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## REVIEWS AND ANNOTATIONS

**Tomášek, M., Mühlemann, G. (eds), *Interpretation of Law in China - Roots and Perspectives*, Charles University in Prague, Karolinum Press, 2011, 201 pp.**

The book under review is intended to be a tribute to the Second Thematic Congress of International Academy of Comparative Law to be held in Taipei, May 24 - 26, 2012. This Congress will be the first event of that type the Academy is organising in East Asia; its central topic is the codification of law with a special regard to codification in East Asia.

This publication is based upon outcomes and conclusions drawn during a common seminar arranged for by the Faculty of Law of Charles University in Prague, Czech Republic, and the University of Zurich, Switzerland, held in Prague in 2009. The seminar focused on the Chinese legal culture in its widest sense, its roots and prospects. Outstanding authors from practically all over the world, who are specialised in comparative law within large legal systems focusing on Chinese law, have contributed to the publication. As the scientific editor Professor Tomášek, Chinese law specialist in the Czech Republic,<sup>1)</sup> points out in his Introduction „...China is one of the areas of the contemporary world with the greatest future. There is no doubt that such an emerging position of China as a world power is also a big challenge for lawyers and the legal science.“ Professor Tomášek devotes his introductory comments to the development of the legal culture and traditional as well as modern principles of interpretation of law in China in comparison with other countries in East Asia.

Individual chapters are written by professors from the following institutions: the Centre for Studies of Legal Culture, University of Copenhagen; Berkeley Law School, University of California; the Faculty of Law of Zurich Uni-

versity; the Institute for European and International Law, Faculty of Law, University of Innsbruck; the Seoul National University College of Law; University in Freiburg; the School of Law, University of Aberdeen; the Faculty of Civil Law, Business Law and Economic Law, China University of Political Science and Law in Beijing; the US-Asia Law Institute of the New York University School of Law, and the Faculty of Law, University of Hong Kong.

Readers would be attracted by the moving history of the legal development in East Asian countries and the outline of topical issues of legal interpretation indicated in the Introduction (Michal Tomášek). They are followed by a chapter entitled „Justice, benevolence, and happiness – encounter and challenges in global legal culture“ (Hanne Petersen), where the author focuses on a comparison of the concepts of justice and benevolence as they apply in Western and Chinese legal cultures. Robert C. Berring concentrates on „Speculations on law and society in modern China“ starting with the Qing Dynasty and finishing with the future of Chinese law in the 21st century. Guido Mühlemann in his extensive chapter shows China's multiple legal traditions, including the special Chinese horizons of thinking of the stratagems, supra-planning and Sino-Marxism. „Transformation through transfer“ – this is a succinct title of the chapter by Florencia Benitez-Schaeffer, dealing with the development of the legal codes at the end of the Qing Dynasty. Chongo Choi in his chapter „East Asian encounters with Western law and the emergence of East Asian jurisprudence“ analyzes the unique and dynamic history of East Asia in confrontation with Western civilisation. Harro von Denver tries to look at the system of the People's Republic of China from an unusual perspective expressed in the title „Stratagem prevention through law in the

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<sup>1)</sup> See, inter alia, TOMÁŠEK, M. *Dějiny čínské práva* [History of Chinese Law], Academia Prague 2004.

People's Republic of China". A critical analysis is brought by Yin Bo in „Chinese socialist legal system, evolution and principal features“. It is followed by another analysis entitled „Judicial interpretation and the envisaged guiding case mechanism in mainland China“ (Jin Zhenbao), commencing with quite a substantial note that interpreting the law has not been recognized in mainland China until recently as an integral component of the judicial power, or more precisely, the adjudicative power of the judges. The chapter deals in detail with gradual changes in the practice of courts and concludes with certain optimism drawn from the envisaged Guiding Case Mechanism. Li Ling's chapter is entitled „Lost in translation“ and analyzes the „rule of guanxi“ and the impact of guanxi and personal relationships upon the legal development in China. The author points out that a clear definitional distinction should be firstly made between the „guanxi“ referring to social/personal relationship and the „guanxi“ denoting a practice as well as practitioners of a particular type of favour exchange conducted in very specific circumstances („guanxi-practices“). The final chapter is devoted to the application of sentence suspension and exemption for „duty offenses“ in China (Li Li, Wu Chonghao). The authors argue that in present-day China, equality before the law is understood as one of basic rights of individuals; nevertheless, lenient punishment for duty offenses through sentence suspension and exemption has drawn wide attention. They openly show that lenient punishment for duty offenses through sentence suspension and exemption in China finds its roots in the special status of the offenders and ineffective legal techniques. Influenced by Confucian benevolence and the prevailing ideology, judges are likely to show their sympathy towards duty offense criminals and suspend their sentence or exempt them from the penalty. The chapter proposes reforms including further judicial interpretations, off-site trials and pre-sentence hearings in order

to attain correct application of relevant provisions of law.

The book is a unique work which analyses and synthesizes sometimes very complex issues of the interpretation of law in China. I strongly believe that this publication will attract the attention of the wider legal public focusing not only on Chinese law and the law of East Asia but also on comparative law in general.

Monika Pauknerová

**Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, Oxford University Press, 2010, 303 pp.**

Published by the renowned Oxford University Press (OUP), Richard Susskind's monograph „The End of Lawyers? Rethinking the Nature of Legal Services“ is among the notable books that appeared in the world of legal literature at the end of 2010. Currently the only one of its kind, this publication focuses on the highly topical area of the position of legal services in the information society of today, as well as issues related to future development in the field.<sup>1)</sup>

The writer both analyses in great detail current relationships in the business of providing legal services in the area of information technologies (including issues such as social networks, online services for barristers and clients and so forth) and forecasts possible future developments in the area. He bases his arguments on the premise that the current legal marketplace is inefficient in many ways, wasting existing resources in the absence of a genuine competitive environment, which leads him to believe that future changes, whose range and architecture he goes on to describe in detail, are bound to happen, albeit slowly. Furthermore, he suggests that in this respect the reason for those changes will not be so much a shift in the behaviour of the providers

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<sup>1)</sup> An interesting author's description of his publications can be found on YouTube: Richard Susskind on "*The End of Lawyers?*", <http://www.youtube.com/watch?v=nq2ZhXpa5Gc>

of such services as primarily the market's real need driven by their consumers. In doing so, the writer in many respects critically evaluates the models for the provision of legal services used to date and attempts to predict likely future developments, both in terms of content and architecture. With regard to that, he infers that the development of those technologies will lead, among other things, to a change in the overall system structure of all legal professions and the form and manner of the provision of legal services. Susskind argues that the market is increasingly unlikely to tolerate expensive lawyers for tasks (guiding, advising, drafting, researching, problem-solving, and more) that can equally or better be discharged, directly or indirectly, by smart systems and processes. The author thus introduces the idea that some of the current legal professions might disappear step by step, while suggesting that the newly shaped market will demand the establishment of some new ones, to be held only by those with legal qualifications. Two forces propel the legal profession towards this scenario: a market pull towards commoditisation and a pervasive development and uptake of information technology. At the same time, the book foresees new law jobs emerging which may be highly rewarding, even if very different from those of today. He goes on to make the somewhat contradictory assumption that legal professions in the future will either prosper or face disaster, with some of them disappearing completely as mentioned above. This idea is reflected not only in the book's title (including the question mark<sup>2</sup>), but also in its overall content<sup>3</sup>.

Richard Susskind, an established British author of the book, has been involved in the is-

ssues of the relationship between law and technology for over 25 years. He is an independent adviser to major professional firms and to national governments. He lectures internationally and has been invited to speak in over 40 countries. He has written and edited numerous books, including *Expert Systems in Law* (OUP, 1987), *The Future of Law* (OUP, 1996), *Transforming the Law* (OUP, 2000), *The Susskind Interviews: Legal Experts in Changing Times* (Sweet & Maxwell, 2005) and has written over 100 columns for *The Times*. He has advised on numerous government inquiries and, since 1998, has been IT Adviser to the Lord Chief Justice of England. In 2003, he was appointed by the Cabinet Office as Chair of the Advisory Panel on Public Sector Information. He holds law professorships at Gresham College in London and the University of Strathclyde in Glasgow. Richard has a first class honours degree in law from the University of Glasgow and a doctorate in law and computers from Balliol College, Oxford. He is a Fellow of the Royal Society of Edinburgh and of the British Computer Society, and was awarded an OBE in the Millennium New Year's Honours List for services to IT in the Law and to the Administration of Justice. The above publication thus successfully follows up most of his work to date, in particular his previous book, „*The Future of Law*“ from 1996, in which Susskind attempted to analyse the impact of IT development on traditional legal jobs.<sup>4</sup>)

The overall content layout and the systematic arrangement of the book reflect the writer's effort to provide the reader with as much comprehensibility, readability and information

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<sup>2</sup>) On a side note, the author says that the question mark in the book's title is primarily meant to assure the reader that the work deals with the question as to whether there is any future for legal professions rather than forecasting their extinction. The writer admits to having been inspired in this respect by similar titles such as Postman's *The End of Education* (New York, Vintage, 1995) and Kessler's *The End of Medicine* (New York, Collins, 2006).

<sup>3</sup>) The rest of the book really does not talk about the end of lawyers as we know them. Instead it explores how the legal profession and the work of lawyers may change because of technological advances.

<sup>4</sup>) This book attracted a great deal of attention in its time and in retrospect there is no option but to acknowledge that many of its predictions, which seemed highly unlikely at the time, have come true.

as possible. Included in the work is a comprehensive overview of related literature (pages 285 – 291) and a detailed list of terminology used in the book (pages 293 – 303), which is very welcome in this kind of publication. As far as the above overview of literature is concerned, the author explores it further and provides detailed systematic comments in the text.

The monograph is divided into eight basic parts (chapters), examining the topic comprehensively, including a focus on technologies currently available and on most theoretical and practical issues.

The first opening chapter deals with essential introductory questions through which the writer concentrates primarily on historical aspects and briefly touches on selected issues of current challenges. He also notes, „Whether consciously or not, in order to survive, many lawyers are widening their range of skills, broadening their sphere of impact, and are anxious that the world does not pigeon-hole them as detached scribes who sit in ivory towers. Many lawyers, in other words, can no longer eke a living from the law alone“ (page 6). He hints that English law schools are too narrow in their training, although he does not comment on the trend in many American law schools to begin to bring interdisciplinary perspectives into the faculty and thus into the classroom. He also thinks that law firms will include many non-lawyers in the future. The second chapter explores the actual evolution of the provision of legal services, describing market commoditization, that is, the gradual process of turning the exclusive products provided by legal professions into common goods. The author arrives at this conclusion primarily as a result of the fact that the current impact and capabilities of information technologies will gradually revolutionize the field leading to the replacement of people with legal qualifications by IT specialists. Susskind is clearly interested in the

interplay between client demand for the commoditization or standardization of legal services with information technology advances. The model of legal work he presents (page 29) says that some legal work is personalized and individualized, some is standardized, some is systematized, some is packaged, and some is commoditized like form wills or software to help prepare individual tax returns.<sup>5)</sup>

The third and fourth chapters deal with what Susskind expects in the development of current technology trends, especially online services and specific issues in doing business in a network environment. He also analyses legal-related technologies described by the author as disruptive. These parts are the core of the book, containing a detailed presentation of the topic in relation to all main legal-oriented technologies whose existence and significance form the fundamental basis for the writer's conclusions and theories dealing with the future of legal professions. He argues that these technologies will accelerate the movement toward more commoditization of legal services. He does say that „Many lawyers exaggerate the extent to which their performance depends on deep expertise. Lawyers, like other professions, cloak themselves in a web of mystique, jargon, and apparent complexity, in part to project market value and partly, no doubt, as a matter of bolstering their self-respect. My point here is that simply because lawyers assert that expertise underpins their performance, we should not take this at face value“ (page 90). Susskind continues, „Lawyers often overstate the extent to which the content of their work is creative, strategic, and novel“ (page 90). He also noted that new technology can also help lawyers be more creative.<sup>6)</sup>

The fifth chapter then predicts the future of and changes in the work of in-house lawyers. This chapter also looks at how the changing expectations of clients will affect the legal

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<sup>5)</sup> Lawyers assume that all of their work is highly personalized and individualized, but Susskind argues that much legal work can and will fall into the latter categories. It is these latter types of legal work that threaten the future of the legal profession as we currently know it.

<sup>6)</sup> Comparing lawyers to medical professionals, for example, he argues that lawyers need to develop closed on-line communities where they can ask and answer legal questions among fellow professionals much like medical doctors already do now.

work of all lawyers, not just those who are in-house. But the main thrust of the chapter is to predict how the practice of law will change in the future for those who are in-house corporate lawyers. Chapter six looks at litigation and its alternatives, including the question of avoiding it completely. The seventh chapter deals with the crucial issue of attitudes towards law and justice, its communicativeness and the increasing significance of legal-related information systems. This chapter is particularly notable as the text consistently presents real-life issues brought about by current approaches towards law and its communicativeness.

The above chapters are rounded off by final chapter (Part 8), which offers a clear conclusion and the writer's predictions regarding the future of legal professions. Taking into account the largely practical focus of the book, it is of particular note that the author chose a practical and descriptive approach rather than one which is theoretical or doctrinating. This chapter serves as a summary of the arguments and a call to action for the profession. As Susskind concludes the law evolving to the point there will be five types of lawyers: (1) trusted advisors who offer „bespoke“ services; (2) enhanced practitioners who provide systematized, packaged legal services; (3) legal knowledge engineers who create standardized working practices and systems; (4) legal risk managers who work with end-users to reduce the need for more costly services; and (5) legal hybrids who have multidisciplinary practices. I think I can agree with the author, but not entirely. In my opinion Susskind places too much emphasis on cost savings influencing the future of the law. Majority of client lawyers often make decisions based on other factors than is the price of services. Susskind also doesn't acknowledge that online legal solutions may appeal to the consumer; therefore the use of those services may ultimately result in more work for lawyers. As Susskind concludes, „*The future for lawyers could be prosperous or disastrous. The*

*arguments and findings of this book can support either end game. I predict that lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive“* (page 268).

The text itself is compiled comprehensibly, with knowledge of the subject matter, and above all practically, which does not hinder the clarity of interpretation. It also offers some new pieces of knowledge and, on more than one occasion, its effective arguments attract your attention. Generally it must be appreciated that the approach to the topic has reached a stage when a clear, self-sufficient and, especially, detailed explanation of the vast majority of relevant legal regulations can be provided. There are very few areas here that could be said to deserve more attention on part of the author.

All in all, I find the book to be a great contribution, to be well structured and, in many ways, in its own manner, unique in Europe and worldwide, as nothing this extensive has been contributed in the field. Furthermore, it is written in a way that is easy to comprehend by both legal professionals and the lay public, as the author in many cases chooses to state facts in a succinct and quite eloquent manner that usually gets to the heart of the matter a great deal more successfully than complex and intricate explanations. This publication makes some clear and simple predictions about what lawyers will do in the future, but it is most valuable for raising the issues in the first place. On account of its focus and its comprehensive approach to the subject matter, the book can be recommended not only to law students but also to all legal professionals and other specialists dealing with law and related areas. The publication also acts as a hugely significant source for any further debate concerning the future shape and form of legal services.<sup>7)</sup>

Ján Matejka

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<sup>7)</sup> This paper has been compiled with support from the Grant Agency of the Czech Republic under project ID GA407/09/1823 – Legal regulation of the computer network environment with regard to the Internet (2009-2011, GA0/GA)