

## Visualising a Visual Movement – Reflections on a Growing Body of Research

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In the two editions of the Journal of Open Access to Law dedicated to Visual Law we traverse a delightful panorama. We observe a diverse and maturing body, not only of scholarship, but also of practical application of “Visual Law”. Closely allied to it are the themes and disciplines of Legal Design which are woven through much of its unfoldment.

Practising what Visual Law preaches, virtually every article supplements its textual communication with visual examples and illustrations. While the articles collectively demonstrate the considerable progress that has already been made by the field (not to mention its already long heritage) the ample opportunities for continuing scholarship and innovation are also evident. There are many questions and issues yet to be explored. Were we to follow the journey of visual law further, we can imagine that it will scale up, as its innovative approaches are taken up on a larger scale by a growing body of practitioners in the many spaces in which law is influential.

There are a number of themes or indeed values that underpin and run through much of the body of work that the two editions present. Most papers are concerned in one way or another with the accessibility of law. As Doherty outlines, accessibility ranges from digital access, through readability to comprehensibility. It is a thread that links together waves of a movement that has emerged and continues to express itself in new and different forms: the Open Access to Law movement (concerned primarily with digital access), the plain language movement, and most recently visualisation and legal design. (Doherty, 2020) Ultimately the values pursued by this body of scholarship and application include equality and fairness among citizens, access to justice, and the effectiveness of the rule of law itself.

These diverse approaches all have a common focus on the needs and rights of end users of law. Those end users are themselves diverse, implying a rich ecosystem in which visual law might be and has been deployed, as the articles demonstrate.

Among those end users are current and aspiring members of the legal profession. Emily Allbon explores the application of visualisation

to the teaching of law, including her own practical experience in the use of visual tools. A driving concern was accessibility of law to those seeking to learn it. The tldr initiative provides, among other things, an example of visual storytelling which brings to life the forbidding intricacies of land law. Law is embedded in place and alongside the people who live there. (Allbon, 2019) For those who have already entered the legal profession, and particularly judges, the need for learning does not end. Internationally, principles of judicial training encourage the adoption of the most up-to-date techniques. Here too, we see the current deployment of visualisation, as Conti et al explore. In the multilingual environment of the European Union, where only a percentage (17% of judges and prosecutors) are proficient in the most widespread working language (English), visual communication has particular advantages. These are in addition to other characteristics of visual communication, such as the brain's capacity to process images very rapidly. (Conti et al, 2019)

Three papers are in different ways concerned with effective communication with citizens. Fioravanti and Romano explore the use of visual communication in administrative documents, examining practice in jurisdictions in the Americas and Oceania in comparison to the situation in the European Union. They note the promotion of visual elements in most jurisdictions but the need for the greater promotion of visual communication within the Italian jurisdiction. (Fioravanti and Romano, 2019)

Furthermore, the effectiveness of visual communication depends greatly on its unfoldment within a user-centred design paradigm. The theme of access to law is here too, as it is in Margaret Hagan's paper on self-help designs for traffic infringements and courts. Here we find a practically oriented and evaluated examination of alternative approaches to self-help for users of the system which ranged from visual guides to a "virtual buddy" which performed some of the facilitative functions of a lawyer. The evaluation of the different approaches allowed them to be ranked for effectiveness. User engagement also allowed qualitative conversations around the aspirations of those who might use the system. The research concludes by pointing to the potential for further similar studies that extend the exploration and evaluations reported. (Hagan, 2019)

Schmidt-Kessen et al, are also concerned with an embedded application of the law, examining the effectiveness of landing pages used in various jurisdictions to redirect web users away from illegal online gambling sites. Here the focus is on the goals of regulators who are seeking to protect citizens from illegal gambling and channel demand into less risky legal offerings. Estonian, French, Polish and Spanish sites

are analysed for their textual and visual elements. They emphasise the importance of applying legal design disciplines to evaluate whether the diverse approaches are effective, or not, in achieving regulatory goals. (Schmidt-Kessen et al, 2019). Here again we see an open agenda for further research.

Keating and Baasch Andersen's paper addresses another audience that uses the law: in this case employers and employees. Like the Hagan paper we see again the use of user centred design evaluation to measure the effectiveness of approaches. The question that engaged the researchers was how to improve the effectiveness of an employment contract as a communicative tool that would shape values and behaviour in the workplace. Turning employment contracts into comic strips is not self-evidently a way to make a contract a *better* legal instrument. Yet this is what the researchers found. (Keating and Baasch Anderson, 2020) The implications of this is further explored below.

Neil du Toit's article analyses the use of network visualisation to represent citation networks in court judgements. The analysis examines the directionality appropriate to such citation networks and considers the different use cases which network relationships represent e.g. Case B cites Case A and Case C – which implies that Case C may be of interest to a researcher researching Case A. Conversely if Case B is cited by both Case A and Case C, it may represent a similarity between Cases A and C. du Toit convincingly illustrates the benefits of a network visualisation of a citation network as compared with tabular presentation (which can require an exponential search for the researcher seeking to find authorities). (Neil du Toit, 2019)

A further three articles, in different ways, ask us to consider the limits, dangers and shortcomings (potential or already realised) of visual communication or visual law. The prudent consideration of these limits (as well as being essential in its own right), allows us to explore a variety of questions more deeply. To do so, I deploy an icon which is familiar, even if we have not seen this particular version before.



Figure 1.

We do not need to know where in the world this icon is used, or anything about the word or symbol it contains, to be confident of understanding its meaning. It successfully, concisely and unambiguously communicates a non-trivial legal rule, and does so without the necessity of any words. The visual characteristic of *instantaneous* communication is essential to its task. (See Conti et al, 2019) No jurisdiction is likely to believe that prominently displaying the words of the underlying legal rule on large signs might be a better approach for this communicative task. If further persuasion is needed here is the first subsection of one rule associated with such an icon:

*67(1) A driver at an intersection with a stop sign or stop line, but without traffic lights, must stop and give way in accordance with this rule.*

*Maximum penalty—20 penalty units.<sup>1</sup>*

Furthermore, most of the *words* in which the legal rule is communicated around the world would be incomprehensible to most of us (including in some cases even if it is written in a language we understand!). (See Doherty, 2020) The icon conveys the *meaning* without the need of spoken communication at all. Further the way the brain processes visual information allows us to recognise it as belonging to the same category of phenomena as the stop signs with which we are familiar. Remove the visual elements and it would be incomprehensible, unless we are familiar with the script used. We may note that there is in principle no limit to the complexity of the information such an icon

<sup>1</sup> Road Rules 2014 (NSW)

might represent. Instead of its primary message of “stop” such a symbol might equally be mapped to the collected works of Shakespeare. As it is, the sign represents far more than a single word.

We might perhaps think that this example is somehow “cheating”. After all, the ability of this icon to communicate is conditioned on a wide range of factors such as the culture to which we belong, the kind of societal experiences to which we have been exposed and on the considerable investment in standardization which was necessary to endow the inherently meaningless pattern of shape and colours with meaning. Most of the hard work is not done by the icon at all. It floats rather on a sea of practical international cooperation that results in its meaning being obvious. We may also note that both disciplines of visualisation and design (such as we have discussed above) are embedded in the icon.

Yet little of what has been drawn out from this commonplace example is unique to visual communication. Indeed, an example from the world of written communication which has in recent times engaged my attention, illustrates some of the shared characteristics of verbal/written and visual modes of communication.

Dante Alighieri’s poetry abandoned words which were in his time inaccessible: Latin words. Such words were the preserve of a small minority and Dante wished to reach a larger audience. Rather, he adopted oral and written symbols that could be sung or recited (and understood) on a street corner as a new vehicle for “high culture”. However, he immediately faced the same problem of standardisation we see above – for the spoken word varied from place to place. Indeed, he estimated that there were thousands of variants of what we today call Italian. (Dante, *De Vulgari Eloquentia*) Further, like the stop sign, the effectiveness of Dante’s communication depended on the prior experience and culture of his audiences. What we call words are after all meaningless sounds - “icons” in themselves. They are arbitrarily mapped through complex cultural (and often political processes – as is certainly true of the history of Italian words) to the meanings they convey. Nonetheless, Dante’s work strengthened an emerging “literary” community. Like efforts to make law more accessible, which extend over centuries, (Ducato, 2019), Dante’s hopes for a living Italian language foundered in the centuries of archaic formalism that followed him. “Italian” became the preserve of exclusive cultural and literary circles which replaced the exclusive circles that had previously clung to Latin. It took the efforts of another language reformer (Manzoni) centuries later (and not to mention an accompanying political revolution and the assistance of modern mass media) to finally get there. (Migliorini, 1984, pp 117-122, 364, 406 et seq, 511) Language is the result of the

combined effect of bottom-up communicative interactions of individual agents and top-down systemic standardisation.

Returning to our stop sign, we may recall further that it may convey no meaning at all, if we are visually impaired. Indeed, the entire legal and infrastructural framework of the transport systems within which the icon is set may be of limited usability to us in that case, as the system as a whole assumes sighted users.

Reminded by Sara Frug’s article, I have ensured the icon above is accompanied by an alternative text that accurately communicates the nature of the image. Using visual communication of course inherently focusses on the capacity to *see*. Yet, the now well-established and legally mandated accessibility standards that guide the production of materials placed online should be something with which we are all familiar. Further, design principles impel us to ensure that the artefacts we create are usable in all realistic scenarios. Nonetheless efforts to address the issue among visual law practitioners tend to be inadequate with images provided with “non-descriptive, incomplete, or misleading alternative text”. Designers tend to design from “their own abilities and experience”. Frug highlights universal design principles as central to addressing this problem with visual law. Noting that there are aspects of visual communication which are inherent in visual communication itself, Frug suggests that much that is conveyed visually can also be communicated through semantic markup of information resources. (Frug, 2019)

Rossi and Lenzini are also concerned with the limits of visual law in a different sense. They examine, among other issues, the potential of icons to *mislead*. They are particularly concerned with privacy notices and their standardisation. They discuss icons and their characteristics, pointing out the need for standardisation, and that they are created artificially. (Rossi and Lenzini, 2020) However as argued above standardisation is also a characteristic of textual communication.

Rossi and Lenzini note that pictograms can be related to familiar representations that assist the user in discerning their meaning. (Something untrue of spoken language except in the limited case of onomatopoeia). However, such associations can render pictograms uncertain and points to the importance of standardisation to resolve ambiguity (and they note the universal communicative value of street signs in this regard). In this context they suggest the need for standardisation of iconography protecting privacy online (as for example appears in a web browser url). They also call for further empirical research into how pictograms are received by users to improve the situation. (Rossi and Lenzini, 2020)

Eliza Mik's article also draws our attention to the limits of visual law and makes a number of valid and important points that caution against an over-enthusiastic and uncritical approach to visual law. "Visual" representation of the written word may indeed misrepresent meaning or incompletely represent the law. It may be selective or may introduce bias "nudging" meaning in favour of agendas not necessarily in the interests of the viewer or reader. Visual law usually requires textual accompaniment to buttress its usefulness. Further the article observes that not every legal rule lends itself to visualisation. (Mik, 2020)

The statement "Law is word-based because, as a matter of principle, only words can convey the complexity of legal rules" questions, at a fundamental level, the *feasibility* of use of visual communication to communicate law. Certainly, language has incredible complexity. It is at its most complex and multi-layered in poetic works such as Dante's *Commedia*, yet legal language deliberately distances itself from the most complex use of language – binding itself to a "controlled" subset of normal language – particularly in legislative instruments. Complexity, ambiguity and prolixity of language are lamented characteristics of legal language shunned by every competent drafter. As argued above visual symbols are in principal no different to verbal ones.

Moreover, a conclusion that visual law can only ever play a subordinate role – forever pinned to the golden standard of the statute or legal precept – "*gold letter law*" – is not borne out by the body of scholarship these volumes of JOAL contain. For things do not remain the same as visual and design paradigms are introduced. As researchers who engage with visual law or legal design have found, the process pushes the boundary of what law should be. The inadequacies of the words contained in the written text – and underlying shortcomings in the rules themselves – drawn forth by the visualisation process – become the focus of reform and improvement. This, for example, is evident in the journey reported by Keating and Baasch Anderson. It was not enough to "visualise" existing legal rules. As they became visible, it became evident that the rules themselves needed re-design. (Keating and Baasch Anderson, 2020).

Another example which much occupies my attention is Australia's migration legislation, elements of which, it is my frequent duty to explain to student clients.<sup>2</sup> Having worked with this unhappy morass of largely impenetrable legislation for some years now, I am confident in my conclusion that the Parliament would do better if it entirely threw out the great bulk of the black letter law. Instead, the online web systems that have been created to put the underlying statutes into

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<sup>2</sup> As the Principal Lawyer of the ANUSA Legal Service

effect should become the law. Visa pages published by the government are underpinned by a philosophy of human oriented design and begin implicitly with user-oriented questions such as “What do users need to do?” (apply for visas) and “what do users need to know?” (which visa to apply for, how to apply, eligibility, conditions and entitlements). Not content with having thus far facilitated the practical operation of the law from a user viewpoint, the web pages provide online systems which allow users to apply online, including uploading documentary evidence supporting their application.

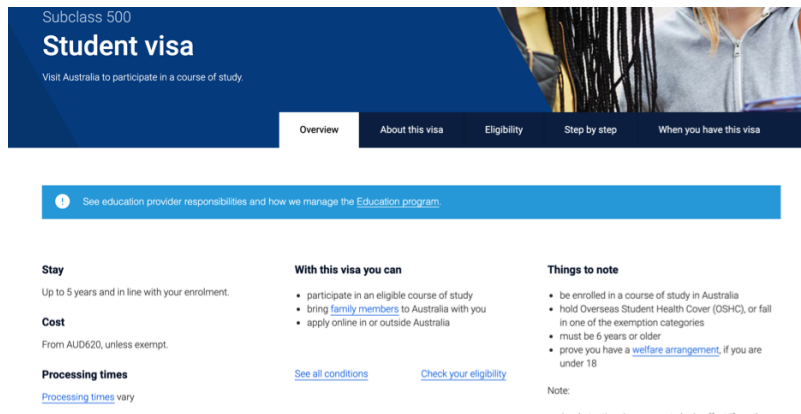


Figure 2. Screenshot from Australian Department of Home Affairs Web Page for Student Visa 500

Although these web interfaces are not perfect, their usability (having been designed for that purpose) is simply in a different league to the black letter law which it appropriately leaves behind. Legal jargon is abstracted away from users for the simple reason that it is entirely unnecessary for much of what the law intends to do.

If such webpages did become “the law”, users of the system would be happier: having more confidence that what they read on Departmental websites is indeed the law. But virtually nothing else would change, except that an industry made relevant largely due to a profoundly inefficient and inaccessible mode of communication, would find itself a little less necessary. The creation of such websites has already made that a reality. Of course, such radical suggestions raise new problems. How would we for instance ensure the web version we are looking at, is actually the version authorised by Parliament? How could legislative tools be deployed in such a way that Parliament’s time is not taken up with updating web pages? Such problems could be comfortably resolved by use of regulation making powers (in which most of Australia’s migration law is already contained). Black letter law does not necessarily



attain a gold standard. This is one of the points of visual law. It helps black letter law truly become golden.

Sooner or later an engagement with questions of visual law or legal design also invite deeper questions as to the nature of law itself. For how we understand what law is and its function is at stake as we approach law no longer exclusively as lawyers, but also as designers, illustrators, computer scientists and otherwise. We may for instance find it necessary to seek to define law: “Law is text”. (Mik, 2020) For our understanding of law what law is, frames how we view visual law. Doherty also highlights that the nature of law is at issue. He notes the relevance of the Raz’s over-arching *purpose of law* as important to our understanding of law. Law’s purpose is to guide human behaviour and if it is to do so human beings “must be able to find out what it is”. (Doherty, 2020) Communication is far more than the “bells and whistles” of a legal system. From such considerations Doherty argues the need not only for law to be accessible, but for it to be comprehensible.

The directions of such reflections are valuable, as they free us from limited conceptions of what the law is and what it might do. Indeed, freeing the law of the assumptions we bring to it is assisted by adopted a “Law as . . .” framework. This allows us to describe the complexity of law (which is indeed a complex phenomenon) in numerous ways: law as designed artefact, law as communication, law as rule, law as text or document.<sup>3</sup>

The Free Access to Law Movement, legal visualisation and legal design each approach law in slightly different ways but they all have in common a concern not so much for the law; as for the human person who either needs to use the law, or upon whom the law operates. On the other hand, it is a movement which is implicitly little concerned with Hart’s sovereign maker of law. From a legal design viewpoint, the user is implicitly sovereign. It may perhaps be the shifting of such profoundly embedded understandings of law which accelerate the work of the movement and which might in the end prove its most transformative contribution. Yet the work that visual law explores is not free of dangers or shortcomings as the some of the papers in these editions have cautioned. Ultimately any theoretical construct or intuition as to the value of the use of visualisation and legal design (or indeed any other approach to law) must be assessed through increasing deployment of empirical evaluation. Work in this direction is well underway. However, evaluation must become even more an integral element of work in this field.

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<sup>3</sup> The interested reader is referred to M.A. Curtotti, *Enhancing the Communication of Law: a cross-disciplinary investigation applying information technology*, Phd Thesis, 2016, Chapter 2

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