PEOPLE'S ASSESSORS IN THE COURTS—A STUDY ON SOCIOLOGY OF LAW (1982). By Kalman Kulcsar. Akaden. Kiado, Budapest. Pp. 140. Price $ 7.

IN INDIA, the statutory right to trial by jury was conferred by the Criminal Procedure Code before being abolished on the basis of recommendations of the Law Commission of India.[1] Our Constitution makers did not consider it proper to confer on the citizen a fundamental right to trial by jury as in the United States of America.

A note-worthy point is that the re-adoption of jury trial in this country would control and reduce the number of unjustified acquittals by criminal courts which are said to be on the increase. It is said that a judge is required to give considered reasons for convicting the accused and on his being unable to do so, the appellate courts set aside the conviction. But, on the contrary, the jury is not required to give reasons for their verdict and their general good sense will not allow crime to go unpunished merely because there are discrepancies in the evidence or because a plausible defence has been raised. The Law Commission was of the view that this reasoning proceeded upon a misunderstanding of the judicial function, ignoring actual experience of jury trials which resulted in failure of justice including erroneous acquittals.

There is no doubt that the system of trial by jury has the advantages of associating the public with the administration of criminal justice and serves to inculcate in the citizen, a sense of duty, responsibility and respect for the majesty of the law. But the Law Commission was of the opinion that a system should be judged mainly by the extent to which it works efficiently. Its main purpose is the dispensation of justice, which if it fails to do, its continuance cannot be supported for other reasons.

The Law Commission also held the view that trial by jury invariably took longer time than by the judge alone. This is so because proceedings have to be conducted at a slower pace to enable the jury to understand the evidence and to follow its sequence. Further, arguments of counsel had to be more elaborate so that issues of fact and law might be put forward in a simple, clear manner before the jury. Also the judge was required to sum up the case to the jury. The summing up had necessarily to be very carefully done and, in some cases, written out in advance before being read out to the jury. In cases where the charge was not written out in advance, the judge was required to reduce the heads of charge later into writing. All these steps resulted in making trial by jury a time-consuming process.

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1. See Law Commission of India, *Fourteenth Report on Reform of Judicial Administration*, vol. II, ch. 42, pp. 864-73 (1958).

On the other hand, the institution of people's assessors or the system of trial by jury as it is called in the United States or the United Kingdom, is based on the notion that community fellows are vital to the judicial process. In a self-governing society, the jury serves not only a symbolic but also a pedagogical function. It is the primary institution of government that most directly requires the attention and participation of a large number of citizens in a direct decision-making role. This involvement in the judicial process is meant to foster civic responsibilities and respect for the law.

In the United States of America, a knowledgeable person[2] has said that "if one feature of our legal system distinguishes us from the rest of the world, it is our continued reliance upon the jury"

The image of ordinary men and women passing judgment on their fellow citizens retains its honoured place in the democratic conception of how a community should govern itself. So long as our society remains committed to this idea, we should continue to modify and improve, rather than abandon, this timeless institution.[3]

In this background of different approaches in the two largest democracies of the world, it is refreshing to find that in Hungary, a country belonging to the socialist world, considerable importance is attached to involving laymen in the process of judicial decision-making.

This book explains the mechanics of people's participation in judicial decision-making, and consists of four chapters. Chapter 1 deals with the 'historical types of lay participation in judicial decision-making'. It gives the history of administration of justice with particular reference to the types of lay participation in court judgments. It also sets out the 'Ideal Model' of people's assessor activity and also discusses the legal provisions in which such activity appears.

The topic 'Society and the People's Assessor' is dealt with in chapter 2. It discusses the social characteristics of the people's assessor and the phenomena concerning the election and his being called in. The question is posed here as to what the people's assessor brings with himself from the society and then answers it by saying that a lot of information and opinions are brought in which are useful to judicial decision-making.

Chapter 3 analyses the topic of 'People's Assessor Participation in Judicial Decision-making'. The subjective and organisational factors of people's assessor activity are discussed here as also the elements of judicial decision and people's assessor participation.

The 'Possibilities and Social Limits of Lay Jurisdiction' are set out in chapter 4. The author sums up the development of the functions of law

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2. See Irving R. Kaufman, (judge of the United States Court of Appeals for the Second Circuit) "The Verdict on Juries", *New York Times Magazine*, 1 April 1984.

3. *Ibid.*

in Hungarian socialist society in the following words:

1. [M]aintenance of the law and order required for the normal life of society;
2. an influence to maintain order in the relationship between citizens and organizations and the state and help given in the resolution of conflicts which arise;
3. participation in the conscious shaping and planning of society, in organizing the various social processes.[4]

He also vividly shows how before World War II, the legal profession provided the training for a significant part of the judicial, internal affairs, and police apparatus as well as the public administration. The objective consequence of this 'inter-twinement', he says, was that no small portion of the jurists was linked to the regime overthrown and, as a result, many jurists were removed from the new state machinery and political life. As a consequence of this

> in the early 1950's, there was a sharp decline in the number of law students, the Academies of Law were closed down, and the faculty of law in one of the universities of science was also disbanded. This phenomenon alone was not without influence on the evaluation of the legal profession in the negative sense and the term "lawyer custom", as an expression of contempt became more or less general usage at about this time.[5]

The consequences of lowering of the prestige of lawyers after the World War II

> resulted in unfavourable ground for, on the one hand, people's assessor activity as one form of lay participation, while on the other, the social prestige and attraction of this position remained without a solid basis.[6]

The fundamental change in the situation of the legal profession and legal organisations took place with the consolidation of socialist social relations. In this connection, the learned author says:[7]

> We cannot undertake to give a further analysis of the factors which have led to a positive change in the social evaluation of the

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4. Kalman Kulcsar, *People's Assessor in the Courts—A Study on the Sociology of Law* 120 (1982).
5. *Id.* at 121.
6. *Id.* at 124.
7. *Id.* at 125.

> legal regulations, the legal profession and the court organisation, on the present stage of social development. It is certain, however, and there are many signs which indicate that the process has begun. To this extent, therefore, favourable conditions are developing for raising the "prestige" of the function of people's assessor in so far as the rise in the prestige of the court organization can have an attractive influence on the function of people's assessor, too, and it can help eliminate the resistance of the organisation providing the people's assessor. With the rise in the "attraction" of the court organization, acting as a people's assessor may become more desirable to people who already have prestige, and, are more active socially.

The author, Kalman Kulcsar, member of the Hungarian Academy of Sciences, a well-known scholar of the sociology of law, is especially interested in the social factors affecting the efficiency of legal rules. In this book, he examines the participation of people's assessors in judicial decision-making in the Hungarian courts as well as the social, organisational and group psychological preconditions of this participation. The results shed light on the social factors affecting the efficiency of the legal norms regulating the participation of people's assessors in the judicial procedure, reflect on the possibilities of and the limits to the participation of the lay element in an organisation based on expertise. These latter general conclusions may be of interest from the point of view of the sociology of organisations and even of political sociology.

A special merit of the book is that through analysing the data obtained by empirical means in a historical context, theoretical inference may also be drawn. The book is very well written and has excellent printing and get-up. As legal literature from socialist countries in the English language is scarce, it will be a welcome addition to the libraries in this country.

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