The Future of Property Law

Published 27 november, 2025

professor emeritus, LL.D. Juha Karhu- University of Lapland

The possessive individualistic principles of property law (property law sensu largo, that is, including not only norms on ownership rights but also contract law and tort law) have enabled and legitimised the overuse of natural resources. Our anxiety and worries about the future of property law should be focused on the active facilitation of new policy doctrines. A policy doctrine is more than just another legal argument referring to the aims and objectives of the legal norm being applied. A policy doctrine is less than a full-scale legal principle, however. In property law the new policy doctrines embrace and cherish the ideas of sustainability and responsibility and are thus answers to the global challenges of our epoch like climate change, pandemics, or gross violations of international law. The article gives examples of new policy doctrines in liability law: global value chain (GVC) liability, robotic liability, and platform liability. GVC liability directs the responsibilities and liabilities of global value chains to the key enterprise in charge and in control of the whole chain. Robotic liability tries to end the unending discussions on the common criteria for an individual or a firm to be held liable in cases of robots causing harm. Instead, in robotic liability the robot itself is seen as a legal person with the capacity of being liable - leading of course to subsequent questions of insurance arrangements before the robot can be put into use. Platform liability structures the legal roles of the sharing economy in a new way without being stuck in the old distinctions between contract types of B2B, B2C and C2C. In the sharing economy, the platform itself should bear inalienable liabilities towards both the individual service provider and the individual service user because of, and to the extent of, the factual power position taken by the platform owner. Relating to ownership, the article refers as examples ideas of commons in housing arrangements and the repatriation of cultural objects.

Jurisprudence breathes only when it cares for its outside. (to paraphrase a statement from Emmanuel Levinas' philosophy)

The article was originally published in Finnish in the form of Juha Karhu: Varallisuusoikeuden huomen, in Lakimies 7–8/2022, pp. 1085–1104.

1. To begin with: nothing new under the sun?

After decades of preparation, *the Bürgerliches Gesetzbuch* (BGB), the German Civil Code, was nearing completion at the end of the 19th century. The BGB was intended to provide a systematic basic solution for determining the time of the formation of a contract. The aim was to distinguish between contracts between persons present, i.e. face-to-face contracts, where a binding contract was concluded as soon as an acceptance of the offer had been given, and contracts between persons absent, e.g. by letter, where a contract was concluded only after the offeror had acknowledged the acceptance of the offer sent to him by post. Then something unprecedented happened. The telephone was invented. The young radical civil law scholars of the time, who had naturally not been involved in the preparatory work, wrote critically about how all the long and thorough preparation had been wasted by this new technological invention. There was instant voice contact on the phone, even if it was not face to face. The "imperial backlash" was immediate and relentless. The basic systematic solution was not touched. Instead, a new subparagraph was added to the BGB article regulating the conclusion of a contract concluded by telephone. The basic division between contracts concluded face-to-face and those concluded in absentia remained untouched.

The 2019 Nordic Property Law Days were held in Helsinki. They maintain and continue the common Nordic property law tradition. Among the topics discussed were the importance of blockchain in contract law and the liability for damages in connection with Global Value Chains (GVC). The younger scholars who were excited about these new phenomena received a paternalistically friendly, but stunning response from many of the older colleagues who commented on them: traditional pragmatic Nordic property law has no problem systematically structuring and guiding the deliberations on the new (read: all new) phenomena. It is only a question of the ability to understand this traditional system, which has proved its worth, and the skill to apply it correctly.

These two events, otherwise quite unrelated, are linked by an unstated underlying idea. Property law is and remains yesterday's news. Is there really nothing new in law under the sun?

I both agree and disagree. I agree that in making changes to legal systems and legal mindsets (i.e. doctrines), there needs to be an understanding and deep, or backward-looking, view of the fundamentals.[1] I disagree about the starting point of that look. Unlike those late 19th century Germans of "*die herrschende Meinung*" (mainstream scholars) or some of my Nordic colleagues of the boomer generation, I see the future as a more relevant starting point than the present. It is not enough that with the current mindset we can somehow cope with the property law problems caused by new phenomena without breaking the prevailing system. *We must also, and above all, look at the present from the perspective of the future; we must look at today from the perspective of tomorrow.* Only then will we be able to identify the need for new systemic ideas and place them as 'stones in the shoe' of the current system, requiring a change of mindset, without completely disrupting the current

1 See the author's article Juha Pöyhönen, Oikeustieteen ajanmukaisuus [Jurisprudence and Time]. Lakimies 1997, pp. 357–375 and other articles in the thematic issue Lakimies 3/1997. See, for example, Päivi Paasto, Omistuksen juuret: omistusoikeuden perustelua koskeva oppihistorallinen tutkimus [The Roots of Ownership: a study of the history of justification of ownership rights]. Suomalainen Lakimiesyhdistys 2004 and Mika Viljanen, Vahingonkorvauksen määrä: tutkimus vahingoista ja rahoista [The Amount of Damages: a study of damages and money]. Suomalainen Lakimiesyhdistys 2008.

Copyright © 2026 Karnov Group Denmark A/S

system. Only in this way can the legal profession take on a role as one of the agents of change, rather than a brakeman.

But why should the law be part of the change? Why is the role of the brakeman not enough? We need to make sure that we care for[2] that the law is part of the change for the sake of the ultimate justification of all law: justice. The ultimate requirement of law to do justice here and now requires looking to the present, not only from the past but also from the future. Only in this way can continuity and movement, tradition and change be safeguarded simultaneously. Only in this way can one and the i.e. legal solution do justice to yesterday, today and tomorrow.

2. Towards a property law imposing duties

Hannu Tolonen's "Korko, raha ja sopimus" [Interest, Money and Contract] is a rich and detailed analysis of how medieval jurisprudence, built on the prohibition of interest, and strongly marked by canon law, bent and adapted in the early modern period to recognise and acknowledge the ways of acquiring surplus value that the needs of emerging capitalism demanded. The prohibition of interest is a prime example of the dogma of the jurisprudence of its time, a dogma based on true faith (read: values). According to that doctrine, money was infertile. The change began with the fact that the prohibition of interest was initially considered inapplicable to merchant's money. A merchant who bought goods cheaply and sold them at a higher price was in fact considered to be receiving compensation for his labour and skills. Later, the emergence of new institutions like the Amsterdam stock exchange meant that investment money was no longer seen as "barren" either, but as a permissible way of earning the additional capital needed for productive activity.[3]

Tolonen's work is a close reading of the texts of legal scholars and theologians who dealt with the prohibition of interest and the infertility of money. From this point of view, the change was not a sudden radical break. The change was gradual, with the new entity consisting of many individual exceptions and of analogous extensions of the exceptions already made. It was only when these individual exceptions were linked together that a major change was possible.

Tolonen's picture of this early modern legal change corresponds to my own understanding of how property law will change in the 21st century. Now is the time to develop "small" new legal doctrines that are increasingly compatible with the needs and necessities of the future.[4][5] When they are combined, we will witness a major change.

But is there any place in tomorrow's world for a property law like the one we have today, which essentially imposes rights and distributes resources? *Mika Viljanen* has rightly questioned whether there will be a need for property law as we know it today in the future. He argues that property law in our time has become an integral part of planetary problems rather than part of the solutions needed to secure the future. Indeed, to cope with current and future global crises, property law needs to impose duties rather than rights.

"In Anthropocene futures (in the Anthropocene era, the status and activities of human beings take on "colossal" proportions, parallel to geological periods, added here), property rights of the present kind do not seem to have a meaningful role. Property law must somehow be camouflaged as a right of self-restraint, care and renewal. The future of the planet must also be put on the property law agenda."[6]

Self-restraint, care and renewal could be legally achieved already now by imposing new duties. But this creates a new problem.

"The only way we can really think of duty and responsibility is to regard duty and responsibility as a limited and precise absence of the right to choose. Duty exists only where a norm created within the framework of objective law or private autonomy forces us to give up our freedom. Care and renewal must be brought to the core of the conceptual system of law, instead of freedom of choice."[7]

However, Viljanen does not consider such a transition to a legal system that imposes duties to be easy.

"Conceptualising the change needed is extremely difficult. The same problem plagues all modern Western legal thinking. We are victims of an anthropocentric ontology of the Enlightenment. Man is free and has a choice. Nature is unfree and has no choice and no rights. We find it difficult to think at all without organising the whole legal world around these ideas of freedom and (subjective) rights. Duties remain subordinate: they are defined through freedom. The freedom to choose what to do, to disregard other beings, is the fundamental axiom of our whole legal format."[8]

Viljanen's analyses seem relevant. Viljanen seems to be largely correct in his view of the uselessness and even outright harmfulness of existing property law. Apart from the fact that current property law seems to lack effective internal incentives to take voluntary action against climate change, the *track record of property law* is rather poor in considering the relevance of other recent crises, such

2 I use the terms "take care of" or "care for" in the same sense as Juho Rankinen in the title of his doctoral thesis Juho Rankinen, Rikosoikeudellinen huolimattomuus ja huolesta rikosoikeuteen [Criminal Negligence and *Taking Care of Criminal Law*]. University of Helsinki 2020 (emphasis here) to refer to the role of jurisprudence and its scholars as authors of their own science.

3 Hannu Tolonen, Korko, raha ja sopimus: korkokielto ja sen häviäminen rahan sekä pääoman syntymisen ongelmana [Interest, Money and Contract: the prohibition of interest and its disappearance as a problem of money and birth of capital]. Lakimiesliiton Kustannus 1992.

4 Paasto 2004 describes how the notions of the exclusivity and inalienability of ownership rights emerged as a result of gradual individual changes in legal doctrines. Also, Thomas Wilhelmsson, Senmodern ansvarsrätt [Late Modern Liability Law]. Kauppakaari 2001, relies on the development of "small good liability narratives".

5 On the constant pendulum swing in jurisprudence between apology and utopia, see Martti Koskenniemi, From Apology to Utopia. The Structure of International Legal Argument, Cambridge University Press 2006. See also Martti Koskenniemi, To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870. Cambridge University Press 2021 and the diverse ways in which international law doctrines can be linked to the international relations existing at the time of the development of such doctrines.

6 Mika Viljanen, Antroposeenin varallisuusoikeus [Property Law of the Anthropocene]. Oikeus 2021, p. 521 (emphasis JK).

7 Viljanen 2021, p. 522 (emphasis JK).

8 Viljanen 2021, pp. 521–522.

Copyright © 2026 Karnov Group Denmark A/S

as the interest rate pandemic or Russia's illegal invasion of Ukraine. Particularly striking is the *almost complete absence of legal imagination in the proposed measures based on traditional property law*.[9] Traditional property law seems to be failing not only in the face of the ecological crisis but also in the face of other global crises. But is the future of property law as part of the world of necessary responses to the global crises of the 21st century so bad? Is it not possible to reform property law?

3. The three dimensions of modern law: state law, market law and societal law

To consider the possibility of change and how to implement it in law, we should start with an analysis of the current situation. Property law is part of our modern law. Modern law in our time is increasingly being seen as pluralist. In addition to the legal systems of nation states, there are many other parallel and overlapping normative systems, all of which have a legitimate claim to be considered in legal decisions. In this type of observation, however, the pluralism of modern law is seen only externally as the coexistence of many systems. Pluralism has another, internal aspect. Internal legal pluralism refers, for example, to the multiplicity of legal sources (polycentricity) and, more generally, to the fact that *modern law has several dimensions*.[10]

In today's modern law, three internal dimensions can be distinguished: the law of the nation state, the law of the market and the law of society.[11] Our modern law is the result of the constant interaction between these three dimensions. As a legal system, the sustainability of modern law can be seen to be based on this constant interaction. As such, this interaction and the forms it takes provide a model for the new lessons that are needed in the face of change.

The basis for the interaction between the dimensions of modern law is tense. This tension is due to the fact that the normativity of law is expressed in different ways. In state law, the form of legitimate norms is parliamentary law, which is the ideal of a democratic rule of law. The normativity of state law is textual, positive, coercive and ordered.[12] In market law, normativity is expressed and implemented in the form of commercial practices that are respected in the field and effectively honed. Normativity in market law is predictability and efficiency. In societal law, legitimate norms are based on cultural aspects of human communities, such as traditions and fundamental values. The normativity of societal law is customary, lived and experienced and directly value based.[13]

The multidimensionality of modern law makes it porous. It weaves a multitude of networks of juridical-practical orders, forcing us into constant transformations and crossings of boundaries. In this porosity, state law attempts to safeguard and assert its supremacy by claiming its exclusivity as the only binding law (*hard law*). However, our legal world is characterised and typified by interlegality. In its instances, law is constituted by the constant intersection of different laws, both *hard law* and various forms of *soft law.* In this continuous interlegality, compromises between normative orders and conciliatory coexistence in living law are also possible and continuous.[14]

In fact, the internal multidimensionality of modern law has been a constant reality. Nation-state law has never become completely exclusive, but the phenomena of non-state law have always co-existed with state law.[15][16] *The search for a basis and inspiration for new doctrines in the multidimensionality of law is not a question of discovering something completely new, but of identifying, recognising and organising all the dimensions and elements of modern law in a new way*.[17]

9 See Juha Karhu, The Global Impact (Both Challenges and Opportunities) of COVID-19 on Rights and Justice pp. 91–112, in Luo Li – Carlos Espaliú Berdud – Steve Foster – Ben Stanford (eds), Global Pandemic, Technology and Business, Routledge 2022.

10 On the many meanings of legal pluralism in the contemporary debate, see Jaakko Husa, Advanced Introduction to Law and Globalization. Edward Elgar 2018.

11 Kaarlo Tuori, Properties of Law. Cambridge University Press 2021, pp. 215–238 distinguishes between *state law* and *non-state law*. In this paper, *non-state law* is structured on the one hand into market law, which Tuori refers to as *lex mercatoria*, and on the other hand into societal law, which Tuori refers to with examples like indigenous law and religious legal systems. See Tuori 2021, pp. 224–225 and p. 245. See also Juha Karhu, Kohti yhteiskunnan oikeutta [Towards the Law of Society] pp. 63–81, in Omistus, sopimusoikeus, vaihdanta. Leena Kartion juhlakirja [Ownership, Contract Law, Excange. Leena Kartio's commemorative book]. University of Turku 2004.

12 Tuori 2021, p. 231: "The normativity of modern state law is textual, positive, coercive, and ordered."

13 Cf. Hannu Tolonen's doctrine of legal sources (Tolonen, Oikeuslähdeoppi [Legal Source Doctrine]. WSLT 2003), where formal legal sources can be seen as relating in particular to state law, substantive ones to (partly) market law, and real legal sources to societal law.

14 Interlegality is referred to here in the sense of Boaventura de Sousa Santos. According to Tuor (2021, p. 242), in Sousa Santos' view we live "in a time of porous legality or of legal porosity, multiple networks of legal orders forcing us to constant transitions and trespasses" where "our legal life is constituted by an intersection of different legal orders, that is, by interlegality".

15 Tuori also makes the same observation when examining the challenge to the authority of state law from the perspective of indigenous and religious law (Tuori 2021, p. 245).

16 Therefore, the challenge for the doctrine of legal sources in the 21st century is to build space not only for state law, but also for market law (for example, by recognising contracts as sources of law) and societal law (for example, by recognising experience as a source of law). See Juha Karhu, Kohti 2000-luvun oikeuslähdeoppia [Towards a 21st Century Doctrine of Sources of Law]. Lakimies 2020, pp. 1017–1034.

17 According to Päivi Paasto, the legal-historical research she conducts is not a matter of new discoveries of facts, but of interpreting what is already known in a way that her new ideas become visible to everyone. Paasto, Lecture 7.12.1994.

Copyright © 2026 Karnov Group Denmark A/S

When our modern law is thus understood as internally multidimensional, a preliminary response to Viljanen's critique can be given. What is essential for a change towards a more responsible property law system is the ability to impose liabilities also and above all by internal means, not only by external ones.[18] Duties must be seen as internal limits imposed by sustainable uses of rights, rather than as external constraints.[19] In this way, rights can only be exercised as rights if they are accompanied by duties. Rights and duties form an inseparable unity. The basic deontic (i.e. holding) element of the legal system is thus a hybrid "right-duty duality", a non-hohfeldian legal conception but as fundamental as the hohfeldian ones.[20] A "right-duty duality" consists of both rights and duties, not a pure right or a mere duty. This "right-duty duality" is significant to highlight that the change is not a complete shift from mere rights to mere duties. Such an idea of complete change from mere rights to mere duties, when taken to its extreme, can easily lead to pessimistic conclusions that reject the possibility of change.[21]

A paradigmatic example of such legal "right-duty duality" is the Nordic right of everyone.[22] It has come to modern Nordic legal cultures from the pre-modern world of monarchy and peasant society, but even there it was alien, a living remnant of earlier nomadic cultures. The right of everyone, like the rights based on societal law in general, are characterised by their inclusiveness: everyone has the right to move about in nature. Such a right is sustainable because it includes a duty and an internal norm to ensure that moving around does not cause harm to nature or to other travellers.[23] In Finland's reform of fundamental rights, the right of everyone was excluded from the list of fundamental rights precisely because it so strongly implies duties.[24]

4. Towards new policy doctrines

In the era of inter-regionalism, the need to find operationally tolerable and coherent compromises in the face of conflicting tensions has been highlighted.[25] Kaarlo Tuori suggests three means for dialogical legal pluralism - which is very much in line with the interlegality referred to here: doctrinal (i.e. related to general doctrines), procedural and institutional.[26] In the search for compromises, the conceptual boundaries or institutional structures of doctrines do not seem to provide a sustainable basis for the development of the new approach. Concepts and institutions tend only to multiply and transform tensions and conflicts between the internal dimensions of law. New legal concepts and theories need to be supported by well-established normative arrangements, including those very compromises, to bring to the fore issues that were previously obscured. It is not yet time to build new legal concepts and theories.

The problem with procedural means, on the other hand, is that they easily repeat and reproduce the initial inequality of the participants. For example, the possibility given to the Sámi Parliament to influence the enactment of national laws relevant to Sámi culture - as a compromise between state law and societal law - has proven to be unworkable in practice.[27]

Legal principles seem to remain the most promising form of new doctrinal developments. In the early stages of change, new principles are easier to develop than new concepts.[28] In the early stages of change, legal principles begin to emerge from persistent policy guidelines. It is policies that initially feed and sustain the value and

18 Viljanen (2021, p. 522) also stresses that the new duties are something other than modern duties.

19 On the internal limit / external limitation of rights debate, see Tapio Määttä, Maanomistusoikeus. Tutkimus omistusoikeusparadigmoista maaomaisuuden käytön ympäristöoikeudellisen sääntelyn näkökulmasta [Land Ownership Law. A study of property rights paradigms from the perspective of environmental regulation of land use]. Suomalainen Lakimiesyhdistys 1999.

20 See W.N. Hohfeld, Some Fundamental Legal Conseptions as Applied in Judicial Reasoning. 1917.

21 See the "disgustingly realistic" position raised by Mika Viljanen (Viljanen 2021 p. 517) that "corporate responsibility instruments would have no impact on the international competitive position of companies." On the other hand, unfounded optimism is not sustainable either. My work, Uusi varallisuusoikeus [New Property Law], was informed by an attempt to build legal spaces for proactive corporate responsibility, including through a strong commitment to the corporate responsibility programmes that were already in place at the time of its publication. See Juha Pöyhönen (Karhu), Uusi varallisuusoikeus. Lakimiesliiton Kustannus 2000.

22 See Karhu 1994 on the rights of every man from the point of view of societal law. A similar example of a legal right-duty duality is the care and maintenance of a child. For the carer it is both a right and a duty. Care for the elderly, on the other hand, is an example of how a value-based choice within the scope of societal law is easy to accept as a duty but difficult to accept as a right on the part of the state (and more specifically here: the regional public authorities). See Laura Kalliomaa-Puha, Vanhoille ja sairaille sopivaa? Omaishoitosopimus hoivan instrumenttina [Suitable for the old and sick? Contracts made between public authority and family member as an instrument of care]. Kelan tutkimusosasto 2007. In public law, legal right-duty dualities are quite typical. In a constitutional state, taking legal action is typically the legal duty of the competent official.

23 See the Ministry of the Environment's report on the rights of everyone (www.ymparisto.fi/fi-FI/Luonto/ rights-of-everyone, visited 22.9.2022).

24 An additional reason for excluding the rights of every man from the scope of fundamental rights is that fundamental rights were typically seen as regulating the hierarchical relationship between the state and citizens, and not as regulating the horizontal relationship between individuals.

25 According to Tuori (2021, p. 242), Sousa Santos' idea is that "conciliation between normative orders is also an alternative" and not just choosing one over the other.

26 Tuori 2021, p. 255.

27 Juha Guttorm, Saamelaisten itsehallinto Suomessa – dynaaminen vai staattinen? [Self-government of the Sámi in Finland - dynamic or static?] Lapland University Press 2018.

28 Jenna Päläs has convincingly shown that we must, however, avoid feeding legal zombies, i.e. legal doctrines that are out of date. Päläs Oikeusasema jakamistalouden hyödykesopimussuhteissa – Tutkimus vallasta, subjektiuksista sekä oikeuden ja sosiaalisen etääntymisestä [Legal Status in Commodity Contractual Relations in the Sharing Economy - A Study of Power, Subjectivity and the Distance between Law and the Social]. University of Lapland 2022 p. 50.

Copyright © 2026 Karnov Group Denmark A/S

goal dimensions of a legal principle,[29] as illustrated by the "polluter pays" dimension of environmental law. The "*polluter pays principle*", which is now part of the criteria for environmental liability, was initially just a policy, but as the scope of that policy grew and its role became stronger, it was transformed into a legal principle - it is through policies, i.e. legal policy objectives, that the outlines of new legal principles can thus be sketched out and begin to form.[30] I call such policy-based legal ideas *policy doctrines*.

The development of policy doctrines can be based on some ideas from legal methodology. In this paper, the methodology of development is based on the formative concepts structuring property law incidents: context, overall arrangement, stakeholder, risk position.[31] They are used to identify and define the situational "playing field", its actors, the roles of the actors and the objectives of the actors' interests. This provides a picture of a typical situation that serves as a test and development reference for the policy to be promoted.[32] Such a structuring approach, which implements presumptive contextualism, has much in common with the topical perspective on law.[33]

New policy doctrines alone, and especially those that are departures from the current system, may not provide the basis for an internally consistent new system. The "exceptionality" of the exceptions must be controlled in some way and the changes they imply must be made into transitions, not just random instances.[34] At the same time, this system of control should be compatible or one occasion with the interplay of the dimensions of modern justice under interleague law.

In this article, the fundamental and human rights system has been chosen for this control task. Human rights are transnational, fundamental rights are national.[35] The strong interconnection between human rights and fundamental rights is based on a coherent set of normative content. Fundamental rights must be interpreted and applied in a human rights-friendly way. The practice of applying national fundamental rights has an impact on the interpretation of human rights. The following discussion of fundamental rights refers in this way to norms that are linked and articulated to the human rights regime.

The intersection of human rights and fundamental rights is also one of the sources of tension within modern law. Precisely because human rights are not a typical nation-state right but transnational, they are a natural link in the development of policy doctrines. Human rights are a common anchor, but in these developments they do not in all respects impose the same limits as fundamental rights in state law. Human rights must therefore be elaborated as similar, but not necessarily identical, anchors to the laws of markets and societies with the same normative content as fundamental rights in state law.[36]

National fundamental rights have a binding effect on the legislator. In Finland, the Parliamentary Constitutional Committee has adopted the doctrine of the limitation of fundamental rights[37] to check whether a legislative proposal restricting fundamental rights is sufficiently justified, in terms of its specificity, of an important social reason, of necessity of the means chosen and of the proportionality of the interference. The Constitution thus requires state law to be compatible with fundamental rights. Article 106 of the Constitution complements the effectiveness of fundamental rights. Article 106 of the Constitution requires the primacy of the Constitution in the application of parliamentary laws.

When fundamental and human rights are used as a platform for the development of new policy doctrines, it is not only their right dimension that is essential, but above all the related duty dimension. In state law, the state must respect, protect and promote human

29 Tuori (2021, p. 218) also points out that in non-state law, policies are often more important than principles in terms of substantive coherence, whereas the opposite is true in state law. See also my dissertation Juha Pöyhönen, Sopimusoikeuden järjestelmä ja sopimusten sovittelu [The System of Contract Law and Adjustment of Contracts]. Suomalainen Lakimiesyhdistys 1988 pp. 54–57 for a discussion of value principles and goal principles.

30 See also Tiina Paloniitty, Taking Aims Seriously. Journal of Human Rights and Environment 6 (2015), pp. 55–74, where the complex challenges of environmental law in the Anthropocene are addressed through the principles and their consistent application in a goal-conscious manner.

31 Pöyhönen 2000. See Kaarlo Tuori, Kriittinen oikeuspositivismi [Critical Legal Positivism]. Sanoma Pro Oy 2000, chapter on the War of Concepts. See also Matti Muukkonen, Kuntalain soveltamisalasta [On the Scope of Application of the Municipal Act]. Books on Demand 2022.

32 Here is a link to Per-Olof Ekelöf's teleological doctrine of legal interpretation. It identifies the typical situation envisaged by a provision of law and the way it is applied in that situation. This deepened understanding of the objectives of the law is then used as a model for non-typical situations of application. In this paper, this type of approach is extended in the sense that the objectives under teleology are not limited to the laws of state law, but also to the goals inherent in the rights of the market and society. On Ekelöf's teleological doctrine of statutory interpretation, see Timo Saranpää, Näyttöenemmyysperiaate riita-asiassa [The Preponderance-of-the-Evidence Principle in Civil Case Litigation]. Suomalainen Lakimiesyhdistys 2010.

33 On topical thinking in criminal law, see for example, see Ari-Matti Nuutila, Criminal negligence [Rikosoikeudellinen huolimattomuus]. Lakimiesliitto Kustannus 1996. See also Oskar Mossberg, Avtalets räckvidd I [The Reach of the Contract I: On Third Party Effects of Contract, with Particular Regard to Third Party Contracts and Direct Claims]. Iustus 2020 pp. 177–190, where the doctrinal study of law as an endeavour is seen as a rhetorical hermeneutics combining rhetoric with topics.

34 See the debate in the early 2000s on the relationship between Thomas Wilhelmsson's use of small good legal narratives and Kaarlo Tuori's aim to base systematicity of law on overreaching common fundamentals. Tuori, Sosiaalisesta siviilioikeudesta myöhäismoderniin vastuuoikeuteen [From Social Civil Law to Late Modern Liability Law]. Lakimies 2002, pp. 902–913 and Wilhelmsson, Yleiset opit ja pienet kertomukset ennakoitavuuden ja yhdenvertaisuuden näkökulmasta [General doctrines and small narratives from the perspective of predictability and equality]. Lakimies 2004, pp. 199–227.

35 See Tuori 2021, pp. 234–238.

36 In concrete terms, this means that the conditions for restricting fundamental rights are different in each of the three dimensions. For example, green colonialism is a limit to the state (coercive) means of implementing the fundamental environmental duties, formulated from the perspective of indigenous (societal) law.

37 See Veli-Pekka Viljanen, Perusoikeuksien rajoitusedellytykset [Conditions for the Limitation of Fundamental Rights]. Talentum 2001.

Copyright © 2026 Karnov Group Denmark A/S

rights directly and through fundamental rights, and these requirements impose obligations on the state and guide its general policy making. Often, the important social reason that is one of the preconditions for a restriction of a fundamental right is linked to the realisation of another fundamental right. Similarly, autonomous human communities must also respect at least basic human rights such as equality. On the other hand, human rights have evolved from their original Western individual-centred formulations to become more global and thus more pluralistic.[38] For example, there has been a move to give fundamental rights protection to parts of nature such as rivers. Moreover, human rights are also characterised by a strong sense of contextuality.

4.1 "Let the beneficiary bear the risk"[39] - CSR policy doctrines

4.1.1 Global Value Chain (GVC) responsibility

In his doctoral thesis "From National Product Liability to Transnational Production Liability", *Jaakko Salminen* has developed a doctrine of liability relationships in global supply chains.[40] Using the formative conceptual framework adopted in this paper, GVC liability can be described as follows:

The context is one of transnational production.

The overall arrangements are global production chains, typically with Western management companies and subcontractors from emerging economies.

The stakeholders are the management company, its subcontractors and, typically, the "subcontractor's" "fist house" companies and their employees.

The risk positions resulting from free contracting are typically asymmetric, with the lead firm receiving most of the benefits of the chain but, through contractual and corporate arrangements and often relying on the lenient laws of the subcontractor country, exempting itself from any (societal) liability.

GVC liability is based on the same general idea of liability law as product liability: liability should be imposed on the operator who can most easily and cost-effectively reduce the risk of damage and thus avoid "opening the source of the risk". As a policy doctrine, the strong target background for GVC liability is the rules set by the lead companies' home states for production activities in their own country (state law), sector-specific and now also general corporate liability standards (market law), and the justified expectations of the customers of the final product as to the fairness and other properties of production (societal law).

GVC liability provides direct protection for workers in subcontracting companies.[41] GVC liability is therefore a more radical and powerful driver for change than corporate liability regimes based on *due diligence*.[42] As Viljanen rightly points out critically, it is not very realistic to assume that better information alone will in itself lead to a change in the profitable behaviour of companies in a context where nation states are concerned about their own international competitiveness[43]

4.1.2. Platform liability

Jenna Päläs has developed the idea of platform liability in the sharing economy in her dissertation "The Formation of Legal Positions in Sharing Economy Contracts for Exchange of Goods and Services. A Research on Power, Subjectivities, and the Distance Between the Juridical and the Social":[44]

The context is the market for digital services in the sharing economy.

The overall arrangement is a platform that typically brings together private resource providers and resource users.

Stakeholders include the platform company, resource providers and resource users, and, typically in a sharing economy, the state and society at large.

Päläs has identified an asymmetry in the *risk positions* formed by free contracting in the sense that platform companies typically try to position themselves only as external intermediaries but still take both a substantial share of the economic benefits of the activity and assume a dominant role in setting and controlling the rules of operation.

According to Päläs, platform liability arises precisely from the power position that the company operating the platform assumes in relation to and at the expense of both the private resource provider and the private resource user. As a policy doctrine, platform liability relies heavily in particular on the European Union's regulatory effort to influence the behaviour of digital technology-based service providers vis-à-vis their customers in a balancing way.[45]

4.1.3. Robotic responsibility

Particularly in the context of the development of self-driving cars, a more general debate has begun on liability issues related to the operation of autonomous robots.[46] The idea of robot liability is to place the responsibility directly on the robot itself, rather than on

38 Tuori 2021, p. 260: "They (human rights, JK) are no longer tied to the point of view of the state legislator but take note of post-national legal plurality, also muddling the boundary between law and non-law, as well as hard and soft law."

39 Swedish Rules for Judges' Associations, dating back to 16th Century. Rule number 40.

40 Jaakko Salminen, From national product liability to transnational production liability: conceptualizing the relationship of law and global supply chains. University of Turku 2017. See also The IGLP Law and Global Production Working Group: The role of law in global value chains: a research manifesto. London Review of International Law 4 2016, pp. 57–79.

41 The effective enforcement of these claims in practice depends on the rules of private international law and the procedural law of the different States.

42 See for example the Commission proposal for a Directive on Corporate Sustainability Due Diligence COM(2022) 71 final 2022/0051 (COD).

43 Viljanen 2021, p. 517.

44 Päläs, Oikeusasema jakamistalouden hyödykesopimussuhteissa. Tutkimus vallasta, subjektiuksista sekä oikeuden ja sosiaalisen eriytymisestä. Lapin yliopisto 2022.

45 See in more detail Päläs 2022, pp. 76–81.

46 See for example Lauri Luoto, Itsestään ajavat autot ja rikosoikeudellinen vastuu [Self-driving cars and criminal liability]. Lakimies 2022, pp. 927–948.

Copyright © 2026 Karnov Group Denmark A/S

the “human” actors involved, such as robot manufacturers or software developers.

The context is automated manufacturing but also extending to social mobility and care activities.

The overall arrangement is a useful activity based on an independent aid.

The stakeholders are the robot designers, manufacturers and developers of the necessary control system, as well as those involved in the operation, but also the robot itself.

Risk positions are currently very open, and liabilities are variable, based on both a sparse set of regulations and contracts, with no typical or established policies.

As a policy doctrine, robot liability has a particular threshold in that traditional liability law presupposes a legal personality, and many consider the robot to be merely a machine and therefore legally impossible to attribute liability to. However, *Visa Kurki*’s analysis has shown that there are no compelling conceptual counterarguments to holding a robot or AI legally liable. Kurki bases this conclusion on his distinction between active and passive personhood, where an AI can be held liable even if it is not assumed, for example, to be able to enter into contracts in its own name.[47] Once this conceptual threshold has been crossed, robot liability can easily be placed in an operational environment where the deployment of a robot requires liability insurance.[48]

4.2. Commons policy doctrines

The strongest of the pillars of traditional property rights in a market economy system is private property, the paradigm of property rights, which in time became exclusive and unconditional, i.e. unlimited in its limits and measures.[49] In economic history, private property acquired this absolute status through the legal transfer to private ownership of widespread forms of common property that were firmly anchored in society.[50] The common property regime is therefore more a question of restoring something that once was in place than of creating something entirely new.

4.2.1 Community Land Trust Model (CLT)

*Saki Bailey’*s policy is to open the choice of housing to all through a shared ownership arrangement. At the same time, the underlying idea is to demonstrate that property as an institution of social wealth distribution can be modified and restored to support shared ownership arrangements. For restoration, Bailey has developed applications of the idea of common ownership in housing arrangements. Her research is comparative legal scholarship, but here I will focus on developments in the US legal system.[51] Bailey has described the legal arrangements that can be used to implement shared ownership in housing in the United States.

The context is the US housing market.

The overall arrangement is an institution that uses established legal mechanisms to transfer residential buildings into common ownership. A key role here is played by the trust, which owns the land on which the buildings stand for the benefit of the residents.

Stakeholders are residents, their democratic communities, public authorities and market actors.

The risk positions consist of the reconciliation of market price and the long-term nature of the right to housing, as well as the influence of different parties in the governing bodies.[52]

The CLT shows how a social right (everyone has a need for housing and therefore a right to housing) can already be superimposed on a market’s law with the support or at least the indifference of nation state’s law. In fact, CLT is somewhat reminiscent of the original idea of the late 19th Century invention of “grynderbuilding”, where families in need of housing build a house together. Since then, this activity has become more commercialised and has therefore moved away from the original idea. In the Nordic countries, the need for housing is protected as a fundamental right and thus requires public measures. On the other hand, there is nothing to prevent companies operating under market conditions, such as limited liability companies, from taking responsibility for implementing this fundamental right by means of a statute[53]

4.2.2. Repatriation

Another example of a doctrine linked to property rights is repatriation, i.e. the return of cultural objects once collected, especially in Western museums, to their countries of origin and/or indigenous peoples.

The context of repatriation is culture, typically museums, but also cultural content production and remembrance.

The overall arrangement is the physical return and receipt of objects and the making available to and for the benefit of the communities of original ownership.

Stakeholders include museums with a public mission, local museums, researchers (especially archaeologists) and communities of indigenous cultural ownership.

47 Visa Kurki, A Theory of Legal Personhood. Oxford University Press 2019 pp. 175–190

48 Cf. otherwise Mika Viljanen, Robotteja vakuuttamassa: autonomiset alukset esimerkkinä [Insuring Robots: autonomous ships as an example]. Lakimies 2018, pp. 954–974, who sees major problems in developing the necessary insurance policies.

49 Nowadays, for example in European civil codes, ownership right is seen by its nature not as an absolute and unlimited right, but as a general right which includes those rights which are not expressly excluded by law (Code Civil art. 544, BGB § 903, Burgerlijk Wetboek art. 5:1).

50 This description of the emergence of the capitalist market, and in particular the role of legal changes in it, is controversial. For a discussion, see Saki Bailey, The Common Good in Common Goods. The Decommodification of Fundamental Resources through Law. University of Gothenburg 2020, pp. 70–79. Even today, this development is justified by the so-called tragedy of the commons theory, i.e. the argument that common property leads to uncontrolled over-exploitation of a dedicated resource. Elinor Ostrom has convincingly refuted this theory with economic arguments, showing the economic sustainability of many different types of common property arrangements. See Ostrom, The Future of the Commons, in The Future of the Commons: Beyond Market Failure and Government Regulation. The Institute of Economic Affairs 2012, pp. 68–83.

51 Bailey herself refers to Nordic system of condominiums (asumisoikeus, bostadsrätt) enabling long term housing rights by the tenants to their apartments as a similar arrangement to the community land trust.

52 Bailey 2020, especially Chapter 6 Toolkit for the Decommodification of Housing through Commons Property Institutions (pp. 287–343).

53 See Anssi Kärki, Benefit corporation – yhteiskuntavastuuseen sitoutuva osakeyhtiö [Benefit Corporation – A limited liability company committed to social responsibility]. Liikejuridiikka 2017, pp. 146–182.

Copyright © 2026 Karnov Group Denmark A/S

The risk positions relate not only to the risk of damage associated with the transfer of physical objects, but also to *accessto culture*, and the capture and redistribution of benefits held by third parties back to the communities of original ownership.

Repatriation is based on the principle of correcting the wrongs of history as policymaking. The same policy is reflected in Finland's recent establishment of the Sámi Truth and Reconciliation Commission.[54] Repatriation of cultural objects also reflects the historical limits of the content of ownership. Restitution is not prevented by the fact that the objects were once legally exported.

But repatriation is also about more than just ownership of objects.[55] Repatriation has a policy that derives from societal law. *Access to culture* in Sámi - as in other indigenous cultures - is a non-museum, lived and experienced history.[56] For example, the return of the Skolt Sámi women's horn hat as part of their handmade tradition, the *duodji*, is essentially a return of cultural experience and crafts(wo)manship. For the Skolt Sámi, the horn hat is both part of an individual way of life and a participation in the life of the community (family).[57] As a phenomenon of social justice, the return of this "maternal ancestral power hat", both as an object and as a tradition, is just; they were never given by choice but because of physical and cultural (especially religious) force. Repatriation is a legal obligation imposed on Sámi communities by the law of their society.

5. Summary and reflection

In this paper, policy doctrines have been raised as a means of jurisprudence that can make our current property law more compatible with the challenges of the global world of our time. However, such policy doctrines for better social adaptation of law are not only a phenomenon of the modern legal era. *Päivi Paasto*'s doctoral thesis on legal history examines the changes in the doctrine of shared ownership of land from the late 17th century to the present.[58] The changes in this internally contradictory and multifaceted doctrine become understandable when read in the light of the goal of continuous exploitation of agricultural land. The doctrine of shared ownership was transformed from a form of power secured by ownership rights into a policy doctrine of its time for the efficient supra-generational exploitation of agricultural land!

The legal world of the early 21st century is pluralistic. Pluralism does not just mean parallel diversity, but dialogical plurality.[59] Thus, the impetus for new policy doctrines comes not only from within the legal system but also from elsewhere.

A good example of such stimulation from elsewhere is Islamic banking. It follows the Koranic prohibition of interest. Banks that grant credit still have the potential for profitable business. However, they must be open and transparent about the costs on which they base the compensation they claim in addition to the repayment of the principal of the loan. In Finland, despite the absence of an interest prohibition, a very similar situation has arisen in the interpretation of standard terms entitling to an interest rate increase (The Finnish Supreme Court 2016:10). In these terms, the right to increase the interest rate was linked to an increase in the bank's own borrowing costs. In practice, such costs are largely the same as those required for Islamic banking. In Supreme Court case 2016:10, the difficulties in giving precise meaning to the expression "the bank's own cost of raising funds" in the standard terms were partly due to the fact that - in the absence of an interest prohibition - it was not necessary to specify in detail the bank's own costs of the credit when agreeing the initial interest rate with customers (Supreme Court 2016:10, paragraphs 34-35).

In an age of legal pluralism, the dream of a scholar concerned with systematics is "*Unity in Plurality*"[60]. But how could this ideal work in practice? This paper has advocated goal-oriented policy doctrines as a form of framing the change. This approach has several justifications in terms of legal pluralism.

First, compromises are easier to find and tolerate in a case-by-case approach than in general doctrines that permeate the whole court. It is therefore foreseeable that the role of *common law* legal systems and their emphasis on case law will be strengthened at the expense of the pursuit of uniform general and abstract rules of law in *civil law* countries.[61] The implementation of policies can be ensured more flexibly on a case-by-case basis than by means of general rules.

Secondly, we are increasingly confronted with situations where the starting points of the parties are too contradictory to reach an agreement. Compromises cannot be made if there is no common ground. For example, different basic legal concepts may force us to take as a starting point for agreement the fact that we disagree

54 See Government Decision of 28.10.2021 VN/11265/2020.

55 See also in this respect Merima Bruncevic, Fixing the Shadows – Access to Art and the Legal Concept of Cultural Commons. University of Gothenburg 2014.

56 I refer to my own experience of Outi Pieski's exhibition "Cuolmmadit" in Oulu in spring 2019. The name of the exhibition means "to tie several knots" in North Sámi and it was based on the knotted fringes of Sámi scarves.

57 Eeva-Kristiina Harlin – Outi Pieski, Ládjogahpir – Máttaráhku gábagahpir. The Ládjogahpir – The Foremother's Hat of Pride. Davvi Girji 2020. See also the Finnish Supreme Court 2022:26, where in a case concerning unauthorised fishing, one of the local Sámi defendants was a young person, describing the importance of fishing for cultural continuity. The Supreme Court applied Article 106 of the Constitution and held that the application of the penal provision led to a manifest conflict with the right of the Sámi people to their own language and culture, protected by Article 17(3) of the Constitution.

58 Paasto, Omistuskäsitteistön rakenteesta: tutkimus jaetun omistusopin mahdollisuudesta ja merkityksestä omistuskäsitteistössä 1700-luvun lopulle tultaessa [On the Structure of the Concept of Ownership: a study of the possibility and significance of the doctrine of shared ownership as an ownership concept towards the end of the 18th century]. University of Turku 1994.

59 Tuori 2021, pp. 255–256.

60 Tuori 2021, pp. 264–267.

61 See also Husa 2018.

Copyright © 2026 Karnov Group Denmark A/S

on fundamental issues. An illustrative example of this is the so-called indigenous treaties of shared sovereignty.[62] Yet many areas of practical life remain to be agreed.

Thirdly, the basic requirement of justice as equality begins to emphasise more on the different treatment of the different. In practice, this leads to constant demarcations as to what constitutes legally relevant differences. Respecting, protecting and promoting material difference is based on a kind of reverse analogy, reminiscent of the doctrine of distinguishing in common law stare decisis rule, i.e. the separation of the facts of the case under consideration from previous precedents. A new form of equality is emerging in the form of "non-binary spectra", reflecting the diversity of the pluralist era.[63] In their flexibility, the policy goals offer a means of "translating" such new diversities into the language of law and jurisprudence.

To secure its future, it is paramount that property law finds its own internal ways of imposing duties.[64]

62 See, for example, the yet to be ratified initialled Nordic Sámi Convention and the regulation of its various chapters. It should be noted, however, that the Nordic Sámi Convention does not contain an "agree to disagree" article on the right to self-determination of the Sámi and the basis for this right, in accordance with shared sovereignty.

63 "Ideally, people would have fewer expectations of each other based on assumed gender. I encourage people to deviate from the norm, to stand out and redefine gender. The non-binary spectrum is part of our history and our future." Haliz, Nuori Voima 3/2022 p. 43.

64 A paraphrase of a statement made by Simo Zitting about the new jurisprudence represented by analytical civil law in the 1950s: "The new jurisprudence had to come." The background to Zitting's statement was the idea of an approach adapted to the needs of the new forms of economic exchange that were developing at the time. In this paper, a similar pressure is exerted by the global crises of our time. I see a similarity in the ethos of the statement: law must and can, by changing internally, better respond to the challenges of its time.

Copyright © 2026 Karnov Group Denmark A/S