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Editorial: What legal design could be: Towards an expanded practice of inquiry, critique, and action

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Abstract: Our theme track call for papers invited contributions that explore the role of designers in advancing legal design as an expanded practice of inquiry, critique, and action. Our core motivation for this theme track is our vision for a baseline world where everyone possesses agency to use the law and is equipped to both assert legal rights and question or change the role that law has in and on our lives. We are here deliberately challenging the emerging norms of legal design practice and theory because we feel achieving universal legal agency will entail working with a different attitude toward a different direction than most of the legal design field today. Through the frame of critical design theory and practice (and other frames), papers in this track document steps taken, challenges faced, or lessons learned deploying critical, speculative, and experimental approaches to legal design in the legal or design academy, professions, and beyond.

Keywords: legal design; critical design

Though its roots can be traced back decades, legal design has been a named, articulated *thing* for only ten years (Davis, 2020). Initially spurred as a formal matter by the rise of “design thinking,” its initial incarnation focused on an optimistic and promising straightforward application of human-centered design methods to the world of law (Hagan, 2013). It did not take long for the idea to be embraced by traditionally conservative legal institutions, including law schools, private firms, state and local courts, and municipal agencies, as a means reforming everything from commercial legal product lines to civil court forms to the very conception of justice itself (Jackson et al., 2020). Nor did it take long for this new, inherently exploratory, democratic, and inclusive (Doherty, 2022) discipline to branch out well beyond product design methods to experiment with, refine, and iterate on a



wide range of creative practices and modalities (Sherman, 2019). Legal design can now be understood to encompass a number of other creative processes, from system, service, and experience design, to social practice art and legislative theater, all of which are now being applied to challenges people face navigating, accessing, and interacting with law. As this new interdisciplinary field has taken hold in the professions—legal, design, and otherwise—its influence and reach are expanding. No longer solely the province of technologists making law-related apps, or law faculty exploring new pedagogies, now law firms, courts, government agencies and NGOs are deploying legal design as more and more institutions seek to make themselves more adaptive to human needs and responsive to social change.

All of this is exciting (Doherty, 2022) because legal design rests on, among other things, the premise that law is one of the most fundamental architectures of human society, and that design holds the promise of improving how people experience law, and by extension, society (Kim et al., 2022; Perry-Kessaris, 2022). The ‘rule of law’ (for our purposes, just ‘law’) is ostensibly founded on the proposition that all people are entitled to equality of treatment, if not outcomes. Yet, more often than not, law has historically been deployed as a means of oppression – of asserting the will of certain political groups over others (Gerber, 2022). This occurs both through the substantive law (the sources of legal rights such as constitutions, statutes, regulations, and appellate court opinions) and the institutional systems through which the substantive law is manifest (court and administrative processes, components of the criminal industrial complex, municipal agency mechanisms, and you-name-it) (Dabaghi, 2022). Were the rule of law actualized in the world in its purest form, it would hardly resemble our present reality. We think legal design can get law closer to its promise, and that today’s world desperately needs such an intervention (Rossi et al., 2022; Dabaghi, 2022; Gerber, 2022; Walton, 2022).

This DRS2022 Track is therefore an opportunity for legal design to dream (Pope, 2022). To dream about what could be, what should be, and what we hope will be (Dunne & Raby, 2013). And to dream free of the restrictions of the existing disciplines of law and design, free even of the emerging norms of legal design (Bhatnagar, 2022). We consider this an opportunity for interested parties to convene creative minds and consider how this emerging discipline might inspire itself (Santuber & Edelman, 2022; Doherty, 2022) to best achieve what often feels tantalizingly close and excruciatingly far away - a lasting reorganization of law itself in order that it might fulfill its baseline promise of justice for all.

To date, much of the work in this space has tended to rely on commercial methods, often developed in corporate contexts where designers are focused on solving problems rather than posing them, and answering rather than asking questions. This is understandable - indeed desirable - as a practical and strategic matter. It has, for example, been crucial to the successful introduction of design to legal types that the proposed methods are tested and proven. It is also necessary to aggressively continue those efforts in our front line socio-legal institutions (schools, courts, digital everything) in order to continue to improve any number

of functions and steadily increase the number of professions with positive experiences with 'legal design.'

Continuing exclusively in this vein at this point, however, leaves too much potential untapped. Because existing approaches to legal design remain largely affirmative, they tend to maintain the status quo with efforts that are too narrow in scope, reductive in nature, or constrained in capacity to bring about critical reflection about, and action on, what exactly legal design should be designing. We therefore take our inspiration for this track from the established field of critical design, which takes a discursive approach to design and works to prompt critical reflection upon our everyday beliefs, values, and worldviews through speculative proposals (Dunne & Raby, 2013, Tharp & Tharp, 2019). We think critical design offers the potential to challenge fundamental issues at play in our existing systems, thereby assisting in setting the conditions for meaningful and lasting change in law and our legal systems and institutions (Walton, 2022).

Our call for papers invited contributions that explore the role of designers in advancing legal design as an expanded practice of inquiry, critique, and action. Like all of our work at the NuLawLab, our core motivation for this theme track is our vision for a baseline world where everyone possesses agency to use the law and is equipped to both assert legal rights and question or change the role that law has in and on our lives. We are here deliberately challenging the emerging norms of legal design practice and theory because we feel achieving universal legal agency will entail working with a different attitude toward a different direction than most of the legal design field today. Through the frame of critical design theory and practice (and other frames), papers in this track document steps taken, challenges faced, or lessons learned deploying critical, speculative, and experimental approaches to legal design in the legal or design academy, professions, and beyond.

The ten papers that follow can be roughly grouped, and are organized into, four categories: (1) disciplinary reflections and rigorous interdisciplinarity; (2) radical imagination and speculative futures; (3) public participation and policy interventions ; and (4) expanded approaches and alternative foundations. We think all four categories show us what legal design could be.

1. Disciplinary reflections and rigorous interdisciplinarity

Michael Doherty kicks things off for us with *Disciplinarity and the Modes of Legal Design*, which not only serves as a helpful introduction to those unfamiliar with legal design, but by examining the topic through the lens of disciplinarity, suggests that the field "has a great and tantalizing opportunity to do things differently and its own rhetoric, if it really means it, should lead it to consciously and positively design its modalities and infrastructure rather than unconsciously follow those of existing disciplines."

Amanda Perry-Kessaris follows with a compelling argument that *Legal design could and should be more sociological* by detailing three enhancements for a sociolegal approach to

legal design, including offering helpful additional arguments for why legal design is important.

2. Radical imagination and speculative futures

Hallie Jay Pope optimistically proposes a ‘juicer’ legal design classroom with her *Liberatory Legal Design and Radical Imagination* - one that pushes legal designers to problem-solve with the aim of radically remaking our world, and proposes a powerfully simple tool for freeing the imagination through the co-creation of visual stories about dream project outcomes.

Karma Dabaghi credibly moves us *Beyond Design Thinking and into Speculative Futures in Legal Design* by detailing the 2020 Beirut Port Blast as a use case for the application of speculative design methods to imagine the potential problems that need to be addressed before causing irreparable harm.

Phoebe Walton’s refreshing *James v Birnmann - The Potential of Critical Design for Examining Legal Issues* persuasively argues that we can enrich legal design with speculative environments that confront/examine/attack some of the fundamental issues within western legal systems and in so doing, elevate to critical the need for more widespread reform.

3. Public participation and policy interventions

Arianna Rossi, Regis Chatellier, Stefano Leucci, Rossana Ducato, and Estelle Harry ask the question *What if data protection regulators embraced foresight and speculative design?* By examining the actual deployment of foresight methods and speculative design in data privacy policy making in the European Union and France, they offer these methods as tested tools for policy makers to broaden public participation and democratically co-create our world.

This Lab (Miso Kim, Dan Jackson, Jules Rochielle Sievert, and Morgan Wilson) details *Locked down with abusers: designing for the dignity and autonomy of domestic violence survivors during the COVID-19 pandemic*, exploring how service design can elevate legal design beyond methods and means into a discipline that intentionally dignifies the human experience of moving through legal systems and processes.

Alix Gerber provides a frontline view *Designing Inside and Alongside the System: Working With Residents of Ferguson, Missouri on Policy Reform*, offering a deep dive into two related socio-legal design interventions in Ferguson in the wake of the murder of Michael Brown.

4. Expanded approaches and alternative foundations

Joaquin Santuber and Jonathan Edelman present a wonderfully interactive experience for the reader with *Designing with theories: producing Legal Design diffractively in courts of justice*, guiding us through seven theories deployed to answer the question “what if we

redesign justice from [X] theory?" Their compelling invitation is for us to see the world as a field of possibility through theories.

Sankalp Bhatnagar examines *What Legal Design Is as opposed to Could/Should Be* and introduces an alternative foundation for the field whereby its proponents recognise their task as putting lawyers and judges back in touch with law as a special kind of design that is capable of bringing out the marginal, overlooked, and forgotten practices of our lives. Only then, he argues, will this field make actual change, and not merely a change of appearance.

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Sankalp Bhatnagar holds undergraduate and graduate degrees in mathematics and design from Carnegie Mellon, where he earned intercollege and research honors, and a graduate degree from The New School. He has embedded with the Lab since 2020 as a research resident and senior researcher.