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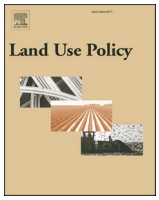

Soft spaces, soft planning, soft law: Examining the institutionalisation of city-regional planning in Finland

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ABSTRACT

This article discusses the concepts of soft spaces and soft planning in the context of city-regional planning, complementing the discussion with an excursion to "soft law". The point of departure is the current debate on the legitimacy deficits of the often power-laden processes where "soft" planning spaces are enacted or "performed", and decisions made concerning planning of these spaces. Through legal theory and the concept of soft law, the article provides first, a new perspective on the performative nature of soft planning, and second, new conceptual tools for addressing legitimacy and effectiveness of soft planning. The article also uses the concepts of soft spaces, soft planning, and soft law for scrutinising the ongoing renewal of the Finnish planning system, where some, but not all aspects of currently largely informal city-regional planning are purported to be formalised or hardened.

1. Introduction

1.1. Background

Urbanisation takes place today not only through the growth of single cities, but also as rapid expansion of city-regions. This expansion needs coordination regarding such issues as land-use, housing provision, transportation systems planning, as well as the provision of private and public services and green infrastructure so that growth can take place in an ecologically sustainable and socially just manner (e.g., Janssen-Jansen and Hutton, 2011; Ravetz, 2013; Harrison, 2021). While in some countries the growing importance of city-regions has led to the introduction of new formal city-regional -scale institutions with notable planning powers, in many cases the city-regional scale has fallen in between existing formal jurisdictions, and city-regional planning activities have taken place in "soft spaces" representing "multilayered, fluid, and sometimes fuzzy scales", scales "other than those of the statutory planning system" (Allmendinger and Haughton, 2009, 617). This has been the case also in Finland, which is the contextual locus of this paper.

The emergence of soft spaces has been taken to mean not only that our understanding of space needs to change to better capture the new, soft "relationality" of space, but also that there is a need to analyse and develop new "soft planning" practices and instruments reaching beyond administrative borders and seeking synergies between actors across territorial and administrative boundaries through informal or semi-formal governance networks (Faludi, 2013; see also Stead, 2014; Purkarthofer, 2016). Planning theorists have promoted soft planning because of the assumed effectiveness and agility of soft planning in responding to multi-scalar and rapidly transforming planning problems. As it has been often argued, traditional bureaucratic and slow forms of planning have difficulties in tackling these kinds of challenges (Healey, 2004, 2006).

Despite their potential in responding to multi-scalar and changing urban problems, soft spaces and soft planning have attracted criticism. Most importantly, planning and governance activities emerging in soft spaces have been argued to suffer from legitimacy deficits as they lack transparency and democratic accountability (Allmendinger and Haughton, 2009, 2010; Metzger, 2011; Mäntysalo et al., 2015; Nadin et al., 2018). Furthermore, the critics have pointed out that the effectiveness of soft planning is often questionable. In addition to the fact that soft planning does not produce legally binding outcomes, it also typically has not replaced statutory planning, and the coexistence of statutory and non-statutory elements increases ambiguity in planning and governance systems (Olesen, 2012; Mäntysalo et al., 2015; Hytönen et al., 2016).

When the concept of soft, informal and networked planning and

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governance originally emerged in the 1990s, the theory of communicative planning – based largely on Jürgen Habermas's theory of communicative rationality – provided a normative model for restoring the legitimacy of new planning and governance practices. In this model, the legitimacy of problem-framings and planning solutions was based on their rational justifiability. The current discourses on soft spaces and soft planning emphasise, however, that soft spaces and the related governance practices are often brought into being through power-laden "performative" discourses that do not meet the criteria of rational and argumentative communication (e.g., Metzger and Schmitt, 2012; Davoudi et al., 2021). While this has been typically taken to mean that the legitimacy of these practices escapes rational analysis, we argue that the key for assessing their legitimacy and effectiveness can be found from the theory of performative language use, a mode of language use where speakers do not merely report states of affairs but change them with their speech acts.

Performative language use is a theme that has attracted attention not only in the context of planning theory, but also in legal theory. We complement our discussion on soft spaces and soft planning with a legal-theoretical point of view. In so doing, we return to the roots of the discourse on soft spaces, where the differentiation between soft and hard planning spaces coalesced with the differentiation between statutory and non-statutory planning spaces, whereas in the recent theorizing of soft and hard spaces they are typically discussed in cultural rather than legal terms. While we argue that the perspective of legal studies restores the analytical clarity of the concepts of soft and hard, we also acknowledge that even in the field of law there is a grey area between soft and hard or formal and informal. In recent decades, this grey area has been discussed especially in terms of "soft law", defined as regulation that typically, but not always, originates from sources other than those having been vested with powers of enacting law, and as regulation that has no legal effects, but is still expected to have factual effects (e.g., Baxter, 1980; Senden, 2004, 2005; Maher, 2021). Theories of soft law can beneficially complement the discussion on the legitimacy and effectiveness of soft spaces and soft planning especially by shedding light on the performativity in the enactment of soft law, and by extension, of soft spaces and soft plans.

The types and sources of soft law are manifold. EU is an important source of soft law in its member states including Finland (e.g., Eliantonio et al., 2021; Korkea-aho et al., 2021). The European Commission produces, for example, *interpretative* soft law aimed at elucidating the interpretation Community law, which may be claimed not to aim to generate legal effects other than those ensuing from the underlying law, but which may in some instances go further than the Community law provisions (Senden, 2004, 143–144). This kind of soft law plays a role also in the Finnish planning legislation. For example, the Commission has drafted guidance on the implementation and interpretation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive). The guidance document states that it represents only the views of the Commission services and is not of a binding nature, and that in the last resort, it rests with the European Court of Justice to interpret a directive. Despite this, the guidance is purported to have an effect on the implementation and interpretation of both the Directive and the national law (European Commission, 2003). There is also a Community law doctrine that national courts must take European soft law into account when deciding cases (see Case C-322/88, Grimaldi v Fonds des Maladies Professionnelles, EU:C:1989:646; Korkea-aho, 2018). All this is indicative of the shades of grey between hard and soft law.

In the theoretical part of our paper, we draw on the international discussion on soft law, introducing the theories of soft law into the discussion on soft spaces and soft planning. In addition to the theoretical work on the interrelations between the concepts of soft spaces, planning and law, we conduct a case analysis of Finnish city-regional planning. Finnish city-regional planning has thus far largely taken place in soft spaces and through soft planning, and it has been partly guided by soft law material coming mainly from Finnish soft law sources. The Finnish planning law is currently under renewal, and some, but not all aspects of currently largely informal city-regional planning are purported to be formalised or hardened. We analyse the current and the proposed model of Finnish city-regional planning in light of our theoretical work on the interrelated concepts of soft spaces, soft planning and soft law.

1.2. Research questions, methods and materials

In this paper, we aim at answering to both theoretical and practice-oriented research questions.

Our theoretical research questions are:

- What is the added analytical value of the concept of soft law in the theoretical discourse on soft spaces and soft planning, and what kinds of new perspectives can the concept of soft law provide to questions concerning the legitimacy and effectiveness of soft planning?
- Furthermore, how is the theory of performative language use helpful in assessing the legitimacy and effectiveness of soft planning and soft law?

Our practice-oriented question is:

- In which ways the combinations of soft and hard aspects of city-regional planning in the current Finnish regulatory system and in the new system under preparation contribute to the legitimacy and efficiency of planning, when assessed in terms of the conceptual framework of soft spaces, soft planning and soft law?

We aim at answering the theoretical questions by reviewing the evolution of the concepts of soft spaces, soft planning (Section 2), and soft law (Section 3). As our review reveals, contemporary planning theorists have largely settled with identifying legitimacy deficits and efficiency deficits of soft planning. We will show through our review that the theory of soft law provides remedies for these deficits, contributing thus to the development of the theories of soft spaces and planning. The practice-oriented question will be answered, in turn, by using the theoretical part of the paper – the conceptual framework of soft spaces and soft planning enriched by the concept of soft law – for scrutinising the current and proposed models of city-regional planning in Finland (Section 4). The material analysed consists mainly of legal texts such as the current Land Use and Building Act (132/1999) of Finland, the latest draft for the government bill for the new Planning and Building Act of Finland (Ympäristöministeriö, 2021), material related to preparation of law, and existing research results concerning the application of soft and hard law in planning practice. After having analysed this material in the theoretical framework, we present a categorisation of soft and hard features in the current and proposed model of city-regional planning in Finland (Section 5) and assess them from the point of view of legitimacy and effectiveness (Section 6).

A central methodological problem pertaining to all three concepts – soft space, soft planning and soft law – is that they are typically theorized internationally, but they may function in differing ways in the various country-contexts where they have "travelled to" (Healey, 2011; see also Purkarthofer and Granqvist, 2021). For instance, legal traditions have a significant impact on the degree and quality of fuzziness of the boundaries between formal and informal (Korkea-aho, 2005). In Finland, the boundaries between formal and informal are in many respects clearer than in the context of the UK, which is the context of origin of the discourse on soft spaces. In particular, in Finland the legal effects of plans – or other such documents – are predetermined to a high extent by the legislature, and the courts typically do not give legal weight to non-binding norms. Yet, the Finnish discourse on soft law shows that this is not always the case, especially when at issue is environmental law (Määttä, 2005a). Furthermore, Finland's membership in the EU with its

extensive use of soft law instruments has marked a change in Finnish legal and administrative practices and in their traditionally strong emphasis on formal law and parliamentary democracy (Eliantonio et al., 2021; Korkea-aho et al., 2021).

2. Soft spaces as platforms for informal planning and networked governance

2.1. The emergence of the concept of soft spaces

The term "soft space" originates from the context of UK, and more precisely from Allmendinger and Haughton's work on New Labour era urban regeneration policies seeking better policy integration and cooperation across institutional and organisational boundaries. The most famous example of soft spaces discussed by Allmendinger and Haughton has been the Thames Gateway Project covering three counties and 16 local authorities and involving numerous partners from public and private sectors. Soft spaces and practices are described as prioritising efficiency in "getting things done" over the tidiness of governance practices (Allmendinger and Haughton, 2009, 619). Critics have argued that while the new informal spaces and practices are often built on a promise of greater inclusion of stakeholders, in the absence of formal rules it is often the dominant interests in society that set the rules for planning processes, the result being depoliticization and legitimacy deficits in planning (Haughton et al., 2013). Furthermore, whereas decision-making within traditional formal governments includes mechanisms for contesting decisions, the decisions taken informally in soft spaces usually cannot be challenged, given that it is often unclear "who is responsible for the decision, or if any decision formally even has been made" (Metzger, 2011).

Since Allmendinger and Haughton's inaugural work, the concept of soft spaces has travelled also to mainland Europe, where it has been used in the analysis and development of spatial planning and policy in different scales (Haughton et al., 2013). These scales have ranged from city-regions to macro-regions crossing national borders and owing much of their existence to the European Union spatial policies (Purkarthofer and Granqvist, 2021).

2.2. Assessing the legitimacy of governance in soft spaces

In the UK context, the concept of soft spaces has been anticipated for some time in the geographical discourse on relationality of space and the implications of this relationality for planning theory. Already in the 1990s, Graham and Healey called for exploration of the new socio-spatiality of heterogeneous cities, where the actors do no longer inhabit static, container-like places that are organised in nested hierarchies, but rather produce relational and dynamic space "through social actions within and between places" (Graham and Healey, 1999, 627).

The theoretical discourse on the production of relational space is closely connected to the theories of communicative or collaborative planning, which emerged in the late 1980s and early 1990s (e.g., Healey, 1992, 1997; Forester, 1989, 1993; Innes, 1995, 1996). Back then, the relationality of space was increasingly observed to be a quality produced by informal governance networks, where communicative relations were established beyond administrative and organisational boundaries in various scales. The theorists of communicative planning such as Healey acknowledged the potential problems related to the legitimacy and democratic accountability of governance networks in practice, but she maintained that the democratic potential of informal governance practices could be restored by paying attention to the design of the new informal institutions of governance where consensus formation would ideally take place through rational and inclusive communication (Healey, 1992, 1997; see also Innes and Booher, 1999, 2000).

Healey's and many other communicative planning theorists' normative ideals were grounded on Habermas's theory of communicative rationality, with which Habermas argued rationality to be intersubjective and manifesting its potential in argumentative use of language (Habermas, 1984, 1987). According to this theory, subjects evolve and learn in regard their knowledge of the external world, the norms on which they base their actions in the social world and even the development of their own identities in being involved in communicative networks. Healey (1992, 1997) adopted from Habermas the view that the identities and the interests of actors in communicative networks are not pre-given and fixed, but that the actors can be expected to change their interests on a rational basis through the discourses they get involved in (Healey, 1992, 1997; see also Forester, 1989, 1993).

2.3. The performativity of language-use

The theoretical roots of communicative planning theory, especially as regards the capacity of communication to establish new shared understandings of the factual and normative dimensions of reality, can be traced further back, beyond Habermas, to J.L. Austin's theory of speech acts. Austin (1962) argued that speaking is not only a way of conveying information but also a way of acting, of "doing things with words". He introduced the notion of "performatives", that is, utterances with which speakers do something, bringing something new into being instead of merely reporting existing states of affairs. Speakers can for instance make promises, or apologise someone for something. Furthermore, when the external conditions are favourable – favourability depending on legal norms in particular – priests can bring about marriages with their words, or municipal authority can approve and carry into effect a plan (Austin, 1961, 220–239; Tuori, 2007, 21–24). Austin's differentiation of ways of doing something in saying something included, first, "locutionary acts", the sheer acts *of* saying something, secondly, "illocutionary acts", the acts *in* saying something like in the case of marrying a couple, and thirdly, "perlocutionary acts" that produce consequences related to the "feelings, thoughts, or actions of the audience, or of the speaker, or of other persons" (Austin, 1962, 98–101). The theory of speech acts is significant also from the point of view of legal theory as legal utterances are an important object of legal studies. Already Austin himself made this connection clear, as he often relied on examples from the legal world (Amselek, 1988, 187; see also Austin, 1962, 31–32). Law can indeed be viewed as a (temporal) series of speech acts, which include both the written law and claims about its *in casu* application (Constable, 2011).

Habermas invoked to the concept of illocutionary act in establishing a view of a "binding" and "bonding" force of language (see e.g., Habermas, 1984, 302; 1987, 77), a view that has been central later for communicative planning theorists who have relied on the integrative and coordinating force of informal communicative governance practices rather than the force of law. In Habermas's theory, illocutionary force of language is related to the practice of understanding and accepting of speech acts where the speakers raise implicitly or explicitly "validity claims" related to truth, normative rightness, and authenticity or sincerity, being also committed to redeem these claims if they are challenged by the listeners (Habermas, 1984, 15–16, 99–100; see also Forester, 1993, 27).

After the emergence of communicative planning theory, numerous critics have questioned the practical relevance of the Habermasian theory of understanding-oriented speech, where the only intention of the participants is to find out which claims are rationally redeemable. This model has been argued to have little use in planning contexts that are typically infused with strategic interests and uneven power relations (see e.g., Westin, 2021). Habermas well acknowledges, just like his critics, that language is often used strategically rather than in understanding-oriented ways, bypassing the illocutionary aspects of speech, and aiming directly at the achievement of perlocutionary effects (e.g., Habermas, 1992). Yet, planning theorists such as Forester (2003, 2015) have argued that the practical value in Habermas's work does not lie primarily in the ideals, but rather in the practical tools for the critical

analysis of the use of power through performative language use, such as shaping attention or framing of problem-settings by speaking.

Healey (2006), in a similar vein, has discussed how planning issues are performatively "framed" in communicative planning processes, focusing on the spatial dimensions of such framing in contemporary city-regions. While Forester discusses primarily the justifiability of the ways in which attention is shaped in planning processes, Healey emphasises the imaginative powers in the creation of new, persuasive conceptions of dynamic, fluid and open relational spatiality enabling "mobilisation force to enlarge the synergies, reduce the conflicts and turn coexistence into some kind of identification with the place of the urban region" (Healey, 2006, 541). In so doing, Healey departs from the Habermasian framework which is more suitable for justification than for innovative discovery of new problem framings and solution candidates (Mattila, 2016, 2020). Yet, the creative endeavours described by Healey would fit Habermas's conceptualization of authenticity of speech acts. Claims of authenticity cannot be subjugated to argumentative testing as easily as other validity claims, but they do not escape rational discussion altogether. For instance, art criticism is a form of discussion that thematises the authenticity of aesthetic expression, though recognising that the outcomes of this type of discussion cannot be expected to be universally valid in the same way as are scientific truths or norms of justice (see e.g., Habermas, 1984, 41–42).

Contemporary theories on discursive "performing" or enacting of planning spaces typically assume that the processes where new spatial units are brought into being are not rational, argumentative, and justification-oriented, but power-laden political processes of "strife and struggle" (Metzger and Schmitt, 2012, 267; see also Zimmerbauer and Paasi, 2020). The research on the performative enacting of soft spaces is related to a broader geographical discourse on spatial imaginaries, which work persuasively through aesthetic-intuitive appeal of symbolic expression and storytelling, aiming at the naturalisation of such spatial imaginaries that are inherently political or ideological (e.g., Watkins, 2015; Davoudi and Brooks, 2021; Davoudi et al., 2021). Instead of Austinian or Habermasian analytical approaches to performativity, these studies rely mainly on theories of post-structuralist performativity (see e.g., Glass and Rose-Redwood, 2014), where the concept of legitimacy has not traditionally had a place. To re-capture the aspect of legitimacy in the discursive performing of soft spaces, Austinian-Habermasian approach is worth revisiting, given especially that it brings to the fore the fact that along the expressive dimensions of language, the discursive production of space has cognitive and moral dimensions that can be rationally assessed.

2.4. Hard or soft spaces; formal or informal steering?

Even though the legitimacy problems of soft spaces have been widely recognised, very few planning theorists have spoken in favour of "costly and disruptive" formalization of soft spaces (Haughton et al., 2013, 227). Healey (2009), for instance, favours dynamic conceptions of space with some degree of stability rather than "spatial fixes" that would legally formalise city-regions. While she recognises that formal administrative arrangements are typically based on certain procedural rules contributing to the rational quality of decision-making, this does not outweigh for her the fact that formal structures are often not open to new ways of thinking and to the voices of the stakeholders (Healey, 1997, 269; see also Innes et al., 2007).

The communicative planning theorists' emphasis on informality might have its origins in Habermas's theory of communicative action (1987) where the expansion of formal, legal structures into previously informally regulated spheres of life appeared as a potential source of distortions of rational, understanding-oriented speech, and its gradual replacement with strategically-rational approaches. Nonetheless, Habermas changed his view on the role of legal regulation already in the early 1990s, emphasising that along the increasing heterogeneity and complexity in our societies, the coordinating and integrative power of informal normative structures as well as of informal communicative interaction have weakened considerably (Habermas, 1996; see also March, 2012, 34; Mattila, 2020). This implies to Habermas that communicative action needs to be increasingly complemented with binding, enforceable law. Law brings about stability and predictability (Habermas, 1996, 37), while it also integrates political communities who under modern conditions are not united by a shared political ethos, but can still understand themselves as "consociates under law" (Habermas, 1996, passim). Habermas no longer discusses communicative rationality primarily as a resource for direct steering of society, given that it would be practically impossible in contemporary complex and heterogenous societies to engage all citizens in all public-decision making. Communicatively-rational discourses now rather appear as the ultimate source of legitimate law (Habermas, 1996). Communicatively-rational discourses, however, do not need to take place only in procedurally regulated environments such as parliaments. While the rational quality of public decision-making can typically be supported by regulated processes, Habermas, 1996 still recognises that innovative and creative problem-framing processes can benefit from such settings that enable free and informal discussions.

Thus, whereas the increasing cultural pluralism, heterogeneity, and networked nature of cities and city-regions has suggested for the proponents of soft spaces and networked governance that informal communicative interaction fares better in solving problems of coordination of action and social integration than do formal institutions and practices, Habermas – the original source of inspiration for many of them – drew almost the opposite conclusions of the implications of the very same conditions. We use the Habermasian approach here as a heuristic model, and turn next to the pros and cons of both formal and informal steering mechanisms, as well as their interplay and intertwinement in planning systems. While this intertwinement of formal and informal has not been subject to in-depth analysis in planning theory, it has been studied in the field of law, and in particular, in the context of soft law.

3. Soft law – The variety of shades of law

3.1. The emergence of the concept of soft law

The discourse on soft law emerged in the context of international law in the 1980s (e.g., Baxter, 1980), and later especially in the context of the European Union where the concept of soft law gained increasing importance in the development of new, more efficient and agile forms of regulation (Senden, 2004, 2005, 2021). Soft law in all its manifestations has thereafter spread into numerous fields of law in national contexts as well, leading to traditional binding law being increasingly complemented with – and sometimes even replaced by – novel types of soft regulation. In legal studies, soft law has put into question the traditional demarcation lines between non-binding social norms and binding, enforceable legal norms backed up with coercive powers of the state. Soft law is located in between, and intertwined with, these two traditional categories of norms. As such, it has been sometimes interpreted as an anomaly in the system of law, and as an element that unnecessarily blurs the boundary between the increasing complexity of the everyday world of norms, and the "simplicity of law", based on clear differentiations between legal and illegal, in force and not in force, or binding and not binding (Klabbers, 1998, 387).

The category of soft law has been defined, for example, as being constituted by "[r]ules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects" (Senden, 2004, 112). Soft law, like its planning-related counterparts, is an ambiguous concept. It covers a multitude of instruments at international, EU and national level, elements that are nonbinding, yet aim for compliance (Koulu, 2009; Korkea-aho, 2009; Friedrich, 2013). The term soft law itself contains a

clear normative element, while at the same time carrying a connotation of being something weaker than "hard law". Like soft places, soft law is closely connected with the idea of governance (and) networks (Maher, 2021).

What complicates the matter further is that the categories of soft and hard may be mixed, and there may be soft instruments in hard regulation (Shelton, 2000, 10–11), like the case is often in the field of planning law. Furthermore, like soft spaces, also soft law may harden. Soft law, in fact, seldom occurs in isolation but is rather either a precursor or a supplement to hard law (Shelton, 2000, 10). It is typically used in such circumstances where there is not yet sufficient consensus, or even competence, for enacting hard law. Soft law thus has an intermediary role towards hard regulation (Klabbers, 1998; Korkea-aho, 2009, 233–234; Shelton, 2000).

3.2. Criticism of soft law

Soft law has been criticised for reasons that are familiar from the criticism of soft spaces and soft planning, especially for the reason that soft law depoliticizes the steering of collective action in not requiring decisions from democratically elected organs with legislative powers, and in being not burdened with formal requirements of transparency and public engagement (Klabbers, 1998; Koulu, 2009). It has been noted that soft law serves the power interests of the actors behind the soft regulation, but not necessarily the interests of others (Klabbers, 1998; Koulu, 2009). Furthermore, critics have pointed out that there are hardly any mechanisms with which to contest soft law norms and instruments, and that the criticisms concerning the non-contestability can be dismissed on the basis that soft law is not legally binding (Koulu, 2009, 119–120). Soft law may thus give a rise to a double standard, since arguments can be drawn either from the "law" or "non-law" aspects of soft law. This witnesses of the vagueness of the normative significance and effectiveness of soft law. It has been argued that as soon as soft law is to be *legally* applied in a specific situation, it "collapses into either hard law, or no law at all" (Klabbers, 1998, 382).

One strand of criticism has focused on the formulation of soft norms. The way in which norms are set forth in soft law may imitate the form of binding legal norms, though the origins of these norms do not meet the criteria of legitimate law-making (Koulu, 2009, 121). In terms of Austinian performatives, the actors "performing" the norms could be seen as aiming at perlocutionary effects. However, in this case there are reasons to suspect that the perlocutionary effects come into being because those who are subjected to regulation are led to believe that an illocutionary act of enacting law has been performed, when in reality, this is not the case, since soft law is lacking the formal authorisation and legitimacy of positive law (cf. Tuori, 2007, 21–24). Yet, the actors who are subject to regulation often do not consider or question the formal authorisation of the norms applied, or the "validity claim" that the norms present concerning their origins. Thus, the purported effects of soft law are achieved. In Habermasian terms, this could constitute a case of strategic use of language.

3.3. The usefulness of soft law in environmental regulation

Regardless of the criticism, there are scholars who have defended the position of soft law, and argued that soft law can increase the legitimacy, transparency, and effectiveness of regulation (Senden, 2004, 2005; see also Shelton, 2000, 12–13). Soft law has been argued to have contributed positively especially to the field of environmental law, planning law included (Määttä, 2005a). This is related to the fact that in the field of environmental law, the degree in which regulation directs decisions varies considerably even when at issue is the formal and binding "hard" law (e.g., de Sadeleer, 2002, 255–258; Heinilä, 2017, 97–106), though this as such does not constitute "softness" in the meaning of "soft law". The so-called flexible (yet binding) norms that are particularly common in environmental law are intrinsically open for case-specific interpretation, allowing factual circumstances, scientific knowledge as well as societal objectives and values to be taken into account. When the Finnish Land Use and Building Act (132/1999) is at issue, "hard" law leaves through flexible norms a broad discretionary leeway for local authorities who apply the law (e.g. Heinilä, 2017, 124, 382–383). There are good reasons behind the existence of such a leeway, given that local authorities need to be able to take into account the changing local environmental and cultural conditions in applying law and drafting plans that are appropriate in their particular contexts. From a communicative point of view, this leeway can and should be used to incorporate the outcomes of communicative mechanisms into decision-making. From this point of view, this kind of binding law creates, ideally, a regulated framework for collaborative planning.

Nonetheless, this leeway can be problematic as regards the transparency and legitimacy of norm application. It can lead to situations where norms are not applied with a primary intention of serving the goals and provisions of the Land Use and Building Act (132/1999) but rather some particular short-term economic interests (Uusitalo, 1990; Kuusiniemi, 2001, 187–190; Heinilä, 2019, 35). In Finland, there is no administrative supervision of the expediency of the drafted plans, but only the legality of the plans can be controlled. This feature of the Finnish system derives mainly from the strong municipal self-government. Soft law sources may be helpful here, especially when the source of soft regulation is a governmental body, like the case typically is in Finland (Korkea-aho, 2005). Soft regulation coming from administrative sources can complement legally binding norms for instance with knowledge of good governance practices, and guide the application of flexible norms, thus increasing the likelihood that the practice of norm application serves the ends that it is meant to serve, contributes to the transparency of the practice of norm application, and increases legal certainty (Määttä, 2005b). Transparency can be increased by strengthening the connection between hard law and soft law by making the expected use of extra-legal sources visible in the hard law, thus creating "normative routes" for them (Määttä, 2005a).

3.4. Two rationales of norm compliance

Since soft law lacks the quality of legal bindingness, its relevance as a source of law must be found elsewhere. Thus, it belongs to a category of sources of law that gain their significance through acceptability (moral or ethical justifiability) or effectiveness and expediency (factual consequences of compliance) (Tuori, 2007, 23; Määttä, 2005a, 385–386). This means that soft law norms, conceived of as Austinian or Habermasian speech acts, make validity claims related to their moral quality (normative validity) or their consequences (factual validity), claims that the subjects of regulation can question and reject if they wish to. And yet, even if the claims were found as justified and acceptable, the subjects of soft regulation can approach the norms from strategically-rational perspective, rather than from communicatively-rational perspective. They are free to decide on the basis of their own interests whether or not they take into account soft law material or comply with it (cf. Shelton, 2000, 13–14). After all, there are usually no sanctions backing up compliance as there are in the case of hard law. As will be shown in the next section, strategic interests are often involved in the decision-making concerning the use of soft-law material related to the Land Use and Building Act (132/1999) in the planning practice in Finnish municipalities.

4. Analysing the city-regional planning in Finland

4.1. The current model and practice of city-regional planning in Finland

The broad leeway left for local authorities in applying law has contributed to the fact that sustainable inter-municipal coordination of growth in Finnish city-regions has been difficult to achieve (Hytönen and Ahlqvist, 2019). Municipalities in the outer fringes of growing urban

regions, in particular, have been argued to have prioritised attracting investment and resident tax payers over the goals related to environmental values in their planning practice by regulating land use loosely (Hytönen et al., 2012, 116–119; see also Oinonen et al., 2013, 46–50). Soft law has in its own right had a role in the implementation of Land Use and Building Act (132/1999), most notably in the form of numerous guides and instructions by the Ministry of the Environment (see e.g., Ympäristöministeriö, 2002, 2003). This administrative guidance is relatively unproblematic from the point of view of formal legitimacy, since competent authorities in Finland are entitled to give instructions (but not rules) in the field of their statutory tasks even without a provision permitting it in written law (see e.g., Supreme Administrative Court of Finland's precedent KHO 2020:54).

Furthermore, planning practices falling into the category of soft planning have been frequently utilised in the Finnish city-regional planning. The central state has thus far put considerable trust in the effectiveness of the informal coordination of development in the Finnish urban regions, and only very recently when the process for a comprehensive renewal of the Finnish planning law started, aims were expressed to formalise or "harden" some aspects of city-regional planning (Ympäristöministeriö, 2018). Yet, the currently institutionalized administrative arrangements have not facilitated this project.

Finland is a unitary state with strong municipalities, for which the Constitution of Finland (731/1999, Section 212) guarantees the right to be self-governed by their residents. Thus, the municipalities also have notable planning powers. Regional level of administration has existed in various forms in Finland, though its formal position has always been weak in between the strong state and local governments. When Finland was preparing for the EU membership in the early 1990s, the EU regional policy required some amount of solidification of the regional level administration (Purkarhofer and Mattila, 2018). Regional councils were established to respond to this requirement, and they were given the form of statutory joint municipal authority. Regional councils have the statutory responsibility of regional planning, and regional plans formally steer local planning that consists of general planning and detailed planning. Regional plans have been in some cases drafted to specifically cover certain city-regions. The factual steering capacity of regional plans has been criticised on the grounds that regional councils have often difficulties in making choices as regards the channelling of the growth (Ympäristöministeriö, 2014). When the councils consist of representatives of the local governments, and not of representatives whose mandate would be based on regional-level elections, there is the risk that the plans eventually register the wishes of the local governments to get their share of the growth instead of channelling the growth selectively (Mattila, 2017; Purkarhofer and Mattila, 2018).

The regions in Finland currently extend far beyond functional city-regions formed around the regional central cities. Because of this, the central government reasoned in the mid-2000s that the problems of city-regional planning should not be primarily mitigated by means of regional planning but by encouraging the central cities to either consolidate with surrounding municipalities (which would have meant the establishment of "hard" city-regional spaces) or at least to co-operate with them in the matters of land-use, housing and transportation planning. Such were the central objectives of the PARAS project introduced by government of Finland in 2007, backed up with the Act on Restructuring Local Government (169/2007), which obliged the medium-sized and large urban regions to engage in planning cooperation, though leaving the formal requirements of city-regional planning and plans largely undefined. The local and regional planning officers as well as local political decision-makers have been reported to have felt that the Act with its top-down or command and control model did not contribute effectively to the goal of promoting inter-municipal cooperation in urban regions (Hytönen et al., 2016; see also Valtioneuvosto, 2009).

However, as a part of the legacy of the PARAS project, city-regional structural schemes have become common in the most populous urban regions in Finland. Structural schemes are soft instruments as they have no legal effects and no status in the existing planning law (Mäntysalo et al., 2015). Moreover, in 2011, the Central Government of Finland introduced a new soft tool for encouraging inter-municipal cooperation: the MAL agreement (M representing land-use, A representing housing and L representing transportation). In the MAL agreements the state commits to certain investments on infrastructure, while the municipalities in city-regions commit to certain principles of programming the spatial development in the city-region. The MAL agreements cannot be referred to as soft law as such, since the agreements are case-specific agreements between certain government agencies and municipalities, but they are nonetheless soft instruments. They have been described as socio-political declarations or letters of intent, although there have been efforts to increase the bindingness of the agreements (Vatilo, 2020, 11–12). Compliance is in any case based on the interests of the contracting parties. Whereas planning law and "hard" plans higher in the plan hierarchy set legally binding (although flexible) requirements for municipal planning, MAL agreements only set non-binding objectives and guidance for planning that do not formally affect the legality of the plan.

The informal structural schemes have thus far had an important position in the negotiations concerning MAL agreements. Finnish planning scholars have pointed out that the drafting of structural schemes has been non-transparent and the processes have not typically included public participation, which is an obligatory and important element in statutory planning processes (Bäcklund et al., 2018). Moreover, not even the local elected politicians seem to be generally well informed of the structural schemes and agreement procedures (Ojaniemi, 2014). Given that these tools are also not mentioned in the Land Use and Building Act (132/1999), there are no "normative routes" (cf. Määttä, 2005a) indicating that the structural schemes and MAL agreements are supposed to have an effect on municipal plans. While many Finnish planning scholars regard the effects of structural models and MAL agreements on the quality of plans to be positive rather than negative, they have criticised these instruments for depoliticizing Finnish city-regional planning (Bäcklund et al., 2018).

Whereas the PARAS project did not harden any aspects of city-regional planning, the Land Use and Building Act (132/1999) has obliged since 2008 the capital city Helsinki and the three surrounding municipalities Espoo, Vantaa and Kauniainen to draft a city-regional plan (however, this plan could be with or without legal effects). In the Government bill to Parliament (HE 102/2008 vp, 13) it was stated that despite the legal obligation there would be no set time limit to fulfil this obligation. This plan has not been drafted. In addition to this specific requirement set to the municipalities in Helsinki city-region, Land Use and Building Act includes a statutory instrument for joint general plans that is available for all municipalities, but this instrument has not thus far been widely used (Hallberg et al., 2020, 337–338).

Despite the reluctance of municipalities to use statutory planning instruments cooperatively, voluntary inter-municipal cooperation networks have been common in Finnish urban regions. Nonetheless, these networks have typically avoided making hard choices such as selecting the directions where growth is channelled, and rather emerged around pre-existing shared interests and issues that are not likely to create controversy (Purkarthofer et al., 2021). For instance, in the Greater Helsinki city-region, where the municipalities have been reluctant to engage in cooperative statutory planning activities, Helsinki and the surrounding 13 municipalities launched in 2007 a high-profile ideas competition "Greater Helsinki Vision 2050", followed by a series of public workshops and seminars. In this project, the aim was to create shared understandings concerning the spatial development of the region (Ache, 2011). Even more importantly, for the actors who initiated the GHV 2050 it was a project of performative enacting of the region that had so far had only very weak ontological status as a territorial unit. Even though these kinds of processes are seemingly far away from "hard" planning processes, they can build trust among participants and prepare them for joint statutory processes of drafting legally binding

plans in a longer time span in a similar manner to soft law-making as an intermediary stage leading later to binding regulation.

4.2. The current proposal for the model of city-regional planning in Finland

In 2018, the Finnish Ministry of the Environment commenced the preparations of a comprehensive reform of the Land Use and Building Act (132/1999). Strengthening of the position of supra-local planning was high on the agenda of the Ministry, given that the preparatory reports had shown that there are major problems in inter-municipal cooperation on the issues of land-use, housing and transportation (Ympäristöministeriö, 2014, 2018), and that the municipal general plans do not generally pay enough attention to the supra-local aspects of planning (Laitio and Maijala, 2010). Especially the current government of Finland, appointed in 2019, highlights in its programme the general objectives of aiming at carbon neutral society and fostering biodiversity, the objectives which could be advanced in particular with city-regional efforts in supporting defragmentation of urban structure and sustainable modes of mobility (Valtioneuvosto, 2019; Ympäristöministeriö, 2019).

However, the former government of Finland that inaugurated the law reform emphasised the need for a simpler planning system and smoothly running planning procedures to promote construction (Valtioneuvoston kanslia, 2015). This might in part explain why the current draft of the law introduces the new planning instrument of statutory city-regional plan, which nevertheless would be soft in the sense that it would not have any legal effects (Ympäristöministeriö, 2021). The lack of legal effects would be likely to contribute to the smoothness of planning procedures, given that the contents of city-regional plans could be disregarded at the local level if they contradict with local land use interests. Thus, it could be argued that by choosing this regulatory strategy, the legislator appears to make an illocutionary act of addressing the sustainability issues of city-regions, while recognizing that perlocutionary effects – the implementation of more sustainable city-regional planning – would not be likely to follow.

According to the draft for the new Planning and Building Act (Ympäristöministeriö, 2021), Helsinki urban region and six other city-regions in Finland would be obliged to draft a city-regional plan. These regions would not be soft spaces in the sense that the area they cover would be defined in the regulation, but they would also not be hard spaces in the sense that they would unite people in city-regions into Habermasian political communities responsible for binding regulation. Thus, the legislature seems to trust that these increasingly heterogeneous communities can be held together and their joint planning endeavours coordinated by the binding and bonding force of communication only.

Even though city-regional planning would be non-binding, the legislature wanted to introduce to city-regional planning the mandatory public engagement procedures that have formed an integral part of statutory legally binding plans in Finland (Ympäristöministeriö, 2021). In so doing, the legislature accounted for the criticism presented by Finnish planning scholars (e.g., Bäcklund et al., 2018). MAL agreements would continue to complement city-regional planning, though they are not mentioned in the draft law. The agreement procedures would not contain public participation.

5. Results of the analysis: Hard and soft aspects in the Finnish city regional planning

Based on the analysis above, we can make the following categorisations of the soft and hard aspects in the current and proposed model of city-regional planning in Finland. In the current model, city-regional planning is soft planning. The only exception is that the Land Use and Building Act (132/1999) obliges the city region of Helsinki and its three surrounding municipalities to prepare a city-regional plan, which they have not thus far prepared, though. This plan – if it existed – would belong to the category of hard planning. The geographical coverage of Helsinki city-region is also hardened in the Land Use and Building Act, though this hardening is not purported to produce a hard political or administrative unit, but this planning unit is "buoyed" (Zimmerbauer and Paasi, 2020) on municipalities.

In the proposed model for the upcoming city-regional planning in Finland, the obligation to prepare a city-regional plan is extended to six other city regions besides the Helsinki city-region. These city-regions, again, are hard geographically, though not politically and administratively. Furthermore, the city-regional planning processes would be hard as they are statutory. Yet, the end result would be soft from a legal point of view (lacking legal effects). Using the categories of formal and informal, the process itself would be formal, but the completed plan could be categorized as informal. As a speech act, despite the locutionary act of the completed city-regional plan being "uttered", its illocutionary and perlocutionary aspects would remain unclear, since there is no *legal* speech act being performed (although during the process, a number of procedurally legal speech acts would be performed).

The category of soft law, as an intermediary between informal norms and formal rules, is relevant for the partial hardening of soft spaces and planning in the legal reform especially because of the fact that the proposed law gives a position for the city-regional plans in the written law. This establishes a "normative route" for them and enhances their public visibility and transparency, though it does not make these plans legally binding. In the current model of Finnish city-regional planning, legally non-binding structural schemes prepared by the municipalities in city-regions are not mentioned in the legal texts even though they are supposed to have steering effects.

6. Discussion: The effectiveness and legitimacy of Finnish city-regional planning

As has already become clear, legally non-binding city-regional plans could be disregarded in municipal planning if they contradict with local interests. The effectiveness of city-regional plans in supporting defragmentation of urban structure and sustainable modes of mobility could therefore be questioned. It can also be questioned whether the municipalities in city-regions would seriously engage in processes that do not produce binding outcomes. The municipalities in Helsinki city-region that are currently obliged to fulfil this duty have not thus far been interested in doing so. Existing research has shown that both politicians and planning officials have been frustrated with responsibilities related to planning procedures that produce non-binding outcomes and are thus potentially not effective (Hytönen et al., 2016).

It is also unclear whether the mandatory procedures of public participation in city-regional planning contribute towards the enhancement of the legitimacy of city-regional planning. If the public correctly recognises that city-regional plans are soft despite the legal nature of the process, then the question is whether the public is motivated to provide its input to processes that might not have an effect on more detailed and legally binding local level plans. Nonetheless, the public might also be misled to think that they are involved in a process that produces something legally obliging, given that city-regional plans may be argued to be analogous to soft law that often takes the appearance of legally binding regulation.

There is of course a possibility that the public discourses that are supposed to emerge around the drafting of soft plans are meant to be something completely different from the input that the public provides for the drafting of binding plans at other levels of the planning system – something more informal and something that prepares the public for the future when they might form a political community responsible for binding regulation or planning, or even a political community inhabiting a legally hardened territorial unit. While there would be a need for instance for discourses where the regional territorial units can be performatively enacted, emerging regional identities affirmed, or hegemonic spatial imaginaries questioned, and new, more authentic

imaginaries created, it is still highly unclear whether the procedurally regulated and geographically hardened context of city-regional plans would provide an optimal context for these kinds of discourses. The joint general plans of the current Act might serve this function better since their geographic coverage is not pre-determined and the process may lead to either legally binding or non-binding plan.

7. Conclusions

We have explored in this article the relevance of the concepts of soft spaces and soft planning for analysing city-regional planning, complementing the perspective of planning studies with a legal point of view, and in particular, by turning to the concept of soft law. As we have shown, the discourse on soft law provides a more nuanced understanding of the various aspects and degrees of softness and hardness or formality and informality than does the currently popular culturally-oriented discourse on soft spaces and planning.

The theory of performative speech acts, utilised both in the contexts of legal theory and planning theory, adds to this understanding, providing tools for assessing legitimacy and effectiveness of soft planning and plans. In addition, the Habermasian use of the Austinian speech act theory brings to the fore the benefits of formal regulation, even though Habermasian theory has been thus far utilised mainly to support informal steering through communication taking place within governance networks. One of the main takeaways of the theoretical part of our study is that when designing land-use planning systems, soft and communicative forms of steering should not be over-utilised. If the legitimacy of all planning is based on communication, communicative mechanisms run the risk of getting overburdened. Formal arrangements, furthermore, do not need to be an opposite to soft or informal planning that is based on communication, because formalised planning and planning spaces can be – and ideally are – grounded on communicative mechanisms and open to public scrutiny. Ultimately, then, at issue should be the overall architecture for the interplay of different kinds of soft and hard, or communication- and law-based aspects and elements in planning systems and not the categorical, and in our opinion unnecessarily simple, choice between formal and informal steering. In this architecture, soft law instruments can work as intermediates or transition tools between "soft" and "hard" planning, tools that make it possible for instance to combine the transparency of legal regulation or hard planning with the agility of informal steering or soft planning.

We have also analysed the soft and hard aspects of city-regional planning in the current and proposed planning law in Finland, utilising the conceptual framework of soft spaces, soft planning and soft law. As we have argued, the legitimacy deficit related to the current informal city-regional structural schemes could be at least partly fixed by treating the current informal structural schemes, which are purported to have an effect on planning, as soft law. In particular, informal structural schemes could be linked to the written "hard" law by "normative routing" (Määttä, 2005a) of soft-law material, in this case, the city-regional plans. This would make city-regional planning visible for the public, which is what the current proposal for the proposed model (Ympäristöministeriö, 2021) actually does. However, the MAL agreements would still continue to indirectly steer both city-regional and local planning, and these agreements are not normatively routed to planning law in the current draft of the Planning and Building Act.

The current draft (Ympäristöministeriö, 2021) also proposes that the city-regional plans would be made statutory and the processes of drafting the plans hardened, so that they become burdened for instance with requirements concerning public participation. Also, the spaces would be hardened, since the coverage area of the plans would be pre-determined in legislation. They would not be hard spaces as jurisdictions that would have any degree of political autonomy, though, so these hardened spaces would not be homes for political communities who could make binding decisions concerning their future. Despite this, city-regional plans could well be made binding in the institutional design, but in the proposed model, city-regional plans do not have any legal effects. Therefore, at issue would be soft planning, though having an appearance of hard planning in many respects.

The "hard" disguise of the city-regional plans will not probably produce perlocutionary effects in the sense that city-regional plans would be taken as binding plans at the local level of planning, given that professional actors such as planners and developers can be expected to be familiar with the formal and informal aspects of city-regional plans. Nonetheless, this disguise might give the public an impression that, for instance, the problems related to the prioritisation of local short-term economic interests over the sustainability goals in municipal planning are solved. Furthermore, the appearance of a binding plan might mislead citizens who engage in city-regional planning processes to think that they are contributing to a process that produces legally obliging outcomes.

We suspect that the proposed model would not fare well in encouraging the public to participate in planning activities, even though the model clearly aims at responding to the criticism concerning the lack of transparency and participation in current largely informal city-regional planning practices. This is because the model falls between hard and soft in such a way that neither the hard nor the soft aspects provide motivational support for the participants. On one hand, the model is too soft to be convincing for those people who want to have an impact on things, since the results are non-binding. On the other hand, the model is probably too restrictive for those who want to engage in creative enacting of new planning spaces and practices, since the model predetermines the geographic coverage of the plans and sets procedural requirements that steer the process to a solution- or plan-oriented direction rather than to free and creative exploration of authentic city-regional identities. Given all this, it can be argued that the proposed model does not make the soft, communication-based, and the hard, regulatory elements to support each other in an optimal way as regards the objectives of enhancing the legitimacy and increasing the effectiveness of city-regional planning.

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Case law

Court of Justice of the European Union: Case C-322/88, Grimaldi v Fonds des Maladies Professionnelles, EU:C:1989:646.

Supreme Administrative Court of Finland: KHO 2020:54.

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The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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