People's Assessors in the Courts: A Study in the Sociology of the Law [Book Note]

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Book Note


Member and current Secretary General of the Hungarian Academy of Sciences, Kálmán Kulcsár is a distinguished scholar in the sociology of law. Spanning many decades, his publications include The Problem of the Law (1960), The Educational Role of Law in Socialist Society (1961), Society, Politics, Law (1974) and The Foundation of the Law (1979). Dr. Kulcsár has a special interest in how social factors affect the Hungarian legal system. In this volume, he explores the role of People's Assessors in the courts. Inaugurated in post-World War II Communist Hungary in 1949, People's Assessors were to ensure lay participation in decision-making in the judicial system. He examines the role of lay participation in the courts, stressing its historical context and development. At the same time, he emphasizes the fundamental problems and limitations of an organization which increasingly demands expertise and specialized knowledge. The book is rightly subtitled: A Study on the Sociology of the Law. Dr. Kulcsár examines and assesses the social and organizational conditions of the courts within a sociologist's framework of organizational behavior and decision-making. Although his data is drawn specifically from the Hungarian model, his conclusions are general enough to offer some insight into the role of the lay element in the American courts as well.

The Communist succession to power marked a dramatic change in the norms, values, and outlooks of Hungarian society: their triumph brought a thorough extirpation of traditional ideals and practices. Political, economic, and social revolutions were paralleled by a judicial revolution. Although prior to 1945, Hungarian jurisprudence had been based on traditional tenets of Roman Law and the Napoleonic Code, this was abruptly abandoned in favor of the politically expedient legal dogmas of the state—dogmas consistent with the building of a Marxist-oriented Socialist society. The
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judicial system suffered another bane: the decline in the status of the lawyer, placing him alongside the landowner, capitalist, and army officer as a figure of the past. This era of increased centralization demanded legal expertise more than ever before; yet, it was only the politically loyal who were permitted to administer justice and to lay the foundation for a new legal system.

The first law under the new constitution, which was adopted August 20, 1949 (Act II, 1949), addresses the participation of People's Assessors in the judicial process. It states that a new legal office was needed so as to permit the people's "conviction, sober view of life, and natural sense of justice" to prevail at judicial proceedings. Elected for a period of one month, a People's Assessor was placed on the same legal plane as a professionally qualified judge. In Kulcsár's "ideal model," an Assessor's participation in the trial and judicial council was to "introduce views, opinions, values etc. to the decision within the framework given by legal regulations. These may differ from the personal outlooks of the judges, from the features of the organization, and even from formalized legal policy expectations." A People's Assessor was to serve as a "corrective factor" (a social control) in the proceedings; at the same time, he was to inform society about the functioning of the laws and judicial system.

As Kulcsár's research shows, the Assessors' observable role diverged significantly from the ideal. Two general historical trends affected this: the growing nexus between legal systems and political power, and the continuing decline in the significance of lay participation in judicial decision-making. The political-legal link was especially strong in the immediate postwar years: People's Assessors were selected so as to give "preference to the interests of the socialist political system and political organizations." Certain decrees narrowed down participation in courts to "the working people," i.e., to those found politically suitable. Nevertheless, in subsequent years, the position of the People's Assessor became more moderate and more in line with the normal functioning of the court system, and it is the behavior of these "moderated" People's Assessors which Kulcsár analyzes in this work.

Kulcsár approaches his study of the role of People's Assessors as a sociologist; he sees the court as an organization, and studies the

2. Id. at 128.
3. Id. at 41.
activities of its members within the framework of organizational behavior analysis. His methods in the chapter on participation and decision-making in the court parallel the methods used to assess business behavior. In fact, one of his most frequently cited sources is Economics Nobel Laureate Herbert Simon’s study on administrative behavior.

Structurally, Kulcsár’s book is divided into four chapters; each is further subdivided into a certain number of sections. He devotes the first chapter to historical background and to the explanation of assumptions and methodology. The second chapter outlines his empirical findings about the demographic composition and attitudes of People’s Assessors, the third traces the extent and effect of participation and the fourth investigates the possibilities and social limits of lay jurisdiction.

The study reveals some important differences between the ideal model of the People’s Assessor and its actual functioning. Because no quotas exist for those selected as People’s Assessors, the demographics of the participants is skewed: lay participation is weighted heavily toward pensioners and away from agricultural workers. This distorts the range of opinion received from society. Of equal importance, a pool of “repeat assessors” has developed, limiting the number and range of those chosen as People’s Assessors: a full 38% of those interviewed had served five or more times.4 Assessors become unofficial members of the organization (the court), and as Herbert Simon argues, they are gradually shaped by the goals, norms, and expectations of the organization—obviating the advantages of extraorganizational participation.5 The problem of organizational assimilation is compounded by the widespread passivity on the part of the People’s Assessors in the court system; the judge as legal expert, a possessor of specialized knowledge, inhibits lay participation in the proceedings.

The effectiveness and importance of lay participation in the court system has also been debated in American legal circles. The studies of the Chicago Jury Project, for example, analyzed the role and participation of the lay element (the jury) in the American courts. It concluded that the balance between judge and jury (their relative importance in the proceedings), was very much dependent on the judge’s personality.6 This is in strong agreement with Kulc-

4. Id. at 69.
sár’s assessment to the effect that “a combined evaluation of all subjective and organizational factors gives a picture in which the person and activity of the presiding judge is the strongest.” The specialized or technical elements in the judicial decision constitute the more significant factor in both systems.

In 1962, the Dean of Harvard Law School expressed his feeling about the role of the lay element in the American courts as follows:

Even in the best of cases, trial by jury is the apotheosis of amateurs. How can anyone think that 12 people selected at random in twelve random ways with the only criterion being a complete lack of general qualification would have special ability to decide on disputes between people?

Kulcsár feels that this view is a misunderstanding of the role of lay participation in the contemporary judicial process. The most important characteristic of any lay element is that it is “organization-alien,” its very existence working to prevent the administration of justice from becoming organizationally routine. Kulcsár suggests that given more information about the case and its circumstances, a People’s Assessor could countervail the judge’s dominating influence. In the end, Kulcsár emerges as a strong proponent of People’s Assessors and the lay element in the courts.

Having just presented observations underscoring the ineffectiveness of People’s Assessors and the lay element, this is a quixotic, if admirable position. Although, in theory, the People’s Assessor will always be “organization-alien,” by the arguments and observations presented in this study the de facto significance of this distinction is minimal. Professor Kulcsár is attached to the idea of the lay element in the courts. But even with his proposed reforms, he gives us little reason to believe that the People’s Assessor can ever gain an important role in the judicial decision-making process. Instead of being assured about the viability of lay participation in the contemporary court system, we become even more convinced of its declining significance.

The book is well-researched; its observations and analysis are cogent and well thought out. Kulcsár is a top scholar in his field and even a cursory glance at this volume will reveal the thoroughness of his research. The book’s only major (though not intrinsic) flaw is the quality of translation: it does little to simplify the prolix nature of contemporary Hungarian. The quality of editing is also poor: common words such as “judgment” are consistently misspelled.

7. KULCSÁR, supra note 1, at 109.
8. HARVARD LAW SCHOOL DEAN’S REPORT 5-6 (1962-63).
The book has an appendix which includes regulations implemented in 1975 (after Kulcsár had collected the data for his study). These new regulations restrict participation of People's Assessors to only the most important cases.

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