

EFFECTS OF THE DEMATERIALIZATION¹ PHENOMENON OF THE COURTS UNDER THE IMPACT OF VIDEO TECHNOLOGIES AND DIGITALIZATION

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Abstract

The dematerialization phenomenon of the courthouse under the impact of video-technology and digitalization is a phenomenon in progress. During the history the spaces dedicated for justice have been strongly correlated with technologies of the period.

In ancient Greece the trials took place in open air, in agora according with the participatory democracy concept, but the Romans brought the law indoor. The XIXth century produced the concept of palace of justice, strongly correlated with the fact that written papers were the main result of the act of justice.

The XXIst century characterized by the acceleration of development of video technologies and digitalization produce new concepts in the process of justice such as the dematerialization of the courthouse, and the video-trial which produce a new architectural paradigm concerning the buildings for justice. Court buildings can be analyzed from three perspectives. The first perspective is about the Court buildings as public places where justice procedures are carried out. These buildings are also workplaces for judges, court staff, support workers, lawyers, and interpreters occasionally for jurors or expert witnesses.

The third and less tangible role of these buildings is the embodying community values about the rule of law in society. If in the nineteenth century the symbolism of courts convey an impression of national authority the actual trend towards 'e-justice' creates a difficulty in recreate the symbolic level of the court buildings. The article is analyzing the implication of this phenomenon.

Keywords: video technologies, digitalization, video-trial, buildings for justice, courts.

1. Introduction

In the last decade of the twentieth century, architects, lawyers, law enforcement officers, magistrates and artists have concentrated their efforts in a common attempt to reconceptualize the spaces dedicated to justice. Beyond some regional or local variations, through the common referral to international standards and in light of more and more widespread concepts of transnational cooperation, a common ideal of expressing the attitude towards the law was pursued.

Following these efforts, starting with the second decade of the XXIst century, the governments of European countries, including Romania, have joined an extended investment program in the field of buildings that were to constitute the infrastructure of the judiciary.¹

The allocation of significant public funds in this direction reflected the importance that society attaches to the judiciary. Architecture was invited to support and even emphasize the importance of law in society. Moreover, there are researchers who argue that the

design of a space dedicated to justice can be considered an important partner that plays a positive role in how justice can process its own experience. We can say that architecture and design can have an active contribution in the act of justice and not only that of reflecting the law².

However, as a result of the continuous expansion of the use of digital technology and video links, a parallel phenomenon appears, namely the introduction of the concept of the virtual court.

The aim of this article is to underline the importance of maintaining, at least partial, the physical space of the court of justice, and also to provide for the courts a significant design.

The administration of justice and concepts of an ideal courthouse during the time

Over time, the manner in which the act of justice took place was correlated with the technical and technological possibilities of the time. The ancient Greeks did not use writing in the act of judgment, conducting trials outdoors, in the agora. They used the walls of *stoa*-type buildings only to publish, inscribed in stone, the laws. With the introduction of written

¹ Dematerialization is an expression first used by L. Mulcahy in *Legal Architecture Justice, due process and the place of law*, Routledge Publishing House, 2011, chapter 8, p. 162.

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¹ A.A. Tait, *Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere*, 2013, University of Richmond, Chapter 23 *Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere* Judith Resnik, Dennis Curtis, and Allison Tait.

² L. Mulcahy, *Legal Architecture Justice, due process and the place of law*, Routledge Publishing House, 2011, p. 163.

documents in the unfolding of the acts of justice, the Romans moved the processes inside, using the multifunctional spaces of the great basilicas. Until the XIXth century, there were only a few buildings dedicated exclusively to the judiciary.

In the second half of the XIXth century, the concept of the Palace of Justice crystallized, as a large construction, which aimed to provide a space exclusively for the act of justice, a construction that in addition to an increasing studied functionality, also had the role of symbolically illustrating the principle of order through the judicial system over the subordinate territory. Thus, it can be seen that, from a historical perspective, the program of spaces for justice is in a process of continuous development. About what is the most suitable court architecture and how it might be achieved, it was a major concern in the last years.

2. The XXIst Century - a new paradigm shift

The impact of technology on the operation of cases in courtrooms and in the administration of justice is creating a change and paradigm shifts. Recently, digital technologies and the use of video links, created the premises of a new paradigm, that of virtual courts, a phenomenon that has had a strong impact both on the act of justice and on the spaces intended for justice. The theme of debating security and the uses of emerging technologies is available for new architecture but also for being implemented in old building. Through a careful design it is aimed the goal of obtain a hybrid form in the architecture between the traditional law court and the use of technology

However, there are researchers who believe that the introduction of virtual court systems has the potential to disrupt³ the very concept of the courts of justice.

Case studies - The impact of technology in courtrooms, experience, advantages and disadvantages

Beginning with the last years of the XXth century, Australia has experienced the exercise of the act of justice through video sessions of court panels.

In Europe, the Secretary of State for Justice, Jack Straw, announced in 2009 the implementation of a pilot project in which a first virtual court system was to be tested in England⁴,

The project involved creating a link between a South London Court and a police station. In this system, cases would be heard without people having to leave the police station. In some cases, the procedure

was so established that the accused would never physically enter a courtroom again.

Following the analysis of how the impact of the virtual court affected the quality of the legal procedure, it was found that the cost savings were not substantial and those who used the system experienced a loss of quality of the act of justice.

Over time, it has been observed that the assumption that technologies that allow the organization of video conferencing have a neutral impact on the quality of justice has not been confirmed. It was later pointed out that there are conditions for the use of video conferencing to be likely to alter the experience of the process.

For example, a major objection to the video-link hearing system was raised by lawyers who legitimately asked whether it was indicated to be physically present during hearings, with the accused at the police station, or in the same space as the judge.

Emma Rowden, at one point, asks: What do we lose when we lose our courts?⁵, and based on empirical evidence from the experience of video links used in Australian courts, points out that this mode of operation ignores the importance of the symbolic function of the courthouse building as a space dedicated to law in the community.

In the mean time in a society that is moving towards a world characterized more and more by the use of virtual spaces, the courts have a particular course.

In every field of the justice system, from commercial disputes to war crimes trials the video technologies are transforming hearings. This process began over thirty years ago in Australia (1990-1991), but during the pandemic, the transition towards video enabled hearings became a necessity.

The year 2020 was the moment which made the extensive use of video technologies a reality.

The judicial system experienced situation of judges sitting sometimes alone in courtrooms, or participating in hearings together with other participants, including prosecutors or lawyers, from home. In many situations judges presided over hearings from their chambers, or homes. Many courts have developed during the pandemic guidelines for using video technologies. With a high rate of probability the justice systems will consider to continue the use of video technologies after the pandemic is over. Some countries are analyzing practical suggestions about a way to make this transition towards video links. It is taking in consideration for what types of matter it is recommended this protocol. The question is how the

³ *Ibidem.*

⁴ E. Rowden, *Virtual Courts and Putting 'Summary' back into 'Summary Justice': Merely Brief, or Unjust?*, S. Jonathan, *Architecture and Justice Judicial Meanings in the Public Realm*, University of California Berkeley Publishing House, 2013, p. 110.

⁵ E. Rowden, *Distributed Courts and Legitimacy: What do we Lose When we Lose the Courthouse?*, Sage Journals, November 5, 2015.

use of video links impacts on important justice principles like openness, fairness and the chance to test evidence thoroughly.

In 2018 the UK Ministry of Justice and Her Majesty's Courts and Tribunal Service in England and Wales experienced one of the real-world applications of a virtual court approach – using a single screen. UK virtual court pilot experience was a "pre-hearing".

Other pilot projects analyzed the transition to the virtual court. An UK virtual court pilot project has attempted to recreate a virtual journey to a courtroom in comparison with the real one journey.

It was taken in consideration that the solemnity and rigor of the main entrance to the courthouse, the stairs, the doors, the main hall, the moving along the corridors and up elevators or interior stairs, the waiting outside and the process of being called into the courtroom, all these transitions provide the participant information about the process and a specific mood, helping to create a respectful disposition.

The pilot project for the virtual court room proposal was to take in consideration to implement a series of screens before entering to the video hearings. Each page was projected in order to provide information about the case, the time of the hearing, and the court. It was taken into consideration a certain etiquette. It was considered a modality of recreating the solemnity of the process, and users are required to acknowledge that they are about to enter a formal court.

Physical court buildings will continue to be the center of many, if not most, virtual hearings, a range of other spaces will be involved as well. Participants may be taking part in a virtual hearing from a variety of locations, including one's office, home, court or other public building. It is important to take in consideration that the environment should also be suitable in visual, lighting, acoustics.

Dr. Andrew Huberman, a professor of neurobiology and ophthalmology at Stanford University School of Medicine consider that the way we arrange the physical environment can be used to induce a more analytic or on contrary an abstract thinking. Discussed for hundreds of years, the *cathedral effect* was formally enunciated since the early 2000. It seems that people being in high ceiling spaces would shift their thinking and their ideas to more abstract type of thinking. It seems also that our cognition follow our visual environment. In conclusion the high ceiling space of traditional court-room is facilitating a more abstract and moral thinking than a low ceiling space of an anonymous office⁶.

In the case of video-links it is necessary to find ways to preserve the formality of hearings because the authority of the judicial officer might be less evident in

a virtual court setting than in a traditional one where the hierarchy is produced by the way of using the space in opposition with due the flattening of hierarchy produced by the screen configuration. In the single-screen configuration the judicial officer appears in a box, just like any other participant. The limited research on what effect this might have is equivocal.

3. Benefits of using technology in courts

There are certainly many benefits to digital technology. Equipping the courts with the possibility of connecting to audio-video recording platforms, which includes the possibility of converting the audio document into a written document is a useful technical solution. This innovation will change the role of the clerk in the traditional conduct of the process. The impact of this innovation will be reflected in the morphology of the court building, in the office area which in the XXth century model provided significant office space, intended for clerks' areas with a special functional relationship with the judges' offices. Prior to the introduction of these types of systems, the share of space dedicated to clerks in the office area of the court building was significant.

Also, the endowment of the court buildings with high-capacity storage and archiving platforms reconfigures its morphology, minimizing the physical archiving spaces.

From another perspective, electronic applications will allow with much greater ease, the submission or consultation of files from a distance, which will lead to a considerable reduction in the spaces that were previously intended for this type of activity.

New fields of preoccupation for aspects like taking in consideration new angles such particular attention to the psychology of justice, methods of promoting psychological safety in the courthouse, and how to communicate appropriate are explored themes concerning the architecture of the court design. In this direction Australians said in 2009 that they were getting closer to having hologram witnesses appearing at trial, which they believed would allow vulnerable witnesses to attend trials without the trauma of physical contact with the accused.

It is assumed that the video-link interrogation system will reduce the costs of transporting the accused and the necessary security measures. At the same time, this new interrogation system will obviously change the morphology of a courthouse by eliminating both the area for detainees and the courtroom of the criminal court itself, which will lead to some decrease in investment in the case of those buildings.

⁶ #HubermanLab #Neuroscience #Productivity, Optimizing Workspace for Productivity, Focus, & Creativity | Huberman Lab Podcast #57.

4. Conclusions

This article has looked at a neglected aspect of judge craft: the physical and material context in which judging takes place. In contrast to the arguments in favor of the use of digital technology and video links, there are views that the use of virtual courts will undermine the seriousness and solemnity of court proceedings. Most of the time, for example, there has been a lack of attention to the anonymous spaces that host the video conference. This lack of meaning and dignity that the image of an anonymous space gives as a background to the judiciary, in the case of video-link hearings is not able to contribute beneficially to the quality of the act of justice.

Roger Smith, an expert in international law, human rights and access to justice, expressed concern that television trials would be confused in the collective consciousness with the act of taking part in a video game, degrading the experience of solemnity in the courtroom.

One can speculate on the fact that writing as the main method of recording facts or events created the concept of building for justice, but as a result of the adoption of video technologies and digitization there is a risk that this concept will lose its importance.

However, there are arguments in favor of maintaining the court as a physical space.

On March 30, 2020, Cambridge University Press published an article on *Aesthetics and International Courts*, which highlights the link between art and legal experience.

At the same time, many buildings designed to serve the cause of justice have often become commonplace office buildings without plastic expression.

Inexpressive, perceived as just places where litigation procedures are carried out, justice buildings have now come to be located on the outskirts of cities, without being a pole in its symbolic geography.

Turning these buildings into simple, file-handling factories, into a world where ignorance of the law does not absolve you of violating it, deprives us of the connection with the meaning and symbolism of such buildings. It is obvious that we are in a situation where necessity prevails. The large „amounts of injustice” committed by people which is also increasing, needs an oversizing of the authorities to treat this toxin, this injustice.

Even if modernity marks the beginning of a relativisation of the object of art and modern art cultivates some „anti-Platonic” and „anti-Aristotelian” levels, we wonder how far we can push the expressionless character of a building for justice in the conditions in which we want architecture to serve the spirit of the law and not just its letter?

It is true that we find in all areas of contemporary reality a certain intention to simplify and eliminate formalism, but we believe that in the case of buildings intended for justice the requirement that these buildings have the quality of „significant” needs to be maintained.

As an argument in this direction we emphasize the fact that: in an urban space, the presence of these buildings is in fact, from a symbolic point of view, a reflection of the importance of the law in that community.

Is it in the power of architecture and art to transform a space dedicated to justice into a place that inspires an ideal relationship to the notions of law and justice? Do we still need metaphors in the case of justice buildings or are we stepping into a world where we no longer need such buildings?

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