

COURT ARCHITECTURE and THE JUSTICE SYSTEM

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Abstract

The past century has seen a significant expansion of dedicated courtroom buildings in two separate but comparable countries, Portugal and Scotland. The architecture of both countries embodies different national and civic values. In the case of Portugal, two particular types of building are encountered with design driven by the varying demands of central Government. The first of those types comprises structures erected during the period of the dictatorship from 1926 to 1974 with a stress on the nobility of justice through monumental buildings with accompanying decoration and symbols of justice. The more recent period has seen a less homogeneous approach with both purpose-built and adapted buildings often providing spaces of mediocre quality, limited decoration and justice-related symbols. In Scotland the earlier 19th century buildings followed the design preferences of local professionals and what was produced were, for the most part, either classical Greek temples of justice or neo-Baronial strong houses of the law. In both cases the buildings were typically unadorned by symbols of justice. Recent centralization has altered that flexibility. In the 21st century in both Portugal and Scotland the expressed need to reduce expenditure on such public services, through the device of court reform, is in danger of altering the role of the courts as expressions of national or civic spirit. Here governments are seeking to economize in a way which contrasts with more expansive and design-centred approaches taken in such countries as France and the United States.

Keywords: Court Architecture; Portugal; Scotland; reform, closure, international comparison

Introduction

Interest in the significance and impact of the spaces in which justice is formally dispensed has grown in the recent past. There have been extensive studies of the development of courts in individual jurisdictions (Graham 2003; Mulcahy 2011; Robson and Rodger 2018) as well as overarching assessments of the whole panoply of justice and its symbolism (Resnik and Curtis 2010).

This collaborative chapter outlines how the spaces of justice have developed in recent times in two small jurisdictions: Portugal and Scotland. Two small and semi-peripheral European countries, with similar geographical areas, variable geomorphologies (seacoast and inland zones), and in the same time zone. Even if history, legal systems (civil and common law), legal traditions and local legal cultures differ, both countries have – as other countries do too – court systems based in geographical judicial organisations (judicial maps) where the courthouse building is the visible symbol of such organisation.

But why Portugal and Scotland? Firstly, the interest in analyzing two countries ‘off the beaten track’, meaning going beyond the usual examples covering the USA, Britain or even France, which have been extensively examined but seem to ‘hide’ or ‘shadow’ what has happened in other, smaller, countries. Secondly, comparing two countries coming from different legal traditions is more illuminating than examining each country singularly. Such comparison provides a broader picture of the development and current situation of the court buildings in civil law/continental jurisdictions (Portugal) and in common law jurisdictions (Scotland is also interesting because its legal system is particular, containing civil law elements). Furthermore, both countries suffer the pressures resulting from the collision between regional and local levels deriving from being part of the European Union. And both share a border with a large influential neighbour (Spain and Britain, respectively). Thus the national legal system is jealously guarded but wider global political and financial pressures impact on the ability of the

system to retain their distinctiveness. This impacts in its court buildings too. Thirdly, each country has developed characteristic architectural designs of the court buildings in different historical periods and under different political regimes. However, in the recent past both have experienced the implementation of large-scale reforms aiming to increase the efficiency and efficacy of the judicial system, by reorganizing the judicial maps¹, reducing the number of courts and digitizing court procedures, within a larger context of austerity measures² and reductions in public expenditure. Thus, comparing Portugal and Scotland helps better to understand the current dynamics affecting legal systems, and the courthouse buildings, in terms of austerity policies combined with managerial policies concerning the quality and effectiveness of the judiciary, and its (visible) impacts.

1. The importance of the courthouse buildings

In accordance with fundamental democratic principles we not only need to know there is a court where we can bring our legal issues against individuals and/or public bodies, but we also need to be sure that the building in which such a court functions is adequate to meet our demand for justice. Therefore, in a handbook on law and courts the physical representations of justice embodied in courthouse buildings cannot be avoided. On the contrary, it is an important theme on the agenda, because the architectures of these buildings reveal a great deal about the ideologies and consequent representations (political, institutional, professional, cultural, symbolic and social) on which the judicial process is based and the dynamics of power in trials and hearings (Mulcahy 2011; Branco 2015). Thus, courthouse architecture is not incidental, since the (observable) aesthetic (and symbolic) dimension of architecture (as well as judicial rituals and robes) serve the purpose of reinforcing authority, legitimacy and recognition of an

¹ Cf. <https://rm.coe.int/comparative-study-of-the-reforms-of-the-judicial-maps-in-europe/168078c53a> (last accessed 27th November 2018).

² See Dias (2016) on the influence of the *Troika* (European Union, International Monetary Fund and European Central Bank) in shaping judicial reforms in Portugal, especially from 2011 onwards.

institutional order in the guise of the judiciary (Haldar 1994). The success of the multiple activities on which the practice and application of justice are based depends on its buildings, architecture(s), facilities, internal organisation, state of maintenance and accessibility (whether geographic, which has to do with urban planning, road and transportation networks; or physical accessibility, meaning access to and within the building). Therefore, the architecture of the courthouse is an essential element for the administration of justice.

In this respect, and given the increasing relevance of the subject, the European Commission for the Efficiency of Justice (CEPEJ) established a set of guidelines on the organization and accessibility of court premises. CEPEJ (2014) considers it essential that plans to construct or renovate judicial premises must be drawn up in such a way as to ensure the provision of high-quality justice and to take into account the expectations of the users. Hence the importance of reflecting on the buildings that the courts inhabit, their flexibility and technological capacity, and the current plans for change.

In the next sections we will discuss the situation in Portugal, followed by Scotland.

2. Portugal: a variety of courthouse buildings in the 21st century

Portugal is a small country on the Iberian Peninsula, with a population of around 10 million people, living in a total area of about 92 thousand km². The Constitution of the Portuguese Republic makes a distinction between civil and administrative jurisdiction. Portugal's civil jurisdiction, in the courts of first instance³, and since 2014, is divided into 23 court districts, called *comarcas*⁴ each with a main judicial court based in the capitals of the existing administrative districts (which are 18 plus 2 autonomous regions, the Azores and Madeira

³ The hierarchical structure is also formed by five courts of second instance or courts of appeal – *Tribunais da Relação*; and a Supreme Court of Justice (in Lisbon). There is also a Constitutional Court and an Auditors Court. The administrative jurisdiction has a similar hierarchical structure.

⁴ There are also subject-matter jurisdiction courts of first instance that have territorial jurisdiction over several *comarcas* (penal supervisory courts; maritime court; intellectual property court; concurrency, regulation and supervision court; and central criminal procedure court).

Islands). Each of these court districts is divided into central and local court departments or *instâncias* – such division has to do with jurisdictional rules of competence based on territory, the relevant legal issue and value of any claim. The central court departments have jurisdiction over the geographical area corresponding to the court district and are divided into civil, criminal, and specialized sections or *juízos* (such as commercial, family and children, criminal and labor etc.), and are usually in the central municipality of the administrative district. Cases not allocated to the central court departments are processed by the local court departments, which have general jurisdiction sections divided into civil, criminal, petty crime, and proximity sections, in the other municipalities of the area corresponding to the administrative district.

2.1. A brief retrospective of the Portuguese courthouse

We can classify Portuguese courthouse architecture into six main periods (Nunes 2003): 1. Itinerant Justice (12th - 15th centuries); 2. The emergence of a primitive architecture of justice (16th - mid-19th centuries); 3. Town Halls (*Casas da Câmara*) and Convents (from 1820 until mid-20th century); 4. The Palaces of Justice of the ‘New State’ (from 1934 to circa 1980); 5. Contesting Templates (1960s to 1980s); and 6. Post 2004.

Firstly, as shown by the dates, some phases relate to different political regimes, revealing a concurrence and continuity of architectural trends and programs in relation to the court buildings. Secondly, there were two major active periods of construction and installation of courts: the period between the 1950s and early 1970s (during the dictatorship); and the 1990s, especially the last few years of that decade, coinciding with the first European Community support frameworks. This rise in construction and installation of buildings after the Democratic Revolution (1974) coincided too with an increase in litigation, a specialization of justice and the consequent need to find new spaces for the courts created by legal reforms. We also note a move from the urban centers towards the city peripheries (mainly with the adaptation of

residential blocks, concentrated in the outskirts of the cities). Most of the courts located in the central part of the cities were built between 1950 and 1974, while the courts located on the peripheries were built or installed after 1995.

The sixth and most recent period is marked by the reduced number of purpose-built court premises (mostly after 2004, as in Sintra's case – image 1), which coincides with the onset of the economic crisis. It is also connected to a new strategy regarding the planning and management of the courts, based on a costly leasing policy⁵ and the re-use of other buildings, such as commercial or residential blocks. This is also linked with the creation of the 'campus of justice' concept, an attempt to concentrate services related to justice in a certain area of the city, which were dispersed in different parts of the town.

Image 1 – Sintra (Comarca de Lisboa Oeste, 2004)



Source: Patrícia Branco

2.2. A Fascist regime and its political propaganda: creating project-types for the courthouse building

⁵ 13 million Euros per year, concerning 45 buildings (Ministério da Justiça 2018).

In Portugal, the period of courthouse construction, as shown, does not coincide with the Scottish one (as will be discussed later) or with the ‘paradigmatic’ examples of France and Britain, which began earlier (18th and 19th centuries), and have been at the core of the studies concerning courthouse architecture. Lisbon is one of the few European capitals where the courthouse edifice was only built during the second half of the 20th century. Authors like Nunes (2003) claim there was no courthouse architectural program in Portugal before Salazar’s *Estado Novo*⁶ (or ‘New State’, the dictatorship period, which lasted from 1926 to 1974).

It was during the ‘New State’, mainly from the 1940s onwards, that the regime tried to put an end to what were called "Slum Courts" (*Tribunais Pardieiro*), lodged in buildings that did not have the required dignity to embody and represent the power of the regime, aiming to be seen as solid, durable and impressive, hence the creation and construction of a network of public premises at various levels. The idea of an agenda for the court system, overseeing a detailed architectural program serving as an instrument of the regime’s propaganda, where the description of the spaces of justice was clearly defined, was a strategy led by the Directorate General of National Buildings and Monuments. Forty-seven of these courthouses were designed by the same architect, Rodrigues Lima, who established a project-type for the buildings (many of which were built by Prison Work Brigades), based on an architectural grammar known as nationalist classicism, mixing the cosmopolitanism of the modernist style with elements of local identity (Oliveira 2016; Moniz and Bandeirinha 2013). A good example is Oporto’s Courthouse (image 2).

Image 2 – Oporto (Arc. Rodrigues Lima, 1961)

⁶ For a detailed analysis of Salazar’s *Estado Novo* see Pinto and Rezola (2007).



Source:

https://commons.wikimedia.org/wiki/File:Raul_R_Lima_Pal%C3%A1cio_da_Justi%C3%A7a_Porto_3445.jpg#/media/File:Raul_R_Lima_Pal%C3%A1cio_da_Justi%C3%A7a_Porto_3445.jpg

This project-type had a great impact in terms of the image of what court buildings should look like: usually a two-storey building, with clear demarcation between the services to be installed on the ground floor and the court on the upper floor. Such model, not only because of its iconic power, but because these buildings are still operative today, continues to mark collective ideals regarding courthouse buildings. This all has a negative effect on the capacity to rethink these spaces in democratic times (Moniz and Bandeirinha 2013).

2.3. Multiple architectural profiles vs. standard internal organisation

The Portuguese courthouse buildings present multiple profiles in the 21st century, defined by the co-existence of different architectural styles from different periods. We have courthouses whose model is relatively standardized, identifiable by the monumentality of the buildings (in terms of architecture, decoration and symbols). The use of robust materials (like marble) also confers a sense of durability and nobility to these courts.

This model, inherited from the dictatorship period, coexists with another, characterized by the variations in the buildings, either built during the last phase of the regime (where architects tried new templates, marked by a certain experimentalism) or after the Democratic Revolution of 1974. It is not easy to identify an architectural trend; furthermore, the designs have not always been successful, and some of the boldest architectural proposals later raised problems in terms of security, maintenance and flexibility plans.

Secondly, these profiles center around the construction of purpose-built premises and the adaptation of other buildings (hindering the possibility of a larger architectural intervention and resulting in spaces of mediocre quality), that can either belong to the Ministry of Justice⁷ or to private bodies through leasing schemes. Moreover, in the more recent buildings the use of cheap and low quality materials is noticeable, together with the disappearance of decoration and justice-related symbols. At the same time, the buildings present a high level of homogeneity in relation to the courtrooms, circulation corridors and other internal configurations of the building, since the functional program is basically the same, elaborated in the *Estado Novo*. The vast majority of courtrooms are rectangular in shape. The judge's table, along with the Public Prosecutor's and barristers' tables, sit on a raised platform, occupying different levels (which can be clearly seen given the height and shape of the chairs reserved to each profession), separated from the public zone by a barrier. The court official's table is also inside the closed off area, beneath the platform. Parties, experts and witnesses have a reserved area outside the barrier, right in front of the judge's line of sight. As far as furniture is concerned, the most used in the courtrooms is the functional type (office like), followed by classic style furniture (older courts).

⁷ The process of setting up a court building begins with a request from *Instituto de Gestão Financeira e Equipamentos da Justiça* to *Direção-Geral de Administração da Justiça* to develop a brief. This brief takes into account caseload, the human resources (judges, prosecutors and court staff), and needs.

2.4. Current times and looking ahead

In May of 2018, the Ministry of Justice announced a Strategic Plan for the Requalification and Modernization of the Courts Network, to be implemented in the next decade (2018-2028), with an estimated budget of 275 million Euros. After examining 300 court buildings, the Ministry concluded there are many deficiencies in the courts' estate and significant investment in maintenance and renovation is urgently needed. The Ministry hence foresees the construction of courthouses buildings in the main metropolitan areas of Lisbon, Oporto and Coimbra, as well as the revamping of many buildings in the other 20 court districts.

In such context, the reorganization of the judicial map needs to be taken into account.

In less than a decade, Portugal witnessed three reforms of the judicial organization (map), in 2009, 2014 and 2017, respectively; and the one implemented in September of 2014 had intense effects in terms of the judiciary's territorial and management organisation. One of the most criticized aspects of this reform was the closure of 20 courts – a modest number if compared with what happened in other European countries, but we need to take into account the particular characteristics and geography of the country as well as the existing infrastructure (transportation, technology, buildings) – which took place mainly in the interior and rural part of the country. At the same time, other 27 courts were transformed into sections of proximity. With Law no. 40-A/2016, the 20 courts that had been closed in 2014 were reopened in 2017, but transformed into sections of proximity which, although not being full courts in the traditional sense, perform some judicial functions, in particular local hearings in criminal proceedings have to take place there now, as a rule. These proximity sections are installed in the courthouse buildings of the previous *tribunais judiciais* in those municipalities.

Actually, one of the most critical problems concerning the reorganization of the judiciary services in 2014 was the lack or insufficiency of adequate court facilities. The existing buildings were not prepared for the new organization, since no new courthouses were built and

the Ministry of Justice only carried out some renovation work in a few buildings, that were not ready by the time the reform was implemented. Finally, many courts suffered from a shortage of space, not only in terms of receiving files from the closed courts, but also in terms of an insufficiency of courtrooms and hearing rooms. This is actually an old problem, that requires improvised solutions like adapting available rooms, when and if these are available, to function as courtrooms (Branco 2018). Additionally, given the insufficiency of the facilities noted, some courts have been temporarily moved to provisional premises, such as containers, offering poor working conditions to magistrates and court staff, and inadequate public areas to the users.

The Ministry of Justice, in the absence of a centralised design guide for courts, indicates the core elements of its 10-year plan: 1) greater flexibility of the buildings to maximize the use of space; 2) increase the number of courtrooms; 3) the adaptation, where possible, of spaces for larger hearings/trials; and 4) ensure, where possible, individual offices for the magistrates (as well as central archives for the court district, and unidirectional viewing rooms at the headquarters of the *Comarcas*, particularly for family hearings involving children).

The primary aim of the Ministry's plan is to reinforce the passive security of the premises; to improve the detention areas in the courts; to eliminate all existing architectural barriers (accessibility); and to improve the energy performance of the buildings, offering better technological support tools (Ministério da Justiça 2018). Actually, the use of digital technologies through the digitization of procedures has been often criticized, given the poor functioning of ICT, the lack of equipment, and the inadequacy of the buildings for their correct installation and use, thus the importance of this issue.

3. Scotland: a variety of courthouse buildings mainly from the 19th century

Consistent with the situation in many other countries – e.g. USA, France, and Belgium, as noted above - construction and consolidation of the justice estate in Scotland largely took place

in the 19th century. Despite this basic spatial, architectural and geographical regularisation of the system, the history since has been one of regular reassessments of needs and adaptation of resources. Arguably the most significant aspect of these constant changes is the relationship between the physical presence of the justice system and the evolving political configurations which have the power to establish and shape that presence.

At the time of writing in 2018, Scotland with a population of 5.2 million and an area of 80,000 km², has some 39 local courts and a major appeal court dealing with civil matters located in the capital, Edinburgh. The local courts also deal with most criminal matters while very serious matters and appeals are dealt with by the High Court of Justiciary, normally in either Edinburgh, Glasgow or Aberdeen. This arrangement has been in operation for the past 400 years with only minor additions to the number of the courts and closures on occasions (Robson and Rodger 2018).

Looking at the development of the exterior and interiors of all the courts in Scotland at the start of the second decade of the 21st century a number of issues emerged. The shifting from ad hoc and shared courtroom premises was, until the 19th century, a local matter depending on initiatives from local politicians, professional and business people. Obtaining dedicated court premises required the expense and complexity of a local Act of Parliament process. This meant that the construction and improvement of local courts was a matter of local action or inaction and many courts remained in non-dedicated or shared premises (Robson and Rodger 2018). According to the Sheriff Court Houses (Scotland) Act 1860, sheriff court houses had to be provided by the local state - County Councils and Court House Commissioners. This was subject to control by the central government who could override a local decision not to erect a court house.

This central Government check, however, did not constrain the local Commissioners as far as choice of architect was concerned and a range of styles from neo-classical to Scots baronial was adopted, with the former style predominating in the period 1830-60 and the latter from the 1860s onwards (Robson and Rodger 2018). The Commissioners continued to have discretion as to whom they chose and how they made this determination. The watchword continued, however, to be maintaining control of costs throughout the process, once an architect was agreed. Changes in local Government organisation introduced in 1889 meant that henceforth the role of the Court Commissioners was assumed by the County Councils and costs were met from local property taxes (Whetstone 1981).



Although the 19th century represents the peak of building one might suggest that the location of the spaces for justice has always been in a state of flux. Just as the new courts opened in the

19th century reflected the development of new and growing urban centres like Airdrie and Kilmarnock so in the 20th century some 10 courts closed. The developments in the 20th century were limited. There has continued to be closures of a number of courts across the country on an *ad hoc* basis as their business declined. The closures occurred spasmodically for local reasons rather than as a result of a Scotland-wide strategy.



The opportunity to consider “the number and distribution of sheriff courts” arose when the Grant Committee was appointed in August 1963. This was part of its terms of reference which ranged into the function of the sheriff court, its organisation, practice and procedure as well as rights of appeal and what changes might be required to secure the speedier, more economical

and satisfactory disposal of civil and criminal business. The problem as they saw it was the variations in volume of work and frequency of court sittings and how this related to the distribution of population which was not standard across Scotland. Since they acknowledged that Scotland could not be chopped into uniform sheriff court districts serving similar populations and with similar amounts of work, they approached the problem flexibly. They thought it desirable to identify “local centres to which people travel to work or to do their shopping or to do their business and then (attempt) to decide how many of these local centres need to be court towns”. This did not produce radical solutions since as they pointed out the courts had “grown up, over a very long period, in the places where it was most convenient to have them, and the long process of selection (had) tended to take account of the distribution of population, volume of work, and communications in the various areas”. There were situations where the patterns were out of step with shifts of population and patterns of work, particularly post War New Town⁸ developments. The Committee was “not much in favour of closing existing sheriff courts” and hence were not “prepared to recommend firmly that any court should be closed”.

3.1. The Scottish Court Service’s plans for reform in 2013

The spatial consequences of any closure actions were and continue to be wide-ranging and have serious socio-economic effects reaching beyond those intended for and felt in the judicial system. The Scottish Court Service in its 2013 review showed itself aware that many considered its actions as a major intervention in the workings of the built environment – the ‘community’s heritage and civic identity’- of a number of small Scottish towns. Their report

⁸ The ‘New Towns’ are literally dozens of new towns designed and built from scratch across Britain to accommodate overspill populations from the overcrowded 19th century industrial city centres in the post war period after provisions were made in the 1946 New Towns Act. These were complete and self-standing new towns with all residential, industrial, commercial and civic functions and institutions including schools, hospitals, housing, factories and in some cases courthouses too.

highlights that several correspondents to their consultation ‘commented on the potential impact on the local economy and heritage’, but the report rejected this claim noting that they ‘found little evidence to support the claims’. Interestingly 43 out of the 56 buildings in the Scottish court estate in 2013 were listed as being officially of architectural merit. As regards access to justice, the question of both the ‘impact on court users’ and ‘impact on the quality of legal services and Administration of Justice’, the Scottish Court Service claimed that ‘in total only around 5% of overall court business will move to another court, which in the majority of cases will be a distance of less than 20 miles.’

While there is undoubtedly a move towards further centralisation and rationalisation in the court system - driven to a large extent by financial considerations⁹ - there is simultaneously an element of dispersal of court business. The Gill Report of 2009 proposed that the lowest value of claim needed in order for a case to gain access to the Court of Session in the nation’s capital, Edinburgh, be raised from £5,000 to £150,000 and for a new local sheriff appeal court to be introduced along with ‘summary sheriffs’. This would add to the business at Sheriff Court level rather than adding to the already stretched Court of Session and High Court. There is a concern about how far people can be expected to travel as either litigants or witnesses in the Government’s paper on access to Justice (Judicial Office For Scotland 2012: section D). The whole notion of the ‘local’ is very different now from that which was the case in the 19th century, and will continue to change. The Scottish Court Service (2013: 9) point out ‘both transport and media information services are vastly different from the Victorian period when many of the current courts were built.’

⁹Scottish Court Service (2013): ‘public sector funding is under severe pressure, by 2014-15 the court service running cost budget will reduce by 20% in real terms and the capital budget will reduce from £20M to £4M.’

The problem for the future is how to provide a system which is “accessible to all and sensitive to the needs of those who use it” at the same time as making “effective and efficient use of its resources, allocating them to cases proportionately to the importance and value of the issues at stake” (Gill 2009: 6). This involves disadvantaging some citizens and some areas. Which citizens and which areas do best in this political process depends on who is able to marshal power and influence most effectively. We can see how this operated in the past with court developments, closures and “rationalisation” a constant feature of the Scottish legal scene over the past two centuries since courts in fixed locations became the norm.

3.2. International Comparisons

The current and projected changes in the estate of the justice system in Scotland and its design can perhaps best be critiqued in terms of their significance and scope in a comparative exercise with other judicial systems across the globe. Resnik and Curtis (2011: 193) point out that by the end of the twentieth century ‘many court systems focussed on “long range planning” and that there was a “quiet crisis” of aging facilities in poor condition, and growth in caseloads and prison populations’. There has been a massive and ambitious programme commenced in the 1990s by the French Ministry of Justice to rebuild much of its estate, and amongst the similar programmes instituted by many other jurisdictions, the longstanding example of the USA Design Excellence Programme could be an instructive example.

In comparison with the French process of commissioning modern court buildings which has made for open public dialogue and debate on the relationship of architectural and design forms to the culture and processes of justice, the design of recent Scottish courts has hitherto apparently been bound by convention and uniformity. Again, as noted above, this is largely

due to a procurement policy in Scotland which has directed design via the templates to be found in the Design Guides produced by the Scottish Court Service. In the French case, however, architects were left a deal of freedom to use their own professional expertise to examine and explore the issues which here are regulated by the Scottish Design Guides. In France that ‘ambition’ of the government also led to the commissioning of some of the top architects to design new buildings, like Rogers, Nouvel and Ciriani, the spending of some 6 billion francs on projects from 1995-99, and the public profile gained by their designs ensured that debate on the relationship between design, architecture and justice was given an open public airing.

In Scotland, meanwhile, the tendering, commissioning and design processes have tended –with one or two exceptions, like Glasgow Sheriff Court in the 1970s – to be very low profile, with few architects of well-established national or global public profile taking part, and little public awareness or debate about the processes or outcomes. It could not be said in general, however, that keeping the design and construction of new public buildings low profile is currently a dominant governmental or cultural trait in Scotland. There have been numerous notable instances of high-profile well established architects, of both national and global provenance, who have been commissioned and completed public buildings over the past couple of decades, including Miralles’ Scottish Parliament, Hadid’s Transport Museum, and Holl’s new Glasgow School of Art building. That high profile has also ensured that there has been much public discussion and debate over the success or otherwise of those particular buildings. It remains to be seen whether the project to create sixteen new Justice Centres in Scotland will aim at or encourage a similar open and public process of procurement and debate on the design of new buildings. It would take a great change from the current culture both of tendering and commissioning, and of vision and ambition, to achieve such transparency. It appears, for the moment, that despite the fact we are on the cusp of making great changes in the physical extent and form of the Scottish court system, neither the client, the Scottish Justice system, nor the

architectural profession has the appetite to make the design and production of great public buildings a matter of public urgency.

3.3. The future of court design in Scotland

It is thus that the programme of current court closures and the project to move to a more concentrated system of sixteen Justice Centres for jury trials from the more even geographical spread of Sheriff Courts constitutes a plan for great administrative and organisational changes, along lines common to many court systems since the late 20th century. There seems to have been no corresponding shift in the conception of the design and procurement of the physical estate of the judicial system. Unlike the USA, in Scotland there has been no nurturing of a public culture of the courthouse as an important civic institution, no outreach (films for public consumption, user-friendly websites etc.), no publication programme (disciplinary journals and glossy monographs on new buildings), no engagement in debate and discussion through a programme of charettes, workshops and conferences, nor any lobbying of government for specific funding whether by the judiciary, the courts administration or the architectural profession.

The new £23 million justice centre in Inverness will be completed in late 2019 and will house a ‘unique centre of community justice and support services for witnesses, victims, accused and those convicted in courts’ situated on a former bus depot near the city’s Burnett Road Police Station. The most disappointing factor in the commission is that the project will not be architect-led. Instead a construction company was first appointed – Robertson Construction, and they in turn appointed the Edinburgh based architects Reiach and Hall on a design and build contract where the contractor is in charge of the design rather than an architect.

Conclusions

Portugal and Scotland show similarities and confluences, but also differences and distinctive features, as we described.

The evolution of the Portuguese judicial architecture displays ruptures and continuities in relation to the strong and recognizable model inherited from the Estado Novo period. The changes registered are mainly due to budgetary constraints (derived from a managerial rationality and global impositions) and temporal constraints (the immediate need to physically establish courts created by law), increased litigation and procedural reforms, such as procedural dematerialization or reorganization of the judicial map. Although there is still an identification with the model inherited from the dictatorship, there is the idea that the spaces of the courts that are to be created in the future do not have to replicate this formula. There is, however, no clear concept as to what should be the space of justice in 21st century Portugal, so both Ministry and the judiciary are still looking for a model, identifying above all the negative aspects of the spaces in use: the degradation of the buildings, the inadequacy of the internal organisation, and lack of accessibility and security, and technological incapacities. Amidst budgetary constraints and European Union impositions, with wide-range consequences for the judicial system and its estate.

In Scotland, with the absorption of a broader range of legal, civic and social facilities and functions in the planned development of Justice Centers, the movement seems to be away from self-standing, sole function courthouse buildings, and back to the mid-19th century model of a shared, multi-use facility all under one roof – as seen in Scotland’s most recent courthouse and council offices development in Livingston. As both Graham (2003) and Mulcahy (2011) demonstrate throughout their works in the context of England, and we have noted in relation to Scotland, the notion of “court architecture” is a heuristic device, albeit with different specific

histories. Its demise, *pace* Quinlan, is something about which we do not feel much regret needs to be expressed, other than for the change of use of some handsome buildings. When considering the issue of the heritage and civic identity which courts might represent, the Shaping Scotland's Court Services (2013: para 1.24) was impassive

We recognise that, some communities regard the presence of a court, even one that sits infrequently, as an important element of each community's heritage and civic identity. However, this needs to be balanced against the fact that many other or similar communities function without a dedicated local court and both transport and media information services are vastly different from the Victorian period when many of the current courts were built.

We are not too concerned at one aspect of these changes. Maintenance of a physically impressive setting, which is, in effect, an exercise of power, may be something that should be resisted. Gill in pursuit of saving money, certainly adds to the process of stripping away some of these decorative auxiliaries to power. Perhaps the artificial lighting and functional seating of the modern court are to be preferred to rooms which seek to evoke the majesty of the law with impressive ceilings and decorative courtroom furniture. It rather depends on what perspective one takes on the Resnik and Curtis suggestion that the courts are for the most part the settings for the exercise of power, cloaked in the language of legality and justice. Whatever one's view of the procedure in the courtrooms of 21st century Scotland, losing handsome buildings of historic pedigree and ornate internal settings might be regarded as a price worth paying for an improvement in the legal process and a more efficient, humane, transparent and democratic production of justice, even if it comes at the end of computer screen link up in a "pop up" justice centre.

In Portugal and Scotland, the most recent assessment of the likely way forward suggests a digital electronic trajectory. In a post-troika Portugal and a post-Brexit Scotland, the court systems have to adapt to the digital age¹⁰. This points the way to the virtual court, and to courts

¹⁰*The Scottish Legal System – What Next?*, Parliament House July 14th 2016.

and tribunals reverting to a justice system based on written evidence wherever possible without the need for expensive, if attractive, buildings. Sadly, however, the debate about the changes in Scotland has taken place largely between the institutions involved in the legal and judicial systems – e.g. the Scottish Court Service and the Judiciary – and the powerful representatives of those institutions, like Lord Gill. There has been very little input from wider Scottish civil society, and there has been no major published and disinterested critique by any lay body, such as JUSTICE with the report on English changes (2016), from its membership of independent but qualified, engaged and professional citizens. Also in Portugal, there is no participation in the debate concerning court facilities by lay bodies. The magistrates themselves corroborate this idea, stating, because of their internal view of the functioning and adequacy of the spaces, they serve as representatives of the needs of the users. Given the connections between the legislative body, the judicial system and democratic processes, this top-down, elitist and, more or less, undisturbed in-house procedure cannot reflect well on the health of participatory democracy.

As said, today justice is thought in terms of flows, management imperatives, productivity, budgetary constraints. An architectural program that meets all these elements is necessarily a complex one, which needs to be discussed in a roundtable, with the professionals who will work in the buildings, and who necessarily have a better knowledge of how justice must be rendered; with the architects and builders, who have knowledge of building techniques and materials and their plasticity; with the Ministry of Justice, who controls budgets; and also with the users, since they use the spaces and in them they seek solutions to their questions and in them they solve their conflicts.

This is part of the fascination of how Scottish and Portuguese spaces of justice have developed over the years and provides pointers to those examining the emergence and nature of the court estate in different jurisdictions. They both bear the imprint of past power relations as well as

offer opportunities for different visions in the future. The extent to which the developments are part of the democratic process or a continuation of elite decision-making has yet to be determined and will be a feature of any political system with an element of public participation.

References

Branco, Patrícia (2015), *Os Tribunais como Espaços de Reconhecimento, Funcionalidade e de Acesso à Justiça*. Porto: Vida Económica.

Branco, Patrícia (2018), "Considering a different model for the Family and Children Courthouse Building. Reflections on the Portuguese experience", *Oñati Socio-Legal Series*, 8, 3, 400-418.

CEPEJ (2014), *Guidelines on the organization and accessibility of court premises*. <https://rm.coe.int/16807482cb>. Last accessed 11.10.2018.

Dias, João Paulo (2016), "The transition to a democratic Portuguese judicial system: (delaying) changes in the legal culture", *International Journal of Law in Context*, 12, 1, 24-41.

Freitas, Vladimir Passos (2008), "Arquitetura judiciária deve auxiliar administração", https://www.conjur.com.br/2008-mar-15/arquitetura_judiciaria_auxiliar_administracao. Last accessed 11.10.2018.

Gill, Lord (2009) *Report of the Scottish Civil Courts Review* (Edinburgh) available at <https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf?sfvrsn=4> – accessed December 18 2018

Graham, Clare (2003), *Ordering Law: The Architecture and Social History of the English LawCourt to 1914*. Aldershot: Ashgate.

Haldar, Piyel (1994), "In and out of court: on topographies of law and the architecture of court buildings", *International Journal for the Semiotics of Law*, VII/20, 185-200.

Judicial Office for Scotland (2012) *Principles for Provision of Access to Justice* (available at http://www.scotcourts.gov.uk/docs/default-source/scs-consultation-court-structures/statement_of_principles.pdf - accessed December 18 2018

Ministério da Justiça (2018), *Plano Estratégico Plurianual de Requalificação e Modernização da Rede de Tribunais. 2018 – 2028*. <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=3131b5f4-6044-416a-96dd-354193e76222>. Last accessed 11.10.2018.

Moniz, Gonçalo Canto; Bandeirinha, José António (2013), "A construção dos espaços da justiça: monumentalidade e humanismo", in Patrícia Branco (ed.), *Sociologia do(s) espaço(s) da justiça: diálogos interdisciplinares*. Coimbra: Almedina, 103-123.

Mulcahy, Linda (2011), *Legal Architecture. Justice, due process and the place of law*. London/New York: Routledge.

Nunes, António Manuel (2003), *Espaços e imagens da justiça no Estado Novo. Templos da justiça e arte judiciária*. Coimbra: Edições Minerva.

Oliveira, Ivo (2016), “A condição de estranheza perante a arquitectura da justiça. O abandono dos antigos edifícios e a retirada do Estado dos processos de concepção e construção de novos edifícios”, in Carla Carrondo et al. (eds.), *O estranho e o estrangeiro no teatro*. Porto: Centro de Estudos Teatrais da Universidade do Porto, 205-220.

Pinto, António Costa; Rezola, Maria Inácia (2007), “Political Catholicism, Crisis of Democracy and Salazar’s New State in Portugal”, *Totalitarian Movements and Political Religions*, 8, 2, 353-368.

Resnik, Judith and Curtis, Dennis (2011), *Representing Justice: Invention, Controversy and Rights in City-States and Democratic Courtrooms*. New Haven: Yale University Press.

Robson, Peter and Rodger, Johnny (2018) *The Spaces of Justice. The Architecture of the Scottish Court*. Madison: Fairleigh Dickinson University Press.

Scottish Court Service (2013) *Shaping Scotland’s Court Services* (available at http://www.scotcourts.gov.uk/docs/default-source/scs-consultation-court-structures/response_to_the_consultation_and_recommendationspdf.pdf - accessed December 18 2018

Whetstone, Ann (1981) *Scottish County Government in the 18th and 19th Centuries* Edinburgh, John Donald