Architects of Justice: the Politics of Courtroom Design

Linda Mulcahy

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Architects of Justice: The Politics of Courtroom Design

Linda Mulcahy
Birkbeck, University of London, UK

Abstract

This article looks at the interface between the design of courtrooms and the notion of participatory justice. In contrast to a vision of judicial space as neutral, this article argues that understanding the factors which determine the internal design of the courtroom is crucial to a broader and more nuanced understanding of judgecraft. The use of space in the courtroom has changed significantly since custom-built courthouses first appeared, and these changes often reflect struggles for territory. In this article I focus on the ways the role of the spectator has been marginalized within the court and led to the demise of the notion of 'public' trial. This has been achieved through a series of design guides which ensure that participants in the trial are isolated and surveyed. The origins of these guides can be traced to the mid-Victorian era in which the public were often conceived of as threatening and 'dirty'.

Key Words

court architecture; *Court Standards and Design Guide*; courtroom; due process; legal geographies; public trials; space; spectators; surveillance

Introduction

This article looks at one aspect of judgecraft which is rarely remarked upon: the interface between the physical environment of the court and the fundamental principle that justice should be seen to be done.[1] The environment in which the trial takes place can be seen as a physical expression of our relationship with the ideals of justice and reflects the troubled history of this term. Current ways of thinking about how and why the courtroom should be partitioned into zones, and movement within it restricted, have

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come about as a result of turf wars about who can legitimately participate in the legal arena and call the judiciary to account. The containment of the jury, the increasing amount of space allocated to advocates, and the creation of dedicated space for journalists all have complex histories which deserve to be charted and discussed. What they demonstrate is that a treatise on courtroom design can just as easily focus on the courtroom as a contested space as it could on the more familiar discourse of stability, tradition and gravitas. In this article I focus on just one aspect of the struggle for territory – that involving spectators of the trial and the ways in which the possibility of participatory justice has become increasingly constrained.

The absence of research on the experience of internal space in courtrooms can, in part, be explained by lawyers' obsession with the word. When we teach our students about law we do so through the medium of the written judgment or transcript as though these give a complete account of why a case is decided in a particular way. We frequently assume that if all else is equal, the judgment given in one place would be the same as the judgment reached in another. In this sense lawyers have traditionally looked upon space within the court as a depoliticized surface. This conceptualization of the legal arena limits our appreciation of how spatial dynamics can influence what evidence is forthcoming, the basis on which judgments are made and the confidence that the public have in the process of adjudication. In contrast to a vision of judicial space as neutral, this article argues that the shape of a courtroom, the configuration of walls and barriers, the height of partitions within it, the positioning of tables, and even the choice of materials are crucial to a broader and more nuanced understanding of judgecraft.

It has long been taken as given that the activities carried out in a courtroom have an impact on how a courtroom should be designed. This is evidenced by the fact that courtrooms tend to be immediately distinguishable from other interiors. The question of whether design can determine what happens in the trial is more complex. One of the interests which has fuelled this article is the extent to which it is possible to both condition the design and design the conditions of judgecraft. Deliberate attempts have undoubtedly been made to promote new ideologies of adjudication through design which focus on inclusion and participatory justice. The Federal German court in which glass has been used to create actual and metaphorical transparency in the aftermath of the horrors of the Third Reich is just one such example (Bürklin, 2004). The internal design of the Constitutional Court in South Africa reflects another attempt to engender a republican conception of transformative constitutionalism through architecture and internal design (Le Roux, 2004; see also Fischer-Taylor, 1993; McNamara, 2004). However, it remains the case that it is difficult to find a broader discussion of the geography of 'everyday' courts.

The research described in this article is part of a much bigger project on court architecture. In this first offering I focus on the ways in which the public trial has become impoverished by the marginalization of spectators. There are a number of reasons why everyday trials fail to attract observers. Examples include shifts in thinking about the occupation of public and private

spheres, the professionalization of law and the advent of other forms of 'entertainment' such as television. Important as those themes are, they are beyond the scope of the present article. My aim is not to produce a grand theory to explain why space allocated for spectators is so often empty in today's courts. Rather, I hope to explore how the use of space in the courtroom has contributed to the demise of the public trial. In doing so I attempt to develop the limited literature on court architecture which has tended to focus on exteriors by concentrating on the geography of the interior of the courthouse.

The existing literature on court architecture has tended to provide accounts of particular 'courts' such as the Palais de Justice of Paris (Fischer-Taylor, 1993), the Supreme Court Building in Jerusalem (Sharon, 1993), or the Royal Courts of Justice (Brownlee, 1984). By way of contrast this article looks at the characteristics of modern design templates in England which now prescribe the layout of *all* new courts. It considers how the space within courtrooms is divided up and what this says about our conceptualization of the relationship between the various parties involved in the trial. It concludes that public space within the court has come to be associated with danger, and the surveillance of those who come to observe the process of judgecraft an imperative.

LEGAL GEOGRAPHIES

While control of territory has long been seen as fundamental to studies of power dynamics in society, it is only recently that social geographers, sociologists and lawyers have turned their attention to the interface between law, place and space (see Foucault, 1977; Harvey, 1996; Evans, 1999; Fairweather and McConville, 2000; Blomley et al., 2001). The suggestion that space is fundamental in any exercise of power by ensuring a certain allocation of people in space and a coding of their reciprocal relations is a compelling one (see Foucault, 1984; Massey, 2005). Viewed in this way, space is very far from being a flat, immobilized surface. The subject is a particularly interesting one for legal systems which rely on oral testimony and adversarial procedure. In these jurisdictions performance is all. The courtroom is converted into a stage in which space, sight lines and acoustics are critical in assessments about the credibility of the speaker and the statement they are making (Fischer-Taylor, 1993).

It would seem then that the spatial is open to, and a necessary element in, the politics of judgecraft. Each time a partition is created or bar installed in a court it has the effect of creating an inside and outside; an 'opposition' or other which can serve to signal segregation, place or inequality. Each time a floor is raised it has the potential to become the physical manifestation of hierarchy and power. When a royal coat of arms is placed behind a judge's chair it makes clear that the full authority of the state and legitimate force is behind the judge.[2] The space–place dynamic is particularly striking when one considers that in the modern court, space ostensibly designated as 'public' is

in fact divided into a series of private spheres which are not accessible to all. Seen in this way the space in a courtroom becomes a particular articulation of social, cultural and legal relations.

Despite a dearth of research on the position of the spectator in the trial it is clear that the use of space and designation of place can undoubtedly affect the dynamics of judicial proceedings. The trials of Tompson and Venables for the murder of Jamie Bulger provide a contemporary example of the ways in which internal courtroom design can impact on due process. In *V* v *United Kingdom* [1999] the juvenile defendant was successful in asserting that the cumulative effect of several aspects of his trial meant that he had been denied a fair hearing and gave rise to a breach of the European Convention on Human Rights. These aspects included the accusatorial nature of the trial, the fact that the trial was held in a public court as though adult proceedings, the length of the trial, the presence of a jury of 12 adult strangers, the overwhelming presence of a hostile media and public, and the disclosure of the defendants' identity. Most significant for the purposes of the argument being pursued here is the fact that the physical layout of the courtroom was found to have contributed to the abuse of human rights. It was determined that the raising of the dock, undertaken in the hope that it would ensure that the defendant could see what was going on, actually had the effect of increasing his sense of intense discomfort and exposure. It transpired that the defendant had paid very little attention to what was going on around him and that, as a result, has been poorly placed to instruct counsel. Venables cried throughout most of the trial and claimed to have spent much of the time counting in his head or making shapes with his shoes. Expert evidence on his state of mind suggested that he had felt better after the first three days in the Crown Court, but only because he had stopped listening to the proceedings.

Given the age of the defendant, his low intelligence and the intense public interest in the proceedings, Venables' case may be an extreme example of how the physical organization of the courtroom can discourage participation. But socio-legal research on how the trial is experienced has demonstrated that the space–time ritual of English proceedings combines to inhibit participation and understanding. In her seminal work on Magistrates courts Carlen (1976) argued that 'spatial arrangements . . . which might signify to the onlooker a guarantee of an orderly display of justice, are too often experienced by participants as being generative of a theatrical autism with all the actors talking past each other' (pp. 21–2).

She goes on to suggest that the exploitation of courtroom space has a paralyzing effect on those who are not regular users of the court system. Focusing on the perspectives of defendants she observed that after initial attempts to follow proceedings, they *commonly* give up the pretence of understanding. In part this is attributed to the various ways in which conventional use of space is disrupted in the courtroom. So, for instance, accepted and familiar modes of conversational practice are perverted so that confessions and highly personal stories which would normally be told in close and intimate spaces are conducted over much longer distances and in the presence of

strangers. In this way space was seen to contribute to a ceremonial stripping of dignity. Significantly, all the participants in her study complained of the sterile theatricality of the courtroom in which temporal and spatial conventions were successfully manipulated to produce a disciplined display of justice in which 'alternative performances evocative of unpermitted social worlds' (Carlen, 1976: 12) were suppressed.

So what? One reaction to such concerns about how space is used to engender humiliation and disinterest might be to suggest that courts are supposed to be daunting places in which participants are encouraged to reflect on the gravity of law and legal proceedings. This is, after all, one of the clear messages transmitted by the high gothic architecture of the Royal Courts of Justice in the Strand or the Victoria Law Courts in Birmingham. The court is not, and arguably should not be, akin to an academic seminar. Violent outbursts, prisoners jumping the dock and harassment of the jury and witnesses are far from unheard of. My purpose is not to suggest that surveillance and discipline in the courtroom are inappropriate *per se.* Rather I argue that they can serve to undermine the contention that courts are 'open' to the public in any meaningful way or that spectators can participate in the trial in the sense of sharing an experience with other participants. It is also significant that debates about the use of space in the courtroom have taken place away from the public gaze and are somewhat shrouded in mystery. The result is that while many shifts in evidentiary practice have been hotly debated as pertaining to our enjoyment of civil liberties, certain trends in courtroom design have come to restrict behaviour in much more subtle ways.

THE EMERGENCE OF DESIGN TEMPLATES FOR COURTS

Given my focus on the mechanics of power and containment it seems appropriate to turn to the most authoritative 'manual' for court architects. The issue of how space within all new courtrooms should be used and divided is the subject of the *Court Standards and Design Guide* (Department for Constitutional Affairs, 2004), which became a public document only recently. At 813 pages long, the guide imposes a detailed template on designers. One of the reasons the *Guide* is so worthy of our attention is that centralized and compulsory guidance of this kind has only become possible in recent decades. Historically, responsibility and influence for design had been dispersed among a range of people and institutions with different ideals, interests, ambitions and procedures. The presence of a number of parallel courts systems until the late 19th century meant that a plethora of bodies such as the chancery, the police, boroughs, manors and churches funded and oversaw courtroom design within distinct legal jurisdictions.[3] However, we are fortunate that the interiors of many courtrooms, even if still not used as courts, have been preserved.[4] These provide us with a rich source of data spanning from the 12th century to modern times, and offer invaluable clues about how modern templates have evolved. Such is that wealth of information waiting to be

discovered that the action group SAVE Britain's Heritage have been prepared to argue that law courts are 'the UK's great undiscovered architectural treasure trove' (SAVE, 2004: 1).

In her seminal work on the architectural and social history of the English law court to 1914, Graham (2003, 2004) argues that for much of the history of English legal systems it is difficult to find anything other than rudimentary designs of the interior of courts. For many centuries there were no custom-built courthouses, only houses which happened to host courts. Accommodation was makeshift even for the 'national' courts. The monarch's courts were held wherever she or he happened to be and local trials were held in buildings used for a multitude of purposes such as castles,[5] churches, public houses, manor houses, assembly rooms and guildhalls, depending on their status, jurisdiction and where there happened to be space. In larger locations it was common for more than one court to sit in the same hall at the same time. These features of early courts have important implications for court design. Court furniture had to be simple, as well as easy to dismantle and carry, and space was commonly sectioned off by little more than simple oak benches.

Oversight of design became bureaucraticized very slowly and only after the various legal systems were centralized. For much of the history of courtroom design then, the reasons for preferences were implied rather than openly stated and in the absence of in-depth research or public debate they remain largely mysterious (Jacob, 1999). Somewhat surprisingly, given the general shifts to centralized power from the end of the 19th century, general guidance on interior court design did not appear until the end of the 20th century, although the merger and abolition of a number of parallel and overlapping legal systems in the late 19th century heralded a trend in which control of the design process in the public sector was vested in fewer institutions. One of the earliest indications of this was the setting-up of regulatory boards to oversee public works. From 1870 to 1914 a number of public bodies stamped the London suburbs with a recognizable, repetitive building type that contributed to the capital's and its suburbs' identity. These included the Metropolitan Police Authority, which was responsible for the design and build of police courts. In due course they established permanent design and planning teams whose aims were to influence the local and national environment as plans were often borrowed by boroughs across the country (Graham, 2003).

At the same time particular architects began to take responsibility for influencing and designing more than one court and court architecture began to emerge as a specialist branch of design. Courts such as Liverpool St Georges, the Royal Courts of Justice, Manchester Assize Courts, Birmingham's Victoria Law Courts and those contained within Leeds Town Hall came to be seen as major architectural commissions and were much discussed in the press. This trend was encouraged by lawyers and architects as a means of securing public affirmation of their still fragile status (McNamara, 2004). As court business increased and large sections of the population migrated to towns in the mid-19th century, courts came increasingly to be held in permanent locations and the trend towards custom-built courthouses began. The implications of this

were enormous as the emphasis shifted away from multi-purpose rooms with moveable fittings to dedicated courtrooms in which barriers and divisions were fixed. Given this shift, and the interest generated by new build in this era, it is not unreasonable to suggest that it was in the mid-19th century that the modern courtroom was born.

However, it was not until the latter part of the 20th century that civil servants and the judiciary began to draw on their collective experience of, and presumptions about, court architecture to translate design requirements into a universal template to guide all courthouse designers. It was those involved in the construction of the Magistrates Courts who pioneered the idea of common design specifications from the 1970s onwards but the shift towards centralized guidance also came about as a result of the launch of the most ambitious court-building programme ever attempted.[6] Fuelled by concerns about overcrowding in the Crown Courts, this lasted from 1972 until 1996 and cost in the region of £500 million. One hundred and thirty-nine schemes were completed in that time and 382 new courts built. In addition, 28 combined court complexes containing up to 20 courtrooms were created. Today, such is the rise of the centralized planner that in a US context Wong (2001) is confident enough to make reference to the 'profession' of judicial space management which he goes on to describe as both an art and science (see also Philips and Griebel, 2003).

From a position just 50 years ago in which much responsibility for courtroom design was decentralized we have very quickly reached a position in which the creativity and discretion of individual architects have been marginalized. Designers of courthouses face a considerable challenge in their attempts to reconcile the requirements of authority and security with those of humanity and publicity. But writers such as Tschumi (1996) have been sceptical about the opportunities for creative design in this context. In his work on architecture and disjunction, he has been particularly vocal about the lack of impetus for architects to challenge or violate bureaucratic or political boundaries. Moreover, he doubts the willingness of architects to challenge existing structures and practices, especially where public works are concerned. In his view, historical analysis has generally supported the view that the role of the architect is to project on the ground the dominant images of social institutions. In other words they translate the economic or political structure of society into buildings or groups of buildings. In keeping with this approach, the *Guide* makes it clear that the expectation is that architects will design courts with an eye to tradition and prescribed order. This is made particularly apparent in the introductory sections to chapters on the specifications for Crown and Magistrates courts:

> The courtroom layouts are the result of careful consideration by numerous user groups. They incorporate specific and well-defined relationships between the various participants by means of carefully arranged sight lines, distances and levels. It has been found that attempts by individual designers to improve on these layouts have rarely been successful and consequently these layouts are to be adopted in all cases. (Department for Constitutional Affairs, 2004: 122)

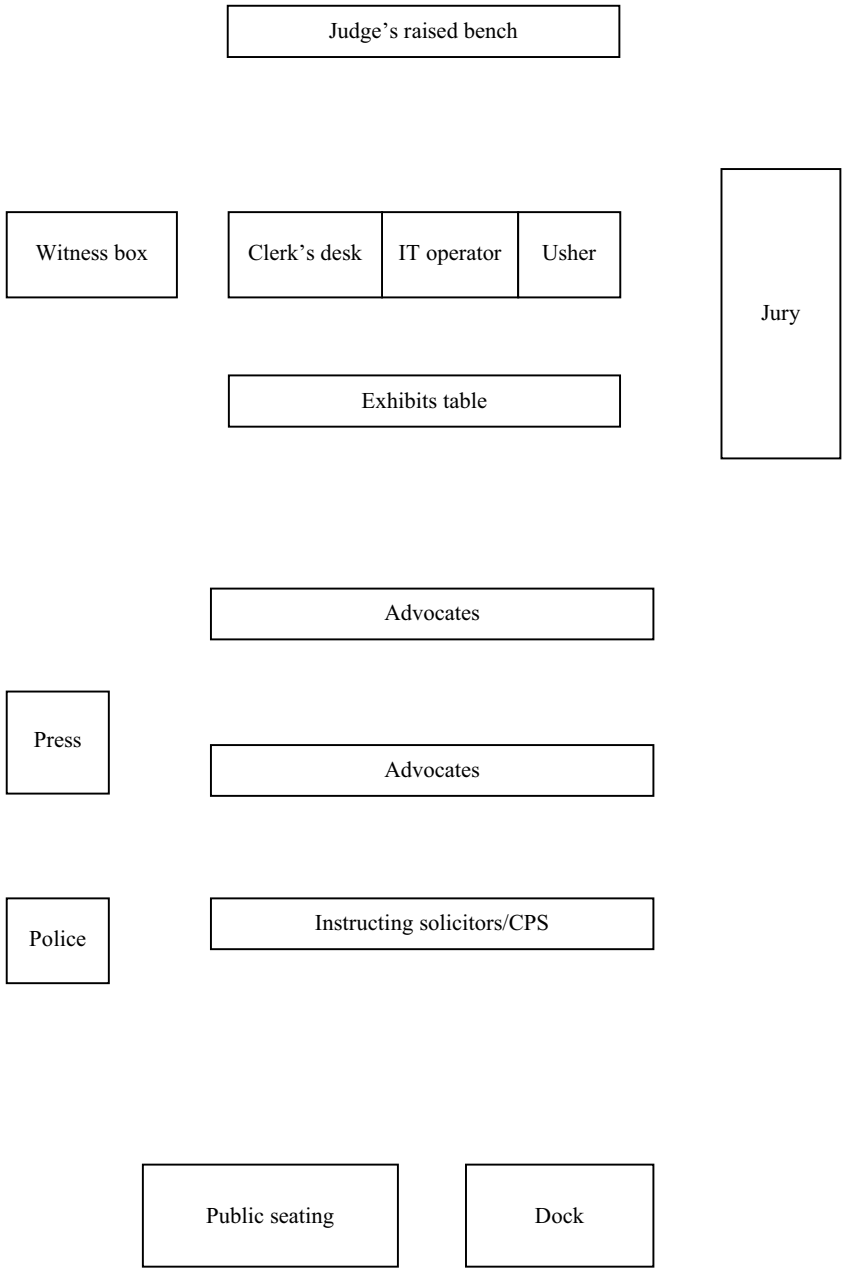
The assumptions behind the design principles governing the internal configuration of the court are not discussed and the sense is one of an established order of things which is no longer considered worthy of discussion. The importance of architectural creativity is recognized by the *Guide* but largely limited to the exterior design of the building and its entrance hall. As regards the interior of the courtroom there remains minimal artistic discretion. The approach suggested here is one in which the courtroom is seen as a frozen site of nostalgia in which designers should contain aspirations towards progress or change. Viewed in this way courtrooms are seen as having authentic, fixed and unproblematic identities in which the placing of bodies in particular ways is no longer contestable.

THE COURT STANDARDS AND DESIGN GUIDE

The *Guide* provides an excellent case study in micro-regulation of the smallest details of the everyday life of the court. The current version of the manual is the most comprehensive to date and provides standardized templates for all Magistrates, County and Crown Courts. It is a lengthy document containing a series of illustrations and text which prescribe in minute detail how the internal space of all publicly funded courthouses should be configured. Its intricate diagrams and maps are presented as a definitive plan of how space in the courtroom is to be allocated. Even the most cursory reading of the text reveals the *Guide*'s concern with the minutiae of signifiers in the courtroom. So, for instance, it contains detailed guidance about the materials which should be used to build and fill the court as well as their quality, size and position. It has sections on signs, safety, air, water, acoustics, furniture and furnishings, finishes and materials, alarms, information technology and sustainable development. We are informed of the correct size of the advocates' desk, the appropriate depth of the glass in a secure dock; the positioning of each category of user; recommended floor and ceiling finishes and the type of wallpaper to be used in the court offices. One emerges at the end of reading the *Guide* with an intricate knowledge of such things as the size of the mirror to be positioned in the judges' private toilets and the number of toilet roll holders to be installed.

As well as partitioning space the *Guide* designates place. It identifies eight generic features of the interior design of the court which are essential to any plan, the majority of which are synonymous with the placing of particular participants in the trial. These are: the judges or magistrates bench, clerk's desk, witness box, jury benches, press desk, exhibits table, advocates bench and secure dock. The *Guide* also prescribes exactly how these components will be positioned. As is illustrated in Figure 1, the Judge's raised bench and clerk's table before it face the defendant who occupies the dock at the back of the court. In between them with their backs to the defendant sit the barristers and solicitors involved in the trial. The jury sit to the left of the judge as he or she faces the court, and the witness box a sword's length away from the judge

FIGURE 1
Standard Criminal Court



Source: Department for Constitutional Affairs (2004: Appendix 8/A)

to their right. The positioning of the public seating area and press box are not so strictly prescribed, the expectation appearing to be that they will be fitted in where there is appropriate space. However, the norm since the introduction of the first *Guide* in the 1970s seems to be for the public area to be within the body of the court at the back and either to the side or rear of the dock or to one side facing the jury.

The suggestion that the *Guide* has been fuelled as much by the need to specify quality standards in the era of private finance initiatives as it has been by reflexive practice is an attractive one. But at another level the *Guide* can be seen as imposing a form of order on the courtroom which limits the extent to which the courtroom can be designated as a public space. The distribution of bodies, walls, lights and gazes into particular arrangements reveals conceptualizations of the relationship between the spectator and the judicial system which are better characterized by the notions of segregation and surveillance than they are ideas about participatory justice. In the sections which follow I explore each of these inter-related concepts in turn.

SEGREGATION IN THE COURTROOM

The internal space of the court has always been divided with the result that the internal designs of courtrooms share common features over time. But until the 18th century the divisions tended to be crude. The earliest images of English courts to have survived in the Whaddon manuscripts demonstrate that certain aspects of the design of the superior courts have remained constant from at least the 15th century until the present day (Graham, 2003; see also Burroughs, 1999; Jacob, 1999).[7] Like their modern counterparts national medieval courts were divided into four different zones occupied by the judiciary on a dias; court officials seated around a large table; the defendant and their advisers; and those waiting for the next trial and spectators.

A comparison of medieval courtrooms with the designs prescribed by the modern *Design Guide* suggests that the ways in which segregation of participants is achieved has become increasingly refined and sophisticated. The changing use of space in the courtroom reflects how roles in the trial have transformed over time as ideas about due process and the value of lay knowledge have changed. Lawyers, in particular, began to assume a much more important role in the trial in the last 150 years as the right to counsel was established and law became increasingly technical (Langbein, 2003). As they have begun to play a larger role in proceedings, they have also come to lay claim to space in the courtroom.[8] At one point a central table commonly dominated the well of the court and was used by a variety of court officials (see Figure 2). This reduced as dedicated benches were inserted for lawyers and is now represented by the much smaller desk assigned to the clerk. The creation of separate space for the petty jury, who at one stage used to mingle with spectators, also came about as a result of changes to civil and criminal procedure as their power to gather evidence and to adjudicate on matters of

law was gradually restricted. In short the jury came to be celebrated for its *lack* of connection with spectators (Pole, 2002).

Much less commented upon is the way in which the space for the public to view proceedings has become more peripheral and contained. It is clear that freedom of movement in pre-Victorian courts was much less restricted than today, although class distinctions in the 'public' viewing areas were common.[9] The fact that it was usual for more than one court to sit in large halls meant that the public could easily be accommodated. It also made it much harder to constrain their movement between courts or activity between them. Views of Westminster Hall from 1620, the earliest surviving picture of the interior of Winchester Hall from about 1740, and a sketch of Doctors' Commons in 1808 show casual onlookers strolling nearby to the courts and observing proceedings as though promenading along the seafront (Graham, 2003).[10] Not only was movement more free but spectators' behaviour was much less regulated. A number of representations of the 'interior' of the courts across jurisdictions commonly show animated spectators in the body of the court engaged in conversation as the trial progressed in the background.[11] Picard (2003) recounts how the courts in Elizabethan London were so popular with the public that pickpockets and sneak thieves considered term time at the courts to be akin to harvest time.

An outraged editor of the *County Courts Chronicle* (1847–49) described a trial at Brentford County Court in 1847, held in a public house, in which a good proportion of litigants and witnesses crowded into the hall and the staircase appeared to have been intoxicated:

> The disgraceful confusion which this state of things produced is perfectly indescribable; not to be witnesses, I hope and believe, in any other court of law in the Kingdom. It was the whole work, and hard work too, of the poor wicket keeper or sub-bailiff, to prevent regular pitched battles, to say nothing of 'words of violence' to check which his continued entreaty was – 'Silence, ladies! Silence! You really must be quiet, ladies, and go out if you want to talk'. But little the ladies reacted, or gentlemen either, for they still cut their jokes, and vented their wrath, as the humour was upon them, in the most boisterous manner, and this, too, in the immediate presence of the learned Judge, before whom, in several circumstances, the parties after judgement, flatly refused to pay, and threatened their opponents if they enforced it. After all this, without any other attempt at keeping order, beyond the request of the officer just mentioned. (p. 77)

This tendency to see both litigants and the public as irritants in the trial was not uncommon and is reflected in the ways in which they were increasingly contained in custom-built courts.[12] In his authoritative work on the Royal Courts of Justice, Brownlee (1984) makes the point that the new courts of 1882 were largely planned to limit public access. The cavernous entrance hall was designed for use by lawyers rather than the general public who were referred to by the court's architect Street as 'dirty'. In her work on the Palais de Justice in Paris Fischer-Taylor (1993) has argued that similar concerns about the public were expressed in France in the mid-19th century. There was particular concern about the working classes who were often feared to

be in league with the defendant, or assumed to be thieves who came to court to keep abreast of the law. These suggestions are born out in an English context by an analysis of debates in the *County Courts Chronicle* from when it was first established by lawyers in 1847. The perceived respectability of the trial as a spectator sport can be seen to diminish as 'gentlemanly values' within the courtroom are promoted. Viewed against this backdrop the expectation in the *Court Design Guide* that a secure dock is required in some criminal courts to protect the public and officers from the defendant but is also there to protect the defendant from external attack by the public can be seen as part of a more general historical trend. In looking at these examples the emerging preference for trials without theatre – controlled rather than unpredictable displays, and silent contemplation rather than a din – becomes clear.

In England the demise of the use of multi-purpose halls in which courts were temporary visitors facilitated the containment of the public because it gave less scope for them to wander between trials. Instead they were slowly restricted to galleries or penned areas in which their view of proceedings might be restricted. So, for instance, in courtroom Number 1 in the Old Bailey (1902–7) and Court 1 of Middlesex Guildhall (1911–14) it was impossible for those in the gallery to see the barristers presenting the case. The result was that the disembodied voices of counsel floated up to the gallery and a visual assessment of their credibility as advocates could not be made. The amount of space provided in the public areas has also diminished. The Shire Hall at Presteigne (1826–9) (see Figure 2) is typical of the Victorian era in that it could take almost 200 people standing, but the *Guide* now recommends the provision of just 25 seats in the public area of the standard court. It is clear then that the moving observers of earlier times have been replaced by groups that can be numbered and supervised and, where there is insufficient space to house them, excluded.

It is significant that, as the role of the public in the trial has diminished, the role of the press has increased to the extent that they could now be said to be surrogates for the public in the vast majority of trials. In the course of observing trials I have always wondered how it is that the press have come to have a more prominent space in the courtroom than the public they are there to represent and inform. I have also been interested to note that while I have been questioned about note taking in the courts on several occasions, colleagues from the press are free to take whatever notes they care to. In part this position has come about as a result of debate about the need for public trials transforming into a debate about the right of the press to report them. An attempt to counteract the poor reputation of the press editors from the 18th century onwards placed increasing emphasis on the constitutional importance of a free press as an indispensable link between public opinion and public institutions (see further Boyce, 1978; Williams, 1978). The free press came to be seen as critical in forming and articulating public opinion but also in defending the rights of citizens and exposing corruption. This claim, which some commentators have described as a political myth (see in particular Curran and Seaton, 1997), extended to coverage of trials where the

FIGURE 2
Segregation in the Court Room at Presteigne (© L. Mulcahy)

press were seen to have a special role. Unlike the political arena where politicians are keen to discuss the implications of particular policies, the judiciary's unwillingness to comment on their judgments outside of court meant that the press were left with the important job of conveying meanings to the general public and translating complex material (Greenhouse, 1996).

The extent to which all members of the press are interested in fulfilling their constitutional role is a matter of some debate but it is clear that the internal design of courtrooms has increasingly given recognition to the importance of the press. Where they once shared observation space with the public, members of the press have gradually been allocated a dedicated desk. The Crown Court at Dorchester provides an early example in the form of a fold-down desk in the corner of the public gallery and in the Assize courts at Durham, refurbished in 1870, the press were given a prominent place in the well of the court adjacent to the witness box and judicial bench. Similarly, Graham (2003) recounts how when Wyatt constructed an eastern addition to the courts at Winchester in 1871–74 he gave the press ringside seats while deliberately restricting the accommodation for spectators. The *Guide* now requires that a desk for the press be provided and in some locations, such as the Queen Elizabeth courts in Liverpool, the press have also been allocated

dedicated office space. Spatial indulgence in some common law jurisdictions is such that Sanford (1999: 4) was moved to describe the press in a prominent murder trial in the United States as roaming the courtroom 'like proprietary floorwalkers'.

SIGHTLINES WITHIN THE COURT

Surveillance of the public within the court is also facilitated through the prescription of who should be able to see whom. While the *Court Design Guide* does deal with issues of visibility, it could be argued that its focus is on the visibility of spectators rather than the visibility of proceedings. Expectations about 'sightlines' within the courtroom provide a particularly good example of the panoptic ideal; how the heaviness of the idea of law as physical compulsion can be replaced by the simple economic geometry of seamless surveillance.

Some aspects of the *Guide* come as no surprise. Height has been used since medieval times to signify the power of the judge to survey all that goes on in the court. The *Guide* reiterates the expectation that the judge should have visual control over everyone in the court in order that they may maintain full control of the proceedings. It is the references to other participants' sightlines that prove more interesting. Significantly, spectators are expected to have a clear view of the judge but are destined to get no more than a 'general view' of the proceedings. Indeed they are the only parties at the trial who, it is specified, should have their field of vision restricted. While axial visibility is imposed on them, they suffer from lateral invisibility in ways which guarantee order. So for instance, it is prescribed by the *Guide* that they should have the minimum possible direct eye contact with the jury in order to reduce the risk of intimidation of jurors. Moreover, a glass screen between the modern dock and public seating area is expected to be obscured to a height of 1525 mm above the floor level so that members of the public are prevented from seeing the defendant while seated. Further, the positioning of plasma screens to display electronic evidence appears to have been undertaken with the needs of the judge, jury, witnesses, defendant and counsel in mind. My experience in the course of observing trials in 50 randomly selected courtrooms has been that these screens are often obscured from the view of members of the public and that attempts to get a better view by standing up or leaning are met with disapproval. Since the only person a member of the public is sure to have a clear view of is the judge, it would seem to be the case that the observation of justice is now limited to observation of the adjudicator rather than evaluation of evidence and the weight which should be afforded it. It is process rather than substantive argument that the public are encouraged to observe. In this way observation has become distinct from participation and viewing from accountability.

SEGREGATION OUTSIDE OF THE COURTROOM

The principle of segregation also extends beyond the courtroom into its environs. Court design has moved from a position as late as the 18th century in which all the functions relating to a case were carried out in one hall to a situation in which courtrooms in the 20th century commonly occupy just 10 per cent of the total space in courthouses (Jeavons, 1992). In part this changing use of space has occurred because of the increase in court business. This and the growing complexity of the law have fuelled the need for additional space for administrators to archive in secure places. But much more noteworthy is the way in which claims for new types of dedicated areas to which the public did not have access began to be made with the advent of the customized courthouse and the way in which space became synonymous more than ever before with the idea of territory and hierarchy.

These changes started to occur in the mid-19th century, as architects were able for the first time to direct their attention to permanent fixtures in the internal configuration of the courts. Major architectural commissions such as Manchester Assize built in 1859, the Victoria Law Courts in Birmingham (1887–91) and the Royal Courts of Justice in the Strand set new trends in providing private accommodation for lawyers and judges in the form of libraries, dining rooms and robing rooms. During this time dedicated circulation routes for judges, lawyers and courts official began to emerge. These are an excellent example of the canalization of circulation which Foucault discusses in his interview with Rabinow (1984) and elsewhere. The concentric ring scheme, pioneered by Alfred Waterhouse in Manchester placed the hall and courtrooms at the centre of the building and office space and other dedicated accommodation on the outside with both being served by a ring of corridors (see further Waterhouse, 1864–65; Cunningham and Waterhouse, 1992). The design was acclaimed by jurists and set a template for the internal organization of subsequent courts.[13]

The principle of segregation has remained critical and is now more sophisticated than ever, leading many commentators to suggest that the law court is now the most complex of building types to construct (*Construction*, 1992). Judges, lawyers, witnesses, defendants and spectators now each have a designated circulation route and at least four have their own entrances which link their area within the court to discrete suites of rooms and facilities. So for example it is prescribed by the *Guide* that the judicial zone should contain a library, retiring room, kitchen, toilets and assembly area. Similarly, the staff zone includes 21 designated areas including such things as offices for clerks and principals, an incident control room, store, archive, strong room and post room. The effect of this zoning is that the trial is more staged than ever before. By controlling movements the judiciary and court staff can contain exchanges, restrict the potential for spontaneous outbursts or meetings and increase the dramatic impact of arrival within the courtroom. Once more, these changes appear to have been fuelled by fear of the public. While on the one hand the *Guide* recognizes that attending court can be intimidating for

the public, several references are made to concerns about graffiti and the potential for vandalism and intimidation. We are informed for instance that high-quality materials, railings and plants should be used to deter vandalism, keep people at a distance and discourage 'loitering'.

In his study of Wood Green Crown Court, Paul Rock supports this interpretation. His interviews with court staff reveal that the movement towards exclusive zones outside the courtroom to which the public have no access is fuelled by an overwhelming fear of an unruly and disruptive public. He describes how the fear of being contaminated by the public is reflected in the ways in which staff talk about territory: 'Professionals . . . judge the quality of their home territory by its accessibility to the public. Characteristically, the more open it is, the less it will be favoured . . . Seclusion become desirable when enclosures are surrounded by territory housing the volatile civilian' (p. 275). The ways in which fear of the laity dominates the allocation of space are a dominant feature of Rock's work, in which he observed ongoing apprehension about the possibility of disorder in the court and its environs. The picture he presents is one in which staff perceived to be in an ever-present danger and fear of the imminent collapse of the social order of the court.

CONCLUSION

This article has looked at a neglected aspect of judgecraft: the physical and material context in which judging takes place. I have argued that the use of space within the courtroom tells us much about the ideologies underpinning judicial process and power dynamics in the trial. In particular, I have sought to explore the ways in which increasing bureaucratization and progressive use of segregation and surveillance to contain participants have served to marginalize judicial accountability and participatory justice. These issues are far from irrelevant to judgecraft. The marking-out of court space helps to determine how the everyday practices of judging are moulded by space. It also serves to separate and further reify the judge. Perhaps most significantly, it helps members of the judiciary to maintain control over who, and what, is likely to be heard.

Commentators have suggested that it has become common in modern times for court architecture to represent law as increasingly democratic, to make attempts to flatten hierarchical structures and move away from the alienating atmosphere of subordination in the courtroom (Melhuish, 1996). Policy makers have identified knowledge of how the courts work as a key aspect of citizenship and some effort is undoubtedly being made to encourage the public to visit the courts (Cochlin, 2002; Department for Constitutional Affairs, 2003a, 2003b, 2004). It is also true that the 'wedding cake' design of many custom-built courts has recently given way to a flatter court landscape in which there is less vertical distance between the parties. At one extreme the grand façades of older courts have also been replaced by the commonplace office block devoid of symbols of justice other than the coat

of arms or the much-praised glass façades of courts such as Manchester County Court. In line with such sentiments the *Guide* specifically stipulates that 'the building should be seen less as a symbol of authority than as an expression of the concept of justice and equality before the law. The scales of justice are a more appropriate symbol than the sword of retribution' (Department for Constitutional Affairs, 2004: section 1.2).

But there is also a possibility that discipline and surveillance in the courtroom have become so subtle that these crude symbols of force can now be dispensed with. The use of glass for exterior walls of courts or their atriums may signal a powerful metaphor about the transparency of justice but can have the opposite effect for users of the courthouse who suffer from the constant threat of inspection. It is important to remember that it is not the walls of the private corridors in the backstage of the court that are being exposed but the public areas in which spectators and defendants are caught in a new field of visibility. For all its talk of accessibility, producers of the *Guide* can remain confident that they have perfected the models of containment conceived of by their forebears. The complete segregation of clearly defined categories of participants in the trial, the creation of private zones within the courthouse and courtroom, detailed specifications as regards sightlines and the physical separation of the press and jury from the public are all architectural embodiments of control in which notions of 'visibility' become a ruse. Contrary to the rhetoric employed by policy makers, the architectural apparatus imposed by the *Guide* can just as easily be read as a vehicle for creating and sustaining power relations. The sophisticated forms of segregation and surveillance employed allow things to be arranged in such a way that the exercise of power is not added on from the outside but is subtly present in ways which increase its efficiency and transform spectators into docile bodies.

NOTES

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1. There are some notable exceptions to this. See, in particular, Sharon (1993), Brodie et al. (2001), Graham (2003), Bürklin (2004), Le Roux (2004), McNamara (2004) and SAVE (2004). See also the emerging body of work on law and the image which touches upon related concepts: Douzinas and Nead (1999), Haldar (1999) and Nead (2002).
2. In Northern Ireland the symbolic significance of the coat of arms has been recognized in recent legislation which allows that the coat of arms should no longer be displayed in newly built courthouses. The rationale behind this is that it has become associated with partial justice in the province.
3. So, for instance, local consistory courts tended to sit in privileged parish churches in railed-off areas or in dedicated areas of cathedrals. Lincoln cathedral consistory court had three separate court areas in 1742 (Graham, 2003). See further Herber (1999).

4. Many courthouses are less suitable for conversion for other uses because of the security precautions adopted when they are built. This is one reason why the Department for Constitutional Affairs finds it so difficult to dispose of old estates. Reinforced walls provide a particular challenge for those who might want to convert the large space of a courtroom into smaller units. However, a number of former courts do now house very different organizations such as fitness centres and a religious temple (SAVE, 2004).
5. For instance the great hall at Leicester Castle, Lancaster Shire Hall, the great hall at Oakham Castle, or Taunton Castle, served a number of functions including hosting large feasts, civic ceremonies and political debates. By the time that the crown court moved out in 1980, Leicester Castle had housed courts of one kind or another for over 800 years. The assizes first sat there in 1273 (SAVE, 2004). Built in 1180, the first Assize recorded at Oakham Castle was recorded in 1229 and the last held in 1970.
6. *Magistrates Court Design Guide* (1970). See also *Consultative Memorandum on the Design of the Courts* (1970) and the *Crown and County Courthouse Design Manual* (1975).
7. The manuscripts contain illustrations of the three national courts of Kings Bench, common pleas and chancery which were convened in Westminster Hall from the late 12th century. For a discussion of the illustrations, see Gerhold (1999) and Graham (2003).
8. While it remained common practice up to the 19th century to retain a large communal table in the well of the court for officials and lawyers, this was gradually replaced by the much smaller clerk's table and rows of seating for barristers and solicitors (Graham, 2003). This served to vertically separate the judge and defendant and horizontally separate the jury and witnesses (Graham, 2003). John Soane pioneered this arrangement on a larger scale than had previously been the case when he built the new courts at Westminster in 1821–26. Examples of courts in which the table occupies a central position can still be seen at Dorchester, Presteigne, and Chester consistory court. The court was dedicated to rows of seating for the growing number of advocates attending trials. This trend was particularly popular in large civil commercial trials. In modern times the table is represented by the small desk occupied by the court clerk immediately in front of the judge.
9. Special areas were often assigned for the gentry to observe trials. In Nottingham Shire Hall a balcony around the principal Court was reserved for the gentry to sit and a door from the balcony led to the judge's accommodation should they be invited to join him for lunch or refreshments. In a twist of fate the balcony also housed the very vocal wives of miners prosecuted during the Nottinghamshire miners' strike.
10. Moreover it is clear that in Westminster Hall the judiciary had to compete with shopkeepers for the attention of the public. Gerhold (1999) shows that merchandise was being sold in the hall by the 1290s and that there were shops selling books, gloves, caps, beer, sugar and linen by 1340. By 1666 there were 48 shops in the hall filling the space between courts.
11. See, for instance, the illustration of courts reproduced by Graham (2003), including view of the Court of King's bench, Westminster Hall from about 1755, the drawing of the Court of Common Pleas in Westminster hall built in 1740–41, the sketch of the imaginary reconstruction of a trial in the Earl Marshall's court at the College of Arms c.1707, the courtroom at Bow Street dated 1808. The court of chancery circa 1725 reproduced in Gerhold (1999) also illustrates this point as does an engraving of the Court of Requests of the City of London by Robert Wilkinson from 1817 reproduced in Herber (1999).

12. The gendered aspect of this exclusion hinted at in the quotes will come as no surprise to feminist scholars and is worthy of much more consideration than I am able to give it here. It is noticeable for instance that by the beginning of the 20th century it appears to have become rare for women to attend the court. Moreover it was only after they became jurors that judges stopped clearing female spectators when evidence of a sexual nature was discussed. See further Fischer-Taylor (1993).
13. See, for example, Liverpool sessions house, the Victoria law courts at Birmingham and Winchester. The design for the courts at Manchester was explicitly praised in the instructions for the competition to design the Royal Courts of Justice (see further Waterhouse, 1864–5; *Builder*, 1878; Brownlee, 1984; Cunningham and Waterhouse, 1992).

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