Nature's Rights are Human Rights:
Revitalizing Indigenous Land Stewardship Through Legal Personhood

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Abstract

Indigenous peoples have held rich, complex knowledges on environmental sustainability and the interrelatedness of humans and the natural world since time immemorial. However, this expertise continues to be largely excluded within domestic and international environmental decision-making. In recent years, a strategy has emerged which provides opportunity for Indigenous worldviews about the environment to be strengthened within a legal context. Legal personhood involves assigning legal rights and protections to natural entities, like rivers. This concept challenges current human rights discourse to include Indigenous knowledges on how the wellbeing of the environment and human beings is not only linked but mutually dependent. This paper provides connections from human rights foundations, theory, and practice to the legal personhood method, as researched during my practicum at Wa Ni Ska Tan. Finally, this paper indicates the potential for the legal personhood method to revitalize Indigenous land stewardship and autonomy in Canada, and advocates for the necessity of further research, education, and awareness on this process.

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Indigenous peoples[1] have held complex understandings of environmental sustainability and the natural world since time immemorial but continue to be wrongfully excluded from environmental management processes. The emerging concept of legal personhood, or assigning legal rights to natural entities, is not only an innovative solution for this issue, but also offers a pathway to enriching Indigenous land stewardship and environmental autonomy in Canada. As encapsulated by Nerberg (2022), "in a time that's marked by the double shock of the climate and biodiversity crises, protecting nature by legal means may be one of the most effective ways forward for saving life as we know it" (para. 6). Overall, this paper argues for the expansion of the current human rights framework to include the rights of nature in alignment with Indigenous worldviews and ways of knowing.

First, this paper[2] explores the extent to which current human rights discourse is rooted in anthropocentrism, and thus its limitations in regards to excluding Indigenous knowledges and perspectives on the natural world. It analyzes hierarchies of rights, what morally separates humans from other living things, a reconsideration of rights-holders, and a discussion on the conception of rights as entitlements or responsibilities. Next, it provides an argument for how and why nature's rights are human rights, substantiated by several scholars as well as through an Indigenous lens. This paper then transitions to outlining the implications of Indigenous exclusion from environmental decision-making, including restrictions at COP15 and modern colonialism which continues to undermine the value of Traditional Ecological Knowledge (TEK). This section

[1] Throughout this paper, the term 'Indigenous peoples' is used as an umbrella term and is not meant to homogenize or generalize the diverse identities, histories, and cultures of Indigenous peoples, but rather to indicate some common experiences. Walter and Anderson (2013) explain this as "shared colonized histories" as well as similar modern realities (p. 19). Smith (2021) explains that within the term 'Indigenous peoples', the 's' in 'peoples' represents "the right to self-determination", as well as to highlight the diversity included within the term (p. 7).

[2] Within the Master of Human Rights program at the University of Manitoba, the purpose of the major research paper is to enhance students' critical understandings of human rights law, theory, and research, by drawing connections between human rights discourse and the practicum experience. This paper represents the culmination of insights gained from coursework, human rights research, and my practicum experience at Wa Ni Ska Tan.

concludes with an overview of the violations of Indigenous environmental rights and widescale consequences of this reality.

Next, this paper discusses the legal personhood method, its similarities to Indigenous perceptions of the natural world, and its integration into Western law which embodies Two-Eyed Seeing. My reflection on my practicum at Wa Ni Ska Tan highlights how Indigenous environmental organizations are working to fill the gaps which persist in current human rights theory and practice. Wa Ni Ska Tan provided the ideal environment to research the Muteshekau Shipu legal personhood case study, and to identify recommendations for future legal personhood research in Canada. This paper concludes by emphasizing the importance of Indigenous-led research and Indigenous methodologies to ensure that colonial, extractive research is not repeated.

Limitations of Current Human Rights Discourse

Human rights are inherently anthropocentric, which significantly contrasts with Indigenous worldviews. As environmental issues escalate, the interrelatedness of human rights and the state of the natural world will become more apparent and will further expose the need to expand the current human rights framework to include Indigenous perspectives on the inimitable value of the natural world. As summarized by Tănăsescu (2020), "[t]he classic conception of rights, of undeniable western origin, is understood as anthropocentric…concerned only with the rights of people in relation to land, animals, and natural objects, and not in any meaningful way with nature itself" (p. 432). Therefore, the "logic of human rights is potentially problematic" due to its base in anthropocentricism (Barry & Woods, 2016, p. 388). On the surface, a human focus is not necessarily problematic as there are certainly enough historical and ongoing oppressions, atrocities, crimes against humanity, marginalization, racism, and discrimination (among other issues) within humankind to necessitate complex systems of domestic and international rights solely focused on humans and their treatment to each other. Nevertheless, the state of the environment continues to affect human rights around the world on an unprecedented and unparalleled scale. Just one example is that "[t]he impact of climate change has meant that there are now more environmental refugees in the world than refugees from wars" (Barry & Woods, 2016, p. 391). The crossover between human rights and environmental rights continues to

intensify with urgency. In addition, the concept of *who* or *what* deserves rights and *who* or *what* morally deserves to be rights-holders becomes much more nuanced when considering Indigenous worldviews and how human beings relate to other living things and the natural world. Barry and Woods (2016) argue that "[h]uman rights are undeniably universalist" and highlight that some "Non-Western critics of human rights" believe that "human rights proponents are insufficiently sensitive to cultural difference" (p. 389). Thus far, the concept of rights-holders within human rights have been largely based on Western or Eurocentric individualistic ideologies, understandings, and worldviews, which places human beings as hierarchically dominant compared to the natural world and non-human beings.

In a philosophical sense, anthropocentrism refers to the belief that humankind is centrally and hierarchically superior to other living things. This naturally leads to ideas on how humans interact with, use, and exploit the natural world. Stone (1972) confirms that "our present state of affairs – at least in the West – can be traced to the view that Nature is the dominion of Man…[which] derives from our religious traditions" (p. 493-494). One prominent example of this is the Book of Genesis verse 1:26 in the Christian Bible, which asserts that humankind has "dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth" (Carroll & Prickett, 1998, p. 2). In juxtaposition, many Indigenous worldviews are rooted in the belief of living in equal harmony with the earth and all living things. The words of Gichi-anishinaabe (Native American Elder) encapsulate this belief, which indicates its stark contrast compared to Western or Christian foundations:

> "Honour the sacred. Honour the Earth, our Mother. Honour the Elders. Honour all with whom we share the earth: four-legged, two-legged, winged ones, swimmers, crawlers, plant and rock people. Walk in balance and beauty." (Interpretive sign, Brokenhead Wetland Ecological Reserve)

Indeed, Moreton-Robinson (2017) defends that "humans are worth no more or no less than all living things" (p. 7). Human beings do not exist in a vacuum. Rather, human life exists not only alongside but in an interrelated relationship with a living planet full of complex ecosystems of billions of other living organisms. Sioux scholar Vine Deloria Jr. (1999) explains this through the concept of relativity, stating that "everything in the natural world has relationships with every

other thing and the total set of relationships makes up the natural world as we experience it" (p. 34, as cited in Moreton-Robinson, 2017, p. 5). Similarly, Barry and Woods (2016) observe that:

> "At the crux of the relationship between the environment and human rights is the inescapable fact that humans are ecologically embedded beings. That is, humans are utterly dependent upon, and vulnerable to changes in, their relationship with the non-human world." (p. 381)

Therefore, it is complacent and ethically problematic to not consider the moral repercussions of human actions upon these other entities and natural systems, not only for the sake of humans but for the wellbeing of these organisms and systems in and of themselves.

Hierarchies of Rights

Anthropocentric Western thought emphasizes human separation from the natural world and other living beings, which entails that only humans are morally deserving of specific rights. In *Advanced Introduction to International Human Rights Law*, Dinah L. Shelton (2014) questions the intricacies of human nature that separate humans from other living beings and make us deserving of rights. She explains that "[t]he concept of human rights involves consideration of what 'rights' a person possesses by virtue of being 'human', that is, rights that human beings have simply because they are human beings" (p. 1). Barry and Woods (2016) explain that "[t]o claim a human right is to say that there is something morally significant about being human", and that "[h]uman rights discourse recognizes that individual humans have [rights] in a way that individual snails, or giant pandas, or (more complicatedly) forest ecosystems do not" (p. 388). Correspondingly, Shelton (2014) questions: What is the essence of 'human' that inevitably gives right to rights, if it does?" (p. 1). Do humans "have a special moral place in the universe"? (Barry & Woods, 2016, p. 384). These authors question the ideology of anthropocentric-based rights, and hint towards the argument of expanding rights to non-human beings.

How radical is the idea of extending rights to non-human beings? In perspective, human rights concepts and eligibility for rights-holders have significantly progressed throughout history. In *Philosophy of Human Rights: Theory and Practice,* Boersema (2018) provides an overview of the historical and philosophical advancements of rights-holders, and concludes that "[a]ll living beings have a fundamental value and therefore have some fundamental rights" (p. 118). To reach

this conclusion, he highlights the work of Thomas Paine, *A Vindication of the Rights of Man* (1789), which proposed that fundamental, natural rights should be afforded to all citizens, regardless of factors such as social class (as cited in Boersema, 2018, p. 117). He also discusses the subsequent work of Mary Wollstonecraft, *A Vindication of the Rights of Women* (1792), which correspondingly asserts that, based on that logic, women should also be included as holders of natural rights (as cited in Boersema, 2018, p. 117). Shortly afterwards, Thomas Taylor satirized both aforementioned works, by writing *A Vindication of the Rights of Brutes,* which argues that if groups such as those with 'undesirable' social standing and women deserve rights, then nonhuman animals (who he refers to as 'brutes') should as well in alignment with the proposed ideology of the "equality of all things, with respect to their intrinsic and real dignity and worth" (as cited in Boersema, 2018, p. 117). While Taylor wrote this book to ridicule the belief of equal rights to all living things, "a growing number of people have put forth and strongly endorsed this very same argument ever since", leading to the landmark 1975 publication *Animal Liberation* by Peter Singer (Boersema, 2018, p. 117). This philosophical idea of animals having rights created an explosion of new discourse on the "social, political, and moral issues related to the treatment of animals by humans" (Boersema, 2018, p. 117). This line of thought set a precedent for the expansion of rights-holders to include non-human beings in alignment with their inherent value.

Who is a Worthy Rights-Holder?

There is a nuanced difference between being considered a moral rights-holder versus simply being legally protected by other means. Assigning legal rights to nature is much different than other environmental protection strategies, such as outlining legally protected conservation areas. One of the central questions that arose from Singer's publication was "whether nonhuman animals are rights holders, particularly holders of moral rights and not 'merely' legal protections" (Boersema, 2018, p. 117). This relates to a critical differentiation that continues to be debated within the current legal personhood movement for the rights of nature. Regan (2004) proposed the idea that "every living being has a fundamental value that is not grounded in anything other than itself" (as cited in Boersema, 2018, p. 119). This concept relates to how some Indigenous peoples see the natural world as having its own value, whereas typically Eurocentric ideology is based on domination of the natural world, and viewing natural resources only for their exploitative,

commercial, and extractive values to human beings. Tănăsescu (2020) explains that "nature and natural entities…have value in and of themselves, and not only instrumentally, in relation to people" (p. 432). In this line of thought, the natural entity becomes the rights-holder, and its value and corresponding rights and protections are independent from its short-term use to human beings. Stone (1972) argues that changing the way we think about rights-holders can open pathways to granting dignity to previously the exploited "rightless", stating that "until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of 'us' – those who are holding rights at the time" (p. 455). He further elaborates on the difficulty of altering ideologies:

> "There is something of a seamless web involved: there will be resistance to giving the thing 'rights' until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it 'rights' – which is almost inevitably going to sound inconceivable to a large group of people." (Stone, 1972, p. 456)

While the leap from protecting the environment to viewing natural entities as rights-holders may seem unconventional to some, this shift follows the same pattern of granting rights to the rightless.

This shift also creates space for Indigenous understandings of the value of natural, inanimate objects such as rocks, trees, rivers, or mountains that have held complex meanings since time immemorial. For example, Tănăsescu (2020) explains that definitions of living things can have different interpretations within Indigenous understandings and can include "not only landscape features but also supernatural beings" (p. 19). Indeed, in some Indigenous cultures these entities are viewed as sacred living ancestors or relatives, which are thus deserving of rights and protections. Therefore, there are diverse understandings of *who* or *what* has intrinsic value, and *who* or *what* deserves rights and protections, which necessitates an expansion of current rights discourse.

Rights as Entitlements or Responsibilities?

In an Indigenous-inclusive re-imagining of who is a worthy rights-holder, further critical questions arise, including the consideration of rights as individualistic entitlements or collective responsibilities. Barry & Woods (2016) maintain that "[human rights] affirm the normative status of humans as special beings deserving of dignity and specific types of appropriate treatment and non-interference" (p. 384). This raises a significant moral and ethical question. While some

scholars argue that human rights "are about entitlements rather than duties" (Barry & Woods, 2016, p. 384), others emphasize that a foundational human rights principle is that rights have corresponding responsibilities. This is typically employed when considering the responsibilities that humans have to other humans, to ensure that their rights are upheld and not violated by other human actions. Through a different lens, what responsibilities do we have to *non-human livings things*, or the living natural environment? How do we show the correlation between responsibilities to non-human living things and the natural world and the ability to uphold human rights and wellbeing around the world?

Many Indigenous scholars have connected corresponding human responsibilities to the natural world in a holistic sense, as opposed to the concept of rights or individualistic entitlements. While Indigenous cultures, beliefs, laws, and spiritualities are incredibly diverse, there are some similar underlying values, such as the worldview that humans are just one part of the natural world and share a responsibility to protect it (Townsend et al., 2021). Corntassel (2008) asserts that "the concept of 'rights' is inappropriate for articulating Indigenous understandings of community relationships and responsibilities", and alternatively puts forward the Tsalagi notion of *Gadugi*, meaning "our responsibilities to our natural laws and communities" (as cited in Gaudry, 2011, p. 130). Interpreting rights as responsibilities to others and to the natural world aligns less problematically with some Indigenous beliefs. Laurie Eldridge (2008), Cherokee scholar explains the traditional concept of interconnectedness, in that "all living beings in this world including the earth are connected and that one's actions have far reaching consequences" (p. 1, as cited in Moreton-Robinson, 2017, p. 5). Hence, understanding human impact upon the earth is also central to Indigenous conceptions of responsibilities.

Further, many Indigenous peoples (and some environmentalists) believe in not only current human responsibilities, but future ones as well. Indeed, "persons living today have obligations to future generations to bequeath both a sustainable environment and an adequate resource base" (Barry & Woods, 2016, pp. 384-385). For example, the Iroquois-based Seventh-Generation principle "states that any action or decision should take into account its consequences for up to seven generations to come" (Ebel & Rinke, 2014, p. 82). Critically, the consideration of future rights-holders is missing from mainstream human rights policy and practice. Stone (1972)

alerts that "[w]e are depleting our energy and food sources at a rate that takes little account of the needs even of humans now living" (p. 492). Barry and Woods (2016) ponder if individuals or groups from future generations "can be said to have rights of moral weight comparable to those of persons living now, which would entail claims on persons living now" (p. 385). Therefore, it is evident that current human rights discourse has significant gaps when considering Indigenous understandings of human beings in relation to the natural world and could benefit from including these worldviews.

Nature's Rights are Human Rights

Nature's rights relate to human rights and wellbeing in a multitude of direct and indirect ways. These connections have been realized by Indigenous peoples for thousands of years and are now beginning to be more recognized by Western and international institutions, such as the United Nations. Barkham (2021) validates that "[a]ll human rights exist because of nature" and that we cannot fully realize "rights to life or property rights if nature's rights are not achieved" (para. 16). Indeed, "without living systems such as clean water, air, and fertile soils, there is no human life" and thus, no human rights to protect (Barkham, 2021, para. 16). Barry and Woods (2016) assert that:

> "If a sustainable environment were understood to be as much a material precondition for the exercise of civil and political rights as food and water are thus argued to be, then, such rights may be thought to be 'indivisible' from environmental rights also, and norms or institutions that threatened or undermined sustainability would also be the target of human rights claims." (p. 386)

Hence, nature's rights *are* human rights. Dan Wildcat (2009) of the Muscogee Nation provides an Indigenous lens to this concept, by explaining that "we, members of humankind, accept our inalienable responsibilities as members of the planet's complex life system, as well as our inalienable rights" (as cited in Whyte, 2021, p. 60). Indeed, the state and wellbeing of the environment can significantly affect, uphold, or jeopardize the enjoyment of human rights.

The United Nations Environment Programme (UNEP) (2009) outlines several ways in which fundamental human rights are affected by the environment. Most notably, they describe the state of the environment "as a prerequisite for the enjoyment of human rights" (UNEP, as cited in Barry & Woods, 2016, p. 381). Foundationally, Article 3 of the *Universal Declaration of Human*

Rights outlines that "[e]veryone has the right to life, liberty and security of person" (UN General Assembly, 1948). The right to human life is critically dependent on clean air, clean water, and sustainable food sources which are all dependent on the state of the natural world and its systems (Barry & Woods, 2016, p. 383). Human rights and security are threatened by pollution, environmental degradation, and scarcity of resources which can result in violent conflict and vast population displacement (Barry & Woods, 2016, p. 383). Other human rights endangerments include environmental catastrophes such as "oil spills, other chemical spills, or radioactive contamination,…flooding and rising sea levels, or landslides and soil erosion", which are results of human activities such as resource mining, dam constructions, and mass agriculture (Barry & Woods, 2016, p. 383). On October 8, 2021, the United Nations declared the right to a healthy and sustainable environment a human right (United Nations, 2021), and the link between human rights and environmental protection continues to strengthen. However, "[i]n political practice…this close interrelationship and its ramifications for our social, political, and economic practices are often neglected" (Barry & Woods, 2016, p. 381). Ergo, the recognition of how nature's rights affect human rights needs to be more concretely reflected in both environmental and human rights policy and practice, in alignment with Indigenous views.

Indigenous Exclusion from Environmental Decision-Making

It is evident that human rights foundations and current discourse has roots in Western or Eurocentric ideologies, and that Indigenous knowledges have been continually treated as invalid or peripheral. These patterns also persist within environmental conservation and resource management initiatives. Despite promises interlaced with buzzwords of reconciliation, consultation, and inclusion, Indigenous peoples continue to be largely excluded from environmental decision-making at municipal, domestic, and international levels.

COP15 Restrictions

This reality was recently encapsulated at COP15 (United Nations biodiversity summit) in Montreal, which took place during December 2022. This landmark international summit was designed to have representatives from around the world discuss and attempt to solve the world's

most pressing environmental issues, including pollution, deforestation, and agricultural detriments ("Indigenous People Recognized", 2022). Its goal was to find innovative strategies to preserve "at least 30 percent of land, freshwater, and oceans by 2030" (para. 2). On the surface, the summit appeared to have adequate Indigenous representation, as approximately 497 of the 15, 723 registrants were representatives of Indigenous groups (para. 3). However, in a purely quantitative sense, the total Indigenous presence at COP15 was significantly disproportionate to what it should be. According to the UN, "Indigenous lands contain about 80 percent of the world's remaining biodiversity, while making up about 20 percent of the Earth's total territory" ("Indigenous People Recognized", 2022, para. 7). The 497 Indigenous registrants made up only 3 percent of total representatives in attendance. Indeed, Waziyatawin Angela Wilson (2005) emphasizes that there are "300 million Indigenous peoples worldwide" that "have tremendous potential to transform the world" (p. 13).

Despite these numbers and the strengthening of Indigenous movements around the world, there continues to be stark gaps between promises and tangible change, fair representation, and genuine reconciliation efforts. While "[m]any scientists, environmentalists, and world leaders have recognized [Indigenous peoples'] leadership as environmental stewards, and experts on how to best live in harmony with nature" ("Indigenous People Recognized", 2022, para. 7), Indigenous peoples are continually denied meaningful opportunities to contribute to environmental management decisions. UN Secretary General Antonio Guterres describes Indigenous peoples as "the most effective guardians of biodiversity" (para. 8). However, at COP15, "none of [the] Indigenous nations [had] decision-making status"; instead, they were required to have a sponsor speak for them (paras. 4-5). While Indigenous representatives are permitted to speak during plenary meetings, during negotiations (where decisions are made) they "need permission to enter the room and sit at the table", and sometimes are "refused entry" if their ideas do not gain enough external support (paras. 12-13). This paternalistic arrangement is due to the fact that Indigenous nations do not hold status with the United Nations Convention on Biological Diversity, and thus "don't have equal status during negotiations" ("Indigenous People Recognized", 2022, para. 6). This lack of fair representation is an embodiment of the deeply unjust reality that Indigenous peoples continue to face within environmental policy.

Persisting Colonialism

Indigenous peoples continue to be unjustly oppressed by having their voices restricted on environmental solutions, due to colonial disrespect of Indigenous knowledges. Wilson (2005) underscores the importance of "building a collective voice", explaining that "Indigenous Peoples…derive great strength from hearing words of truth spoken: truth is an ally of the oppressed" (p. 13). Unfortunately, Indigenous representatives are often subject to tokenism and an illusion of empowerment and inclusion, while being denied opportunity to fully participate. Métis Elder Norman Meade explains that "[p]illars of the colonial system are money, greed, and control of resources" while highlighting that "[Indigenous communities] are built on cultural and spiritual pillars" (as cited in Ferland et al., 2021, p. 71). Indigenous knowledges, cultures, and spiritualities are still treated as peripheral and less legitimate compared to Western or scientific approaches to environmental issues. Battiste (2005) explains that "[society] under colonial influence has long perceived Indigenous knowledge as 'the other' and in binary opposition to Western scientific knowledge" (as cited in Reid et al., 2021, p. 245).

Indigenous worldviews have been wrongfully dismissed and delegitimized as "qualitative, anecdotal, intuitive, holistic, and oral" as opposed to Western knowledge as "quantitative, factual, [and] analytical" (Reid et al., 2021, p. 245). These beliefs are rooted in blatant racism and colonialism and are disturbingly recent. Walter and Andersen (2013) point out the appalling work of Widdowson and Howard (2008), who wrote that "Indigenous society is less advanced on the human evolutionary scale" and that their environmental knowledge "must necessarily be reviewed as inferior" (p. 51). On the contrary, Indigenous peoples have had complex understandings about how ecosystems are interconnected and how integral water is to all lifeforms for thousands of years, long before modern scientific understandings. Linda Tuhiwai Smith (2021) of the Ngāti Awa and Ngāti Porou, Māori emphasizes that as a whole, "science has been hostile to Indigenous ways of knowing" as well as "fraught with hostile attitudes towards Indigenous cultures" (p. 182). These colonial attitudes result in the deficiency of Indigenous knowledges within environmental policy.

Value of Traditional Ecological Knowledge (TEK)

Even today, while environmental scientists have made significant strides, they are only beginning to understand the extent to which TEK can be applied to current environmental protection initiatives, by connecting Indigenous knowledges to modern scientific and political solutions. TEK refers to Indigenous cultural and spiritual beliefs which are complemented by nuanced, intergenerational knowledges about the natural world. Nelson and Shilling (2018) define TEK as "detailed empirical knowledge, material practices, [and] ethical and spiritual responsibilities" regarding the natural world, which accumulates over generations. They continue to explain that TEK is "a sophisticated symbiosis of philosophy and practice" which is "an integration not yet achieved by Western models of sustainability" (Nelson & Shilling, 2018, p. 35). The concept of humans living in a symbiotic relationship with the natural world "is a missing link in Western economic models" (Nelson & Shilling, 2018, p. 35). Jérôme Bacon St-Onge, vice-chief of the Innu Council of Pessamit in Québec, highlights that Indigenous peoples have "cultivated the land, lived on the land, and occupied the land since the dawn of time", and thus deserve legal status with the United Nations in order to promote Indigenous-led conservation ("Indigenous People Recognized", 2022, para. 18). The traditional worldviews of Indigenous peoples have allowed populations to thrive in various challenging environments for thousands of years, far pre-dating colonization (Nelson & Shilling, 2018, pp. 3-4). Therefore, Indigenous knowledges should be honoured as invaluable solutions towards the world's current environmental crises, as the continued exclusion of Indigenous peoples "robs humanity as a whole of the contribution that Indigenous peoples stand ready to make" (Havemann, 2016, p. 345).

Violation of Indigenous Rights

The exclusion of Indigenous voices and knowledges from environmental decision-making violates Indigenous rights in a variety of ways. The United Nations Environment Programme (2009) identifies that "certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters [are] essential to good environmental decision-making" (as cited in Barry & Woods, 2016, p. 381). Whyte (2021) identifies that "rapidly growing literatures and technical reports are showing that…clean energy

solutions for mitigating the rise in global average temperature are unjust or harmful to Indigenous peoples across the planet" (p. 56). He continues to explain that "injustices and harms include economic deprivation and land dispossession and desecration" as well as "the silencing of Indigenous leadership, knowledge, and voices in law, policy, and administration pertaining to mitigation measures" (p. 56). Wilson (2005) explains that "[Indigenous peoples] have been trained by the dominant society to think of our stories and language as insignificant or even worthless" which leads to "a sense of powerlessness" (p. 13). The exclusion of Indigenous, poor, and marginalized groups from environmental decision-making is not only unjust but also serves to continue to benefit the wealthy and affluent.

Decisions made by affluent peoples, even if they do address some environmental concerns, typically come at the expense and exploitation of marginalized and Indigenous peoples in the name of 'development'. For example, projects to extract resources such as "minerals, oil, and timber" (Barry & Woods, 2016, p. 383) that are depicted as positive economic development usually do not benefit marginalized peoples. Whyte (2021) questions: "If a forest conservation project displaces Indigenous peoples from their lands…where is the better environmental future for that Indigenous peoples?" (p. 56). Indigenous displacement has occurred for the sake of "wind, solar, biofuel, and nuclear sources" (Whyte, 2021, p. 56), and Indigenous peoples continue to endure "little or no consultation, and insufficient compensation" (O'Neill, 2007, as cited in Barry & Woods, 2016, p. 392).

These patterns are consistent across the globe, including the United States and Canada. Whyte (2021) warns that "projects for clean or renewable energy or carbon footprint reduction will repeat the moral wrongs and injustices of the past" as well as "[generate] harm and risks that burden Indigenous peoples and retrench colonial power" (pp. 56-57). Sandoval (2018) examines how "the United States never fairly included Indigenous peoples in the energy grid system", thus restricting their potential to "benefit from and be leaders in renewable energy" (as cited in Whyte, 2021, p. 56). Whyte (2021) also highlights the Site C mega dam in British Colombia, which "was conceived in ways that violated Indigenous peoples' rights and treaties and had numerous negative environmental impacts (p. 56). Similarly, Hydro-Québec falsely promised the Innu of Ekuanitshit community "jobs, money, [and] contracts" which they claimed would result in the

positive development of “economy and infrastructure” in exchange for damming the Romaine River within the community’s territory (Nerberg, 2022, para. 23). In reality, “its only legacy is a trail of destruction”, as the community did not receive any benefits or even the generated energy, as the majority of energy is exported and sold for profit (Nerberg, 2022, para. 23).

Disturbingly, Indigenous environmental activists and land defenders face disproportionate rates of violence and murder related to resource exploitation (Marshall, 2021). In 2020, one-third of all murdered environmental activists across the world were Indigenous peoples, and these numbers are likely underreported (Marshall, 2021, para. 8). Indeed, the ongoing Wet’suwet’en conflict in northwestern British Colombia exemplifies these themes, during which Indigenous land defenders, activists, and journalists faced violent police raids, resulting in over 75 arrests (Morin, 2022). Police used attack dogs, snipers, AK-47s, helicopters, axes, and chainsaws to break down doors of residents and protesters who simply wanted to protect the sacred river Wedzin Kwa from Coastal GasLink drilling and destruction (Morin, 2022). These horrifying examples of state violence occurred despite Canada’s prior implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous rights and lands continue to face colonial and corporate violence to this very day in Canada, evoking the question of what progress has truly been made in the journey of ‘reconciliation’.

Consequences

This subordination of the natural world and vast violations of Indigenous rights not only continues to devastate various species populations, biodiversity, and ecosystems, but also (as a result of such treatment) continues to subsequently affect human wellbeing, rights, and quality of life. Townsend et al. (2021) recognize that “[r]ights understood through a western, liberal and individualistic lens overlook collective responsibilities to the natural world” (para. 13). Indeed, “much of the current and historical damage to the environment has been predicated on the idea that humans are morally more important than other animals and ecosystems” (Barry & Woods, 2016, p. 384). Limiting human rights to an anthropocentric viewpoint will continue to harm both the environment and human beings.

In a holistic sense, the destruction of nature has far-reaching consequences for all living things and objects on earth. Mary Arquette (2000) of the Mohawk community of Akwesasne explains that "[w]hen a person decides to forget ethics requiring respect for the natural world, it is not difficult for that individual to also lose respect for themselves, their families, and other human beings" (p. 92, as cited in Whyte, 2021, p. 60). Whyte (2021) describes this current state as "a massive breach of kinship, especially in terms of violations of care, consent, and reciprocity" and calls for the necessity to repair these damaged bonds between "humans, animals, and/or diverse others" (p. 59). He warns that "[a] world or situation lacking in these bonds is one in which some members will respond to change in ways that lead to deeply unjust and immoral actions and outcomes" (Whyte, 2021, p. 59). Stone (1972) asserts that reimaging human's relationship with nature would "[make] us far better humans", in addition to providing a "a step towards solving the material planetary problems" (p. 495). Even back in 1972, Stone puts forward scientific warnings of environmental crises, including global warming, resource scarcity, and the destruction of life as we know it (p. 492). Today, scientists are aware that these issues have increasingly intensified. Unfortunately, much of the world's environmental decision-making still tends to minimize Indigenous perspectives and solutions.

Connection to Legal Personhood

Despite continual violations of Indigenous and environmental rights, Indigenous peoples around the world continue to fight for environmental justice through a variety of resilient, innovative strategies. One such method is the concept of legal or environmental personhood, which involves gaining legal rights and protections for natural entities, such as rivers. Townsend et al. (2021) explain that "Indigenous laws mirror and reinforce relational worldviews that view living entities as relatives, not resources", which creates responsibility to respect the natural world (para. 15). This belief holds that "[t]rees, mountains, and plants are relatives, not commodities that can be privately owned and exploited" (Townsend et al., 2021, para. 11). Legal personhood provides a pathway to translating this concept into law.

There are several key factors which set this model apart from other environmental conservation strategies. First, it involves a critical "paradigm shift" which places the natural

environment as “a holder of the right to be protected, as opposed to an object of protection” (Cárdenas, 2021, para. 4). This ideology shows that natural entities have value in and of themselves, which is completely separate from their exploitative use to human beings. Second, this model typically involves appointing the Indigenous community (who has the sacred connection to the entity) as the legal stewards or guardians. This reinforces autonomy and self-determination, by providing an alternative to relying on unbalanced negotiations with governments or corporations. Finally, it provides an opportunity to honour and legally enshrine Indigenous worldviews regarding the personification of nature within a legal context. Legal personhood also creates opportunity to take legal action if the outlined rights are violated.

Considering the progression of thought on rights-holders throughout history, this concept is not as radical as it may seem. In his landmark 1972 article “Should Trees Have Standing? Towards Legal Rights for Natural Objects”, Christopher D. Stone discusses historical societal norms within dominant legal systems, which severely discriminated against various groups and afforded them no social or legal rights. This includes past and continuing advocacy for the rights of women, children, people of colour and Indigenous peoples, disabled peoples, immigrants and refugees, prisoners, and other marginalized groups. As articulated by Stone (1972), “[t]hroughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable” (p. 453). He continues to emphasize that “each time there is a movement to confer rights onto some new ‘entity’, the proposal is bound to sound odd or frightening or laughable” (Stone, 1972, p. 455). This speaks to how past dominant ideologies have formed the foundations of law, human rights, and rights-holders, and how they were at times limited, prejudiced, unjustly restricted, and excluding of rights-deserving peoples. The fact that corporations, churches, and elites have historically held legal rights, whereas minority rights had to be hard-fought and granted only when extremely overdue, shows that legal rights have historically favored capitalistic ventures and state powers.

Stone (1972) demonstrates that societies and legal systems have already normalized many “inanimate rights-holders” such as “trusts, corporations, …municipalities, …[and] nation-states” among others (p. 452). With this history of the progression of rights in mind, granting legal rights to natural entities does not appear as shocking or unrealistic as perhaps first glance would evoke.

Stone (1972) remarks that the implementation of legal personhood for a natural entity "will call for lawyers as bold and imaginative as those who convinced the Supreme Court that a railroad corporation was a 'person'" (p. 465). As explained by Townsend et al. (2021), "[r]ecognizing the rights of nature are modern expressions of long-practised Indigenous laws" (para. 12). While Stone does not credit or connect any of his proposed ideas on the rights of nature to Indigenous peoples (which is of course problematic), his paper brings the rights of nature ideology into the Western legal context.

While Indigenous understandings of the natural world and its systems may not ever translate seamlessly or perfectly into Western legal interpretations, legal personhood still offers a connecting pathway between Indigenous and Western conceptions. Elder Dr. Albert Marshall's concept of Two-Eyed Seeing or *Etuaptmumk* in Mi'kmaw provides space for this blending of worldviews. Two-Eyed Seeing is defined as:

> "[L]earning 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." (as cited in Reid et al., 2021, p. 243)

Reid et al. (2021) caution that within this model, it is imperative that Indigenous knowledges are "paired with, not subsumed by, Western scientific insights for an equitable and sustainable future" (p. 243).

The Whanganui River in New Zealand is an excellent example of ethical legal personhood and Two-Eyed Seeing, which was thoughtfully Indigenous-centered. In 2017, the Whanganui River became the first river in the world to be recognized as a living entity with corresponding legal rights. Importantly, its legislation took eight years to "[incorporate] Māori worldview…in a way that could work with existing laws and social norms" (Eckstein et al., 2019, p. 813). This historic agreement used a "Western legal model and [endowed] it with distinctly Māori characteristics" in "an attempt to syncretize two different systems" (O'Bryan, 2017, p. 67). Indeed, the *Te Awa Tupua* agreement is distinctive in that it is centered in Māori beliefs, values, and language (O'Bryan, 2017). This agreement not only reflects a high level of inclusivity and participatory values, but also appointed the Whanganui Iwi tribe autonomy over the legal design

and implementation. This case study shows the creative possibilities of uniting Indigenous worldviews and cultural rights into legal translation.

Therefore, it is possible to ethically blend Indigenous knowledges into the Western legal context. Since the historic Whanganui River case, the concept of legal personhood has been "enlivening environmentalism around the world" (Barkham, 2021, para. 4). Some examples of rivers with variations of legal personhood include the Yarra in Australia, Rio Atrato in Colombia, the Ganga, Yamuna, and Narmada rivers in India, Vilcabamba in Ecuador, the Turag River in Bangladesh, and the Muteshekau Shipu in Canada (Eckstein et al., 2019; Nixon, 2021; Tignino & Turley, 2018). These legal rights have been granted "through legislative actions and others via judicial decisions", which result in attaining either similar rights to human beings or variations of legal protections (Eckstein et al., 2019, p. 804). The concept of legal personhood continues to slowly gain momentum as its various interpretations and implementations increase around the world.

Practicum Analysis and Reflection

This paper has explored the ways in which the current human rights framework is limited by Eurocentric subordination of Indigenous worldviews and the exclusion of Indigenous voices from environmental solutions. It may take many more years of advocacy and struggle to gain equitable representation on urgent environmental issues. However, grassroots movements of Indigenous environmental justice initiatives around the world have worked to fill in this gap.

One such example is Wa Ni Ska Tan, a research-based, Indigenous-led organization at the University of Manitoba's Environmental Conservation Lab. Wa Ni Ska Tan provides space to explore how the protection of the natural world fulfills Indigenous rights. The organization works to uplift the voices of Indigenous communities who have been negatively affected by hydropower development in northern Manitoba. Hydropower development has resulted in devastating violations of Indigenous rights, including complex impacts on livelihoods, food and water sources, cultural practices, land-based traditions, and wellbeing (Wa Ni Ska Tan, n.d.). Wa Ni Ska Tan utilizes research, community projects, education, public outreach, and advocacy to address

these impacts, create awareness, and initiate social and environmental change. Their balanced value of research and community stories indicates a commitment to form meaningful connections, and to share stories and document impacts in the most effective way to create change. Wa Ni Ska Tan's work reflects the interdisciplinary nature of human rights which provided an ideal environment to research the concept and practical applications of legal personhood in relation to Indigenous rights and environmental justice.

During my practicum I researched the legal personhood process and implementation, as well as relevant community development best practices. I analyzed legal personhood as a potential Indigenous-led environmental conservation method in response to the harmful impacts of resource extraction. I studied and noted patterns on various legal personhood case studies from around the world, to understand how the concept could be applied in Canada, as well as explored how legal approaches can be strengthened by community-led initiatives and advocacy. To enhance my understanding of the legal processes involved with this method, I completed Rights of Nature Legal Training offered by the Center for Democratic and Environmental Rights (Center for Democratic and Environmental Rights, n.d.).

Next, I aimed to develop skills and methods to translate academic research into accessible materials, so that the concept could be more widely understood, shared, and applied by communities. I completed projects such as creating a plain language blog post, social media posts, and a newsletter entry about legal personhood, as well as attended workshops on creating accessible materials. This is in alignment with Adam Gaudry's (2011) argument in "Insurgent Research" for improved and enriched forms of dissemination for Indigenous communities, in order to allow research to reach more Indigenous peoples and make meaningful change. Gaudry (2011) expresses his "firm belief that research should be both inspiring and accessible" (p. 133) and argues against "jargon-laden prose" which gatekeeps information from public understanding (p. 116).

Throughout my practicum I focused my research on the Muteshekau Shipu case study, which became the first river in Canada to be granted legal personhood. I aimed to learn about the

initiation and implementation, as well as obstacles and recommendations in the hope that this information could be shared with more Indigenous communities across Canada.

Muteshekau Shipu Case Study

The Muteshekau Shipu (also called the Magpie River) is a 300 km long river in Eastern Québec, which is in the Nitassinan ancestral territory of the Innu peoples of Ekuanitshit (Nixon, 2021). The Innu of Ekuanitshit First Nation band is located on the Mingan reserve near the St. Lawrence River (Raymer, 2021). The Innu have strived for generations to protect the safety of the river, which is continually threatened by hydroelectric dam development by Hydro-Québec (Raymer, 2021; Townsend et al., 2021). Uapukun Mestokosho (a member of the Innu community) explains that the Muteshekau Shipu has significant cultural value, and its protection ensures that the Innu people can "revive their traditional land-based practices that had been abandoned during the violence of the colonial era" (as cited in Barkham, 2021, para. 2). Rita Mestokosho, an Innu activist from the community, explains that "[w]e've always known the river is alive" and that "[t]he river is like the blood that runs in our veins" (as cited in Nerberg, 2022, para. 2).

On February 23, 2021, the Muteshekau Shipu became the first river in Canada to be granted legal personhood, which was achieved by an alliance between the Innu Council of Ekuanitshit and the Minganie Regional County Municipality (Townsend et al., 2021). This historic decision is part of a "global movement to recognize the rights of nature in law" (Townsend et al., 2021, para. 3). The river now has nine legal rights, including the rights to live and flow, to respect its cycles, to protect and preserve its natural evolution, to maintain its biodiversity, to fulfill its ecosystem functions, to maintain its integrity, to be safe from pollution, to regenerate and be restored, and to sue or take legal action (Nerberg, 2022, para. 25; Raymer, 2021, para. 13). As outlined in the decision, the Innu Council of Ekuanitshit will act as the river's legal guardians and are "formally entrusted with the river's care for future generations" (Townsend et al., 2021, para. 7). This is in alignment with traditional Indigenous worldviews which "place Indigenous peoples in a stewardship or caretaking relationship with water that they view as fundamental to their laws and culture" (Eckstein et al., 2019, p. 815). David Boyd (UN Special Rapporteur on Human Rights and the Environment) described this protection as "a

recognition of the importance of integrating Aboriginal legal concepts into the Canadian legal system" (as cited in Cárdenas, 2021, para. 5). Granting legal personhood to the Muteshekau Shipu and appointing the Innu as legal guardians emphasizes Indigenous autonomy, leadership, and participation. This case and potential future cases have the potential to revitalize "government-to-government agreements" (Eckstein et al., 2019, p. 817). Further, legal personhood provides opportunity to honour Indigenous worldviews within a legally protected framework.

Recommendations and Next Steps

There are many waterbodies and natural entities in Canada which have important cultural connections to Indigenous peoples, which face threats like resource exploitation and pollution. As additional education and awareness about this process is shared, there is potential for more Indigenous communities across Canada to use legal personhood in their own territories, by customizing this rights-based approach to their specific context, needs, and legal systems. This process has already been illustrated around the world, showing that when any natural entity gains rights, it creates a powerful precedent for future protections. For example, Chief Jean-Charles Piétacho of the Innu of Ekuanitshit First Nation initially travelled to New Zealand to learn directly from the Māori peoples about the Whanganui River case, as he identified legal personhood as a promising strategy to protect the Muteshekau Shipu in his home community (Lane, 2021). Correspondingly, the Muteshekau Shipu's nine legal rights were drafted based on previous legal personhood cases from around the world (Nerberg, 2022). This indicates that sharing knowledge about the legal personhood process and implementation has the potential to result in further successful cases.

Currently, there is very limited academic research on legal personhood in the Canadian context, as well as minimal practical information about this process. The following recommendations are directed towards interested academics, non-profits, legal researchers, or Indigenous communities in Canada, and should always be Indigenous-led and Indigenous-centred.

1. Conduct additional detailed research on the Muteshekau Shipu case, in order to compile a framework toolkit outlining the process and implementation of legal personhood in the Canadian context. This should include project initiation, challenges, best practices, and recommendations for each stage.

2. Create a legal guideline for the process of legal personhood in the Canadian context. Boyd has identified that relevant factors which may complement and support Canada's recognition of legal personhood are the "Protection of Aboriginal Rights" provision in section 35 of the Constitution Act (1982), as well as free, prior, and informed consent outlined in UNDRIP (Nerberg, 2022, para. 23). However, he acknowledges that it is still ambiguous "how the [Canadian] courts will interpret [legal personhood] law" (Nerberg, 2022, para. 23), which necessitates further legal examination of such.

3. Subsequently, synthesize a plain-language community resource package which includes the above gathered insights, for Indigenous communities to learn about this method, and to share, adapt, and implement as desired. This material should be in alignment with Gaudry's (2011) argument for accessible educational materials as improved outcomes of academic research.

During my practicum I learned about the main stakeholders of this case study, which include the Innu Council of Ekuanitshit, the Minganie Regional County Municipality, the International Observatory on the Rights of Nature (Observatoire International des Droits de la Nature), the Association Eaux-Vives Minganie (AEVM), and SNAP Québec (Société pour la Nature et les parcs du Canada section Québec, which is the Québec chapter of the Canadian Parks and Wilderness Society). This cross-sectoral alliance appears to be a key factor in the success of this case. These stakeholders would be an ideal starting point in the proposed research on this process, as they are the experts who accomplished this landmark resolution in the legal personhood movement.

Some questions which may yield useful insight are:

- What were some of the initial steps which led to forming this alliance and to pursuing legal personhood for the Muteshekau Shipu?
- What advice would you give to communities who are interested in initiating the legal personhood process in their own territories?
- What are the major practical challenges to the legal personhood method?
- What could be done to increase education and awareness about the value and process of legal personhood in Canada?

It may also be of interest to learn from other Indigenous environmental organizations in Canada who have began this process, such as the Lake Winnipeg Indigenous Collective, who is exploring the potential of legal personhood for Lake Winnipeg (Lake Winnipeg Indigenous Collective, n.d.).

Ethical and Indigenous-Led Research

During my practicum, I learned about cultural competencies, best practices, and ethical considerations when researching with and building relationships with Indigenous communities. I had the opportunity to participate in the Working in Good Ways (Ferland et al., 2021) workshop, which challenged me to reflect on my own positionality and responsibilities when building meaningful relationships with Indigenous communities in a research context. I learned about principles such as literacy, reflection, relationship, reciprocity, protocol, humility, and collaboration. I participated in group discussions, activities, and reflections on the effects of colonial institutions when conducting research with Indigenous communities.

As this proposed research on the Muteshekau Shipu legal personhood process should be completed in partnership with the community, the researcher, whether Indigenous or not, must have a thorough understanding of Indigenous research methodologies, as well as be critically aware of the past and ongoing harm from extractive research that is inflicted on Indigenous communities (Gaudry, 2011). Gaudry (2011) underscores that "[r]esearch *on* Indigenous peoples tends to reproduce tired colonial narratives that justify occupation and oppression" (pp. 113-114).

Moreton-Robinson (2017) identifies that "the challenge for Indigenous research is undoing the Western methodological presupposition of nature as servant to humanity and humanity as master of nature" (p. 7). She argues that "we require new Indigenous ways to understand and research the complexity of our relations with our mother the living earth" (p. 7). Moreton-Robinson (2017) also underscores the importance of relationality in Indigenous research, by understanding human relationships with the natural world.

Finally, it is imperative not to force Western frameworks into this research process. As Gaudry (2011) explains, extractive researchers "almost always translate their research findings into the dominant culture's worldview", which results in researchers viewing "Indigenous knowledges according to a universalized Western worldview" (p. 115). Clearly, this type of harmful research "reinforces the colonialist assertion that Indigenous knowledges are not valuable in their own right or defensible on their own terms" (Gaudry, 2011, p. 115). On a similar note, Barry and Woods (2016) explain that the current human rights framework does not translate seamlessly into environmental solutions, "nor can human rights be uncritically accepted by the environmental movement" (p. 393). Instead, they prescribe human rights as "a resource that environmentalists might make use of, and a set of norms and values that…activists can work with others to renew and reshape" (p. 393). Critically analyzing current human rights discourse, combining with Indigenous knowledges, and 'reshaping' into progressive, Indigenous-led strategies and tools to better include Indigenous voices in environmental decision-making would provide useful insight into the legal personhood method for future applications.

Conclusion

During my practicum and throughout my degree, I reflected upon the interdisciplinary nature of human rights, and the possibilities of expanding current human rights frameworks to include Indigenous knowledges. It was enlightening to explore the connections between human rights, Indigenous perspectives, and the state of the environment. This revitalized my passion for human rights as a holistic interpretation, a true measure of one's quality of life, and how these metrics are rooted in the health and wellbeing of the natural world. Just as humans are not separate from the environment, but a part of a living, interrelated system, human rights are part of

and mutually dependent on the rights of nature. This experience allowed me to delve into the meaning of why and how nature's rights *are* human rights, and how Indigenous knowledges could unquestionably benefit current environmental policy.

As discussed in this paper, throughout history the concepts of human rights and rights-holders has drastically progressed within society. While human rights are far from being realized for all, there is hope for healing of the natural world, inclusion for Indigenous peoples, and long-overdue validation of their invaluable expertise. Legal personhood provides an innovative pathway to working together, just as the Indigenous and non-Indigenous stakeholders joined together to protect the Muteshekau Shipu. Precedents such as these send a strong message to corporations and governments still entrenched in anthropocentric, exploitative mindsets towards the environment, and provide opportunity to decolonize natural resource protection in Canada.

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