***THE RIVER AS PERSON***

“Rights Right Now: Classic, Contemporary, and Alternative Approaches"

2017 Graduate Law Students’ Conference at Osgoode Hall Law School

Toronto, February 23-24, 2017

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Ladies and gentlemen, thank you for inviting me here today. It is an honour and a privilege, and I hope to reward your trust by giving you some new ideas to chew on.

The law is variously described. Sir Thomas More called it a causeway that takes us over stormy waters. One of my professors deemed it ‘a technology of the self.’ Perhaps the best definition was tendered by Louis St-Laurent: that the law is one of the humanities. It makes us wiser, gentler, and better – more human. More than that, it is practical. All of the humanities enrich our understanding, but the law goes beyond that to action. It is the best way we have ever found to *get stuff done*.

But how does the law work its magic? What are its tools and weapons? The mightiest ones that have ever been devised: ideas embodied in words. It is the idea of the *person* that I shall touch on today.

Definitions of ‘person’ include ‘A human being, as distinguished from things or animals’ and, in proscriptive law, ‘a body of persons, or (in the wider sense, as a corporation) an aggregate of property . . . that is recognized by law as the subject of rights and duties.’ It is these rather narrow definitions that I now propose to expand.

The conceptual history of ‘person’ shows considerable change over the five thousand years of history. In the fourth millennium BCE, the only entities accorded full personhood seem to have been the gods. Their rights were prayer, obedience, and sacrifice; in return their main duty was to protect and reward their acolytes. In time the people closest to the gods, the priests who spoke with them and the kings whose power they legitimated, shared their aura and, by extension, their personhood. Bit by bit, beginning from on high, more and more people were considered to possess the rights and duties that marked them as persons. That coincided with the birth of law.

The concept of person was, and continues to be, bound up in rights: What may and may not be done to any entity. Rome has been sneered at for attaining mere grandeur, not Grecian glory: but I submit that the Roman concept of rule by law was, and is, as great an achievement as the *Iliad*. CIVES ROMANVS was a *person*. He had rights; he had privileges. He had to pay taxes, but he could not be detained, jailed, or punished without due process. In the eyes of the state, unlike slaves or foreigners, he *existed*. When Rome ruled the world, he ruled Rome.

Note I say ‘he.’ It took a further two millennia for the law to admit women to personhood – and the process is, I hate to say, still globally incomplete. Women in the UK were considered persons only in 1919, when Parliament accorded them the vote, culminating a century of three British Reform Bills that ended by granting the franchise to all adult males. The other Western democracies soon followed the Mother of Parliaments.

Thus, the concept of personhood continues to be a work in progress. One must ask: Where might it go next?

Well, perhaps to our non-human cousins. Ethological research now identifies traits in the more intelligent animals that were once thought to define humanity. Tool use? Chimpanzees fish for termites using sticks. Family bonds? Whales and elephants grieve the death of kin. Intentionality? Ravens cover photocells in Nunavut, switching on streetlights in daytime to warm their feet. Sheer play? I have an indelible memory of my son, then five years old, running back and forth along a glass aquarium wall behind which a Pacific sea otter swam figure 8s next to him in a joyous *pas de deux*. Many of these species are threatened by human activity. To more fully protect them, might *H.sapiens* accord them status under the law? And, if we do so, might we not extend this definitional protection to entities beyond genus *vertebrata* – even to *geography*?

This is a radical suggestion, in support of which I will table a paradigm-ic example. One of my STS colleagues studies a river in Costa Rica that that nation’s federal government has crippled by unchecked hydroelectric development. Due to the new power dams, fishers catch no fish; children have lost their swimming holes; a river that had for centuries sustained a viable culture and political economy has been effectively obliterated. And to what end? Costa Rica, Central America’s ‘rich coast,’ generates electricity it *does not need,* to sell to adjacent states. In so doing, the country has violated the ancient rights of a river and its people.

Now you may question my application of the word ‘rights’ to a river, which has agency – in that it affects things and people – but neither intelligence nor conscious intent. Rights are properly the possession of persons, both fleshly and, by consensus, corporate. These rights include life, liberty, and property, and although they are *not* inalienable – consider the legal deprivation of a convict’s freedom – there are, at least in Western nations, enormously powerful safeguards against their withdrawal.

What might the rights of a river look like? Let me toss out some possibilities. A river should, except in rare circumstances, have the following things absolutely guaranteed:

* Clean, unpolluted water (excepting natural turbidity)
* Minimum flow (seasonally adjusted)
* Vigorous, healthy natural ecosystems free of invasive species
* Natural channels, including natural evolutions over time (such as oxbows)

If we recall our initial definition of personhood, we see that it entails not only rights but also duties. What would we consider a river’s duties, and how might we hold the river to them? This is where it gets interesting. The duty to remain within its banks and not cause flooding, even though periodic overflow is a natural occurrence? Enforcing that duty would require intelligent intervention – precise geoengineering on a local scale. There are numerous examples of this process: the beautiful Muskoka region is in large part a human artifact, with flood control and emergency diversion plans in place. The entire country of Holland is a similar artifact.

Alternatively, we might identify a river’s historic flood plain and build nothing on it that would permanently be damaged by floodwater. This has been done with a Toronto urban river, the Don. After the deadly onset of Hurricane Hazel, regional conservation authorities elected to put nothing on the Don’s flood plain but parks and golf courses. If another hurricane hits, these land uses will quickly bounce back from full immersion – and the river’s main duty is fully met.

I mentioned as one of a river’s rights, the right to natural channels. I first began to think along these lines when I interviewed a forest hydrologist on the steep, rainy west coast of British Columbia. Human settlement had encroached on Chapman Creek, a big, brawling stream that in spate could toss around ten-tonne boulders like tennis balls. Millions of dollars, years of design and construction, and thousands of cubic metres of concrete, were poured into reconfiguring the stream’s channels – and every few years the river would simply flex its muscles and blow all that work away.

The hydrologist I talked to finally realized that the river could not be given orders, so to speak; but if it were left to flow where it *wanted* – that is the exact phrase he used – it would do so more easily and gently, even at spring runoff. So he looked up old-timers who had known the river for decades, and asked them where the river had originally flowed. Old maps helped as well. Fifteen years later, the river winds where it once wound, with vanishingly few overflows even during thaws. Accorded its personal right to natural channels, the river happily accepted the personal duty of staying inside them.

Yet even this success story still has dangers. A re-stabilized Chapman Creek has attracted so much new development that the lawns of the new houses threaten to drain the watercourse dry. Some additional intervention seems called for here, in the form of provincial or municipal legislation mandating drought-tolerant vegetation or even Astro Turf. If we must have lawns, let them be responsible: the Second Right of Rivers is at stake.

Finally, there are those who decry the cost in time, energy, and money of granting rights to rivers. Such objections were in fact applied to resist (happily, ineffectively) the restoration of Chapman Creek. Apart from the aesthetic considerations, however – a natural river being simply less appalling to look at than a straight concrete spillway – benefit-cost analyses have demonstrated that a refurbished river costs much, *much* less to maintain than its artificial predecessors. Even its natural detritus, logs and stones swept down from higher elevations, act as brakes on falling water, and form natural dams favourable to spawning salmon.

The lesson is clear: Use the law to be good to nature, and she will be good to you. Insult her, and you will regret it. Thank you.

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