

Rights of nature and the “kincentric” turn in Canadian settler law

by

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ABSTRACT

This paper considers how the legal articulation of “rights of nature” (RoN) advances social and environmental justice goals in Canada. Focusing on the St. Lawrence River (STL) watershed as a case study, it explores why politicians and environmental not-for-profit groups (ENGOS) have pursued a RoN legislation strategy in this case, and what they hope to achieve. The story that emerged is that the RoN movement is evidence of a hoped-for paradigm shift that is critical for the world and that is to some extent already occurring. This paradigm shift is often described as one towards ecocentrism or towards a more Indigenous-centred view. Alternately, the concept of “kincentrism” is another way of understanding the shift that the RoN movement is encouraging. Kincentrism can be seen as a reorientation for North American settler colonial society, towards greater respect for relationality between, and common ancestry of, human and non-human life. This way of understanding kinship is central to many Indigenous legal systems and worldviews. The research demonstrated that many of those actively involved in the RoN movement are planting the seeds of a shift towards (or perhaps back to) a more relational way of understanding the world and its non-human elements. This supports the suggestion that nature rights can be considered a “collective” form of right that is itself more relational than more traditional western rights concepts. While there is optimism amongst many advocates that a RoN-related paradigm shift could have profound socioecological impacts, there are numerous hurdles. First, if the RoN movement in Canada is to support or compliment Indigenous rights, it must be grounded in Indigenous laws rather than simply be “inspired” by them. To accomplish this, RoN initiatives should be led or co-led by Indigenous peoples and include grassroots Indigenous voices. Second, “anthropocentrism” as well as human failures to protect the environment are often cited as key causes of the problems RoN laws aim to address. In employing this framing, advocates and legal drafters must neither erase the fact of historical and ongoing Indigenous stewardship, nor ignore the role of other socio-economic and political forces contributing to environmental degradation such as (racial) capitalism and the ongoing effects of colonialism. Finally, a related concern is that the movement must not distract from or undermine Indigenous self-determination efforts. While the initial two bills did not advance past first reading, other RoN movement goals such as public education may be advancing. As well, the increased public involvement of Indigenous leaders in STL rights recognition efforts over the past year is a positive sign. It may indicate that the RoN movement in Canada represents and supports progress towards greater respect for, recognition of and prioritization of Indigenous knowledges, laws, and lifeways.

FOREWORD

This major research project was an effort to bridge my law and governance background with my MES studies in environmental conservation, governance, and policy. In particular, my goal was to explore emerging concepts of environmental rights and how these were being implemented in Canada. The St. Lawrence River case study was a timely opportunity to consider how the “rights of nature” movement was evolving in Canada: in May 2022, early in my MES studies, two parallel bills were introduced – in the Quebec National Assembly and federal House of Commons respectively – that proposed to recognize the St. Lawrence River’s rights. The decision to analyze these bills through a critical environmental justice lens arose in part during my environmental justice course with my supervisor, Dr. Dayna Nadine Scott, when I had the opportunity to consider what it would mean to view “rivers” as a community that experiences environmental injustice. While my questions at the outset of this project were focused on what it meant for marginalized voices to be “included” in environmental governance (an approach likely rooted in my legal training), this evolved towards more critical inquiries such as whether “inclusion” is always the goal. I’ve ended this project with many new questions about what “environmental governance” could mean if nature’s “voice” is more widely understood, acknowledged, and acted upon; and with cautious optimism about the prospects for the “rights of nature” movement in Canada. I look forward to following the introduction and progress of the new St. Lawrence River rights bill in the Senate this fall, as well as seeing how other “rights of nature” laws, resolutions, policies and strategies unfold in Canada - both on paper and in the public imagination - in the months and years ahead.

DEDICATION

For my kids - my most precious teachers.

Evelyne: *May your deep compassion continue to soften the world around us.*

Julian: *May all your sweet and soulful dandelion wishes come true.*

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PART I: FACTS, CONTEXT AND RESEARCH QUESTIONS

1. OVERVIEW: THE ST. LAWRENCE RIVER AND THE “RIGHTS OF NATURE” MOVEMENT IN CANADA

This paper evaluates how "rights of nature" (RoN) legislation is being used as a tool to protect the St. Lawrence River (STL) in Canada. It also aims to tell a story of a possible (re)emerging recognition in settler societies that rivers are living relatives, and of the STL's recent journey through two bills introduced to recognize the river's rights and legal personhood. Settler legislation¹ - broadly defined to include bills, statutes, and municipal resolutions - may not be the most obvious place to go looking for a story. And, yet in the preamble of every statute, in every parliamentary speech introducing a bill, and in every court proceeding that considers a law, a story is told. This tension between the technical wording of laws and the stories that surround them animates the struggle to recognize nature's rights.

My overarching research question is how the legal articulation of RoN advances social and environmental justice goals in Canada. Focusing on the STL watershed as a case study, my specific research question asks why politicians and environmental not-for-profit groups (ENGOS) have pursued a RoN strategy in this case, and what they hope to achieve. The story I heard frequently in the course of this research project is that the RoN movement is evidence of a paradigm shift that is critical for the world and that is to some extent already occurring. The shift is often described as one towards ecocentrism (Dancer, 2021; Vega Cárdenas *et al.*, 2018) or towards a more Indigenous-centred view. Alternately, Townsend *et al.* (2021) identify the

¹The term "settler legislation" or "settler law" is adopted from Scott *et al.*'s Operationalizing Indigenous-led Impact Assessment (2023), which defines the latter term as "legislation and doctrine enacted by federal, provincial and territorial governments in Canada or espoused by settler courts" (p. 8).

concept of “kincentrism”, as coined by Salmón (2000), as another way of understanding the shift that RoN is encouraging.

Kincentrism can be seen as a reorientation for North American settler colonial society, towards greater respect for relationality between, and common ancestry of, human and non-human life (Salmón, 2000; Townsend et al., 2021). This kinship, as highlighted in multiple interviews I conducted for this project, is central to many Indigenous legal systems and worldviews and is a critical piece of the story. In my interviews, it was clear that many of those actively involved in the RoN movement are planting the seeds of that shift, that is, a shift towards (or perhaps back to) a more relational way of understanding the world and its non-human elements.

While there is optimism amongst advocates such as Boyd (2017) that such a paradigm shift could have profound socioecological impacts, there are numerous hurdles. First, the movement must meaningfully engage all of the necessary Indigenous voices whose rights, interests, and own laws are involved in any RoN discussion including grassroots voices (M. Brown, Personal Communication, April 21, 2023; L. Borrows, Personal Communication, May 4, 2023; Barrera, 2018) in order to truly shift the status quo. Second, it is arguably important that the framing of the problem as “anthropocentrism” itself, or as a human failure to protect the environment, does not erase the positive role of Indigenous stewardship and does not ignore other socio-economic and political forces such as (racial) capitalism, neoliberalism, and the ongoing effects of colonialism in shaping the problems faced by the STL and its various human and more-than-human communities (Richter, 2018). Finally, a related concern is that the movement must remain focused on supporting and not distracting from or undermining

Indigenous self-determination and sovereignty efforts (L. Borrows, Personal Communication, May 4, 2023; M. Brown, Personal Communication, April 21, 2023; Marshall, 2019).

1.1 Positioning myself

In exploring this topic, I reflected often on the many bodies of water that are a part of my ancestry and that have shaped me. I was raised in Toronto (Tkaronto), near Lake Ontario, or Niigaani-gichigami in Anishinaabemowin (Decolonial Atlas, 2014), the Humber River or Gabekanaang-ziibi (or alternately Cobekhenonk), and Mimico Creek or Omiimiikaa (Talking Treaties Collective, 2022). One branch of my ancestors originally settled along an industrial and deeply polluted stretch of the STL in Montreal's Point St.-Charles neighbourhood.² Before that, my family's history includes at least 800 years of subsistence farming along southwestern Ukraine's Prut River.

As a white settler, a graduate student at an academic institution, and a lawyer by background, I note the many elements of privilege I bring to this project and the ways that these experiences shape my perspective. As well, in my interviews, because of time and other practical constraints, I have primarily spoken with people in positions of power and whose authority or expertise is recognized by state governments and academic institutions, which significantly limits the reach of this research. Accordingly, over the course of this project I have attempted to bear in mind how I may be replicating power structures; and to ask, in the spirit of the Wet'suwet'en "Reimagined Free Prior and Informed Consent" protocol, and as

² When I asked my dad what he remembered of the St. Lawrence from his childhood - somehow expecting grim reflections about pollution and health impacts - he instead chuckled and told me a story of a time he and some other kids tried to build a raft to cross from Point St-Charles to nearby Nuns' Island, but upon launching it the raft immediately sank, and they all laughed and laughed. I carry this lighthearted story as a reminder that every person has their own unique relationships with their environment that academic and news reports will only seldom capture.

suggested by Temper (2019), how this work will benefit Indigenous peoples and other marginalized communities.

I also acknowledge that many different First Nations are connected to the STL and its watersheds, and take heed of Indigenous scholars' critiques of the practice of "pan-Indigenizing" or flattening Indigenous traditions (Greenwood *et al.*, 2008). I endeavour to avoid generalizations where possible, but also wish to identify that much of the commentary about RoN that I have cited does make certain generalizations about Indigenous peoples and their cultures, legal systems, worldviews and lifeways.

1.2 Roadmap for this paper

This paper has three main sections. Part I summarizes the story of the STL watershed and the efforts to recognize its rights including an overview of the two bills introduced in 2022, their origin, and their current status. It also sets out the research questions in more detail and explains the methodological approach and analytical lens for this paper. Part II discusses the research findings, including the idea that a "paradigm shift" focused on kinship may be able to assist the RoN movement in Canada by addressing human rights, environmental justice, and broader environmental protection in a more holistic and relational way. Part III summarizes my conclusions and suggests possibilities for future research.

2. BACKGROUND: THE STL WATERSHED AND EFFORTS TO RECOGNIZE ITS RIGHTS

The STL is and has been known by many names to the Indigenous communities that currently and historically live in the region. These include Kaniatarowanenneh (or Roitatokenti or Raoteniataara) for the Mohawk (Mohawk Council of Akwesasne, n.d.; Vega Cárdenas & Turp, 2023), Wepistukujaw Sipo for the Innu, Moliantegok for the Abenaki, Kahnawa'kye for

the Tuscarora, and Magtogoek for the Algonquin (Vega Cárdenas & Turp, 2023). The STL is also one of several rivers that drain into or from a Great Lake that are all called Gichigami-ziibi (Sea River) in Anishinaabemowin (Decolonial Atlas, 2014).

The region surrounding the STL has been continuously inhabited by Indigenous peoples for thousands of years (Nametau Innu, 2010). It includes the modern territories of the Innu Nation including seven Innu communities along the STL (Native Land Digital [NLD], 2023; Gouvernement du Québec, 2023a), the Kanien'kehá:ka or Mohawk Nation including the Kahnawake, Akwesasne and Kanesatake communities (NLD, 2021; Gouvernement du Québec, 2023b), the Abenaki (NLD, 2022a), the Haudenosaunee Confederacy (NLD, 2022b), and the Anishinabek Nation (Anishinabek Nation, 2023). Many nations within the STL watershed have outstanding and long-disputed land claims (Government of Canada, 2021), as recently highlighted by Amnesty International in the case of the Innu Nation of Pessamit (Guevara-Rosas & Langlois, 2022). This is a factor in the settler-colonial history of the region that is not always named in RoN discussions, though as discussed below it is expressly noted in the Innu of Ekuanitshit's RoN declaration for the Magpie River / Mutehekau Shipu.

The broader Laurentian - Great Lakes Watershed, which includes the STL, is home to over 38 million people, approximately 2.5 million of whom live in the STL region on the Canadian side of the river (Fergen *et al.*, 2022). The Government of Canada describes the STL river as a "significant socio-economic asset for Quebec [...], and the industrial heartland of the United States", as well as "among the world's most important commercial waterways" (Environment and Climate Change Canada, 2017). The river is also often cited as having great cultural importance for people in Quebec (Vega Cárdenas, 2023).

Because the STL originates in the Great Lakes, it is heavily affected by industrial activity in the Great Lakes region (Environment Canada [EC], 2015) and has been subject to high levels of pollution from a variety of sources (see, e.g., Vega Cárdenas *et al.*, 2023; Mohawk Council of Akwesasne, n.d.). While enhanced environmental protections have had some impacts, there are ongoing issues with urban waste and agricultural run off (Vega Cárdenas *et al.*, 2023). Climate change is also a growing challenge for the STL, including for biodiversity (see, e.g., Bartolai *et al.*, 2015; Bernstein, 2022), for local communities (see, e.g., Finnerty, 2021) and for the shipping industry (Comtois, 2022). In March 2023, ice levels on the STL were the third lowest ever recorded (Colello, 2023).

2.1 St. Lawrence River Governance

A broad range of government bodies, organizations and initiatives exist to oversee or govern the various environmental issues in and along the STL. The concept of environmental governance is broader than the concept of government, encompassing the ways in which people and institutions collectively manage environmental issues (Saunier & Meganck, 2009). Governance of the river and its watershed is complicated by many factors, many of which are rooted in the fact that a large section of the river itself constitutes a border between Ontario and the United States, and a small section constitutes the border between Ontario and Quebec. Governance challenges include: the fragmentation of environmental and water jurisdiction in both Canada and the U.S.; the somewhat outdated mandate of the International Joint Commission (IJC); and the vast number of other government bodies connected to the larger Great Lakes – St. Lawrence region, including eight U.S. states, two Canadian provinces, hundreds of municipalities, and many Indigenous nations (Chaloux & Paquin, 2013).

Despite the many challenges faced by the STL watershed, the past 40 years have been marked by significant efforts at better water management in the region. This has included a shift to an intergovernmental watershed-based approach, particularly through subnational government collaborations between Canadian provinces and U.S. states, described as “paradiplomacy” (Chaloux & Paquin, 2013, p. 310). The concept of watershed-based governance, which is broadly defined as making decisions at the watershed level, has been a growing trend in Canada and the U.S., including for cross-border agreements, over the past forty years (Benidickson, 2017; Chaloux & Paquin, 2013, p. 309). However, for North American settlers, the concept dates back at least to the 1880s when John Wesley Powell, taking inspiration from Indigenous knowledges, advocated (albeit unsuccessfully) for watershed-based state borders in the western United States. Powell described a watershed as a place where “all living things are inextricably linked” and was concerned about protecting watershed resources for future generations (Norman, 2015, p. 79).

The IJC has, since 1909, enabled collaborative river governance along the Canada-US border by the two nations pursuant to the Boundary Waters Treaty (IJC, 2023a; IJC, 2016). This treaty was an important early attempt at watershed-based governance. However, this bilateral treaty simultaneously reinforced the Canada-US colonial political border and the two nations’ exclusion of Indigenous nations from this governance framework (Norman, 2015). More recently, the IJC’s International Watershed Initiative has sought to address the exclusion of Indigenous peoples and to put greater emphasis on Indigenous and local community leadership, including representation on management boards, in addressing transboundary water challenges (Norman, 2015; IJC, 2023b).

Another important initiative in the region is the Mohawk Council of Kahnawake's 2020 request for a federal regional impact assessment of the STL, which would gather information about cumulative impacts on the STL (Montour, 2020). The fate of this and any future federal impact assessments is currently in the hands of the Supreme Court of Canada, who has recently heard an appeal challenging the constitutionality of the legislation empowering these assessments (2023). However, the request has been supported by fifteen First Nations and Councils, three Indigenous organizations, several ENGOs, and the federal NDP. This demonstrates both widespread recognition that existing STL protection measures are insufficient, as well as broad support for a more holistic approach to protecting the STL watershed (Impact Assessment Agency of Canada [IAAC], 2021; NDP, 2021; Paul *et al.*, 2021; Montour, 2021; IAAC, 2022).

Other efforts at improving river management include the establishment of a multitude of new environmental agreements and monitoring and oversight bodies (Chaloux & Paquin, 2013, p. 310). As well, in Quebec, water protection has recently been embedded in legislation and recognized as a collective resource (Observatoire, 2023c; Bill 27, 2009). Finally, ENGOs can play an important role in river governance through legal and non-legal environmental justice tools such as litigation, advocacy and negotiation (Enkhbaatar, 2021).

2.2 The “rights of nature” movement

The call for a regional assessment is reflective of a commonly expressed sentiment that current laws and governance are not working to adequately protect the environment, or from Boyd's perspective, “have not yet changed to keep pace with the evolution of our values” (Boyd, 2017, p. xxxiv). Boyd also points to “misuse of other animals, species, and nature”,

particularly as a result of “high levels of consumption in wealthy nations”, as a problem “rooted in three entrenched and related ideas”: the influence of anthropocentrism or human superiority over nature, the view of nature as property, and the pursuit of “limitless economic growth” (2017, p. xxii-xxiii). Boyd sees the RoN “revolution” as having the “potential to achieve three vital outcomes: reducing the harm suffered by sentient animals, stopping human-caused species extinction, and protecting the planet’s life-support systems” (2017, p. xxxv).

The idea that nature has rights can be understood in at least two related ways: first, that natural entities such as plants, animals, rivers, and ecosystems are living and have inherent worth that must be recognized; second, that such natural entities should be recognized as having “personhood” rights, or the same or similar rights that humans have (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, n.d.; Boyd, 2017; Stone, 1972). In the first conception, the recognition of the inherent value of a river might lead to the codification of substantive rights such as the river’s right to flow, be free from contamination, and to be restored. In the second conception, a river might be granted the kind of procedural rights that humans have within a legal system such as the right to bring a legal action in a court or tribunal (Stone, 1972; O’Donnell & Talbot-Jones, 2017).

A key concept in RoN law is the appointment of a guardian or guardian body who represents the interests of the river or other entity in various forums including courts. This is sometimes described as being akin to a guardian appointed to speak on behalf of a child in court (O’Donnell, 2023; Vega Cárdenas *et al.*, 2023). Similarly, guardians have been described as having a fiduciary-type role (Vega Cárdenas & Mestokosho, 2023).

Roots of the RoN movement

The modern RoN movement has variously been described as having roots in Indigenous worldviews (see, e.g., Craft, 2014, p. 26; Gellers, 2021), in many of the world's religions and cultures, as well as in western legal systems. For example, as Boyd notes, Jainism, Buddhism, and Hinduism all emphasize a "reverence for all life and non-injury to all living things" (2017, p. xxix). By contrast, Tănăsescu and others dispute claims that rights of nature are truly an Indigenous concept (Tănăsescu, 2020; Marshall, 2019) or that Indigenous ontologies are authentically represented in RoN discourse (Tănăsescu, 2020; Valladares & Boelens, 2019). Finally, the modern Western origin of the concept of extending legal rights to nature is a paper by American academic Christopher Stone, in which Stone posited that the extension of rights to nature represents a paradigm shift in the same way as the extension of rights to children (Stone, 1972).

The dramatic growth of the RoN movement

The RoN movement has been rapidly gaining speed over the past fifteen years following Ecuador's constitutional amendment in 2008 (Boyd, 2017). The movement reached a dramatic acceleration following the 2017 passage of legislation in New Zealand (Aotearoa) affirming that the Whanganui river has personhood rights (Boyd, 2017; Cárdenas & Meza, 2023). Shortly thereafter and inspired by the Whanganui decision, the High Court in the Indian State of Uttarakhand declared that the Ganga and Yamuna Rivers also had personhood rights (Lokgariwar, 2017): a significant precedent because like the STL, the Ganga River crosses international boundaries and its basin sustains millions of people (Lokgariwar, 2017). Despite the Uttarakhand decision being overturned shortly thereafter (BBC, 2017), since then, a multitude of governments at every level around the world have granted rights to rivers and

other living entities through court rulings, legislation, resolutions, and constitutional amendments (Harmony with Nature UN, n.d.; Boyd, 2017; Vega Cárdenas & Meza, 2023). In May 2023, Rhode Island passed the first state level resolution in the US recognizing nature rights (Earth Law Center, 2023).

Amongst a range of international RoN initiatives, most significant may be the inclusion of RoN in the 2022 UN Convention on Biodiversity (UN Environment Program, 2022). Other international efforts include a collaborative project to draft an Antarctic Ocean rights declaration (Antarctica Rights, n.d.) and a project to grant rights to the Pacific Ocean (Insitut de Recherche pour le Développement, 2021). The river rights movement is also being advanced with the support of a draft Universal Declaration of the Rights of Rivers (Earth Law Center, 2022; Rights of Rivers, n.d.).

2.3 RoN movement's rapid growth in Canada

Over the past several years, the RoN movement has also been growing in Canada. This movement has been advanced with support from a number of environmental not-for-profit organizations (ENGOS), and in particular the Québec-based Observatoire International des Droits de la Nature (the Observatoire) and its President, Yenny Vega Cárdenas. The Observatoire has played a key role in supporting the Magpie River / Mutehekau Shipu resolutions, as discussed below, and are at the forefront of the STL rights movement (Observatoire, 2023a-c).

The STL is the third river in Canada for which rights have been articulated in either settler or Indigenous law. In 2021, the Innu Council of Ekuanitshit and the Regional County Municipality of Minganie adopted resolutions declaring the Magpie River / Mutehekau Shipu to

have rights (Conseil des Innu de Ekuanitshit, 2021; Municipalité Régionale de Comté de Minganie, 2021). While this is often considered a critical Canadian first (see, e.g., Vega Cárdenas & Meza, 2023), in fact it followed the T̓silhqot'in Nation's 2020 decision to recognize the rights of the ʔElhdaqox (Sturgeon River or Fraser River), including rights of the "people, animals, fish, plants, nen [lands], and tu [waters]" with respect to "decisions about their care and use" (T̓silhqot'in Nation, 2020, p. 5). No parallel municipal, provincial or federal law has been introduced to date.

Numerous other RoN projects are in progress or under consideration in Canada. In 2017, the Assembly of First Nations (AFN) passed a resolution to explore ways to better protect waterways, including by exploring recognition of the Kichizibi (Ottawa River) watershed as a legal "person" (AFN, 2017). A multi-year Indigenous-led project is underway to explore rights of nature for Lake Winnipeg, which will include public education, community engagement, a summit, and work towards "a system of multi-nation governance" (Decolonizing Water, 2023). Former Kitigan Zibi Anishinaabe Chief Gilbert Whiteduck recently expressed his support for the pursuit of personhood for the Gatineau River (Andrews, 2023). The Anishinaabe Nation is currently contemplating a Great Lakes Bill of Rights that includes recognizing the lakes' legal personhood (M. Brown, Personal Communication, April 21, 2023). Finally, a recent research project explored how the concept of urban rights of nature could influence urban planning in Vancouver (Gram *et al.*, 2021).

2.4 The proposals for RoN for the St. Lawrence River

Similar to other RoN initiatives, the campaign to introduce RoN legislation for the STL arose as a result of concerns that existing strategies are failing to protect the STL and its

watershed and that therefore a new approach is needed (see, e.g., *Strategies Saint-Laurent*, 2023; R. Galvez, Personal Communication, June 5, 2023). The campaign began with an opinion letter published by the Observatoire in 2018 (Vega Cárdenas *et al.*, 2018; Earth Law Center, 2018), followed by a draft STL rights bill produced by the Observatoire in 2021 (Vega Cárdenas & Turp, 2021, Annexe 3). In May 2022, two bills were released in parallel as private opposition or minority members' bills: Quebec Bill 990 (Projet de loi no. 990, 2022), by now-former MNA and Québec Solidaire member Émilise Lessard-Therrien; and federal Bill C-271 (2022), by New Democratic Party MP Alexandre Boulerice.

Neither of these 2022 bills progressed past first reading (for reasons outlined below). However, Boulerice subsequently approached independent Senator Rosa Galvez about the possibility of introducing the bill through the Canadian Senate (A. Boulerice, Personal Communication, April 11, 2023), and soon thereafter, Sen. Galvez announced her intention to introduce a RoN bill for the STL (Méndez, 2023). Thus, a third STL rights bill is anticipated to be introduced in the Senate in the fall of 2023, though no draft bill was available for review as of July 2023 as the bill is still in the planning and consultation stage (R. Galvez, Personal Communication, June 5, 2023).

Support for STL rights legislation is broad and appears to be growing. The federal NDP website includes a declaration of support for the idea of granting personhood rights to the STL (NDP, 2023). The St. Lawrence River Alliance, which supports granting RoN to the river, includes ten environmental organizations, two Indigenous governing bodies, two research centres, and 17 Quebec cities and municipalities (Observatoire, 2023b). On April 24, 2023, the AFN-Quebec-Labrador passed a resolution declaring personhood of the St Lawrence rights

(Méndez, 2023). Finally, a Great Lakes rights bill is under consideration in New York State that would encompass the STL (New York State Assembly Bill A4344, 2023).

2.5 Content of the STL bills

While the federal and provincial STL bills were introduced in tandem, there are a number of significant differences in the wording of the bills and both diverge from the Observatoire's proposed bill. A key difference is the content of the preambles to the bills. Other differences include the scope of what is protected, the ways in which the rights are articulated and the rights enforcement mechanisms. As well, the guardianship bodies differ in their membership, leadership, and statutory mandate. These features are summarized below.

The preambles

The preamble of federal Bill C-271, though brief, provides some context for the bill. It includes the statement that "the importance of natural entities such as the St. Lawrence River should be emphasized by recognizing them as having legal personality", and that "the legal fiction thus created is necessary to guarantee the St. Lawrence River a healthy environment, to the benefit of current and future generations, and to enhance its protection" (2022). Bill 990's preamble similarly highlights the "fundamental importance" of the STL "for Québec society", and several recitations of Quebec law that would support the bill including the articulation in the Quebec Charter of Rights and Freedoms of the right to a healthy environment, and that "watercourses, as sources of life and living environments, must be preserved" (2022).

In the preambles of the two STL bills, only federal Bill C-271 references Indigenous peoples. That preamble includes the following: "it is necessary to recognize that all Indigenous peoples who are living on the borders of the STL and who have navigated it over millennia are

the traditional custodians of the River and ensure its protection, the enhancement of its rights and its best interest". By contrast, the Observatoire's proposed bill notes in the preamble that the legal approach in the bill is "recognized worldwide as being inspired by standards and values that are mostly traditional to First Nations" (Vega Cárdenas & Turp, 2021, p. 517).

In fact, while the bill originally proposed by the Observatoire includes a lengthy preamble, most of this is omitted from the brief preamble to provincial Bill 990, and much is omitted as well from federal Bill C-271. Other omitted wording from the Observatoire's proposed preamble includes references to the role anthropocentrism has played in leading "human beings to break the connection and interdependence we had with nature, causing degradation to our ecosystems, the disappearance of our ecosystems, the disappearance of species and damage to the Earth's biodiversity", and the suggestion that humans are the cause of climate change (Vega Cárdenas & Turp, 2021, p. 517).

What part of the river is recognized

Each of Quebec Bill 990 and federal Bill C-271 take a different approach to defining what constitutes the STL. Bill C-271 includes the river, as well as its flora, fauna and bed, but not any tributaries or the broader watershed (2022, s. 2). By contrast, in Quebec Bill 990, the STL includes "the St Lawrence Estuary and the Gulf of the St Lawrence, as well as all its tributaries and its watershed" (2022, s.1). Additionally, consideration is to be given "in defending and promoting rights of the River [...] to the right of other living species to life and well-being" (s. 11(1)). Thus, while Quebec Bill 990 could be seen to at least contemplate the rights of humans by acknowledging the rights "of other living species", both bills exclude humans from the definition of the river.

The definition of the STL in Quebec Bill 990 echoes the scope of the Observatoire's proposal (Vega Cárdenas & Turp, 2021, p. 517), which includes the river and "direct" tributaries as well as "all natural elements associated with the River, notably the fauna, flora, and riverbed." However, unlike the Observatoire's proposal, Quebec Bill 990 clearly treats "other living species" as separate from the river and its tributaries. Similarly, though the federal NDP declaration suggests that both the STL and its watershed must be protected and speaks about the "indivisibility" of the river and its tributaries (NDP, 2023, ss. 1-3), this concept is not reflected in the text of federal Bill C-271 (2022, s.2).

The "rights" articulated

The articulated purposes of federal Bill C-271 include giving the STL "the capacity of a natural person, in order to protect its right to exist and flow, to maintain its vital cycles, natural biodiversity and integrity, to fulfil essential functions within its ecosystem, to be nourished by its aquifers and tributaries, to be protected from contamination and to regenerate" (2022, s. 4(a)). The bill goes on to state that the river has "the capacity and the rights, powers and privileges of a natural person, including the right to institute legal proceedings" (2022, s. 5(1)). By contrast, Quebec Bill 990 directly declares that the STL is the holder of a list of more substantive rights such as the right to exist and to flow, and to regenerate (2022, s. 2). However, the bill also states that the river's rights are to be balanced with other interests: rights "are to be exercised in keeping with Indigenous rights and international commitments applicable to Quebec and taking into account the legislative and regulatory provisions relating

to the protection of the environment, land use development and the conservation and development of wildlife” (2022, s. 4).³

Rights enforcement and remedies

In both bills, a guardian body plays a gatekeeping role with respect to the exercise of the STL’s rights. In federal Bill C-271, the guardian body, called the “Protection Committee”, has the power to bring a legal action for damages on the STL’s behalf “if it is of the opinion that an act or omission in contravention of any Act of Parliament or of a provincial legislature caused or is likely to cause substantial damages to the River” (2022, s. 11(1)). It also articulates that any such “monetary relief awarded” is to be “invested in protection and restoration measures for the River” (2022, s. 11(2)). Quebec Bill 990 similarly grants river guardians the power to bring proceedings against any person who harms the river “through a person’s fault or illegal act”, but the potential remedies are broader: the guardians can seek one or more of “(1) restoration of the River to its original state or a state similar to its original state; (2) reparation through compensatory measures; and (3) reparation by payment of compensation in a lump sum or otherwise” (2022, s. 17).

Each of the two bills takes a slightly different approach to reciprocal responsibility under the law. In Quebec Bill 990, the STL cannot itself be subject to legal action (2022, s. 3). In the case of Bill C-271, the river and its guardian body are immune from legal action for any act or omission “done in good faith” by the guardian body (2022, s.5(2)). This implies that the

³This is taken from the official translation of Bill 990. However, the phrase “development of wildlife” is expressed in French as “la mise en valeur de la faune” for which Google Translate suggests the meaning “enhancement of wildlife” (Projet de loi no 990, s. 4).

committee, or even the river itself, may be held liable for bad faith conduct by the guardian body.

Two proposed guardian bodies for the STL

In the STL context, where many nations and settler communities have a relationship with the river, the selection of a guardian body is a key issue. Quebec Bill 990 and federal Bill C-271 propose similar guardian bodies, with some important distinctions. In Quebec Bill 990, the seven-member committee includes the provincial Minister of Environment and the Fight Against Climate Change as chair, as well as one representative from an ENGO, two Indigenous representatives, two municipal representatives, and one representative from academia with water-related expertise. The various representatives are chosen upon consultation within each of these groups, and in the case of the Indigenous representatives, this means consultation “with the representatives of the eleven Indigenous nations of Québec” (2022, s.7(2)). The bill clarifies that the appointments “must be made so as to achieve the most equitable representation possible of the men and women of the regions of Québec and must reflect the demographic composition of the population of Québec” (2022, s. 7).

In federal Bill C-271, the eleven-member “Protection Committee” includes two provincial government representatives from each of Ontario and Quebec, two Indigenous representatives from each of Ontario and Quebec, and three ENGO representatives from either province (2022, s. 6(2)). The Indigenous representatives are to be “recommended by relevant Indigenous governing bodies” (2022, s. 6(2)(c),(d)), which at present would mean the regional Assembly of First Nations for each of Ontario and Quebec-Labrador (A. Boulerice, Personal Communication, April 11, 2023). The Governor in Council, who is responsible for all

appointments, is to choose the chair from amongst the four Indigenous committee members (2022, s. 6(4)).

In addition to having the power to bring legal actions, the guardian bodies have a wide range of other duties. In federal Bill C-271, the duties include “intervening and advising during consultations, public hearings and environmental impact assessments”, “acting on a priority basis to mitigate any harm done to the River and to restore its ecosystems”, “proposing concrete measures that respect the River to guarantee secure access to the River and its tributaries for community and tourist activities”, and “participating in the implementation of plans and programs for the management and conservation of the River’s habitat and ecosystems” (2022, s. 8). Quebec Bill 900 similarly sets out guardians’ duties including “providing its opinion on any project or issue that may affect the rights of the River”, “submitting recommendations to the Government to ensure balance between the regeneration of the River and the satisfaction of essential human needs with respect to water and energy”, “participating in restoration and conservation programs for the wildlife that is dependent on the River”, and “proposing measures to guarantee safe access to the River and its tributaries for recreational tourism activities” (2022, s. 11).

Explaining the differences

It is also important to note the different trajectories of the two STL bills, including the differences between the Observatoire draft bill and the two bills introduced in May 2022. These differences can be explained in at least three ways: first and as discussed further below, government legislative drafters and “legal experts” play a role in addressing “jurisdictional issues” and wording changes to ensure that the language used has “legal status” and can be

fully integrated into existing law (A. Boulerice, Personal Communication, April 11, 2023; Québec Solidaire staff member, Personal Communication, June 15, 2023). Second, staff members within the Québec Solidaire also made changes particularly to the preamble text to ensure the bill introduced reflected the views of the political party membership (Québec Solidaire staff member, Personal Communication, June 15, 2023). Finally, differences between Canada's common law system and the civil law system unique to Quebec, may potentially shape how the laws are drafted.

2.6 Current status of the STL bills

While the federal and provincial bills to recognize rights of the STL were introduced in parallel, the journeys of the two bills have since diverged. While federal bill C-271 failed to obtain a high priority in what Boulerice describes as a "lottery" for private members' bills to be considered, making it extremely unlikely to proceed beyond first reading (Personal Communication, April 11, 2023), Boulerice's ongoing enthusiasm for the RoN movement and Sen. Galvez's plans to introduce a similar bill both demonstrate that the issue remains live at the federal level. Quebec Bill 990 has similarly not yet led to any consideration of RoN at the Quebec National Assembly but seems less likely to receive attention in the near term. The bill did not advance prior to the October 2022 election; MNA Lessard-Therrien who had introduced it was not re-elected (Radio-Canada, 2022); and despite the inclusion of nature rights for the STL in their 2022 election platform, the Québec Solidaire party has no current plans to advance a similar bill (Québec Solidaire staff member, Personal Communication, June 15, 2023). While it is possible that the concept may be advanced before the next provincial election in 2026, currently the party is prioritizing other issues such as adaptation to climate

change (Quebec Solidaire Staff Member, Personal Communication, June 15, 2023). This loss of momentum at the provincial level in Quebec is one of many issues and challenges for the RoN movement in Canada, as summarized below.

3. CURRENT ISSUES AND CHALLENGES FOR RIGHTS OF THE STL WATERSHED

3.1 Environmental justice considerations

In the evolving discourse around the rights of nature, key questions include technical considerations, e.g., whether courts will uphold such rights, and how they will be acted upon (Stone, 1972). A key challenge for environmental legislative initiatives more generally is that environmental harms tend to have disproportionate impacts on marginalized peoples, including those marginalized by race, class, and gender. In this context, change through legislation can be difficult in part because of the “power of entrenched economic interests over elected officials” (Scott, 2022, at p. 296).

3.2 Philosophical considerations and rights conflicts

Other questions include philosophical ones, e.g., how human relationships with nature are expressed (Stone, 1972). Conflicts may arise between the western individualistic “rights” framework and the Indigenous worldviews upon which nature rights are often based. This includes differing views on the relative importance of mutual responsibility versus individual rights (Mills, Drake & Muthusamipillai, 2017; J. Borrows, 2010). Some of the critiques of “rights of nature”, as will be explored further below, focus on the fact that RoN legislation is often introduced by settler-colonial governments and are sometimes even settler led, and that “rights” are themselves a colonial concept that has been used to oppress Indigenous peoples (see, e.g., Kauffman, 2020). A related critique of the “river guardian” concept common in RoN

laws is that rivers are often framed as “legal minors”, which can “diminish the rivers as legal actors” (O’Donnell, 2023, p. 331). A question that arises, then, is whether Indigenous epistemologies tend to be elevated or distorted by state RoN legislation.

Finally, while the “most transformative” RoN initiatives have been Indigenous-led or “consistently influenced” by Indigenous peoples (O’Donnell *et al.*, 2020, p. 405), the meaning of “Indigenous-led” itself is not settled. In the context of examining “Indigenous-led” impact assessments, Scott *et al.* note that “some processes have been labelled Indigenous-led where Indigenous nations act as a proponent under settler [impact assessment] legislation, while others insist that Indigenous-led means operating outside and independent of settler legislative frameworks” (2023, p. 9). This tension can be seen in discussions of the RoN movement, as illustrated below.

3.3 Untested waters and enforcement challenges

A key question that remains unanswered is how Canadian courts will respond to various laws purporting to grant personhood rights. As yet, the Magpie River / Mutehekau Shipu laws have not been challenged in court. Whether economic or other concerns would prevail over legislation protecting the STL is thus an outstanding question. The shared jurisdiction over “the environment” in the Canadian Constitution (*Constitution Act*, 1867, ss. 91-92) as between the federal and provincial governments, and lack of express reference to the environment in the Constitution, adds its own complexities for any federal or provincial bill attempting to shape environmental law and policy (Scott, 2017).

Kauffman and Martin (2016) provide an early analysis of how rights of nature cases have played out in Ecuador. What is most significant is their conclusion that rights of nature

are now “a regular part of national discourse” (p. 19). However, key barriers include judges’ limited knowledge and understanding of this new concept, and the politicization of the issue (Kauffman & Martin, 2016). By contrast, Breda (2023) suggests that the experience in the US is that despite increasingly widespread use of RoN resolutions and laws, the movement has had little if any practical impact on environmental protection (Breda, 2023).

3.4 Economic pressures

Finally, it is important to note the significant ongoing economic pressures on the STL, including desires to expand shipping on the STL. In 2021, the Federal government refused to allow the Laurentia container terminal project to move forward because of expected environmental impacts on humans, fish, and fish habitat (Martin, 2021). This is despite the fact that the project was supported by the Conseil de la Nation Huronne-Wendat (Bacon, 2021). However, as recently as late May 2023, the US’s St. Lawrence Seaway administrator reportedly announced aspirations to “double” its shipping traffic (Brynda, 2023). These competing priorities – whether actual or perceived – such as economic development goals for federal and provincial governments and for First Nations, and environmental protection goals, pose ongoing practical challenges for politicians and ENGOs pursuing STL protection strategies.

4. RESEARCH QUESTIONS AND METHODOLOGY

In addressing my research question of why politicians and ENGOs have pursued a “rights of nature” strategy in the STL watershed, and what they hope to achieve, my key areas of inquiry in exploring my research questions are as follows:

Q1. Factors contributing to RoN support and advocacy

- 1a) What specific factors have contributed to ENGOs and politicians supporting personhood rights for the STL? Are these arguments typically rooted in environmental justice (including procedural justice), intergenerational justice, and/or interspecies justice?⁴
- 1b) How do politicians, ENGOs, and other actors perceive nature and environmental rights in the STL context? Are “rights of nature” perceived as complementing or conflicting with human rights, e.g., to a clean, healthy and sustainable environment?

Q2. Role of legislation in framing rights-based river governance

- 2a) How does nature rights legislation support (or hinder) the environmental justice goal of enabling more meaningful participation and leadership in environmental decision-making for marginalized people and communities?
- 2b) If a river has personhood rights, who should be responsible for stewarding and enforcing those rights, and how does legislation attempt to address this issue?

4.1 Methodological approach

The methodology for this project is a multi-methods approach, including literature review, legal research and key informant interviews. My interviewees included: Luc Noël, who at the time of the interview was the Prefect⁵ of Minganie Regional County Municipality, and who helped bring about the RoN declaration for the Magpie River / Mutehekau Shipu;

⁴While this question initially included a specific focus on the views of several municipalities, I was unable to interview any representatives of municipalities that support the RoN movement for the STL. As well, these municipalities have published little to nothing regarding this decision. Accordingly, the question has been reframed more broadly to ask about the views of politicians.

⁵As of August 30, 2023, M. Noël is no longer the Prefect of the Minganie Regional County Municipality, and his comments do not necessarily reflect the current views of the Minganie Regional County Municipality or its current Prefect.

Alexandre Boulerice, NDP Member of Parliament for Rosemont—La Petite-Patrie, who brought forward the federal RoN bill for the STL in May 2022 (Bill C-271); Meredith Brown, former waterkeeper for the ENGO Ottawa Waterkeeper who has followed the RoN movement for decades; Lindsay Borrows, an Anishinaabe Assistant Professor at Queen's University Faculty of Law in Kingston, Ontario, who teaches Indigenous law and ecological governance; Canadian Senator (and Peruvian of Quechua lineage) Rosa Galvez, who as noted below is planning to introduce an STL rights bill in the Senate; and a staff member for Québec Solidaire MNA Alejandra Zaga Mendez, to whom I was directed when I reached out to the Québec Solidaire party regarding Quebec Bill 990. In accordance with the ethics approval obtained for this project, the decision was taken to name the interviewees as a result of their key roles in the initiatives under study, and confirmed by explicit informed written consent.

4.2 Critical environmental justice lens

In terms of a theoretical framework, this project aims to take a critical environmental justice lens (Taylor & Pacini-Ketchabaw, 2018). The term environmental justice (EJ) is often focused on unequal distribution (amongst humans) of environmental costs and benefits; for example, those who benefit most from heavily polluting industry often live far from that industry, and vice versa (Schlosberg, 2007; Slater & Peterson, 2009). It is also commonly associated with access to justice concepts, such as access to courts and decision-making processes (Slater & Peterson, 2009), which can all be described as aspects of public participation (Jodoin *et al.*, 2015) in procedural justice (Faber *et al.*, 2021). This is also related to the concept of “recognition justice” which is focused on the idea of inclusion of groups traditionally marginalized and excluded from political and legal processes (Schlosberg, 2013).

However, critics such as Faber *et al.* (2021) argue that liberal environmental justice theory is inadequate because it fails to “offer a deep theoretical critique of systemic racism, class exploitation, and racial capitalism” (p. 2, citing Richter, 2018) or “ground the political-economic forces producing environmental harm in the imperatives of capital accumulation and capitalist development” (p. 2, citing Faber, 2008). Without a focus on factors such as the influence of corporate power and money in the electoral system and the underlying causes of environmental harm and injustice, environmental justice can have the effect of simply relocating pollution rather than eliminating these harms (Faber *et al.*, 2021, p. 5). As well, procedural and recognition justice can be seen as problematic in that they presume an impartial state, and are inadequate if marginalized communities are offered “false or undesirable choices” such as accepting or rejecting a polluting industry and the economic benefits it claims to offer (Faber *et al.*, 2021, pp. 6-7). The “struggle” for EJ, Faber *et al.* argue, “must be about the politics of capitalist production per se and the elimination of the ecological threat, not just the ‘fair’ distribution of ecological hazards via better government regulation of racial/class-based inequities in the marketplace” (2021, p. 5). Faber *et al.* call for a more “transformational” justice, that seeks to “transform systems of power and profit that result in the exploitation of people and nature” (2021, pp. 9-10).

Pellow (2018) defines critical EJ according to “four pillars”, being an increased focus on intersectionality including non-human justice; a focus on different and broader scales of time and space; a more critical perspective on state power; and a focus on the idea of indispensability as a response to the expendability inherent in environmental injustice (p. 18). Pellow acknowledges Cole and Foster’s argument that the “courts have not worked for the EJ

movement” (2001). In response, Pellow suggests that “[t]he legal system and the state shouldn’t be the only game in town” (Pulido, 2017, pp. 51-52).

In the context of the first “pillar”, Vermeulen (2019) highlights South American, Indigenous-led EJ movements that include protection of non-humans as an important, positive trend. Others have characterized this first pillar as describing a need for a more decolonial EJ (Menton *et al.*, 2020; Temper, 2019). Vega Cárdenas and Meza (2023) similarly describe EJ’s “anthropocentric paradigm” as a shortcoming (p. 43), a perspective that identifies and challenges the traditional understanding of environmental justice. They suggest a need for a complementary “ecocentric”, “ecological justice” that recognizes nature’s inherent value. They further argue that this iteration of ecocentrism goes beyond a “biocentric approach” which “individually” values both human and non-human beings, because ecocentrism focuses on “interdependent relations between species and their surroundings” (pp. 45-46, citing Montalvan Zambrano, 2020, p. 188). This vision of ecocentrism sees all of humans and nature as “an interdependent whole” (p. 47, citing Costa, 2009, p. 115) and “values the cultural intersection between humans and Nature” (p. 47). Interspecies justice, or multispecies justice, which embraces both justice for non-human beings and recognition of different ontologies (Chao & Celermajer, 2023), can thus be considered important themes in critical EJ literature.

In reflecting on environmental versus ecological justice, Pellow suggests that environmental justice can be viewed as “much more human-centered” which he acknowledges is “for good reason, since the humans we center in EJ studies have long been erased from environmental issues.” By contrast, ecological justice “opens up ways of thinking of our world as multiracial, multigendered, multispecies societies, communities, and polities” (Pulido, 2017,

p. 46). Vermeylen further argues that the “recognition of plural ontologies and epistemologies is a prerequisite for environmental justice to be transformative” (2019, p. 89), and that environmental justice “requires a more upfront confrontation with the socio historical causes of oppression brought about by coloniality” (2019, p. 90). Finally, Schlosberg suggests that the distinction between (a more anthropocentric) EJ and ecological or interspecies justice is an American trend, whereas elsewhere these are more entangled concepts (2007).

PART II: FINDINGS

5. SUMMARY OF FINDINGS

The interviews and literature review demonstrate significant enthusiasm around the idea of recognizing the rights of the St. Lawrence, particularly in light of the global rise in popularity of the RoN movement and the successful introduction of resolutions in Quebec for the Magpie River / Mutehekau Shipu. The introduction of STL rights legislation is an important milestone, as these are the first provincial and federal bills introduced in Canada that recognize any form of nature rights. The following sections outline why various ENGOs and politicians have supported these bills, how nature rights are perceived in relation to various forms of human rights, and the perceived role of this proposed legislation in achieving environmental justice goals and in shaping the rivers’ stewardship through rights enforcement.

To summarize the discussion below, a key factor in support for the RoN bills is the value of joining a global movement that itself represents and supports a necessary paradigm shift in how humans relate to the environment: from anthropocentric, property-oriented, or capitalist, to one that is more earth-centred, Indigenous-centred, or relational. The value of the bills thus includes a public education component to help the public understand the need for this shift.

This all reflects the supporters' tendency to emphasize interspecies and multispecies justice, intergenerational justice, and to some extent environmental justice in explaining their significance, but to place less emphasis on the more practical procedural justice considerations.

The advancement of these bills is generally seen as justified now in light of advances in RoN laws and Quebec environmental law. There is also a sense in which they are justified as necessary (and theoretically helpful) steps towards reconciliation and decolonization. However, there are a number of important critiques of these justifications in the context of the STL bills and that are echoed in the broader RoN literature. These critiques demonstrate some of the ways in which the bills themselves can be seen to fall short of the ambitions and hopes for what they might achieve. On the other hand, perhaps because of the energy behind the larger RoN movement, for some there seems to be a sense that the STL bills may be justifiable because they are "low risk", which itself is a problematic concept.

There is a range of commentary on how the two RoN bills might fit into the "rights" ecosystem in Quebec and Canada. RoN laws are often viewed as complementary and supportive to other rights such as the right to a healthy environment and Indigenous rights, and as having an important place in Canada's pluralistic legal system. There are also important discussions about how RoN and biocultural rights may be mutually reinforcing. However, others have critiqued the assumptions of compatibility, including some commentators who note rights conflicts that have already occurred in other jurisdictions.

Finally, in considering the impacts of the RoN draft legislation, the bills appear to make some progress towards procedural environmental justice for rivers, though their EJ benefits to

Indigenous peoples are less clear. The preamble of the bills can be seen as an important tool in this regard, as is evident in plans for a new Senate RoN bill. The selection of guardians can also be seen as an important tool, though the guardians will have multiple complex relationships to navigate in fulfilling their broad mandates.

6. FACTORS CONTRIBUTING TO RoN SUPPORT AND ADVOCACY

6.1 The idea of a paradigm shift as a key factor in RoN support and advocacy

The idea that RoN represents, or is part of, a much needed paradigm shift is a common theme (see, e.g., Epstein *et al.*, 2022; Houck, 2017). This shift is often described as being global in nature. For example, Merino argues that the “growing recognition of the rights of nature is [...] a global process that demonstrates how powerful ideals embraced by social movements travel through different continents” (2022, p. 308). The need for a new approach is often premised on the concerns expressed by many advocates that existing environmental law approaches have not addressed many chronic problems (see, e.g., Boyd, 2017). Boyd recognizes that achieving a paradigm shift is neither quick nor easy, describing the process of ideas changing as an “evolution” that “is not a smooth or gradual process” but rather one that “happens in fits and starts, in what scientists call punctuated equilibrium”, eventually resulting in a shift (2017, p. xxxiii).

The paradigm shift concept was frequently echoed in the interviews. For example, Boulerice sees the federal bill he introduced as part of a “conceptual revolution” (A. Boulerice, Personal Communication, April 11, 2023). Sen. Galvez similarly believes that “humanity is at a crossroads and an ecocentric vision for the planet is long overdue” (Méndez, 2023). Sen. Galvez also explains that the need for a new approach arises because existing laws only mitigate but

can never completely eliminate toxins from the environment: “It’s an illusion of the government to think that they can control [toxins] or damage to ecosystems in general without a profound change in approach” (Personal Communication, June 5, 2023). Brown, who notes that people have been talking about the need for an environment-related paradigm shift “for decades”, thinks that the RoN movement would be a paradigm shift about “how we are in relationship with water” (M. Brown, Personal Communication, April 21, 2023).

For Sen. Galvez, public education with respect to this need for a paradigm shift is also an important goal for, and benefit of, an RoN bill. She explains, “we have our big goal, to pass the bill, but we also have a responsibility to tell citizens why we need to move in this direction, educate them - how we got to this cul-de-sac that we’re in now” (Personal Communication, June 5, 2023). Similarly, Brown sees four steps needed to move to action: “awareness, then understanding, commitment, and action” and highlights the importance of these early steps (Personal Communication, April 21, 2023). Sen. Galvez and Brown’s comments also reflect the perspective of Temper (2019) who highlights a key role for education in achieving “real justice” in the RoN context (p. 107).

Characterizing the paradigm shift: an ecocentric view

There are at least three related ways this paradigm shift is typically characterized: towards ecocentrism; towards a more Indigenous-informed worldview; and towards greater understanding of relationship or kinship. These concepts overlap in many ways. They are parsed out below because each emphasis has its own implications for how RoN is understood and possibly for how it is implemented.

First, the shift towards ecocentrism is often also expressed as a shift away from anthropocentrism. For example, the RoN literature frequently distinguishes between an anthropocentric discourse of nature as “service provider” and a more ecocentric or “Earth-centred” discourse of nature “as subject” (Dancer, 2021, p. 22; Vega Cárdenas *et al.*, 2018; Houck, 2017). Both Sen. Galvez and Boulerice describe the current paradigm of “anthropocentrism” as in need of change (R. Galvez, Personal Communication, June 5, 2023; A. Boulerice, Personal Communication, April 11, 2023). The word “ecocentric” is also used by the New York State-based ENGO Talking Rivers to describe the RoN-based governance goals for the STL watershed (Talking Rivers, 2022). However, as discussed below, others challenge the anthropocentrism-ecocentrism dichotomy (Tănăsescu, 2020) or the claim that environmental law is anthropocentric in the absence of RoN (Bétaille, 2019).

While the concept of ecocentrism often places strong emphasis on the intrinsic value of nature (Vega Cárdenas & Meza, 2023), many expressions of ecocentrism are reflective of what Merino describes as the second wave of the RoN movement. Merino describes an earlier, first wave of RoN in the 1970s that tended towards a “biocentric” lens, viewing these rights in an individualistic liberal manner like other rights and using the judiciary to expand the categories of rights (2022, p. 310). By contrast, Merino identifies the second RoN wave in the 1990s that took a more policy-focused approach, seeking to introduce “Earth Jurisprudence” that codified the laws of nature, challenged the human/nature duality, and pursued a more “democratic” relationship with the earth (p. 313). As noted above, this broader sense of “ecocentrism” or ecological justice is also emphasized by Vega Cárdenas and the Observatoire (Vega Cárdenas & Meza, 2023).

Epstein *et al.* similarly describe the lineage of nature rights as including the European human rights movement. They view the movement as subsequently (a) departing “significantly from both anthropocentric assumptions and reliance on individual rights” and (b) aligning with “Earth jurisprudence” (2022, p. 6). For Epstein *et al.*, “Earth jurisprudence” also includes a focus on reciprocity over individualism, pluralistic ontologies, and a recognition of a need for profound societal changes rather than improvements (Epstein *et al.*, 2022, p. 6).

A second view of the paradigm shift: An Indigenous-informed worldview

The shift towards ecocentrism can also be characterized as a shift towards a more Indigenous-informed worldview. This is consistent with what Merino describes as the third wave of the RoN movement towards Indigenous and ENGO leadership in drafting RoN law and policy (2022). Brown has observed a shift towards greater understandings of Indigenous perspectives in her conversations with many people involved in the RoN movement over the past several years, leading her to see the process of pursuing legal personhood for nature as “really valuable in terms of helping other colonial governments understand, and the general public understand, Indigenous ways of thinking, Indigenous legal systems, and Indigenous rights” - as long as the process is Indigenous-led (Personal Communication, April 21, 2023). Vega Cárdenas & Meza (2023) similarly view the RoN movement and shift towards an ecocentric perspective as inspired by “several Indigenous peoples for whom Nature is sacred” and identify ecological justice as in turn influencing environmental law around the world (p. 65). By contrast, Merino argues that while RoN is sometimes thought of as emerging “as a consequence of a new Western ecological consciousness inspired by Indigenous thinking”, it is

better understood as “a space to mediate and negotiate Indigenous and Western critical views on the environment” (2022, p. 309).

In discussing the challenges of identifying what an “Indigenous worldview” means, Lindsay Borrows highlights the “incredible diversity and complexity of Indigenous thought around how we actually implement our laws” (Personal Communication, May 4, 2023). With this in mind, one aspect of Indigenous perspectives commonly cited in the RoN context is Indigenous peoples’ connection to land, which has been described by the Chiefs of Ontario as “the founding source of our identity and culture”: “Great responsibilities to protect and preserve the land have been bestowed upon us by the Creator, and are captured in each Nations Laws” (Chiefs of Ontario, 2023). The Indigenous Council of Experts similarly states that it is “integral to Indigenous worldviews” that land and water “cannot be separated from Indigenous ways of life, identities, values, spiritual practices or knowledge systems” (Indigenous Circle of Experts, 2018, p. 35). There are also specific examples in Indigenous laws of “legal agency of non-human beings”, for example, as captured by the word “nikaanagana” or “nindigaawemanidook”, meaning “all our relations” in Anishinaabe law (Craft, 2014, p. 18; Craft, 2022). This perspective is similarly consistent with Innu relationships with the land (Vega Cárdenas & Mestokosho, 2023).

There are a number of important critiques in this context, introduced here and discussed further below. First, Tănăsescu argues that the suggestion that Indigenous peoples are “inherently predisposed towards” protecting nature’s rights is problematic (2020, p. 436), suggesting that “[a] particular connection with the land is as good as the practices that keep it alive, and does not rest in ethnic categories” (2020, p. 449). As well, in the 2000s, during

Merino's "third wave" of the RoN movement, a concern arose amongst some Indigenous groups that "setting norms for a domain that had previously been outside the legal world would grant the state another way of regulating and controlling communities' most intimate spaces" (Valladares & Boelens, 2017, p. 1026). In this context it is critical to keep in mind that the North American national park movement involved the displacement of Indigenous peoples from lands they had long stewarded (Cronon, 1996, p. 15). Moreover, Merino suggests that while "Indigenous thinking and activism have been crucial for developing laws and institutions", "the rationale underpinning these developments tends to neglect the call of Indigenous politics for territorial rights and plurinationality" (2022, p. 323-4). In discussing the example of the Ecuadorian constitution, Tănăsescu notes that it contained both nature rights and human rights, and that Indigenous communities supported it in pursuit of self-governance rights (2022, p. 327).

Despite these challenges, Brown notes that amongst the various nations in the Great Lakes region, there is a great deal of common interest in the idea of personhood for rivers. She believes that this is because of the "disconnect between Indigenous laws' notions of rights and responsibilities and colonial laws" (Personal Communication, April 21, 2023). It would seem that to Brown, RoN has the potential to weave these laws with settler or colonial laws in a productive way.

A third view of the paradigm shift, towards relationality and kinship

A third theme is the idea of a paradigm shift emphasizing relationship or kinship with nature. This can be seen as an aspect of the shift towards both ecocentrism and Indigenous-

centred thought. This concept can also be seen as aligned with the notions of interspecies and multispecies justice (Chao & Celermajer, 2023).

For example, to Sen. Galvez, the RoN movement has a broader goal of shifting away from a view of nature as “something that we dominate and that we exploit only for our benefit” towards being “in symbiotic relationship with nature.” She further critiques the idea of a divide between human needs and the environment’s needs: “We think that there is competition between an economic view and an environmental view but in reality there is not” (Personal Communication, June 5, 2023). Sen. Galvez also highlights the common human experience of having a “special relation” with our surroundings, noting that Quebecers including “First Nations, Metis, Quebecers, and colonizers have this intrinsic relationship with the St. Lawrence”. In her view, positive societal change will occur when we can express “the importance we give to that [relationship]” (Personal Communication, June 5, 2023). Boulerice similarly shares that federal Bill C-271 has been a “really popular” campaign that many people are “intrigued about” and “want to be involved” with, in part because in his view, they “want to stop the anthropocentric perspective” and the “perspective that humans and nature are separate” which he describes as “ridiculous” (Personal Communication, April 11, 2023).

These views are reflected in the broader RoN literature. For example, Sze *et al.* (2009) echo Sen. Galvez’s critique of environmental initiatives that persist in framing humans and nature as separate, by attempting through policy to “balance” economic and environmental concerns. Gellers similarly suggests that this issue is at the heart of the RoN movement, arguing that the “ontological premise underlying this global [RoN] initiative is that the Cartesian separation between man and nature is illusory; all organic life is intimately

connected” (2021, p. 104). As well, BC-based lawyer Ian Moore emphasizes that lawsuits are less important than the “opportunity to restructure our relationships with nature” and “seeing things that are not human as [having] equal stature from a moral perspective” (Staley, 2021).

Defining kincentrism

Salmón (2000) describes the idea of a relational worldview as “kincentric”, a concept cited in the interviews with Sen. Galvez (June 5, 2023) and Lindsay Borrows (May 4, 2023) as well as in a paper co-authored by Borrows (Townsend *et al.*, 2021). Salmón explains that “[I]ndigenous people in North America are aware that life in any environment is viable only when humans view their surroundings as kin; that their mutual roles are essential for their survival” (2000, p. 1327); and that kincentric ecology recognizes that “the complex interactions that result from this relationship enhance and preserve the ecosystem” (p. 1331). Lindsay Borrows appreciates this concept because it suggests that “to be kind towards our more-than-human relations doesn’t have to be at the expense of human relationships”, recognizing that “we’re so intertwined” (Personal Communication, May 4, 2023). Sen. Galvez links together the ideas of ecocentrism, kincentrism, and the phrase “all my relations” - a phrase used in Canadian Senate Bill S-241, the *Jane Goodall Act* (2022) - as concepts that are “already there in the other Americas” and that she sees as important. In the context of her new RoN Senate bill, she is looking forward to the input from First Nations because “they have a relationship with the watershed going back millennia and this vision [of] kincentrism: we are related” (Personal Communication, June 5, 2023).

This entanglement between human and more-than-human relationships is also evident in Anishinaabe author Patty Krawec’s urging that we “become kin” with each other and with all

of nature. In describing the importance of kinship rather than charity, she notes that “[h]elping feels good, but it is paternal; without relationship, it embeds hierarchy” (Krawec & Estes, 2022, p. 148). Krawec characterizes land as “our first relationship” and “the first relationship that we need to restore” (Krawec & Estes, 2022, p. 126), reflecting Sheehan’s view that globally we have developed a “deeply dysfunctional relationship” with water (2014, p. 162).

The importance of a community’s relationship with a natural body is frequently cited as a reason for recognizing nature rights. For example, the idea of recognizing or “restoring” kinship with the land was prominent in the settlement of the Māori claims in New Zealand (Dawson, 2023, p. 345). In calls to grant personhood rights to the Pacific Ocean, this ocean has similarly been described as part of Pacific Islanders’ “life, their family, their blood” (David, 2023, p. 448; see also Insitut de Recherche pour le Développement, 2021). In granting the Atrato River rights, the Supreme Court of Colombia relied upon local communities’ “relation of profound unity” with the river (C. T-622, 2016, p. 50, cited in Vega Cárdenas & Meza, 2023).

Kinship and reciprocity in and beyond Indigenous worldviews

Kincentrism can be seen as another way to broadly characterize many Indigenous worldviews. For example, Tănăsescu takes the view that Indigenous philosophies are better described as “relational” than as ecocentric (2020, at p. 437). This goes beyond the mere concept of prioritizing relationships, and extends to deeper ontological understandings of the world. Tănăsescu defines relational ontologies as those that “conceptualize the world as a series of relations: the primary beings of the world are not individuals separated by identity criteria, but rather are the relationships between inherently changeable beings” (2020, p. 450). Relational ontologies, which are necessarily “specific to a location and a people [...] who

themselves take their character from the land” are, in this view, distinct from “modernist” ecocentric ones, which “tend to speak for a totalizing, universal nature that stands above any one being” (2020, p. 451). Tănăsescu argues that this kind of “ecocentrism” frame “risks sidestepping the notion of reciprocity, arguably a central issue for many Indigenous philosophies, in favour of the issue of recognition, a western onto-normative construct that is steeped in universalist and centrist thinking” (2020, p. 452).

There are numerous examples demonstrating the importance of relationship, kinship, and reciprocity within Indigenous legal systems and worldviews. In Mi’kmaw legal tradition, “netukulimk” is a stewardship concept that “is about respect, reverence, responsibility, and reciprocity” relevant to fisheries management (McMillan & Prosper, 2016, pp. 629, 641). Vega Cárdenas & Mestokosho highlight many relational aspects of Innu worldviews including the understanding that rivers are ancestors (2023). As well, Anishinaabe-Métis scholar Aimée Craft explains that Anishinaabe *inaakonigewin* (law) is “structured relationally, primarily in a realm of responsibilities (rather than the binary of rights and obligations)” (2019, p. 10c- 10d) and that it is relationships that “give rise to rights, obligations and responsibilities” (Craft, 2014, p. 8). She further elaborates:

“We are related to each other and to the animals, plants and other beings on this earth. [...] We address others by saying ‘all of my relations’, ‘nikaanagana’, or ‘nindigaawemanidook.’ [...] Equality means treating others with respect. Children are considered equal. So are other ‘relatives’ like plants and animals. We look after those to whom we are related – all of them” (Craft, 2014, p. 18).

There are also other notable statements that relational connections to land and water is something that unites Indigenous peoples. For example, the Supreme Court of Canada has identified Indigenous peoples’ relationships with the land as important to establishing “Aboriginal title”, a collective type of land right recognized under Canadian common law

(*Delgamuukw v. British Columbia*, 1997, paras. 115, 176). The Indigenous Circle of Experts similarly explains that “[i]n Indigenous worldviews, conservation is achieved when the relationships and uses that have conserved the lands and waters for thousands of years remain intact or are re-established” (2018, p. 35). As well, for many Indigenous peoples, land and water are themselves “inseparable when it comes to stewardship and conservation” (Indigenous Circle of Experts, 2018, p. 10)

Some commentators further point out that kincentrism is not unique to Indigenous cultures, which arguably suggests that the concept can be reclaimed in settler societies without cultural appropriation. For example, Epstein *et al.* suggest that Western cultures only shifted away from a kincentric view of nature in recent centuries as “liberal politics and capitalist exchange” became dominant (2022, p. 2). Dancer similarly states that “holistic socio-cultural human-Earth relationships” have long existed in societies and religions around the world (2021, p. 25). Houck (2017) describes how the “earliest records [of] cultures east and west found kinship in nature that demanded human observance and protection” (p. 16). In the STL context, Sen. Galvez takes the view that the people of Quebec have a true sense of kinship with the STL, and that even if it is not expressed in this way, all Quebecers can “express the importance, love, and relationship we have with nature” (Personal Communication, June 5, 2023). While Noël did not use the language of relationship, he similarly expressed the “incredible” importance of the STL to the people of Quebec (Personal Communication, March 29, 2023), supporting the idea that this is a commonly experienced relationship for Quebecers of many backgrounds.

Challenges for kinship and relationality

While there may be some optimism surrounding the idea of a kincentric turn, there are nevertheless some critiques of the concept of kinship itself, especially as it is shaped by the state in and beyond the RoN context. An important example comes from Bradway and Freeman's *Queer Kinship*, which notes that queer theory "frequently eschews the idiom of "kinship", highlighting how kinship typically "operates as a key site of dispossession, exploitation, and struggle for racialized and minoritized social groups" (2022, pp. 2, 17). Examples of this include heteronormative marriage laws, the severing of Indigenous kinship bonds through residential schools, and the broader "displacement and dispossession of Indigenous practices and the concepts of kinship that are incommensurable with white settler ideologies" (2022, p. 16). Bradway and Freeman describe this as "the state's biopolitical management of social being" (2022, p. 10).

Given concerns such as these, ensuring that "kincentrism" remains rooted in Indigenous concepts of kinship seems key in the RoN context. From the perspective of Cherokee scholar Daniel Heath Justice, kinship is "not about something that *is* in itself so much as something we *do* – actively, thoughtfully, respectfully" (2008, p. 148). Krawec similarly describes kinship as an act, explaining that "the question has never been *whether* we are related but *how* we live out these relationships with the land, and with other-than-human relatives, and with each other" (Krawec & Estes, 2022, p. 148). As Leanne Betasamosake Simpson explains that historically, for Anishinaabe people, "life didn't rely on institutionality to hold the structure of life" but rather "relied upon process that created networked relationship" (2017, p. 23, cited in Rifkin, 2022 p. 155). As well, Melanie Yazzie argues that attending to Indigenous "practices of making kin" can "encourage people to imagine collective forms of belonging and accountability that

do not reproduce liberal ideas of citizenship and nationalism” (Yazzie, 2017, cited in Rifkin, 2022, p. 155).

Evidence of a paradigm shift

There are at least some signs that a paradigm shift is in fact occurring, including towards wider recognition and acceptance of Indigenous perspectives. What may be most reflective of this is the amount of settler interest in and support for the RoN movement in Canada where the first two RoN laws have been Indigenous-led or co-led. As noted above, in 2020 the rights of the ?Elhdaqox (Sturgeon River or Fraser River) were recognized by the T?ilhqot’in Nation in a law passed by the nation, and in 2021, the rights of the Magpie River / Mutehekau Shipu were recognized in parallel resolutions advanced by the Innu Council of Ekuanitshit and the local regional municipality (Conseil des Innu de Ekuanitshit, 2021; Municipalité Régionale de Comté de Minganie, 2021).

It is also clear that Indigenous leaders are playing an increasingly public role in the RON movement for the STL and beyond. The shift towards increased Indigenous leadership and engagement in this movement especially in the early part of 2023 is evidenced in the declaration of the AFN-Quebec-Labrador (Méndez, 2023), the public comments by former Chief Gilbert Whiteduck (Andrews, 2023), and the planned re-introduction of STL rights legislation by a senator of Quechua lineage following more in depth Indigenous consultations (R. Galvez, Personal Communication, June 5, 2023), though the full scope of these consultations has not been made public. These Indigenous voices may help further shift the narrative not just about the RoN movement but about the validity and survivance of Indigenous legal systems. Moreover, their presence suggests that the paradigm shift has gone

beyond a mere discursive shift. Dancer argues that discourses “influence our ontological worldviews, shape law and policy priorities and - in the context of human-Earth relations - human behaviours and impacts on the planet” (2021, p. 22); a shift towards prioritizing Indigenous voices demonstrates that at least some of these are occurring.

In particular, the third wave of the RoN movement as described by Merino (2022) is evident in the way that the movement has been unfolding in Canada, as is what Merino describes as the fourth and most recent RoN wave, a movement towards greater global collaboration (2022). This includes the active participation of ENGOs such as the Observatoire and of Indigenous governing bodies such as the Innu Council of Ekuanitshit and the AFN over the past five years. As well, the strong connections between these efforts and the broader international movement further demonstrate the growth of the RoN movement in Canada, and perhaps in turn, the hoped-for paradigm shift.

Perhaps most significantly, in April 2023, at the 12th Interactive Dialogue of the UN General Assembly, there was broad support across state governments, Indigenous peoples, and non-government participants for an “Earth Assembly” in 2024 to discuss a “new, non-anthropocentric, Earth-centred paradigm” (Méndez, 2023). Decision making at the international level is not automatically legally binding in Canadian courts even when Canada signs onto international treaties. Moreover, it often fails to be implemented in domestic law (see, e.g., Neve, 2023), a problem exacerbated in the environmental law context by the constitutional division of powers (Wood *et al.*, 2010). Nevertheless, the normative force of a global trend should have some impact on how RoN laws and similar relational or kincentric

initiatives are received in the court of public opinion, and may support the broad public education goal referenced by many RoN advocates.

Significant challenges for this “paradigm shift” clearly remain. For example, even RoN advocates seem to struggle to balance the identification of political realities for Indigenous laws’ acceptance with their own recognition of the importance of these laws. For example, Boulerice characterizes the Magpie River / Mutehekau Shipu resolutions as “just a mutual recognition” and “not legally official” (Personal Communication, April 11, 2023). As well, as noted above, the T̓silhqot’in Nation’s RoN law is rarely discussed as a Canadian first despite preceding the Magpie River / Mutehekau Shipu resolutions. This perhaps demonstrates the difficulty of pursuing legal pluralism without reinforcing perceptions of Indigenous laws as mere customs.

As well, the Québec Solidaire staff member’s comments about prioritizing climate change (Personal Communication, June 15, 2023) suggest that the so-called paradigm shift is not currently enough to sustain interest in the RoN movement. In order to re-establish the party’s interest in an RoN bill for the STL, advocates may need to either demonstrate that RoN measures can support climate adaptation, or that there is international support for RoN recognition as a strategy to counter biodiversity loss (UN Environment Program, 2022), a crisis that cannot be forgotten in efforts to address the climate crisis. The perspective that such strategies may be competing for attention and resources suggests that the interconnectedness between these issues may not be sufficiently compelling for minority political parties to put resources behind this initiative. However, the Québec Solidaire staff member also emphasizes the importance to the party of representing Indigenous voices (Personal Communication, June

15, 2023), which perhaps suggests that the political party may re-engage with this issue if Sen. Galvez's Indigenous consultation process demonstrates clear and broad Indigenous support for these RoN initiatives.

6.2 Legal advances in Quebec environmental law as another factor in RoN support

Despite recent setbacks in the advancement of a provincial RoN law in Quebec, a frequently cited rationale for the STL being the right choice for advancing this "paradigm shift" is that there are important legal precedents in Quebec as evidenced by the Magpie River / Mutehekau Shipu resolutions as well as Quebec environmental law more broadly. For example, the RoN declaration published by the federal NDP in support of Boulerice's RoN bill states that the proposed rights legislation for the STL will "give the river its own legal status, just like the Magpie River" (2023). The Observatoire has also stated that the STL proposal was inspired by Quebec legislation passed in 2009 recognizing that water is a collective resource that must be preserved and protected for both present and future generations (Observatoire, 2023; Bill 27, 2009). Boyd agrees that Quebec's "leadership" in advancing environmental rights such as the right to a healthy environment makes the province "a great place for a Canadian breakthrough" (2021). Thus, despite the bills' reliance primarily upon precedents from outside of Canada, and the fact that a significant portion of the STL runs through the province of Ontario and New York State, there is a particular rooting in Quebec law.

From an Indigenous rights perspective, this is perhaps a particular challenge in the current political climate in Quebec, where the provincial government has been criticized for seeking to undermine Indigenous people's rights in legal battles, and tendency to circumvent the AFN and obtain support for development from struggling communities (Curtis, 2023).

These critiques must be balanced with recognition of individual nations' sovereignty as identified by Lindsay Borrows (Personal Communication, April 21, 2023). However, these concerns along with the absence of any current Quebec government initiative regarding RoN for the STL can be seen as a significant setback, to the extent that advocates hope for a RoN "breakthrough" at the provincial level (e.g., Boyd, 2021).

That said, governments and government priorities do change. Vega Cárdenas and Turp (2023) support the suggestion of former Quebec National Assembly member Sylvain Gaudreault that a "transparent study" be conducted regarding the idea of an STL rights bill (p. 514). What Gaudreault specifically recommends is a Quebec parliamentary commission to study the idea, which if pursued in the future could then lead to a government RoN bill (Gaudreault, 2023). From an Indigenous rights or sovereignty perspective, much would depend on the process followed during a parliamentary commission including the process for establishing Indigenous partnerships or consultation.

6.3 Decolonization, reconciliation as factors sometimes highlighted in RoN support

Because the paradigm shift is seen as one that is Indigenous-centred and/or focused on concepts seen as consistent with Indigenous epistemologies and ontologies, the RoN movement is in turn sometimes described as a step towards reconciliation or decolonization. For example, Boulerice expresses hopes that the bill can "open the conversation" on both RoN and reconciliation (Personal Communication, April 11, 2023). As well, Vega Cárdenas and Mestokosho view the Magpie River / Mutehekau Shipu resolutions as a "breakthrough" that "places the Innu epistemology at the heart of the evolution of Canadian environmental law" and "encompasses a decolonial process that advances reconciliation" (2023, p. 119). However,

despite Vega Cárdenas and Turp's urging that recognition of the STL's rights is a logical progression from the Magpie River / Mutehekau Shipu resolutions (2023), neither of the two STL bills introduced in 2022 build on this "breakthrough" by expressly naming or relying upon Indigenous epistemology.

Lindsay Borrows agrees that reconciliation is "a core component" of the RoN movement, and is "optimistic" about RoN's "capacity to animate important elements of Indigenous sovereignty and decision making authority." However, she also notes that "at its core, [the RoN movement] needs to be grounded in foundations and deep partnerships if not Indigenous led." In her view this is critical because of "the longstanding obligations Indigenous people have to these entities like the St. Lawrence River" (Personal Communication, May 4, 2023).

In contemplating the "decolonizing" ambitions of the RoN movement, it is also important to bear in mind Tuck and Yang's reminder that "[d]ecolonization brings about the repatriation of Indigenous land and life; it is not a metaphor for other things we want to do to improve our societies" (2012, p. 1). Tuck and Yang view such metaphorical use of the concept "as a series of moves to innocence (Malwhinney, 1998), which problematically attempt to reconcile settler guilt and complicity, and rescue settler futurity" (2012, p. 3). From this perspective, the RoN movement can be said to do little for Indigenous communities if it results only in tokenistic Indigenous engagement while evading more tangible recognition of Indigenous rights, duties to the land, and lifeways. In Krawec's words, "[w]e can't talk about restoring relationship to land without talking about restoring it to the people from whom it was taken" (Krawec & Estes, 2022, p. 130).

6.4 RoN bills as low-risk advocacy strategies

Another possible rationale for supporting the two STL rights bills may be a sentiment that there is little or no downside to introducing them, because anything that advances the “paradigm shift” is helpful. This is to some extent reflected in the comments of the Observatoire’s President, Vega Cárdenas, who views these first bills as “stepping stones” that would “at least put the issue before the public” and “spur similar efforts in the future” (Millán, 2022). This is perhaps a recognition that the two bills were never widely expected to pass into law, especially given that they were both private opposition or minority member bills (Millán, 2022).

From a different perspective, there are also sentiments that even if the bills passed, they would be of low political or fiscal risk to settler governments. For example, Brown comments that RoN legislation could potentially be supported by the Quebec and Ontario governments: their “legal experts might decide it’s innocuous so they might go along with it” (Personal Communication, April 21, 2023). This is reminiscent of the comments of Bavikatte and Bennett about biocultural rights, discussed further below, which they suggest “carry no undertone of the political self-determination claims that inevitably make states nervous” (Bavikatte & Bennett, 2014, p. 27).

This logic is also to some extent reflected in Noël’s view about supporting RoN for the Magpie River / Mutehekau Shipu. Noël notes that hydro development on the neighbouring Romaine River has had no discernible local benefit: despite four dams being built there, “social problems, [...] jobs, education, health, transport - everything is the same,” he observes, “so why not take the lead and do something to protect our territory?” (Personal Communication,

March 29, 2023). This perspective is rooted more in a pragmatic, cost-benefit analysis than those of many other advocates, though Noël also shares other rationale more rooted in justice concepts, as highlighted below. As well, Noël also does not seem to extend this sentiment to the Quebec STL bill, which his municipality has not publicly supported to date, and which he does not believe is likely to be successful in the current political climate (Personal Communication, March 29, 2023).

Of course, the perspective that RoN bills are of “little risk” does not centre the perspective of Indigenous peoples who are not meaningfully involved in their advancement. In the context of Quebec Bill 990, Quebec-based lawyer Sarah-Maude Belleville-Chenard identifies the “absence or at least a lack of consideration of the participation of Indigenous peoples” as a problem with the bill (Millán, 2022). Were this bill to have passed, it is not clear how this initial shortcoming might have been addressed, or how the bill would have achieved its intended EJ goals from an Indigenous perspective.

6.5 A variety of justice-based arguments underlie RoN support and advocacy

Reflecting further on the EJ and other justice-based rationale for the RoN bills, in addition to the focus on interspecies or multispecies justice, intergenerational justice is an important rationale for RoN supporters. To a lesser extent, other concepts related to environmental justice are highlighted, though different interviewees apply this concept in different ways. What is perhaps most interesting is the relative lack of focus on the concept of procedural justice, which as discussed below, is consistent with the overall tendency of RoN advocates to focus on societal shifts over practical legal impacts.

Intergenerational justice

Intergenerational equity, as articulated by Weiss (1988), has been defined as equity between generations, and often focuses on equity or justice for future generations. Vega Cárdenas emphasizes intergenerational equity as an important rationale for a shift towards “ecological justice” (Vega Cárdenas & Meza, 2023, pp. 44-45). Sen. Galvez similarly highlights the importance of caring for future generations in rationalizing the RoN movement (Personal Communication, June 5, 2023). Lindsay Borrows also references intergenerational justice in the context of describing kincentrism, explaining that “kincentrism roots us in a sense of animacy with one another and in knowing how [to] go down this path of taking, so that we can sustain future generations and honour our previous ancestral generations, and the work they’ve done” (Personal Communication, May 4, 2023). The idea of leaving nature intact for future generations is similarly an important factor for Noël’s support for the RoN movement (Personal Communication, March 29, 2023).

Varying approaches to environmental justice

In the interviews, both Boulerice and Brown discuss what EJ might mean in the RoN context. Boulerice views RoN as “another tool, to do a better job” than existing environmental laws to address environmental injustice, which he defines in the more traditional sense of disproportionate environmental impacts on marginalized people including Indigenous and low income people (Personal Communication, April 11, 2023; Schlosberg, 2007; Slater & Peterson, 2009). His approach suggests the view that a healthier river would in turn mean health and other benefits for marginalized riverside communities. By contrast, Brown suggests that the recognition of “water as a sovereign being with a spirit and rights” should lead to a less anthropocentric perspective on EJ, while identifying this as a paradigm shift that “would take a

lot” (Personal Communication, April 21, 2023). This approach reflects a more critical and expansive view of EJ (Pellow, 2018). Lindsay Borrows similarly offers an EJ view that is reflective of multispecies justice, emphasizing the importance when discussing concepts such as racial justice, gender justice, and broader environmental justice, of recognizing “how entangled all these justices are” (Personal Communication, May 4, 2023).

Procedural justice as a secondary priority

By contrast, most of the interviewees pay little attention to the procedural justice aspect of the RoN bills, though this topic is touched on by Lindsay Borrows. Borrows notes that Indigenous representation through political organizations such as the AFN, while practical, may pose legal challenges because they are not rights holders (Personal Communication, May 4, 2023). She also notes that RoN “isn’t about shutting out humans from taking; it’s an opportunity to have those voices there to ensure that the ones who do want to engage in a more intensive taking can have their reasons heard” (Personal Communication, May 4, 2023).

Sen. Galvez also identifies the implementation of a legal framework as one of the core goals of the bill, which can be seen to some extent as the establishment of procedural rights. Sen. Galvez summarizes the goals of her proposed bill as the establishment of “legal personhood” legislation that “recognizes its rights”, and “establishes a protection committee and legal framework for its protection, restoration, and most importantly sustainable management”. If all of this is achieved, Sen. Galvez sees that as “a complete success” (Personal Communication, June 5, 2023). Additionally, while Sen. Galvez also identifies other broader goals as noted above, her emphasis on public education as a desired outcome can perhaps be

connected to the procedural justice goal of providing access to information (Jodoin *et al.*, 2015).

An important question in the procedural justice context is who exactly is gaining access to justice as a result of RoN laws. International experience demonstrates a range of experiences in this regard. While Boyd is enthusiastic about the RoN movement's accomplishments to date (2017, 2021), some have argued that in Bangladesh, RoN laws for rivers have only modestly benefited rivers but have more substantially harmed riverside communities, in that evictions along rivers have so far only targeted individuals rather than corporations who continue to obtain permits to operate along rivers (Araz, 2019; Chandran, 2019; Lubaba & Fahim, 2020).

7. PERCEPTIONS OF THE STL RIGHTS ECOSYSTEM

Key perceptions identified in the interviews and literature are (i) the notion that RoN often compliments rights, especially the right to a healthy environment; (ii) the potential for conflicts between Indigenous rights and RoN including in the context of "legal pluralism"; and (iii) the mutual reinforcement of RoN and biocultural rights, and the related concept of "collective" rights.

7.1 RoN and human rights as (often) complimentary

In expressing his support for RoN laws for the STL, Boyd identifies the right to a healthy environment as complimentary to RoN, and sees nature rights and broader human rights frameworks as reconcilable in the majority of circumstances (2021). To explain this perspective, Boyd points to the 2017 decision of the Inter-American Court of Human Rights that affirmed that "the full enjoyment of all human rights depends on a supportive

environment” (2017, para. 54). That decision also noted the UN General Assembly’s recognition in 2015 that “the scope of the human rights of everyone depends on achieving the three dimensions of sustainable development: the economic, the social and the environmental” (2017, para. 53). This supports the perspective of other RoN advocates who have vigorously argued that violations of the rights of nature cannot be considered separately from human rights violations and that in many instances “co-violations” of these rights occur (Wilson *et al.*, 2016, p. 4).

The inevitability of rights conflicts is noted by Collins, who argues that basic humans needs for food, housing and other forms of sustenance mean that RoN “cannot amount to a total prohibition on human encroachment”; instead, there must be a “constant process of line-drawing” to balance RoN with human rights (2021, p. 79). Schlosberg similarly argues that rights theories should not seek the elimination of conflict but rather problem solving amongst and between communities and stakeholder groups (2013). This perspective is recognized by Boyd, who acknowledges that “there will be really tough conflicts”, pointing to the example of South Africa, where arid regions with growing populations could lead to “conflicts between human rights to water and ecosystem rights”. However, he expresses hope that these are “exceptions to the rule of harmony” that can be reconciled through human “ingenuity” (2021).

7.2 Potential conflicts between Indigenous rights and RoN

While RoN advocates such as Vega Cárdenas and Boyd similarly see alignment between Indigenous rights and RoN (Vega Cárdenas *et al.*, 2023; Boyd, 2017), other commentators such as Boulerice recognize the potential for conflict in this regard as a “really tough” question (Personal Communication, April 11, 2023). Lindsay Borrows identifies concerns about the STL

bills becoming a precedent for RoN to erode Indigenous sovereignty efforts. However, she also notes Indigenous peoples' "long standing tradition of building bridges across different legal traditions" and the practical desires, "on the ground", for shared decision-making authority. In her view, this is "because of the strength that [joint decision-making] can bring at its best" and sometimes also because of the limited capacity of nations to take on the work of sole governance. She expresses hope that this is "another treaty making opportunity, but it's 'personhood' rather than treaty as another tool", while recognizing that RoN is only one tool of many that are needed "for protection and stewardship of these natural beings" (Personal Communication, May 4, 2023).

Lindsay Borrows also notes the challenges that could arise between RoN and First Nations that do wish to pursue development that involves extraction. Recognizing the inevitability that "we always are going to be engaged in this act of taking from this earth", she adds that in the STL context, "it would be helpful for understanding cumulative impacts on the river so that when nations want to do that taking can look at what will be lost and gained for the river" (Personal Communication, May 4, 2023). This perspective can be linked to the Mohawk Council of Kahnawake's call for a federal impact assessment that would similarly provide insights into cumulative impacts (Montour, 2020).

Legal pluralism; or, whose law is it anyways?

In considering how Indigenous laws and RoN may interact, the concept of legal pluralism is important. This concept is frequently cited as a reason for RoN laws. For example, Vega Cárdenas and Mestokosho see the Magpie River / Mutehekau Shipu resolutions as critically important to legal pluralism in light of their reliance on Innu law (2023, p. 119).

“Legal pluralism” itself is a complex idea with widely differing meanings especially in the context of understanding the relationship between Indigenous and state laws and the level of acceptance and recognition of Indigenous laws (see, e.g., McKerracher, 2023). In discussing the role of Indigenous law in Canada, Anishinaabe scholar John Borrows highlights the importance for integrity of a legal system of recognition both “from within and by others” (2010, p. 116). He points to the way Canadian common law and Quebec civil law now benefit and enrich each other without the assimilation of civil law, in a way that could be an example for settler law and Indigenous law (2010, p. 114). Dancer further argues that a “new deep legal pluralism is needed, which recognises Nature as subject and decentres the state in favour of an equitable sharing of power over human-Earth relations” (2021, p. 36).

As Gellers points out, rights of nature will vary in each jurisdiction depending on its laws and cultural norms (2021). In Canada, that ought to be shaped by the multiple legal traditions that are part of the STL’s legal landscape, as reflected in John Borrows’ comments that Canadian law is “incomplete” without the recognition of Indigenous legal traditions (2010, p. 6). However, despite the recognition by Canadian courts and legal scholars of the co-existence of Indigenous legal systems alongside the settler legal system (see, e.g., *Pastion v Dene Tha’ First Nation*, 2018; McNeil, 2021), navigating legal pluralism can be deeply challenging for Indigenous peoples.

Critiques of legal pluralism in this context include the dark history of Indigenous peoples who have “suffered greatly from the [Canadian] laws, legislation and policies that have been imposed” and whose laws have not historically been respected by Canadian law (Craft, 2014, p. 22, citing Niizhoosake Copenace and Peter Atkinson). Atkinson further expresses that

rather than “creating partnerships”, allies must “respect what we want to do” and “not interfere with each other’s law and governance” (Craft, 2014, p. 23). From an Anishinaabe perspective, in order to move forward, Craft argues that what is ultimately needed is the “acknowledgement of Anishinaabe inaakonigewin [law] as a separate but equal system of law”, which can only occur after it is recognized as existing, and is then understood (Craft, 2014, p. 24). Virginia Marshall, a Wiradjuri Nyemba lawyer and legal scholar based in Australia, similarly argues that laws and cultural norms of various Indigenous communities cannot simply be subsumed, generalized, or “colonized” into RoN laws (Marshall, 2019, p. 234).

In the specific context of water, there are unique challenges for legal pluralism. For example, while Craft is supportive of the RoN movement through Indigenous laws, she identifies the concern from an Anishinaabe law perspective that “Western legal mechanisms can fall short of the legal relationships that currently exist between Indigenous peoples and water [and] may lose the spirit of the relationship itself” (2019, p. 10b). From Craft’s perspective, Canadian law “considers water as an object or subject” unlike Anishinaabe law, which “considers water to be an independent (yet interconnected) agent in relationships of coexistence with other beings, all part of a larger web of Creation.” A federal or provincial statute would thus “be limited to the Canadian jurisdictional water context, which falls short of understanding or implementing Anishinaabe nibi inaakonigewin [water law]” (2019, p. 10e).

A deeper concern relating to the concept of kinship is that RoN laws could play out as a harmful intrusion into Indigenous legal systems. Despite the optimistic rhetoric about relationality and indivisibility, Marshall points out that many RoN laws in fact separate “ecological components of natural entities” into “individual legal entities” with standing to sue,

excluding humans from nature in the process (2019, p. 236). This perspective powerfully highlights the risk of further dispossession that could result from state intervention into kinship with nature, as Tola argues has in fact occurred in Bolivia as a result of making “Pachmama” a “gendered subject whose rights depend on a state committed to an extractive model of development” (2018, p. 27).

Consultation vs leadership

Here it is useful to consider the distinction between approaches that call for Indigenous consultation versus those that enable Indigenous leadership. This itself is underpinned by the broader tension between participatory rights and self-governance rights. Some commentators including Brown have highlighted the importance of Indigenous-led governance in any RoN initiative (M. Brown, Personal Communication, April 21, 2023). Brown’s emphasis on Indigenous-led governance (Personal Communication, April 21, 2023) echoes similar arguments of Townsend *et al.*: “Rivers speak but since western laws and institutions are not designed to listen, people must act as intermediaries voicing perspectives on their behalf. Indigenous laws are well positioned to conceptualize the decision-making structures needed to breathe life into legal personhood” (2021). Boyd takes the stronger view that the work of ENGOs such as the Observatoire in assisting Indigenous communities to recognize RoN “of natural entities within their traditional territories” in a manner that puts “Indigenous customary legal systems to the forefront” is “fundamentally important” (2021).

The colonial history of decisions being made that affect Indigenous peoples without consulting them is long, and includes the 1975 *James Bay and Northern Quebec Agreement*, claiming to extinguish the rights of the Innu and Quebec Anishinaabe (Farget & Fullum-Lavery,

2014). However, even where “consultation” processes now exist, these can have limited benefits where participants do not believe their input matters. For example, in a recent study (Farget, 2020), members of the Eukuanitshit First Nation expressed feelings of powerlessness during consultations regarding proposed hydroelectric projects along the Romaine River. Farget concludes that consultation was experienced as “a norm reproducing state unilateralism rather than being relational and based on reciprocity”, and a process “inseparable from the colonial project” (2020, para. 36).⁶ In November 2022, two Innu communities expressed deep frustration with Quebec’s failures to protect woodland caribou, citing an “inadequate and rigid consultation process that leaves no room for Aboriginal leadership” (Riga, 2022).

For scholars such as Scott, improving consultation processes is unlikely to be enough. She asks, “instead of trying to bring settler or colonial legal systems, such as Canada’s, ‘into line’ with Indigenous legal orders, [...] [w]hat if we focused on returning the governing authority over lands and waters to the peoples and communities whose inherent authority is grounded in knowledge of those lands and waters?” (Scott, 2022, at p. 298). Dhillon similarly opposes the “inclusionary politics” that strive to include Indigenous perspectives without moving towards decolonization (2021, p. 900).⁷

⁶These quotes are Google translations from the following french text: “[...] le droit à la consultation est associé au sentiment d’impuissance de nombreux participants et participantes à la recherche et à l’indifférence gouvernementale. Dans ce contexte, il apparaît comme une norme reproduisant l’unilatéralisme étatique plutôt que comme étant relationnelle et fondée sur la réciprocité. Relativement au projet de la Romaine, la mise en oeuvre de ce droit semble s’inscrire dans le prolongement des expériences antérieures de dépossession territoriale. Le droit d’être consulté et d’être accommodé devient alors indissociable du projet colonial, celui-ci consistant en un projet d’effacement des voix, des perspectives et des « projets de vie » autochtones.”

⁷ The question of “consultation” versus “self-governance” is also very much alive in the current debates over the federal government’s draft UNDRIP plan (Forester, 2023a). The visibility of this debate in mainstream media is itself perhaps a sign of progress, however the challenges are far from settled, as evidenced by the Assembly of First Nations’ April 2023 resolution to amend either UNDRIP or the UNDRIP implementation plan to allow for more consultation (Forester, 2023b).

Critiques of RoN in the Indigenous stewardship context

A key question is how the concept of rights generally, and RoN in particular, fits into Indigenous conservation and stewardship. For example, the Indigenous Circle of Experts (2018) expresses the importance of responsibility over rights in conservation:

“[P]rotected and conserved areas do not represent an assertion of rights, but rather an exercise of responsibility [...] perhaps best understood through the lens of natural law [...]. In Indigenous worldviews, the natural world is not separate from humans, but is rather a place where all living beings and spirits are connected. This understanding requires us to care for, respect and live within the bounds created by the rest of the natural world” (p. 8).

This is similar to eco-feminist perspective offered by Sandilands “that relationships are just as important as rights and that obligations and mutuality end up in many respects being just as important as rights and entitlements” (Chayne, n.d.).

From an Indigenous stewardship perspective, Marshall is a strong critic of the RoN movement itself. She argues that the Australian government should prioritize supporting Indigenous-led stewardship over promoting RoN, which she describes as a “new tool of colonisation which would decouple Indigenous ontological relationships and laws and the inherent obligations to manage and care for the environment” (2019, p. 234). Fitz-Henry (2022) also identifies the critique that RoN is a “strategic fabrication” by western lawyers. This view is echoed by Santos who describes the modern “rights of nature” movement as a “hybrid” of Indigenous concepts of nature and Western concepts of rights, and argues that from Indigenous perspectives “it makes no sense to attribute rights to nature, for nature is the source of all rights”. He concludes that RoN is “formulated in this way to be intelligible and politically effective in a society saturated with the idea of human rights” (2018, p. 11). Fitz-Henry shares the view of Tănăsescu that “the political implications of Indigenous ways of life are vastly more radical than those of rights of nature”, and that “[i]n identifying Indigenous

philosophies with rights of nature too closely, we run the risk of diminishing the radical potential of alternative political arrangements” (2022, p. 346; Tănăsescu, 2022, p. 453).

The New Zealand RoN example demonstrates contested views of how Indigenous-led the RoN movement really is. Kauffman emphasizes that granting of rights to Te Urewera in New Zealand was an idea that came from Crown negotiators to help settle the land claim, rather than from local Indigenous peoples or the global “rights of nature” movement (2020, p. 579). However, Boyd vigorously opposes suggestions that RoN laws are being “appropriated” by western culture. He argues that the RoN laws in New Zealand are “driven by reconciliation” and that “the ideas aren’t coming from western culture, so at this point it’s not remotely accurate to call it cultural appropriation when Indigenous peoples are trying to get their views into settler legislation” (2021). In light of Boyd’s comments, a response to Kaufmann might be that the exact origin of the idea is less important than the role of Indigenous peoples and Indigenous laws in the idea’s implementation.

More optimistically, Sen. Galvez sees no great chasm between scientific and Indigenous perspectives on the environment. She explains that they are often “saying the exact same things” in different ways, and that “both are very sure of something, which is that if we destroy what keeps us alive, we are not going in a good direction.” She believes that in Canada, “bills should be able to reconcile these two views,” pointing to examples of many other countries that have passed RoN legislation (Personal Communication, June 5, 2023).

Pluralism in practice?

In the STL context, efforts are being made to take a pluralistic approach to RoN, at least in the sense of integrating Indigenous legal perspectives. Boulerice explains that federal Bill C-

271 looked to the Magpie River / Mutehekau Shipu resolutions as an example of a First Nation and municipality working together, and similarly wanted to ensure First Nation seats representing the river. He expresses the importance that the bill did not represent “Ottawa telling First Nations what to do, and how to do it”, as well as the importance of the guardian body having the “benefit from centuries of knowledge” of Indigenous peoples (Personal Communication, April 11, 2023). As noted above, the preamble of Bill C-271 acknowledges Indigenous peoples’ traditional and ongoing role as “custodians” (2022). Sen. Galvez similarly emphasizes the vital importance of deeply understanding Indigenous perspectives prior to reintroducing an RoN bill for the STL (Personal Communication, June 5, 2023).

By contrast, this emphasis on Indigenous perspectives and laws is less prominent in Quebec Bill 990. Bill 990 does explicitly state that rights are to be exercised “in keeping with Indigenous rights” (2022, s. 4) and like federal Bill C-271, includes Indigenous representation on the guardian council (2022, s. 7(2)). However, it does not refer to any Indigenous worldviews or laws, and, as Belleville-Chenard points out, makes no reference to Indigenous peoples’ “stewardship relationship” with the river (Millán, 2022).

Another concept that was not translated into the text of federal bill C-271 is the notion that land and water are “inseparable” in many Indigenous worldviews as highlighted by the Indigenous Circle of Experts (2018, p. 10). Despite the federal NDP declaration’s reference to the “indivisibility” of the river and its tributaries (NDP, 2023, ss. 1-3), Boulerice notes that for “jurisdictional” reasons Bill C-271 is drafted more narrowly. Presumably this is a reference to the limits of federal jurisdiction over provincial lands (*Constitution Act*, 1867, ss. 91-92).

This concern is also echoed in the difficulties incorporating the concept that humans are in turn “part of the land”, to which there is an “unbreakable and sacred connection” (Indigenous Circle of Experts, 2018, p. 35). Despite the more nuanced perspectives of politicians such as Boulerice, who recognizes the deep flaws in separating humans from nature (Personal Communication, April 11, 2023), as previously noted neither federal Bill C-271 or Quebec Bill 990 includes humans within what is defined as the STL. These examples demonstrate some of the limits of an approach to “legal pluralism” that seeks to incorporate Indigenous principles into state law.

Finally, borders themselves pose challenges for legal pluralism. In addition to the boundaries created by Canadian constitutional law, state borders inevitably shape provincial and federal law. The very fact that the STL shares a single name in Anishinaabemowin with several other rivers (Decolonial Atlas, 2014), contrasted with the political boundaries that divide the river, illustrates in part the gap between Canadian and Indigenous legal concepts.

The implementation gaps between aspiration and reality even at the stage of introducing bills hint at the risk that the RoN movement can in practice lead to little more than a tokenistic legal pluralism. In this context, it is important to consider whether part of the RoN movement’s appeal in settler-colonial states is that it taps into the long settler tradition of glorifying and essentializing both nature (as wild and untouched) and Indigenous peoples (“noble savage” myth) (Rowland, 2004). This is arguably the case if laws merely take “inspiration” from Indigenous worldviews without actually implementing Indigenous laws.

Lindsay Borrows’ perspective is helpful here. She supports an RoN approach that enables nations to design personhood approaches that align with their own legal systems

(Personal Communication, May 4, 2023). This is consistent with the advice of the Indigenous Circle of Experts (2018) with respect to the creation of Indigenous Protected and Conserved Areas, to allow for decision-making about the river to happen in community, with ceremony, in accordance with Indigenous peoples' own laws.⁸ An approach to RoN decision making that is, as Borrows describes, "grounded in deep partnership" with Indigenous communities (Personal Communication, May 4, 2023) could help to address some of the practical limitations of federal and provincial legislation.

7.3 RoN and biocultural rights as mutually reinforcing

While this point did not arise in the interviews, the links highlighted in the literature between RoN and biocultural rights are also important to note. Biocultural rights, which can often arise in (but are not exclusive to) the Indigenous rights context, are a rights category firmly established in international law that focuses on a community's stewardship rights, rooted in their long-term connection to and stewardship of the land (Bavikatte & Bennett, 2014). Vega Cárdenas *et al.* note that a "historical and cultural link" has already been recognized between the STL and neighbouring communities through the STL's legal status as a historic site and that this could lead to the recognition of biocultural rights. In their view, this could in turn support the recognition of the STL's rights (2023, p. 101). Similarly, Vega Cárdenas and Mestokosho suggest that the Innu's Magpie River / Mutehekau Shipu RoN declaration "ensures the respect for both the right of self-determination and the biocultural rights of the Innu community of Ekuanitshit" (2023, p. 119).

⁸ While beyond the scope of this paper, it is important to recognize the uncertainty within the colonial legal system that results from a decision to root rights of nature in Indigenous law only. The question of whether colonial laws would "match" or explicitly support such laws, or whether settler courts would fully recognize the role of such laws in a pluralistic legal system is also important to consider.

Biocultural rights can be characterized as a form of collective right, which in turn have been described as the “third-generation” of environmental and other rights (Bavikatte & Bennett, 2014, p. 19; Zohadi, 2004). As the Inter-American Court of Human Rights has noted, human rights to a healthy environment also include a collective component, in that “the right to a healthy environment constitutes a universal value that is owed to both present and future generations” (2017, para. 59). Scott and Malivel (2021) further suggest that intergenerational environmental rights are both collective and relational (2021). These perspectives suggest that the RoN movement is well placed within a larger movement towards more relational and collective forms of justice, as further explored below.

8. ROLE OF LEGISLATION IN FRAMING RIGHTS-BASED RIVER GOVERNANCE

8.1 RoN legislation in the EJ context

In considering how EJ applies in the context of RoN legislation, it is important to recognize that those most affected by environmental issues are frequently excluded from every level of decision-making (Indigenous Climate Action [ICA], 2021; Williams *et al.*, 2018). This is demonstrated by the exclusion of Indigenous peoples from participation in recent Canadian federal climate policies (ICA, 2021). As well, top-down environmental governance has also been criticized as “hierarchical” and undemocratic, with consultation processes seen as ineffective at incorporating non-dominant voices (MacGregor, 2013, p. 627).

Rivers as an EJ community

One way of considering the impact of RoN laws on EJ is to view such laws as an expansion of procedural rights of the environment itself. This can be seen as the heart of the “personhood” aspect of the RoN movement. The idea that rivers might be an EJ community,

that is, a community that faces unjust impacts of pollution, is reflected in the concept shared by Anishinaabe elders that the water itself suffers as a result of pollution (Craft, 2014, p. 34) without receiving any benefit from a polluting industry. The inclusion of rivers in common and civil law decision making would in this sense represent a significant shift. Moreover, the proposed RoN laws would seem to go well beyond mere consultation with the STL, by offering the river a voice in legal proceedings as well as numerous substantive remedies (Bill C-271, 2022, s.11; Bill 990, 2022, s. 17).

EJ advancements through preambles?

Of course, to achieve the goal of granting rivers access to courts, RoN laws must withstand court challenges to their validity. In this regard, Sen. Galvez sees the preamble to an RoN bill as a potentially important tool, particularly since Canadian courts have no federal or provincial court precedent for interpreting RoN laws. She notes that the preamble to federal Bill C-271 “is very short” and that the bill “goes straight to declaring [personhood for the STL]” and here she sees room for expansion. She further explains, “sometimes we think preamble and principles aren’t important. But in reality, because it’s new, it could be challenged in court. So we want to give courts the most we can on how to interpret the passage of the bill” (Personal Communication, June 5, 2022).

Sen. Galvez further explains that Indigenous worldviews including the concept of kincentrism may be an important part of a preamble. In this regard, and as noted above, she is “looking forward to the input from First Nations” (Personal Communication, June 5, 2023). Other examples of possible content for the preamble that Sen. Galvez references include addressing the existing “economic model that is predatory capitalism” rather than a model

focused on “ecocentrism or kincentrism”, as well as the “donut model” of economics which recognizes both human rights floors and planetary limit ceilings (Personal Communication, June 5, 2023).

Legal scholar Kent Roach suggests that preambles also hold an important place for storytelling (Roach, 2001). In this sense, they can be a place in settler law for legal pluralism to flourish. As Roach explains, preambles have purposes beyond “persuading the citizenry to obey the law” and contextualizing a law:

“Preambles can use narratives to explain how legislation came to be developed and provide a vehicle for linking the attempt of the law to guide the future with a recognition of the past. The narrative uses of preambles are powerful and for better or worse can influence the substance of legislation. Preambles can also express hopes and aspirations for legislation, but there is a danger that they may overestimate what the legislation can achieve and even its actual text. Nevertheless, the symbolic, aspirational, and expressive ordering that occurs in preambles can be an important instrument of governance and in itself a form of legal pluralism that complements the usual instrumental ambitions of legislation.” (2001, pp. 151-152)

Pushing change through the preamble is part of the approach recently taken in Senate Bill S-241, the *Jane Goodall Act* (2022), which was referred to committee on June 8, 2023 (Senate of Canada, 2023). S-241 is an animal rights bill that seeks to grant “limited legal standing” to certain animals (Klyne, 2022). Originally introduced as Bill S-218 (Parliament of Canada, 2020) by now retired Sen. Murray Sinclair, and now reintroduced by Cree Métis Senator Marty Klyne, the bill’s preamble includes a statement that is authentically rooted in First Nations worldviews: “Whereas the phrase “All My Relations” expresses an Indigenous understanding that all life forms of Creation are interconnected and interdependent”. In re-introducing this bill, Klyne cited the Truth and Reconciliation Commission’s call “to reconcile with the earth, through a restoration of reciprocity and mutual respect” in line with Indigenous laws (Klyne, 2022; Truth and Reconciliation Commission of Canada, 2015). Despite the bill carrying the name of a settler activist, the subsequent parliamentary debate record is

nevertheless an incredible trove of commentary highlighting Indigenous understandings of connectedness and interdependence of all life (see, e.g., Coyle, 2022; McCallum, 2022). This debate may give some insight as to how Sen. Galvez's RoN bill may be received at least at the Senate level.

The context offered by preambles can also serve a public educational role, as observed by Sen. Galvez (Personal Communication, June 5, 2023), which could indirectly support the advancement of EJ for rivers. Brown similarly highlights the value of "building awareness" through steps such as the Senate debate regarding the *Jane Goodall Act* (2022), which she sees as a necessary precedent to action (Personal Communication, April 21, 2023). In this regard, it is interesting to note that while many Senators who supported the *Jane Goodall Act* emphasized the importance of relationality, its opponents expressed concern about the "slippery slope" of granting legal standing to animals. Specific critiques included the prospect of being "sued by your dog" and that the bill "strengthens the ongoing assault on Canadian agriculture" because it could lead to farm animal rights (Plett, 2023). This debate can be seen both as evidence of a growing awareness of the RoN movement and also perhaps of the uphill battle for any "paradigm shift" or progress.

Jurisdictional challenges for procedural EJ

Comparing the possible impacts of the two Magpie River / Mutehekau Shipu resolutions to the proposed STL provincial and federal laws, it is important to note the many different legal jurisdictions involved in each, creating much uncertainty as to whether these laws would be upheld by a court. Claims such as that of the NDP that the proposed federal RoN legislation will "give the river its own legal status, just like the Magpie River" (2023) do not delve into the

nuances of the legal status of the Magpie River / Mutehekau Shipu declarations, framing these as stable building blocks despite their fragility to a legal challenge. On one hand, this may allow for multiple unique opportunities for courts to uphold or recognize these laws. To this point, Boyd (2021) argues that RoN laws need to be introduced by all levels of government – federal, provincial, municipal, and Indigenous. Any such law upheld by a court would be a remarkable evolution in Canadian law and perhaps provide more certainty for complimentary laws at other government levels.

However, there are also complex relationships between each of these levels of government, including municipal and provincial government. For example, there is recent precedent for the Quebec government overriding municipal authority in the context of transportation infrastructure along the STL (Medicoff & Béland, 2022). It is not clear how seriously municipal-led “personhood” initiatives will be taken in Quebec, and no more evident how the Quebec government or Hydro Québec will respond to an Innu or other First Nation resolution, in a case of conflicting priorities. While Magpie River / Mutehekau Shipu advocates argue that municipal powers in Quebec authorize the “assignment” of legal personhood from municipalities to “waterways within their boundaries” (Vega Cárdenas & Mestokosho, 2023, p. 136), legal challenges seem particularly likely in the context of the Quebec government’s current bids to expand hydroelectricity capacity including on the Magpie River / Mutehekau Shipu itself (Curtis, 2023).⁹ Noël clearly recognizes the limitations of laws passed by individual

⁹Although entirely speculative, it is interesting to consider whether an additional strategy is at play in the Magpie River / Mutehekau Shipu case, i.e., to bolster the evidentiary record for any future “Aboriginal title” legal claim in the event that Hydro Quebec pursues efforts to build another dam on the Magpie River / Mutehekau Shipu. An Aboriginal title claim is part of the Innu of Uashat Mak Mani-Utenam’s \$2.2 billion lawsuit filed in January 2023 against Hydro-Québec in relation to the Churchill Falls hydroelectric project (Amador, 2023).

municipalities, and for this reason sees great value in many municipalities working together with international organizations (Personal Communication, Mar 29, 2023).

It is possible that jurisdictional or similar “legal” factors also contribute to the kind of rights articulated in the bills. In this context, it is important to recognize that in some RoN laws, only procedural rights such as access to the courts are granted. This is the case in New Zealand, where Te Awa Tupua (the Whanganui River watershed) and Te Urewera are granted only “personhood” rights and no substantive rights. As Kauffman and Martin explain, “the laws do not guarantee the ecosystems’ right to maintain their integrity or to be restored, much less to flourish” (2021, p. 64).

The construction of federal Bill C-271 is similar to some extent in that it only expressly grants the STL the “rights, powers and privileges of a natural person” (2022, s. 5(1)). However, it also includes a provision stating that the purpose of granting the river these rights is to protect more substantive rights such as the right to exist and flow (s. 4(1)(a)). This seems a weaker construction than the more direct statement in the NDP proposal declaring all of the rivers’ substantive rights (2023). It is possible that this change was made by legislative drafters in order to reflect what was considered by them to be legally enforceable in light of Quebec’s overlapping jurisdiction (A. Boulerice, Personal Communication, April 11, 2023). However, the more direct statement of rights in Quebec Bill 990 (2022, s. 2) as well as its more direct remedy of “restoration” (2022, s. 17(1)) provides an interesting contrast (2022, s. 2). It is also possible that these differences between the two STL rights bills can be attributed to the difference between the more comprehensive civil law and the common law system.

Less clear how RoN advances EJ for humans

Beyond the rivers themselves, it is important to reflect on how RoN can avoid undermining EJ for particularly vulnerable and exploited human communities. In this context, the framing of RoN's "ecocentrism" as a measure that compliments human rights is critical (Vega Cárdenas and Meza, 2023). The relational dimension of "ecocentrism" is perhaps not always evident in the term: from the words "anthropocentrism" and "ecocentrism" alone, it is easy to imagine a contemplated shift away from concerns for vulnerable people. In fact, the framing of the problem as anthropocentrism arguably hides the larger power structures at work such as racial capitalism (Faber *et al.*, 2021; Richter, 2018).

The above critique can be rooted in Tănăsescu's observation of the "perceived tension between anthropocentric and ecocentric legal thinking, evident through the matter-of-fact use of these terms to describe western legal ontology versus the rights of nature" (2020, p. 433). Marshall also resists the reliance on the concept of anthropocentrism to characterize the problem RoN sets out to solve, because it incorrectly suggests that "all humans seek to exploit, destroy and abuse the earth and fails to acknowledge or value the unique position of Indigenous peoples" (2019, p. 245). The risk here is the promotion of a view that Indigenous peoples' "values, beliefs, customs and laws are not adequate to maintain obligations to care for Country" despite millennia of stewardship (2019, p. 246).

This risk is perhaps also evident in the reflections of Jean-Eric Turcotte, Director General of the ENGO Stratégies Saint-Laurent that pursuing RoN for the STL "is an absolutely necessary means, but also an acknowledgement of failure: to put a status on a territory is to underline that one is not responsible enough to use its resources in a sustainable way" (Living with Rivers, n.d.). While this comment is not likely aimed at Indigenous communities, it

nevertheless once again omits the fact of Indigenous stewardship. This exemplifies an unintentional, subtle and concerning form of Indigenous erasure.

Framing RoN as relational and kincentric may help address this issue. More broadly, the idea of kincentric environmental justice could be useful in the global north for better identifying the intersectional and relational aspects of environmental violence. For example, Dhillon identifies ways in which Indigenous peoples' kinship with nature has been deeply harmed by colonization, and argues for an environmental justice movement that does not "sideline decolonization and Indigenous futurity, but place[s] it at the centre of the struggle for the radical reimagining of our world" (2021, p. 909). A relational or kincentric environmental justice could be understood as capturing the idea that those in closest *relation* to a river or natural body are going to be disproportionately impacted by its pollution. This aligns in part with existing EJ logic, would seem to resonate with many Indigenous perspectives, and is also consistent with the concept of a decolonial environmental justice (Temper, 2019). It is perhaps because North American concepts of EJ tend to be separate from ecological justice (Schlosberg, 2007) that a relational or kincentric turn in settler society and government is due, or perhaps beginning, towards greater alignment with a more interconnected, interspecies view of justice.

From Whyte's perspective, it may be too late to address the intercultural relationships that were also harmed by colonization. He describes a "relational tipping point" that was "probably crossed years ago through the operations and impacts of colonialism, industrialization, and capitalism" (2020, p. 5). In the context of responding to climate change, Whyte argues that "the qualities of relationships connecting indigenous peoples with other

societies' governments, nongovernmental organizations, and corporations are not conducive to coordinated action that would avoid further injustice against indigenous peoples" (2020, p. 1). While "building bridges" is, as noted above, something Lindsay Borrows identifies as being part of Indigenous tradition (Personal Communication, May 4, 2023), many Indigenous people have also described the weight of always being called upon to be the interpreter between Indigenous and settler world. Chloe Dragon Smith, a Métis woman, describes this as the "burden of being a bridge" (Smith, 2023). This demonstrates some of the depth of what must be addressed for any "paradigm shift" or RoN law to have meaningful impact.

8.2 Legislation establishes stewards, who must navigate many complex relationships

In considering the possible practical impacts of RoN legislation, there are outstanding questions about how the STL and other natural bodies should be represented. In common and civil law courts, nature would inevitably be represented by humans. The claim that RoN is therefore inherently flawed is quickly downplayed by Houck, who notes that humans often represent non-human clients in legal proceedings (2017, p. 27). However, this broader question does raise the important inquiry about who should represent nature, both to ensure its interests are well understood and to avoid conflicts of interest.

While Houck argues that nature's interests should be obvious in that all life strives to live and be restored (2017, p. 33), Lindsay Borrows identifies some of the more nuanced considerations in identifying guardians. She asks, "what does it mean if we don't think about the people who will make decisions, [and their] training, background? How is racial, gender justice being built into these boards?" She also notes that governance bodies for rivers should

“depend on the legal traditions of the river” (Personal Communication, May 4, 2023), again emphasizing the importance of each nation’s laws and their connection to the land.

Lindsay Borrows considers the proposed role of large political bodies such as the AFN in choosing guardians as an “interesting” choice. As noted above, she views this as “practical” but not legally the strongest because it is not a rights-holding entity in the same way individual nations and Métis communities are. She further notes that some nations may be content to be represented by a larger political body such as AFN, whereas others might have the resources and desire to have their voices heard directly on a guardian council (Personal Communication, May 4, 2023). Boulerice too notes that from an environmental justice perspective, being represented by an Indigenous organization may not be ideal for every nation, acknowledging that “if you’re poor you can’t say no” (Personal Communication, April 11, 2023). These comments reflect broader concerns expressed by some First Nations activists and leaders that political organizations such as the AFN are disconnected from “the grassroots people” (CBC News, 2014; Barrera, 2018) and have sometimes been focused on internal issues rather than “more pressing problems” being faced in communities (Needham, 2023).

A related critique is that a guardian body that is too closely aligned with existing government authorities may fail to bring the fresh perspective sought by RoN advocates. For example, Lokgariwar comments that the guardians appointed for the Ganga and Yamuna rivers are the same people “responsible for the sad state of these rivers today, and they have failed to really achieve any improvement in the condition of these rivers” (2017). Similarly, and echoing Lindsay Borrows’ comments about the judgement that must go into choosing guardians, Chennai-based environmental activist Nityanand Jayaraman rhetorically poses this

question: if the Ganga and Yamuna Rivers “have the status of minors”, then “what are the agencies that will be regulating the parents?” (Das, 2017).

In considering the role of guardian councils who are appointed to “speak” for rivers, it is important to note that, in the context of the STL bills, these councils would be creatures of statute and do not currently exist in any form. A similar concept to nature guardian councils is the emerging concept of institutional guardians for future generations (Scott & Malivel, 2021). In Scott and Malivel’s view, this latter type of guardian exists in an important relationship with future generations (2021). Likewise, and from a relational perspective, guardian councils’ relationship with the natural bodies they represent is critical, as reflected in Lindsay Borrows’ and Brown’s comments (L. Borrows, Personal Communication, May 4, 2023; M. Brown, Personal Communication, April 21, 2023).

Finally, the two RoN bills implicitly draw a distinction between the responsibilities of the guardians to the STL and those of all others who live near the river. Here it is important to note that in contrast with RoN approaches that describe rivers and other natural bodies as “legal minors” (O’Donnell, 2023, p. 331) or “like a child who has rights, not obligations” (Vega Cárdenas *et al.*, 2023, p. 104), Anishinaabe Elder Allan White describes humans as “big brothers of nature” (Craft, 2014, p. 18). Such a conception places all humans in a kinship relationship with nature, as opposed to a small group of individuals being “legal guardians” of a natural body, leaving others free from this obligation. In this sense, the guardianship bodies described in the two STL rights bills establish something far less than the kind of universal obligation to nature arising from kinship that exists in many Indigenous legal orders. This gap is perhaps the

larger concern and that may limit the possible impacts of RoN legislation without a larger paradigm shift that truly encourages all settlers to understand their responsibilities to nature.

PART III: CONCLUSION

9. REFLECTIONS ON THE FINDINGS

9.1 The “paradigm shift” and its consequences for STL and other river governance

Reflecting back on the key factors behind the RoN bills introduced in 2022, the idea of a paradigm shift is worth re-examining. To the extent that the RoN movement is understood as being as much a conceptual and ideological movement as a legal one, the particular wording of draft legislation perhaps matters less than the broader narrative shift that is sought and to some extent is already occurring. In fact, it may be that the greatest unity within the movement, and between settler and Indigenous voices speaking about RoN, is that the movement itself represents a much needed evolution within society.

From this perspective, the two STL bills introduced in 2022 seem to have a solid place in such a societal evolution in Canada. The strongest evidence of this is arguably not the bills themselves, but the notable shift I observed over the months of this research project towards far more public statements from and about Indigenous leadership and engagement in the STL rights movement in Canada. While Indigenous perspectives have always been seen as a key aspect of the movement to introduce the STL rights bills, there has been a clear evolution as highlighted in section 6.1 below. As well, though the initial bills could have achieved more in terms of centring Indigenous peoples and views, both through earlier engagement with Indigenous communities and through the text of the preambles, the initial leadership of the movement has clearly made efforts to address these issues and they may be further addressed

in Sen. Galvez's next iteration of the federal bill. Furthermore, it is possible that further Indigenous consultation led by Sen. Galvez will include not just political organizations but also grassroots Indigenous groups. All of this seems to bode well for the movement having a more meaningful impact both for Indigenous peoples as well as from Indigenous peoples in Canada, depending on how the movement evolves in the months and years ahead.

A kincentric lens has value for shifting settler perspectives

Secondly, while the various characterizations of the "paradigm shift" are all useful, the concept of a kincentric turn is a particularly powerful concept. Sheehan's comments about "dysfunctional" relationships with water (2014, p. 162) outside of Indigenous cultures is borne out in the ways that settler governments continue to enable private ownership and sale of water and maintain "pollution permission" laws (Boyd, 2017). Moreover, recognizing that the meaning of the concept of "kinship" is contested (see Bradway and Freeman, 2022), I would argue that there is a stronger sense of connectedness inherent in the term *kinship* versus *relationship*. From a settler perspective, the concept of kinship with rivers and other natural bodies is thus perhaps a more significant evolution in thought that challenges settler state and heteropatriarchal norms. A focus on kinship in Canadian law and policy on kinship can perhaps also be seen as a development beyond a more charitable or hierarchical stewardship ethic (Krawec & Estes, 2022).

9.2 Reflections on the strategic role and choices of ENGOs and advocates

Third, the role of ENGOs and other advocates in the context of encouraging a paradigm shift is important, as seen in the work of the Observatoire, Boyd (2017), and many others. It is thus interesting to consider the strategic choice to pursue the STL as the first provincial or

federal law to be granted rights. While municipalities may have authority over rivers within their boundaries, as articulated by Vega Cárdenas & Mestokosho in explaining the legal rationale for the Magpie River / Mutekehau Shipu resolutions (2023, p. 136), the STL extends far beyond any municipal boundaries and even provincial and national boundaries. In light of this and other geographic, jurisdictional and historical challenges, the STL cannot be governed by a single Indigenous nation or body. Because of this, collaborative governance between Indigenous and other governments can be seen as the best possible outcome. However, federal and provincial legislation is not the only or inevitable to advance this goal.

While Boyd suggests that provincial and federal legislation are just two of several jurisdictions that would all benefit from parallel RoN legislation (2021), it is important to consider how this initial and novel introduction of parallel federal and provincial legislation may set a precedent for RoN's place in Canada's legal pluralist environment. This could potentially be viewed as legislation that de-emphasizes the status of Indigenous laws, particularly given that public Indigenous support has come only from a political body, the AFN, but that no First Nation passed a parallel law in coordination with the provincial and federal ones. However, it could also be seen as a very powerful choice that brings the movement into the mainstream in a necessary way that may bolster future legal challenges against municipal or First Nation laws.

As well, the strategic choice to recognize the rights of one particular river, rather than all rivers, could have consequences. For example, there is a risk that this could simply result in extractive projects relocating to another river for which such rights have not yet been recognized. Such an outcome could potentially be seen as environmental injustice both for the

area the project moves to and for people in that community (Faber *et al.*, 2021). This same concern was identified by a First Nation in the context of determining the scope of a federal impact assessment for the STL (IAAC, 2021). While the Canadian Environmental Law Association recommends against a recognizing RoN universally across the province, it nevertheless supports a broad RoN law within Ontario's Environmental Bill of Rights, "with permissive provisions that enable the Ontario government, in conjunction with Indigenous partners, to selectively identify and protect designated areas" (Lindgren, 2023). A similar approach was recommended by the Observatoire (Vega Cárdenas & Turp, 2021, Annexe 3, ch. 7), could potentially have been proposed federally or in Quebec, and may be a worthwhile direction for advocates to explore.

9.3 EJ and other justice impacts

Reflecting back on the various justice concepts, the emphasis seen in the literature and interviews on interspecies and multispecies justice is perhaps the most interesting, because these justice concepts support the idea of a kincentric or relational paradigm shift. By contrast, the lack of focus on procedural justice may suggest recognition of legal fragility: because these bills may not stand up in court, it is more compelling to focus on the idea than the practical, specific execution under various forms of Canadian law. Alternatively, this could reflect a recognition that, as Lindsay Borrows noted, RoN is just one of many tools (Personal Communication, May 4, 2023) that the broader paradigm shift may be built upon.

Procedural justice and beyond

As noted above, the RoN legislation for the STL proposes to offer, amongst other things, procedural justice to the river itself in the sense of more direct access to courts and

tribunals. Indirectly, the laws could be said to enhance procedural justice for Indigenous peoples and perhaps for ENGOs whose mandates include river stewardship and who are appointed as river guardians. However, as Lindsay Borrows notes (Personal Communication, May 4, 2023), not all Indigenous peoples and nations will necessarily want to be represented by a political body such as the AFN. The two STL bills, as drafted, provide only a set number of seats for Indigenous voices and in both cases, these seats represent a minority of voices (4 of 11 in the federal bill, and 2 of 7 in the provincial bill) (Bill C-271, 2022, s. 6(2); Bill 990, 2022, s. 7). Depending on how those seats are used in practice, the proposed legislation may fall short of providing procedural justice for many who would wish to have their voices heard more directly in river governance. In the same manner, it could be said to fall short of supporting Indigenous self-determination for each affected nation.

A partial answer to concerns such as Marshall's about the possible harms of RoN to Indigenous peoples is that the RoN laws proposed for the STL extend beyond the mere granting of legal standing. As highlighted above, the proposed STL laws call for guardian bodies to play a host of roles, giving voice to the river in other environmental governance contexts. Arguably, this theoretical participation of "the river" in more venues, even if many of these are settler legal venues, could potentially create new opportunities for settlers involved in river governance to better understand Indigenous relational ontologies. For example, the question, "why does the river need to be represented here?" can be answered by explaining its inseparability. This corresponds with the public educational value of the RoN movement and of advancing a paradigm shift (R. Galvez, Personal Communication, June 5, 2023).

9.4 The rights "ecosystem" is growing and adapting

To reflect on the notion of the rights “ecosystem” at play in the RoN movement, Indigenous rights are possibly the most complex piece. On one hand, the prospect of new participatory frameworks for both Indigenous peoples and nature can be seen as a major advancement. On the other hand, the two bills are settler law and as noted above do not explicitly integrate Indigenous laws or advance Indigenous rights. Much depends on the extent to which Indigenous laws really do become part of the governance model. Sen. Galvez seems attuned to these challenges, and Boulerice recognizes profound limits of a federal law and his own positionality (R. Galvez, Personal Communication, June 5, 2023; A. Boulerice, Personal Communication, April 11, 2023).

This concept of intergenerational environmental rights as both collective and relational (Scott & Malivel, 2021) has relevance in the RoN context. If relationality is a key focus for RoN and if RoN is approached in a holistic way that sees human and nature as indivisible, then collective rights *to* the river for both present and future beings can be understood as a core aspect of the river’s rights. This perspective reflects the Observatoire’s position that the recognition of water as a collective resource in Quebec is a foundation for the recognition of the STL’s rights (Observatoire, 2023(c); Bill 27, 2009), and reflects the suggestion that RoN supports biocultural rights (Vega Cárdenas & Mestokosho, 2023, p 119). This also supports the position of Wilson *et al.* (2016) and Boyd (2017) that the rights of humans and of nature can and must coexist, even if it will sometimes be difficult to unravel how they should be balanced in a given context.

In fact, RoN may well be seen as a form of collective right that gives greater meaning to biocultural rights, and that helps to fill gaps that may be left by colonial legal systems when

interpreting biocultural rights as a form of human right. In this context, the “collective” might be defined as including not just the affected human community as in the case of biocultural rights, but the broader ecosystem including plants, animals, and the river itself. This would to some extent reflect the kind of interconnectedness described in many Indigenous epistemologies as highlighted above. This perspective may be particularly relevant where a nation or community seeking recognition of rights of nature could also be recognized as having biocultural rights.

Of course, collective rights, at least as recognized under settler law, cannot address the complex jurisdictional issues as between the federal, provincial, municipal, and Indigenous laws. As well, there are many other unanswered questions about the potential role of biocultural rights in the STL and RoN contexts. For example, proposed laws such as the STL rights bills would grant guardianship to a committee that purports to represent a large and diverse river, and to some extent the human and non-human communities it supports. While Bavikatte and Bennett would seem to view such biocultural rights claims as theoretically possible (2014), it is unclear if the broader community inhabiting the STL watershed could necessarily claim biocultural rights in relation to the river.

Finally, the very fact that two RoN bills can be viewed as seeking the incorporation of Indigenous worldviews into the structures of settler law reflects the imbalance of Indigenous people always being called upon to be the “bridge” (Smith, 2023). Instead of “arming” nature with rights so that it can battle on a more level playing field in court - an ever-escalating arms race - it might be valuable to ask what disarming western rights holders would look like. Put otherwise, what would it mean for western rights to be set down, or translated into Indigenous

legal systems? What if for example corporate “rights” had to be contextualized within seven generations thinking (Craft, 2014, pp. 19-20)?

9.5 Advancements in EJ, at least in principle(s)

As noted above, it is possible that environmental justice could be enhanced as a result of the STL rights bills, in the procedural justice sense of the river itself really getting a voice. RoN would also seem to go beyond procedural or distributional justice at least in principle, certainly to include recognition justice (Schlosberg, 2013), i.e., the recognition of the struggles of rivers. Moreover, if more substantive rights are exercised as iterated in the text of the STL personhood bills, this could be viewed as a step towards a more transformational justice as described by Faber *et al.* (2021, pp. 9-10). This is particularly true if Indigenous communities are deeply engaged in this movement and continue to meaningfully influence state RoN laws including through declarations under their own laws.

The suggestions that a kind of indirect procedural or substantive EJ will result for those people who rely on land, as a result of having land more thoroughly protected, are more difficult to evaluate. This is a kind of trickle-down argument. While there is substantial support for the idea that Indigenous peoples rely upon the well-being of the land as highlighted above, Indigenous rights and land claims cannot simply be ignored once RoN laws are passed, especially given the diversity of Indigenous peoples and perspectives (L. Borrows, Personal Communication, May 4, 2023).

Arguably, the greatest gain here is for the expansion in Canada of EJ discussions in directions hoped for and written about for decades. This includes an expansion to embrace interspecies and multispecies justice as well as a multi-temporal expansion (Chao &

Celermajer, 2023), in that the rights and needs of future generations are being discussed. This is, as noted above, an expansiveness that would recognize that interconnectedness that some such as Sen. Galvez say has always existed in Central and South America (Personal Communication, June 5, 2023). Again, the notion of a “paradigm shift” has value in shifting peoples’ ideas, which in Dancer’s view can in turn shape laws that reflect these ideas (2021). That said, it is important to bear in mind that societal changes do not always occur in a linear way in the direction of some widely agreed-upon idea of “progress”, as recognized by Boyd (2017).

9.6 Normative role of the legislative drafters

A critical issue in considering possible EJ impacts of RoN bills is the extent to which legislation removes the law from the hands of its advocates, in the same way that lawsuits remove control from the hands of the complainants. The comments of both Boulerice (Personal Communication, April 11, 2023) and the Québec Solidaire staff member (Personal Communication, June 15, 2023) on this point suggest that government drafting experts can play a normative role in reinforcing legal conventions which at present time have minimal Indigenous influence. The ways in which legislators and legislative drafters wield power to whittle words into a more conservative shape are also reflected in the concerns of critics such as Marshall (2019) and Tănăsescu (2022). Even if there was no realistic belief that these first bills would become law, their text as revised by these drafters still exists as a precedent, and it remains to be seen how the introduction of these initial bills will ultimately shape the RoN movement in Canada.

Such questions are a necessary response to the suggestions that STL bills may be “low risk”. If for example a RoN bill might be seen as having low “political risk” for a provincial government because it avoids more challenging issues of Indigenous land claims (M. Brown, April 21, 2023), then it is important to consider what might be left out of the final legal text after going through legislative committees and multiple readings, as well as how the law might be implemented in order to achieve the government’s other goals. This could in theory pose sovereignty risks to Indigenous communities or result in a kind of tokenistic legal pluralism. If Bill 990 passed as worded or was reintroduced as worded, then the lack of Indigenous consultation could become a significant ongoing barrier for the law to achieve meaningful change.

Ensuring conformity with common and civil law is an understandable concern from the perspective of government lawyers, given the very real possibility of a provincial constitutional challenge against federal legislation on the basis that it exceeds federal jurisdiction (see, e.g., *Attorney General of Canada v. Attorney General of Alberta*, 2023). It is easy to imagine such a dispute arising were federal RoN legislation to proceed without parallel provincial legislation - a real possibility at the present time, since there are no public plans for a reintroduced provincial RoN bill. However, if government legal drafters are only focused on conformity with common law and civil law, and not with Indigenous law, then this would also be a profound impediment for the prospect of “braiding” Indigenous laws with state laws and for minimizing conflict in a so-called pluralistic legal environment.

The influence of party staff acknowledged by the Québec Solidaire staff member (Personal Communication, June 15, 2023) also demonstrates the normative force of party

politics, where a political party may feel bound by the wishes of party members who voted for them. Even if successfully passing RoN legislation was not the only goal for RoN advocates, it is important to reflect on the journey of the two STL bills introduced in May 2022. Because neither bill advanced beyond first reading, they were not debated in the federal legislature and Quebec National Assembly respectively. The bills' failure to advance can be attributed in part to the fact that they were introduced as private members' bills rather than government bills and so had to compete with many other private bills for the opportunity to be heard. In the case of Bill 990, the fall 2022 election meant that the bill could no longer advance (Québec Solidaire staff member, Personal Communication, June 15, 2023), but also resulted in the MNA who had introduced Bill 990 losing her seat. All of these factors demonstrate both the importance of which politicians or political parties introduce a bill as well as the numerous barriers to moving draft legislation forward.

As well, it is useful to note the future role of the judiciary in interpreting any RoN legislation. Sen. Galvez's comment about the role of the preamble in supporting the judiciary's understanding (Personal Communication, June 5, 2023) is a partial answer to concerns of Kauffmann and Martin (2016) about judges' need to be educated about the RoN concept. However, this demonstrates yet another way in which the text of a bill becomes disconnected from the hands of its initial drafters and advocates and could potentially erode progress in advancing EJ.

9.7 Indigenous peoples were always guardians and STL laws need to say this

In considering how the STL rights bills could shape who is understood as responsible for the STL's rights, as "guardians" or otherwise, it is important to recognize that this is currently a

shifting landscape with the federal bill being re-examined through a greater Indigenous lens. However, looking at the two bills as introduced, I do share concerns about legislation that is silent on Indigenous laws' existence such as provincial Bill 990. This is a kind of erasure that is counterproductive to claimed goals of decolonization or reconciliation. I echo Marshall's view that is harmful to discuss who should "speak for the river" without noting the traditional and historic stewards who still live here and still live their laws despite colonialism and ongoing genocide. While a large part of the story currently being told is about this stewardship role, if that aspect of the story is edited out of the legislation, we risk one story being told to the public, and another to the courts in the nearly inevitable legal challenges that any RoN bills that become law would face.

While Bill C-271 is stronger in respect of highlighting Indigenous peoples' roles as guardians, as Sen. Galvez notes the story told in Bill C-271 is an abridged one (Personal Communication, June 5, 2023) and the next iteration of the bill may offer a more complete one. One aspect of that bill's preamble that could potentially be addressed is the notion that a "legal fiction" must be created to give natural bodies standing in court (Bill C-271, 2022). While this wording may have been viewed as a legal necessity, it also demonstrates how far removed settler legal systems can be from Indigenous worldviews and laws that both hold nature to be alive and recognize Indigenous peoples' legal responsibilities to nature, as reflected in Marshall's analysis (2019). Whether this gap can be bridged at all is perhaps a critical question in the debate about the role RoN can play in environmental law and policy.

A final comment is that in telling the story of the STL rights bills, what goes unstated is at least as important as what is said. In any future legislation that follows the first two STL

rights bills, it will be important to watch for the use of the passive voice, both in the preambles and in the broader discourse. For example, the preamble to federal Bill C-271 (2022) does not explain who or what is responsible for the need to create a “legal fiction” to give nature standing. One answer is that Indigenous laws viewing nature as a living relation are not yet fully recognized under settler law. In discourse about the need for a paradigm shift, the question of who or what caused this so-called separation of humans from nature is likewise sometimes absent. If we avoid naming the causes, such as colonialism, it will be more difficult to shape solutions that are truly decolonial.

10. STEPS FOR FUTURE RESEARCH

To conclude, the following are my reflections on possible steps for future research. First, in our interview, Brown highlighted the importance of understanding further how RoN implementation has impacted settler governments’ watershed governance decisions, and how guardian voices have been shaping environmental discourse and outcomes (Personal Communication, April 21, 2023). A study looking in more detail at how guardian councils are shaping decision making at various levels (beyond reports about court decisions) would be valuable.

Second, given the emphasis of Lin *et al.* (2021) and others on the importance of public education about Indigenous laws as a key aspect of reconciliation that must be advanced in order for RoN to have profound impacts, research looking at education of law students, legal drafters, and the judiciary could be useful. This is particularly important in light of the ongoing discussions about UNDRIP implementation. While this project has furthered my belief that many settlers do have a sense that all of nature is alive, even if this concept is not clearly

articulated in settler legal or cultural contexts, Indigenous-led education has the potential to deepen settler understanding of nature-based and kinship-oriented Indigenous laws and may in turn lead to broader acceptance of RoN laws.¹⁰

Third, a more extensive analysis for RoN from a queer ecology perspective would be valuable, as this lens seems to capture many important nuances in the RoN context. Finally, research engaging with grassroots Indigenous communities would be particularly valuable in understanding their perspectives on RoN laws both within settler laws and in Indigenous legal systems.

¹⁰ This conclusion is the result not just of my research for this project, but also of my personal learning journey in York's Master in Environmental Studies program: this journey has included an introductory education on Indigenous laws, a critical aspect of law that was largely absent from my own legal education in the mid-2000s. I was happy to learn that Indigenous laws are now part of the core curriculum for every Osgoode Hall Law School student. Similarly, students at other Canadian law schools now also have similar mandatory courses as well as other courses to enrich these understandings (McDonagh, 2023).

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