

BOOK REVIEW

Lisa Blomgren Amsler, Janet K. Martinez, and Stephanie E. Smith (eds.), *Dispute System Design: Preventing, Managing, and Resolving Conflict*, Stanford University Press, 2020

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As the COVID-19 pandemic raged across the world and ravaged much of the United States, racial injustice, socioeconomic fissures and cultural fault lines that have long existed came into unavoidable focus. As the fundamental underpinnings of the American Experiment were tested under the harsh spotlight of a social media fuelled, 24/7 'noise cycle', few failures became as rapidly apparent to those impacted than the American legal system. Despite many years of technological innovation implemented under the banner of online dispute resolution (ODR), many of the promises heard when implementing these systems did not pan out. Many can reasonably argue that ODR system performance has not lived up to the promises made because most were launched when we were still in uncharted, tech-driven waters with no guide on how to wrap our arms around the immenseness of either the problems that could be solved or the solutions we should pursue. There was no textbook guiding us on where to even start.

As dispute resolution professionals, that reality has now changed. For us, that book now exists.

Dispute System Design: Preventing, Managing, and Resolving Conflict by Lisa Blomgren Amsler, Janet K. Martinez, and Stephanie E. Smith (Stanford University Press, 2020) is stated by the authors to be 'about creating processes and structures that enable people to have access to voice and justice'. Published mere weeks

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before our health systems, social systems, economic systems, political systems and justice systems were all pushed to and beyond their points of failure, one could easily argue that never before has a book been both so prescient and timely.

Since the early writings of Ethan Katsh and Janet Rifkin that opened the door to ODR as a distinct field, innovation has arguably been driven by what technology could do more often than what it should do. For example, artificial intelligence (AI) is currently seen by many as a magic pill that will now allow everyone to do more with less. As we clamour to integrate AI into all levels of our justice system, we are quickly seeing its misapplication in algorithmic policing or surveillance tools that have baked in racial bias. As we move a technological layer down to the analytics and machine learning (ML) techniques driving many e-commerce-derived ODR tools, individuals like Professor Norman W. Spaulding have recently challenged the appropriateness of assuming that truly 'simple cases' even exist within the legal system. By examining the perceptions of ODR users, the National Legal Aid and Defender Association raises questions regarding the power-derived imbalances which can remain even in the least sophisticated ODR systems. These criticisms of many modern ODR systems are the exact failings this book masterfully prepares the next generation of ODR system designers to address: 'the power to control the design and execution of a dispute system can determine its fairness and justice in both the process and the outcome'.

Disputes are so fundamental to our human existence that any effort to provide an effective cookbook for designing systems that prevent, manage and resolve conflict is ambitious. Yet this book elegantly completes this task by calling upon the best elements of Systems Thinking and Design Thinking, organizing the material in a near 'how to' format, while providing the tools needed to inspire and empower any reader to quickly expand beyond the scope of this foundation work. Starting with a comprehensive framing of Dispute System Design (DSD), the book works through the analytical framework and tools needed for DSD before diving into system and design practice, including the importance of accountability and ethics in any evaluative and iterative processes.

It is true that Systems and Design Thinking are not new concepts. Introduced in the mid-20th century works of W. Edwards Demming, John E. Arnold and L. Bruce Archer, these concepts have been refined and formalized as inclusive, iterative, data-driven processes which helped transform entrenched thinking in multi-disciplined fields from automobile design to international aid. The authors' dedication to the core principles of these Systems and Design Thinking disciplines by including such an 'extensive range of contexts across diverse academic disciplines' makes it mandatory reading for anyone 'who designs or improves existing [dispute resolution] processes or systems'.

This inclusion of diverse perspectives really comes into focus once the book delves into the case applications that make up the majority of the book's chapters. In this part of the book, complex scenarios from a wide range of industries and communities are expertly presented in a manner that reinforces and expands upon the foundations of system design. To argue that the authors are experts in their field may overvalue the contributions of many others we consider to be 'experts'. Many realities that generations of dispute resolution graduates now assume must

have always been obvious, like the inequitable benefits gained by those who repeatedly use arbitration, were discovered through the same painstaking attention to detail that is being handed down through this work. This opus on DSD provides a format through which the hardest learned lessons of a dynamically evolving field can be added into any level of curriculum. For high-intensity, case-study modules, the book provides case applications like that of Kaiser Permanente Health System which are suitable for both independent use and offer linkages back to the fundamentals underpinning the broader issues developed in the book. For broader topics, chapters like those on Transitional Justice have been so compactly boiled to their essence while offering an invaluable trove of cited works that they could be almost effortlessly developed into a comprehensive survey course or rapidly expanded into a graduate-level syllabus.

Like anyone who has sought or achieved mastery in their field, dispute resolution practitioners often find it difficult to see beyond their earned perspective. We will often build upon what we know using tools that conform to our world view. If we do not train ourselves out of this habit, those who seek innovative solutions to the justice challenges of our generation will continue replicating technologies like the ODR tools that many felt did not live up to their hype. To make those difficult transitions from the world we know to a more just tomorrow, dispute resolvers will have to make a difficult journey of inclusive, equitable and innovative discovery. In *Dispute System Design*, those who wish to make that journey can now follow a clear path.