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Conclusion

Digitalisation in the context of the administrative justice system presents a wide variety of issues. The case studies in this book have demonstrated that. It is essential that the ongoing incursion of digital technology into administrative justice is not seen as some distinct field of interest and activity, but as part of the core business of those concerned with public law and administrative justice. There will be no satisfying overall answer or theory that can be developed in response to this incursion. In administrative justice, generalisations are often unhelpful and rarely true. Different instances of digitalisation – whether they are imposed as part of public service provision or arise organically from technological innovation – need to be considered in their particular institutional and political contexts.

Given this, this book has sought to provide a framework for analysing unfolding developments in the digitalisation of administrative justice, and not an overarching prescriptive theory. It has argued that analysis must reflect on how developments with digital technology fit into the central and long-stranding administrative justice concerns of evidence, politics, models and design. It has highlighted the urgent need to study closely the empirical consequences of technology and revisit, and maybe

even abandon, existing frameworks for understanding how administrative justice operates. By outlining this path forwards, I am essentially re-stating what Richard B. Stewart wrote at the end of his famous 1975 essay, ‘The reformation of American administrative law’, considering the role of administrative law in the context of a changing US state and polity: ‘[g]iven “the undefined foreboding of something unknown,” we can know only that we must spurn superficial analysis and simplistic remedies, girding ourselves to shoulder, for the indefinite future, the intellectual and social burdens of a dense complexity.’¹

At the conclusion of writing this book, the growing digitalisation of administrative justice was forming a subtle backdrop for headlines. A report published by the UN Special Rapporteur on Extreme Poverty and Human Rights, Professor Philip Alston, castigated the UK’s approach to welfare provision.² A key part of his findings related to the use of new technologies in administration. Professor Alston noted how ‘[g]overnment is increasingly automating itself with the use of data and new technology tools, including AI. Evidence shows that the human rights of the poorest and most vulnerable are especially at risk in such contexts.’³ Among complaints of a lack of transparency and concerns about legal frameworks concerning data, Professor Alston saw fit to remind the government that: ‘there is nothing inherent in Artificial Intelligence and other technologies that enable automation that threatens human rights and the rule of

¹ Stewart, Richard B. (1975) ‘The reformation of American administrative law’, *Harvard Law Review*, 88(8), 1667, p 1813. Citing Hegel, Georg (1949) *The Phenomenology of Mind* (2nd edn, translated by J. Baillie), Mineola, NY: Dover Publications, p 75.

² UN OHCHR (United Nations Office of the High Commissioner, Human Rights) (2018) ‘Statement on Visit to the United Kingdom’, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, 16 November (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E).

³ *Ibid.*

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law. The reality is that governments simply seek to operationalize their political preferences through technology; the outcomes may be good or bad.⁴

The team at the DWP, while busy disputing the Special Rapporteur's findings, were also dealing with a ministerial transition.⁵ The Minister for Work and Pensions in post during the week of Professor Alston's visit to the UK, Esther McVey MP, had resigned from the Cabinet in protest over the handling of Brexit negotiations. Brexit itself will represent another step towards reliance on digital administration in the UK. Given the amount of administrative change required in a small amount of time, it is hardly surprising that technology is being relied upon to manage the transition.⁶ One major example is the EU Settlement Scheme, which has been established to enable EU citizens and their family members, currently residing within the UK, to apply for settled status following the UK's expected withdrawal from the EU.⁷ To apply, applicants must complete an online application.⁸ As part of this process, individuals must demonstrate a continuous period of residency within the UK, where they have not been absent from the country for more than 6 months within any 12-month period.⁹ To confirm and

⁴ Ibid.

⁵ See, for example, Walker, Peter (2018) 'Amber Rudd condemns UN poverty report in combative return to frontline politics', *The Guardian*, 19 November (www.theguardian.com/politics/2018/nov/19/amber-rudd-un-poverty-report-return-frontline-politics).

⁶ See, generally, Tomlinson, Joe and Lovdahl Gormsen, Liza (2018) 'Stumbling towards the UK's new administrative settlement: A study of competition law enforcement after Brexit', *Cambridge Yearbook of European Legal Studies*, 20, 233–51.

⁷ Home Office (2018) *EU Settlement Scheme: EU Citizens and Their Family Members*, 1 November (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf).

⁸ Ibid.

⁹ Ibid, p 39.

establish this period of residency, the Home Office are deploying automated checks that engage tax and welfare databases and systems.¹⁰ Where it has been algorithmically determined that an applicant has not met the requirements, they must then provide evidence to the contrary. These recent developments only reiterate further the urgency of analysing what digital technology means for administrative justice. My hope is that the discussion in this book has brought attention to, and provided a framework to understand and analyse, the wide variety of important challenges presented by ensuring justice in an increasingly digital state.

¹⁰ *Ibid*, pp 41, 50.