

Centro de Estudos Sociais Laboratório Associado Faculdade de Economia Universidade de Coimbra

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QUESTIONING THE CONNECTION BETWEEN
ACCESS TO LAW AND JUSTICE AND COURTHOUSE
ARCHITECTURE

Setembro de 2010 Oficina nº 352

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Oficina do CES n.º 352 Setembro de 2010

OFICINA DO CES

Publicação seriada do **Centro de Estudos Sociais** Praça D. Dinis Colégio de S. Jerónimo, Coimbra

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Questioning the Connection between Access to Law and Justice and Courthouse Architecture

Abstract: Considering access to law and justice in a broad sense also means considering issues that may contribute to curtail that right, and which are beyond the citizens' conditions of economical sufficiency or insufficiency. Subsequently there is a concern with access to law and justice in spatial terms, i.e., the way in which the space of the courts – external and internal – can help facilitate or limit the access of citizens to law and justice. Thus, questions arise regarding whether law and justice really do need palaces and/or rituals, or whether there should be a new model of court, one that could better fit the needs that law and justice demand nowadays.

Introduction

"You move in this court's circles?" asked K. "Yes," said the lawyer. [...] "What circles should I move in, then, if not with members of my own discipline?" the lawyer added. It sounded so indisputable that K. gave no answer at all. "But you work in the High Court, not that court in the attic," he had wanted to say but could not bring himself to actually utter it.

The Trial, Franz Kafka²

In this 21st century, the traditional epistemology used by law and other social sciences is being challenged to face the complexities of a world in constant change. This means we need to resort to new methodologies, which can combine different skills, and enable new reflections and (perhaps) solutions for the regulation of social relationships. This is why today we hear so much about a change in paradigms, about new challenges and the reformulation of conceptions – we live in a time of intense transformation regarding the models of law and justice. Within contemporary methodological proposals about law and

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² See the e-book on http://www.gutenberg.org/cache/epub/7849/pg7849.html (January 2010).

justice, there is a tension between two main models: one which takes on the form of a pyramid, of hierarchy and distance; the other one embodies the image of a network, being flexible and adapting itself, creating structures of proximity (Ost e van de Kerchove, 2002). According to Commaille (2004), we live amid a model of transcendent justice, which enhances the sacred, and a model of justice immanent to society, of a profane quality. And maybe this is why we try to look at law from more places, and odder places, than what has become usual (Hespanha, 2007).

Therefore, questioning the right of access to law and justice keeps on being fundamental. We have to continue questioning what types of obstacles are still capable of obstructing the citizens' right of accessing law and justice. Among such obstacles, I will concentrate on courthouse architecture as a constructor and a communicator of barriers and spaces, shaping the expectations, experiences and interpretations of legal events.

Part I: Architecture and Law – A Complicit Communicational Relationship

It is through architecture that we build and transform spaces. In this sense, architecture can be seen, Pierre Caye (2008) claims, as "I'art de l'espacement", the art of spacing, because it is through the built walls that spaces are enlarged or limited. And inside these real spaces there are idealized spaces which appear because the built space is the surface at which different worlds – real/imagined/desired – meet (Kevelson, 1996). That is to say: design and/or architecture use space as a means of communication, a communication made of symbols, signs, messages that are not always immediately seized. That is why Eco (1997) considers architecture a special challenge for semiotics – apparently, most buildings are not meant to convey these values or goals, but to fulfill a specific function.

Consecutively, if we understand, in a broad sense, law as communication – as stated by Van Hoecke (2002) – we conceive it as a superstructure – or a common space – of human conduct's regulation, in its multiple interactions. A superstructure which has the role of communicating a message: the rights/duties and responsibilities of each and all of us. For Cartier (2008: 55), the communication of law appears both as a necessary condition for the effectiveness of the rule of law and as a factor for its legitimacy.

We can then say that there is a kind of natural complicity between one - law - and the other - architecture, since both have the goal of communicating the message of the institution of man as man, because, as claimed by Supiot (2005), man is a metaphysical animal, who

lives in the emerging world of things and signs. Thus, both law and architecture share this feature: they communicate, they institute spaces, and they regulate our movements.

In this sense, we can claim that theories, conceptions and representations of law, of justice and of the administration of justice are the main factors behind the conception and transformation of the judiciary spaces. The space where justice is administered (be it the tree of justice, the house of justice within the medieval markets, the distant neoclassic palace of justice or the contemporary Portuguese campus of justice) is always the result of the dominant conceptions of law and justice, of sovereignty and of the State, consequently influencing the architectural program of a court (Mulcahy, 2008).

Part II: Access to Law and Justice?

This fundamental right, enshrined in different international legal documents, such as the Universal Declaration of Human Rights or the European Convention of Human Rights, or in national Constitutions (in Portugal, it is a right enshrined in Article 20.° of our Constitution since 1976), is still complex and difficult to define. In 1978, Cappelletti and Garth proposed two analytical ways of conceiving how access to law and justice could be understood: a) in a strict sense, access to law and justice could be identified with equality of access to the judicial system and/or representation by a lawyer in a conflict; b) in a broad sense, access to law and justice would imply guarantying the effectiveness of individual and collective rights, in the sense that our rights will only be valuable if we know them and if, in the eventuality of a conflict, we can appeal to an instance that can assist us at resolving it. Also Faget (1995) offers an interesting analytical perspective: access to law and justice symbolizes the conquest of citizenship, the possibility given to the members of society of exercising their rights and abiding to their responsibilities, allowing for the use of law as the ability of acting 'offensively' (mettre en oeuvre un droit) or 'defensively' (faire respecter son droit). In strict terms, it would simply mean acceding to legal information.

We must distinguish, on the other hand, between a material/economical access and an intellectual one (which can be subdivided into a psychological/emotional, and even spatial/physical, access). The first type is usually, or most often, guaranteed by the legal system, including here Legal Aid regimes. But the second type – the intellectual access – requires the ability to access the qualitative rationality of a law that is often perceived as something incomprehensible, be it by its proliferation or by its constantly changing nature

(Nicolau, 2002). The law is seen as something abstract, something apart from quotidian life. For Baptista Machado (1990) this is normal: we only become well aware of the value of health when we are sick; the same happens regarding law, for when it starts presenting pathological features, that's when we start paying attention to legal reality and to think about things like codes, norms, courts, etc.

Moreover, and to add in more complexity, nowadays one can think of law and justice being 'invaded' by different concerns/pressures/demands, such as those of efficiency/efficacy/effectiveness, managerial and budgetary rationalities, technology, reforms of the judicial map, legal pluralism, globalization, among others, which imply their transformation and/or 'mood swings'.

Part III: Courthouse Architecture

Before entering the subject of courthouse architecture, let us think about geometry: volumes, solids and lines. Straight lines. What does this has to do with law? Or with courthouses?



Photo: Rui Cunha (2000), Fundação Luís de Molina

Taking into account the 15th century fresco representing *The Good and Bad Judges*, in the Old Town Hall Court in Monsaraz, Alentejo (South of Portugal), one can see that the Good Judge is holding a straight cane, while the Bad Judge holds a bent (or tort) one. So, we have here the idea of straight lines as representing good justice and bent lines representing injustice or poor law. In Euskera, the language of the Basque Country, which is a language of unknown origin, assumed to be from the Stone Age, and has a descriptive nature, there was no term for law; therefore, it was necessary to find a translation for it, which occurred with

the adoption of the word *zuzenbide*. This means, literally, to walk on a straight line. Furthermore, if we pay attention to some sayings or expressions we see that the spatial, geometric and visual dimensions are always present: right vs. tort; regulation; a righteous observance of law.

Law's discourse, associated since legal positivism to the written code, and to technical and formal language, can be composed of other "materials", made of non-verbal sequences and artifacts (Santos e Villegas, 2001). In fact, we can say that law consists of a speech made of visible and invisible lines, abyssal lines as Santos calls it (2007), that divide reality into two fields: on one hand, the visible faces of law are the legal rules; on the other hand, the meaning they hold is full of invisible significant; for some the sound of law is relatively harmonious, but for those who do not understand its discourse there is a sound barrier, a barrier that may give way either to silence or to noise; at the courthouse, the architectural structures and rituals erect boundaries of space, transforming the ordinary into the extraordinary; for those who are able to perceive the meaning/significant there is the possibility of accessing, while others must stay on the other side of the line, the line that separates the inaccessible from the accessible (Branco, 2009). This brings us to the issue of courthouse architecture.

According to Robert Jacob (1995), architecture is an essential feature of the image of justice, whose symbolism establishes a distance, more or less reduced, to citizens. Thus, the first step of justice is to outline a space where rules are defined, goals are set, and actors are established (Garapon, 1997). This means that walls, doors, rooms and halls serve as communication channels (Mohr, 1999), which separate what is inside from what is outside, ritual from quotidian. It is through the architecture of its spaces that law authorizes itself as a singular and sacred space for the regulation of community, a space where the actual fact becomes the 'legal fact'. The aesthetic dimensions of the courthouse, far from being apolitical and incidental, actually ensure the strength and force of an institutional order (Haldar, 1994). Thus, through the medium of architecture, the building reveals much about prevailing notions of the relationship between the State, law, lawyers and legal subjects (Mulcahy, 2008). Or, in other words, how and what law means is influenced by where it means (Manderson, 2005), which also makes the territorialization of justice so important and a debatable subject. This is why we come to think about courts as the places where law as a discourse that both constrains and makes sense of our lives is actually made real and, in the

process, disputed, fought over, changed. Therefore, in recent years many scholars have been drawn to think more carefully about how spaces themselves communicate, or disrupt, legal meaning (Manderson, 2005). Court buildings, some authors affirm, convey information about justice, which means that good court design may communicate that justice is accessible; and that safety and privacy are respected; or architecture may send out other messages: that people are not equals in the court; participants and the public are not entitled to understand the proceedings; or that court management needs are more important than citizens' needs (Canberra University, 1998).

Nevertheless, we do not think much about the spaces where law and justice are exercised. Indeed, it is as if these spaces kept on being neutral, non-existent. When we think of law or justice, we think primarily in terms of rules, codes, of the written word. As Manderson (2008) says, law continues to write as if it's being paid by the word. Since positivism/legalism we have been modeled not to think of the image or the spaces of justice, as if these do not have any role to play. Or as if justice did not exist in material, concrete or architectural terms.

Space is, in effect, composed of a multitude of languages – visual, acoustic, tactile and kinesthetic – which result in a phenomenological experience of the different spaces we enter: through physical contact we get feelings, perceptions, emotions, memories, all linked to aspects of our lives and the circumvolving reality (Bouchier, 2008). It is the experience of space that underlies our interactions in the world (Egginton, 2003). But if we understand that buildings convey a visual, tactile, audio and kinesthetic vocabulary, we can then ask: what kind of law and justice does an old building, one that has even become dangerous, communicate? Or a space that seems like a bric-a-brac? And a bureaucratic space of justice, full of computers? Or a space that resembles a supermarket, and sometimes is set between shops in shopping malls? Spaces whose windows do not open want to give a picture of a justice that cannot be corrupted by the entry of partridges? Or, on the other hand, offer us a conception of a law that is not open to the winds of change? And the dematerialization of justice gives place to what kind of space? Additionally, can we think of law and justice without a space?

³ Partridges symbolically represented corruption, as it can also be seen in the mentioned fresco, where the Bad Judge is seen receiving partridges as a form of payment for his decisions.

⁴ See an interesting article by Mulcahy (2008), "The Unbearable Lightness of Being?: Shifts Towards the Virtual Trial", *Journal of Law and Society*, 35 (4), 464-489.

This type of studies has been absent from the current debate in Portugal, both in legal theory and in social sciences, and is all the more meaningful at a moment when a new judiciary map takes place, one that aims at achieving efficiency, through a rationalized and specialized management of courts. Mulcahy (2007), among other authors, explains that the lack of research in this area is due to the fact that only recently social geographers, sociologists and lawyers have turned their attention to the interface between law, place and space. On the other hand, Resnik (2009) draws attention to the fact that this idea of the courthouse as a segregated and specially named space, different from other public spaces, which turned out to be so familiar to us, is a recent phenomenon which was novel not too many centuries or even decades ago. But the lack of interest in the law and justice spaces is not only a prerogative of lawyers: Nunes (2003) tells us that the most recent books on history of art, even the most ambitious ones, rarely provide information regarding the courts. Paradigmatic is also the example of the Survey *IAPXX*–20th Century Architecture in Portugal, focused on the documentation of the existing architectural heritage, which left out the entire Portuguese judiciary patrimonial legacy.

Part IV: Intersecting Courthouse Architecture and Access to Law and Justice

When the user enters a courthouse, he does it with a utilitarian purpose: to find a specific office or the courtroom. The aesthetic dimension does not intervene explicitly, because what matters is, above all, the functionality of these spaces (Chalifour, 2008). But what kind of considerations, feelings, conceptions of law and justice will he get from the porticos, the walls or the rooms? In the book *Os tribunais nas sociedades contemporâneas. O caso português* (1996: 556/557), in the section on opinions about law, justice and the courts, obtained through a survey, we can find the following comments: "everyone is afraid to go to court"; "it makes us nervous, shy"; "they aren't scary but respectful"; and "the architectural aspect and the functioning conditions of the courts should be improved, for it is burdensome and ugly to be there".

And yet, such concerns are not addressed (at least explicitly). The issues which are taken into account in successive law reforms in order to improve accessibility and the quality of justice are always the cost of justice or the timeliness of decisions, and never space. Nevertheless, the final report of the European Commission for the Efficiency of Justice

⁵ For more information, see http://arquitectos.pt/index.htm?no=202072682,228 (February 2010).

(CEPEJ, 2008) is very clear when stating that access to justice is not only limited to financial resources, but is also affected by the time needed to reach a court building. And I add that access to buildings or spaces of justice has not only a geographical character.

The architectural evolution of courts – from Roman times and roman *fora*, through the tree of justice in the medieval period, whose shadow would host the king-Judge; from church halls to taverns and town halls; from the neoclassical palace to the fascist apparatus of the Portuguese dictatorship, and leading to the new construction projects taking place – responded historically to the gradual empowerment of the judicial function, the imposition of new legal professions, the political power of each period, and changes in the trial process. Medieval justice, for instance, although well incorporated in the mercantile circuits and daily life, has been supplanted by judicial authority, in order to satisfy a growing demand of justice, and thereby has become distant from the worldliness of the city and has developed an arsenal of argumentation and procedures. That has been materialized in the courthouse, with its grand staircases and columns, giving the image of a solemn and mysterious power, one which must inspire awe on litigants. Thus, Garapon (1997) argues that careful attention must be paid to court symbolism and rituals, designed to ensure that justice is executed in an orderly and accountable way.

An also interesting fact that comes to our attention has to with this: each new courthouse can be seen as a piece conceived by its author, the architect, even if its program has to obey the requisites imposed by the Ministry of Justice. Speaking of the new spaces, Garapon (2006) has written that the thing that strikes him about them is their symbolic silence. What we perceive, then, is a tension between tensions: although these new spaces are still sumptuous and majestic, be it in terms of structure, volume, proportion or materials, they have lost their differential character, their *reconnaissance*. Lawyers are said to misunderstand architecture's rationality – and architects are pointed out as being oblivious to the functions of justice or legal rationality.

And if it is true that we may have trouble defining an institution, it is also true that we are able to identify a courthouse through its space. "We know one when we see it," says John Brigham (1996). Is this absolutely true? When, in *The Trial* by Kafka, K. searches for the space where his first hearing would take place, he tells us: "He had thought that he would recognize the building from a distance by some kind of sign, without knowing exactly what

⁶ Please see: AFHJ (2002); Martha McNamara (2004); Jacob (1994).

the sign would look like, or from some particular kind of activity outside the entrance" (Kafka, 1998: 38). But that's not what happened. And the following questions arise: what makes a courthouse *a court*? Does it suffice to have a nameplate? And can one speak of the architectural ID of a court? What kind of data must be included in such an ID?

The professionals, such as judges, prosecutors, lawyers and other judicial actors, when speaking of the spaces of law and justice seem to do it in an almost concealed way. In a focus group we organized, as well as in several interviews, I heard expressions such as: "What we perceive is that the citizen, when he enters the courthouse, the last thing he feels is protected. I think it has to do with the way courts have been constituted, as spaces filled with rituals. People almost feel they have to do the sign of the cross before entering" (Social Services). Or: "The courts should be seen as civic centers and not as places that frighten people. And if this is not resolved, it will be difficult to see them as civic centers. This is a fundamental issue for access to law and justice!" (Public Prosecutor). Or even: "People are afraid to go to court. Curiously, the *julgados de paz* [justices of the peace] – which are courts in the legal sense – do not have the same psychological component" (representative of the Ministry of Justice).

It is, therefore, important to analyze what kind of spaces will be more apt or fit to serve communication, legitimacy and accessibility to law and justice in the 21st century. The functions of justice have evolved, which is why we must ask ourselves whether the new functions of law and justice can still be accommodated within the old architectural symbolism or whether new symbols will be needed. The representative of the Lawyers' Bar interviewed has said:

Does justice have to be administered in palaces? Well, what do we expect from justice? Efficacy, functionality, timely decisions? Or majestic, divine, and an almost hierarchical magnificence in its forms and symbols? I think that justice, instead of looking for deformalization, should diminish its majestic dimension and be more a part of the mortal world. Without ceasing to be justice, and without losing its sovereign dimension.

⁷ Research Project "As mutações do acesso à lei e à justiça na União Europeia – o estudo de caso da justiça da família em Portugal" (PTDC/JUR/65395/2006), funded by Fundação para a Ciência e Tecnologia, in which the author was a member of the research team. In http://www.ces.uc.pt/projectos/mutacoes/.

Conclusion

Spaces have to provide citizens with a new image of justice, more in tune with the changing judicial practices and attitudes; a justice that must include all; a justice that needs to resolve various conflicts and is, thus, a more specialized and pluralist justice. Will we witness the 'palacization of trees' or, supplementary, 'the arborization of palaces'? Or an assemblage?

The transformation of law and justice in the 21st century will have to consider communication, accessibility and the legitimacy of law, as we have said. This means reflecting on the (re)construction and (re)contextualization of spaces as polysemic communicating symbols of law and justice.

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