

Richard Susskind, *Online Courts and the Future of Justice*, Oxford University Press, 2019

Using technology to expand access to justice is a hot topic these days, and the National Center for State Courts and the Pew Charitable Trusts have put tens of millions of dollars into pilot programmes, empirical academic studies and legal service non-profits to accelerate the trend. Into the heart of this fertile national conversation comes the latest book from Richard Susskind, the most influential legal technology thinker in the UK, focused on the promise and potential of online courts.

Susskind begins by joking that he has written essentially the same book every four years, which has a grain of truth. However, the consistency of his message over 40 years is worthy of respect. This new book is of a piece with his influential prior books *The Future of Law* (1996), *The End of Lawyers?* (2008) and *Tomorrow's Lawyers* (which came out in a second edition in 2017). Susskind's prior book, *The Future of the Professions* (written with his son, Daniel Susskind, in 2015), described how technology is changing the role of advisors (like lawyers and doctors) who develop expertise and provide advice to their clients, so he has considered these changes from all angles.

Susskind's work demonstrates that there is no one better qualified to sketch out a vision for the emergence of online courts. He has an impressive ability to simplify complex topics, yet without watering them down, so non-technical readers can comprehend his points without getting tangled in jargon or nerd doublespeak.

He divides the book into four parts:

- 1 Courts and Justice (covering topics like *why courts matter, access to justice and tackling injustice*);
- 2 Is Court a Service or a Place? (covering topics like *a vision for online courts, online judging and assisting arguments*);
- 3 The Case Against (Susskind deserves credit for anticipating most of the objections of his critics and addressing them in detail); and
- 4 The Future (including an overview of emerging technologies like artificial intelligence (AI) and computer judges).

It is clear from the outset that Susskind is focusing primarily on the resolution of civil disputes, which he describes as "legal disagreements that arise when a party who has suffered a loss seeks a remedy from another". That leaves space for another book to focus on the potential for online criminal courts, which is in itself a rich subject area. He also clarifies that this book is not intended to be a detailed empirical study of systems currently in operation but primarily an attempt to make the case for online courts moving forward.

Susskind takes a step back to talk about why courts are important from both a constitutional and a jurisprudential perspective. He then lays out reasons why change is necessary and the recent advances in technology that create opportunities for these changes. Susskind describes how our notions of interpersonal

interaction are evolving, from physical to virtual to online, and how a future justice system may blend them all together to better meet the needs of litigants.

Susskind then shifts to the problems the courts are facing in providing access to justice and addresses the challenge of making processes quicker, cheaper and more convenient. He discusses various conceptions of justice (including substantive justice, procedural justice, distributive justice and sustainable justice) – putting his erudition on display by citing Amartya Sen, Hobbes, Kant and Voltaire (among others) – but by returning to these foundational philosophical principles he helps to make his case that online courts can deliver value in all of these frameworks. Any move towards online courts should ensure that the justice system remains “accessible, transparent, sufficiently resourced, and appropriately balanced”. Only systems that embody these principles are worthy of being backed by the coercive power of the state, whether online or offline.

Susskind unfolds his vision for online courts, describing several initiatives that provided inspiration (such as eBay’s online dispute resolution processes, British Columbia’s Civil Resolution Tribunal, the UK financial ombudsman service, and others). Susskind led a key task force, under the UK Civil Justice Council, that recommended the creation of a new internet-based court service, called *Her Majesty’s Online Court*, that focused on the resolution of low-value civil disputes. His narrated history helps the reader understand how the report was received and how his vision has continued to evolve since publication.

In my opinion the weakest part of Susskind’s book is his section on an architecture for online courts. He offers a rubric with four layers – legal health promotion, dispute avoidance, dispute containment and dispute resolution – and shows how different approaches (e.g. traditional courts, virtual hearings and ODR) focus on different pieces of this rubric. He subsequently suggests a vision for online courts that ticks more of these boxes. Perhaps because I have spent so much time working in the ODR space I find this rubric somewhat confusing and out of sync with the way courts and legal service bureaus are thinking about systems design. Personally, I feel ODR covers each of the four areas Susskind describes in some ways, and I dislike the term ‘containment’ as a descriptor for facilitative dispute resolution methods like mediation. But Susskind’s attempt at an architecture is appreciated, even if it does not deliver an actionable blueprint for how online courts can be designed and deployed.

Susskind is on firmer footing when he turns to the question of online judging. It is clear that he has spent a lot of time debating this subject with judges, because his writing on this topic is clear and well reasoned. Like any good lawyer, Susskind successfully anticipates the objections of his critics. He puts forward the best version of their concerns (e.g. second class justice, transparency, fairness, bias, increased litigiousness) and addresses each in turn. He makes it clear that though his vision for online courts may have shortcomings and risks, it is still an improvement over the existing options available for most lower-value civil disputes.

One of his strongest sections deals with the importance of the human face of justice and describes how technology may lead us to overlook human psychology in the justice process. He also explains how technology may reinforce social inequity and contribute to digital exclusion. These are lessons that must guide our efforts in building and developing online courts.

Susskind acknowledges the failure of past public technology projects in the justice systems of England and Wales, as well as the disastrous example of the California Case Management System (CCMS), whose costs ballooned to almost 2 billion dollars before the project was shelved in 2012. He highlights the importance of not rushing into these changes and affirms the need to test and learn with pilot experiments to make sure we get systems right before we deploy them widely.

In devoting only five pages to the question of how law and code will interact in the future, Susskind's treatment of the issue feels somewhat inadequate in the light of the expanding concept of decentralized justice, which envisions a new justice system backed by math instead of the coercive power of the state. Experiments like Kleros and Jur.io rely on code to deliver a new kind of trusted online court, and that vision may be the most radical rethinking of how the justice system could evolve in the next decade or two. But while those examples do not appear in the book, Susskind generously shares many other case studies from around the world and documents their approaches and early results. At this early stage, not much empirical data is available to undergird the case for online courts, but as time progresses, I imagine the data sets will become richer and will likely bolster Susskind's core arguments.

Susskind goes on to identify what future technologies may eventually enter the equation, including AI, telepresence, augmented reality, virtual reality and advanced online dispute resolution. There is so much happening in the world of AI these days that it could fill a book (or several books) on its own, but Susskind expertly lays out the contours of AI as they are currently understood and explores how these approaches could eventually lead us towards a digital judge.

Susskind concludes the book by noting that 54.4% of human beings on the planet are deprived of the "protections, entitlements, and benefits that the law can and should afford". As our world globalizes, he observes, our joint task will be to ensure every human's right to respect and dignity is enshrined in and enforceable at law. He challenges all of us to leverage the internet and technology to "develop and make available a standard, adaptable, global platform for online courts that can be replicated around the world" to achieve this objective.

Susskind muses on what his little granddaughter, Rosa, will think about the book when she turns 21 in 2039, asking whether

Rosa [would] want to know, two decades hence, why her grandfather felt the need to waste his time writing a book that argued for the glaringly obvious – that in a digital society it makes much sense for much of the work of courts to be conducted online.

Book Review

In hindsight, Rosa may consider it obvious that online courts were inevitable. But from our current perspective, this book is an important step towards making that future a reality.

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