

Participatory and designerly strategies for sociolegal research impact: Lessons from research aimed at making hate crime visible

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Abstract

This paper draws the attention of impact-curious sociolegal researchers to the potential of participatory research strategies to improve the relevance and rigour of research, and to generate meaningful sociolegal change; and proposes that participatory strategies can be enhanced by 'designerly ways', especially 'making things visible and tangible'. It explores and evidences these claims through the multi-country Facing All the Facts project which asked: How can we understand the implementation of international standards around hate crime reporting and recording, and influence civil society organisations and public authorities to see themselves as part of a victim-centred system, so that hate crime begins to become more visible in Europe? The paper concludes that combining traditional, participatory and designerly strategies can secure the productive involvement of disparate publics/stakeholders in the research process; improving the chances of generating meaningful change ('impact') by focuses attention at the intersections of the actual and the potential.

Keywords

Hate crime, participatory research, participatory design, legal design, socio-legal research methods

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Introduction

This paper draws the attention of impact-curious sociolegal researchers to the potential of participatory research strategies both to improve the relevance and rigour of research, and to generate meaningful sociolegal change; and it proposes that participatory strategies can be enhanced by the introduction of knowledge, attitudes and skills from design research, in particular the ‘designerly way’ of ‘making things visible and tangible’. It explores and evidences these claims through the example of a ground-breaking multi-country study, conducted on behalf of a diverse partnership of public authorities and civil society organisations to answer a pressing policy question: How can we understand the national implementation of international standards around hate crime reporting and recording, and influence civil society organisations and public authorities to see themselves as part of a victim-centred system, so that hate crime begins to become more visible in Europe?

The paper first introduces the theoretical and policy-related rationale underpinning the traditional (desk-based analysis, interviews), participatory (consultation, workshops) and designerly (making things visible in artefacts and processes) components of the Facing All the Facts project methodology; then details its implementation and evaluates its effectiveness from the perspectives of both the researchers and the participant publics/stakeholders. It concludes that it by combining traditional, participatory and designerly strategies the productive involvement of disparate publics/stakeholders in the research process can be secured; and that this can improve the chances of generating meaningful change (‘impact’) by generating structured-yet-free spaces in which attention focuses—in practical, critical and imaginative ways—on the intersections between the actual and the potential.

Hate crime is described by the OSCE Office for Democratic Institutions and Human Rights as ‘criminal acts motivated by bias or prejudice towards particular groups of people.’ The ‘bias motivations’ that convert a crime—such as property damage, theft, assault or murder—into a hate crime include ‘preconceived negative opinions, stereotypical assumptions, intolerance or hatred’ that are ‘directed to a particular group that shares a common characteristic’ such as race, ethnicity, language, religion, nationality, sexual orientation, gender and disability.² There is a growing consensus in Europe that a first step to

² (ODIHR) OSCE Office for Democratic Institutions and Human Rights website. Accessed 15 April 2019.

addressing hate crime is to make its nature, prevalence and impact more visible.³ But most European countries fail to fully comply with their international commitments to record and monitor hate crime investigations, prosecutions and sentencing decisions.⁴

Reasons for this slow progress include a lack of trust by victims⁵ in public authorities such that they do not report or remain engaged with the criminal justice process; of skill, knowledge and commitment within public authorities to identify, support and protect victims of hate crime; of connection and cooperation, including around information sharing, across public authorities and with civil society organisations (CSOs) that support victims; and of consistency in legal approaches to defining and responding to hate crime.⁶ Indeed, there is active debate about the conceptual contours of hate crime: Which groups and types of crime, and what quality and quantity of ‘hate’, should fall within its boundaries?⁷ As international efforts to stabilise⁸ and operationalise⁹ standards around hate crime have intensified, new spaces are emerging for policy actors, activists and academics to collaborate in defining the contours of the field. However, ‘fault lines between scholarship

³ FRA 2018, European Council Conclusions and ODIHR 2014.

⁴ For example, the European Union Agency for Fundamental Rights (2012) reported only four member states had ‘comprehensive’ data collection mechanisms covering victim reporting, law enforcement agencies recording and criminal justice agency prosecution (2012); and only 11 states submitted information on disability hate crime to the 2017 OSCE Office of Democratic Institutions and Human Rights annual hate crime reporting cycle, up from six in 2013 (ODIHR 2018).

⁵ We use the term ‘victim/s’ because it is the term most commonly used in relevant reports, standards and laws. We recognise the fact that many who have experienced hate crime may prefer labels such as ‘survivor’.

⁶ European Union Agency for Fundamental Rights 2018; Perry 2016; Schweppe et al. 2018.

⁷ See Hall 2012, Iganski 2008, Chakraborti and Garland 2012 and Perry 2009.

⁸ The 1965 Convention on the Elimination of Racial Discrimination (CERD) directed states to criminalise racist and xenophobic violence, but only in 2009 was the term ‘hate crime’ defined, and then as a political, not legal commitment (OSCE: 2009). The 2012 EU Victim’s Directive was the first international legal instrument to use the term ‘hate crime’. While an inclusive list of ‘protected characteristics’ establishes the scope of the hate crime concept at the international level, the Directive is silent on other aspects of its definition.

⁹ An interactive timeline showing the development of international standards and their operationalisation is available on the Facing All the Facts website, including General Policy Recommendations of the European Commission against Racism and Intolerance, DG-JUSTICE guidelines, EU funding programmes and High Level Group on Racism and Xenophobia; as well as and ODIHR/FRA police, prosecutor and data collection capacity-building programmes.

and policy’ remain in this field as in so many, therefore neither scholarship nor policy is entirely ‘evidenced-based.’¹⁰

The resulting deficit of data—and, therefore, of information and knowledge—ensures that hate crime remains less visible, impeding national and comparative efforts to understand hate crime and its impacts and to assess national progress in meeting international standards on hate crime reporting and recording; effective resource allocation towards hate crime prevention and victim support; and public awareness of hate crime as a problem. In combination, these factors deny victims protection, recognition and justice.

The Facing All the Facts project (2016-2019) sought to support and accelerate the process of making hate crime visible—conceptually and empirically—in Europe by improving understandings of reporting and recording of hate crime; by starting shared conversations between the CSOs and public authority actors at the heart of national ‘systems’ of hate crime reporting and recording; by identifying and testing new avenues through which to influence the relationships between those actors; and by attempting to shift those systems towards a victims-centred and action-oriented stance in future. The ground-breaking study covered six countries—Greece, Hungary, Ireland, Italy, Spain and UK—and was conducted through a diverse partnership of 11 public authorities and civil society organisations (CSOs) from nine countries, including the Observatory for Security against Acts of Discrimination (OSCAD) within the Italian Ministry of Interior, the UK policing lead on hate crime and the National University of Public Service of Hungary.¹¹

The project methodology was formed of three interconnected threads: ‘traditional’ sociolegal strategies (desk-based analysis and interviews); ‘participatory’ strategies (consultation and workshops); and ‘designerly’ strategies (making things visible in artefacts and processes).¹² The traditional sociolegal research strategies were aimed primarily at *understanding* hate

¹⁰ Chakraborti 2013.

¹¹ A full list of partners can be found at the project website. It was co-ordinated by CEJI- A Jewish Contribution to Inclusive Europe, as part of a wider civil society initiative, Facing Facts, which works across civil society and public authorities to improve the recognition and recording of (and responses to) hate crime and hate speech at the national level and beyond. Once disseminated via project reports, e-learning modules and events, the wider project will influence police officers, prosecutors, policy makers and CSOs across Europe. The project was funded by the European Union’s Rights, Equality and Citizenship Programme.

¹² The full project methodology is available on the Facing Facts! website (Accessed 14 April 2019).

crime reporting and recording ‘systems’ across the project countries. The participatory and design-led strategies were aimed at not only understanding but also *influencing* perceptions, expectations and practices of ‘actors’ within national hate crime reporting and recording ‘systems’.

Participatory research strategies for meaningful change

Most academic research is conducted in ‘Mode 1’—that is, knowledge is ‘produced within academic institutions by independent’ and still often, albeit decreasingly, ‘autonomous traditional disciplines and verified by peer review’. Increasingly, and especially where the aim is to generate meaningful change beyond academia (‘impact’), academic research is conducted in Mode 2—that is, knowledge ‘is produced in the context of its application, being transdisciplinary and verified by its social worth and applicability.’¹³ This involves working with non-academics, to whom we refer using Mark Reed’s term ‘publics/stakeholders’ (rather than ‘beneficiaries’ or ‘stakeholders’ or ‘users’), allowing us to capture those often partially overlapping people who might be, on the one hand, affected (positively or negatively) by our research and, on the other hand, able to affect (positively or negatively) our research process.¹⁴ At minimum, Mode 2 research requires the active participation of publics/stakeholders and as such can be seen as:

‘part of a wider contemporary tendency toward participatory practices in areas ranging from the arts, to industry, to “open” government in which users/publics/patients/audiences/communities are invited to take on more active roles in shaping the knowledge, policies and practices of the world around them.’¹⁵

In its most developed form, Mode 2 research is ‘co-produced’ by academics and publics/stakeholders in a way that ‘assumes no hierarchy of knowledge forms’, and that sees ‘disciplinary and professional boundaries’ as ‘fluid’.¹⁶ As researchers are increasingly required by funders and assessors such as the UK Research Excellence Framework (REF) to attend to the ‘impact’ of their research beyond academia, so the involvement of publics/stakeholders are increasingly highlighted—for example in REF Impact case

¹³ Campbell and Vanderhoven 2016, p. 13 citing Gibbons 1994 and Nowotny et al. 2001.

¹⁴ Reed 2018 pp 59 and 64.

¹⁵ Facer and Enright 2016, p. 144 quoted in McDermond 2018, p. 160.

¹⁶ Campbell and Vanderhoven 2016 p. 12.

studies.¹⁷ But examples of scholarly sociolegal publications that explicitly self-describe as adopting participatory or collaborative strategies remain scarce. One example is ‘Productive Margins: Regulating for Engagement’--a collaboration between artists, community researchers, community development experts and a multi-disciplinary academics—that ‘attempted to incorporate “expertise by experience” as much as “expertise by certification”’, to gain ‘more holistic, complex understandings of regulatory systems...that took account of the multiple subjectivities of different actors in a much-expanded view of regulatory space’¹⁸

Such Mode 2 research requires sustained ‘two-way, trusting relationships’ between researchers and publics/stakeholders.¹⁹ Most academics are not interested and/or not equipped to generate and sustain such relationships with publics/stakeholders, and many topics that they research are unsuited to it.²⁰ By contrast, non-academic researchers such as the public authority-civil society partnership behind Facing All the Facts, are more likely to work on topics and in networks that are inherently Mode 2-ready. To them the idea of generating and sustaining the necessary relationships with publics/stakeholders tends to be more natural, even essential. But even they can find it difficult to entice certain publics/stakeholders to participate in research, and to manage the associated diversity of publics/stakeholders and perspectives. In order to achieve its (Mode 2-oriented) aims of both understanding and influencing the reporting and recording of hate crime, the Facing All the Facts project turned to participatory strategies.

The term ‘participatory’ is used to refer to a particular research ‘style’, the ‘unity and justification’ of which lie less in a specific set of ‘concrete research methods’, more in an ‘orientation... in favor of the possibility, the significance, and the usefulness of involving research partners in the knowledge-production process.’ Participatory research strategies enable voices to be heard. ‘What counts is that they bring their experiences, their everyday knowledge, and their ability into the research process and thereby gain new perspectives and insights.’ In a participatory context ‘difference’ is ‘an asset’; and a ‘mutual curiosity about

¹⁷ See for example the top-rated impact case studies submitted by the School of Law, University of Ulster for REF2014: REF2014 website. See also McNamara 2019 and Lewis et al. 2012.

¹⁸ McDermond 2018, p. 160. Another example is Fleminga et al. 2018.

¹⁹ Reed 2018 pp. 6 and 67.

²⁰ Campbell and Vanderhoven 2016 p. 27.

the knowledge and ability of those on the “other side”, and about ‘what one can learn from them,’ is vital.

The Facing All the Facts project was primarily directed to ‘hearing’ voices of the local, rather than international, actors that populate the ‘national systems’ for hate crime reporting and recording; and to focusing on those with responsibilities within that system. As the following sections explain, the project ensured the participation of these actors in two ways. First traditional research strategies (desk-based research, interviews) were enhanced by continuous consultation with project partners drawn from publics/stakeholders in each project country. Second, the project brought together representatives from CSOs and public authority ‘system actors’ (about 100 total) in 12 participatory workshops (two per project country). The workshop aims were to generate and improve the effectiveness of relationships between actors within the system; to test and enhance the desk-based analysis and graphic artefacts; and to recommend action for improvements in practices around hate crime reporting and recording.²¹

However, ‘participation in participatory research’ does not come naturally. Participants must have ‘specific knowledge and skills’ such as ‘the ability to proceed systematically in the research process, communicative skills in dealing with groups’ without which participatory strategies can be chaotic and unproductive.²² To create a space for such a diverse range of publics/stakeholders and on the sensitive topic of hate crime requires more than this: ‘the boundaries of the communicative space, the type of participation leadership, opportunities to express anxiety and the balance between order and chaos must be continually negotiated’; and the resulting design is ‘necessarily paradoxical and contradictory’.²³ In order to mitigate risks and enhance effectiveness, participatory research must strike a delicate balance between structure and freedom. As the final sections of the paper show design-driven methodologies can be especially successful at maintaining that balance.²⁴

²¹ IGOs and members of the public were not included in order to maintain focus. For detailed guidance on how to plan similar workshops see the project methodology paper on the Facing All the Facts website.

²² Bergold and Thomas 2012 paras 2, 42 and 50.

²³ Bergold and Thomas 2012 para 14.

²⁴ Perry-Kessaris 2017a.

Enhancing traditional strategies with continuous consultation

The two traditional sociolegal research strategies (desk-based analysis and interviews) were aimed at understanding hate crime reporting and recording: desk-based analysis and interviews. Both were enhanced by continuous consultation with national partners drawn from publics/stakeholders in each project country.

Desk-based analysis

Desk-based analysis of policy and academic literature was conducted to produce the first ever synthesis of existing international standards on reporting and recording of hate crime into a unified list of 40 standards.²⁵ This synthesis produced important macro level findings about international standards and their national implementation. For example, it was revealed that, with the important exception of the EU Victim's Rights Directive, international standards focus almost exclusively on institutions rather than on victims; that CSOs are not foreseen as an integral part of national hate crime reporting and data collection 'systems'; and that institutions are conceptualised as being independent as rather than interdependent and cooperative.

These standards were used to build an 'assessment toolkit' which was completed by national partners, eventually producing a 'national system report' for each project country. These reports assessed the effectiveness of relationships between key 'actors' that underpin (or ought to) the national hate crime reporting and recording 'system'. Five categories of 'system actor' were identified. Firstly, those civil society organisations (CSOs) who have commitments to record hate crime as reported to them by victims or witnesses. Secondly, criminal justice authorities, including law enforcement agencies, which are the first point of contact for most victims and have the strongest obligations under international norms and standards to record hate crime; prosecution services, which have important relationships with law enforcement and are obliged under international norms and standards to record

²⁵ The international standards are drawn from legal sources, such as CERD 1965, judgments of the European Court of Human Rights, and obligations to collect and share data specified by the Victim's Rights Directive 2012/29 EU; from non-binding recommendations such as OSCE Ministerial Council Decisions and European Commission Against Racism and Intolerance (ECRI) Policy Recommendations; and from guidance produced by international organisations and CSOs including the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and Facing Facts. A full chronology of the evolution of hate crime standards can be found on the project website.

hate crime data; and judicial bodies, which are obliged under international norms and standards to record data that (should) communicate(s) whether hate crime laws have been applied. Thirdly, ministries, often of interior and justice, that collate and review the data that are recorded by other agencies and set the framework for data sharing. Fourthly, intergovernmental organisations (IGOs) use data provided by national authorities to describe and assess hate crime across countries, provide spaces for knowledge exchange, and assist with technical capacity building. Finally, the ‘general public’ are both part of the context within which the ‘system’ operates and stakeholders within it.²⁶

The effectiveness of relationships between these ‘system actors’ was assessed on two dimensions: framework and action (Figure 1). By separately detailing the ‘frameworks’ for hate crime reporting and recording, and the ‘action’ taken to implement that framework, the toolkit makes visible both whether a system is relatively superficial (framework only) or meaningful (framework plus action), and the dynamic nature of the underpinning ‘relationships’. It also gives ‘credit’ to emergent systems, such as the Republic of Ireland, which has taken some effective action, but has yet to implement a framework.

Dimensions		Descriptors
Framework	Action	
Technical frameworks allow reporting, recording and analysis.	Data is recorded, shared, collected, published	Green: Good*
allow system-wide information sharing	Information is acted upon to develop policy and improve responses.	Amber: Adequate
		Red: Inadequate
		(*) always with room for improvement

Figure 1: Assessment of effectiveness of relationships between system actors

In order to better understand what factors support or undermine the effectiveness of relationships between system actors, 32 in-depth interviews (at least five per project country) were conducted with ‘change agents’—that is, individuals or groups from across the ‘system’

²⁶ The inclusion of the general public produces some destabilising effects. For example, although some members of the public may witness hate crime they, like victims, cannot have obligations to record or collect of hate crime data; furthermore,; furthermore, while some may themselves be members of groups that are the targets of hate crime, others may be hostile to an anti-hate crime agenda; and if we include the general public, why not also the members of the media or of parliaments? These questions, made visible in the process of designing of the systems map this project, should be explored in future research.

that shift processes or perspectives. In contrast to the participatory workshops (see below), change agents were interviewed individually to allow in-depth explorations of their perceptions, expectations and experiences around specific, complex and sensitive issues. For example, change-agents were asked to share their perspective on the ‘story’ of hate crime in the country—what were the key events that shaped the national consciousness about hate crime? Their answers informed detailed national chronologies for each national system report.

Introducing ‘designerly ways’ into participatory research strategies

The Facing All the Facts project mitigated the risks and enhanced the effectiveness of participatory strategies by combining them with ‘designerly ways’²⁷—that is, knowledge, attitudes and skills from design research. In so doing it followed the traditions of ‘participatory design’ (also known as co-design), which originated as a Scandinavian information technology-driven effort to ‘rebalance power and agency among managers and workers’ in 1970s, and which now informs the field known as ‘social design’.²⁸

Social design aims to ‘meet social needs’ around, for example, ageing, loneliness, violence, nutrition, entertainment or infrastructure whilst/through creating ‘new social relationships or collaborations’.²⁹ It is built around participatory strategies: the intended users of the social design output—which may be, for example, an artefact, environment, service or event—become ‘co-researchers and co-designers exploring and defining the issue, and generating and prototyping ideas’.³⁰ What distinguishes participatory strategies within social design is that ‘expert’ social designers provoke and facilitate change-making by provoking and facilitating non-experts to become ‘diffuse’ designers and to approach their own field of expertise in ‘design mode’.³¹

To enter into ‘design mode’, proposes social designer Ezio Manzini, is to exercise three senses which we all possess, and which we may already deploy in relation to our own work, to our community of practice, and to the wider world which we seek to affect. These are the

²⁷ The term ‘Designerly ways’ was coined by Nigel Cross (2006).

²⁸ Bannon et al. 2018 p. 1 and Kimbell 2015 p. 64. For an overview of participatory design see Simonsen and Robertson 2012.

²⁹ Manzini 2015 p. 11 quoting Murray et al. 2010.

³⁰ Kimbell 2015 p. 64.

³¹ Manzini 2015 p. 77.

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’. Social designers ‘stimulate’ and ‘cultivate’ those three senses to ‘make things happen’, and they do this in five designerly ways: by making things ‘possible and probable’, ‘effective and meaningful’, ‘replicable and connected’, ‘local and open’ and ‘visible and tangible’.³²

Working from a sociolegal perspective, Amanda Perry-Kessaris has foregrounded the designerly way of ‘making things visible and tangible’ because the act of making things visible and tangible offers the most immediate entry point into design mode, being at once at the very heart of design and disruptively far from traditional sociolegal ways. Making things visible and tangible is at the heart of design because without it designers cannot honour their foundational commitments to communication and experimentation. Communication is a core function of design(s), to be performed by their visible and tangible outputs. And the design research processes used to create those outputs are built around experimentation—the testing of visible and/or tangible prototypes to ensure that they are effective.

Communication, with oneself, with others, is central to that ‘structured-yet-free’ experimentation process.³³ Together the designerly emphasis on communication and experimentation and urge/ability to make things visible and tangible all contribute to generating structured-yet-free spaces in which the practical, critical and the imaginative productively coexist.³⁴

The application to social science research of design research strategies, especially making things visible and tangible in prototypes, was surfaced in the ground-breaking ProtoPublics project led by Guy Julier and Lucy Kimbell. That project was motivated by the observation that design research combines the practice of designing, which is about ‘the generation and exploration of futures’, with the practice of researching, ‘which is in essence about understanding the past or the present but which may be used to inform decision making about the future.’³⁵ It 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

³² Manzini 2015 p. 31 and 77.

³³ Perry-Kessaris 2017b, 2019 and forthcoming 2020.

³⁴ Perry-Kessaris 2019.

³⁵ Julier and Kimbell 2016, p. 39.

issues.’ Five interdisciplinary academic teams were assembled, each of which co-designed a social science sub-project around a physical prototype. For example, one team explored the rules governing hitching a lift, developing a visible and tangible ‘Hitching Kit’ game.³⁶ Participant feedback exposed the practical value of prototyping in multidisciplinary social science projects.³⁷ Indeed, a growing multi-disciplinary literature on ‘embodied making’ implies that some of the productive potential of prototyping activities may lie in the fact that they seek to capture and reinvest the practical, critical and/or imaginative insights that can be triggered by the physical experience of making.³⁸

In their final report, Julier and Kimbell explored the idea that design research might be the source of new forms of co-produced, participatory, impact-oriented investigation. Referencing Figure 2, they argue that Mode 1 research ‘is produced in ways that are not deeply oriented to shaping or informing future change’, and Mode 2 research ‘more closely overlaps between actualities and potentialities’ because it is the result of participatory and co-productive strategies deployed by a range of publics/stakeholders ‘and in relation to the context in which it will be used.’ They propose that ‘co-produced design research’ might be acknowledged as a new Mode 3: ‘concentrated at the intersection between research and change, with a focus on mediating between actualities and potentialities.’³⁹ They highlight the fact that prototypes are especially powerful in part because they represent both the ‘actual’ and the ‘potential’, in the sense that they ‘encompass[] the not-as-yet, while also being rooted in the actual here and now.’⁴⁰

The Facing All the Facts project was not a design research project. It was always intended to be participatory, and the strategy of using designed graphic artefacts was identified early on by the core project team. But it was only once the project was underway, that more ‘academic’ conversations between the co-authors of this paper generated that the insight that the introduction of designerly ways might enhance the project. Specifically, we observed that by committing in a more designerly way to making things visible and tangible, not only in artefacts but also in processes, the project team might enhance the graphic artefacts, the

³⁶ Available at <https://protopublics.org/project-5/> (Accessed 17 April 2019). See also the Sociological Model Making Project website.

³⁷ Julier and Kimbell 2016 p. 24.

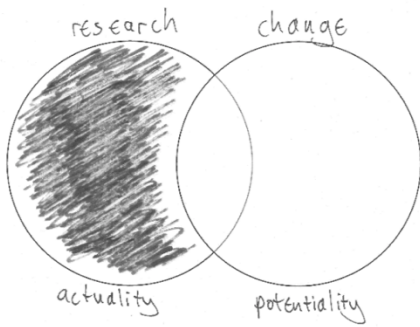
³⁸ Gulliksen et al. 2016; Rosch et al. 2013.

³⁹ Julier and Kimbell 2016 p. 40.

⁴⁰ Michael 2015, p. 212 quoted in Julier and Kimbell 2016, p. 39.

project's participatory character and its ability to produce meaningful change. In this way the project came to be very much in the Mode 3 spirit, using participatory and designerly strategies to focus on the structured-yet-free actuality/potentiality intersection. Furthermore, it went beyond the co-productive limits of the ProtoPublics project, in the sense that it was conducted on behalf of a non-academic partnership; it involved diverse stakeholders actively working across institutional boundaries in a live field of criminal justice policy and practice; and it was by a lead researcher with deep policy and CSO experience, with sociolegal design input from the (academic) co-author of this paper and broader input from academic members of the project's advisory group.

The following sections explain how the Facing All the Facts project made things visible and tangible in two formats: graphic artefacts and workshop processes. They critically evaluate these attempts to combine participatory with design-based research strategies in order to more effectively achieve the (Mode 2-oriented) project aims of both understanding and influencing the reporting and recording of hate crime.



(a) Mode 1 research



(b) Mode 2 co-produced research



(c) Mode 3 Co-produced design research

Figure 2: From actuality to actuality-potentiality. Illustrator Holly MacDonald. © University of Brighton. Reproduced with permission.⁴¹

⁴¹ Adapted from Julier and Kimbell 2016 p. 40.

Making things visible and tangible in artefacts

The project made visible aspects of hate crime reporting and recording in two sets of graphic artefacts: 'national system maps' and 'journey of a hate crime case'. Both sets of project graphics can be seen as part of a wider landscape of legal information design intended to make visible complex legal phenomena in an uncomplicated way so that it becomes 'more accessible and understandable'.⁴² Both sets were co-created in an iterative and experimental process and involving project publics/stakeholders, who worked collaboratively during project workshops; the lead researcher, who drew on literature, interviews, national partners and professional experience; and a graphic designer.

The 'national system maps' made visible both the key national actors (public authorities and CSOs) around hate crime reporting and recording, and the effectiveness of the relationships between those actors, for each project country (Figure 3). Victims of hate crime are at the centre of each map, surrounded by the five categories of 'system actors'. Lines connecting the actors are colour-coded red, amber, or green to indicate the 'effectiveness' of their relationships, as established in desk-based analysis and workshop activities. The maps are not intended as a formal assessment of national efforts, rather as transparent tools, connected to existing standards, with which publics/stakeholders can co-describe the current system, co-diagnose areas for improvement and co-prioritise improvements. Some data is missing and some may be incorrect, so they are designed to be updated as appropriate.

The 'journey of a hate crime case' made visible, from the perspective of a victim, the stages at which hate crime may or may not be reported and/or recorded within the national system; what should be recorded, by whom and why; and the consequences of not recording (Figure 4).

⁴² Haapio and Hagan 2016, pp. 182-3. See further Perry-Kessarlis 2019.

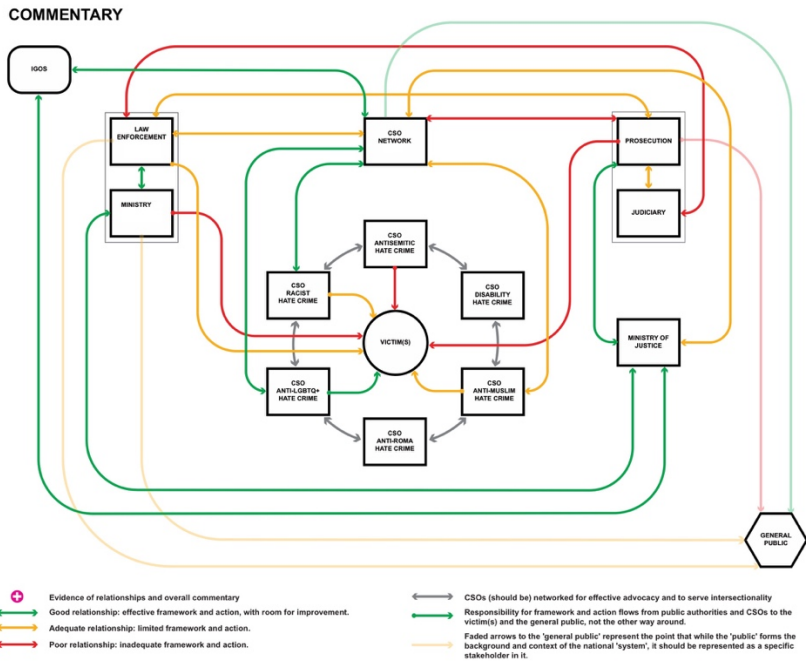


Figure 3: National system map. Designer Jonathan Brennan. Image © CEJI 2019. Reproduced with permission.

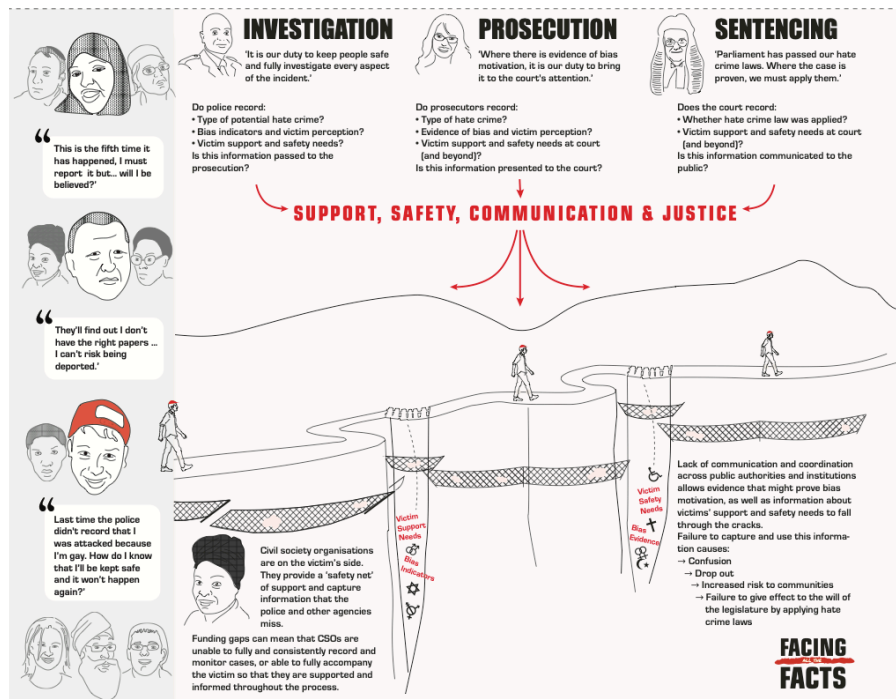


Figure 4: Journey of a hate crime case (English language version). Designer Jonathan Brennan. Image CC BY-NC-ND CEJI 2019.

Evaluation

The iterative processes through which the artefacts were co-created were crucial to making visible actual/potential national systems. They also generated spaces into which the stakeholders could feed suggestions as to how the research method could be continually improved.

Stakeholder participant feedback makes clear that the graphics succeeded in providing a shared, structured-yet-free, space in which publics/stakeholders could be at once critical (of themselves, of the graphic and of the real-world context), imaginative and practical.

Many found the graphics to be of great practical value. For example, they noted that 'it is really useful to see all agencies as part of the same picture', 'I can use this in my trainings with colleagues', and it 'presents findings that could take many pages to present in narrative form'. They advised that the graphic should be made easily downloadable; to be consulted, annotated and updated in paper form during future non-project-related trainings and other activities. An instructional video on how to use the graphic as a training and development tool has since been developed as part of an online learning module for decision makers.⁴³

Some participants engaged imaginatively with the graphics. For example, one responded to the pathway imagery within the graphic with the observation that in fact the 'victim experience is actually more like a maze, where victims can bump into walls, feeling stuck and not knowing where to go.'

For others the graphic activated a critical sense. For example, one public authority stakeholder said that by visualising the process from the perspective of the victim, the graphic 'highlights the fact that our criminal justice system does not take this approach'; another indicated that the image did not adequately convey the 'hostile' environment experienced by victims of hate crime; a number of participants noted that the graphic does not capture the pre-reporting or post-sentencing stages of the journey, meaning that important local authority, probation and prison functions are not represented; and others that it does not include all victim groups. There are limits to what can be portrayed in a single

⁴³ Available on the Facing the Facts website.

graphic, but a solution would be to develop additional graphics, including animations, to represent these other aspects.⁴⁴

Information design is time consuming and challenging in many ways, some of which are mirrored in traditional text-based formats. For example, it is difficult to balance between over-complicating and oversimplifying, making visible complex systems in a way that offers the necessary degree of national granularity, whilst remaining accessible and comparable across contexts. On the one hand, the number of lines and relationships can make maps difficult to ‘read’; on the other hand, several of the maps don’t reflect the depth and complexity of action in national contexts because to do so would result in overwhelming detail.⁴⁵ Furthermore, it is difficult to make visible all the nuances in a relationship using a single coloured line. Some relationships are uneven, with one institution or individual doing most of the ‘work’; others are naturally ‘one-way’—for example, victims are not expected routinely to share data with CSOs or with public authorities; and some relationships don’t need to exist—for example, where one ministry is responsible for liaising with IGOs there is no need for a relationship between the other ministries and the IGOs. The solution was add pop-up explanatory text on the maps to include free text detail and context from the self-assessments. An additional strategy might be to enable users to focus on the relationships of one particular actor; or to filter the image by ‘effectiveness’ to make visible system-wide strengths, gaps and weaknesses.

Finally, both sets of artefacts made visible, and thereby embedded and reinforced, specific project aims. For example, two constraints were placed on the design of both the journey of a hate crime graphic and the systems maps: the layout must be victim-centric; and all relevant actors must appear on the same page in a way that reveals their relationships as part of a ‘system’.

⁴⁴ Participants were invited to provide additional post-workshop feedback via email and during the project conference. Feedback was also obtained from project partners and, informally, from inter-governmental organisations (IGOs). All of this fed into the design of the artefacts. Final versions are included in the national system reports available in the project website.

⁴⁵ For example, it was not possible to capture local and regional variety and institutional complexity of federalised systems such as Spain and Italy, and devolved contexts such as the United Kingdom. Sub-national versions could be generated in future.

Making things visible and tangible in processes

The project made things visible and tangible through the processes associated with the 12 participatory workshops. A typical workshop might bring together, for example, civil society activists with direct experience of supporting victims, police and prosecutors with direct experience of investigating/prosecuting and recording hate crimes, statisticians responsible for reviewing data and deciding on publication, and ministry officials responsible for resource allocation. Perry and national partners planned the composition of small group to complete workshop activities, ensuring that they contained a mixture of roles and perspectives.

By their very attendance at the workshops, participants made visible and tangible, often for the first time, the actual/potential 'system' for hate crime reporting and recording.⁴⁶ But to achieve the more nuanced workshop aim (see above) of generating and improving relationships between system actors it was necessary to disrupt professional, cultural and social hierarchies; as well as to encourage consensus-building between system actors who often had never met, and whose agendas and perspectives, around hate crime and more generally, varied greatly. Consensus-building activities allow participants not only to 'play[] out scenarios', but also to perform 'collective, speculative tinkering, or bricolage':

'they play with heterogenous concepts, strategies and actions with which various individuals in the group have experience, and try combining them until they create a new scenario that they collectively agree will work.'⁴⁷

So consensus-building activities were designed to enable those publics/stakeholders to engage freely with each other as expert critical friends, to see and even experience things from each other's point of view, to share information openly discuss issues such as reliability and validity, and to consider how they might help each other.

Some of these workshops activities were aimed at making visible to participants the existence of multiple perspectives around hate crime reporting and recording. For example, participants were asked to 'take on' the perspective of another system actor when considering specific questions such as: what does 'hate crime' mean, and what resources and relationships do you 'need' in order to address it? Furthermore, participants worked in

⁴⁶ Where workshops did not achieve full representation across all categories of system actor the risks were mitigated by desk research and follow up with national partners.

⁴⁷ Innes and Booher 1999, p. 13.

small groups to imagine, from the perspective of a victim, the actual and potential 'journey' through the national system of an imaginary case.⁴⁸

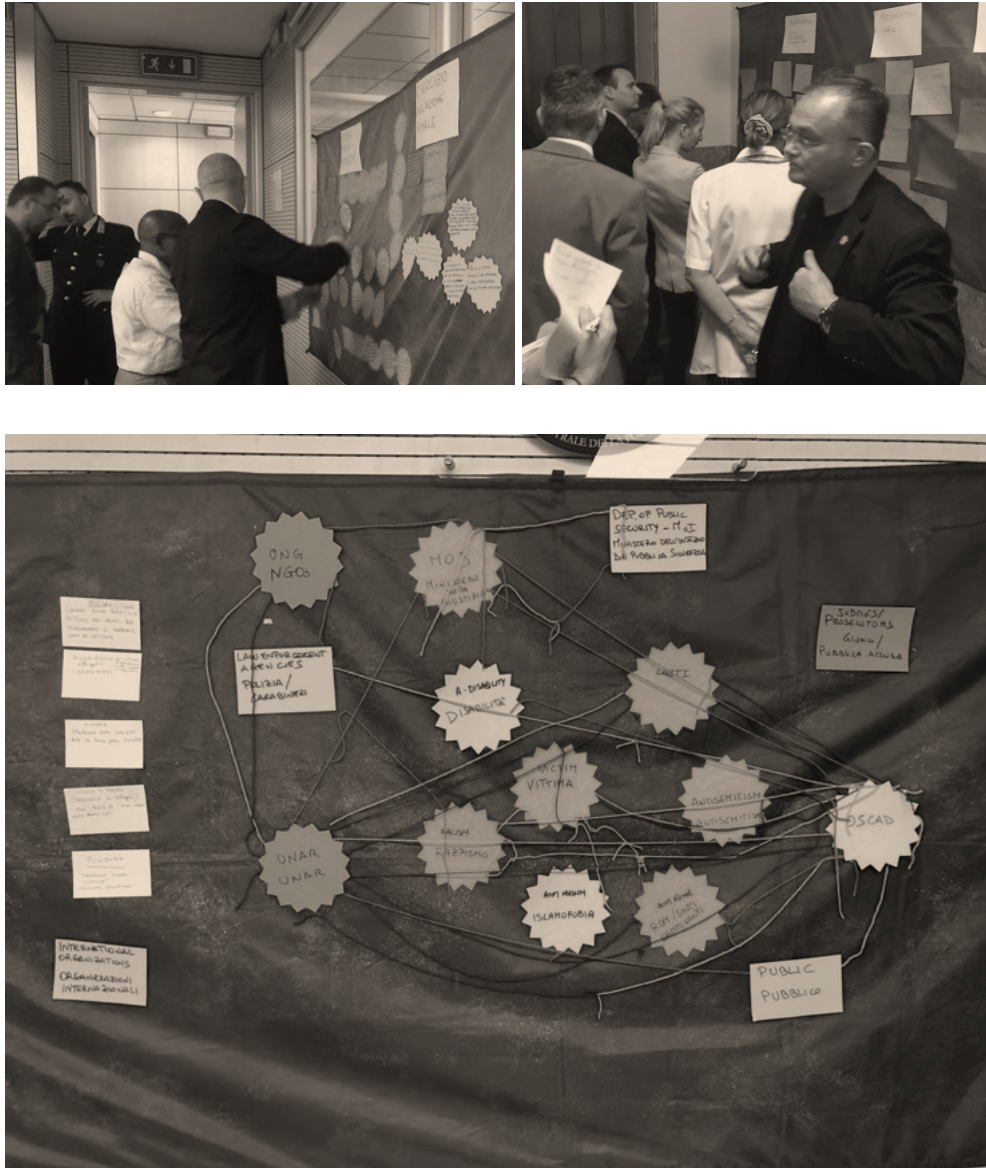


Figure 5 a, b and c: Collaborative prototyping in workshops. Photo credit Joanna Perry. Image CC-BY-4.0 2019.

The results of such role play activities fed into additional workshop processes aimed at making visible and tangible some of the multiple experiences and expectations around hate crime reporting and recording through collaborative prototyping (Figure 5). Specifically, participants co-plotted facts (such as what data is captured at each stage of the 'journey' of

⁴⁸ In the imaginary case a man of African descent is assaulted by men using racist slurs and the phrase 'go back to your country', a witness calls the police who take a statement from the victim and other witnesses and it is confirmed that this incident is a racist assault.

a hate crime) and expert perceptions (such as the strength of inter-institutional relationships) onto a large adhesive wall-mounted surface ('sticky wall'). They worked together to attach, move and remove labelled cards and coloured string in a physical process of negotiation and debate across professional, social and cultural 'divides'. For example, before having seen the formal project graphics, participants worked together to create their own prototypes of their actual/potential national 'systems'. The workshop leader set out on the sticky wall a skeleton map of key system actors using coloured cards labelled (in English and the national language) with black marker. Participants negotiated towards an agreed assessment of the effectiveness of the relationship between those actors, representing their finding in red, yellow or green thread (or in instances of disagreement, threads). Following moderated discussion participants were asked to agree and post on the wall priority actions for improvement. The resulting prototypes then informed the project graphic artefacts and national reports.

Evaluation

The ProtoPublics project found that 'embodied work such as visualising concepts, crafting material mock-ups or representing issues' enables workshop participants 'from different backgrounds and with different capacities', including those who 'previously did not know each other, to share information and perspectives, generate ideas and engage in sense-making together' and, in so doing to develop interpersonal trust.⁴⁹ Each of these benefits were reflected in participant feedback and action relating to the Facing All the Facts project. Firstly, participants reported that they found it helpful to connect, often for the first time, with other system actors; and several workshops saw participants agreeing specific actions on cooperation—for example, arranging meetings to further discuss how hate crime recording and data collection might be improved between one or more institutions. Secondly, participants reported that they learned new information and valued the opportunity to share knowledge; and every workshop saw at least one country-specific recommendation agreed among participants which was then fed directly into the final research outputs.⁵⁰ Thirdly, participants indicated that the collaborative prototyping activities were engaging and productive, allowing them to construct and critique a fuller picture of hate crime recording and data collection. They commented that it was 'useful to see and compare peoples'

⁴⁹ Julier and Kimbell 2016 p. 24.

⁵⁰ For example, a Ministry of Interior committed to publishing previously unavailable information, and a CSO decided to coordinate a national CSO reporting and recording network.

perceptions', 'interesting to look another person in the eye and admit that the relationship could be improved', and 'quite rewarding, because even though we agreed, we also had discrepancies'. 'The most positive thing is that it reflects many elements'. And at the end of each workshop, most participants chose to record the final state of the sticky wall in a photo.

The collaborative prototyping activities made visible and tangible, and thereby embedded and reinforced, three project propositions: that victims ought to be at the centre; that hate crime data recording relies on a 'system'; and that this system is composed, and reliant on the quality, of relationships between system actors. By working within those propositions participants added to the legitimacy of those propositions as well as of the final formal 'systems' graphics.

The risks associated with participatory research strategies and coproduced research have been explored in detail elsewhere.⁵¹ Here we focus on those associated with the project workshops. The workshops were intended to be spaces in which valuable dissenting opinions could be expressed freely, and without fear of repercussions.⁵² For example, all quotes, even where anonymous, were presented in context for clearance by the relevant participant; and it was decided that Perry-Kessarlis would not attend any of the workshops for fear that her outsider status would cause anxiety or confusion. Nevertheless, the collaborative elements of the workshops represented a complete (non-hierarchical, boundary-crossing and experimental) departure from the traditional workshop, meeting and training formats that many participants, especially those working in a public authority context, are used to. 'This way of working is not usual for me', reported one CSO actor. Indeed, several participants associated with a public authority reflected that the 'novelty factor' of the sticky wall and coloured string undermined the 'seriousness' of the activities. Another suggested that it was risky to use it at a 'one-off' event, suggesting it could not be fully accepted as a credible way to engage until it had been introduced and regularly used in the more formal public authority contexts. However most demonstrated a clear openness to

⁵¹ See Campbell and Vanderhoven 2016 p. 23 et seq. on risks of participatory research generally. See also Bergold and Thomas 2012 paras 10-20. We set aside their first principle, that the wider national political context within which each participatory workshop takes place must be 'democratic'. Although it makes sense to be cautious, it seems inappropriate to exclude out of hand situations where democracy is lacking. Indeed in these cases participation in research might be seen as a rare democratic opportunity.

⁵² The project as a whole followed ethical guidance from its academic and policy advisory group, the standards of the project co-ordinator (CEJI – A Jewish Contribution to an Inclusive Europe) and the Socio-Legal Studies Association Statement of Principles of Ethical Research Practice.

engaging with these strategies during the workshops, and formal feedback was overwhelmingly positive.

An important factor contributing to the success of this project was flexibility. ‘Co-production involves learning’, so it ‘requires flexibility... to enable responsiveness as mutual understanding evolves, initial assumptions prove shaky or circumstances change.’⁵³ For example, it was in response to early stakeholder observations that the criteria for assessing national contexts were unclear that self-assessment toolkit was revised to explicitly link to the 40 standards that had been synthesised during desk-based research; and the final consultation workshop for England and Wales, where the hate crime system is generally well understood, focused on the locally emerging priority issue of third-party reporting.

Conclusion

‘The ways in which things get done, ideas are generated, processes develop, and outputs take shape through people being together in a shared space (embodied connection)—all of these are productive of impact, rather than the fact or state of collaboration.’⁵⁴

Every aspect of this project—especially the iterative co-creation of national reports and graphic artefacts, and the organisation and facilitation of workshops—was delicate, complex and resource-intensive; requiring secure access to, and intense interaction with, diverse public/stakeholders. For example, although key publics/stakeholders were members of the public authority-civil society partnerships responsible for the project, it was still necessary to entice individuals to attend workshops, remain for the duration and engage with a methodology-in-progress. The solution was to begin workshops with a formal introduction on the current situation around international implementation of standards on hate crime reporting and recording. Participants’ attention was thereby focused on the intersection of the actual-potential at which the research was directed, but they also gained something solid and valuable to take back to the office. As Mark Reed puts it, ‘people value research for its ability to provide them with answers to questions; knowledge that is new to them, relevant, interesting and useful.’ Sometimes researchers are ‘so focused on generating completely new knowledge’ that they overlook the fact that their existing knowledge, built up over time

⁵³ Campbell and Vanderhoven 2016 p. 20.

⁵⁴ Campbell and Vanderhoven 2016, p. 56.

that most cannot afford to invest, 'enables [them] to answer many of the questions that people care most about'.⁵⁵

Academic researchers often explicitly or implicitly treat knowledge as a 'gift'. This is a double mischaracterisation: knowledge cannot be 'transmitted unchanged from one person to another', for it 'changes as it passes from person to person through social networks, as people adapt it to their own contexts and needs'; and those 'receiving' knowledge 'may not appreciate it' or 'be able to use it' especially if their 'needs and preferences' are unknown to the 'giver'.⁵⁶ When academics and non-academics work together to co-produce research, or to produce research that is at least participatory in orientation, they can generate not only 'both academic insight and public benefit', but 'potentially also *different* (and *greater*) intellectual insights' than either can achieve working alone.⁵⁷ This is in part because '[s]ocial innovation occurs when people, expertise and material assets come into contact in a new way that is able to create new meaning and...opportunities'.⁵⁸ The process of writing this article has been a case in point. Perry has spent her career working with people affected by hate crime, and on policy responses to hate crime; and uses that experience to generate critical insights into the dominant academic and policy conceptualisations of hate crime. Perry-Kessarar has spent her career conducting research that is empirically grounded, theoretically-informed but only recently, and with the aid of training in design, with the intention of generating meaningful change beyond academia ('impact'). The methodological consultations underpinning this article have improved our 'relevance' and 'rigour', and produced insights that would otherwise not have been possible.⁵⁹

Throughout the paper we have drawn attention to some risks that surfaced around the project methodology, such as over-simplification in graphics, and alienation among workshop participants. To these we now add two general cautions. Firstly, participatory research is not for everyone. A crucial factor in the success of this project was the unique blend of expertise and experience brought by Perry as lead project researcher. Having performed hate crime-related roles within public authority and CSO institutions across national and international contexts over many years, she is familiar with international

⁵⁵ Reed 2018, p. 78.

⁵⁶ Reed 2018 p. 6.

⁵⁷ Campbell and Vanderhoven 2016, pp 14-15.

⁵⁸ Manzini 2015 p. 77.

⁵⁹ Campbell and Vanderhoven 2016 p. 17.

terminology, national laws and criminal procedure as well as running workshops with simultaneous translation and facilitating exchange across CSO-public authority 'divides'.⁶⁰ Secondly, no research strategy is 'neutral'—all 'originate in, derive meaning from, and effect recursive impacts upon human actors'; they 'entail choices'.⁶¹ For example, participatory strategies involve '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'.⁶² Likewise any given design either 'serves or subverts the status quo'; is the product of the ideologies, 'values and assumptions in which it was created'. Design also relies on communication, which is a non-universal and 'volatile process' in which 'misinterpretation' is an ever-present danger.⁶³ The risk of miscommunication is amplified in multilingual and comparative sociolegal contexts such as the Facing All the Facts project in which, for example, simultaneous translation was required for two thirds of the workshops.⁶⁴

The Facing All the Facts project approached legal systems as actually/potentially shared spaces in which real world tensions are actually/potentially addressed. Such a conceptual orientation falls within what Roger Cotterrell (2018) has termed 'sociological jurisprudence': it attends to the 'well-being' of law (rather than its mere exploitation, 'unmasking or debunking'), and to law as a 'practical idea' (rather than an abstract phenomenon) by, among other things, accommodating, respecting and nurturing both sociolegal unity and sociolegal diversity.⁶⁵ Such a 'juristic' approach entails productive conceptual, empirical and normative tensions between 'structure and freedom'.⁶⁶ On the one hand, if you care about the 'wellbeing of law' then you must care for its *structural* coherence, for legal systems that do not fit together cannot function. On the other hand, if you care about law as a 'practical idea' that is socially meaningful then your thinking and practice must accommodate, respect

⁶⁰ She may have developed preconceptions as a result of these experiences, which might have filtered through to the project. But no evidence this has been identified by project publics/stakeholders or in consultations with her co-author.

⁶¹ Perry-Kessaris 2019.

⁶² Kimbell 2015 p. 64.

⁶³ Pater 2016 pp. 2 and 3.

⁶⁴ For debates surrounding how, why and when (not) to attempt comparative sociolegal research, including the fraught question of whether it is/ought to be more about similarities or differences, see Örucü and Nelken 2007.

⁶⁵ Cotterrell 2018, pp. 31-33.

⁶⁶ Perry-Kessaris 2019.

and nurture social and legal diversity, and the *freedom* that makes it possible.⁶⁷ For example, returning to the Facing All the Facts project, we can see that the concept of hate crime can insert into the pre-existing structures of legal systems not only a new typology of violence, and frameworks and actions to effectively deal with it, but also new shared ‘spaces’ for connection between stakeholders.⁶⁸ In so doing the legal system comes to accommodate, respect and nurture diverse, previously invisible, peoples; and is itself enriched.

As this paper has demonstrated, the designerly ways can generate structured-yet-free spaces in which sociolegal researchers, including participating publics/stakeholders, can more practically, critically and imaginatively navigate these parallel conceptual concerns around ‘structure’ and ‘freedom’.⁶⁹ In particular, we have shown that in these spaces researchers, including participants, are able to navigate between the structure of the actual and the freedom of the potential. For example, by creating ‘visual outputs that foreground people’s current experiences of a social issue’, such as the ‘journey of a hate crime case’ graphics, or ‘mockups or prototypes that project how things might be in the future’, such as the sticky wall showing both the status quo and suggestions for change, we can ‘instantiate in the present’, digitally and/or materially, ‘provisional aspects of the future.’⁷⁰ In so doing we support Julier and Kimbell’s proposition that co-produced design research might be recognised as a new Mode 3, ‘concerned with the mediations between how things are now and how they could be,’ which ought to be of interest to impact-curious sociolegal researchers as well as to non-academic researchers. Furthermore, we propose that, because the designerly ‘expertise in materialising future possibilities’⁷¹ centres on making things visible and tangible, it is on this aspect of designerly ways that impact-curious sociolegal and non-academic researchers should concentrate in the first instance.

⁶⁷ Cotterrell 2018 pp. 31, 33 and 170.

⁶⁸ Perry 2014.

⁶⁹ Perry-Kessaris 2017a. This helps to explain why designerly ways are increasingly being applied in a range of legal activities including legal practice, legal activism, policy-making and, most recently, sociolegal research: Perry-Kessaris 2019.

⁷⁰ Julier and Kimbell p. 41.

⁷¹ Julier and Kimbell 2016, p. 41.

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