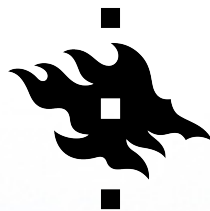


THE BREADTH & WIDTH OF THE WFD

REGULATING
ADAPTIVE WATER MANAGEMENT



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TIINA PALONIITTY /
DOCTORAL CANDIDATE
HELSINKI LAW /
KONE FOUNDATION

THE QUEST OF SOCIO-ÉCO-LEGAL SOLUTION

I ADAPTIVE MANAGEMENT

II ADAPTIVE WATER MANAGEMENT IN THE EU

THE WESER RULING

THE RULE & ITS EXEMPTION

QUESTIONS & PROBLEMS

III FORMATION OF THE NORMATIVE

OPTIONS FOR 'THE LEGAL'

MANAGING LEGAL FORMALISM

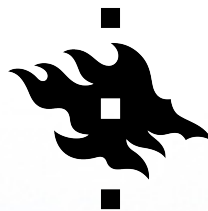
SKETCHING THE ROADMAP



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ADAPTIVE MANAGEMENT

- first developed in the 1970's (Holling et al.)
- cherish uncertainty!
 - constantly altering hydro- / ecological circles acknowledged as they are
 - ...and learn to reduce it...
- a *paradigm shift* from previous natural resource management that wished to acquire control over the resource
- adman repels **anything** fixed
 - the scientists & the managers to learn
 - The Panarchy Thesis



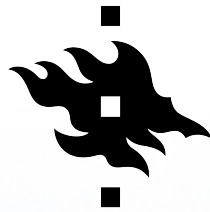
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ADAPTIVE MANAGEMENT

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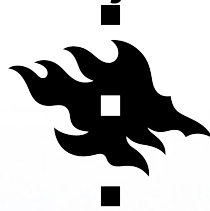
- small-scale natural resources management / conservation projects: quite all right
 - success of adman in large-scale projects – scarce
 - compatibility w/ highly developed societies...?
- towards end of the 20th century, from ecological to socio-ecological
 - values of the society included in the assessment
 - resilience studies (Stockholm)
 - regulation of a challenge
 - \$ or § = trouble



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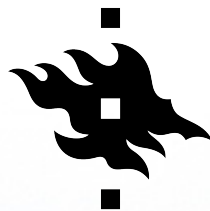
ADAPTIVE WATER MANAGEMENT & THE EU

- the Water Framework Directive ('the WFD') since 2000 (2000/60/EC)
 - river basin management plans (RMBP), programmes of measures (PoM), water bodies (WB), environmental objectives (high, good, moderate), WB status classifications...
 - N.B.! river basins, not nations or jurisdictions
 - integration of all pollution sources
 - continuous process (1st deadline 2015, 2nd 2021, 3rd 2027...)
- dispute of 15 yrs: is management ~land use planning or sth more?
 - objectives of *best effort* or objectives of *result*



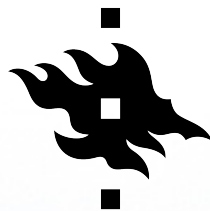
THE WESER RULING BY THE CJEU

- *The Weser Ruling (C-461/13)*: environmental objectives are legally binding in individual undertakings
- ‘good surface water status’ not to be jeopardised
 - defined in the sternest possible way
 - = ‘the good status objective’ is a legally binding norm
- deterioration within a status class also counted as deterioration
 - the CJEU abandoned the ‘status class theory’
- the drafting process // the Dire itself // and ‘exception proves the rule’



THE RULE & ITS EXEMPTION

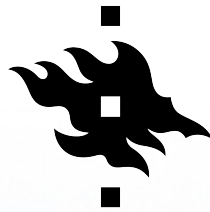
- for ‘the principle of non-deterioration’ to retain its practical effect
 - formalism meets adaptive water management
- the scope of derogation in Art. 4(7)
- new undertakings only
- physical alterations or emissions
 - if sustainable, physical alterations are allowed to cause plunge from the ‘good status’
 - emissions cannot



WHEN TO EXEMPT?

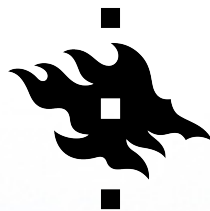
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- the last resort // detailed in the RBMP's // technical feasibility et al.
- BUT human health, safety, sustainable development justify exemption
 - weighing and balancing of interests
 - not fully open, though
 - small-scale undertakings w/ water emissions in trouble
- Schwarze Sulm Ruling (C-346/14)
 - renewable water energy, derogation allowed?
 - weighing & balancing by the national court, not by the CJEU



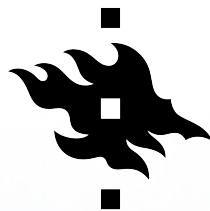
QUESTIONS & PROBLEMS

- water quality regulation has a veto over all other Union envtl regulation
- RMBP's decided every sixth year, not on rolling basis
 - too rarely for the public to influence?
- right to participate in natural resources management
OR right to manage one's surroundings?
- to impact RMBP at too late a stage of their drafting
- adaptive socio-ecological water management, still a top-down administrative process (cf adman theory)



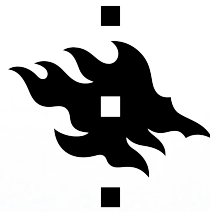
FORMATION OF THE NORMATIVE

- the Weser ruling reassured lawyers of their worth – but the ruling inherently incompatible with adman
- the normative is decided upon when the RBMP's are gathered & the WB's evaluated
 - admin work by the water engineers, biologists, limnologists
 - when the scientific models are selected & developed (N.B. eg timing of public hearings)
- to regulate adman unnecessary?
- what is left for the judiciary to review?



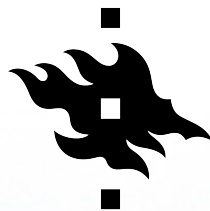
OPTIONS FOR 'THE LEGAL'

- relational jurisprudence by *Del Mar* might suit for the common law
 - question of weighing and balancing, fact / value distinction
- in the civil law system?
 - when the RBMP's taken to the courts, scope of review?
 - SWE&FIN: reformatory process
 - the court questioning all the detailed scientific work of the case? hardly
 - expert judges in the admin courts
 - ...but RBMP's modelled separately to each WB
- acknowledge & accept



MANAGING LEGAL FORMALISM

- The Weser ruling a solution for the 'legal', but not the 'socio-eco-legal'
- focus on the management
 - ≠ land use planning but constant, unending process
- permits more as a part of the management process, decreasing their importance
- permitting procedure w/ obligation to revise (more often)?
N.B. management is manmade endeavour



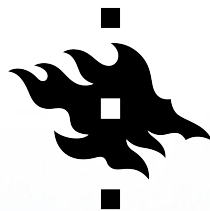
SKETCHING THE ROADMAP

i) get your scale right

ii) pick a jurisdiction

iii) focus on the management

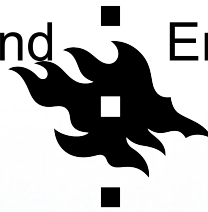
iv) resilience takes perseverance



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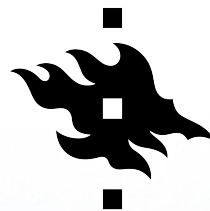


Thanks!

tiina.paloniitty@helsinki.fi

Twitter @TPaloniitty

Kone Foundation:
www.koneensaatio.fi/en



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