manicom about tensions some years ago (but even now) in the South China Sea, involving China, the Philippines, and other nations, including the United States. Manicom attributes much of the problem to "empathy gaps." An empathy gap, he says, is "simply a mutual misperception or misunderstanding of another's wants, needs, fears, interests, judgments and perceptions and [they] are numerous between the protagonists in the South China Sea dispute."[102] The example of the South China Sea is fitting in another respect. If, as Francis says, we need "agreement on systems of governance for the whole range of so-called 'global commons,'" we might note that at least one imaginative international lawyer argues that just as the law of the sea, imperfect as it is, has helped to address conflicts in the South China Sea, so it might also provide guidance for governance of another contested "commons," namely, outer space.[103]

There are, of course, any number of troubling issues that require empathy not only toward the ocean and its countless denizens but especially toward vulnerable human beings as well: Pacific Islanders facing rising seas; refugees, many of them climate refugees, on the open seas, seeking safety or asylum; those depending on fishing for livelihood, nourishment, or meaning against the backdrop of calls for drastic cutbacks in the global fishing industry—the list goes on. To put it too simply but in a manner leading back to international law, the issue is empathy toward anyone whose human rights are threatened or violated. Empathy must also be extended to future generations, as those negotiating UNCLOS in the days of Arvid Pardo understood, or as Pope Francis or Greta Thunberg insist today. And an appeal to human rights leads back to the ocean part of ocean empathy: the pressing question of whether whales and harbor seals and plankton might have their rights, too.[104]

Ocean Empathy and Action

While I have been stressing empathy-as-understanding, albeit with feeling, ocean empathy does not stop there. Peter Neill stresses that, "if one can empathize with the

102. James Manicom, "Empathy Gaps in the South China Sea," Centre for International Governance Innovation (website), July 21, 2014, https://www.cigionline.org/articles/empathy-gaps-south-china-sea/#:~:text=.

103. Roncervert Ganon Almond, "Building a Durable Legal Framework in Space: The Extraterrestrial Impact of the South China Sea Dispute," *Yale Journal of International Law*, October 24, 2017, http://www.yjil.yale.edu/building-a-durable-legal-framework-in-space-the-extraterrestrial-impact-of-the-south-china-sea-dispute/. See also, George, *Mining Morality*, 246–53.

104. See Alexandre Surrallés, "Human Rights for Nonhumans?," *HAU: Journal of Ethnographic Theory* 7, no. 3 (Winter 2017): 211–35, http://dx.doi.org/10.14318/hau7.3.013. Surrallés's questions and insights are especially relevant as they focus on the relationship as understood by indigenous people. More specific and often widely discussed questions regarding "animal rights" and "animal ethics" are of course highly relevant but cannot be pursued here.

ocean and its creatures, one can define and exploit new and different motivational strength to catalyze behavioral change."[105] And guiding norms for that behavioral change would include "ocean equity"[106] as well as "reciprocity," the latter of which often characterizes indigenous approaches to nature.[107] The numerous groups or organizations practicing ocean empathy in one form or another are oriented to action. They want to do what they can to save the sea.[108] The further emergence of a new law of the sea, informed by ocean empathy, can also help change the minds, hearts, and behavior of human actors worldwide.

Listening with the Ear of the Heart

Given Francis's concern for the oceans in *Laudato Si'*, we may return to him for further thoughts on ocean empathy that take us more directly into the realm of grace. If his—and our—concern is, in part, the further emergence of effective ocean governance as integral to our care for *mare nostrum*, we should note that, as Bernard Lonergan explains, "the prototype of emergence is insight."[109] In other words, a starting point is interiority, or what Francis calls "listening with the ear of the heart." "The first type of listening to be rediscovered," he says, "is listening to oneself, to one's truest needs, those inscribed in each person's inmost being. And we can only start by listening to what makes us unique in creation: the desire to be in relationship with others and with the Other. We are not made to live like atoms, but together."[110]

True enough, but, here at least, perhaps Francis has not gone far enough. If we truly listen to the sea and sea creatures—coral gathered in reefs, microorganisms of every kind—will we not be hearing of their "desire to be in relationship with others and with the Other"? As we practice ocean empathy, as we listen with "the ear of the heart" to "our sea" as participants and not possessors (Allott), as we consider extremophiles in the deepest waters, sea stars near the shore, or seagulls soaring above, perhaps we will find that, as relationship-seeking creatures, we human beings are not so unique or special after all.

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105. Neill, *Once and Future Ocean*, 278.
106. Peter Neill, "What Is Ocean Equity?," part 3 of BLUEprint: How the Ocean Will Save Civilization, World Ocean Observatory (podcast), https://www.worldoceanobservatory.org/wor/what-ocean-equity.
107. Neill, *Once and Future Ocean*, 240–42.
108. For the United Nations' own extensive listing of NGOs that deal with the oceans and the Law of the Sea, see United Nations Division for Ocean Affairs and the Law of the Sea, https://www.un.org/depts/los/Links/NGO-links.htm.
109. Bernard J. F. Lonergan, *Insight: A Study of Human Understanding*, 5th ed., in *Collected Works of Bernard Lonergan*, vol. 3, ed. Frederick E. Crowe and Robert M. Doran (Toronto: University of Toronto Press, 1992), 556.
110. Francis, "Listening with the Ear of the Heart," Message of His Holiness Pope Francis for the 56th World Day of Social Communications (Rome, January 24, 2022), https://www.vatican.va/content/francesco/en/messages/communications/documents/20220124-messaggio-comunicazioni-sociali.html.

Two Theological Approaches to the Law of the Sea

As noted at the outset, this effort to connect theology and theologians to the law of the sea is more suggestive than conclusive, more a proposed agenda than a report. And the emphasis thus far has been more on international law than theology. But this withdrawal into possibly unfamiliar territory is for the sake of return to more familiar theological waters. So, I end, if all too briefly, by focusing on two promising strands of contemporary theology that may help shore up the law of the sea.[111]

Deep Incarnation

Australian theologian Denis Edwards began his 2017 Catholic Theological Society of America convention plenary address, "Ecological Theology: Trinitarian Perspectives," with a detailed description of threats to the Great Barrier Reef.[112] He reached into the past, retrieving the thought of Athanasius and Aquinas, and turned to recent voices such as Elizabeth Johnson, Cecelia Deanne-Drummond, and John Haught to make several connections between ecology and the Trinity. These included the way in which the Trinity is humbly and intimately present to all creatures—not just human beings—and, significantly, especially present to them in their suffering.

Edwards carries this theologizing forward in *Deep Incarnation: God's Redemptive Suffering with Creatures*,[113] a book the cover of which depicts a human diver swimming an arm's length away from a whale many times the diver's size. Edwards critically discusses deep incarnation as found in the work of recent theologians (Niels Gregersen, Christopher Southgate, Richard Bauckham, and, again, Celia Deanne-Drummond and Elizabeth Johnson). But he also looks back to Irenaeus and Athanasius, as well as to Karl Rahner, who links incarnation and evolution—ending the review of each figure by listing "Critical Differences [from], Resonances [with], and Insights [regarding]" deep incarnation. A concluding chapter is devoted to his further thoughts on the Cross as sacrament of God's redemptive suffering with creatures, ending with connections between deep incarnation and *Laudato Si'*.

I make no attempt here to analyze or to evaluate fully deep incarnation as presented by Edwards or others. Rather, I simply suggest reasons why this rich theological approach can help to shore up the law of the sea and the "new consciousness" (Allott) that informs it. To begin with, theologians, past and present, who contribute to this theology are arguably in tune with, and may deepen, the notion of "ocean empathy"

111. These, of course, are not the only theological approaches that may be connected to ocean governance. Elsewhere, for instance, I have brought Christian Realism, early liberation theology, and, especially, the thought of Bernard Lonergan into conversation with international law and the law of the sea.

112. Denis Edwards, "Ecological Theology: Trinitarian Perspectives," *CTSA Proceedings* 72 (2017): 14–28.

113. Denis Edwards, *Deep Incarnation: God's Redemptive Suffering with Creatures* (Maryknoll, NY: Orbis Books, 2019).

discussed above.[114] Such empathy, giving voice to the creatures of the earth and the sea, is suggested by the very title, taken from the book of Job, of a major contribution to deep incarnation, namely, Elizabeth Johnson's *Ask the Beasts*.[115] That this empathy, better construed now as compassion, is understood theologically is clear from *Deep Incarnation*'s subtitle, *God's Redemptive Suffering with Creatures.* Were deep incarnation theologians to turn their attention to ocean governance, I can imagine them endorsing the notion that sea creatures not only have "rights" but should also qualify as "subjects" of international law. And just as Arvid Pardo and Philip Allott, from the side of international law, assume an evolutionary worldview, deep incarnation is not only at home with evolution but, to its great credit, seeks to deal theologically with the suffering and death that evolution entails.[116] Furthermore, the retrieval of premodern sources—Irenaeus, Athanasius, and Aquinas, in the case of Edwards—as major contributors to deep incarnation theology parallels the recurring return to early sources in the case of international law. But as someone like Judge Weeramantry or historian Stephen Neff would stress, early sources for international law are by no means confined to the Christian world.[117]

At least three other interrelated emphases of deep incarnation favor engagement of international law and ocean governance. One is the emphasis on the presence of grace within the human community and, indeed, extended to all of creation—including extraterrestrials.[118] Thus, there is a predisposition to recognize God's workings quite outside the Christian tradition (I have in mind NGOs exercising and acting on ocean empathy, or international lawyers whose specialty is the law of the sea). Another is the importance of participation, so emphasized by Philip Allott, but now understood theologically, namely, as participation finally in the life of the Trinity. A third is God's identification with creatures as an act of divine self-transcendence. This provides a grounding for understanding the human practice of ocean empathy, or compassion with sea creatures if you will, as self-transcendence, rather than self-abasement or condescension, much less domination, of any kind. In short, if ocean empathy can help shore up the law of the sea, then deep incarnation, exercising especially what Nafzinger calls religion's "creative" and "aspirational" functions, can not only affirm but also deepen the "new consciousness" that Allott claims informs the still-emerging "new law of the sea."

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114. See, for example, Ryan Duns, "Luminosity and Love: Metaphysics and Empathy in *Hearer of the Word*," *Theological Studies* 82, no. 3 (September 2021): 440–63, https://doi.org/10.1177/00405639211035149.
115. Elizabeth Johnson, *Ask the Beasts: Darwin and the Law of Love* (London: Bloomsbury, 2014). Job 12:7–9, NAB, reads (emphasis added), "But now ask the beasts to teach you, the birds of the air to tell you; Or speak to the earth to instruct you, *and the fish of the sea* to inform you. Which of all these does not know that the hand of God has done this?"
116. Edwards, *Deep Incarnation*, 2–4, 24, 77.
117. Under the headings "Plural Worlds" and "Broadening Horizons," Neff devotes the opening chapter of *Justice among Nations* not only to Greece and Rome but equally to Mesopotamia and the Middle East, to India, and to China.
118. Edwards, *Deep Incarnation*, 102–4.

But the attempt to shore up the law of the sea may also challenge those espousing this theology. For one thing, deep incarnation has much to say about the laws of nature but, without bracketing these laws, it may need to say more about laws enacted by humans, including the vast range of international law.[119] Related to this, elsewhere I have argued that international law may be construed as "ethics writ large," seeking implicitly to answer the question, "how ought we to live, how can we live, together on the same planet, even as, like Icarus (or maybe not), we sometimes seek to escape that planet's bounds?"[120] And no doubt deep incarnation has much to contribute to theological ethics, especially at a foundational level. But at least as represented by Edwards, theologians steeped in this approach might say more about moral decision-making in the concrete. So, just as in this journal, John C. Ford, SJ, famously discussed at length the morality of obliteration bombing (being carried on at the time during World War II), with multiple references to international law,[121] one might ask what deep incarnation has to say about the ethics of seabed mining with its ecological disruptions, when it is also claimed that the resources to be retrieved are essential for clean and green energy in the face of ocean-affecting climate change. Or, perhaps to put it another way, what happens when deep incarnation is more closely joined to "practical reasoning," or even "casuistry," at its best?

I assume that theologians, Catholic and other, can contribute to an ever-more inclusive, all-embracing catholic reconception of international law. Such a contribution will require engaging other traditions on equal footing. But the trinitarian theology of deep incarnation, with its particularly strong christological focus, leaves some question as to how, or even whether, to get beyond an "inclusivist" understanding of interlocutors as "anonymous Christians," or some equivalent. Concrete engagement of the largely secular and pluralistic world of international law might place that open question in a new light. Elizabeth Johnson gives an outstanding example of a deep incarnational engagement of Charles Darwin. How might similar engagement of prominent international lawyers, past and present, not necessarily Christian or even particularly religious, help to shore up the law of the sea—and perhaps advance deep incarnation theology in the process?

The above observations and questions are tentative and suggestive. The real issue is less what I think to be the case but rather what theologians deeply committed to the practice and not just the idea of deep incarnation will find if, with Francis, they set their sights on ocean governance and, with Allott, "a new law of the sea." What "critical differences" from, "resonances" with, and perhaps new "insights" into deep incarnation will they find?

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119. For instance, Elizabeth Johnson's *Ask the Beasts* contains over one hundred references to "law" or "laws." But most, if not all, are to laws of nature, even though Charles Darwin, thoroughly discussed in the book, inhabited a world of human-made laws, too. These included customary sea law governing the *Beagle*, on which he voyaged for nearly five years, and laws regarding slavery, a practice to which he was adamantly opposed.
120. George, *Mining Morality*, 46–47.
121. John C. Ford, "The Morality of Obliteration Bombing," *Theological Studies* 5 (September 1944): 261–309, https://doi.org/10.1177/004056394400500301.

Comparative Theology

Christopher Weeramantry wrote *The Lord's Prayer* from the perspective of a Roman Catholic. Yet he insists at one point that "the rich and varied nuances that impregnate the Christian scriptures can sometimes receive a new radiance through rays of inspiration coming from other scriptures, just as those others can be lighted up by inspiration from the Christian"[122]—a statement that captures the essence, or at least the spirit, of "comparative theology," a second strand of theology that can help to shore up the law of the sea.

Comparative theology is a vibrant if somewhat unsettled field. While one of its leading expositors and practitioners, Francis X. Clooney, SJ, carefully distinguishes comparative theology from related disciplines, such as comparative religion or theology of religions,[123] Catherine Cornille points out that "even within one and the same religion, theologians have developed different conceptions of the nature and goal of the discipline. This is already reflected in the various definitions of comparative theology."[124] Comparative theology may be done from a "confessional" standpoint, or it may be "meta-confessional" in its intent, or the difference may be "one of degree."[125] When it comes to engaging another tradition for the sake of better understanding one's own, the comparative theologian may be "inclusivist" ("closed" or "open") or "pluralist" or something in between.[126] While comparative theology involves "deep learning across religious boundaries,"[127] often requiring much time and effort, whether all comparative theologians agree on just what purpose that learning should serve is not so clear.

Surely, more could be said regarding these and other fluid marks of comparative theology. But I leave it to those immersed in or inspired by this approach to address the differences among themselves. Here, I simply offer three suggestions as to how those who regard themselves as comparative theologians might help to shore up the law of the sea.

The first suggestion is for comparative theologians simply to spend more time and energy focused on the sea. So, they might compare what particular traditions say or have said about the sea as suggested by texts included in *The Ocean Reader*, under the heading of "Creation,"[128] or by the "Faith Resources" gathered by the organization Interfaith Oceans.[129] Or, they might consider existing examples of in-depth religious

122. Weeramantry, *The Lord's Prayer*, 47.
123. Francis X. Clooney, *Comparative Theology: Deep Learning across Religious Boundaries* (Oxford: Wiley-Blackwell, 2010), 6–14.
124. Catherine Cornille, *Meaning and Method in Comparative Theology* (Hoboken, NJ: John Wiley and Sons, 2020), 2.
125. Cornille, *Meaning and Method*, 10.
126. Cornille, *Meaning and Method*, 53–65.
127. Note the subtitle of Clooney, *Comparative Theology*.
128. Eric Paul Roorda, ed., *The Ocean Reader* (Durham, NC: Duke University Press, 2020), 5–40.
129. "Faith Resources to Awaken Others," Interfaith Oceans (website), https://www.interfaithoceans.org/interfaith.

attention to the sea that qualify as, or at least have affinities to, comparative theology. For instance, Kimberly C. Patton turns to ancient Greece, Inuit culture, Hinduism, and other sources to connect modern marine pollution and the ancient cathartic ocean.[130] And the Jewish writer Erica Brown draws on not only Jewish but also Christian sources to plumb the depths of the book of Jonah, with its drama at sea and its meaning for today.[131]

Second, a common intent and virtue of comparative theology is striving to understand other traditions on their own terms. So "empathy" and "imagination" are already integral to comparative theology. But one might ask: Cannot these habits of mind and heart be directed not just to, say, the texts or practices of another tradition regarding the sea but to the sea itself? Can the ocean itself be the "text" to which the comparative theologian should turn more often—a move that deep incarnation theologians would likely affirm? This should not be a great leap for comparative theologians if they are already crossing certain religious boundaries. Again, as Philip Allott points out, conceptions of the sea in "other cultures"—and here we can assume this includes indigenous cultures—"often have a significantly numinous aspect, leading to attitudes such as humility, respect, fellow feeling, and an absence of a sense of domination and exploitation, and of *meum* and *tuum*."

Third, and directly to the main point of this article, I would encourage comparative theologians to engage the dynamic world of international law, including aspects of the law of the sea, as seriously and with as much care as they might any religious tradition. They would compare theologically their own and perhaps other traditions with what they find in international law, learn from the comparisons, pass on to others what they have learned, and help others to learn more on their own. Treating international law as itself a religious or at least a quasi-religious tradition, and thus a candidate for theological comparison, is not as strange or strained as it might seem. Secular though it may now be, international law has profound and diverse religious roots; Manfred Lachs attests that "international law has entered into fields of a scientific and theological character"; and Judge Weeramantry reached out to diverse religious traditions to further his international legal arguments. For my part, I have argued that what Bernard Lonergan calls "the emerging religious consciousness of our time" is discernible in the world of international law.[132] Similarly, but more authoritatively, a leading scholar of law and religion, Harold Berman, closes a review of an anthology on religion and international law by stating that

130. Kimberly C. Patton, *The Sea Can Wash Away All Evils: Modern Marine Pollution and the Ancient Cathartic Ocean* (New York: Columbia University Press, 2007).

131. Erica Brown, *Jonah: The Reluctant Prophet* (New Milford, CT and Jerusalem: Maggid Books, 2017).

132. George, *Mining Morality*, 50–51; and William P. George, "Who Are the *Fideles* and What Is Their *Sensus*? Insights from Bernard Lonergan," in *Learning from* All *the Faithful: A Contemporary Theology of the* Sensus Fidei, ed. Bradford E. Hinze and Peter C. Phan (Eugene, OR: Pickwick Publications, 2016), 184–94.

> this, indeed, may be the final word in the analysis of the interaction between religion and international law in a multicultural, multireligious world: that not only Roman Catholicism and Protestantism, as in the Grotian paradigm, but all great faiths, including some forms of humanism, may unite in affirming the presence of a transcendent spiritual element—a holy spirit—in the processes of making, interpreting, and applying international law itself.[133]

For Francis Clooney at least, "faith is a necessary and explicit factor" in comparative theology.[134] So I might add that Berman highlights, without apparent objection, my positing in a contribution to the volume "a common faith in the 'Global Ethic' of international law itself."[135] So, international law might be yet another realm of "faith" that theologians can and should comparatively explore.

Comparative theology often requires narrowing the comparative focus to something specific. So, theologians might, for instance, compare Christian (e.g., Grotian) and Islamic arguments for customary laws regarding the "freedom of the seas."[136] Or, since UNCLOS is a treaty, and another term for treaty is "covenant," they might compare meanings of covenant in Judaism or Christianity, on the one hand, and in international law on the other. Or, again, the focus might be on the common heritage principle, comparing what is said about it in UNCLOS with whatever in one's own tradition might seem to align with, or possibly challenge, that principle.

By engaging international law in a theologically comparative way, Catholic theologians, the likely readers of this journal, have an opportunity to understand better their own tradition by moving, in comparative fashion, beyond that tradition and encountering what I have been calling the catholic reconception of international law. But just as surely, moved by ocean empathy, comparativists from other traditions can turn to international law and, drawing upon their creative, aspirational, custodial, and mediative skills (Nafzinger), also help shore up the law of the sea.[137]

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133. Harold J. Berman, review of *Religion and International Law*, ed. Mark W. Janis and Carolyn Evans, *American Journal of International Law* 94, no. 4 (October 2000): 803 (emphasis added). Arguably, this "holy spirit" may be identified with Lonergan's "emerging religious consciousness of our time."
134. Clooney, *Comparative Theology*, 9.
135. Berman, review of *Religion and International Law*, 802. The contribution to which he is referring is William P. George, "Looking for a Global Ethic? Try International Law," in Janis and Evans, *Religion and International Law*, 191–208.
136. For Islamic understandings predating Grotius, see Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019).
137. For instance, one might compare the Buddhist notion of "interbeing," as discussed by Thich Nhat Hahn in *Living Buddha, Living Christ* (New York: Riverhead Books, 1995), 10–12, with UNCLOS negotiators' consciousness "that the problems of ocean space are closely interrelated and need to be considered as a whole."

Conclusion

In 1867, one hundred years before Arvid Pardo spoke about the need for a new and improved law of the sea, from Dover Beach Matthew Arnold asked his "love" to:

> Listen! you hear the grating roar
>
> Of pebbles which the waves draw back, and fling,
>
> At their return, up the high strand,
>
> Begin, and cease, and then again begin,
>
> With tremulous cadence slow, and bring
>
> The eternal note of sadness in.[138]

Today, against the backdrop of the too-often sad state of our world, many voices—Pope Francis, ocean scientists, NGOs, and international lawyers, too—urge us, each in their own way, to listen to the sea. Wherever we might find ourselves, theologically, culturally, geographically, if we listen empathetically, with "the ear of the heart," we may learn how better to live with what Rachel Carson called "the sea around us." We may also learn how, together, we can shore up the law of the sea. But as we "return to the ocean depths" (Pardo), we may learn something more. The "world is blue" (Earle), with the oceans covering some 70 percent of Planet Earth. Now, according to St. Francis, quoted by Pope Francis, it is "our Sister, Mother Earth" who "sustains and governs us."[139] So yes, we may govern the oceans, but just as surely the oceans govern us. By entering more fully into this shared governing process, perhaps we will finally learn what is meant by a truly universal, truly catholic reconception of the law of the sea.

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138. For the entire poem, see Matthew Arnold, "Dover Beach," Poetry Foundation, https://www.poetryfoundation.org/poems/43588/dover-beach.
139. "Praise be to you, my Lord, through our Sister, Mother Earth, who sustains and governs us, and who produces various fruit with coloured flowers and herbs." "The Canticle of the Creatures," in Regis J. Armstrong, *Francis of Assisi: Early Documents*, vol. 1 (New York: New City Press, 1999), 113–14, quoted in *LS* §1.