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Indigenous Environmental Justice and Sustainability

Deborah McGregor

4.1 INTRODUCTION

This chapter offers an alternative vision for sustainable futures involving self-determined Indigenous environmental justice (EJ). It builds upon a distinct understanding of Indigenous EJ which asserts that the components necessary for Indigenous EJ are Indigenous knowledge systems, legal orders, and conceptions of justice that have existed for thousands of years.¹ This contribution will also offer preliminary thoughts on the need to decolonize internationally adopted conceptions of sustainable development expressed more recently through the post-2015 United Nations sustainable development agenda. Indigenous environmental injustice is very much an outcome of “unsustainable” and detrimental “development,” as well as gross violations of human and Indigenous rights as pointed to by Indigenous peoples globally for decades. Indigenous peoples have formulated alternative forms of sustainable development based in part on anti-colonial critiques of “sustainable development,” and have asserted their own self-determined sustainable future since the Earth Summit in 1992.

I will address the points above by analyzing key international Indigenous environmental declarations of the past two decades that offer anti-colonial critiques and insights, thus creating the space for alternative sustainable futures from an Indigenous perspective. I will then offer a distinct conception of sustainability and environmental justice through the Anishinabek ideal of *mino-mnaamodzawin* (living well) through the use of stories.² Importantly, I am not suggesting that I have the ability to pose the definitive Indigenous EJ framework; each nation *already* has its own intellectual and legal traditions to draw upon. In this contribution, I focus on the Anishinabek tradition. Realizing well-being with the Earth is a plural endeavor, as evident in the concept of *buen vivir* which calls for living well within a community, but an expanded view of community that includes, nature, animals, plants – the Earth itself (or what I would refer to as all of Creation). *Buen vivir* has found expression in Indigenous international sustainable development declarations, such as the outcome document from Rio+20 International Conference of Indigenous Peoples on Self-Determination and Sustainable Development.³

¹ D. McGregor, “Honouring Our Relations: An Anishinabe Perspective on Environmental Justice,” in J. Agyeman, R. Haluza-Delay, P. Cole, and P. O’Riley (eds.), *Speaking for Ourselves: Constructions of Environmental Justice in Canada* (Vancouver, BC: UBC Press, 2009), pp. 27–41.

² See V. Napoleon and H. Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” (2016) 61 *McGill Law Journal* 727; H. Stark, “Stories as Law: A Method to Live by,” in C. Anderson and J. O’Brien (eds.), *Sources and Methods in Indigenous Studies* (New York: Routledge, 2017), pp. 249–256.

³ At Earth Summit 2 in Rio De Janeiro, twenty years after the first summit in 1992, Indigenous Peoples gathered to formulate their own declaration as part of Rio + 20 International Conference of Indigenous Peoples on Self-

4.2 DECOLONIZING SUSTAINABLE DEVELOPMENT

Two decades after the Earth Summit in Rio de Janeiro, the outcome document “The Future We Want”⁴ was released following the UN Conference on Sustainable Development at Rio 2012, also known as Rio+20. Indigenous peoples were immediately critical of the view of sustainable development offered in the document. As an example, the portrayal of the earth as “natural capital” which would drive the “green economy” were viewed as problematic and contributing to the further institutionalization of colonialism.⁵ Access to key discussions and inclusion in decision-making at Rio+20 were also major concerns for Indigenous peoples at the conference, who had experienced ongoing procedural injustices at these international forums.

In spite of this, Indigenous peoples at Rio+20 were able to meet and produce some key outcome documents of their own. Chief among these, the Kari-Oca 2 Declaration: Indigenous Peoples Global Conference on Rio+20 and Mother Earth, points to a self-determined and desirable future from an Indigenous point of view.

In the absence of a true implementation of sustainable development, the world is now in a multiple ecological, economic, and climatic crisis; including biodiversity loss, desertification, de-glaciation, food, water, energy shortage, a worsening global economic recession, social instability, and crisis of values. In this sense, we recognize that much remains to be done by international agreements to respond adequately to the rights and needs of Indigenous Peoples. The actual contributions and potentials of our peoples must be recognized by a true sustainable development for our communities that allows each one of us to *Live Well*.⁶

In short, as long as significant Indigenous environmental injustices go unresolved under current sustainable development initiatives, self-determination for Indigenous peoples remains seriously compromised.⁷ The more recent post-2015 United Nations sustainable development agenda “Transforming Our World: The 2030 Agenda for Sustainable Development” offers some improvement, yet while Indigenous peoples called for a more human rights-based approach this time around, many Indigenous people remain dissatisfied and have offered further recommendations for improving the Sustainable Development Goals.⁸

Determination and Sustainable Development. The Declaration specifically engages the term *buen vivir* as offering an ancient yet alternative vision of how to achieve sustainability, stating: “Indigenous peoples call upon the world to return to dialogue and harmony with Mother Earth, and to adopt a new paradigm of civilization based on Buen Vivir – Living Well. In the spirit of humanity and our collective survival, dignity and well-being, we respectfully offer our cultural world views as an important foundation to collectively renew our relationships with each other and Mother Earth and to ensure Buen Vivir/ living well proceeds with integrity” (Rio+20 International Conference of Indigenous Peoples on Self-Determination and Sustainable Development June 19, 2012, Rio De Janeiro) Kari-Oca Declaration 2, 2012. Indigenous Peoples Global Conference on Rio +20 and Mother earth, Kari-Oca, Brazil, <https://rightsandresources.org/wp-content/exported-pdf/rio20finalpoliticaldeclaration.pdf>.

⁴ UN, “The Future We Want: Outcomes Document of the United Nations Conference on Sustainable Development,” RIO+20 United Nations Conference on Sustainable Development, June 20–22, 2012.

⁵ M. A. Frank, “The Future We Don’t Want: Indigenous Peoples at RIO+20,” *Cultural Survival Quarterly Magazine*, Sept. 2012, www.culturalsurvival.org/publications/cultural-survival-quarterly/future-we-dont-want-indigenous-peoples-rio20.

⁶ Kari-Oca 2 Declaration, Indigenous Peoples Global Conference on Rio+20 and Mother Earth, Kari-Oca Village at Sacred Kari-Oca Púku, Rio de Janeiro, Brazil, June 17, 2012, p. 4 (*italics added*).

⁷ D. McGregor, “Living Well with the Earth: Indigenous Rights and Environment,” in C. Lennox and D. Short (eds.), *Handbook of Indigenous Peoples’ Rights* (New York: Routledge, 2016), pp. 167–180.

⁸ “Indigenous Peoples Major Group: Policy Brief on Sustainable Development Goals and Post-2015 Development Agenda: A Working Draft,” 2015.

The achievement of Indigenous environmental justice continues to be an elusive and challenging target in international sustainable development forums. Resolving this situation necessarily involves conversations around human rights and Indigenous rights in particular. This has been expressed over the last decade through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),⁹ UN Resolution 64/292, Human Right to Water and Sanitation,¹⁰ and other instruments developed internationally to protect Indigenous and other vulnerable and marginalized peoples. As critically important as these instruments are for guiding humanity toward a just and sustainable future, they are not based on Indigenous intellectual or legal traditions (although in some cases, such as UNDRIP, they are informed by them). What these important instruments point to is the responsibility of the international Indigenous and human rights community to support the stated and desired aspirations of Indigenous peoples by compelling global governance structures (United Nations, World Bank, etc.), nation-states and others to comply with such instruments. The reality for most (if not all) Indigenous peoples is that they remain subject to foreign law (as opposed to their own legal orders) and thus realizing the “future they want” requires international actors to fully implement UNDRIP and other Indigenous declarations in support of Indigenous aspirations, rather than simply inserting and subsuming Indigenous peoples in dominant frameworks.

As other scholars have pointed out, extending conventional notions of environmental justice and sustainable futures to a narrative that considers or is inclusive of nonhuman entities through a “rights of nature” discourse demonstrates innovation based perhaps in part on Indigenous world views, such as the Universal Declaration on the Rights of Mother Earth.¹¹ However, EJ seen from an Indigenous point of view is more than this: it involves a unique set of considerations which draws Indigenous sovereignty, law, justice, and governance into the conversation.¹² It requires an examination of not only power relations among peoples, but also of the colonial legacy that continues to play out in laws, litigation, and policies that systematically, institutionally, and structurally enable ongoing assaults on Indigenous lands and lives.¹³ Furthermore, Indigenous communities have never been homogenous and this remains so; different communities are impacted differently by environmental injustices.¹⁴ Some groups are typically more vulnerable to the impacts of environmental injustice, and broader legal, institutional colonial and capitalist structures often further exacerbate this fact. Gender, for example, can be a defining characteristic for how a person or group may experience environ-

⁹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Dec. 13, 2007, UN Doc. A/RES/61/295.

¹⁰ UN General Assembly, *The Human Right to Water and Sanitation*, 29 May 2014, UN Doc. A/RES/64/292.

¹¹ See R. Bratspies, “Do We Need a Human Right to a Healthy Environment?” (2015) 13 *Santa Clara Journal of International Law* 31 at 68; C. G. Gonzalez, “Human Rights, Environmental Justice, and the Global South” (2015) 13 *Santa Clara Journal of International Law* 151 at 168.

¹² L. Westra, *Environmental Justice & the Rights of Indigenous Peoples: International & Domestic Legal Perspectives* (Padstow, UK: Earthscan, 2008); K. Whyte, “Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene” (2017) 55 *English Language Notes* 153.

¹³ Whyte, note 12.

¹⁴ B. Jacobs, “Environmental Racism on Indigenous Lands and Territories,” Canadian Political Science Association, May 20, 2010; K. Whyte, “Our Ancestors’ Dystopia Now: Indigenous Conservation and the Anthropocene,” in U. K. Heise, J. Christensen, and M. Niemann (eds.), *Routledge Companion to the Environmental Humanities* (Abingdon, UK: Routledge, 2017).

mental injustice.¹⁵ Furthermore, gender also informs distinct approaches to addressing environmental injustice.¹⁶

It is not enough to put forward alternative (often ancient) models of Indigenous EJ frameworks and expect them to flourish, as these must operate in a capitalist and colonial context. The more commonly accepted environmental justice conceptions must also be decolonized to generate the space for how we might “know” about these other conceptions of justice.¹⁷ From an Indigenous point of view, environmental injustices are symptomatic of ongoing processes of colonialism and dispossession, coupled with a literal transformation of the natural environment, that have been at work for over 500 years.¹⁸ Even though these destructive forces have shape-shifted and taken different forms over time, they have continued throughout to support the development and maintenance of an unsustainable global world order, politically, legally, economically, and environmentally. Western and colonial laws have thus failed and continue to fail Indigenous peoples.¹⁹ Indigenous peoples cannot be expected to rely solely on Western legal orders to achieve justice.

International actors and nation-states do, however, still have a critical role to play in support of Indigenous self-determined, sustainable futures, as they must challenge and decolonize their own laws and legal systems. Such measures are called for in UNDRIP, which presents opportunities to address certain aspects of Indigenous environmental justice, in particular by offering redress for the dispossession of Indigenous peoples of their lands, territories, and resources (something that continues to this day, as evidenced by ongoing resource extraction and development on Indigenous lands and waters without Indigenous consent or adequate consultation). UNDRIP seeks to address such injustices through a number of provisions, free, prior, and informed consent being an important principle for contributing to procedural justice. As UNDRIP states:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.²⁰

It is increasingly clear that current global and national environmental protection regimes are failing, with increasing species extinction, water pollution, contamination of the natural environment, scarcity, climate change, and other forms of environmental degradation all vying for our immediate attention.²¹ Ongoing and increasing conflict for control over lands and resources

¹⁵ Assembly of First Nations Environmental Stewardship Unit, “Environmental Health and First Nations Women: Research Paper,” March 2009; K. Vinyeta, K. P. Whyte, and K. Lynn, “Climate Change through an Intersectional Lens: Gendered Vulnerability and Resilience in Indigenous Communities in the United States,” United States Department of Agriculture, US Forest Service, Pacific Northwest Research Station, General Technical Report PNW-GTR-923, Dec. 2015; L. Williams, “Climate Change, Colonialism, and Women’s Well-being in Canada: What Is to Be Done?” (2018) 109 *Canadian Journal of Public Health* 268.

¹⁶ For example, to address water justice, the Ontario Native Women’s Association (ONWA) Indigenous Women’s Water Commission developed a specific tool kit for Indigenous women, drawing on specific women’s responsibilities and knowledge: Ontario Indigenous Women’s Water Commission, “Water Commission Toolkit,” Nov. 2014.

¹⁷ D. McGregor, “Mino-Mnaamodzawin: Achieving Indigenous Environmental Justice in Canada” (2018) 9 *Environment and Society* 7.

¹⁸ H. Davis and Z. Todd, “On the Importance of a Date, or Decolonizing the Anthropocene” (2017) 16 *Archives of Civil and Mechanical Engineering* 761; Whyte, note 12.

¹⁹ J. Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016).

²⁰ Art. 10.

²¹ M. Barlow, “Building the Case for the Universal Declaration of The Rights of Mother Earth,” in Council of Canadians, Fundacion Pachamama, and Global Exchange (eds.), *Does Nature Have Rights? Transforming*

throughout the world further demonstrates that existing environmental governance, policy, legal, and regulatory frameworks are floundering at every scale. Such points have been highlighted in Indigenous and non-Indigenous international, national, and regional environmental declarations over the past three decades.²² For example, the Mandaluyong Declaration of the Global Conference on Indigenous Women²³ stated that from the perspective of Indigenous women:

The worsening conflicts over ownership and access to our land and resources brought about by past and present discriminatory legal, political and economic systems, some conservation regimes and some climate change responses, as well as the unregulated behavior of corporations, are taking a serious toll on us. We have to continue nurturing our families and communities under such difficult situations.²⁴

These systems in fact aggressively undermine Indigenous peoples, in particular Indigenous women, in systemic, ongoing, and violent ways. The Mandaluyong Declaration adds that “The Bagua Massacre in Peru in June 2009 where the military fired upon Indigenous peoples protesting against discriminatory laws which favored mining corporations over them represents what is happening to many Indigenous peoples in Africa, Latin America and Asia.”²⁵ It is simply not rational for Indigenous peoples to rely on these global, national, and regional economic and political frameworks for environmental justice and a sustainable future. Various Indigenous international environmental declarations over the decades have articulated similar sentiments and challenges and have offered calls to action to reorient the dominant world order’s unsustainable paradigms.²⁶

4.3 INDIGENOUS ENVIRONMENTAL JUSTICE

The environmental justice contributions included in this volume, several of which address Indigenous rights and Indigenous law, are important and will remain so for years to come, particularly in diagnosing injustice and advocating for its elimination. Through my own contribution I hope to generate a nuanced understanding of *Indigenous* EJ by building on my earlier work which establishes that environmental justice is relevant beyond the human dimension. In so doing, I will draw upon knowledge and laws that originate from the lands and waters themselves.²⁷

In earlier theoretical explorations, I examined how Indigenous EJ is not a new concept and has existed for millennia.²⁸ I pointed out that simply decolonizing or indigenizing the concept of EJ will not

Grassroots Organizing to Protect People and the Planet (Ottawa: Council of Canadians, Fundacion Pachamama, and Global Exchange, 2010), pp. 6–11.

²² McGregor, note 7; Whyte, note 13.

²³ TEBREBBA, Indigenous Peoples’ International Centre for Policy Research and Education, *Mandaluyong Declaration of the Global Conference on Indigenous Women, Climate Change and REDD Plus*, Legend Villas, Mandaluyong, Metro Manila, Philippines, Nov. 18–19, 2010.

²⁴ *Ibid.*, p. 2.

²⁵ *Ibid.*, p. 3.

²⁶ McGregor, note 7.

²⁷ Indigenous legal orders convey that it is not ethical to take credit for knowledge that already exists in “Nature” or on the “Land.” J. Dumont, *Indigenous Intelligence* (Sudbury: University of Sudbury, 2006). For humans to claim ownership over knowledge of the “more-than-human,” see M. Nelson, “The Hyrdomythology of the Anishinaabeg: Will Mishipizhu Survive Climate Change, or Is He Creating It?,” in J. Doerfler, J. Sinclair, and H. Stark (eds.), *Centering Anishinaabeg Studies: Understanding the World through Stories* (East Lansing, MI: Michigan State University, 2013), pp. 213–233.

²⁸ McGregor, note 1.

fully illuminate a profound understanding and practice of EJ.²⁹ The foundation of Indigenous thought lies in the theories, philosophies, principles, and values of Indigenous peoples, in all their diversity, around the world. Processes of “decolonizing” or “indigenizing” are indeed necessary undertakings, and UNDRIP and other human rights instruments present opportunities for the reform of dominant legal orders to address injustice. However, these instruments are intended to decolonize global actors and nation-states, and their epistemological origins differ from those of Indigenous peoples. Indigenous legal orders flow from Indigenous peoples’ own long-standing relationships to and understandings of the natural/spiritual world. Further insights into this fundamental dichotomy are required to articulate, from an Indigenous perspective, the laws, norms, protocols, and traditions essential for achieving Indigenous EJ.

Although diverse, one of the major commonalities of Indigenous perspectives in relation to justice, and a key way in which Indigenous perspectives differ markedly from their non-Indigenous counterparts, involves the conception of humanity’s relationships with “other orders of beings,”³⁰ or what Melissa Nelson calls the “more-than human world.”³¹ Indigenous intellectual and legal systems draw on a set of Indigenous metaphysical, ontological, and epistemological assumptions about the place of humanity in the world which describe how people should relate to all of Creation.³² As illustrated by the stories at the conclusion of this chapter, the instructions, protocols, laws, and ethics that are conveyed in Anishinabek *inaakonigewin* (law),³³ for example, guide humanity in proper conduct, and these instructions often come directly from the natural world (water, plants, wind, animals, etc.). The Anishinabek³⁴ take clan names (*dodem*) from among the first animals that are said to have died for the people, and as such are considered “relatives.”³⁵ As well, many Anishinabek characterize the Earth as a living entity with feelings, thoughts, and agency.³⁶

Anishinabek legal scholar John Borrows affirms that, “Anishinabek law provides guidance about how to theorize, practice, and order our associations with the Earth, and does so in a way

²⁹ McGregor, note 17.

³⁰ C. King, *Balancing Two Worlds: Jean-Baptiste Assiginack and the Odawa Nation, 1768–1866* (Saskatoon: Articulate Eye, 2013), p. 11.

³¹ Nelson, note 27. For the Anishinabek, our sources of knowledge are thousands of years old, or even millions or more when you consider who some of our relatives are. Over time, we have developed our own epistemologies for understanding and relating to these relatives and teachers. Academic scholarship increasingly refers to these teachers/relatives as the “other-than-human,” the “more-than-human,” or the “non-human.” S. C. Larsen and J. T. Johnson, *Being Together in Place: Indigenous Coexistence in a More Than Human World* (Minnesota: University of Minnesota Press, 2017). Because such terminology continues to place humanity at the “center,” Indigenous scholars such as Robin Kimmerer and Kyle Whyte choose other terms (e.g. “teachers” and “relatives”) to refer to other beings/entities (R. Wall Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013); Whyte, note 12.

³² J. Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

³³ A. Craft, “Giving and Receiving Life from *Anishinaabe nibi inaakonigewin* (Our Water Law) Research,” in J. Thorpe, S. Rutherford, and A. Sandberg (eds.), *Methodological Challenges in Nature-Culture and Environmental History Research* (New York: Routledge, 2017), pp. 105–119.

³⁴ The Anishinabek, historically and in the present day, have lived and continue to live around the middle of North America, particularly in the Great Lakes region and the prairies northwest of the Lakes (Borrows, note 32). Prior to this, however, Anishinabek ancestors migrated from their original homeland on the eastern shores of North America and thus currently live along the shores of St. Lawrence to the Great Lakes and further west. E. Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Hayward, WI: Indian Country Communications, 1988).

³⁵ D. Johnston, *Respecting and Protecting the Sacred*, prepared for the Ipperwash Inquiry, Ministry of the Attorney General, 2006.

³⁶ *Ibid.*

that produces answers that are very different from those found in other sources.”³⁷ In this sense, by grounding conceptions of Indigenous justice (and injustice) in Anishinabek law, possibilities open up for innovation in Indigenous conceptions of justice and sustainability.

4.4 SOURCES OF KNOWLEDGE

Ontologically, an important aspect of Indigenous knowledge systems, and Anishinabek knowledge systems in particular, is that we acknowledge the lands and the waters themselves as relatives and teachers, and that they are a significant source of knowledge.³⁸ We learn from them about how to be in the world, and they also form a critical source of law.³⁹

Utilizing Indigenous knowledge systems as a framework for analysis, EJ applies to all “relatives” in Creation, not just people. Indigenous EJ encompasses the duties and responsibilities of people to all beings, and conversely their responsibilities to people. EJ is regarded as a question of balance and harmony, of reciprocity and respect, among all beings in Creation; not just between humans, but among all “relatives.”

Indigenous laws flow from different sources (from the land, the Creator, the spiritual realm) and are embedded in Place, although laws can be negotiated across nations and large geographic spaces, as seen in nation-to-nation treaties. They convey particular types of relationships with and responsibilities to each other as peoples, the natural world or environment, the ancestors, the spirit world, and future generations.⁴⁰

Inherent in Anishinabek law are reciprocal responsibilities and obligations that are to be met to ensure harmonious relations. With rights come responsibilities. Responsibilities lie at the heart of Anishinabek legal structure, according to Aimee Craft.⁴¹ Anishinabek legal obligations and responsibilities consider relationships among all our relations, including the spirit world, the ancestors, those yet to come, and other powerful beings that inhabit the peopled cosmos. These legal considerations are supported by Indigenous knowledge systems (IKS), which emphasize not just the practice of acquiring knowledge and perhaps utilizing it, but also acquiring the knowledge needed to ensure harmonious and just relationships. The Anishinabek developed laws, protocols, and practices over time to ensure that relationships with other orders of beings remained in balance, and that life would continue. In this sense, as knowledge can come directly from Creation, or the “natural world,” all beings/entities/peoples have responsibilities to carry out to ensure the continuance of Creation to support life.

The idea of Place/Land/Peopled Landscape⁴² is paramount in this theoretical framework.⁴³ IKS and laws are read from the land.⁴⁴ The primary sources of Anishinabek laws are experiences from

³⁷ Borrows, note 32, p. 269.

³⁸ Kimmerer, note 31.

³⁹ Borrows, note 32; A. Craft, *Anishinaabe Nibi Inaakonigewin Report: Reflecting the Water Laws Research Gathering*, University of Manitoba Human Rights Research (CHRR) and the Public Interest Law Centre, Spring 2014.

⁴⁰ Borrows, note 32; Johnston, note 35.

⁴¹ Craft, note 39.

⁴² In this sense, knowledge can come directly from the Land (and by this I mean all of Creation). As expressed by Indigenous scholar Sandra Styres and collaborator Dawn Zinga, “For us, this refers to land as a living entity providing the central underpinnings for all life, the understanding of interconnected relationships, and is underscored by her capitalization as a proper name” (D. Zinga and S. Styres, “Pedagogy of the Land: Tensions, Challenges, and Contradictions” (2011) 4 *First Nations Perspectives* 59 at 62). All beings/entities/peoples have responsibilities to carry out in order to ensure the continuance of Creation.

⁴³ *Ibid.*; Larsen and Johnson, note 31.

⁴⁴ Borrows, note 31; Kimmerer, note 31.

living in and observing the natural world/Creation.⁴⁵ Natural law comes from a natural, spiritual place.⁴⁶ Law, then, is all around us, if we know how to read it. In other words, properly understanding and enacting natural law requires vast knowledge of the natural world/environment, the “more-than-human” world, and how it functions in ensuring the continuance of all of Creation.

Anishinabek EJ would include obligations and responsibilities to all of Creation, including all beings, the ancestors and those yet to come, and the spirit world; it is not limited to the living or the “natural” world as seen through Western eyes.⁴⁷ Anishinabek justice would be supported by Anishinabek conceptions of legal and knowledge systems which require that people must cooperate with all beings in Creation. Fundamentally, Indigenous conceptions of EJ, based on Indigenous knowledge, convey a profound understanding of humanity’s place in the world, extending beyond the aspirations and needs of humanity to other beings/persons/relatives/teachers (plants, animals, moon, stars, etc.). Such world views and ontologies, in which everything is alive and must be related to as such,⁴⁸ require distinct understandings and practices to influence conceptions of laws, knowledge, and justice. It is, therefore, not enough to simply incorporate Indigenous perspectives into existing EJ theoretical and methodological frameworks (as valuable as these are). Explicit effort must be made to decolonize EJ theoretical frameworks and underlying assumptions about human–nature relationships. Furthermore, the narrative must go beyond “indigenizing” EJ to envision distinct formulations of Indigenous EJ based on the diversity of Indigenous world view, theory, ontology, epistemology, and intellectual and legal traditions.

Indigenous legal traditions reflect a set of reciprocal relationships and a coexistence with the natural world.⁴⁹ Balanced relationships are sought between humans and other entities in the natural world (animals, plants, birds, forests, waters, etc.) as well as with the ancestors⁵⁰ and future generations.⁵¹ The outcome of these relationships is *mino-mnaamodzawin*, the ideal that ensures a sustainable future for all life.

4.5 MINO-MNAAMODZAWIN

The Anishinaabe concept of *mino-mnaamodzawin* (the “good life,” or “living well”) offers protocols for ensuring that balanced relationships among all beings of Creation are maintained. Concepts such as this could provide significant guidance as we work toward achieving a more sustainable society. *Mino-mnaamodzawin* (some communities use “minobimaatasiwin”), broadly speaking, is considered to be the overriding goal of the Anishinabek, both individually and collectively. Dr. Cecile King describes *mino-mnaamodzawin* as the “art of living well [which] forms the ideal that Anishinabek strive for.”⁵² Living well requires maintaining good and balanced relations with each other as humans, as well as with “other than human persons.”⁵³ Anishinaabe leader and activist Winona LaDuke, who began applying the concept to

⁴⁵ King, note 30.

⁴⁶ Craft, note 39.

⁴⁷ McGregor, note 1.

⁴⁸ Dumont, note 27.

⁴⁹ Larsen and Johnson, note 31.

⁵⁰ Johnston, note 35.

⁵¹ D. McGregor, “Indigenous Women, Water Justice and Zaagidowin (Love)” (2015) 30 *Canadian Woman Studies/les cahiers de la femme* 71.

⁵² King, note 30.

⁵³ T. Smith, *The Island of the Anishnaabeg: Thunderers and Water Monsters in the Traditional Ojibwe Life-World* (Moscow: University of Idaho Press, 1995).

environmental justice issues, pointed out that the ideal is supported by Indigenous knowledge systems, legal orders, and especially natural law.⁵⁴

Mino-mnaamodzawin, then, does not apply to humanity alone. Seeking redress, restoration, or reconciliation purely for humans and their environmental abuses, violations, and destruction will not result in balanced relationships. All beings have the potential to realize *mino-mnaamodzawin*.⁵⁵ The purpose of reconciliation in this context is to sustain life for all “relations”; it is not strictly a human endeavor. Many stories point to humans’ tendency to be the most destructive and thus in need of more guidance than other entities or beings.⁵⁶ However, the obligations to attain *mino-mnaamodzawin* are *mutual* and other beings or entities also have their obligations and duties to perform. *Mino-mnaamodzawin* recognizes that other beings or entities in Creation also have their own laws (natural laws) that they must follow to ensure balance. A commitment to *mino-mnaamodzawin* has the potential to reconfigure and reclaim appropriate relationships with other orders of beings to achieve justice.

The relationships that Anishinabek are responsible for include those with all entities and beings in the world, some of which have far more power than humans.⁵⁷ *Mino-mnaamodzawin* points to the responsibility to seek well-being with other orders of beings or persons through processes of relational accountability. Relational accountability extends beyond nurturing relations among humans and includes “limitless ‘nonhuman’ entities that are usually described in western contexts as elements, animals, trees, landscapes, and so on.”⁵⁸

As noted above, I am not in any way suggesting that I have the ability to pose the definitive Indigenous EJ framework as each nation *already* has its own intellectual and legal traditions to draw upon. In this contribution I focus on the Anishinabek tradition, a tradition that shares common features with the concept of *buen vivir* as expressed in Indigenous international sustainable development declarations, such as the outcome document from the Rio+20 International Conference of Indigenous Peoples on Self-Determination and Sustainable Development.⁵⁹

I will share stories that illustrate the intersection between knowledge and legal orders. Utilizing stories as a source of knowledge to convey Indigenous legal orders is a defining characteristic of emerging Indigenous legal, governance, and political scholarship.⁶⁰ In any story there are multiple layers and meanings to be derived, depending on how prepared the listener (or, in this case, the reader) is to process and make sense of the story. The next section provides insight into the epistemology and ontology of Indigenous knowledge systems.

⁵⁴ W. LaDuke, “Traditional Ecological Knowledge and Environmental Futures” (1994) 5 *Colorado Journal of International Environmental Law and Policy* 126.

⁵⁵ Indigenous peoples’ continued assertion of the rights of Mother Earth to live can no longer be seen as simply philosophical, unrealistic reflections. On the contrary, they are becoming a reality in certain state legal systems. Emerging conceptual frameworks such as Earth Jurisprudence, Earth Justice, and Wild Law are gaining currency and increasingly becoming the topic of much debate. For example, Earth Jurisprudence is a legal philosophy that emphasizes the interconnections and interdependence of humanity and the natural world. A. L. Schillmoller and A. Pelizzon, “Mapping the Terrain of Earth Jurisprudence: Landscape, Thresholds and Horizons” (2013) 3 *Environmental and Earth Law Journal* 1. Earth Jurisprudence challenges the human-focused nature of current legal systems and promotes laws that protect nature in its own right (nature not as property). McGregor, note 7.

⁵⁶ Craft, note 33.

⁵⁷ Smith, note 53.

⁵⁸ S. Suchet-Pearson, S. Wright, K. Lloyd, L. Burarrwanga, and P. Hodge, “Footprints across the Beach: Beyond Researcher-Centered Methodologies,” in J. Johnson and S. Larson (eds.), *A Deeper Sense of Place: Stories and Journey of Indigenous-Academic Collaboration* (Corvallis: Oregon State University Press, 2013), p. 33.

⁵⁹ See note 3.

⁶⁰ Borrows, notes 19 and 32; Napoleon and Friedland, note 2; Stark, note 2.

The stories below illustrate how knowledge and legal orders are derived directly from the natural and spiritual world, two sources of Anishinabek law. It is up to humans to act on the knowledge shared through these realms by enacting the duties and responsibilities that come with the knowledge. The other orders of being share knowledge with people, and as seen below, humans deliberate on the best course of action (another source of Anishinabek law). It is recognized that, although it has been shared with them, the knowledge is not owned by the people.⁶¹ Knowledge in this context is not necessarily of a human origin.

4.6 STORY 1: A WOMAN'S VOICE⁶²

Ishigamizige Giizis (the boiling sap moon) is in the springtime, when the snow and ice begin to melt, and water begins to flow. The days are warm with the sunshine, but the nights are still cold. During one such time, the Anishinabek were suffering and in a state of crisis. It had been a long and difficult winter and there was little food available. The winter stores had been used up and the people were desperate. The children were crying from hunger.

There was little hope, the hunters came up empty, and could not travel far, as all were weak from hunger. Many people died. One day, a woman began to get herself and her three children ready to leave the camp. The night before they left, she went out a ways from the camp and put down tobacco. Under the full moon, she prayed for strength and direction, for she knew that her children would die of starvation if she did not do something. Some of the other women, Mothers and Grandmothers, followed her and began to pray with her. While they were praying, a voice began to sing. When the prayer was finished, the voice, that seemed to come from a huge tree spoke and said “*Waaban nanaawwneg omaagibzhak*,” “Tomorrow at mid day come here.”⁶³

Some women were afraid and left, while others stayed to discuss what had occurred. These latter women decided to do what the spirit voice had instructed them to do, hopeful that the voice/spirit would help guide them in this time of great need. The next day was sunny and warm and the remaining people gathered at the huge tree. A prayer was offered by an Elder asking for direction and assistance. As the Elder prayed, water flowed from the sunny side of the tree, much to the surprise of those gathered. Not sure what to do, it was the children, curious and fearless, who tasted the water first and told the others the water tasted good. The water was sap from the maple tree: *zhiiagamide* – sweet water.

The people used birch bark vessels, *makaks*, to catch the sap, Elders were nourished, and children were so happy and grateful for the gift. And so it was the people were saved from starvation. The sap is often referred to as the sweet medicine water and the tree is referred to as the tree of life. The trees offer food and nourishment in the spring when there is little food available. The *Aniaatig* (maple tree) is honored for its gift to the people and the knowledge for how to obtain the sap.⁶⁴

The story of how sweet sap, maple syrup, and maple sugar came to the people, at a time of year when the need was great, conveys many teachings. It is partly a warning not to romanticize the past, and that life for the Anishinabek for thousands of years was intellectually and physically challenging as well as beautiful. It also recognizes that people, in this case the Anishinabek, had

⁶¹ In this world view, the natural world can be said to have intellectual property rights. Laws and protocols already exist in the Anishinabek governance system to address such concerns.

⁶² This story is a summary of the version told by Edward Benton-Banai in E. Benton-Banai, *The Anishinaabe Almanac: Living through the Seasons* (M'Chigeen, ON: Kenjgewin Teg Educational Institute, 2008).

⁶³ Ibid.

⁶⁴ Ibid., p. 17.

to seek new knowledge in order to flourish. When necessary, knowledge would come to the Anishinabek or be sought in different ways.⁶⁵

The source of the knowledge in this story is of particular interest here. The teachings come from the tree itself; the *Aniaatig* has agency and decides to share its life force with the people and conveys this message as knowledge of how to survive and enjoy a great gift during that difficult time of year. The *Aniaatig* comes to the aid of the people, particularly because of the women who were seeking guidance and instruction through prayer and contemplation. The knowledge comes from the natural and spiritual world, yet it is up to the humans to decide what do with the knowledge that has been shared with them. Innovation is therefore still required (e.g. utilizing the birch bark vessels, boiling the sap to produce maple syrup and sugar).

In the sharing of the knowledge, a relationship is developed between the people and the trees. A set of mutual obligations and responsibilities is established. The Anishinabek honor the *Aniaatig* by creating ceremonies, songs, and prayers to remember its gifts. In another version of this story, also told by Anishinabe Elder Benton-Banai, it is the bear (*mukwa*) that shares knowledge of how to obtain sap from the trees with the people to again save them from sure starvation. The bear teaches the Anishinabek how to find nourishment at the time of year (spring) when food is scarce.

In both these stories it is the tree (plant being) or the bear (animal being) that shares its knowledge. The knowledge shared is a gift to support the continuance of life. A gift obligates the receiver to “know” how to honor the gift appropriately. For example, in our family, at the *ziizaaakodokeng* (where we make maple syrup), we tap the trees and make syrup every year during the time of the *Ishigamizige Giizis*. An important obligation to the *Aniaatig* on our part (as humans) is to receive the gift of the *ziizabaakodaabo* (sap) and to *know* how to *miizhiyaang* (receive) that gift that saved my ancestors from certain starvation. In my family, based on our knowledge and understanding of the gift of *ziizabaakodaabo*, the legal obligation to the *Aniaatig* is to refrain from “taking” from the trees. The legal obligation is to the tree, not only its spirit, but its very being. In other words, we have an obligation to sustain the biology and ecology of the *Aniaatig*. We must also sustain the ecological system that supports the trees/forest. In order to fully honor the gift of *Ziizabaakodaabo*, we also have to obtain and act on Anishinabek *Gikensowin*/knowledge (which encompasses ecological/environmental knowledge).

This means, for example, that we do not “take” sap by setting up a “pipeline” system, where lines are hooked up to the trees and sap sent to a central location for boiling. We, as Anishinabek, have the capacity to do so, but we do not. There is a profound intergenerational understanding that each tree must be approached every day (as in when tapping and collecting the sap) and its well-being observed. Is each tree still prepared to “give” sap, or does it need a rest? Such relationships are lost when more automated systems are used, and when the well-being of each tree is unknown. It becomes tempting when using a pipeline system to take more than is actually needed to nourish the family and others in need (greed may arise). The legal principal of *knowing how* to receive a *gift* from the *Aniaatig*, rather than to *take or extract a resource* is fundamental to understanding law that supports justice, well-being, or *mino-mnaa-modzawin* for the *Aniaatig*. *Ziizabaakodaabo* is not a resource; it is life, it is nourishment. Similarly, the *Aniaatig* is not a resource, but the tree of life. Ensuring well-being for the

⁶⁵ D. McGregor and S. Plain, “Anishnabe Research Theory and Practice: Place Based Research,” in A. Corbiere, M. A. Corbiere, D. McGregor, and C. Migwans (eds.), *Anishnaabewin niwîn: Four Rising Winds* (M’Chigeeng, ON: Ojibew Cultural Foundation, 2013).

Aniaatig, the knowledge and legal principles gained from the tree/bear therefore supports sustainability.⁶⁶

4.7 STORY 2: THE PIPE AND THE EAGLE⁶⁷

The following story illustrates that sometimes it is not humans who are the arbiters of justice. We lack the capacity on occasion, despite our great intelligence, to ensure justice for all beings in Creation. Sometimes it is the compassion, knowledge, actions, and interventions of other beings (plants/animals, etc.) that must be deployed to ensure the continuance of life.

The Anishinabek received many gifts (knowledge, laws, drums, pipes, ceremonies, *semma* (tobacco) from the Creator/Creation to provide them with the spiritual strength to support the continuance of life. There were also various helpers and teachers sent to assist the people in learning how to live well and coexist with the rest of Creation. Over time, however, the Anishinabek came to forget the teachings of love, respect, honor, generosity, humility, truth, and bravery. Instead, they began to disregard the natural laws and to behave disrespectfully toward other orders of beings. The people became vain and arrogant, and used the gifts from the Creator/Creation, that were supposed to remind us of our duties, obligations, and responsibilities to Creation, against other life for their own gain and personal power, and to feed their own ego and greed.

The Creator/Creation became upset about the abuse and corruption of these vitally important gifts that were intended to engender peace, humility, and generosity, and to support life-giving ways. A spirit was therefore sent to destroy the Earth after the Sun rose four times. On the fourth day, just before the Sun rises, the Creator/Creation is about to set forth destruction.

Just before dawn on the fourth day, the *Mi-gi-zi'* (eagle) flew out of the crack between darkness and light – that edge between night and day. He flew straight into the sky. He flew so high that he flew completely out of sight. He flew to talk with the Creator. The Sun was about come over the rim of the Earth. The eagle screamed four times to get the Creator's attention. The Creator saw the eagle and held back the Sun. At the time of this *be-da'-bun* ("false dawn"), the eagle talked to the Creator.⁶⁸

The Eagle petitioned the Creator/Creation in an effort to save the people. *Mi-gi-zi'* acknowledged that while indeed there was corruption and evil in the world and people had forgotten their instructions, the unborn could still learn and therefore there was still hope. The Eagle reported that although things looked grim there were still a few who were humble and trying to live in harmony with the Earth. The Eagle appealed to the Creator/Creation and asked that, if he could find any people who still followed the original instructions, who cared for and lived well with the Earth, who knew how to use the gifts respectfully and to support life, would life then be spared on Earth?

Let me fly over the Earth each day at dawn and look over the people. As long as I can report to you each day that there is still one person who sounds the Waterdrum or uses Tobacco and the Pipe in the proper way, I beg you to spare the Earth for the sake the unborn. It is in these unborn that there is still hope for the Earth's people to correct their ways.⁶⁹

⁶⁶ This story also challenges the view that Indigenous peoples were simply too primitive to cause widespread environmental destruction. We could have, but we did not. We could commercialize the Ziizaakodokeng, but we do not. Doing so would cross the line and become "taking" rather than "receiving." The laws of nature are intended to support life.

⁶⁷ Adapted from Benton-Banai, note 34.

⁶⁸ *Ibid.*, p. 80.

⁶⁹ *Ibid.*, pp. 80–82.

The Creator/Creation thus holds back the destruction and entrusts the Eagle with the responsibility to fly over the Earth each day to find at least one good person who continues to live according to *mino-mnaamodzawin* and report back to the Creator/Creation his observations. Every day, the Eagle flies over the Earth to find at least one family or person who still practices the traditions. The unborn, the Eagle says, can learn from the few who still follow the instructions to live in harmony with the Earth, and life is spared. As Benton-Benai observes “We owe our lives and the lives of our children to the Eagle.”⁷⁰

There are many important teachings and messages associated with this story. For example, we must remember that it is Eagle who petitions on our behalf; we are not able to save ourselves as humanity. Despite our intelligence, we are destructive; yet we have been spared despite doing everything to cause our own demise. We are saved again by our relatives, who have compassion and pity for us. Second, through our arrogance, we have orchestrated our own destruction. Yet we continue to ignore our responsibilities to life and the unborn. Third, the Eagle only needs to find one person still using the gifts as instructed to support life. If there is one family, or even one person, there is still hope, and life will continue for another day.

The knowledge and interventions in the story of the Pipe and the Eagle are not human-derived or enacted. Indigenous, or in this particular case, Anishinabek, legal orders can account for this phenomenon through natural law – the laws that are derived from our knowledge of Creation and life. The knowledge and laws that have a profound influence on our lives as humans are enacted through spiritual and natural laws and our obligations to the future – the unborn.⁷¹

4.8 CONCLUSION

We have relied, and I suggest continue to rely, on knowledge being shared by our relatives, including the lands and the waters, in order to survive. But we must relearn how to receive these gifts and knowledge and not to abuse them for our own gain or vanity. As the stories point to above, we have faced our demise before and count on our relatives to intercede on our behalf. As people, we have duties and obligations to deliberate on the knowledge and laws from other sources and learn how to honor and enact them to ensure harmonious relations in Creation. These laws may be codified in various ways and passed down from generation to generation. The stories also convey that despite the gifts of will and intelligence given to us, we can be highly destructive, to which the current planetary ecological crisis attests. We, in other words, have choices to make.

I suggest that the knowledge we need to survive as humanity may not derive strictly from the “human realm”; we need to revitalize and relearn the traditions that will ensure all knowledge is respected, including that from our various nonhuman relatives. We have not been able to solve the greatest challenges of our time on our own, despite great advances in science and technology. Human-centered and generated knowledge has not proven to be enough.

If Indigenous knowledge and legal traditions with respect to such concepts as *mino-mnaamodzawin* remain invisible or unacknowledged, then how can environmental justice be

⁷⁰ Ibid., p. 82.

⁷¹ I also understand this story as a climate justice story. Our unsustainable development/destruction mode of living threatens current and future generations. It is the “love” born by the Eagle that spares us despite our arrogance as humanity. Love for humanity, all beings, and all life is rarely offered as a motivation for environmental justice or sustainability.

achieved? Can sustainability be attained based on human knowledge only? The stories related here and the knowledge they convey may offer appropriate approaches to achieving the justice and sustainability that is so desperately needed. Thus far, it is the people who have failed; the *Aniaatig* and the Eagle continue to do their work. Without fail, they continue to fulfil their obligations.

PROOF