The National Constitution as a Basis for Furthering Human Environmental Responsibilities – A Finnish Perspective

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Abstract

As the ultimate purpose of environmental law is to regulate the relationship between humans and their environment, it is obligated reflect on the characteristics related to the complexity of this relationship e.g. diversity, interconnectedness, uncertainty and the finite carrying capacity of the earth. Furthermore, humans are connected to ecological interdependencies and should therefore organize their norms accordingly. The challenge for the next generation of environmental law is to progress from a reactive approach towards ensuring positive objectives for social-ecological systems via more adaptive and systemic-sensitive legislation. By using the Finnish constitution as an example, I discuss whether in terms of legal premises, we might already have the potential to justify further environmental responsibilities, while constitutional environmental rights thus hold hope for stimulating calls to tackle environmental degradation.

> "In the very early phases of the development of civilization, man's views were essentially of wholeness rather than of fragmentation".[1]

1. Introduction

According to contemporary ecological awareness, the resilience of both social and ecological systems are interconnected in complex, dynamic, nonlinear relationships. Additionally, the integrity and resilience of human communities and social institutions, as well as of natural communities and ecosystems, depend on each other.[2] Because there is an entwined vitality and vulnerability between social and ecological systems[3], human beings and the environment should thus be viewed as a single unit, although previously they have often been considered separate entities. Whereas a social-ecological view emphasizes constant transformations in—and various inter-linkages and interdependencies between—social and ecological systems, the sectoral, rigid, front-end built laws, which often show significant inconsistency in relation to

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[1] D Bohm '*Wholeness and the implicate order*' (Routledge 2002).

[2] The understanding that ecological resilience also requires understanding that the behaviour of humans involved with those ecosystems has triggered the development of the field of social-ecological systems research and the study of social-ecological resilience. C Folke, J Colding and F. Berkes '*Synthesis: building resilience and adaptive capacity in social-ecological systems*' in F Berkes, J Colding, C Folke (ed) '*Navigating Social–Ecological Systems: Building Resilience for Complexity and Change*' (Cambridge University Press 2003) 352–387; M Sterk, I A van de Leemput, and E Peeters (2017) '*How to conceptualize and operationalize resilience in socio-ecological systems?*' Current Opinion in Environmental Sustainability 28, 108-113. https://doi.org/10.1016/j.cosust.2017.09.003.

[3] E Ostrom '*A general framework for analyzing sustainability of social-ecological systems*' (2009) 325 Science 419–422.

their object.[4] For example, Finnish national environmental legislation has structural features that weaken the ability of courts to broadly tackle formidable, systemic environmental problems, such as climate change and biodiversity loss. Also, whereas solving global environmental problems requires extensive guidance of human and organizational behaviour, Finnish environmental legislation is chiefly based on traditional permit control and the nation's courts cannot take greenhouse gas emissions, into account in its considerations on e.g. environmental permitting as relevant legislation (the Environmental Protection Act) does not allow for this[5].[6]

Recent reinterpretations of constitutional environmental right (as will be discussed below) give the legislator a stronger mandate to change regulatory structures. This provision may also appear in interpretations of the law to a limited extent – although it is first and foremost up to the legislator to decide what is desired.[7] For the conditions of constitutional environmental right to be met—and the different dimensions of environmental responsibility to be taken into account—environmental legislation needs to be well coordinated.[8] More systemic-sensitive considerations would require adapting legislation and its interpretations to the ever-changing social-ecological realities—which would naturally increase the need for tolerance of legal uncertainty. In my view, this *tolerance of uncertainty* is at the core of everyone's constitutional responsibility for the environment.

Legal scholars have long identified problems in regulating human relationship with ecosystems and offered adaptive integrated approaches to the undeniable challenge that humans and their systems currently encounter. This paper takes part into these discussions by identifying connections between human responsibility over the integrity and resilience of social-ecological systems and constitutional environmental rights. The concept of human rights for a healthy environment has been debated since these concerns converged in the 1970s[9]. As *Farnese* argues, '[i]t is reckless to continue to wait for soft targets to be translated into hard targets under the banner of environmentalism conservation'.[10] The constitutional recognition of environmental rights and responsibilities respectively, reflects an understanding of the interdependency between human rights and the environment on a high normative level, heretofore offering a strong

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[4] C A Arnold & L H Gunderson, '*Adaptive Law and Resilience*' (2013) Legal Studies Research Paper Series Paper 10429.

[5] According to Section 48.2 of the Environmental Protection Act 'an environmental permit *shall be issued* (emphasis added) if the activity fulfils the requirements of the provisions given in and under this Act and the Waste Act'—in other words, if the desired activity does not cause specific pollution effects on the environment. Indeed, the Environmental Protection Act is an emissions act, it is not made to control the effects of climate change but to control the concrete and perceivable effects of pollution. Therefore, permitting authorities and courts are incapable of taking advantage of it to protect the climate. K Kuusiniemi '*Luonnonsuojelun asema ympäristön käytöstä ja suojelusta päätettäessä*' Oikeustieteen seminaari luonnonsuojelulain uudistuksesta 1.9.2020. Such concept of decision making can also be beneficial to nature as it neither allows for balancing interests when the environmental conditions for granting a permit are not met.

[6] The situation would be quite different with the so-called concession-type or benchmark-based permitting schemes, which give the decision-making authority the power to take-into-account other aspects than the explicit prohibitions of the legislation. Ibid.

[7] This paper does not seek to propose amendments to any legislation *per se* but it merely argues on implementing further human environmental responsibilities throughout our legal system – and searches for constitutional grounds for doing so.

[8] Government Proposal for Nature Conservation Act (HE 76/2022 vp), 293.

[9] Whether the right is individual or collective, negative or positive, what the scope and nature of the right is and so forth.

[10] P Farnese '*A Rejoinder to 'Holistic and Leadership Approaches to International Regulation: Confronting Nature Conservation and Developmental Challenges*' (3(2) 2014) Transnational Environmental Law 321–322.

mandate to implement accordant legislations. In other words, in terms of legal premises, we may already have the potential to justify further environmental responsibilities, while constitutional environmental rights thus hold hope for stimulating calls to tackle environmental degradation. In this paper, I will not frame or categorize these rights *per se* but search for implications regarding their capabilities to further human environmental responsibilities. The motive for linking constitutional environmental provisions and human responsibility over the management of social-ecological systems is first and foremost to bind the tolerance of uncertainty—characteristic of the normative formed on the basis of complied non-legal scientific information—to a fundamental value-based decision made within the sphere of (constitutional) law.

The discussion draws on what *Plumwood* refers to as 'the paradigm of mastery'—especially when she alludes to denied dependency in the human/natural relationship[11]. Indeed, there have been clear implications that the law has often been appropriated for human purposes. As we now know (via science), humans are intimately entwined with nature, and we no longer have an excuse for this mastery. Minor adjustments under the auspices of environmental law have not altered this underlying paradigm.[12] I will discuss whether more fundamental legislation, e.g. constitutional environmental right as a meta-principle, can offer the premises for doing so. This research thereby also cautiously alludes to *Fuller*'s and *Dworkin*'s efforts to find unifying principles and maxims of law[13] within the constitutional sphere. The focus of this scrutiny is further inspired by *Bosselmann*'s ecological approach to human rights, thereby especially concentrating on the responsibility to protect the environment. Also, as a departure from what Bosselmann defines as 'the approach of individual environmental rights' where the environment is a mere good or value to be added to the list of individual demands according to which the ecological approach to the human rights environment is a condition of life, therefore requiring limitations on individual freedom.[14]

The discussion commences in section 2 where I discuss the legal premises for environmental responsibilities. I focus especially on the potential of the Finnish legal system to embed further responsibilities of care for the environment on the basis of the environmental rights currently in place in the Finnish constitution. In section 3, by diagnosing the inter-related vulnerability of ecological and social systems, I will discuss some scholarly arguments on rethinking environmental law for the Anthropocene. Here, the central message is that law can no longer adopt the reductionist idea of a natural environment that almost completely separates the human sphere from the natural sphere[15]. As a result, I encourage further recognition of environmental responsibilities in legal discourse on the environment in order to trigger accordant legislation. Finally, I discuss whether, in light of this analysis, current constitutional environmental rights already have the potential to justify and further environmental responsibilities and more adaptive, systemic-sensitive social-ecolo-

[11] V Plumwood '*Feminism and the mastery of nature*' (London Routledge 1993).

[12] K Morrow '*Of human responsibility: Considering the human/environment relationship and ecosystems in the Anthropocene*' in L J Kotzé (ed) Environmental Law and Governance for the Anthropocene (Hart Publishing 2017) 272.

[13] L L Fuller Anatomy of the Law (New York: F A Praeger; London: The Pall Mall Press 1968) 140.

[14] K Bosselmann '*Human Rights and the Environment – Redefining Fundamental Principles*' in B Gleeson and N Low (ed) '*Governing for the Environment. Global Issues Series*' (Palgrave Macmillan, London 2001) 118–134 at 119.

[15] See K Bosselmann 'Losing the Forest for the Trees: Environmental Reductionism in Law' (2010) 2 Sustainability, 2424–48.

gical considerations in legislation and decision-making.

2. Constitutional environmental right as a justification ground to enforce further environmental responsibilities – Responsibility for the environment in the Finnish constitution

Desirable as it might be to develop a completely new paradigm to address the human-earth relationship, it is both necessary (considering the threat of environmental degradation) and pragmatic to work instead with a reframed version of the predominant human rights framework[16].[17] From the perspective of human responsibility, human rights and the environment are interrelated through the concept of 'sustainable development' for the benefit of present and future generations[18].[19] *Weston and Bollier* argue that a rights-based approach to ecological governance implies more than simply environmental protection but also freedom, non-discrimination and other norms of social justice.[20]

The problem with the existing legal rights approach, however, is the narrow definition of the interested party. In a legal system where access to the judiciary is organized in terms of individual/collective, the margins for environmental representation are significantly reduced. Often, the presented issues cannot appear as representative of anything from within the legal system.[21] Indeed, apart from the right to self-determination, all the rights in the Universal Declaration of Human Rights and the Covenants are the rights of individuals. Even when group membership is

[16] E Grant, L Kotze and K Morrow '*Human Rights and the Environment: In Search of a New Relationship. Synergies and Common Themes*' (3(5) 2013) Oñati Socio-Legal Series 953–965 at 959.

[17] One can identify various dimensions in the link between human rights and the environment. Firstly, adequate environmental protection can be seen as a precondition for the enjoyment of existing human rights. Existing human rights are also a tool for achieving advanced protection of the environment. B Lewis '*Environmental rights or a right to the environment? Exploring the nexus between human rights and environmental protection*' (8(1) 2012) Macquarie Journal of International and Comparative Environmental Law 36-47. Furthermore, a human rights-based aspect carries the virtue that when a claimed value is categorized as right, it trumps most other claimed values. R Dworking '*Taking Rights Seriously*' (London: Duckworth 1978).

[18] Commission on Human Rights, Resolution 2003/71 on Human rights and the environment as part of sustainable development, Commission on Human Rights (2003); Commission on Human Rights, Resolution 1995/14 on Human Rights and the Environment (1995); See also S Giorgetta, '*The Right to a Healthy Environment, Human Rights and Sustainable Development*' (2 2002) International Environmental Agreements: Politics, Law and Economics 173–194.

[19] The rights of future generations—or alternatively the duties of present generations to protect the rights of future generations—have been repeatedly affirmed at international, regional and domestic levels. Our Common Future: Report of the World Commission on Environment and Development (Brundtland Report), UN Doc. A/42/427, 1987; General Assembly Resolution 42/187, 'Report of the World Commission on Environment and Development', adopted on 11 December 1987; Universal Declaration on the Responsibilities of the Present Generation towards Future Generations, adopted by the General Conference of UNESCO on 12 November 1997; United Nations Framework Convention on Climate Change, adopted on 9 May 1992, vol. 1771, p. 107, preamble and Article 3; UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, UN Doc. A/CONF.157/23; UNECE Convention on access to information, public participation in decision making and access to justice in environmental matters, adopted by the United Nations Economic Commission for Europe on 25 June 1998, UN Treaty Series, vol. 2161; Pulp Mills on the River Uruguay, Argentina v Uruguay, Order, Provisional Measures ICJ Rep 113 par 177. The rights of, or duties to, future generations have also increasingly been explicitly articulated in relation to separate rights for the environment, of which the Århus Convention presents an excellent example. Environmental demands linked to human rights can facilitate grassroots action in defence of social-ecological systems.

[20] B Weston and D Bollier '*Toward a recalibrated human right to a clean and healthy environment: making the conceptual transition*' (4 (2) 2013) Journal of Human Rights and the Environment 123.

[21] A Philippopoulos-Mihalopoulos '*Absent Environments – Theorizing Environmental Law and the City*' (Routledge-Cavendish 2007) 175.

essential to the definition of a human right, the specified rights are held by individual members of protected groups. Individualism is thereby—and always will be—at the core of human rights philosophy.[22] Yet another example of this at the EU-level is that the fundamental characteristic of the rights of the European Convention on Human Rights (ECHR) is to protect individual rights, not collective rights.[23] Moreover, the current requirement for environmental litigation to qualify as a violation before the European Court of Human Rights (ECtHR) specifies that the environmental damage must have a clear connection with the realization of individual rights, such as the right to health, life or ownership.[24]

Society does have legitimate claims against individuals—and individuals do have important duties toward society. However, *in mainstream human rights, individual responsibility has traditionally been subsidiary to state responsibility*. Thereby, the institutional view of responsibility has been claimed too reductionist—lulling individuals into a false comfort leading them to believe that they do not need to consider that enjoying rights necessarily entails the notion of responsibility owed towards other rights holders (arguably extending beyond, to the natural world).[25] *Grant, Kotzé and Morrow* further argue that this problem is exacerbated by the fact that the legal system is not 'alive' to our environmental distress. We, however, continue to expect too much of the legal system, thus using it as an excuse to abdicate our own responsibility.[26]

Although most scholars affirm that a constitutional environmental right meets the definitions of a human right[27], this right also potentially contains certain fundamentally differing properties—especially regarding its responsibility dimension[28]. This constitutional dimension

[22] L H Leib 'Human Rights and the Environment: Philosophical, Theoretical, and Legal Perspectives' 2(3 2011) Queen Mary Studies in International Law 56–57.

[23] According to *Bogojevic*, the EU also might be following a constitutionalizing trend. Further, the Charter of Fundamental Rights of the European Union codifies a 'high level of environmental protection' and 'improvement of the quality of the environment' as part of EU's corpus of fundamental rights protection. However, there is no mention of environmental rights in Article 37: The Charter draws a distinction between rights and principles, of which environmental protection belongs to the latter. S Bogojević '*EU Human Rights Law and Environmental Protection: The Beginning of a Beautiful Friendship?*' in S Douglas-Scott and N Hatzis (ed.) EU Human Rights Law (Edward Elgar Publishing 2014).

[24] As the collective nature of rights is not incorporated into the Convention, the ECtHR may include the acknowledgment of a right, including such elements difficult in the framework, where the rights are inherently individual rights. One of the cases where the ECtHR stated explicitly that there is a necessity to make a connection between individual rights and environmental pollution is the case of Kyrtatos v. Greece (ECtHR, Kyrtatos v. Greece, 22 May 2003, para 52). H-E Heiskanen '*Towards Greener Human Rights Protection: Rewriting the Environmental Case Law of the European Court of Human Rights*' (Tampere University Press 2018) 88.

[25] Grant et al (n 16) 961.

[26] Ibid.

[27] Eg R P Hiskes '*The Human Rights to a Green future: Environmental Rights and Intergenerational Ju*stice' (Cambridge University Press 2009); L Collins '*Are We There Yet? The Right to Environment in International and European Law*' McGill International Journal of Sustainable Development Law and Policy (3(2) 2007) 119–153 2007, T Hayward '*Constitutional Environmental Rights*' (Oxford University Press 2005), S Giorgetta '*The Right to a Healthy Environment, Human Rights and Sustainable Development*' (2 2002) International Environmental Agreements: Politics, Law and Economics 171–192.

[28] Over 80 UN member states provide an individual responsibility for protecting the environment. Interestingly, there are six nations whose constitutions establish an individual duty to protect the environment but nonetheless do not establish an individual right to a healthy environment nor impose environmental obligations upon the state. D Marrani '*The Second Anniversary of the Constitutionalisation of the French Charter of the Environment: Constitutional and Environmental Implications*' Environmental Law Review (10(1) 2008) 9–27. These provisions seem to be mere hortatory and confirm that everyone has a role in protecting the environment from human-imposed damage and degradation. D Boyd '*The Environmental Rights Revolution. A Global Study of Constitutions, Human Rights, and the Environment*' (UBC Press 2012). In some countries, the development of constitutional environmental responsibility has been taken one

emphasizes that the environmental values protected by the constitution cannot be solely reduced to the rights of individuals. Using Finland as an example, I will now discuss the application of the constitutional environmental right to determine whether it is 'alive' towards the notion of responsibility and whether it thereby has further potential to provide an answer to our social-ecological crisis.

In many national constitutions—Finland included—our fundamental dependence on the environment and decision to work for environmental protection is solved one-sidedly. The section 20.1 of the Finnish constitution declares that '[n]ature and its biodiversity, the environment and the national heritage are the responsibility of everyone'[29], rather than mentioning the rights of nature[30]. This solution, according to *Pirjatanniemi* is, however, legally enforceable. Indeed, from a legal perspective it is possible to create obligations without identifiable rights-holders at hand.[31] The reason behind formulating the provision in the fundamental rights chapter of the Finnish Constitution as (human) 'responsibility for the environment' instead of the 'right of nature' originates from the conceptual components of the Finnish legal system. Additionally, as *Tuori* puts it, 'if it is true that the conceptual deep structure of modern law includes legal subjectivity as an equal feature of all human beings, this explains why the idea of rights of nature is difficult for our legal system'.[32] To clarify the terminology, I will refer to section 20 of the Finnish constitution as a 'constitutional environmental right' (*ympäristöperusoikeus*) although the title of the section is worded as the 'responsibility for the environment'. I will also focus my scrutiny especially on the section 20.1 of the constitution, but since responsibility as a legally enforceable duty requires that also participatory and procedural rights are adequately safeguarded and factually practiced, and since responsibility for nature is also fulfilled through the right to a healthy environment, I will include reflections on the section 20.2 of the constitution where it is relevant.[33]

Unlike other constitutional right provisions, section 20.1 of the Finnish constitution is not based on the idea of protecting individual or collective rights, but it imposes responsibility on everyone for nature and its biodiversity, the environment and the cultural heritage. According to the Government Bill on the amendment of the constitutional environmental responsibility provision (HE 309/1993 vp), the responsibility

step further. For example, in 1998, Ecuador formally recognized both the precautionary principle and the right of individuals to protect the environment. A transition to a right of nature was also included in Venezuela's Constitution, which recognizes the right and duty of each generation to protect and maintain the environment for its benefit and the future world. Furthermore, more than 25 towns and cities in the US have implemented ordinances that are arguably premised upon the rights of nature.

[29] This provision covers both the prevention of environmental degradation and pollution as well as active nature-favourable action. Thereby it expresses people's overall liability for the total line of social activities and economics that secures the preservation of the natural diversity of the living and non-living. PeVL 20/2010 vp.

[30] The entire Section 20 of the Finnish Constitution ('Responsibility for the environment') reads: 'Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment'.

[31] E Pirjatanniemi '*Greening Human Rights Law: A Focus on the European Convention on Human Right*s' Human Rights and Sustainability (Routledge 2016) 11–24 at 22.

[32] K Tuori '*Oikeusjärjestys ja oikeudelliset käytännöt*' (Helsingin yliopiston oikeustieteellinen tiedekunta 2013) 60–61.

[33] About the types of environmental protection provisions in constitutions see eg Boyd (n 28) 52–71; Hayward (n 27) 84–88, 139–153.

provision is justified based on the notion that the protection of nature and the environment is associated with values that cannot be reduced to individual rights. The provision can thus be seen to contain a foundation for the integration principle. Also, the environmental values expressed therein should be considered in all environmentally relevant legislation and judicial practice.[34] Furthermore, the constitutional environmental right will also have to be weighed in the implementation of so-called welfare rights.[35]

One of the main contributions of the constitutional environmental right is to enable a better balance between competing economic interests. Moreover, as classical fundamental rights are often specifically addressed to protect property and the freedom of a source of livelihood, weighing circumstances against these rights is especially common to the constitutional environmental right. Also, while the protection of property and the individual freedom to engage in commercial activity are covered by the Finnish constitution, the environmental right provision can also have an effect on their interpretations (and *vice versa*) when, *inter alia*, legislative solutions for a sustainable balance between man and nature are promoted.[36] Indeed, while taking into account the general conditions for the restriction of constitutional provisions, it is possible to present an interpretation that an owner's freedom can be limited more rigidly on the basis of environmental reasons as provided in the constitutional provision 20.1. Likewise, the achievement of environmental targets is thereby considered more important than, e.g. the absolute protection of an entrepreneur's investment.[37]

As several statements[38] issued by the Committee on Constitutional Affairs have affirmed[39], section 20.1 of the Finnish constitution should be interpreted as a normatively binding provision.[40] This premise has also been established in case law[41]. For example, the Supreme Administrative Court found that section 20.1 of the Finnish Constitution contains a constitutional statement on the significance of natural values and thereby guides the application and interpretation of

[34] A Kumpula '*Perustuslain 20 § ja sen merkitys kaivoslainsäädännön valmistelussa*' (2006) 3.

[35] V-P Viljanen '*Perusoikeusjärjestelmä ja ympäristö*' in V-M Thuren (ed.) 'Oikeus ja oikeudenmukaisuus' Oikeustieteen päivät 3.-4.6.1999 Joensuussa (Joensuu 1999) 91–101.

[36] PeVL 20/2010 vp.

[37] A Kumpula '*Ympäristönsuojelu*' in K Kuusiniemi, A Ekroos, A Kumpula and P Vihervuori (ed.) Ympäristöoikeus. (WSOY Lakitieto 2001) 1109–1379 at 1271–1272.

[38] PeVL 21/1996 vp; PeVL 38/1998 vp.

[39] The Committee on Constitutional Affairs is the main body tasked with reviewing the constitutionality of laws. Its supervision contributes to ensuring the unity of the rule of law. In the legislative enactment phase, the Constitutional Committee exercises preliminary supervision and issues opinions on the constitutionality of bills before Parliament.

[40] The wording of the provision communicates its difference compared to other rights protected by the Constitution. With regard to constitutional environmental law, the only issue that the drafting of fundamental rights reform refers to is the declaratory nature of the right: the provision is 'mainly' or 'quite declarative' in nature. The implementation of the provision would take place with the support and mediation of other legislation (KM 1992: 3, p 360 and HE 309/1993 vp, p 66) However, in the case of a constitutional environmental right, the term declaratory should not be locked in. According to Section 22 of the constitution, public authorities must ensure the realization of fundamental and human rights. In this case, the fundamental right of the environment also contains a strong binding obligation on public authorities when read in light of Section 22 of the constitution.

[41] When it comes to the supervision of legality, the section 106 'Primacy of the Constitution' of the Finnish constitution declares that '[i]f, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the constitution, the court of law shall give primacy to the provision in the constitution.' However, this provision rarely becomes applicable. Instead, a constitution-friendly interpretation of the law (see PeVL 6/1988 vp) is seen as a priority means of ensuring an effective realisation of constitutional rights. This interpretation often occurs balancing between different constitutional provisions.

the law.[42] This interpretation emphasizes that the provision is not only an abstract legal principle but one that also guides the interpretation of other fundamental rights. *Inter alia*, the 'case of Vuotos'[43] demonstrated that section 20.1 can be used as a supporting argument in interpreting flexible norms. In a more recent case before the Supreme Administrative Court, section 20.1 seems to have provided an extra argument for limiting other constitutional rights. In addition, an annual prohibition on gill-netting—based on the Government's decree—to protect ringed seal pups in shareholders' waters was opposed by the same shareholders on the basis that the decree breached property rights and legal certainty (both of which are also safeguarded in the constitution). The complaint was rejected, e.g. on the grounds that the restriction on the property right was specific enough and justified by societal need. The restriction was also proportional to the weight of the societal need it was based on. In addition, the court also stated that according to section 20.1, nature and its biodiversity are the responsibility of everyone.[44]

Section 20.1 has also given ground for interpretations in favour of the constitution in conjunction with section 20.2 when the processual norms of ordinary laws are interpreted in the favour of environmental associations right to appeal.[45] A 'constitution-friendly' evolution can be found in the decisions of the Finnish Supreme Administrative Court concerning the opportunity to participate. Additionally, in its case law, the interpretation of the concept of an appellant 'the interest directly affected by a decision'[46] is no longer understood solely as the private interest of an association or as a collective interest safeguarding the environment of its members but is increasingly equated with the public environmental interest accordant to the association's agenda. Consequently, the association's right to appeal may be based on the infringement of public interest when this interest is accordant to the association's function. In addition to allowing associations a right to participate, this 'constitution-friendly' interpretation endows them with the responsibility to act on behalf of public interest in the sphere of environmental protection.[47]

The previous cases serve as examples of constitutional environmental law's capability to limit government powers and other competitive interests by allowing judges to interpret statutory provisions and administrative decisions in favour of the environment. Thereby, it can be seen to contribute to changing the underlying paradigm of mastery within our current legal system. These cases are however exceptions to typical argumentations in environmental cases, where the constitutional environmental right plays quite limited role. Indeed, the constitutional environmental right is still undeveloped as a result of its rather sporadic use in case law compared to other constitutional rights.[48]

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[42] Kumpula (n 34) 3, 20.

[43] KHO: 2002:86 'The Case of Vuotos'. In this case, the court held that the constitutional environmental right provides a statement on the value of nature and guides interpretation of the law. This case is certainly not the only court decision emphasizing natural values, but due to its special features, it is especially relevant for the application of Section 20.1 of the constitution.

[44] KHO: 2014:57.

[45] Eg KHO 2007:74.

[46] Chapter 2, Section 6 of the Administrative Judicial Procedure Act (586/1996).

[47] E.g. K Kokko '*Ympäristöoikeuden perusteet*' (2017) 129–130.

[48] The assessment of the weighting between constitutional environmental right and another constitutional right (usually the protection of property) is further complicated by the fact that although such weighting was made in court, its effects are not always documented. Judges of the Supreme Administrative Court assess that in certain decisions the successful argumentation of either the Constitutional Committee or even the appellant herself – concerning constitutional environmental right – can still be conveyed in the decision of the court. J Viljanen, H Heiskanen, S Raskulla, T Koivurova

Constitutional environmental right also serves as meta-principle guiding the nation's overall environmental policy. The constitutional provision 20.2 implies a constitutional mandate to develop environmental legislation in such a way that a healthy environment and people's influence over decision-making about their own living environment are safeguarded and developed through active measures of public authority[49].[50] This is also especially important in order to organise the exercise of everyone's constitutional environmental responsibility. The Committee on Constitutional Affairs has considered this provision of constitutional environmental right to be relevant, for example, in its opinions on fishing restrictions[51], restrictions on the use of certain fishing gears[52], protection of the built heritage[53], mining[54], domestic wastewater treatment[55], soil extraction[56] and private forest management[57].

Furthermore, the constitutional provision 20.1 constitutes grounds for new legislation that implements further environmental responsibilities on everyone. The Government Bill on the new Nature Conservation Act (HE 76/2022 vp), submitted to Parliament in May 2022, serves as a recent example of this. Also, the bill includes many references to the link between further environmental responsibilities accompanied with tolerance of legal uncertainty and the fulfillment of the constitutional environmental right. With regards to this, one of the most interesting reforms is the inclusion of the precautionary principle in section 7 of the Act. According to the Government Bill, the precautionary principle has positive impact on the constitutional environmental right (compared to the effective law 1096/1996) by strengthening everyone's responsibility for nature and its diversity.[58] Another particularly interesting reform in this regard is the voluntary ecological compensation in chapter 11 of the proposed Act. It seeks to provide a way to compensate for the degradation of the natural environment caused by economic activities thereby promoting the realization of environmental responsibility in accordance with section 20.1 of the Constitution[59]. Although the implementation of these provisions still remains to be accomplished, it is unquestionable that the concept of shared responsibility as a central part of the constitutional environmental right imposes an obligation not only on authorities but also on individuals, companies and organizations – in a widespread manner – to consider their constitutional environmental obligations[60].

Moreover, there are few examples where the constitutional environmental right has set limits on the government's proposals for new legislation: For example, in its opinion on the Government Bill on bankruptcy law (HE 221/2018 vp), the Finnish Constitutional Affairs Committee issued the opinion that the draft law does not sufficiently take into account the need to balance the protection of property right—guaranteed in section 15 of the Constitution—with the constitutional environment right under section 20 of the Constitution. In other words, the environme-

and L Heinämäki '*Miten ympäristöperusoikeus toteutuu?*' (Ympäristöministeriö, Tampereen yliopisto ja Pohjoisen ympäristö- ja vähemmistöoikeuden instituutti 2014) 17.

[49] Also, according to constitutional provision 20.2 'the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment'.

[50] Viljanen et al. (48) 16.

[51] PeVL 14/2010.

[52] PeVL 20/2010 vp.

[53] PeVL 6/2010 vp.

[54] PeVL 32/2010 vp.

[55] PeVL 44/2010 vp.

[56] PeVL 2 / 1997 vp.

[57] PeVL 22/1996.

[58] The Government Bill on Nature Conservation Act (HE 76/2022 vp) 296.

[59] Ibid., 309.

[60] Ibid., 293.

ntal liability provisions of bankruptcy law went too far in relation to the constitutional environmental provision and the environmental responsibility it protects.[61] The Constitutional Affairs Committee has indeed repeatedly assessed restrictions on the use of property based on environmental considerations.[62] In its assessment of whether the restrictions on the use of property are acceptable and proportionate, the Committee has put special emphasis on the grounds anchored in section 20 of the Constitution.[63]

The above-mentioned statements illustrate that a constitutional environmental right not only enhances environmentally friendly legislation but also mitigates the changes in the political climate so that they do not lead to a dire weakening of environmental legislation. In comparison, in Canada—where there is no federal Environmental Bill of Rights—in 2012 the Government of Canada introduced Bill C-38 (*Omnibus Bill; the Jobs, Growth and Long-term Prosperity Act*)[64], which made drastic changes to federal environmental legislation, including, among others, the Canadian Environmental Assessment Act (CEAA), the Fisheries Act and Species at Risk Act (SARA). Further, as a result of the dramatic change in political climate, a number of substantial changes to environmental legislation were introduced with virtually no debate nor compromise.[65]

Section 20 of the Finnish Constitution already guides legislation and the application of law in courts by allowing room for constitutional environmental right-friendly guidance and interpretations of the content of ordinary laws. Especially the interpretations relating to the concept of an appellant seem of interest as similar development has been witnessed within the Court of Justice of the European Union (CJEU): The CJEU has interpreted recent case law relating to the Århus Convention[66] and its implementation in EU law in such a way as to impose requirements on the Member States to allow broad standing rights on environmental matters before the national courts.[67] This development trend is especially favourable because long-term responsibility as a legally enforceable duty requires that the scope defining those of standing should be widened[68].

However, despite all the above-mentioned positive development, it still seems rather chal-

[61] The proposed bankruptcy law suggested that creditors' right to receive payment could not be limited, when their right was duly justified on other constitutional grounds (i.e. property right and freedom of livelihood). The Finnish Constitutional Affairs Committee gave particular weight to Section 20 of the constitution when it assessed the admissibility of restrictions on the use of property. PeVL (69/2018).

[62] See e.g. PeVL 55/2018 vp, PeVL 25/2014 vp, PeVL 10/2014 vp, PeVL 36/2013 vp and PeVL 20/2010 vp.

[63] See e.g. PeVL 36/2013 vp, 2/I and PeVL 6/2010 vp, 3/I).

[64] Bill C-38 https://parl.ca/DocumentViewer/en/41-1/bill/C-38/royal-assent.

[65] Reading between the lines of the 'Responsible Resource Development' rhetoric: the use of omnibus bills to 'streamline' Canadian environmental legislation, Denis Kirchhoff & Leonard J.S. Tsuji p. 108–120 | Received 10 Dec 2013, Accepted 12 Feb 2014, Published online: 04 Mar 2014.

[66] Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters 2161 UNTS 447; 38 ILM 517 (1999).

[67] This approach is clearly illustrated in the so-called Slovak Brown Bear case, in which the Slovak Supreme Administrative Court asked the CJEU whether Article 9(3) of the Convention—that is, enabling all members of the public to have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities that contravene provisions of its national law relating to the environment—is directly applicable, or has direct effect. The CJEU replied in the negative but added that the national courts should interpret national procedural laws so as to give environmental NGOs standing—even when there is no such explicit provision (Case C-240/09 *Lesoochranarske zokupenie VLK v Ministerstvo zivotneho prostredia Slovenskej republiky* [2011] ECR I-1285, para. 30–31. (*'Slovak Brown Bear'). See also Case C-263/08 Djurgården-Lilla Värtans* [2009] ECR I-9967.

[68] Pirjatanniemi (n 31) 21.

lenging to employ further tolerance for legal uncertainty in the form of genuinely adaptive, more systemic-sensitive environmental legislation. This would require changes in – and further coordination between laws. In the light of the interpretations of the constitutional environmental right made by the Committee on Constitutional Affairs and the Supreme Administrative Court everyone's constitutional responsibility for the environment is a normatively binding provision – capable to limit competitive interests and thereby challenge the existing allegedly stagnated legal certainty. Hence, I propose that we might already have a justification ground to embed further responsibilities of care for the environment via more adaptive and systemic-sensitive legislation. It would, however, be of utmost importance that we get more case law around constitutional environmental right to receive similar interpretative assistance as many other constitutional provisions. Therefore, it would be desirable that whenever the court weighs between constitutional environmental right and another constitutional right, its effects are also duly documented.

3. Shared vulnerability as a mandate to enforce further human environmental responsibilities

By adopting resilience science in natural resources management, we are moving our focus from laws related to living organisms towards those that relate to the inanimate physical media supporting them. We are, in other words, changing the approach from the 'environmental' towards the 'ecological'. This inescapably poses a critical question about how human beings feature within ecosystems. *Bosselmann* reminds us that while the individualistic core guarantees for human freedom are anthropocentric, no species can survive without respecting their ecological conditions. According to his hypothesis, it is the recognition of our ecological conditions that makes us truly humane.[69] Referring to *Merleau-Ponty*'s philosophy, *Grear* argues that it offers '[h]ope for the re-conceptualisation of the relationship between human beings and the living world … to understanding them as interrelated expressions of one unified, vulnerable living order'. Grear further suggests that this alternative ontology offers an understanding of vulnerability as intrinsic to the interconnected structure of being—*intercorporeality*[70]—and therefore also maintains the hope for legal theory to juridically grasp these implications rather than rendering us external to an objectified 'nature'.[71]

Jonas argues that the lengthened reach of our deeds moves responsibility to the centre of the ethical stage. Further, he maintains that a theory of responsibility needs to be set forth in both private and public spheres.[72] *Philippopoulos-Mihalopoulos* asks what it is in 'the space' that brings humans closer to their own respon-

[69] K Bosselmann 'In search of global law: The significance of the Earth Charter' (8(1) 2004) Worldviews 62–75 at 64.

[70] '*Intercorporeality*' – an ultimately ontological claim relating to the structure of being. This structure is, in Adams's words, 'inter- being, intertwining – and such interrelating is intrinsic to the very structure of subjectivity and lived reality'. This claim, as we can see, totally undermines the separation between mind and body, self and other, body and other, human and the world so intrinsic to the dominant Western worldview. Indeed, for Merleau-Ponty, subject and object are never separated at all – but instead form 'two abstract "moments" of a unique structure which is presence'. W W Adams '*The Primacy of Interrelating: Practicing Ecological Psychology with Buber, Levinas and Merleau-Ponty*' (38 2007) Journal of Phenomenological Psychology 24–61 at 40, citing M Merleau-Ponty '*Nature: Course Notes from the College de France*' (R Vallier, trans) (Northwestern University Press, Evanston, ILLs 2003) 500.

[71] A Grear '*The vulnerable living order: human rights and the environment in a critical and philosophical perspective*' (2(1) 2011) Journal of Human Rights and the Environment 23–44 at 38, 42.

[72] H Jonas '*The Imperative of Responsibility: in Search of an Ethics for the Technological Age*' (Chicago: The University of Chicago Press 1984) x.

sibility? According to him, the answer must be sought in a way in which vulnerability becomes apparent. To be *in the middle* (emphasis added) is to become aware of one's vulnerability.[73] This new, vulnerable position of the middle allows the reshaping of ecological processes as well as the position of environmental law in relation to them. Thereby, *Philippopoulos-Mihalopoulos* emphasizes that law – in its critical turning – must adopt the same level of vulnerability as its object of protection.[74]

Grant, Kotzé and Morrow note that notions of responsibility in tandem with vulnerability, also bring the issue of responsibility to the fore in discussions of purely intra-human rights claims and is therefore applicable both to humans and the biosphere. They propose that if vulnerability is an individual, collective and ecological condition, a corrective moral responsibility and ultimately legal accountability necessarily need to share and respond to its multi-layered character[75]. Furthermore, they urge us to balance rights with strong and enforceable duties to ensure that rights-based approaches create the paradigm shift that an ecological approach would require.[76] The concept of vulnerability further acknowledges that one's personal vulnerability is a condition of limits and therefore limitations. These limits are arguably missing in environmental legal discussions[77] and there has been a call for the 'vulnerable legal subject' to displace the liberal legal subject that currently dominates law and policy[78]. The space of vulnerability has serious affect for the way we understand social-ecological processes and the position of environmental law with regards to them[79]. Therefore, as *Philippopoulos-Mihalopoulos* puts it, the dualistic debate between anthropocentric and eco-centric legal protection must be relinquished as it only embodies the exercise of old semantics.[80]

Individual environmental responsibility relativizes individual freedoms thereby recognizing not only the value of environment—but also the environmental rights of other people. In ethical terms, the anthropocentric, utilitarian understanding of human rights is thus complemented by an eco-centric understanding. There is, as *Grant, Kotzé and Morrow* note, a need to balance rights with strong and enforceable duties, laying out our responsibilities in clear terms. Accordingly, if we are to ensure that rights-based approaches create the paradigm shift that an ecological approach requires, extending this methodology of rights-based legal protection to the non-human world, then notions of human responsibility (applicable on both individual and collective bases) cannot be relegated to the background. This is essentially because the invocation of such rights will firstly require human articulation and recognition, followed by human advocacy and adjudication to activate any protection so accorded.

So, as is accordant to a social-ecological resilience paradigm[81]—we are fundamentally

[73] A Philippopoulos-Mihalopoulos '*Actors or Spectators? Vulnerability and Critical Environmental Law*' (3(5) 2013) Oñati Socio-Legal Series 854–876 at 861.
[74] Ibid. 871.
[75] See also Burdon, who focuses on the creation of an ecological conception of law. P D Burdon '*The Earth Community and Ecological Jurisprudence*' (3 (5) 2013) Oñati Socio-Legal Series 815–837.
[76] Grant et al. (n 16) 961.
[77] Ibid.
[78] See 'The Vulnerability and the Human Condition Initiative' at https://web.gs.emory.edu/vulnerability/index.html.
[79] First, it reveals an incontestable exposure to the world. Second, the space of vulnerability exposes the futility of looking for a centre in the way life, society or anything else is structured. And third, it exposes the illusion of hierarchical control believed to be yielded by the law in relation to nature. Burdon (n 18), 859.
[80] Ibid. 859.
[81] See e.g. F Berkes, J Coldin, and C Folke (ed.) '*Navigating Social-ecological Systems: Building Resilience for Com-*

connected and interrelatedly dependent on the systemic whole—in the middle of which we are destined to live. Consequently, we ought to become aware that despite of our protected freedoms, we are not free from our systemic vulnerability.[82] Indeed, while humans are unavoidably immersed in nature, they must make choices about how to act. Humans' monopoly power over the rest of nature will not disappear but needs to be exercised benignly in the interests of all ecosystem components, including human beings themselves.[83] *Bosselmann, Engel* and *Taylor* see the possibility that by focusing our attention on the covenantal dimensions of democratic citizenship, we may find reasons to believe that human beings can morally self-govern themselves within the evolutionary and historical conditions of life on this planet.[84] These attributes are already reflected in many constitutions as was discussed above.

Ecological concepts are gradually introduced into the interpretation and implementation of laws and even used as a basis to establish entirely new legal concepts.[85] The appearance of shortfalls in contemporary laws, particularly under new scientific knowledge based on ecology, made it clear that we need to reformulate the laws relating to natural resources management.[86] In any case, laws governing natural resources have their roots in natural law—as do human rights[87]. As humans are connected to ecological interdependencies, they are therefore responsible to organize their norms accordingly. The conditions for doing so are arguably already established, as was discussed above in the context of the Finnish constitution.

4. Conclusions

The anthropocentric worldview has widely been identified as the cause of today's unfolding ecological crises.[88] Additionally, as the human subject is seen as vulnerable in the context of the Anthropocene[89], the modern categories of knowledge and of action, including forms and modalities of the operation of power that underpin the Anthropocene, are also in a state of crisis.[90] Indeed, the anthropocentric worldview has arguably shaped legal modernity, operating as the fundamental manner through which modern law organizes, categorizes and orders reality—particularly nature. It is further claimed that our laws relating to the environment remain stranded in a modernist, humanist tradition, consistently failing to engage with the merger of the interdisciplinary and post-humanist knowledge structures that have emerged over the past few decades.[91]

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plexity and Change' (Cambridge University Press, Cambridge 2003); B H Walker, C S Holling, S R Carpenter and A Kinzig '*Resilience, adaptability and transformability in social-ecological systems*' (9(2):5 2004) Ecology and Society; E Ostrom '*A General Framework for Analyzing Sustainability of Social-Ecological Systems*' (325 2009) Science 419–422; C Folke '*Resilience*' in H H Shugart (ed.) 'Oxford research encyclopedia of environmental science' (Oxford University Press 2016).

[82] Grear (n 71) 23–44.

[83] See D B Botkin '*Discordant Harmonies: a New Ecology for the Twenty-first Century*' (Oxford University Press 1990).

[84] K Bosselmann, R Engel and P Taylor '*Governance for Sustainability Issues, Challenges, Successes*' (IUCN 2008) 47.

[85] N Y Turgut '*The Influence of Ecology on Environmental Law: Challenges to the Concept of Traditional Law*' ((2)2008) Environmental Law Review 119.

[86] C Cullinan '*The Rule of Nature's Law*' in C Voigt (ed.) Rule of Law for Nature – New Dimensions and Ideas in Environmental Law (Cambridge University Press 2013) 94–108 at 108.

[87] See e.g. D Edelstein '*On the Spirit of Rights*' (University of Chicago Press 2018).

[88] P D Burdon 'Earth Jurisprudence. Private Property and Earth Community' (Adelaide Law School, The University of Adelaide 2011).

[89] P J Crutzen and E Stoermer '*The Anthropocene*' (41 2000) IGBP Newsletter.

[90] E Fisher, '*Environmental Law as "Hot" Law*' (25(3) 2013) Journal of Environmental Law 347–348 at 347.

[91] A Philippopoulos–Mihalopoulos '*Critical Environmental Law as Method in the Anthropocene*' in A Philippopou-

According to *Taylor*, there are certain fundamental reasons why the law finds the task of reconciling legal rights with responsibilities toward the collective for the protection of nature so difficult. Firstly, despite the growing acceptance of the interrelationship between morality and law, there remains a great hesitation to bring them too close to each other. Secondly, the exercise of the traditional rights-focused law that places primacy upon individual freedoms, articulated as legal rights, is only limited by reciprocal legal duties to not interfere with the legal rights of others. The legal rules that surround property are predominantly expressed as 'rights'. As these property rights have been developed to protect human 'freedom' from interference by the state or other private individuals and facilitate economic growth via exploitation, they only concern human needs and interests to the extent of legally recognized interest.[92]

Whereas, *Rawls* identifies the natural duties of individuals such as the duty not to harm or injure another and the duty not to cause unnecessary suffering[93], it is also rather clear under the current ecological understanding that these duties should extend to the indirect effects resulting how we exploit nature (in an un-resilient manner). Perhaps the most ambitious dimension from the responsibility perspective relates to the concept of the 'duties of mankind towards the environment', which also includes 'human duties to protect the environment as such', i.e. not necessarily for the anthropocentric benefit of present and future generations but for the benefit of nature in its own right.[94] Thus, overall responsibility is not reduced to limiting actions in relation to someone else's right, but it can be seen to imply that there is actually an independent good to be protected outside so-called 'subjective rights'.

In addition to broadened standing rights and interpretations affirming constitutional environmental responsibility, long term environmental responsibility as a legally enforceable responsibility requires us to overcome the question of causality.[95] This emphasizes the significance of the precautionary principle in natural resources governance. Indeed, resilience-based governance will require the operationalization of further human environmental responsibilities in the form of organizational learning, cross-scale linkages and the adaptive capacity to govern in a more flexible, iterative and adaptive (systemic-sensitive) manner[96].[97] Due to ecological uncertainties, laws should promote social-ecological resilience by re-envisioning management rules more precautionarily than has been done so in

los-Mihalopoulos and V Brooks (ed.) 'Research Methods in Environmental Law: A Handbook' (Edward Elgar 2017) 131–158 at 131.

[92] Although she scrutinizes the reasons, especially from an Anglo-American law perspective, the challenges are nonetheless universal.

[93] J Rawls '*A Theory of Justice*' (1971) 114.

[94] See e.g. D Shelton '*Human Rights and the Environment: What specific environmental rights have been recognized?*' Denver Journal of International Law and Policy (35 2006) 130-132; 26 1982 '*UN World Charter on Nature*' UN Doc A/RES/37/7; 1992 UN Convention on Biological Diversity, (UNTS 1760 1992) 79; C Redgwell '*Life, The Universe and Everything: A Critique of Anthropocentric Rights*' in A Boyle and M Anderson (ed.) 'Human Rights Approaches to Environmental Protection' (Oxford, Oxford University Press 1996) 71–87.

[95] Pirjatanniemi (n 31) 21.

[96] A S Garmestani and M H Benson '*A Framework for Resilience-based Governance of Social-ecological Systems*' Ecology and Society (1 2013) 9.

[97] Adaptive law methods and processes can be used as regulative tools to operationalize the precautionary principle – thereby also helping to mitigate the problems related to an excess of discretion and equipping the principle with value-based aspects. E Raitanen '*Legal Weaknesses and Windows of Opportunity in Transnational Biodiversity Protection: as Seen through the Lens of an Ecosystem Approach-Based Paradigm*' in S Maljean-Dubois (ed.) '*The Effectiveness of Environmental Law*' (Intersentia 2017) 98.

the past[98]. Indeed, the precautionary principle entails considering the vulnerability of social-ecological systems, the limitations of science, the availability of alternatives and the need for long-term, holistic social-ecological considerations.[99] The inclusion of the precautionary principle (and, by this means, more ecological considerations and further tolerance for legal uncertainty) in the Government Bill on the new Nature Conservation Act is therefore an important implementation of the responsibility of everyone to protect nature in accordance with section 20.1 of the Finnish constitution.

Our systemic health depends upon the integrity of the ecological whole. Therefore, the reflection of the old semantics of environment as a resource with the human at its centre within the legal architecture needs to change[100]. As environmental goods and values—under the existing paradigm—are mainly protected because of their role in satisfying human needs, humans should also decide upon the degree of protection required. This formulation is the logical consequence of the traditional human rights/responsibility concept.[101] A stronger emphasis on the role of precaution would shift the burden of proof to those who seek to engage in actions that have long-term consequences[102]. When the principle of legal certainty is not based on genuinely sustainable but stagnated premises, it will eventually lead not only to ecological but also social injustice. As the courts have lately been increasingly expected to express their stance on matters of fundamental (also – and here especially of *constitutional*) rights—particularly in the context of climate change[103]—this has at least invigorated the debate on whether our actions/omissions to safeguard our life-supporting systems can, even from a constitutional perspective, stand up.

The orientation of law, through its reception of ecological and eco-philosophical understanding, is already changing and a great number of domestic constitutions extol the human duties of environmental protection around the world. But more action is needed as the limits of the Earth's biological capacity are—likewise already—overextended.[104] In this respect, legislators have a crucial role in advancing social-ecological understanding. While Constitutional Courts have potentially a significant role in safeguarding constitutionally established rules, rights, and

[98] R K Craig '*"Stationarity Is Dead"—Long Live Transformation: Five Principles for Climate Change Adaptation Law*' (9 2010 Harvard Environmental Law Review) 48.

[99] Thereby, it also operates as a safeguard against asymmetric information and imperfect monitoring. W Burns '*Potential Causes of Action for Climate Impacts under the United Nations Fish Stocks Agreement*' Climate Law Reporter (7 2007).

[100] E.g. S Turner 'A Global Environmental Right' (Routledge 2014) 68.

[101] S Borras '*New Transitions from Human Rights to the Environment to the Rights of Nature*' Transnational Environmental Law (5(1) 2016) 113–143.

[102] Pirjatanniemi (n 31) 21.

[103] When climate change litigation has been brought by citizens to remedy infringements of their constitutional rights, claimants have invoked constitutional rights to remedy governmental action or inaction to mitigate the causes of climate change or to adapt to the consequences of climate change. E.g. *Preston* has grouped these cases into four categories: cases seeking to remedy governmental failure to take action to mitigate air pollution, in which failure infringes the claimant's right to life or right to a clean and healthy environment; cases seeking to remedy governmental action that contributes to climate change where the action deprives the claimant of life, liberty or property without due process of law; cases seeking to remedy governmental action to approve development that will contribute to climate change, which will infringe the claimant's right to a clean and healthy environment; and cases seeking to remedy governmental failure to take action to adapt to the consequences of climate change, the failure of which infringes the claimant's fundamental rights. B J Preston '*The Evolving Role of Environmental Rights in Climate Change Litigation*' (2018) Chinese Journal of Environmental Law 2(2) 131–164.

[104] The Ecological Footprint Model at www.footprintnetwork.org.

freedoms[105], and one can also claim that the highest authority to rule on the constitutionality of laws should be transferred to the Constitutional Court in Finland as well – courtrooms should not be the substitute for politicians but the law now finds itself amidst a new and evolving 'open ecology' of social, biological and ecological processes. This is a new, radical conceptualization of what *Philippopoulos-Mihalopoulos* terms 'critical environmental law'. Consequently, law—not to be reduced only to environmental law—is also ethically obliged to assume a much more active role in what is currently happening on the planet. Indeed, law, along with other societal disciplines, needs to refashion the human/environment paradigm by implementing 'social-ecological thinking'.[106] This, according to *Morrow*, requires further 'disciplinary borrowing'[107].

Constitutions as meta-principles are not only adaptive in nature but also charged with fundamental values[108]. Thereby, constitutional environmental provisions such as currently featured in the Finnish constitution, may be seen as a justification ground for further human environmental responsibilities. As was discussed above, section 20.1 of the Finnish constitution is not based on the idea of protecting individual or collective rights but nonetheless imposes responsibility for the environment on *everyone* and is, concretely, enabling a better balance between competing – rather stagnated economic interests (especially the protection of property and the individual freedom to engage in commercial activity). Considering the ever-changing social-ecological realities of today, constitutional environmental responsibility could thus serve as a basis to justify further tolerance for legal uncertainty (in relation to securing the achieved economic benefits) in the form of more adaptive and systemic-sensitive environmental legislation—and interpretations thereof. As *Bosselmann* urges us to ask whether the environment is a mere good or value to be added to the list of individual demands—or whether the environment is a condition of life, therefore requiring limitations on individual freedom—our answer, eventually, *will* define whether we favour the approach of individual environmental rights or the ecological approach to human rights.[109]

Therefore, dare I presume, constitutional provisions have a central role to play in guiding development towards the inclusion of stronger social-ecological responsibilities in the legal sphere. Indeed, fundamental constitutional rights, especially rights such as the constitutional environmental right—the object of protection of which can be interpreted as a collective good rather than as an individual right—serve as examples of what *Karhu* defines as situation-sensitive contextualism as an alternative to strict legal positivism. This kind of contextualism demonstrates that it should no longer be conside-

[105] See e.g. the German Constitutional Court's ruling in *Neubauer* where the court held that postponing climate action to a later day is constitutionally inadmissible as responsibility was transferred too much to young people and future relatives. 'Neubauer, et al. v. Germany', Sabin Center for Climate Change Law, <http://climate-casechart.com/climate-change-litigation/non-us-case/neubauer-et-al-v-germany/> for access to the German Constitutional Court's decision.

[106] E.g. Dworkin proposes that lawyers must recognize that law is no more independent from philosophy than it is from other disciplines. Dworkin (n 17) 149.

[107] She argues that there is a need to develop ecological thinking to bring a human-environment interface to the fore to inform discussions of the difficult choices facing humanity. K *Morrow 'Of Human Responsibility: Considering the Human/Environment Relationship and Ecosystems in the Anthropocene'* in L Kotzé (ed.) 'Environmental Law and Governance for the Anthropocene' Oxford: Hart Publishing 269–288 at 247.

[108] E.g. Dworkin, who argues for a fusion of constitutional law and moral theory. Dworkin (n 17) 149.

[109] K Bosselmann '*Human Rights and the Environment: Redefining Fundamental Principles*' in B Gleeson B and N Low (ed.) Governing for the Environment'. Global Issues Series (Palgrave Macmillan, London 2001) 118–134.

red necessary to put the 'right' before the 'good'. The question relates to what *Tuori*[110] considers to be the harmony of the current legal system and for which he sets coherence as a criterion rather than a logic. The coherence of the current legal system, conditioned by 'super-norms' or 'meta-principles', is united by value and morality and no longer by logical connections reverting to the authority of norms.[111] As *Kotzé* concludes: Environmental constitutionalism[112] is best understood as a 'mindset'[113] or a particular 'new way of thinking about the relationship among individuals, sovereign governments, and the environment[114]'.[115] By adopting environmental responsibility at the constitutional level, we are legally embracing the understanding of our interconnected, vulnerable structure of being—*intercorporeality*[116], which is comprised of more than individuals and their rights.

[110] K Tuori '*Käsitelainopin itsepuolustus*' (7–8 2002) Lakimies 1295–1320 at 1312.

[111] J Karhu '*Perusoikeudet ja oikeuslähdeoppi*' (5 2003) Lakimies 789–807 at 804.

[112] Environmental constitutionalism is mostly employed to denote a regulatory transformation, specifically as a mode of environmental governance that seeks to enhance environmental protection by elevating it to the constitutional level. L Kotzé '*Human rights and the environment through an environmental constitutionalism lens*' in A Grear and L Kotzé (ed.) 'Research handbook on human rights and the environment' (Edward Elgar, United Kingdom 2015).

[113] Referring to M Koskenniemi '*Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization*' Theoretical Inquiries in Law (8(1) 2007) 9–36.

[114] Referring to J R May and E Daly '*Global Environmental Constitutionalism*' (Cambridge University Press Kindle Edition 2015) 49.

[115] Kotzé (n 112) 165.

[116] Grear (n 71).