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Legal design for practice, activism, policy and research

Amanda Perry-Kessaris¹

Abstract

This paper offers an integrated introduction to how, conceptually, to think about what design can do for law; where, empirically, to find examples of legal design; and how, normatively, to assess it. It begins by highlighting three lawyerly concerns: the need to communicate; the need to balance structure and freedom; and the need to be at once practical, critical and imaginative. Next the paper highlights three features of designerly ways: a commitment to communication, an emphasis on experimentation, and an ability to make things visible and tangible. It is proposed that designerly ways can directly improve lawyerly communication; and that they can also generate new structured-yet-free spaces in which lawyers can be at once practical, critical and imaginative. The paper then provides examples of legal design in action across four fields of lawyering: legal practice, legal activism, policy-making and legal research. Emphasis is placed throughout on the need for a critical approach to legal design—that is, for legal design to be thought about and done with a commitment to avoiding, exposing and remedying biases and inequalities. In that spirit, the paper concludes with an assessment of some of the risks associated with legal design.

Introduction

Since the making of tools and the painting of caves became common place 2.5 million years ago, human life has been increasingly entangled with design(s). Designs or designed outcomes can include artefacts, images, sounds and systems. The range of design disciplines is continually, and now rapidly, expanding from traditional fields graphic design, which centres on typography, colour theory and visual grammar; to product design which is concerned with ergonomics and user interface; to software design which relies on linguistic skills; and event design which includes attention to factors such as narrative. This article is a design. In fact, it is a something of a co-design. My choices as author have (mostly)

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determined the pattern of words; the publisher's choices have determined the typeface, scale and weight in which those words appear, as well as the referencing style, margins and so on; the images have been designed in India, the US, Cyprus and the UK; and you may have chosen to print it on a certain size and weight of paper, or to read it on a particular type of screen (in which case your view is also co-designed by whoever wrote the software).

Legal design is a nascent field of thinking and practice, the contours and content of which are emergent and contested, but at its core is a shared interest in the question of what design can do for law. This paper offers a conceptual framework through which to think about legal design; a varied selection of contemporary examples legal design; and some criteria with which to assess them. It does not explain in detail the methodological question of how to do legal design. It begins by highlighting three lawyerly concerns (the need to communicate; the need to balance structure and freedom; and the need to be at once practical, critical and imaginative). It then argues that designerly ways (which specialise in communication, emphasis experimentation and involve 'making things visible and tangible'²) can both improve lawyerly communication and generate new spaces of 'structured freedom'³ in which lawyers can be at once practical, critical and imaginative. Next, the paper offers examples of the application of designerly ways in a range of legal spheres (legal practice, legal activism, policy-making and legal research). Emphasis is placed throughout on the need for a critical approach to legal design—that is, for legal design to be thought about and done with a commitment to avoiding, exposing and remedying biases and inequalities. In that spirit, the paper concludes with an assessment of some of the risks associated with legal design.

Lawyerly concerns

Being a lawyer involves using, changing and creating legal ideas. Many fields of practice—advocate, activist, civil servant, researcher, journalist, career criminal—require that participants take some degree of interest in law. In this constrained space I want to set aside those whose interest in law is superficial or purely instrumental, and focus on the widespread yet distinctive lawyering that Roger Cotterrell has termed 'juristic'. Jurists can be

² Manzini, E. (2015) *Design, when everybody designs*. London: MIT Press, p. 31.

³ Perry-Kessaris, A. (2017) 'The pop-up museum of legal objects project: an experiment in "sociological design"' *Northern Ireland Legal Quarterly* Special Issue on the Pop-up Museum of Legal Objects, 68(3) pp. 225-244.

identified by their commitment firstly, to the 'well-being' of law, and specifically to its 'enrich[ment] and sustain[ment]' rather than its mere exploitation, 'unmasking or debunking'; and secondly, to 'law as a practical idea' rather than merely an abstract phenomenon, and specifically to its 'meaningfulness as a social institution'. To promote such 'a value-oriented idea of law adapted to the specific, varying conditions of law's sociohistorical existence', as jurists do, is 'the most distinctive, perhaps ultimately the most difficult, form of [lawyering]'.⁴

At the heart of the distinctiveness, and the associated difficulty, of juristic lawyering lies a productive tension between structure and freedom. On the one hand, Cotterrell argues, a commitment to the well-being of law requires a commitment to 'law's unity' as a coherent 'structure of values', for a law that is not coherent cannot be well. On the other hand, a commitment to law as a practical idea, one that is socially meaningful, requires a commitment to ensuring that it accommodates, and actively nurtures, diversity. Law achieves this objective, which Cotterrell terms 'social unity', by 'facilitat[ing] communication' about the 'need' for 'respect' for 'all'; as well as by enforcing that need by challenging inequality and bias.⁵ As will be seen below, this need to navigate the tension between structure and freedom (difference), and this emphasis on law as a communicator, are clear points of contact between law and design. Furthermore, a juristic commitment to the well-being of law as a practical idea calls for skills, knowledge and attitudes that are at once practical, critical and imaginative; and this constitutes the third point of contact between law and design.

Lawyers must be practical. They need skills and knowledge about what the law is interpreted to mean, about 'getting things done', about 'moving [people] ...into desired action', about 'planning and organising', about 'distinguishing and narrowing issues to avoid confusion and manage complexity'; and 'aiming for coherence and consistency in thought and action'. In some ways 'thinking "like a lawyer"' is much 'like the reasoning of anyone else.' But lawyers can be said to 'do it with a *special self-awareness*, so that techniques of this everyday reasoning are consciously picked out, nurtured, fine-tuned, and emphasised.'⁶

⁴ Cotterrell, R. (2018) *Sociological Jurisprudence: Juristic thought and social inquiry* Routledge pp. 31-33.

⁵ Cotterrell 2018 pp. 31, 33 and 170.

⁶ Cotterrell 2018 pp. 20 and 22.

Lawyers must be critical. They must ruthlessly weed out ‘irrelevances so as to identify what is really important in a problem to be solved’; and make ‘arguments with maximum persuasiveness’, which itself entails ‘paying sharp attention to opposing lines of thought’ and ‘tailoring argument precisely to issues and results sought’.⁷ More than this they must be critical of law and lawyering—identifying and rectifying failures to promote legal unity and social unity.

And lawyers must be imaginative. Imagination is both central and unique to humanity; and law, like money, relies entirely upon it. ‘Imagine’ (!) writes Yuval Noah Harari in his epic history of homo sapiens, ‘how difficult it would have been to create states, or churches, or legal systems if we could speak only about things that really exist, such as rivers, trees and lions.’⁸ Indeed, what is perhaps really ‘special about legal expertise’ is ‘creative reasoning’—an ‘ability to work with legal ideas securely, linking them in accepted patterns of reasoning, drawing inferences from them that will be recognised as legally appropriate, and understanding how rules interrelate to create webs of legal meaning’.⁹

Designerly ways

Being a designer involves using, changing and creating artefacts, images, sounds and systems. Design is best understood as a ‘practice’ located on a ‘sociomaterial’ plane. A ‘practice’ is a ‘routinized . . . behaviour’ including bodily and mental activities, “‘things” and their use’, ‘background knowledge’, know-how, emotion and motivation. Seen as a practice, design is formed of ‘dynamic configurations of minds, bodies, objects, discourses, knowledge, structures / processes and agency’. Entangled in these configurations are the minds and bodies of not only (current and prior) designers, but also users and clients, commissioners and stakeholders; and not only those artefacts, images, sounds and processes that are intended as the final product, but also any prototypes that have been generated along the way. In this sense designs are never really final. They evolve—sometimes by chance. For example, were you to spill coffee on a print out of this article, or to accidentally crack the screen on which you are viewing it, those elements would not be part of ‘the design’. But say there were something metaphorically evocative about the shape of the coffee stain, or that the crack traced an unexpected connection between two concepts

⁷ Cotterrell 2018 p. 22.

⁸ Harari, Y. N. (2011) *Sapiens: A brief history of human kind*. Vintage Press, p. 35.

⁹ Cotterrell 2018 p. 21.

in the article, and that you chose to pursue those insights in a new piece of work, then we might consider the result to be a new 'design'. So Lucy Kimbell urges us to think in terms of 'design-as-practice'—that is, the routinized behaviours that are characteristic of design; and of 'designs-in-practice'—that is, the roles played by artefacts, images, sounds and systems in design processes.¹⁰

An increasing emphasis on design-as-practice has allowed design to be understood as 'a treasure trove' of 'sophisticated creative and innovative' tools, 'many of which can be used outside of the confines of [its] traditional ... domain'.¹¹ It is now verging-on-routine to see certain elements of this 'trove' being deployed outside of design—most often under the banner of 'design thinking', but perhaps most ambitiously under the banner of 'design as attitude'¹²—for a wide range of industry, policy and, to a limited extent, research purposes; in local, national and international contexts. 'Design thinking' has been promoted as a 'cognitive style' that can serve as a 'resource' in management, business and policy contexts by the Design Council, IDEO and Stanford's d.school among others.¹³

Opinions vary as to what skills, knowledge and attitudes are distinctive of what Nigel Cross has termed 'designerly ways'.¹⁴ Proponents of 'design thinking' tend to highlight routines that they regard as both productive and as distinctive of design. For example, the UK-based Design Council identifies four iterative phases that are shared across design sub-disciplines: Discover, Define, Develop and Deliver. The Council visualises these alternately divergent and convergent phases as a 'double diamond' (Figure 1). In the Discover phase of a project '[d]esigners try to look at the world in a fresh way, notice new things and gather insights'. It is a phase dominated by divergent thinking in which the conceptual, empirical and normative

¹⁰ Kimbell, L. (2012) Rethinking Design Thinking: Part II 4(2) *Design and Culture* 129, pp. 134-6 and 142.

¹¹ Dorst, K., Kaldor, L., Klippan, L. and Watson, R. (2016) *Designing for the common good*. Amsterdam: BIS Publishers, p. 3.

¹² Rawsthorn, A. (2018) *Design as an Attitude*. Zurich: JRP | Ringier.

¹³ Kimbell, L. (2011) 'Rethinking design thinking: Part I' 3(3) *Design and Culture*, 285-306, p. 286.

¹⁴ Cross, N. (2006) *Designerly Ways of Knowing* London: Springer Verlag.

scope of a project open up dramatically. In the Define phase, ‘designers try to make sense of all the possibilities identified in the Discover phase. Which matters most? ... What is feasible?’. This is a convergent phase in which the focus is narrowed considerably. During the Develop phase ‘solutions or concepts are created, prototyped, tested and iterated’. This divergent phase involves a wide-ranging search for responses to a specific issue. Finally the convergent Deliver phase is when ‘the project ... is finalised, produced and launched’.¹⁵ Alternatively, the d.school at Stanford offers a hexagon-based vision of design thinking—Empathize, Define, Ideate, Prototype, Test.¹⁶

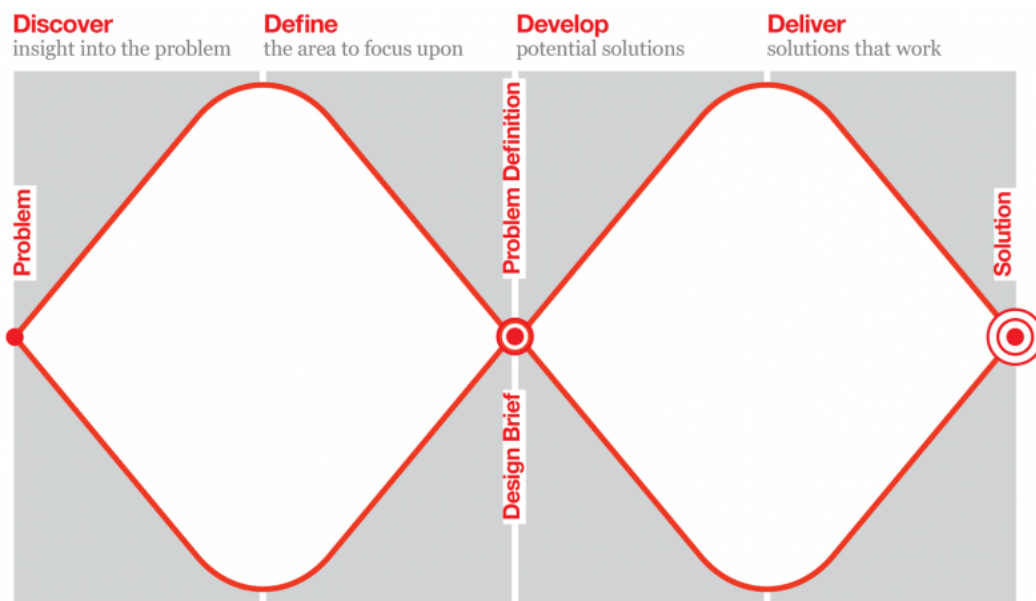


Figure 1: Double Diamond © 2015 Design Council. Reproduced with permission.

Viewed through a lawyerly lens, three designerly ways come to the fore—a commitment to communication, an emphasis on experimentation, and an ability to make things visible and tangible. Firstly, communication is both a mission and a method of design. It is often the core function to be performed by a designed outcome such as an instruction manual, a promotional poster, the user interface of a smart phone. Secondly, it is also by

¹⁵ Design Council (2015) *The design process: what is the Double Diamond?* Available at <http://www.designcouncil.org.uk/news-opinion/design-process-what-double-diamond> (Accessed 19 September 2018).

¹⁶ See the d.school website for ‘A virtual crash course in design thinking’ <https://dschool.stanford.edu/resources-collections/a-virtual-crash-course-in-design-thinking>

communicating—whether in internal dialogue with their critical self, or external dialogue with their client or collaborator or other stakeholders—that designers experiment. They test and explore their ideas to ensure that they are well directed and effective. Thirdly, at every stage of their practice designers ‘make things visible and tangible’¹⁷—in artefacts, in notations, in movements and other ‘non-verbal, graphic/spatial modelling media’.¹⁸ These three characteristics all contribute to, and are sustained by, the designerly ability to generate structured-yet-free spaces in which the practical, critical and the imaginative productively coexist. For example, social designer Ezio Manzini argues that designers ‘make things happen by ‘stimulating’ and ‘cultivating’ three senses which we all possess, and which non-designers, including lawyers, already deploy in relation to their own work and wider lives. These are the critical sense — that is, ‘the ability to look at the state of things and recognise what cannot, or should not, be acceptable’; the imaginative sense — that is, ‘the ability to imagine something that does not yet exist’; and the practical sense — that is, ‘the ability to recognise feasible ways of getting things to happen’.¹⁹ Design processes such as those encapsulated in the Double Diamond are aimed at keeping all three of these senses active, each at once structuring and freeing the other, so that good design can emerge.

¹⁷ Manzini, E. (2015) *Design, when everybody designs*. London: MIT Press.

¹⁸ Cross 2006, p. 20.

¹⁹ Manzini 2015, p. 31. I have substituted ‘imaginative’ for Manzini’s ‘creative’.

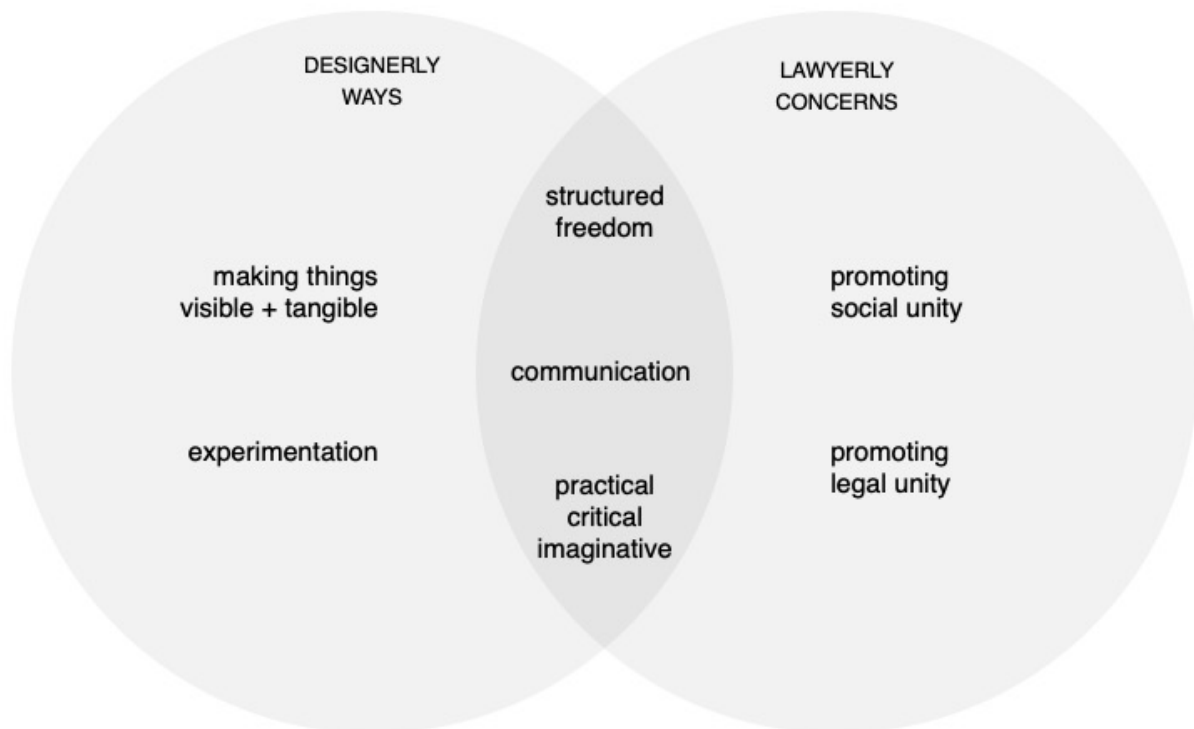


Figure 2: Points of contact between designerly ways and lawyerly concerns. © A. Perry-Kessaris 2018.

Figure 2 places designerly ways and lawyerly concerns in the same space in order to highlight points of contact: a commitment to communication; a need for/ability to create structured freedom; and a need/ability to be at once practical, critical and imaginative. The following section connects this conceptual framework with existing literature on legal design.

Legal design

The proposition at the heart of legal design can be conceptualised as follows: designerly ways (especially experimentation, communication and making things visible and tangible) can enhance lawyerly communication; and generate new structured-yet-free spaces in which lawyers can be at once practical, critical and imaginative.

A number of legal designers have, in their expert explanations of how to do legal design, identified aspects of this conceptual proposition in their own terms. For example, Margaret Hagan's evolving online book, *Law by Design* is the first, at least in the English language, sustained effort to sketch an approach to the wider field of legal design. She draws on her

experience as Director of the Legal Design Lab at Stanford Law School, where she focuses on access to justice, addressing both legal communications and legal processes. In specifying the key attributes of a legal designer or design-driven lawyer, Hagan points to a combination of skills, knowledge and attitudes that are at once designerly and lawyerly, and that coalesce around a designerly emphasis on communication and experimentation, and on making things visible and tangible. For example, she argues that legal designers must ‘communicate visually’, ‘facilitate creative sessions’, ‘attract and work with interdisciplinary teams’, ‘frame and reframe problems’, ‘interview and do ethnographies’, ‘map and synthesise’, ‘build things quickly and intentionally’, ‘test and iterate’, and to ‘parse, unpack and uncover insights’. Hagan alludes to the importance of the designerly emphasis on experimentation by explaining how a design-driven lawyer might respond to a legal issue presented by a client, by working with them to frame and reframe the ‘problem’, thereby opening up ‘spaces’ for solutions, and at the same time seeking feedback from clients on what solutions will and won’t work. Only some of the ideas generated in this process will reach the stage of being prototyped and then rejected or accepted (perhaps subject to refinement) by users and, Hagan observes, if lawyers ‘think of everything [they] do as a prototype rather than as something that must be perfect, [they] can act more creatively and tap into others’ creativity and expertise. ...It will also save [them] from falling too in love with ideas’ before they have ‘figured out if they’re workable.’ Finally she alludes to the designerly emphasis on making things visible and tangible when she observes that by ‘[t]hinking ... and making like a designer’ lawyers can transition from their traditional roles as ‘unconscious designers’ of artefacts, process and experiences, to a new role as intentional, ‘conscious designers.’²⁰

Together with other pioneering legal designers such as Helena Haapio and Stefania Passera, Hagan has created the Legal Design Alliance (LeDA)—an interdisciplinary network of academics and practitioners from law, design and beyond. Its manifesto defines legal design around a commitment to ‘making the legal system more human-centered and effective’. It prioritizes the “users” of the law’, including ‘lawyers and judges’ as well as ‘citizens, consumers, businesses’; and focuses on improving clarity, certainty, trust and

²⁰ Hagan, M. (undated) *Law by Design*. Available at <http://www.lawbydesign.co/en/legal-design> (Accessed 4 December 2018). See also Open Law Lab blog Available at <http://www.openlawlab.com>.

communication.²¹ This explicit emphasis on what the purpose of legal design *ought* to be is distinctive, and a driving factor, of the LeDA. Many operating at the intersection between law and design are content with relatively thin normative criteria—for example, arguing that legal design ought, if anything, to be about improving efficiency. My preference is for legal design to be *defined* broadly, and with minimal normative emphasis, as the deployment of designerly ways to address lawyerly concerns. But design, like law, is a fundamentally social, as opposed to purely technical or abstract, field of practice. Both originate in, derive meaning from, and effect recursive impacts upon human actors, including their actions, interactions and rationalities. They entail choices. So neither design nor law is ever neutral—politically, economically, culturally or otherwise. Legal design ought, therefore, to be *approached* critically—that is, thought about and done with reference to the juristic normative commitment to avoiding, exposing and remedying biases and inequalities, whether they derive from law, from design or from legal design itself.

Having explained how to think about, and how to begin to assess, legal design, the following sections introduce empirical examples from four fields of lawyering: legal practice, legal activism, policy-making and legal research. It can be helpful to think of these examples of legal design as lying on a spectrum, beginning with those that are relatively focused on communication, especially by making things visible and tangible; and moving on to those where the emphasis on making things visible and tangible is also important for the more open purposes of experimentation, and of creating spaces of structured freedom. In every case, designerly ways can be seen to enable lawyerly concerns to be explored in ways that are at once practical, critical and imaginative.

Design for legal practice

I use the term ‘legal practice’ to refer to the work of drafting legal documents, such as contracts or legislation; advising clients on legal decisions such as a divorce or a free trade agreement; and making legal cases such as arguments in defence of an accused person, or against a declaration of war. Documents and processes involved in each form of practice are the product of a wide range of ‘people, functions and technologies’, interactions between which must be ‘consistent and linked’.²² So efficient and precise communication within legal

²¹ Legal Design Alliance website. Available at <https://www.legaldesignalliance.org> (Accessed 4 December 2018).

²² Haapio, H. and Hagan, M. (2016) ‘Design patterns for contracts’ in

documents and processes is both complicated and essential, not only to keep costs down and quality up, but also to promote what Cotterrell refers to as 'legal unity'.

Information design and interaction design were probably the first to be deployed in legal practice. Information design focuses on how information is presented in, for example, instruction manuals, maps, signage and data visualisations. The aim to convert data into information, which can then be converted further into knowledge; and in so doing to reduce 'information anxiety'.²³ In a legal practice context they are used to 'help people use and navigate complex legal domains', and to make 'legal information', including documents and processes, 'more accessible and understandable'.²⁴ Contract visualisation is an especially vibrant field of legal information design. For example Stefania Passera pioneered Legal Design Jams in which designers and lawyers collaborate intensively to visualize legal materials such as the Microsoft Online Store terms and conditions.²⁵ And Figure 3 shows a compressed version of the process by Passera re-organised a tenancy agreement, first by sorting elements into more meaningful categories, then by incorporating visual symbols and cues to aid comprehension and navigation.²⁶ Other examples of the application of information design to visualise law can be found in Robert de Rooy's 'comic contracts' in which 'parties are represented by characters', 'terms are written in pictures' and a legally

Erich Schweighofer et al. (Eds.), *Networks. Proceedings of the 19th International Legal Informatics Symposium IRIS 2016*. Wein: Osterreichische Computer Gesellschaft OCG / books@ocg.at, 381–388, pp. 382-3.

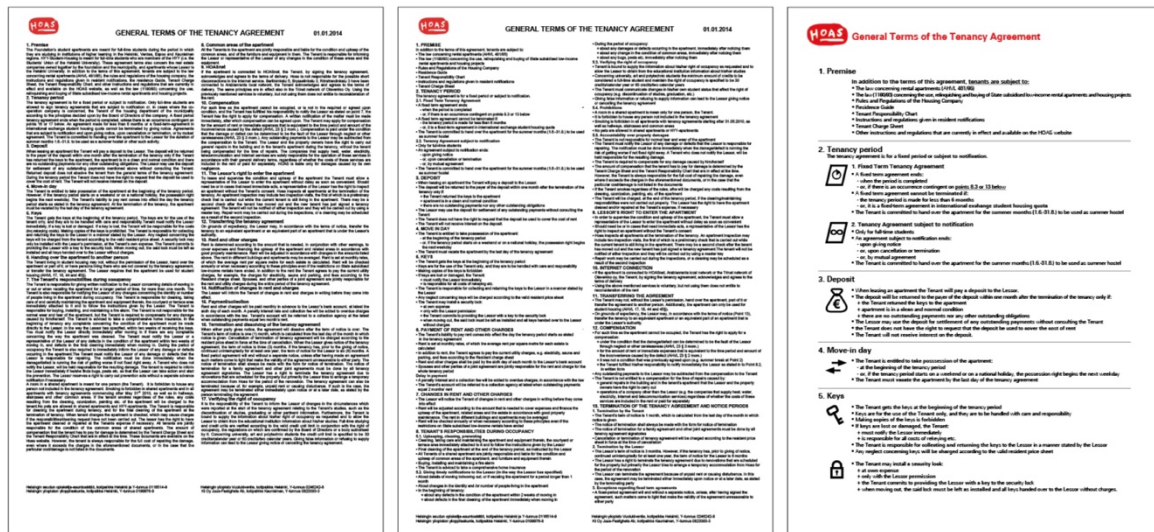
²³ Wurman, R. S. (1989) *Information Anxiety* Doubleday, cover page and p. 59.

²⁴ Haapio and Hagan 2016, pp. 182-3.

²⁵ Legal Design Jam website. Available at <http://legaldesignjam.com> (Accessed 4 December 2018); and Haapio, H. and Passera S. (2013) 'Visual Law: what lawyers need to learn from information designers'. Voxpopulii. Blog of the Legal Information Institute. 13 May 2013. Available at <http://blog.law.cornell.edu/voxpath/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers/> (Accessed 4 December 2018).

²⁶ Passera, S. (2015). 'Flowcharts, swimlanes, and timelines – Alternatives to prose in communicating legal-bureaucratic instructions to civil servants'. *Journal of Technical and Business Communication*. Vol. 32, no. 2, pp. 229-272.

binding contract is formed when parties sign the comic itself²⁷; the Creative Commons project which allows authors to communicate the terms under which they license their work using a few simple icons;²⁸ Rightsinfo.org, established by barrister Adam Wagner to produce accessible visual communications about human rights;²⁹ and the 2013 Good Law initiative of the UK Office of the Parliamentary Counsel and Cabinet Office;³⁰ a Legal Design lab project on wayfinding in courts³¹; and Law Bore, an online help students navigate the legal world.³²



²⁷ Creative Contracts. Available at <https://creative-contracts.com> (Accessed 4 December 2018). See also Camilla Basch-Anderson’s Comicbook Contracts project site. Available at <https://www.comicbookcontracts.com> (Accessed 4 December 2018).

²⁸ Available at <http://creativecommons.org/licenses> (Accessed on 4 December 2018).

²⁹ Available at <https://rightsinfo.org> (Accessed 4 December 2018).

³⁰ Office of the Parliamentary Counsel and Cabinet Office (2013) *When laws become too complex*. See also Curlotti, M. and McCreath, E. (2012) ‘Enhancing the Visualization of Law’. Paper presented at the 2012 Law via the Internet Twentieth Anniversary Conference, Cornell University, October 9, 2012. (Peer reviewed paper). Available at SSRN: <https://ssrn.com/abstract=2160614>.

³¹ Hagan, M. (2018) ‘8 ideas for better court wayfinding’ Open Law Lab. Blog. 27 June 2018 Available at <http://www.openlawlab.com/2018/06/27/8-ideas-for-better-court-wayfinding/> Accessed 4 December 2018. See also the Nu Law Lab Redesigning the Housing Court project Available at <http://www.nulawlab.org/view/redesigning-housing-court> (Accessed 4 December 2018).

³² Available at <https://Lawbore.net> Accessed 4 December 2018.

Figure 3: Extracts from an original (left) restructured (centre) and visually redesigned and restructured (right) tenancy agreement from Passera (2015) © 2013 Stefania Passera. Reproduced with permission.

Secondly, 'legaltech' is increasingly deployed in legal practice to increase private profit, widen access to justice or sharpen the implementation of criminal justice. Here hard and soft information technology are design to distribute and, using artificial intelligence, to automate, legal services. For example, legal bot Law Pàdí is a Nigerian 'automated legal assistant' which aims to give 'clear and easy-to-understand answers, cutting through legal jargon', one of many such projects showcased or supported by the Hague Institute for Innovation of Law.³³ Another example is the crowd-sourced Learned Hands project from the Legal Design Lab which asks lawyers to apply labels to legal issues appearing in online descriptions of problems, and in self-help resources produced by courts and other legal organisations. The labels will then be used to train machine learning models to see if they might be able to produce more useful automated legal advice.³⁴ From a critical, juristic, perspective it is important to emphasise that information technology, and artificial intelligence in particular, can itself sustain or introduce bias and inequality. For example, ProPublica discovered in 2016 that the software used to predict future criminality as a factor when determining sentences and bail bonds across the United States is built around algorithms which have been shown to be not only unreliable predictors of criminality, but also systematically biased against people of colour.³⁵

Experienced legal design practitioners such as Helena Haapio are beginning to look for ways in which the legal practice can learn not only from design technology and techniques, but also from wider design practices. For example, together with Hagan, Haapio advocates the development and sharing by lawyers of 'design patterns'—that is, 'reusable models of a solution to a commonly occurring problem' akin to those routinely used by architects, interaction designers and software 'to promote high quality, efficient, and consistent work,

³³ Law Padi website Available at <https://lawpadi.com/> (Accessed 4 December 2018); Hague Institute for Innovation of Law website available at <https://www.hiil.org/> (Accessed 4 December 2018).

³⁴ Available at <https://learnedhands.law.stanford.edu> (Accessed 4 December 2018).

³⁵ Angwin, J., Larson, J., Mattu, S. and Kirchner, L. (2016)

'Machine Bias'. May 23, 2016. Propublica. Available at <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> (Accessed 4 December 2018).

and a lingua franca among collaborators coming from different domains.³⁶ In juristic terms we can see this as an effort to produce unity of legal practice to complement and support legal unity.

Whatever aspect of legal practice is in question, design choices must first and foremost be tailored to accommodate the needs and abilities of the user. More specifically, as Edward Tufte observes, information design is supposed to transfer power to the user by enabling them to ‘select...narrate, recast and personalize’ information.³⁷ For example, the ‘infamous hanging chads’ that besmirched the 2000 US presidential election was ‘a consequence of bad design’: the font size of ballot paper was enlarged to aid elderly voters, which pushed the ballot into a confusing ‘two-page, “butterfly” format’. Despite a detailed report prepared by the American Institute of Graphic Arts (AIGA) setting out how to use principles of information design to improve ballot papers in federal elections, ‘ballot designs have hardly improved since’.³⁸ Such design failures offer valuable warnings to all legal designers. Information and interaction design are, at a global level, deeply embedded in the modernist principles of *gestalt* psychology originating in Germany in the early 20th century. The nature of these principles can be gleaned from these entries from an influential design encyclopaedia: ‘usability of a system is improved when similar parts are expressed in similar ways’; as the ‘flexibility of a system increases [its usability] decreases’; hierarchy is ‘the simplest structure for visualizing and understanding complexity’; and ‘mental [models] developed from experience’ determine how ‘[p]eople understand and interact with systems and environments.’³⁹ Indeed much of information design centres on Richard Saul Wurman’s observation that there are only five methods by which to organise information—namely, by

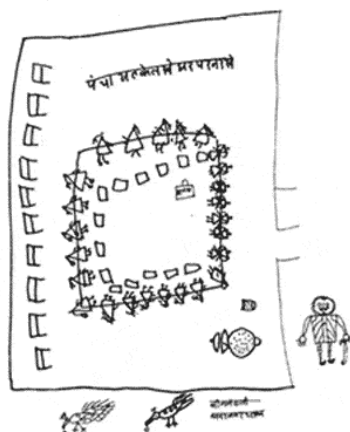
³⁶ Haapio and Hagan 2016, p. 83.

³⁷ Tufte, E. (1990) *Envisioning Information* Graphics Press pp. 34 and 50.

³⁸ Mestel, Spenser (2018) ‘The high stakes of voter ballot design’ *AIGA Eye on Design*. 5 November 2018. Available at https://eyeondesign.aiga.org/the-high-stakes-of-voter-ballot-design/?mc_cid=5b4b82ef3b&mc_eid=c12ee8fe37 (Accessed 4 December 2018); and US Election Assistance Commission (2007) *Effective Designs for the Administration of Federal Elections (Ballot Design)*. EAC. Available at https://www.eac.gov/assets/1/1/EAC_Effective_Election_Design.pdf (Accessed 4 December 2018).

³⁹ Lidwell, W, Holden, K and Butler J (2010) *Universal Principles of Design* pp. 56, 122 and 154.

category, time, location, alphabet, or continuum; and that the designerly skill lies in choosing the method that is most suited to communicating the information in question and rendering it in accessible visual and/or tangible form.⁴⁰ But communication ‘is a volatile process, wherein misinterpretations cannot be entirely avoided.’ ‘Miscommunication’ originates in ‘the assumption that people will understand us’ because the language we have chosen to use is somehow ‘universal’ or ‘objective’. Such ‘[a]ssumptions of objectivity and universality’ are embedded in the ‘modernist design principles as they are taught in Western design education.’⁴¹ They result in alienation, confusion, offence and error. So, just as we see an increasing commitment decolonise the law school curriculum, rendering it relevant to and respectful of all,⁴² so there must be an ongoing commitment to continuously decolonise legal design. An example of good practice comes from Lakshmi Murthy, leader of Vikalp Design, who co-designs public information materials with and for illiterate and low-literate rural communities in India. Traditional rural visual vocabularies are both rich and distinct from urban visual vocabularies. In order to reduce the chance of miscommunication, Murthy asks end users themselves to create any images used in their information materials (Figure 4).⁴³



⁴⁰ Nathan Shedroff ‘Information interaction design: a unified field theory of design’ in R. Jacobsen (ed.) *Information Design* (MIT Press 1999) 270-1.

⁴¹ Pater 2016 p. 3.

⁴² See for example ‘Decolonising law school curricula’ an ongoing project led by Suhraiya Jivraj and originating at Kent Law School.

⁴³ Codesign (2012) ‘For the people. By the people’ in *Dekho: Conversations on design in India*, 80-101. See also Vikalp Design website Available at <http://www.vikalpdesign.com> (Accessed 4 December 2018).

Figure 4: Representation created by a villager for inclusion in publication on the Panchayati Raj system of local government. © 2005. Lakshmi Murthy. Reproduced with permission.

From a critical perspective legal designers must ask: To what extent do the ‘universal’ principles of design, or the specific ways in which they are enacted by designers, serve to introduce, reinforce or leave unchallenged biases and inequalities? This is a question that those working in the field of legal activism tend to be especially good at addressing.

Design for legal activism

By ‘legal activism’ I mean to refer to civic efforts to change, or raise awareness of, legal phenomena, including of what the law says and how it is implemented. There are many ways to trigger change—propaganda, persuasion and penalty to name a few—each of which is more likely to succeed if it is consciously designed.⁴⁴ But there is nothing inherently ‘good’ about design. From the swastika to the atomic bomb, design has facilitated all too much bad change; and often the good and bad are inextricably interwoven. For example, an infamous diagram detailing how to maximise the number of people to be carried in the slave ship *Brookes* without breaching the provisions of the Regulated Slave Trade Act 1788 also proved invaluable to abolitionists.⁴⁵ Always, but especially in relation legal activism, design itself is political—it not only either ‘serves or subverts the status quo’, but is also the result of the ‘values and assumptions in which it was created’ and the ‘ideologies behind it’.⁴⁶ Since the 1960s designers have periodically issued First Things First manifestos calling for designers to take more responsibility for their practice, and to work for ‘worthy’ causes such by addressing ‘environmental, social and cultural crises’; enhancing ‘education, medicine, privacy and digital security...journalism... and humanitarian aid’; ‘transform[ing]’ economic and financial systems and ‘reinforce[ing]’ human rights.⁴⁷ An ever more nuanced critical

⁴⁴ Dunne, A. and Raby, F. (2014) *Speculative everything: Design, fiction, and social dreaming* London: MIT Press, p. 160.

⁴⁵ Available at <http://www.bl.uk/learning/timeline/item106661.html> (Accessed 4 December 2018).

⁴⁶ Pater, R. (2016) *The Politics of Design: a (not so) global manual for visual communication*. Amsterdam: BIS, p. 2. Quoting Tony Fry.

⁴⁷ First Things First Manifesto (1963) drafted by Ken Garland and delivered at the Institute of Contemporary Arts Available at <http://kengarland.co.uk/KG-published-writing/first->

awareness of design's always political, always contingent, nature continues to evolve among designers. For example, it permeated a recent exhibit at London's Design Museum exploring the contribution to activism generally of graphic design—placards, magazine covers, data visualisations and so on.⁴⁸ At the same time, the exhibit included a large poster reading 'SLOGANS IN NICE TYPEFACES WONT SAVE HUMAN RACES', emphasising the limits of design as a tool for change; while 40 exhibiting designers became activists against the Design Museum itself, removing their work from the premises in response to the hosting 'a private event linked to the arms industry'.⁴⁹ In this space I choose to focus on those instances of legal design for activism where the designerly aspects are relatively uncomplicated, and/or where designerly ways are expressly directed towards avoiding, exposing and remedying biases and inequalities .

The Centre for Urban Pedagogy, a not-for-profit organisation based in New York, City that uses design to 'demystify the urban policy and planning issues that impact ... communities, so that more individuals can better participate in shaping them'. It uses design-based methods to help members of the public, including school children, to identify, explore and communicate about key legal issues such as the rights of domestic workers, street vendors and tenants; and the trade-offs involved in urban planning. Each year it issues a call for civil society groups to bid for a 'complex policy issue' to be the subject of a 'collaborative design process', resulting in an engaging and accessible guide for distribution to 'people who need

[things-first](#) ; First Things First 2000 published by Adbusters, Eye Magazine, Émigré and others. Available at <http://www.eyemagazine.com/feature/article/first-things-first-manifesto-2000>; and First Things First 2014 initiated by Cole Peters Available at <http://firstthingsfirst2014.org> (Accessed 4 December 2018). See also Holleran, S. (2018) 'Designing the real deal' *Design Observer* (August 8 2018). Available at <https://designobserver.com/feature/designing-the-real-deal/39962> (Accessed 4 December 2018).

⁴⁸ *Hope to Nope: Graphics and politics 2008-2018*. Exhibition. 28 March to 12 August 2018. Design Museum.

⁴⁹ Brown, M. (2018) 'Design Museum challenged over private "arms industry" event'. 24 July 2018. *The Guardian*. Accessed 7 November 2018. Available at <https://www.theguardian.com/artanddesign/2018/jul/24/design-museum-challenged--arms-industry-event> (Accessed 4 December 2018).

to know, people who want to know and people who like design'.⁵⁰ For example, Figure 5 is an extract from Vendor Power! which uses a visual language similar to that of airplane safety cards to explain to street vendors what their rights are. Like some of the information design examples in the preceding section, it dramatically widens accessibility by prioritising images, in this case supported by multi-lingual text.



Figure 5: Extract from Vendor Power! a collaboration of the Center for Urban Pedagogy, Street Vendor Project, and designer Candy Chang. © the Center for Urban Pedagogy (CUP), 2018. Reproduced with permission. The poster uses simple graphics and minimal text – in the five languages most commonly spoken among NYC’s vendors – to decode the rules and regulations for New York City’s street vendors. Street Vendor Project has distributed thousands of copies to its members, and other organizations that deal with street vendor issues are using them, too.

Likewise, the Cypriot Puzzle is a small cross-disciplinary group devoted to provoking and facilitating Cypriots to engage critically with issues and processes surrounding the status of Cyprus as a divided island. ‘Rather than giving out 600-page manifestos and reports we prefer to use videos, infographics and other multimedia to provide people with attractive, holistic, and – as far as possible – objective information.’ The group has produced a range of animations on topics such as the legal structure of the proposed bizonal, bicomunal

⁵⁰ Centre for Urban Pedagogy Website. Available at <http://welcometocup.org/Projects/MakingPolicyPublic> (Accessed 4 December 2018).

federation around which negotiations between the predominantly Turkish Cypriot north and predominantly Greek Cypriot south are ongoing.⁵¹ Visual methods have also at times been central to the development of the group's shared understanding of the legal issues. For example, in the multi-disciplinary process of creating videos 'whole walls were filled' with data and images, providing a common visual plane on which concepts and empirical evidence could be shared, critiqued and tested. However visual communication does not have the same effect on all audiences. For example, although extensive research underpins each output, they have found that 'the older generation makes fun of the necessity of visualisation for the youth...[and] feels that there is some seriousness lacking in our project.'⁵²

Such reservations are likely to recede over time, especially given the now widespread recognition of the value of designerly ways in activist organisations such as Forensic Architecture. There lawyers work with architects, artists, filmmakers, software developers, investigative journalists, archaeologists and scientists to generate and communicate evidence for national and international legal proceedings. A distinctive feature of their recent practice has been the training and involvement of communities in evidence collection,⁵³ very much in the spirit of co-design. Originally known as participatory design, co-design originated among software designers in Scandinavia in the 1980s, and went on to inform social and innovation designers such as Ezio Manzini. The role of 'expert' designers in this context is to create strategies for change-making by provoking and facilitating non-experts to become 'diffuse' designers and to approach their own field of expertise in 'design mode'.⁵⁴ '[P]articipatory design recognises that designing is not neutral'. It 'involves making decisions about who is invited to participate, how participation is enabled, which tools are used, and how the outcomes of such an activity shape what goes forward.' So 'a range of people are invited to become active participants in the innovation journey and have access to the tools

⁵¹ Cypriot Puzzle website. Available at <http://www.thecypriotpuzzle.org/about/> (Accessed 4 December 2018).

⁵² Interview, Andromachi Sophocleous, Nicosia, 21 June 2016.

⁵³ Forensic Architecture 'The Destruction of Yazidi Heritage'. Exhibited as 'Maps of Defiance', representing the UK at the London Design Biennale 2018. Available at <https://www.forensic-architecture.org/case/destruction-yazidi-heritage/> (Accessed 4 December 2018).

⁵⁴ Manzini, E. (2015) *Design, when everybody designs*. London: MIT Press, p. 77.

that experts use’—to become ‘co-researchers and co-designers exploring and defining the issue, and generating and prototyping ideas.’⁵⁵ As will be seen, co-design is also a feature of a third field of legal design practice: policy-making.

Design for policy making

Design has long played a role in public policy implementation—from the ‘legal architecture’ of prisons and courtrooms;⁵⁶ to the adjusting of road markings to change driving habits; to the ‘crime-proofing’ of everyday products and built environments through ‘design against crime’ initiatives⁵⁷. From a critical perspective, such efforts become controversial when they attempt to exert subtle pre-emptive social control. For example, Gordan Savičić and Selena Savić have highlighted ‘unpleasant design’ which use spikes and awkwardly oriented surfaces to render public spaces unusable by rough sleepers (and the guerrilla tactics that may defuse them).⁵⁸

In this section I want to highlight how designerly ways can be deployed in policy making.⁵⁹ In her increasingly influential celebration of the ‘entrepreneurial state’, Mariana Mazuccato notes that public sector investment tends automatically to be miss-classified as unproductive ‘expenditure’, despite being often as innovative and productive as anything the private sector undertakes.⁶⁰ Certainly there has been a clear move in recent years towards a more proactive, innovation-oriented stance in policy-making circles.

⁵⁵ Kimbell, L. (2015) *Applying design approaches to policy making: Discovering PolicyLab* Brighton: Brighton University, p. 64.

⁵⁶ Mulcahy, L. (2011) *Legal Architecture* Routledge.

⁵⁷ Ekblom, P. (2011) ‘Happy returns: ideas brought back from situational crime prevention’s exploration of design against crime’ in Tilley, N. ed. *The Reasoning Criminologist: Essays in Honour of Ronald V. Clarke*. Routledge, pp. 38-49; Davey, C., Wootton, A., Cooper, R. and Press, M. (2005) ‘Design Against Crime: Extending the Reach of Crime Prevention through Environmental Design’ 18 Secur J 39.

⁵⁸ ‘Unpleasant Design & Hostile Urban Architecture’ 99% Invisible Episode 219 <https://99percentinvisible.org/episode/unpleasant-design-hostile-urban-architecture/>

⁵⁹ See Bason, C. ed. (2014) *Design for Policy* Routledge.

⁶⁰ Mazzucato, M. (2015) *The Entrepreneurial State: Debunking public v. private sector myths* Public Affairs. New York.

‘The policy profession is shifting from being hierarchical and closed to being networked and open.’⁶¹ Design-driven policy innovation units are both a cause and an effect of this shift. For example, the first such unit, MindLab was set up in 2002 as a cross-ministry advisor owned by the Danish Government and was widely regarded as the most influential of its kind, even as it was over-taken by the new Disruption Task Force and closed down in 2018. Over time, MindLab ‘evolved from designing solutions to civic problems to ingraining experimentation and risk-taking across government...teaching thousands of public servants to think like innovators [to] unlock unprecedented productivity.’⁶² Likewise, Policy Lab was established within the UK Cabinet Office to engage civil servants in design-based policy making methods as part of the wider Open Policy Making agenda and uses design-based methods to create ‘occasions and spaces in which people from inside and outside of government are able to participate in new [networked and open] ways in the activity of policy making.’⁶³ At an international level, UNDP Innovation, operating with direct funding from the Government of Denmark, combines principles of contemporary design (such as centring the user) with principles of contemporary development work (such as building for sustainability and doing no harm).⁶⁴ NESTA reportedly estimated in 2015 that 100 such policy innovation labs existed worldwide.⁶⁵

Policy innovation labs tend to promote experimentation. For example, the World Bank’s World Development Report 2015 refers in some detail to the Problem-Driven Iterative Adaptation model which values ‘authorizing environments that encourage experimentation, positive deviance’, and the repeated use of the question ‘why’ as a tool.⁶⁶ Sometimes experimentation is primarily conceptual. For example, ‘frame innovation’ is used to resolve

⁶¹ Kimbell 2015 p. 60.

⁶² ‘How Denmark lost its MindLab: the inside story’. apolitical. June 5 2018. Available at https://apolitical.co/solution_article/how-denmark-lost-its-mindlab-the-inside-story (Accessed 4 December 2018).

⁶³ Kimbell 2015 pp. 3 and 60.

⁶⁴ UNDP Innovation Facility (2018) *Moon Shots & Puddle Jumps - Innovation for the Sustainable Development Goals*. New York: UNDP.

⁶⁵ Kimbell 2015 p. 3.

⁶⁶ World Bank 2015 pp. 17, 21, 182 and 199. See also Andrews, M., Pritchett, L. and Woolcock, M. (2013) ‘Escaping Capability Traps through Problem-Driven Iterative Adaptation (PDIA).’ 51 *World Development* 234-44.

such ‘open, complex and networked’ issues —referred to by Richard Buchanan as ‘wicked problems’.⁶⁷ Policy makers are encouraged to repeatedly ‘zoom in and out’ between a problem and its context until an alternative ‘frame’ for the problem becomes apparent. Such a frame, to be formulated in the pattern ‘If...as if...then’, is intended to offer a ‘bridge’ to a new approach.⁶⁸ Policy innovation labs tend to be informed by participatory design, and in the spirit of openness their methods are often in accessible format.⁶⁹

Some techniques are more concrete, focusing on making propositions visible and tangible. For example, ‘evidence safaris’ require that ‘everyone involved in a project look at all the data, evidence and knowledge surrounding a policy issue’, while ‘journey mapping’ see policy makers plot the experience of those who use their services in order to ‘understand the interactions and touch points that people have regardless of department or policy boundaries’.⁷⁰ An ethnographic study by Lucy Kimbell’s offers a deep insight into such practices at Policy Lab. She notes the extension and embedding of existing government prototyping practices, in particular by emphasising their exploratory potential, and by making prototypes visible and tangible (Figure 6). New policies have traditionally been piloted (or rolled out in full) based on research-based (or even instinctual) propositions. Prototypes can be inserted as an intermediary stage between proposition and pilot/roll-out for developing observation-based insights. For example, one Policy Lab project, completed with the Home Office and Surrey and Sussex Police, saw participants making visible and tangible their ideas about supporting people through the Criminal Justice System in simple, rough cardboard models; another involved young people testing and improving a planned HMRC online, text message and postal communications strategy using paper prototypes. Kimbell observed that the collaborative processes of making an ‘exploratory prototype’ generated

⁶⁷ Buchanan, R. (1992) ‘Wicked problems in design thinking’ 8(2) *Design Issues* 5–21.

⁶⁸ Dorst, K. (2015) *Frame innovation: Create new thinking by design*. London: MIT Press; and Dorst, K., Kaldor, L., Klippan, L. and Watson, R. (2016) *Designing for the common good*. Amsterdam: BIS Publishers.

⁶⁹ See MindLab Methods page <http://mind-lab.dk/en/methods>; PolicyLab tool and techniques Slideshare <https://www.slideshare.net/Openpolicymaking/policy-lab-hopps-oard-presentation>; and NESTA ‘Development Impact and You: Practical Tools to Trigger and Support Social Innovation’. Available at: <https://diytoolkit.org> (Accessed 4 December 2018).

⁷⁰ Cabinet Office (2017) Open policy making toolkit. Available at <https://www.gov.uk/guidance/open-policy-making-toolkit> (Accessed 4 December 2018).

both (visible and tangible) ‘evidence about the plausibility of ...a proposed solution’ and ‘new insights into the problem and new concepts to explore’. So prototyping ‘continues to investigate a problem, while exploring solutions to it’.⁷¹



Figure 6: Illustration of table top prototyping by Holly Macdonald © Brighton University. 2015 Reproduced with permission.⁷²

In the traditionally hierarchical, closed, concrete and high-pressure world of government policy making, it is possible for designerly ways to have a dramatic effect. UNDP Innovation wryly observed that ‘the hype cycle of innovation has peaked in many industries’, with many who claim to engage in it failing to understand the basics. ‘But overall the sector is maturing and with it, the ambition to leverage innovation as a driver for systems-change and solid metrics to measure the impact of innovation.’⁷³ From a critical perspective the question is whether designerly ways are resulting in policies, and policy making environments, that avoid, expose and remedy biases and inequalities.

Design for legal research

Legal research falls into two main categories: research *for* law and research *into* law. Likewise, design research includes research *for* design, and research *into* design. But because design processes and outputs are ways of understanding the world, we can also

⁷¹ Kimbell 2015 p. 52-57.

⁷² Kimbell 2015 p. 64.

⁷³ UNDP Innovation 2018 p. 9.

speak of research *through* design.⁷⁴ This section focuses on how designerly ways might be applied in the context of academic legal research.

Roger Cotterrell has noted a ‘permanent tension’ at the heart of popular perceptions of legal expertise. On the one hand is the publicly-oriented idea of ‘legal knowledge as a cultural, communal resource which the lawyer can tap into and interpret to the citizen’. On the other is a privately-oriented idea of legal expertise as knowledge of the ‘obscure, technical “artificial reason” of law’.⁷⁵ That tension is perhaps at its most acute in the field of academic legal research, and at its most incongruous in the field of sociolegal research. Sociolegal researchers are distinguished by their commitment to ‘consistently and permanently . . . reinterpret law . . . as a social phenomenon’;⁷⁶ but sociolegal research processes rarely reflect, let alone embody, a social orientation. So my ongoing investigation entitled ‘Doing sociolegal research in design mode’ begins with the, by now familiar, proposition that designerly ways (a commitment to communication, an emphasis on experimentation, and an ability to make things visible and tangible) can enhance legal researchers’ abilities to address their concerns. But it goes further to consider whether sociolegal research done in what Manzini calls ‘design mode’ might be more social?

The most extensively elaborated element of that investigation thus far focuses on making things visible and tangible in models. Model making allows researchers to externalise ideas, such that they can be more effectively shared and critiqued; to prototype and test provisional ideas, and thereby to embrace contingency; and accessibly to communicate complexity. The decision to focus on models was in part a response to the findings of the ProtoPublics project led by Guy Julier and Lucy Kimbell.⁷⁷ Driven by the emergence of social design as a field of practice, that project aimed to ‘clarify how a design-oriented approach complements and is distinct from other kinds of cross-disciplinary, co-produced research in relation to social issues.’ Five interdisciplinary academic teams were brought together, each of which co-designed a social science sub-project using physical prototypes. For example, The Rules

⁷⁴ Frayling, C. (1993) *Research in Art and Design* 1:1 Royal College of Art Research Papers 1.

⁷⁵ Cotterrell 2018 p. 20

⁷⁶ Cotterrell, R. (1998) ‘Why must legal ideas be interpreted sociologically?’ 25:2 *Journal of Law and Society* 171-92, p.183.

⁷⁷ Julier, G. and Kimbell, L. (2016) *Co-producing social futures through design research*. Brighton: University of Brighton.

of Thumb sub-project aimed to identify the rules governing hitching a lift and developed a 'Hitching Kit' game.⁷⁸ Participants 'didn't know each other', came from different disciplinary backgrounds, and 'had to create ... trust in a very short time frame'. Their feedback exposed the value of model-making in the project: 'collaborative "doing" and "making"' enabled them 'to share information and perspectives, generate ideas and engage in sense-making together'.⁷⁹ So making things visible and tangible seems to create distinctly communal spaces of structured freedom.

The Sociolegal Model-making project built on this insight, engaging over 100 researchers experimenting with individual and collaborative model-making in relation to their ongoing research projects, supplemented with individual experimentation in relation to my ongoing research into the economic life of law in Cyprus; and were shared in real time on Twitter then converted into films and blogs posts. The experiments confirmed that sociolegal model making is productive for a wide range of researchers and topics.⁸⁰ For example, participants reported that one model-making experiment helped them: 'see connections' and gaps across their project; realise 'we should discuss our projects more, to learn more from each other'; 'reflect on alternative solutions'; 'express relatively unformed ideas'; 'sit back and analyse' the model, gaining 'reflexive insight'; and 'instinctually' to 'add elements' and only 'later...to see how they fit' with the wider project.

These findings informed my design of a set of easily downloadable and printable artefacts intended to provoke and facilitate any sociolegal researcher to engage in model-making. The primary artefacts are *A Proposition*, in which a call is made to sociolegal researchers to engage in model-making and *A Guide*, in which three modes of sociolegal model-making are explained (Figure 7). The three model-making modes are 'modular' model-making, in which building systems such as Lego are used primarily for the practical purpose of explaining a sociolegal project; 'found' model-making, in which stumbled-upon or curated items are used primarily for the critical purpose of generating new perspectives on a project; and 'bespoke' model making, in which artefacts are made, for example, from clay, primarily for the

⁷⁸ Available at <https://protopublics.org/project-5/> (accessed 4 December 2018).

⁷⁹ Julier, G. and Kimbell, L. (2016) *Co-producing social futures through design research*. Brighton: University of Brighton, p. 24.

⁸⁰ Perry-Kessarar, A. Approaching the Econosociolegal. Blog. Available at <https://econosociolegal.wordpress.com/>; Perry-Kessarar, A. Sociolegal Model Making video collection at <https://vimeo.com/album/4228144>; and Perry-Kessarar 2017.

little there there' has, as they say, gone viral.⁸² At the heart of some such backlashes against design imperialism is a sense that too much of what design is selling is neither coherent or nor unique. For example, a recent Design Council report breathlessly asserted that designers are 'unique' simply because they draw on 'a range of different skills, tools and technologies to deliver new ideas, goods and services' (who doesn't?). It also asserted that 'people who use design skills are 47 percent more productive than the average UK worker, delivering almost £10 extra per hour', but many of the 'design skills' identified in the Report—including the skill of 'design' itself—were either not defined, or listed as shared with other disciplines.⁸³ It is difficult and risky to claim individual skills, knowledge and attitudes are unique to design, which is why this paper instead highlights combinations of features that are characteristic of design, points of contact shared with law, and examples of legal design practice.

In the sphere of legal design additional resistance comes from the fact that, while 'the designer's mindset pushes us to explore and test ambitious ... big, risky, wild ideas', lawyers rather 'tend to make a sport out of shooting down ideas as quickly and thoroughly as possible.'⁸⁴ Lawyers also have a somewhat contrary relationship with the idea of creativity. They know it is crucial to their work, but as intentional and structured thinkers, they are wary of its free-wheeling connotations. And the style of much of design-discourse is built around bold and somewhat pushy statements/instructions with which some lawyers and legal stakeholders will simply never voluntarily engage. No point in forcing it.

⁸² Vinsel, L. (2017) 'Design thinking is kind of like syphilis — It's contagious and rots your brains. Blog. 6 December 2017. Available at: https://medium.com/@sts_news/design-thinking-is-kind-of-like-syphilis-its-contagious-and-rots-your-brains-842ed078af29 (Accessed 4 December 2018); and (2018) 'There's So Little There There: A Response to the Stanford d.school's Defense of Design Thinking'. Blog post. 14 June 2018. Available at <https://blog.usejournal.com/theres-so-little-there-there-a-response-to-the-stanford-d-school-s-defense-of-design-thinking-3cac35a1a365> (Accessed 4 December 2018). See also Beirut, M and Heffland, J (2018) 'Episode 83: Post-Its and Blocks'. Observatory Podcast. 21 June 2018. Available at <https://designobserver.com/feature/episode-83-post-its-and-blocks/39865/> (Accessed 4 December 2018).

⁸³ Design Council (2017) *Designing a Future Economy: Developing design skills for productivity and innovation* London: Design Council, pp. 5 and 32.

⁸⁴ Hagan (undated).

If lawyerly engagements with design are to be productive, some common myths about design must be dispelled: it does not originate in ‘divine sparks’, is neither ‘irrational’ nor ‘mysterious’, is not just about ‘creating beauty’, it is certainly not all ‘good’,⁸⁵ and it is neither entirely unique nor entirely discrete. The current fizz and pop around design thinking is not only vain but also in vain—damaging even—when design-based skills, knowledge and attitudes are not supplemented with expertise in the field to be ‘designed’; and vice-versa. As designers and lawyers are drawn ever more into each others’ zones of competence, the need for cross-disciplinary training and collaboration becomes ever more pressing. Most importantly, neither design, nor law, nor legal design is neutral, so approach them critically.

⁸⁵ Dorst 2015 pp. 41-44.