



REVIEW

The legal concept of ‘heritage’ in the world heritage convention: The case of Yakushima, Island



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Abstract Yakushima Island (Yakushima) has been developed for eco-tourism, and it has been registered on the list of UNESCO world heritage (WH) sites. The inhabitants of Yakushima have derived great prosperity from their WH registration and are considered successful in Japan.

In spite of the island's strong economic growth due to tourism, there have been many social problems. The inhabitants, including tourist agencies and tour guides, are the primary agents of these social problems. In this paper, we explain that the causes of these social problems are rooted in a misinterpretation of the WH convention, especially the concept of ‘heritage’. We must define the meaning of ‘heritage’ and the related words in the convention.

In doing this, it is necessary to introduce strictly defined legal terms from the civil law. In our civil law, the concept of ‘heritage’ is described as one concept, that is, joint-property or inheritance. Inheritance is owned jointly, and it consists of heirs and inheritance obligees, that is, all the peoples of the world. The inhabitants in Yakushima should recognize that they gave everyone from around the world the right to enjoy the natural environment of their island after it was registered on the WH list.

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Introduction

Four areas in Japan have been registered as World Natural Heritage (WNH) sites on the UNESCO list: Yakushima, registered in 1993; Shirakami, in 1993; Shiretoko, in 2005; and Ogasawara, in 2011. Three of those sites are ocean: Yakushima, Shiretoko, and Ogasawara. Furthermore, the Southwest Islands area (Amami and Okinawa), was put on the provisional list in 2014. It is possible that the framework of WNH registration in Japan has been tilted towards islands (Hagino, 2013) (pp. 78–79).

The Yakushima area is a successful example of developmental tourism, but the inhabitants, including tourist agencies and eco-tour guides, cause many social problems. For example, entrance fee was imposed several times in the WNH zone. There are three popular eco-tourism spots in Yakushima: Shiratani-Unsui-Kyo, Jomonsugi-route, and Yakusugi Land (Hagino, 2011). The typical plan for three days in Yakushima costs about \$200 for entry and guide. It was reported that the Yakushima Tourism Association misappropriated donations received from tourists illegally (Minami-nippon Newspaper, 2015). The amount was about \$200,000.

How did such social problems occur? In 1972, the inhabitants organized the nature conservation group, that is, “Yakushima wo Mamorukai”, and were able to close down forestry forever, even though it was a major industry of Yakushima at that time (Shiba, 2007) (p. 76). It was one of the successful movements of nature conservation in Japan. Before this movement, there was only another movement against the landholding system in 1900 (Miyamoto, 1974) (pp. 144–148). After WH registration, tourists have rushed to Yakushima. The eco-tour spot, “Jomon-sugi” has been overused by tourists which has become an issue (<http://mirainoasiato.jimdo.com/島民/社会問題と入場税>). The groups concerned with tourism have replaced the issue of overuse for the issue of human waste treatment and have never restricted the number of tourists for the pecuniary advantage of tourism (<http://env.go.jp/自然/isan/kento/comf02/03/mat02.pdf>). A nature conservation group would set a limit on the number of tourists, if the nature conservation movement continued. It is not necessary for inhabitants to conserve nature, because almost all area in Yakushima are national conservation zone under legal control by the government. There has been little difference of opinion about nature reservation between stakeholders, that is, inhabitants, tour agencies and eco tour guides. Then they have tried to solve the issue of human waste treatment by collecting donations from tourists under the name of sharing the expenses by beneficiaries. This method is not a solution to the root of the overuse.

However, Yakushima Tourism Association covered their deficit from the donations and then the directors resigned. I think that this was a disappointing case and that this problem should not finish as a simple case because a similar case will happen in the future. We paid attention at the time of WH registration which was quietened down their nature conservation movement. Inhabitants should try to gain a deeper understanding of the WH convention. The WH registration means that they should not perform activities to human waste treatment, but new activities to maintain world heritage.

Our focus is their understandings of the concept of ‘heritage’ in the WH convention and our purpose is to seek

the underlying causes of the social problems. We choose a legal approach, especially civil law in Japan, and we have some confidence that there is a close relationship between heritage in the WH sites and civil law.

Some meanings of the word ‘language’

‘Heritage’ is an unusual word and we must define ‘heritage’ according to the WH convention. There are different definitions of the word. In English, ‘heritage’ means ‘treasure’, and this meaning includes national heritage. In the dictionary, it is defined ‘the history, traditions, and qualities that a country or society has had for many years and that are considered an important part of its character’ (Hornby, 2005).

In the WH convention, ‘heritage’ is used as follows: ‘Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for *all the peoples of the world*, of safeguarding this unique and irreplaceable property, to *whatever people it may belong*’. The ‘need to be preserved as a part of the world heritage of *mankind as a whole*’ (UNESCO, 1973, preamble). ‘The duty of ensuring the identification, protection conservation, presentation and transmission to *future generations* of the cultural and natural heritage’ (UNESCO, 1973, Article 4).

According to the convention, the meaning of ‘heritage’ is a property for *all the peoples of the world, mankind as a whole*, or *whatever people to whom it may belong*, and furthermore *future generations*. The ratified country ought to grant the usufruct of its WH sites for mankind in the present and future.

The legal concept of ‘heritage’ in the succession process

Succession is a part of the system of civil law as a strictly defined legal term. We must understand the legal system. Civil law was established in France, and civil laws in other countries accords with French civil law. The basic framework is the same in all the countries.

Nakagawa and Izumi (2000), (pp. 43–44) explained the distinction derived from the succession process (Table 1). Proprietary rights perish with death, in the event of which the property becomes a joint-property, that is, joint-heritance, belonging to kinship and person declared by testament and inheritance becomes an obligee.

Upon redemption, the inheritance obligee would get some part of the movable property out of the joint-property. After the redemption is complete, the kinship and the person by

Table 1 Succession Process in civil law. Source: Nakagawa and Izumi (2000) (pp. 43–44).

Succession Process	Ownership of the deceased’s property
Before redemption	Joint-property: joint-heir (kinship relationship, persons declared by testament and inheritance oblige)
Redemption	To satisfy the obligation for inheritance obligees (movable property: liability or obligation)
After redemption	Individual property: to divide the other property among the heirs (kinship relations and persons declared by testament)

Table 2 Members of joint-property.

Civil law	Interpretation of the WH convention	Case in Yakushima
Kinship relation	Nations (not stated clearly)	Inhabitants
People declared by testament		Eco-tour guides agencies
Inheritance obligations	(1) All the peoples of the world mankind as a whole whatever people it may belong (2) Future generation	None

testament is called the heir or inheritor. This person can then divide the property of the deceased and make it an individual's property.

'Heritage' has a role in social or national property as a *public goods*. All the peoples of the world in the present and future may have usufructs over WH. We cannot redeem WH incessantly. We can confirm that 'heritage' in the convention exists only before the redemption process (Table 1).

Reconsideration of the concept of 'heritage'

We reconsider the concept of 'heritage' in the WH convention from the standpoint of the legal system (Table 2). 'Heritage' is the process before redemption. Inheritance obligations are necessary for WH. Inheritance obligations consist of (1) **all the peoples of the world**, or mankind as a whole and (2) **future generations**. Inheritors should accept the right for all the peoples of the world and future generations through eternity.

We reconsider the social problems in Yakushima within a legal framework (Table 2). There is no sense of incongruity with regard to distributing profits and donations from tourists. There exists a power to remove a stranger from their island, and they consider a tourist as a resource of income. The inhabitants, including guides and agencies in Yakushima, think of themselves as heirs in Yakushima and have the ownership of the natural property because of their residency. This phenomenon is similar to 'club goods' in micro economics (Buchanan, 1965). It appears that the inhabitants ignore the inheritance obligee and do not recognize the usufruct over WH shared by all the peoples of the world. The inhabitants ought to have given the usufruct to all the peoples of the world after Yakushima was registered on the list.

Conclusions

Negative choices

Some WH sites were removed from the WH list, such as the Arabian Oryx Sanctuary in Oman, which was removed in 2007, and the Dresden Elbe Valley in Germany, which was removed in 2009. Inhabitants can choose to remove their WH site from the list, and then they could nullify the usufruct of all the peoples of the world. We would like to denote this as a negative choice for WH. Presently, there are more than 1,000 WH sites, and there is a potential for poor decisions in Japan.

The boom of tourism was over in Yakushima (Hagino, 2015). To overcome this recession, the negative choice would appear in the front stage.

New directions for Yakushima

What action is necessary for the inhabitants of Yakushima? The WH registration means that they should not perform

activity to human waste treatment, but new activity to maintain a world heritage. They have to recognize their obligation to all the peoples of the world if they want to retain their island's status as a WH site. We suggest some concrete measures against the social problems: restriction of the number of tourists (Oosawa et al., 2006, p. 232), then to abolish the entrance fees and release financial statements of any donations. This would be a major turning point for the inhabitants of Yakushima. WH site should be maintained and developed for all the peoples of the world as soon as the WH registration.

Nature could not recover itself rapidly. To restrict the number of tourists is one of the best choice for nature reservation, which will keep the usufruct of all the peoples tomorrow.

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