



## BOOK REVIEW

# Review of *Online Courts and the Future of Justice* by Richard Susskind (Oxford University Press, 2019)

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Richard Susskind's most recent book sets forth a vision for the future role of online courts in resolving civil disputes and why they will have a profound effect on the manner in which processing of disagreements and claims under law is likely to occur. The benefits will compound as the traditional processes that comprise the oftentimes cumbersome, time-intensive and costly framework of conventional courts give way to more efficient, direct, convenient, and affordable online solutions. Susskind's years of advocacy for automated solutions in court system operations and functions are manifest in how he judiciously analyzes and responds to the myriad objections to his vision. He alerts his readers to the perils of overlooking the human elements of dispute resolution, highlighting the challenges to online developers and the risks they pose for the dispute resolution field. He argues persuasively that because more than half of the world's population lacks meaningful access to the rule of law and administration of justice, our challenge is to leverage the potential of technology and the Internet to broaden that access by creating and deploying functional online courts worldwide.

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Using technology to expand access to justice is a hot topic these days, with the National Center for State Courts and the Pew Charitable Trusts putting tens of millions of dollars into pilot programs, 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 starts out by joking that he has written essentially the same book every four years, which has a grain of truth. But that said, 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

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edition in 2017). Susskind's prior book, *The Future of the Professions* (written with his son, Daniel Susskind, in 2015) addressed 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 body of work makes clear that there is no one better qualified than he to sketch out a vision for the emergence of online courts. 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 and computer judges).

Susskind is explicit at the outset that he is focusing primarily on the resolution of civil disputes, which he describes as "legal disagreements that arise when a party who has suffered 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 makes clear that he does not intend this book to be a detailed empirical study of systems currently in operation as his focus is more on making the case for online courts moving forward.

Susskind takes a step back to talk about why courts are important from both a constitutional and jurisprudential perspective. He then lays out the 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 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. He does so, displaying his erudition, by citing Amartya Sen, Thomas Hobbes, Immanuel Kant, and François-Marie Arouet aka Voltaire, among others. By returning to foundational philosophical principles, he helps to make his case that online courts can deliver value in all of these frameworks. Any move toward 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, online or offline.

Susskind walks through the development of 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* focused on the resolution of low-value civil disputes. His narrated history helps the reader understand how the report was received when it first came out 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, then shows how different existing 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 fills in more of these boxes. Perhaps because I have spent so much time working in the ODR space, I find this rubric a little 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 doesn’t get us all the way to 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 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 does a good job anticipating the objections of his critics. He puts forward the best version of their concerns, e.g. second-class justice, transparency, fairness, bias, increased litigiousness, then addresses each one by one. He makes 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 how technology may lead us to overlook human psychology in the justice process. He also speaks to how technology may reinforce social inequity and contribute to digital exclusion. These are lessons we must keep front of mind as we build and develop online courts.

Susskind acknowledges the past public-technology projects in the justice systems of England and Wales that failed, 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. Citing these failures, he highlights the importance of not rushing into these changes; we need to test and learn with pilot experiments to make sure we get systems right before we deploy them widely.

Susskind devotes only five pages to the question of how law and code will interact in the future, which seems somewhat inadequate considering 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 don’t appear in the book, Susskind generously shares many other case studies from around the world and documents their approaches and early results. As they are still in early stages of development, there is little empirical data undergirding the case for online courts. However, as time progresses, I imagine the data sets will become richer and will likely bolster Susskind’s core arguments.

He then looks to the horizon at what future technologies may eventually enter the equation including artificial intelligence, 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 does a good job clearly laying out the contours of AI as they are currently understood, then explores how these approaches could eventually lead us toward a digital judge.

Susskind ends the book by noting that 54% 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, Susskind observes, our joint task will be to ensure every human’s right to respect and dignity is enshrined in and enforceable by the 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 what his new granddaughter, Rosa, will think about the book when she turns 21 in 2039. He asks whether "Rosa will 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 sense for much of the work of the courts to be conducted online." In hindsight, from Rosa's future perspective, it may seem obvious that online courts were inevitable. But from our current perspective, this book is an important step toward making that future become a reality.

### Competing Interests

The author is President and CEO of Mediate.com based in Eugene, Oregon, USA. He was previously Vice President of Online Dispute Resolution, Tyler Technologies, San Jose, California USA. Tyler Technologies is a sponsor of the IACA journal.

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