

Title : Law as Commons and Buen Vivir

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What is law

There is two aspect of law. First is how it is made. We, as a society, makes law. And second, I, as an individual, is subject to law, and should obey the law. First aspect is usually said as democracy, and second aspect is usually said as rule of law. We, as an individual usually does not make law but are subject to law. So we are accustomed to the rule of law side of the law, not democracy side of the law. But theoretically we make the law, or more technically we elect congressman who make our law for me.

What is commons

"A common may be anything a community recognizes as capable of satisfying some real, fundamental need outside of market exchange. In addition to physical public space, this may also include institutional organizations such as cooperatives or commonwealths, trusts in the interest of future generations, village economies, water-sharing devices, and many other arrangements, antique as well as current. Its utility is created by shared community access and diffuse decision making. These commons institutions, through face-to-face reciprocal monitoring, mentoring, and support, tend to counteract the profit motive, inequality, and shortsightedness."¹

So in this respect, law is a commons for me and for my society. Because law is something a community recognizes as capable of satisfying some real fundamental need outside, or more precisely including market exchange. As the famous saying goes, "Where there is society, there is law." We need a law, a social agreement, in order to live. But as with all the other social institution, law is something made, and at the same time, applied. Law as something applied also has the trait of a commons, because we need this aspect of law for us, as a social being, to live. But the aspect of law, which is something made, has much to do with commons. Because the spirit of the commons

¹ Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berett-Koehler Publishers, 2015, p. 150.

is something made from bottom up, through cooperation and partnership.²

Law as something made and commons

We usually take law for granted, that is something given to us, not made by us. Then how can we make law, or more precisely, how can we take law as something made. We can do that through recognizing law as commons, and learning from the organizing principles of commons.

"The fundamental organizational principle of commoning everywhere is that of caring, duty, reciprocity, and participation. It is about spending a lot of time together to care for something recognized as a common with high attention and patience. It is a process where individuals sharing a collective purpose institutionalize their collective will to maintain some order and some stability in pursuit of their goals. Such commoning institutions are highly virtuous from an ecological perspective, because they avoid waste in consumption and exploitation. Most important, commoning not only cares for the existing commons but also generates new social commons because people when doing things together exchange ideas and opportunities. Commoning generates the collective knowledge we need to solve today's systemic problems."³

We can make law as recognizing law as commons, that is, through care, duty, reciprocity, and

² "Commons institutions function through the direct legal empowerment of their members in common pursuit of a generative meaning or task, and they respond to real human needs for participation, security, and sociability. Working from the bottom up, such institutions have the potential to take over the core of the legal system, representing a network that can conquer the world not through violence and brutality but through cooperation and partnerships. Because commoners experiment with different models of labor division outside of exploitation, human time is freed up for proselytizing, organizing, and connecting, which allows the network to grow and take over. Government and private property would not necessarily disappear in the ecological legal order, but they would be limited and tamed by the commons." Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berett-Koehler Publishers, 2015, p. 150~151.

³ Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berett-Koehler Publishers, 2015, p. 153~154.

participation. Important aspect of this view is that law is not something that is authorized by supreme being, but something we make through commoning process. "Commoning, defined as participating as a community in caring for the public good, generates the collective knowledge we need to solve today's systemic problems. No hierarchical structure based on the concentration of power and exclusion can do that."⁴

What is buen vivir

The heart of conceptualizing the concept of commons lies the process of "commoning", which can be interpreted as enlarging the participants of the commons, through care, duty, participation, and reciprocity. So commons is intrically connected with the boundary or boundarizing of the community. How should we boundarize our community? I think this is the concern of buen vivir.

Buen vivir is good living, but what is good living? Acknowledging good living is possible though pointing out our main contemporary problem. Our main problem is usually said as the nature-culture divide. People usually blame Descartes for this. Let's look at what he actually says. Following is from Descartes' <Meditations on First Philosophy>.

"Mind differs from body that body is by its nature divisible while mind is indivisible. When I think about my mind – or, in other words, about myself insofar as I am just a thinking thing – I can't distinguish any parts in me; I understand myself to be a single, unified thing. Although my whole mind seems united to my whole body, I know that cutting off a foot, arm, or other limb would not take anything away from my mind. The abilities to will, sense, understanding, and so on can't be called parts, since it's one and the same mind that wills, senses, and understands."⁵

As Descartes says, body can be cut off, while mind is a single mind, and I am a thinking thing, from the famous cogito ergo sum. That is, body is divisible, while mind is indivisible. This is usually interpreted as differentiating the mind and the body. But it can also be interpreted as connecting

⁴ Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berett-Koehler Publishers, 2015, p. 162.

⁵ Rene Descartes, Ronald Rubin trans., <Meditations of First Philosophy>, Arete Press, 1986.

mind and body. Or in his words, mind or thinking thing(res cogitans) is connecting thing, and body or extended thing(res extensia) is something connect through the mind. So if you interpret Descartes in this way even he looks for connection through division.

I think buen vivir has two aspects, internal and external. Internally it is connecting body and mind. And externally it is connecting nature and culture. In order for this external connection possible, acknowledging persona in nature is needed. This leads to rights of nature.

Rights of nature as buen vivir

The Preamble of the Constitution of Ecuador of 2008 states that the people of Ecuador “hereby decide to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the sumak kawsay.” With this Preamble, Title II, Chapter 7, Articles 71~74 is entitled “Rights of Nature.” First of these articles, the article 71 is the following.

Art. 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for her existence and for the maintenance and regeneration of her life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

So buen vivir is a good way of living reached through a new form of public coexistence, in diversity and in harmony with nature. This is done through recognizing Pacha Mama or Nature, where life is reproduced and occurs. And I think this process is accomplished through connecting body and mind, and nature and culture. Which is in itself the act of commoning, internally and externally. Myself and earth are all the connection of thinking thing and extended thing. And good way of living starts from this connection.

Rights of nature is in itself the process of expanding the participant of legal subject to non-humans. So acknowledging the rights of nature is the process of commoning, particularly toward expanding the subject of rights.

Lots of scholars treat rights of nature in itself a hybrid between the Western concept of right and the indigenous thinking Pacha Mama, that is, nature as a living thing.

Conclusion

"An ecolegal order would recognize the fundamental interconnectedness of our global problems and enable us to find appropriate, mutually supportive solutions that, instead of distinguishing law, politics, and economics at the local, state, or even international level, would mirror the interdependence of the problems they address. Systemic solutions typically solve several problems at the same time."⁶

Can we enlarge our constituents of our legal system beyond human? I think this can be done through connection of mind and body internally, and connection culture and nature externally. And this may be the threshold that can solve lots of things of present disconnectedness.

The problem is disconnectedness, and solution is in connecting. Buen vivir is connecting way of living. Commons is a social acknowledgement of interconnectedness. And law is a social institution enabling this. So perceiving law as commons and buen vivir is very important.

"We have the knowledge, the technologies, and the financial means to build a sustainable future. What we need now is the capacity to transform the systemic vision into radically new human laws, capable of creating the correct incentive scheme to move in a safe direction. Such laws are most likely to emerge from self-organizing communities created, piece by piece, from the bottom up."⁷

⁶ Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berrett-Koehler Publishers, 2015, p. 159.

⁷ Fritjof Capra and Ugo Mattei, <The Ecology of Law>, Berrett-Koehler Publishers, 2015, p. 160.