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Virtual Courts and Putting 'Summary' back into 'Summary Justice': Merely Brief, or Unjust?

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INTRODUCTION

The use of videolinks in courts is often heralded as the beginnings of so-called 'virtual' courts, as evident in a recent pilot undertaken in the United Kingdom. While the option to participate in courtroom hearings from remote locations via videolink has been available in many countries for over two decades, the overall effects of this change in procedure on the experience of justice remains relatively unknown. This chapter will argue that existing practices of participating in court processes from a remote location risk proceedings being perceived as procedurally unjust as fundamental aspects of the judicial process are potentially undermined by current 'virtual' – or what might more aptly be termed 'distributed' – courts.

Widespread remote participation in court processes is occurring internationally, often justified through a mix of pragmatic and ethical rationales. Reducing the need for transport which is costly and degrades the environment, improving access to justice for people living in remote areas, attempting to reduce the trauma associated with giving evidence for child and vulnerable witnesses, minimising security risks associated with moving those on remand, enabling access to experts who would otherwise be unavailable – all have been put forward to suggest that videolinks will help create a more efficient and effective justice system.[1] It is generally accepted that the use of videolink technology within the adversarial system has the potential to redress some imbalances, and to improve overall access to justice. However, I argue that the way videolink technology is currently implemented in many jurisdictions – as typified in the Virtual Court pilot discussed below – reveals that the important role of the built environment in supporting successful court processes is grossly underestimated.[2] The chapter ends by discussing alternative ways to conceptualise the role of environmental design within the trend towards what I term '*remote court participation*', in order to address some of these concerns.

THE VIRTUAL COURT PILOT

In May 2009, Justice Secretary Jack Straw announced the arrival of the 'Virtual Court' in the United Kingdom. Established as a pilot, the first instance linked Charing Cross Police Station with Camberwell Green Magistrates' Court in South London, and was proposed in order to speed up the processing of minor offences.[3] Cases under the new system would be heard within hours of the defendant being charged, and a plea of guilty could see sentencing handed down on the same day, all without needing to leave the police station where the person was first taken into custody. Initially a voluntary programme requiring informed consent from the defendant; the pilot became compulsory for all first hearings 'within certain parameters and conditions'.[4] Such moves prompt important questions such as: if a person appearing before a Magistrate in the UK Virtual Court Pilot does not ever physically encounter a courtroom, but only the inside of a police station, is it a problem?

It was obviously important for the Ministry of Justice to prove that the Virtual Court pilot would have no detrimental impact upon the quality of court procedure. According to the official press release from the Ministry of Justice:

> *Virtual Courts are exciting as they have the potential to transform how the justice system deals with crimes. Cases will be resolved more quickly, improving the service given to victims, witnesses and defendants, and justice will be faster and more efficient, without any loss of quality.*[5]

The projected cost savings were not insubstantial.[6] However, one wonders whether people who have appeared in court under this new system would agree with the Ministry's claims of no 'loss of quality'. The implicit assumption underlying this rhetoric is that videoconferencing technology is benign and neutral, and can be easily inserted into existing conditions and used without significantly altering the nature of the experience.

GROWING CONCERNS

It would appear that the assumptions the Ministry of Justice made equating speed with an improved service were not shared by those subject to the new system. Within the first weeks of the pilot going live, there was a large amount of criticism levelled at the Virtual Court pilot by lawyers representing their clients under this new procedure:[7]

> *... solicitor Robin Murray said the system placed lawyers in the impossible position of having to choose between being in court to defend their client or being with them at the police station. He also told the BBC that it left the defendant isolated. 'He won't be able to see his family and friends who normally would turn up for a court hearing if they wanted to support him,' Mr Murray said. 'I think it is an isolating feature – the fact that you are almost taking part in a remote video game. It rather depersonalises the whole process.'*[8]

Roger Smith, Director of legal human rights organisation Justice, expressed concerns that virtual courts could undermine the gravitas of judicial proceedings, commenting:

> *... I have concerns about it being used to sentence somebody. Being summoned before a TV screen is not the same as being summoned before a court ... Being arrested, taken to a police station and then on to court is a shaming process. It is an extremely unpleasant experience to stand in a dock and be told by a judge that you're going to receive a sentence. There is a danger that this process would be debased by being made to look like a reality TV game.*[9]

Eighteen months after the pilot was initiated, criticism from the legal profession continued unabated, with one solicitor calling the pilot the 'Facebook of the criminal justice system' emphasising the difficulties in establishing empathy over the link and the practical problems in achieving effective advocacy for clients.[10] Concerns raised include the difficulties posed when the lawyer's experience of defending their client is fundamentally altered. With transmission of body language and non-verbal cues less effective over the link, defence lawyers are faced with an 'invidious choice', having to opt either for the ability to have quiet asides with their client, or the advantage of being face-to-face with the Magistrate.[11] More recent commentary questions the ability of virtual courts to adequately create trust and confidence in the criminal justice system given the clear disadvantages that the pilot imposes on the defendant and their counsel.[12]

The idea that the Virtual Court is potentially unfair towards the remote defendant was picked up by the recently published official evaluation of the pilot.[13] The evaluation identified that the physical separation of defendants (and sometimes their solicitors) made it harder for communication before and during hearings, raising some concerns for practitioners. Furthermore, the report found that some judicial officers found it more difficult to impose their authority 'remotely', and: 'perceived that defendants took the process less seriously than they would if they appeared in person.'[14] Recently expressed concerns hinted that many defendants who appeared under this system were confused and uncertain about what exactly it was that they were taking part in. In the words of one UK lawyer describing the experience of some of their clients: 'a couple of them haven't even realised that they're in court at all; they just haven't taken it in.'[15]

Economic questions aside, the key question now facing the Ministry of Justice is how many of the above concerns can be ironed out and addressed by changes to the way in which the pilot has been designed and operates, and what aspects, if any, are perceived to be inherent to remote participation, and potentially unresolvable? For instance, one reason for the criticism of virtual courts as 'isolating' is that the technology at present is only focused on conveying official court business. Contact with 'family and friends', as simple as an encouraging smile or nod, are significant social interactions that the court as a public setting affords, but which are not necessarily a high priority for court administrators consumed with providing an efficient and expedient system for handling a busy Magistrate's caseload. The opportunity for dialogue between others involved in the process is also missed,

as unplanned encounters in lifts, corridors and waiting areas, where money saving negotiations can take place, are lost.[16] While it is clear that concerns such as these might be addressed with improved design of videolinks to encompass a wider range of verbal and nonverbal communication and more interactions between different types of participants, associations with an experience that is unreal, 'depersonalised' and like a video game – are perhaps less easily reconciled.

VIRTUAL – OR MERELY DISPERSED?

In some ways the tag 'virtual court' that has been ascribed to the pilot seems to be a misnomer. This procedure is not substantially different from how a court that currently uses videolinks might operate and hardly involves the immersive avatar-filled cyber-environments that the term virtual court might imply. Perhaps apprehensions expressed about virtual courts have more to do with the term 'virtual' itself. In many ways – perhaps mistakenly – the virtual is seen as tightly linked to the relatively recent advances in computer technology, yet as many authors point out, the virtual as a concept is really nothing new.[17] The ubiquitous acts of writing, reading, or looking in a mirror have all variously been described as ways in which virtual spaces have long been a part of our embodied existence. By contrast, the terms virtual reality and virtual environments emerged recently, and are closely tied to the computer technologies that allow them to occur.[18]

Virtual, by definition, seems inevitably to connote lack. Our associations with the word are such that when we describe something as 'virtual', it seems to involve a level of trickery in regards to perception, or, that while the end result may be the same there was something different or lost in the process. Some have argued that when speaking of the virtual in its current application to describe technologically mediated communications distinctions between the terms real, actual and virtual need to be made, and that we need to create a clearer understanding about the relationships between them.[19] For most people, the real is strongly associated with concreteness, tangibility and reliability, whereas the virtual is seen as insubstantial, intangible and unreliable. However, the actual (concrete) and the virtual (insubstantial) can both be real and constitute a person's reality. As such, the virtual in this context, needs to be seen as being opposite to 'actual' (concrete) rather than 'real'. Perhaps until the term 'virtual' reaches this semantic shift, and shakes itself from associations with fiction (the simulated, the fake, and the unreal), the term virtual court will always imply something is lacking, and infer unauthenticity. Perhaps in some ways the term 'distributed court' is more apt to describe what is actually achieved both in the United Kingdom pilot, and in other so-named operational 'virtual courts', to avoid these unwanted associations.[20]

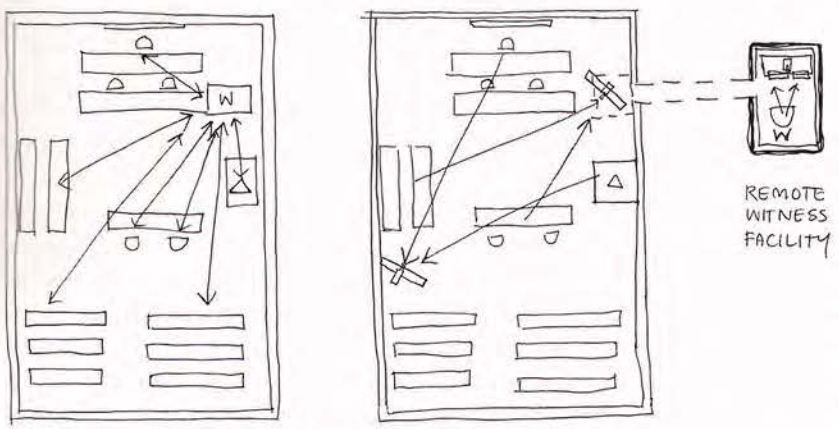
In order for a virtual – or distributed – court to work effectively, a level of trust in the mechanism by which justice is dispensed and a confidence that all participants are being treated equally and with respect, whether appearing in person or remotely, needs to be established. Associations with fiction then may be seen to undermine the role of the court as a symbolic entity, and may in turn

unsettle its authority. Authenticity implies legitimacy, and establishing legitimate authority is of critical importance to generate public trust that court processes are fair and just.[21] Feelings of remoteness and alienation, coupled with difficulties in communication and engagement between participants described by critics of the United Kingdom's pilot would seem to foster distrust, rather than a belief in the legitimacy of the authority of the court.

NEW WAYS OF UNDERSTANDING THE IMPACT OF REMOTE PARTICIPATION

The widespread use of videoconferencing technology has facilitated a major shift in what we see as the boundary of the physical court and the place for conducting legal procedure, mirroring more closely our experience of 'court' not as a single, discrete object or process, but as a 'multi-faceted entity'.[22] Courts, it may be said, operate simultaneously on a symbolic, a structural and an embodied level, and in combination they contribute to our collective notions of justice.[23] They are experienced by the citizen as the locus of law, by the members of the courtroom as a communally performed ritual, and individually as a participant with a specific role to perform (as witness, defendant, lawyer, judge, as court officer, as jury member, or as a representative of the press or of the public, family or friends of the parties and so forth).

An initial analysis would suggest that there are significant implications that the current use of videolink technology has on all three levels of experiencing the court. The question we then need to ask is does the adoption of technology in this way improve things? And to obtain an adequate answer, we really need to ask the question in different ways: *how* has the introduction of video mediated communication altered the *experience* of being a participant and can each participant adequately perform their role in court? Can the participants still understand the social context and the court rituals in which they are partaking? And does widespread use of video-mediated communications in this way affect our collective understanding of the symbolic function of the court within society?



7.1 Remote Court Participation, and the shift from the court operating on a single site, to multiple sites, significantly alters the structural dynamic of court interactions (drawn by author)

There are a number of issues raised in the Virtual Court pilot discourse with regards to what is perceived to happen when a court process is altered by the use of video-mediated communication. Firstly, the technology allows for a splitting of place – the highly-structured performance setting of the court is now effectively operating simultaneously in two discrete locations: the courtroom in the courthouse, and the remote room which in this instance is in a police station. From an architectural perspective, a major concern with current videolinks is that the environment remote participants find themselves in is often at odds with that of the courtroom itself. Remote participation spaces are often described as extensions of the courtroom – and yet, more often than not, the places in which remote participants are located are small, windowless, bland, with only a chair and the video-technology itself; and it would seem the virtual court pilot is no exception. Perhaps if the design of the remote space achieved a similar sense of import and dignity evident in a courtroom, the sense of gravitas might not be as muddied, nor the sense of 'unreality' as sharp, as when court proceedings are perceived through the frame of an anonymous remote space. Linda Mulcahy further questions the lack of attention paid to spaces in which remote participants are linked to court, stating: 'the importance of architecture and design is marginalized if not completely denied'.[24] In one study that included opinions of remote participants about the environment in which they participated, 27 per cent disliked the videolink room, most often likening it to a box or a cupboard.[25]

An interesting feature of the discourse to date is the way that communication technologies allowing remote participation in court processes are being conceived of, and discussed. Audio-visual technology is often revealed as merely another tool but not as something that is an integral or active part of the interaction itself. This is a view contrary to recent work undertaken by Actor-Network and assemblage theorists who re-conceptualise the interaction between human and nonhuman actants, attempting to dismantle previous notions of nonhuman parts of the assemblage as passive or inactive.[26] According to Actor-Network Theory, videoconferencing technology – with its cameras, screens and audio-visual equipment – as nonhuman elements have a capacity equal to humans to influence the nature of connections, meanings and processes. In light of these perspectives, two recent studies stand out as identifying potential ways forward in the analysis of the effects of communication technologies on court processes and the role of the built environment in the enactment of justice.

Lanzara and Patriotta examined six courtrooms that piloted the use of video-cassette recorders (VCR) to document proceedings as a supplement to transcription, seeking to understand the impact of introducing this technology on the behavioural response of courtroom actors.[27] They viewed these videotaped court proceedings through the lens of assemblage theories that conceived of the activities of the courtroom as a kind of knowledge-creation, whereby knowledge is always performed and negotiated.[28] Lanzara and Patriotta found that judges and other relevant actors had to redesign their habitual routines, which abruptly displaced them from established ways of thinking and acting in the court.[29] In order to create a successful record of the event on the VCR, the judicial officers

needed 'to develop the kind of sensitivity and skill that belongs to a film-maker rather than a man of law'.[30] Lanzara and Patriotta noted that some were better than others at adjusting to the new media, suggesting that where the VCR was ignored or where experimentation was inadequate, matching the real and recorded events were rarely an issue, compared to when there were no interruptions nor detection and correction of errors during the recording process, the quality of the video as a result was very low.[31] When these interventions were successful and an accurate VCR recording was achieved, however, they were identified by the researchers as instances of making and remaking organisational knowledge in the courtroom setting.[32]

Most relevant for the study of videolink use in courts, Lanzara and Patriotta highlight the effects of the screen and cameras in terms of its capacity to make explicit the fabricated nature of the trial, as an event 'fashioned by and within a medium'.[33] For them, the VCR disrupts traditional practices and challenges the existential fixedness of the scene.[34] By describing the activities of the courtroom as an assemblage, Lanzara and Patriotta enable a different perspective on the insertion of new technologies – the VCR, cameras and screens – into the existing phenomenology and everyday practices of the court. This approach is useful as it provokes a rethinking of how those parts problematise existing relationships and activities in the performance of justice, which – rather than being fixed, pre-determined and certain, are exposed as already contingent, performative and emergent. Ultimately, such a perspective is dependant on how the technology itself is viewed – not as an inert and unbiased medium through which justice is enacted (as it ever was), but as actively transforming the court's performance of justice-in-the-making.

Such a perspective of new communication technologies is not, however, common amongst court regulars. In Christian Licoppe and Laurence Dumoulin's research for instance, they observed the way in which the court participants of their study considered videoconferencing as 'relatively transparent with respect to courtroom interaction', commenting that:

> *... interviewees repeatedly claimed that as long as the audio and video technology was working, and that the participants could see and hear one another through the screen, manage next-speaker selection, and ask questions that elicit relevant answers, judicial business could proceed as usual – irrespective of how strange the scene of distributed hearing might appear to courtroom professionals.*[35]

The reported views of their participants – that the technology is unproblematic – are refuted by Licoppe and Dumoulin, who state that: 'communication technology is not transparent. It makes a difference'.[36] This is a conclusion reached by the researchers after a careful analysis of a particular instance of a distributed, videolinked hearing, where the familiar ritualistic opening of: '[T]he hearing is now open. [Y]ou may be seated,' was unceremoniously omitted.[37] Its absence went – rather surprisingly – unnoticed by participants, so much so that in posthearing interviews, even when confronted with the videorecording of the hearing in question, participants failed to identify

anything as different or amiss unless heavily prompted by the researchers.[38] In their analysis, Licoppe and Dumoulin revealed that the task of the opening line, to signal to all participants that the hearing itself had started – was being achieved by other means. A 'roll call' of relevant participants performed at the beginning of the videolink by the judge functioned in a similar way to the conventional opening statement in the discrete court setting – so much so that to utter it at the point where it would have seemed appropriate to do so, would achieve little more than what verbal and nonverbal resources had already accomplished.[39] For Licoppe and Dumoulin, then, technology makes a difference 'as it is part of a network of social and material, linguistic and non-linguistic agencies, which shapes the activity setting and the relevance and force of the linguistic performances occurring within it'.[40] The utility of certain phrases, under the new videolinked court regime, render them no longer useful, so they are dropped without comment.

Communication technologies in the courtroom are not conceived of here as a transparent force, but a transformative one. Such readings compel us to pose the following questions: are we aware of how the use of these technologies transforms the interactions taking place? Do we think these changes are positive and lead to fair proceedings? And if not, how might other parts of the network be manipulated or employed to enable the performance of hearings and trials that are procedurally fair? I argue that the built environment – as nonhuman parts of the network, or, as integral components of the assemblage – need to be viewed as having a similar capacity as the inserted communication technologies to influence perceptions of procedural fairness in both distributed and discrete court proceedings. As such, more attention needs to be paid to the effects of changing the environment of remote court participants. The advantage of Actor-Network and Assemblage theories for this task is that they not only try to account for the influence of nonhuman entities – in this context, *both* the built environment and audio-visual technologies – but that they account for them in a non-deterministic way.[41]

CONCLUSIONS

Inserting audio-visual technology into the courtroom involves disrupting long-established and complex social and physical relationships. In some instances, such as for vulnerable or child witnesses, it has been well documented as a positive disruption, for others, unless there is serious consideration as to what these disruptions imply, it is possible that this results in a step backwards. Seemingly trivial decisions such as the location and décor of a remote room, the size of the screen, the angle of a camera and the position of a participant, may nonetheless prove to be critically important to perceptions of fairness. Particularly, the important role of the built environment to provide social information, by way of 'behavioural cues' has been overlooked in the design of remote court environments.[42] An unstudied approach to the design of remote

court spaces and the insertion of audio-visual technologies into existing courtrooms that does not take into account these subtle but accumulative ways in which video-mediation alters the dynamics of the interactions taking place and the individual's experience of court, then 'no loss of quality' may well be impossible to achieve.[43]

The court is not then, a transparent space in which adjudication happens and in which form does not impact upon either process or outcome. Court spaces are not only an intrinsic part of the enactment of justice being done and 'being seen to be done', but they can also be seen as a reflection of the socio-political context. By simple shifts of place, location or ornamentation, a person's position within the space can transform them from the margins to being at the centre of the action taking place, it can enlarge or curtail their voice and it can convey respect and dignify a person, or alternatively, degrade them. As Pierre Bourdieu claims: '... the feeling of injustice or the ability to perceive an experience as unjust is not distributed in a uniform way; it depends closely upon the position one occupies in the social space'.[44] As such, any account of spatial changes to court practices must take into account the diversity of perspectives from within the social space. If we are focused on analysing the impact of altering the setting of the court on perceptions of justice and procedural fairness – a key question we need to ask before we proceed is: how can we adequately capture the myriad ways in which the setting of the court can influence the way the court is perceived by the individual, by the group and by society as a whole? How can we view the court in a way that encompasses the courtroom acting as a performative space, the hearing as a symbolic event, or the way in which the court space can help to define roles, mark boundaries and transform status?

The Virtual Courts pilot was portrayed at the time of its implementation by the Chair of the London Criminal Justice Board as a major advance in court procedure, helping face the challenge to put 'summary' back into 'summary justice'.[45] The major risk, however, is that brevity might be sought at the expense of fairness, and that the right to a fair process – inherent in the true legal use of the term 'summary justice' – may in fact be subverted by the bureaucracy's attempt to save time and money. While such issues are perhaps more acutely felt in the context of lower courts with their high volume caseloads, such questions are pertinent for remote participation throughout the judicial system. How we measure whether remote participation is occurring in a satisfactory manner is important, and needs to engage with the complex ways in which we relate to our courtrooms and courthouses, and the actions that take place within them. Clearly, in some instances, the ability to participate in court processes remotely has redressed pre-existing imbalances within the system – such as its use for vulnerable and child witnesses to give evidence – and its use has no doubt eased the trauma of court participation for many people in these groups.[46] But while 'access to justice' is often cited as the key reason for implementing videoconferencing technology and promoting the concept of virtual courts, *real* access to justice will only be achieved when remote participation does not equate to diminished participation.

NOTES

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1 Joyce Plotnikoff and Richard Woolfson, *Preliminary Hearings: Video Links Evaluation of Pilot Projects* (London: The Home Office, 1999), pp. 54–8; Plotnikoff and Woolfson, *Evaluation of Video Link Pilot at Manchester Crown Court* (London: The Home Office, 2000), pp. 47–8; Michael D. Roth, 'Laissez-faire Videoconferencing: Remote Witness Testimony and Adversarial Truth', *UCLA Law Review*, 48/1 (2000–2001): 190–91; Anne Wallace, 'Virtual Justice in the Bush: The use of court technology in remote and regional Australia', Paper presented at the 3rd Conference on Law & Technology, Malaysia (11–12 November 2008); EU Council Working Party on e-Justice, *Guide on Videoconferencing in Cross-border Proceedings* (Brussels: Council of the European Union, 2009); Reid Howie Associates, *Vulnerable and Intimidated Witnesses: Review of Provisions in Other Jurisdictions* (Edinburgh: Scottish Executive Central Research Unit, 2002), accessed 12/11/09: http://www.scotland.gov.uk/Publications/2002/07/14989/8012; Anne Wallace and Emma Rowden, 'Gateways to Justice: The use of videoconferencing technology to take evidence in Australian courts', *Proceedings of the 9th European Conference on eGovernment* (London, 2009); Adam Brett and Lawrence Blumberg, 'Video-linked court liaison services: forging new frontiers in psychiatry in Western Australia', *Australasian Psychiatry,* 14/1 (2006). In Australia it has even been suggested that videolinks may save lives. See: Nicholas Perpitch, 'Bail videolink could have saved life', *The Australian*, 15 June 2009, 4; Coroner's Court of WA, *Inquest into the Death of Mr Ward (File No 8008/08),* no. 70–71 (2008).

2 It is generally accepted that use of videolinks has improved the quality of justice by providing access to evidence that would otherwise be unavailable. In a recent study, 39 per cent of young witnesses interviewed would not have given evidence at all, had remote participation not been available. Plotnikoff and Woolfson, *Measuring Up? Evaluating Implementation of Government Commitments to Young Witnesses in Criminal Proceedings* (London: NSPCC, 2009), p. 9.

3 BBC News, 'London hosts first virtual court' (27 May 2009). Minor offences can result in a two year prison term.

4 Ministry of Justice (UK), *News Release: Jack Straw: New Virtual Courts Launched and Intensive Community Payback Extended* (12 May 2009); Catherine Baksi, 'Solicitors Raise Confidentiality Concerns in Virtual Court Pilot', *The Law Gazette* (24 September 2009). As at 16 December 2009, the pilot became compulsory in all pilot areas. Baksi, 'Chaos Predicted Over Virtual Court Pilot'. *The Law Gazette* (16 December 2009); Criminal Justice Board (UK), *The Virtual Court* [promotional DVD] (undated, *c.* 2008); Rowden, Wallace, and Goodman-Delahunty, 'Sentencing by videolink: Up in the Air?', *Criminal Law Journal,* 34/6 (2010): 366.

5 Ministry of Justice (UK), *News Release.*

6 Prior to the establishment of the pilot, it was estimated that the change in procedure could deliver benefits in excess of £10 million a year if rolled-out nationwide. See: Ministry of Justice (UK) *News Release.* The official evaluation of the pilot reveals the cost-benefit scenario to be overstated. Ministry of Justice (UK), *Virtual Court Pilot: Outcome Evaluation*, Ministry of Justice Research Series 21/10 (2010).

7 Baksi, 'Defence solicitors shun pilots of virtual court', *The Law Gazette* (4 June 2009).

8 BBC News, 'Solicitors boycott virtual courts', 31 July 2009.

9 Roger Smith, as quoted in the *London Evening Standard* (2007).

10 Bruce Reid, solicitor advocate quoted in Michael Peel, 'Jury still out on 'virtual courts'. *Financial Times*, 3 November 2010.

11 Michael Peel, 'Jury still out'; Rowden, Wallace and Goodman-Delahunty, 'Sentencing by videolink'.

12 Frances Ridout, 'Virtual Courts – Virtual Justice?', *Criminal Law & Justice Weekly* 174 (25 September 2010): 603.

13 One of the four main objectives of the *Virtual Court Pilot: Outcome Evaluation* was to assess 'whether the Virtual Court process was no less fair than a traditional court'. Ministry of Justice (UK), *Virtual Court Pilot: Outcome Evaluation*, p. iii.

14 Ministry of Justice (UK), *Virtual Court Pilot: Outcome Evaluation*, p. vi.

15 Bruce Reid speaking on ABC Radio National, 'Virtual Courts and the Technological Revolution', *The Law Report*, Broadcast 12 April 2011. Reid further explained of his clients' difficulties in understanding the Virtual Court process: 'I would estimate at least ten per cent of my clients have mental health difficulties, and at least another 20 per cent will be recovering from overindulgence in alcohol, or withdrawing from various forms of narcotics, drugs and sometimes both.'

16 Julienne Hanson, 'The architecture of justice: iconography and space configuration in the English law court building' *arq: Architectural Research Quarterly,* 1/04 (1996): 59.

17 Elizabeth Grosz, *Architecture From the Outside: Essays on Virtual and Real Space* (Cambridge MA: MIT Press, 2001), p. 79; Ali Yakhlef, 'We Have Always Been Virtual: Writing, Institutions, and Technology!', *Space and Culture,* 12/1 (2009).

18 The term virtual, as it is applied to computing, emerged according to the Oxford English Dictionary around 1959, and in relation to virtual reality, around 1987. See: OED definition of 'virtual' adj. (and n.) Second edition, 1989; online version November 2010. Accessed 3/01/11: http://www.oed.com:80/Entry/223829. Earlier version first published in *New English Dictionary*, 1917; Yakhlef, 'We Have Always Been Virtual', p. 81.

19 Edward Castronova, *Synthetic Worlds: The Business and Culture of Online Games* (Chicago, University of Chicago Press, 2006), pp. 285–94; Rob Shields, *The Virtual* (New York: Routledge, 2003), pp. 34–5.

20 The term distributed court is preferred over 'virtual court' as it implies the distribution of the court space over several locations, without the implied 'insubstantial' or 'fake' connotations of the term 'virtual'. While I came to the term distributed court independently, it seems that the phrase has already gained currency in academic circles. For instance, a variation of the term was applied recently in a French study of videoconferencing use in courts to describe a 'distributed hearing (see Christian Licoppe and Laurence Dumoulin, 'The "Curious Case" of an Unspoken Opening Speech Act: A Video-Ethnography of the Use of Video Communication in Courtroom Activities', *Research on Language & Social Interaction*, 43/3 (2010): 211–31, and the phrase 'distributed courts of law' appears on Professor Licoppe's research website). My use of the term refers to the phrase adopted by Sherry Turkle from marketing discourse 'distributed presence', or how one can be 'in several contexts at the same time', in Anne Friedberg, *The Virtual Window: From Alberti to Microsoft* (Cambridge MA: MIT Press, 2006), p. 235. 'Distributed presence' also appears in William J. Mitchell, *Me++: The Cyborg Self and the Networked City* (Cambridge MA: MIT Press, 2003), pp. 143–241. A term that might also be used is 'dispersed space', see Kazys Varnelis and Anne Friedberg, 'Place: The Networking of Public Space', in *Networked Publics*, ed. Varnelis (Cambridge MA: MIT Press, 2008), pp. 15–42. In my definition, the distributed court has one sitting judge, as distinct from the example given in the Australian Family Law Act that defines a court constituted by two or more judges sitting at the same time

but in different places linked by audio-visual technologies as a 'split court', stating: 'for the purposes of determining which law to apply in proceedings in which a split court is sitting, the Court is taken to be sitting at the place at which the presiding Judge is sitting.' Family Law Act (1975), s27/3.

21 Kim Dovey, *Becoming Places* (London; New York: Routledge, 2010), p. 125.

22 Stephen Parker, *Courts and The Public* (Melbourne: Australian Institute of Judicial Administration Incorporated, 1998), p. 23.

23 For a similar description of the tripartite nature in which we encounter architecture see Thomas A. Markus, *Buildings and Power: Freedom and Control in the Origin of Modern Building Types* (London: Routledge, 1993), pp. 21–2.

24 Linda Mulcahy, 'The Unbearable Lightness of Being? Shifts Towards the Virtual Trial', *Journal of Law and Society*, 35/4 (2008): 480.

25 Plotnikoff and Woolfson, *In Their Own Words: The Experiences of 50 Young Witnesses in Criminal Proceedings* (London, 2004), p. 38.

26 Jonathan Murdoch, 'Inhuman/nonhuman/human: actor-network theory and prospects for a nondualistic and symmetrical perspective on nature and society', *Environment and Planning D: Society and Space*, 15 (1997).

27 Giovan Francesco Lanzara and Gerardo Patriotta, 'Technology and the Courtroom: An Inquiry into Knowledge Making in Organisations', *Journal of Management Studies*, 38/7 (2001): 943.

28 Ibid., pp. 944–6.

29 Ibid., pp. 945–6.

30 Ibid., p. 953.

31 Ibid., p. 954.

32 Ibid., p. 954.

33 Ibid., p. 965.

34 Ibid., p. 965.

35 Licoppe and Dumoulin, 'The "Curious Case"', p. 212.

36 Ibid., p. 230.

37 The opening is a judicial convention rather than prescribed by law. However it also performs two specific functions: it establishes the beginning of the hearing in question (a performative utterance that marks everything subsequent as legally relevant), then the second turn 'you may be seated' resolves the practical problem that arose with the judge's entrance (Licoppe and Dumoulin, 'The "Curious Case"', pp. 214–16).

38 Ibid., p. 227.

39 Ibid., p. 221, 227. Ironically, the 'roll call' is uttered as a way of re-establishing the order that was previously performed by the court space – in essence, 'the spatial arrangement of persons and artifacts', the symbols that indicate roles, hierarchy and deference – are being performed verbally instead by the judge (Licoppe and Dumoulin, 'The "Curious Case"', p. 219).

40 Ibid., p. 229.

41 Scott McQuire, Personal Communication, 7 August 2011.

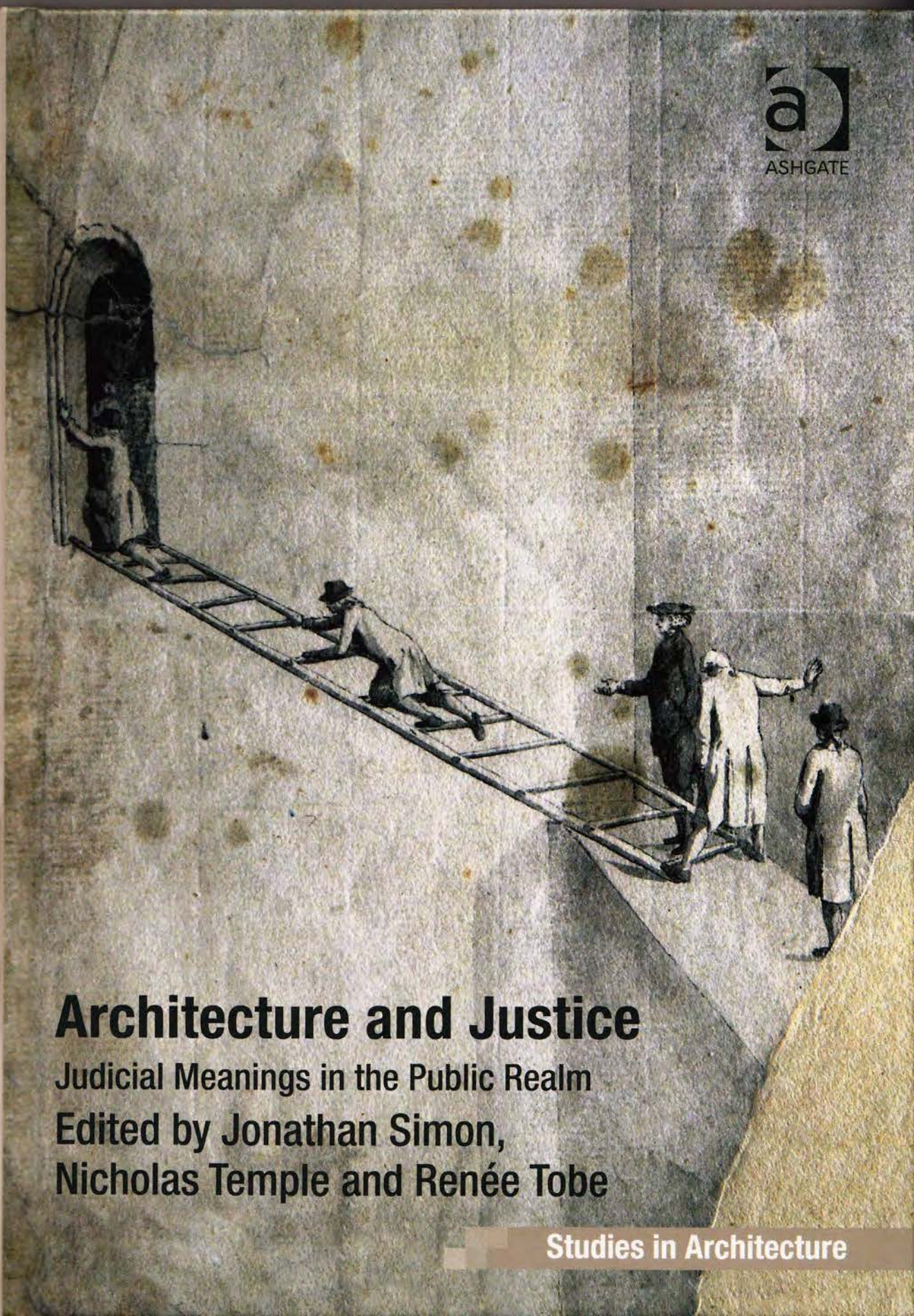
42 For further discussion on this point, see: Rowden, Wallace and Goodman-Delahunty, 'Sentencing by videolink'.

43 A.B. Poulin, 'Criminal justice and video conferencing technology: The remote defendant', *Tulane Law Review*, 78 (2004): 1089–167.

44 Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', trans. R. Terdiman, *The Hastings Law Journal*, 38 (1987): 833.

45 Tim Godwin (Chair, London Criminal Justice Board), in London Criminal Justice Board, *The Virtual Court*.

46 No doubt improvements could be made here also. See Mulcahy, 'The Unbearable Lightness of Being?'; Wallace and Rowden, 'Gateways to Justice'.



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Architecture and Justice

Judicial Meanings in the Public Realm

Edited by Jonathan Simon, Nicholas Temple and Renée Tobe

Studies in Architecture

Architecture and Justice

Judicial Meanings in the Public Realm

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Nicholas Temple, School of Art, Design and Architecture, University of Huddersfield, UK;
Renée Tobe, School of Architecture, Computing and Engineering, University of East London, UK

Bringing together leading scholars in the fields of criminology, international law, philosophy and architectural history and theory, this book examines the interrelationships between architecture and justice, highlighting the provocative and curiously ambiguous juncture between the two. Illustrated by a range of disparate and diverse case studies, it draws out the formal language of justice, and extends the effects that architecture has on both the place of, and the individuals subject to, justice. With its multi-disciplinary perspective, the study serves as a platform on which to debate the relationships between the ceremonial, legalistic, administrative and penal aspects of justice, and the spaces that constitute their settings.

The structure of the book develops from the particular to the universal, from local situations to the larger city, and thereby examines the role that architecture and urban space play in the deliberations of justice. At the same time, contributors to the volume remind us of the potential impact the built environment can have in undermining the proper juridical processes of a socio-political system. Hence, the book provides both wise counsel and warnings of the role of public/civic space in affirming our sense of a just or unjust society.

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Cover image: Sketch by Samuel Grimm (1786) of the interior shaft of the northwest tower of Lincoln Cathedral showing a group of men, including Sir Joseph Banks, crossing a ladder to the entrance to the old cathedral prison. Courtesy of Lincoln Cathedral Library.

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Contents

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Jonathan Simon is the Adrian A. Kragen Professor of Law, UC Berkeley. His books include *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford University Press, 2007) and the forthcoming, *Mass Incarceration on Trial: Human Rights and the Future of Imprisonment* (New Press, 2013).

Baroness Vivien Stern, CBE is currently a member of the Parliamentary Joint Committee on Statutory Instruments. In 2009 Stern was invited by the UK Government to conduct a review of UK rape laws and produced the subsequent report The Stern Review. She lists her political interests as criminal justice, foreign affairs, human rights, international development, penal reform, and prisons, and has written several books, including *Creating Criminals: Prisons and People in a Market Society*; *Bricks of Shame: Britain's Prisons*; *Failures in Penal Policy*; *Imprisoned by Our Prisons: A Programme for Reform* (Fabian Series); *The Prisons We Deserve* and *A Sin Against the Future: Imprisonment in the World*.

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Nicholas Temple is an architect and Professor of Architecture at the University of Huddersfield, with research interests in the historical and cultural contexts

Introduction

The papers presented in this volume expound on the links between architecture and justice, articulating the provocative and sometimes ambiguous juncture between the two, seek to draw out the formal language of justice, and examine the effects that architecture has on both the place of justice and on individual and collective experiences of judicial processes. In bringing together disparate disciplines this book aims to be evocative, informative and educational for both form givers (architects) and law givers (legal, judicial, and criminological practitioners). Baroness Vivien Stern, who gave the opening keynote address at the conference (from which these papers originate), remarked that this was the first time she had been invited to speak to a combined audience of architects, lawyers, and criminologists. Her sometimes uncomfortable remarks, about the contributions of architecture in the creation of both a just and unjust society, set the tone for the debate in which each speaker was held under 'surveillance' by a watchful and critical audience. A silent voice in these discussions was Michel Foucault, whose *Discipline and Punish* has inspired countless students of architecture with its detailed and imagistic descriptions of prisons and punishment, offering a range of different readings for criminologists, lawyers and architects.[1]

The structure of this volume develops from the particular to the universal – from local situations to unbounded dispositions. Hence the chapters are arranged in escalating increments of scale, from the intimate, often personalized (and depersonalized) scale of a single prison cell, to the courtroom where justice is meted out, through cities that are registers of justice in the civic order and the social realm and concludes with deeper discussions of the nature of both justice and injustice. Drawn from a multitude of philosophical, political, juridical, theological, historical, cultural, psychological and architectural interests, the book provides a platform on which to debate the relationships between the ceremonial, legalistic, administrative and penal aspects of justice, and the spaces that constitute their settings. These relationships moreover are not always assumed as stable or unquestioned. Indeed, historical claims of a universality – or standard – of justice are often predicated on the basis of enforcement through violent or intimidating means; that questions of mercy or salvation are intimately bound to various forms of punishment, whether through the infliction of physical pain, public shame/humiliation or forced confinement.

In the modern democratic world justice is fundamental to our notions of societal order; that is to the order that is sustained between us as responsible citizens, without recourse to force or violence. There is a strong assumption that justice is something to which we have an unassailable and absolute right. Yet justice is not a concept that lends itself easily to universal definition, or to codification. It is rather subject to judgments which are deemed morally right before a mutually accepted authority, in conformity to shared reasoning and values.

The problematic relationships between a universal concept of justice, whether instituted through religious doctrine, democratic systems of government or an autocratic regime, and the actual deliberations of justice – actualized through judgments made by a judge or a jury – underlines the central role that architecture plays in conveying the solemnity and legitimacy of the occasion, and ultimately of the judicial outcome. In essence, architecture provides the setting in which to situate – and declare – important moments of decision-making and their consequences. At the same time, we should be aware that architecture both frames – and is framed by – justice. Building practices, which involve bringing disparate parties (architects, surveyors, planners, clients and users etc) together for a shared/common purpose, are explicitly bound by judicial processes; laws that are both written (codes of professional conduct, planning law etc) and unwritten (the ethical responsibility of architects to society at large). What is arguably at stake in this bureaucratization of justice is succinctly summarized by Peter Carl: '... the truth of the legal trial is neither the winner nor the loser of the context, but the re-affirmation through the context of lawfulness.'[2] It is this quest for lawfulness, and ultimately of our search for a just society, that is at the heart of this series of essays.

Part 1 in the volume, 'Prisons and Prison Cells', examines the distinction between incarceration and correction, between penitence and the penitentiary. It traces prison design and suggests that there may be other forms of control that are more efficacious in the expressions of justice. Yvonne Jewkes suggests that prison architects face acute, paradoxical challenges. Not only must they design prisons that fulfill the brief issued by government ministers, who prioritize low cost and high security before anything else, but they must also meet public expectations about what prisons should look like. At the same time their designs must aid rehabilitation as well as deliver punishment. Helen Johnston discusses how the architecture of the prison has developed historically. Prison space has been contested and used to reflect the competing philosophies of punishment of the time. She describes how the prison 'cell' became the main space for this transformative regime whether underpinned by ideas of reform or deterrence. Oscar Wilde's invocation of 'humanity's machine' and the dark and narrow cells in which we dwell, informs the next chapter as well.[3] Here Gabriela Świtek expounds on the Piranesian fantasy as the basis of a rich body of literature inspired by the impossible, labyrinthine and endless spaces of the *Carceri*. Historical and contemporary developments of prisons and visions of Bentham's panopticon reflect descriptions of imagined dwelling places, and shed light on visual culture. Nicholas Temple's description of the transformation

of Lincoln Castle into a prison, and the use of the nearby Lincoln Cathedral as a courthouse and prison, reveal often overlooked aspects of judicial and punitive practices in the early modern world and their implications in the relationship between canon and civil law. Focusing in particular on the punitive role of the Lincoln Castle, Temple examines the governorship of the gaol under John Merryweather who used the surveillance tower for both guarding prisoners and as a personal astronomical observatory, a dual function that speaks volumes about the ambiguous relationships between appearance and function in the varying acts of surveillance. The prison chapel, still preserved intact, was designed so that prisoners were isolated from their fellow inmates and could only observe the minister. An example of Wilde's 'humanity's machine' described earlier, the psychological effects of this confinement (highlighted during a short visit to Lincoln Castle by participants from the conference), remind us of the effectiveness of certain design strategies to instill feelings of extreme claustrophobia and isolation – in the face of legitimate punitive and judicial practices.

The following part, 'Courtrooms and Courthouses', brings the discussion into the place where justice is meted out, and the symbols of both justice and authority in courtrooms and courthouses. Justice framed by Architecture forms the basis of this section, and the symbols of both Justice and authority expressed on or framing the architecture are recurrent themes. Justice implies an imposition of an authority, and cultures and societies create architectural forms for this expression. Linda Mulcahy asks what contemporary courthouses should 'look' like and whether we are required to 'recognize' justice in architectural form. Just as the previous part examines the distinction in architectural decision making between external and internal design, Part 2 offers different codes for courthouse presence and courtroom layout. The discussion of whether and how courtrooms may be 'read' draws from distinctive internal planning that dictates circulation routes and separate rooms where those who once rubbed shoulders are now kept apart. Design guides for courtrooms standardize how a courtroom should be experienced to maintain neutrality of design so that the justice is the same wherever it is practiced, the principle being that if the place where justice is decreed looks identical, then the justice will be standardized as well. Keith Crawford discusses the courtroom as place to practice authority through symbol and civic code based on Revolutionary France and the *Palais de Justice*, where the seat of the judge, the authority of law, becomes the magistral of the law faculty lecture theatre. In contrast to this discussion of physical imposition, Emma Rowden questions whether there is still a place for the physical courtroom, or if justice can be rendered 'virtual' as effectively. In the virtual court it is difficult to determine when justice begins, and without symbols of authority there is mistrust of the fairness of the court.

Implicit within this section on Courtrooms and Courthouses, is the notion of authority and how it is expressed in architecture. Spatial form and symbolism informs the conceptions of social justice discussed by Zarina Patel and Clinton van der Merwe, who examine Constitution Hill in Johannesburg, South Africa. Constitution Hill, once military garrison, then Boer fort, became a jail that

housed at different times, Mahatma Gandhi and Nelson Mandela as well as other less iconic offenders whose very imprisonment represented the injustice of the society, and is now a tourist attraction. Symbols of justice and the path to freedom and redemption question the individual's place in the society, and form a backdrop for the South African Constitution. This discussion of architecture and ritual expressed through codified building forms is seen through the veil of the typically authoritarian representation of justice in architecture, in the form of the Chinese yamen, where Peter Blundell Jones discerns a transition (expressed in the gatehouse) between the public realm and the lawcourt. The need for continuity and tradition in judicial matters is typically expressed in the ceremonial trappings of the courthouse and in the language of the legal document and demonstrates the inseparability of administration and law-keeping. In the yamen, before imposing judgement, the law keeper determines the truth through seven tactics of detection, evocatively named as: the hook, the raid, the attack, intimidation, browbeating, comparison, and compelling, codified in a legal manual for magistrates.

Part 3, 'Civic and Societal Order', offers reflections on the dialectical character of the contemporary city looking at how it has developed from nineteenth century consumerism, of 'ownership' and material consumption, the crimes associated with these appropriative spaces, through to examinations of how imagery imposes justice and exposes injustices. The space of justice becomes the space of the theatre of the public realm; that we also refer to as the space of the city. Jonathan Charley expounds on how politics, power, and the edifices of justice in three European cities are inextricably linked to the history of the slave trade, colonization and the plantation economies of Africa and the Americas. Just as Foucault's *Discipline and Punish* sits as a constant companion throughout the book, two other texts inform much of the writing. One of these is David Harvey's *Social Justice and the City* describing social processes and spatial forms.[4] Richard Patterson applies Harvey's special and social anthropology to urban semiology and linguistic structures in social expression and a spatialization of knowledge. Another text, John Rawls' *A Theory of Knowledge*, sets the *mise en scène* for Jonathan Simon's chapter that begins by rejecting the pre-conceptions of ideologies and policies that shape prisons and courtrooms, and demonstrates how home ownership and crime are interconnected in surprising ways, contextualized with the economic crisis and politics of the current era.[5] John Bass's chapter exposes the role of photography and images in investigating colonial 'preemption' of Native settlements in Western Canada. These images although possibly staged, offer spatial evaluation of both truth and injustice. Catherine Hamel's poetic and abstract expressions of justice, politics and boundaries evocatively rounds off the debate.

The final part, 'Philosophical Questioning of Propriety', concludes these discussions by casting light on our human condition of being individuals in a globalized society where justice is a central political concept. Peter Carl looks at the concept of fairness and equity through a discussion of temporality, symbolic order, measure and spatial ordering by Hammurabi in ancient Mesopotamia,

and then in Plato's *Republic*, with its proposals for the just well-ordered state. He questions whether Justice itself is subsumed in a black hole of laws and law-giving, of control and contracts, or remains firmly in the centre of architectural form and thought. Renée Tobe's commentary examines different translations of Plato's *Protagoras*. No matter the asymmetry of meaning between civic justice and citycraft, political skill, or citizenship our capacity for urban life is always requisite on common sense and justice. In Lisa Landrum's chapter, classical Greek plays featuring architect-protagonists provide exemplary dramatizations of the quest for justice, peace and social order. This relation of symbolic justice is developed in the medieval cathedral and expressed through light and spirit expounded on by John Hendrix through a reading of justice as the good through the experience of Lincoln Cathedral. The final chapter, by Raymond Geuss, questions our desire 'to know' and our quest for truth in a world that is unstable and insecure. Geuss examines freedom and politics in relation to architecture and the city. While we can turn away from an image of injustice or close a book that describes an uncomfortable truth, we can not avoid the architecture and cities we construct for ourselves.

This publication includes only a small fraction of the discussions that arose in the course of the conference. One subject that we were not able to include here described in detail is the experience of the Supermax prison. The sensory deprivation (the little lockable room where a prisoner is placed so that two inmates did not pass in a hallway, for example) and the details of the minutely controlled routine of each day are both fascinating and compelling. It is worth highlighting here briefly the impact of reading about the Supermax prison on one of the editors to this volume:

> *While sitting in the British Library Reading Room, after having finished the relevant chapter, I looked up and 'felt' the materiality of the space, the feel of air movement, the colour, texture, sounds of people turning pages, the clothes and hair of the readers around me, the lighting. It was as if the world, the one we take for granted, described as 'asleep on the back of a tiger' was suddenly brought into existence for me and I had woken up. I never felt so free and so rich and so lucky. I sat for some minutes, just looking.'*

In another part of the world, the ferry from San Francisco to Larkspur, a highly priced and desirable area of real estate in the West coast of the USA, passes right in front of the State prison of San Quentin, somewhere inside of which is an execution room where people are put to death and someone, maybe an architect, has determined the shape and form, decided how it should be painted, whether or not it has carpet on the floor and what kind of lighting it has. It is a chilling thought.

People are incarcerated all over the world. As architects we look at prisons as 'typologies' or try to make them better places to be in. Traditional discussions of Architecture and Justice designate prisons and courtrooms. We hope that this publication will open up future discussions about how the cities and environments we build for ourselves are expressions of notions of 'justice', and that we are responsible for not just the cities we live in, but how and why we live in them.

NOTES

1 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London, 1991).

2 Peter Carl, 'Architectural Design and Situational History', in Adam Hardy and Necdet Teymur (eds), *Architectural History and the Studio* (London, 1996), pp. 74–89, esp. p. 81.

3 Oscar Wilde, *De Profundis, The Ballad of Reading Gaol and Other Writings* (Ware, 1898/2002).

4 David Harvey, *Social Justice and the City* (Baltimore MD, 1973).

5 John Rawls, *A Theory of Knowledge* (Cambridge MA, 1971).

PART 1
Prison