

Demokratieforum „Environment and Law“: Forests, Biodiversity and Climate Change: The German Perspective on Ethics, Law, Policy and Trade

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Fundamental Rights

- State authorities have a **duty to respect fundamental rights**
- Basic rights to protection (especially Article 2 (2) sentence 1 GG: **health**), but as well right to **property** (Art. 14 GG):
 - (1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.
 - (2) Property entails obligations. Its use shall also serve the public good.
 - (3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Art. 20a GG: Constitutional state objective

However, environmental protection as a state responsibility is not only based on state theory, but is also anchored in constitutional law:

Article 20a Grundgesetz:

"Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."

Article 20a does not establish an individual fundamental right but "only" a state objective that appeals to all state authorities

Art. 20a GG: Implementation

The **legislature** must concretise the state's objective by simple law, taking account of conflicting constitutional concerns, and must determine the means to be used for this purpose. Conflicts between different constitutional objectives must be resolved by means of proportionality, weighing and weighting the corresponding interests.

The Federal Constitutional Court can, in principle, **review** whether the legislator fulfils its duty to concretise and realise the state objective.

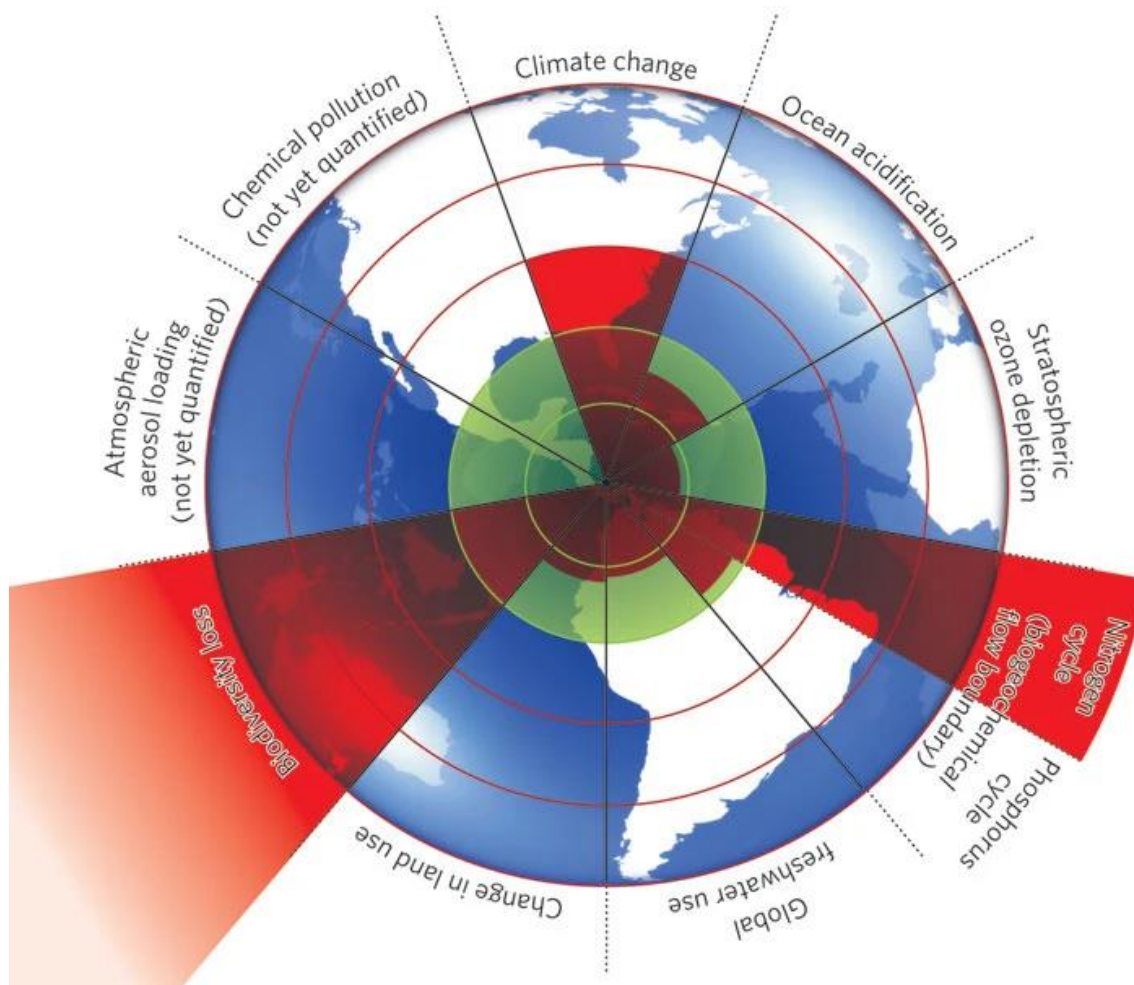
In this regard the „**Untermaßverbot**“ (undersize ban) defines the minimum of protection: an effective and coherent protection concept is required by the legislator

Art. 20a GG: Implementation

The reference to **future generations** in Art. 20a has proved to be a decisive point of reference for the specification of the level of protection. It implies a duty to protect and furthermore a duty to prevent serious and irreversible environmental degradation.

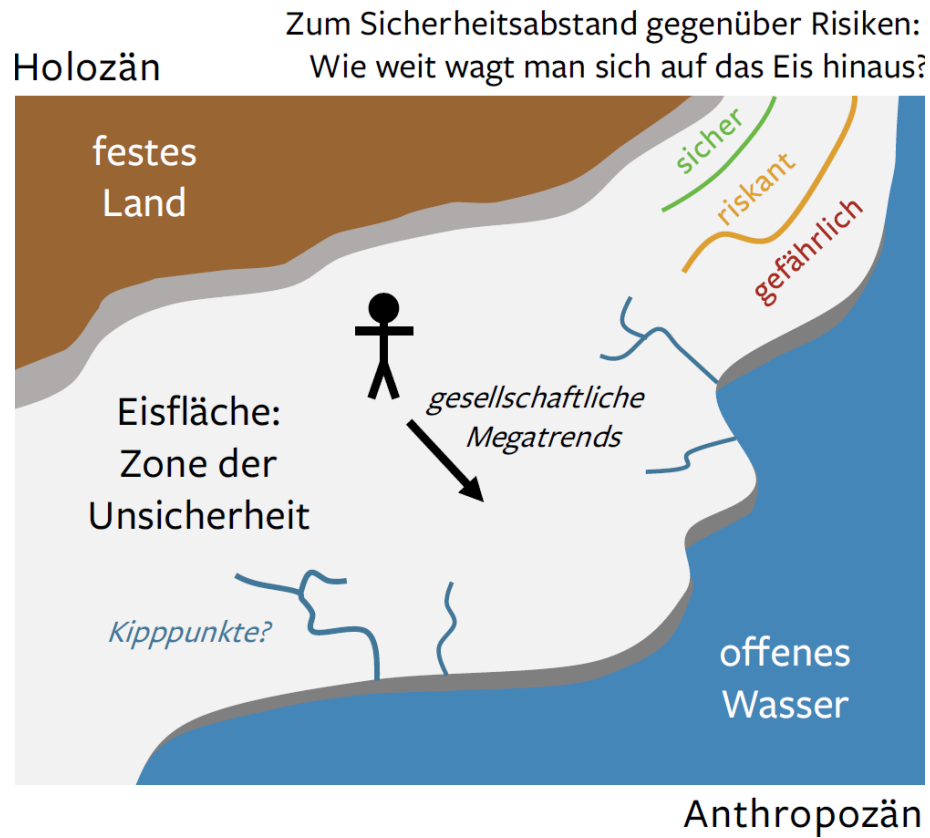
This coincides with the risk based approach of the **precautionary principle**: A lack of complete scientific certainty must not be a reason for postponing cost-effective prevention measures in the event of imminent serious or irreversible damage.

The precautionary principle aims at efficient **risk management**. intervention of public authorities can be shifted forward into the area of risk, i.e. before a hazard - defined as a sufficient probability of damage - can be proven.



Source: Rockström/Steffen et al.

Illustration of planetary boundaries and tipping points:



Fundamental Rights

1. Dimensions of the fundamental right of property

- State authorities have a duty to respect fundamental rights
- At the same time state authorities have a duty to protect fundamental rights

2. Approaches of interpretation

- Environmental protection by/through property?
 - Action excluded from the protection of property?
 - Obligations from property?
- = Responsibilities of the owner by using his/her property