QUANTITATIVE ANALYSIS OF LAW (1st ed. 1990). Edited by Heinz Schaffer and Attila Racz, in collaboration with Barbara Rhode. Akademia Klado, Budapest. Pp. 404.

A GREAT philosopher, Rene Descartes has said that *Cogito ergo sum*, "I think, therefore I compare". Comparison is thus a natural activity. It has its utility also. It not only enlarges the vision, but also makes us grasp more firmly the essentials of our own system.

The book[1] under review falls within the genre of comparative law. The European Coordination Centre for Research and Documentation in Social Sciences initiated, some time ago, a project for studying the output of legislative activity in selected countries, on a pre-designed pattern. The countries covered were from Eastern and Western Europe *viz.*, Austria, France, the Federal Republic of Germany, the (erstwhile) German Democraic Republic, Hungary, Norway, Poland and Switzerland. This book incorporates the result of that research. One does not come across too many works on legislation. Nor is there a surfeit of works in English on comparative law. The book should, therefore, prove to be a useful contribution. But at the outset, some observations about legislation as a subject of study and research, as also about comparison as a method of study and research seem to be needed.

In modern times legislation is not only the principal source of law. It is the most dominating and predominant source of law. Judicial law making will of course always remain important. But legislation as a source of law has some peculiar features. Legislation can plan in advance, which case law cannot. It can operate without an actual case or controversy. The judicial process cannot do so. Legislation can authorise and give birth to hundreds of "sublaws" which judge made law cannot do. Most important, legislation can create completely new law while a judge has to weave the web from existing threads.

Not many scholars have tried to assess the magnitude of legislative activity in their own country. Nor have they attempted to analyse the final products of that activity, or even to quantify the output. The utility of such a study has not been warmly accepted by scholars. Probably it is thought that such a research would be barren and unproductive and that it would lead to no meaningful suggestions and would not result in the evolution of many significant guidelines for the future. Hence there has emerged a void in research materials on legislation. Books like the one under review are welcome, as they fill the void to some extent.

Statute law can be viewed from a number of perspectives. For the citizen, a statute is (in general) a command, laying down how the citizen is to act (or not to act) in a given situation. To the bureaucrat who proposes to impinge upon personal liberty by some official action not yet covered by existing legislation but proposed to be covered by a proposed statute, the statute is an authorisation,

1. Heinz Schaffer and Attila Racz (ed.), (in collaboration with Barbara Rhode), *Quantitative Analysis of Law* (1st ed. 1990).

giving him the requisite power - a power which is needed (at least as a matter of theory), in countries governed by the rule of law. The lawyer, on the other hand, views a statute as a source of new law. To him, the enactment of every statute means one more item of knowledge which he must add to his mental repertoire, or one more book which he will have to purchase for his library. Of course, in due course of time, almost every statute may be expected to bring in its own crop of litigation and thus add to the scope of potential work for the lawyer. To the political party that has a promised a particular measure in its election manifesto, the passing of a statute in promotion of that manifesto means an achievement to its credit. These are only different perspectives, illustrating the manner in which different types of individuals may view a statute. These perspectives come into existence, because a statute forms part of the legal system of the country where it is enacted. Each new statute brings into existence, or reaffirms, some legal norm, or modifies or abrogates a pre-existing legal norm and thereby leaves its mark on the corpus of the law.

Of course, a statute passed by the legislature, while it makes the end of the legislative process, is, in many other respects really a beginning. No legal system can function of its own force. Ordinarily, its written norms are, so to say, buffered through the social norms. If there is a deep schism between what the legislature has enacted and what society desires, there will be serious conflicts. Sometimes, such conflicts are themselves attempted to be dealt with by more legislation, which seeks to impose still more stringent substantive or procedural norms for reinforcing the statute already passed. It is also to be noted, that a reasonable amount of constancy in law and law enforcement may become a desiratum, if a statute is to possess practical utility.

With all these possibilities, research in the field of legislation should be exciting. It can be the more so, when the method adopted is a comparative one and when the countries covered are fairly numerous.

The comparative method itself offers great thrills. Rheinstein has distinguished between two species of comparative legal research. Dealing with legal system, he says:

> Macrocomparison is concerned with the comparison of entire legal systems, such as the Anglo American common law system and the civil law system. Micro-comparison, in contrast, is concerned with a survey of the detailed legal rules and institutions of the various systems. The two branches, of course, shade into each other, especially in the comparison of the methods of procedure and of legal thought.[2]

The book stands midway between the two. It does not compare legal systems as wholes. But it has selected a fairly large segment of the relevant legal systems and presented a comparative analysis.

Haiman,[3] points out that physical environment plays an important role. People who are crowded together on small islands, take the Japanese or the

2. Max Rheinstein, *International Encyclopaedia of Social Sciences*. vol. 9, pp. 205-7 (1968).
3. Haiman, *Speech and Law in a Free Society* (a book which won four awards).

English, tend to guard whatever privacy they can, with more inhibition on their inter-personal and public communication style than may be the case, for *e.g.*, in the wide open spaces of the American west. He observes that ultimately, the law of a land, reflecting a composite of these and other forces, determines what its people will be allowed or not allowed to say. One could add, that the mental environment might also make a difference. Legislation and other sources of law operate against the background of the constitution of the country which constitutes the "mental environment" of the law makers. The principles of constitutional law are not to be viewed merely as mandates of black letter law, enacted by the Constituent Assembly or similar body of the country and laid down in a neutral fashion. Questions of constitutional law usually involve some of ouur deepest political and philosophical differences.

What then should be the possible device that can be adopted when one studies legislation from the comparative angle? It would appear that there are numerous options available. One can focus attention upon the quality of legislation and examine how far it is inspired by political movements. Or, one can investigate the role of private individuals in the evolution of various statutes. In the alternative, one can, if one is technically equipped for the purpose, scrutinise the product from the point of view of good or bad draftsmanship - a task which is not so dull as it might appear at the first sight. The book under reviews does not opt for any of these alternatives. It confines itself to a quantitative analysis of statutes enacted in the countries concerned. It tells us, in regard to the selected countries, and in regard to the selected period, how many statutes and substatutes were passed during the period in question, how many of them are still extant, what has been the attitude of the bureaucracy towards the publication and republication of statutes, how often have statutes been amended or revised, and so on. Such studies stand on the periphery of constitutional law and administration law. While not going deep into those territories, they can given us some brilliant glimpses into the legislative process. One can pigeon hole such studies under the discipline of 'political science'. But they are of great interest to lawyers also.

The book contains rich information on the matters mentioned above. It tells us how much legislation is there in the selected countries; how the present volume of statute law has come into existence and (in some cases) what is the extent to which legislation receives publicity and so on. There is, of course, no attempt at evaluating the laws passed, or at scrutinising their social utility, their political background and their contribution - positive or negative towards the welfare of the community. The study in fact does not purport to deal with these socio legal aspects. But the material presented here is sufficient to re-convince the readers, that we live in an over-legislated society. There can, probably, be no escape from this situation, given the kind of political thinking and approach that mark the 20th century. The study also points to the need for keeping citizens aware of the vast multitude of laws under which they are. It appears that not many of the countries dealt with in the study can be said to possess even a reasonably satisfactory level of facilities in this regard. The task, it seems, is assumed to be beyond the resources of the state. This is the reality. But it ought to be changed. The first duty of the state ought to be to arrange for systematic and regular publication of

statutory materials. This point has been brought out in the book though indirectly.

The book, however, fails in one important respect. Having chosen the aim of giving a comparative picture of the position in various countries, the study does not fully achieve that aim. This is primarily due to the fact, the layout of the various chapters of the study (devoted to each country) is not uniform. The topics selected for each country are not necessarily identical. Nor do they appear in the same order in each chapter. Even if some topics are common, they do not receive the same attention in regard to each country. The chapters do not run on the same tracks. The result is that when an interested reader wishes to know if, on a particular topic (*e.g.* arrangements made for publicity), two countries concerned - say, France and Hungary have the same experience, he is not able to easily locate the relevant discussion in the book, because the topics do not appear in the same order in each chapter. No doubt, there are useful concluding chapters at the end of the book which seek to give a general assessment. Still, readers who are likely to consult such books would prefer to draw their own comparisons on points of interest.

The printing is very good. But the absence of an index should be regarded as a serious flaw, in a book of this nature. Inspite of this drawback, however, the book is bound to be of use and interest to persons concerned with the disciplines of administrative law, legislative process and political science.

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