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Disciplinarity and the modes of Legal Design

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Abstract: This paper examines the emerging field of Legal Design through a critical reflection on the literature on academic disciplines and disciplinarity and argues that Legal Design does meet the criteria for recognition as an emerging academic sub-discipline. Its central contention is that Legal Design academics (together with their collaborative partners) have a timely opportunity to intentionally design the modalities of their nascent discipline. Academic disciplines can be understood in various ways. Whether this is, for example, from a sociological or an anthropological perspective, Legal Design has the chance to examine the human experience of disciplinarity and to consciously build an academic discipline that works for its users, be they academic practitioners, students or wider professional communities.

Keywords: legal design; disciplinarity; academic disciplines

1. Introduction

Is Legal Design an academic discipline? Academic disciplines can be understood in various ways, including from sociological (the institutionalisation and organisation of knowledge production) (Bourdieu, 1988), or anthropological perspectives (academic disciplines as 'tribes' with a shared culture and values) (Becher & Trowler, 2001). The paper briefly measures the current state of Legal Design against the checklist of characteristics of a discipline as proposed by Krishnan (2009) and concludes that Legal Design does have the characteristics of an emerging discipline. It explores some of the potential negative consequences of erecting disciplinary boundaries and norms but argues that recognition of Legal Design as a sub-discipline is broadly positive. The paper concludes that Legal Design academics (together with their collaborative partners) have a timely opportunity to intentionally design the methods and modalities of their nascent discipline. We can, and should, consciously build an academic discipline that works for its users, be they academic practitioners, students or wider professional communities.

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2. Legal Design

There is a high degree of consensus as to the aims, meaning and method of Legal Design. Margaret Hagan (2013) defines it as "the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying". For the Legal Design Alliance, "Legal Design is an interdisciplinary approach to apply human-centred design to prevent or solve legal problems".

There are variances in the central methodology of legal design. NuLawLab uses a four-stage approach derived from Kelley and Kelley (2013: Jackson, 2016) of a) inspiration, b) synthesis, c) ideation and experimentation, and d) implementation. The influential work of Stickdorn et al (2018; Design Council, 2021) on service design methods adopts the British Design Council model of discover, define, develop and deliver, visualised as a 'double-diamond' process. The Stanford d:school model has five stages: empathise, define, ideate, prototype, test. Yet even a cursory examination shows that these are slightly different ways of demarcating and labelling a substantially similar multistep process. They all also agree on the need to apply these models in non-mechanistic and flexible ways.

This harmony should not, perhaps, be so surprising. The core methodology of design thinking was already well developed before its purposeful application to legal systems and services. There have been, very broadly speaking, different points of focus in the different geographical incubators of the discipline: on contracts and visualisations in Europe, particularly Finland and Germany; on access to justice and the design of dispute resolution procedures from the 'law labs' of the USA. Yet, this has not resulted in significant conflicts as to the core aims and methods of Legal Design.

3. The nature of academic disciplines

An initial question is, should legal designers even want their work to be organised within the structure of an academic discipline? Trowler (2012) has pointed out that, "Some have argued that disciplines are dead or dying, replaced by interdisciplinary forms of organisation as higher education becomes more oriented to solving pressing real-world problems through multidisciplinary task-oriented formations that draw in expertise from beyond universities". One conception of this relatively new mode of knowledge generation and problem solving is called 'Mode 2'. Proposed by Gibbons et al (1994), it contrasts with a traditional Mode 1 where the focus of scientific research is new knowledge created within strict disciplinary boundaries and university institutional structures. Mode 2 is concerned with real world problem solving in fluid multi-disciplinary teams, using action research, co-operative enquiry, grounded theory and clinical methods (McLean, MacIntosh & Grant, 2003). This structure will have an immediate resonance for Legal Design.

The descriptive accuracy of the Mode 2 concept, though, has itself been criticised (Fuller, 2000) and attacks on the conceptual value (as 'simplistic') recognised even by some of its proponents (Nowotny, Scott & Gibbons, 2003). The element of Mode 2 most relevant to this

paper is the critique of disciplinarity that it associates with Mode 1, which developed within a paradigm of pure scientific research, and which seems to have limited applicability to legal scholarship. A persistent and older model of legal scholarship involves scholars acting as, or closely with, legal practitioners in the practical application of law, i.e. in a real-world problem-oriented way (Cownie, 2012). Crucially, a key feature of Mode 2, its multi-disciplinarity, presupposes the existence of disciplinary boundaries and the leading modern study on academic disciplinarity by Krishnan concludes that "It is certainly too soon to declare the end of disciplines and there is the strong likelihood that disciplines and disciplinarity can survive in the long-term … [and] it is unlikely that a single post-disciplinary science could be possible or successful or even desirable" (Krishnan, 2009, p.55).

As outlined below there are benefits for academics to have their field recognised as an 'academic discipline' in terms of developing academic identities, effective infrastructures and organisational independence. Trowler acknowledges this "continued salience of disciplinary forms of organisation". An interim conclusion is that Mode 2 is an interesting perspective on the economic and social organisation of knowledge production and sketches out many features that Legal Design ought to be happy to embrace but does not strike a serious blow to the continuing relevance of academic disciplines.

We should, though, also address the alleged dark sides of disciplinarity. Krishnan identifies criticisms that its "narrow and deep specialization" can foster 'insularity and imperialism rooted in partial and ideological thinking' (Krishnan, 2009, p.4). Exercising a discipline will intrinsically involve policing certain behaviours or ways of thinking (Krishnan, 2009, p.8). This was the aspect of disciplinarity that Michel Foucault found so distasteful in *Discipline and Punish*. He argued that "The disciplines characterize, classify, specialize; they distribute along a scale, around a norm, hierarchize individuals in relation to one another and, if necessary, disqualify and invalidate." Followers of disciplines ultimately internalise these rules so that "open repression is no longer needed", and academic disciplines act as a process 'limiting the freedom of individuals and as a way of constraining discourses' (Foucault, 1991, p.223).

This poses questions to those who want to actively promote the development of Legal Design as an 'academic discipline'. If it is a discipline, then it must have boundaries. If it is interdisciplinary, that is, a field of activity traversing academic disciplinary boundaries, then those boundaries must exist and be maintained by the actions of disciplinary practitioners. Lyotard (1984) agrees that academic disciplines are specific practices containing rules that determine which kinds of statements are true or false.

Disciplinarity almost certainly carries with it this 'border force', this policing, function. Social constructionists such as Biagoli have argued, for example, that peer review is "a means of policing academic discourses and of ensuring their overall coherence" (2002, p.16). Similar exercises of disciplinary power happen in the selection of research partners, appointments to editorial boards, hiring decisions by faculty committees and so on. A decision of a Legal Design editorial board to reject a paper because it did not respect disciplinary traditions (e.g. the LeDA Manifesto) would take us into this realm of Foucaultian discipline. If it decided not

to decide, then the editorial board would threaten the intellectual coherence of the subject it is publishing papers on.

Ultimately, it seems that the responsibilities of this function cannot be avoided. Boundaries are necessary. They allow argument to happen. They allow communities of practice to build capacity to generate useful knowledge and go on to do useful things in the world. The answer for Legal Design may simply be an explicit awareness of this aspect of disciplinarity and a reflexive application of its external facing methodologies to its own practices as a discipline. That is, to be human-centred, to be flexible and to focus on the real-life needs of its practitioners as well as its users. If academic power must be exercised then let it be in a paradigm upholding quality but that also values equity, inclusivity and (as a particularly radical suggestion) kindness.

The modalities and conventions of a particular discipline can emerge as much from its social practices as from its more formal declarations, organising principles and manifestos. The danger for a nascent discipline is that can incorporate unspoken assumptions that deserve to be questioned and existing inequities that deserved to be rejected. Legal Design has a great and tantalising 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.

4. Legal Design as an academic discipline

Krishnan, in his wide-ranging survey of the nature of disciplinarity, says that disciplines involve “the organisation of learning and systematic production of new knowledge” (2009, p. 9). He presents a six-point list of the general characteristics that a discipline ought to have. This section is a short initial proposal of whether and how Legal Design fulfils these characteristics.

a) particular object of study

Legal Design is a markedly diverse field. As a form of professional practice, it has been most utilised at opposite ends (depending on how one measures these things) of the legal services spectrum. Many ground-breaking projects are in access to justice and ‘poverty law’ fields. There have been innovative developments from Big Law firms, in-house corporate legal services, and legal design agencies. This diversity is reflected in the academic practices of legal design pioneers, from Helena Haapio’s work on contracts and proactive law, to Margaret Hagan’s insistence that the work of the Stanford Legal Design Lab should have a direct positive impact on people facing post-Covid eviction in the US. The particular object of Legal Design has encompassed many areas of legal scholarship including intellectual property, privacy, legal technology, judicial administration, legal policy-making, communication of civil rights, etc. Yet the breadth of this activity should not divert us from the fact that this work has an underlying commonality, an object of study that is the application of design mindsets and methods to legal products and processes.

There are many precedents where the knowledge matrices of existing external disciplines have been brought to bear as a lens to examine very wide parts of the legal field and, as a consequence, to create something new. Legal history and law & economics are just two examples of this disciplinary porosity.

b) a body of accumulated specialist knowledge

As a nascent discipline this is necessarily a small but growing body of knowledge. It should be acknowledged that, thus far, the body of accumulated knowledge is rather underdeveloped, but there has been a surge of new monographs and edited collections in 2020-22, plus special editions of journals. A new specialist journal, provisionally titled *Legal Design Journal*, is in development. Yet, the body of academic work on Legal Design, around a decade after its emergence remains disparate and only operates in dialogue with other Legal Design scholarship in limited ways.

A part of this relative disciplinary immaturity is that Legal Design is very different from other young and new legal disciplines, such as environmental law, sports law, energy law. They, like legal history, law & economics, and feminist legal studies, can review and analyse a huge corpus of existing legal materials. We have no key cases, no body of primary law to pore over. The examples we use will largely be from practice rather than from law reports and the statute book. The case studies available to us are very useful, but often limited by commercial confidence considerations.

c) theories and concepts that can organise that specialist knowledge effectively

There are a range of concepts from design, as well as legal classifications, that can organise Legal Design knowledge, but the golden thread is user-centricity. Other specialist knowledge concepts that are distinct – when viewed from existing legal perspectives – include innovation, prototyping and creativity. Is UX a bit thin as an organising concept? If we think of law not as a system of commands but as a social common good (as much political philosophy, social contract theory and rule of law rhetoric does), then there are important practical, economic, social and moral reasons why law should work better for people. In other words, human-centricity has the potential to be both revolutionary in its impact on legal systems and services and intellectually coherent with organising theories and concepts with deep roots in Legal Design's parent disciplines of law and design.

d) specific terminologies or a specific technical language

Legal Design has lots of specific technical language, mostly derived from mainstream design thinking and service design: UX, journey mapping, ideation, needs analysis, service safari, pain points. Their use in a legal context can seem exotic. As the discipline matures, as it become more entangled in the tacit knowledge, the underlying disciplinary matrix, of law they may become more entwined with legal discourse (e.g. contract design, the A2J gap), and start to appear more integrated into legal vocabularies and, conversely, to seem more distinct to designers.

e) developed specific research methods

Again, we have a picture of diversity and some underlying harmony. There is a lot of method in the method – UX research (qualitative and quantitative), observer and participant research, prototype testing, outcome evaluation. Many of these research methods have been alien or highly marginal to legal scholarship so far.

Legal design scholars also integrate existing methodologies with new design perspectives to evolve new ways of doing legal research, for example Perry-Kessaris (2021) adding imaginative designerly ways to the palette of socio-legal inquiry into economic/legal life.

f) some institutional manifestation in the form of subjects taught at universities or colleges, respective academic departments and professional associations.

There is a persuasive story to tell here that Legal Design has been successful in starting to carve out institutional manifestations of its work. This is not always easy, as tax law academics in the UK can attest. There is a competitive market for space in the law curriculum, in support for new programme development, in staffing resource allocation decisions. There are too many Legal Design course initiatives, clinical legal design programmes, and extra-curricular activity to list here, but one element of Legal Design discipline building is worth highlighting – lots of it has happened regardless of institutional support.

Legal Design activists have tapped into global networking and collaborations with practitioners to create judicial support programmes, student clinical projects, international conferences, open professional associations. They are not divorced from institutional power and exigencies but hint at new ways to build an academic discipline.

The overall interim conclusion is that the disciplinary conditions have been met. There is a sufficient pattern within the mosaic of activities around law and design to say that something is emerging that can in good conscience be called ‘Legal Design’. We can characterise this as a process of *subject parturition*; Legal Design is developing from the interaction of legal and design disciplines and gradually gaining some independence from them (Metzger, 1987). Work remains to be done on what Metzger called *subject dignification*, an increase in status and acceptability within the academy.

5. Disciplinarity construction and character

Some psychological approaches to discipline classification are based on the beliefs that discipline members hold about themselves (Biglan, 1973). This is pertinent to Legal Design because it implies agency – the ability of discipline practitioners, particularly in the emergent phase, to consciously consider how the modes of the discipline (its operations and structures, the experience of *being* a Legal Design academic) can match its ambitions for the delivery of legal services, business contracts, access to justice, the application of legal tech

etc. That is, if disciplines are a social construct, let us think about how we want to design this, our own particular construct.

Anthropology can also provide useful perspectives here, particularly the work of Becher and Trowler (2001) on 'academic tribes'. According to this analysis, academic disciplines distinguish themselves through "self-created cultural practices and specific values". These tribes speak the same language, participate in the social life of the group and to a significant degree share the same beliefs. As Trowler says "the knowledge structures of disciplines (the academic territories) strongly condition or even determine the behaviour and values of academics, who live in disciplinary tribes with common sets of practices" (Trowler, Saunders & Bamber, 2012, p.24).

The language of tribes may be attractive to legal designers involved in carving out new territory and ways of doing their discipline and in presenting cultural practices that may be rather different from their law school colleagues. Krishnan argues that "academic tribes, especially those with less tradition, strive for developing a strong cultural identity that allows them to prosper" (2009, p.24).

Yet, there is something further to consider in this academic tribes thesis. As Trowler argues above, the visible culture of an academic tribe is strongly conditioned or even determined by the knowledge structure of the tribe's discipline. That is, physicists are different from engineers in the ways they research, teach, converse, hold conferences, and even choose hobbies, because physics is different from engineering. As legal designers we may accept that the experimental, visual and practical elements of our methods will influence our culture and behaviour as academics but ought not to lose sight of the central tenet that social systems and processes can be intentionally designed. Indeed, Becher and Trowler stress that their anthropological analysis is only one way of identifying structural factors influencing academics' cultures (2001, p.24). Any conditioning of legal design subject matter and methods on our 'tribal' behaviour and culture can be critically examined to see if it is fit for its own purposes and consistent with its own rhetoric.

There are a couple of final lines to draw between Krishnan's work and Legal Design. Historical perspectives on the development of disciplines point to the need for intellectual leadership to define the new discipline, give it a clear agenda and inspire followers. He argues that "founding a new discipline needs adventurous pioneers who are willing to leave their original discipline behind to cover new ground", and that "practically every new discipline starts off necessarily as an interdisciplinary project that combines elements from some parent discipline(s) with original new elements and insights" (Krishnan, 2009, p.34). Further, he finds that "disciplines are now identified more through the methodology they apply to certain topics or research fields, rather than through the topics or research fields themselves" (Krishnan, 2009, p.35).

There is therefore scope for legal designers to draw on the best of the epistemological and methodological domains of law and design to influence the social construction of a new sub-

discipline. Those inheritances will influence but not determine the direction or nature of Legal Design, and the 'adventurous pioneers' have agency in evolving the modalities of being an academic Legal Designer.

6. What should the intentional design of Legal Design as an academic discipline consider?

Describing a key facet of Legal Design, Hagan (2013) says that, "It offers intentionality in the face of a system that has been hacked and patched together haphazardly and without user testing". It would be an irony if Legal Design were to evolve its own disciplinarity in a haphazard way and without testing for the experience of what we might call the 'users' of that disciplinary system, i.e. its own practitioners, students, and those outside academia who want to engage with their work. There are strong signs that this passive approach will not happen, that there is an intention among Legal Design academics to think deeply about how they want to practice their own particular variant of academia (Doherty, 2019).

Service design as applied to customer-facing organisations already acknowledges that its methods can, and should, be used with employees and service providers as well as directly with service users and customers (Stickdorn et al, 2018). Academic practitioners of Legal Design will still be (largely) working within the academy. They will be seeking career development, research funds, sabbatical leave, research students. This is because they have the same ambitions as other bright hard-working people, but also because they want to go out into the world and use design to make the sorts of differences to legal systems and services that, inter alia, Hagan and Haapio talk about so eloquently. Having the resources and authority of the academy, may not always be essential, but they certainly help. No discipline is an island, entire unto itself. If Legal Design wants to do things a bit differently it still has to navigate these higher education systems and structures. It if wants, as just one example, to develop different ways of presenting work (apps, posters) which garner academic credibility, then it must do so in a way that acknowledges the existing and overwhelming primacy of text as authority within the legal academy.

7. What should being a Legal Design academic look and feel like?

With that in mind, this paper concludes with some short position statements or discussion points. These points are about the modalities of Legal Design as an academic discipline – the particular mode in which being a Legal Design academic is expressed or experienced. They largely follow aspects of Legal Design that are extant but seek to develop further discussion of these academic and cultural practices. So, Legal Design as an Academic Discipline ought to be:

a) Internationalist not national

A large majority of legal academic disciplines have a national focus; being based on the study and teaching of a body of substantive national law (e.g. property, contract, criminal law) this

is understandable. This is acknowledged by Becher and Trowler as one limit on the more extreme visions of globalised higher education (2001, p.3), and is further bound up in issues of national legal professional accreditation. Yet, those topics not based on studying specifically national law often also adopt nationally-focused structures (to a greater or lesser extent). American law students will use textbooks on international law written by American authors. There is a *British* Institute of International and Comparative Law.

Similarly, legal education has some specific jurisdictional concerns but is more often concerned with universal questions of pedagogy, yet none of the twelve members of the editorial board of the Journal of Legal Education is from outside the US. The UK-based *Law Teacher* journal is the 'international journal of legal education' yet 64% of its editorial board comes from one country, the UK. In other words, there is scope for legal scholarship to have a more internationalist mode.

As a legal academic discipline emerging in the second and third decades of the 21st century Legal Design does not have adopt this infrastructure. The modes of collaborative working and communicating available in a connected world mean that it is easier to write together, to run events together and to contribute to each other's courses. The, for better or worse, dominance of international English means that a large majority of practitioners and students have access to a lingua franca. Though this does throw up challenges to the need to develop Legal Design materials in languages accessible to a wide range of language users, and to support the development of Legal Design centres of excellence that can both take part in global debates and support localised activities.

b) Interdisciplinary not mono-disciplinary

This follows, of course, from the whole basis of the movement. It involves working with technologists, information designers, visualisation partners. It is part of the DNA of Legal Design. However, if Legal Design is the application of design thinking to a social process (a legal system) or a business offering (legal services) why not just bring in a really great service design team? What do law-background legal designers bring to the party?

Hagan has charted how Legal Design is a complement to existing legal methodologies such as Law in Action and Empirical Legal Studies (2018, p.207-08), and Perry-Kessaris (2021) has similarly argued the value of design approaches to socio-legal studies. The drafting and application of general rules to unknown variants of future human behaviour, 'doing things with rules', is inherently complex and there are more obvious constraints on the ability to simplify and visualise legal information than there are in e.g. product design.

That is, the distinctiveness of law as a social phenomenon and of lawyering and lawyerly skills as practices need to be articulated, so that this process is not seen as simply the application of one methodology (design) to one knowledge domain (law); to be Legal Design not Design and the Law.

c) Democratic and inclusive not hierarchical

This a call to the Legal Design community to try to consciously design working practices during the developmental stage of the discipline, so that they avoid some of the callousness and inequity we see in legal practice and academia. It has been argued that the generation of new academic structures can present opportunities 'to shed oppressive practices as well as to realise new possibilities' (Winter, 1995, p.130). How is working in Legal Design going to be a great experience for early career researchers, students, non-academics, academics who are parents, non-lawyers? Graphic Design, certainly in the UK, is not a great role model here in relation to women, People of Color or working-class people. Most of the high-profile innovators in Legal Design have been women, how can we widen out that positive effect and sustain it?

This is a short question but a difficult one. Its premise – that Legal Design ought to build into its cultural practices so-called progressive values – ought to be interrogated and discussed. If it is accepted, then its implications will demand certain critical approaches to, to take one example, conference organisation. Will they revolve around high profile key-note speakers? Will participants be invited along 'to hear' or to 'help create'? How far will organisers go to replace 'manels' with balanced panels? What about pricing or even childcare? These is even before we get to issues around project funding, editorial panels etc.

As emphasised here, no discipline is an island, and the answers to many of these questions will be conditioned by existing practices within the academy. Yet this is where an awareness of disciplinarity combined with design methods may help the Legal Design community build versions of academic life that are more amenable to its practitioners.

d) Multi-modal not text-based

The legal academy has its traditional structures for research outputs of journals, edited collections, monographs. The core output of a Legal Design project may be a poster, an app, a diagram, a website, a form, a contract, or something even less tangible (e.g. an increase in the number of court staff undertaking concierge-like services). Do we need to translate these into traditional formats (a journal article about a poster) or allow the objects to stand for themselves?

This produces a dilemma. To move wholly to a 'translation model' undermines the validity of the object as a legal research output. To wholly reject a 'translation model' leaves legal designers without a CV or publishing record that would be easily recognised by a funding council or faculty hiring committee. The answer to the dilemma is not obvious or easy, but intentionality about the mode of being an academic within a Legal Design sub-discipline ought to embolden us to tackle the question directly.

8. Conclusion

This is an exciting time for Legal Design. Those who broke the ground on this discipline over the last 20 years are seeing an upsurge in interest in what they started to build. More recent

arrivals, who may play a role as 'consolidators and synthesizers' (Krishnan, 2009, p.34), are discovering a methodology and toolkit that opens up possibilities for innovation and engagement that were previously a vague itch that they were not quite able to scratch.

The tools and methods for the type of enterprise called for here are already in our hands. Autoethnography is already being used to examine the experiences of clinical legal practitioners in higher education (Campbell, 2016). Other forms of participant research could uncover the human-centred needs of early career researchers, of academics who want to get into the field, of consultants and start-ups who want to contribute to more academically focussed projects. Personas of these archetypes could be co-created and their onward journeys from first engagement with Legal Design mapped. Experimental prototypes of conference engagement, or publication models of design objects, or models to generate academic collaboration rather than competition, could be quickly ideated, prioritised, implemented and evaluated.

The outward looking nature of Legal Design is one of its most attractive features. It should not exclude careful consideration of what being an 'academic discipline' might mean for Legal Design or internal debate on how its practitioners might intentionally design their own disciplinary culture and working practices.

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