

# Christianity and Global Law

This book explores both historical and contemporary Christian sources and dimensions of global law and includes critical perspectives from various religious and philosophical traditions.

Two dozen leading scholars discuss the constituent principles of this new global legal order historically, comparatively, and currently. The first part uses a historical-biographical approach to study a few of the major Christian architects of global law and transnational legal theory, from St. Paul to Jacques Maritain. The second part distills the deep Christian sources and dimensions of the main principles of global law, historically and today, separating out the distinct Catholic, Protestant, and Orthodox Christian contributions as appropriate. Finally, the authors address a number of pressing global issues and challenges, where a Christian-informed legal perspective can and should have deep purchase and influence. The work makes no claim that Christianity is the only historical shaper of global law, nor that it should monopolize the theory and practice of global law today. But the book does insist that Christianity, as one of the world's great religions, has deep norms and practices, ideas and institutions, prophets and procedures that can be of benefit as the world struggles to find global legal resources to confront humanity's greatest challenges.

The volume will be an essential resource for academics and researchers working in the areas of law and religion, transnational law, legal philosophy, and legal history.

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The practice of religion by individuals and groups, the rise of religious diversity, and the fear of religious extremism, raise profound questions for the interaction between law and religion in society. The regulatory systems involved, the religion laws of secular government (national and international) and the religious laws of faith communities, are valuable tools for our understanding of the dynamics of mutual accommodation and the analysis and resolution of issues in such areas as: religious freedom; discrimination; the autonomy of religious organisations; doctrine, worship and religious symbols; the property and finances of religion; religion, education and public institutions; and religion, marriage and children. In this series, scholars at the forefront of law and religion contribute to the debates in this area. The books in the series are analytical with a key target audience of scholars and practitioners, including lawyers, religious leaders, and others with an interest in this rapidly developing discipline.

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Edited by Rafael Domingo and  
John Witte, Jr.

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**To the Memory of Alonzo L. McDonald (1928–2019)**  
**Global Leader of Church, State, Society, and**  
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# Contents

<i>List of contributors</i>	x
<i>Preface and acknowledgments</i>	xii
<b>Introduction</b>	<b>1</b>
RAFAEL DOMINGO AND JOHN WITTE, JR.	
<b>PART I</b>	
<b>Historical-biographical approach</b>	<b>15</b>
<b>1 St. Paul and the moral law</b>	<b>17</b>
C. KAVIN ROWE	
<b>2 Augustine and the common good</b>	<b>31</b>
JOSEF LÖSSL	
<b>3 Thomas Aquinas: definitions and vocabulary in his <i>Treatise on Law</i></b>	<b>51</b>
CHARLES J. REID, JR.	
<b>4 Francisco de Vitoria and the global commonwealth</b>	<b>72</b>
ANDREAS WAGNER	
<b>5 Francisco Suárez on the law of nations and just war</b>	<b>84</b>
HENRIK LAGERLUND	
<b>6 Alberico Gentili and the secularization of the law of nations</b>	<b>98</b>
RAFAEL DOMINGO AND GIOVANNI MINNUCCI	
<b>7 Johannes Althusius and the universal rule of natural laws and rights</b>	<b>112</b>
JOHN WITTE, JR.	

<b>8 Hugo Grotius and the makings of modern natural law</b>	127
JON MILLER	
<b>9 Kant's <i>Religion and Perpetual Peace</i></b>	143
LAWRENCE PASTERNAK	
<b>10 Jacques Maritain and the Universal Declaration of Human Rights</b>	158
WILLIAM SWEET	
<b>11 Robert Schuman and the process of European integration</b>	178
RAFAEL DOMINGO	
<b>PART II</b>	
<b>Structural principles of global governance</b>	195
<b>12 Christianity and the global rule of law</b>	197
NEIL WALKER	
<b>13 Christianity and the principle of dignity</b>	214
MARTIN SCHLAG	
<b>14 Christianity and the principle of equality in global law</b>	231
JULIAN RIVERS	
<b>15 The principle of the common good</b>	251
GEORGE DUKE	
<b>16 Christianity, sovereignty, and global law</b>	267
NICHOLAS ARONEY	
<b>17 Christianity and the principle of solidarity</b>	287
ANA MARTA GONZÁLEZ	
<b>18 Christianity and the principle of subsidiarity</b>	303
THOMAS C. KOHLER	
<b>PART III</b>	
<b>Global issues and global public goods</b>	321
<b>19 Christianity and human rights</b>	323
SAMUEL MOYN	

<b>20 Christianity and the international economic order</b>	337
DANIEL A. CRANE	
<b>21 Christianity and a global law for migration</b>	351
SILAS W. ALLARD	
<b>22 Christianity, global environmental protection, and animal law</b>	365
MARK SOMOS AND ANNE PETERS	
<b>23 Christianity and the use of force: <i>Lex</i> and <i>Pax Christi</i></b>	384
MARY ELLEN O'CONNELL	
<b>24 Christianity and international criminal law</b>	402
JOHAN D. VAN DER VYVER	
 <i>Index</i>	 416

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# Preface and acknowledgments

This volume on *Christianity and Global Law* is one of several new introductions to Christianity and law commissioned by the Center for the Study of Law and Religion at Emory University. Each volume is an anthology of some two dozen chapters written by leading scholars. Each volume has historical, doctrinal, and comparative materials designed to uncover Christian sources and dimensions of familiar legal topics. Each volume is authoritative but accessible, calibrated to reach students, scholars, and instructors in law, divinity, graduate, and advanced college courses as well as educated readers from various fields interested in what Christianity has, can, and perhaps should offer to the world of law. Earlier titles in this series include *Christianity and Law* (2008); *Christianity and Human Rights* (2010); *Christianity and Family Law* (2017); and *Christianity and Natural Law* (2017). Other titles are forthcoming on Christianity and church law, conscience, constitutionalism, criminal law, economic law, international law, migration law, and private law. We aim to commission similar volumes on Christianity and bankruptcy law, education law, elder law, environmental law, health law, labor law, procedural law, remedies, and other familiar legal topics.

This volume on *Christianity and Global Law*—together with the parallel volumes in press on criminal law and private law—was made possible by a generous grant from Fieldstead and Company, a private California foundation. We give thanks to the Fieldstead board and directors for their generous support and to the program officers, Dr. Stephen Erikson and Dr. Joe Gorra, for their wise counsel as we planned these volumes. We are deeply grateful to Dr. Gary S. Hauk, Emory University historian and senior editor in the Center for the Study of Law and Religion, for sharing his superb editorial talents so generously in copyediting this manuscript. We also express our warm thanks to our Center colleagues, Ms. Anita Mann and Ms. Amy Wheeler, for their skillful administration of this and other scholarly projects.

Both of us are privileged to have the generous support of Emory University as well as of individual benefactors. We are most grateful for the perennial support, counsel, and encouragement of Gonzalo Rodríguez-Fraile for Rafael Domingo's work on fundamental questions of law and spirituality viewed in rich interdisciplinary legal perspective. We are equally grateful for our friends at the McDonald Agape Foundation, notably Ambassador Alonzo McDonald, Ms.

Suzie McDonald, and Mr. Peter McDonald, for their decades-long support of John Witte's ongoing work in law and Christianity and their collaboration on several earlier projects and volumes, including other titles in this series.

Ambassador Alonzo McDonald passed away on November 21, 2019, just as this volume was going to press. Al was very much a global leader of church, state, society, and economy. He was a Marine Corps veteran, a distinguished businessman, and a generous philanthropist. His career included service as CEO of McKinsey & Company; president and vice-chairman of the Bendix Corporation; White House Staff Director under President Jimmy Carter; and U.S. ambassador for trade who led the world in negotiating the General Agreement on Tariffs and Trade (GATT), a fundamental early expression of global law. He was a leading member of the Council on Foreign Relations, the International Chamber of Commerce, the Center for Inter-American Relations, and the French-American Foundation. He was also co-founder of the Trinity Forum and trustee of Emory University. With gratitude for his remarkable life of faith and work, we dedicate this book to the memory of Alonzo McDonald.

It was a joy for us to work with such a range of leading scholars from North America, Europe, Australia, and South Africa who contributed fresh chapters to this volume. We are delighted to publish this volume and several others in the distinguished Law and Religion series edited by one of the world's preeminent scholars of law and religion, Professor Norman Doe. Professor Doe and his many colleagues in the Cardiff Centre for Law and Religion have been vital trans-Atlantic allies with our Emory Center for the Study of Law and Religion. We give thanks for their leadership in this expanding global field of interdisciplinary legal study, and for their partnership with us in publishing this and parallel volumes on law and Christianity.

Finally, we express our warm thanks to Alison Kirk and her colleagues at Routledge in taking on these volumes and applying their usual standards of excellence in their editing, production, and marketing of this volume.

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# Introduction

*Rafael Domingo and John Witte, Jr.*

This volume explores the interaction between Christianity and the challenges and principles of global law. By “global law,” we mean the emerging common law of humanity that transcends both the law of individual states and the international law between and among nations and regions. The challenges pressing for global law solutions today include massive human rights violations, international terrorism, genocide, war, arms trafficking, refugees and migrants, sex trafficking, global disease, hunger, famine, poverty, global political and economic corruption, global climate and environmental challenges, and major (bio)technological issues—all of which are beyond the capacity or power of any nation or even of international law to address fully. Discussions of global law today build on ancient and foundational principles such as dignity, equality, solidarity, sovereignty, subsidiarity, pluralism, the common good, and the rule of law. They also build on the efforts of earlier great legal minds from classical times until today who have sought to translate these legal principles into effective and enduring precepts and practices to address the major challenges of their day, sometimes using such sweeping concepts as *ius naturale*, *ius gentium*, *ius commune*, and comparable appeals to “universals.”

The new field of global law study remains a work in progress, and it will require some time and experimentation before it is settled—particularly given the recent resurgence of nationalism and balkanization along religious, ethnic, linguistic, and racial lines. What Goethe said about the development of science also applies to the evolution of law: “With the expansion of knowledge, from time to time a rearrangement becomes necessary; it usually happens according to newer maxims, but always remains provisional.”<sup>1</sup> The growing interdependence of the world’s economies, cultures, and populations, and the rapid emergence of massive new global challenges to human civilization, now calls for this radical “rearrangement” of law and the creation of new legal “maxims,” however “provisional,” to guide the development of law in subsequent generations.

This volume is part and product of the rapidly emerging scholarship on global law.<sup>2</sup> It presents freshly commissioned chapters by two dozen leading jurists, theologians, philosophers, political scientists, historians, and social scientists from North America, Europe, South Africa, and Australia. The chapters reflect the provisional, experimental, and sometimes controversial discourse about global

law today. Some contributors equate global law with international law; others see it as any law beyond the international law between and among sovereign states. For some, global law is only a worldwide growing legal consciousness to resolve planetary problems together; for others, it is a set of legal institutions organized on a global level to deal with public goods that affect humanity as a whole. For some, global law is the result of a process of constitutionalization of international law; for others, global law is a common law of humanity, a true world law. Our view as editors is that global law must remain complementary to national legal systems and focused only on specific global challenges facing global humanity. We do not envision a comprehensive and universal global legal system encompassing and preempting the national and international legal systems in the world. But we do believe that global law's primary focus on the fundamental dignity of the global person rather than on the community of sovereign nation-states will eventually bring profound changes to the foundations of international law.

While the chapters in this volume do not settle on a common definition or concept of global law, they do focus on the past, present, and potential contributions of global Christianity to global law. This topic is rather new to contemporary global law scholarship, even though Christianity with its 2.3 billion members<sup>3</sup> is the largest faith in the world. The relationship of Christianity and global law is worthy of close examination, and this volume outlines some of the emerging resources, questions, and methods. We make no claim that Christianity has been the only historical shaper of global law, nor that it should monopolize the theory and practice of global law today or in the future. Our hypothesis is more modest but nonetheless insistent: that Christianity has deep norms and practices, ideas and institutions, prophets and procedures that can be of great benefit as the world struggles to find global legal resources to confront humanity's greatest challenges.

This volume is deliberately ecumenical in character and reflects a range of historical and contemporary Christian perspectives on global law, with contributors offering descriptive, normative, and critical insights. The book is also decidedly interreligious in orientation, seeking to present Christian teachings on global law in a way that we hope will resonate with readers of all religions, first philosophies, and legal traditions. And the book is interdisciplinary in perspective, designed to show that secular legal systems, including the budding global law systems, are based in part on fundamental religious beliefs, values, and ideas. In the history of the Western legal tradition, Christian teachings and practices provided many of the founding beliefs and values of public, private, penal, and procedural law and legal theory. We editors believe that these same Christian teachings and practices are valuable for the emerging systems of global law as well, alongside sundry other religious and philosophical systems.

## **Part I: historical-biographical approach**

The first part of our volume is biographical in nature. Behind many legal achievements, including the development of global law, one finds Christian values and

ideals as they were interpreted at a given time. And behind those ideals, one often finds particular Christian legal thinkers who left an indelible mark on our legal culture. From among the hundreds of possible figures to study, we have selected eleven principal figures from the first century to the twentieth century who contributed key ideas and insights to the later development of global law or some aspects of it. We have included major jurists like Alberico Gentili (1552–1608), Johannes Althusius (1563–1638), and Hugo Grotius (1583–1645). We have also included the Apostle Paul (c. 5–c. 64–67 CE); theologians like Augustine of Hippo (354–430), Thomas Aquinas (1225–1274), Francisco de Vitoria (1483–1546), and Francisco Suárez (1548–1617); philosophers like Immanuel Kant (1724–1804) and Jacques Maritain (1882–1973); and the politician Robert Schuman (1886–1963)—all of whom influenced the law more profoundly than many jurists.<sup>4</sup>

To be sure, without globalization there is no properly global law, and talking about global law prior to the Second World War is thus somewhat anachronistic. But it is also true that the idea of the existence of some legal principles of universal validity based on a common human nature and comparable experience is at the heart of Western civilization, as is the idea that law is the result of a long process of legal evolution, political maturation, and social development. Each chapter zeroes in on the specific key insight or legal contribution of that historical writer who later proved critical to the formation of global law.

In Chapter 1, C. Kavin Rowe argues that it is far from obvious that St. Paul was a defender of a universal moral law, or even a natural law. According to Rowe, in St. Paul's writings law most frequently means the Torah, that is, the law of God revealed to Moses and recorded in the Pentateuch; Torah was not equivalent to a universal moral law. Instead, Rowe defends the idea that Christian freedom and Christian wisdom are the real tools offered for St. Paul for living in the world in accordance with the will of God.

This first chapter poses a perennial dialectic that will occupy several other chapters in this volume, namely, that some theologians have a complex and critical view about natural law, even while most Christians take it for granted. The critical view can be seen in natural law skeptics such as Karl Barth or, currently, Michael Welker. On the other hand, according to a natural law doctrine very much supported by Thomas Aquinas and the Catholic Church, and by Althusius and the Calvinist tradition, the Torah itself contains many truths accessible to natural reason, which are immutable and permanent throughout human history. Whether such a traditional doctrine actually comports with St. Paul's reasoning is the central question posed by Rowe's exegesis in the first chapter.

In Chapter 2, on Augustine, Josef Lössl argues that classical (Greco-Roman) political thought knew the concept of the common good as an ideal in civic life which was as unquestioned as it was unattainable. In his monumental volume on *The City of God*, St. Augustine of Hippo mercilessly deconstructed the myth of ancient civic virtue and, taking Rome as example, laid bare the crisis and failure of the ancient civic project. He replaced it with a broader and, at the same time, deeper vision. His scope was the whole of humanity, the law of nature, and the

law of nations. He explored in principle the human condition and analyzed basic concepts such as the private vs. the public, the common vs. the particular, institutions such as marriage and family, and socioeconomic phenomena such as labor and leisure, poverty and wealth. This chapter discusses these and other aspects of Augustine's teaching on the common good and outlines briefly its continuing relevance.

This is an adventuresome but convincing reading of Augustine's wide-ranging thought and of how his worldview and imperial context provide interesting insights even for global law discussions in our day. Augustine's understanding of the *city* and its conceptual connections to the city of Rome and the Roman Empire, and to the kingdom of God and the new city of Jerusalem coming down in the Book of Revelation, is crucial to capturing Augustine's political thought. The reader will probably enjoy the parallel attention to the common good as both an intellectual and a spiritual reality, and the particular expressions of and challenges to these goods in Augustine's discussions of legal cases, private property disputes, work in monastic communities, and love within nuclear families of ancient Rome. The chapter also analyzes the Augustinian understanding of natural law, which, grounded in creation, is more authoritative and capable of delivering justice than the traditional law of nations based on human *consensus*.

In Chapter 3, Charles J. Reid, Jr. analyzes some of Thomas Aquinas's central juridical and legal ideas that shaped Western legal culture for many centuries in Catholic, Protestant, and Enlightenment liberal thought alike. Key to understanding Aquinas's realistic approach to law is the thought that law is both divine and human reason (*ratio*), with no conflicts between them. Divine reason is perfect, and it provides coherence to the whole law. Divine reason fixes the plan for the universe and is the ultimate archetype for rationally based human law. Human reason aspires to pursue the good by discovering the divine plan for communal creatures. Although there are immutable principles, the law is not static but flexible, since if human needs change, so must the law. A major point of the chapter is that straightforward translations of Aquinas's Latin writings often do a disservice to his thought. That happens especially with the Latin words *lex* and *ius*, which do not have an easy translation into English as they have into French, Italian, Spanish, and even German.

In Chapter 4, examining the foundations of a "global commonwealth," Andreas Wagner explores the understanding of the law of nations by Francisco de Vitoria, the founder of the so-called School of Salamanca. A pioneer in the development of the idea of public international law and the global human community, Francisco de Vitoria inaugurated the discourse and debate on global law in expounding his general conception of a global political commonwealth, organized according to republican motives. According to Vitoria, while this global commonwealth comprises both nations and individual persons, it is constituted primarily by the latter. All human beings are citizens both of their home nations and of the global commonwealth. In their capacity as global citizens, individuals can claim their legal rights against other foreign persons and communities and even against the otherwise sovereign particular political community of which

they are a member. The chapter points out some ambivalences resulting from the political use that imperial colonists made of Vitoria's arguments and from the formal way in which he presented them. However, critics targeting these ambivalences seem to disagree about whether global law should then be more or less interventionist than Vitoria had suggested. Interestingly, both types of criticism can be discerned in today's reception of Vitoria as well as in some of his contemporaries' reactions.

In Chapter 5, Henrik Lagerlund introduces Francisco Suárez's thinking on the law of nations and just war. Suárez was also a member of the School of Salamanca and was strongly inspired by the medieval Thomistic tradition. He made essential contributions to natural theology, the philosophy of mind and action, metaphysics, ethics, political philosophy, and law. Suárez developed a modern account of the law of nations as a form of positive human law, not a mere extension of natural reason as it was seen by his predecessors. Included within the law of nations was the law of war, whose rules were drawn from custom but then cast in written positive law forms. Suárez argued that war as such is not intrinsically evil, and, therefore, that a just war is possible under some conditions. According to Suárez, defensive war is not only allowed but sometimes even commanded. His thinking influenced the jurisprudence of Grotius, Pufendorf, Leibniz, and Descartes, opening the doors to new modern legal developments.

In Chapter 6, Rafael Domingo and Giovanni Minnucci analyze the secularization of the law of nations led by Alberico Gentili. An early modern Italian legal theorist and legal practitioner, Alberico Gentili was a transitional figure, able to combine the standards of the old Italian school of civilians (the Bartolists) and the new categories of the legal humanists. He designed an autonomous and practical framework for the law of nations based on three pillars: the Greco-Roman natural law, the Justinian compilation of Roman law texts, and the Bodinian notion of sovereignty as supreme, perpetual, and indivisible power. By doing this, Gentili freed the law of nations from excessive scholastic influences and theological importations, and he contributed to the establishment of the theoretical pillars of the European modern state and to the building up of a society of sovereign nations.

In Chapter 7 on Johannes Althusius, John Wiite, Jr. analyzes the life and thought of this early seventeenth-century Calvinist German jurist and political philosopher, especially his account of the ultimate rule of natural laws and rights. This account would appeal not only to Christians but to all individuals seriously concerned about faith, justice, order, equality, and liberty. Althusius opposed the Bodinian vision of the unitary state-monarchy as the best guarantor of order and peace. He laid the foundations of the law in human nature, natural rights, symbiotic association (such as family and kinship, guilds and estates, cities and provinces), social contract, divine covenant, written constitutionalism, and political federalism, among others. Many of Althusius's legal foundations, especially his early developments of the theories of federation and subsidiarity, are now considered by scholars as true pillars of the emerging idea of global law.

In Chapter 8, Jon Miller examines Hugo Grotius's argument for the making of modern natural law theory. An uncommon thinker living an uncommon life

under uncommon social circumstances, Grotius is considered to be the father of modern international law and a pivotal figure in his time. While his originality is still under question, his work certainly had a massive influence on international legal theory and politics, including the laws of war and peace, the law of the sea and trade, and the development of natural rights. Miller offers a theistic explanation about the meaning of Grotius's (in)famous phrase *etiam si Deus non daretur*—that is, that the natural law would exist “even if God did not exist”—which is often misunderstood by scholars. According to Miller, the argument that natural law is self-evident to rational human nature presupposes the existence of God and the creation of rational humans made in the image of God. At the end of his chapter, Miller offers a suggestive comparison between German Protestant Reformer Martin Luther and Dutch Protestant Hugo Grotius.

After Chapter 8, we move from the Reformation era to the Enlightenment, to the post-Westphalian modern international system. The series of treaties that came together in the so-called Peace of Westphalia (1648) ended a century of European wars of religions that killed more than eight million people, even with the primitive weaponry of the day. In Chapter 9, Lawrence Pasternack delves into Immanuel Kant's ideas set out in his 1795 master work on *Religion and Perpetual* [or “Everlasting”—*ewig*] *Peace*, one of the best expressions of rational Enlightenment thought on war and peace. Pasternack shows how some of Kant's affirmative religious positions influenced his approach to international relations, and specifically how his 1795 work was shaped by some of the key topics of a previous writing that had deeper theological insights. Arguing that the German adjective *ewig* in Kant's famous work is better translated as *everlasting* or *eternal* rather than *perpetual*, Pasternack argues that Kant advocated not merely the interruption of all hostilities in the international realm but the true conversion of international relations into a scenario of *everlasting* peace.

The last two chapters of the first historical-biographical part explore the lives and thinking of two twentieth-century French titans, Jacques Maritain and Robert Schuman. In Chapter 10, William Sweet examines the decisive influence of Jacques Maritain, the great Catholic philosopher, theologian, and diplomat, on the justification, proposal, and development of the Universal Declaration of Human Rights (1948). The author demonstrates powerfully Maritain's contributions to natural, positive, and international rights discussions before, during, and after the UN Declaration. Readers will be surprised by how much Maritain had already developed his thinking before the Second World War and how he shifted his logic and argumentation as he watched and listened in the formulation of the international documents.

In Chapter 11, Rafael Domingo introduces Robert Schuman, one of the architects of European reconciliation and integration. Having been raised in the controversial border state of Alsace-Lorraine, he strongly desired a free and unified Europe and joined in cooperation and friendship across state lines. Although Schuman never talked specifically about global law, some of his decisive ideas, principles, and values that inspired European integration are critical for the development of global law and human community, Domingo argues. These include

the idea of the centrality of the person, the need to eliminate wars through peaceful legal tools, the importance of limiting state sovereignty without dissolving sovereign nations, and the principles of solidarity and subsidiarity.

## Part II: structural principles of global governance

The second part of the book deals with several structural principles of global law: dignity, equality, solidarity, sovereignty, subsidiarity, pluralism, the common good, and the rule of law. Although the chapters in this part are more normative and theoretical, the authors continue to draw on historical examples and exemplars. The structural principles selected for analysis are not exclusive to global law, but they have proved critical to its development and are even at the heart of it.

If there is a universal common good for all humanity, that good itself creates a global community, whose existence and protection should be subject to a global *rule of law*. This global human community is not a mere federation of sovereign nation-states but a universal community of all human persons without exclusion. All persons are by their nature compulsory members of this global humanity, and no one can freely abandon it. Such a unique community of individuals should be based on the *imago Dei* principle of dignity, which provides equal legal status to all persons without exception. Moreover, if humanity is indivisible, the governance of this global human community must be inspired by the further principle of solidarity. Membership in a global community, however, sits alongside voluntary and involuntary membership in other communities as well: families, neighborhoods, local states, and various social, economic, recreational, and other voluntary associations. The principles of limited sovereignty and subsidiarity thus allow the integration and coordination of different instrumental communities with the global human community.<sup>5</sup>

In Chapter 12, Neil Walker offers a general introduction to the second part of the volume by focusing on the contested concept of a global rule of law. He explains the pros and cons of the two prevalent narratives on the topic: the secular narrative and the religious narrative. The former tries to regularize globalization detached from religion; the latter sees in the Christian tradition a foundation for a globally expansive rule of law. Walker defends an integrative third way, supported in part by the work of German philosopher Jürgen Habermas, and argues that religiously inspired actors and institutions can themselves be active agents of a process of “secularization” in which the religious sources are harmoniously mixed with other secular sources.

In Chapter 13, Martin Schlag delves into the Christian origins of human dignity in the Roman Catholic tradition. Although human dignity is not properly a biblical term, the Bible paves the path for Christian theology to frame a dignity-based legal anthropology. According to Schlag, while it is true that other religious traditions and philosophical schools developed concepts similar to dignity, the Christian tradition has played a decisive role in the consolidation of the idea worldwide. Schlag appreciates all attempts to establish a universal and secular concept of human dignity in order to promote good pillars in democratic

societies, but he argues that Christian values, and specifically dignity, without following Christ are ultimately rootless.

In Chapter 14, Julian Rivers focuses on some key elements for a challenging conversation about equality in modern law as he deeply engages with biblical and historical sources and arguments together with the latest national and international documents. He puts together and compares the words of the fourth-century Christian apologist Lactantius and suggests that Christianity has something relevant to say about equality and the Universal Declaration of Human Rights (1948). According to Rivers, what Christianity offers to the idea of equality is a solid metaphysical foundation; a long tradition of narratives and images that overcome legal abstractions and technicalities; a serious commitment to individual equality under law and the subsequent support for a set of antidiscriminatory laws; and a good balance between individual and collective identities and political structures.

In Chapter 15, on the principle of the common good, George Duke contrasts the teachings of Augustine and Aquinas with contemporary theories of Jürgen Habermas, John Rawls, and Adrian Vermeule, and especially with the natural law theorists John Finnis and Mark Murphy. The main difference between medieval and contemporary theories of the common good, Duke argues, is the medieval interpretation of virtue as constitutive for the common good of any political community. According to Duke, all political communities necessarily aim at the common good. However, their understanding of the concrete ethical meaning and normative relevance of that idea is intrinsically related to the interpretation of citizen virtue. The reason is that the common good is finally dependent upon a conception of the ultimate purpose of a good human life. The chapter ends with some reflections on the status of the common good as a normative principle.

In Chapter 16, Nicholas Aroney distills an immense body of jurisprudence on the modern meaning of political sovereignty, particularly as attached to the nation-state and its territory. In order to avoid any possibility of a world *imperium*, Aroney is cautious about the proposal of a global law that succeeds or supplants international law. On a global scale, the author defends a principle of *limited* sovereignty—based not on Jean Bodin’s idea of absolute and indivisible sovereignty but rather on Johannes Althusius’s federal principle. Instrumental and intermediary communities between the global human community and the individual—such as nations, regions, and various nonstate associations—help to satisfy most of the needs of human beings on an intermediate scale, Aroney argues, and they are crucial for developing human freedom and a healthy political, social, and economic life.

In Chapter 17, Ana Marta González analyzes the Christian roots of the principle of solidarity. She shows how the principle of solidarity emerged in response to the *social question* that pressed for answers in the aftermath of the French Revolution and the industrial revolution. While both socialism and solidarism came to frame solidarity mostly in political and sociological terms, Christianity has mainly approached it from a theological and practical perspective. Many scholars opposed solidarity to Christian charity and argued that solidarity is just

an aspirational principle or a natural fact for assuring social cohesion. González argues, however, that solidarity is not merely the result of structural decisions in political communities but also an ethical response to ethical social issues. Solidarity has an ontological dimension, prior to any social interaction and social form.

In Chapter 18, Thomas C. Kohler analyzes the political, economic, ethical, and social dimensions of the principle of subsidiarity. The subsidiarity principle promotes the centrality of the human person in the decision-making process of any political community and urges that immediate and local associations are often best positioned to develop the personal capacities and individual responsibilities of each person, even while that person remains an involuntary member of national, international, and global legal communities. Kohler explains why the principle of subsidiarity, so relevant in Europe, has gained little attention in the United States. The Consolidated Version of the Treaty on European Union enshrines the solidarity principle in its Article 5, providing in part that “the use of Union competencies is governed by the principle of subsidiarity” and that “national parliaments ensure compliance with the principle of subsidiarity.”

### **Part III: global issues and public global goods**

The third part of the volume deals with illustrative global issues, deeply influenced by Christianity, that come under the domain of global law. Our starting assumption is that global law is not the only legal system of the global legal community, but it complements the work of existing local, national, and international laws in dealing with pressing global legal issues that transcend the capacity of any nation or region to deal with them comprehensively. Global law, several contributors in this part emphasize, is not a monopolistic world law, and the existence of a global legal community does not presuppose the need for a global state that subsumes and preempts all other lesser sovereigns. Such a move would mark the end of social freedom and political life. Humanity as such is universal and total, but the legal-political structures and institutions that govern it should not be. Global law should satisfy only certain specific human needs, namely, those that affect humanity as such and can be resolved adequately only on the global scale. Some contributors to this section object to this perspective, but it sounds through the structure of the book itself.

This third part begins with a provocative Chapter 19 by leading historian Samuel Moyn. Moyn argues that most accounts of Christianity and human rights have proved apologetic and fictitious. While other historians, including several authors in this volume, have argued that human rights are the product of millennia-long cultural and religious traditions and are based on deep theological, philosophical, political, and legal reflections, Moyn emphasizes how *contingently* and *recently* Christianity engaged human rights, and how tenuous the human rights revolution has been in concretely addressing real-world problems. Moyn inspects critically the claim that American Protestants placed religious freedom at the foundation of the US Constitution and Bill of Rights, arguing that this is revisionist history. He also debunks claims of a long Catholic tradition of human rights, arguing that

it was only after the Second World War that the church came to embrace human rights, reversing its aversion to liberalism, democracy, and human rights after the French Revolution.

In Chapter 20, on the global economic order, Daniel A. Crane suggests that, although it is difficult for Christians to agree about the principles and content of an economic worldview, there is a specific economic message in the Bible. In his parables, Jesus talked about financial and management concerns, about money and its distribution, and about taxes and economic activity. According to Crane, the Christian tradition in economics arises not only from Christians' desire to interact with their cultures but also out of the great abundance of biblical sources and the need to reflect the faith in economic decisions. In our day, however, the engagement between formal Christian institutions and global economic and political institutions such as the World Trade Organization, the International Monetary Fund, and the World Bank is almost nonexistent, and most large corporations prefer not to be involved in religious issues to avoid inadvertent offense. According to Crane, the specific role of Christian institutions in the global economic sphere remains a difficult challenge for the twenty-first century.

In Chapter 21, Silas W. Allard describes the emerging global law of migration and the tension between person-centric and state-centric approaches, the latter of which come at massive costs to the fundamentals of human dignity. The chapter provides a good balance of crisp description and normative advocacy. Allard argues for the need to place the particular political community in service of those who move in search of opportunities to live and flourish. The boundary-crossing responsibility to protect the inherent dignity of any person calls for a prioritizing of individual and family interests and rights over the exclusive interests of nation-states through global practices of solidarity and cooperation.

In Chapter 22, on environmental protection and animal law, Mark Somos and Anne Peters validate the centrality of this topic of true and urgent global import in a volume on Christianity and global law. They take the Christian side of the story seriously, albeit critically and comparatively with other faiths and classical teachings. They introduce adroitly the range of interesting literature on point in a range of fields, not least law and legal history on both sides of the Atlantic. They frame issues of environmental care, stewardship, and, more particularly, animal law and rights, for Christians and other people of faith.

In Chapter 23, Mary Ellen O'Connell offers a brief history of the Christian contribution to the tradition of pacifism, the doctrine of just war, the doctrine's limits on war, and the tensions between natural law and positive law theories in relation to the use of force. According to O'Connell, the more relevant Christian contribution to the law governing the use of force is its rejection of violence, as well as the conception that the resort to war is immoral. O'Connell argues for the revival of the idea of natural law to liberate jurisprudence from the consequences of positivistic consensualism. However, she notes that any revitalization of natural law doctrines should take into consideration the diversity of the global community.

Finally, in Chapter 24 on international criminal law, Johan D. van der Vyver focuses on the contributions of Christianity to criminal law on a global scale and, particularly, the role of the Holy See in drafting the statute for a permanent international criminal court. The Catholic Church's contribution rested upon the moral commitment to help the international community, not upon any political, economic, or diplomatic interest, as was common in many government delegations. Van der Vyver explains how the Holy See tried to assure that a deliberately ambiguous terminology could serve to contradict moral doctrines. For instance, the refined nuances in distinguishing between forced and enforced action was one of the Holy See's contributions to the statute.

## **Conclusion**

The Christian tradition has, for centuries, offered theological, philosophical, moral, and legal ideas and tools that have contributed to the development of law, legal systems, and legal procedures. These Christian teachings and doctrines have inspired the laws of local communities, of nation-states, and of the modern international law system. They hold power and potential for the process of globalization of law as well. To be sure, the emerging idea of global law is not a Christian creation, just as the ideas of the common good, human dignity, natural law, and human rights are not Christian creations. But many Christian principles and prophets have helped shape these emerging ideas, building on and alongside other religious and philosophical traditions.

The modern process of secularization of law is a help, not a hindrance, to the ongoing collaboration between Christianity and law, because secularization itself is an idea that is also inspired and illuminated by Christian teachings. "Render unto Caesar the things that are Caesar's, and unto God the things that are God's."<sup>6</sup> These were revolutionary words pronounced by Jesus in addressing the global imperial Roman law of his day, and these words have enduring insight for our day. Just because the realm of Caesar involves principles, rules, and propositions derived from legal sources does not mean that metalegal sources (moral, religious, and spiritual) cannot provide legal inspiration, too. Otherwise, it would be easy to fall into a legal reductionism which damages the essential unity of the human person. Christianity teaches that human persons, while subjects of the realm of Caesar, are also subjects within the realm of God, and they of necessity bring the values of this transcendent realm into the temporal realm. Jesus did so in his day, often formulating his message in maxims, parables, and hypotheticals that Jews and Greeks, Romans and Samaritans could understand, appreciate, and apply. Christians can and should do so in our day, using the best methods of public reasoning to offer instructions to a pluralistic legal world.

As a universal religion, Christianity is concerned about humanity as such and not only about a particular ethnicity, culture, or group. According to Christianity, humanity is the family of the children of God and comprises creatures made in the image of God. This Christian truth enlightens from a spiritual dimension not

only all global human affairs but also the whole process of globalization as such. This metalegal truth grants legitimacy to the global human community. That is one of the reasons why early ecumenical Christian bodies like the World Council of Churches weighed in decisively on global questions. It also explains why the modern Roman Catholic Church, starting with Pope John XIII,<sup>7</sup> began to advocate global governance or world authority to deal with global questions. As Pope Benedict XVI summarized:

Such an authority would need to be regulated by law, to observe consistently the principles of subsidiarity and solidarity, to seek to establish the common good, and to make a commitment to securing authentic integral human development inspired by the values of charity in truth.<sup>8</sup>

We started with a Goethe aphorism, and we end with another one: “When two masters of the same art differ from one another in their way of expounding things, probably the insoluble problem lies in the middle between the two of them.”<sup>9</sup> This volume was not a matter of two experts but of twenty-five international scholars, and all of them differ from one another. Probably the reader will find the solution of global law in the middle of all the explanations.

## Notes

- 1 Goethe, 424, 426. The translation is ours.
- 2 See, among others, Twining; Madunic and Kirton; Teitel; Walker; Capaldo; Dybowski and García Pérez; and Kingsbury et al.
- 3 See [www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/](http://www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/) (accessed September 23, 2019).
- 4 On the idea of Christian jurists, see the introduction in Domingo and Martínez-Torrón, eds., 1–29, esp. at 1–3.
- 5 See Domingo, “The New Global Human Community,” 563–87; Domingo, “A Global Law for a Global Community,” 1–22.
- 6 Matthew 22:21.
- 7 Pope John XXIII, Encyclical Letter *Pacem in Terris* (April 11, 1963), § 140 and § 141.
- 8 See Benedict XVI (Joseph Ratzinger), Encyclical Letter *Caritas in veritate* (June 29, 2009), § 67. See also the echo in Pope Francis, Encyclical Letter *Laudato si'* (May 24, 2015), § 175.
- 9 Goethe, vol. 12, 422, no. 418.

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## References

- 1 Paul nevertheless figures frequently in religious discussions of natural law. See, e.g., Adolphe, Fastiggi, and Vacca. It is important to note that the meaning of the expression “natural law” has also undergone profound change in the modern world. See, inter alia, Hittinger, 1–30. For the purposes of this chapter, I use the terms universal moral law, moral law, and natural law in as rudimentary a sense as possible: they means the basic, normative way we are supposed to be in the world that can be discerned simply by thinking/observing/arguing with others, etc. Legitimate debate could be had about whether natural law and universal moral law mean or refer to the same thing. In my view, if one speaks of a/the moral law, one invokes norms that trade on metaphysical affirmations and commitments; if one speaks of natural law, one also invokes norms that trade on metaphysical affirmations and commitments. Whether the two sets of metaphysical affirmations and commitments are identical or not would vary depending on what exactly was intended by “moral” and “natural.” In short, the words will mean what we use them to mean.
- 2 On the complicated question of the “Noachide” commandments and whether Jews thought Gentiles were expected to keep certain pre-Mosaic laws, see, inter alia, Bockmuehl, *Jewish Law in Gentile Churches*, 145–73.
- 3 The Stoics are actually more complex and would not mean by “nature” what it is frequently taken to mean today. I have written about the meaning of Stoic words elsewhere; see in relation to the topic of this chapter, for example, the section on the words “God and World” in Rowe, *One True Life*, 226–28. Some scholars, of course, trace natural law back to Plato, but one would need to demonstrate that Plato’s use of “nature” or of “law” or of “reason,” and so on, mean what is meant in any given modern natural law discussion to know that the continuity between the posited point of origin and current debate was real. See the discussion in Crowe, 1–27.
- 4 There are other passages one could read, of course, but sooner or later these must figure prominently. One could also think automatically of 1 Corinthians 6:1–11 in relation to Gentile courts of law, or Romans 13:1–7 in relation to various forms of government, but there are many others. Richard Cassidy, e.g., focuses on 2 Timothy in “St. Paul: Between the Law of Caesar and the Justice of Christ in Second Timothy,” and Mary Healy on Ephesians 5 in “St. Paul, Ephesians 5, and Same-Sex Marriage”; both essays are in Adolphe, Fastiggi, and Vacca, 1–20, 147–59, respectively. For the commitment to reception history as a hermeneutically illuminating way to understand an earlier writer’s positions or the range of a text’s plausible field of meaning, see Bockmuehl, *Seeing the Word*.
- 5 Reading this passage to affirm that the Gentiles do in fact “have some knowledge of what is right and good through the law of creation and through conscience” is such a common mistake that one can pick an example almost at random. I cite Carl Braaten because of his indisputably excellent contributions to theology. It is therefore all the more striking that such a common mistake finds its way into his arguments about natural law. See Braaten, 36.
- 6 By nature (*physei*) is meant here “by birth,” i.e., they are not Jewish and thus are not born into the way of life that is Torah. *Physei*, that is, should not be read with *poiein* to require the translation “do by nature.”
- 7 Moreover, it would make little sense to point to the observance of a/the natural law as the move to set up the discussion of Jewish Christian behavior that follows.
- 8 On the current interpretation and history of discussion of this passage, see especially Gathercole.
- 9 Moreover, the coordination of sin and will means that even if there were a law to be discovered, we could not unproblematically obey it, as Paul forcefully argues in

Romans 7:14–25, for example. The point of discovering a universal law we cannot obey makes sense in certain tendencies of Luther’s law/gospel theology, but it is hard to account for otherwise.

- 10 It is customary in the modern period for New Testament scholars to argue that the Paul of Acts and the Paul of the Epistles should be kept apart. For certain tasks this makes some sense. But I take Bockmuehl’s larger methodological point in *Seeing the Word* about “reception” to be correct, and apply it here in this way: in an attempt to assess the range of the New Testament’s Paul for the question of a universal moral law, we would do well to examine his immediate reception within the New Testament text that most directly and elaborately speaks to this question.
- 11 For fuller discussion, see Rowe, *World Upside Down*, 27–41.
- 12 Barrett, 850–51.
- 13 Rowe, *World Upside Down*, 77.
- 14 Of course Acts does not portray Paul’s death as the Gospel does that of Jesus. But the reader of Acts knows about Paul’s death and can see the foreshadowing again and again in the way Acts tells about Paul’s mission (in his speech to the Ephesian elders, for example, in Acts 20:17–38). On this point, see especially Talbert, 231.
- 15 Interestingly, Tertullian, ever the lawyer he was trained to be, argues that the Roman practice here contradicts Roman law (i.e., there is no identifiable crime that goes with the name Christian—as stealing goes with thief, for example—and yet the Christians are treated as criminals and punished as such). This argument is an instance of ad hoc reasoning with the law to criticize its unjust application. See Tertullian’s *Apology*.
- 16 On this point, see Schreiner; Westberg, both in Cromartie, 51–76, 103–17, respectively.
- 17 Such evidence could, of course, be quite complicated in any of its particular instantiations. For example, we might observe that some peoples have the explicitly articulated prohibition against killing and think that this reflects knowledge of God’s law. Paul’s reply would likely move from this theoretical or noetic judgment (epistemology) to the practice (practical reason): but they kill anyway. The critical Pauline test for God’s law is what we could call the *regula vitae*, that is, whether it shows up in life as the law that is lived.
- 18 For an example of how “convergences” or ad hoc agreements can be put constructively to work without large-scale moral theories or background notions of universally binding norms, see Engelhardt.
- 19 Even as others might appear. The point is not that everything common will disappear but that things in common are ad hoc and will shift. Christians should be wisely alert to things in common and make of them practically what we are able to make of them. But we should not be fooled into thinking—to put it in Wittgensteinian terms—that secular grammar and Christian grammar are the rules of the same language.
- 20 A slightly different way to put the point about freedom is to speak of critical distance. Freedom vis-à-vis human laws always implies a critical distance from any given law. It is this critical distance that is presupposed in the Romans’ early worries about Christian “obstinacy.” The Romans did not of course speak of “critical distance” as the Christian political posture. But it is the fact of that distance—the willingness to insert Christian theological understanding between Roman law and Christian obedience to it—that renders intelligible the Roman mystification at the Christian refusal to worship/sacrifice to the gods/emperor.
- 1 The classic modern biography of Augustine is still Brown, *Augustine of Hippo*; among the more recent biographies see Fox.
- 2 See Ducot; Marafioti and Ducot, 931–54; see also below in the next section.
- 3 As Augustine himself had to experience bitterly, when a high-ranking friend, the *comes* Marcellinus, to whom he had dedicated *The City of God*, was arbitrarily

- executed as a consequence of court intrigues in 412; see Drecoll, 1160–65. For wider evidence of state brutality (coercion, persecution, etc.) see Shaw, *passim*.
- 4 Thus O'Daly, 3.24.
  - 5 However, I would not go as far as Ralph Mathisen, who concludes that Augustine “was a most effective spokesperson for the social and political establishment;” see Mathisen, 806. Some aspects of Augustine’s political thought, as we shall hopefully see below, were potentially deeply subversive to the dominant strands of society in his day.
  - 6 For a broad understanding of church aid in Augustine’s time, see Brown, *Through the Eye of a Needle*, *passim* and especially 322–38.
  - 7 For a recent example of such an understanding of the common good, see Reich. For previous studies of Augustine’s understanding of the concept, see Canning, 219–22.
  - 8 See, e.g., *City of God* 1 praef. his reference to the earthly state (*civitas terrena*, by which he means not only but also the Roman Empire), which he has no choice but to inhabit, as constantly seeking to enslave people, while it is itself enslaved by lust for domination (*quae cum dominari adpetit, etsi populi serviant, ipsa ei dominandi libido dominatur*).
  - 9 *Ibid.*, *magnum opus et arduum*.
  - 10 For a good introduction to this work, see still O'Daly.
  - 11 See for this BeDuhn.
  - 12 For a recent study of this aspect of his life, see Doyle.
  - 13 TeSelle, “The Civic Vision in Augustine’s City of God.” To be sure, Augustine did speak of the “reign of God,” namely within the “City of God” (*City of God* 19.24).
  - 14 See for this Assmann, 223–34.
  - 15 See for this Chang; TeSelle, “The Civic Vision in Augustine’s City of God,” 276, too, assumes Pauline influence on Augustine in this regard.
  - 16 Carter, 176.
  - 17 *City of God*, 19.24.
  - 18 *City of God*, 3.24. Even today, the period of the Gracchi is still seen as marking the beginning of the end of the Roman republic; see, e.g., Watts, 45–118.
  - 19 *City of God*, 2.21; 3.21–23. A sense among people that justice (economic, social, juridical) is no longer served by the public system is still seen as one of the root causes for the total breakdown of social order, as happened, for example, on the occasion of the riots engulfing several cities in the United Kingdom around August 9, 2011; see Newburn.
  - 20 *City of God*, 2.21 with reference to Cicero, *Republic*, 2.42ff., 3.5.
  - 21 Cf. Aristotle, *Politics*, 3.6–7.12.
  - 22 See Jehne, 24–25.
  - 23 See for this Knopf.
  - 24 Meaning more “distributively” and “equitably,” in tune with and for the benefit of the general public. Considering the actual amount of power held by the *princeps* (who was called *imperator* for a good reason) and the damage to the common good caused by the abuse of this power, the arrangement under the Principate may have been a cruel pretense; thus famously Syme. But it was (admittedly) nevertheless remarkably successful and enduring despite being in a state of permanent crisis and transformation.
  - 25 For Augustine, the Christian emperors had not made a fundamental structural difference to the empire (*City of God*, 5.24–26). Some of them seem to have been blessed by God as individuals, which also had a positive effect on their reign and resulted in benefits for the people. But that was all. A persecutor such as Julian the Apostate could reemerge at any time and reverse the situation (18.52).

- 26 See for what follows Dougherty.
- 27 Ibid., 583; *Against Faustus*, 22.27; 30.33; *Sermon*, 81.2; *Diverse questions*, 53.2; *Quantity of the Soul*, 36.80. Typically, for Augustine, God, by virtue of divine will, is not bound by the law which God created, but can, and indeed does, override it; this is not unnatural but supernatural; see *City of God*, 21.8.
- 28 *Letter*, 157.3.15; *City of God*, 11.27.
- 29 *Confessions*, 2.4.9; *On the Trinity*, 12.15.24–25; see also Lössl, “How ‘Bad’ Is Augustine’s ‘Bad Conscience?’”
- 30 *Confessions*, 3.7.13; *On the Trinity*, 14.15.21; *Letter*, 138.1.4, 8; *Diverse Questions*, 31.1.
- 31 *On Christian Doctrine*, 1.26.27; *On the Literal Interpretation of Genesis*, 9.17.32.
- 32 See Dougherty, 583 for the expression *summa ratio* with reference to *On Free Will*, 1.6.14–15 and *On True Religion*, 31.58.
- 33 See Dodaro, 14.
- 34 Harper, 213: “Slavery belonged to the *ius gentium*.”
- 35 Note in this context *Retractions*, 1.8.2: “It is one thing to inquire into the source of evil and another to inquire how one can return to his original good or reach one that is greater.” To be sure, in the case of slavery as well as in other cases (capital punishment, social care, economic injustice) Augustine did offer very concrete and compelling ideas for improvement; see Gregory, 54; against Harper, 213, who seems to suggest that church leaders were resigned to the prevailing state of affairs.
- 36 Harper, 213.
- 37 See for this also Madec, “Commune-proprrium.”
- 38 Cf. Plotinus, *Ennead*, 6.4–5; Porphyry, *Sentence*, 40, as reflected, for example, in *The Immortality of the Soul*, 6, or *Soliloquies*, 2.22 (something is “in the mind” even before I think of it).
- 39 *On Free Will*, 2.19.
- 40 *Confessions*, 10.8.
- 41 *On Free Will*, 2.37.
- 42 *On the Literal Interpretation of Genesis*, 11.14.18.
- 43 *On Free Will*, 2.53.
- 44 *On the Trinity*, 12.14.
- 45 Ibid. A similar idea is expressed by Plotinus, *Ennead*, 6.5.12: Attempts to increase the “all” by adding a particular (“something”) will lead to diminution; for what the particular adds to the all is negativity. The problematic nature of privatizing public goods and concerns (adding a private interest to the common interest) has also been recognized in economics including for the sphere of social media, e.g., Facebook, where “public networks” are in reality devices that generate profit for private companies, sometimes with devastating consequences for their users; see Mazzucato, 249–59; Zuboff, 446–54, especially 449. Zuboff’s analysis of surveillance capitalism has generally a very Augustinian ring; see, e.g., pp. 26–27 on the weakness of human nature.
- 46 Again, *On the Trinity*, 12.14 referring to 1 Timothy 6:10. One could almost replace the term “avarice” with “addiction.”
- 47 *On the Literal Interpretation of Genesis*, 11.15.19–20; *City of God*, 14.28.
- 48 *City of God*, 15.3; 15.14.
- 49 See *City of God*, 5.18 with a multitude of examples.
- 50 *City of God*, 5.18.
- 51 *Enarration in Psalm*, 105.34.
- 52 This is not to say that the institutional *ecclesia* could not claim for itself truth and demand allegiance in Augustine’s view (similar to the way any earthly authority could), but one could not expect from it visible and palpable perfection here on

- earth. For Augustine, the church's perfection was "mystical." It was only real insofar as the church represented aspects of the City of God. This put Augustine at odds with groups such as the Donatists, who claimed that their members were perfect by definition, that is, by virtue of having been baptized into their church, which was by definition perfect; or the Pelagians, for whom the church's perfection was visible in the ascetic perfection of at least some of its members. Todd Breyfogle writes on this: "Augustine's theological and ecclesiological contestations with the Donatists and Pelagians are also political in that both sects represented, for Augustine, an impatience with the Christian's pilgrim status and with the mystical character of the Church." Breyfogle, 522.
- 53 Augustine wrote *The Good of Marriage* in a context of controversy. A Roman monk, Jovinian, had put forward the argument that marriage and celibacy were equally meritorious forms of the Christian life. To this Jerome responded with a series of polemical letters (48–50) which seemed to disparage married life in favor of monastic celibacy. By focusing on the social benefits (as well as limitations) of marriage rather than on sexual ethics (abstinence vs. concupiscence) Augustine (in *The Good of Marriage*) put forward a moderate position; for a comprehensive account see Hunter, *Marriage, Celibacy and Heresy in Ancient Christianity*; see also Hunter, "Bono coniugali, De," 110–11.
- 54 *The Good of Marriage*, 1.1.
- 55 *Ibid.*, 9.9.
- 56 *Ibid.*, 3.3.
- 57 *Ibid.*, 5.5, 6.6, 11.12.
- 58 To that extent he agrees with Jovinian (see above n. 53).
- 59 *The Good of Marriage*, 13.15, 19.22.
- 60 Hunter, "Bono coniugali," 110; cf. Augustine, *The Good of Marriage*, 17.19.
- 61 See for this, e.g., the episode in *Confessions*, 6.14.24, according to which marriages prevented a group of young men from following their intellectual pursuits; more references like this in Hunter, "Marriage," 535.
- 62 See, e.g., *Soliloquies*, 1.10.17.
- 63 For what follows, see Lawless, "Opere Monachorum," 596.
- 64 See Brown, *Treasure in Heaven*, especially 89–108, where Egyptian monasticism is credited with a work ethic that tended not to be shared by Syrian monasticism, and 65 and 70 on Augustine's *The Work of Monks*.
- 65 Augustine discusses these arguments in *The Work of Monks*, 1–30.
- 66 *Ibid.*, 28.36.
- 67 *Ibid.*, 16.19: *compatiantur infirmis, et amore privatae rei non inligati manibus suis in commune laborare, praepositis suis sine murmure obtemperare.*
- 68 Compare for these above n. 22–23.
- 69 *The Work of Monks*, 25.32. "He who was honored with a triumph after subduing Africa" (Augustine, pandering to his addressees' regard for classical education, even uses the technical term, *Africa edomita*) was of course Scipio Africanus, who was perhaps *the* most highly regarded Roman in Antiquity. By the writers celebrating him, Augustine may in the first instance have thought of Valerius Maximus, *Facts* 4.4 and Seneca, *Consolation to Helvia* 12.6. Both authors relate the anecdote of Scipio's inability to pay his daughter's dowry.
- 70 This passage suggests that those who "converted [to the monastic life] from the state of poverty" may not all have been poor in the economic sense. If they were healthy and skilled, they may well have earned a good living from manual labor and even become prosperous. But their reliance on manual labor kept them socially at a low level. For more details on Roman society in the time of Augustine see Mathisen, 804.

- 71 With the expression *sapor Christi* (“savor of Christ”) Augustine invokes the concept of the “spiritual senses.” It is significant that he does so when addressing the “better off,” those better educated and used to a more refined and sophisticated lifestyle. They need to learn to “savor” Christ’s values (humility and deprivation of food and other sensual pleasures) instead of physical pleasures. The message would have been less appropriate for those joining the monastic life from poorer backgrounds, who were better used to sensual deprivation but also less sophisticated in the use of their senses; for Augustine’s teaching on the spiritual senses, see Harrison, 767–68.
- 72 See for this above n. 48, with references to *City of God*, 15.3 and 15.14.
- 73 Cf. above n. 50 and in *The Work of Monks*, 25.32 the expression *societas eorum quibus est anima una et cor unum in deo*. See also Madec, “Le communisme spirituel.”
- 74 See above n. 5.
- 75 See for this also Dodaro, who draws lines between Cicero and Augustine.
- 76 See above n. 73.
- 77 Following Ernst Troeltsch, this is not to say that Augustine’s thought provided a blueprint for the Middle Ages. However, it did offer some principal thinking on which later thinkers, above all Thomas Aquinas, could also build.
- 78 Or, as Gregory, 57, prefers to call it, “ethics of citizenship.”
- 79 Troeltsch’s position is best developed in Troeltsch, *Augustin*; Harnack’s can be traced in Harnack, *Augustin*; see also the summaries by Starr.
- 80 Compare Gregory, 32.
- 81 For further discussion of these points see Gregory, 36.
- 82 For an extensive discussion of this problem (including the term “logic of terror,” coined by the German philosopher Kurt Flasch), see Lössl, “Augustine, ‘Pelagianism,’ Julian of Aelclanum and Modern Scholarship.”
- 83 Compare Gregory, 43–44.
- 84 Compare Gregory, 49–54 at 52: Not all societies are equally (hopelessly) corrupt.
- 1 Drury, 3.
  - 2 Küng, 101–2.
  - 3 Given, 46.
  - 4 Foster, 30.
  - 5 Aquinas, *Summa Theologiae*, Ia, IIae, q. 90, art. 1, *responsio*.
  - 6 Brewbaker, 585.
  - 7 Cascarelli, 235, n. 5.
  - 8 Zuckert, 705.
  - 9 Aquinas, *Treatise on Law*, 2.
- 10 Kletzer, 63.
- 11 Aquinas, *Summa Theologiae*, vol. 28, p. 7.
- 12 Post.
- 13 Aquinas, *Summa Theologiae*, Ia, IIae, q. 90, art. 1, *resp.*, ad 3. The maxim is a paraphrase of Ulpian, *quod principi placuit, legis habet vigorem*. *Digest* 1.4.1. Cf., Wilks, 213–14 and n. 1.
- 14 Aquinas, *Summa Theologiae*, Ia, IIae, q. 90, art. 4, *resp.*
- 15 Jones, 40.
- 16 Alcuin, *Grammatica, Patrologia Latina* 101, 849, 858.
- 17 Casey, 99.
- 18 Copeland, 206.
- 19 Ia, IIae, q. 91, art. 1, *resp.*
- 20 Ia, IIae, q. 93, art. 1, *resp.*
- 21 *Ibid.*
- 22 Ia, IIae, q. 100, art. 2, *resp.*

- 23 Ia, IIae, q. 91, art. 4, *resp.* (divine law); Ia, IIae, q. 91, art. 2., *resp.* (natural law).  
 24 Ia, IIae, q. 94, art. 2, *resp.*; and Ia, IIae, q. 94. art. 3, *resp.*  
 25 Celano.  
 26 Peters, 269–70.  
 27 Ia IIae, q. 90, art. 2, *resp.*  
 28 Ibid.  
 29 Ibid.  
 30 Jordan, 40.  
 31 Colish, 267.  
 32 Ia, IIae, q. 92, art. 1, *resp.*  
 33 Ia, IIae, q. 96, art. 1, *resp.*  
 34 Ia, IIae, q. 95, art. 4, *resp.*  
 35 Ia, IIae, q. 97, art. 4, *resp.*; Ia, IIae, q. 96, art. 6, *resp.*  
 36 X. 1.6.20.  
 37 Ia, IIae, q. 97, art. 4, *resp.*  
 38 Ia, IIae, q. 58, art. 1, *obj.* 1, and *resp.*  
 39 Hamouda and Price, 193–94.  
 40 Pope, 265–72.  
 41 Ia, IIae, q. 95, art. 1, *resp. ad 2.*  
 42 Ia, IIae, q. 93, art. 3, *resp.*  
 43 Dean, 84.  
 44 See, for example, de Gandino; and Schioppa, 152.  
 45 Ia, IIae, q. 90, art. 4, *resp.*  
 46 Ia, IIae, q. 91, art. 1, *resp.*  
 47 Ibid., *ad 1.*  
 48 Ia, q. 24, art. 1, *resp.*  
 49 Ia, IIae, q. 93, art. 2.

Z:\Data\XMLData\15031data\3565x\Updf\15031-3565f-Finalpass-R04\15031-3565 51 Ia, IIae, q. 94, art. 2, *resp.*

- 52 Ia, IIae, q. 94, art. 3, *resp.*  
 53 Ibid.  
 54 Charles J. Reid, Jr., *Treatise on Jurisprudence*, draft of chapter 10 (under contract with West Academic Publishing).  
 55 Ia, Iiae, q. 91, art. 1, *resp.*  
 56 Ia, IIae, q. 13, art. 3, *resp.*  
 57 There are problems with translating *praecipienda* straightforwardly as “command,” which I address in the section “Words and Phrases,” below, and I have used the word “command” here largely as a matter of convenience.  
 58 Ia, IIae, q. 92, art. 2., *resp.*  
 59 Ia, IIae, q. 91, art. 3, *resp., ad 3.*  
 60 Ia, IIae, q. 97, art. 1, *resp.*  
 61 Ia, IIae, q. 97, art. 2, *resp.*  
 62 Ibid.  
 63 Ibid.  
 64 Ibid., *ad 3.*  
 65 Ia, IIae, q. 95, art. 3, *resp.* Thomas is here closely following a text of Modestinus, preserved in the *Digest*, 1.3.25.  
 66 Pennington, *Pope and Bishops*, 15–17; “Bishops and Their Dioceses.” Cf. X.2.24.18 (Innocent III’s decree *Quanto Personam*).

- 67 Ia, IIae, q. 97, art. 3 (*utrum consuetudo possit obtinere vim legis*).
- 68 Ia, IIae, q. 97, art. 3, *resp.*
- 69 See Bonfield for example.
- 70 See Akehurst for example.
- 71 See Hierbaut for example.
- 72 Ia, IIae, q. 97, art. 3, *resp. ad 3.*
- 73 Ibid.
- 74 Ia, IIae, q. 97, art. 3, *resp. ad 2.*
- 75 Ibid.
- 76 Ibid.
- 77 Ia, IIae, q. 97, art. 3, *resp.*
- 78 Ia, IIae, q. 92, art. 2.
- 79 *Digest* 1,3,1.
- 80 Ia, IIae, q. 84, art. 2, *resp.* (*Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum*).
- 81 Aquinas, *Summa Theologiae*, *supra*, vol. 28, p. 81.
- 82 Aquinas, *Treatise on Law*, Freddoso, tr., *supra*.
- 83 Ia, IIae, q. 90, art. 2, *resp., ad 1.*
- 84 Speer, 670.
- 85 Ia, IIae, q. 92, art. 2 (*Sed idem imperare quod praecipere*).
- 86 Peter Damian, *Sermo*, 46.
- 87 Jordan, *Teaching Bodies*, 122.
- 88 Ia, IIae, q. 93, art. 1, *resp.*
- 89 *Summa Contra Gentiles*, Bk. III, c. 59 (*visio divinae substantiae est ultimus finis cuiuslibet intellectualis substantiae*).
- 90 Ia, I Iae, q. 91, art. 3, *resp., ad 2.*
- 91 Tierney.
- 92 Ia, IIae, q. 91, art. 2, *resp. ad 3.*
- 93 Ia, IIae, q. 91, art. 3, *resp. ad 2.*
- 94 Ia, IIae, q. 91, art. 2, *resp. ad 3.*
- 95 Ia, IIae, q. 92, art. 1, *resp.*
- 96 Ia, IIae, q. 96, art. 2, *resp.*
- 97 Ia, IIae, q. 92, art. 2, *resp., ad 4.*
- 98 Ia, IIae, q. 92, art. 1, *resp. ad 4.*
- 99 Van den Eynde.
- 100 Kuttner.
- 101 Ia, IIae, q. 99, art. 3, *resp.*
- 102 Ia, IIae, q. 91, art. 4, *resp.*
- 103 Ia, IIae, q. 90, art. 1, *resp.*
- 104 Ia, IIae, q. 93, art. 1, *resp.*
- 105 Brundage, 171.
- 106 See, for example, Murphy, 54–55; McNerny, “Aquinas’ Moral Theory”; and Hannon.
- 107 Ia, IIae, q. 91, art. 4, *resp.*
- 1 Cf. Villoslada.
  - 2 For Vitoria’s more political *relectiones*, several modern editions are available, some of them very recent. The most prominent is the English-only *Political Writings*, edited by Pagden and Lawrance. This also includes some other texts, such as letters and Vitoria’s commentary on Thomas Aquinas’s *Summa Theologiae*, *Prima Secundae*, q. 90–105, the so-called *Treatise on Law*. A bilingual Latin-German, more complete edition of the *relectiones* is Vitoria, *Vorlesungen (Relectiones), Völkerrecht Politik Kirche*. A Latin-only online edition based on the first printed publication of the *relectiones* (Lyon: Boyer, 1557) has been established

- by Thomas Duve and Matthias Lutz-Bachmann at <https://id.salamanca.school/texts/W0013>. Finally, the major part of Vitoria’s commentaries on the *Secunda Secundae* of Thomas Aquinas’s *Summa Theologiae* (including the commentary on the *Treatise on Law* from the *Prima Secundae* as an appendix) is available in Vitoria, *Comentarios a la Secunda secundae de Santo Tomás*. In the following, I will give references to the Pagden/Lawrance and the online edition, where available. Translations have been minimally modified from Lawrance’s.
- 3 Vitoria, *On Civil Power*, § 5 (q. 1), Pagden and Lawrance, 9; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.3.article5>. For a discussion of which form this overseeing power can take—monarchic or democratic—cf. Wagner, “Zum Verhältnis von Völkerrecht und Rechtsbegriff bei Francisco de Vitoria.”
  - 4 Vitoria, *On Civil Power*, §§ 3–5, 6, 7 (q. 1), respectively. As the *form* of political power, one might think of the series of political-legal activities that Vitoria mentions in § 8: “The [multitude] as such cannot frame laws, [issue decrees], judge disputes, punish transgressors” [ed. Pagden/Lawrance, 14; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.3.article8>]; he did not say explicitly, however, that he meant this as an explanation of the formal cause.
  - 5 Vitoria explained this most clearly in a fragment discovered by Beltrán de Heredia in 1931. Pagden and Lawrance include this fragment in Vitoria’s *relectio On Dietary Laws* [q. 1, art. 5, p. 227f.], Horst/Justenhoven/Stüben include it in the *Relectio De Indis* [Second Part, §§ 13ff., p. 506ff.].
  - 6 Vitoria, *On Civil Power*, § 14 (q. 2) [ed. Pagden/Lawrance, p. 32; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.3.article14>, near the very end of the article].
  - 7 Vitoria, *I On the Power of the Church*, q. 5 [ed. Pagden/Lawrance, §§ 1–19, pp. 82ff.; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.1.6>].
  - 8 See Vitoria, *De Indis*, q. 2, art. 2 (second unjust title) [ed. Pagden/Lawrance, §§ 26–31, pp. 258ff.; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.27>].
  - 9 *Ibid.* [ed. Pagden/Lawrance, p. 264; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.article31>].
  - 10 For instance, the first reason he adduces for the first of the possible just titles for the Spanish conquest in *De Indis* is “the law of nations (*ius gentium*), which either is or derives from natural law” [ed. Pagden/Lawrance, p. 278].
  - 11 Cf. Oliveira e Silva.
  - 12 Ed. Beltrán de Heredia, Vol. 3 (Salamanca: Apartado, 1934), 12ff.
  - 13 Pagden/Lawrance, § 21, q. 3, art. 4, p. 40; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.3.article21>
  - 14 Pagden/Lawrance, § 2, p. 278/§ 4, p. 281; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.41.article2>/<https://id.salamanca.school/texts/W0013:vol1.5.41.article4>
  - 15 Cf. Vitoria, *Comentarios a la Secunda Secundae de Santo Tomás*, q. 57, art. 3.4 [ed. Beltrán de Heredia, p. 16].
  - 16 Vitoria, *On Civil Power*, § 21 (q. 3, art. 4) [ed. Pagden/Lawrance, p. 40; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.3.article21>].
  - 17 On custom creating, changing, and abrogating law, cf. Vitoria, *Commentaries on the Prima Secundae of Thomas Aquinas*, q. 97, art. 3 [Ed. Pagden/Lawrance, pp. 185f.; as an appendix in *Comentarios a la Secunda Secundae de Santo Tomás*, ed. by Beltrán de Heredia, Vol. VI, 1952, pp. 438f.]. Cf. also Tierney, 101–24.

- 18 Vitoria, *De Indis*, q. 3, art. 1 (first just title) [ed. Pagden/Lawrance, p. 278; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.41.article2>].
- 19 Vitoria, *De Indis*, q. 2, art. 5 (fifth unjust title) [ed. Pagden/Lawrance, pp. 273f.; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.article40>], or, more explicitly, in the fragment mentioned above already, in *On Dietary Laws*, q. 1, art. 5, fourth conclusion [ed. Pagden/Lawrance, pp. 224f.], resp. in *De Indis*, second part, art. 7 [ed. Horst/Justenhoven/Stüben, pp. 500–03].
- 20 Vitoria, *De Indis*, q. 3, art. 5 (fifth just title) [ed. Pagden/Lawrance, pp. 287f.; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.5.41.article15>], or again *On Dietary Laws*, q. 1, art. 5, fifth conclusion [ed. Pagden/Lawrance, pp. 225f.], resp. *De Indis*, second part, art. 8 [ed. Horst/Justenhoven/Stüben, pp. 503–5].
- 21 Cf. also Vitoria's *relectio On the Law of War*, q. 1, art. 2 [ed. Pagden/Lawrance, pp. 299–302; ed. Duve/Lutz-Bachmann, <https://id.salamanca.school/texts/W0013:vol1.6.article2>].
- 22 Anghie, *Imperialism, Sovereignty and the Making of International Law*. On similarly critical perspectives, cf. Bohrer. Vitoria's role in the also not-so-unproblematic development of twentieth-century international legal doctrine is discussed, for example, by Rasilla del Moral, "Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law."
- 23 An interesting discussion about how to conceptualize a theoretical framework that could complement an "ideal" normative theory in this sense has developed precisely as an interchange between European and Latin-American perspectives: cf. Curcó Cobos.
- 1 This summary of Suárez's life and work is based on the one given in Lagerlund (2018). For more substantial accounts see the introduction to Hill and Lagerlund (2012) and also to Sala and Fastiggi (2014) as well as Shields and Schwartz (2015).
  - 2 For earlier presentations of this topic see foremost Brett (2018) and Tierney (2007). See also Nussbaum (1950) as well as Coujou (2014) and Hamilton (1963).
  - 3 For more on Suárez on natural law, see Lagerlund (2018) and Gordley (2012). Pink (2012) develops a somewhat different view than Gordley (2012).
  - 4 One of the few philosophers cited in the *Meditations* is Suárez. On this see the introduction to Hill and Lagerlund (2012) and also Ariew (2012).
  - 5 For more about this, see Casilini (2017).
  - 6 See Ariew (2012) for a somewhat different view.
  - 7 Most of my quotations and references will be to Thomas Pink's edition, titled in English *Selections from Three Works* (Suárez 2015), but the original Latin can be found in Volumes 5 and 6 of the *Opera Omnia* in 28 volumes (Suárez 1856–78).
  - 8 Thomas Aquinas, *ST*, I–II, q. 95, a. 4: "For in the first place it belongs to the notion of human law, to be derived from the law of nature, as explained above. In this respect positive law is divided into the 'law of nations' and 'civil law,' according to the two ways in which something may be derived from the law of nature, as stated above. Because, to the law of nations belong those things which are derived from the law of nature, as conclusions from premises, e.g., just buyings and sellings, and the like, without which men cannot live together, which is a point of the law of nature, since man is by nature a social animal, as is proved in *Polit. i, 2.*"
  - 9 See Pink (2012) and Lagerlund (2018).
  - 10 See more in Lagerlund (2018).

- 11 The distinction between written and unwritten law (*ius scriptum* and *ius non scriptum*) goes back a long way and was common in medieval times (see Meder 2008). It is a distinction between statutes enacted by a king or parliament and cases decided by judges, that is, legal customs. The use of the terms “written” and “unwritten” is a little bit misleading. Written law does not necessarily mean rules of law expressed in writing, but a law dictated in an imperative way and where precepts in their words constitute the law. Natural law, as understood by Suárez, is written law in this sense. Unwritten law does not mean that it is not formulated in writing, but is derived through consensus in the reasons and spirit of, for example, cases rather than the letter of the law. The difference lies in that written law is obligatory because it is enacted, while unwritten law is obligatory as general custom. English common law is often described as the “custom of the realm” (Pollock 1896, 242).
- 12 He in several places expresses himself in this way, namely that the law gives rise to a power or ability to do something. The law can in this way be said to empower a nation or a sovereign, in Suárez’s terminology. For more on this power or obligation, see Lagerlund (2018).
- 13 See Kadens (2012) for a historical argument similar to this one. She discusses the notion of merchant law in the Middle Ages and raises serious doubt about whether custom was ever really used as the basis for international law, at least on trade and merchant law.
- 14 See Nussbaum (1950, 102–11), and Miller (2014). See also Thomas Aquinas, *ST*, II–II, q. 40, and Cajetan’s commentary on this question, which is the most important background for Suárez’s own discussion.
- 15 See Reichberg (2011) for a careful and more extensive treatment of just war than the one given here. I will merely mention a few interesting aspects that I feel are missing from previous accounts. One of the more substantial accounts of Suárez on the law of war can be found in Haggemacher (1983).
- 16 See Nussbaum (1950, 106–7).
- 17 For more on this, see Lagerlund (2018).
  - 1 On the Bodinian idea of sovereignty, see Bodin, *On Sovereignty*; for the original, see Bodin, *Les six livres de la République*.
  - 2 Gentili, *De iure belli* 1.9.64. In general, we follow the English translation but have made some adjustments when necessary. Gentili recognizes that “the learned” Vitoria and Covarrubias also declare that religion is not a good reason for war (*De iure belli* 1.9.61, p. 39).
  - 3 See Gentili, *De iure belli* 1.12.92, p. 57: “Keep silence, theologians, in matters which concern others!”
  - 4 Schmitt, 126.
  - 5 Gentili, *De iure belli* 1.15.111, p. 69.
  - 6 Grotius, *De iure belli ac pacis*, Prolegomena § 38: cuius diligentia sicut alios adiuvare posse scio, et me adiutum profiteor [“from his work I confess I have derived assistance, as I believe others will profit too.”] The lecture caused enormous patriotic impact on the young kingdom of Italy.
  - 7 Holland, *An Inaugural Lecture*.
  - 8 In our day, scholars like Benedict Kingsbury, Benjamin Straumann, Diego Panizza, Andreas Wagner, Ursula Vollerthun, Peter Schröder, Anthony Padgen, Giovanni Minnucci, Diego Quaglioni, and Alain Wijffels, to mention some of them, have produced impressive scholarship on Gentili. See bibliography at the end of the chapter.
  - 9 See Gentili, *De Papatu Romano Antichristo*, from the manuscript D’Orville 607, Bodleian Library, University of Oxford (1580–85 and 1591).
- 10 For further biographical information, see Van der Molen; de Benedictis; and Minnucci, “Gentili, Alberico.”

- 11 Scipione Gentili also became a famous jurist. During his lifetime, his fame in Europe surpassed that of Alberico. See Bianchin.
- 12 A complete list of Gentili's works is offered by I.W.F. Maclean, "Alberico Gentili: His Publishers and the Vagaries of the Book Trade between England and Germany," in Maclean, *Learning and the Market Place*, 323–37.
- 13 Gentili, *De legationibus libri tres, De iure belli libri tres, Hispanicae Advocacionis libri duo*.
- 14 Gentili, *The Wars of Romans*.
- 15 See Gentili, *De legationibus* 3.22.231, p. 201. On the *De legationibus*, see Feingold.
- 16 Gentili, *De iure belli* 1.2.17, p. 12.
- 17 Ibid., 1.3.22, p. 15.
- 18 Ibid., 1.3.23, p. 15.
- 19 Ibid., 1.3.22, p. 15.
- 20 Ibid., 1.3.23, p. 15.
- 21 Ibid., 2.1.209, p. 131.
- 22 Ibid., 3.1.470, p. 289.
- 23 Ibid., 3.2.482, p. 295.
- 24 On the importance of this work to understanding Gentili's thought, see Minnucci, *Silete theologi in munere alieno*, 190–96.
- 25 *Index librorum prohibitorum SS. Domini nostri Gregorii XVI Pontificis Maximi* (Roma: Monteregeali 1841), 196: "Gentilis, Albericus, Disputationum de nuptiis libri VII, Dec. 7 aug. 1603;—et caetera ejusdem opera omnia, dec. 7 aug. 1603."
- 26 Gentili, *De iure belli* 1.1.1–2, p. 3.
- 27 Ibid., 1.1.3, p. 4.
- 28 Ibid., 1.5.46, p. 29.
- 29 Ibid., 1.1.8, p. 7.
- 30 Ibid., 1.12.92, p. 57.
- 31 Gentili, *Disputationum de nuptiis libri septem*, 112–13: *Flammis, flammis libros spurcissimos barbarorum, non solum impiissimos Antichristi. Flammis omnes, flammis: ut Lutherus magnus facere docuit!* On this topic, Minnucci, *Silete theologi in munere alieno*, 196–202.
- 32 Gentili, *Disputationum libri tres*: I. *De libris Iuris Canonici*. On this topic, Minnucci, "Alberico Gentili: un protestante alle prese con il Corpus Iuris Canonici."
- 33 See, for instance, Cicero, *De re publica* 3.33 and *De officiis* 3.17.69. For Latin sources, we use *The Latin Library*: [www.thelatinlibrary.com/](http://www.thelatinlibrary.com/).
- 34 Gaius spoke of *ius gentium* at the beginning of his *Institutes* (1.1.1) and contrasted it, as did Cicero, with *ius civile*. Gaius said that civilized peoples—that is, those organized according to law and custom—govern themselves partly by their own law and partly by the law common to all people. The law proper to the city is civil law; the one established by natural reason among all people is called the law of nations because of its universal observance. Natural reason determines, in the abstract, what the law of nations is or could be, and its enforced general application among nations makes it so concretely.
- 35 Ulpian, in *Digest* 1.1.6, differentiated the civil law, which he considered *proprium* or local (*ius proprium, id est civile*), from a common law comprising both the law of nations and natural law. For Ulpian, however, Cicero's and Gaius's bipartite division becomes tripartite (civil law, law of nature, law of nations). According to Ulpian (*Digest* 1.1.1.3), the reason for this is that the law of nations would be common only to people, whereas the natural law would in general encompass animals as well. For the whole *Corpus iuris*, we use the edition of Mommsen, Krüger, Kroll, and Schöll.

- 36 The Emperor Justinian adopted Gaius's definition of *ius gentium* and its later three-way division by Ulpian in the sixth century in his *Institutes* (1.2.1) and *Digest* (1.1.1.2).
- 37 Gentili, *De iure belli* 1.1.10, p. 8. The statement comes from Cicero, *Tusculanae Disputationum* 1.13.30.
- 38 Gentili, *De iure belli* 1.15.109, p. 68.
- 39 Ibid., 1.15.109, p. 68.
- 40 Ibid., 1.15.110, p. 68.
- 41 Ibid., 1.3.26, p. 17.
- 42 Ibid., 1.1.26, p. 17.
- 43 Ibid., 1.1.27, p. 17.
- 44 Ibid., 1.3.28 p. 18.
- 45 Ibid., 1.3.27, p. 18. On this topic, see Domingo, *Roman Law*, 169.
- 46 On the value of *Corpus iuris* as a legal source among sovereign powers, see Straumann, 102–23.
- 47 Padgen, 92.
- 48 Gentili, *De iure belli* 1.9.65, p. 41: “Religion is a part of the law of nature and therefore that law will not protect those who have no share in it.”
- 49 See Domingo, *God and the Secular Legal System*.
- 50 Gentili, *De iure belli* 1.12.92, p. 57.
- 51 In this sense, Phillipson.
- 52 Gentili, *Disputationum de nuptiis libri septem*; hereafter *De nuptiis*.
- 53 On the importance of this work to understanding Gentili's thought, see Minnucci, *Silete theologi in munere alieno*, 190–96. See also Minnucci, *Alberico Gentili iuris interpret della prima Età moderna*, 19–60, with bibliography.
- 54 See Ulpian, *Digest* 1.1.1.
- 55 Gentili, *De nuptiis*, 57.
- 56 See Celsus, *Digest* 1.1.1pr.
- 57 See Gentili, *De nuptiis*, p. 57. On this topic, Minnucci, *Silete theologi in munere alieno*, 213–14.
- 58 See Gentili, *De nuptiis*, 93.
- 59 Ibid., 1.9.61, 39.
- 60 Ibid., 1.9.59, 38. These ideas are firmly rooted in Early Christian Thought (Tertullian and Lactantius, among others). See Wilken.
- 61 Ibid., 1.9.60, p. 38.
- 62 Ibid., 1.10.71, p. 44.
- 63 Ibid.
- 64 Ibid., 1.11.79–84, pp. 49–52.
- 65 Ibid., 1.11.84, p. 52.
- 66 Gentili, *De nuptiis*, 9–10.
- 67 Gentili, *De iure belli*, 1.9.64, p. 41.
- 68 Ibid., 1.9.66, p. 41.
- 69 Ibid., 1.9.65, p. 41.
- 1 This article is excerpted in part from my volume *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007), ch. 3.
  - 2 Althusius, *Politica methodice digesta atque exemplis sacris & profanis illustrata*. See abridged English translation, *Politica Johannes Althusius*, ed. and trans. F.S. Carney (Indianapolis, IN: Liberty Fund, 1995); abridged German text of the 1614 edition published as Althusius, *Politik*, and Latin and English versions of the preface to the 1610 edition in Laursen, 193–201. I have used the 1614 Friedrich edition unless otherwise noted, and adapted the English translation by F.S. Carney in *Politica* [hereafter Pol.]

- 3 Althusius, *Dicaeologicae libri tres, totum et universum Jus, quo utimur, methodice complectentes*; I have used the 1618 edition throughout [hereafter Dic.].
- 4 Dic. I.13.6, 10; Pol. XXI.35–40; Pol. XXII.1–12; Pol., Preface (1603, 1610, and 1614 eds.).
- 5 Pol. X.4; Pol. XIX.6, 15, 23, 29, 49; Pol. XX.18; Pol. XXVIII.30–32; Dic. I.13.3, 6–8.
- 6 Dic. I.13.10–18; Pol. I.32–39; Pol. IX.21; Pol. XVIII.22; Pol. XXI.16–19; Pol. XXXVIII.37.
- 7 Dic. I.13.1, 14–15; Pol. XXX.16, 19–20.
- 8 Dic. I.13.13–18; Dic. I.14; Pol. XXI.1–20.
- 9 Dic. I.6.4–6, 26; Dic. I.13.16–18; Pol. XXI.20–21; Pol. XXIII.1–20.
- 10 Pol. VII.7–12; Pol. X.3–12; Pol. XVIII.32–44; Pol. XXI.22–29.
- 11 Dic. I.13.4–18; Dic. I.14.1–14; Dic. I.35.22–23; Pol. VII.7–12; Pol. IX.20–21; Pol. X.3–12; Pol. XVIII.32–44; Pol. XXI.22–29; Pol. XXII passim.
- 12 Ibid.
- 13 Dic. I.13.11, 18–19.
- 14 Pol., Preface (1610 and 1614 eds.); Pol. XXI.29. See further sustained discussions of the Decalogue in Pol. VII.7–12; Pol. X.3–12; Pol. XVIII.32–44; Pol. XXI.22–29, 41; Dic. I.13.10–18; Dic. I.14.1–3; and further brief references in Pol. XVIII.66; Pol. XIX.14, 31, 59, 69; Pol. XXVII.18; Pol. XXIX.1; Pol. XXVIII.32, 38, 77, 100.
- 15 Pol. XXI.25–27, quoting in part from Cicero, *The Orator*, I.43.
- 16 Pol. XXI.33–40; Pol. XXII.3–4; Dic. I.14.5–11; Dic. I.16.9–10; Dic. I.101.43; Dic. 115.1–36.
- 17 Pol. XXI.33; Dic. I.14.5; Dic. I.16.9–18.
- 18 Pol. VIII.72–91; Pol. XXI.32–33; Dic. I.14.20; Dic. I.15.18–21.
- 19 Dic. I.14.1–20; Dic. I.15.1–21; Dic. I.16.8; Pol. VIII.72–86; Pol. XXI.30–40; Pol. XXII.1–3, 10.
- 20 Dic. I.25.1–8; Pol. XXI.22–24.
- 21 Pol. XX.12–13, 20–22; Pol. XXXVII.21–22, 33–34, 36; Pol. XXVIII.14, 53–66; Pol. XXXVIII.10–14, 77–78; Dic. I.101.32–33, 42–43; Dic. I.113.8–9, 12; I.115.10–36.
- 22 Pol. XXVIII.62.
- 23 Pol. VII.4–7; Pol. IX.33–45; Pol. XXVIII.14, 37–73, 62–66; Dic. I.25.8–10.
- 24 Pol. XI.33–45; Pol. XXVIII.60–66.
- 25 *The Works of John Locke*, 12th ed., 9 vols. (London, 1824), 5:47.
- 26 Dic. I.25–26; Dic. I.117–22; Pol. X.5–7; Civ. Con. II.1.
- 27 Pol. VI.43–44; Pol. IX.5–9; Dic. I.81.8–15.
- 28 Pol. VI.47; Dic. I.26.10–19, 33; Dic. I.81.7–18.
- 29 See the detailed table at the head of book I in Dic.
- 30 Dic. I.18–24, 27–33, 36–63, 78–81, 130; Dic. II.12–23.
- 31 Dic. I.81.4, 7, 18.
- 32 Dic. I.5, 7, 9–10, 13, 25, 28–30, 80; III.9.38–44; Pol. III.37–41.
- 33 Dic. I.64–97; Dic. II.11–22.
- 34 See, e.g., recent efforts along these lines in Doe, *Christian Law*, and Doe, *Comparative Religious Law*.
- 1 I mention some of these in my article on Grotius for the *Stanford Encyclopedia of Philosophy* (<https://plato.stanford.edu/entries/grotius/>). For additional discussion, see Tuck, “Introduction” to Grotius, *De Iure Belli ac Pacis*, ix–xii. Hereafter I refer to this work by Grotius as *DIB*.
  - 2 Perhaps because Grotius was an important man who led a fascinating life, there are numerous biographies of him. In the concluding section of this chapter, I provide two historical sources. Two more recent lives are Dumbauld, *The Life and*

*Legal Writings of Hugo Grotius*, and Edwards, *Hugo Grotius*. I have relied on these sources and my own understanding of Grotius in this section on his life and works.

- 3 For more on this work and the theological-political context, see the “General Introduction” to the excellent critical edition produced by Harm-Jan van Dam.
- 4 The most comprehensive record of Grotius’s writings remains the *Bibliographie* by Ter Meulen and Diermanse.
- 5 This work was first published posthumously, although a partial edition appeared in Grotius’s lifetime under the title *Annotationes in libros Evangeliorum* (1641).
- 6 Throughout this chapter, I use the edition of the *DIB* edited by Tuck. For the *DIP*, I use the edition edited by Van Ittersum.
- 7 Van Ittersum retells the story of the composition and eventual publication of *DIP* on pp. xiv–xxiii of her edition of the volume.
- 8 The tendency to equate *ius naturale* and *lex naturalis* goes back to Grotius’s day, as we learn from Hobbes. He writes, “though they that speak of this subject use to confound *jus* [*sic*] and *lex* (*right* and *law*), yet they ought to be distinguished, because Right consisteth in liberty to do or to forbear, whereas Law determineth and bindeth to one of them; so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent” (*Leviathan* 1.14.3).
- 9 An excellent guide to the vast literature on the subject of this paragraph can be found in Rasilla Del Moral.
- 10 As Isidore of Seville wrote a thousand years before Grotius: “Natural law is common to all nations. It is followed everywhere by all people due to a natural impulse, not because of any institution”: *Etymologiarum sive originum libri XX*, bk. 5, para. 4, 1 (my translation).
- 11 For a helpful introductory discussion of natural law in Plato, Aristotle, and the Stoics, see Striker.
- 12 See, e.g., Aquinas, *Summa theologiae*, Ia–IIae, question 91, article 4, pp. 944–45.
- 13 See, e.g., Ockham’s *Commentary on the Sentences*, 2, 4–5.
- 14 See, e.g., *De Legibus*, bk. 1, ch. 5, section 13 (for his agreement with Ockham) and bk. 2, ch. 6, section 5 (for his agreement with Aquinas).
- 15 See, e.g., Vreeland. The first comprehensive treatment wholly dedicated to international law was by Zouche.
- 16 As Grotius writes of his method, “first, let us see what is true universally and as a general proposition; then, let us gradually narrow this generalization, adapting it to the special nature of the case under consideration. Just as the mathematicians customarily prefix to any concrete demonstration a preliminary statement of certain broad axioms on which all persons are easily agreed, in order that there may be some fixed point from which to trace the proof of what follows, so shall we point out certain rules and laws of the most general nature . . . with the purpose of laying a foundation upon which our other conclusions may safely rest” (*DIP*, ch. 1, pp. 17–18).
- 17 Grotius, *DIP*, “Prolegomena,” § 7. Henceforth all citations to this work will be in-text. Two notes about abbreviations: (1) I use *DIB* plus book, chapter and section numbers to refer to the *De Iure Belli ac Pacis*; (2) I use “Prolegomena” plus a section number to cite this part of the *DIB*. All translations are from Tuck’s edition.
- 18 Korsgaard, 22.
- 19 Suárez, bk. 2, ch. 6, section 3.
- 20 Irwin, 86. Irwin himself does not think of Grotius as a pioneer in natural law; he is only citing the opinions of the many others who do.
- 21 These descriptions of their personalities are my own. In forming them, I have relied on various sources, including Albrecht Beutel, “Luther’s Life,” and Helmar Junghans, “Luther’s Wittenberg,” both in part 1 of McKim, *Cambridge Companion to Luther*. For Grotius, see the hagiographic “Life of Hugo Grotius” published

- with *De Iure Belli ac Pacis* (see note 3 for the full bibliographical record) as well as Bayle, “Grotius.”
- 22 Luther, “Against the Robbing and Murdering Hordes,” *Luther’s Works*, vol. 46, p. 50.
  - 23 There is a balanced discussion of this topic in Hendrix “Luther’s Impact on the Sixteenth Century.” See also Hillerbrand.
  - 24 See especially Luther’s “Temporal Authority: To What Extent It Should Be Obeyed,” in *Luther’s Works*, vol. 45, pp. 81–129. For discussion, see Cargill Thompson, ch. 3, and Massing, 573–74.
  - 25 See, e.g., *DIP*, ch. 4, question 2, p. 73ff. of Van Ittersum’s edition.
  - 26 At the same time, it is not the case that Grotius never directly responded to Luther. One such instance is documented in Irwin, *The Development of Ethics*, 85.
  - 27 Most notably, there is *De veritate religionis Christianae* (The truth of the Christian religion). Here Grotius argues both for the superiority of the Christian religion over all others and for the agreement of all Christians on a core set of beliefs. These core commitments are vastly more important than the peripheral issues where Christians disagreed.
  - 28 For more on Luther and this war, see Friedeburg.
  - 29 An excellent summary of Grotius’s religious writings and his core beliefs can be found in Tuck, *Philosophy and Government*, 179–86.
  - 30 Letter from Grotius to G.M. Lingelsheim of November 1, 1606, translated and printed in Van Ittersum’s edition of the *DIP*, p. 552.
  - 1 Philpott, 206.
  - 2 Such trends are discussed in “Kant’s Philosophy of Religion” in the *Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/kant-religion/>.
  - 3 Hobbes, 70.
  - 4 Citations to Kant will be to the Akademie Ausgabe by volume and page, except for the *Critique of Pure Reason*, where citations will use the standard A/B edition pagination. Unless otherwise noted, English quotations will be from *The Cambridge Edition of the Works of Immanuel Kant*.
  - 5 See Pasternack, “Kant on the Debt of Sin.”
  - 6 Kant does not seem settled as to whether or not our duty to perpetual peace is a duty to merely strive towards it or a duty to bring it into actuality. In the *Religion* and in *Perpetual Peace*, he seems to support the former; in the *Metaphysics of Morals*, he indicates instead the latter (6:350).
  - 7 One might think of Neville Chamberlain’s appeasement of Hitler as such an example.
  - 8 Guyer, 430.
  - 9 *Ibid.*, 434.
  - 10 *Ibid.*
  - 11 *Ibid.*, 426.
  - 12 Note that Guyer does not claim that prudence and the mechanisms of nature are sufficient to realize perpetual peace, as he too acknowledges the role of an “inscrutable choice to be virtuous” (425). My point, however, is that what Guyer utilizes to provide the basis for our confidence that perpetual peace is not impossible pertains instead to peace pacts.
  - 13 This is not to say that agents interested in the moral betterment of humanity would not support cosmopolitanism, for it is not only better than active warfare but it also may be seen as helping make us potentially more receptive to moral growth. See Frierson.
  - 14 See Pasternack, “Restoring Kant’s Conception of the Highest Good.”
  - 15 In other words, while moral politicians may still pursue a duty to avoid warfare and promote peace, the antinomy between politics and morality may be read as a

challenge to the possibility of perpetual peace. As such, unless we have a way to overcome the catch-22 conveyed by the antinomy, we may in fact have to conclude that the “crooked wood” of humanity tells us either that perpetual peace is “demonstrably impossible,” or at least how it is possible “surpasses every concept of ours.”

- 16 See Pasternack, “Religious Assent and the Question of Theology.”
- 17 Kant does not follow the Augustinian thesis that our moral capacities are so corrupted by original sin that we no longer have the volitional powers needed to become morally good. Rather, his point is that out of self-interest, we would not choose to subordinate it to morality, and thus once we have willed to prioritize self-interest over morality (something Kant claims all humanity has done), we would never will to reverse that order. Hence, it is out of the logic of what we have willed that we face the catch-22 which then prompts the need for divine aid. See 6:51–52.
- 18 By analogy, we may separate our specific duties, such as to be charitable, from the more radical duty to undergo a “moral revolution,” whereby we change our “supreme maxim” to one that prioritizes morality over self-interest. It is the latter which Kant maintains requires our appeal to divine aid (6:47–52).
- 19 Breul and Schnurr.
- 20 Early translations shifted between “perpetual” and “eternal.” Examples include the 1796 *Project for a Perpetual Peace* (unknown translator, London: Vernor and Hood) and *Eternal Peace* (J.D. Morell, London: Hodder and Stoughton, 1884). One possible reason why “perpetual” was chosen by translators is because of the antecedent French work on perpetual peace by Abbé St. Pierre, *Project pur rendre la paix perpétuelle en Europe* (1713).
- 21 See Borowski; see also Hunter.
- 22 Thanks to Geoff Dargan, Pablo Muchnik, and Rob Gressis for helpful discussion and feedback.
  - 1 Maritain, “The Possibilities for Cooperation in a Divided World,” 172–84, at 182.
  - 2 See Chenu.
  - 3 Maritain, *Humanisme integral*, in *Oeuvres complètes*, 443, translation mine. See *Integral Humanism*.
  - 4 In *The Review of Politics*, 8 (1946): 419–55, at 420. This text, based on lectures from 1939 (“The Person and the Individual”) and 1945 (“The Human Person in Society”), appeared almost simultaneously in French, in the *Revue Thomiste* (mai-août 1946): 237–78. A year later, in 1947, it was published in book form with some minor revisions.
  - 5 Maritain, *Humanisme integral*, 447. Stibora, 33, seems to have missed this obvious reference.
  - 6 Moyn, “Jacques Maritain, Christian New Order, and the Birth of Human Rights,” 59. Stibora, 52, disagrees, though her arguments here are weak.
  - 7 In Maritain, *Scholasticism and Politics*.
  - 8 *Ibid.*, 111.
  - 9 Maritain, “Integral Humanism and the Crisis of Modern Times.”
  - 10 Maritain, “Person and the Common Good,” 432.
  - 11 *Ibid.*, 442.
  - 12 *Ibid.*, 435.
  - 13 *Ibid.*, 442.
  - 14 Some members of the Commission on Human Rights made just this mistake. See *Commission on Human Rights: Summary Record of the Fourteenth Meeting, New York, 4 February 1947*, E/CN.4/SR.14, pp. 4–5, at [https://digitallibrary.un.org/record/626959/files/E\\_CN.4\\_SR.14-EN.pdf](https://digitallibrary.un.org/record/626959/files/E_CN.4_SR.14-EN.pdf).

- 15 See, for example, Meinville; see also Perez; and Compagnon, 165–70.
- 16 De Koninck.
- 17 Maritain responded to De Koninck’s criticisms, albeit indirectly, in “The Person and the Common Good.”
- 18 Maritain, *The Rights of Man and Natural Law*, 39–41. See also Maritain, *Natural Law*, 96–98.
- 19 *Ibid.*, 49.
- 20 *Ibid.*, 39–40.
- 21 *Ibid.*, 40.
- 22 *Ibid.*, 39.
- 23 *Ibid.*, 46–47.
- 24 *Ibid.*, 51–53.
- 25 *Ibid.*, 60.
- 26 *Ibid.*, 52; see also *Man and the State*, 103–5.
- 27 See Maritain’s essay “Christianisme et démocratie,” in *Le crépuscule de la civilisation*, 76 and 81, and his “Introduction,” to UNESCO (ed.), *Human Rights: Comments and Interpretations*, UNESCO/PHS/3 (rev.) Paris (July 25, 1948) [later republished, with minor changes, London: Allan Wingate, 1949], p. vii. Maritain’s account of the inalienability of rights is controversial. See, for example, Crosson. Interestingly, Maritain did not use the term “inalienable rights” in *Les droits de l’homme et la loi naturelle*.
- 28 See Roth.
- 29 See Sweet, “Charles Malik.”
- 30 This was, as noted above, a disputed term. Malik was responsible for including the term in the preamble of the UDHR. Chang objected to the term, but the commission allowed the word to remain. For a recent discussion, see Nelson.
- 31 See Glendon, 144.
- 32 American Anthropological Association, 539–43.
- 33 Commission on Human Rights, Summary Record of the Seventy-Fourth Meeting, June 15, 1947, E/CN.4/SR.74, p. 14 at <https://undocs.org/E/CN.4/SR.74>.
- 34 See Ochs and Gimeno.
- 35 See Goodale’s mildly dismissive, but also somewhat inaccurate, comments on Maritain’s relation to the UDHR, in “The Myth of Universality.”
- 36 Agi, 212. See also Winter and Prost, 164.
- 37 Mougel, 76.
- 38 *Ibid.*, 65, my translation.
- 39 These quotations are taken from Maritain’s discussion and list, given in Maritain, *Natural Law*, 71–98.
- 40 See note 14 above and E/CN.4/SR.14, 4–5.
- 41 Maritain, *Natural Law*, 79.
- 42 Taylor and Maclure, 96.
- 43 Malik, 11.
- 44 Maritain, *Natural Law*, 80.
- 45 *Ibid.*, 97.
- 46 A further reason for believing that Maritain may have had an influence on the UDHR is based on the possible impact of the American Declaration of the Rights and Duties of Man (May 2, 1948)—sometimes called the “Bogota Declaration”—on the UDHR. Given Maritain’s influence in Latin America in the late 1930s and early 1940s, it is possible that Maritain had some effect on this text and thus, indirectly, on the UDHR. For his influence in Latin America, see, Ramos-Reyes.
- 47 UNESCO, ed., *Human Rights*, Appendix II, p. 11.
- 48 Maritain, “La Voix de la Paix,” in *Oeuvres Complètes*, Vol. 9. See n. 1 above.

- 49 “M. Maritain Calls for Unity,” *Unesco Courier* 1/1, February 1948.
- 50 See Seydoux. See also Barré, *Beggars for Heaven*, 393–94.
- 51 Maritain, “Introduction,” in UNESCO, *Human Rights*, II.
- 52 Maritain, “Philosophical Examination of Human Rights,” in UNESCO, *Human Rights*, 59–63, at 59.
- 53 Goodale, “The Myth of Universality,” 610.
- 54 “The Grounds of an International Declaration of Human Rights,” in UNESCO, *Human Rights*.
- 55 Letter from E.H. Carr to J. Huxley, September 29, 1947, reprinted in *Letters to the Contrary*.
- 56 Maritain, “Introduction,” I.
- 57 Ibid.
- 58 See Maritain, *Man and the State*, 107; see also *Natural Law*, ed. Sweet, 74.
- 59 Maritain, *Man and the State*, 87, 107.
- 60 Sweet, “Maritain’s Criticisms of Natural Law Theories.”
- 61 Maritain, *La loi naturelle ou loi non écrite*. Texte inédit, établi par Georges Brazzola (Fribourg: Éditions Universitaires, 1986). An English edition, *Lectures on Natural Law*, tr. William Sweet, is forthcoming from University of Notre Dame Press. Versions of the first and second chapters also appeared in *Man and the State*, ch. 4, “Natural Law and Moral Law” [in *Moral Principles of Action: Man’s Ethical Imperative*, ed. Ruth Nanda Anshen (New York: Harper and Brothers, 1952), 62–76], and in some other essays of the period.
- 62 Maritain, *The Range of Reason*, 22.
- 63 Maritain, *La loi naturelle*, 52, 56.
- 64 Maritain, “Philosophical Examination of Human Rights,” 63.
- 65 Maritain, *Natural Law*, 79, n. 40.
- 66 See Maritain’s paper, “Natural Law and the Rights of Man: A Philosophical Discussion,” preserved in the Jacques and Raissa Maritain papers at Kolbsheim. The paper seems to have been read at the College of St. Thomas, in St. Paul, Minnesota, in late 1950/early 1951, and is almost identical to *Man and the State*, ch. 4, and to “The Philosophical Foundations of Natural Law” in *Natural Law and World Law, volume d’hommage offert a Kotaro Tanaka* (Tokyo: Yuhikaku, 1954), 133–43.
- 67 Maritain, *Man and the State*, 90–98.
- 68 Maritain, “Communication with regard to the Draft World Declaration on the Rights of Man,” Letter of June 18, 1947, p. 3, section 5. <http://unesdoc.unesco.org/images/0012/001243/124341eb.pdf>. See also his “Philosophical Examination of Human Rights,” 60.
- 69 Ibid.
- 70 Maritain, *La loi naturelle*, 190. Translations are mine.
- 71 Ibid., 190–91, emphasis mine.
- 72 Ibid.
- 73 Moyn, “Personalism, Community, and the Origins of Human Rights,” 87.
- 74 Maritain, “Philosophical Examination of Human Rights,” 61.
- 1 See Schuman, *French Foreign Policy*, 5. In a letter of 1942 to Robert Rochefort, Robert Schuman wrote (in French): “We are the very imperfect instruments of a Providence which makes use of them in the accomplishment of great designs which go beyond us. This certainty demands a lot of modesty but gives us a serenity that would not always be justified by our personal experiences considered from a merely human point of view.” See Roth, *Robert Schuman*, 562.
  - 2 See some examples in Krijtenburg, *Schuman’s Europe*, 52–53. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/19767/fulltext.pdf?sequence=17>.
  - 3 Acheson, 32.

- 4 Fimister.
- 5 Krijtenburg, *Schuman's Europe*.
- 6 See Poidevin; see also Pennera.
- 7 Rochefort; Lejeune; Roth; Lücker and Seitlinger; Pelt.
- 8 Mittendorfer.
- 9 For biographical details, see the biographies listed in notes 2–7 and the bibliography.
- 10 On the Franco-Prussian War, see Wawro; also Howard.
- 11 The territory was made up of 93 percent of Alsace and 26 percent of Lorraine; the remaining portions of these regions continued to be part of France. Since its complete reversion to France following World War I, the territory has been referred to administratively as Alsace-Moselle. Since 2016, Alsace and Lorraine are a part of the new French administrative region in northeastern France called Grand East. For an overview of the history of Alsace-Lorraine, see Roth, *Alsace-Lorraine*.
- 12 It is a west Germanic language, very close to German and Dutch, with borrowed words from French. In Luxembourg, children study in Luxembourgish at kindergarten level and in German and French at primary level.
- 13 The letters received by Schuman from his mother (1906–09) are deposited in the Schuman Papers (34 J 1) at the Departmental Archives in the Moselle. See Hiegel and Duvigneau, 10. For a commentary about these letters, see Poidevin, 17–19.
- 14 In Alsace and Moselle, a local law is still in force. Established in 1919 after the end of the First World War, it is applied in the French departments of Bas-Rhin, Haut-Rhin, and Moselle, grouped under the generic name of Alsace-Moselle, which is now in the Grand East region. This local law retains the provisions set up by German authorities between 1871 and 1918 when those provisions are considered more favorable to the inhabitants of Alsace and Moselle. The local law also includes the pre-1870 French laws maintained by the German administration but abrogated by the French authorities before their return in 1918. Finally, the local law includes specific French laws after 1918 applicable only to these territories. The local law mainly affects professional regulations, credit institutions, statutory holidays, legislation on the reimbursement of health expenses, social assistance for the poorest persons, the organization of justice and the courts, civil procedures, bankruptcy, the land register, the law of hunting, and the law of association. The French law on separation of the churches and the state of December 9, 1905, is not applied in Alsace and Moselle. Instead, the 1801 Concordat with the Holy See and the special laws of 1802 are still in force. As result, religious education is compulsory in primary and secondary schools (with permission of the parents); the University of Strasbourg and the University of Metz are the only French public universities to teach theology; the remuneration of the ministers of the four recognized cults (Catholic priests, Lutheran and Reformed pastors, and Jewish rabbis) is taken over by the state. The appointments of the archbishop of Strasbourg and the bishop of Metz are made by the president of the French Republic, the last head of state in the world to appoint Catholic bishops. For an overview of the local law in Alsace and Moselle, see Institut Du Droit Local Alsacien-Mosellan.
- 15 On the so-called Vichy regime, see Burrin.
- 16 See Poidevin, 137.
- 17 Schuman was prime minister again for a week, September 5–11, 1948.
- 18 See Lejeune, *Robert Schuman, père de l'Europe*, 153.
- 19 See the whole text available at: [https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration\\_en](https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en).
- 20 On the spirituality of the declaration, see Wilton, 13–32. As Fimister well pointed out, the 1950 declaration resulted from the “self-conscious application” by

- Schuman of the Catholic social thought and neo-Thomistic political philosophy to international relations. See Fimister, 17.
- 21 See Schuman, *For Europe*, 110.
  - 22 *Ibid.*, 20.
  - 23 *Ibid.*, 119: “In a small hotel on Rue Martignac, it was Jean Monnet who, together with his collaborators, sketched out within a few months, discretely and in the utmost secrecy—not even the government knew—the idea of the coal and steel community.” See also Monnet, *Memoirs*, 318–35. The first draft was prepared by Paul Reuter, Schuman’s colleague and the lawyer at the Foreign Ministry, and it was mainly edited by Jean Monnet, Étienne Hirsch, Pierre Uri, and Bernard Clappier. In her doctoral thesis, Margriet Krijtenburg tries to recover Schuman’s leadership in the project. See Krijtenburg, *Schuman’s Europe*. In the same vein, see also Price, 61–62. On the role of Paul Reuter, see Cohen. For a general overview, see Reuter, *La Communauté européenne*.
  - 24 Schuman, *For Europe*, 119. On this relationship, see Roussel, 87–92.
  - 25 Schuman, *For Europe*, 119. An example of risk is, for instance, that two days before the declaration, on May 7, 1950, Schuman, without the consent of the French Council of Ministers, assured Chancellor Konrad Adenauer in a letter that the proposal of declaration would be approved a few days later by the French government. The letter is available at: [www.cvce.eu/content/publication/1999/2/10/5b2f4ed8-b98c-4dc3-b7de-0f53bf11ff55/publishable\\_en.pdf](http://www.cvce.eu/content/publication/1999/2/10/5b2f4ed8-b98c-4dc3-b7de-0f53bf11ff55/publishable_en.pdf).
  - 26 On constitutional European moments, see Weiler, esp. 3–4.
  - 27 See Rochefort, 317; and Poidevin, 367.
  - 28 The lack of understanding between De Gaulle and Schuman was profound. See Fimister, 170–71; and Lejeune, *Robert Schuman, père de l’Europe*, 135–138. The divergences among the two politicians are explained by Chopra, 35–39.
  - 29 After the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) in 1957, a single assembly was created with the powers and responsibilities assigned to it at the EEC and Euratom treaties. This assembly also replaced the Common Assembly of the European Coal and Steel Community. The single assembly held its first session on March 19, 1958. It was this new assembly that elected Schuman as president unanimously. The official and unified designation as European Parliament was made by Art. 2 of the Single European Act of 1986. For an overview of the history of the European Parliament, see: [www.cvce.eu/en/obj/european\\_parliament-en-ad6a0d57-08ef-427d-a715-f6e3bfaf775a.html](http://www.cvce.eu/en/obj/european_parliament-en-ad6a0d57-08ef-427d-a715-f6e3bfaf775a.html).
  - 30 See Poidevin, 420.
  - 31 On the cause of beatification, see Institut Saint-Benoît, esp. 11–15.
  - 32 Information available at: [www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Index.aspx](http://www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Index.aspx).
  - 33 Information available at: [http://wwwen.uni.lu/recherche/robert\\_schuman\\_institute\\_of\\_european\\_affairs](http://wwwen.uni.lu/recherche/robert_schuman_institute_of_european_affairs).
  - 34 See Hiegel and Duvigneau, available at: [www.archives57.com/phocadownload/6\\_FONDS\\_PRIVES/politique/frad57%20034-036j%20papiers%20schuman.pdf](http://www.archives57.com/phocadownload/6_FONDS_PRIVES/politique/frad57%20034-036j%20papiers%20schuman.pdf).
  - 35 The inventory is available at: <http://archives.eui.eu/en/fonds/153157?item=HALK>.
  - 36 A list of Schuman’s more than sixty minor writings, lectures, and speeches can be found in Poidevin, *Robert Schuman, homme d’État*, 481, 484–86. Most of them can be consulted in the Schuman Papers (34 J) at the Departmental Archive of Moselle. Some are available at: [www.schuman.info](http://www.schuman.info) led by David Heilbron Price.
  - 37 Schuman, *For Europe*. The English translation of the essay must be improved.

- 38 Schuman, *For Europe*, 15.
- 39 Robert Schuman, “Préface,” in Reuter, *La Communauté européenne*, 3–8, at 7. The legal approach to the idea of supranationality was deeply developed by Paul Reuter.
- 40 *Ibid.*, 18.
- 41 *Ibid.*, 22.
- 42 *Ibid.*, 29.
- 43 *Ibid.*, 134.
- 44 *Ibid.*, 35.
- 45 *Ibid.*, 36.
- 46 *Ibid.*, 37.
- 47 *Ibid.*, 43.
- 48 *Ibid.*, 51.
- 49 *Ibid.*, 44.
- 50 *Ibid.*, 46.
- 51 *Ibid.*, 61.
- 52 *Ibid.*, 79.
- 53 *Ibid.*, 139.
- 54 *Ibid.*, 86.
- 55 *Ibid.*, 93.
- 56 The Decision and the Act on European elections by direct universal suffrage were signed in Brussels on September 20, 1976. The Act entered into force in July 1978, following ratification by all member states. The first elections took place on June 7 and 10, 1979. See basic information at: [www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf).
- 57 Schuman, *For Europe*, 108.
- 58 Around thirty-three thousand people are employed by the European Commission. In the European Parliament, around six thousand people work in the general secretariat and in the political groups. In the Council of the European Union, around thirty-five hundred people work in the general secretariat. See basic information at [https://europa.eu/european-union/about-eu/figures/administration\\_en](https://europa.eu/european-union/about-eu/figures/administration_en)
- 59 Schuman, *For Europe*, 106.
- 60 For further development, Domingo, “The New Global Human Community.”
- 1 See, e.g., Orford.
- 2 Ungern-Sternberg, 295.
- 3 Waldron.
- 4 *Ibid.*, 158.
- 5 *Ibid.*, 157; see also Tamanaha, ch. 9.
- 6 This list is adapted from Rosenfeld, at 1313.
- 7 Taylor.
- 8 Walker, “Beyond the Holistic Constitution?”
- 9 See, e.g., Krygier.
- 10 See, e.g., Rosenfeld, 1313.
- 11 See, e.g., Tamanaha, ch. 7.
- 12 *Ibid.*, ch. 7–8.
- 13 See, e.g., Waldron, “Are Sovereigns Entitled to the Benefits of the International Rule of Law?”
- 14 On the realist-liberal distinction, see, e.g., Slaughter.
- 15 Orford, 2.
- 16 See, e.g., Sen.
- 17 See, e.g., Neff, esp. ch. 10.

- 18 On different models of morally relevant interconnectedness in respect of global justice, see Walker, “The Gap between Global Law and Global Justice.”
- 19 See Samuelson.
- 20 Chimni.
- 21 See, e.g., Pogge.
- 22 See, e.g., Singer.
- 23 See, e.g., Koskenniemi, “International Law and Religion: No Stable Ground,” 3–24.
- 24 Koskenniemi, “No Stable Ground,” 16.
- 25 See Chapter 3 of this volume on Thomas Aquinas and the doctrine of natural law.
- 26 See, e.g., Ungern-Sternberg.
- 27 See Chapter 4 in this volume.
- 28 See Chapter 5 in this volume.
- 29 See Chapter 6 in this volume.
- 30 See Chapter 8 in this volume.
- 31 See Chapter 9 in this volume.
- 32 Schmitt.
- 33 See, e.g., Nafziger.
- 34 Paz, 926.
- 35 Koskenniemi, “No Stable Ground,” 9.
- 36 See Chapter 2 in this volume.
- 37 Koskenniemi, “No Stable Ground,” 4.
- 38 Moyn. See also Chapter 19 in this volume.
- 39 See, e.g., Weiler.
- 40 Fukuyama.
- 41 See, e.g., Zuquete.
- 42 Domingo, *New Global Law*. See also his “Gaius, Vattel, and the New Global Law Paradigm.”
- 43 Domingo, *New Global Law*, 157–58.
- 44 *Ibid.*, ch. 4.
- 45 See, e.g., Walker, *Intimations*, ch. 5.
- 46 See, e.g., Waldron, “The Image of God.”
- 47 See, e.g., Habermas.
  - 1 Barilan, 89.
  - 2 “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”; [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/).
  - 3 See Shulztiner and Carmi, 461–90.
  - 4 *Ibid.*, 490.
  - 5 Carozza, <https://doi.org/10.1093/law/9780199640133.003.0015>, downloaded December 2018.
  - 6 Whitman, 1196.
  - 7 *Ibid.*, 1170.
  - 8 Kass, 246.
  - 9 “Adam was one hundred and thirty years old when he begot a son in his likeness, after his image; and he named him Seth.”
  - 10 “Anyone who sheds the blood of a human being, by a human being shall that one’s blood be shed; for in the image of God have human beings been made.”
  - 11 “Yet you have made him little less than a god, crowned him with glory and honor.”
  - 12 “For God formed us to be imperishable; the image of his own nature he made us.”
  - 13 “He endowed them with strength like his own, and made them in his image.”

- 14 Paul's letter to Philemon clearly asks for Onesimus's liberation. See on Gregory of Nyssa's rejection of slavery, keywords "social analogy" and "slavery," in Mateo-Secco and Maspero.
- 15 Meilaender, "Human Dignity and Public Bioethics," 40.
- 16 Theophilus, *Ad Autolyicum*, II.18, p. 57.
- 17 Tertullian, *Adversus Marcionem*, vol. I, p. 481 (my own translation).
- 18 Cicero, *De Re Publica* I, XXVII, 43: "*Quoniam distinctos dignitatis gradus non habebant, non tenebat ornatum suum civitas*": pp. 68–69.
- 19 See Hanvey, 212.
- 20 Aquinas, *Scriptum Super . . . Petri Lombardi Episcopi Parisiensis*, vol. 1, Liber 1, distinctio 10, q. 1 art. 5, p. 270.
- 21 Aquinas, *Summa Theologiae*, I, q. 29, a. 3, ad 2.
- 22 Ibid., II–II, q. 64, a. 2.
- 23 Ibid., II–II, q. 189, a. 6, ad 3: "*Persona liberi hominis superat omnem aestimationem pecuniae*." (my translation). This was a formulation also of Roman law.
- 24 Ibid., q. 66, a 1 c.
- 25 Aquinas, *Scriptum Super . . . Petri Lombardi Episcopi Parisiensis*, vol. 3, Liber 3, distinctio 35, q. 1 art. 4, quaestiuncula 3, solutio 1, p. 1189.
- 26 Aquinas, *De Veritate*, q. 5, a. 7 c.
- 27 Pico della Mirandola, 225.
- 28 Vitoria, *De Indis et de Iure Belli Relectiones*, Section I, n. 21. p. 127, n. 24, p. 128.
- 29 For the Protestant tradition on human dignity, see Witte.
- 30 Kant, n. 428–29, p. 15–57.
- 31 Ibid., n. 435, p. 172.
- 32 Ibid., n. 433, p. 166.
  - 1 I am grateful to Jonathan Burnside, Rafael Domingo, Ian Leigh, and John Witte, Jr. for their comments on an earlier draft.
  - 2 Lactantius, *Divine Institutes*, 5.14 (trans. Oliver and Joan Lockwood O'Donovan).
  - 3 The O'Donovans claim that he was "the first Christian thinker to subject the idea of justice to serious analysis." See O'Donovan and O'Donovan, 46–47.
  - 4 Lactantius, 5.15.
  - 5 Such as the theory Plato puts in the mouth of Glaucon in book 2 of *The Republic*.
  - 6 [www.equalrightstrust.org/content/declaration-principles-equality](http://www.equalrightstrust.org/content/declaration-principles-equality). Accessed April 9, 2019.
  - 7 See Walker.
  - 8 See Cover.
  - 9 See Dworkin.
  - 10 Raz, ch. 9.
  - 11 Romans 5:12–21.
  - 12 Genesis 3:20; Acts 17:26.
  - 13 Romans 3:23–24.
  - 14 1 Corinthians 12:12–13; Galatians 3:26–28; Colossians 3:11.
  - 15 See, classically, St. Augustine, *The City of God Against the Pagans* (411–26), esp. book 15.1 for the relationship between the two cities and Adam/Christ.
  - 16 See Berman.
  - 17 Deuteronomy 3:12–20; Joshua 13–22.
  - 18 Leviticus 25.
  - 19 This is Dworkin's preferred model: *Sovereign Virtue*, 89; cf. Hutton.
  - 20 Amos 6:1–7; 2:6.
  - 21 1 Kings 21; Isaiah 5:8–10; Micah 2:1–2.
  - 22 E.g., Deuteronomy 10:18; 14:29; Psalm 94:6; Jeremiah 7:6; 22:3; Ezekiel 22:7; Zechariah 7:10; Malachi 3:5.
  - 23 Exodus 19:3–8; Deuteronomy 5:22.

- 24 1 Samuel 8:10–18.
- 25 Deuteronomy 17:14–20.
- 26 Exodus 23:6–8; Leviticus 19:15.
- 27 See, e.g., Code of Hammurabi (c. 1754 BCE), which distinguishes extensively according to the relative status of slaves, freeborn, and freedpersons.
- 28 2 Chronicles 19:7.
- 29 Proverbs 17:15; Romans 2:11; Ephesians 6:9; Colossians 3:25; 1 Peter 1:17.
- 30 Deuteronomy 25:1.
- 31 Luke 1:52–53.
- 32 Summed up in the prophetic words, “Jacob I have loved, but Esau I have hated”: Malachi 1:2–3.
- 33 See the gospels generally! John 4 will suffice as an example of outstanding intersectionality.
- 34 Philippians 2:6.
- 35 2 Corinthians 8:9, 13.
- 36 2 Corinthians 5:21.
- 37 Matthew 22: 34–40.
- 38 Luke 14:11; 18:14.
- 39 Luke 16:25.
- 40 John 9:41.
- 41 1 Corinthians 1:27–28.
- 42 Matthew 19:30; 20:16; Mark 9:35; Luke 13:30; Luke 9:48.
- 43 Galatians 3:26–28.
- 44 Acts 2:44–45.
- 45 Acts 2:6; 6:1–7.
- 46 1 Thessalonians 4:11–12; 2 Thessalonians 3:6–10.
- 47 2 Corinthians 8:1–15.
- 48 Exodus 16:18.
- 49 James 2:1–9.
- 50 Revelation 7:9–10.
- 51 See Colossians 3:22–4:1; 1 Timothy 1:10; and the remarkably countercultural letter of Philemon. A similar, although considerably more complex and controversial, case can be made in relation to the position of women.
- 52 Estimates of the size of the slave population vary considerably. It is often claimed that 30 to 40 percent of the Italian population were slaves in the first century BCE. Kyle Harper reviews the evidence for the later Empire as a whole and lands on a figure of 10 percent. See Harper, *Slavery*, ch. 1.
- 53 Excerpts in O’Donovan and O’Donovan, 66–88.
- 54 See Siedentop.
- 55 This is the thesis of David Bentley Hart in *Atheist Delusions*. For a parallel account of sexual ethics, see Harper, *From Shame to Sin*.
- 56 See Pojman.
- 57 Waldron, *God, Locke, and Equality*.
- 58 *Ibid.*, 243.
- 59 Waldron, *One Another’s Equals*, 205.
- 60 Wolterstorff, ch. 16.
- 61 Promissory Oaths Act 1868, s. 4.
- 62 Augustine was not the only bishop to complain about the time this absorbed. See Lamoreaux.
- 63 UDHR, art. 7; see also ICCPR, art. 26.
- 64 UDHR, art. 10; see also ICCPR, art. 14(1).
- 65 UDHR, art. 2; see also ICCPR, art. 2(1).
- 66 ICESCR, art. 2.

- 67 Art. 1(1).  
68 *Le Lys Rouge* (1894).  
69 *Brown v. Board of Education*, 347 US 483 (1954).  
70 CERD, art. 1(4); see also CEDAW, art. 4(1).  
71 See Khaitan.  
72 Art. 8.  
73 See, e.g., CERD, art (1); CEDAW, art. 1(1); CRPD, art. 2.  
74 *D.H. v. Czech Republic* (57325/00), November 13, 2007 (ECtHR, Grand Chamber). The most recent major human rights treaty (CRPD, 2006) expressly states that it extends to “all forms of discrimination including denial of reasonable accommodation.” This must refer to indirect discrimination.  
75 CRPD, art. 5(3).  
76 See the commitment to “universal design” in CRPD, art. 4(f).  
77 Art. 13.  
78 CEDAW, art. 5(a).  
79 *Ibid.*, art. 16.  
80 See, e.g., Cain.  
81 CRC, art. 5.  
82 ICCPR, art. 25.  
83 ICESCR, art. 7.  
84 *Ibid.*, art. 11(2)(b).  
85 Charter of the United Nations (1945), art. 2(1).  
86 Art. 9(2).  
87 Art. 18(1).  
88 ICCPR, art. 1; ICESCR, art. 1.  
89 McCorquodale, 361.  
90 See Westen.  
91 *Nichomachean Ethics* V.3; *Politics* I.5.  
92 O’Donovan, *Ways of Judgment*, 33.  
93 See Smith.  
94 See White and, for a vigorous Christian case along similar lines, Forrester.  
1 Rawls, 217.  
2 Finnis, *Natural Law and Natural Rights*, 155. Finnis’s instrumental account of the common good is indebted to Grisez, 850, and John XXIII, *Mater et Magistra*, § 65.  
3 Adrian Vermeule, “The Common Bad,” unpublished presentation at the Thomistic Institute, October 2018.  
4 *Ibid.*  
5 See, for example, Weithman.  
6 *De civitate Dei*. 19.17.  
7 *Ibid.*, 15.3.  
8 *Ibid.*, 15.2, 14.28.  
9 Aquinas, *Summa Theologia* (ST) II–II q. 29. a.1.  
10 ST II–II q. 57, a.1.  
11 ST II–II q. 58. a. 6 and 7.  
12 ST II–II q. 58. a. 6.  
13 ST I–II. q. 90. a.4.  
14 ST I–II q. 95 a.1; *Summa Contra Gentiles* III. 121.  
15 ST II–II q. 104. a. 5.  
16 ST I–II. q. 90. a.3; q. 107 a. 2.  
17 Weithman, 371–72.

- 18 As Josef Lössl notes in this volume, Augustine aims “beyond any political notion of the common good . . . and explore[s] the anthropological, theological, and in particular eschatological dimensions of the concept.”
- 19 See Canning for excellent discussion of this point.
- 20 *De Libero Arbitrio* 2.14.37.
- 21 *Regula* 5:2.
- 22 *Confessiones* 12.25.34.
- 23 Canning, at 221 citing *De civitate Dei* 19.17.
- 24 Kempshall, 73.
- 25 *Ibid.*
- 26 *Summa Contra Gentiles* III. 117 and ST I–II q. 109. a.3.
- 27 Kempshall, 102.
- 28 ST II–II q. 58. a.15.
- 29 *Ibid.*
- 30 ST II–II q. 58. a.6.
- 31 *Ibid.*
- 32 ST I–II q. 90. a. 4.
- 33 *De Regno*, I. I.
- 34 ST I–II q. 91. a. 2.
- 35 *Summa Contra Gentiles* III. 2.
- 36 ST I–II I, q. 1, a. 1, 2.
- 37 ST I–II q. 90 a. 3.
- 38 ST I–II q. 72, a. 4; q. 93, a. 1; q. 95, a. 4; q. 96, a. 4; q. 97, a. 4; II–II, q. 109, a. 3; q. 114, a. 2; q. 129, a. 6.
- 39 It is instructive in this context that Aquinas derives the precepts of the “law of nations” (*ius gentium*) from the natural law by reference to justice as a form of good order: just relations (e.g., in buying and selling) are necessary in any political community, if humans are to live together in relative harmony. ST I–I q. 95 a. 4.
- 40 ST I–II q. 17, a. 4.
- 41 Kempshall, 100. This understanding can of course extend to smaller associations (such as the family and church), each with its own common goods worthy of promotion through law. Conversely, the breakdown of such institutions tends to have flow-on effects for the sense of a shared common good beyond the provision of public goods in a narrower material sense.
- 42 *Sententia Ethic*, lib. 1 l. 1 n. 5.
- 43 *Ibid.*
- 44 Tuck, 55.
- 45 *Ethica*, I.4.16 and V.3.9.
- 46 *De Legibus*, III, III, VIII.
- 47 Habermas, 84, 95.
- 48 Murphy, “Common Good,” 134–35.
- 49 *Ibid.*, 135.
- 50 *Ibid.*
- 51 Murphy, *Natural Law*, 114.
- 52 See Keys, 41–48.
- 53 Finnis, “The Authority of Law,” 86–87.
- 54 *Ibid.*, 87–89.
- 55 Murphy, “Common Good,” 136.
- 56 *Ibid.*, 137.
- 57 *Ibid.*
- 58 *Ibid.*, 136.
- 59 *Ibid.*, 148.

- 60 Finnis, *Natural Law and Natural Rights*, 85–90. See also Finnis, *Aquinas*, 82, 97–98.
- 61 Finnis, “The Authority of Law,” 133–37.
- 62 Finnis, “Reflections and Responses,” 520.
- 63 Ibid.
- 64 Finnis, *Natural Law and Natural Rights*, 153.
- 65 Ibid., 138. Italics mine.
- 66 Murphy, “The Common Good,” 142.
- 67 Ibid., 157.
- 68 Ibid.
- 69 Ibid.
- 70 Ibid., 31.
- 71 *Ethica*, I.3.14.
- 72 Kempshall, 31.
- 73 Ibid., 32.
- 74 Ibid., 38–40.
- 75 *Ethicorum Libri Decem*, 1.6.3.
- 76 *Sententia Ethic.*, lib. 1 l. 1 n. 5.
- 77 Ibid.
- 78 Kempshall, 100.
- 79 Finnis, “Authority of Law,” 116.
- 80 See Pakaluk. Cf. Aristotle’s claim that it is the virtuous person who acts most courageously and nobly in dangerous situations because they have more to lose (*NE* 1117b10–15).
- 81 *Super Ethica*, III.8.
- 82 Finnis, *Natural Law and Natural Rights*, 155.
- 1 An earlier version of this chapter was presented at a seminar organized by the Programme for the Foundations of Law and Constitutional Government, Oxford University, July 24, 2019. Thanks are due to Nick Barber, Anthony Cassimatis, Rafael Domingo, Richard Ekins, Luke Glanville, Joel Harrison, Simon Kennedy, Pablo Ortuzar, Ewan Smith, John Witte, Jr., and Paul Yowell for their comments.
- 2 Walker, 18–24.
- 3 Domingo, “A Global Law for a Global Community,” 1.
- 4 Domingo, *The New Global Law*, 92, 145–46, 166.
- 5 Ibid., xvi.
- 6 Ibid., 71–72.
- 7 Jens Bartelson observes that while sovereignty is “essentially contested as to its meaning,” it is “essentially uncontested” as to its foundational role in modern political discourse: Bartelson, 14.
- 8 Charter of the United Nations (1945), Preamble, Arts. 2.1, 2.4, 2.7; see also Art. 78.
- 9 Sinclair, 10–21.
- 10 Vienna Convention on the Law of Treaties (signed 1969, came into force 1980), Preamble, Arts. 1(a), 11, 24.2, 34. See also Henkin, 11.
- 11 Vienna Convention, Arts. 26, 52.
- 12 Subject to any reservations it may have made, as in turn qualified by any objections by other state parties pursuant to the treaty: Vienna Convention, Arts. 19–23; see Cassese, 173–75.
- 13 Vienna Convention, Arts. 49–54. Withdrawal from or denunciation of a treaty is also possible where it is established that the parties intended to admit the possibility of doing so or the right to do so can be implied from the nature of the treaty: Vienna Convention Art. 56.1.
- 14 Vienna Convention, Arts. 39–41.

- 15 Charter of the United Nations (1945), Preamble, Arts. 1.2, 73. See, likewise, Art. 76 in relation to trust territories.
- 16 See International Covenant on Civil and Political Rights (1966), Art. 1.1; International Covenant on Economic, Social and Cultural Rights (1966), Art. 1.1.
- 17 Glanville, 85–86.
- 18 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, UNGA Resolution 2131 [XX] (1965), cited in *ibid.*, 86.
- 19 Cassese, 48. He adds that the principle is the only one on which there is “unqualified agreement” among states “regardless of ideologies, political leanings, and circumstances.”
- 20 Condorelli and Cassese, 14–18.
- 21 Oppenheim, Vol. 1, 206–7 (§ 123).
- 22 *Ibid.*, 207–8 (§ 124).
- 23 As Martin Wight observed, “It would be impossible to have a society of sovereign states unless each state, while claiming sovereignty for itself, recognized that every other state had the right to claim and enjoy its own sovereignty as well”: Wight, 135.
- 24 Oppenheim, Vol. 1, 208–15, 221–29 (§§ 125–29, 134–37). On the duty to protect, see Glanville, *Sovereignty and the Responsibility to Protect*.
- 25 Bodin, *On Sovereignty*, I.8, p 1. On Bodin’s significance, see Skinner, 286–301; Hinsley, 119–25; Bartelson, 141–43.
- 26 Bodin, I.8, p 1. Bodin’s Latin translation rendered the sentence thus: “*maiestas est summa in cives legibusque solute potestas*.” See Domingo, *New Global Law*, 66, and Domingo, “Roman Law and Global Constitutionalism.”
- 27 Bodin, I.8, pp. 3, 4, 7–8, 11, 13, 19; see also pp. 23, 32, 39; I.10, p 51.
- 28 *Ibid.*, I.8, p. 34; I.10, pp. 46, 50.
- 29 Maritain, “The Concept of Sovereignty,” 343, 344, 346.
- 30 Hobbes, *Leviathan*, II.17, p. 132 [87]. On Hobbes’s significance, see Hinsley, 141–57.
- 31 Bodin, II.17, p. 132 [87]–[88].
- 32 Hinsley, 143–44.
- 33 Negretto, 179.
- 34 Hobbes, *Leviathan*, I.15, p. 110 [182]; I.16, p. 123 [80]; II.20, p. 160 [170]; II.26, p. 203 [137], p. 208 [140]; II.31, p. 276 [187]. See also Hobbes, *A Dialogue*, Vol. 11, p. 31.
- 35 Hobbes, *Leviathan*, II.9, 250 [169]; II.18, pp. 133–39 [88]–[92], p. 139 [92]–[93]; II.22, p. 172 [115], pp. 175–77 [118], p. 181 [121]–[122]; II.26, p. 204 [137]–[138]; II.29, pp. 253–54 [171]–[172], p. 251 [170], pp. 256–57 [174]; II.30, p. 268 [71].
- 36 Bodin drew a similar set of conclusions. See Bodin, I.10, pp. 48–49, 52.
- 37 *Ibid.* II.29, pp. 253–54; III.42, pp. 384–85, 421–24, 427–28; III.35, pp. 314–15; III.38, pp. 345–60; III.41, pp. 375–76; IV.44, pp. 486–90, 474–75; IV.46, pp. 526–27. See also Wright, 20, and Wright’s translation of Hobbes’s “Appendix” to *Leviathan* (1688), §§ 193–94, 199–200, pp. 160, 162.
- 38 Negretto, 186.
- 39 Hobbes, *Leviathan*, I.12, p. 96 [61]; II.30, p. 273 [185].
- 40 *Ibid.*, I.13, p. 98 [63].
- 41 Malcolm, ch. 13, “Hobbes’s Theory of International Relations.”
- 42 Bodin, I.8 pp. 13–14, 45.
- 43 Jens Bartelson has written of an “ideological deification of sovereign authority”: Bartelson, 153.
- 44 Augustine, *Enchiridion*, XXIV.96.

- 45 Courtenay, 243, 244–47. See also Boh, 185.
- 46 Ibid., 252.
- 47 Milbank, 194–95, citing Hostiensis, *Summa Aurea* (1250–53) and discussing Kantorowicz, “The Sovereignty of the Artist.”
- 48 Oakley, *The Watershed of Modern Politics*, ch. 5.
- 49 Oakley, “Jacobean Political Theology,” 329–30, citing Bodin, *Six Books on the Commonwealth*, I.8, p. 13.
- 50 Foisneau, 271.
- 51 Courtenay, 254.
- 52 Oakley, “Jacobean Political Theology,” 332–33.
- 53 Courtenay, 253. On the “operationalisation” of the *potentia absoluta*, see also Oakley, “The Absolute and Ordained Power of God in Sixteenth- and Seventeenth-Century Theology,” 437; Oakley, “The Absolute and Ordained Power of God and King in the Sixteenth and Seventeenth Centuries,” 669.
- 54 Justinian, *Digest*, I.3.3; I.4.1.
- 55 Pennington, “Law, Legislative Authority, and Theories of Government, 1150–1300,” 424, 432.
- 56 Ibid., 432.
- 57 Kantorowicz, *The King’s Two Bodies*, 463.
- 58 Elshtain, 69–70.
- 59 Eusebius, 58.
- 60 Augustine, *City of God*, XIX.7; XIX.13, 20.
- 61 Cochrane, vi, 509–10, citing Augustine, *City of God*, XIII.5.
- 62 O’Donovan, *The Desire of the Nations*, 146–51.
- 63 Berman, 10.
- 64 Milbank, 268, 276.
- 65 Hueglin, 169.
- 66 For more detail, see Chapter 7 in this volume. Interest in Althusius’s work was revived by Gierke in his *Johannes Althusius* and was a seminal influence on the pluralist thought of Frederick Maitland, John Neville Figgis, Abraham Kuyper, and Herman Dooyeweerd. See Runciman; and Van der Vyver.
- 67 Althusius, *Politica: An Abridged Translation*, IX.21.
- 68 Ibid., IX.21 (citing Romans 13:1 and Augustine, *City of God*, IV.4); X.1.
- 69 Ibid., IX.21.
- 70 Ibid., XIX.9–11.
- 71 *Digest*, I.4.1.
- 72 Althusius, *Politica*, XIX.35 (again citing Augustine, *City of God*, IV.4); XVIII.106.
- 73 Ibid., V.8; VII.1; IX.1, 3, 5; XIX.6–7, 49.
- 74 Ibid., IX.15, 18, 19, 25.
- 75 Althusius, “Preface to the First Edition (1603),” in *ibid.*, 7; see also *ibid.*, XXXVII.1.
- 76 Ibid., IX.22, 27 (citing Augustine, *City of God*, XIX.15).
- 77 Althusius, *Politica*, XVIII.48, 63, 88, 90; XX.20; XXXVIII.28–29, 50, 61, 76, 112.
- 78 Runciman, 45.
- 79 For an array of examples, see *Oxford English Dictionary*, 2nd ed, *sv* “sovereign,” “sovereignty.”
- 80 Elshtain, *Sovereignty*, 43.
- 81 Kuyper, 79: “the Sovereignty of the Triune God over the whole cosmos, in all its spheres and kingdoms . . . radiates in mankind in a threefold deduced supremacy, viz., 1. The Sovereignty in the *State*; 2. The Sovereignty in *Society*; and 3. The Sovereignty in the *Church*.”
- 82 Hegel, §§ 330, 331.

- 83 O'Donovan, "Government as Judgment."
- 84 Schmitt, 37. On Schmitt's motives and presuppositions, see Howse, 212.
- 85 Domingo, *New Global Law*, 49.
- 86 *Ibid.*, 71, 103, 117.
- 87 Wight, 43.
- 88 *Ibid.*, 276.
- 89 For details, see Aroney, "Formation," 277; and Aroney, "Constituent Power," 5.
- 90 Cavanaugh, 243, 260.
- 91 Moltmann, 19.
- 92 O'Donovan, *Ways of Judgment*, 214.
- 1 Monti, 45. See also Metz, "Solidarität und Geschichte. Institution und sozialer Begriff der Solidarität in Westeuropa im 19. Jahrhundert," 172–94.
- 2 Zimmermann, 53, footnote 136.
- 3 Stjernø, 27–28.
- 4 Wilkinson and Kleinan, 190–94.
- 5 See Augier, 4. For an extensive study of the development of solidarity in Catholic Social Teaching, see Montii.
- 6 See Oseewaard.
- 7 "J'ai voulu remplacer la charité du christianisme par la solidarité humaine." Leroux, *La Grève*, vol. 1, ch. 42, p. 254. For a comprehensive account of his approach to solidarity and Christianity, see Leroux, *De L'Humanité*. See also Metz, 172–94.
- 8 Leroux starts his *De L'Humanité* with a quote from Romans 12:5. Auguste Comte used the organic metaphor to approach social reality, as did Alfred Fouillée and Léon Bourgeois. However, it was also a highly controversial idea within social theory: See Tarde, 78–82. John Paul II saw in this doctrine the fundamental anthropological error of socialism (*Centessimus Annus*, n. 13).
- 9 See Monti, 73.
- 10 See Sennett, 41.
- 11 See Blais; also Augier.
- 12 See Bouglé.
- 13 In the UK, Toynbee Hall opened in 1884 with Christian inspiration, while Chicago's Hull House opened in 1889 in the United States. Its founder, Jane Addams, had visited Toynbee Hall; Hull House, however, was not religiously based. Dorothy Day, herself a Catholic convert, continued this idea in the 1930s with her Hospitality Houses.
- 14 Such as the Tuskegee Institute for the education of black people advanced by Booker T. Washington or the progress of community work. See Sennett, 44–45, 55–62.
- 15 See Parsons, *Structure of Social Action*, 688–91.
- 16 See Stjernø, 38–39.
- 17 Parsons, "Concept of Influence," 224–54, 240.
- 18 See his notion of "primary groups." Cooley, 179–84.
- 19 Parsons, *Structure of Social Action*, 713.
- 20 Delbos, 7–12, 637.
- 21 Blondel, 210.
- 22 *Ibid.*, 207.
- 23 *Ibid.*, 217.
- 24 See Russo.
- 25 Sorokin, *Social and Cultural Mobility*, 538–40.
- 26 See Sorokin, *Ways and Power of Love*, 8.
- 27 See Rodrigo del Blanco.

- 28 According to the direction, it can be direct or indirect solidarity (which resembles Cooley's distinction between primary and secondary groups); according to intensity, it can be minimal (courtesy, benevolent neutrality, amiability) or maximal (passion, friendship, compassion, devotion); according to extension it can be minimal (for instance, that between a tourist and a shopper, a client, etc.) or universal (which encompasses everything, as in a family); according to the subjects it can be interpersonal or intergroup; according to the motivation, it can be fundamental, intentional, normative, mechanic, organic; according to the meanings and values, it can be total or special. All these forms can be organized around three types: family-type solidarity, compulsive-type solidarity, and mixed-type solidarity. See Rodrigo del Blanco, 86–106.
- 29 See Baggio.
- 30 Francis, Pope, 482 Among secular authors, it is perhaps John Rawls who most closely argued along these lines, highlighting the limited role fraternity has played in the political arena so far, and trying to make room for it in his theory of justice through his "Difference Principle." See Rawls, 90.
- 1 Isensee, 333.
- 2 Baumgartner, 13.
- 3 Koslowski, 39.
- 4 Wedderburn, 14.
- 5 Nell-Breuning, 79.
- 6 Coleman, 183.
- 7 Machiavelli, 43.
- 8 Montesquieu, 237.
- 9 Lincoln, vol. 2, 220.
- 10 Ketteler, *Freiheit, Autorität und Kirche*, 282–83.
- 11 Ketteler, "Offenes Schreiben Kettelers als Deputierten der deutschen Nationalversammlung an seine Wähler, 17. September 1848," in *Wilhelm Emmanuel von Kettelers Schriften*, 403.
- 12 *Die Katholiken im Deutschen Reich. Entwurf zu einem politischen Programm* in, Ketteler, *Sämtliche Werke*, section 1, vol. 4, 210.
- 13 Ketteler, *Sämtliche Werke*, sect. 1, vol. 5, 122.
- 14 Buss, 15.
- 15 Isensee, 345.
- 16 Nell-Breuning, 114 (emphasis in original).
- 17 Isensee, 339.
- 18 Tocqueville, 509–10.
- 19 *Ibid.*, 506–7.
- 20 *Ibid.*, 510.
- 21 *Ibid.*, 691.
- 22 *Ibid.*, 694.
- 23 *Ibid.*, 522–23.
- 24 *Ibid.*, 517.
- 25 Mounier, 19.
- 26 Isensee, 81.
- 27 Tuebner.
- 28 Kittner, 929.
- 29 Furet, 107.
- 30 Ketteler, *Sämtliche Werke*, sect. 1, vol. 1, 227.
- 31 Hayward, vi–vii.
- 32 Tischner, 7.
- 33 In speaking in this essay of "the proper" or "the responsible unfolding of the personality," I intend by those qualifiers to distinguish the self-transcendence

such a process entails from the narcissistic and ungrounded sense of unfolding or development of the personality spoken of by Wilhelm von Humboldt in his work *Ideen zu einem Versuch, die Gänzen der Wirksamkeit des Staats zu bestimmen*, especially part 2 of that essay, which finds substantial echo in John Stuart Mill's *On Liberty*. Among other pathologies, these latter approaches lead to an extraordinary individualism and estrangement from others that not only denies the sort of transcendence that grounds friendship and community but also edges into self-divination. On this theme, see Voegelin, 1.

34 Gilson, 4–5.

1 See John Paul II.

2 See Zuber's *L'origine religieuse des droits de l'homme*, which is now the best general work on the topic. For a counterpoint to the cautious skepticism of my treatment, compare Witte and Alexander, *Christianity and Human Rights*.

3 Henkin is accessible and authoritative.

4 See Schwarzschild.

5 See Gregory.

6 See Villey.

7 On this topic, see the relevant chapters in Halme-Tuomisaari and Slotte.

8 See Witte, *The Reformation of Rights*.

9 Walzer, 300.

10 Collinson, 46.

11 See Arendt.

12 Edelstein, "Christian Human Rights in the French Revolution"; *On the Spirit of Rights*, 196–204.

13 See Howard.

14 On comparative Christian frameworks for expansion over "sacred space," see Elliott, esp. ch. 6.

15 See Lake and Reynolds.

16 Chappel, "Explaining the Catholic Turn to Rights in the 1930s."

17 See Bouwman; see also Lindqvist.

18 See Moyn, "Personalism, Community, and the Origins of Human Rights."

19 Bainton, 13–14; Schultz. Compare also Wilken.

20 See Lecler.

21 Ritter, 469; Moyn, "The First Historian of Human Rights."

22 Engler; Moyn, *The Last Utopia*, ch. 4.

23 Macintyre, 69.

24 Walker, 27, 71; Domingo, 143 (footnote omitted). But compare Soirila.

25 See Berman.

1 See Turley.

2 See, generally, Stiglitz.

3 See, for example, Decock; Colish.

4 Pufendorf; Grotius.

5 Luther.

6 See Stark.

7 Mokyr, 229, 314.

8 See Becker, Pfaff, and Rubin.

9 See Gregg.

10 See Chamberlain.

11 See Temple.

12 Janz, 63.

13 Barro and McCleary.

14 See Benedict XVI, *Caritas in veritate* (emphasis added).

15 World Council of Churches.

- 16 “Church of England urges five days of prayer for the poor as Brexit looms,” [www.theguardian.com/uk-news/2019/feb/23/justin-welby-says-poorest-face-biggest-risks-posed-by-brexit-uncertainty](http://www.theguardian.com/uk-news/2019/feb/23/justin-welby-says-poorest-face-biggest-risks-posed-by-brexit-uncertainty).
- 17 Marshall, 397.
- 18 See Williams.
- 19 Ibid.
- 20 See Woodberry, who argues that conversionary Protestants “were a crucial catalyst initiating the development and spread of religious liberty, mass education, mass printing, newspapers, voluntary organizations, and colonial reforms, thereby creating the conditions that made stable democracy more likely.”
- 21 See Jedwab, Meier, and Moradi. The authors collect much of the research on the economic effects of missionary expansion but also argue that some of the ostensible effects may be endogenous—missionaries went to locations that were already the best suited for economic development.
- 22 <https://factsand Trends.net/2016/12/12/10-key-trends-in-global-christianity-for-2017/>.
- 23 See, for example, Freeman.
- 24 See Bush, Fountain, and Feener; see also Thaut.
- 25 Pew Forum.
- 26 Ibid.
- 27 Ibid.
- 28 See Wood and Heslam.
- 29 See Kurt, Inman, and Gino.
- 30 See Khanna.
- 31 See Afsharipour and Rana.
- 32 *Citizens United v. FEC*, 558 US 310 (2010).
- 33 *Burwell v. Hobby Lobby Stores, Inc.*, 573 US 682 (2014).
- 34 “Clarification on Wal-Mart’s Holiday Greeting,” [https://corporate.walmart.com/\\_news\\_/news-archive/2005/12/01/clarification-on-wal-marts-holiday-greeting](https://corporate.walmart.com/_news_/news-archive/2005/12/01/clarification-on-wal-marts-holiday-greeting).
- 35 See Harrison and Kjellberg.
  - 1 International Organization for Migration, 15. As a proportion of global population, international migration has remained relatively steady over the past thirty-five years, rising from 2.3 percent in 1970 to 3.3 percent in 2013. International Organization for Migration, 15. It is worth noting, however, that 1 percent of the world’s population of 7.7 billion is 77 million people—a small number in relative, but not absolute, terms.
  - 2 UNHCR, 1, 13.
  - 3 G.A. Res. 71/1, New York Declaration for Refugees and Migrants, paras. 7, 10–11 (October 3, 2016) (emphasis added).
  - 4 Domingo, xvi–xvii.
  - 5 “U.N. Commissioner Wants U.S. to Show Leadership on Refugee Crisis,” *NPR*, October 23, 2017, [www.npr.org/2017/10/23/559454562/u-n-commissioner-wants-u-s-to-show-leadership-on-refugee-crisis](http://www.npr.org/2017/10/23/559454562/u-n-commissioner-wants-u-s-to-show-leadership-on-refugee-crisis).
  - 6 Betts, 23.
  - 7 Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness (Aug. 30, 1961), 989 U.N.T.S. 175; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990), 2220 U.N.T.S. 3; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Nov. 15, 2000), 2237 U.N.T.S. 319. See footnote 9 for treaties regarding refugees.

- 8 See, for example, G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 13 (Dec. 10, 1948) (right of return to one's country of nationality; right to leave any country), art. 14 (right to seek asylum), art. 15 (limiting denationalization); International Covenant on Civil and Political Rights, art. 12 (right of return to one's country of nationality; right to leave any country), art. 13 (due process before expulsion from country of residence), art. 23 (right to family unity) (Dec. 16, 1966), 999 U.N.T.S. 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 (non-refoulement to a situation of torture) (Dec. 10, 1984), 1465 U.N.T.S. 85.
- 9 Convention Relating to the Status of Refugees (July 28, 1951), 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees (Jan. 31, 1967), 606 U.N.T.S. 267. Hereafter, I refer to the 1951 Convention and the 1967 Protocol. When referring to the 1951 Convention as modified by the 1967 Protocol, I use the term "Refugee Convention." As of writing, there are 147 state parties to the Refugee Convention. For a discussion of the substantive impact of the rights contained in the Refugee Convention, see Hathaway.
- 10 Einarsen, paras. 9–11, <http://opil.ouplaw.com.proxy.library.emory.edu/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512-chapter-2>. See also Goodwin-Gill and McAdam, 16 ("In treaties and arrangements concluded under the auspices of the League of Nations, a group or category approach was adopted. That someone was [a] outside their country of origin and [b] without the protection of the government of that State, were sufficient and necessary conditions."); Gattrell, ch. 2.
- 11 The Refugee Convention defines a refugee as:

any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

1951 Convention, art. 1(A)(2) (as modified by the 1967 Protocol art. 1(2)). The 1951 Convention did contain important geographic and temporal limitations related to the postwar context of the late 1940s and early 1950s. Article 1(A)(2) of the 1951 Convention limited the refugee definition to those persons impacted by events "occurring before 1 January 1951," and article 1(B)(1) permitted state parties to the 1951 Convention to declare that "events occurring before 1 January 1951" meant "events occurring in Europe before 1 January 1951." These temporal and geographic limitations were subsequently removed by article 1(2) of the 1967 Protocol, giving the refugee definition a global scope (both geographically and temporally). The expanded scope of the Refugee Convention reflects the movement toward a global law of migration discussed below.

- 12 Aleinikoff, 29 n36; Lauterpacht and Bethlehem, 149–63; Goodwin-Gill and McAdam, 345–54. For arguments that nonrefoulement is a *jus cogens* norm, see Costello and Foster; Allain.
- 13 For regional agreements, see, for example, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45; Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia, November 19–22, 1984. For international treaties, see, for

example, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990), 2220 U.N.T.S. 3.

14 See Schoenholtz.

15 See, for example, Allard, “Global and Local Challenges to Refugee Protection.”

16 The Global Compact for Safe, Orderly and Regular Migration was finalized in July 2018 and adopted at the International Conference on the Global Compact for Migration, December 10–11, 2018, in Marrakech, Morocco. In the end, 164 UN member states signed the compact in Marrakech. The Global Compact on Refugees (G.A. Res. 73/12 (Part II)) was adopted by the UN General Assembly on December 17, 2018, with 181 UN member states voting in favor of the resolution. Only the United States and Hungary voted against the compact on refugees, and a small number of countries abstained from the vote.

17 Hathaway, 596.

18 New York Declaration, para. 21; see also Global Compact on Migration, para. 15 (asserting “people-centered” and “national sovereignty” as foundations of the framework).

19 See Allard, “Reimagining Asylum”; Malkki, “Speechless Emissaries”; and Snyder.

20 Arendt, 182.

21 Simpson, 230, quoted in Gatrell, 53 (interpolation in Gatrell).

22 Douglas, 36; see also Bretherton, 137 (drawing the same analogy to Douglas).

23 Reed, 228, quoting Agamben, 3; see also Ngai.

24 Heyer, 109; see also Kerwin, 204.

25 Quoted in Kerwin, 204.

26 Cruz, 57.

27 Carroll, 5–6.

28 Francis, 9, <https://migrants-refugees.va/wp-content/uploads/2018/03/Legal-size-ENG-2nd-Edition-Towards-the-Global-Compacts-2018-EMAIL.pdf> (quoting Psalm 146:9).

29 See, for example, the stories of Jesus’s interactions with the Samaritan woman (John 4:1–26), the centurion (Matthew 8:5–13), and tax collectors (Luke 19:1–10, Mark 2:13–17).

30 Rajendra, 142–44.

31 United States Conference of Catholic Bishops, “Welcoming the Stranger among Us: Unity in Diversity” (United States Catholic Conference, 2000), <http://uscbb.org/issues-and-action/cultural-diversity/pastoral-care-of-migrants-refugees-and-travelers/resources/welcoming-the-stranger-among-us-unity-in-diversity.cfm> (emphasis added).

32 Bretherton, 131. For Bretherton’s genealogy of Christian cosmopolitanism, see Bretherton, 131–33.

33 Ibid., 132–33.

34 Reed, 242.

35 United Methodist Church, “Welcoming the Migrant to the U.S.,” in *The Book of Resolutions of the United Methodist Church* (Nashville, TN: The United Methodist Publishing House, 2016), [www.umc.org/what-we-believe/welcoming-the-migrant-to-the-us](http://www.umc.org/what-we-believe/welcoming-the-migrant-to-the-us).

36 For other biblical laws relating to the foreigner, see Carroll, 11–12.

37 Bretherton, 135.

38 Heyer, 115, quoting Steck, 164.

39 Francis, “Homily at ‘Arena’ Sports Camp.”

1 IPCC, “Summary for Policymakers,” in Stocker, et al., eds., 17.

2 Francis, *Laudato si’*, par. 17. See the essays in Pasquale.

3 Jenkins, 3. Also see Kotzé.

4 Peters, 10.

- 5 Ibid., 16.
- 6 Remele, 48; Schroer, 9–10.
- 7 White, 1205.
- 8 *Laudato si'*, par. 66. According to Pope Francis, Genesis and other biblical phrases cited by Lynn White and others against Christianity should be put in their context and read in light of the progressive evolution of Christianity (par. 67).
- 9 *Laudato si'*, par. 67–69. See for specifically animal-friendly reinterpretations of the notion of “dominion” in Genesis: Linzey, 14–19; Rosenberger, 117.
- 10 This structure repeats in chapter 2 of the encyclical, which begins with the call for dialogue between the religious and secular concerns for nature, asserts the Catholic posture of dialogue and search for synthesis between faith and reason, then proceeds to adumbrate the Catholic contribution with no reference to science or any secular position.
- 11 For Judaism and early Christianity, see Grant.
- 12 In Roman law: *Digest* I.i.3, XLVIII.vi.11. *Code* IX.xvi.2. In canon law: *Decretals* V.xii.18, *Constitutions of Clement* V.iv. In natural and international law: Hugo Grotius, *De iure praedae*, VII.104. *De iure belli ac pacis*, I.II.i.180–83.
- 13 See the references in Depew, at 402–3, and in Evrigenis, 99–101.
- 14 Notable moral discussions of this animal emblem of sociability, with direct legal implications for regulating commonwealths, appear in storks’ piety toward parents in James I, “The Trew Law of Free Monarchies” (1598) in *Political Writings*, 62–84, at 77; Hugo Grotius, *De iure belli ac pacis* (Paris, 1625), Prolegomena; and *The Pennsylvania, Delaware, Maryland, and Virginia almanack and ephemeris, for the year of our Lord, 1783* (Baltimore, 1782), which intriguingly cites Samuel Bochart’s *Hierozoicon* (London, 1663). A related sentimental-political commonplace held that storks live only in republics—e.g., Harrington, 8–9.
- 15 Comparably, Cicero argued that humans want the same things as animals: *pax, libertas, otium*. Cicero, *De leg. agr.* II.iv.9.
- 16 Partial survey of this literature in Grotius, *De iure belli ac pacis*, I.I.xi.157.
- 17 Grotius, *De iure belli ac pacis*, II.V.xii.530–31, II.VII.iv.585–86, II.XX.v.959.
- 18 E.g., Grotius, *De iure belli ac pacis*, Prolegomena, 79–85. For early modern strategies to draw this distinction, and render animals objects but not subjects of law and dominion, see Brett, *Changes of State* and Brett, “Rights of and over Animals.” Later cases in Rahe.
- 19 Richard Popkin, Richard Tuck, and others convincingly show that neoskepticism was one of the key intellectual movements that prompted a shift of emphasis from divine law to natural law and natural science. To give one influential example, Montaigne revived and reframed several doctrines of Sextus Empiricus, the best-known ancient Skeptic. For instance, due to human epistemic arrogance, animals understand nature and each other better than humanity does (Montaigne, 16–17, 31–33, 50–51, 54–55). Gregarious animals have better-organized societies and politics than humans (Ibid., 19). Some animal species are religious (Ibid., 33). Animals can excel humans in household management and even war (Ibid., 38–41). Some animals have a superior understanding of mathematics (Ibid., 44–45). Their moral qualities generally surpass ours, whether one examines faithfulness, gratitude, trustworthiness in alliance, greatness of spirit, self-criticism, or clemency (Ibid., 41f.). Montaigne also follows Sextus in comparing the virtues of animals over humans with the virtues of ordinary people over scholars and philosophers (Ibid., 35, 52–53, 59, 64, 66). Also see Seneca, *De ira*, I.xvi.
- 20 *Digest* IX.i.1, Grotius, *De iure belli ac pacis*, I.II.iii.188.
- 21 Philo, *On the Decalogue*, commentary on the Fifth Commandment.
- 22 See Evans; also Fischer; also Girgen.

- 23 Seneca, *De clementia* 1.18, cited in Grotius, *De iure belli ac pacis*, III.X.1414–16, III.XIV.1483.
- 24 See Schwartz. Arnaoutoglou, 27–28. Aquinas, *Summa Contra Gentiles*, III.112.13, p. 119. Compare John Locke, *Second Treatise*, on the natural prohibition against waste.
- 25 See Vossius.
- 26 Nussbaum, 1514–16.
- 27 See Allen.
- 28 Roman law: *Digest* XLI.i.5. Canon law: *Decretum* I.i.7. The legal title for wild animals that could never become property is *ferae naturae*.
- 29 Grotius, *Mare liberum*, 23, 111, passim. Somos, *American States of Nature*, 316–17.
- 30 E.g., Grotius, *De veritate*, noting that God gave Creation to humankind not only according to Genesis but also according to Hesiod, Ovid, and other pagans. Linzey, “Is Christianity Irredeemably Speciesist?” xi–xx.
- 31 Augustine, *City of God*, XII.23.
- 32 *Ibid.*, I.20.
- 33 Ephrem, cited in McLaughlin, at 138n3.
- 34 Grotius, *Meletius*, 114.
- 35 *Ibid.*, 117.
- 36 *Ibid.*
- 37 For the cardinal Roman law passages see Grotius, *Mare liberum*, 24–31.
- 38 See Bodansky. See also Shaffer.
- 39 Feichtner and Ranganathan, 546.
- 40 See Peñalver; see also Kaul.
- 41 See Winter and Shimo.
- 42 Schrijver, *passim*. See also Nolte, “The International Law Commission and Community Interests.” Nolte also points out that a “community interest does not fall from the sky” but “needs to be socially established (constructed, recognized)” even in the case of scientifically provable facts, such as environmental harm. Our point is that the electoral tactics mentioned above are relevant methods for constructing them. The renewed appreciation that sovereignty encompasses responsibility is the core idea of the “responsibility to protect” (Resolution adopted by the General Assembly, World Summit Outcome, UN-Doc. A/RES/60/1 of October 24, 2005, para. 138).
- 43 Mickelson, charting the emergence of references to the interests of future generations in CHM regimes.
- 44 ILC Report 2015 (n 10), 22–23 at para. 53, cited in Nolte, “International Law Commission.”
- 45 S Murase, Second report on the protection of the atmosphere (March 2, 2015) UN-Doc.A/CN.4/681, 18–19 at par. 29. P.H. Sand/J.B. Wiener, “Towards a New International Law of the Atmosphere?” (2016) 7 *GoJIL* 195, 216. Both cited in Nolte, “The International Law Commission.”
- 46 Statute of the International Law Commission, Art. 1(1), Nov. 21, 1947.
- 47 Kosmus, Renner, and Ullrich, *Integrating Ecosystem Services into Development Planning: A Stepwise Approach for Practitioners Based on the TEEB Approach* (GIZ, 2012). Also see [www.bbc.com/news/world-asia-india-46436829](http://www.bbc.com/news/world-asia-india-46436829).
- 48 McDuff, 105.
- 49 *Laudato si'*, par. 20, 25, 45, 42–48, passim.
- 50 *Ibid.*, par. 30.
- 51 *Ibid.*, par. 51–53.
- 52 *Ibid.*, par. 15.
- 53 See Lin. Lin’s article shows targeted lobbying, pressure on US legislators, voter mobilization, and other direct legal effects of *Laudato si'*.

- 54 Mary Evelyn Tucker and John Grim, “Overview of World Religions and Ecology” (2009), The Forum on Religion and Ecology at Yale, <http://fore.yale.edu/religion/>.
- 55 See Catechism of the Catholic Church, 2417. Stewardship in environmental theology takes Paul’s use of *oikonomia* for its founding concept. Jenkins, *Ecologies of Grace*, 81.
- 56 Passmore, 29.
- 57 Jenkins, *Ecologies of Grace*, 84.
- 58 *Ibid.*, 90.
- 59 Scully, 117, 131.
- 60 Rosenberger.
- 61 Jenkins, *Ecologies of Grace*, 78–81, n. 22.
- 62 McDuff, 113–14.
- 63 Heltzel, cited in the excellent article by Jochemsen.
- 64 *Laudato si’*, par. 53.
- 65 *Ibid.*, par. 43.
- 66 Garner, at 112.
- 67 *Ibid.*, 120.
- 68 *Ibid.*, 168.
- 69 *Ibid.*, 129.
- 70 McLaughlin, 127 on stewardship and responsibility in Irenaeus.
- 71 Jenkins, ch. 1–2.
- 72 McLaughlin, 129–35.
- 73 See, e.g., *Laudato si’*, par. 70.
- 74 Catechism of the Catholic Church, 2416. This is the key message of Saint Francis’s Canticle of the Sun. See Moloney.
- 75 *Laudato si’*, par. 33.
- 76 Electoral prioritization: see Parry. Via civil disobedience and unlawful action: see Cooke.
- 77 Kymlicka On problems of reframing global commons as public good via transboundary harm, *erga omnes* obligations, or multilateral environmental agreements: Brunnée.
- 78 Jenkins, *Ecologies of Grace*, 9, n. 15 surveying part of this literature. Phrase from 12.
- 79 E.g., George of Trebizond, Preface to his 1452 ed. of Plato’s *Laws*. Cunaeus. A relevant treatment is Porras, 641–60. “The providentialist doctrine of commerce, adopted by the early authors of international law, remains embedded in the structure of international law and cannot easily be dislodged. Until this doctrine is dislodged, however, international law will continue to be hobbled in its ability to address the urgent task of protecting the natural environment.” Although in this contribution Porras does not discuss the Christian sources and beliefs of “early authors of international law,” she notes in passing that their commodification of nature “complemented the Judeo-Christian belief that God had given dominion over the created Earth to human beings”: 660.
- 80 See Brosnan; see also Purdy. Purdy’s account runs from James Kent, *Commentaries on American Law*, vol. 3 (1828), through the Romanticism of Transcendentalists such as Thoreau and Emerson to the still-active Sierra Club.
- 81 Purdy, 218.
- 82 See Broder; see also Gore.
- 83 Grotius, *Truth of Christian Religion*, I.iii.33, I.vii.36–37.
- 84 Nagle.
- 85 Nagle, 337, endorsing this phrase by Kari Konkola.
- 86 *Laudato si’*, par. 40–42.

- 87 Ibid., e.g., par. 56–61.
- 88 Ibid., par. 59.
- 89 See Braithwaite.
- 90 See Northcott.
- 91 Purdy, 173, *passim*.
- 92 Inglehart and Baker. See also <http://www.worldvaluessurvey.org/wvs.jsp>.
- 93 None of these categories is monolithic or constant. Laurel Kearns offers yet another taxonomy and genealogy of Christian environmentalism. Michael Northcott, *Christianity and Environmental Ethics*: environmental theologies can be anthropocentric, theocentric, or ecocentric. Jenkins 15n35. Laurel Kearns from sociological observation of US groups: ecojustice, Christian stewardship, and creation spirituality as 3 models. Jenkins 18n58.
- 94 Warde.
- 95 A point well made in McLaughlin.
- 96 Austria (1988), Germany (1990), Azerbaijan (1999), Moldova (2002), Switzerland (2002), Liechtenstein (2003), the Netherlands (2015).
- 97 The European Union (2008); France (2015); Portugal and Colombia (2016).
- 98 Peters, “Introduction to the Symposium on Global Animal Law,” containing, inter alia, overviews of recent European trends of dereification, and US and Latin American endowments of animals with habeas corpus, and human right analogues.
- 99 Weiss, on an important use of the secular moral norm of equity to prompt international environmental law to evolve. The opportunity for legal progress through moral contest is laid out in directly relevant general terms, without discussing religion, Blattner, 274–90.
- 100 E.g., Jenkins, Tucker, and Grim.
- 101 *Laudato si’*, par. 122–23.
- 1 The standard account of international law in antiquity is Bederman. See also Neff, *Justice Among Nations*; Grewe; Nussbaum, 35.
  - 2 United Nations Charter Article 1. Article 2(4) mandates that “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” Among the important books on this law, see Gray.
  - 3 While the subject of this volume is “global law,” I do not understand “global law” to be distinct from international law. International law is the system of rules, principles, and processes applicable to activity at the inter-state level. It includes principles and procedures for making, applying, and enforcing the law. Accordingly, this chapter focuses on the relationship between Christian reflection on law and force and the evolution of the international legal prohibition on the use of force. But see Domingo, *The New Global Law*.
  - 4 Brownlie, 5.
  - 5 Grotius, “Prolegomena.”
  - 6 Brownlie, 5.
  - 7 *Tertullian, On Idolatry*, ch. 19; “Concerning Military Service.”
  - 8 Neff, 3–5, 10–11; Grewe, 108–11; Nussbaum, 35.
  - 9 Grewe, 108. See also “The Donatists,” *New World Encyclopedia*, [www.newworldencyclopedia.org/entry/Donatist](http://www.newworldencyclopedia.org/entry/Donatist).
  - 10 See, e.g., “Augustine Letter to Boniface,” reprinted in Friedman, 7. See also von Elbe. Neff recounts similar but earlier ideas found in Confucianism: “War was seen as a last resort, to counteract antisocial conduct and reinforce the norms which integrated the society into a harmonious whole”: Neff, 10.
  - 11 Augustine, *De Civitate Dei*, bk. 19, ch. 13. See also Thomas Aquinas, *Summa Theologica*, II-II, 29, i, ad 1.

- 12 Brownlie, 5–6.
- 13 See Aquinas, *Summa Theologica*, I–II, 96, iii. In *De Regno* and the Commentary on St. Matthew, for example, he writes explicitly of the province or kingdom as a cooperative union of city states in pursuit of peace.
- 14 Grewe, 109. See also von Elbe, 669, and Brownlie, 6.
- 15 O’Connell and Day, 562–80; Porter, 48–49.
- 16 Kaveny, 29, citing Aquinas, *Summa Theologica*, I–II, 91, iv.
- 17 Neff, 74, 78. See also Adeno.
- 18 Grotius, *De Jure Belli ac Pacis*, “Prolegomena.”
- 19 Neff, 141; Lauterpacht, 31, citing Grotius, *De Jure Belli ac Pacis*, “Prolegomena,” 23.
- 20 Samuel Pufendorf, *The Law of Nature and of Nations* (1672), quoted in Porter, 27–28. See also d’Aspremont and Kammerhofer.
- 21 Vattel, 302.
- 22 Von Elbe, 684.
- 23 Kingsbury, 424; also Oppenheim, *International Law*, 92.
- 24 Oppenheim, *International Law*, 55–57; Kingsbury, 431.
- 25 Oppenheim, “The Science of International Law,” 332. See also Nussbaum, 234–35.
- 26 Hart, 227.
- 27 O’Connell and Day.
- 28 Farrell, 140–41, 150–53.
- 29 Kelsen, 330.
- 30 Ibid.
- 31 Childress, 467–68.
- 32 Carr, 186–88.
- 33 Schmitt, 176–80.
- 34 See the discussion of Gustav Radbruch’s linkage of Germany’s crimes to positivism in Fuller.
- 35 See Luban, Strudler, and Wasserman, 2352.
- 36 See Hathaway and Shapiro, esp. ch. 13, “The End of Conquest.”
- 37 O’Connell, “The Crisis in Ukraine—2014.”
- 38 Akehurst, 25. And see ch. 1 more generally.
- 39 See Pope John XXIII, *Pacem in Terris*; and Pope Paul VI.
- 40 See, e.g., Williamson.
- 41 See Elie.
- 42 Niebuhr, 111.
- 43 During the Cuban Missile Crisis, the Kennedy administration took care to make arguments that would not diminish Soviet legal duties in the area of use of force. See Chayes, 67–68.
- 44 See Johnson.
- 45 Elshtain, “The Third Annual Grotius Lecture”; *Just War Against Terror*.
- 46 Biggar, esp. ch. 6, “On not always giving the Devil the benefit of law: Legality, morality, and Kosovo.”
- 47 See Christiansen.
- 48 Brooks, “The Defection Track.” See also Brooks, “At War in Libya.”
- 49 Prime Minister’s Office, 10 Downing Street, Syria Action—UK Government Legal Position, April 14, 2018.
- 50 The US Department of Justice issued a memo arguing the President had authority under the US Constitution to attack without Congressional authorization.
- 51 See O’Connell and Day; Koskenniemi; Geoff Gordon; and Orakhelashvili.
- 52 Sztucki, 59.
- 53 Allott, 269.

- 54 Vienna Convention on the Law of Treaties, Art. 64.
- 55 Hehir.
- 1 Bassiouni, 50.
  - 2 See Hall.
  - 3 As to the case against Von Hagenbusch, see Schwartzberger, 462–66; Deschênes, at 250–52.
  - 4 Bassiouni, n. 1, at 2; Cavicchia, 224; Marquardt, “Constitutionality of an International Criminal Court,” *Columbia Journal of Transnational Law* 33 (1995): 76–77; Jamison, 421; Carpenter, 230–31; Karadsheh, 248; Lin, 757; Peter, 177; Brown, 766; Bos, “Recent Developments,” 41; Adriaan Bos, “A Perspective,” 465; McGoldrick, 13; also mentioning the prosecution in 1268 of Conradin von Hofenstafeln for “waging aggressive war.”
  - 5 G.A. Res. 52/160 of 15 Dec. 1997 (annex), para. 3, U.N. GAOR Supp. (No. 49), U.N. Doc. A/52/49, at 384.
  - 6 Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (July 17, 1998), reprinted in 37 I.L.M. 1002 (1998) (hereafter “ICC Statute”).
  - 7 Zimmermann, 234.
  - 8 Broomhall, 19–20.
  - 9 *Ibid.*, 2.
  - 10 See Johan D. van der Vyver, “Civil Society and the International Criminal Court,” *Journal of Human Rights* 2.3 (2003): 425–39.
  - 11 See Van der Vyver, “Civil Society and the International Criminal Court.”
  - 12 Pace and Thieroff, 391; Pace and Schense, 110–11.
  - 13 See Hall, “The Third and Fourth Sessions”; “The Fifth Session.”
  - 14 Pace and Schense, n. 12, at 115; see Pace, “The Relationship Between the International Criminal Court and Non-Governmental Organizations,” 209 (speaking of “the extraordinary goodwill and trust that developed between the Coalition and governments”).
  - 15 Broomhall, n. 8, at 13.
  - 16 Bos, “Recent Developments,” n. 4, at 45.
  - 17 “Les ONG et les Nations Unies Veulent Travailler Ensemble,” Montreal, Agence France Presse: Informations Generales (Dec. 8, 1999).
  - 18 “Welcome.” *Terra Viva* 5 (June 15, 1998).
  - 19 ICC Statute, n. 6, art. 13(b).
  - 20 *Ibid.*, art. 16.
  - 21 See Reynolds, 605–06; Streains, 358; Cottier, 249.
  - 22 Barry, 59.
  - 23 See Streains, 360–61; Cottier, 248–49.
  - 24 Streains, n. 23, at 357.
  - 25 *Ibid.*, 364; see also Moshan, 180–81 (making the same point in the context of crimes against humanity).
  - 26 ICC Statute, n. 6, art. 7(1)(g).
  - 27 *Ibid.*, art. 8(2)(b)(xxii).
  - 28 *Ibid.*, art. 8(2)(c)(vi).
  - 29 *Ibid.*, art. 21(3) (emphasis added).
  - 30 *Ibid.*, art. 7(1)(h) (emphasis added.)
  - 31 See Salant, 216; Sadat, 180.
  - 32 See Sadat, n. 31, at 160.
  - 33 ICC Statute, n. 6, art 7(3).
  - 34 *Ibid.*, art. 7(1).
  - 35 *Ibid.*, art. 7(1)(h) (requiring that persecution is to involve “any act referred to in this paragraph or any crime within the jurisdiction of the Court”).
  - 36 *Ibid.*, art. 7(2)(f).

- 37 Ibid., art. 8(2)(b)(xxii).
- 38 Ibid., art. 67(1)(b); see Kreß, 336–37.
- 39 Report of the Preparatory Commission for the International Criminal Court, *Finalized Draft Text of the Rules of Procedure and Evidence*, Rule 73(1), U.N. Doc. PCNICC/2000/INF/3/Add.1 (12 July 2000).
- 40 Ibid., Rule 73(3).
- 41 Ibid.
- 42 Sadat, n. 31, at 267; Bothe, 396–97.
- 43 Statute of the International Atomic Energy Agency, 276 U.N.T.S. 3.
- 44 Treaty on the Non-Proliferation of Nuclear Weapons, 729 U.N.T.S. 161.
- 45 Kirsch and Holmes, 7.
- 46 Legality of the Threat or Use of Nuclear Weapons, 1996 ICJ 226, para. 105E.
- 47 Mexico, in Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth Session, The Hague (November 18–26, 2009), Annex II, *Report of the Working Group on the Review Conference*, Appendix II (at 64).
- 48 See Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth Session, New York (December 4–14, 2017), *Report of the Working Group on Amendments*, U.N. Doc. ICC-ASP/16/22, II. B. (para. 23) (November 15, 2017) (noting that “Mexico indicated that it would present an updated paper on its proposal after the conclusion of the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons. Leading Towards their Total Elimination”).
- 49 Migliore, 38.
- 50 Terrell and McNamee, 460.
- 51 Migliore, n. 49, at 38.
- 52 Ibid., 36.
- 53 See ICC Statute, n. 6, art. 8(2)(viii).
- 54 Ibid., art. 124. France, as well as Colombia, attached an Article 124 declaration to their respective instruments of ratification, but both of those declarations were subsequently withdrawn.
- 55 See Van der Vyver, “The International Criminal Court: American Responses.”
- 56 See Lippman.
- 57 Schabas, 424.
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