





# **Legal Design Perspectives: Theoretical and Practical Insights from the Field**

**Rossana Ducato and Alain Strowel (eds)**

**Ledizioni**



With the support of the  
Erasmus+ Programme  
of the European Union

This publication and its release in gold open access has been made possible thanks to the support of the Erasmus+ Jean Monnet Module grant 599987-EPP-1-2018-1-BE-EP-PJMO-MODULE for the course “European IT Law by Design”.

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Rossana Ducato and Alain Strowel (eds), *Legal Design Perspectives: Theoretical and Practical Insights from the Field*

First edition: October 2021

ISBN print: 9788855265669

ISBN ePub: 9788855265676

ISBN PDF Open Access: 9788855265751

Catalogue and reprints information: [www.ledipublishing.com](http://www.ledipublishing.com), [www.ledizioni.it](http://www.ledizioni.it)

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# INTRODUCTION

*Rossana Ducato and Alain Strowel*

Before the law sits a gatekeeper. A man, coming from the countryside, asks to enter. The law door is open – as always – but the gatekeeper says he cannot enter now. The man asks whether he will be allowed access later on. The gatekeeper responds that it's possible. The law door is open, so the man tries to snoop around, but the gatekeeper admonishes him: he is the lowest of the gatekeepers, and if the man manages to enter, he will face other guardians even more powerful than him. The man from the countryside did not expect all these difficulties, as he genuinely believed that the law should be accessible to anyone. He is intimidated by the severe appearance of the gatekeeper, so he decides to wait for his permission. The waiting lasts days, months, and years. Over that time, the man keeps wearing to get inside and even tries to bribe the gatekeeper, but access is never granted.

Sitting before the law, the man grows older, his eyesight becomes blurred, but the light emanating from the door is still clearly distinguishable to him.

In the end, when he realises he is close to death, he addresses a last question to the gatekeeper: “everyone strives to reach the Law...how does it happen, then, that in all these years no one but me has requested admittance”. The gatekeeper responds that no one else could gain admittance because the gate was meant solely for him. He adds he will now shut it down.

This is the famous parable, *Before the law*, that Kafka narrates in *The Trial*.<sup>1</sup> It is a complex story that can be read at many levels, including the metaphysical one. We can see it as a metaphor or a prototypical status of the legal (eco)system. And we use it to open the course ‘European IT Law by Design’ to introduce Legal Design to students.<sup>2</sup>

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1 Franz Kafka, *The Trial* (David Wyllie tr, 2005) <<https://www.gutenberg.org/ebooks/7849>> accessed 22 August 2021.

2 This course, part of the elective program of the master degree in law at UCLouvain,

The door of the law is always open, so, in principle, it is accessible to anyone. However, the entrance is guarded by an intermediary, the gatekeeper, who communicates two rules, i.e. the layman cannot enter when he asks for it, and the layman has an ‘exclusive right to access’. We understand from the parable that the Law has a structure and organisation beyond what the layman can see from his perspective. It is a path (a process, we might say), with different doors and gatekeepers presiding each of them. The layman tries several strategies to get access, more or less morally acceptable, but he ultimately respects the prohibition. The nature of such a prohibition remains unclear in the story. Does it come from the Law directly? Is it an artificial creation of the gatekeeper? Perhaps, the rule barring access originates from the Law. But, was it misinterpreted by the gatekeeper? Or was there an issue in communicating the rule to the layperson? Or, perhaps, the prohibition was correctly communicated, but the layperson was not able to comprehend it?

In the end, the ultimate meaning of the Law – in contrast with its light coming from the door – remains obscure to the countryside man, to the gatekeeper (it seems), to K. and the priest who discuss the story in *The Trial*, and, ultimately to the reader of the book.

There is a fundamental tension underlying the whole story: the Law should be open to anyone, but its architecture is designed in a way that does not work well in practice.

We use *Before the Law* as an exemplification of the subject matter of Legal Design. The latter is a growing field of study and practice aimed at making the legal system more accessible, understandable, and usable. To reach this goal, it relies on design methods and design thinking.

Prominent examples of Legal Design are directed toward the ‘front-end’<sup>3</sup> of the legal system, i.e. how can we make legal communication better and more understandable, for instance, by restructuring privacy

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was funded by the Erasmus+ Jean Monnet grant aimed at supporting highly innovative courses in the field of European Studies. The course run from 2018 to 2021 (<[www.eitlab.eu](http://www.eitlab.eu)>).

3 Reusing here the catching metaphor by Margaret Hagan regarding the layers of Legal Design interventions. See Margaret D Hagan, *Law By Design* (2016) <[www.lawbydesign.co](http://www.lawbydesign.co)> accessed 22 August 2021.



policies,<sup>4</sup> legislative acts,<sup>5</sup> court rulings<sup>6</sup>; but many others are tackling the ‘back-end’ of the legal system, e.g. how to improve access to legal aid<sup>7</sup>, how to enhance contracting and negotiation<sup>8</sup>, how to prototype for adequate policy making<sup>9</sup>. The dividing line between the two layers is not clear-cut as most of the time a Legal Design intervention can address both front- and back-end issues.

These examples are grounded on an understanding of Legal Design as a discipline or an approach to prevent or solve problems in the legal domain.<sup>10</sup> However, another area of growing interest among scholars is

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- 4 Helena Haapio and others, ‘Legal design patterns for privacy’ in Erich Schweighofer and others (eds), *Data Protection/LegalTech Proceedings of the 21st International Legal Informatics Symposium IRIS* (Editions Weblaw 2018).
  - 5 David Berman, ‘Toward a New Format for Canadian Legislation—Using Graphic Design Principles and Methods to Improve Public Access to the Law’ (2000) 30 *Human Resources Development Canada and Justice Canada Project Paper*. As reported in Gerlinde Berger-Walliser, Thomas D Barton and Helena Haapio, ‘From Visualization to Legal Design: A Collaborative and Creative Process’ (2017) 54 *American Business Law Journal* 347.
  - 6 Prospected in Colette R Brunschwig, ‘Visual Law and Legal Design: Questions and Tentative Answers’ in Erich Schweighofer and others (eds), *Proceedings of the 24th International Legal Informatics Symposium IRIS* (Editions Weblaw 2021). Although not labelled as Legal Design, it is interesting to mention to this end an initiative that recognises the importance of using plain language in judicial proceedings. In 2019, the Italian State Council (Administrative jurisdiction) signed an agreement with the ‘Accademia della Crusca’, the most prestigious institution for the study of the Italian language and philology, to work on the comprehensibility of court rulings. The agreement includes training for judges, staff, practitioners, and dissemination activities such as symposium and conferences on the language of law. See, <<https://accademiadellacrusca.it/it/contenuti/accordo-tra-il-consiglio-di-stato-e-laccademia-della-crusca-su-lessico-e-stile-delle-sentenze/6222>> accessed 22 August 2021.
  - 7 Margaret Hagan, ‘The Justice Is in the Details: Evaluating Different Self-Help Designs for Legal Capability in Traffic Court’ (2019) 7 *Journal of Open Access to Law* 1; Hallie Jay Pope and Ashley Treni, ‘Sharing Knowledge, Shifting Power: A Case Study of “Rebellious” Legal Design during COVID-19’ (2021) 9 *Journal of Open Access to Law* 1.
  - 8 Marcelo Corrales Compagnucci, Helena Haapio, Mark Fenwick (eds) *Research Handbook on Contract Design* (Edward Elgar forthcoming).
  - 9 Margaret D Hagan, ‘Prototyping for policy’ in Marcelo Corrales Compagnucci and others (eds) *Research Handbook on Legal Design* (Edward Elgar forthcoming).
  - 10 LeDA, What is Legal Design (2018) <[www.legaldesignalliance.org](http://www.legaldesignalliance.org)> accessed 22 August 2021.

the potentiality of applying ‘designerly ways of knowing’ to law and legal research.<sup>11</sup> By adopting the speculative lenses of designers and learning from other forms of design, such as critical design, discursive design, or fictional design, then lawyers, scholars, practitioners, and students can exercise their imaginative skills, explore critical alternatives and open spaces for discussing and questioning our current relationship with the legal system or its categories.

As this brief overview shows, the relation between law and design holds the potential to change, challenge, and improve the status quo in the legal domain. However, the content, methods, and approaches of Legal Design are still contested.<sup>12</sup> This is always a welcoming sign for a nascent area of research and practice, as it represents a perfect lab to explore the ‘paths’ rather than the ‘boundaries’ of a field.

The present edited collection on Legal Design intends to contribute to such a debate. It is the outcome of a long-term and collective reflection beginning three years ago when we started a pioneering course that integrated Legal Design into a Faculty of Law teaching curriculum. Thanks to the support of the Erasmus+ Jean Monnet Module grant, we had the opportunity to launch the course ‘European IT Law by Design’, adopting an innovative (project-based) teaching methodology. Many of the chapters in this book are authored by the teaching staff and visiting scholars who participated in the course. Their contributions reflect the challenges to combine law and design and thrive to explain such a dynamic interaction to law students.

Another substantive part of the contributions stems from the expanded community of the course yearly gathering around the Legal Design Roundtable, an international forum for discussion of Legal Design research and practice. The book hosts, in particular, contributions building on the papers and projects presented at the 2020 VirtualTable dedicated to ‘Legal Design Methodology: A Pre-blueprint’ (Brussels/online, 1-2 April 2020).

Hence the book collects works from the different voices of the Legal Design community, reflecting its diversity and richness in approaches and

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

12 Amanda Perry-Kessaris, ‘Legal Design for Practice, Activism, Policy, and Research’ (2019) 46 *Journal of Law and Society* 185.

backgrounds. Lawyers, designers, scholars, practitioners, and researchers offer their theoretical and practical perspectives, tackling a range of issues and areas of legal applications, spanning from the EU IT law context to the civil justice system in the US and Australia, to the legal practice in Mexico.

A book like this is only an intermediate output. It is far from being the full stop at the end of the discourse on Legal Design. This holds particularly true in this sector, where the body of literature and practice is expanding at an impressive pace. With this in mind, the edited volume intends to provide the reader, whether at the beginning of their journey in Legal Design or at an advanced stage, with a handful of sources including theoretical essays and practical examples to provide the pulse of the state of the art in the field and its future directions. It is also an open invitation to continue our collective investigation into the mutual relationship between law and design, exploring not only how design can be applied in the legal domain but also understanding how law can support design. It is a call to do so with scientific rigour and *curiositas*, the intellectual wonder that should animate any effort to advance art and science.

This book is divided in two parts. The first part hosts a series of critical essays that contribute from a variety of perspectives to the ongoing discussion about the foundations and methodologies of Legal Design. The second part includes a series of ‘project’s outlines’, i.e. analytical presentations of a Legal Design project by teams operating in the field, to zoom into the current practice.

In both cases, we challenged our authors with the format of their chapter. The critical essays, which correspond to a traditional scholarly contribution, are introduced by a visual abstract. Here, the authors sketch the structure of their paper, highlighting the central thesis, arguments, and original contribution. The goal of this visual representation is to offer an overview of the main takeaways of each chapter, helping readers to quickly identify the scope and key message of the contribution.

On the contrary, the project’s outlines are developed according to a specific structure: summary of the project, research question(s), background and context of the project, research project design (the structure and phases of the research project), methodology, prototype and its results and impact (how the project solved the problem identified, metrics

and evaluation), critical takeaways (limitations and existing challenges of the project, future lines of research). The choice of this structure is meant to facilitate the identification of the key features of a project and allow the contrast and comparison of the different techniques and methodologies adopted in the presented Legal Design interventions.

Part I opens with a seminal work by **Apolline Le Gall**. The author challenges the widespread assumption of design thinking applied to the law as the only manifestation of Legal Design. Building on design theory and the empirical insights from the design studio *Nul n'est censé ignorer la loi* ("Ignorance of law is no excuse") conducted at l'ENSCI-Les Ateliers, she identifies four design practices – design thinking, meaning design, projective design and research design – that could provide a more comprehensive and critical framework for Legal Design interventions. Each of these spaces is characterised by different processes and tools, thus allowing the legal community to be aware of a broader palette of tools to reach more complex goals beyond the modelisation and communication of legal information.

**Petra Hietanen-Kunwald, Helena Haapio and Nina Toivonen** embark on a challenging methodological inquiry investigating how design methods can be meaningfully transposed into the legal domain. Engaging with Niklas Luhmann's systems theory, they propose a theoretical framework for applying Legal Design to one of the law's most prominent tasks: the prevention and resolution of disputes. This attempt is not merely an "academic" exercise. By creating a bridge between systems theory and legal theory, they pave the way for developing suitable solutions to prevent or solve conflicts in practice.

Following a reflective practice approach in their recent work, **Joaquin Santuber and Lina Krawietz** bring their experience of practitioners and researchers to the conversation. They distil their findings into six practical lessons on how to conduct user research in Legal Design projects. Their key contribution is that user research methodologies should be considered a core component of the nascent discipline of Legal Design.

Another critical methodological point is raised by **Lois R Lupica and Genevieve Grant**. Despite the growing popularity of Legal Design, the authors stress that it remains unclear to what extent Legal Design interventions are bringing a meaningful change to the legal system. There-

fore, they argue for measuring such an impact by building a more rigorous scholarly evaluation of the Legal Design outcomes and processes. To this end, they propose investigating evaluation methods already consolidated in other fields, such as health services methods, and seeing what lessons can be learned for the civil justice sector.

**Rae Morgan and Emily Allbon** intervene in the debate with a punchy reflection on the state of Legal Design in the legal practice, discussing the (in)opportunity to consider Legal Design as a special niche in design. The two authors present a thoughtful review of the legal culture in the UK (which is valid for other countries as well) and outline, with examples, observations, and practical methods, how lawyers can *really* embrace design's human-centred approach.

**Alain Strowel and Laura Somaini** explore the potential of Legal Design in the current policy debate about platform regulation, focusing, in particular, on recommender systems and on the need of enhanced transparency. The authors show how the existing EU regulatory framework could be improved with the proposed Digital Services Act, which introduces specific obligations for very large online platforms in relation to recommender systems. They also suggest that more could be done to better distinguish advertising from other content on platforms. The authors plead for future research where Legal Design tools would be harnessed to empower the platform users to modify or influence the recommender system's main parameters.

**Rossana Ducato** provides a critical reading on how the human-centred approach can be adopted when designing the mandatory disclosures established in the General Data Protection Regulation (GDPR). The chapter outlines the basics of the principle of transparency and the information obligations enshrined in the GDPR, discusses the human-centred 'signs' within the Regulation, and offers a framework to develop modular solutions to enhance the comprehension of information by a diverse audience.

The quest for transparency is also at the core of **Marietjie Botes and Arianna Rossi's** work. Building on their expertise on standardised icons in the legal domain, the authors argue against the alleged 'universal' communication power of pictures, explaining how the socio-economic context and culture can influence the understanding of the message. To illustrate such a point, they present the controversial aspects and impli-

cations emerging in a case study concerning the genomic consent form developed in 2018 for the San community in South Africa, showing how the involvement of the local population led to a more satisfactory re-design of the consent procedure.

Part I concludes with the research experience of **Chiara Fioravanti and Francesco Romano** within the framework of projects funded by the Asylum, Migration and Integration Fund, to foster the accessibility and comprehensibility of administrative texts for recently settled migrants. The authors present the challenges of developing solutions for such a vulnerable target, sharing their preliminary results and guidelines applicable in a multicultural and multilingual context.

Part II of the book zooms in on three concrete Legal Design examples developed in very different contexts.

The first project in the public sector is presented by **Marie Potel and Elisabeth Talbourdet**. The two authors guide the reader through their recent collaboration with the French Data Protection Authority (the CNIL), showing the method they followed to create interfaces to support children to better understand and exercise their data protection rights in the online environment. Interestingly, they also produced ‘methodology kits’ that could be reused by other designers.

The second project also focuses on the importance of making legal information understandable and usable, but for another category of vulnerable subjects, namely the person under arrest. **Florence Cols** outlines the journey conducted within a European project ‘Access Just’ for redrafting the ‘Letter of Rights’ in a more meaningful way to persons who are – as a matter of fact – in a delicate and stressful condition. The project presents the results of the Belgian node and the proposed new version of the letter.

The third project shows an application of design thinking to enhance or create new legal services in a commercial context. **Angélica Flechas, Nicolás Guío, Daniela Bretón, and Jorge García** illustrate their experience in redesigning the services of the legal department of the Mexican bank Nacional Monte Piedad. By ‘choreographing’ the actors and components of the service, they identified few key areas of intervention to valorise the legal department’s role within the bank and its clients.

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