

**Creating Healing Law with a *Grundnorm* Based on Care:
How to Practice Law in a Sustainable and Equitable Manner**

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INTRODUCTION

“Do you want to start a kelp farm with me?” my best friend asked over the phone, from her notably landlocked home in Wisconsin.

“Yes!” I was nearly shouting with enthusiasm. Pause. “What exactly is that?”

She told me about a book she’d been reading called *Eat Like a Fish*. The author, Bren Smith, is a fisherman who has seen it all, fishing from his home in Newfoundland to the Bering Strait. Fed up with the environmental destruction he witnessed and the overall ‘ik factor’ of fish farming, but wanting to live on the sea, he asked himself: “What does the Ocean want us to grow?”¹ His answer was simple: things that don’t swim away and don’t need any inputs. His career as an oyster farmer began, but after two consecutive seasons of climate change wiping out his crop, he wanted to address climate change too. After spending countless nights in bars reading about the global history of aquaculture, he stumbled into a career leading the United States into polyculture ocean farming, or what he calls regenerative ocean farming.² This was my first introduction to asking a question based on what the ecosystem is offering us and considering our relationship with the Ocean. Naturally, it came from someone who loves the sea.

Raised by hippies, I was predisposed to finding nature-positive lifeways. Unfortunately, growing up in a capitalist society left me with little guidance or vocabulary to lead the kind of revolution I was looking for. I knew perspective shifts are required and I knew a bridge between cultural divides is needed to stop the massive injustices and heal. My mother always reminded me of the old saying, “Kill them with kindness.” We talked about the word “kill” and what it really meant: disarm them, surprise them, soften them, support them, teach them, etc., with kindness. Kill only their distrust, false assumptions, and other barriers to empathy. Our world has been made so unkind and so cruel, it takes great strength and courage to be compassionate, thoughtful, and caring.

In my heart, this thesis is the culmination of everything I learned from my parents, from art school, from three graduate degrees, and from life experience. I learned that nothing is more important than coming from a place of empathy, caring, and kindness. With such priorities, we can listen and learn from each other, collaborate instead of fight over compromises, and create a better future for all life. Thankfully, I am not alone in this endeavour. Scholars, community leaders, Indigenous Peoples, and countless others from all walks of life have been rallying together for social and legal change since before I was born. All of us stand on the shoulders of giants, and

¹ Smith B, *Eat Like A Fish: My Adventures Farming the Ocean to Fight Climate Change* (Vintage Books 2019), 83.

² Smith (n 1).

because of that, I write this thesis from a place of deep gratitude for both the famous and unsung heroes throughout history and today.

THE PROBLEM & THE RESEARCH

The problem is that the planet is being murdered and it is perfectly legal. The solution is to teach the law to care. Decades ago, James Boyd White began his body of work leading to innovative questions in legal scholarship, which could be summarised as, “What if law was a healing practice?”³ For any healing to occur, we need to understand relationships. A *grundnorm* that allows us to ground our interpretation of law in *caring* for all our relations can aid in the transition of law to a healing practice.

The primary research question is: How can we design and use a *grundnorm* to interpret existing, accepted international law to promote sustainability and equity? To answer this, I explore several sub-questions: (1) Why is international law not sustainable or equitable? (2) Are there examples of law that are sustainable and equitable? (3) What are the ideal results from a new *grundnorm*? Answering these questions requires an understanding of the worldviews that shape law. They are the cause of the symptoms. Comparing findings from questions one and two are essential to creating a *grundnorm*. Question three is designed to illustrate the desired results of applying the *grundnorm* to legal analysis, specifically to international law regarding the Ocean.

METHODOLOGY

Multiple perspectives are required to understand why law is the way it is, and thus how to take meaningful steps to change it for the better. This thesis describes how international law became what it is today through multiple lenses: comparing worldviews regarding ‘Nature’ and how they shape lifeways and legalities; ecofeminist critiques of Western binary thinking that inform legal frameworks and planetary destruction; and the history of how international law was shaped by colonisation and how it enforces power imbalances, biases, and environmental racism. This includes an analysis of international treaties to find Western worldviews in the language of the law today and what happens when ideologies within law conflict. Further analysis of emerging ecocentric law will be presented with two examples of recent legislation.

³ James Boyd White’s body of work explores alternative ways to interpret law to create a more just and humane society, using law to foster empathy, understanding, and reconciliation. Most relevant works include *Justice as Translation: An Essay in Cultural and Legal Criticism* (1990), *Acts of Hope: Creating Authority in Literature, Law, and Politics* (1994), and *The Edge of Meaning* (2001).

Finally, imagination shines a light on how to move forward: informed by the above research, I will present one approach to bridge worldviews: questioning what we think we know. Following the example of Mi'kmaw Elder Albert Marshall, this paper encourages Two-Eyed Seeing, defined as "learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of mainstream knowledges and ways of knowing, and to use both these eyes together, for the benefit of all."⁴ The Questions of Care are a starting point meant to be accessible at any level of decision-making, for the benefit of all members of the Earth Community⁵ to begin seeing with both eyes. The Yolngu people of Arnhemland, Australia have a helpful example of a Two-Eyed Seeing framework. There is a place called *Ganma*, where fresh water and sea water meet; each water represents distinct knowledge systems that come together and interact but maintain their separateness, creating a new space where two ways of knowing "come together equitably and work in parallel—ultimately creating greater shared understanding."⁶ This goes beyond the dialogue of integrating, combining, or incorporating Indigenous knowledge, which often are euphemisms for assimilation.⁷ The Questions of Care offer an opportunity to create a space like *Ganma*, anywhere in the world.

The purpose of this new *grundnorm* is to help decision-makers interpret existing law as a healing practice. This includes uniting human activity with habitat and restoring relationships between people and between people and the habitat in which they live. Thus, this paper seeks to provoke radical legal change as quickly as possible to ensure harmony among the Earth Community.

ROADMAP

Part I will examine the causes behind the failure of International Environmental Law (IEL) to halt the decline of the global environment.⁸ Born of colonialism and patriarchy, false dichotomies have oppressed all non-Western worldviews and created laws that give us a false choice: the environment or the economy. To understand how this came to be, Part I provides a non-exhaustive summary of the Western worldview and various Indigenous worldviews. Then, a glance at history

⁴ Reid A, Eckert L and Lane J-F, "'Two-Eyed Seeing': An Indigenous Framework to Transform Fisheries Research and Management" (2021) 22 *Fish and Fisheries* 243, 245.

⁵ The Earth Community includes humans, animals, plants, and natural processes like the water cycle and Ocean currents upon which life depends; *see* Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd edn, Green Books 2001).

⁶ Reid (n 4) 245.

⁷ *ibid* 245.

⁸ Zelle T and others, *Earth Law: Emerging Ecocentric Law--A Guide for Practitioners* (Wolters Kluwer 2021), 1.

shows how colonisation shaped international law, how colonist bias persists, and how IEL continues to embody the Western worldview, resulting in the oppression of people and the destruction of our planet.

By then most readers will be thoroughly depressed, so Part II provides a path forward to transform law into a healing practice. Examples of successful legislation and Indigenous teachings guide the creation of the Questions of Care. These questions are meant to be asked when interpreting existing law to shift focus toward ‘all our relations’ and thus promote ecologically, socially, and culturally just systems at all levels of governance: from States acting on the international stage to municipalities and community-led actions.

Part III will examine how the Questions of Care show that previously dismissed, radical ideas, are actually not that radical with all things considered—specifically, when ‘all our relations’ are considered. Applying the Questions of Care to our marine environmental crisis, it is clear that we need to turn the entire High Seas into a Marine Protected Area and completely re-think food production in our Exclusive Economic Zones (EEZs). The Questions of Care support a new reading of the United Nations Convention on the Law of the Sea, including a bit of undermining because that is a critical element of decolonising law. Restorative Ocean Farms provide a concrete example that destroys the idea that human activity is inherently harmful: we can live in harmony with the Ocean through this nature-positive method of food production. And when all our relationships are considered, we can promote equity among our communities at all levels: local, regional, and global.

BACKGROUND

On April 22, 1970, approximately 20 million people celebrated the first Earth Day, followed by an explosion of environmental laws domestically and internationally. Yet, while environmental movements have grown in strength, size, and sophistication, the global ecosystem's overall health continues to deteriorate rapidly.⁹ One need only glance at the news to see that modern environmental law is failing to maintain a habitable planet.

Of particular importance, restoring our relationship with the ocean is paramount.

[I]n no other realm is the importance of biodiversity for sustainable development more essential than in the ocean. Marine biodiversity, the variety of life in the ocean and seas, is a critical aspect [] supporting the healthy functioning of the planet and providing services that underpin the health, well-being, and prosperity of humanity.¹⁰

⁹ *ibid* 1.

¹⁰ Cristiana Paşca Palmer, *Marine Biodiversity and Ecosystems Underpin a Healthy Planet and Social Well-Being*, U.N. CHRON. (May 2017).

Climate change is having dramatic, negative impacts on Ocean ecosystems. The increased amount of carbon dioxide in the atmosphere results in more carbon being absorbed by the ocean, causing acidification (OA) and the Oceans' surface temperature is rising, exacerbating sea level rise, coastal flooding, and altering currents. All of these issues increase harm to marine biodiversity, in addition to coral bleaching events, fish migrating to the poles, and wetlands being swallowed by the sea.¹¹ Moreover, ocean-atmosphere interactions occur over months or years which results in trends persisting for decades or even centuries. If all greenhouse gas emissions came to a complete stop today, we would still see the impacts of our actions well into the future.¹² The severity of these impacts on all life on Earth cannot be overstated.

Putting climate change aside for a moment, we find other man-made problems. For example, plastic pollution is expected to outweigh fish by 2050¹³ and overfishing is the norm. The Ocean is under-protected by IEL despite the many overlapping treaties that include some relevance to the marine environment, marine species, and/or marine activities. This is largely due to how international treaties try to silo issues, like focusing on protecting single, imperilled marine species. Listing treaties are a prime example, like the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES) and the fishery-specific International Convention for the Conservation of Atlantic Tuna, which “has proven largely ineffective at addressing the effects of overfishing on nontarget species, habitat, and marine ecosystems.”¹⁴ Fishing is generally considered the number one threat to marine biodiversity.¹⁵

This inhalation of fish populations has been well documented within just a single lifetime. In the 1950s, few fish populations had been heavily harvested, but large industrial fishing took hold and systematically drove fish populations to the brink. Part of UNCLOS specifically addresses fishing, and in the decades since it went into force “hundreds of attempts have been made at

¹¹ Nations U, ‘How Is Climate Change Impacting the World’s Ocean’ (United Nations) <<https://www.un.org/en/climatechange/science/climate-issues/ocean-impacts>> accessed 7 May 2024; US EPA O, ‘Climate Change Impacts on the Ocean and Marine Resources’ (19 October 2022) <<https://www.epa.gov/climateimpacts/climate-change-impacts-ocean-and-marine-resources>> accessed 7 May 2024

¹² Climate Change Indicators: Oceans, ENV’T PROT. AGENCY, <https://perma.cc/725A-RG55> (last visited Feb. 8, 2023); *see also*, Rod Fujita, 5 Ways Climate Change is Affecting Our Oceans, ENV’T DEF. FUND (Oct. 8, 2013), <https://perma.cc/FX8C-6EBQ>

¹³ Fava MF, ‘Plastic Pollution in the Ocean: Data, Facts, Consequences’ (Ocean Literacy Portal, 9 May 2022) <<https://oceanliteracy.unesco.org/plastic-pollution-ocean/>> accessed 13 April 2024

¹⁴ Craig R, ‘Protecting International Marine Biodiversity: International Treaties and National Systems of Marine Protected Areas’ (2005) 20 *Journal of Land Use & Environmental Law* 333, 359.

¹⁵ MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: CURRENT STATE AND TRENDS, 516 (Rashid Hassan et al. eds., 2005) [hereinafter MEA].

multilateral agreements primarily through regional fishery management organisations, which aim to coordinate fishing across EEZs and on the High Seas. While some exceptions exist, these efforts are widely regarded as a failure.”¹⁶ Regional Fishery Management Organisations (RFMOs) consistently fail to meet UNCLOS mandates and the mandates of their own Conventions¹⁷ because their capacity for marine conservation is deeply undercut by rampant corruption.¹⁸

Another huge limitation of fishing regulations is that they focus on the targeted species without consideration for the ecosystem upon which those species depend.¹⁹ In 1996, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) reported that technological advances in fishing techniques were devastating important fishing grounds, further estimating that 9 of the world’s 17 fisheries were on their way to exhaustion.²⁰ Then, in 2009, the United Nations Food & Agriculture Organisation (FAO) warned that global fish catches were levelling off or declining despite increased fishing efforts; however, these estimates are notably conservative because they exclude fisheries that have already collapsed.²¹ Even to a purely Rationalist mind, this is bad. Approximately 3 billion people depend on the ocean for their primary source of protein,²² ecosystem services from the ocean are valued in the trillions, and the Ocean’s cultural significance around the world is priceless.²³

¹⁶ White C and Costello C, ‘Close the High Seas to Fishing?’ (2014) 12 PLoS Biology, 1.

¹⁷ Andreoli V and others, ‘Fisheries Subsidies Exacerbate Inequities in Accessing Seafood Nutrients in the Indian Ocean’ [2023] NPJ Ocean Sustainability, 2.

¹⁸ Freitas, Ben. ‘Corruption in the Fisheries Sector: Import Controls, Transparency, and WWF Practice’. World Wildlife Fund, April 2021.

¹⁹ Craig (n 14) 359.

²⁰ Marine Biodiversity, 21 UNESCO-UNEP ENV’T EDUC. NEWSL. 1 (UNESCO, Nairobi, Kenya), Mar. 1996, at 2.

²¹ U.N. FOOD & AGRIC. ORG., THE STATE OF THE WORLD FISHERIES AND AQUACULTURE 2008, 87 (2009).

²² Sustainable Seafood, WORLD WILDLIFE FUND, <https://perma.cc/CKQ9-XRUN> (last visited Feb. 8, 2023).

²³ Elise Huffer, Raising and integrating the cultural values of the Ocean, INT’L UNION FOR CONSERVATION OF NATURE: NEWS & EVENTS, (Oct. 6, 2017), <https://perma.cc/W2ZB-6A8C>; see Marine and Coastal Ecosystem Services, OCEAN & CLIMATE PLATFORM, <https://perma.cc/DT5B-7CKV> (last visited Feb. 8, 2023) (stating that eco-system services associated with the ocean are valued at just under \$30 trillion per year).

PART I: THE WORLDVIEWS THAT SHAPED INTERNATIONAL LAW & THEIR DEVASTATING RESULTS

The law is the codification of society's values, morals, and social contracts, and the interpretation of law is based on the philosophical underpinnings that created it.²⁴ Thus, to understand how the law came to exist in its current form we must understand the worldview held by the society that shaped the law. Currently, international law has been shaped by one worldview: Western. And that worldview alone has not resulted in a legal system that maintains a habitable planet or promotes equity. By comparing and learning from multiple worldviews, the dominant society can gain new perspectives and work towards laws that reflect the needs of the Earth Community.

A. Comparing Worldviews

Cultures that have lived, and continue to live, 'sustainably' or 'in harmony with Nature' are based on understanding the relationship between humans and Nature as a two-way street.²⁵ For example, Indigenous cultures often view Earth as bestowing gifts and their concept of reciprocity is based on *gratitude*. Unlike Western concepts of reciprocity (and eye-for-an-eye), this norm requires one to respond to a positive action with another positive action.²⁶ Improving the Western view of Nature is essential to sustainable and equitable solutions in law and policy.

Western thought is based on patriarchy and therefore has created many gendered dualisms, such as: Man/Nature, Reason/Emotion, and Masculine/Feminine.²⁷ Such dualisms also fall under Good/Bad. Thus, Reason and Emotion are "sharply separated and opposed," with feminine emotions being "essentially unreliable, untrustworthy, and morally irrelevant, an inferior domain to be dominated by a superior disinterested (and of course masculine) reason."²⁸ The Rationalist view allows Western thought to hold reason as superior and in opposition to anything 'other,' which is the key to anthropocentrism (and androcentrism) in Western tradition and the connected oppression of anything considered feminine, which includes Nature and peoples viewed as 'other'.²⁹ Examining

²⁴ See, e.g., Rawls J, *A Theory of Justice* (Harvard University Press 1971); Dworkin R, *Law's Empire* (Harvard University Press 1986).

²⁵ Zelle (n 8) 83.

²⁶ *ibid*, 83.

²⁷ Plumwood V, 'Nature, Self, and Gender: Feminism, Environmental Philosophy, and the Critique of Rationalism' (1991) 6 *Hypatia* 3, 10.

²⁸ Plumwood (n 27) 5.

²⁹ *ibid* 3, 6.

the standard and widespread instrumental treatment of Nature in the West,³⁰ rationalism and utilitarianism promote the conceptual division between humans and Nature, leading to the view that humans are “outside” of Nature, usually the “external controllers of it.”³¹ And this is why the Western understanding of Nature continues to drive ecological degradation today. This binary mindset is incapable of thinking its way out of environmental crises³² because it requires nonbinary thought. Thinking only in terms of man/Nature places imagination in a box where human activity only causes harm and the idea that human activity can be harmonious with our habitat never enters the mind.

To illustrate this point,³³ I will elaborate on Shirley Scott’s argument that international law is an ideology and that when ideologies conflict, they must either be defeated or absorbed.³⁴ The law, like other ideologies, is made up. But Nature is not. All human systems, like international law and politics, must function within the broader system of the environment—the global Ecosystem.

You can’t negotiate with a beetle. You are now dealing with natural law. And if you don’t understand natural law, you will soon.³⁵

~Oren Lyons

Lyons was referring to the 4 million acres of Canadian forest wiped out by bark beetles, whose range and breeding season crept upward in warmer winter temperatures due to global warming. Lyons is a member of the Onondaga Nation Council of Chiefs and a professor of American Studies who emphasises that Natural Law (the laws of Nature) has guided Indigenous approaches to ecological management for millennia. He teaches a simple fact about Natural Law: there is no negotiating and no mercy.³⁶ Regardless of our ideologies, Nature will continue to function based on its own rules. While ideologies must either defeat or absorb conflicting ideas to be upheld,³⁷ the Ecosystem will only destroy ideologies that do not follow its laws, its rules of

³⁰ *ibid* 4.

³¹ *ibid* 10. (While this view exists outside the West, it is especially strong there. Many other cultures stress the continuity between humans and Nature.)

³² Natarajan U and Dehm J (eds), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press 2022) 36.

³³ I also *literally* illustrated it, see Annex 1: Image 1.

³⁴ Scott S, ‘International Law as Ideology: Theorizing the Relationship between International Law and International Politics’ (1994) 5 *European Journal of International Law* 313, 321.

³⁵ Wood MC, *Nature’s Trust: Environmental Law for a New Ecological Age* (Cambridge University Press 2014), 3.

³⁶ Wood (n 35) 3.

³⁷ Scott (n 34) 319.

cause-and-effect. Therefore, if the ideology of international law is to be upheld, it must support the Ecosystem in which it functions. We must accept the magnitude of our multiple ecological crises, and that the speed at which they are unfolding will not be solved by the same sort of solutions we are used to thinking of now.³⁸

Rationalism and modern environmentalism do not account for the Ecosystem as something that surrounds humans. They hold IEL as the final system under which other human systems function (like the economic system). This fails to see that all human systems operate on Earth and are therefore subject to Earth's laws. Unlike ideologies, the Ecosystem is not something humans made up; it is not something we can change at a conference.

Within the Western worldview, there is a call for Relational values. One example is the Ethic of Care. Proponents have affirmed that “provided that people are interdependent, the whole social fabric is sustained on care”³⁹ and “regard emotions such as empathy, sympathy, and sensitivity as essential for moral guidance and reject abstract reasoning as the only way to deal with a moral problem” and present it as an approach to solving environmental problems.⁴⁰ The Ethic of Care and Relational concepts provide a framework within which people are free to exercise their bio-cultural values. “Special relationship with, care for, or empathy with particular aspects of nature as experience rather than with nature as abstraction are essential to provide a depth and type of concern that is not otherwise possible. Care and responsibility for particular animals, trees, and rivers that are known well, loved, and appropriately connected to the self are an important basis for acquiring a wider, more generalized concern.”⁴¹ Eleanor Ostrom's work found that communities managing common-pool resources failed when they did not include “moral values such as trust, sense of community, integrity, reputation as reliable group members, communication, and reciprocity.”⁴² These values are all part of a larger practice of care.⁴³

Indigenous worldviews share a common thread: their laws, traditions, and governance systems focus on relationships and stewardship. Central to many Indigenous cultures is gratitude-based reciprocity and kinship (or relational) systems. Principles and ethics from Haida law focus on

³⁸ Wood (n 34) 12.

³⁹ Moreno-Cases V and Bagus P, ‘The Ethics of Care and the Tragedy of the Commons’ (2021) 68 *International Review of Economics* 405, 406.

⁴⁰ Moreno-Cases (n 39) 405.

⁴¹ Plumwood 7.

⁴² Moreno-Casas, 417-18, citing Ostrom E (1990) *Governing the Commons. the evolution of institutions for collective action*. Cambridge University Press, Cambridge.

⁴³ Moreno-Cases (n 39) 418.

respect, responsibility, giving and receiving, interconnectedness, and seeking wise counsel.⁴⁴ In Mi'kmaq, *M's-it No'kmaq* roughly translates to “all my relations” and the practice of caring for “all my relations” represents a kin-relationship with the land, waters, and all of life.⁴⁵ “All parts of the environment are an ancestral connection with obligations, roles, responsibilities, and relations defined for all.”⁴⁶ Indigenous worldviews often see “all of the ‘ecologies’ as alive, interdependent, and interrelating forms in flux and permeated by spirit.”⁴⁷

Relationships are central and are expressed and experienced in alignment with ecological realities and attunement with intersecting life forces and ecological realms, in ways that lead to socially and ecologically just relationships. The “highest form of existence” is “living in harmony with the life forces active in different ecological realms”, with “knowledgeable respect for all life forces and relationships of balance.”⁴⁸

This mindset has cultivated a deep understanding of place, interconnectedness, and process. Most Indigenous Peoples “think, act, behave, and organise their governance institutions on the basis of a relationship to their ecology[.]”⁴⁹

The Ocean is biologically, ecologically, and culturally connected by currents, migratory species, and the longstanding traditions and knowledge of coastal and near-coastal Indigenous People. All coastal people of Ghana regard the Ocean as a deity. Cultures like the Anlo, Ewe, and Ga have a deep respect and reverence for the Ocean. Anlo grow up with the Sea, and by age ten they are excellent swimmers and have the skill set to join fishing expeditions.⁵⁰ Their moral ecology emphasises four tenants of relationships: (1) the symbiosis between humans and nature; (2) the overlap of culture and nature; (3) that humans should receive their share of produce based on their own investment; and (4) social cooperation as essential to community survival.⁵¹ Extreme individualism and greed are seen as undermining the environment and the community. Further,

⁴⁴ M's-it No'kmaq and others, “Awakening the Sleeping Giant”: Re-Indigenization Principles for Transforming Biodiversity Conservation in Canada and Beyond’ (2021) 6 FACETS 839, 845.

⁴⁵ M's-it No'kmaq (n 44) 840.

⁴⁶ McLean M and others, ‘Connecting Conservation & Culture: The Importance of Indigenous Knowledge in Conservation Decision-Making and Resource Management of Migratory Marine Species’ (2023) 155 Marine Policy, 2.

⁴⁷ M's-it No'kmaq (n 44) 844.

⁴⁸ *ibid* 846.

⁴⁹ *ibid* 845.

⁵⁰ Akyeampong E, ‘Indigenous Knowledge and Maritime Fishing in West Africa: The Case of Ghana’ (2007) Special Volume No.1 Tribes and Tribals 173, 180.

⁵¹ Akyeampong (n 50) 177.

fishing cultures have historically shown an understanding that overfishing will imperil their lives, including their culture and economy. Each fishing community has a day of rest for both religious and conservation reasons.⁵² Fishing is not just a job, it is culture, a way of life. So sacred is the Ocean that the Anlo-Ewe community refused to move inland despite severe coastal erosion—financial aspects are secondary or sometimes even irrelevant.⁵³

Understandings and connections of the High Seas are found in traditional voyaging and navigation cultures, like Polynesian and Pacific Northwest canoe cultures. Voyages rely “on intimate knowledge and observations of the ocean, swells, sky, stars, weather, clouds, as well as fishes, seabirds, marine animals, other ocean life, and phenomena.”⁵⁴ Further, there are spiritual practices and beliefs related to migratory and cultural keystone species. For example, Indigenous People of the North Pacific Rim along the coast and along rivers reaching far inland have harvested salmon since the earliest human arrival in North America.⁵⁵ Their place-based cultural systems linked harvesting salmon with habitat stewardship.⁵⁶ This starkly contrasts with the “diffuse and disconnected governance of salmon” currently employed on the High Seas, which disrupted Indigenous relationships with salmon and is generally associated with wide-spread salmon population declines.⁵⁷ Recently, salmon scientists have called for place-based management.⁵⁸

In African fishing communities, there is an emphasis on working together and fostering alliances. Moreover, M’s-it No’kmaq places a premium on diversity and difference⁵⁹ and the African fishing communities value open-mindedness to innovation and ideas.⁶⁰ These are the values that lead to thinking outside the dominant paradigm box of IL that hands out permits to destroy the planet.

Rationalism denies our humanity by rejecting relationships and their associated emotions, like *care* and *empathy*, due to their label as ‘bad.’ Historical colonisation and the continued eco-

⁵² *ibid* 177.

⁵³ *ibid* 177.

⁵⁴ Vierros M, Harrison A-L and Sloat M, ‘Considering Indigenous Peoples and Local Communities in Governance of the Global Ocean Commons’ (2020) 119 *Marine Policy*, 2.

⁵⁵ Vierros (n 54) 4 (Approximately 10,000 years).

⁵⁶ *ibid* 4.

⁵⁷ *ibid* 4.

⁵⁸ *ibid* 4.

⁵⁹ M’s-it No’kmaq (n 44) 845.

⁶⁰ Akyeampong (n 50) 174.

colonisation of today show that Rationalist ethics are highly ethnocentric and do not account for the views of many Indigenous peoples—this renders any attempt by international law to include Indigenous People (via informed consent, consultation, etc.) as mere lipservice.⁶¹ Concepts seen as opposing Rationalism are therefore “better able to apply to the views of such peoples, whose ethic of respect, care, and responsibility for land is often based on special relationships with particular areas of land via links to kin.”⁶² These concepts (respect, care, etc.) provide a more accurate and sustainable perspective on our environment. This includes worldviews “where the world is properly understood as something that surrounds us--our literal environs--rather than something we are capable of subjecting to capture, construct and control.”⁶³ These worldviews contrast sharply, yet the rise of an Ethic of Care over the last three-quarters of the century shows a shift in Western values. Now is the time to mainstream Relational values to alter how we interpret existing law, respect Indigenous legalities, and apply law for the benefit of the Earth Community.

B. How International Law Embodies & Reinforces the Western Worldview

The modern environmentalism produced by Western culture in the 1960s continued the Western tradition of Rationalism, which was enshrined in a flurry of IEL agreements. IEL, like other ideologies, attempts to block evidence of the underlying power structure while reconfirming the position of the powerful (in this case, the Global North/colonisers), universalising their worldview and obscuring alternatives.⁶⁴ This happened from the beginning: colonisation was justified through the colonisers’ understanding of who should be sovereign based on the colonisers’ view of Nature—colonisers saw themselves as benefiting the colonised by teaching them how to make ‘optimal use’ of their ecology,⁶⁵ all the while stealing it for their own industrialisation and wealth hoarding. These views shaped sovereignty in the colonial era and international law during the decolonisation process.⁶⁶ Trying to gain equal footing in the international community, new States considerably transformed their domestic spheres to participate in the new global order, enabling “increasingly efficient exploitation of Nature through instituting European systems of land

⁶¹ Vierros (n 54) 1; McLean (n 46) 4.

⁶² Plumwood (n 27) 9.

⁶³ Natarajan (n 32) 36.

⁶⁴ Natarajan (n 32) 36; Scott S, ‘International Law as IDEology: Theorizing the Relationship between International Law and International Politics’ (1994) 5 *European Journal of International Law* 313, 318.

⁶⁵ Natarajan (n 32) 38.

⁶⁶ *ibid* 38.

tenure, private property, contracts, torts, and so on.”⁶⁷ Many of the social, political and economic systems that promote the destruction of the planet continue the dispossession of Indigenous People from their lands, culture, language, laws, and governance systems.⁶⁸ Indigenous legal scholar, Irene Watson of the Tangane-kald, Meintangk Boandik First Nation Peoples of the Coorong in South Australia, refers to the struggle between Indigenous People and states as a “conflict between authority and power. Authority is in the hands of the First Nations Peoples and is law, while power is held by the states by way of a violent foundation.”⁶⁹

Accepted international law accepts the conquest claims of states over others as well as the continuing right to control them, resulting in “the domination of Indigenous Peoples by states.”⁷⁰ Thus, before international *environmental* law was written, international law set the stage for IEL to maintain colonial-era power dynamics. The development of IEL within this context only serves as a continuation of historical inequity and oppression, resulting in eco-colonialism.⁷¹ This bias is evident in Western law’s insistence that Roman law was the beginning of ‘civilized legal systems’ and maintaining it as the primary source to interpret legal developments.⁷² Thus, Western legal traditions and scholars of Western law often overlook the “violent histories of imperial and colonial domination, as well as the pervasive transplantation of Western culture” that are fundamental elements of Western legal history.⁷³

For example, during African decolonisation, the importance of preservation remained an important part of the fishing communities’ traditions.⁷⁴ But today, many coastal African States’ laws, are inherited from colonisers and favour big industry while placing all the conversation pressure and constraints on small-scale and traditional fishing communities.⁷⁵ Colonial rule in

⁶⁷ *ibid* 38.

⁶⁸ M’s-it No’kmaq (n 44) 841.

⁶⁹ Watson I, First Nations, Indigenous Peoples: Our Laws Have Always Been Here, Indigenous Peoples as Subject of International Law 97.

⁷⁰ Newcomb S, Domination in Relation to Indigenous (“Dominated”) Peoples in International Law, Indigenous Peoples as Subjects of International Law 18, 20.

⁷¹ This practice takes many forms, including the mentality of the white-saviour complex; for example, it is evident in colonisers not viewing Africans as capable of making their own conservation goals. Crowe D and Shryer J, ‘Eco-Colonialism: An Opinion from Sub-Saharan Africa...’ (1995) 23 *Wildlife Society Bulletin* 26

⁷² Zelle (n 8) 657.

⁷³ *ibid* 657-8.

⁷⁴ Akyeampong (n 50) 179.

⁷⁵ Okafor-Yarwood I, ‘EU Targets Fragile West African Fish Stocks, despite Protection Laws’ (*The Conversation*, 5 November 2019) <<http://theconversation.com/eu-targets-fragile-west-african-fish-stocks-despite-protection-laws-125679>> accessed 16 December 2023

Africa held Western ways of knowing as superior and discredited Indigenous Knowledge Systems; colonisers produced a body of written work inherited by post-colonial governments and scholars thus continuing to shape economic priorities.⁷⁶ Dismissing Indigenous Knowledge resulted in tragedies, from epidemics of sleeping sickness and malaria to huge failures in irrigation projects and forestry science based on false assumptions.⁷⁷

Further, colonisers have long projected the ‘tragedy of the commons’ upon Indigenous People, and West African fishers are among the many still facing this prejudice.⁷⁸ In a recent study that has barely begun, a Harvard scholar felt the need to share his first impressions of the problems in African fisheries: he claims that African artisanal fishers like to blame Chinese trawlers for the reduction of fish and lays equal blame at their feet for adding outboard engines to their canoes and having a population increase.⁷⁹ If the Ghanaian fishers told him how foreign trawlers remove the nets of artisanal fishers and take the catch,⁸⁰ it fell on deaf ears. He further suggested African fishers leave the area to find other livelihoods.⁸¹ This indicates he learned nothing of their culture or the long history of environmental racism in Africa.⁸² He bases his ‘findings’ on three weeks visiting fishing communities in Ghana, Côte d’Ivoire, and Nigeria.⁸³ His lack of effort to understand the *history of place* and his premature publication based on colonial worldviews shows two things: first, the hangover of colonialist bias continues today, and second, decolonising our individual and collective minds takes effort and requires us to question our assumptions.

Countless aspects of Indigenous culture and knowledge have been lost around the world from oppressive policies and racist practices, including the violent removal of Indigenous People from their homes, prohibiting their stewardship practices, their language, their systems of government, and other tactics purposefully employed to reduce Indigenous sovereignty and autonomy.⁸⁴ Examples are numerous, such as the centuries-long genocide by what is now known as

⁷⁶ Akyeampong (n 50) 174.

⁷⁷ *ibid* 174.

⁷⁸ *ibid* 176.

⁷⁹ Paarlberg R, ‘West Africa’s Falling Fish Stocks: Illegal Chinese Trawlers, Climate Change and Artisanal Fishing Fleets to Blame’ (*The Conversation*, 9 April 2024) <<http://theconversation.com/west-africas-falling-fish-stocks-illegal-chinese-trawlers-climate-change-and-artisanal-fishing-fleets-to-blame-226819>> accessed 18 April 2024

⁸⁰ Akyeampong (n 50) 179.

⁸¹ Paarlberg (n 79).

⁸² Akyeampong (n 50) 176. (“Colonial officials often viewed Africans as inefficient and reckless custodians of their natural resources.”)

⁸³ Paarlberg (n 79).

⁸⁴ McLean (n 46) 2.

the United States against all Native American people.⁸⁵ This removal of Indigenous People and their cultures and worldviews allowed colonisers to continue their harmful assaults upon Nature. A decline in Indigenous languages across Australia since colonisation parallels with Australia's biodiversity decline.⁸⁶

Colonisation is not a discrete, historical event that altered the lives of Indigenous People long ago.⁸⁷ The narratives, worldviews, and power of the colonisers continue to be enforced by law today. These systems "continue to impose inequity, racism, injustice and disconnection with culture and traditional governance systems," despite strong resistance from Indigenous People.⁸⁸ Colonised regions are full of Indigenous People who have never relinquished their rights to their home or ceded any title to any territory, and have persistently asserted these rights.⁸⁹

International Law has attempted to provide some protection for the rights of Indigenous People. This includes the United Nations Declaration on the Rights of Indigenous Peoples and Article 8(j) of the Convention on Biological Diversity (CBD).⁹⁰ Despite this international recognition, Indigenous People have been consistently omitted and underrepresented from governance, management, conservation, and other dialogues and decision-making processes both in terrestrial and marine spaces.⁹¹ The salt in the wound of this historic injustice is that Indigenous People are the first to suffer when species or habitats are harmed due to "inadequate colonial management practices or insufficient policies."⁹²

C. Why There is an Ecological Crisis Despite Western Law's Attempts at "Sustainability"

Language shapes our worldview. The extent to which language permeates our lives and our minds is summarised well by Steven Newcomb who stated that "international law serves as an excellent example of 'the linguistic colonisation of the present by the past.'"⁹³ Like implicit bias, it is not easy to see unless it is known. For example, consider the perspective shift presented by

⁸⁵ Dunbar-Ortiz R, *An Indigenous Peoples' History of the United States* (Beacon Press 2015)

⁸⁶ McLean (n 42) 2.

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Convention on Biological Diversity (1992) art. 8(j).

⁹¹ McLean (n 42) 2.

⁹² *ibid.*

⁹³ Newcomb (n 70) 20.

International Environmental Lawyer, Tony Oposa: referring to ‘developed States’ as ‘Over-consuming States’ and ‘underdeveloped States’ as ‘Low-consuming States’⁹⁴ places environmental accountability where it belongs. Moreover, it challenges the concept of ‘development’ which is criticised as Eurocentric due to how it “denigrates non-Western, non-modern, and non-industrialised ways of life as inferior and in need of changing to make them more like the ‘developed’ nations.”⁹⁵ It forces capitalism upon nations and privileges profitable activities, marginalising other lifeways.⁹⁶ Language in IEL embodies the Western worldview, preventing new terms like ‘sustainable’ or ‘live in harmony with Nature’ from having meaning beyond the context of the capitalist extraction of ‘resources.’

For example, many IEL treaties include the term “exploit” which often signals thinly veiled neo-liberal values. During the drafting of UNCLOS and the CBD, no one would proudly say “I exploit women and children,” or “This woman was over-exploited.” These statements are appalling. Exploit has various definitions depending on the context, including “the act of exploiting someone unfairly for your own advantage,” and “the use or development of something for profit or progress in business.”⁹⁷ In both contexts, exploitation is a one-way street. IEL often emphasizes a State’s ‘right to exploit a resource,’⁹⁸ which obscures the full extent of the human-Nature relationship and creates the false dichotomies of man-Nature, economy-environment. Moreover, there is no room for a kinship perspective because Nature is treated as legal object, not as subject; Nature is a *something* as opposed to a *someone*. This is why the human-Nature relationship under Western law has become so unhealthy. It ignores the simple fact that humans are a species like any other, living in relationship to other species, cycles, and seasons.

Few IEL treaties acknowledge the interdependence of humanity and habitat, and when they do, results do not improve. For example, Agenda 21 states, “We are confronted with a perpetuation of disparities between and within nations [] and the *continuing deterioration of the ecosystems on*

⁹⁴ TEDxManila - Antonio Oposa Jr - 12/05/09 (Directed by TEDx, 2010) <https://www.youtube.com/watch?v=PPLLZX_bMdI> accessed 16 December 2023

⁹⁵ Bendell J, ‘Replacing Sustainable Development: Potential Frameworks for International Cooperation in an Era of Increasing Crises and Disasters’ (2022) 14, 8182 Sustainability, 8.

⁹⁶ Bendell (n 94) 8.

⁹⁷ ‘Exploitation’ (10 April 2024) <<https://dictionary.cambridge.org/dictionary/english/exploitation>> accessed 16 April 2024

⁹⁸ See e.g., United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, (UNCLOS 1982) arts 61, 62, 119.

*which we depend for our well-being,*⁹⁹ and that “Governments should continue to [] promote and support policies, domestic and international, that make economic growth and environmental protection *mutually supportive.*”¹⁰⁰ This language opens the door to living in harmony with our habitat but provides no guidance. Thus, we continue to watch as “the environment-development equation still grapples with the question of implementation.”¹⁰¹ Implementation is NOT the problem: the equation is the problem. There is no ‘right’ answer if we do not have the ‘right’ question.

Some of the language of IEL has opened doors to avoid systematically destroying the planet. But we have not walked through those doors because the Western worldview is blinded by Rationalism which only supports extractive capitalism. This sentence in the first principle of the Rio Declaration is such a promising door: “They are entitled to a healthy and productive life in harmony with nature.”¹⁰² It still holds capitalistic values (productive life) but the term ‘in harmony with nature’ opens the door to new understandings of ‘sustainable.’ Harmony is defined as “a consistent, orderly or pleasing arrangement of parts; harmonious relations,” and its synonyms are “friendship” and “unity.”¹⁰³ Applying these ideas to Nature, especially when considering relations, would create a much different concept of ‘sustainability.’ What would our world look like if we tried to create friendships with Nature? What would society look like if we appreciated all the relationships within Nature and between us and Nature? These types of questions are what we need to be asking ourselves to ensure we live ‘in harmony with Nature.’

The UN started the Harmony with Nature Program in 2009 with the acknowledgement that “the world’s depletion of natural resources and rapid environmental degradation are the result of unsustainable consumption and production patterns” resulting in “adverse consequences” for the planet and the “overall health and wellbeing of humanity.”¹⁰⁴ The UN goes on to say, “Devising a new world will require a new relationship with the Earth and with humankind’s own existence.”¹⁰⁵

⁹⁹ United Nations Department of Public Information. Agenda 21 : Programme of Action for Sustainable Development. 3 June 1992. Preamble item 1.1 (emphasis added.) (Agenda 1992.)

¹⁰⁰ Agenda 21 (1992), para 2.9(d).

¹⁰¹ Ibid.

¹⁰² Rio Declaration on Environment and Development. The Final Text of Agreements Negotiated by Governments at the United Nations Conference on Environment and Development (UNCED), A/CONF.151/26 (1992). Principle 1.

¹⁰³ ‘HARMONY Definition & Meaning | Dictionary.Com’ <<https://www.dictionary.com/browse/harmony>> accessed 14 June 2024

¹⁰⁴ United Nations, ‘Harmony With Nature’ (*Harmony with Nature*) <<http://harmonywithnatureun.org/>> accessed 6 May 2024

¹⁰⁵ *ibid.*

Focusing on a new ‘relationship’ with Earth and using the word ‘harmony’ opens a door, but we have yet to walk through it. That is because “current legal systems are designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and other members of the Earth community.”¹⁰⁶

These issues are found in UNCLOS and explain why it has failed to ‘conserve’ the ‘resource’ of fish. It divided up the sea regardless of ecosystem functioning, fragmenting the Ocean legally and conceptually; horizontally and vertically; and also by medium and function, resulting in the isolation of interconnected ecosystems as sites of extractive economic activity.¹⁰⁷ At the time, the understanding of the Ocean and our impact upon it was deeply lacking (in Western society). The importance of the Ocean to global ecosystem health has long been underestimated. Today, it is increasingly clear that “the value of a healthy ocean is difficult to overestimate.”¹⁰⁸ Despite the historical blindspot of understanding the Ocean’s significance, the entire Ocean is afforded some degree of protection by UNCLOS.¹⁰⁹ While UNCLOS’ marine conservation articles emphasise ‘sustainability’ and ‘protection, conservation, and preservation’ in all Ocean spaces including those under State jurisdiction,¹¹⁰ UNCLOS fails to create human-Ocean harmony because it lacks the Relational values so important to the Ethic of Care found in Ostrom’s work and Indigenous legalities.

The term ‘conservation,’ in UNCLOS is based on the concept of “wise use.”¹¹¹ This is evidenced by many of the articles requiring States to promote “optimal utilization” (of resources) with a “view to ensuring conservation.”¹¹² Article 61 specifically requires States to maintain ‘living resources’ through appropriate conservation measures so that they are not “endangered by over-exploitation” in their EZZ.¹¹³ Article 61(3) elaborates that,

¹⁰⁶ Higgins P, Short D and South N, ‘Protecting the Planet: A Proposal for a Law of Ecocide’ (2013) 59 *Criminal Law & Social Change* 251, 256, *citing* Cullinan (n 5) 114.

¹⁰⁷ Ranganathan S, ‘Decolonization and International Law: Putting the Ocean on the Map’ (2021) 23 *Journal of the History of International Law* 161, 164.

¹⁰⁸ Ogden J, ‘Maintaining Diversity in the Oceans’ (2001) 43 *Environmental*, 31.

¹⁰⁹ UNCLOS (1982) arts 61-68, PART VII Sec 2; Also, this can be interpreted to create an Ocean-wide MPA, since all marine areas have some form of ‘protection,’ Wright D, *Future Sea: How to Rescue and Protect the World’s Oceans* (University of Chicago Press 2020).

¹¹⁰ UNCLOS (1982) arts. 56, 61, 63-67

¹¹¹ Buys A, ‘What Are the Differences between Conservation and Preservation?’ (*Conservation Mag | Wildlife, Nature and Travel Magazine*, 4 October 2022) <<https://conservationmag.org/en/environment/what-are-the-differences-between-conservation-and-preservation>> accessed 15 April 2024

¹¹² UNCLOS (1982) arts. 64, 62, 61

¹¹³ *ibid* arts. 61.

Such measures shall also be designed to *maintain or restore* populations of harvested species at levels which can produce the *maximum sustainable yield*, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.¹¹⁴

Article 61 is immediately followed by Article 62, requiring States to give access to other States if they cannot harvest their full allowable catch. The language creates a conflict between States' duties to conserve the marine environment and their right to 'exploit' it.¹¹⁵ Without any conservation or biodiversity goals,¹¹⁶ profits have repeatedly won over the health of the planet and people because that is what capitalism requires. In theory, States set their MSY based on the 'best scientific evidence,' yet in Europe, roughly 78% of scientific recommendations have been ignored causing severe damage to fishing areas.¹¹⁷ Moreover, Indigenous ecological knowledge is often not considered the 'best available science' and the needs of local communities are ignored.¹¹⁸ The language requiring States to permit other States to catch fish until the full allowable catch is reached also implies an obligation to fish as much as possible because that is the optimal *utilisation* of the species and no alternatives are presented. The fish are there to be *utilised* by humans. Without considering 'all our relations,' the idea that the 'optimal utilization' of fish includes allowing them to perform their ecosystem function has never come into play.

UNCLOS can be interpreted to prohibit overfishing since harvested species populations must be *maintained or restored* and, in theory, the 'maximum sustainable yield' (MSY) should support the ability of future generations to keep fishing. But if the term 'sustainable' has no meaning, then it does little for creating a meaningful MSY. And while the 'interdependence of stocks' is also (supposedly) considered, the ecosystem as a whole is not. Further implementing agreements, like the 1995 Fish Stocks Agreement, begin to consider the ecosystem but largely regarding impacts on the ability to extract fish as opposed to ensuring a functioning ecosystem. The Preamble states, "Conscious of the need to avoid adverse impacts on the marine environment,

¹¹⁴ UNCLOS (1982) art 61(3).

¹¹⁵ Craig (n 14) 362.

¹¹⁶ *ibid* 362.

¹¹⁷ 'Total Allowable Catches (TACs)' (Oceana Europe) <<https://europe.oceana.org/total-allowable-catches-tacs/>> accessed 6 May 2024

¹¹⁸ See generally, Akyeampong (n 50).

preserve biodiversity, maintain the integrity of marine ecosystems and minimise the risk of long-term or irreversible effects of fishing operations.”¹¹⁹ Article 5(b) goes on to “ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. . .”¹²⁰ This language implies that human activities, specifically fishing, are inherently harmful to the environment. It does not allow for the idea that humans are part of Nature and can therefore live in harmony with it like any other species. All fishing implementing agreements of UNCLOS fail because they use the same language in the same context and thus yield the same result: overfishing, habitat destruction, and global inequities. Overall, “The current multilateral fisheries regime neither creates, nor has the potential to create, incentives for states to design or comply with ambitious rules.”¹²¹

Thus far, IEL’s attempt at handling our environmental crises has been an attempt to negotiate with the Ecosystem. Western law just slapped the word ‘sustainable’ in front of other words like ‘development’ and ‘use.’ In theory, the problem is solved because such modifiers change meaning; however, in practice, prioritising economic development nullifies transformative potentials.¹²² This is due to the Rational view of Nature, understanding it only through a scientific lens and tools of calculation which function in reference to the State. Solutions are therefore only Rationalist, tending to be technocratic and economic: carbon markets, emission trading schemes, technology transfer, clean development mechanisms, etc. These growth-based approaches systematically reinforce the economic privilege and oppression that created our environmental crises in the first place.¹²³ “Rather than being the means of breaking down the conceptual separation between the economy and the ecology, international law reinforces this divide.”¹²⁴ These proposals and others like them only tinker around the edges of business-as-usual, which is driving the planet

¹¹⁹ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and High Migratory Fish Stocks 1995 (164/37) (FSA 1995).

¹²⁰ FSA (1995), s 5(b).

¹²¹ Green J and Rudyk B, ‘Closing the High Seas to Fishing: A Club Approach’ (2020) 115 *Marine Policy*, 1.

¹²² Natarajan (n 32) 42.

¹²³ *ibid* 42.

¹²⁴ *ibid* 42.

toward catastrophe.¹²⁵ With this perspective, it is clear that “[s]ustainable development is turning brownish,”¹²⁶ or perhaps it was never green.

¹²⁵ Wood (n 35) 12.

¹²⁶ Dupuy P-M and Viñuales J, *International Environmental Law* (2nd edn, Cambridge University Press 2018), 23.

PART II: HOW TO MAKE THE LAW A HEALING PRACTICE (AND QUICKLY)

This part will present two examples of recent legislation that pushes law into a healing practice and consider how the Questions of Care will impact widely used legal tools like Environmental Impact Assessments (EIAs) and Benefit-Sharing. What the world will gain from the law as healing practice goes beyond healing the relationships between the colonisers and Indigenous People. Two-Eyed Seeing does not seek to ‘integrate’ two knowledge systems but rather have them maintain their distinction and integrity as different cultural frameworks for knowing the world, and together learn from one another.¹²⁷ It is the only path to maintaining a habitable planet for all life. If we continue on the current path, humanity will go extinct and take many other species with us.¹²⁸ Western culture is at a turning point: either acknowledge wrongdoing and work toward equitable systemic change or continue to murder the planet and any chance at humanity’s survival in the relatively near future.

Re-Indigenisation¹²⁹ of international law is important for equity and representation. This entails centring Indigenous worldviews and ways of knowing,¹³⁰ which is essential to finding ‘the right questions’ to promote healing law between people, and between people and the planet. Indigenous knowledge also offers the world deep guidance: “There is growing recognition of the effective governance of Indigenous lands by Indigenous Peoples, with 40% of the Earth’s most intact remaining biodiverse areas in Indigenous stewardship.”¹³¹ Indigenous communities hold stewardship practices and laws “for respective places and species which are based on the collective, long-term observational knowledge that have allowed sustainable use of marine resources across millennia.”¹³² Indigenous knowledge, innovation, and practices will enrich the diversity of conservation approaches and environmental solutions¹³³ and challenge Western concepts like

¹²⁷ Mazzocchi F, ‘A Deeper Meaning of Sustainability: Insights from Indigenous Knowledge’ (2020) 7 *The Anthropocene Review* 77, 78.

¹²⁸ Masson-Delmotte V, Zhai P and Pörtner HO, ‘Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty’ (Intergovernmental Panel on Climate Change 2018).

¹²⁹ Re-Indigenisation is often used in place of ‘decolonisation’ because it shows that Indigenous legalities, governance, culture, etc., all existed before colonisation. For example, the present-day Americas were full of people with domestic and international laws, norms, and economies. Colonisers tried to destroy it, therefore practices like Two-Eyed Seeing are bringing it back to where it originally existed.

¹³⁰ M’s-it No’kmaq (n 44) 841.

¹³¹ *ibid* 843-44.

¹³² McLean (n 46) 4.

¹³³ Vierros (54) 2.

sustainability, which are still focused on the domination of man over Nature.¹³⁴ Moreover, the ‘best available science’ has critical knowledge gaps. Many species are understudied or “data poor” due to their cryptic behaviour, remote locations, transboundary migrations, or other elusive qualities; some species have only been studied by Western science for a few decades. Indigenous knowledge, curated over thousands of years, will extend scientific understanding of these species, habitats, and biodiversity.¹³⁵ This is of particular importance to marine spaces, including the High Seas.

Indigenous knowledge systems are essential to the conservation of all migratory species and their associated marine ecosystems. Indigenous communities and their respective knowledge holders must be front and centre of conservation research, management decisions, and governance processes related to migratory marine species.¹³⁶

Given the multiplicity of environmental crises, it is time to embrace Relational worldviews and methods of knowledge creation outside of Western science. Relational accounts of the self, of humans and our habitat, allow us to reject the Rationalist, instrumental treatment of Nature and develop alternatives based on relationships and feelings—respect, gratitude, cooperation, and care.

A. Current Examples of Healing Law

The following two examples fall under Earth Law, which is the fastest-growing legal movement in the world.¹³⁷ This umbrella term includes many approaches to eco-centric law, including animal rights, rights of future generations, Rights of Nature, Guardianships, and principles of stewardship.¹³⁸ The Rights of Nature have been codified into several constitutions, including Ecuador and South Africa.¹³⁹ The popularity of Rights to address ecological crises can be attributed to rights being on the masculine side of dualisms; this is also a critique of their overall effectiveness since rights emphasise separation and autonomy.¹⁴⁰ The rights of Natural beings like plants and animals, as well as the Rights of Natural entities like rivers or ecosystems, continue to silo Nature by separating it into parts *with* rights and parts *without* rights. It begs the question, how

¹³⁴ Mazzocchi (n 127) 78.

¹³⁵ McLean (n 46) 4.

¹³⁶ *ibid* 7.

¹³⁷ Takacs D, ‘We Are the River’ [2021] *University of Illinois Law Review* 545, 545.

¹³⁸ See generally, Zelle (n 8).

¹³⁹ Constitution (2008) Republic of Ecuador, Constitution (1996) Republic of South Africa.

¹⁴⁰ Plumwood (n 27) 8.

many species or rivers need rights to ensure the human legal system upholds the ecosystem? While Rights of Nature and Rights of Future Generations have been successful in environmental protection,¹⁴¹ in the long run, we are better off centring less dualistic moral concepts like care, respect, compassion, gratitude, friendship, and responsibility.¹⁴² Rights-based legal frameworks do not align with Indigenous legalities based on these values.¹⁴³ However, given that rights-based frameworks are the dominant paradigm in international and domestic laws, it can be strategic to use them as a stepping stone toward Relational values.

In Aotearoa, the Crown acknowledged treaty violations with the Māori and sought to make amends; the Crown further acknowledged Māori longstanding cultural traditions, their claims to traditional land, and that ecological sciences support the Māori understanding of interdependence between humans and Nature. The negotiations that followed resulted in the Te Urewera Act of 2014, the most progressive legislation to date granting legal personhood to a bioregion and providing an example of how to re-Indigenise law by returning governing power to Indigenous communities.¹⁴⁴

The Māori did not want fee simple ownership or guardianship, because they do not believe they can “own” something to which they fundamentally “belong.”¹⁴⁵ Rights-based frameworks do not always reflect Indigenous values such as reciprocity and responsibility; for the Māori, there is little separation between one’s “self” and the habitat that sustains one: “To pollute the River is to pollute the people.”¹⁴⁶ Given the dominant paradigm of rights-based frameworks, the Māori did settle on legal personhood as their best legal option during negotiations but not all were completely happy with the decision.¹⁴⁷

The Act requires that the bioregion be governed by political appointees of both the Māori and the Crown, and by principles reflecting Tuhoe cosmology. This includes the requirement that businesses seeking to operate in the area must “negotiate friendship agreements that detail how they

¹⁴¹ ‘Ecuador Court Upholds “Rights of Nature,” Blocks Intag Valley Copper Mine’ (*Mongabay Environmental News*, 31 March 2023) <<https://news.mongabay.com/2023/03/ecuador-court-upholds-rights-of-nature-blocks-intag-valley-copper-mine/>> accessed 1 April 2024

¹⁴² Plumwood (n 27) 9.

¹⁴³ Zelle (n 8) 656.

¹⁴⁴ Te Urewera Act 2014 (N.Z.), see also, Takacs (n 137) 553, 554, 561.

¹⁴⁵ Takacs (n 137) 569.

¹⁴⁶ Pierce T, ‘Radical Legal Change: Moving Toward Earth Law’ (2022) 28 *Hastings Environmental Law Journal* 237, 252, citing Takacs (n 137) 561.

¹⁴⁷ Conversation with Professor David Takacs (n 137) about his research in Aotearoa. See author for notes.

will ‘demonstrate loyal affection to the Te Urewera values and her need to continue her complex balancing act among living systems.’”¹⁴⁸

Despite being rights-based, this approach shows legal scholars and decision-makers a path into the realm of “anthro-eco-centric” notions:

the law is still first and foremost a reflection of human beliefs and human needs, but the law situates those needs in a web of interrelatedness where the nonhuman world looks after us as we look after it, with those connections so entwined that there is no “us” and “it”—we are the River, and the River is us.¹⁴⁹

While this Act is not perfect, it shows that radical legal change is possible and already in process. Law is becoming a healing practice in the Global South.

B. The Questions of Care as Grundnorm

Comparing worldviews and the implicit bias of international law teaches us that we need to question what we think we know. If we are going to change how we practice law, if we want it to be a healing practice, we need to ask the right questions to find new paths forward. This part will offer six Questions of Care to ask ourselves when practising law. Usually, when such a procedure is widely accepted, it is called a *grundnorm*. *Grundnorms* are universal principles used to interpret and apply law.¹⁵⁰ They are considered a “fundamental legal principle or norm against which all other legal norms can be assessed and validated,” thus binding and guiding governmental power.¹⁵¹ While they are not initially binding, they can crystallise into Customary International Law (CIL) through *opinio juris* and State Practice: what States say they believe is a legal obligation and State action regarding that legal obligation. Typically a principle or norm becomes CIL over a long time,¹⁵² but our environmental crises cannot wait much longer. Eco-centric law is being legislated and supported by courts¹⁵³ in the Global South, but international legislation can take decades. For example, the new High Seas Treaty was nearly twenty years in the making and is still in the ratification

¹⁴⁸ Takacs (n 137) 547, 572.

¹⁴⁹ *ibid* 561.

¹⁵⁰ Kim R and Bosselmann K, ‘Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law’ (2015) 24 *Review of European Community & International Environmental Law* 194, 205

¹⁵¹ Kim (n 150) 205.

¹⁵² Hernández, Gleider, *International Law* (2nd edn, Oxford University Press 2022), 35

¹⁵³ *Mining Permits in Regards to the Los Cedros Protected Forest* [2021] Constitutional Court of Ecuador 1149-19-JP/20

process,¹⁵⁴ and many environmental goals need to be achieved by 2030¹⁵⁵ which is only six years from this writing. The Questions of Care can be used immediately to help decision-makers, from government officials to community leaders, begin practising a more equitable and sustainable version of law that resembles a healing practice.

Upon careful review of Indigenous worldviews, scientific documentation of environmental destruction, the ecofeminist analysis of the Rational/Emotional within law, and the history of colonisation, I offer these “Questions of Care” as a guide to push accepted international law into a healing practice that respects Indigenous laws and the needs of the Earth Community:

1. What is the natural history of this place?
2. What is the social history of this place?
3. What relationships between human communities need healing?
4. What relationships between the human community and their habitat need healing?
5. Given the exploration of questions 1-4, is this project appropriate for this location?
6. Who is best suited to carry out this project based on the relationships that need healing?

At first glance, these questions may seem to separate humans and Nature. Yet, we humans are a species of our own, just like a salmon is a species of its own—and so by asking questions about the relationship of different parts of Nature (human to human, human to river, human to forest, etc.), we can better understand ourselves as one of the parts of Nature. With each question, there is an opportunity to seek a deep understanding of all the relationships of a place, to seek wise counsel from many, and to act in a way that benefits “all our relations.” Understanding the historical context of relationships is critical to understanding what needs healing today, and thus the first two questions require an accurate, honest view of place as told by multiple voices. The questions also offer a chance to consider the symbiosis of our relationships and the overlap of human culture and the habitat in which we, as a species, live. These questions demand the inclusion of all voices to find meaningful answers, including the voice of Nature. “Relationships are not something extrinsic to who we are, not an ‘add on’ feature of human nature; they play an essential role in shaping what it is to be human.”¹⁵⁶

¹⁵⁴ “After almost 20 years of talks, United Nations member states agree on legal framework for part so the ocean outside national boundaries,” McVeigh K, ‘High Seas Treaty: Historic Deal to Protect International Waters Finally Reached at UN’ *The Guardian* (5 March 2023) <<https://www.theguardian.com/environment/2023/mar/05/high-seas-treaty-agreement-to-protect-international-waters-finally-reached-at-un>> accessed 6 May 2024

¹⁵⁵ For example, global CO₂ emissions need to decline by about 45% from 2010 levels by 2030 to stay on target for ‘net zero’ by 2050, IPCC (2018) (n 127) 12.

¹⁵⁶ Plumwood (n 27) 20.

Taking the time to ask these questions when interpreting and applying law is an opportunity for everyone to be more inclusive, considerate, and caring. Such questions go beyond current legal requirements and tools, like Environmental Impact Assessments (EIAs), sustainable development goals, or benefit-sharing mechanisms. The desired results are policies and actions that create a more equitable world in which we live in harmony with our habitat. For practice, let us imagine what these questions would do if they were part of EIAs and Benefit-Sharing analyses.

EIAs were recognised to have crystallised as CIL in the Case Concerning Pulp Mills on the River Uruguay (*Pulp Mills*) decided by the International Court of Justice (ICJ).¹⁵⁷ The ICJ stated that the content of an EIA must consider the nature and magnitude of both the activity and the activity's impact, possible alternatives to the proposed activity, and EIAs should be conducted before, during, and after the activity because they are part of the continuous duty to prevent harm.¹⁵⁸

This case exemplifies how colonisers created international law and influenced domestic law: These two South American States used language almost identical to the language of pre-existing international treaties in their own agreement. Argentina and Uruguay came before the ICJ in part over a dispute over the 1975 Statute of the River Uruguay, in which Article 1 requires Parties to “contribute to the optimum and rational utilisation of the river.”¹⁵⁹ The ICJ provided clarity and criteria for EIAs, but they are still not preventing the destruction of the planet because they continue to support the Western worldview of choosing between “environment or economy” and merely assess the estimated amount of environmental damage, which is then determined as acceptable or unacceptable.

Asking the Questions of Care will enable us to add considerations to EIAs that shift focus from Rational, ‘optimal use’ toward healing relationships. To answer these questions, EIAs will require a multi-disciplinary approach, thus adding seats at the table of decision-making. The first two questions provide the context to answer the remaining questions and therefore should include as many local voices as possible. Understanding the natural history of a place will need the voices of scientists, historians, Indigenous ecological knowledge, local naturalists, and others. The social history of a place will illuminate the past and current struggles of marginalised peoples and require acknowledgement of the lasting power dynamics from colonisation. Gaining a holistic perspective on the history of a place, from social struggles to ecosystem health and biocultural values, will provide a more accurate understanding of our relationships and how to move forward in an

¹⁵⁷ *Case Concerning Pulp Mills on the River Uruguay* (International Court of Justice) (*Pulp Mills*) para 204.

¹⁵⁸ *Pulp Mills* (n 157) para 205.

¹⁵⁹ *ibid* Part IV(B)(1).

equitable manner for all life. These first two questions are necessary to come to the best answers for the following questions about the proposed project. Grounding EIA analysis in respect, care, and gratitude for the Earth Community means a project can only be deemed appropriate if it has Nature-positive impacts and supports the needs of local communities.

The CBD requires benefit-sharing, and originally, many States rich in biological and cultural diversity hoped it would serve as a safeguard by recognising Indigenous knowledge.¹⁶⁰ Years later, few examples of equitable benefit sharing are found. What typically occurs is foreign corporations paying governments (and on rare occasions, Indigenous People) for bio-prospecting dependent on Indigenous knowledge.¹⁶¹ Royalties for any resulting commercially viable products are often promised but in contracts that are difficult to enforce. Worst still, in some cases, “paying large sums of money to Indigenous groups may hasten their destruction.”¹⁶²

However, projects will have vastly different results if benefit-sharing mechanisms consider the Questions of Care. The focus will shift away from the exchange of money and technology toward meaningful relationships between Indigenous people and the people asking for their knowledge to create products like medication; moreover, our questions will consider the relationships between all people and the ecosystem providing livelihoods and products that improve our quality of life. The resulting mutual respect for people and place would be a far cry from “the usual cascade of intellectual property licences from one multinational to another.”¹⁶³

¹⁶⁰ Cullinan (n 5) 156.

¹⁶¹ *ibid* 156.

¹⁶² *ibid* 156.

¹⁶³ *ibid* 156.

PART III: RESTORING OCEAN RELATIONSHIPS

Asking the Questions of Care will result in change—that is the point. Some of this change may, at first, seem radical. However, when all our relations are considered, radical legal change may not seem so radical. Surely, burning fossil fuels to the point that the entire planet is no longer habitable is a much more radical notion than treating each other with care and respect. The Ocean has been and continues to be a legal realm that encourages experimentation,¹⁶⁴ so it is a great place to initiate legal change and will be the focus of the following analysis: ideal impacts from applying the Questions of Care to restoring Ocean relationships. Two ideas will be considered, (1) turning the High Seas into a Marine Protected Area (MPA), and (2) Restorative Ocean Farms (ROFs) in EEZs. Relevant international law includes UNCLOS and the new High Seas Treaty, officially called “The Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction” (the BBNJ).

The BBNJ is embedded in the same Western worldviews as UNCLOS. Thus, it continues to support the colonial forces that promote certain ways of knowing over others, resulting in conventional fisheries management that “adheres to an ‘illusion of certainty’ in which Nature is predictable and controllable.”¹⁶⁵ It is hierarchical and paternalistic, and “the net result is a global system that is largely failing both ecologically and socially.”¹⁶⁶ The consistent use of the phrase ‘best available science’¹⁶⁷ and its exclusion of other ways of knowing has legally permitted raging marine environmental destruction. It is past time to engage in Two-Eyed Seeing.

Not only would it behove fisheries scientists to use all and the best tools and knowledge available at this time of crisis, irrespective of their origin and the perceived objectivity and superiority of Western scientific approaches, but this would importantly serve decolonial and reconciliatory efforts that help rectify uneven power relations, knowledge inequalities, and other racially linked and unjust dynamics in fisheries.¹⁶⁸

This section explores how the Questions of Care can aid the transition to inclusivity of knowledge and act as a collaborative force when accepted international law and Indigenous laws conflict.

¹⁶⁴ Ranganathan (n 107) 163.

¹⁶⁵ Reid (n 4) 244.

¹⁶⁶ *ibid* 244.

¹⁶⁷ See e.g., UNCLOS (1982) arts 61(2), 119(1).

¹⁶⁸ Reid (n 4) 245.

A. *All Our Relations Considered, the High Seas Should Be a Marine Protected Area*

Question 1: What is the natural history of this place?

The natural history of the High Seas is relatively unknown due to its remoteness and vastness, resulting in what the Global Ocean Commission calls “a general ignorance of natural life there.”¹⁶⁹ Indigenous knowledge can help fill gaps, yet doing so has been underexplored academically.¹⁷⁰ But even Western knowledge is aware industrial fishing has reduced the biomass of some targeted species by 90% and historical calculations show a new fishery can reduce biomass by an order of magnitude in only 10-15 years.¹⁷¹ The “history of the world’s fishing practices has been one of progressive overexploitation”¹⁷² which is why the Millenium Ecosystem Assessment concluded that “overfishing [is] having the most widespread and dominant direct impact on food provisioning services, which will affect future generations,”¹⁷³ and other models are predicting the collapse of *all* fisheries by mid-century.¹⁷⁴

Additionally, since industrial fishing began, countless species have been and continue to be pushed to extinction, such as Oceanic Whitetip Sharks whose populations have plummeted 98% and are now ‘functionally extinct’ in some areas like the Gulf of Mexico. This comes after being one of “the most abundant and ubiquitous shark species in tropical waters globally.”¹⁷⁵ This species is a prime example of the phenomenon of shifting baselines. This occurs when each generation adjusts to a new normal, thinking the present state is ‘natural’ and ignoring historical change.¹⁷⁶ This results in management based on “simplistic concepts such as maximum sustainable yield” with a dangerous lack of historical perspective, turning marine management into managing extinction rates,¹⁷⁷ like with Oceanic Whitetips and fisheries at large. Shifting baselines is a major player in the first Question of Care, and wise counsel can be found in the many Indigenous People who are

¹⁶⁹ Rogers AD and Sumaila R, ‘The High Seas and Us: Understanding the Value of High-Seas Ecosystems’ (Global Ocean Commission 2014), 5.

¹⁷⁰ Reid (n 4) 256.

¹⁷¹ Hassan R, ‘Millenium Ecosystem Assessment, Ecosystems and Human Well-Being: Current State and Trends’ (United Nations 2005), 516 (MEA 2005).

¹⁷² Craig (n 14) 27.

¹⁷³ MEA 2005 (n 171) 479.

¹⁷⁴ Worm B, ‘Impacts of Biodiversity Loss on Ocean Ecosystem Services’ (2006) 314 *Science*, 790.

¹⁷⁵ Young C, ‘The Biology and Conservation Status of the Oceanic Whitetip Shark (*Carcharhinus Longimanus*) and Future Directions for Recovery’ (2020) 30 *Review of Fish Biology & Fisheries* 293, 293.

¹⁷⁶ Jackson J, Alexander K and Sala E (eds), *Shifting Baselines: The Past and the Future of Ocean Fisheries* (Island Press 2011), 3

¹⁷⁷ Jackson (n 176) 3.

“culturally and ecologically interconnected with each other and the High Seas through Ocean ecosystems.”¹⁷⁸

In summary, both scientific consensus and Indigenous knowledge support ending High Sea fishing. For example, the Nature Needs Half movement is a coalition of scientists, Indigenous Peoples, conservationists, nonprofits, and public officials fighting to protect 50% of the planet (specifically, they advocate for protecting 50% of each 846 ecoregions.) They argue that the best, contemporary science and Indigenous wisdom show that half of the planet needs conservation status for healthy functioning that benefits all life.¹⁷⁹ This is considerably more than the 30x30 goal generally accepted by international law, and, specifically, the BBNJ¹⁸⁰ which sets out to create a “well-connected network of marine protected areas.”¹⁸¹

Question 2: What is the social history of this place?

The High Seas remoteness and vastness has prevented humans from spending much time there on an evolutionary scale. The most significant human ties to the High Seas are through Indigenous cosmologies and traditional sailing voyages.¹⁸² Some of the cosmologies were recently very publicly expressed at the March 2023 International Seabed Authority (ISA) meeting in Jamaica. Solomon Kaho’ohalahala gave delegates a traditional chant and explained that in his culture’s genealogy, all life comes from the deep sea: “the Ocean is our country and we come from the deepest depths of the seas.”¹⁸³ The ISA received a petition with over 1,000 signatures from 34 countries and 56 Indigenous groups expressing they do not consent to deep sea mining and urging the ISA to enact an immediate ban on the activity. Signatory Alanna Matamaru Smith from Te Ipukarea Society stated,

We are not in a position to add any new stress to our oceans by allowing deep-sea mining to start. Overfishing, ocean pollution, and rising temperatures have already taken a huge toll on our high seas and we have

¹⁷⁸ Vierros (n 54) 8.

¹⁷⁹ ‘Nature Needs Half’ (Nature Needs Half) <<https://natureneedshalf.org/>> accessed 8 May 2024

¹⁸⁰ The British Broadcasting Company (BBC) stated that the BBNJ “aims to help place 30% of the seas into protected areas by 2030,” yet this goal is not stated anywhere in the document. ‘Ocean Treaty: Historic Agreement Reached after Decade of Talks’ (5 March 2023) <<https://www.bbc.com/news/science-environment-64815782>> accessed 8 May 2024.

¹⁸¹ BBNJ, s 17(a).

¹⁸² Vierros (n 54) 4, 8.

¹⁸³ ‘Indigenous Peoples from 34 Nations Call for Total Ban on Deep Sea Mining - Greenpeace USA’ (20 March 2023) <<https://www.greenpeace.org/usa/news/indigenous-peoples-from-34-nations-call-for-total-ban-on-deep-sea-mining/>> accessed 17 April 2024.

done a poor job at mitigating these current stressors. So why are we even considering a new layer of destruction to an ecosystem that provides so much for us? We need to start giving back to our ocean, not deprive it of its wonders.¹⁸⁴

Less publicly known are the cosmologies of the South Pacific, where fish is a cultural food staple, sea-borne trading networks sustain livelihoods and communication, and the Ocean is a place of “ritual cleansing and healing.”¹⁸⁵ Additionally, Sea-Ocean connections (seas being smaller, more enclosed spaces compared to the open, or high seas) have been fundamental in shaping Southeast Asian cosmologies and religions.¹⁸⁶ Recall also the Ocean-based biocultural values of African fishing communities.

Question 3: What relationships between human communities need healing?

Many relationships need healing from High Seas fishing and we will explore three: States engaged in High Seas fishing are damaging their relationship (1) with Indigenous Peoples, (2) with other States by taking all the fish and causing global inequity, and (3) with their own people by endangering the global ecosystem and allowing human rights violations. Most issues have already been discussed, but to summarise: First, Indigenous voices have been marginalized repeatedly across environmental law and in Ocean spaces. Second, only a few wealthy, Over-consuming States dominate High Seas fishing¹⁸⁷ resulting in an inequitable distribution of fish in EEZs that harms Low-Consuming States. Further, it is estimated that removing high-seas fish from the market could reduce the global cost of fish, making this important protein more accessible and increasing food security.¹⁸⁸ Both problems are seen in West African fishing states where Chinese trawlers take fish from West African fishing communities. Additionally, High Seas fishers are among the most vulnerable workers to exploitation and unsafe conditions because they are the least protected

¹⁸⁴ *ibid.*

¹⁸⁵ Andaya B, ‘Seas, Oceans and Cosmologies in Southeast Asia’ (2017) 48 *Journal of Southeast Asian Studies* 349, 351.

¹⁸⁶ Andaya (n 185) 350.

¹⁸⁷ McCauley D and Jablonicky C, ‘Wealthy Countries Dominate Industrial Fishing’ (2018) 4 *Science Advances*.

¹⁸⁸ McCauley (n 187) 3.

workers under international law.¹⁸⁹ Ending High Seas fishing would reduce a variety of human rights violations occurring around the world, including modern-day slavery.¹⁹⁰

Essentially, the race for fish has humans competing against each other instead of working together. Around the world, High Seas fishing harms many human-human relationships by marginalising their voices, destroying their lifeways, and/or exploiting vulnerable people.

Question 4: What relationships between the human community and their habitat need healing?

Here we are faced with overlapping issues because everything is connected. The State-Indigenous relationship has prevented Indigenous Peoples all over the world from engaging in their legalities and cultural practices of Ocean stewardship both in relation to nearshore waters and the High Seas. Overall, the harm of High Seas fishing is being caused by the Western worldview of Nature and all of humanity is suffering from it. An end to fishing the High Seas will help heal the global ecosystem and build respect between more people for what the Ocean provides.

Question 5: Given the exploration of questions 1-4, is this project appropriate for this location? Specifically, is turning the High Seas into an MPA appropriate?

A project is appropriate for a location if it heals the relationships revealed by Questions One through Four. In this case, studies have shown that ending fishing on the High Seas has huge benefits, including restoring multiple marine ecosystems and equitable fish distribution and promoting food security where it is needed most, like the Great Ocean States, coastal African States, and coastal Indian Ocean States.¹⁹¹ One study found that a High Seas MPA would benefit fisheries even if 90% of their current fishing efforts were on the High Seas. The explanation is simple: overfished species are “likely to recover (and benefit sovereign fisheries via spillover) when the High Seas are closed.”¹⁹² Studies have shown that even with a small spillover of 18%, global fish catch would remain the same. Other models have estimated the potential for 42% spillover, which would increase global fishing catch by USD 11 million annually.¹⁹³ A High Seas MPA has been called a “fish bank” for the world.¹⁹⁴ Creating a High Seas MPA will start to heal the relationship

¹⁸⁹ *ibid* 1.

¹⁹⁰ Dow S, ““Such Brutality”: Tricked into Slavery in the Thai Fishing Industry’ *The Guardian* (21 September 2019) <<https://www.theguardian.com/world/2019/sep/21/such-brutality-tricked-into-slavery-in-the-thai-fishing-industry>> accessed 17 April 2024; *See also*, Calma J, ‘Slavery and Overfishing on the High Seas Can’t Hide from These Researchers’ (*The Verge*, 21 December 2020) <<https://www.theverge.com/22193774/high-seas-fishing-vessels-ais-slave-labor>> accessed 17 April 2024

¹⁹¹ White (n 16) 3; Andreoli (n 17) 6.

¹⁹² White (n 16), 2.

¹⁹³ *ibid*, 2-3.

¹⁹⁴ *ibid* 3.

between Western minds and the Ocean once it shows that respecting the Oceans' ecological history and prioritising its health, in turn, provides abundant fish and a more stable global ecosystem.

Question 6: Who is best suited to carry out this project based on the relationships that need healing?

Looking to who is best suited to carry out this project is both simple and complicated. The answer may point to a certain group of people who *should* carry out a project or proposal based on everything learned in Questions 1-5, but that does not mean the legal or political systems will support that group. Therefore, on occasion, the *who* will also be greatly connected with the *how*. The logistics of carrying out healing in the face of oppressive systems make clear that we all have a responsibility to support the *who* in any way we can. Whatever we have to give, it is time to give. Cannupa Hannska said in a speech, "Everyone has privilege. I'm privileged to be an artist and to work with amazing people. Whatever your privilege is, weaponise it for good."¹⁹⁵ In this way, the answer to Question 6 examines who should take the lead based on their capacity and role.

Since the High Seas concerns the entire international community, inclusivity is important. Nonprofits, NGOs, and local activist groups have important roles in international politics. They can promote diversity in negotiations and act as a bridge between civil society and decision-makers.¹⁹⁶ The simplicity is that everyone deserves a say and the complexity is fighting the current imbalance of power: community leaders can make a difference. In this case, the High Seas are governed by UNCLOS and its implementing agreements, so States have the most power, and several approaches to creating a High Seas MPA have been proposed. In an ideal world, States would ask themselves the Questions of Care to ensure they are representing what their people want. However, a High Seas MPA can interest even the most anthropocentric, capitalist-minded States.

For example, High Seas fishing is not financially viable without government subsidies.¹⁹⁷ Fishing the High Seas requires larger (more expensive) boats, additional fuel, and more time looking for fish, resulting in higher costs for each fish.¹⁹⁸ Any State could end its subsidies in the self-interest of saving money. However, since only 10 States land the majority of High Seas fish,¹⁹⁹ making a defacto MPA by ending subsidies would only be effective if those States participated.

Another approach is for States to take domestic legal action, unilaterally or by creating "clubs." Because States that are the end consumers of fish are not those that catch it, they can have

¹⁹⁵ Hanska C, 'Art & Activism: Standing Rock' (Speech, Oregon State University, 2017)

¹⁹⁶ Sumaila R and et. al., 'Winners and Losers in a World Where the High Seas Is Closed to Fishing' (2015) 5 Scientific Reports, 1,3.

¹⁹⁷ Sumaila (n 196) 3.

¹⁹⁸ *ibid* 3.

¹⁹⁹ *ibid*, 1, 3.

considerable influence on the few High Seas fishing States. The Club Approach can take various forms of collaborative action. For example, States can prohibit their flagged fishing vessels from fishing the High Seas and refuse any fish from the High Seas. Another option is to condition access to a desirable good for States banning High Seas fishing.²⁰⁰ And the United States and Russia have already banned other States from fishing a ‘donut hole’ of High Seas surrounded by their EEZs.²⁰¹

Unilateral action could also be taken, but the impact would greatly depend on which States ban High Seas fishing and fish products. The U.S. imports 90% of its seafood²⁰² despite having the largest EEZ in the world.²⁰³ U.S. fishers are not using the maximum number of High Seas permits, and it is estimated that they would support a High Seas MPA because demand for fish harvested from EEZ would increase. Additionally, their EEZ has very stringent regulations under the federal Magnuson-Stevens Act²⁰⁴ so a High Seas ban would deny access to the market for fish caught through less stringent regimes, thus levelling the playing field for domestic fishers.²⁰⁵

States could also submit an MPA proposal through the BBNJ, which sets out to create a “well-connected network of marine protected areas.”²⁰⁶ Nothing would be more ‘well-connected’ than a complete MPA and no language in the BBNJ prohibits a complete MPA. The idea of smaller MPAs on the High Seas will not be as effective, since smaller MPAs have not produced significant benefits for most migratory species.²⁰⁷ “Creating marine protected areas and reserves is widely regarded as the silver bullet of ocean conservation when in truth it is an exercise in damage limitation that enables cruel and harmful commercial practices to continue over large parts of the world’s ocean[.]”²⁰⁸ Thus, the Earth Community is better off with a complete High Seas MPA and States will be on more equal footing for such a proposal.

Assuming all these benefits are presented clearly and given that all States stand to benefit from a High Seas MPA, it is likely to have majority support in a BBNJ proposal process. While the BBNJ does prefer consensus, Article 23(2) allows for decisions of Part III to be made by a two-

²⁰⁰ Green (n 121) 9-10.

²⁰¹ *ibid.*

²⁰² Wyman K, ‘Unilateral Steps to End High Seas Fishing’ (2018) 6 Texas A&M Law Review, 293.

²⁰³ The United States Is an Ocean Nation, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <http://www.gc.noaa.gov/documents/2011/012711-gcil-maritime-eez-map.pdf>

²⁰⁴ Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 (1976).

²⁰⁵ Wyman (n 202) 293.

²⁰⁶ BBNJ, s 17(a).

²⁰⁷ Wright D, *Future Sea: How to Rescue and Protect the World’s Oceans* (University of Chicago Press 2020), 163.

²⁰⁸ Wright (n 207) 163.

thirds majority vote.²⁰⁹ Since each State gets one vote, this is a huge opportunity for middle- and low-consuming States to shift away from forces of eco-colonisation and help restore the global Ocean, healing the Earth Community. We should hope to see a “united, multinational political commitment to modernise and implement existing international law [which] can generate a wholly different, more enlightened understanding”²¹⁰ of our relationship with the Ocean.

However, politics certainly influences the legal system.²¹¹ Some pushback may come from the handful of wealthy States that currently land the majority of High Seas fish—they could argue that closing the High Seas would increase food security risks by reducing fish catch and job losses. However, there are no facts to support such economic concerns. High Seas fisheries provide few jobs and fewer still with significant incomes²¹² and according to the Global Ocean Commission’s analysis, impacts across the board would likely be positive.²¹³ As it stands now, High Seas fishing plays a small role in the economic value of global fisheries while overfishing the High Seas directly harms EEZ fisheries.²¹⁴ Even from the capitalistic perspective of commodifying Nature, all ‘ecosystem services’ depend on all parts of the High Seas, including the living flora and fauna, and the composition of the seabed.²¹⁵

The greatest challenge States will have to overcome is adherence to precedent. The BBNJ must be read in the context of other laws²¹⁶ and specifically states it shall “not undermine relevant legal instruments and frameworks.”²¹⁷ UNCLOS is a relevant framework which creates the freedom to fish the High Seas. Sadly, the “not undermine” rule was repeatedly “wielded as a buffer,” for shooting down “more radical proposals” during the BBNJ negotiations.²¹⁸ Removing an enumerated freedom²¹⁹ of the High Seas could be seen as radical and undermining UNCLOS.

²⁰⁹ BBNJ, s 23(2).

²¹⁰ Wright (n 207) 163.

²¹¹ Scott (n 34) 320.

²¹² Sumaila (n 196) 1, 3.

²¹³ Rogers (n 169), 13.

²¹⁴ *ibid* 2, 3, 13.

²¹⁵ *ibid* 2, 3, 13.

²¹⁶ Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction 2023 (A/CONF232/2023/4) (BBNJ 2023), arts 5(1)-(2), 22(2)

²¹⁷ BBNJ (2023), arts 22(2).

²¹⁸ Raganathan (n 107) 179.

²¹⁹ UNCLOS (1982) art 87(e).

When law conflicts or overlaps, we use a *grundnorm* to find and validate appropriate interpretations that meet the highest calling of the law, and only upon that do we base our decisions and actions.²²⁰ The only reason *grundnorms* have not been used to resolve conflicts in law between Western laws like UNCLOS and Indigenous legalities of Ocean Stewardship is because Western legal practitioners continue to marginalise and dismiss Indigenous Peoples. The BBNJ specifically tries to be inclusive of Indigenous knowledge, which was seen as “an indication of the growing international acceptance of the importance of Indigenous knowledge for the management of species that cross jurisdictional boundaries.”²²¹ This “beacon of hope” has let us down as we are faced with the fact that “Despite their inherent rights and responsibilities to manage their ancestral territories, Indigenous communities and their knowledge systems have consistently been marginalised from decision-making processes through colonial processes continuing today.”²²² Approximately 90% of the scientific publications consulted in this drafting process came from scientists in [Overconsuming] States, showing an “extremely inequitable participation of the scientific community.”²²³ It is easy to conclude that if the Questions of Care were the *grundnorm* used to settle conflicts between these Western Laws and Indigenous Laws, a High Seas MPA would be appropriate legal action.

The irony of any “do not undermine” analysis should not be missed. Western law has done nothing but undermine all others. A certain amount of undermining law is required to decolonise law. That is, in fact, the point.

Additionally, creating new laws to address old laws that are failing must include undermining the mechanisms that cause the failure. A study of the scientific community at large showed that some authors were hopeful about the BBNJ’s ability to strengthen sectoral bodies and instruments in fulfilling UNCLOS responsibilities by promoting action through “new global regulations, standards and practical guides to be implemented by States parties,” but the phrase ‘not undermine’ was associate in a negative context.”²²⁴ The scientists know actual change is needed. Pushing law into a healing practice, or at least transitioning to law that maintains a habitable planet, requires undermining the laws harming the planet.

²²⁰ Kim (n 150) 205.

²²¹ McLean (n 46) 4.

²²² *ibid* 2.

²²³ Caldeira M and Teixeira H, ‘Negotiations to Implement Area-Based Management Tools beyond National Jurisdiction: The Scientific Community’s View’ (2023) 10 *Frontiers in Marine Science*, 10.

²²⁴ Calderia (n 223) 12.

Even if Indigenous legalities and voices are ignored, UNCLOS and the BBNJ have conflicts within their own texts and between each other. The UNCLOS freedom to fish the High Seas and the purpose of the BBNJ “to prevent marine ecosystems and biodiversity from a continuous decline”²²⁵ cannot coexist. The environmental damage outlined above makes that clear.

Further, a recent study shows that a complete High Seas MPA would simultaneously achieve three outcomes that the BBNJ desires: (1) it would coordinate global efforts across the High Seas and EEZs, (2) it would reduce overfishing and (3) it would protect a sufficient range to allow fish populations to bounce back.²²⁶ This supports all of the BBNJ’s Objectives laid out in Article 17, including (a) conserving areas requiring protection, (b) strengthening cooperation and coordination, but perhaps most importantly, (c)-(e) which are:

- (c) *Protect, preserve, restore and maintain biological diversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen resilience to stressors, including those related to climate change, ocean acidification and marine pollution;*
- (d) *Support food security and other socioeconomic objectives, including the protection of cultural values;*
- (e) *Support developing States Parties, in particular the least developed countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle-income countries. . .*

Italics emphasise the areas in which these studies show clear and nearly immediate benefits. The only legal question is whether we are going to choose to engage in Two-Eyed Seeing to help meet numerous goals of the BBNJ, the needs of people, and the needs of the ecosystem, or if we are going to maintain oppressive systems of colonialism while hiding behind ‘do not undermine.’

B. How to ‘Maintain & Restore’ Our Exclusive Economic Zones

Coastal ecosystems have been terribly damaged all over the world. But the story of Bren Smith’s Ocean Farms provides a solution. Like the principles of regenerative farming on land, mimicking the ecosystem to cultivate food (and medicine) has countless benefits ecologically, socially, culturally, and economically. And when the Questions of Care are considered first, the benefits will be widely felt by the Earth Community at large. Thus, I call these Restorative Ocean Farms (ROFs). They are the prime example of ideal results from asking the Questions of Care.

²²⁵ *ibid* 2.

²²⁶ White (n 16) 1.

A ROF is an underwater, vertical, polyculture garden. In cold water, ROFs typically cultivate bivalves like mussels, oysters, clams, scallops, and seaweeds native to the location.²²⁷ In tropical waters, species could include sea cucumbers, oysters for pearls or meat, sea grapes and other seaweeds, seagrass beds, and even coral for the aquarium trade²²⁸ or as part of coral reef restoration projects. In any location, when we ask the Questions of Care, ROFs offer significant benefits “including job creation, food security, positive nutritional outcomes, poverty alleviation, gender and social equity, intergenerational collaboration, and [partnering with] traditional knowledge. Whether public or private entities, ROFs prioritise supporting local communities’ needs. In short, ROFs reimagine current aquaculture practices to align human needs with ecosystem services.”²²⁹ ROF design, species selection, and business plans are site-specific.²³⁰

The numerous ecological and socio-economic benefits extend beyond the coastline and have already been quantified through a Western lens. Starting with the ecological benefits, ROFs improve water quality, reduce ocean acidification, act as a massive carbon sink, and create a nursery for juvenile fish and habitat for many other marine species, thus supporting a more resilient ecosystem. Additionally, fishers can easily transfer their skills and tools to ROFs; spending a few days a week working on their ROF keeps their relationship with the sea alive, increases income sources and reduces fishing pressure so that they (and future generations) can continue fishing traditions.²³¹ Equally as exciting are the cross-ecosystem benefits: seaweed can be used as fertilizer on land-based farms, which achieves many desirable results: (1) it eliminates some fertilizers thus (2) saving farmers money while (3) reducing harmful runoff into rivers and the Ocean, and (4) it restores carbon to the soil creating yet another carbon sink.²³² Perhaps a more unique use of seaweed is using it to reduce the potent greenhouse gas emitted by cow burps: methane. This unique solution is going mainstream since California just approved the first red seaweed dietary supplement for cows.²³³ Dairy cows alone account for 45% of California’s methane emissions, so the implications

²²⁷ Smith (n 1) 57.

²²⁸ Pierce T and D’Andrea A, ‘Opportunities for Women in Restorative Ocean Farms’ Women in Fisheries (Pacific Community, New Caledonia, September 2023) <<https://fame.spc.int/publications/bulletins/womeninfisheries/38>> accessed 8 June 2024

²²⁹ *ibid.*

²³⁰ *ibid.*

²³¹ Pierce (n 146) 118-121.

²³² *ibid.*

²³³ Duggan T, ‘To Fight Climate Change, California Approves Seaweed That Cuts Methane Emissions in Cow Burps’ *San Francisco Chronicle* (9 May 2022) <<https://perma.cc/75YQ-LPKT>>

for States seeking to meet their climate emission reduction goals are considerable, especially for those with large dairy and beef industries.²³⁴

The socio-economic benefits promote equity, including poverty alleviation. Not only do the bivalves provide an important source of protein, but seaweeds (aka sea vegetables) are highly nutritious.²³⁵ The ability to cultivate a variety of nutritious food from a small area will support local food security and nutrition goals. It's estimated that 180,000 square kilometres would produce 120 million and between 11 million and 40 million pounds of sea vegetables.²³⁶ ROFs also create jobs on and off the farm. For example, if only 5% of US waters were used as ROFs, it would create 50 million new jobs.²³⁷ ROFs also provide a release valve for the inequities in the fishing industry, including against ocean grabbing and IUU fishing.

Returning to the West African coastal fisheries, employing ROFs with the Questions of Care will help heal past injustices and current problems. Question 1: Understanding the natural history of the coastline and potential ROF sites will require knowledge of the traditional fishing communities. Question 2: The social history, as described above, is rife with the pain of colonisation and continuing environmental racism. Question 3: The human-human relationships that need healing are many: between traditional fishers and the government, and between traditional fishers and the Chinese trawlers. For example, Chinese trawlers float just outside the EEZ of Senegal: these factory ships scoop up all the fish before they can reach the smaller boats of local fishers, devastating their livelihoods and forcing many people to leave their homes in search of work.²³⁸ More trawlers from China and other States are allowed to enter the EEZs of West African States legally, using local companies as fronts to gain the State flag.²³⁹ And of course, UNCLOS supports this via its articles of 'optimal utilisation' and the requirement to allow foreign vessels to fish until the TAC is reached without properly defining 'sustainable'. So the relationship between international ocean and fishing laws and African States also needs healing. Question 4: The human-Nature relationships that need healing are many: the Chinese perspective of extracting massive amounts of biomass for their own

²³⁴ Pierce (n 146), 118-121.

²³⁵ *ibid* 121-122.

²³⁶ Kleis R, 'Growing Seaweed Can Solve Acidification' [2010] PHYS ORG <<https://perma.cc/L6XH-K4LG>>

²³⁷ Smith (n 1) 131. (Smith did the math: the report estimated that one job is created per ten dry tons of seaweed, which could directly create 50 million jobs; Smith found that to create 50 million jobs in the U.S., it would take 5% of American waters).

²³⁸ 'Overfishing in Senegal: Chinese Trawlers Leave Local Fishermen with Empty Nets' (Yahoo News, 24 February 2022) <<https://uk.news.yahoo.com/overfishing-senegal-chinese-trawlers-leave-153434782.html>> accessed 17 April 2024

²³⁹ Paarlberg (n 79).

consumption on the other side of the world is ecologically devastating, and the African fisherfolk have not been able to engage in their traditional fishing practices. Question 5: With all this in mind, carefully planned ROFs will be appropriate in certain locations to restore the ecosystem.

Question 6: Who should participate and in what capacity? Who should have ROFs is the traditional fishers because that will help heal the majority of relationship issues. While waiting for the harmful subsidies of distant water fishing vessels to be prohibited and for African States to grow their capacity to monitor their EEZs, West African fishers can maintain their Indigenous knowledge and relationship with the sea through ROFs. When fish are scarce, they can depend on income from the ROF which provides multiple harvests throughout the year and opens up different markets. ROFs cannot heal all the relationships, but they can help those who need it most: the traditional fishers and the local ecosystem. The benefits of ROFs will allow fishing communities more time, money, and thus agency to engage in activism to seek justice for the other relationships.

Furthermore, since climate change disproportionately impacts women, ROFs provide an opportunity to increase gender equity at any location. In West African States, most fishmonger/processing jobs are held by women.²⁴⁰ Community-based fishery management projects in Pacific Island Countries and Territories (PICTs) have a successful track record of gender-equity initiatives in aquaculture that any ROF project can build from. For example, the community in Va'ulele established the first pearl-meat oyster farm in collaboration with J. Hunter Sustainable Pearls, the Wildlife Society, and the Pacific Community (SPC). Women and youth have been engaged with job opportunities, empowering their voices in the community. Both men and women have agreed that the participation of women has strengthened relationships and promoted smooth operations of the oyster farm.²⁴¹

Question 6 also points to the role of wealthy States (especially those that previously were colonisers) who should provide financial support to Indigenous and traditional fishing communities. While ROFs are notably affordable to launch,²⁴² even small start-up costs can be large obstacles to people living below the global poverty line or on remote islands.²⁴³ Most fisherfolk already have transferrable tools, skills, and knowledge, and already have a boat. This additional financial help

²⁴⁰ Okafor-Yarwood (n 75).

²⁴¹ Pierce T and D'Andrea A, 'Opportunities for Women in Restorative Ocean Farms' *Women in Fisheries* (Pacific Community, New Caledonia, September 2023) <<https://fame.spc.int/publications/bulletins/womeninfisheries/38>> accessed 8 June 2024.

²⁴² Smith (n 1) 103. (Smith started his farm after saving up money selling nic-nacs on the streets of New York City, providing an estimate of about USD 20,000 for starting a farm in the USA.)

²⁴³ The international poverty line is USD 2.15 per day, Paarlberg (n 75).

can come directly from BBNJ Art 52, which creates a funding mechanism to support the goals of BBNJ. Article 52(6)(c) specifically requires the fund to “Support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge” among other activities.²⁴⁴ This funding could support Indigenous/Community-led restorative ocean farming initiatives around the world, including in West African States and PICTs. It would be especially helpful to launch such practices at remote sites, where materials and training may be lacking and shipping costly like for some South Pacific Islands. Additional funding sources can be found in other international agreements. For example, the Paris Agreement created funding for climate resilience, adaptation, and mitigation, which should take into account the needs and priorities of low-consuming states.²⁴⁵

In summary, Question 6 looks to place equitable responsibility on all participants based on the answers to the first five questions. By being inclusive of Indigenous voices and current problems, the role of participants, from the individual relationships between genders within a community to the State level, are put in the historical context of colonialism and modern-day eco-colonialism. Thus, colonisers can be held responsible and communities can take action to better their situation while waiting for States to do the right thing.

One critical element that ROFs and the Questions of Care share is that they do not need to wait for international or national law—action can be taken now to promote ecocentric and equitable living. Community organisations and government officials at any level can use the Questions of Care and the example of ROFs to create legislation, infrastructure, or any project that meets the needs of their local Earth Community. Imagine what would happen to the relationship between Western society and the Ocean if the law promoted Two-Eyed Seeing and Western society treated all parts of the Ocean with principles like reciprocity, gratitude, and stewardship.

²⁴⁴ BBNJ (2023), arts 52, 52(6)(c)

²⁴⁵ Paris Agreement, s 1(c), 8, 11.

CONCLUSION

Returning to international law as an ideology, Scott argues that the power of an idea resides in its acceptance as a basis for action.²⁴⁶ Even the most rationalist thinkers must concede that human systems must uphold the Ecosystem. Currently, accepted international law does not do that, and cannot do that without a fundamental shift in worldview. The Earth Law movement shows that this shift is not only possible but already underway. Based on worldviews previously excluded from international law and the examples of Earth Law, the Questions of Care offer an opportunity to interpret law in the best possible light for the Earth Community. The results, when applied to the Ocean, can heal all our relations: those between people, and those between people and the habitat in which they live. Our Ocean can be full of fish and free of plastic, gift us with food, and support cultural practices. The law simply needs to support the people and practices that know how to make it happen. If we stop to ask each other how to do this and listen to each other, creating a better world is only limited by our imagination. The Questions of Care offer a path not only to changing legal practice but changing the dominant worldview. That can save the world, and that is an acceptable basis for action.

²⁴⁶ Scott (n 34) 317.

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ANNEX: Images

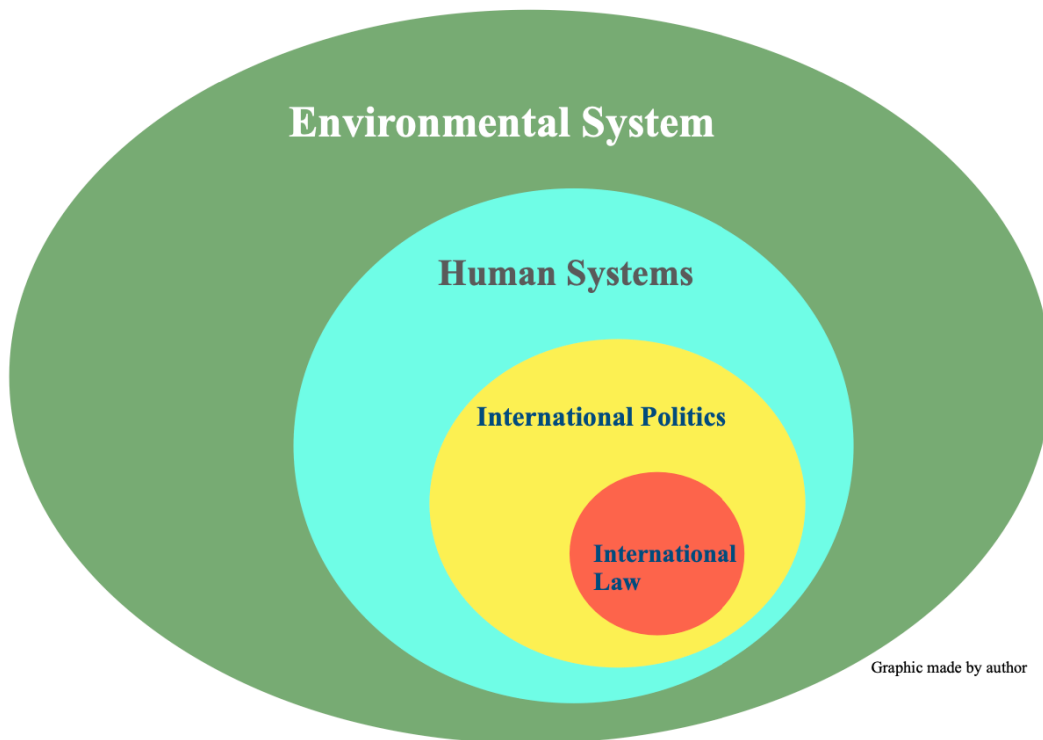


Image 1: Digital illustration of the expansion of Scott's argument.



Image 2: Cold Water Restorative Ocean Farm
Mixed Media by t.a.pierce

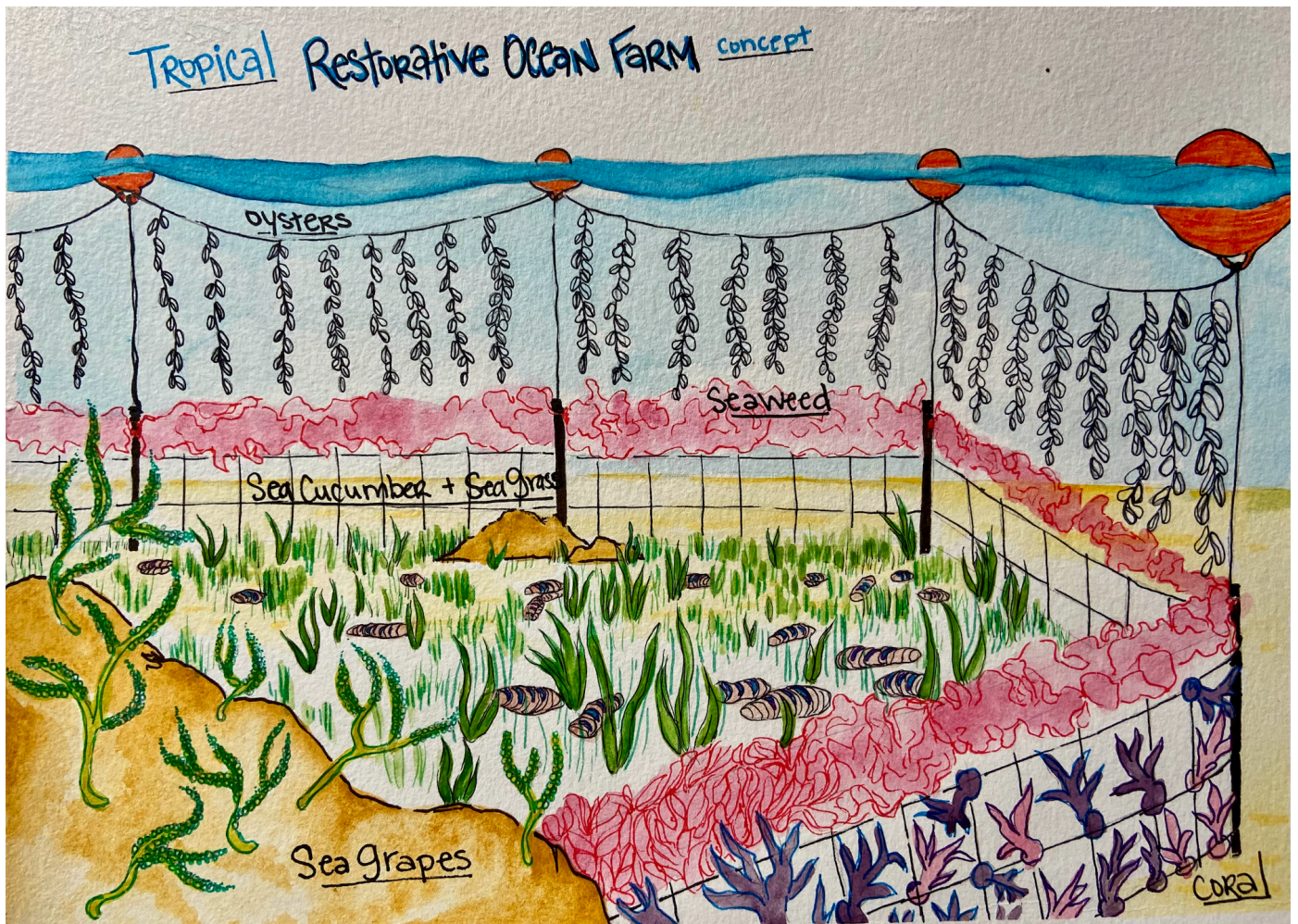


Image 3: Tropical Water Restorative Ocean Farm
Mixed Media by t.a.pierce

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