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To cite this article: Amanda Perry-Kessaris, Mohsin Alam Bhat & Joanna Perry (2023) Conceptual experimentation through design in pedagogical contexts: lessons from an anti-hate crime project in India, *The Law Teacher*, 57:4, 437-457, DOI: [10.1080/03069400.2023.2275496](https://doi.org/10.1080/03069400.2023.2275496)

To link to this article: <https://doi.org/10.1080/03069400.2023.2275496>



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Published online: 24 Nov 2023.



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Conceptual experimentation through design in pedagogical contexts: lessons from an anti-hate crime project in India

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ABSTRACT

This paper explores how modes of thinking and practice that are characteristic of design-based disciplines – “designerly ways” – might contribute to the migration and integration of legal concepts, by prompting and facilitating conceptual experimentation in pedagogical contexts. It uses the example of a project which invited those working against targeted violence in India to experiment with the concept of “hate crime” – that is, of crimes motivated by hostility or prejudice towards the victim’s identity. It concludes that conceptual experimentation is especially useful and urgent when debating the risks and rewards around the migration of globally established legal concepts, such as hate crime, into specific local contexts, such as India; and especially where the sociolegal context renders such debate risky. And it concludes that designerly ways can help to ensure that any such migration is “provincialised”, and the concept itself is enriched in the process.

ARTICLE HISTORY Received 24 May 2023; Accepted 23 October 2023

KEYWORDS Legal design; hate crime; conceptual experimentation; provincialised migration; India

Introduction

“Concepts are important as thinking tools at all levels of practical legal activity as well as in academic law and legal philosophy”.¹ To understand the potential meanings and practical impacts of a concept we must experiment with it. And because concepts are not found, they are made, it makes sense to think of concepts themselves as “experimental explanations”² – all the more so given that every globalising day brings new reasons to question “the adequacy of our

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¹William Twining, “Have Concepts, Will Travel: Analytical Jurisprudence in Global Context” (2005) 1 *International Journal of Law in Context* 5, 6.

²Margaret Davies, *Law Unlimited* (Routledge 2017) 14.

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existing stock of concepts for a huge variety of tasks at many levels”.³ A willingness and ability to experiment does not always come naturally, and experimentation can be especially difficult to attempt in contexts that are either extremely chaotic, so that we do not feel sufficiently held, or extremely rigid, so that we do not feel sufficiently free.⁴ But it is possible to prompt and facilitate conceptual experimentation by proactively maintaining an appropriate balance between structure and freedom.⁵

This paper explores how we can generate a sense of structured freedom in pedagogical contexts by deploying “designerly ways”⁶ – that is, modes of thinking and practice that, although not individually exclusive to, are together characteristic of design-based disciplines. It uses the example of a project in which activists, lawyers, researchers and journalists working on targeted violence in India were invited to experiment with the concept of “hate crime” (henceforth “India project”).⁷

We begin with an introduction to the internationally established concept of hate crime; to Indian thinking and practice around this and other adjacent concepts; and to the idea that the “migration” of any concept between any contexts is a multi-directional and indeterminate process, involving a high degree of experimentation. Next we outline how the India project drew on designerly ways to proactively prompt and facilitate activist participants, working in a pedagogical context, to experiment with the concept of hate crime; and we draw upon participant feedback to reflect upon the risks and rewards.⁸ We conclude that designerly ways can contribute to the migration and integration of legal concepts such as hate crime, by providing a structured-yet-free pedagogical ecosystem that enables practical, critical and imaginative experimentation. Such experimentation is particularly pertinent, useful and urgent in contexts such as India where the hate crime concept is novel and not legally incorporated, and where social and political mobilisation against acts of hate crime is risky. Annelise Riles draws attention to the “empowered and empowering” process by which legal concepts “pas[s] from one set of legal hands to another”, and to the “ability” of legal concepts “to go on”. In this passing and in this going on lie the potential of legal concepts to be “hopeful”.⁹ But such a sense of hope is surely predicated on a sense of agency and inclusion. So we further conclude that designerly ways can prompt and facilitate the enrichment of global understanding of the hate crime concept by inviting stakeholders beyond global centres to critique, reinterpret and innovate internationally established concepts, to widen their appeal, legitimacy and practical utility.

³Twining (n 1) 6.

⁴See Yoko Akama, Sarah Pink and Shanti Sumartojo, *Uncertainty and Possibility: New Approaches to Future Making in Design Anthropology* (Bloomsbury Academic Press 2018).

⁵Amanda Perry-Kessariss, “The Pop-Up Museum of Legal Objects Project: An Experiment in ‘Sociolegal Design’” (2017) 68 Northern Ireland Legal Quarterly Special Issue on the Pop-up Museum of Legal Objects 225.

⁶Nigel Cross, “Designerly Ways of Knowing” (1982) 3 Design Studies 221.

⁷The India project was supported by the Research Activities Fund of the Society of Legal Scholars, which is a UK-based learned society; and by CEJI – a Jewish contribution to an inclusive Europe (CEJI), which is a non-governmental organisation that “stands with people of all backgrounds to promote a Europe of diversity and respect”: CEJI website <<https://ceji.org>> accessed 20 October 2023.

⁸Participant feedback was gathered from contributions to an online discussion forum (n = 41 posts in three forum activities), a post-event online survey (n = 13) and one-to-one interviews (n = 12), as well as observations from individual and collective investigator reflections.

⁹Annelise Riles, “Is the Law Hopeful?” in Hirokazu Miyazaki and Richard Swedberg (eds), *The Economy of Hope* (University of Pennsylvania Press 2016) 144.

Hate crime as migratory concept

The term “hate crime” originated among civil rights activists in the United States in the 1990s and captures those crimes that are motivated by hostility or prejudice towards the victim’s identity. It is generally deployed as both a positive description of a category of offences that are characterised by bias, including some of the impact of those offences; and a normative prescription to respond with enhanced punishment, victim support and community engagement.¹⁰

The concept of hate crime has increasingly become integrated into the global human rights agenda. It has generated a “new conceptual typology of violence”, and with it new legal “spaces” in which publics/stakeholders can work to address it as an empirical reality.¹¹ There is a vibrant academic debate about whether hate crimes in and of themselves amount to human rights violations.¹² But there is complete consensus that hate crime is an important human rights issue today, and an emerging expectation that states are under an obligation to treat such discriminatory crimes distinctly and with fitting scrutiny.¹³

International human rights instruments generally prohibit racial discrimination,¹⁴ and mandate states to “take all appropriate measures to combat intolerance on the grounds of religion”.¹⁵ Specifically, Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 requires states to take “positive measures” to make “all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” an offence under their laws; and Article 20(2) of the International Covenant on Civil and Political Rights 1966 directs states to prohibit “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. The two most recent declarations of the United Nations Congress on Crime Prevention and Criminal Justice in 2015 and 2021 have included resolutions addressing hate crime. Specifically, the 2021 Kyoto Declaration mandates states to “develop effective strategies” to “prevent, investigate and prosecute hate crimes” and “engage effectively with victims and victim communities”.¹⁶

The region in which the concept of hate crime has been most extensively developed is Europe. The European Court of Human Rights (ECtHR) has repeatedly found that the European Convention on Human Rights (ECHR) imposes a duty to investigate discriminatory violence, and the breach of that duty constitutes a violation of victims’ right to

¹⁰Joanna Perry, “Evidencing the Case for ‘Hate Crime’” in Neil Chakraborti and Jon Garland (eds), *Responding to Hate Crime: The Case for Connecting Policy and Research* (The Policy Press 2014); Joanna Perry, “The Migration and Integration of the Hate Crime Approach in India” (2014) 11(1) *Jindal Global Law Review* 7.

¹¹Amanda Perry-Kessaris and Joanna Perry, “Enhancing Participatory Strategies with Designery Ways for Sociological Impact: Lessons from Research Aimed at Making Hate Crime Visible” (2020) 29 *Social and Legal Studies* 835, 839.

¹²See Thomas Brudholm, “Hate Crimes and Human Rights Violations” (2015) 32 *Journal of Applied Philosophy* 82.

¹³Mark Austin Walters, *Criminalising Hate: Law as Social Justice Liberalism* (Springer 2022).

¹⁴International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTC 171 (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTC 195 (CERD).

¹⁵Article 4 UNGA Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief UN (1981) Doc A/RES/36/55.

¹⁶UNGA Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development, UN Doc A/RES/76/181 (adopted 11 January 2022) (Kyoto Declaration), para 91. See also UNGA Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation UN Doc A/RES/70/174 (adopted 31 March 2015) (Doha Declaration), para 5(q).

life and the right to freedom from torture.¹⁷ Relying on data from national NGOs and international bodies, the ECtHR has repeatedly noted that hate crimes are mainly committed against minority groups, and asserted that they must be investigated and prosecuted as such in order “to reassert, continuously, society’s condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence”.¹⁸ For instance, in the *Nachova* case the ECtHR held that states “have the additional duty ... to unmask any racist motive”, and to “establish whether or not ethnic hatred or prejudice may have played a role in the events”. Not doing so and treating hate crimes “on an equal footing with cases that have no racist overtones” would, argued the Court, ignore “the specific nature” of such crimes, and consequently violate the “right to life” (Article 2) and “prohibition of discrimination” (Article 14) under the European Convention on Human Rights. Furthermore, the Court noted that criminal acts motivated by ethnic or racial hatred “require particular vigilance”. This includes collecting and securing relevant evidence, and exploring “all practical means of discovering the truth and deliver[ing] fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence”.¹⁹

Meanwhile, the Organization for Security and Cooperation in Europe (OSCE) has devoted substantial attention to hate crime because it sees it as “creat[ing] cycles of violence and retaliation” that undermine community cohesion and put security at risk.²⁰ It defines hate crimes as “criminal acts committed with bias motives”,²¹ meaning that the perpetrator intentionally chooses the target – whether that be one or more people, or property – because of some “protected characteristic” such as “‘race’, language, religion, ethnicity, nationality, or any other similar common factor”.²²

There is a general lack of empirical clarity around the prevalence and impact of hate crime due in large part to conceptual divergence around what acts and “protected characteristics” are captured within the definition of hate crime, as well as technical divergence in the recording and sharing of data by national authorities.²³ However, systematic data gathering has been underway by intergovernmental organisations in Europe, particularly the OSCE and the European Union Agency for Fundamental Rights (FRA) since 2009, and is now becoming an EU priority.²⁴ Furthermore, recent years have seen an increased focus on building capacity in the public sector and civil society to tackle hate crime across Europe.²⁵

¹⁷See *Šečić v Croatia* App no 40116/02 (ECtHR, 31 May 2007); *Angelova and Iliev v Bulgaria* App no 55523/00 (ECtHR, 26 July 2007); *Milanović v Serbia* App no 44614/07 (ECtHR, 14 December 2010); *Dordević v Croatia* App no 41526/10 (ECtHR, 24 July 2012); *Identoba and Others v Georgia* App no 73235/12 (ECtHR, 12 May 2015).

¹⁸European Union Agency for Fundamental Rights (FRA), *Unmasking Bias Motives in Crimes: Selected Cases of the European Court of Human Rights* (FRA 2018) 3.

¹⁹European Court of Human Rights (Grand Chamber), *Nachova and Others v Bulgaria*, nos 43577/98 and 43579/98 (Judgment of 6 July 2005), paras 155, 158 and 159.

²⁰OSCE-ODIHR, *Hate Crime Laws: A Practical Guide* (OSCE-ODIHR 9 March 2009) 7.

²¹OSCE Ministerial Council Decision No 9/09 on Combating Hate Crimes (2009).

²²OSCE-ODIHR (n 20) 16. Emphasis in original.

²³Joanna Perry, “A Shared Global Perspective on Hate Crime?” (2016) 27 *Criminal Justice Policy Review* 610.

²⁴For example, the European Commission has established a significant funding programme to support responses to hate crime in Member States along with a High level Group on Hate Crime and Hate Speech: European Commission Newsroom, “A EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance” (18 March 2019) <<https://ec.europa.eu/newsroom/just/items/51025>> accessed 20 October 2023. See also OSCE hate crime website <<https://hatecrime.osce.org/>> and FRA hate crime website <<https://fra.europa.eu/en/themes/hate-crime>> accessed 20 October 2023.

²⁵For a detailed overview of international standards and efforts in the area see Joanna Perry, “A Shared Global Perspective on Hate Crime?” (2016) 27 *Criminal Justice Policy Review* 610; and Joanna Perry, “The Migration and Integration of the Hate Crime Approach in India” (2020) 11(1) *Jindal Global Law Review* 7.

Scholars have now started paying attention to the “internationalisation” or “globalisation” of the concept of hate crime. National level attention to targeted violence, and adherence to hate crime as a legal concept, varies considerably. Recent compilations suggest that the countries in North America and Western Europe now have relatively well-established hate crime regimes, and several countries in Africa, Asia and South America have incorporated laws specifically addressing hate crimes.²⁶

In India, the tendency has been to rely not on hate crime but rather on a rich array of local conceptualisations.²⁷ India has a long history of inter-community violence in the form of both large-scale sectarian conflict and localised attacks on vulnerable minorities. The partition of the country in 1947 on the lines of religion led to mass killings across religious lines and entrenched deep social cleavages, especially among the majority Hindu and minority Muslim communities; and there is a history of violence against the small Christian minority, particularly on the alleged grounds of religious conversions. But caste violence against subordinated caste groups (Dalits) is the most significant and widespread everyday form of violence, and such targeted violence is currently on the rise.²⁸ Furthermore, there is evidence of local state (including police) complicity in many crimes, which has aggravated concerns of institutional bias against minorities.²⁹ There is a growing feeling of unease and embattlement among human rights advocates, especially since the election of the right-wing Bharatiya Janata Party in 2014.

India has a secular constitution and a common law-inspired legal system, including key equality and anti-discrimination rights; as well as a well-developed legal culture and active civil society. While India has not incorporated an explicit “hate crime” legislative framework, its legal policies against targeted violence share similarities with it.³⁰ The most significant is legislation against caste violence, especially the Atrocities Act 1989, which provides special procedures and enhanced punishments in cases of caste crimes against Dalits and indigenous communities. Indian criminal law does not incorporate similar provisions against religious violence, but it does provide for state authorities to proceed against persons who disrupt public order or create enmity against groups.³¹ Civil society actors have deployed this legal language, as well as the term “communal riots” to capture mass sectarian violence, in their advocacy and documentation work; and human rights activism has mushroomed, sustained by factors such as a historically independent higher judiciary as well as vibrant universities, social organisations, media and legal professionals. More recently, some Indian states have introduced penal

²⁶Walters (n 13). See also Dimosthenis Chrysikos, “Crimes Motivated by Intolerance and Discrimination: Overview of Trends and Responses at the National and International Levels” (United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders 2018, Resource Material No 108) 83.

²⁷Mohsin Alam Bhat and Neil Chakraborti, “Lost in Translation? Applying the Hate Crime Concept to an Indian Context” (2023) *Journal of Interpersonal Violence* (forthcoming).

²⁸Human Rights Watch, “India: Events of 2021” in *World Report 2022* (Human Rights Watch 2022); Naomi Barton, “89 Instances of Hate Crimes, Hate Speech Across Six North Indian States in Four Months” (*The Wire*, 9 March 2022) <<https://thewire.in/communalism/89-instances-of-hate-crimes-hate-speech-across-six-north-indian-states-in-four-months>> accessed 20 October 2023; Mohsin Alam Bhat, “Mob, Murder, Motivation: The Emergence of Hate Crime Discourse in India” (2020) 16 *Socio-Legal Review* 76.

²⁹Mohsin Alam Bhat, Vidisha Bajaj and Sanjana Kumar, “The Crime Vanishes: Mob Lynching, Hate Crime, and Police Discretion in India” (2020) 11(1) *Jindal Global Law Review* 33; Pritam Singh, “Institutional Communalism in India” in Mujibur Rehman (ed), *Communalism in Postcolonial India: Changing Contours* (Routledge India 2018) 78–100.

³⁰Mohsin Alam Bhat, “Hate Crime in India” (2020) 11(1) *Jindal Global Law Review* 1.

³¹*ibid.*

legislation against “mob lynching”.³² These laws address targeted mob violence against minorities, particularly on allegations of cow slaughter that have visibly proliferated since 2015.³³

How, if at all, might the globally established concept of hate crime contribute to local efforts to address targeted violence in India?

The case for provincialised conceptual migration

Sociolegal scholarship, not to mention the practical experiences of colonial and international development actors, tells us that instrumental attempts to “transplant”³⁴ legal concepts from one context into another tend to result in unexpected and undesired effects.³⁵ So it is more realistic, and morally justifiable, to think instead in the more nuanced terms of conceptual “migration”³⁶ between sociohistorical contexts – whether forced, spontaneous, or something in between. Meanwhile, legal anthropology urges us to decentre legal institutions and doctrinal analysis and to focus our attention on non-state spaces and actors, including social movements and grassroots activists. For example, Sally Engle Merry and co-authors have shown how human rights concepts migrate from “global sites of creation” to local contexts when activists “translate” and “vernacularise” them,³⁷ adapting and reframing them “in local terms” so that they “resonate” in the “new location”.³⁸

It is important to understand two features of this process of migration. First, the terminology of “migration” may suggest a uni-directional dynamic in which a global centre produces concepts that are subsequently translated into peripheries. But this is not so. For example, drawing on political scientist Angelos Sepos, we can say that legal concepts may indeed be “downloaded” from centre to periphery, but they may also “cross-loaded” between peripheries and “uploaded” from peripheries to centre.³⁹ Second, the concepts at the centre of this process are not necessarily stable. “[L]egal concepts [and] texts are not simply the product of a single act of creation by a powerful agent at a particular moment. They are also produced through the process of handing on from one legal actor to the next”.⁴⁰ For example, drawing on sociologists Terrence Halliday and Bruce Carruthers we can say that global legal concepts are continuously reconstructed in the course of “recursive cycles” of drafting and implementation, both in the centre and

³²Bhat, Bajaj and Kumar (n 29).

³³Human Rights Watch, ‘Violent cow protection India: Vigilante groups attack minorities’ (*Human Rights Watch*, 18 February 2019) <<https://www.hrw.org/report/2019/02/19/violent-cow-protection-india/vigilante-groups-attack-minorities>> accessed 17 November 2023.

³⁴Alan Watson, *Legal Transplants: An Approach to Comparative Law* 2nd Edition (University of Georgia Press 1993).

³⁵Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2005); Lynette C. Chua, ‘The Vernacular Mobilization of Human Rights in Myanmar’s Sexual Orientation and Gender Identity Movement’ (2015) 49 *Law & Society Review* 299; Gregory Massell, ‘Law and an Instrument of Revolutionary Change in a Traditional Milieu: The Case of Soviet Central Asia’ (1968) 2 *Law & Society Review* 179.

³⁶Perry, ‘The Migration and Integration of the Hate Crime Approach in India’ (n 25).

³⁷Sally Engle Merry and Rachel Stern, ‘The Female Inheritance Movement in Hong Kong: Theorizing the Local/Global Interface’ (2005) 46 *Current Anthropology* 387, 401.

³⁸Peggy Levitt and Sally Merry, ‘Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States’ (2009) 9 *Global Networks* 441, 448.

³⁹Angelos Sepos, *The Europeanization of Cyprus: Polity, Policies and Politics* (Palgrave Macmillan 2008).

⁴⁰Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021) 244.

the periphery.⁴¹ And these processes are not purely instrumental. State and non-state experts often work critically. They draw on local practices, values, interests, ambitions, constraints and histories to surface the limitations, weaknesses, biases and blind spots of both global and local concepts; and to activate, contain and adapt them.⁴²

One way to systematically recognise and accommodate these considerations around the direction and stability of conceptual migration is through the notion of “provincialisation”. For example, Dipesh Chakrabarty⁴³ has called for the “provincialization of Europe” – that is, for a proactive shift away from seeing Europe, including its realities and its imaginaries, as central; and towards seeing Europe as one among many equally valid and meaningful peripheries. To provincialise a concept is, then, both to adapt it to “local” circumstances, and to surface and address any “foreign” values and interests embedded within it.

As is so often the case in relation to human rights,⁴⁴ activists play a vital role in the conceptual migration and integration that must underpin any provincialisation process. However, activist-driven migration faces several challenges: in addition to political insecurity, institutional barriers and social resistance, it may also face ideational inertia towards new conceptual thinking. This is why the India project focused on how design-informed pedagogic experimentation among anti-hate activists and researchers can facilitate migration of hate crime; and why the insights it has generated are relevant for human rights law and policy training and practice more generally.

The design and implementation of the broader India project was motivated by several wide-angle, long-term questions. How might the globally established concept of hate crime be provincialised in and through Indian thinking and practice? What adaptations to the concept might be needed? How, if at all, might those adaptations and any resulting insights contribute to global understandings of and efforts to address targeted violence?

In this paper we focus on the narrower, short-term issue of how designerly ways can be used in a pedagogical context to prompt and facilitate the conceptual experimentation that is essential to provincialised migration.

Designerly ways with conceptual experimentation

The India project aimed to use designerly ways to make provincialised migration more “possible and probable” in a pedagogical context.⁴⁵ It started from the premises that the migratory concept of hate crime must, as a matter of pragmatics and of morality, be provincialised; that the dynamics of provincialisation are multi-directional; and that the outcomes are indeterminate. Innovation designers would identify provincialised conceptual migration as an “open, complex, networked and dynamic” process or situation⁴⁶ and, as such, ideally suited to the application of design-based methods.⁴⁷

⁴¹Terrence C Halliday and Bruce Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford University Press 2009). For a detailed consideration of the concepts of violence and peace see Johan Galtung, “Violence, Peace and Research” (1969) 6(3) *Journal of Peace Research* 167.

⁴²Chua (n 35).

⁴³Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press 2009).

⁴⁴Sally Engle Merry, “Human Rights and Transnational Culture: Regulating Gender Violence through Global Law” (2006) 44 *Osgoode Hall Law Journal* 53; Lynette C. Chua, “The Vernacular Mobilization of Human Rights in Myanmar’s Sexual Orientation and Gender Identity Movement” (2015) 49 *Law & Society Review* 299.

⁴⁵Ezio Manzini, *Design, When Everybody Designs* (MIT Press 2015).

⁴⁶Kees Dorst, *Frame Innovation: Create New Thinking by Design* (MIT Press 2015) *passim*.

⁴⁷Richard Buchanan, “Wicked Problems in Design Thinking” (1992) 8(2) *Design Issues* 5; Colin Burns and others, “Transformation Design” (Red Paper 2, Design Council 2005).

Designerly ways have in recent decades come to be regarded as a resource to address “problems” in a diverse array of other public, private and third sector fields, including legal practice⁴⁸ and legal education.⁴⁹ From a legal perspective, three characteristics of these ways stand out as distinctive, relevant and potentially useful.⁵⁰ First, is the designerly mindset, which is simultaneously practical – that is, able to make things happen; critical – that is, able to identify what is wrong and why; and imaginative – that is, able to conjure that which is not yet/still present. Second is the designerly emphasis on experimentation, both in the relatively “creative” sense of ideating, following leads and being provisional, and in the relatively “scientific” sense of testing hypotheses, discarding that which does not fit or work.⁵¹ Third, is the designerly emphasis on making ideas visible and/or tangible, not only in final designed artefacts, but also in drafts, sketches and prototypes that are made along the way as part of experimental processes.⁵² Together these ways can generate “structured-yet-free” spaces or “ecosystems” within which it may be more or differently possible to make and communicate sense of ideas, and of actual and potential empirical realities.⁵³

Designerly ways of making ideas visible and tangible in the context of experimental processes can offer a powerful mechanism for activating and enhancing conceptual imagination, while still attending to the importance of being practical and critical.⁵⁴ Traditional pedagogical approaches tend to promote “technical rationality, analysis and logic over other kinds of knowing”.⁵⁵ But Allison James and Stephen Brookfield argue that we ought to make more “space” for – to develop and value – our “personal antennae”, “intuition”, “gut feelings” and, most especially, imagination. We ought to activate and enhance the abilities of learners and teachers to experiment or “play” with existing ideas and new possibilities – to “embar[k] on a process in a spirit of optimistic trust”, not to be “afraid to suspend [their] disbelief when faced with the unexpected”,

⁴⁸For overviews of legal design see Margaret Hagan, “Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System” (2020) 36(3) *Design Issues* 3; Marcelo Corrales Compagnucci and others (eds), *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar 2021); Rossana Ducato and Alain Strowel (eds), *Legal Design Perspectives: Theoretical and Practical Insights from the Field* (LEDI Publishing 2021).

⁴⁹See for example Emily Allbon and Amanda Perry-Kessaris (eds), *Design in Legal Education* (Routledge 2022); Craig Collins, “Story Interface and Strategic Design for New Law Curricula” (2016) 50 *The Law Teacher* 98; Dan Jackson, “Human-Centered Legal Tech: Integrating Design in Legal Education” (2016) 50 *The Law Teacher* 82; Sanna Niinikoski and Nina Toivonen, “Legal Design in Education: Ways of Teaching and the Role of Different Disciplines in Building Legal Design Competence” in Corrales Compagnucci and others (n 48).

⁵⁰See further Amanda Perry-Kessaris, “Legal Design for Practice, Activism, Policy and Research” (2019) 46 *Journal of Law and Society* 185.

⁵¹See Tim Ingold, *Making: Anthropology, Archaeology, Art and Architecture* (Routledge 2013) 6–7.

⁵²John Zimmerman, Jodi Forlizzi and Shelley Evenson, “Research through Design as a Method for Interaction Design Research in HCI” in Mary Beth Rosson and David J. Gilmore (eds), *CHI 2007 Proceedings* (Extended Abstracts Proceedings of the 2007 Conference on Human Factors in Computing Systems, CHI 2007, San Jose, CA, ACM Press, 28 April–3 May 2007) 497.

⁵³Amanda Perry-Kessaris, *Doing Sociolegal Research in Design Mode* (Routledge 2021).

⁵⁴*ibid.* For examples of making legal ideas visible and tangible see the Fantasy Legal Exhibitions project <<https://amandaperrykessaris.org/2023/09/25/fantasy-legal-exhibitions/>> accessed 20 October 2023; Amanda Perry-Kessaris, “Could Alternative Econo-Legal Futures Be Made More Possible and Probable through Prefigurative Design? Insights from and for Cyprus” (2022) 72 *Northern Ireland Legal Quarterly* 623; Amanda Perry-Kessaris, “Making Sociolegal Research More Social by Design: Anglo-German Roots, Rewards and Risks” (2020) 21 *German Law Journal* 1427.

⁵⁵Allison James and Stephen D Brookfield, *Engaging Imagination: Helping Students Become Creative and Reflective Thinkers* (Jossey-Bass 2014) 15.

and to “travel willingly and curiously to see what it might reveal”.⁵⁶ The ability of designerly ways to prompt and facilitate collective practical-critical-imaginative thinking was demonstrated in a series of in-person participatory stakeholder workshops during the Europe-based Facing All the Facts project (2016–2019).⁵⁷ Those workshops had brought together diverse sets of “system actors”⁵⁸ to engage in collaborative prototyping – a designerly strategy which combines experimentation and making ideas visible and tangible.⁵⁹ These activities helped to “disrupt professional, cultural and social structures and practices – structures and practices that are likely to be especially robust and divergent among those who work in, around and against legal systems, and even more so where their focus is the sensitive topic of hate crime”.⁶⁰ For example, participants co-plotted facts, such as what data is (not) captured at each stage of the “journey” of a hate crime case, and expert perceptions, for example, about the strength of inter-institutional relationships within the national “system”, onto a large adhesive wall-mounted surface (“sticky wall”); and then worked together to attach, move and remove labelled cards and coloured string in a physical process of negotiation and debate across professional, social and cultural “divides”. Through these activities, participants were prompted and facilitated to act as “expert critical friends, to see and experience things from each other’s point of view, to share”; and, crucially, to move between the actual and the potential – the hate crime system as it is, and as it might yet be.⁶¹

The India project was originally designed as an intensive in-person event, to be held in New Delhi, centring on the practices developed in the Europe project. However, it was adapted to an extended online format in response to the Covid pandemic. An important consequence was that opportunities for participants to make ideas visible were constrained, and there was no possibility of the kind of material-making strategies (prototyping) deployed in the Europe project. But it was possible to retain a strong emphasis on experimentation. So the (adapted) India project focused on generating a structured-yet-free enabling ecosystem in which practical-critical-imaginative conceptual experimentation could safely take place, and in which the interpersonal relationships necessary to take provincialised migration forward could be nurtured.

⁵⁶Allison James and Stephen D Brookfield, *Engaging Imagination: Helping Students Become Creative and Reflective Thinkers* (Jossey-Bass 2014) 3, 14–15, 57–58 and 64. See further Emily Allbon and Amanda Perry-Kessaris, “What Can Design Do for Legal Education?” in Emily Allbon and Amanda Perry-Kessaris (eds), *Design in Legal Education* (Routledge 2022).

⁵⁷The Facing All the Facts project covered six countries (Greece, Hungary, Ireland, Italy, Spain and the UK), and was coordinated by CEJI on behalf of a diverse partnership of 11 public authorities and civil society organisations from nine countries: Facing Facts Website <www.facingfacts.eu/european-report/> accessed 20 October 2023. The research element of the project was led by Joanna Perry, with methodological input from Amanda Perry-Kessaris, as well as broader input from Facing all the Facts Partners and academic members of the project’s advisory group: Perry-Kessaris and Perry (n 11).

⁵⁸For example, “civil society activists with direct experience of supporting victims, police and prosecutors with direct experience of investigating/prosecuting and recording hate crimes, statisticians responsible for reviewing data and deciding on publication, and ministry officials responsible for resource allocation”: Perry-Kessaris and Perry (n 11) 841.

⁵⁹ibid 839.

⁶⁰ibid 842. See further Guy Julier and Lucy Kimbell, *Co-Producing Social Futures through Design Research* (University of Brighton 2016) 24; Jarg Bergold and Stefan Thomas, “Participatory Research Methods: A Methodological Approach in Motion” (2012) 13(1) Forum: Qualitative Social Research Article 30, 14.

⁶¹Perry-Kessaris and Perry (n 11) 839, 841 and 847.

Project overview

The India project centred on an online training course delivered over four weeks in late 2021. It drew heavily on Facing Facts Online, a training platform coordinated by a non-governmental organisation, CEJI – A Jewish contribution to an Inclusive Europe,⁶² which has offered learning opportunities on identifying, monitoring and responding to hate crime to a range of stakeholders since 2015 (Figure 1).⁶³

A closed digital learning environment was populated with policy documents, scholarly literature and bespoke interactive multimedia content; and participants engaged in weekly live seminars, moderated asynchronous discussion, as well as an extended interactive discussion with a former civil servant and veteran activist. The project team included specialists in hate crime and online learning; a national expert with an in-depth knowledge of the Indian context who was able to access highly motivated, and often experienced, participants; and a specialist in design-based approaches to law.

Experimentation was emphasised primarily towards the middle and end of the project, as part of a shift in emphasis from relatively “acquisitive” to relatively “participatory” learning.⁶⁴

The learning design for the initial stages of the course was relatively formal and acquisitive. These initial stages sought to open spaces – imaginative and dialogic – for



Figure 1. Collaborative prototyping of hate crime systems maps during an in-person facing facts participatory workshop in Vienna. Image Annabelle Betz, 2022.

⁶²CEJI website <<https://ceji.org>> accessed 20 October 2023.

⁶³See Joanna Perry, “Online Learning on Hate Crime, Hate Speech And bias: Connecting Theory and Practice” (*Facing Facts Blog*, undated) <www.facingfacts.eu/blog/2396> accessed 20 October 2023.

⁶⁴Anna Sfard, “On Two Metaphors for Learning and the Dangers of Choosing Just One” (1998) 27(2) Educational Researcher 4.

conceptual experimentation in subsequent stages in two ways. First, they introduced participants to the globally circulating and dominant concept of hate crime, to create conceptual familiarity as well as complicate locally entrenched understandings and legal tools of seeing and addressing violence against vulnerable groups. Second, they invited participants to think critically about the dominant hate crime concept based on their local knowledge and experience.

Participants were introduced first to hate crime, both as a sociolegal concept deployed in international and foreign national contexts, and as a social phenomenon occurring worldwide; and then to hate crime-adjacent sociolegal concepts and social phenomena in India. This detailed and systematic conceptual and empirical introduction was essential to introduce a critical understanding of the well-established hate crime concept. This is particularly crucial because, as one participant put it, “nothing like this has happened before” in India.⁶⁵ Sources included legal texts, scholarly and policy literature; as well as videos and graphics, which were used to introduce specific incidents as examples of hate crime. Participants generally reported that the course materials were “very valuable” in, on the one hand, “reinforcing”, “sharpening”, “clarify[ing]” and “formalis[ing]” their existing knowledge; and, on the other hand, “introducing new concepts”. For example, they noted the importance distinguishing between hate crime and adjacent concepts such as “hate speech”, “bullying”, structural discrimination and institutional bias.⁶⁶

For several participants, this part of the course introduced fresh perspectives, or surfaced previously hidden perspectives of their work on anti-minority violence in India. For some, the effects of being introduced to the hate crime framework appear to be irreversible. For example, one participant, a law student and community worker with prior experience in hate violence documentation, said she could now “see” her work with new “conceptual clarity”, and build her future documentation practice on a “definitive” “foundatio[n]”.⁶⁷ A second participant, someone who works on online visualisation of data on civil liberties violations, said that he now realised that he had been “in complete darkness” about the intricacies of the subject.⁶⁸ A third participant, a legal researcher and practitioner, told us that the discussions and conversations in the course, especially the engagement with the former civil servant and veteran activist, had been especially “fulfilling” because they allowed her to “take a step back” and “look at” her work “from a distance”. For example, they helped her to “make sense of” the potentially “reparative aspects” of her work.⁶⁹ A fourth participant, a legal researcher, noted that he could not now understand why he “did not think about” the relevance of the concept to his work before participating in the project, and that he would now seriously consider the applicability of the concept in a litigation context.⁷⁰ A fifth participant noted that the course helped her to “change” and to “look at [media] reports in an entirely different way”; and another that it provided “a lens” to “understand” what hate does at both the individual and the collective levels, and to “understand” hate crime both as a legal concept and as an “event”.⁷¹ Finally, one participant with two years

⁶⁵Interview 12.

⁶⁶Interviews 1, 4, 7, 9, 11, 12.

⁶⁷Interview 7.

⁶⁸Interview 12.

⁶⁹Interview 10.

⁷⁰Interview 3.

⁷¹Interviews 1 and 6.

of experience working as a lawyer with anti-hate human rights organisations reports she was now able to see how “aspects” or “categories other than law are also equally important”. It was “only after the conversations” during the course that she realised that “it’s not only law that kicks in” after an incident, because the legal system is part of a wider social context. So while it is important to track how incidents are reported and how they travel through the judicial system, hate crime “needs to be reported and documented for several other purposes as well”; as part of a wider agenda of “creating a whole discourse about hate crime, and . . . bringing it to a point where it is acknowledged and perceived as a crime by people in general”, which “is a whole different thing altogether”.⁷²

The emphasis then moved to more critical and participatory learning – a shift for which the ground had been laid from the outset in weekly discussion forums and tutorials which planted the seed for interaction and peer learning. Participants began to test the dominant conception of hate crime as a practical sociolegal idea, focusing on its actual and potential relevance to India generally, and to their work in particular. For example, they were invited to identify and analyse “bias” elements in detailed case studies, and to reflect on how they might record and share information as part of their monitoring efforts.

Through these activities they began to understand hate crime as a (provincialisable) “threshold concept” – that is, “a portal, opening up a new and previously inaccessible way of thinking about something”,⁷³ which could transform the ways in which they viewed their own past, present and future work; and allow them to place themselves and their work in a shared conceptual and empirical space with the work of other local and international actors. For example, one participant described this as “a certain kind of training or a way of thinking”, or “a lens to understand” hate crime, and how it “helped” him to “go deep into the legal aspect”, and beyond how “media reported it”.⁷⁴ Another appreciated their new-found ability to think of hate crime as a “process” that may begin with a specific criminal offence but that is also comprised of formal responses such as recording and prosecuting, and informal responses such as social isolation; and said “I would like to see how [the concept of hate crime] plays in community spaces, how it applies That would really help me . . . [in] connecting with people who also do the same things”.⁷⁵

Crucially, the participants also came to view the concept of hate crime less as a “model” and more as a (provincialisable) resource – as one approach to thinking about and responding to the problem of violence; and to understand that in order to open pathways to adapting the concept, there is the need for “nuance” and an ability to “read between the lines” in existing international formulations.⁷⁶ For example, as one participant observed, “it is very, very difficult to address the

⁷²Interview 5.

⁷³Jan Meyer and Ray Land (eds), *Overcoming Barriers to Student Understanding: Threshold Concepts and Troublesome Knowledge* (Routledge 2006) 1. Established theories tend to categorise learning as either individualistic or collaborative, paying sufficient attention to the “interplay” between these two levels, and in particular to how they co-evolve: Joachim Kimmerle, Ulrike Cress and Christoph Held, “The Interplay between Individual and Collective Knowledge: Technologies for Organisational Learning and Knowledge Building” (2010) 8 *Knowledge Management Research and Practice* 133, 139–40.

⁷⁴Interview 6.

⁷⁵Interview 7.

⁷⁶Interview 2.

concept of hate in isolation" (Interview 2) from the wider social context, including patterns of social, structural and institutional prejudice, bias and discrimination. So, for example, participants found it problematic that it is unclear whether the dominant conception of hate crime includes casteism, which is a significant bias motivation in India.⁷⁷

This structure, whereby participants were first introduced to the globally circulating concept of hate crime, then to local alternatives, was intended to establish shared understandings of relevant issues, and shared terminology with which to refer to them before moving on to critically evaluate global and local conceptions, and finally to synthesise any insights into imaginary provincialised versions. However, both the project team and the participants noted that this pattern had another value – namely that all participants were forced into alien territory at the outset. This was especially productive for those with extensive local experience who had begun the course in the familiar world of Indian approaches to targeted violence, might otherwise be resistant to experimentation. Apart from being introduced to a new vocabulary, this initial international and comparative stage made participants more ductile. Some told us that they were surprised by the non-local materials, suggesting dislocation, but also curiosity. One participant, well versed in legal research on violence in the Indian context, was surprised by how many questions he got wrong when testing his knowledge at the end of this initial section.⁷⁸ This willingness and ability of participants to distance themselves from their socialised context and engage in practical-critical-imaginative thinking about both the Indian situation and the hate crime concept was most apparent during the tutorials which were discursive and largely participant-led. Here participants surfaced the limitations of the concept – for example, why are caste, hate speech, and structural discrimination missing; the practical implications of taking a hate crime-based approach to targeted violence in India – for example, the need to engage with institutions in the context of deep mistrust and state complicity, to look beyond law enforcement to data, documentation and victim support, and to take impact assessment and quantification seriously. This insight that experimentation is prompted and facilitated by early disorientation or dislocation is supported by design literature⁷⁹ and ought to be explored and activated further in any future attempts to use designerly ways to support conceptual experimentation especially among experienced practitioners.

Towards the end of the project the emphasis shifted increasingly to experimental learning, culminating in the here-to-there activity.

⁷⁷Participants generally appreciated the depth of empirical engagement with the Indian context. For example, one participant noted that they found it "very beautiful" that "everything [was] very targeted to the Indian context": Interview 4. Another participant recalled his initial reservations about the applicability of the hate crime concept in the "different" Indian context, and welcomed the instructors' emphasis on the fact that "every country is different": Interview 2. Some felt that, although the local emphasis had helped to "contextualis[e]" the hate crime concept, this practice could have been further "built upon": Interview 7. Also Interview 11.

⁷⁸Interview 4.

⁷⁹See Akama and others (n 4).

“Here-to-there” activity

The here-to-there activity is an established component of the Facing Facts Online approach which was used more intentionally in the India project. Like the prototyping activities in the above-described Europe-based in-person workshops, here-to-there was used to help participants in the India project to bridge the gap between the “actual” and the “potential”,⁸⁰ by generating a “structure-yet-free space” in which to experiment, practically-critically-imaginatively, with the concept of hate crime.⁸¹

Participants were asked individually and collaboratively to reflect first on where we are, then on where we should be, and finally on how we might get from “here” to “there”; to place those reflections in a shared Google.doc; and to comment upon those contributions (Figure 2). Finally the contributions and comments were collated into a lightly designed document including additional comments from the project team (Figure 3).

Outcomes included suggestions about how the concept could be put to use in India, not only by introducing it into legislation or to the jurisprudence in the courts, but also as a rallying point for community building and action, as a frame for activists and journalists to gather and monitor data about the incidence of hate crime and responses to it.

The here-to-there exercise deployed all three of the designerly ways identified above. First, it prompted and facilitated participants to be critical – that is, to identify the strengths and weaknesses of the hate crime concept, and in the Indian hate crime context (“here”); imaginative – that is, to envisage how the

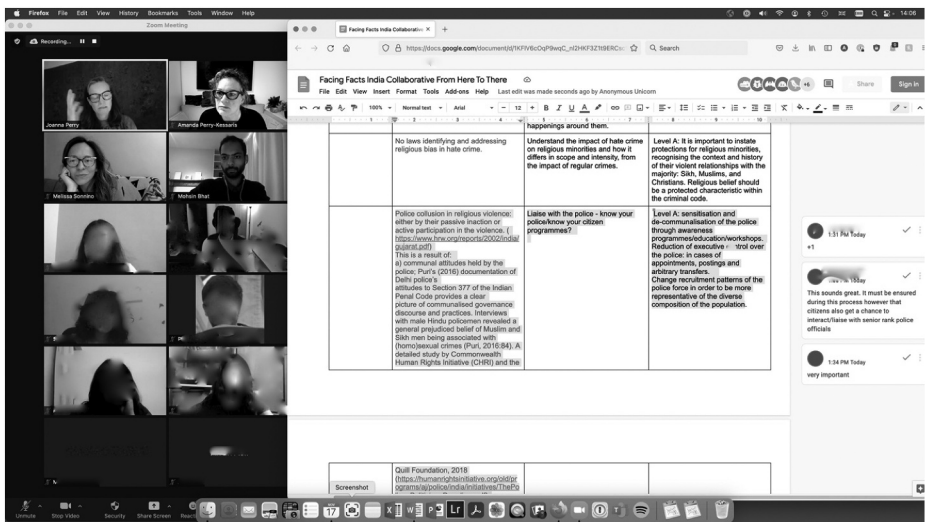


Figure 2. Screenshot of online collaborative here-to-there exercise in action. Image: Amanda Perry-Kessarar, Mohsin Alam Bhat and Joanna Perry, 2021.

⁸⁰Julier and Kimbell (n 59) 39.

⁸¹Perry-Kessarar and Perry (n 11).

Here to There Facing Facts India 2021





Here	To	There	Next
			
<p><i>What is the current situation?</i></p>	<p><i>What can I do to get from 'here' to 'there'?</i></p>	<p><i>What should the situation be?</i></p>	<p><i>Comments, links and resources from the training team</i></p>
<p>Use colour to identify:</p> <ul style="list-style-type: none"> Weaknesses of Indian context as RED Promising aspects of Indian context as AMBER Positive aspects of Indian context as GREEN 	<p>Identify specific actions related to Here (the current situation) and There (where you want to get to). You might focus on your individual goals and/or wider goals for society.</p>	<p>Use a letter to identify the priority of entries in this column:</p> <ul style="list-style-type: none"> Level A= essential; Level B= important; Level C= desirable. 	
<p>The results of this collaborative exercise, completed during Facing Facts India training in 2021, have been gathered under headings:</p>			
<ul style="list-style-type: none"> Law Recording / Reporting Disability Victim Support Police / Criminal Justice Structural discrimination / Structural transformation Mis / dis-information Schools 			

Figure 3. Designed compilation of contributions to collaborative here-to-there exercise. Image: Amanda Perry-Kessarar, Mohsin Alam Bhat and Joanna Perry, 2021.

hate crime concept, and responses to hate crime in India, could be (“there”); and practical – that is, to identify concrete ways in which we can make change happen (“to”). Second, it prompted and facilitated experimentation – that is, making evidence-based propositions about how things probably are, and perhaps could be; and then testing and refining them in conversation via a Google. doc, as well as in seminars and in asynchronous discussions. Third, it prompted and facilitated the use of visual communication strategies, including the use of a table divided into “here”, “to” and “there”; and the use of colour to differentiate between weak, promising and positive aspects of the current Indian hate crime context (Figure 3).

Participants themselves noted the practical, critical and imaginative dimensions of the exercise. For example, they reported that the exercise offers “a lot of possibility” to be “creative”. And at the same time it “helped” participants in “actually getting down to think” about “what will be the practical solution”. For a start, it was obvious that it would be inadequate to simply “critique” existing laws, or to offer “abstract” or “very broad ideas as to what has to be done”, because it is when you are trying to identify “how it has to be done” that “it becomes very difficult”, and “you need to start somewhere”.⁸² Furthermore, one interviewee remarked that it was especially useful, and unusual, to be prompted to be “thinking about what is positive, what is moderate, what is negative?” in the current context because the standard “law school project writing mode” is to dismiss law on the grounds that there are always “problems” with “implementation”, and this “generates scepticism and pessimism”, and the lingering question “so then what?”.⁸³

⁸²Interview 5.

⁸³Interview 4.

Some observed that the exercise was especially “helpful” as a “place to connect” – “to see the place where I’m coming from”, to “locat[e]” the “knowledge” and “experience” of other participants and to “se[e] how hate crime as a concept would look like when they use it, in contrast [to] when I use it”. For example, one participant was “intrigued” by the process of “trying to see . . . how we can – I can – contribute over ‘there’”, and trying “to understand that it is us, the civil society, which has to do something about” getting from here to “there”. It was “forward thinking”.⁸⁴ And several interviewees indicated that they wanted to take the exercise further. For example, one said that “now that we have come to this position” of having, through the here-to-there exercise, identified and “divided” the possible actions under the “headings of law and reporting and criminal justice and misinformation . . . we could . . . probably start a more dedicated discussion with like-minded [people]”.⁸⁵

The here-to-there activity appears to have had an impact on the future plans of participants, in particular by making planning feel possible.⁸⁶ This mirrors the feedback of participants in the Europe-based Facing All the Facts project (2016–2019) who indicated that in-person workshops not only offered valuable opportunities “to connect, often for the first time, with other system actors”, and to learn and share; they also “improved the likelihood of meaningful change from the wider research project”. Indeed, “every workshop saw at least one country-specific recommendation agreed among participants which was then fed directly into the final research outputs; and several workshops saw participants agreeing specific actions on cooperation”.⁸⁷ Similarly, according to one India project participant, the main achievement of the project was to prompt and facilitate members of the cohort to consider “what concrete action we can take . . . to get this process started” and thereby to “make [us] feel that this is not only something that the state should do but, maybe we should all participate in this conversation”.⁸⁸ Likewise, another participant concluded that “[w]e need institutions” and “[w]e need law”; but “we [also] need . . . to organise” as a “community” to “bring up hate crime”, and “not [to] entirely depend on representation and the police”. The fact that the cohort was collectively “thinking about community mobilisation” made her “really happy” because it showed to her that the hate crime concept could “provide a framework” that can not only “work on institutions” but also “get people to think about . . . oppression that happens specifically to marginalised communities based on their identities”, which is “very relevant in India”.⁸⁹ As one participant told us, “all of us have gone back with a total understanding of how this [hate crime concept] works, and we are going to implement it in the various things we do, writing about it and thinking about it”. They went on to observe that “we should not leave” the proposals generated through the here-to-there activity to languish “on the shared document”, “we should go forward with those ideas”, make them “available to other people . . .”. They “should result in something outside of that sheet”.⁹⁰ Possible future plans included setting up helplines that “could be used both as a database to collect hate crimes and give emotional support or financial support to the victims”; drawing on the “conceptual

⁸⁴Interviews 7 and 1.

⁸⁵Interview 5.

⁸⁶Perry-Kessariss and Perry (n 11) 846.

⁸⁷*ibid.*

⁸⁸Interview 2.

⁸⁹Interview 3.

⁹⁰Interview 12.

framework”, the “comparative insights” and the “contributions of the peers in the group” when “trying to make sense of recent news” and of Indian cases; and creating a documentation system that communicates with “common people” to change “ground level perception” of bias and prejudice.⁹¹

There are practical limitations of the exercise. For example, one noted that they felt it was an “achievement” of the course “to get the participants [to] think about taking a concrete action”, and “to make them feel that this is not only something that the state should do but, maybe we should all participate in this conversation”; but at the same time they were still left wondering “What can we do?” Another reported that although the here-to-there exercise might be useful for “policy makers to fight it out” at a more abstract level, at the “operational” level the “ecosystem is much more complex”. “It’s not just step one, step two, step three and boom, we are done. It doesn’t work that way”.⁹²

It is noteworthy that, although the exercise was introduced early on, participants did not engage with it until late in the project. This may have been because the exercise is not in fact relevant until later, because its relevance does not become clear to participants until later and/or because it was not well explained until later. Future iterations should consider creating the appropriate “scaffolding” that could allow participants to effectively engage with the “here-to-there” activity earlier on.⁹³

Caveats

The success of the here-to-there exercise in prompting and facilitating individual and collective experimentation with the concept of hate crime owes much to the non-designerly elements of the enabling ecosystem that was nurtured by the Indian project. Deployed in isolation, an emphasis on experimentation would almost certainly have produced no positive, and potentially many negative, effects. Every aspect of the design and implementation of the anti-hate crime projects such as these is delicate, complex and resource-intensive. An enabling ecosystem can only be achieved by a team that combines extensive experience with detailed technical expertise and local knowledge and networks; and participants who come with open minds.

The wider project ecosystem seems to have eased some of the anxieties associated with addressing hate crime acts. The politically charged national context in India makes working in the field of violence and hate crime extremely challenging. Many participants mentioned this during the tutorials, forum discussions and in their feedback. Some participants appeared to be concerned about the safety of freely sharing their views, especially among unknown peers on an online platform. Care was taken to address those concerns in tutorials. Furthermore, one participant, a law student and community worker, explained she had “left” her previous work on “tracking” hate crime in one of India’s states “because it was very graphic” and involved “horrible, brutal violence”; and that she appreciated the fact that the course materials reached beyond such “low hanging fruit” to also consider less violent, everyday instances of hate crime.⁹⁴

⁹¹Interviews 1, 4 and 11.

⁹²Interviews 2 and 11.

⁹³See Binbin Zheng, Melissa Niiya and Mark Warschauer, “Wikis and Collaborative Learning in Higher Education” (2015) 24 *Technology, Pedagogy and Education* 357.

⁹⁴Interview 7.

The wider project ecosystem also seems to have supported a sense of community. “By their very attendance”, participants in anti-hate crime events make “visible to themselves and to others”, sometimes “for the first time” the existing anti-hate crime community.⁹⁵ One participant in the Indian project observed that participation in interactive sessions “makes you realise that you’re not alone and that there are actually people in the field who are kind of in the same situations . . . [P]erhaps [what] one needs to do the most now is to network, and make sure [you] that you have each other”.⁹⁶ Indeed participants seemed to draw not only strategic insights, but also a degree of moral support, from what they learned about other national contexts. One participant noted that while “our struggles in India go unheard so easily”, the experiences in other countries gave her “a little hope” that governments responded when “there was movement and there were people who spoke up”. This proved to them that “a strong, unified movement” and “fighting for” change may work despite the challenges. They described the comparative approach of the course as “useful” and “helpful” because “we all draw strength from each other”, including from “the international human rights space”. However, another emphasised that other contexts are “very, very different from that in India”.⁹⁷

Many valued the opportunity to interact and collaborate with diverse participants. Relatively experienced participants valued the presence of “young people”, noting that it was “exciting to listen, have a sensitive view of things . . . I like how they were thinking outside the box”; while newer entrants to the field found it “inspiring” to hear from “so many experienced people”.⁹⁸ One observed that it was “very enlightening” to hear “a completely different perspective”. A second valued the fact that the course created a “non-judgemental” space of “solidarity” whilst at the same time “challenging our own viewpoints”: “People were . . . saying things that I had not thought about before”. A third participant gave the following illustration: On the one hand, some were talking “about how that there is no legislation” and “no policies” around targeted violence, and how we need to pursue “transformative justice” and “not centr[e the] police”; but on the other hand, those “who had worked with the state” were arguing that “bureaucracy should be centred”, and those “who were working with police were thinking about how they could do so more effectively . . . I hadn’t thought about how you could do that . . . because I really haven’t been fully exposed to any perspective outside of the grassroots community perspective. And most of those spaces are not spaces of action, not resolving issues, but they are spaces of support”. Here “the idea of the state is somewhat reduced . . . And the question is never how can we get the system to share our values?”⁹⁹

The project team took a user-centred, experimental approach to the course design, adapting the content and sequencing along the way and this was generally well received. However, we note that there is a fine balance to be struck between, on the one hand, promoting learner control, knowledge creation, agency and autonomy by offering flexible and customised options and choice; and on the other hand offering guidance and structure.¹⁰⁰ So it is understandable that one interviewee felt that

⁹⁵Perry-Kessarlis and Perry (n 11) 841.

⁹⁶Interview 10.

⁹⁷Interviews 2 and 3.

⁹⁸Interviews 9 and 4.

⁹⁹Interviews 8, 2 and 7.

¹⁰⁰Catherine McLoughlin and Mark JW Lee, “Personalised and Self-Regulated Learning in the Web 2.0 Era: International Exemplars of Innovative Pedagogy Using Social Software” (2010) 26 *Australasian Journal of Educational Technology* 28, 38.

discussion could have been a “little more controlled and directed” or “old-school”, emphasising the voice of expert instructors, “rather than being a very organic exercise of people sharing ideas”.¹⁰¹

Several interviewees noted the technical and social limitations of the virtual format. For example, some noted “there were too many perspectives in the room and people from too many places, and we couldn’t all hear them out” and that “we didn’t have enough time to come to know, understand each other, at least in terms of professionally working together towards this cause” especially given they were “trying to grapple with such a complex issue and trying to put it all together”.¹⁰² But it was also acknowledged that some anxieties around online participation proved unfounded or outweighed by the benefit of being accessible to busy participants in disparate locations.¹⁰³

Indeed, it is likely that the here-to-there exercise is most effective when deployed online. The accessible technology of GoogleDocs allowed learners to make changes to the document any time and to collaborate in real time during the group session towards the end of the course. The intense and immediate collaboration this method enabled suggests broader insights into how designerly ways might be most effectively deployed in online spaces.¹⁰⁴

Conclusion

In *Sociological Jurisprudence: Juristic Thought and Social Inquiry*, Roger Cotterrell argues that we must work for the “well-being of law as a practical idea”.¹⁰⁵ To assess the well-being of law we must assess not only its conceptual coherence – that is, whether it has an internal logic, and whether that logic fits with or maps onto, even if in disruptive or challenging ways, existing jurisprudence; but also its practical relevance – that is, whether it fits with or maps onto, even if in disruptive or challenging ways, real-world perceptions, experiences and expectations around the actual and potential relationships between law and wider social life. The work of making legal concepts relevant within and between diverse national and international contexts ought, in the pragmatic sense, to be explicitly experimental because it ought, in both the pragmatic and the moral senses, to be provincialised.

The India project was motivated by a wider research question: Given the “immediate context” in India, including “concrete realities of violence, impunity, and accountability”,¹⁰⁶ is it possible, and would it be productive, to “integrate”¹⁰⁷ the concept of hate crime, as a “practical idea”,¹⁰⁸ into Indian activism and policy around targeted violence; and with what adaptations, risks and rewards? The project necessarily emphasised provincialised migration, because hate crime is not an established legal

¹⁰¹Interview 12.

¹⁰²Interviews 7, 11 and 6.

¹⁰³Interviews 3, 8 and 11.

¹⁰⁴For online learning see Siân Bayne, “Deceit, Desire and Control: The Identities of Learners and Teachers in Cyberspace” in Ray Land and Siân Bayne (eds), *Education in Cyberspace* (Routledge 2005); Adrian Kirkwood and Linda Price, “Technology-Enhanced Learning and Teaching in Higher Education: What Is ‘Enhanced’ and How Do We Know? A Critical Literature Review” (2014) 39 *Learning, Media and Technology* 6; Glyn Thomas and Stephen Thorpe, “Enhancing the Facilitation of Online Groups in Higher Education: A Review of the Literature on Face-to-Face and Online Group-Facilitation” (2019) 27 *Interactive Learning Environments* 62.

¹⁰⁵Roger MB Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Routledge 2018) 31.

¹⁰⁶Bhat, “Hate Crime in India” (n 30) 3.

¹⁰⁷Perry, “The Migration and Integration of the Hate Crime Approach in India” (n 25).

¹⁰⁸Cotterrell (n 103).

concept in India as it is, at least on paper, in Europe. Provincialised conceptual migration is an inherently experimental process of trial, error and happenstance. As such it is amenable to being prompted and facilitated through designerly ways. So a key aim of the project was to draw on designerly ways to prompt and facilitate experimentation.

We found that, in the appropriate pedagogical setting, designerly ways can prompt and facilitate activists to make and communicate a sense of the concept of hate crime, and to begin to adapt it to, and integrate it into, Indian contexts. By emphasising experimentation, designerly ways supported and reinforced an open learning approach, in which trainers and participants alike were involved in a process of discovery about what is and might be possible and useful. Participants were prompted and facilitated to “play” with the hate crime concept, including identifying its weaknesses, blind spots and limitations; and imagining novel and situations – conditions, relationships, projects and so on – in which the concept (with modifications) might be practically utilised in the Indian context. Many participants (researchers, journalists, activists and lawyers) were not just familiar with but also highly socialised into Indian concepts, frameworks and strategies around targeted violence. So it was important that the pedagogical approach, including its adoption of designerly ways, unsettled and disrupted entrenched thinking among the participants, opening them up to the possibility of experimentation. It is regrettable that it was not possible, due to the constraints of the pandemic, to explore the potential of material making as a strategy for enhancing collective conceptual experimentation; all the more so given the rising insistence from theorist working within a “new materialist” frame that attention must be paid to the ways in which law is entangled in the wider, human and more-than-human, material world.¹⁰⁹ How better to explore law’s entanglement than by making legal ideas material?

Second, we found that designerly ways can generate an enabling pedagogical ecosystem in which activists can find solace and build trust with each other, with society at large and with state actors. The project took place in a climate of escalating religious discrimination, exclusion, hate speech and, consequently, fear. Activists working on targeted violence in India feel increasingly isolated from society at large, and distrustful of state actors. There is reason to anticipate that, by creating an enabling ecosystem, and prompting and facilitating participants to collectively imagine futures in the here-to-there exercise, the India project contributed to making collaboration more possible and probable. This kind of conceptual experimentation in a pedagogical setting may be all that is possible where there cannot yet be any practical mobilisation. This is the case in India because of concerted political pressure against any kind of public mobilisation in support of equality and human rights.

Third, we found that opportunities to test the practical relevance of a legal concept such as hate crime can be generated even in the absence of any state engagement. Activists, policy makers and scholars should explore further how and when to integrate it into the legal system and society more broadly.

Finally given that any sociolegal venture which seeks to develop a coherent approach to a particular concern must, in both the pragmatic and the moral senses, embrace multiplicity and diversity, we note that national and international communities of thinking and practice around hate crime ought to explore

¹⁰⁹See Davies (n 2).

the rich conceptual and practical insights developed by Indian activists and scholars who have been working on questions around targeted violence for generations, not least since Partition.

Disclosure statement

No potential conflict of interest was reported by the authors.

Funding

The authors are grateful for support from the Society of Legal Scholars Research Activities Fund, and from CEJI-A Jewish contribution to an inclusive Europe.

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