

## Frequently Asked Questions

### I. Who are the Southern Resident Orcas?

Southern Resident Orcas are found mostly off British Columbia and Washington in the Salish Sea as well as off the coast of Oregon, and Northern California. The Southern Resident Orcas represent the smallest of the four resident communities within the Northeastern portion of North America Pacific Ocean and is comprised of three familial pods (J, K and L pods). Their primary food source is chinook salmon. They are locally, culturally, spiritually, and economically important. Unfortunately, the Southern Resident population is declining; fewer than 80 individuals survive.

### II. Why do we need to recognize the Southern Resident Orcas' rights?

**We need to employ different tools in order to protect and restore the population.**

Human health and wellbeing are inseparable from a clean and healthy environment, which provides humankind access to clean water, air, shelter, medicine, and food. Over 8 million people live in the communities surrounding the Salish Sea. Their lives depend on the health and well-being of the Salish Sea and the ecosystems and species therein.

Our current dominant legal and economic systems perpetuate environmental degradation by assuming that the natural world is merely property or a “resource” for human use and benefit. While having played an important role in regulating harmful activities, many environmental laws are also based on these assumptions which limits their ability to address the root causes of, and provide holistic solutions to, such issues as the climate crisis and biodiversity loss. On the other hand, Earth-centered laws such as those based on the “Rights of Nature” are emerging worldwide to transform the assumptions and values underlying our systems to a way of being oriented around our relationship with and responsibilities to Nature, of which we are an inseparable part.

**Why “Rights”.** Western legal systems use a “rights” based framework.<sup>1</sup> In the U.S., the most notable examples are in the U.S. and State Constitutions, delineating such rights as free speech, freedom of religion and equal protection of the laws. In this construct, the concept of rights reflects legal, social, and ethical norms. In other words, rights are the fundamental normative rules about what is owed to, or allowed of, a person or entity recognized as having rights. Recognizing a living being or entity as having rights is a statement of societal values as evidenced by the civil rights, LGBTQ rights, and suffrage movements.

“Legal rights” are thus based on a society’s laws, values, and customs. Rights described as “natural, inherent, inalienable, or fundamental” are rights that exist unconditionally: they are recognized, not granted, and, while they may be denied or previously unrecognized, they cannot be taken away. Once recognized in law, inherent and fundamental rights become legally recognized rights. Such is the case with recognizing the rights of Nature. The rights of Nature and the Southern Resident Orcas’ exist, even though our legal system has yet to formally recognize them. From a practical perspective, when a living being or entity is recognized as having rights, it means that others have a corresponding responsibility to uphold and respect those rights. The rights-bearing being or entity can enforce and assert their rights in various forums, and seek protection of their rights in court, if needed.

Protecting the Orcas’ rights requires reducing threats to their existence as well as restoring and fostering the healthy ecosystem that they, and we, need to exist and thrive. When making policy and management decisions, the Orcas’ interests and needs must be considered alongside human populations. The Orcas’ have the right to fulfill their irreplaceable role in the web of life. It is our responsibility to give Orcas a voice,

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<sup>1</sup> We recognize that many Indigenous Peoples do not express their relationships with other humans and the natural world in terms of “rights”. (See Aimee Craft: Craft, A. (2016). Giving and receiving life from Anishinaabe nibi inaakonigewin (our water law) research. In *Methodological Challenges in Nature-Culture and Environmental History Research* (pp. 125-139). Routledge). While there is much discussion about the value of other frameworks (not based on “rights”), we recognize that implementing such frameworks requires a complete restructuring of our current legal system and the upending of the societal expectations of many people. For a general discussion on the history, meaning, and critique of rights see the Stanford Encyclopedia of Philosophy. Stanford University. July 9, 2007. Retrieved July 31, 2021, available at <https://plato.stanford.edu/entries/rights/>. “Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states. Rights dominate modern understandings of what actions are permissible and which institutions are just. Rights structure the form of governments, the content of laws, and the shape of morality as many now see it. To accept a set of rights is to approve a distribution of freedom and authority, and so to endorse a certain view of what may, must, and must not be done.”

and in doing so, respect their needs. The Orcas are a rightsholder and stakeholder that must be included in the conversation.

### **III. What are the benefits of a State bill recognizing the rights of the Southern Resident Orcas'?**

A State bill recognizing the rights of the Southern Resident Orcas' would create a whole-system approach to governance, serving as a unifying foundation for overcoming our current anthropocentric and fragmented approach to conservation and governance within the region. The bill would provide an effective norm (code of conduct) for our legal, governance and economic systems. We would reorient these systems to respect the complex web of relationships among humans and all other beings within the Salish Sea ecosystem. Implementation will not be easy and will take time.

The specific purposes of the bill are to (1) recognize and identify the inherent rights of the Southern Resident Orcas; (2) create mechanisms for implementation; and (3) create enforcement mechanisms and establish remedies.

By recognizing and protecting the inherent rights of the Southern Resident Orcas, such as the right to be free of captivity and to adequate food supply from naturally occurring sources, we can begin to restore the health of the species and thereby that of the entire Salish Sea ecosystem.

### **IV. How does recognizing the rights of the Southern Resident Orcas relate to Indigenous worldviews?**

Indigenous worldviews have generally been based on holistic relationships between human and non-human beings. For centuries, principles of relatedness, interconnectedness, spirituality, humility and reciprocity have guided activities, balancing the needs of people with the capacity of ecosystems to sustain those needs, therefore facilitating the stewardship of approximately 80% of Earth's biodiversity.

Indigenous Peoples across the United States (and the world) are leading the movement for recognition of rights of Nature by passing resolutions and statutes, negotiating for co-stewardship guardianship bodies, and amending Tribal constitutions, that recognize Indigenous sovereignty and the rights of natural communities and ecosystems: the Nez Percé Tribe and Yurok Tribe recognized the rights of the Snake River and Klamath River, respectively; the Ponca Nation recently announced it will

develop a second resolution to recognize rights of the Arkansas and the Salt Fork Rivers, expanding its previous Rights of Nature recognition; the Ho-Chunk Nation recognized Nature's rights in a resolution and is advancing a constitutional amendment; and the White Earth band of Ojibwe recognized the rights of Manoomin (the wild rice plant). In February 2022, the Sauk-Suiattle Indian Tribe brought a lawsuit against Seattle, Washington in the Sauk-Suiattle Tribal Court on behalf of salmon, Tsuladx<sup>w</sup>, alleging three hydroelectric dams are responsible for their population declines and thus, violate the salmon's inherent right to flourish. Tsuladx<sup>w</sup> are culturally and relationally important to the Sauk-Suiattle people since time immemorial, representing a sacred food and relative in traditional storytellings.

Many Coast Salish Indigenous peoples have an ancient relationship with the Southern Resident Orcas, recognizing that their well-being is an indicator of our own. For instance, the Lhaq'temish people of the Lummi Nation, Indigenous peoples on the coast of northern Washington and southern British Columbia, consider the orca as "qwe'lhol'mechen," which roughly translates to "our relatives under the water" and the oral traditions of the Sk̓wx̓wú7mesh (Squamish People), whose Sk̓wx̓wú7mesh Úxwumixw traditional territory is located in the Lower Mainland region of British Columbia, include stories of the Orcas' cultural and spiritual significance.

Additionally, in 2018, the Affiliated Tribes of Northwest Indians (comprised of American Indians/Alaska Natives and tribes in Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska) passed Resolution #18-32 recognizing a sacred obligation to the Southern Resident Orcas, "our relatives under the waves." The Resolution explains that the sacred obligation "to ensure all our relations are treated in a dignified manner that reflects tribal cultural values that have been passed down for countless generations" is to be understood in the context of "an inherent right and a treaty right, and in terms of indigenous ways of knowing the natural law" as embodied in their relationship to the Southern Residents.

Recognizing the rights of the Southern Resident Orcas may thus be seen as a compliment to the recognition of the sacred obligation many peoples have to the population.

## **V. What are the benefits and challenges of recognizing Rights of Nature?**

### *a. Benefits*

- Increases protection and restoration of the natural environment;

- Provides standing for Nature to defend Nature's rights in court via legal guardians, members of a local community, or others acting in Nature's best interests;
- Aligns with other rights-based movements, such as rights of future generations and human rights to a healthy environment;
- Helps to keep human activity within the Earth's natural capacity;
- Maintains or increases environmental health, rather than merely slowing the decline;

b. *Challenges*

- Uses an unfamiliar concept, particularly for those accustomed to a legal system that treats humans as separate from Nature, despite the reality that we are Nature and Nature's rights advance human rights;
- Introduces a new legal framework that may be challenged by certain corporations and industry groups as unlawful;
- Contributes to the rapidly-growing movement for Earth-centered laws but much more will be needed to reach the 25% "tipping point" for social change.<sup>2</sup>

## VI. Why can't we rely on our current laws to protect the Orcas from extinction?

Southern Resident Orcas are legally "protected" under the U.S. Endangered Species Act, the U.S. Marine Mammal Protection Act, and Canada's Species At Risk Act. While these laws protect Orcas from being intentionally harmed in general, they do not recognize that Orcas have the right to life or to have their interests represented in decision making. Real protection in our legal system requires the right to be heard. The plight of the Southern Resident Orcas highlights why transformative and systemic change are needed.

Despite the protection they gained at the federal level in the United States under the Endangered Species Act (ESA) in 2005, the Southern Resident population has continued to decline. The ESA has many loopholes that, ultimately, make it acceptable to decimate a species, essentially as disposable property, as long as the illusion is maintained that extinction is being avoided. The ESA Committee (aka, the "God Squad") has the authority to exempt an agency action from the requirements of section 7(a)(2). As a result, activities can still proceed even if it threatens the existence of a species. We see similar gaps in the Marine Mammal Protection Act.

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<sup>2</sup> *How to Make Social Change*, YES! Magazine, available at <https://www.yesmagazine.org/issue/what-the-rest-of-the-world-knows/2020/11/03/how-social-change-happens> (visited Aug. 18, 2021).

State laws and processes, even when intended to protect the Southern Residents, have similar limitations. For example, Governor Inslee's Executive Order 18-02 established the Southern Resident Killer Whale Recovery and Task Force to identify, prioritize and support the implementation of a long-term action plan for the recovery of Southern Resident Orcas to ensure a healthy and sustained population for the future. Yet, as many public commenters noted, the Orcas themselves did not have a seat at the table and a clear voice in the process. Had the Orcas been represented by guardians acting on their behalf and in their best interests, the conversation would have been different, and the Task Force may have recommended even bolder actions.

## **VII. What are the potential economic benefits of supporting the rights of Southern Resident Orcas?**

Implementing the legal rights of Orcas would require us to begin making decisions about the way humans interact with the natural world in a truly holistic, systemic and precautionary way. Holistic decision making benefits the economy. Consider the following:

- The cumulative economic impact of poor ocean management practices costs \$200 billion (USD) per year.<sup>3</sup>
- In British Columbia, the lower mainland's aquatic near-shore services such as flood protection, water supply, and critical habitat for fish and other animals are estimated to provide between \$30 and \$60 billion in benefits each year. In Washington, human benefits such as climate regulation, pollination, water supply and treatment, nutrient cycling, and recreation provide approximately \$10 to \$80 billion worth of benefits each year.<sup>4</sup>
- The Salish Sea region supports 88,000 tourism related jobs and generates \$3 billion in spending. The overall value of the whale watching industry in Washington State is worth at least \$65-\$70 million annually, with an average annual growth rate of 3%. In San Juan County alone "whale watching participants who whale watch from boat-based tours or from terrestrial viewing points in San Juan County support over \$216 million worth of economic activity

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<sup>3</sup> United Nations Development Programme. Rep. *UNDP Annual Report*. New York, NY: Bureau of External Relations and Advocacy, 2012.

<sup>4</sup>"What Is an Ecosystem Worth? OUR THREATENED COAST: NATURE AND SHARED BENEFITS IN THE SALISH SEA." Raincoast.org. Accessed 2021.  
<https://www.raincoast.org/wp-content/uploads/2016/10/Ch-3-What-is-an-Ecosystem-Worth.pdf>.

in the Puget Sound Region every year. This activity generates more than \$12 million in state and local tax revenue annually and supports over 1,800 jobs.”<sup>5</sup>

- 37 species of mammals call the Salish Sea home, including 16 seen as also having risk of extinction, such as the Baird’s Beaked Whale. Recent studies show the economic contributions of one whale over its lifetime are estimated at over \$2 million, and over \$3 trillion for all large whales combined.<sup>6</sup>
- Renewable energy sources have replaced the output of the Lower Snake dams several times over and the dams do not provide peaking power due to low flows and fish passage limitations.<sup>7</sup> Economic benefits of the dams are far below the costs (benefit to cost ratio of .15, meaning 15 cents in benefits to every tax dollar spent).<sup>8</sup>
- Measures to address the lack of prey (salmon) for the Southern Resident Orcas will similarly support broader ecosystem health resulting in more abundance for everyone, including the fisheries, which generate \$1.6 billion in revenue annually in Washington state alone.<sup>9</sup> This is of great concern given the mounting and projected impacts of climate change. For example, one billion marine animals are estimated to have died during the heatwave across the Pacific north-west and Canada in July, 2021.<sup>10</sup>
- North Wind’s Weir estuary habitat restoration project is located on the Duwamish River a few miles upstream of where it feeds into Elliott Bay. The intertidal habitat enhanced by this project provides a feeding area and transitional zone for juvenile salmon. The research found that the expenditures on the North Wind Weir project generated approximately \$3.5 million in economic output (2013 dollars).<sup>11</sup>

## VIII. What does this mean for my property rights?

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<sup>5</sup> Cox, Justin. “The Economic Impact of Killer Whales in the Salish Sea.” SeaDoc Society. SeaDoc Society, March 4, 2019. <https://www.seadocsociety.org/blog/the-economic-impact-of-killer-whales-in-the-salish-sea>.

<sup>6</sup> Marine Mammal Commission, The Economics of Marine Mammals, <https://www.mmc.gov/priority-topics/value-marine-mammals/>

<sup>7</sup> “Bonneville Power,” DamSense. Accessed 2021. <https://damsense.org/bonneville-power/>.

<sup>8</sup> <https://damsense.org/lower-snake-dams/>

<sup>9</sup> Chowder, Dukes Seafood and. “Disappearance of Wild SALMON Hurts Local Economy | Provided by DUKE’S Seafood & CHOWDER.” The Seattle Times. The Seattle Times Company, February 7, 2018. <https://www.seattletimes.com/sponsored/disappearance-of-wild-salmon-hurts-local-economy/>.

<sup>10</sup> Cecco, Leyland. “‘Heat Dome’ Probably KILLED 1bn Marine Animals on Canada Coast, Experts Say.” The Guardian. Guardian News and Media, July 8, 2021. <https://www.theguardian.com/environment/2021/jul/08/heat-dome-canada-pacific-northwest-animal-deaths>.

<sup>11</sup> <https://www.americanrivers.org/wp-content/uploads/2020/06/AR-Economic-Outcomes-Report.pdf>

Most of those rights we consider under the umbrella of property rights will not be significantly affected by a law that recognizes the Orcas' rights. What will change is that the exercise of property rights will be balanced with the rights of the Orcas and the responsibilities owed to Nature. This means that property owners may have additional stewardship responsibilities to help realize the rights of the Orcas and their habitats, including the Salish Sea. The resulting improvements in the ecosystem's health will directly benefit the human members of the ecosystem.

**IX. Can you give an example of how human activities and behavior may change to realize the Southern Residents' rights?**

For recreational and commercial fishers, regulations may decrease fishing quotas to ensure enough salmon are available for the Southern Residents. That is because current fishery allocations do not consider the Orcas' needs. According to NOAA's 2016 5-Year Review, it is estimated that the Southern Resident Orca population needs approximately 347,000 Chinook salmon per year to thrive. Supporting their right to live would require setting aside this amount of fish first, and then deciding if allocations may then be made to other stakeholders in a way that allows the salmon populations to replenish and thrive. Application of the precautionary principle may require short-term closures when necessary to ensure the survival of salmon populations and the Southern Resident Orcas.

Such recognition is not intended to infringe upon Indigenous sovereignty or treaty rights. The recognition of the Orcas' rights will lead to ecosystem restoration that complements Indigenous sovereignty and advances treaty rights. It will provide a framework that supports the call by some Coast Salish peoples for collective action, thereby helping to relieve the inequitable burden falling upon Indigenous communities willing to alter their actions in response to environmental degradation set into motion by settler colonialism. For example, in August 2020, the Tsilhqot'in Nation of British Columbia closed all salmon fishing within their territory west of Williams Lake (including the Fraser River run) due to "extreme conservation concern." They also called upon Canada's Minister of Fisheries and Oceans to issue an emergency order to close all sockeye fisheries on the Fraser River, noting the need to protect runs for future generations. The recognition of the Southern Resident Orcas' rights would support and facilitate such preventative and restorative actions by all levels of government; actions that further jeopardize the existence of a species would not be approved or permitted,



and we would have the legal responsibility to restore the populations and their habitats to health within a timely manner.

## **X. How Can Your Community Join the Movement to Recognize Nature's Rights?**

Your community can recognize Nature's rights by passing supportive laws and policies. In the U.S., over two dozen municipalities have passed local laws recognizing the Rights of Nature. We are calling on local communities to pass local resolutions in support of a state bill.

The goal of passing a resolution in your local community that recognizes the Rights of Nature in some form, in this case pertaining specifically to the Southern Resident Orcas and the ecosystems upon which they depend, is to educate and build awareness about your unique relationship with, and dependency upon, the broader ecosystem around you. Resolutions passed in [Crestone](#) and [Nederland](#), Colorado offer examples of this approach as do resolutions passed in San Francisco and Malibu on the rights of whales and dolphins. The sample resolution in this toolkit is similar to these, but is expressly focused on the inherent rights of the Southern Resident Orcas as living beings.

The more local communities that have passed a resolution in support of a state bill, the more likely it is that our state legislators will introduce and pass the bill. In Pender Island, BC, Canada, partners Pender Ocean Defenders introduced such a resolution for consideration to their Trust Council in 2018. This campaign included letters/drawings from younger constituents of why they care about the population.

For in depth analysis and understanding of the local Rights of Nature movement in the United States we recommend reading: *The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways* by Marsha Moutrie, available for free [here](#). See also Chapter 9 on the United States in the coursebook, *Earth Law: Emerging Ecocentric Law—A Guide for Practitioners*, co-authored by Elizabeth M. Dunne, Esq. and Lindsey Schromen-Wawrin, available for purchase [here](#).

## **XI. Will recognizing the rights of the Southern Resident Orcas lead to many lawsuits?**

Recognizing the rights of the Orcas may mean some lawsuits in the near term. The goal, however, is to change policies and practices at the rapid pace necessary to prevent the Orcas' extinction. The quicker these changes occur, the more likely the

Orcas are to survive and ultimately thrive, with a corresponding reduction in the need to bring lawsuits to enforce the Orcas' rights.

Any lawsuits brought under the new law must still satisfy legal prerequisites, so a claim for redress will only survive in court if there is an infringement of the rights of the Southern Resident Orcas.

## **XII. Where else has a “Rights of Nature” framework been implemented to protect marine waters and marine mammals?**

### *a. United States*

- The [Marine Life Proclamation](#) passed in Malibu in 2014 resolved that whales and dolphins have the right to free and safe passage and “encourages citizens of the world to do all within their power to protect them and preserve the oceans in which they were destined to spend their lives.”
- Also in 2014, San Francisco passed the “[Free and Safe Passage of Whales and Dolphins in San Francisco’s Coastal Waters](#)” Resolution supporting the free and safe passage of cetaceans and freedom from captivity.
- Over two dozen municipalities in the United States have passed local ordinances or resolutions recognizing the rights of nature, including Santa Monica, which passed the [Sustainability Rights Ordinance](#) in 2014, proclaiming the community’s right to self-governance and the “fundamental and inalienable rights to exist of marine waters.”

### *b. International*

- [Laws](#) prohibiting cetaceans in captivity are growing internationally.
- In 2010, a conference held on Cetacean Rights in Helsinki adopted a [Declaration](#) on the Rights of Cetaceans.
- ʔEsdilagh First Nation in what is now Canada (one of the six that comprises the Tsilhqot’in Nation) enacted the [ʔElhdaqox Dechen Ts’edilhtan](#) (“ʔEsdilagh Sturgeon River Law”) (also known as the Fraser River) that states the people, animals, fish, plants, the nen (“lands”), and the tu (“waters”) have rights.
- [Ecuador](#), [Bolivia](#) and [Mexico City](#) now protect Rights of Nature in their constitutions or national law.

- Court cases in [Ecuador](#) highlight how Rights of Nature improves enforcement and supports conservation efforts, especially in the Galapagos.
- [Galapagos Marine Reserve](#) uses the Rights of Nature as a guiding principle for management. Commercial fishing is prohibited, and fishing is limited to sustainable artisanal fishing. In Ecuador, regulations have been passed as a result of the constitutional amendment, including the National Plan for the Conservation of Marine Turtles, the Protection of hammerhead sharks from bycatch and prohibitions on certain types of fishing gear (For more on the Special Law of the [Galapagos](#).)
- Recent New Zealand treaty agreements declared a [river](#), [national park](#), and [sacred mountain](#) as legal entities with “all the rights of a legal person.” Further, a recent Amendment bill recognized that animals, like humans, “[are sentient](#)” beings.
- Colombia declared both the [Atrato River](#) and [Colombia Amazon](#) as a “legal entity subject to basic rights” through court decisions.
- The Uttarakhand High Court of [India](#) ruled that “the entire animal kingdom, including avian and aquatic, are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person.”
- The [United Kingdom](#) legally recognized animals as sentient beings in 2020 and [Spain](#) followed suit in 2021. [An amendment](#) to the United Kingdom [Animal Welfare \(Sentience\) Bill](#) further recognized lobsters, crabs, and octopus, namely “any cephalopod mollusc” and “any decapod crustacean,” as sentient beings.
- The [United States District Court](#) in Cincinnati, Ohio applied Columbian law recognizing that hippos have legal personhood status in granting their request to take depositions in the U.S.
- The [Belize Barrier Reef](#) was recognized as a subject of rights. Adoption of an indefinite moratorium signed into law on December 29, 2017, to preserve the World Heritage site reef builds on earlier recognition of Nature as subject of rights.
- A [case in the Philippines](#) successfully revoked a permit for oil exploration in the Tanon Strait (a marine protected area) and found that “there should be no questions of their [the petitioners] right to represent the resident marine mammals since the primary steward, the government, had failed in its duty to protect the environment pursuant to the public trust doctrine.”

- The [Hauraki Gulf Marine Park Spatial Plan](#), or “Sea Change Plan” (the Plan)/ New Zealand: Though the Plan does not codify legal rights for the Park, there is an implicit recognition of Rights of Nature stating “Gulf communities need to adjust their relationships with the lands and waters around them. Rather than thinking of the environment and its bounty as an entitlement, considering it as a being in its own right will help us to rethink our reciprocal responsibilities and work toward a better balance.”<sup>12</sup> Customary environmental law, Kaitiakitanga, guides management of the Park and it is defined as “an ethic and practice of protection and conservation of the natural environment and the resources [...]”<sup>13</sup> The main objective of Kaitiakitanga is to maintain a “natural and appropriate balance” between the needs of the people, Mother Earth, and the Sea. The Plan goes further and extends the establishment of the role of guardianship to the community in general, calling upon guardianship to be “practiced by all.”<sup>14</sup>
- Over 20 countries have some form of rights of nature law or judicial decision: <http://www.harmonywithnatureun.org/rightsOfNature/>
- Initiatives are growing internationally recognizing the rights of marine waters and species: [www.earthlawcenter.org/oceanrights](http://www.earthlawcenter.org/oceanrights)

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<sup>12</sup> Seachange Stakeholder Working Group. Rep. *Sea Change: Hauraki Gulf Marine Spatial Plan*, April 2017. <https://www.seachange.org.nz/assets/Sea-Change/5086-SCTTTP-Marine-Spatial-Plan-WR.pdf>, pg. 31.

<sup>13</sup> Ibid. pg. 26.

<sup>14</sup> Ibid. pg. 161.