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Evading Constitutional Inertia: Exception Laws in Finland[1]

Dag Anckar, Åbo Akademi

Exceptions from the prescriptions of the Constitution can be made in Finland without altering the letter of the Constitution, on condition that the exceptions are decided by Parliament in a manner that honours the qualified procedure prescribed in the Finnish Constitution for the altering or enactment of fundamental law. This institution appears very different when compared to the conceptions of fundamental law in most other countries, and it originates from the time of Russian rule in Finland. Hundreds of so-called exception laws have been enacted in Finland during the years of independence, interfering primarily with the right to property, which is guaranteed in the Finnish Constitution. Other rights have been violated in exception laws to a much lesser extent. Empowerment laws, i.e. exception laws that introduce a legislative delegation, have likewise primarily infringed on the right to property. Although the exception law institution has been under suspicion for obscuring the general knowledge of the meaning and intentions of fundamental laws, it cannot be denied that it has facilitated policy making and has contributed to the management of constitutional inertia.

Constitutions are superior to other contemporary rules and acts, but they are not superior to future generational, ideological, political and economic changes. Constitutions are never immune to the test of time. They are, like laws and norms in general, products of ideological commitments and values and they age concurrently with the fading of these commitments and values. They gradually become victims of inertia. In an essay dealing with the Swedish Constitution, Joseph Board emphasizes that as with all other institutions, a constitution has a built-in lag, so that it is never quite up-to-date and never quite fixed. According to Board, 'all written constitutions immediately become partially non-written', and between the formal constitution and the working constitution there is 'a gray area, a border zone within which the forms are only partly fixed, and which serves as the staging ground for further formal changes' (1980, 166–167). Such formal changes are however not easily undertaken. Constitutions embody the highest norms of the state, and these norms are usually protected by qualified provisions for revision and amendment. Most constitutions are rigid in the sense that they make amendment difficult; in fact, provisions that are made unamendable can be found in many constitutions.[2] This rigidity of constitutions is a factor that accentuates inertia problems and the need to

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overcome such problems. It is of course true that constitutions in a sense have a mark of timelessness. They incorporate a national consensus about basic values and the structure of government and such conceptions do not change rapidly. But they do change, and when this happens, rigidity becomes an obstacle to adaptation.

It is the aim of this paper to present and discuss one rather unique mechanism for the handling of constitutional inertia. The paper is about exception laws in Finland, an institution which in fact legitimizes governmental rule-breaking. Exceptions from the prescriptions of the Constitution can be made without altering the letter of the Constitution, and this becomes possible if the exceptions are made by using procedures for amending fundamental law, prescribed in the Constitution. The next section of the paper gives a presentation of this institution, and the successive sections provide empirical descriptions as well as evaluations of the functioning of the institution.

The Legal Framework

Finland is among the many nations which have a rigid constitution. Fundamental laws in Finland, namely the Constitution Act (1919), the Parliament Act (1928), the Ministerial Liability Act (1922), the High Court of Impeachment Act (1922) and the Autonomy Act of Åland (1951), can be enacted or altered only through qualified procedures. First, it is required that proposals concerning fundamental law are accepted by a parliamentary majority to be transferred to the next Parliament which is elected in new elections. Secondly, it is required that such proposals are accepted by the new Parliament with a two-thirds majority of the votes cast. The arguments in favour of this procedure that were put forward in the making of the Constitution in 1917–1919 emphasized that sudden legislative changes were to be avoided and that opportunities should be given for a careful consideration of proposals. One further argument was that the prolonged procedure demanding intervening elections made it possible to appeal to the people in matters concerning constitutional reforms (Sipponen 1977, 73). However, the fathers of the Constitution did understand that situations might arise which could call for prompt constitutional amendments, and it was decided that proposals concerning fundamental law could be considered without delay if they were declared urgent by a five-sixths majority of the votes cast. For such urgent proposals to be accepted, a two-thirds majority of the votes cast is needed.

Since there are 200 MPs in the Finnish Parliament, a minority of 34 can prevent a proposal from being declared urgent. A minority of 67 can reject proposals that have been declared urgent or have been submitted from an

earlier Parliament. These conditions must no doubt be classified as rigid. However, rigidity is accompanied by flexibility. It is a general feature of the Finnish Constitution that it is pliable to the developments of everyday political life and that it permits the content of norms to be extended by means of interpretation. One example of this is the position of the Finnish President, which has varied much in the course of time although the norms defining this position have remained unchanged since the founding of the Constitution in 1919 (Jyränki 1981). The best example, however, is to be found in the introduction to clause 95 in the Form of Government Act, which states:

> This Constitution shall in all its parts be an irrevocable entity. It cannot be altered, explained or repealed neither can deviations be made from it in any other order than the one prescribed for the enactment of fundamental law.

This paragraph[3] thus explicitly states that exceptions can be made from the Constitution on condition that the exceptions are decided in a manner that honours the qualified procedure prescribed for the altering or enactment of fundamental law. This institution has been characterized by a Finnish scholar as 'the most curious and perhaps most profound special feature of the Finnish Constitution', a feature which is 'unique, even extremely different when compared to the conceptions of fundamental law in all other countries' (Kastari 1969, 294). The Form of Government Act declares the Constitution to be an irrevocable entity, but at the same time allows exceptions from its prescriptions, and thus provides a method to circumvent the fundamentality of fundamental law. If the prescriptions of the Constitution seem awkward, the law-maker may evade the toilsome task of changing the Constitution by simply introducing exceptions that are to be valid for some specified or non-specified time from those constitutional stipulations that are in poor agreement with some actual need. The roots of this unique institution are in the peculiar features of Finnish political and historical life during the nineteenth century, and a full understanding of the reasons for the exception arrangement implies knowledge about the historical circumstances preceding the origin of the Finnish Constitution. A brief excursus into history is therefore in order.

Finland was an organic part of Sweden up to the nineteenth century, but was ceded to Russia as a consequence of the so-called Finnish War in 1808–1809. However, the Russian Emperor promised in 1809 to honour the fundamental laws of Finland, and the 1772 Form of Government Act of Sweden remained in force in Finland during the whole period of Russian rule (1809–1917). Finland became a Grand Duchy which in many respects displayed the characteristics of a sovereign state; the National Assembly of Finland was a four-estate Diet. For political and other reasons the Emperor did not convoke the Diet until 1863, and at that time the old constitution

was in need of modernization and of becoming adapted to the social developments. However, this created a dilemma. The rather delicate position of Finland in relation to Russia necessitated caution in matters relating to constitutional law, and there was a general reluctance to involve the Russian authorities in measures that would change even parts of the Constitution that the Emperor had promised to honour. In short, Finland was compelled to find a way of balancing between the preserving of a constitution which was perceived as a symbol for independence and the adjusting of this constitution to modern demands. The solution was to leave the Constitution intact, but to impose restrictions on the applications of some of its stipulations (Jyränki 1982, 54–55). However, since this in fact implied encroachments on the Constitution, it became necessary to legitimize the encroachments by explaining that they were to be effected as if they had been constitutional amendments or alterations. The method was used to some extent already at the 1863–1864 Diet, which when abrogating some of the privileges of the nobility explicitly declared that the decision was taken by all four estates and thus unanimous and in accordance with the procedure for the enactment of fundamental law in the old Swedish Constitution. The same declaration was used in some other decisions that affected the implementation of constitutional law, and in these instances the constitutional wordings were left intact. The method undoubtedly made the basis of a new way of thinking about constitutional reform (cf Kastari 1969, 86–87). However, it was not at all clear at that time that the method would introduce a system of *exceptions* in a strict sense of the word. The hierarchical position of the new superseding stipulations remained an open and abstruse issue.

The practice was continued at the 1877–1878 Diet, which among other things had to consider a proposal to change the levy system to be based on the principle of compulsory military service. Some of the statutes in the proposal were regarded as fundamental to an extent which made it necessary to deal with them in accordance with the procedure prescribed for fundamental law. Among these statutes was a deviation from the constitutional order that only Finnish citizens were entitled to become government employees. However, it appeared that this deviation could not be regarded as a new fundamental law. The statute namely meant that the imperial minister of war was to decide on some matters concerning the Finnish military, and such a limitation of the Finnish autonomy was not to be given the superiority of fundamental law. The Diet therefore proclaimed that the statute was to be regarded as an exception from the Constitution. However, the statute did not in itself have the legal status of fundamental law. In other words, an exception from the Constitution was decided and the procedure for amending fundamental law was used because the exception meant a deviation from fundamental law. Some scholars have argued that

the exception law system was hereby definitely introduced into the practice of Finnish constitutional law (Kastari 1960b, 1969, 88; Sipponen 1977, 79–80). Others take another view and argue that an uncertainty remained for quite a long time with regard to the hierarchical status of the exceptions, which were sometimes regarded as new prescriptions that had the characteristics of fundamental law and sometimes were regarded as deviations from valid constitutional norms (Jyränki 1982, 51–56). This matter will not be dealt with here. It is in any case clear that the treatment of the levy system issue at the 1877–1878 Diet resulted in a strange arrangement which was, however, in accordance with the demands and the political realities of that time. The modern version of this arrangement is one of several elements of the Finnish Constitution which cannot be properly understood unless one recognizes the impact of particular developments in the political history of Finland, such as the Russian supremacy during the time of autonomy and, for instance, the dramatic democratization of Finnish political life in 1906, as the four-estate Diet was then replaced by a modern unicameral Parliament.

This parliamentary reform of 1906 is of special importance here, as the framework of the reform included the stipulation for the urgent procedure for altering fundamental law. The exception law arrangement namely requires, in practice at least, that an urgent procedure can be applied. If this cannot be done, the making of exception laws in Finland would require handling at two Parliaments with an intervening election, and this is a time-consuming effort, which does not satisfy the swiftness that is a prerequisite of exceptions (Jyränki 1982, 57). The fact that the exception law arrangement was among the inheritances that were included in the new Finnish Constitution of 1919 must also be explained by the functionality of the arrangement during the unsettled times before and after the Civil War in 1918, which required exceptional measures and interventions of a non-permanent character. During a time period of a good two years, extending from May 1917 to July 1919, the exception law arrangement was used or was proposed to be used in at least some twenty instances (ibid., 57–58).

The earlier unclearnesses regarding the hierarchical status of exception laws have discharged into understandings that exception laws are not on the same level as fundamental laws. There is thus a conceptual difference between fundamental law and laws that are made by observing the procedure prescribed for fundamental law. Exception laws are not fundamental laws and they can therefore be altered or repealed by means of ordinary laws, that is laws that can be enacted by a non-qualified parliamentary majority. However, if the changes imply new exceptions or extensions of the primary exception, then the qualified procedure prescribed for fundamental law must be used. Reference should be made here to the so-called loophole theory, developed by Paavo Kastari (1960a). The idea of

this theory is that an exception creates a legal loophole in the Constitution, a hole which can be expanded only on condition that the qualified procedure is used once more. On the other hand, if and when the period of validity of the exception expires, the hole cannot be opened anew unless the qualified procedure is used. Exception laws can, however, be enacted to be in force for an indefinite time. This is of course in rather poor agreement with the usual meaning of the term 'exception', but is substantiated by practice as well as doctrine in Finland.

Modes of Application: A Review

The late 1960s and early 1970s formed in many respects a transitory period in the study of public law in Finland. Earlier traditions of law interpretation and textual analysis were challenged by new orientations, which emphasized the need for quantitative data and behavioural approaches in the study of law. These orientations have now faded away to some extent, which is very regrettable. However, they have produced several very useful empirical descriptions of the functioning of constitutional law in Finland, some of which deal with the institution of exception laws. The use of the qualified procedure for the enactment of laws during the years 1919–1970 was analysed by Seppo Laakso in a monograph, published in 1973, and an analysis of exception laws in the field of fundamental rights by Jukka Kultalahti and Teuvo Pohjolainen appeared in 1975. Several findings from these studies were repeated by Kauko Sipponen in a review essay in 1977, and in 1980 Pohjolainen followed up his earlier study in the form of an extensive monograph. Most empirical data in this paper are compilations from these studies, which cover a time span extending from the 1920s to about the mid 1970s. Additional data covering the time period of 1978–1985 have been gathered by the author for the purposes of this paper.

The number of laws that have been made according to the procedure used for constitutional amendments has been growing over time up to the 1980s. Figures illustrating this growth are given in Table 1. The growth has not been continuous and three rather distinctive stages can be identified. During the pre-war decades the procedure was applied with discernment and caution, the average number being about 7 laws per year. The wartime years during the first half of the 1940s as well as the post-war years of rebuilding, reconstruction and war reparations mark a sudden increase in the number of laws enacted by qualified procedures, and the 1940s thus clearly illustrate how exceptional conditions generate a need to resort to exceptional means for political steering and government. In 1945, more than one quarter (27 percent) of all laws made that year were enacted by means of the qualified procedure. From the beginning of the 1950s the

Table 1. Number of Laws in Finland Made According to the Procedure for Constitutional Amendments: Annual Averages for Five-year Periods and Some Other Periods.

1920–24	7.4			1950–54	11.6
1925–29	3.6			1955–59	13.2
1930–34	9.2			1960–64	11.2
1935–39	8.4			1965–69	10.0
1940–44	31.0			1970–74	14.6
1945–49	29.2			1978–85	7.3
1920–39	7.2	1940–49	31.0	1950–74	12.1

growth abated, and now in the 1980s the annual average is about the same as in the pre-war years.

The identification of exception laws within the body of laws that have been made according to qualified procedures shows a remarkable concentration on certain subcategories of laws. First, most laws made in the order for constitutional amendments are in fact exception laws. During the years 1919–1970 altogether 764 law proposals were considered in this qualified order, and no less than 636 (83.2 percent) of these proposals were to be classified in the category of exception laws. During the years 1919–1974 altogether 768 laws were made in the qualified order, no less than 657 (85.5 percent) being exception laws. Again, the vast majority of exception laws have in fact implied interference with the constitutional framework of fundamental rights. No less than 72 percent of all laws made in the qualified order during the years 1919–1974 encroached upon the fundamental rights which the constitution ensures the citizens. This figure has varied to some extent during subperiods, being, for instance, 76 percent during the 1930–1934 period, 60 percent during the 1970–1974 period and 64 percent during the 1978–1985 period. The drop does not imply a decrease in the actual number of laws but is rather to be seen as a function of the fact that the volume of legislation has been steadily growing. Finally, the interferences with fundamental rights are not by far equally distributed amongst the various rights.

The rights provided to Finnish citizens in the second chapter of the Finnish Constitution include, among others, the right to equality and non-discrimination, the right to life, human dignity, personal liberty and property, the right to work, the right of domicile and the right to mobility, the right to believe, to communicate, to assemble and association. Other rights of the citizen, including the right to participate in government, are defined elsewhere in the Constitution.[4] Table 2 reports the distribution of exception laws that have encroached upon fundamental rights. It is evident that exception laws have mainly infringed on the right to property. About

two-thirds of the exception laws interfering with fundamental rights have in fact meant restrictions on this right. The right to personal liberty has been violated in 6 percent of the cases (1919–1974), and no other fundamental right has been violated in more than 1 percent of the cases. The remainder is made up of so-called empowerment laws, i.e. laws which introduce a legislative delegation which deviates from the division of labour between authorities as prescribed in the constitution to an extent which necessitates the use of the procedure for amending fundamental law (Sipponen 1965, 335). Empowerment laws are always exception laws, but they do not of course necessarily concern the framework of fundamental rights. Empirically they often do however, and it has been suggested that almost all empowerment laws made in Finland have in one way or another encroached upon the right to property (Kultalahti & Pohjolainen 1975, 142–143).

Table 2. Exception Laws Interfering with Fundamental Rights in Finland 1920–1985.

	Exception laws		
	Interfering with the right to property (%)	Interfering with other fundamental rights (%)	Empowerment laws (%)
1920–29	82	13	5
1930–39	76	6	19
1940–49	72	13	15
1950–59	53	3	44
1960–69	61	4	36
1970–74	51	13	36
1978–85	49	8	43

Two main tendencies can be found in Table 2. On the one hand, the share of exception laws interfering with the right to property has been decreasing, being eight out of ten in the 1920s and five out of ten in the 1970s and in the years 1978–1985. On the other hand, the share of empowerment laws has been increasing. However, this is not to say that the preoccupation with the right to property is declining. We already mentioned that most empowerment laws in fact touch upon the right to property, and the shift from specific exception laws to more general empowerment laws therefore stands for a change in the legislative strategy rather than a change in the legislative ambition. The change means that the Parliament has empowered other institutions and authorities, mainly of course the Cabinet, to regulate issues that otherwise should have been regulated by Parliament by means of qualified or nonqualified legislative procedures. It is an empirical fact that empowerment laws are usually

enacted for a restricted and often short period of validity. In this sense they form a lesser threat to the fundamental rights than the pure exception laws which have more extended validity periods and often are intended to be in force continuously. It is, however, also a fact that empowerment laws have a wider scope and often are intended to achieve many subgoals within the frame of an overall purpose. This means that the empowered authorities have the right to make chains of decisions rather than some specific decision or decisions. Also, since empowerment laws must be enacted in accordance with the qualified procedure, and since this procedure legitimizes all other deviations from fundamental law as well, it may well be the case that violations of fundamental rights, so to speak, slip into the delegation of legislative competence. It is an important empirical observation that while pure exception laws interfering with the right to property have prescribed on the average 1.5 exceptions from this right, empowerment laws have on the average prescribed 3.5 exceptions (Kultalahti & Pohjolainen 1975, 34).

The dominance of the right to property can be demonstrated also by means of an analysis of the motives invoked for the use of qualified legislative procedures. The aforementioned study by Pohjolainen, which covers the years 1919–1978 and examines all exception laws enacted during that period, reports some notable findings in this respect. The main finding is that motives are not referred to at all in the official legislative documents. In no less than 62 percent of the cases no motivation whatsoever has been given. A second finding is that, insofar as motives are given, they deal with the right to property. This right has been referred to in 29 percent of the cases as the grounds for applying the qualified procedure. Other fundamental rights are clearly negligible in this respect. None of them has been referred to in more than 1 or 2 percent of the cases. Furthermore, there is good reason to conclude that the vast majority of the cases for which no motivation has been given has in fact concerned the right to property. In no less than 87 percent of the cases lacking a motivation, the means prescribed by the law for the fulfillment of the law intention was the expropriation of property (Pohjolainen 1980, 112–115).

There is of course no strictly objective and unequivocal criterion for determining whether a law proposal violates a fundamental right or not and whether the qualified procedure therefore should be applied or not. Such decisions must be taken separately, and the possibility can therefore not be excluded that violations of fundamental rights may be found also in laws enacted in accordance with non-qualified procedures. This question, however, has not been systematically investigated. Since the final decisions concerning the legislative procedure are taken in Parliament, one would expect that the procedure issue arouses differences of opinion and conflicts in the parliamentary arena. This has, however, not been the case. Claims to the effect that the qualified order shall be used have as a rule been

introduced already in the law proposals submitted to Parliament by the Cabinet, and the claims have as a rule not been contested by the Parliament. Less than one-third of the exception laws violating fundamental rights have been referred by the Parliament to the Parliamentary Committee on Constitutional Law, which scrutinizes the constitutionality of proposed legislation, and this clearly illustrates that the matter of procedure has not been politically salient. This means that the administrative machinery which prepares and drafts legislative acts in fact determines to a considerable extent the use of the procedure stipulated for amending fundamental law. Since in most cases no explicit arguments are given which substantiate the recommendations to use a qualified procedure, it seems safe to conclude that the considerations in the drafting stages are largely of a routine nature. This is to some extent at least only natural. If exception laws that concern fundamental rights are divided into 'new' and 'old' exception laws, old laws being laws that extend, change or cancel existing exception laws, the observation can be made that the share of old laws has been increasing from, for instance, 16 percent in the 1930s to 34 percent in the 1970s and 47 percent in 1978–1985. For many such laws no specific recommendations are needed. In so far as they broaden or extend existing laws it follows with necessity that they must be enacted according to the same procedure that was used for the laws they are to replace.

Exceptions: Good or Bad?

In 1970 the Finnish Cabinet appointed a committee which was given the task to investigate how the Finnish Constitution could be revised to correspond better to conditions for democracy and modern social life. The committee was established on a parliamentary basis and delivered its report in 1974. The report, however, was a failure. The committee was paralysed with dissensions and unable to make concrete recommendations, and the report took the form of a catalogue of conflicting points of view and arguments. The committee was followed by another which, however, was instructed to confine itself to the task of following the public debate and compiling the various statements requested on account of the report given by the first committee. This second committee delivered its report in 1975. Although these undertakings did not result in any constitutional revisions and amendments, the two reports provide a collection of statements and arguments which is in many respects useful for an evaluation of the working of the Constitution.[5]

The institution of exception laws was rejected by a majority (12 members) and defended by a minority (5 members) in the first committee. The majority emphasized three points. First, if exceptions are allowed from the

fundamental laws, the general knowledge of the content of these laws will decline, thus causing uncertainty and confusion amongst the citizens. Secondly, the prohibition of exception laws would facilitate the supervision of the observance of fundamental law. Thirdly, the supreme hierarchical position of fundamental law is weakened if exceptions can be made, this weakening, in turn, the legitimacy of the constitution and the public respect of the constitution. On the other hand, the minority stressed two main points. One argument was that the institution increases the flexibility and pliability of the constitution, as it contributes to an adjustment to changing demands and conditions and makes it possible to manage and overcome constitutional inertia. Another argument was that a prohibition of exception laws could in fact weaken the hierarchical status and the general significance of fundamental law. This would be because the need to deviate from the stipulations of fundamental law would make itself felt at times, and would have to be obliged through changes in the interpretations of the factual meaning of constitutional stipulations. Since such changes would have to be made by courts, not in Parliament, the responsibility for defining and demarcating fundamental law would to a noticeable extent be removed from the parliamentary arena.

Both parties overlook the empirical fact that the institution of exception laws has largely and in the main been a vehicle for overcoming the rigid constitutional protection of the right to property. This imbalance in terms of objectives is particularly devastating for the views of the committee majority. There is little empirical evidence to substantiate the belief of the majority that the enactment of exception laws has damaged the general knowledge about the constitution or the general belief in the constitution, and the fact that the exceptions have predominantly been from one rule only makes this belief still more obscure. It is probably true that the knowledge about the constitution amongst the citizens leaves something to be wished, but it seems very far-fetched to blame the exception laws. It needs also to be noticed that most exception laws have in fact been enacted in accordance with the urgent procedure for amending fundamental law, which requires a five-sixths majority. The exceptions have thus almost as a rule been unanimously accepted by the political elite, and this is a factor that presumably would neutralize feelings of distrust and scepticism amongst the public.

The minority standpoint seems more well-founded. There can be little doubt that the institution of exception laws has contributed to a more flexible working of the constitution and to the efficiency of the political system as far as the managing of crisis situations and the equalizing of social conditions are concerned. Pohjolainen has in his study identified and carefully singled out the leading motives for the enactment of exception laws and empowerment laws during the years 1919–1978 (1980, 80 and

Table 3. Rationales of Exception Laws and Empowerment Laws.

Goal	1919–1978				1978–1985	
	Exception laws		Empowerment laws		Exception laws	Empowerment laws
	N	%	N	%	N	N
Reorganization of land ownership	48	11	0	0	0	0
Compensation of war damages	90	21	1	1	0	0
Assistance to deprived population groups	15	4	0	0	1	0
Removal of inflation profits and similar profits	38	9	0	0	2	0
Provision of livelihood and security to the people	46	11	150	94	5	12
Safeguarding functions of public authorities	39	9	4	3	6	2
Rationalization	109	26	2	1	2	1
Other	35	8	2	1	2	1
Totals	420	99	159	100	18	16

296), and the results are reproduced in Table 3 above, which shows amounts and percent distributions of laws oriented towards the attainment of certain goals. The table also reports the corresponding results for the years 1978–1985. In some instances the exception laws are clearly related to specific historical events and situations; this is true for a considerable number of laws made during the first decade of independence and aiming at solving the crofter land issue, and for the fairly large number of laws aiming at compensating for and preventing war damages. Legislative measures for the conveyance of lands to refugees from the areas ceded to the Soviet Union in consequence of the war are included in this category. Other categories are more heterogeneous and are not to the same extent outcomes of specific events. The very large rationalization category comprises laws aiming at the uniforming, clarifying and modernizing of the existing legislation, whereas the laws in the field of public authority functions have aimed at providing incomes for the state and the municipalities and at

securing education and defence. Laws classified as provisions for livelihood and security have promoted the production and consumption of energy, have balanced the public finance, and have regulated economic life in order to advance the undisturbed development of the national economy. Almost all empowerment laws belong in this category. The general impression is certainly that the motives that have initiated exception laws appear well considered.

The fact that many exceptions have been made and that large majorities have been found which have made the exceptions possible testifies to the capacity of the institution to overcome legislative inertia. There have been repeated needs to deviate from the stipulations of the Constitution and the institution has been an effective means to that end. However, since the deviations have predominantly been from one stipulation only, the question can be raised if the inertia problem could be solved by simply changing the stipulations protecting the right to property. The problem here is that a relaxation of this protection seems politically impracticable. The political parties to the left have often argued that the protection of property is too effective in Finland and should as a general rule be extended only to private citizens, but this view has been strongly opposed by the bourgeois counterparts and has not, when it comes to it, been actively defended and pursued by the leftist quarters in Parliament. Klaus Törnudd has made the observation that the accumulating experience of the interpretation of the Constitution shows a gradually growing tendency to take a rigid line and to regard even minor measures with a potential effect on the value or the enjoyment of the rights to private property as falling under constitutional protection (1986, 116–119). We cannot dwell upon this topic here. It must however be stated as a fact that the rigid interpretation of the right to property, originally introduced in the Finnish Constitution as a means for balancing the growing political influence of the labour movement, has become tradition-bound to an extent which makes it virtually impossible to moderate the constitutional rule (cf. Hidén 1971, 105). The most obvious means for abolishing legislative inertia is of course to replace the aged laws. However, this is not a feasible strategy here, simply because the legislation is not generally regarded as aged in itself. The protection of the right to property is not regarded as a manifestation of constitutional inertia, but it is acknowledged that there frequently emerge situations when protecting stipulations appear aged and misguided and need to be bended. In this important sense has the institution of exception laws functioned precisely as a means for evading constitutional inertia.

However, questions can be raised concerning the design of the exception law institution. It has been pointed out by one author that there is something odd about an arrangement that allows exceptions to any rule, provided that the exceptions are made in accordance with a certain procedure. It is also

demonstrated by the same author that the institution has been used in some instances during earlier decades for imposing severe restrictions on the political rights and the political freedom of the citizens (Viljanen 1987, 77–80). If this were to happen nowadays to any considerable extent, the view that exceptions may undermine political legitimacy would certainly seem more well-founded. This could also be phrased in more general terms: if the use of the exception law institution were to expand to cover to any significant extent other issues than the right to property, the damaging effects on the respect for the Constitution and on the general legitimacy of the political system would probably be of such a magnitude as to merit attention. It is true that the political culture in Finland has traditionally been and still is marked by legalism, i.e. by feelings that the government exercise of power is justified and acceptable if exercised by organs which are acting within their constitutional jurisdiction (Jyränki 1983, 65–67), and it is true that this tradition may reduce the risk that an extensive use of exceptions carries unfortunate consequences. It is also true that the making of exceptions postulates the collaboration of practically all political parties and most important segments of the political elite, and this is of course a factor that likewise may reduce the risk. But circumstances like these only reduce the risk, they do not eliminate it. There are no doubt limits in the opinion of the public to what government can do in terms of exceptions.

One obvious method to cope with the risk is to narrow down the range of issues to which exceptions apply. In other words, the method is to declare some fundamental rights to be more fundamental than others and to stipulate that exceptions cannot be made from these rights. The matter was discussed in the aforementioned committee, which was, however, unable to find a recommendation.[6] Some members of the committee argued that certain rights should enjoy a better protection than others and were to be amended only through extreme procedures, such as unanimous decisions by the Parliament, others advocated the view that certain rights were to be made unamendable, still others maintained that all rights mentioned in the Constitution were to be equally protected. The matter has not been seriously considered during the last few years, and it may well be that the Finnish fundamental rights system remains unchanged for the foreseeable future. It would, however, seem a well-advised measure to introduce a hierarchy of fundamental rights in the Constitution and to thus circumscribe the potentials of the exception law arrangement.

If a distinction were to be introduced between constitutional matters that can be subjected to exceptions and matters that cannot, the need for separating the processes for making fundamental law changes and for making exceptions would appear urgent. Such a separation could in fact be based on the present arrangements, as the two qualified procedures for altering fundamental law and for making exception laws could be used in

different contexts. The method of declaring proposals urgent by a five-sixths majority and then accepting urgent proposals by a two-thirds majority seems eminently suited for the making of exceptions, as it, first answers to the demand that exceptions should not be made from the Constitution unless they are supported by large majorities, and, secondly, also answers to the demands for swiftness that are almost automatically raised in exceptional situations. On the other hand, the more time-consuming method of accepting proposals and thereafter transferring them to the next Parliament to be elected, seems well adapted to demands that constitutions should make amendment difficult, and that amendments should not be made unless the people are consulted in one way or another. Such expectations are of course not universal. All constitutions are not rigid. Some are quite flexible as, for instance, the British constitutional framework and some Commonwealth constitutions issuing from it (Duchacek 1973, 35). The Finnish constitutional tradition however emphasizes rigidity rather than flexibility, and is well in line with demands that amendments of fundamental importance should be effected only after careful and prolonged considerations. The differentiation suggested here between methods would therefore answer very well indeed to a differentiation between fundamental principles which cannot be amended by means of exceptions and other provisions subjected to amendment through exceptions. The differentiation would probably also contribute to a better general understanding of constitutional principles and practices in Finland.

NOTES

1. This is a revised and slightly expanded version of a paper delivered at a workshop on 'Rule-Breaking and Crisis Management by European National Governments' at the European Consortium for Political Research, Joint Sessions of Workshops, Amsterdam, April 10–15, 1987.
2. Some examples are given in Duchacek (1973, 33–35).
3. The same wording can be found in the concluding paragraph of the Finnish Parliament Act (§94) from 1928, which of course also has the status of fundamental law.
4. A recent and very thorough presentation and analysis of the fundamental rights system in Finland is given in Törnudd 1986.
5. The two reports are: Statsförfattningskommitténs delbetänkande 1974 (especially pp. 113–115) and Toisen valtiosääntökomitean mietintö 1975 (especially pp. 62–63, 195, 241, 351–352, 368, 415).
6. The deliberations are reported in Statsförfattningskommitténs delbetänkande 1974, pp. 111–113.

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