

BODIES OF WATER AND LEGAL PERSONHOOD

DOCUMENT 1: VIDEO CLIP

1- Watch the following Ted talk and answer the questions



Recommendation: Watch the talk first without the subtitles. Then watch it again with the English subtitles on if need be.

- 1) Who is Kelsey Leonard?
(*job, origins ...*)
- 2) What do we learn about her community? Indigenous people in general?
- 3) What issue is she raising?
- 4) a) How do we usually think about water?
b) How can we transform the way we think about water according to her? What would be the effect?
- 5) What water crises does she mention? (*reminder: 1 crisis / 2 crises*)
- 6) In what ways are Native Americans particularly affected?
- 7) Explain the sentence: "Race is the strongest predictor of water and sanitation access".
- 8) Why does she question "the moral compass of the Western world"?
- 9) Explain what the concept of "legal personhood" refers to and how it would benefit bodies and water if they were granted this status. In what ways would Indigenous peoples also benefit?
- 10) What concrete solutions does she propose? As individuals, what does she encourage us to do?

GRAMMAR FOCUS

- **The present perfect**

Before doing the exercise, [read the lessons on the present perfect from the English grammar today section of the Cambridge dictionary](#).

Conjugate the verbs in brackets in the present perfect and finish the sentences when required based on the information from the document you have listened.

1. The Shinnecock _____ (*always / have*) a connection to water.
2. According to Kelsey Leonard, many people _____ (*forget*) that they are connected to water.
3. Indigenous people _____ (*know*) the value of water _____ a long time due to _____.
4. There _____ (*be*) more and more water crises over the past few years due to _____.
5. Kelsey Leonard's talk _____ (*bring*) attention to the issue of water security so as to _____.
6. Kelsey Leonard _____ (*not / choose*) to accuse big polluters because _____.

>> [Visit Epigram to further practice the present perfect](#)

- **Imagined conditions**

[Read this lesson from the English grammar today section of the Cambridge dictionary](#) on first, second and third conditionals to talk about imagined conditions.

a) Read the prophecy Kelsey Leonard recounts:

*"A dear friend, mentor, water walker, Nokomis, grandmother, Josephine Mandamin-ba - she told me of a prophecy that comes from her people, the Anishinaabe of the Midewiwin Society. And in that prophecy, she told me that it tells of a day that will come where an ounce of water costs more than an ounce of gold." (*ounce = 28g).*

b) Now, make more sentences about imagined conditions. Conjugate the verbs and finish the sentences when required.

1. If an ounce of water _____ (*be*) as expensive as an ounce of gold, _____.
2. If water _____ (*become*) very expensive, _____.
3. If we _____ (*not / lose*) our connection with water, we _____ (*value/certainly*) it more today.
4. If the treaties that Canada and the United States first signed with Indigenous nations _____ (*honor*), they _____ (*use / probably*) rivers in a more sustainable way.
5. If her grandmother _____ (*not / tell*) her the prophecy, _____ (*Kelsey / fight*) for the rights of rivers today?

DOCUMENT 2: Should rivers have the same rights as people?

By Patrick Barkham - Sun 25 Jul 2021, The Guardian (abridged)

1. The Magpie River **winds** majestically through the forests of Quebec for nearly 200 miles. Its thundering ribbon of blue is cherished by kayakers, white-water rafters and the indigenous Innu people of Ekuanitshit. Earlier this year, in a first for Canada, the river was granted legal personhood by local authorities, and given nine rights, including the right to flow, the right to be safe from pollution – and the right to **sue**.
2. Uapukun Mestokosho, a member of the Innu community who campaigned for the recognition of the Magpie's rights said spending time on the river was "a form of healing" for indigenous people who could revive their traditional land-based practices that had been abandoned during the violence of the colonial era. "People are suffering a lot, with intergenerational traumas linked to the past," Mestokosho told CBC. As well as this benefit for people, she said that her ancestors had always protected the Magpie, known as the Muteshekau-shipu, in the past, and a recognition of its rights would help protect it for future generations.
3. The Magpie is one of a growing number of rivers to be recognised as a living entity across the world. The **burgeoning** rights-of-nature movement is pushing local, national and international authorities to recognise natural features – from lakes to mountains – in law, giving them either legal personhood or an independent right to flourish.
4. Giving rivers the status of people – or more – in courts of law is **enlivening** environmentalism around the world. [...]–But can legal rights for nature protect it in reality? Who decides when a river can sue? Does it diminish the power of nature to squeeze it into the western legal system? Or do nature's rights challenge the very foundations of capitalism?
5. Western legal thinkers began **probing** the **prevalent** Enlightenment* **assumption** that natural objects were simply property to be exploited in 1972 when a young professor of legal philosophy, Christopher Stone, argued that the environment should be considered as a subject and given legal personhood – as granted to corporations, for instance – with human guardians able to seek legal **redress** if a natural feature is damaged or destroyed. Today's movement was **ignited** in 2017 when an act of parliament in New Zealand granted the whole Whanganui River rights as an independent entity, considering it an indivisible **whole** from source to sea. Guardians were appointed to act and speak **on behalf of** the river and **enforce** its rights.
6. But what is a river? Most would say not its banks but its flowing water. Unfortunately, the "elephant in the room," says Dr Erin O'Donnell of the University of Melbourne and author of a book on rights for rivers, is the fact that none of the rivers legally recognised as living beings or legal persons actually have any rights to the water that flows within their banks.
7. "There is increasingly an attempt to give rivers a right to flow and so the Magpie River in Canada has got the right to flow, but how you enforce that right is very unclear," says O'Donnell. "And if that's not actually **embedded** within water law, which it isn't yet, then it's probably not worth the paper it's written on."
8. In New Zealand, the Whanganui treaty did not address this key issue, with a water company continuing to divert 80% of the river's flow for hydropower until its licence expires in 2039. If this fact makes rights for rivers appear to be symbolism without legal **teeth**, O'Donnell and others argue that the concept still possesses real transformative power. In Canada, David Boyd, a professor of law and the UN Special Rapporteur on Human Rights and Environment, has said that legal personhood could kickstart a cultural **shift** away from conceiving nature as a "warehouse of commodities for human use."
9. In Australia, that shift is underway with regards to the Yarra, believes O'Donnell. The Yarra was recognised as a living, integrated entity as its traditional owners, the Wurundjeri people, had always known it, in a state act of parliament in 2017. Unlike Lake Erie and other locations in North America, the Yarra has not been made a legal person. "The upside of having legal personality is that you do have extra legal powers, so a river that is a legal person can go to court. The downside is that you immediately focus people's attention on those rights and powers and expect the river to start using them," says O'Donnell. "One of the first questions that I get asked almost every time I speak publicly about the issue of rivers having rights is, 'Can we sue the river when it floods?'" As soon as Lake Erie was granted rights in the United States, farmers – concerned that measures to stop fertilisers running into the lake would threaten their businesses – challenged it in court.
10. Having the Yarra recognised as a living entity sounds like a weaker step than legal personhood, but it still has "the most transformative potential in terms of the way that people **relate to** the river," argues O'Donnell. Until

very recently, the river was a resource to exploit: a source of water, a stormwater drain and a sewer¹. “When we see the river as a living being, is that when we start to say, hang on, what do we want for the river? That’s the genuine conversational shift I’m seeing with the Yarra away from this western resource extraction model to seeking a partnership with the river in its own management.”

11. Some rights-of-nature sceptics argue that it simply can’t fit into western law, which **upholds** capitalism, property rights and extracting profit from the Earth’s resources. After Ecuador incorporated rights of nature into its constitution, in 2011 a provincial court ruled in favour of the Vilcabamba River against damaging road construction. The river won in court but the developer didn’t actually remediate the pollution. Ecuador’s courts have since held more than three dozen lawsuits in the name of nature. Many have been successful but verdicts have not always been enforced on the ground. [...]

12. Rights of nature are being asserted most powerfully in post-colonial countries where indigenous people **strive** to protect traditional lands. But some indigenous campaigners view legal personhood and “rights” for nature as western constructs. “The use of rights doesn’t quite fit into the teachings of many indigenous people,” says Michelle Bender of the Earth Law Center, an influential co-operative based in the United States. “Nature is the source of life, it’s already an entity to be respected and so some people say we don’t need this recognition of rights. To be clear, the rights of nature movement is learning from an indigenous worldview rather than the other way around. The use of rights of nature can help to reorient the law around indigenous relationships and responsibilities to nature.”

13. Europe **lags behind** other continents where indigenous people have challenged western concepts of owning and exploiting nature. In Britain, nature’s rights briefly emerged in 2018 when Frome town council², run by community-minded independent councillors, proposed to pass a bylaw³ recognising the rights of their **stretch** of the River Frome and water-meadows to remain pollution-free. Belatedly, in 2020, central government said that the council could not pass its bylaw because they judged it duplicated existing environmental protections.

14. Mumta Ito, the founder of Nature’s Rights and a former environmental lawyer based in Scotland, says it is not possible to make local laws in Britain as municipalities can in North America. “How can one part of the River Frome have rights when the stretch flowing through the next county⁴ doesn’t? All you can achieve with these local-level laws is raise awareness.”

15. Ito argues that we can’t simply **drop** the rights of nature into the current legal system, but require much more fundamental change. Ultimately the law must recognise that nature’s rights come first, followed by human rights and then corporate rights because without living systems such as clean water, air and fertile soils there is no human life. “We are an intrinsic part of nature and our human right to life emanates from the rights of nature. All human rights exist because of nature. It’s irrational to say we have rights to life or property rights if nature’s rights are not achieved. But we have an economic system that undermines the natural system that we come from.”

16. Such radical legal changes would probably require us to **uproot** established western concepts of property rights, individualism and ceaseless economic growth. “Where do we start?” says Ito. “We should start with common sense. People becoming connected with nature is really going to help. All of us have experienced how good we feel being in the forest or by the sea. It’s hard to get people to care about something if they don’t make the connection.” [...]

17. (...) There is also a chicken-and-egg element to this debate: can law change popular consciousness or is it **doomed** to fail if it doesn’t simply prop up existing values?

18. Campaigners believe the law can and does change the way we think. The changes in the legal system deeply affect the psyche. If the law says I’m in relationship with the ocean and the river then it won’t be long before people start behaving as if we are interconnected with the other life forms on the planet,” [Ito says].

1. sewer: *les égouts* - 2. the town council: *la municipalit * - 3. a bylaw: *un arr t  municipal* - 4. county: *Comt *

*The **Enlightenment** was an intellectual movement in the eighteenth century that emphasized reason and science.

A/ VOCABULARY

Match the words in **bold type** with their synonyms, definitions below.

1. to remove, put an end to: _____ - 2. a supposition, premise: _____
3. to make slow progress compared to others: _____ -
4. something complete: _____ - 5. developing: _____
6. to impose observance (of a rule, etc.), execute: _____; 7. a change: _____
8. to flow in a twisting course: _____ - 9. condemned: _____
10. to take to court: _____ - 11. triggered, started: _____
12. make every effort: _____ - 13. add, include: _____
14. widely accepted or practised: _____ - 15. integrated: _____
16. identify, empathize with: _____ - 17. the area, expanse: _____
18. to invigorate, stimulate: _____ - 19. to support: _____
20. in the interest of, as the agent of: _____ - 21. power: _____
23. compensation, reparation: _____ - 24. to question, examine thoroughly: _____

B/ COMPREHENSION

1- Introduce the text (*type, author, source, date and context, general topic, tone*).

>> Before writing your introduction, read “Introduire un document” in the methodology section of the EPI.

2- Summarise the main information from the text in your own words:

- > legal personhood for rivers: definition of the concept; origins and current movement; benefits and limits.
- > legal personhood v living entity
- > criticisms of the concept (from “the rights-of-nature sceptics”; from indigenous people).
- > reasons why it is more difficult to apply the concept in Europe.
- > the chicken-and-egg element of the debate.

>> Before starting, read the segment on how to write a summary in the file “Méthodologie du résumé et du commentaire” in the methodology section of the EPI.

B/ DISCUSSION TOPICS

Propose arguments / ideas for (one or two of) the following topics. Prepare a detailed outline and note down your ideas. When you are ready, practice presenting your analysis / essay / speech orally. Remember not to read your notes but to communicate your ideas in a convincing tone.

1) Present a structured analysis of paragraphs 15 to 18 of the text above. Propose 2 or 3 main points/arguments that you will illustrate with pertinent examples.

>> Before starting, read the segment on the commentary in the file “Méthodologie du résumé et du commentaire” in the methodology section of the EPI.

2) Kelsey Leonard says that as a Shinnecock woman and a legal scholar she questions “the moral compass of the Western world where you can grant legal personhood to a corporation but not nature”. From your own perspective (as a westerner, as a young person, etc.) do you also find it ethically questionable to grant legal personhood to corporations (= companies, industries) and not water? Why (not)? Use at least 3 strong arguments and relevant examples to support your views.

3) A number of experts argue that oceans should be given a seat at the United Nations.

Michelle Bender, of the Earth Law Center, argues that oceans could more easily be recognised as an independent legal entity because no one owns the high seas and rights of nature don't conflict with property rights there.

“The land – 25 per cent of the planet – is well represented on the UN, but the 75 per cent of the planet which is covered in water is not represented at all. There's no voice to represent the concerns of international waters and they are many. There are huge issues over fish stocks, deep-water mining, the search for hydrocarbons. There are lots of issues and there are going to become more and more. The pressure to exploit international waters for good or bad will increase,” says Admiral Sir James Burnell-Nugent, a former Commander-in-Chief Fleet of the Royal Navy¹.

>> As a (budding) expert and / or activist you deliver a speech to convince world leaders to give oceans a seat at the UN. Use your expertise (in law, or geography or environmental issues, etc.) to prepare a convincing speech with powerful arguments. Practice delivering your speech in a passionate, convincing tone.

¹ “Oceans need their own seat at the United Nations, says Royal Navy expert”, The Independent, 6 June 2015