

Beyond the visual: Theorizing legal design for accessibility and inclusion through an *Ability Capitalism* lens

UVic Legal Design and
Education Series 2024-25

Dr Clare Williams
Kent Law School,
University of Kent, UK

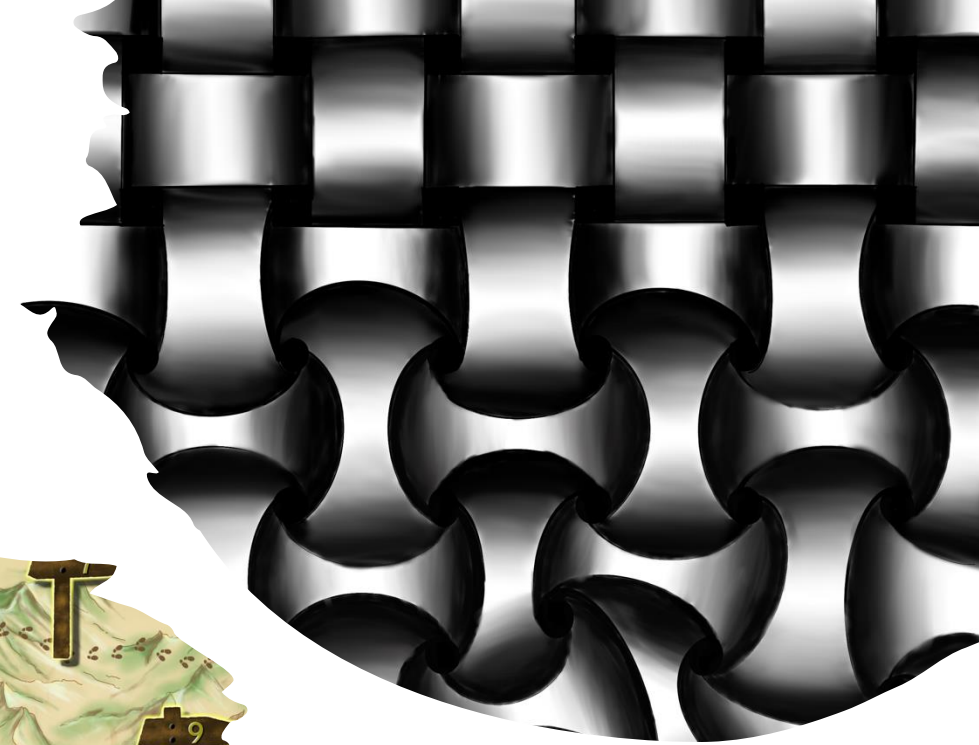
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Graphics by Chris Redford at Nifty Fox Creative

Why did I start thinking about legal design?

- A long and bumpy PhD journey
- An alternative way of sharing an autoethnographic journey ([Mountains of Metaphor](#))
- A way to explore the application of legal theory through personas and vignettes
- A way to enhance teaching practice – students may not be able to read dozens of articles each week
- Now exploring legal and economic constructions of disability using legal design approaches ([Fantasy Legal Exhibitions](#), [Prefigurative Counterfactuals](#))



What legal design *is* and *does*...

- **Legal design** is a new pair of glasses (Margaret Hagan)
- Ways to ‘organiz[e] and display[...] information in a way that maximizes its clarity and understandability’ (Haapio and Passera, 2013)
- Focus on:
 - Consumer/user experience and needs
 - Big picture as well as details (macro- and micro-level engagement)
 - Product design: contracts, access to justice, etc
 - Co-creation: bringing diverse voices into dialogue
- **Visual law** as one aspect of legal design, which includes the addition of ‘graphs, icons, tables, charts and images to supplement text’ (Haapio and Passera, 2013)
- **‘Design mode’** that constructs ‘practical, critical and imaginative’ spaces in which we can make problems and their solutions ‘visible and tangible’ (Perry-Kessarlis, 2021)



Margaret Hagan, [Law by Design](#)

Theoretical assumptions and shortcomings

- Assumptions about the law
 - The law offers remedies to the failures and exclusions of so-called 'natural' markets
- Assumptions about legal actors
 - Actors are pre-social individuals seeking to maximize their utility through 'natural' market relations
- Assumptions about design-based approaches
 - The law can be made more readily available to market transactions through commodification processes
 - We can remake the world through designerly ways



The Great Prefiguration: Pandemic lockdowns and ‘WFH’

“All the time they told us [working from home] wasn’t possible was a lie, because as soon as the pandemic hit, it became possible” [research participant, data on file]

Remote working became the new norm

Disabled people had previously requested and been denied remote working as a reasonable adjustment

Employers tend to overestimate costs and underestimate benefits of reasonable adjustments

What impact might the normalization of remote working have on future requests for reasonable adjustments?

How can we **prefigure counterfactuals**, or imagine alternative sets of market norms, preferences & assumptions?



Prefigurative Counterfactuals

- Speculative questions (what if?)
- Prefigurative questions (as if)
- Counterfactual: contrary to fact
- Prefigurative counterfactuals: imagining, designing, constructing and testing alternative realities

TONY'S CHOCOLONELY EMPLOYMENT AGREEMENT

START

your name?

your role: (check out your impact profile for all the details)

probation period: 0-0-0-0 month(s)

work location:

indefinite period till date 00-00-'00

SERIOUS NOTE, PART 1

that you will handle all confidential Tony's information eh.. confidentially results that you develop or create, solely or jointly with others, during payment with us is owned by Tony's Chocolonely (called 'Intellectual rights'). When we split up, you will return all documents relating to us and your work for us to us (like reports, manuals, drawings, source code and customer lists), obtained by you during your time with us, including any copies.

OUCH!

..mind your step! you're off to those nerve-racking serious notes

gross salary: € 000.000.000,00 per month (on a fulltime basis) + 8% holiday allowance.

number of hours per week: 0-0-0-0 divided over 0-0-0-0 working days. (but hey.. results are more important than the number of hours you make)

with a minimum of 28 days (based on a week). You have to take these days off as a healthy and sane and to make sure you spend time with family, friends and to things you like to do.

YOU ARE GOING TOO FAST!

the serious stuff is a cool down!

ON A SERIOUS NOTE, PART 2

- You can't accept a provision or compensation from our relations or clients. Only if it's chocolate coins.
- Want to combine your job at Tony's with another fancy side job? Make sure you discuss it upfront.
- The Serious about People Guide, as it is or as it will be, is part of this agreement so read it well before you sign.
- This Agreement falls under Dutch law.

Other Tony's benefits:

- Expense allowance of € net per month for work related purchases.
- Profit-sharing bonus
- Pension
- Participation in Tony's Chocolonely's Stock Purchase Plan ("Golden Wrapper"), when you meet the rules and conditions of the plan.
- A monthly commuting allowance + Q-park subscription NS business card for work related travels a bright, shiny company car.

BACK TO START

HOORAY

will take a lovely mugshot of you and put it on a ehh.. mug, among other things, like our website or annual FAIRreport. You might also be photographed on other moments, because we occasionally give a peek of our life at Tony's online or in other publications. Mhokay?

sign here →

sign here →

Address:, says.. yes no

Address:, Zipcode, Residence

sign here →

HUMAN CENTERED DESIGN + LAW CHANGE

TRY SPECULATIVE FUTURES

HELP INCLUDE more PEOPLE IN Policy-MAKING BY USING STORIES, FICTIONAL FUTURES, VISIONARY "PROTOTYPES" to INCLUDE more PARTICIPATORY

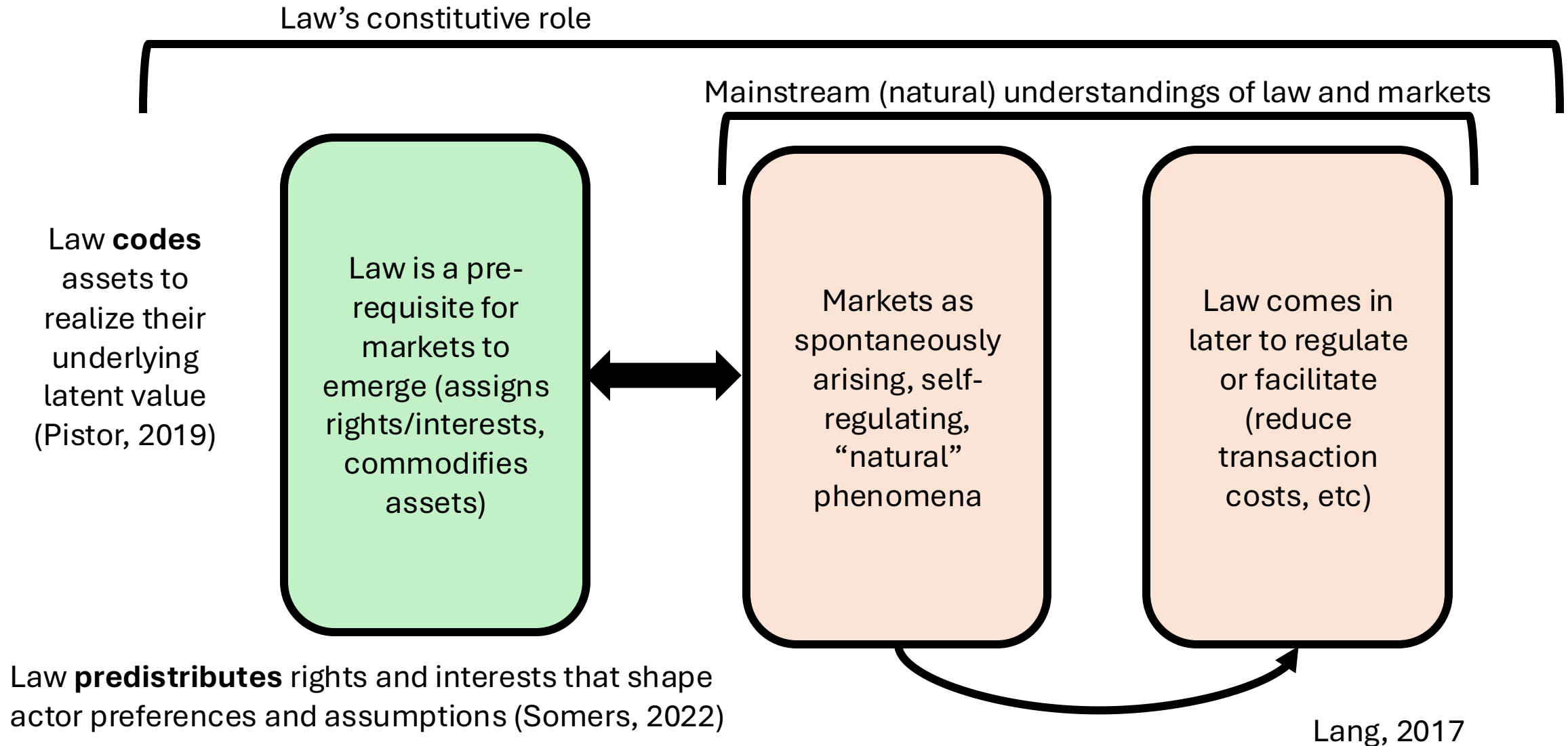
A Participatory Process

INCLUDE diverse stakeholders, especially "USERS" of LAW (not just the "PROFESSIONALS" of LAW)

Flowchart Job Details:

- NAME: Manjit Singh (you)
- ADDRESS: 27 Carew Close, Thornwall PL11 2GT
- JOB TITLE: Systems Designer
- BASE SALARY: £40,000 per year
- NORMAL WORKING HOURS: 4 hours per day, for a total of 28 working hours per week
- START DATE: 01 Feb 2022
- NORMAL PLACE OF WORK: Remote or at 217 Mycelium Street, Newcastle (Livable Planet's Newcastle office), as needed
- MUTUAL TRIAL PERIOD: 6 months
- HOLIDAY ENTITLEMENT: 28 days per year plus Additional Paid Leave

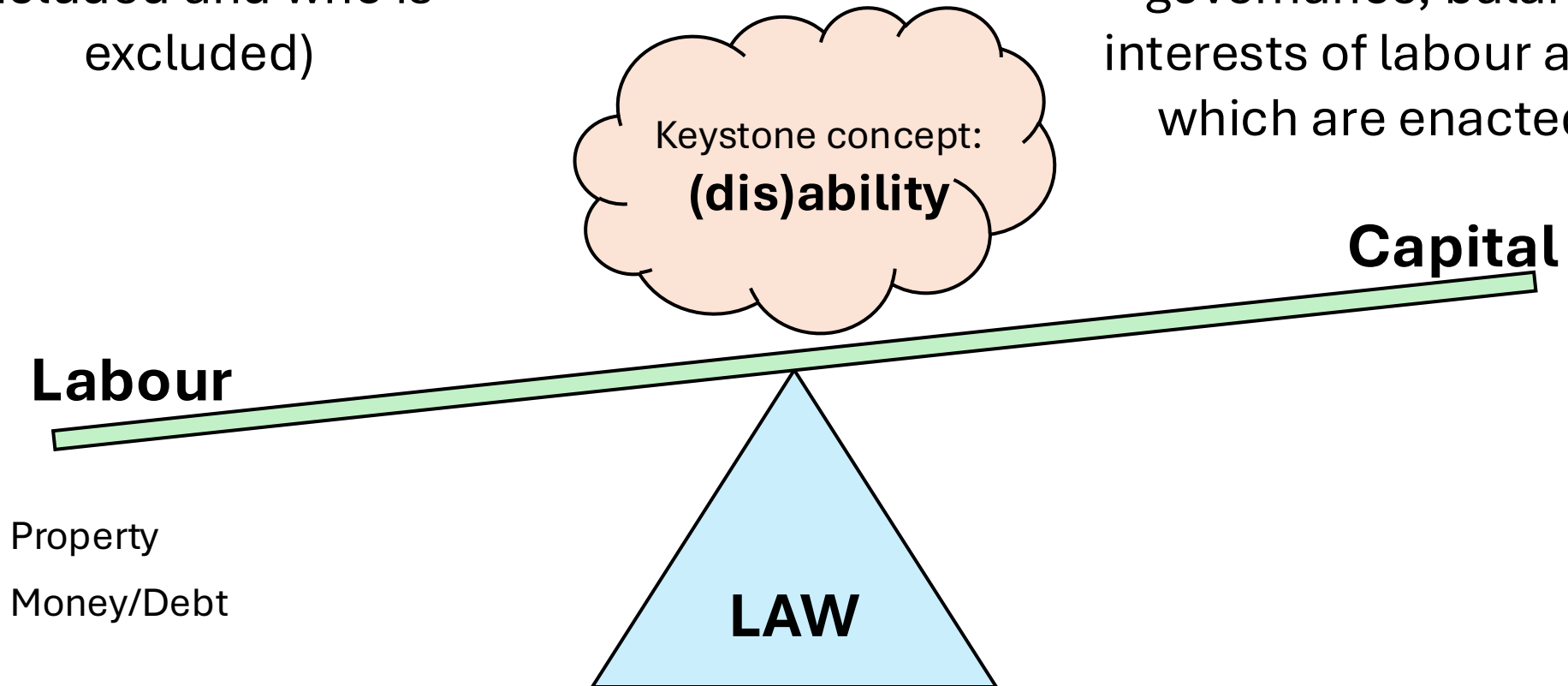
Key concept: law's constitutive role



Ability capitalism

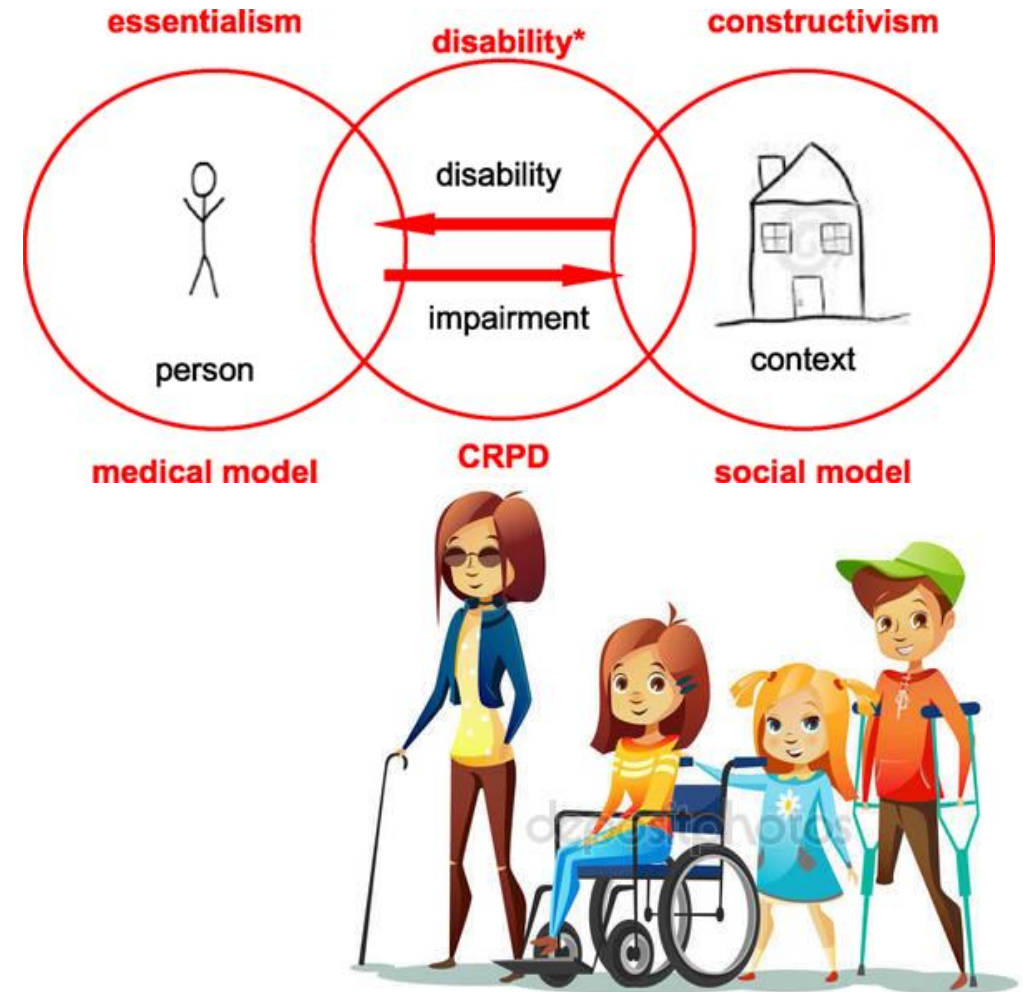
Disability is constructed at market boundaries (who is included and who is excluded)

Disability emerges as a core rationality or technology of governance, balancing the interests of labour and capital which are enacted by law



Designerly ways IN education

- Disability and Social Justice module (launching 2025-26)
- Visual law, using diagrams, charts, graphics
- Personas and vignettes: how does the world look different when we apply different models of disability for these people?
- How does the university disable, and what can Universal Design/Universal Design for Learning (UDL) offer?
- Then, what else needs to happen?



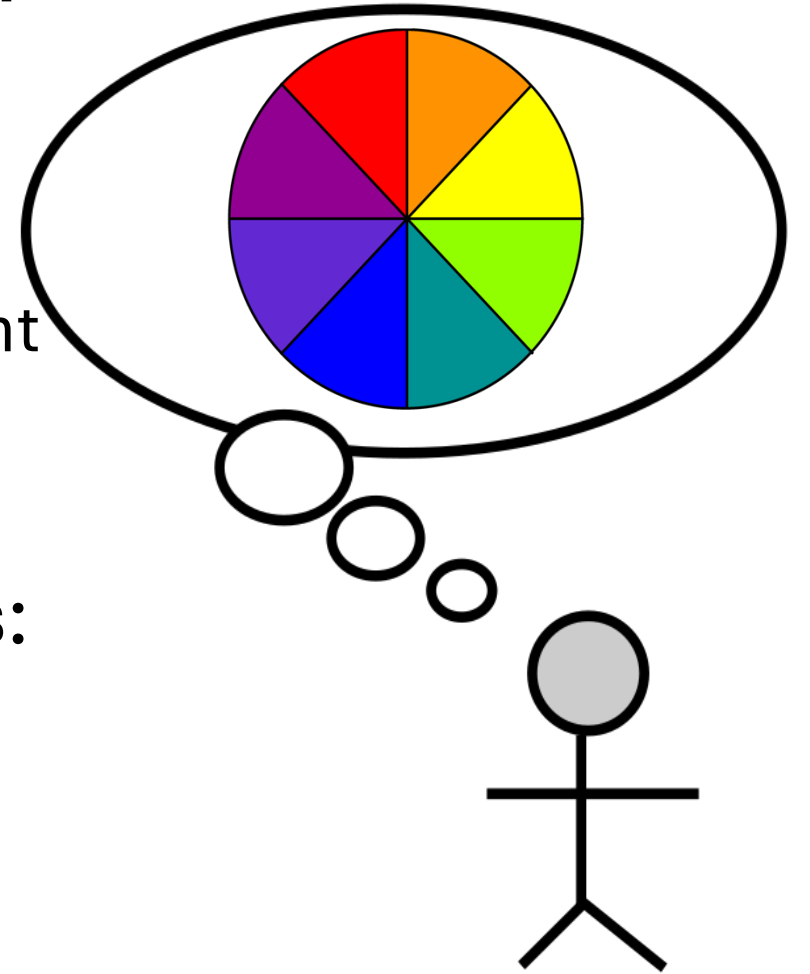
Designerly ways AND education

Designing academic tasks:

- What colour might [X concept] be and why?
- ‘Imagine you are a foreign investor. What do you want to know about the legal system of the host state?’

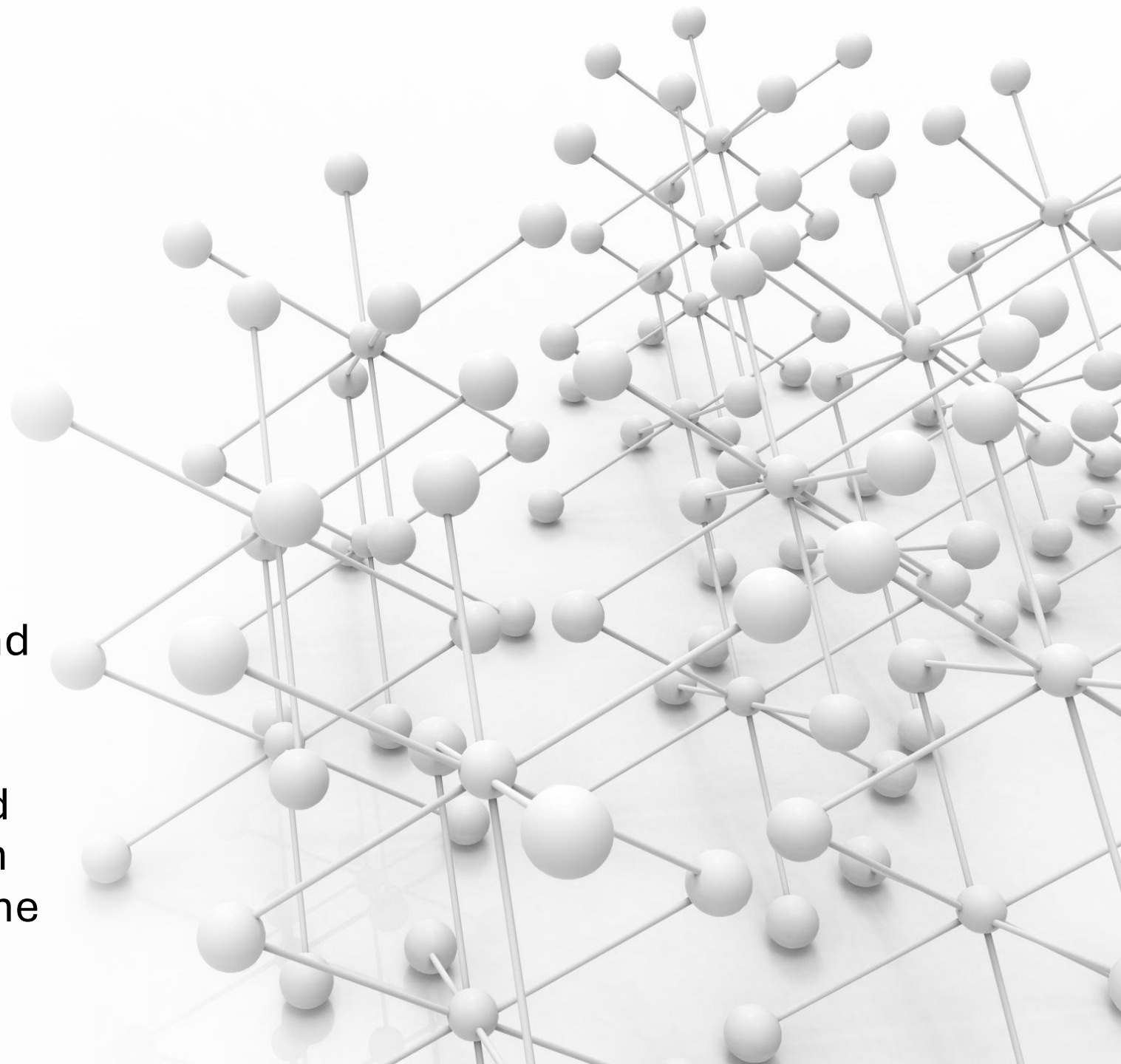
Designing academic settings/ requirements:

- PDF and Word versions of readings
- Journal articles/academic publishing is inherently ableist
- A spoken PhD thesis? (UDL Guidelines lack of engagement with assessment methods?)



Concluding thoughts

- Design mode can enable and disable
- Design mode needs:
 - A deeper theoretical grounding
 - A wider range of voices and values
 - A greater attention to the structural, procedural and substantive ways in which design mode can reimagine the world



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