The River's Legal Personality: A Branch Growing on Canada's Multi-Juridical Living Tree Being Cultivated by Canadian and Indigenous Law?

Introduction:
The 'rights of nature' has become a growing movement in environmental law and policy discourse since the mid-2000s, but 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 Colombians live with. Indigenous, Canadian, and international. In so doing, this interrogation works through three Indigenous legal orders and their storied precedents; the expansion of personhood under Canadian law; Canadian living tree constitutionalism, and section 75(1) constitutional rights. In this pursuit, legal personhood is considered as the primary vehicle to declare the rights of nature, though it is not the only helpful mechanism. The goal of this analysis is to engage in generative, mutually respectful engagements between numerous legal orders to frame a remedy for the unbalanced relationships that British Colombians have with rivers.

Objective:
The purpose of this project is to brand 'Nágisí, Heitulk, and WSÁNÉC law, Canadian law, and international law to illustrate that declaring the rights of nature could be done in accordance with each system's 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 revitalize and resurge Indigenous legal orders. Through this process, the objective is to frame an approach 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 guidelines obscure a central root of this living tree - Indigenous legal orders.

Methodology:
This analysis builds upon existing literature on legal pluralism and adopts an approach that embodies and seeks to realize the multi-juridical reality in Canada (Borrows, 2010). In so doing, this project enacts a methodological approach of Building Legal Orders (Borrows, et al., 2019) that frames the interplay and interaction of numerous legal systems as important, meaningful, and purposeful in advancing law and policy, inter-societal relations, justice, and environmental relations across Turtle Island.

Living Tree Constitutionalism and Multi-Juridicalism
Living tree constitutionalism has been a central tenet of Canadian judicial interpretations since Edwards v. Canada in 1929. Edwards [1929] emphasizes that courts cannot and should not interpret legal provisions through a narrow, static analysis. Instead, constitutional law is living, dynamic, and grows with and for society. This conception, however, is incomplete. It leaves Indigenous legal orders unaddressed within 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 legally plural reality is not new, nor is it a setback for legal interpretation. Legal analyses and assessments that are grounded in and reflect these roots result in conclusions and outcomes that are rooted in rigour 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 'Nágisí, Heitulk, and WSÁNÉC 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
- Indigenous rights to self-determination and organize their affairs.
- Water governance
- Shared jurisdiction with multiple sovereign political entities

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

Canadian Law
- Legal personhood
- Life, Liberty, and Security of the Person (Charter of Rights and Freedoms, 1982)

International Law
- UNDRIP (2007)
- Articles 23 & 26 (2007) - right to fulfill obligations to future generations and maintain territorial ownership or occupation.

References:
- Edwards v. Canada (1929) 3 D.L.R. 540 (S.C.C.);

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