

Philosophy of Law in the Arctic

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The term "Arctic" is not only ecological but also mythical. The term refers to the areas which were thought to be located under the constellation 'Ursa Major' (the Great Bear).

J. Pentikäinen, *Shamanism and Culture*, Helsinki 2006, p.120.

*If we shadows have offended,
Think but this, and all is mended,
That you have but slumber'd here
While these visions did appear.
And this weak and idle theme,
No more yielding but a dream,
Gentles, do not reprehend:
if you pardon, we will mend (...).*

William Shakespeare, *A Midsummer-Night's Dream*,
Epilogue, Cambridge University Press 1924.

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The Arctic as Common Good

*Ko Hasegawa**

Abstract

The paper is to sketch a problem framework for reflecting the moral nature of the Arctic as common good that would be significant for further practical considerations on various Arctic issues.

1. Introduction

As a fundamental problem of the philosophy of law in the Arctic, it is significant how we could grasp the moral nature of the Arctic. In particular, the idea of common good in the Arctic looks much relevant when we see many political, legal, or economic issues concerning the Arctic. In this brief exploration, I try to sketch a problem framework for reflecting the moral nature of the Arctic as common good that would be significant for further practical considerations on various Arctic issues.

2. Introductory Remarks—The Significance of the Idea of Common Good for the Arctic

Should the region of the Arctic be shared by all the relevant societies and peoples, or be appropriated severally by each of those societies and peoples? This is the fundamental issue for the preservation and utilization of various conditions and resources in the Arctic. If to be shared by all, there must be significant constraints to the utilization of the Arctic; if to be

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I am very grateful to the invitation of Dr. Dawid Bunikowski to the research group for the philosophy of law in the Arctic and to this e-book project. As what I discuss in this short essay concerns only the points for my further research on the Arctic as common good, I would not make detailed footnotes for possible references.

appropriated severally, there must be significant freedom in the preservation of the Arctic. The way of thinking in this regard is theoretically contrasting and practically conflicting, whether politically, economically, socially or morally. Which is better, or are there any other possibilities? And, how is the Arctic law to be related to those thinkings? —These are the problems for philosophy of law in the Arctic.

To tackle with these problems, we need beware that there are two different basic problems which gets entangled with each other: conceptual and empirical problems. The former is the problem that concerns the conditions and features of relevant concepts such as common good or property in discussing about the Arctic issues; the latter is the problem that concerns the identification and instantiation of relevant facts to the concept in question such as the allocation of land or sea rights in discussing about those issues. And these problems get entangled in the sense that the conceptual conditions and features are prerequisites to the recognition of empirical matters, while the empirical identification and instantiation are the matters of conceptual application. We have to heed to this twofold problem situation, especially when we wish to focus on the idea of common good for the Arctic.

The idea of common good indicates, in my view, the holistic condition for all human beings in a society, as well as the idea of global common good for all the peoples on this globe. For example, it is evident that clean air is an invaluable life condition for all the people in a society, as well as for all the peoples on this globe⁵¹. This means not simply that clean air is non-exclusionarily sharable but rather that anyone in society cannot live well at all without that condition⁵². Even if clean air is given in some artificial way, the fundamentality of the condition is the same. Thus we may say that clean air is a (natural) common good. On the global level, we can also say that all the peoples on this globe must need this sort of common good in some universal way. Common good is the good that is invaluablely basic for any individuals, classes, groups, or communities of divergent people in society, without regard to their political, economic, or cultural variations.

Yet, what sort of particular good(s) should be regarded as invaluablely basic for the fundamental conditions of human life without which human beings cannot subsist and act well at all? The important question here is concerned not simply with the non-exclusionarily

⁵¹ Common good in a society can be a part of a global common good. One example is clean air mentioned in the text; the other may be climate condition in the sense that the climate change in a region might influence other changes in other regions on the globe.

⁵² Although I am not a Thomist, I maintain that this invaluableness, and thus basicness, is the key to the genuine idea of common good for human beings.

sharable use but rather with the basicness of that good for the subsistence and activities for all the people(s) concerned. To understand this significance of common good, we need some theory of boundary conditions of it, namely conceptual conditions and features of common good, including some paradigmatic instances. Still, to add, while it could be easier to think about that possibility as for natural and economic good, it could be more difficult to think about commonality or universality as for cultural and societal good.

In this short essay, there are few rooms for more explications. However, needless to say, we have to distinguish the concepts of common good, collective goods, public goods and the like⁵³. These various communal good(s) are the good(s) to be co-utilized by anyone in society in some practical way. Still, common good indicates the very necessity of communal hold for the intrinsic and essential basis of human lives.

3. Problems of the Arctic as Common Good

Now, for the idea of the Arctic as common good, central problems are concerned with the conceptual one as I have distinguished above; which may include several sub-problems necessary to address. They are the problem of *circumstance*, the problem of *distribution*, and the problem of *participation*, as I call them, as well as the problem that is the common thread of them, namely the problem of *communality*.

The first problem is concerned with the possibility of the recognition of common good: how can some good or goods be grasped as invaluablely common? The second is concerned with the standards of distribution or redistribution of common good among the relevant peoples, organizations, or states around the Arctic: how can common good be shared equally among relevant societal units? The third is concerned with the conditions of human decision-making for the effective use of common good: how can the relevant units around the region in question decide the administrative issues on the common good in question in a fair way? And the fourth is concerned with the prerequisites of the three problems explicated so far: how the circumstance, distribution, and participation concerning common good can be relevantly common among the relevant units in the region in question? This last problem is ultimately important because the former three problems presuppose some positive answer to

⁵³ The point that common good is invaluable for human life is the difference from collective goods and public goods. Collective goods such as oil are to be allocated in some practical way by individual rights. Public goods such as water supply are to be handled in some individualist way with sharedness and non-excludability. Still, this is an intuition that must be examined further.

this last problem: if those former problems be not given some positively communal characteristics, there would not arise those problems regarding common good.

In particular, the first and the last problem is the vital one for considering whether the Arctic, or some important aspect of the Arctic, can be a common good, and, if so, in what sense and for whom. For example, can the legal issues concerning the Arctic today, such as, naturally, the preservation of climate conditions, the acquisition and use of natural resources in the Arctic, the cooperative use of sky, sea and land for transportation, or socially, the rights of indigenous peoples in the Arctic with each other and against other people and organizations from different areas, the relationship between the necessity of economic development and the maintenance of traditional ways of life, and the communicative exchanges of divergent cultures in the region, be identified as that sort of common good? Here the problem is twofold: one is concerned with the possibility of the Arctic resources as common good for the peoples concerned, and the other is with the possibility of the concept of common good in the Arctic itself. And the direction of possible responses to the particular issues mentioned above is determined by the positive or negative answers to these problems. If we can think positively about these two problems, we will have a positive view for the Arctic as common good, and *vice versa*.

Also, for example, how to arrange the cooperative use of sky, sea and land for transportation among relevant societies and peoples is a distributive question concerning the privilege and burden for that common good. Is the privilege and burden of the Arctic sky, sea or land for transportation to be absolutely equalized among relevant societies and peoples, or to be distributed unevenly and proportionately? And it includes a participatory question concerning common good, in this context, how the scope and extent of those privileges and burdens should be decided, by democratic voting or under some deliberative procedure among relevant societies and peoples.

Incidentally, we should not forget all these points lead to another problem of the so-called common capital in society⁵⁴. The problems mentioned so far include institutional aspects which concern the infra-structure of adequate human dealing of common good. For example, the problem of distribution includes the problem of the institutional framework for the realization and maintenance of distributive justice. Also, the problem of participation includes the problem of the institutional framework for participation such as the system of

⁵⁴ Kohbun Uzawa, *Shakaiteki Kyotsu Shihon (Social Common Capital)* (Iwanami Shoten, 1998).

rights and voting. These frameworks are derivations from the idea of common good; in other words, those are socially common capital for the realization of common good, the constitutive one of which is law. We have to explore how this capital is to be shaped properly in the political, economic, or social determination of common good, and, especially for the philosophy of law in the Arctic, how the proper role is to be given to law in the settings in question.

Meanwhile, there are purely empirical problems as well. Assuming that the significance of the concept of common good is explicated in a proper way in responding to all those questions I have touched in this section, how to empirically identify and instantiate such common good is itself an significant problem⁵⁵. Still, I will leave this problem to relevant empirical discussions.

4. A Future Perspective for the Arctic as Common Good

All the problems I have pointed out in this overview are philosophically deep and practically complex, which requires deep reflections. It is hasty for us to advocate some particular positions to those problems without such reflections. And this is why we need the exploration of the philosophy of law in the Arctic.

To note at this moment, the following issues may be important especially from the viewpoint of common good in the Arctic —— whether and to what extent natural resources and conditions in the Arctic are to be preserved for the stable natural environment in the region and on this globe; whether and to what extent the important species should be protected and preserved for the maintenance of the bio-diversity in this region; whether and to what extent the Arctic is to be geographically arranged to share by the societies or peoples concerned and thereby important resources are to be explored for the common or universal interests of the peoples in this region or on this globe; whether and to what extent the interests of minority peoples in the Arctic, whose livings are endangered by capitalistic globalization and other private exploitations from the advanced parts of the world, should be respected in harmony with relevant global considerations⁵⁶.

⁵⁵ For example, to identify the importance of clean air as common good, we have to observe and grasp the invaluable characteristics of clean air for the life of human beings.

⁵⁶ Cf. Leif Christian Jensen & Geir Hoenneland, eds., *Handbook of the Politics of the Arctic*, Edward Elger Publication, 2015

Not only whether one should answer to these issues affirmatively or negatively but also how one could answer to these issues properly are significant problems for the philosophy of law in the Arctic as common good. To answer these problems, we have to consider what elements we should appreciate as fundamentally common in accessing, utilizing, and preserving those various goods in the Arctic via a legal perspective on the Arctic as common good. And, we should note in the end, the exploration of the Arctic as common good is ultimately a cosmological problem on the very meaning of life for human beings in that vast region in determining the communality of the common good in question⁵⁷.

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⁵⁷ To understand why we have to live under common good is to answer the meaning of life for human being, which, I believe, must face another problem about her communal nature. It might become the problem of the communality of communalities in the Arctic.

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