

Personhood of Whanganui River

Indigenous legal traditions of stewardship and the rights of nature | Angelique EagleWoman

By **Angelique EagleWoman**



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(March 5, 2019, 9:00 AM EST) -- Indigenous peoples worldwide have a deep and abiding relationship with the earth. The Indigenous peoples of the Western Hemisphere commonly refer to the earth as "Mother Earth" and regard her as providing sustenance for all life. When you observe the material objects that surround you on a daily basis, it becomes quite apparent that everything we touch, own, wear, travel in and use as human beings is derived from the earth's resources. Thus, in a prayer from my Dakota Nation culture, we call upon the earth "who sustains all life and provides for all that lives."

As Indigenous legal traditions are being resurrected and revitalized, the core legal principles from traditional norms are being reconsidered and engaged with in contemporary times. Fundamental understandings of interdependence and relationship undergird Indigenous legal principles.

As stated by the Assembly of First Nations on the web page, "Honouring Earth," Indigenous peoples are in a reciprocal relationship with the earth:

"Indigenous peoples are caretakers of Mother Earth and realize and respect her gifts of water, air and fire. First Nations peoples have a special relationship with the earth and all living things in it. This relationship is based on a profound spiritual connection to Mother Earth that guided indigenous peoples to practice reverence, humility and reciprocity. It is also based on the subsistence needs and values extending back thousands of years. Hunting, gathering, and fishing to secure food for self, family, the elderly widows, the community, and for ceremonial purposes. Everything is taken and used with the understanding that we take only what we need, and we must use great care and be aware of how we take and how much of it so that future generations will not be put in peril."

Law is created from norms a society chooses to prioritize for enforcement and the same is true for Indigenous laws. In July 2018, the Assembly of First Nations took the lead in developing proposed legislation on safe drinking water. Drawing on Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples, an information bulletin provided, "[w]e affirm that our inherent water rights must be recognized, protected and upheld."

Recently, the White Earth Band of Ojibwe, one of the Minnesota Chippewa (Ojibwe) Tribes in the United States, made regional news by enacting an ordinance recognizing legal rights of *manoomin* (wild rice) under tribal law. In a Jan.11, 2019 press release, this legal recognition codified "the right of *manoomin* to the right to pure water and freshwater habitat, the right to a healthy climate system and a natural environment free from human-caused global impacts and emissions and more."

This ordinance comes at a time when seven lawsuits are actively seeking to stop the planned Enbridge Energy's Line 3 crude oil pipeline route through northern Minnesota. The project was originally approved for the Calgary-based energy company in June of 2018 by the Minnesota Public Utilities Commission, but the newly elected state governor has recently announced that he will appeal the dismissal of the former administration's lawsuit to halt the pipeline, even though the state regulatory body had approved the project. The planned route for Line 3 would cut through the headwaters of the Mississippi and treaty-protected hunting, fishing and gathering areas for Indigenous nations including signatories to the 1855 Chippewa Treaty.

Several other tribal nations in the United States have recognized legal rights of nature in efforts to conserve and protect natural areas. The Ho-Chunk Nation of Wisconsin in 2016 approved the first step for a tribal constitutional amendment upholding the rights of nature and prohibiting genetic engineering, fossil fuel extraction and frac sand mining as violations of those rights. In 2018, the Ponca Tribe of Oklahoma enacted a tribal right to nature law with the specific purpose of banning fracking.

In other regions of the Western Hemisphere, the rights of nature have been expressed through law based on Indigenous principles. Ecuador became the first country, in 2008, to adopt constitutional protection for the rights of nature. Title II Chapter 7 Article 71 states: "Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution."

In December of 2010, Bolivia through the movement that elected Indigenous President Evo Morales, enacted Law 071 "Law of the Rights of Mother Earth." Chapter II Article 3 provides: "Mother Earth is a dynamic living system comprising an indivisible community of all living systems and living organisms, interrelated, interdependent and complementary, which share a common destiny. Mother Earth is considered sacred, from the worldviews of nations and peasant indigenous peoples."

In October 2012, a second law balancing the interests of those rights, sustainable development and human responsibilities followed, "Framework Law 300 of Mother Earth and Integral Development for Living Well."

In March 2017, the New Zealand government in a legal settlement with the Maori peoples enacted a law recognizing the personhood of the third largest river in the country, Whanganui River. The Whanganui iwi (Maori tribe that live along the river) have an ancestral, spiritual connection to the river that extends beyond its usefulness as a food source.

Later that month, the Uttarakhand High Court in India recognized the Ganges River and its tributary, the Yamuna River with legal personhood citing to the example from New Zealand. One week later the same court recognized personhood of the Himalayan mountain ranges, waters, jungles, wetlands, glaciers and other natural ecosystems.

These types of legal rights for nature are aligned with stewardship and reciprocity concepts in Indigenous legal traditions. Natural resources are necessary for human beings to build homes and gathering places, pursue creative activities and satisfy basic survival needs. There can be a balance between human utilization of natural resources and respect for the earth's ability to regenerate, flourish free of human pollution and exist in a natural state.

A common Indigenous philosophy of legal status for the earth is gaining momentum as evidenced by the examples discussed. As more Indigenous people enter the doors of law schools and become lawyers, legal scholars, judges and decision makers, we are sure to see the re-emergence, development and codification of Indigenous legal principles and their influence on legal systems locally, regionally, nationally and globally.

Angelique W. EagleWoman, (Wambdi A. Was'teWinyan), is a law professor, legal scholar and has served as a pro tempore tribal judge in four Tribal Court systems. She is of the Sisseton-Wahpeton Dakota Oyate. Follow her @ProfEagleWoman (Editor's Note: EagleWoman is currently engaged in a constructive dismissal and racial discrimination suit against Lakehead University, where she served as dean of law from May 2016 until April 2018. The allegations against Lakehead University have not been proven in court.)

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