CULTURE-BASED JUSTICE ARCHITECTURE:

Building Community Wellbeing through Deeper Cultural Engagement

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Abstract

Law and the culture of law find their expression in the many facets of the law's institutions. One of the most visible of these is the architecture of the places in which the legal process is enacted. Through architecture it is possible to communicate widely variant cultural perspectives on the rule of law. In contemporary Australia, an advanced and successful democracy, Aboriginal families continue to experience grossly disproportionate incarceration rates in the justice and correctional institutional systems, often in demonstrably inappropriate environments. Most commentators agree that a significant contributing factor to overrepresentation in these institutions is the high degree of cultural loss that Aboriginal Australia has suffered—and continues to suffer. This paper argues that part of the solution lies in an acknowledgment of—and engagement with—Aboriginal culture where it persists as an evident and potentially viable feature of Aboriginal communities.

Anthropologists, sociologists, Aboriginal advocates and linguists have furnished tools necessary to implement a culturally literate understanding in the endeavors of law reformers, architects and agents of economic development. Nevertheless there remains at political and key administrative levels, significant pockets of resistance to such an approach to reform.

The author, a practicing architect specializing in the design of a broad range of facilities in cross cultural environments, draws upon successful examples of both built works and projects to demonstrate a proven approach to tackling the problem successfully. It is suggested that whilst the cultural circumstances of Aboriginal Australia are unique, the underlying principles of the approach advanced by this paper may be broadly applicable in many of the projects supported by the World Bank and others working towards the advancement of justice reform through the implementation of practical initiatives in communities.

Towards a Culture-Based Paradigm

Facts and Questions

In Western Australia, 42 percent of the adult prison population is Aboriginal and 70 percent of the youth detention system is Aboriginal. Yet in the general community, only 3 percent of the total population is Indigenous. In each of the other states of Australia, Aboriginal people are also consistently overrepresented in custody, though none to the degree of Western Australia.¹

Social scientists and criminologists continue to debate the reasons for these disproportionate rates of overrepresentation. However, most agree that a significant contributing factor is the high degree of cultural loss that Aboriginal Australia has suffered—and continues to suffer. This cultural loss can be directly linked to the disintegration of social support structures and social stability, and, at the individual level, self-esteem, sense of purpose, and identity. Furthermore, enduring and wide-ranging cultural disconnection with mainstream Australian society contributes to continuing social and economic marginalization.²

Thus even in these few key insights, we find culture³ to be among the most important areas requiring critical consideration. It is not too much of a stretch therefore to suggest that part of the solution must lie in an acknowledgment of—and engagement with—Aboriginal culture, at least where and to the degree that it persists as an evident, and potentially viable, feature of Aboriginal communities.

As an architect, this line of reasoning brings us to two questions:

1. Is culture relevant to justice delivery?
2. Can architecture help?

¹ Blagg, *Crime, Aboriginality and the Decolonisation of Justice*, 5-6: “Western Australia (WA) has consistently had the highest level of over-representation of any state in Australia. In 2004 ... just over 27% of all adults arrested were Aboriginal and a staggering 50% of juveniles arrested were Aboriginal. ... On any day in Western Australia just over 42% of the adult prison population are Aboriginal and upwards of 70% of the youth detention system is Aboriginal.” The Aboriginal population of the state is only a fraction of the total population (3 percent), making these incarceration ratios even more extreme in real terms.

² Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, 9: “... most commentators believe that historical factors such as dispossession and exclusion from traditional lands, the impact of past government policies of assimilation and child removal, and the breakdown of cultural authority and traditional law largely explain the present dysfunctional state of many Aboriginal communities.”

³ For the purposes of this paper, a working definition of the word “culture” may be taken from the discipline of anthropology, along the lines of the definition provided in William A. Haviland, “The Nature of Culture,” in *Cultural Anthropology* (Austin: Holt, Rinehart & Winston, 1990, sixth ed.), 30: “The **culture** concept was first developed by anthropologists toward the end of the nineteenth century ... Recent definitions tend to distinguish more clearly between actual behaviour on the one hand and the abstract values, beliefs, and perceptions of the world that lie behind that behaviour on the other. To put it another way, culture is not observable behaviour, but rather the values and beliefs that people use to interpret experience and generate behaviour and that is reflected in their behaviour.”

This paper has been written specifically to answer these two questions. To consider them, we shall focus upon a single endeavor that perhaps most represents the meeting of justice and architecture: that is, the conception and design of justice facilities, particularly the courthouse. Importantly, however, the principles espoused in this paper are intended to suggest an approach to providing a diverse array of community facilities that might help reinstate the order and harmony of healthy functioning communities, alive in their own culture—communities at their best. Facilities such as schools, health clinics, and community-education and activity centers, as well as women’s and children’s shelters, cultural art and sports centers, places for theatrical and ritual aspects of culture, and, of course, culturally appropriate housing—are all necessary parts of restoring and maintaining the total fabric of communities, many of which, in Australia, are currently in a state of crisis.⁴

While this paper focuses on experience in working directly with Australian Aboriginal communities, occasional references are made to international examples in both the justice-reform and architecture fields to point the reader towards the broader applicability of some of the points being made. It is proposed that the firsthand practical experience, research, and ideas set out in this paper will find a wider-reaching significance to justice-reform and design projects in culturally diverse parts of the world. However, all cultures are unique. Traditional cultures of law and dispute resolution, and the design of effective spatial environments for them, vary significantly from one culture to another. Specific cultural observations and strategies that apply in Australia will not necessarily directly translate elsewhere. Nevertheless, the potential exists for broader application of the underlying principles.

The Courthouse and the Law Ground: Ritual and Place

For the architect attempting to understand the relevance of traditional cultures to the design of contemporary justice buildings, it is important to gain an understanding of the traditional culture of law of the societal group in question, where it persists as an accepted and relevant force in society.

This approach enables us to understand how the culture of law may, in various ways, be *dependent* upon mutually understood patterns of spatial occupancy and behavior, and on the nature of traditional environments associated with the relevant processes and rituals.

Traditionally the Australian Aboriginal law ground was—and, in remote traditional communities, still very much is—a single place in which instruction, initiation, celebration, ceremonial elements, and debate take place. By contrast, the courthouse of our society has isolated the element of justice so that trial and sentencing stand in apparent isolation from instruction, celebration, initiation, and so on. Traditional Aboriginal law grounds also continue to make clear and strictly enforce differentiation between women’s and men’s law ground. Access is granted only to initiates. These and

⁴ Painter, “Our Lost Generation,” 23.

other important social-moderating, spatial-management practices are also not evident in the contemporary courthouse.⁵

At the root of the issue is the need to understand the cultural significance of “place.” Significant events and rituals—significant to the individual as much as to a culture—are always strongly associated with the places in which they take place. This is arguably true of most cultures. The associations between ritual and place are two-way, with ritual impregnating otherwise unremarkable places with meaning, while places themselves may, conversely, direct and give significance to ritual and other major events.

Accommodating Cultural Diversity within a Single Legal System

A much-discussed dilemma amongst law reformers is the question of how to reconcile state law and Indigenous customary law. Indications as to how these might be reconciled may be found in the recent innovation that is the Aboriginal sentencing court. This innovation is barely a decade old and has already been embraced with measurable benefits in Australia, Canada, New Zealand, Fiji, and various other countries with significant displaced Indigenous populations. The Aboriginal sentencing court affords us a “laboratory” in which to examine, to a degree, the positive potential for the interaction of traditional cultures with contemporary justice delivery.

The contemporary Indigenous sentencing court administers mainstream law, the same law as is tried in other “inferior” courts. Its scope is currently limited to sentencing, and for crimes only of a relatively minor nature. Crimes of sexual violence or extreme violence are not currently dealt with in these courts.

A key feature of the Aboriginal sentencing court is the direct participation of traditional elders and respected persons of the offender’s cultural group, and sometimes also of the particular region or “country” in which the offense took place, if that differs from the home “country” of the offender. The roles of the participating elders in the process include advice to the magistrate, assistance in communicating with the offender, and even chastisement of and/or counseling the offender on occasion where appropriate. The elders do not have any authority in the matter of sentencing, which the magistrate retains entirely.

Customary tribal law, even where it can be discerned and understood, is not tried or administered by the Aboriginal sentencing court. However, the potential relevance of such considerations to sentencing, where they are legitimate, may form part of the total dialogue that the Indigenous court currently encourages.⁶

⁵ Refer to the Law Reform Commission of Western Australia, *Aboriginal Customary Laws*. This recent, wide-ranging expert study places considerable weight on the importance of properly understanding customary gender issues in the administration of contemporary justice.

⁶ This is, in principle, no different to the established protocol of the inferior courts, which requires judicial officers to consider all factors relevant to sentencing on a case by case basis. (Ibid.)

There is arguably sufficient compatibility between many of the issues dealt with in both systems of law that the matter need not become an impasse to consideration of the physical place of the Indigenous court as a legitimate contemporary expression, by extension, of both. Customary laws of Aboriginal society, just like those of Western European society, have upheld social peace and harmony by, for example, protecting individuals against violence and by active recognition of the sanctity of legitimate marriages and other social obligations. The social foundations of Aboriginal culture that include the nuclear and extended family are not entirely unfamiliar to white Western society.

Canadian experience demonstrates parallels. Professor John Borrows (University of Victoria, Canada) has observed that:

*often there are consistencies between the two systems. If you just try to apply a Canadian law on aboriginal people, it's not likely to be respected. But if that law is based on similarities between the two systems, there's a better likelihood of acceptance by both sides.*⁷

That said, it is acknowledged that there are many features of traditional Aboriginal culture that are unique and for which no ready equivalent in Western mainstream law may be found—and vice versa. Accordingly, this paper will use the term “law” only in reference to mainstream Australian law, and will not presume to discuss customary Aboriginal law. When we discuss the mainstream law we are discussing something that profoundly affects Aboriginal lives, as borne out by the incarceration rate statistics.

Places of the Law

If the relevance of culture to law lies in the effectiveness and acceptance of the legal process by the communities affected by it, perhaps we should be asking whether the law is being heard at places truly significant to the integrity of a whole and functioning community. If in some communities no such place ever existed, how is the law to be tried at all? Trial and sentencing are only the very last stages in the cycle of the law.

Perhaps the place where the law was learned was a shaded dry river bed; perhaps it was the weatherboard or tin house of a grandfather. If so, then these may be the places that might need to be connected to or invoked. The courthouse will need to be rethought as “a place of the law” in the broadest and most connected sense. The new places of law might also have to broaden their function to hosting—appropriately and beautifully—all those other dimensions of the culture of law. A place might now need to be created for teaching, inculcating, and celebrating the rhythms of a successful society, a place for its creative and symbolic dimensions, and for debate.

Whatever form our justice facilities take, the primacy of “country” to Aboriginal people will inevitably remain, and no newly built place will ever serve as a substitute for

⁷ Borrows, *Recovering Canada: The Resurgence of Indigenous Law*.

country, nor for the traditional law ground or all the inextricable ties that these both include.⁸

Obstacles, Obstructions, and Obstructionism

With Aboriginal participation in the Australian economy marginal, if not institutionally impeded, most projects for Aboriginal communities rely upon government funding and with that, the bureaucratic process and its officials. Architects endeavoring to make progress to the betterment of Aboriginal people may encounter resistance when seeking to respond to explicit recommendations of, for example, the Royal Commission into Aboriginal Deaths in Custody,⁹ the Western Australian Law Reform Commission, the Mahoney Enquiry, and others.¹⁰

And yet the changes urged by the aforementioned Royal Commissions and inquiries cannot be precipitated *without* challenging and offering alternatives to the status quo. When the status quo is challenged, new initiatives are often greeted with skepticism. For example, we have received no objection to the design of custody cells to eliminate potential hanging points—such recommendations have been mandated. However, we have struggled—in some quarters—to gain endorsement for design proposals that provide for other equally explicit recommendations in the above reports, such as provision of natural light, access to fresh air and visual outlook onto nature, allowance for a degree of free movement while in custody, facilities designed in such a way as to safely provide for family visits, the separation of adult males from female and juvenile persons in custody, and other recommendations geared towards the psychological well-being of persons in detention.

And when the budget for projects comes under stress for any reason, some senior officials have consistently targeted such design features for elimination with unseemly haste, irrespective of how little cost may attach to them. At best, this signals a lack of understanding of the goals of a culturally informed approach to architectural design.

As an architect working with a broad array of individuals in government departments and bureaucracies, one too frequently encounters an attitude that may be characterized as a resistance to attending to the special needs of a “minority group” (Aboriginals), on the pretext that the extra attention or effort could purportedly be construed as “preferential treatment.”¹¹ Multiculturalism has become instead a euphemism for a kind of “a-culturalism.”¹²

⁸ Tonkinson, *The Mardu Aborigines*, 40: “Despite the necessary fluidity of their nomadic life, the Aborigines are not rootless wanderers who lack territorial attachments. As individuals and group members, they maintain deeply felt and enduring bonds to certain stretches of territory and, within this home area, to sites of particular totemic and religious significance.”

⁹ The Royal Commission into Aboriginal Deaths in Custody .

¹⁰ Mahoney, “Inquiry into the Management of Offenders in Custody,” 288.

¹¹ Guivarra, “Indigenous Law and Justice.”

¹² Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, 11: [Quoting from Rose, A., “Recognition on Customary Law: The way ahead” (speech 1995)]: “Recognition of customary law as

Yet while a prevailing attitude of disinterest—if not actual antagonism—seems to exist towards engagement with Aboriginal culture, it is important to balance this observation with the recognition of a recent and emerging groundswell of enlightened, intelligent concern from both highly and less highly placed individuals in relevant government departments. The future lies with these individuals of integrity.

The Relevance of Postcontact History to Understanding Contemporary Cross-Cultural Issues

The British colonized the East coast of Australia in 1788, after several centuries of coastal exploration of different parts of the vast continent by Dutch, French, and British navigators. Thus began the long-troubled engagement between the Australian Aboriginals and European settlers. Unlike with the Maoris in New Zealand,¹³ the British never extracted a treaty from Australia's original inhabitants. The reasons for this are probably found in the sociopolitical structure of Aboriginal society, which lacked a recognizable centralized government and written laws upon which a treaty process might rely.¹⁴ In fact, the legal position of Australia, as found, has been described by the Latin term *Terra Nullius*, a Latin phrase meaning “no one's land.”¹⁵ In other words, for the purposes of the law, the continent was considered unoccupied.

Two hundred years of subsequent legal history concerning Aboriginal people, their rights, and those of the European occupier are founded on this original assumption. It was only as recently as 1967 that a national referendum finally granted the right of citizenship to Aboriginal people. In common with other Indigenous minorities the world over, contemporary social ills include high incidence of alcoholism, underemployment, high child-mortality rates, lower than average life expectancy, poverty, and an almost unbelievable rate of overrepresentation in the correctional institutions of the country.

A study of historical records from each of the early colonies reveals disturbing disparities in ruling practices. These ranged from, on the one hand, examples of enlightened governance in a number of individual cases arising from conflicts between settler and native to, on the other hand, massacres (both unsanctioned and otherwise) and a process of default depopulation of the lands after mass arrests¹⁶ for the inevitable array of legal infringements, including the spearing of settlers' livestock for food—livestock that had displaced traditional marsupial game and other staples. Then as now, arrest and

an original part of the Australian legal system is not equivalent to being sensitive to or making allowances in the Australian legal process for the cultural differences of the various ethnic groups now making up multicultural Australia. In the post-Mabo era it is important to understand that legislative and community recognition of customary laws is because those laws are the laws of Aborigines and Torres Strait Islanders as the first people of this country.”

¹³ Or, for that matter, as in the case of the British colonization of North America.

¹⁴ Marchant, *The Papal Line of Demarcation*, xxiii-xxiv.

¹⁵ Chisholm and Nettheim, *Understanding Law*, 11.

¹⁶ Blagg, *Crime, Aboriginality and the Decolonisation of Justice*, 92.

incarceration of Aboriginal people all too often occurred for minor infringements, or as a result of a gradual escalation of infringements initiating from minor matters.¹⁷

At present, Aboriginal Australia is represented by a wide spectrum of circumstances, from fully urbanized families and communities integrated into the life of the major cities of Australia to remote, traditionally oriented groups. Although these remote groups are no longer untouched by contemporary “mainstream” society and its concomitant aspirations, many of them nevertheless maintain customary practices. These may include language, customary law, a degree of subsistence hunter/gathering economy, and a spiritual and ceremonial life with associated practices in the arts, all of which represent just the visible aspects of culture. In these remote communities, such customary practices are not so much a revival as they are threads of an unbroken continuity. This is significant, in that there remains a culturally unique identity and world view, which while not wholly unaffected by modern life, is nevertheless original and authentic. It is neither “put on” nor readily discarded. This is, as shall be seen, profoundly relevant to those of us who might seek to collaborate with such groups or to overlay alien legal or other social constructs.

Question 1:

Is Culture Relevant to Effective Justice Delivery?

The Advent of Aboriginal Sentencing Courts in Australia

This paper has already introduced the subject of the Aboriginal sentencing court. Here we look in more detail at its origins and its implications for the relevance of culture to effective justice delivery.

In 1999 South Australian magistrate Chris Vass conceived the idea of an “Aboriginal Court Day.” Vass was a member of the Judicial Aboriginal Cultural Awareness Program and manager of the Northern court circuits of South Australia. Low attendance rates at court by defendants called to appear and ineffectual communication—in both directions—within the court were amongst a number of deficiencies Vass had identified with the traditional magistrates court as he observed it on circuit. After wide consultation, the idea of an “Aboriginal Court Day” was implemented, in which only Aboriginal cases would be heard on allocated days, thereby allowing the introduction of minor procedural adaptations conceived to overcome some of the above-observed deficiencies. These innovations met with measurable improvements in attendance rates.¹⁸

The success of the idea led to its implementation in other South Australian regional locations: in Murray Bridge in 2001, Port Augusta in 2002, and Ceduna in 2003. In terms of the physical court environment, the innovations were minor but significant.

¹⁷ Law Reform Commission of Western Australia, *Aboriginal Customary Laws*.

¹⁸ Over 80 percent attendance rate compared with the more typical rates for Aboriginal people at other South Australian courts of below 50 percent. See Courts Administration Authority South Australia, 2006.

Vass simply came down from the usual elevated magistrate's bench and sat on the same level as the accused; thus, using the existing courts in a different way, everybody was seated at eye level. Unique features of the court's operation included the presence and involvement of elders and family members of the offender. By this means, effort was made to more fully understand the circumstances of the offender and to seek, if appropriate, noncustodial alternatives to rehabilitation.

In the state of Victoria, the idea of the Aboriginal sentencing court was extended one step further with its formal legitimization by an Act of Parliament, the *Magistrates' Court (Koori Court) Act 2002*.¹⁹ The success of the original Koori Court in Shepparton Vic was then replicated in Broadmeadows in 2003 and a circuit including the regional towns of Warrnambool, Portland, and Hamilton in 2004.²⁰

Subsequently the Murri courts in the state of Queensland and circle sentencing in New South Wales, and most recently the Kalgoorlie Community Court in Western Australia in 2006, have seen the spread of this successful idea.²¹ Concurrent with these Australian developments has been the introduction of a number of Indigenous courts in Canada and elsewhere. Their workings, limits of jurisdiction, format, and physical environment demonstrate many similarities to the Australian model to date.

Like the drug court²² before it, the principles of therapeutic jurisprudence form part of the total aim of the Indigenous sentencing court, in which additional effort is made to understand the cultural factors and circumstances of the individuals being sentenced. This in turn may lead to noncustodial alternatives wherever relevant and feasible, including for substance-abuse rehabilitation, counseling, and tackling issues such as homelessness, domestic violence, unemployment, or other contributing factors.

¹⁹ Subsequently incorporated into the *Magistrates Court Act 1989*.

²⁰ *The Age*, "Tough Justice or Soft Touch in Koori Court?"

²¹ The initial innovation was undertaken first by magistrates acting substantially on their own initiative after wide-ranging consultation but without any associated changes to state legislation. Once introduced in the state of Victoria, however, specific legislation was passed in that state, safeguarding the processes in which the Aboriginal sentencing courts were now involving themselves. The later introduction of the Aboriginal sentencing courts in Western Australia in 2006 was not, and remains, unsupported by any new legislation or even, for that matter, significant additional resources. In Western Australia also, the panel of Aboriginal respected persons who voluntarily participate in their advisory capacity to the judicial officer do so entirely unpaid. (Victorian panelists get a modest "sitting fee.")

²² The drug court was first instituted in the United States in 1989. By 2002 there were drug courts in Canada, Australia, England, Scotland, and Ireland, and more than 1,000 across the United States. A drug court was set up in Western Australia (WA) as a two-year pilot program in December 2000. Since its inception, a 2006 review revealed it has cut rates of reoffending by 17 percent compared with offenders who went through the prison system. Participants are required to meet a range of conditions over six months to two years, including home detention, urine drug testing up to three times a week, and attending psychological counseling, detoxification, and other rehabilitation programs, as well as trying to find work and make other positive life changes. Aboriginal participation in the drug court is low and has varied between 8 and 18 percent. Unlike in the state of New South Wales, the WA Drug Court could be hampered by lack of specific legislation. Similar issues confront the Aboriginal Indigenous courts in WA. Drug court is also much cheaper than jail. The 2006 review found that in terms of offender-management costs, it cost \$A 93,075 to keep a person in jail for a year, compared with \$A 16,210 a year to be on a drug court program. See Hampson, "Breaking Free."

Thus far the innovations in the use of the physical environment to drive this success have been modest. The Shepparton Koori Court was set in a small, intimate room with an oval table and Aboriginal art on the walls. The use of round or elliptical tables about which all participants sit and the use of both Australian and Aboriginal flags has become common across most of the Australian Aboriginal courts. Until recently, normal magistrates courtrooms have generally been used, either as they are or moderately remodeled.²³

In 2005 a new purpose-built federal law courts complex in central Adelaide incorporated a dedicated Aboriginal court, which was given visual and architectural prominence. External views and a softly curved interior provide a comfortable, noninstitutional feel to the environment of the Adelaide Aboriginal Court.²⁴

In 2007 a new courts complex was opened at the regional town of Port Augusta in South Australia, which went so far as to provide an outdoor court “room.” This innovation came out of direct consultation with local Aboriginal people and responds to the discomfort experienced by many traditionally oriented Aboriginal people in enclosed court environments.²⁵ Nevertheless, the question of the court environment needs to be considered as a supporting adjunct to the important human, procedural, and cultural innovations that comprise the Aboriginal court, though not in isolation from, or priority over, these other factors.

Cost-Benefit Analysis of Indigenous Courts

The Law Reform Commission of Western Australia in July 2006 attempted a detailed cost-benefit analysis of Aboriginal courts, examining the typical overall costs of reoffending compared with the lower rates of reoffense recorded so far by Aboriginal courts. The numbers are convincing. The benefit-cost ratio for the introduction of an Aboriginal court in Western Australia has been calculated at 2.5 to 1; that is, for every dollar spent on the operation of an Aboriginal court, the state of Western Australia will save at least \$A2.50.²⁶

The following argument was advanced in favor of the introduction of Aboriginal courts by the Law Reform Commission of Western Australia in its September 2006 report:

In order to ... gauge the potential effectiveness of the Commission's recommendations, an evaluation was commissioned on two indicators:

- *The general cost of Aboriginal over-representation in the Western Australian justice system; and*

²³ Marchetti and Daly, “Indigenous Courts and Justice Practices in Australia.”

²⁴ Design studio HASSELL were the architects, interior designers, and landscape architects. The image of interior is referred to later in this paper under the section headed “Architectural Spatial Technique: Environmental Conditions.” An image of the exterior is found under the section headed “Space, Culture and Psychology: The Psychology of the Public Domain.”

²⁵ This recent complex also includes offices for the Aboriginal Legal Rights Movement and hears many cases involving Aboriginal people visiting from the traditional lands.

²⁶ Law Reform Commission of Western Australia, *Aboriginal Customary Laws*.

- *The cost benefit of the establishment of Aboriginal courts pursuant to Recommendation 24 of this Report...*

The first step ...is to determine the cost of crime in Western Australia...The second step in the process of estimating Aboriginal over-representation in the criminal justice system in Western Australia is to divide the costs of crime for Western Australia on the basis of the state population proportions of Aboriginal and non-Aboriginal people... The third step, an estimate is made of the actual cost of crime by Aboriginal people on the basis of the imprisonment proportions of Aboriginal (41.08%) and non-Aboriginal people...The cost of over-representation of Aboriginal people in the criminal justice system in Western Australia in 2006 is estimated at about \$940 million...

The Victorian study derived benefits to the state Department of Justice (reduced costs related to fewer imprisonments and lower rates of recidivism) and other state agencies (reduced welfare and support costs for defendants and their victims) together with further benefits to the community (lower costs for private security and insurance industries and for households investing in precautions, and less need to provide for victims)... For the Western Australian study, benefits are confined to reduced costs related to fewer imprisonments and lower rates of recidivism. The reduced imprisonment figure for Western Australia is based on the Victorian study's assumption that prison days would reduce by 25% if one quarter of Aboriginal defendants appearing before Aboriginal court magistrates received non-custodial sentences...

The reduced recidivism figure is also based on an assumption from the Victorian study. Recidivism is reduced from 32.6% to 14%. A caution with regard to these assumptions is that the Victorian experience is probably not long enough (only about two years) to accurately reflect changes in recidivism rates...

*Findings: The benefit cost ratio for the introduction of an Aboriginal court in Western Australia servicing 88 finalised defendants per year is at 2.5 to 1. That is for every dollar spent on the operation of an Aboriginal court, the State of Western Australia will save at least \$2.50...If more than one Aboriginal court is established, then the cost and benefit figures will both be amplified by the number of courts, leaving the benefit cost ratio the same...*²⁷

Notwithstanding the above analysis, a major argument of this paper is that cultural benefits cannot be entirely measured numerically. Within this context we may observe the actual workings of contemporary Indigenous courts and consider how the designed environment might influence their effectiveness. Sitting in on Indigenous courts' sentencing hearings and listening to comments about the experience by Aboriginal participants, one is struck by certain recurrent themes, including the hope that all participants will better understand the circumstances and the legal process, thereby

²⁷ Ibid.

leading to Aboriginal people's decreased alienation from the justice process and in turn greater acceptance of it.

Other themes include: the reintegration of offenders with their community; a measured process of traditional shaming as well as inspiring individuals to make changes; the realization of effective alternative life choices; and directly tackling issues of causality by following up causal circumstances after sentencing.

On occasion magistrates have been able to, on advice from elders, select single gender panels of elders to handle cases that would traditionally be dealt with by either the men or the women elders. While this approach may, at face value, appear antithetical to contemporary western social values, it nevertheless recognizes mutually accepted and understood values in some areas of customary law and may therefore more effectively effect changes in the behavior of the individuals concerned.²⁸

The reaffirmation of the respect and authority of traditional community elders and "respected persons" is clearly also a major facet that contributes to the reassertion of the integrity and dignity of the Aboriginal community. Importantly, all of these shifts are taking place within the context of the Australian single justice system and the same legal platform that applies to conventional sentencing courts throughout the country. Contrary to ill-informed commentary by some, the Indigenous courts have in no way introduced a second set of laws for Aboriginals; rather, the prescribed role of the elders is in an advisory capacity only, allowing their legal participation within the established legislation, criminal code, and court protocol.

Few of the attributes of the Indigenous court and its success relate to the physical environment, suggesting that this factor is of secondary consideration to the important social and cultural dynamics. Yet might the designed environment not enhance those social and cultural dynamics nevertheless?

If the key to the documented successes of the Indigenous court is the reclaiming of at least part of the court process by Aboriginal people, it indicates that the issue may be one of ownership. By this we mean the emotional, intellectual, and cultural ownership of the law, its administration, its consequences, and its implicit responsibilities—and of course the physical places in which this all happens.

²⁸ I sat in on a series of sentencing hearings in one of the recently formed Aboriginal sentencing courts in Western Australia (known as the "community court") and witnessed one case in which a male offender was requested by the magistrate to take follow-up counseling that was to be organized by a representative of the Aboriginal Legal Service (ALS), also present. The magistrate asked the ALS lawyer to try and ensure that such counseling would be provided by a male if possible. Similarly, are cases when a female will be far more sensitively and effectively dealt with by other women. It was explained to me by one of the senior Aboriginal men serving on the community court panel that under customary law, a wife should never call her husband abusive names and equally a husband should not exercise physical violence over his wife. In instances where either or both have occurred, the woman should be dealt with by the senior women and the man should be dealt with by the senior men. The recognition and accommodation of such values in the contemporary western legal process is a sensitivity that costs nothing, does not contravene mainstream law, and may mean the difference between the current legal process being accepted and effective or completely ineffectual.

So in answer to the question posed at the start of this section, “Is Culture Relevant to Effective Justice Delivery?” and from the above discussion, there seems to be a case for arguing that in the right context, culture may be very relevant to effective justice delivery.

Aboriginal Aspiration to Integrate with Mainstream Society and Move Beyond Traditional Custom and Law

An outsider to an indigenous culture cannot make assumptions about the relevance or degree of relevance of customary practices to Aboriginal communities, no matter how well researched or well intentioned. Aboriginal people are by and large striving for equality and acceptance into mainstream Australian life and aspirations to express or revive traditional aspects of their culture are not universally shared by all members of their own community. A considerable subtlety of understanding is therefore needed. I discussed this question in 2008 with one extremely skillful Aboriginal elder serving on the panel of elders for one of the new Aboriginal sentencing courts in Western Australia. He advised me quite forcibly that the Aboriginal community cannot “go backwards,” that Aboriginals cannot and should not revive customary law, and that they must instead learn to integrate their customs with contemporary ways.

When these views are expressed by such intelligent and active members of the Aboriginal community, they cannot be ignored. I observed this same man in action, serving next to the magistrate and counseling one offender after another in a series of sentencing hearings of the Aboriginal court. His impressive skill clearly encompassed not only an appreciation of Australia’s mainstream legal process but also a thoroughly intimate ownership of, and affinity with, many facets of the desert culture to which he belonged. (He was born in the desert and raised on a mission.)

To one offender from the remote Warburton community who refused to answer any of the questions posed by the magistrate, he spoke very quietly “in language.” This elicited the first response anyone was able to gain from the offender. As he progressed, he persuaded the offender to participate meaningfully in the dialogue, gaining his trust as he went. At one point he referred to the magistrate by a gesture and used a term of reference thoroughly embedded in the subtle law of the desert. It was clear that the exchange between the offender and him was completely infused by that vast and interconnected landscape of understanding of ancient etiquettes that govern behavior between kin.

The direct use of individuals’ names is still widely avoided in traditional Aboriginal culture (except where close specific kinship ties permit such intimacy). In my work in the desert over the years, I have been frequently astonished by the natural and habitual knack of the desert people to refer to each and everyone by descriptive identifiers based on role or relationship to avoid direct use of names. I listened to this Aboriginal panelist as he spoke “in language” to the young male offender. When the panelist came to refer to the magistrate, who sat to his immediate left, he broke briefly into English and referred to the magistrate simply as “*this one here*,” not “*Her Worship*” and certainly not by name. This subtle nuance of reference authoritatively affirmed the proceedings as being

embedded in—and relevant to—the culture of the young man present. It was an instinctive and natural gesture that powerfully communicated to the offender that the magistrate was to be accorded all the deference and respect due to a “law person” of his own culture.

Thus when we speak of a culturally literate approach to justice reform and to architectural design, we must understand customary law with sufficient depth to realize that it encompasses a vast field of cultural dimensions. These range from language, world view, kinship relationships, etiquette, and all the subtle attitudes attached to these, to the facets possibly more commonly associated in the public mind with customary law, such as “spearing” and “payback,” punishments often cited as examples supporting the indiscriminate abandonment of Aboriginal law.

Aboriginal culture and law are so interchangeable, pervasive, and subtle that their wholesale abandonment would be tantamount to an abandonment of identity.

Question 2:

Can Architecture Help?

Contemporary Architecture: Overview of the Art and its Theory

The following discussion offers a brief survey of some significant points of reference in the practice and theory of architecture in the last hundred years, in order that the original ideas espoused in this paper may be understood in the context of contemporary architectural thought.

Modernism

The history of Western architecture has seen an evolution of stylistic language over centuries, with traceable continuity. By the nineteenth century, architecture was largely a visual art that drew upon an established canon. The buildings for civic institutions might be expected to be composed within known and understood syntax, drawn from completely developed styles such as classical, gothic, and occasionally—towards the end of the nineteenth century—elements of the oriental.

Throughout the twentieth century, there were many great upheavals in architecture—many movements and “isms.” Modernism, in its various guises and phases saw the abandonment of historic style as the basis for design. New forms based on the embrace of new construction techniques and technical capabilities led to a climate in which the building of a courthouse, city hall, church, university, or other recognizable institution—or, for that matter, an apartment or office building—no longer drew upon mutually understood historical templates. One type might look much the same as another. At its best, modernism gave us buildings of elegant and gracious simplicity.

Two views of the courthouse designed as part of the Federal Center (1959–1964) in Chicago by German - born American architect Ludwig Mies van der Rohe. This elegant project represents the realization of many of Mies's ideals. The universal problems of architectural enclosure and construction have been reduced to a universal solution of breathtaking simplicity. (Photographs by the author)

Postmodernism

No sooner was modernism finding its most mature and resolved expressions than a school of architectural thought arose that reasserted the importance of known and inherited architectural language and style. The significance of architectural form was vigorously emphasized to comprise an understood and shared language, in which its known motifs and recognized traditional patterns of composition served as meaningful “signs” that were culturally relevant and mutually understood.

Postmodernism frequently sought to use traditional architectural elements (be they pediments, arches, quoins, and so forth) and assemble them in nontraditional compositions, thus “saying” something new in an old—and known—language. The results were simultaneously familiar and unfamiliar, and sometimes quirky.

One practicing proponent of the postmodern agenda, Allan Greenberg, wrote about the relevance of this viewpoint to the design of courtrooms in “Symbolism in Architecture: Courtrooms.”²⁹ Greenberg had designed the Manchester Superior Court Building for the U.S. state of Connecticut in 1978–80. This project was built as a conversion of an existing supermarket, and employs classical language to emphatically assert the building's (new) civic function. At face value this approach appears antithetical to the

²⁹ Greenberg, “Symbolism in Architecture: Courtrooms.”

aesthetic of the Chicago Federal Center by Mies van der Rohe, but it is arguably no less valid.³⁰

Greenberg's playful deployment of once familiar classical elements is described by noted architectural writer Charles Jencks as showing:

...an appropriate use of the classical language, but here the Mannerism is more low keyed...

Jencks follows with a description of the various playful variations on the established use of classical visual language apparent in the work, and concludes:

*...but the meanings most apparent to the public are those of municipal classicism. Because Greenberg's language is so close to stereotype, some may miss his creativity altogether.*³¹

Manchester Courthouse by Allan Greenberg. Traditional features such as quoins extend to become string courses and widen in their length towards the base. The keystone of the arch is entirely disconnected from the arch it purports to support, demonstrating subtle deviations from the norms of classical architectural language.

Sociological and Psychological Models for Architectural Design

At much the same time that modernism was yielding its most mature fruit and postmodernism was emerging, another school of thought found its voice in the writing of Professor Amos Rapoport, who published in 1969 his seminal book, *House, Form and Culture*. This influential book opened a dialogue about cultural variety in architecture throughout the world, pointing to the way housing form may be a fusion of influences that include local climate and construction techniques as well as the subtleties of regionally distinct cultures. Amongst his many academic activities in this area, Rapoport prepared reports on housing to the World Bank in 1980.

This understanding of the relevance of cultural diversity to architecture is work that has been continued more recently in Australia by a limited number of academics working in

³⁰ Actually, many have commented on an innate classicism in the work of Mies van der Rohe, manifest in the strictly disciplined rhythmic ordering of columns and the use of proportion, along with compositions built upon the classical ideas of base, middle, and "entablature." Mies admired and was influenced in his early career in Germany by neoclassicist architect Karl Friedrich Schinkel.

³¹ Jencks, *Architecture Today*, 145.

the field of architecture and Aboriginal culture. Amongst these are architect-anthropologist Dr. Paul Memmott³² at the University of Queensland and academic Dr. Elizabeth Grant of the University of Adelaide.

These academics have studied architecture as it relates to traditional Australian Aboriginal culture and have drawn what lessons they can from Indigenous construction techniques and camp layouts. However, with precontact Australian Aboriginals having left no sophisticated architectural legacy, the work of the current generation of Australian thinkers in this field has of necessity operated in a different intellectual paradigm to that offered by Rapoport. Significant lessons are drawn not so much from extant native architectures as from behavioral and psychological studies, with the implications of these to architectural design then being inferred or proposed.³³

This approach most closely resembles the direction my own design work has taken. It frees one from the passing fashions of a style-bound conception of architectural endeavor. When the material facts of an architecture are reduced back to the fundamentals of “shelter” (in all its dimensions), a new clarity arrives. There remains then a simplicity that allows much-needed room for significant facts to emerge and to be elegantly expressed.

This is an approach that allows buildings to take any variety of appearances, by focusing instead on the more profound levels at which architecture acts on the human consciousness, both as individuals and as groups. It would be fair to say that in the popular mainstream, in which achieving the single arresting image is often the driving consideration for both architect and client, this demanding approach to design is neither widely practiced nor understood. As a way of understanding architecture, this approach may encompass any regional variation in construction or stylistic tradition and remain equally vitally relevant.

³² See Memmott and Chambers, *TAKE 2: Housing Design in Indigenous Australia*.

³³ Grant’s work in particular has often addressed matters confronting the architecture of correctional institutions from Indigenous perspectives. See: Grant and Memmott, “The Case for Single Cells.” This paper looks at the benefits of privacy for inmates that may be achieved with single cells, and the need for emotional support from a range of relatives or surrogate kin as may be found in the dormitory situation. Grant comments on the failure of the prevalent practice of “double-bunking” to satisfy either of these two conflicting needs, particularly at night. This model of commentary places great store in the observation and understanding of the cultural/psychological imperatives driving traditional domiciliary behavior of Aboriginal people.

Project by the author 2003: Residential Art Studio in semi rural bushland North of Perth. When the material facts of an architecture are reduced right back to the fundamentals of shelter, a new clarity arrives.

In May 2009, the World Bank in Washington DC convened a high-level conference on justice reform. Senior World Bank justice-reform specialist David Bernstein presented a talk on courthouse refurbishment projects sponsored by the World Bank in Eastern Europe. In one simple but striking example, he showed photographs of some unadorned regional courthouses beautifully finished out internally in timber. In all regards but one, these courthouses were traditional but unexceptional. The unique innovation was the introduction of full height glass screening between the public gallery and the courtroom. This design device provided complete visual connection between the public and the court proceedings, with an intercom speaker providing a one-way auditory connection between court and gallery. This was a simple but completely effective response to the tendency of the Romanian public towards disruptive verbal interjections during proceedings. Thus, through a culturally observant approach to architecture, the transparency of trial was maintained, but a problematic local cultural trait accommodated.

How Architecture Might Facilitate a Culture-Based Approach to Justice Delivery

The following attributes of architecture find parallels in significant characteristics of Aboriginal culture. As such they may offer us points of connection for the two.

Place

The significance of place has always held primacy in Aboriginal culture. Every place is significant for reasons spanning the metaphysical, economic, and social matters involving custody of the land.

Visual Art and Associations

Architecture is a visual art. The visual art produced by Aboriginal artists across Australia continues to awe the art world with its inventiveness, intuitive sense of beauty, mastery of the relationship between form and texture, merging of form with field, and unique and spiritual potency. There is nothing alien to Aboriginal culture about the idea of a visual art arising from and giving life to deeper and otherwise invisible cultural realities. In this matter, we architects have much to learn from the Indigenous artists, and not the other way around.

Performance Art and Ritual

The performance arts of dance, music, theatre, and storytelling not only survive but are growing and evolving amongst the Aboriginal arts community. Architects design spaces to accommodate specific activities and perceptual aims in equal measure. Therefore, in our work, before we even think about designing an Indigenous court, we have on occasions invited Aboriginal communities to suggest alternative, culturally relevant ritual elements that might resonate with participants perhaps even more effectively than those currently employed, which are an adaptation of a culturally alien model. If we understand the events of the court as a participatory “performance,” our vision of the type of environment that is required might be enriched by the adoption of radical new design directions: darkness, lighting, anticipation, sound, and setting—these are the elements of effective ritual.

Artifact and Construction

While one of the first observations of Aboriginal civilization made by white colonists was an apparent lack of significant construction, the designed artifact has always held a place of high esteem in traditional Aboriginal culture, with gifts, for example, traditionally traded from the Pilbara (in the north of the state) to the southern coast of Western Australia. We may find lessons in the modest functionality of traditional construction. Perhaps our court constructions need, in the end, to be little more than the tents sometimes erected for that very purpose “on country” for remote legal hearings. Sincerity, usefulness, and relevance may be more important than impenetrable aesthetic or legal logic.

A traditional Martu “Wiltja” shelter, an ingenious construction from bent and tensioned saplings, providing privacy and shelter from wind and sun. This one at Parnngurr, Western Desert, Western Australia. (Photograph by the author)

Culture-Specific Spatial Behavior

In my own work as an architect, I was engaged continuously for over eight years (1995–2003) in many remote traditional Aboriginal communities in the deserts of Western Australia. During this time I studied as much as I could assimilate from the writings of, and meetings with, leading anthropologists and linguists who had opened up our understanding of traditional Aboriginal culture in the very regions where I was working.

After some time it became increasingly clear that one need not contrive unusual looking buildings (in pursuit of an Aboriginal “look”) nor indulge romantic white notions about “Aboriginality” in order to go more deeply into Aboriginal culture and to adapt our work as architects to these circumstances. It became possible to understand many culturally unique actions and perceptual constructs in terms of their external manifestations as culture-specific spatial behaviors.³⁴

This approach enabled me to remain on the firm ground in which I was expert and yet respond with great sensitivity to some of the most profound and unfamiliar facets of Aboriginal culture. Many of these attributes are discussed later in this paper but suffice it here to note that the way we lay out rooms and spaces for occupancy, properly considered, will be profoundly influenced by such important facets of Aboriginal culture as:

- kinship and relationships
- language and communication
- connection to country
- customary gender issues
- “shame/deference” (*gunta*)

There are many others. Aboriginal culture has always been and remains deeply defined by complex and extensive relationships among kin. These relationships vary in their imposition of duty on individuals, ranging from obligations to support and provide for certain kin, to relationships of deference, to some particular relationships governed by an obligation to avoid and not communicate with specific others.

These complex webs of obligation are mutually understood by the participants and strongly influence where and how people will position themselves in occupied space in relation to each other. Extended family from young children to old grandparents will in large numbers attend events such as law business, funerals, and trials in court. Facilities designed to cater only to Western paradigms inevitably fail to accommodate such culturally driven needs.

³⁴ Kirke, “*Designing for Spatial Behaviour in the Western Desert.*”

Redesigning the Conventional Courthouse According to Cultural Dimensions

The Broader Court Environment

The Aboriginal sentencing courts are unique. They operate on a limited basis, partially due to the far greater investment in resources needed, as each sentencing hearing takes in excess of 20 minutes compared with the rapid-fire processing of a conventional magistrates court.³⁵

For all their success, the Aboriginal courts have not found universal favor in the justice system. Therefore it remains relevant to look also at conventional courts and question whether their format might also be better attuned to relevant cultural realities in the Aboriginal community. This section considers the potential to adopt a culturally informed approach to the design of a whole range of conventional justice facilities, that is, to extend a cultural literacy to our activities as architects and law reformers beyond the Aboriginal sentencing court.

The Courtroom: An Exercise in Choreography

In most countries that have adopted Western-derived justice systems, a range of different courts coexist, each administering different jurisdictions. The differing composition of participants and procedural variations in each of the court jurisdictions are what lead to the necessary differences in the physical environment of the courtrooms. Of course overlaid on top of a functional analysis are the layouts and forms handed to us by tradition.

But the members of the judiciary themselves are rejecting many of these traditions. The presence (or not) of the coat of arms, the prescribed number of steps up to the judge's bench (and to the dock, the witness and the associate), and the relative position of dock to witness stand to counsel to bench to jury box and so forth are all coming under increasingly open and critical scrutiny by those who conduct their daily business in these rooms. The judiciary also are traveling and visiting courts in Europe and elsewhere. Thus a culture exists at present in which possibilities are being thrown wide open; tradition alone no longer prescribes, unquestioned, how a courtroom should look.

³⁵ Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, 132: "Because of the greater participation in the proceedings and the adoption of an holistic approach to the rehabilitation of the offender, the Commission acknowledges that Aboriginal courts are more resource intensive than mainstream courts. For example, the Koori Court evaluation report observed that a Koori Court may deal with between five and ten matters per day compared to about fifty matters in a general court."

The architect is being increasingly thrown back onto first principles and his/her ability to understand what is really going on in that room, and what, therefore, matters most in composing a physical environment for the conduct of the law.

Interior views of the dedicated Aboriginal Courtroom in the Commonwealth Courts in Adelaide, South Australia (Architects: HASSELL). The format of this room breaks entirely with the traditional layout of courtrooms. All participants sit “in the round” in a manner replicating traditional Aboriginal seating during customary problem solving and law meetings. This courtroom has become so popular in the overall complex that many judges seek to use the Aboriginal courtroom for all their trials and hearings, Aboriginal hearings or not. Illustrations by the author (India ink and watercolor).

It is customary to describe the environment of the courthouse in terms of the relative arrangement of the key physical features: the judge’s bench—so many steps up from the court room, the witness stand, the location of the dock, and so on. However, we shall argue that the reality of the courtroom is the human drama, a drama that plays out in a strictly choreographed and ritualized set of exchanges between the key players. This is the law in action. Having come together for a matter of minutes (magistrates courts), hours, or days, the accused, prosecutor, legal counsel, judge or magistrate, witnesses and jury where applicable, press, and public are all brought momentarily together into an

intense and highly managed set of complex relationships, each with the other, for the duration of the trial.

What is transacted among these players will influence the human process of perception, intuition, comprehension, instinct, and judgment. This is the real court space—the space of a community of consciousness.

All the physical and spatial attributes of the courtroom follow and support this complex, ritualized human engagement. The subtle manipulation of space can directly affect the interactions that may be enabled, provoked, muted, or silenced. In cross-cultural environments where traditions are at variance with the British-derived justice model, an analysis from first principles is the only effective approach to design.

Architectural Spatial Technique

The following discussion introduces some of the specific spatial techniques architects use to modulate the way human beings relate in space. The techniques are illustrated with an analysis of the spatial arrangement of selected elements of the typical courthouse.

Proximity and Distance

In the intensity of encounters in the courtroom, very small modulations of distance between the players can have profound effects. Too close to the witness and the accused in custody can intimidate; too far from judge or jury (or too close and out of easy sight lines) and the demeanor of the witness cannot be read and gauged, the subtleties of facial expression being as important as the words uttered.

The recent advent of “therapeutic” or “problem-solving” courts has shifted the dynamic again. The increasing use of hearings and mediation has moved a greater portion of court business to a table. Here the players can discuss on an equal eye level with each other, where nonverbal cues can be read and better understood. Here also it is possible to reduce the psychological intimidation of participants by the process and regalia of a full court. These attributes all need to be incorporated into the psychology of the environment. Yet even in this environment, especially in family court hearings, latent human emotion can be explosive and conditions of security must somehow be achieved.

Modulations of Ground Plane

The courtroom typically deploys subtle variations in floor height for the public, dock, witness, jury, associate, and judge. This is an example of the spatial separation device using continuity and discontinuity of floor plane. The traditional reason for raising the judge was, and remains in part, the creation of a tangible separation that offers physical safety to the judge, as well as presenting a sense of gravitas. Importantly, however, raising the heights of key participants ensures clear sightlines among all involved.

Barriers and Openness

The cabinetwork of the dock may vary from the relatively open “box” to “better-safe-than-sorry” docks with glass enclosures and other additions.

Lines of sight are persistently the most critical and the most challenging of the spatial geometries that must be achieved in the courtroom. Counsel questions the witness and addresses the jury, and the judge or magistrate controls his/her courtroom and must have visual command of the entire environment. The jury must be able to observe the witness and preferably also the accused. Establishing optimal lines of sight among these players is a tight and unforgiving exercise in geometry and varies with every courtroom design depending on its size and the number of players in each role.

Services

As the range of technology has increased, courtrooms have typically failed to adapt and benches have become cluttered with computer monitors. Sometimes the judge can barely see his/her court past the screens on the bench. Printers and fax machines invade the space under the bench for the associate, leaving no room for legs and creating much distracting noise to proceedings.

Environmental Conditions

On the matter of environmental elements, sightlines and noise have already been mentioned. Certainly also the hermetically sealed courtroom is going out of favor and the benefits of psychological relief to be gained with natural light and views to outdoors are being accepted.

Courtroom interior in the Commonwealth Courts in Adelaide, South Australia (Architects: HASSELL). This softly curved space has generous horizontal windows giving views out to the Adelaide hills beyond the city. Controlling the adverse impact of glare with such extensive glazing required a scientifically based assessment of differential lighting levels provided to the interior of the room by the overhead electric lights so that they are balanced with the light levels experienced through the windows. Illustration by the author (India ink and watercolor).

Space, Culture, and Psychology

Having understood some of the tools at the architect's disposal, it becomes possible to reexamine key cultural issues that have been identified in the course of this study and consider ways in which the design of the court environment may be directly relevant.

Language and Space

As courts enter cross-cultural environments, allowance must be made for inclusion of translators both for the witness and the accused in custody. There are many different living languages in the Australian desert to this day. For a significant proportion of remote Aboriginal populations, English is a second or even third language. Yet these people, except in very rare instances, continue to be tried in courtrooms in the language of the British empire. It is occasionally necessary for two translators: one to translate from one dialect to a second Aboriginal language and a second from that language into English, if competent persons in the languages at hand can even be found. This issue persists especially in the courts of regional Australian towns (especially Western Australia, South Australia, and the Northern Territory). The witness stand and the dock must therefore be sized to allow for potentially two translators each; thus the furniture changes again.

As the Indigenous court enters the broader domain of the problem-solving courts, the intercultural variations on acceptable personal space muddy the waters again. How close is too close for any given culture? In Australian Aboriginal culture, the degree of permissible eye contact—if permitted at all—varies between different kinship relationships. Moreover, in speaking of kinship relationships in Aboriginal culture, we are referring to a complex social-ordering network that extends to cover every inhabitant of the desert, not just immediate blood relatives.

In discussions with the Aboriginal community court panelists in Kalgoorlie, one of the men observed:

A round table would be better than the existing one - (the existing one is about 900mm wide – a long rectangle with rounded ends) - People on opposite sides of the table are too close.

When asked about right distance, he indicated by gesture approximately two meters.

Traditional Aboriginal desert society possesses and may deploy a large number of nonverbal sign language gestures in communication.³⁶ Aboriginal court panelists have remarked to us on the ability of the accused in the dock to communicate with the witness and/or members in the public gallery by signs, including threats, undetected by the white magistrate and others in the same room in close proximity. They emphasized the need to maintain sufficient distance between the dock and the witness and public to manage this, which has a direct impact on the spatial planning of the courtroom.

³⁶ Tonkinson, *The Mardu Aborigines*, 35: “Throughout the Western desert, the Aborigines also employ an elaborate sign language. Kendon (1988:4) says of the culturally similar Warlpiri (whose repertoire exceeds fifteen hundred signs) and other central Australian groups that they possess ‘probably the most complex alternate sign language ever to have been developed.’”

Human Stress and Fair Trial

We have learnt from representatives of Aboriginal Legal Services that the stress felt by the accused is so extreme prior to appearing before the magistrate and during the trial that as often as not, a lawyer must explain to the accused the outcome of the trial even after it is completed. Worse still, in an interview with the concerned president of a regional Western Australian Law Society, I was told of instances in which the design of the existing court building itself was the reason that convicted defendants were regularly denied a debrief interview with their lawyer following trial and conviction. The absence of regulation-compliant, noncontact interview rooms was cited as the reason that lawyers were not permitted to see their clients after the trial, when the defendant was convicted and taken directly into custody. Many such Aboriginal defendants have not even understood that they have been found guilty and therefore not at liberty to leave, and their confusion and distress cannot be alleviated by their lawyer, who cannot have access to them for many hours.³⁷

And yet we create the very environmental conditions in which are placed the people who interact and play out the intense and all too real ritual of the trial under law. We have seen how these environments may exert subtle influences on what is transacted and what, as a consequence of the proceedings themselves, finally transpires. Yet human beings are physical beings, and our senses and perceptual faculties are not immune to the persuasions of environment.

The Significance of Kin

In the Aboriginal court the attendant family are no longer irrelevant onlookers but active—if often silent—participants in the ritualized process of shaming (*gunta*)³⁸ that is taking place. One of the Aboriginal elders on the community court panel in Kalgoorlie observed with characteristic simplicity and clarity that in the conventional magistrates court, the accused faces the magistrate with his/her back to family in the gallery behind. She observed that under this arrangement, the accused can more easily lie to the magistrate without the awareness of watching family to weigh upon him. Around the oval table of the Aboriginal court, however, the presence of family is all too obvious; the ancient restorative power of *gunta* stirs and cannot be evaded.

And of the tensions between families and individuals in the gallery, might not our environment manage these also, and with understanding and compassion? Another of the Aboriginal court panelists asked quietly that our building be “compassionate.” How can a building be compassionate?

³⁷ I was later told by others that this problem had been overstated, as the lawyers could subsequently access their clients once they were delivered to prison, where interview facilities were available. However, statistics indicate that a person in custody is at greatest risk of self-harm (suicide) in the first 24 hours.

³⁸ “Gunta” is a Western Desert Aboriginal word for which there is no English equivalent, though it refers to something approximating shame/respect/culturally inculcated deference.

We have, therefore, where possible arranged the gallery into two separate halves with an aisle down the middle. This is a simple device, but one that allows the families to self-manage their seating and to effect discreet separations without difficulty.

The Psychology of the Public Domain

Courthouses designed in the modern, functionalist 1970s feature tight and efficient planning. Halls, lobbies, and corridors are no larger than they need to be and the shortest distance between two points is always in a straight line. Planning of the public domain as “circulation” might seem to be efficient, but in reality it ignores a whole realm of human activity, contemplation, and interaction that is central to the cultural and actual life of a justice complex.

Interior view of Melbourne Commonwealth Courts. (Architect: HASSELL). The interior is organized around a high multilevel enclosed atrium. The courtrooms are on one side of the atrium linked to chambers across the void by bridges. The atrium itself is visually connected to the outdoor environment with a large high-level glass wall at one end. This open spatial concept gives the visitor an instant and constant appreciation of his/her position and orientation within the whole complex. The impression is one of great clarity. Illustration by the author (India ink and watercolor).

Court managers and users agree that so much of a visit to the courts is actually all about waiting. Last minute instructions from client to counsel take place in these in-between spaces. Negotiated settlements are struck, counseling is proffered, and quiet moments of reflection are all utterly inseparable from the human function of a courthouse but fail to find their way into the brief upon which the architect is instructed by the government works department to build.

The public domain marks the arrival, the first and critical experience of a visit to a court. The public domain reveals the order of the whole; it may be clear, legible, knowable, and calming, or it may be labyrinthine and intimidating

The public domain includes the outdoor spaces as well as the indoor. Certainly it includes the outdoor approach, where people meet, greet, wait, and enter, and the inevitable security checking zone (which can be quite space consuming and which is now becoming an accepted part of our society). Yet could it not also include significant outdoor gardens, courtyards, and natural relief within the secure domain? The reality is that connection to nature is calming:

The garden is the most important thing – relax the feller.

Aboriginal community court panelist during design consultation
March 2008

The more choices in places to settle and wait—and through which to navigate alternative routes into, through, and out of a courts complex—the easier it is for visitors to self-manage hostilities between parties. This applies also to actual legal restraining orders that have on occasion made it impossible for one party to leave a building, as the other party waits on the front steps smoking, an injunction preventing the two parties from coming within a certain distance of each other.

Given the nature of traditional Aboriginal culturally determined kinship separations, it is the public area of the courthouse where these most need to be acknowledged. Properly conceived, the public domain might be the central organizing principle of the design of an entire courts complex, as it frequently sets the character of the architecture and of the overall experience.

View of the Commonwealth and Aboriginal Court complex in Adelaide, South Australia. (Architects: HASSELL). This imposing and elegant structure is situated on the main city square in the heart of the city. Its neighboring buildings are fairly conventional and the protruding green copper clad form in the immediate foreground has attracted admirers and bewilderment alike. The curved copper form recalls the curved copper domes of classical Europe and works perfectly against the foil of the panelized glass facade of the main courts building. The dedicated Aboriginal court is situated inside the green curving bulge and has a lovely soft interior quality with no corners and extensive views out to the Adelaide Hills. Illustration by the author (India ink and watercolor).

Security: A Culture-Based Approach

To Bring about Engagement in a Managed Way

The whole cultural side you can really only get by immersion...There are the cognitive aspects; It is one thing to design for security, but how do you make people feel safe?

Ray Warnes, Executive Director, Court Services
Western Australian Department of the Attorney General, March 2009³⁹

Security is a significant aspect of the design of the courthouse. By its very nature, the business of the courts is conflict. However, the security risks of the courthouse and the means for mitigating them through design are quite unique. We have done much work for the Australian Defense Department and various correctional institutions. Yet while there are similarities, the approach to security in each case is really quite different. It may not be too much of an oversimplification to say that for Defense, we design to keep people out;⁴⁰ for Corrections, we design to keep people in. For the courts, however, we

³⁹ Personal communication March 2009.

⁴⁰ Kirke, *The Architecture of Defense*. See ch. 7, from p. 65 on.

design to let everyone in and most of them out, and for all of them, we design to bring about their engagement, in a managed way, while they are in. This is complex. We will highlight just a few key aspects, with our focus on the human/social and cultural dimensions.

Security at the Main Public Entry

Traditionally many nineteenth-century courthouses comprised a series of individual courtrooms, each of which had its main entry directly on the public street. The street, in these cases, served as the public domain to the complex.⁴¹ In these days of heightened security concerns, however, court management is increasingly opting for a single major public entry with a formidable, technologically supported security threshold utilizing all the bulky scanning equipment found at major airports. This may be a passing mood of the times. In any case, it remains possible to undertake security checks at the entrance of individual courtrooms⁴² and leave the major public entry free and less confrontational. This matter is likely to remain the subject of ongoing debate that involves a broad spectrum of attitudes.

It is interesting to consider, however, that many people associated with courts have reported to us that simply knowing that everyone else in the complex has passed through a significant security check is in fact a great comfort and contributes to a sense of safety for those who are scheduled to confront a perpetrator, or conversely, for the accused who may—with good reason—fear reprisal from family members of alleged victims.

Either way, this new addition to the architectural ensemble can be notoriously difficult to retrofit in the modest lobbies of some older buildings or to meaningfully integrate into the design of new courts. The security apparatus can take up a lot of space, and clutter the sense of arrival.

The Melbourne Commonwealth Courts designed by HASSELL tackled the problem head-on and moved the security inspection space outside of the main volume of the building and marked the entry transition with a symbolic “threshold” arch, amplifying the sense of entry sequence. Thus when one finally does enter the main volume of the building, that sense of immediate arrival is not then marred by the need to pass through a complicated array of detection machinery, as that has already been done.

The notion of whether major front security was going to be intimidating, particularly to Aboriginal people, was explored at length in our consultations with Aboriginal representatives of the community courts. One idea volunteered by the Aboriginal panelists was that an elder be placed at the front door to greet Aboriginal people, a suggestion that was supported by a number of the Aboriginal contributors to the courts.

He could be marked as Law Man and ‘wear the band.’

Aboriginal Legal Service Lawyer

⁴¹ For example, the Melbourne Supreme Courts.

⁴² Using “wands” or other less obtrusive hardware than a full X-ray machine and walk-through scanner.

Other reactions caught us by surprise:

Our people jump on aeroplanes all the time and are used to security.

Aboriginal Court Officer Warburton⁴³

Separate Entrances

It is usual to provide separate, controlled entrances to and from the building for the more vulnerable users, including the judiciary, the witnesses, jury members, and persons in custody. In these cases, the monitoring of those entrances, placing them discretely but not onto an uncontrolled external space, becomes the challenge.

The Commonwealth Law Courts in Melbourne. Architects: HASSELL. The security screening space is a transparent glass box sitting connected to, but in front of, the main building, ensuring that the clutter and annoyance of the security screening process is completed by the time the person enters the building proper. A ceremonial entry “arch” signals the act of entry, formalizing the whole procedure. Illustration by the author (India ink and watercolor).

⁴³ Western Australia is a vast and sparsely populated state and small aircraft are used extensively to access remote communities.

Secure Circulation

Without a doubt, the single most difficult aspect of designing the contemporary courts complex is the now-accepted standard of providing completely separate and secure circulation routes for up to five different classes of users and visitors. These are:

- the public
- the jurors
- the prisoners
- the judiciary
- vulnerable witnesses

The laws of geometry themselves eventually rebel at the complexity of this task and occasional compromises (where two routes do in fact cross over or commingle) not infrequently occur, even in purpose-built, new courthouses. In these cases, it is necessary to choose which crossovers are likely to be the least problematic. Secure locks can allow even a judge to cross the corridor of the prisoner, and this occasionally occurs, though it is not desirable. In the Kalgoorlie courts complex, we introduced an intermediate level that cleverly allowed all routes to get to where they need to without crossing; the higher than usual, floor-to-floor height of the 100-year-old building we were annexing made this device feasible.

High-rise court complexes use quite different planning techniques than do single story or low rise variants. In these the emphasis is no longer on long corridors, but instead on clustered vertical lift and stair shafts—one for each of the five classes of user, each grouped to serve a pair of adjacent courts, on each successive level.

Sunshine Courts Victoria. (Architects: HASSELL). This single story court complex groups each pair of courtrooms between shared landscaped courtyards. Courtrooms facing onto courtyards have offset screened windows to prevent overlooking from one courtroom into the other. A similar device was deployed in the planning of the Kalgoorlie Courts. Illustration by the author (India ink and watercolor).

One of the great difficulties in planning the contemporary courthouse is that by the time each courtroom is ensnared in the entrails of five corridor systems, it can be fiendishly difficult to also provide a window or courtyard for natural light and relief. Nevertheless we have developed some models that can achieve even this.

Security Within the Public Domain

The enhancement of security within the public domain can be achieved on three fronts:

- **Technology** is now proliferating, with security consultants placing innumerable cameras and other devices throughout our designs;
- **Management** choices remain a key element, and court staff have often told us that they would feel more secure with uniformed guards regularly patrolling than with any equipment at the front entrance;
- **Spatial planning** for security mobilizes the social dimensions of occupied space to achieve security, an often overlooked approach that may be the cheapest and most effective of all the options. This is discussed below.

Designing Social Space to Achieve Security

The term CPTED was coined in the 1970s and remains in currency today. Denoting “Crime Prevention Through Environmental Design,” it entails a range of spatial planning methods that are subtle but effective in their action. The significance of this approach lies in the potential for an understanding of human culture and behavior that offers significant benefits in security, an area sometimes assumed to be manageable only by electronic technology.

The importance of managing social space through design was illustrated well by the Aboriginal Manager for Aboriginal Policy and Planning in Western Australia, who, in 2007, told us:

Too often the perpetrator and victim are forced into close proximity ... 90 percent of victims are women... and there are the families also, each supporting their own. Too small a space doesn't allow “avoidance” (customary kinship avoidance behavior) and time to turn and avoid ... Even just the feeling of being cramped.

An introductory explanation of some of the key concepts of CPTED follows.

1. **Employ Defense-In-Depth:** This principle involves placing the most vulnerable assets or persons in a location deeper within the built volume. However, this means that there are more successive spaces that must be crossed, more barriers along the way, and the chances of delay, detection, and interception are greater. Thus while facilities for vulnerable witnesses will inevitably be accessed from

within the public domain, they can be deeper inside it in such a way that the greater volume of human traffic does not ever gravitate there.

2. **Deploy Natural Means of Direct Visual Surveillance:** A well-observed and inhabited space is a safe one. Planning to avoid unnecessary obstructions to natural surveillance while still allowing discrete and private waiting areas is achievable and important.
3. **Create or Exploit Natural Territorial Definition:** This principle entails the provision of spatial cues that facilitate cognitive boundaries, enable a well-occupied space to be self-monitored, and allow individuals and groups to maintain a degree of controlled space for themselves. It is not necessary to have an impregnable barrier in all cases; a territorial boundary marker may be enough. This strategy relies upon a space being reasonably well populated for the self-monitoring to take effect.
4. **Create or Exploit Natural Physical Controls To Access:** Where heightened control or safety needs to be achieved even within the generally accessible public domain (that is, for publicly accessible though sensitive areas such as victim support and witness facilities), one may place successively more sensitive areas deeper within a space, either behind a series of thresholds (barriers), simply further from the busiest public areas (distance), or on different levels within a building (discontinuity of ground plane).

Technology: the New Space

Increasingly video-conferencing technology is allowing for hearings and trials to be conducted with remotely located witnesses. This is especially useful in the case of child or vulnerable witnesses or for witnesses in prison. Hearings are even occasionally being conducted entirely remotely, with the presiding magistrate or judge located in a different town from the rest of proceedings. In our experience, the trend now is towards equipping all courtrooms and conference rooms with video conferencing.

In the vastness of the Australian outback, Australians have demonstrated an enduring tradition of innovation over the last century. One example is the “School-of-the-Air,” which provides two-way radio schooling to remote children, with pedal-powered generators driving wireless equipment in the first half of the twentieth century. Another example that is deeply embedded in the psyche of all Australians is the Royal Flying Doctor Service, founded in 1928 by Reverend John Flynn making use of just one small plane. That service operates to this day. The use of remote video conferencing for trials is another innovation in this tradition.

When one regional center has particularly long lists, the magistrate at another regional center, who may be thousands of miles away, can pick up some of that load. It does, however, introduce new challenges, in that subtle nuances of expression and other

nonverbal cues discussed above are much harder to detect and respond to using these media.

Custody and the Myth that Security and Prisoner Well-Being are Mutually Exclusive Considerations

The subject of design for custody is an entire field in itself. For the purposes of this paper, we might draw attention to two prime—and sometimes competing—considerations:

- security; and
- prisoner well-being

Contrary to a view sometimes expressed, these two need not be mutually exclusive.

From 1987–1991, an Australian Royal Commission into Aboriginal Deaths in Custody examined the disturbingly high incidence of such fatalities.⁴⁴ Causes of death included high incidence of suicide, natural causes, medical conditions, and, on occasion, injuries by police. The Royal Commission made 339 recommendations covering a wide range of areas, from policing issues to matters involving custodial safety, education, employment, cultural maintenance, government policy, customary law, health, and Aboriginal-non-Aboriginal relations. The Commonwealth and all state and territory governments have been required to produce reports stating what they have done to implement the Royal Commission's recommendations.

Many actions followed this landmark study, including a thorough revision of the physical design of the custody environment. Designs to prevent the availability of hanging points, to ensure as far as possible direct line-of-sight observation from the police or courts personnel overseeing the person in custody, and to provide for a natural outlook, fresh air, and the opportunity for a degree of free movement all feature in the recommendations. The proposals also extend to managing opportunities for family visits.

Still we have been repeatedly told by people within the system that key recommendations cannot be implemented, that, for example, contact between prisoner and family might not be permitted. Yet one of the young trainee Aboriginal officers with the Kalgoorlie Aboriginal Legal Service stated the need plainly:

Often times families drive long distances in from remote communities when their juveniles are to appear before court; they desperately want to talk to their juveniles and can't do it. This is especially hard when they have come in from the Lands.

And so, we as architects, still encounter resistance and skepticism when we seek to incorporate direct and meaningful design measures that respond to the unambiguous and

⁴⁴ See the Royal Commission into Aboriginal Deaths in Custody. "The Royal Commission found that, although the rate of Indigenous deaths in custody did not exceed the non-Indigenous rate, the number of Indigenous deaths in custody reflects the over-representation of Indigenous people in custody."

well-founded recommendations of the Royal Commission.⁴⁵ The Royal Commission's effort was in fact followed in 2005 in Western Australia by the Mahoney Enquiry⁴⁶ and the Western Australian Law Reform Commission, both of which have served only to reiterate many of the same findings.

One of the Aboriginal lawyers of the Aboriginal Legal Service at Kalgoorlie several times approached me to plead that we design an outdoor space in a suitable location that would permit the accused to have a cigarette shortly before appearing before the Magistrate.

Clients are generally worried about going to jail and are stressed out and/ or agro; in this state they can't listen effectively when in court. So the ability to have a smoke is needed – Can you allow a space near the courts holding cell.

If we listen to what we are being told in such consultations, we start to find the answers to the challenge: how can architecture be compassionate? In the Kalgoorlie courthouse design we included two small landscaped courtyards attached to each of the holding cells immediately outside the magistrates courtrooms. These provide visual relief, a calming outlook, fresh air, and the opportunity for a smoke just before appearing before the magistrate.

Let us not underestimate, however, the breadth and depth of cultural change that is needed, and let us not overstate the potency of architecture alone to effect these changes. In the words of one of the Kalgoorlie Aboriginal elders, a woman whose note of skepticism is both widespread and justified:

Number one: we should be recognized; Number two: it still doesn't give us any power.

⁴⁵ The recent death of an Aboriginal man in the un-air-conditioned van of a contracted private security-service provider being transported 360km to Kalgoorlie in 40 degree (Celsius) heat has, in recent times in Western Australia, only served to reawaken widespread grief.

⁴⁶ Mahoney, *Inquiry into the Management of Offenders in Custody*.

Case Study: The Kalgoorlie Courthouse

Background

In 2007 we⁴⁷ were engaged to undertake exhaustive consultation leading to the design of a major contemporary courts complex in the remote regional town of Kalgoorlie, in the heart of Western Australia's productive gold fields. At the time of writing, the project had been completed to detailed design development phase. There are encouraging signs that we may yet soon build it, more or less as designed.

The Kalgoorlie Courts Project includes three magistrates courts, two jury courts, and a range of mediation, registry, and other support facilities. The site is the heritage-protected, historic limestone Warden's Court and Post Office building in the heart of Kalgoorlie's heritage precinct. This brief presented a range of challenges, which many considered insurmountable.

The Existing Historic Wardens Court Building that forms the site for the proposed new courts complex.

Design Challenges

Major design issues centered on:

- The physical and cultural constraints of fitting the highly complex programmatic and technological requirements of a contemporary courthouse into a nineteenth-century building.
- The constrained nature of the highly urban site.
- Cultural sensitivity to the diverse needs of Kalgoorlie's Indigenous and non-Indigenous populations and court users, who are often from strongly tradition-oriented communities and outstations.

⁴⁷ This refers to the author as design architect working with HASSELL, in collaboration with Professor Graham Brawn (Melbourne University), along with architect and custody-design specialist Lin Kilpatrick and architect and heritage specialist Kevin Palassis Architect.

Many of the stakeholders, including the Department of the Attorney General, the Western Australian Chief Justice, and the local Indigenous community, shared a strong desire for the project to make real, positive advances in translating genuine cultural expressions and needs into the design of the courthouse. As noted above, the urgency of addressing these issues has been expressed over many years in reports such as the Royal Commission into Aboriginal Deaths in Custody, the Mahoney Inquiry into the Management of Offenders in Custody, and the Western Australian Law Reform Commission.

A Culture-Based Approach

Customary Kinship Law and Space

Amongst traditionally oriented Aboriginal groups, every occupant of the spaces we design will be obliged to behave, in relation to every other person in that room, according to a mutually understood and sophisticated web of kinship law and behavior. This includes relationships of mutual obligation as well as some specific “avoidance” relationships. Aboriginal culture seems to have included an understanding of particular relationships that may be prone to tensions and are therefore preemptively restricted by injunctions on contact. The most common of these is the relationship between son-in-law and mother-in-law.

There are numerous instances in which our courts system causes conflict in Aboriginal society, for example, by unwittingly imposing upon a woman the necessity to testify as a witness in a case concerning a son-in-law. Many existing courts provide inadequate waiting areas, forcing people of customary avoidance kinship relationships to sit in close proximity. These circumstances will at the very least cause distress, if not trigger actual punishment under customary law when they return to their respective communities.

Other cultural factors confronted in this project include language and the ways in which communication in the courtroom space may be hampered, if not disrupted, by inappropriate spatial solutions. It has already been noted that English is a second or even third language for many Aboriginal people from the Western Desert Lands, and both witness stand and dock may need additional space for one if not two translators.

Personal space and acceptable distances between people of differing kin can affect nonverbal communication cues, including eye contact and sign language. This has a direct implication for space planning. Other factors include customary gender-specific injunctions on areas of the law.

And finally the whole subject of art—the multidimensional meanings of form and visual language in architecture—cannot be successfully conceived of without close collaboration with the Aboriginal people who are to be the users of our conceptions.

Connection to Country and Space

Sensitivity and a spirit of collaboration were our aims for the Kalgoorlie Courthouse from the outset. At its heart, the design has inverted usual architectural thinking by making the outdoor spaces the central organizing principle of the project. From making these outdoor spaces work appropriately and comfortably for traditionally oriented Aboriginal people (as well as for the non-Aboriginal Kalgoorlie population), the built elements have derived their form and qualities.

The scheme is organized around a central linear landscaped courtyard spine. On one side is the historic Hannan Street building and on the other side the proposed new single-story building. The courtyard elevation of the new building will be fully glazed, with large folding wall panels, enabling both the public domain and the courtrooms themselves to dissolve into landscaped outdoor areas. The complete separation of the old and new buildings allows the greater part of the generous outdoor domain to be situated entirely within a secure zone, defined by and contained within the two parallel wings of the complex.

View of proposed Central Linear Landscaped Courtyard Spine. Illustration by the author (India ink and watercolor).

A landscaped arrival forecourt outside the secure zone provides a central point from which both wings of the complex may be appreciated and accessed. This forecourt is situated at one side of the site and set well back from the street line of Hannan Street. Its 90-degree reorientation to the point of arrival enables large family groups—which often

include young children—to arrive and wait in safety and privacy, discreetly away from the commercial street. It also gives access from two directions: from busy Hannan Street and from a well-used laneway to the rear of the site.

Proposed landscaped arrival forecourt—set well back from the main commercial street to provide privacy for large extended families who arrive and meet when a loved one appears before the courts. Illustrations by the author (Illustration left: colored chalk. Illustration below: India ink and watercolor).

The design also locates specific functions—for example, the registry—on the Hannan Street frontage to activate the street and ensure a civic relationship between the building and the city it serves.

Ceremony versus Accessibility

The higher courts—the more traditional and ceremonial jury courts—are to be located in the old building, taking advantage of its existing grand internal spaces and civic architecture. The new building will house the busier and more accessible (“inferior”) magistrates courts. All three magistrates courts are at ground level, directly accessible from the secure, landscaped central courtyard. This allows the large number of people and their supporting families to wait immediately outside their scheduled courtroom, either in the enclosed public waiting area or in the fresh air (the general preference). The direct proximity of an outdoor waiting area to each court means that people scheduled to appear may be easily found and called when their turn comes up. It is also intended to avoid the need for names to be called over public address systems, as the direct use of individuals’ names is still widely avoided in traditional Aboriginal culture (except where specific close kinship ties permit such intimacy).

Each magistrate court also has its own private courtyard exclusively associated with that courtroom, allowing proceedings to take place with direct access to fresh air, light, and visual connection to native bush gardens. This is achieved without compromising the privacy and integrity of the hearings.

One of the magistrate courtrooms has been designed to permit maximum flexibility in its modes of operation. The usual tables for legal counsel have been replaced with a single elliptical table. This serves perfectly well for legal counsel during a usual court, but can also transform into a conferencing table for mediation and for the innovative Aboriginal court procedure called the “community court” in Western Australia. The community (Aboriginal) court has a courtyard sufficiently large to allow proceedings to take place out in the garden if appropriate.

Aboriginal Collaboration in the Design Process

Extensive consultation with the local Aboriginal reference group continued throughout the schematic design and design-development process—canvassing, testing, and retesting a range of design solutions to cultural questions and paradoxes. Only through such depth and sustainment of engagement could a proper appreciation of cultural subtleties and their direct impact on spatial planning be appreciated and tested.

Out of this process evolved the entirely original design concept that subtly provides alternative access routes, both onto and throughout the site, to allow for traditional respectful Aboriginal kinship avoidance behavior. Alternative access routes also facilitate the self-management of occasional hostilities between parties. Clear visual surveillance of one’s social and natural environment is designed into and throughout the entire complex, ensuring easy management of security. Anthropological research and

analysis determined the actual distances required for cultural behaviors to ensure that the spaces function effectively when large numbers of users and their families and supporters have to wait or occupy the complex for long periods of time.

The design lacks any extravagance and is efficient and inexpensive (for the court building type), in addition to solving the seemingly insoluble planning problems outlined above. The originality of the architectural solution that came out of sustained and sincere cultural engagement astounded and delighted the Aboriginal community, the Chief Justice of Western Australia, the judiciary, the Attorney General (AG) and the AG's entire department, and the Western Australian government architect, as well as the broader community of the town.⁴⁸ This latter was no small achievement and signals the power of this new approach to architecture.

Worth noting also is that the subtle qualitative improvements to the court environment that we achieved through deep cultural engagement with Aboriginal people has resulted in an environment that is also altogether more approachable and humane for non-Indigenous people. The reasons for this invite deeper thought. Meaningful engagement with Aboriginal culture is awakening us to subtle, culturally inherited understandings of social balances that might offer benefit to broader society. Aboriginal Australia, far from being an intransigent problem that needs to be "fixed," may—given a chance—suggest unique solutions.

With understanding, the solutions to so many problems may be incredibly simple. As an example, nothing in all the design innovations we implemented in the Kalgoorlie Courthouse project appear overtly "Aboriginal" in nature or origin. In fact this is a deliberate quality that the Aboriginal people themselves were consistently emphatic about throughout the design process, as they were conscious of the sensitivities of the white population of Kalgoorlie and anxious not to offend or draw further attention to themselves.

Circulation Systems, Security, and Cultural Inclusiveness

The near impossible circulation requirements of the contemporary courthouse, with five fully independent circulation systems that never cross, has been fully achieved within the constraints imposed by the old building and its extension. The leading role that Aboriginal elders play in the judicial process is acknowledged and formally celebrated, with an elders' meeting room associated with the community court directly off the judicial circulation route.

Colonial Heritage

The truly unique achievement of this project has been the balanced respect accorded to both Indigenous and colonial cultural paradigms in the one built complex. New

⁴⁸ The wider support of the town was gained only after extensive, sustained, and patient consultation in animated public meetings.

construction is generally kept entirely discrete from the original colonial heritage building. This approach will enable the building to be completely restored to its original condition without offending extensions and accretions, and allow the handsome structure to be appreciated “in the round,” as its original designers had intended.

Environmentally Sustainable Design

Opening up the public domain to the landscaped courtyards, in combination with zoned air-conditioning, makes it possible to naturally ventilate the entire public domain, saving on air-conditioning costs for a large portion of the year. The courtrooms may also be fully opened up and the air-conditioning shut down. An underground labyrinth precools ambient air, thereby decreasing the size of the plant and the amount of energy needed to run it.

Conclusions

Law and the culture of law find their expression in the many facets of the law’s institutions. One of the most visible of these is the architecture of the places in which the legal process is enacted. Through architecture it is possible to communicate widely variant cultural perspectives on the rule of law. The potential scope for the architecture of justice institutions is limited only by our willingness to explore new possibilities.

The instruments of law are neither fixed nor absolute. In the post colonial world, we have had ample opportunity to begin to understand the immense achievements of other cultures, and to see the not inconsiderable achievements of our own culture, as one in a family of human achievement. Anthropologists, sociologists, linguists, and many others have furnished us with the tools necessary to implement a new, culturally literate understanding in our many endeavors as law reformers, architects, and agents of economic development. That we should do so has become all too obvious to an increasing number of educated professionals across many disciplines, though there is continued resistance at political and administrative levels.

Because generation after generation of Aboriginal families in Australia continue to suffer at the hands of an inflexible justice system, in inappropriate environments, the need to make such insights a practical reality remains. When we cease to view Aboriginality simplistically, as a problem, and instead begin to see it as it really is—in all its dimensions—perhaps we might together embark on something entirely new. And if this enterprise is successful, we shall find, as in all previous phases of our culture, that a new cultural era will be distinguishable by its own new and distinctive architecture.

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Author Profile

Philip Kirke is a practicing Design Architect based in Perth, Western Australia. He holds a Bachelor of Architecture (Honors) from the University of Western Australia. In the early nineteen nineties he worked on community architecture projects in inner city Manchester UK with Ian Finlay, chairman of the RIBA Community Architecture Group. At that time he gained membership of the Royal Institute of British Architects, of which he remained a member for many years.

Reviewer and intellectual partner, Catherine Gartner, holds University degrees from the prestigious University of Western Australia in Anthropology, Psychology and Law and is a registered nurse. Gartner has worked in legal advice and advocacy in the mental health field since early 2009.

Kirke's architectural practice has had a particular focus on cross-cultural projects including extensive work with traditional Australian Aboriginal communities across the most remote regions of Western Australia, particularly in the Western Desert and in the Kimberley. (1995 to 2003). His work in this field has been published in International Conferences and in a monograph book published by the Royal Australian Institute of Architects: *"TAKE 2: Housing Design in Indigenous Australia"*. (2003). Kirke's work on cultural-based approaches to the design of Courts and Justice facilities was featured in his major article, *"Kalgoorlie Courts Project"* published in, *Architecture Australia* Sept/Oct 2009, AIA in an issue of that journal dedicated entirely to the design of Courts:

Working with the Commonwealth Government design arm and subsequently GHD, Kirke was a principal design architect for the \$200M Christmas Island re-building program, (1993 to 2001), designing, amongst other things, a new \$18M school for the diverse multicultural community, (comprising Chinese, Malay, Indian and European children). His work is characterized by careful study of significant cultural and perceptual attributes of the community groups he designs for as a prime determinant of environmental design. This approach was extended to the completed design of the Kalgoorlie Courthouse (with HASSELL) over the period 2007 to 2008. Not yet built, the ground breaking design of this project ensures that cultural appropriateness informs and infuses every aspect of the architecture.

In May 2009, Kirke travelled to Washington DC, USA, as an invited guest of the World Bank. Senior Vice-President and General Counsel of the World Bank, Anne-Marie Leroy, had convened a conference to share leading edge information on trends and lessons learned in legal and justice sector reform and projects in governance, anticorruption, private sector development and social and human development. Kirke's work as a design architect working in both community and justice facilities, was recognised as representing an approach which seeks to engage with and incorporate indigenous cultural principles. He presented a tutorial to senior World Bank staff which drew on experience gained over many years working with remote traditional Aboriginal communities in the Western Desert of Western Australia.

That presentation was subsequently published as a book: ***The Shelter of Law: Designing with Communities for a Culture of Natural Justice*** . (ISBN 978 0 9775243 4 1) which brings together the fields of Architecture, Law and Aboriginal Studies. This book proposes a holistic approach to the design of Justice facilities. The discussion takes a perspective on community development which is rooted in culture and in community empowerment. Along with Kirke's previous books, "***The Architecture of Defence: 36 Strategies***", (ISBN 978 0 9581699 7 4) and "***The Architecture of Perception***" (ISBN 978 0 9775243 0 3) it is now found in University libraries in Australia, Canada and the United States.

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Title	Author	Number
The Landscape of Local Authority in Sierra Leone: How “traditional” and “Modern” Justice and Governance Systems Interact	Ryann Elizabeth Manning	1
Challenging Generations: Youths and Elders in Rural and Peri-Urban Sierra Leone	Ryann Elizabeth Manning	2
Exploitation of Poor Communities in Sierra Leone: False Promises in Reconstruction and Development	Ryann Elizabeth Manning	3
Justice Versus Peace in Northern Kenya	Tanja Chopra	4
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Framing Local Justice in Bangladesh	Maitreyi Bordia Das, Vivek Maru	8
Access to Justice and Legal Empowerment: A Review of World Bank Practice	Vivek Maru	9
Culture-based justice architecture: Building community well-being through deeper cultural engagement	Philip James Kirke	10

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