

NOTES

Preface to Paperback

1. See n.5, p.305.
2. www.remotecourts.org. The service is a joint effort, hosted by the Society for Computers and Law, funded by LawTech UK, and supported by Her Majesty's Courts & Tribunals Service.
3. Natalie Byrom, Sarah Beardon, and Abby Kendrick, 'The impact of COVID-19 measures on the civil justice system', May 2020, available at <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf>
4. This subject is addressed at pp.208–210.
5. See Jane Flanagan, 'Man is sent to death row via Zoom', *The Times*, 14 May 2020, available at <https://www.thetimes.co.uk/article/man-is-sent-to-death-row-via-zoom-fkhs7h0d3>
6. <https://www.supremecourt.uk/>
7. <https://www.jcpc.uk/>
8. <https://www.supremecourt.uk/watch/lord-reed/the-supreme-court-during-lockdown.html>
9. <https://www.supremecourt.uk/watch/lord-reed/the-supreme-court-during-lockdown.html>
10. See n.14, p.310.
11. See, for example, the work in the UK of JUSTICE at <https://justice.org.uk/our-work/justice-covid-19-response/>
12. *Trial by Jury*, (London: Stevens & Sons, 1956), p.164
13. to <https://technation.io/lawtechuk/>
14. This preface is based on 'The Future of Courts', a paper that was published online by Harvard Law School, in *The Practice* Vol 6, Issue 5, July/August 2020, 2. My thanks to Bryon Fong, Christy O'Neil, Mark Ormerod, Lord Reed, Timothy Shea, Jamie Susskind, and David Wilkins for their comments on earlier drafts.

Introduction

1. Cited in Thomas Kuhn, *The Structure of Scientific Revolutions* (1996), p. 151.
2. *The Future of Law* (1996).
3. See Richard Susskind and Daniel Susskind, *The Future of the Professions* (2015).
4. Quotation from welcoming speech at the First International Forum on Online Courts, held in London in December 2018. See Richard Susskind, 'Making the Case for Online Courts' (2018).
5. See <https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf> (accessed 26 April 2019).
6. See <http://data.worldjusticeproject.org/> (accessed 26 April 2019) where Brazil is ranked 58 out of 126 countries in the WJP Rule of Law Index.
7. See Clayton Christensen, *The Innovator's Dilemma* (1997).
8. Most notably, Joshua Rozenberg at 'The Online Court: Will IT Work?' (2019), and Roger Smith at <https://law-tech-a2j.org/author/rogersmith/> (accessed 26 April 2019).

Chapter 1

1. Lord Bingham, *The Rule of Law* (2010), p. vii.
2. I have relied particularly on Lord Bingham, *The Rule of Law* (2010); Hans Kelsen, *General Theory of Law and State* (1945); Herbert Hart, *The Concept of Law* (2012); Lon Fuller, *The Morality of Law* (1969); and Richard Posner, *How Judges Think* (2008). I have also been helped by the insights of the World Justice Project, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018> (accessed 26 April 2019).
3. Hazel Genn, *Judging Civil Justice* (2010), pp. 115–16. Original emphasis.
4. *Ibid.*, p. 117. Original emphasis.
5. Ronald Dworkin, *Law's Empire* (1986), p. 229.
6. For an important related discussion of the consequences for law of various 'truisms' about human beings and 'human nature', see Herbert Hart, *The Concept of Law* (2012) pp. 192–200.
7. Aristotle, *Nicomachean Ethics* (1999), Book VIII, Ch. 1, 120.
8. Hart, *The Concept of Law* (2012), pp. 125–6.

Chapter 2

1. See <https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf> (accessed 26 April 2019): '4 billion people around the world

- live outside the protection of the law'. This in 2016, when the world population was 7.4 billion.
2. See <https://www.internetworldstats.com/stats4.htm> (accessed 26 April 2019)
 3. HiiL, *Understanding Justice Needs: The Elephant in the Courtroom* (2018), pp. 6 and 30.
 4. United Nations Global Study of Legal Aid (2016), pp. 2–3, available at https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf (accessed 26 April 2019).
 5. See, e.g., TheCityUK's report, 'Legal Excellence, Internationally Renowned: UK Legal Services 2018', available at <https://www.thecityuk.com/research/legal-excellence-internationally-renowned-uk-legal-services-2018/> (accessed 26 April 2019).
 6. Hazel Genn, *Judging Civil Justice* (2010), p. 51
 7. Ministry of Justice, 'Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf (accessed 26 April 2019).
 8. Lord Bach, *Right to Justice: the Final Report of the Bach Commission* (September 2017), p. 12, available at http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf (accessed 26 April 2019).
 9. Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Conflict* (2017), p. 67.
 10. See <https://www.statista.com/topics/2333/e-commerce-in-the-united-kingdom/> (accessed 26 April 2019).
 11. See Richard Susskind, *The Future of Law* (1996), Ch. 1.

Chapter 3

1. In previous books, I have called this 'innovation' but that term is now so widely over-used that I have jettisoned it, at least for now. See, e.g., Richard Susskind, *The End of Lawyers?* (2008); Richard Susskind, *Tomorrow's Lawyers* (2017); and Richard Susskind and Daniel Susskind, *The Future of the Professions* (2015).
2. The classic book on disruption (another over-used term) is Clayton Christensen, *The Innovator's Dilemma* (1997).

3. See Richard Susskind and Daniel Susskind, *The Future of the Professions* (2015), Ch. 4.
4. See *ibid.*
5. Ray Kurzweil, *The Singularity is Near* (2005), p. 127.
6. Daniel Susskind, *A World Without Work* (2020), Ch. 5.
7. Marco Iansiti and Karim Lakhani, 'The Truth about Blockchain' (2017), p. 118.
8. See Jamie Susskind, *Future Politics* (2018), p. 43.
9. <https://www.sermo.com> and <https://www.patientslikeme.com> (accessed 26 April 2019).
10. <https://www.linuxfoundation.org> (accessed 26 April 2019).
11. Robert Gordon, *The Rise and Fall of American Growth* (2016), Ch. 17.
12. Ray Kurzweil, *The Singularity is Near* (2005), p. 9.
13. Richard Susskind, *The Future of Law* (1996), pp. 91–6.
14. *Ibid.*, pp. 285–92.
15. See Richard Susskind and Daniel Susskind, *The Future of the Professions* (2015).

Chapter 4

1. Since first writing and thinking about outcome-thinking, I read Seth Godin, *This is Marketing* (2018), which led to me include the emotional dimension. Chapter 3 of his book is especially useful.
2. See Hazel Genn, 'Online Courts and the Future of Justice' (2017), p. 8.
3. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1998), Book IV Ch.VIII, 49.
4. Cited in Daniel Susskind, *A World Without Work* (2020), Ch. 6.

Chapter 5

1. Judith Resnik and Dennis Curtis, *Representing Justice* (2011).
2. See, e.g., Penelope Gibbs, 'Defendants on Video—Conveyor Belt Justice or a Revolution in Access' (October 2017).
3. Oliver Wendell Holmes, in *Southern Pacific Company v Jensen*, 244 U.S. 205, 222 (1917) (he was referring to the common law).
4. On asynchronous process, see Ayelet Sela, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation' (2016), p. 360.

5. Decomposition in legal services is discussed more fully in Richard Susskind, *The End of Lawyers?* (2008), pp. 42–52 and Richard Susskind, *Tomorrow's Lawyers* (2017), pp. 32–42.

Chapter 6

1. Franz Kafka, *A Country Doctor* (1997), pp.29–33 and Franz Kafka, *The Trial* (1983), pp. 235–43.
2. Lord Woolf, *Access to Justice—Interim Report* (1995) and Lord Woolf, *Access to Justice—Final Report* (1996).
3. See Richard Susskind, *The End of Lawyers?* (2008), Ch. 7.
4. Quoted by Jerome Frank, 'Some Reflections on Judge Learned Hand' (1957), p. 675.
5. Herbert Hart, *The Concept of Law* (2012), Ch.V.

Chapter 7

1. Plato, *The Republic* (2007), p. 8.
2. Lord Devlin, *The Judge* (1981), p. 84. Original emphasis.
3. This takes us into a longstanding discussion in the field of jurisprudence, between 'legal positivists', who will generally argue there is no necessary connection between the law and morality, and 'natural lawyers' who argue that for any law to be valid it must have some minimum moral content. See Herbert Hart, 'Positivism and the Separation of Law and Morals' (1958).
4. For an accessible introduction to ethics and meta-ethics, see John Mackie, *Ethics* (1990).
5. Richard Posner, *How Judges Think* (2008), p. 88.
6. For a richer analysis of procedural justice, distinguishing between 'perfect procedural justice', 'imperfect procedural justice', and 'pure procedural justice', see John Rawls, *A Theory of Justice*, (1972), Ch. II, Section 14. The current approach most closely resembles Rawls's conception of 'pure procedural justice'.
7. Tom Tyler, 'Court Review: Volume 44, Issue 1/2—Procedural Justice and the Courts' (2007).
8. Michael Sandel, *Justice* (2009), p. 19.
9. There is some overlap in this book with proportionate justice as discussed in John Sorabji, *English Civil Justice after the Woolf and Jackson Reforms* (2014), pp. 136–7.

Chapter 8

1. Tom Campbell, *Justice* (2001), p. 3. Original emphasis.
2. Lord Devlin, *The Judge* (1981), p. 3.
3. Amartya Sen, *The Idea of Justice* (2009), pp. 5–7. Emphasis added.

Chapter 9

1. Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (2015). As well as this report, our group set up a website with related materials at <https://www.judiciary.uk/reviews/online-dispute-resolution/> (accessed 26 April 2019).
2. Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (2015), p. 5.
3. See Colin Rule, 'Designing a Global Online Dispute Resolution System: Lessons Learned from eBay' (2017).
4. Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (2015), p. 8.
5. Richard Susskind, 'Online Disputes: Is it Time to End the 'Day in Court'?' (26 February 2015).
6. JUSTICE, *Delivering Justice in an Age of Austerity* (2015).
 7. Michael Gove, 'What does a one nation justice policy look like?' (23 June 2015), available at <https://www.gov.uk/government/speeches/what-does-a-one-nation-justice-policy-look-like> (accessed 26 April 2019).
 8. Lord Thomas, 'Judicial Leadership' (22 June 2015).
 9. HM Treasury, *Spending Review and Autumn Statement* (25 November 2015), available at <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents> (accessed 26 April 2019).
10. Lord Briggs, *Civil Courts Structure Review: Interim Report* (2015).
11. Lord Briggs, *Civil Courts Structure Review: Final Report* (2016).
12. Lord Chancellor et al., 'Transforming our Justice System' (2016).
13. On family work, see Sir James Munby, 'The Family Bar in a Digital World' (2018). On tribunal work, see Sir Ernest Ryder, 'Modernisation of Access to Justice in Times of Austerity' (2016).
14. See Lord Denning, 'Law and Life in our Time' (1967), p. 354.

15. See Richard Susskind, 'Lawyers and Coders Hack Away Dead Wood for Digital Courts' (2017).
16. See Richard Susskind, 'Making the Case for Online Courts' (2018).
17. Richard Susskind, *The Future of Law* (1996).
18. See, e.g., The Engine Room, 'Technology for Legal Empowerment: A Global Review' (2019), and <https://justiceinnovation.law.stanford.edu/> (accessed 26 April 2019).

Chapter 10

1. Legal Services Act 2007.
2. In the Civil Justice Council report, we used the term 'resolution' in respect of Tier 3 decision-making. I now prefer 'determination' to 'resolution' because 'resolution' can be confused with ADR and ODR. More, 'resolution' is also used to refer to the fourth layer of the access to justice model. See Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (2015).

Chapter 11

1. Lord Briggs, *Civil Courts Structure Review: Final Report* (2016), pp. 49–50.
2. I am indebted to Roger Smith who introduced me in this context to the phrase, 'turning a mess into a problem.'
3. Tim Brown and Roger Martin, 'Design for Action' (2015).
4. See <https://justiceinnovation.law.stanford.edu> (accessed 26 April 2019). Also very useful in this connection but not written from a design thinking perspective, is JUSTICE, *Understanding Courts* (2019).
5. See Ayelet Sela, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation' (2016).
6. Atul Gawande, *The Checklist Manifesto* (2007).
7. See Phillip Capper and Richard Susskind, *Latent Damage Law—The Expert System* (1988).
8. Darin Thompson, 'Creating New Pathways to Justice Using Simple Artificial Intelligence and Online Dispute Resolution' (2015).
9. See <https://www.resolver.co.uk> (accessed 26 April 2019).

10. See, e.g., the following systems in the UK—<https://www.advicenow.co.uk>, <https://www.citizensadvice.org.uk/>, and <https://englandshelter.org.uk/> (accessed 26 April 2019).
11. <https://www.patientslikeme.com> (accessed 26 April 2019).
12. Richard Susskind, *The Future of Law* (1996), pp. 23–7.
13. Jeremy Bentham, *Of Laws in General* (1970), p. 71.

Chapter 12

1. See <https://www.financial-ombudsman.org.uk/publications/annual-review-2018/PDF/data-in-more-depth.pdf>, p. 59 (accessed 26 April 2019).
2. See Graham Ross, ‘First case in the Online Court to be Resolved by Algorithm’ (2019).
3. Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (2015), p. 18.

Chapter 13

1. Sir Ernest Ryder, ‘The Modernisation of Access to Justice in Times of Austerity’ (2016).
2. Richard Susskind, *Expert Systems in Law* (1987), pp. 245–51.
3. Jerome Frank, *Courts on Trial* (1949), pp. 221–4.
4. Jerome Frank, ‘Cardozo and the Upper Court Myth’ (1948), p. 386.
5. Richard Susskind, ‘Management and Judges’ (2003).

Chapter 14

1. What constitutes a hard case and what constitutes a clear case is itself quite a hard question. See Richard Susskind, *Expert Systems in Law* (1987), pp. 245–51.
2. For example, in Richard Susskind, *Tomorrow’s Lawyers* (2017), pp. 47–8.
3. Sadly, that research seems to have been lost in the mists of time but I well recall the number, ‘18’.
4. <https://www.resolver.co.uk> (accessed 27 April 2019).

Chapter 15

1. An updated version of my doctorate was published as Richard Susskind, *Expert Systems in Law* (1987).

2. Phillip Capper and Richard Susskind, *Latent Damage Law—The Expert System* (1988).
3. Lawrence Lessig, *Code Version 2.0* (2006). For further elaborations on Lessig's work on 'code', see Jamie Susskind, *Future Politics* (2018), Ch. 5.

Chapter 16

1. I have used this quotation from Gibson in three earlier books. See, e.g., Richard Susskind, *The End of Lawyers?* (2008), p. 145.
2. Eril Niller, 'Can AI be a Fair Judge in Court? Estonia Thinks So' (2019).
3. See, e.g., HMCTS, 'Reform Update' (Autumn 2018)—https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772549/Reform_Update_issue_2_September_2018.pdf.
4. See Senior President of Tribunals, 'The Modernisation of Tribunals—Innovation Plan for 2019/2020' (2019), available at <https://www.judiciary.uk/wp-content/uploads/2019/04/InnovationPlanFor2019-20Copy.pdf> (accessed 27 April 2019).
5. <https://civilresolutionbc.ca> (accessed 27 April 2019).
6. Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal' (2017).
7. <https://civilresolutionbc.ca/wp-content/uploads/2019/03/Technical-Briefing-March-29-2019.pdf> (accessed 27 April 2019).
8. <https://www.trafficpenaltytribunal.gov.uk/> (accessed 27 April 2019). Also see John Aitken, 'Lessons from a Trailblazer Model' (Autumn 2016).
9. <https://www.netcourt.gov.cn/portal/main/en/index.htm> (accessed 27 April 2019).
10. Xuhui Fang, 'Recent Development of Internet Courts in China' (2018).
11. The Supreme People's Court of the People's Republic of China, 'Court Reform in China', White Paper, (14 March 2017)—http://english.court.gov.cn/2017-03/14/content_28552928.htm (accessed 27 April 2019).
12. http://www.courts.justice.nsw.gov.au/Pages/cats/catscorporate_online_services/onlinecourt.aspx (accessed 27 April 2019).
13. <http://www.fedcourt.gov.au/online-services/ecourtroom> (accessed 27 April 2019).
14. <https://www.ncsc.org/2018survey> (accessed 27 April 2019).

15. <https://www.getmatterhorn.com> (accessed 27 April 2019).
16. Maximillian Bulinski and J.J. Prescott, 'Designing Legal Experiences: Online Communication and Resolution in Courts' (2019).
17. See, e.g., Avital Mentovich et al., 'Is Judicial Bias Inevitable? Courts, Technology, and the Future of Impartiality' (2019).
18. See Deno Himonas, 'Utah's Online Dispute Resolution Program' (2018).
19. https://www.govtech.com/civic/SXSW-2019-Utah-Pajama-Court-and-Resolving-Cases-Online.html?AMP&__twitter_impression=true (accessed 27 April 2019).

Chapter 17

1. Richard Susskind, *The Future of Law* (1996), p. 27.
2. See, e.g., Hazel Genn, 'Online Courts and the Future of Justice' (2017) and Natalie Byrom, 'Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice' (2019).

Chapter 18

1. See Lord Briggs, *Civil Courts Structure Review: Interim Report* (2015), p. 84.
2. Aristotle, *Politics*, Part XI, available at <http://classics.mit.edu/Aristotle/politics.3.three.html> (accessed 27 April 2019).

Chapter 19

1. See, e.g., the data published by the Civil Resolution Tribunal at <https://civilresolutionbc.ca> (accessed 27 April 2019).
2. Joseph Hutcheson, 'Judgment Intuitive: The Function of the Hunch in Judicial Decision' (1929).
3. Karl Llewellyn, 'Some Realism about Realism: Responding to Dean Pound' (1931).
4. See Sue Prince, "'Fine Words Butter No Parsnips": Can the Principle of Open Justice Survive the Introduction of the Online Court?' (2019), p. 118.

Chapter 20

1. Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf%23page=9 (accessed 27 April 2019).
2. European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (civil limb)* (2018), available at https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf (accessed 27 April 2019).
3. Susan Schiavetta, 'The Relationship Between e-ADR and Article 6 of the European Convention of Human Rights pursuant to the Case Law of the European Court of Human Rights' (2004).
4. European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (civil limb)* (2018), p. 72.
5. Susan Schiavetta, 'The Relationship Between e-ADR and Article 6 of the European Convention of Human Rights pursuant to the Case Law of the European Court of Human Rights' (2004), Section 5.
6. Andrew Langdon, 'Inaugural Address' (2016).
7. For a compelling discussion of this point, see Mentovich et al., 'Is Judicial Bias Inevitable? Courts, Technology, and the Future of Impartiality' (2019).
8. Lord Briggs, *Civil Courts Structure Review: Interim Report* (2015), p. 4.
9. Andrew Langdon, 'Inaugural Address' (2016).
10. Irvin Yalom, *Becoming Myself* (2017), p. 305.
11. Andrew Langdon, 'Inaugural Address' (2016).
12. Quoted by Lord Devlin, *The Judge* (1981), p. 63.
13. *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm), para. 22.
14. See Daniel Susskind, *A World Without Work* (2020), Ch. 5.
15. Irvin Yalom, *Becoming Myself* (2017), p. 306.
16. Ibid.
17. <https://www.talkspace.com> (accessed 27 April 2019).
18. Irvin Yalom, *Becoming Myself* (2017), p. 307.
19. Ibid., p. 308. Original emphasis.
20. Ibid., p. 309.