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Kaiser: Planung I-Recht und Politik der Planung in Wirtschaft und Gesellschaft

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PLANUNG I—RECHT UND POLITIK DER PLANUNG IN WIRTSCHAFT UND GESELLSCHAFT. Edited by *Joseph H. Kaiser*, Professor of Law, University of Freiburg im Breisgau. Baden-Baden: Nomos Verlagsgesellschaft. 1965. Pp. 422.

The concept of planning is not such an excitingly new idea for a lawyer as it seems to be for advisers and makers of economic policy,

or even for quite a few professional philosophers. Meaningful law-making is destined to direct future human conduct, and, consequently, it necessarily includes "planning" in the broad sense of the term. In addition to determining the obligatory nature of certain acts or omissions, the legislator specifies the penalty or "disincentive" he wishes to ensue from non-compliance with the obligation; the foreseeable and foreseen deterrent effect of that disincentive contributes to the implementation of the rule of law. Indeed, precisely because the refusal to abide by a legal canon is bound to entail adversary consequences, penal or otherwise, this remedial alternative of the law-applying process becomes equally foreseeable.

While the legal profession has generally been aware of the underlying ground rule of human conduct for a long time, some schools of economic thought have largely refused to apply these phenomena to their chosen field. A striking example is the attitude of the parliamentary majority in the German Bundestag, and the successive Federal Governments based on that majority, which since 1949 have remained faithful to Professor (ex-Chancellor) Erhard's idea that public authorities must abstain from anything which could be considered economic planning. Moreover, the legislative and executive branches of the Federal German Government seem to be convinced that they have succeeded in excluding economic planning from the substantive areas under Federal jurisdiction.

The collection of essays which is the subject of review was provoked, *inter alia*, by this state of affairs in the editor's own country. The symposium does not, however, take issue with the merits of the schools of economic thought, if any, which advocate "anti-planning." Rather, it discloses those traits of public and private economic activity, as well as legislative, executive and judicial rulings incidental thereto, which reveal that a certain degree of planning is inherent in any event, despite a contrary intention of the actors. This is so because *any* human activity unfolds in time and space, and if it be directed toward any aim whatsoever, it presupposes a preview of things to come. This intellectual, administrative and managerial preview is better known today as planning.

Professor Joseph H. Kaiser, the initiator of the symposium and editor of *Planung I*, has taken due account of this insight. Accordingly, the scope of topics treated by the essays is not limited to the economic process, but rather, in consideration of the breadth of the planning phenomenon, extends to science and technology, national foreign policy and the evolving domain of intergovernmental organizations as well. Nor is the purview of the studies limited to German problems; discussions of other countries are also included.

Following Professor Kaiser's exposé of a pragmatic theory of planning, Professor Ipsen (Hamburg) provides a reasoned outline of the basic legal questions raised by economic planning which,

together with Professor Scheuner's (Bonn) constitutional assessment of central public planning, should become basic reading in this substantive area of German law for some time to come.

A significant aspect of planning in a Federation is the relationship between the Federal system of planning and the sub-systems of the constituent units—the States (Länder, cantons), municipalities and private business firms which are dependent upon national and regional planning concepts. This relationship in Germany as well as in other countries is discussed in several entries (Kölble, Gygi, Cartellieri). That planning involves systematic management of assets is made apparent not only by contributions dealing with nations outside the Soviet orbit, but, in a particularly illustrative manner, by articles devoted to the evolution of planning in Eastern Germany and Czechoslovakia (Bullinger, Knapp).

The supra-national European communities have been, from their very beginning, under the influence of French indicative planning and the ideas elaborated by the Commissariat au Plan. This is reflected in Professor Ophüls' article on the constituent treaties of these entities, which treaties are regarded as the constitutional framework of community-wide planning. In addition, there is an outline of the aims and methods of planning as a means of directing the business cycle, the production of energy and the co-ordination of energy policy in the European Economic Community.

Governmental planning as it affects the administration of private business and the competition among economic groups is considered as the starting point for managerial assessment of economic planning in essays by J. Heinz Müller, Martin Lohmann, and Arved Deringer. Thereafter follow statements on the planning of foreign policy by the former German Ambassador to the United States, Professor Grewe, and Mr. Walt W. Rostow (in English).

The initiative taken by Professor Kaiser in the editing of these essays has already given rise to other inquiries on the same subject in Germany. It is to be hoped that the promise of an early publication of a volume on planning at the international level will soon be fulfilled in order to close, so far as the legal issues are concerned, a gap in German-language literature.

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