

Sustainability and statutory holism – Norwegian planning legislation in an evolutionary perspective

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In 2008 the Norwegian Parliament adopted a new Planning and Building Act. A few years after its implementation, the Ministry of Local Government and Modernisation commissioned an evaluation of the act's planning section, in compliance with established management routines. The task was conveyed by The Research Council of Norway, and formulated as a research based evaluation. Through this research project, which the authors of this paper are involved in, the efficiency of the new planning system will be investigated by analyzing its basic parts, and studying them in isolation. However, the act's emphasis on comprehensiveness requires a methodology that treats the system as more than the sum of its parts. The aim of this paper is to discuss what can be gained by investigating the behaviour of the new system studied *as a whole*.

Evaluation research is generally undertaken in order to identify areas of improvement. Law evaluation specifically addresses juridical efficiency with respect to the legislator's intention. A question, then, is what the legislator meant to improve by adjusting the system design. By digging into the background of the act, one quickly finds that it answers to more than particular needs; it is the legacy of a long history of innovations, criticism and adaptations. In this evolutionary perspective, the design of the act may be seen as an expression of shifting relations between fundamental

values, the legal structure adjustments, and the role of planning in the government system.

Shifting values

The current Planning and Building Act is the fifth in a row of national planning acts. It was adopted with a new object clause of sustainable development: § 1-1 "*The act is intended to promote sustainable development for the benefit of the individual, society, and future generations.*" The act's planning section prescribes how this object is to be pursued: § 3-1 "*Within the frame of § 1-1 plans by this act shall [...] set goals for the physical, environmental, economic, social, and cultural development of municipalities and regions, clarify societal needs and tasks, and specify how tasks can be solved.*" The phrase indicates a coordinating and cross-sectoral function. It is followed by a cascade of various considerations and references to sector laws, as well as a holistic attitude statement: "*Planning shall promote comprehensiveness by seeing sectors, tasks and interests of an area together, through coordination and collaboration in problem solving between sector authorities, and between state, regional, and municipal agencies, private organisations and institutions, and the general public.*" A question that arise from these adjustments is how an existing system, that was already designed for cross-sectoral operationality, is adapted to promotion of sustainable development as a new value of government.

Legal structure adjustments

By studying the historical sequence of various versions of the law, we can investigate how they responded to specific epochal problems. In the background are the salient needs in society; what is to be seen in the foreground are the systemic or pragmatic responses, i.e. how the legal principles brought along from the past were corrected and adapted to new problems. Norwegian administration was based on a principle of specialisation: "*if an administration emphasizes a consideration that lies within different administrative areas, it will lead to juridical invalidity.*" This principle worked well within a sectoral way of thinking, in times when planning was mainly about urban expansions. However, management of land use and the environment can only work within a spatial dimension. The progressively expanding mandate of planning, as

well as its increasingly cross-sectoral role in the government system, has led the specialisation principle into crisis.

Extensive mandate and growing tensions

The evolution of the planning legislation is not only a legal history; it is also a history of how planning has been used to resolve the problems of society. With sustainable development as the main legal object, it seems reasonable to embed the controls of planning and building activities within the same act. It allows procedures of planning, with its concerns for property rights and land use conflicts, and technical building regulations to be handled within a unitary legal frame. However, when a central purpose of planning is to coordinate between sector interests, the association of planning with the building sector signals an immanent tension in the system. In order to study this behaviour of the system, we propose to view planning legislation as analogue to technology, as a purposed system. Technology is invented to perform specific functions. One of the reasons why the planning system now holds such a central position in land use management, is that it performs functions that are particularly well suited for comprehensive control over land use: its faculty of formulating goals and strategies (including communication between territorial actors), its capacity of proposing solutions and designs, and its statutory power and set of regulative tools that may respond to the needs of local situations. Yet, a central methodological challenge in studying the system's behaviour is to sort between the administrative responsibility that planning has been entrusted, based on the fundamental value of sustainable development, and functions that are proper to planning.

With this paper we wish to provide a reader with insight into Norway's new Planning and Building Act as a means to solve the challenges society is facing today. Seen as an institutional government technology, the formation of the country's planning legislation will be studied through an historical investigation which draws on systemic planning theory, institutional theory of layering, and concepts and discussions from administrative law. Our point of view privileges the study of the statutory planning system in general; it does not take into account the many situations it applies to, nor the quality of its processes and outcomes. We see it as an important corrective to

particularistic points of view, and reductive considerations of efficiency that all projects of evaluation are influenced by. Many countries are continuously engaged in improving their planning legislation. An insight into the Norwegian system may shed light on some general issues of statutory planning systems.