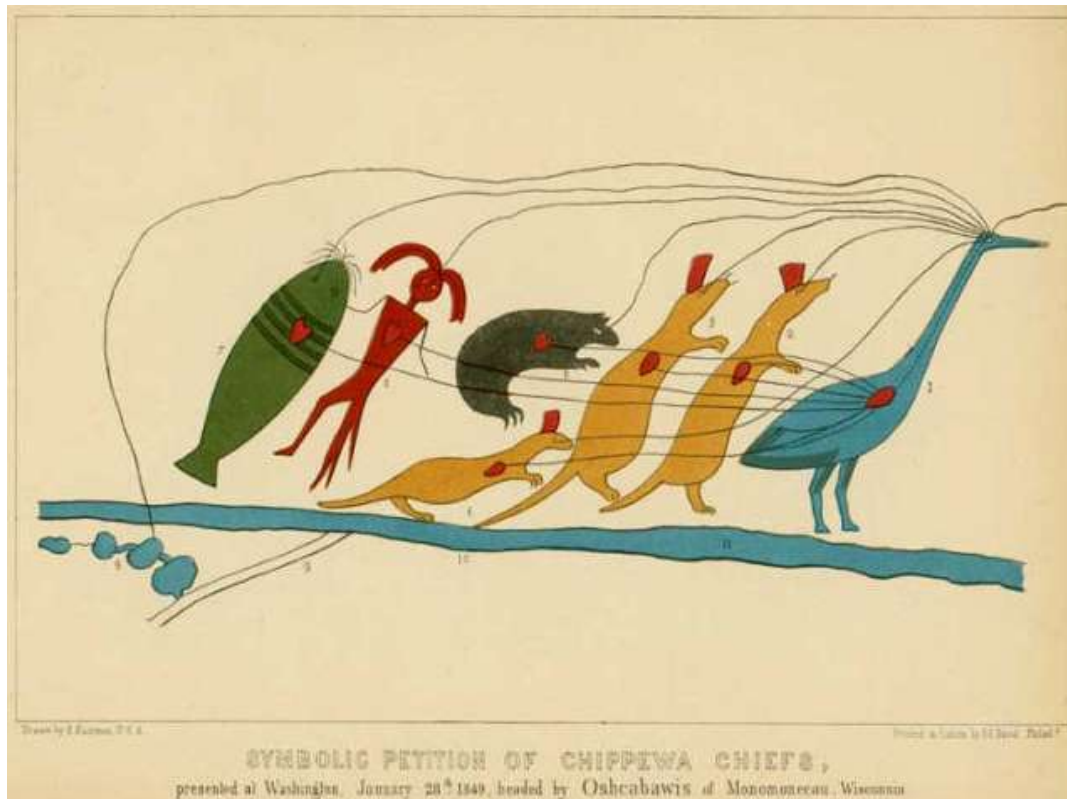


**Thomas Linzey:**  
***Rights of Nature for our Non-Human Kin***  
*"Indigenous Perspectives" - Monthly Broadcast on HealthyLife.Net*  
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<http://www.ecologia.org/news/11.RightsofNatureSept2021.mp3>



*Symbolic Petition of Chippewa Chiefs, presented at Washington, January 28, 1849, headed by Oshcabawis of Monomonecau, Wisconsin<sup>1</sup>*

**Randy Kritkauskay:** Bozho! I address you in Potawatomi [*with*] the word for greeting, as I'm a registered member of this native American tribe and our language is dear to us. My name is Randy Kritkauskay. This episode of

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[https://commons.wikimedia.org/wiki/File:Chief\\_Buffalo%27s\\_Petition\\_1849\\_originally\\_of\\_birch\\_bark.jpg](https://commons.wikimedia.org/wiki/File:Chief_Buffalo%27s_Petition_1849_originally_of_birch_bark.jpg)

Indigenous Perspectives originates from the state of Vermont, in the United States.

This is not my tribal homeland. It is the un-ceded traditional territory of the Abenaki people, who for thousands of years were, and continue to be, stewards of these lands that they know as N'dakinna, which is to be found here in the state of Vermont in the Northeastern United States, and across the Canadian border in Southern Québec province. I begin by acknowledging where we come from both culturally and geographically as this program, Indigenous Perspectives, focuses on understanding our roots in Mother Earth and our connections with our ancestors.

Carolyn Schmidt: And I'm Carolyn Schmidt, co-host. And we welcome Thomas Linzey to our program today, on the topic of "The Rights of Nature, Bringing Indigenous Perspectives into the Legal System."

Thomas Linzey serves as senior legal counsel for the Center for Democratic and Environmental Rights – CDER - a nonprofit organization committed to globally advancing environmental rights. He is widely recognized as the founder of the contemporary community rights and rights of nature movements, which have resulted in the adoption of several hundred municipal laws across the United States. In 2008, he assisted the Ecuadorian constitutional assembly to draft its Rights of Nature provisions for the new Ecuadorian constitution. His work has been featured in The New York Times, The Los Angeles Times, Mother Jones, Forbes, and The Nation magazine. So, welcome, Thomas!

Thomas Linzey: Glad to be here.

Carolyn: Can you start by explaining what the idea of Rights of Nature is all about?

Thomas Linzey: Sure. So, rights of nature concepts have been around for quite some time, even in Western law, but folks still have - most folks are still new at understanding what Rights of Nature means. And in a nutshell, what Rights of Nature means is that our existing way of protecting the natural environment hasn't worked. And that existing way of protecting the natural environment has essentially been about treating nature and ecosystems - you know, mountains, rivers - as property under the law, something to be owned. And which has given birth basically to this concept that the more property you

own, the more ecosystems you can destroy under our system of government. It's that simple.

And so folks have been looking around. And when I say folks, I mean, mostly folks in from the Western or European perspective, have been searching around for a little while for a new paradigm, a new system of environmental protection, which isn't linked to this concept that environmental protection should just be about regulating use of property, in other words, continuing to treat nature and ecosystems as property, but just seeing our role as just regulating the use of it for its owner.

And so in Western law the concept [*Rights of Nature*] popped up in the 1970s, early 1970s. Of course, Western scholars who track this Rights of Nature concept back to 1970 are off base as well, because of course, indigenous communities for thousands of years - many thousands of years - have treated nature as something other than property, something other than something that could be owned.

And so indigenous communities talk about nature in terms of being an animated thing, being a relative, rather than European Western culture, which essentially treats it as this thing, our property to be used, similar to the status of women in the 1820s, similar to the status of African-Americans before the civil war, that in those cases, people were treated as property. Today, there's probably no theory more embedded in Western law: that nature is simply property to be used. And in fact, you see that in our language, it's not just the law. We talk about land being undeveloped, if it hasn't been touched by human hands. Well, that land is developed over billions of years, ecologically, from an environmental perspective, but our language doesn't respect that, or doesn't reflect that.

And so Rights of Nature is really this new doorway towards a new kind of system of environmental protection that recognizes nature as having these human civil rights-type based rights. So think we think about human civil rights all the time. We think about our US constitution, Bill of Rights and our state bill of rights, and that people have certain civil and constitutional rights.

This [*Rights of Nature*] is the concept of, in essence, recognizing or bestowing certain constitutional type rights on nature, like the right to exist, the right to flourish, the right to thrive, for a river to have a right to flow.

But basically these broad standards that have developed around human civil rights type protections being applied to nature - not because it's the right thing to do, which it is; not because it's the moral or ethical thing to do, which it is, - but because the survival in many ways of the human race depends on this concept, that we understand that we're connected to everything, that we're not separate and apart, that we're reliant on the system that provides us with life support systems and with flora and fauna flowing rivers and mountains and forests that are healthy. And so it's the concept of marrying up a new legal system with that understanding. Because otherwise we are in a crisis moment right now, whether it's climate change or the fact that we've mowed down 90% of the original forest in the United States, or we continue to pump 4 billion, tons of toxic pollutants into the air illegally each year. No matter how you look at it, the old system that we have just isn't working anymore.

So for folks interested in it, not only as a kind of moral and ethical movement, as well as a legal movement, that people are interested in it for different reasons, but it doesn't matter. It's all connected to the same, which is that survival on this planet demands that we switched to a different kind of system.

Randy: Thanks. That's an outstanding and really very clear explanation. One of the best I've heard. Now that you've introduced the idea, conceptually, can you bring it down to earth and give us an example of how it's being applied - Rights of Nature? We talked about Klamath being possibly one example that you are knowledgeable about.

Thomas: Yeah. So I'll talk about two, one indigenous and one non-indigenous. And the non-indigenous example I'll use is that in November of last year, 2020, the people of Orange County, Florida, which is where Orlando is located, it's the 30th largest county in the United States. It's about one and a half million people, so a good sized, big county. That environmental activists were frustrated by this existing system of law, which basically has put Florida into a

water crisis situation, whether it's die off of marine life or red tides or algae blooms - Florida's in a pretty bad situation right now, crisis situation around water quality. And it's kind of been the responsibility of the state, who've been passing out development, permits, you know, like candy at Halloween. So 23,000 permits have been issued by the state Department of Environmental Protection to polluters that are polluting waterways and air and polluting the soil as well.

And so activists in Florida said, we're not going to do this anymore. We're not going to go to hearings where we're not even sure whether the microphones are been plugged in or not, or where we're given, you know, given 30 seconds at a meeting to explain what's happening and to try to find a different way, or begging and pleading regulators to do something differently.

And instead they moved to draft a new law, and that new law recognized rights, legally enforceable rights for the Wekiva and Econlockhatchee rivers in Orange County, two of the main rivers that flow through the county. And those rights included the right to be free of pollution, the right to flow, the right to maintain a healthy ecosystem. Those types of rights that accrued not only - not to humans necessarily, or in Orange County - but accrued to the rivers themselves. And that initiative, which I think most people didn't think had a shot at passing, actually received 89% of the vote in November of 2020.

That's becoming the law in the land in Orange County. And then the next step on is to enforce these. Because it doesn't matter what you pass, if they just sit on the books, you have to actually enforce them. And so back in May of this year there was an enforcement lawsuit filed against a developer who wanted to put it a 1900 acre housing commercial development that would destroy over a hundred acres of wetlands. So you have the Orange County law, which says wetlands have rights, including a right to life, right to exist. You have a developer trying to build a development in which he wants to destroy a hundred acres of wetlands. There's a clash of systems there: this kind of indigenous driven value system that's now been driven into Western law, versus the existing system, which wants to permit the 1900 acre housing development and destroy the wetlands.

So that's a real life example of how these laws get enforced. It's not just about passing them. It's actually about changing behavior - involuntarily - of those entities that have no interest in voluntarily changing their behavior. This is

about actually putting in place a different rule, and that rule can be enforced in courts.

Then the indigenous example that comes to mind is the Yurok tribe, Randy, as you mentioned the Klamath River. The Yurok several years ago passed a law, one of the first round of laws passed by indigenous communities in the United States, to recognize the Klamath River as having certain rights. So again, just like the Orange County example, this is about a river having rights to exist and flourish, constitutional based standards.

And the interests of the Yurok tribe, of course, the Yurok nation, is to protect the salmon. So protect the river as waterway, of course, but also protect the salmon. Salmon runs are down in some places 95%. For the Yurok tribe, salmon is a critical piece of the Yurok nation's identity. And so - protecting the waterways to protect the salmon, a critical piece of that cultural heritage that the Yurok nation has. And of course the Yurok talk about the Klamath River being a living being, a relative of Yurok members.

And then similar to some of the other tribes that have passed these Rights of Nature laws like the White Earth Band of Chippewa [*Ojibwe*] in Minnesota. They passed a law in 2018 to recognize wild rice - or manoomin in Chippewa verbiage, Chippewa language - Manoomin as having certain rights to pure water habitat to exist, flourish, thrive. And again, wild rice, of course, is one of those closely held heritage cultural items for the Chippewa, just like the salmon is for the Yurok. And for the Chippewa, of course, the rights to gather wild rice are protected by treaty.

So not only on-reservation wild rice, but off-reservation wild rice as well, because the right to gather rice is protected by a federal treaty. Because of that, you have to have a resource there to actually gather, otherwise the treaty rights make no sense. So from an indigenous perspective, coming at it [*Rights of Nature*] from core cultural values embedded in indigenous communities; for non-indigenous communities, coming at it from a failure of a traditional European regulatory system to actually protect the environment. So kind of frustration on both sides, but both ends driven by the same - driven towards the same model, which recognizes these legal rights for ecosystems, not just for people.

Randy: I really appreciate both examples. They're nicely complimentary. I'm going to back up because I suspect that many of our listeners are having to take a deep breath, and scratching their heads saying, "I really intuitively get the part about, you know, the Wolf and the Hawk and those other living beings being animate and being persons. But somewhere along the way, I kind of wandered off the path when suddenly the landscape became animate and has personhood."

You explained it nicely, but I'm actually going to ask you to re-explain both the legal and environmental import of that. And again, how this is deeply connected to indigenous spirituality and thinking, because that part is a little bit of a leap for people in the mainstream. And even some people like myself who - I'm a legal tribal member, but I didn't grow up on the reservation. I didn't grow up with people using an animate language every day, which reminds me every day and every word, that there are many, many animate beings out there. Could you, could you re-explain it again for us?

Thomas: Yeah. I think indigenous communities of course have a connection to land that non-indigenous communities, Western communities, in the U S particularly, don't have. And so that connection to land really evidences in two ways. One is connection to those resources that are necessary for the tribe, both culturally as well from a survival standpoint. So that's like wild rice for the Chippewa, salmon for the Yurok tribe, et cetera. And so those - that connection to the land may evidence itself through a use of a resource that's critical to the tribe's survival or critical to the tribe's culture.

But the growth of these laws is also coming from the traditional environmentalist meaning of activism in the United States especially, which is driving towards greater protection of ecosystems themselves, such as land or forest. I have to say the early Rights of Nature laws that were passed in the US, back in 2006, covered all ecosystems. A little place called Tamaqua borough in Pennsylvania became the first in 2006 to pass the law. And that law protected all ecosystems in general.

The laws since then have really begun to narrow themselves down to specific pieces of those ecosystems, and mostly waterways. So what you see now is mostly Rights of Nature seen through waterway protection or rivers. So that

river ecosystem is being kind of the discrete bounded ecosystem that's easy to identify and also assign rights to, or bestow rights to. So I think that's what you're seeing more and more.

In the Ecuadorian constitution, which was really the landmark moment - when we were in Ecuador assisting with the drafting, it was very clear from the delegates that were drafting the constitution that they wanted to protect this concept of good living, and that the constitutional amendment was driven - the rewrite of the constitution was driven - by the indigenous communities in Ecuador who wanted to protect land as an ecosystem, as well as discrete parts of that land, like species or waterways, those types of things.

So there's no linear "A to B" here pretty much, but this concept that nature has rights extends beyond just waterways and species to this concept of land. But it hasn't really been practiced that much in US in terms of that broader ecosystem protection, more of the discrete resource production.

Randy: So we have just a little bit of time left here in the first segment. I'm going to pose a question and give you a moment to think about it. You're so terribly articulate - I shouldn't say terribly! - You're so wonderfully articulate on this topic - and I think I'm correct in saying you didn't grow up on a reservation. So one of the things that I'd like you to do to help our listeners is explain your own journey to discovery of the kind of spirituality and Rights of Nature worldview. Because I - I think we need to help people take their own steps and not be intimidated by being confronted by people who are already there. So we'll take a break and we'll come back and we'll pick up that question.

## **Segment Two**

Randy: So welcome back to Indigenous Perspectives. Our guest is Thomas Linzey, and we left him with a question in the first segment about how he could help us to understand his own journey, where he now is working in the legal profession nationally and globally. Tom, can you try to answer that question for us?

Thomas: Sure. So over the past 20 years, we've run into people who have come to similar conclusions to the ones that we've come to along our path, our journey, about how the existing system of environmental law isn't actually protecting the environment, as funny as that sounds sometimes. So we have



an environmental protection system that isn't actually protecting the environment. But my journey started with an embrace of that conventional environmental regulatory system.

So coming out of law school, we created a law firm that provided free legal services to community groups, fighting toxic waste landfills and incinerators and fracking, and large-scale water withdrawals, basically any of the thousands of unwanted projects, mostly corporate projects, that are thrust onto communities every day in the United States every day, every week. And I spent a decade trying to enforce conventional environmental law. So we litigated the Clean Air Act, the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act. This acronym, acronym soup, you know, that we have in the U S around environmental laws.

And so we spent 10 years trying to enforce those laws. And what we found was that the laws themselves don't really give any power to communities to reject these projects. In fact, in the U S the law is that if the federal or state government have permitted something - issued a permit for a specific use or project - that the municipality or the community has no power to prohibit it or reject it, that's black letter law. And so time and time again, we ran into these corridors where, you know, the major corporations in individual industries will write the environmental regulations. It's the secret nobody really wants to admit, but the large corporations write the regulations. So why would they provide anything in those regulations for communities to actually stop projects?

And so I would find myself in hearings in front of judges, arguing over permits that had been issued, and we would win those fights in front of those judges. But then the corporation would simply come back and either rewrite the regulation, or take the gaps, omissions, and deficiencies that we had found within the permit application they had filed and fill those in. And so we had some of the biggest law firms in the country come up to us after these hearings that we had won on behalf of our community clients, and actually thank us for finding the gaps, omissions and deficiencies of the permit applications, so that they could then bill the company more hours to go back and fill in the gaps and omissions and deficiencies.

And the other thing that you learned the hard way is that the corporations - at least, we thought, we were forcing the companies to expend money, to defend

the permit challenge that we had filed. But in the end, one thing you learn is that the permit challenges - the defense by the company of the permit challenges, the monies that they spend - is tax deductible under the tax code as a reasonable necessary business expense.

And so the final part of my learning came when a woman named Jane Anne Morris, who used to bill herself - she's passed away, but used to bill herself as a corporate anthropologist looking at the history of corporations and the pathology of it - said to me that the only thing environmental regulations regulate is environmentalists. That the only thing environmental regulations regulate is us, because they make us predictable as to how we oppose projects when they come into our community, because the script has been written for our opposition before the company even sets foot into our community. We've lost before the company comes in, because the industry has written the regulations underneath which we're trying to do defense.

So long story long is that it took 10 years of that kind of churn for us to come to - for me to come to - the conclusion that the environmental system was - a lot of people say broken; it's not really so much that it's broken - to the point where it's operating perfectly for some. It operates to exhaust us on a hamster wheel of activism, while there are others in control of the script, underneath which we're doing our activism. And so a lot of environmental lawyers or some, a small handful, have come through that pathway. The other pathway is activists on the ground, communities who have been fighting stuff for 30 or 40 years who have come to the conclusion that the whole thing is just a hamster wheel intended to exhaust communities, which it does really well, and have started looking for a different system.

And so, you know, those are kind of the different pathways, but I think my education reached the graduate zone when I was teaching a class on how the environmental regulatory system works and that municipalities - you know, cities, towns, villages, and counties, and people that live within them - don't have power to say no to these harmful projects coming in, if the state or federal government has issued a permit. So if state or feds have issued a permit, the community has zero power to prohibit that incinerator, or zero power under conventional law to prohibit this particular project coming in. And the class I was teaching was indigenous as well as non-indigenous. And

the indigenous person stood up and said, "Oh, so we're not the only ones that live on a reservation!"

That the municipal government structure, because it's so tightly controlled by people further up and further away, sometimes 3,000, 6,000, whatever miles away, that that municipal unit is wholly held - it's almost property of the state and federal government. That if you "misuse" that municipal government to try to ban something that's permitted like an incinerator landfill or whatever, it's harmful, the whole system crashes down on you, just like it does [on] indigenous communities that attempt to say no to uranium mining, you know, off-rez that that's going to have an impact on reservation lands, or limiting jurisdiction by indigenous communities over non tribal members, like companies doing X, Y, and Z off-reservation that impacts tribal members.

So I think that's - that was - one of my awakening moments was to hear that said. Because in reality, it's tough to compare a white community, you know, a white European community with all the privileges that come with that to an indigenous community and call them both reservations. But in reality, they're both reservations because they're held by a system of law that if you agree with the decisions made by the system a lot, everything's fine. But when you start to disagree, that's when the system crashes down on you to stop you from doing what you're trying to do.

Randy: So at some point in this epiphany was there also a moment when the spiritual dimension of what the Native Americans were saying to you clicked in and began to inform your work?

Thomas: I think that took a lot longer. I mean, I'm as English as English can get. So - Scotch-Irish and English - me and my family has a coat of arms and a town named after us in England. And so, you know, that stuff's really deeply embedded. And I don't think that kind of awakening, or that kind of journey, started until we began working with indigenous communities. Because the Rights of Nature work started in non-indigenous Western communities; it was birthed by having another tool to stop a project from coming in: how do we use this tool?

But working with the Ho-Chunk in Wisconsin, working with the White Earth band, the Yurok nation, the tribes across the U S that have really begun to be the front cutting edge of Rights of Nature work. I think working more and more as a tribal lawyer, seeing a different vantage point and understanding that the cultural value is one of those things that's so deeply embedded, that

it's a driver for this work. That it gets encapsulated in how you argue in court, gets encapsulated as that, how you talk to people.

But I - I'm done waiting for some kind of spiritual conversion by a majority of the Western communities, where we're kind of.... I'm not hoping for that anymore. What we're hoping is that these tools speak to different communities in different ways. And indigenous communities have the biggest claim to this concept, overarching framework. So I think it's going to move quickest there.

Carolyn: Wow. We're going to take a break and be back with Thomas Linzey for our next segment, stay tuned.

### **Segment Three**

Carolyn: Welcome back, Thomas Linzey, to the third segment. And can you switch your attention now to talk about some of the ways that Rights of Nature has gained a lot of traction in the international world and in different countries outside the United States?

Thomas: Yeah, so unfortunately actions in the U S have been pretty sparse so far, but development of the Rights of Nature concepts and jurisprudence in other countries has moved rapidly forward. Starting with Ecuador 2008, [their] new constitution, and Ecuador adding Rights of Nature principles, becoming the first country in the world to recognize rights of nature in their national constitution, overwhelmingly ratified by the Ecuadorian people, opposed by the Catholic Church. One of the leaders in the opposition was the Catholic Church, arguing that rights couldn't be given to nature because it was a human concept. So that was some of the opposition in Ecuador. And also opposition from some mainstream environmental groups that thought Rights of Nature was too radical, too crazy, too fringe, and would undermine their use of the environmental regulatory system within Ecuador. So - interesting kind of opposition points.

In Ecuador, there's been over 60 enforcement cases. So, administrative judicial, the first case was - the caption was "the Vilcabamba River versus Province of Loja". The name isn't important except to note that the river itself was the plaintiff. So in these cases, humans are not the plaintiffs. Humans are the voice of the river in this case, but the river is the plaintiff. And that kind of avoids the scrutiny as well, that legal standing brings. Generally

in court, you have to be injured as a human to bring a case. And so when you're a plaintiff, one of the arguments by the other side is to dismiss the case because you don't have standing; you haven't been injured by whatever's happening. Well, in these cases, the ecosystem is the plaintiff, which means that the focus of the standing inquiries *[is]* the ecosystem itself, which is being damaged rather than the humans who are basically acting as a trustee or a guardian for that particular ecosystem.

So whether it's shrimp farming, shark finning, protection of mangroves - in Ecuador, you've had both criminal and civil enforcement actions using Rights of Nature laws in all of those cases. The Vilcabamba River case, which was brought in 2011 - first case in the world in which a judge held on behalf of an ecosystem in a Rights of Nature case. So in this case *[the judge]* ruled in favor of the Vilcabamba River, ordered the local government to stop dumping road debris into the river, which was changing its course and flow. That was the first case.

So about 60 enforcement administrative cases, as well as judicial cases, in Ecuador. Constitutional Court of Ecuador, which is the highest court interpreting the constitution, has selected now some cases to issue new decisions on Rights of Nature, which we expect to be a bright line kind of interpretation, further interpretation of how Rights of Nature can protect against mining, biodiverse areas, as far as those kinds of things. So we're, we're watching that happen.

And up till that - up until the Ecuadorian example, we expected most of these, most of the work around the globe to be legislative. So whether these would be local communities or national governments, writing Rights of Nature laws, and then having the courts enforce them, that had been the process up until this time. So writing laws, having courts enforce them. In 2016, that changed.

The Colombian constitutional court, looking at a case dealing with the Atrato River in the country, no laws whatsoever, no legislation whatsoever, instead used Rights of Nature principles from the bench. So judges, taking Rights of Nature principles from Ecuador and other places, declared it a new norm of international environmental jurisprudence. So a new, a new legal norm. And then applied it to give rights to the Atrato River, to the Rio Atrato in Colombia.

So no legislation, no laws had been passed. These were judges taking concepts and applying them directly in the courts. In 2017, a court in India followed suit, recognizing the Ganges River as being a legal person, basically a rights holder. And then what rights the Ganges had. In 2018, the Colombia Supreme Court followed the lead of the constitutional court, ruled that the Amazon River had certain rights and the Amazon River Basin was a subject of rights. So not just the river, but the basin itself as part of that watershed and ecosystem. And in 2019, the High Court of Bangladesh, which is the Supreme Court of Bangladesh, recognized legal rights for all rivers within the country. So - not just a single river, but all rivers within the country, its main subject of rights and having certain rights.

So at the international level it's been, it's been very interesting because the process of legislation and enforcement has been bypassed. And courts are now applying it directly, based on the principles that are coming out of the Ecuadorian courts and out of this kind of frustration with existing environmental regulatory systems, wanting something that's much clearer. Shifting nature from being property and to being rights holders, essentially under those - under those systems of law.

Randy: Several of the societies that you mentioned are societies where a significant portion of the population intuitively and historically understands that nature is animate and that we are on an equal footing with it. That's an enormous advantage. We don't have that advantage so much here. Is that an obstacle to moving forward with Rights of Nature in our legal system?

Thomas: I think it is. I also say that when you talk to folks in Bangladesh, India and Columbia, they would explain to you that it certainly hasn't been a downhill ride for them. Because the legal systems that are put in place in those countries, which are all colonized countries, were basically colonial legal systems, which were superimposed. And we do it today. The US sends lawyers out to other countries to replicate our environmental regulatory system. So these other systems of law are not the easiest to navigate. Even in Ecuador, you've had arguments about nature being property, that Rights of Nature, you know, the arguments at least, can't ascend above or be elevated above property rights within the system. So especially in Columbia, which has this really up to - you know historically has had a really colonized kind of judicial structure.

So in each of those countries, the litigants, the plaintiffs in these cases mostly have been environmental groups or community environmental organizations, have had to override that bias within the systems to actually obtain these rulings.

So I think there's a lesson there for the U S. I think some of the international jurisprudence may boomerang around to U S courts. But in some ways for now, we've given up hope that Western courts are going to be able to deal with what's in front of them. Because folks think about courts as neutral, but they're not. They're dependent and restricted by precedent over the last 200, 300 years, that is the importance of property within that system. So I think the place where new stuff is going to happen first is probably tribal courts. So indigenous communities that have their own courts, that are enforcing a different value and culture system than Western courts, whether those be local courts, state courts, or federal courts within that Western system.

Randy: That's a really important point to end on for this segment. And we'll pick it up at the beginning of the next segment when we'll discuss a bit more about the long-term prognosis for Rights of Nature and the importance of tribal courts in the United States.

## **Segment Four**

Randy: Welcome back to Indigenous Perspectives and our guest Thomas Linzey. This is our final segment. And we're going to wrap it up with a big question, which is: where is all this leading in the long term? And what reasons do we have to be hopeful about the Rights of Nature making a difference?

Thomas: Yes, that's a great question. It used to be 20 years ago when we talked about Rights of Nature, that they would put you in a padded room. So I gave a tour of law schools in the United States with a South African lawyer, and about halfway through the presentation on the Rights of Nature at the law schools, we'd have the environmental law professors get up and leave the room! Because there are whole careers, and you know, there's a lot banked on this environmental regulatory system that's developed in the U S. And at least back then some folks felt that Rights of Nature was a real threat, that's a real threat to the basis, and kind of crazy and fringe. But that's since changed.

I mean, you have three law schools now: Tulane in New Orleans, Vermont Law School, Levin College of Law in Gainesville, Florida - which have held symposia on rights of nature.

Now where law professors, deans, have spoken, it's basically becoming more acceptable, part of the discourse. The Democratic Party in Florida has now put a Rights of Nature plank into their platform for the Democratic Party. The Democratic National Committee also did so four years ago, supporting indigenous communities that were passing Rights of Nature laws. And all of this cultural understanding, this - this kind of embrace of some of these concepts.

There's been a backlash as well in the states of Ohio and Florida. These state legislatures have now passed preemption laws, which prohibit cities, towns, villages, counties, municipalities from passing Rights of Nature laws at the local level. So now the lawyers are trying to figure out ways to override that preemption in different places, to continue to pass those laws.

But getting all the way back around to the question, what's the long term here? I think the short long term is that more tribal laws are passed, amending tribal constitutions, passing them within business communities of tribes as regular tribal laws, and then moving into tribal courts to enforce those.

One of the most exciting cases is brought right now by White Earth to protect wild rice on the White Earth reservation in Minnesota. So that's the first enforcement case that's been filed about threats - over threats to wild rice. So I think there needs to be more of those, you know, hundreds of those, rather than just a handful.

And then moving municipal laws, at the local level. People don't need to wait for lawyers to hold their hands. They can move these for themselves. In the US, most municipalities have initiative processes, so that if you want to get something passed as law in your city, you can actually collect signatures, go over the heads of your elected city council and put the laws in place through the ballot. That's what the Orange County Florida folks did.

So I think there need to be a thousand, two thousand, three thousand of these laws running to, in effect, change the law from below. And begin to create



these confrontations between the tribal courts and the regular courts, or *[between]* municipal courts and the people of a municipality. These confrontations help people understand why the existing system is so deficient and why a new one is needed. So kind of like building a new bridge while you're beginning to demolish the old one. So there needs to be many more of those new bridges.

And then the thing that excites us a lot is that in Florida, they're now circulating petitions statewide to qualify state constitutional amendments, which would recognize Rights of Nature, specifically rights of waterways in one amendment, rights of iconic species in the other. So like the Florida Panther, the Manatee, the Right Whale, Bottlenose Dolphin, iconic species in Florida, that would be recognized as having their own rights.

So bestowing these constitutionally based rights on species within Florida, as well as on waterways. That's very exciting. And qualification - at that level, it's very difficult, takes about a million signatures in Florida. So it might be another cycle after this one that it takes, but just that people are thinking about, how do you take that local level of law and actually use it to change those higher levels of law, is extremely important.

And then we've been involved in a thought exercise about what a new federal constitution would look like. That actually codifies Rights of Nature into the constitutional structure, the federal level, which of course is this huge mountain to climb, uphill battle kind of thing. But after all Ecuador has it in their national constitution. So it's not so foreign to that concept. But also the U S constitution was written back in the 1780s.

It's almost like, you know, Microsoft Word 1.0, and we have the 1780 system of law, which is based almost entirely on property protection. You won't find the word environment or nature anywhere within the US Constitution. You won't find the words organized labor. You won't find the word union. None of that stuff exists in the 1780s constitution that we have. Some of us have been thinking it's time to upgrade that US Constitution, so that it's actually an earth centered, or a nature centered, a survival centered kind of document, which means overhauling the US constitution, maybe amending it, writing a new one.

But I think what you're seeing right now is a movement, a movement of people, communities, towards those goals. Building the local, using the local to change the state, and then hopefully using the state to actually galvanize the conversation about what kind of structure we want to be governed under. And I think that federal constitutional structure has been used as a weapon against indigenous peoples, against organized labor, against the environmental activists and nature itself. We don't see the Constitution sometimes as a weapon against the things that we love, because it has good stuff in it, like the Bill of Rights. But we forget that the Bill of Rights had to be driven in over the objections of the people that wrote the Constitution in the first place. So even that was revolutionary!

So how do we keep the good, how do we throw out the bad, but how do we have a national source code, a DNA that actually supports the good stuff and the right stuff, rather than continuing to be used as a weapon against the work that activists, both indigenous and non-indigenous, need to be doing.

Randy: Thomas, we're deeply grateful, you know, Migwetch (in Potawatomi), thank you for the wisdom and the perspective and the - the effort that you bring to this endeavor. It is truly a reason for, for great hope. And I just, I want to acknowledge you know, immense gratitude for what you and your colleagues and your allies around the country and the world have done.

So to our viewers, I also want to say Migwetch, thank you for listening. I hope that this broadcast has given you time and space to reconnect with your roots in Mother Earth and with your ancestral roots. Before your busy day distracts you from this moment, I encourage you to take a few minutes to reach out and feel the presence of living flora and fauna, and perhaps even that of ancestors. Allow yourself to touch their presence, capture that moment and hold onto it.

And if you might, write to me and let me know about your experience. I can be reached at [randykritkausky@hushmail.com](mailto:randykritkausky@hushmail.com) or through my website, [randykritkausky.com](http://randykritkausky.com), where you can also find transcripts and supplemental materials of Indigenous Perspectives radio programs, like the one you've just listened to. And it will allow you to read as well as listen. Again, thank you, very much.

*“Indigenous Perspectives” monthly podcast is hosted by Randy Kritkausky, and broadcast on the fourth Thursday of each month, 12 noon Eastern Time (US & Canada), on HealthyLife.net.*



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