

SUSTAINABLE DEVELOPMENT AND THE NATURE OF ENVIRONMENTAL LEGAL PRINCIPLES

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Abstract

In this article, “things” lawyers call “principles” of environmental law will be discussed from a theoretical perspective. Three fundamental questions are answered: 1. Where does the high moral value that is usually attributed principles come from? 2. What is the exact difference between a principle and a legal rule, and between a principle and a policy? 3. What is the relationship between a principle and more concrete legal rules and policies?

It is argued that principles of environmental law receive their high moral value from the ideal of sustainable development. An ideal is a value that is explicit, implicit or latent in the law, or the public and moral culture of a society or group that usually cannot be fully realised, and that partly transcends contingent, historical formulations, and implementations in terms of rules and principles. Principles form a necessary link between directly applicable and enforceable environmental legal rules and the underlying ideal. They are a necessary medium for ideals to find their way into concrete rules and can be used to bridge the gap between the morality of duty and the morality of aspiration.

Because of their basis in (written or unwritten) law and their possible direct and intense influence on legal rules concerning activities that may harm the environment, they must be placed within the morality of duty: a bridgehead within the morality of duty reaching out for the morality of aspiration. From the general function of principles of forming a beachhead in the morality of duty, nine more concrete functions can be derived. These functions principles, both of a substantive and of a procedural nature, have, make it possible to distinguish them from legal rules.

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It must be acknowledged, however, that there is no very strict separation between principles on one side and rules on the other: environmental norms can be placed on a sliding scale with rules on one side and principles on the other side. Principles can become rules over time, when directly applicable in concrete cases. The nine functions are following: 1. principles can enhance the normative power of statutory rules; 2. principles can help to fill in open or unclear statutory rules; 3. principles can increase legal certainty and enhance the legitimacy of decision-making; 4. principles form the basis for new statutory rules; 5. principles give guidance to self-regulation; 6. principles create flexibility in the law; 7. principles help to implement international obligations; 8. principles stimulate the integration of environmental considerations into other policy fields; 9. principles are necessary to pursue an ideal.

Principles thus influence the meaning of a rule but, at the same time, the application of a rule in a concrete case gives the relevant principle a clearer meaning than the principle has on its own. This goes for rules in various legal documents, such as acts and regulations, as well as transnational regulations, and self regulatory rules. Principles thus are dynamic beacons in a wild ocean of ever changing concrete environmental rules. Although the underlying ideal of sustainable development has a rather anthropocentric character, the danger of influencing environmental legal principles (and through principles legal rules and policies as well) in a highly anthropocentric way is small. Firstly, because man is an inseparable part of nature and is very much dependent on balanced and intact ecosystems, especially when future generations are considered as well. Secondly, there is a moral relationship between man and nature. Natural objects have an inherent value: not destroying these objects contributes to the virtue of man. The ecological aspects of the ideal of sustainable development can be sufficiently advanced in decision-making processes by governmental authorities and courts, because most principles that rule environmental decision-making processes create enough room to take into account the more eco-centred arguments.