

Jersey & Guernsey Law Review – June 2013**BOOK REVIEWS**

D Ogier, *The Government and Law of Guernsey*, 2nd ed, States of Guernsey 2012, ISBN 978-0-9549775-1-1, £15.95

1 Guernsey's population has never been more diverse. It is increasingly cosmopolitan. Many of its residents are newcomers. Some with political ambition have little idea of the Island's history and, more importantly, the origin and development of its unique institutions. To such a person Dr Ogier's book will be a godsend. Not only does it provide clear and authoritative answers to many important and sometimes obscure matters, but in this reviewer's opinion, the work is also calculated to bring to those who read it, whether newcomer or native Guernseyman, a deepened sense of identity.

2 The first edition of this work appeared in 2005. In his Foreword, Sir de Vic Carey, then Bailiff, wrote:

“ . . . we are likely to see significant changes in the way that both the States and the Courts conduct themselves in the next ten years . . . ”

Only seven years on, those changes foreseen by Sir de Vic have justified a second edition. The original slim volume has expanded to 326 pages of text. It is supported by an impressive bibliography listing nearly 300 titles both ancient and modern, eloquent testimony to the author's scholarship. Some, but not all, of this increased bulk has been needed to accommodate the description of major amendments, both internal and external, which have occurred in recent years in Guernsey's constitutional arrangements. The effect of these had, in some respects, been calculated to undermine the value of the first edition as a current work of reference.

3 Another writer might have been willing to let the dust settle and perhaps wait for a more measured perspective of these changes and their significance to emerge. Other writers in Guernsey's past have been content with a single essay. But Dr Ogier is not one of that kind. This is the work of a professional historian. Dr Ogier is not only the Island's Archivist. His place at the heart of Guernsey's judicial and administrative establishment gives him unique insight into the Island's institutions. His reputation for accurate scholarship also makes him the natural adviser of choice to the insular authorities on constitutional and historical matters. It is not for nothing therefore that the States of

Guernsey is the publisher of this, as it was of the first edition. The States' imprimatur perhaps also implies an obligation on the author. The book has become almost a document of public record on which others rely for its accuracy. It is indeed as a text book understood to be required reading for law students. Dr Ogier confirms in his preface that he had "done [his] best to state matters as they stood on 23 March 2012".

4 This work has retained the shape of its first edition. The difference lies in its ambition. There is more history and much greater detail here, arguably, at times, almost too much. For example, occasionally when discussing the position of the Douzaines, the author's sentences become longer and longer, and detail at times weighs upon the narrative. Happily such instances are few.

5 In the first part of the book Dr Ogier describes the principal Island institutions. He deals in successive chapters with the organs of parochial, ecclesiastical and civil government and then goes on to consider the courts and the officers who work in them. The matter is full of learning and interest.

6 Chapter 6, simply entitled "The Law of Guernsey", is a joy to read. Dr Ogier is an historian not a lawyer, but his command of his material is masterly. This central chapter has grown from 15 to 48 pages. Lucid, learned and authoritative, the author has drawn upon all relevant French and English sources to produce an account of the Custom, its origins, evolution and influences which this reviewer believes to be without parallel in Guernsey or Jersey literature.¹

7 The great bulk of this text is, by definition, Guernsey centred. Guernsey is however, not an isolated community. This small polity cannot today be understood without an appreciation of its external relations. Dr Ogier's task is not to describe Guernsey's economy or its financial services. Given however that Guernsey's very existence is dependent upon international perceptions of it as a stable orderly jurisdiction governed by the rule of law and capable of maintaining a conversation with the wider world, the third part of this book is important.

8 The last three chapters accordingly consider Guernsey's relationship successively with the rest of the Channel Islands, the United Kingdom and the world. These same chapters follow the model introduced in the first edition but are now substantially enlarged. The text reflects growing concern in both Bailiwicks with the Islands' increasing

¹ A judgment made with all due deference to Gordon Dawes and his elegant essay in this *Review* "A brief history of Guernsey Law" (2006) 10 JL Rev 4.

exposure to global influences as they seek not only to preserve their traditional independence but also to develop a greater international identity.

9 Relations with Jersey in the first edition rated only one page of text, the author noting that “formal relations with Jersey are few”. In 2012 the author confirms that formal relations “remain few”. Now, however, Dr Ogier offers an interesting historical review of that relationship. Moreover, in addition there is a careful and faithful account of various initiatives on which the Islands now collaborate. An example is the establishment of a joint Brussels office in order to maintain a presence in Europe. Economy may have prompted the sharing of expense but there is more to it than that: a growing sense of common interest. Moreover, the judiciary and people at various levels of the Island’s administration, albeit informally, meet regularly. Generally, however, Dr Ogier is cautious about expressing any view on policy and certainly this is true of recent proposals calling for more radical moves aimed at the development of a confederal relationship between the two Bailiwicks.

10 These concluding chapters are accordingly rigorously factual and helpful in their detail. The tone is objective and dispassionate, a character which does not leave Dr Ogier where he states in his concluding sentence:

“Guernsey’s response to developing issues is to continue to assert at home and abroad the ancient and fundamental right of the Island’s community to its own laws and institutions. Small although Guernsey may be, history has equipped us to look the world in the eye.”

11 This excellent work should be read by all who are interested, whether professionally or academically, in Channel Island matters. This reviewer’s reservations are not fundamental although one is heartfelt. In discussing relations with the Crown and the UK Parliament, Dr Ogier arguably gives too much weight to the continuing authority of the Kilbrandon Report on the Constitution and too little to the opinions of that eminent constitutional lawyer and academic Professor Jowell who has advised that Kilbrandon, being dated and inconsistent with human rights and current constitutional practice, should no longer to be followed.

12 Not every small community can boast a body of literary and scholarly output; but then not every small community has had such a rich and varied history as Guernsey or has retained the loyalty of so many of its talented sons and daughters. The Island over the centuries, has been well served by a succession of writers. At this time, and as one publication succeeds another, Dr Ogier can be seen at the peak of this flowering of local scholarship. This latest work is undoubtedly a major intellectual achievement.

13 The first edition was favourably and fully reviewed in this publication² by that eminent Jerseyman Sir Godfray Le Quesne, QC who for more than thirty years, sat as a Judge of the Guernsey and Jersey Courts of Appeal. Le Quesne concluded his review with this commendation:

“This is an erudite, important and valuable book. Anyone interested in the Government of Guernsey should turn to it and will find in it expert help clearly given.”

This reviewer respectfully agrees with that opinion.

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Richard Susskind, *Tomorrow's Lawyers*, 2013, Oxford University Press, ISBN 978-0-19-966806-9

1 Is Professor Richard Susskind just a pessimistic scourge of lawyers, or is he rather a visionary sage? His last work was entitled *The End of Lawyers?* I wrote in my review of that book³ that no editor of a legal journal would naturally respond to that title with any degree of enthusiasm. At least this title gives some hope for the future. In my view, however, Susskind is no mere iconoclast. His broad thesis that the world is changing around the legal profession and that we should all prepare for those changes seems to me incontestable. This is a book that should be read by all lawyers, judges and academics, but above all by students of law, for it is their future about which he writes.

² (2006) 10 JL Rev 132.

³ (2009) 13 J&G L Rev 135.

2 It should also be of particular interest to those whose responsibilities include legal education and the setting of professional standards for entry to the legal profession. Susskind records that in the USA considerable criticism has been voiced of the fact that until 2018 there will be only some 25,000 openings for young lawyers while law schools are churning out 45,000 graduates annually. Many of them will have taken out enormous loans in order to qualify. In the UK we already see increasing difficulties for young lawyers in obtaining training contracts in order to complete their qualification. What kind of lawyers should the Institute of Law, for example, be aiming to produce in the future?

3 *Tomorrow's Lawyers* is in a sense a continuum of Susskind's thinking and research over the last 15 years. The first two parts of the book restate some of the arguments deployed in earlier publications.⁴ Three drivers for change in the legal marketplace will alter fundamentally the way in which legal services are delivered over the next decade. They are the more for less challenge, liberalisation, and information technology. Increasingly, clients will resist the hourly fee rate which rewards the slow and the inefficient. Increasingly, lawyers will find it difficult to resist the opening up of the legal market to others. In Jersey, conveyancing charges have been the first hurdle to fall to the law of competition, but others will follow. And finally, information technology has become a tidal wave upon which old traditional methods will be swept away.

4 Different ways of legal working must be found, Susskind contends. Alternative sourcing and multi-sourcing of legal work will be developed. Why pay an expensive lawyer for doing work that can equally well be performed by an unqualified administrator? Susskind is most convincing when he writes of disruptive legal technologies of which he lists 13 (coincidentally, I am sure). A "disruptive technology" is one that fundamentally challenges and changes the functioning of a particular business or sector. He gives the example of digital camera technology which disrupted chemical printing and ultimately led to the downfall of Kodak. His disruptive legal technologies are: automated document assembly, relentless connectivity, electronic legal marketplace, e-learning, online legal guidance, legal open-sourcing, closed legal communities, workflow and project management, embedded legal knowledge, online dispute resolution, intelligent legal search, big data, and AI-based problem-solving.

⁴ *The Future of Law* (1996, OUP); *Transforming the Law* (2000, OUP); and *The End of Lawyers, Rethinking the Nature of Legal Services* (2008, OUP).

5 There is no space to examine each of these, but one that resonated with this reviewer is relentless connectivity. Jersey lawyers seeking to escape the insistent demands of their clients used to resort (some still do) to becoming “ex-directory”. While a mobile device can be switched off, the plethora of modern technologies such as tablets, wireless broadband access, instant messaging, social networks, and email, all bolstered by increasing processing power and storage capacity, combine to make it all but impossible for the lawyer not to be constantly accessible to clients’ demands. Response times have shortened and the pressure has increased.

6 Despite all these challenges, the third part of the book confirms that Susskind is optimistic about a place for lawyers in the brave new world of tomorrow. He makes some relevant suggestions for judges and court administrators too—because justice is increasingly inaccessible for all but the rich and those funded through the legal aid system. For young lawyers, Susskind envisages new forms of work, often involving the combination of legal knowledge with some other skill—project management, IT, legal processing, risk management and so on. There is no denying that this is challenging stuff. Whether or not one agrees with every aspect of the author’s diagnosis and cure, there is no doubt that serious thought needs to be given by all those for whom the law is important to many of the issues that are identified. For tomorrow’s lawyers, Susskind ends with a stirring battle cry—

“Here is the great excitement for tomorrow’s lawyers. As never before, there is an opportunity to be involved in shaping the next generation of legal services. You will find most senior lawyers to be of little guidance in this quest. Your elders will tend to be cautious, protective, conservative, if not reactionary. They will resist change and will often want to hang on to their traditional ways of working, even if they are well past their sell-by date. In truth, you are on your own. I urge you to forge new paths for the law, our most important social institution.”

7 As a senior, but not, I hope, a reactionary lawyer, may I conclude by saying that this is an intensely stimulating book that is well worth careful study.

Sir Philip Bailhache was Bailiff of Jersey between 1995 and 2009 and has been Editor of the Jersey and Guernsey Law Review since its foundation in 1997.