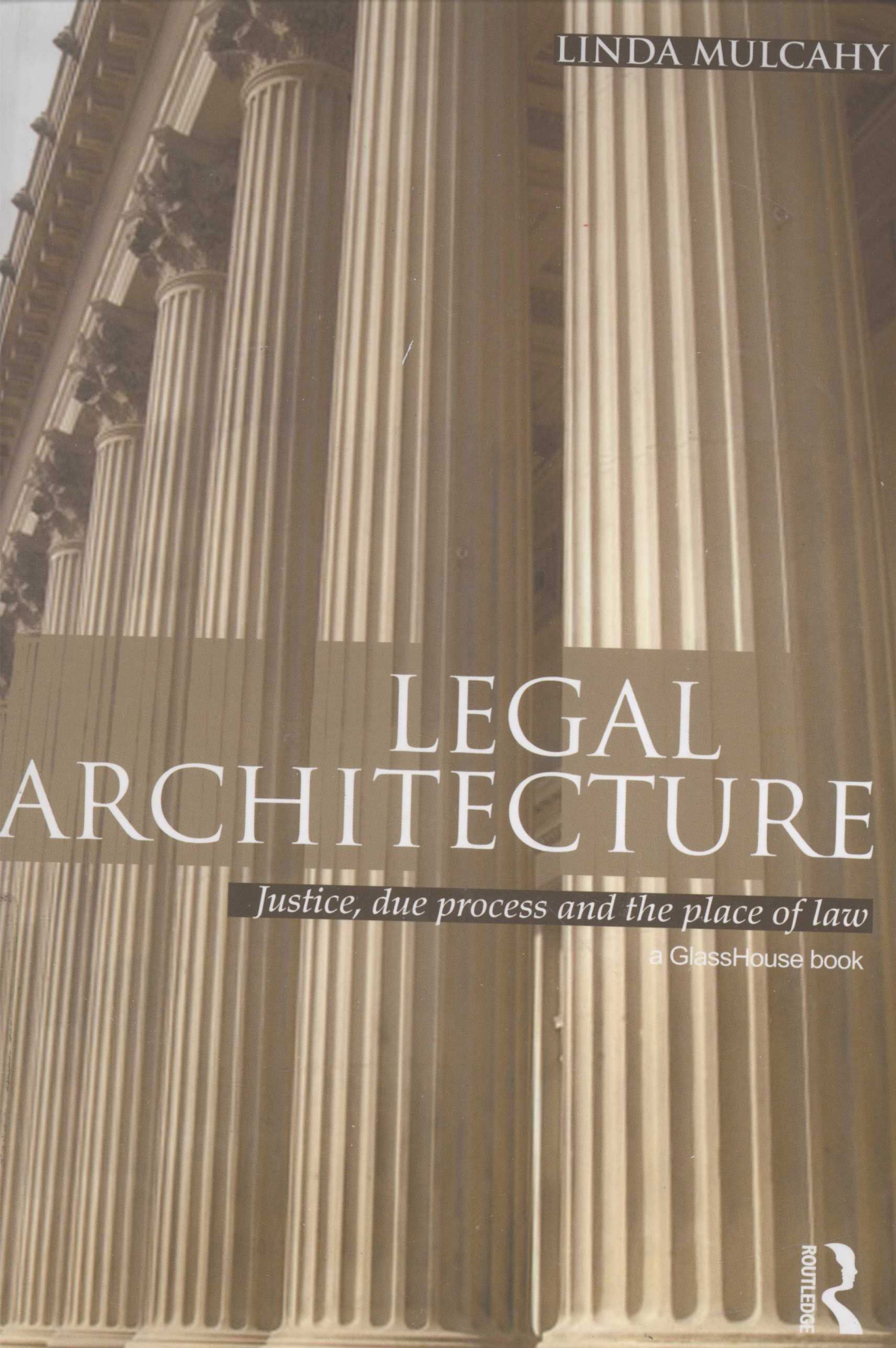
LINDA MULCAHY
LEGAL ARCHITECTURE
Justice, due process and the place of law
a GlassHouse book
ROUTLEDGE

Legal Architecture

Justice, due process and the place of law

Linda Mulcahy

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Legal Architecture

Legal Architecture addresses how the design of the courthouse and courtroom can be seen as a physical expression of our relationship with ideals of justice. It provides an alternative history of the trial, which charts the troubled history of notions of due process and participation. In contrast to visions of judicial space as neutral, Linda Mulcahy argues that understanding the factors that determine the architecture of the courthouse and courtroom are crucial to a broader and more nuanced understanding of the trial. The partitioning of the courtroom into zones and the restriction of movement within it are the result of turf wars about who can legitimately participate in the legal arena and call the judiciary to account. The gradual containment of the public, the increasing amount of space allocated to advocates, and the creation of dedicated space for journalists and the jury, all have complex histories that deserve more attention than they have been given. But these issues are not only of historical significance. Across jurisdictions, questions are now being asked about the internal configurations of the courthouse and courtroom, and whether standard designs meet the needs of modern participatory democracies. The presence and design of the modern dock; the dematerialisation of the courtroom by increasing use of new technologies; and the extent to which courthouses can be described as public spaces are all being hotly debated. This fascinating and original reflection on legal architecture will be of interest to socio-legal or critical scholars working in the field of legal geography, legal history, criminology, legal systems, legal method, evidence, human rights and architecture.

Linda Mulcahy is a Professor of Law at the London School of Economics.

For Phoebe and Seamus

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The production of this book has taken me on a methodological journey during which I have striven to produce a more nuanced account of buildings than I was previously capable of. As I have written I have also become a student of architectural history. For an academic lawyer trained in interpreting texts, learning to 'read' a building and interrogate the image has been liberating and I am grateful

to my tutors for their patience in dealing with my obsession with court architecture. Finally, I offer my gratitude to my husband Richard who has cooked and cleaned for me as I completed this book. My children, Connor and Sam, will no doubt have left home before I complete my next monograph but I am afraid that Richard will live to enjoy the experience again.

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Chapter 1

Architects of justice

Introduction

This book presents an 'alternative' history of the trial. In contrast to previous accounts of legal proceedings which rely on ethnographic studies, an analysis of reported cases or consideration of the jurisprudence of procedure and outcome this monograph tells its story through the architecture of the courthouse. It will be argued that the environment in which the trial takes place can be seen as a physical expression of our relationship with the ideals of justice but that despite its importance the geopolitics of the trial has received very little attention from academics. In contrast to a vision of judicial space as neutral this book argues that understanding the factors which determine the internal design of the courtroom are crucial to a broader and more nuanced understanding of state-sanctioned adjudication. The containment of the jury, the increasing amount of space allocated to advocates, the incarceration of the criminal defendant in the dock, the containment of spectators and the creation of dedicated space for journalists all have complex histories which deserve to be charted and discussed much more than has been the case to date. Each time a section of floor is raised, a barrier installed or a segregated circulation route added it has the potential to create insiders and outsiders; empowered and disempowered participants in a space ostensibly labelled 'public' in which the intricacies of civil liberties and participatory democracy are played out.

We readily think of trials as ritualised events performed according to a social and legal script conferring authority and resulting in documented outcomes. Official language, prescribed procedure, codes of conduct and documentation are recognised as conferring legitimacy on such proceedings but the legitimacy of the trial also derives from the setting in which these rituals take place. Public buildings can both inspire and degrade those within them; they can calm or oppress. The spatial configurations of the courthouse and courtroom can confer prestige or dignity on those who use them or serve to undermine their credibility. Legal architecture can associate law with tradition and conservatism or can equally well symbolise a commitment to change and innovation. Courthouses can act as memorials to the past as well as reflecting aspirations for the future. In a US context, Chief Justice Hennessey (1984) has argued:

> Our courthouses are monuments to our legal tradition, its noble purposes and occasional tragic miscarriages. They evoke the memory of historical events and of the aspirations, frustrations and fears of the many people – the learned, the dedicated, the articulate, the oppressed and the despised, the avaricious and the brutal – whom the law has summoned to exercise their skills or to account for their actions . . . they are not merely buildings, rooms and furniture but are, rather, monuments that evoke several centuries of human effort and progress.

Architects and those commissioning buildings have long understood the importance of space and place in creating and reinforcing courtroom identities but this study of court architecture encourages the reader to confront the interface between rhetoric and reality. Histories of civil liberties, punishment and procedure have tended to focus on the ways in which the trial has 'evolved' as the defendant, the press and the legal profession have acquired rights to speak, report and defend. From a position in which a case might be decided by chance or according to the whim or prejudice of an adjudicator we tend to celebrate the modern trial as a rational process in which the rights of individuals are better protected and excesses of partiality impossible. My aim is not to challenge the thrust of such accounts but an analysis of the spatial configurations of the courthouse and courtroom makes clear that the segmentation and segregation of space has often served to undermine civil liberties and restrict effective participation in the trial. At points the story of legal architecture has reflected evolution and revolution in criminal and civil procedure but it has also served to subvert traditional accounts of the progressive acquisition of rights by marginalising litigants and the public in proceedings as England moved towards a representative democracy.

Although this monograph draws heavily on the history of court architecture the issues it raises are far from being of only historical significance. Many of the spatial practices adopted in the courtrooms of today evolved in very different social and political contexts but are rarely subjected to sustained critique. Legal systems throughout the world draw heavily on traditional practices as a way of conferring gravitas and cultural meaning on proceedings but there is a danger that an over reliance on historical precedents can transform justice facilities into frozen sites of nostalgia (Graham 2004). Important challenges about the contemporary relevance of the placing of participants in the trial await those who commission and design courthouses. Are modern courthouses in which most of the space is not accessible to the public appropriately labelled public buildings? Does the appearance and positioning of the dock undermine the presumption of innocence in the English trial? Is it appropriate for legal counsel in superior courts to sit with their back to their client? Is the increasing use of video link in danger of rendering the modern trial an inauthentic legal ritual? If the state of current building stock reflects the respect in which the legal system is held by the State can we assume that its significance is

in decline? In the chapters which follow I attempt to address these and many related questions.

Existing work in the field

The social significance of court architecture has long been neglected by academics. In the field of legal scholarship, the absence of research on the use and experience of courthouses and 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 they give a complete account of why a case is decided in a particular way. We frequently assume that if all else is equal that judgment given in one place would be the same as judgment reached in another. This conceptualisation of the legal arena undoubtedly 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. It is also the case that to date, lawyers' understanding of the origins of the modern trial and the history of ideas about it stem largely from accounts of atypical criminal trials such as records of *The State Trials*. Excellent use has been made of the Old Bailey sessions papers but again, these present a rather London-centric account of the English trial.[1]

Studies of courthouses have received slightly more generous attention from other disciplines but the literature remains limited.[2] Architectural historians have tended to lavish attention on other public buildings such as churches, castles, prisons or town halls to the detriment of discrete studies of the courthouse. Technical accounts of historic courthouses which focus on aesthetic convention or style such as those provided by English Heritage, the Pevsner guides and the Victorian County Histories are informative but tell us very little about the social or political significance of the spatial practices described. For some commentators the ban on photography of any kind inside law courts has contributed to the underappreciation of the architecture of law courts (SAVE 2003).[3] It has also been the case that traditionally architectural historians have tended to focus on well known architects rather than particular building types. The result is that discussions of courts only occur when they have been designed by the renowned.[4] Contemporary architectural historians have been more prepared to go behind appreciation of technique and style to an understanding of what buildings symbolise, their setting, how they came to be and why they are the way they are. Mark Girouard's (1990) study of the English town is an excellent example of this genre which provides numerous insights into the problem of housing the twice-yearly Assize courts.[5] But other accounts of legal architecture have tended to focus on particular symbolic courts of national significance. Research monographs in this category include Brownlee's (1984) excellent account of the Royal Courts of Justice, Sharon's (1993) book on the Israeli Supreme Court, Burklin *et al*'s (2004) account of the design of the federal Constitutional Court of Germany and Pevsner's (1976) short review of notable courts.

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