The River’s Legal Personality: A Branch Growing on Canada’s Multi-Juridical Living Tree?

Introduction:
The ‘rights of nature’ has become a growing movement in environmental law and policy discourses since the mid-2000s, and has academic roots dating back to 1972 with Christopher Stone’s work. The advancements and enactments that have declared the rights of nature; however, lack Indigenous legal assessments despite relying on Indigenous relationships to place. Seeking to fill this gap in the literature, this analysis engages in a test of multi-juridicalism (Borrows, 2010) and draws on precedents across the three legal systems that British Columbians live under: Canadian, Indigenous, and international. In so doing, this investigation seeks to illustrate that Indigenous legal orders and their storied precedents; the expansion of personhood under Canadian law; Canadian living tree constitutionalism; and section 35(1) rights. In this pursuit, legal personhood is considered as the primary vehicle to declare the rights of nature, though it is not the only or ideal mechanism. The goal of this analysis is to engage in generative, mutuality-respective engagements between numerous legal orders to frame a remedy for the imbalanced relationships that British Columbians have with rivers.

Objective:
The purpose of this project is to braid ‘Namgis, Heiltsuk, and W̱SÁNEĆ Nations practice, though they must confront the current socio-cultural and doctrinal principles and practices. This draws on both Indigenous legal reasoning and Canadian legal concepts and obligations to demonstrate that this declaration is both a way to approach Aboriginal rights and a way to revitalise and resuscitate Indigenous legal orders. Through this process, the objective is to create a process that could be enacted to recognize and declare the rights of rivers and other natural actors under Indigenous, Canadian, and international law. Its underlying secondary objective is to confront the current socio-legal framing of living tree constitutionalism, by illustrating that the living tree’s current guideposts obscure a central root of this living tree - Indigenous legal orders.

Methodology:
This analysis builds on existing literature on legal pluralism and adopts an approach that embodies and seeks to realize the pluralistic legal systems as important, meaningful, and purposive in their framing of living tree constitutionalism, and section 35(1) rights. In so doing, this project adopts an approach that embodies and seeks to realize the pluralistic legal systems as important, meaningful, and purposive in their framing of living tree constitutionalism, and section 35(1) rights. In their framing of living tree constitutionalism, and section 35(1) rights, and for society. This conception, however, is incomplete. It leaves Indigenous legal orders unaddressed in its framing. It overlooks and forgets what the roots of this tree consist of, which are not limited to Western foundations. To confront and demystify legal landscapes and living tree constitutionalism, one must grapple with the reality that the roots of this living tree are grounded in a multi-juridical relationship, with Canadian and Indigenous legal foundations forming Canada’s pluralistic legal culture. This reality of pluralistic legal systems is not new, nor is it a setback for legal interpretations. Legal analyses and assessments that are grounded in and reflect these roots result in conclusions and outcomes that are rooted in reason and justice, producing interpretations with more stability and depth.

Living Tree Constitutionalism and Multi-Juridicalism
Living tree constitutionalism has been a central tenet of Canadian judicial interpretations since Edwards v. Canada (1929). Edwards [1929] emphasizes that courts cannot and should not interpret legal provisions through a narrow, static analysis. Instead, the law is living, dynamic, and grows with and for society. This conception, however, is incomplete. It leaves Indigenous legal orders unaddressed in its framing. It overlooks and forgets what the roots of this tree consist of, which are not limited to Western foundations. To confront and demystify legal landscapes and living tree constitutionalism, one must grapple with the reality that the roots of this living tree are grounded in a multi-juridical relationship, with Canadian and Indigenous legal foundations forming Canada’s pluralistic legal culture. This reality of pluralistic legal systems is not new, nor is it a setback for legal interpretations. Legal analyses and assessments that are grounded in and reflect these roots result in conclusions and outcomes that are rooted in reason and justice, producing interpretations with more stability and depth.

A Model of the Multi-Juridical Living Tree

Legal personhood of rivers

Rights of Nature
- Rivers’ legal personhood is consistent with the expansion of personhood in Canadian law, especially with reference to Edwards v. Canada [1929].
- Rivers’ rights can act as a process to fulfill obligations to future generations, engage in water governance, and embody shared jurisdiction.
- Aligns with the creation stories, ceremonies, and relationships that the ‘Namgis, Heiltsuk, and W̱SÁNEĆ Nations practice, though they must respectively assess the rights of nature on their own terms.

Fundamental Principles of Law
- Balance, proportionality, rights and obligations.
- Law is living, dynamic, and grows with society.
- Legal decisions should be rooted in fundamental justice.

Jurisdiction and Obligations
- Indigenous rights to land.
- Rights to self-determination and live on their own terms.
- Water governance.
- Shared jurisdiction with multiple sovereign political bodies.

Indigenous Legal Orders
- Creation stories.
- Ceremonies.
- Sovereign political units, with long-standing social, political, and juridical principles and precedents.

Canadian Law
- Section 35(1).

International Declarations
- UNDRIP.
- DRIPA, BC, Article 25 (2019) - right to fulfill obligations to future generations.

References:

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