

Justice is Blind and So is Her Architect: Canadian Courthouse Designs and their Socio-Spatial Implications

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ABSTRACT: The imposing design of modern Canadian courthouses reflects the adversarial nature of the Canadian criminal justice system. This paper critically examines how excessive surveillance and security tactics, physical segregation in courtrooms, and restrictions on religious clothing inadvertently harm court users. Drawing on a blend of social sciences and architectural design theory, the analysis recommends greater efforts on behalf of the courts to ensure safe and meaningful victim participation, allow room for agencies assisting accused individuals or victims, and support opportunities for restorative justice. Courts are living, breathing social spaces which influence the administration of justice. As such, this paper argues that courthouses should be adaptable and evolve to address the needs of a transforming legal landscape. In particular, the Canadian legal system is veering away from concerns such as security, stigma, and punishment. Instead, the criminal justice system must be well-equipped to prioritize safety, cultural competence, and the goals of rehabilitation and restoration. Alterations to courthouse design should also be alive to the growing demand for legal processes that are less adversarial in nature. Overall, the judicial process is a distressing experience for all of the parties involved. Shifting to a more progressive and inclusive courthouse design is a key step in embodying the justice system that Canada needs.

KEYWORDS: Architectural Theory, Criminal Law, Institutions, Inclusivity, Restorative Justice

Introduction

The longstanding principles and discursive traditions surrounding Canadian legal affairs have entrenched within society the notion that justice is blind, value-neutral, universal, and always in a state of disinterest (Mulcahy, 2011). This is not the case; rather, it is an ideal that starkly contradicts the reality of legal operations. The application of justice is a highly emotional process, especially for victims of crime who may be re-traumatized in court and their families (Dahlberg, 2009). In addition, the time, money, and emotional resilience needed to sit through an uncertain trial can lead to heightened mental states (Dahlberg, 2009). Other factors can affect the way justice is applied, such as age, gender, socio-economic status, race, profession, as well as the identities and experiences of all involved, which point to the partiality and bias of the law.

While scholars frequently focus on the operations, functions, and ideologies of public institutions, there is a burgeoning field of critical analysis focusing on the architecture and design of these institutions and their socio-spatial implications (Zhang, 2019). Social constructions do not only exist within the conversations and proceedings of the judicial process but also within the physical spaces that contain them (Mulcahy, 2007). The intimidating building design, courtroom layouts, décor, and surveillance mechanisms all speak to the harrowing nature of the criminal courts (Mulcahy, 2011). This paper aims to explore the social-spatial constructions elicited from the architecture and design of modern criminal law courts, and how these constructions can have sociological effects on court users, namely offenders, jurists, members of the public, victims, and specialized service providers. Courts as social, living spaces will also be examined with a focus on the inclusion of ethnic and religious minorities. Lastly, some suggestions to improve Canadian courthouses and issues for further research will be given. Overall, justice and the law are not applied as uniformly and blindly as is assumed, and neither are the design choices of Canadian courthouses.

The Public in the Legal Realm

As noted by Charlotte Santry in her article, “Keeping Appearances” from *Canadian Lawyer*, the architectural examination of the courthouse can provide valuable sociological findings:

Far from being mere bricks and mortar, courthouses are the physical embodiment of the justice system. Their design, appearance, and state of repair can affect the length of trials; help or hinder access to justice; protect or expose vulnerable parties, and inspire a sense of respect or disdain for the judicial process (2013, para. 1).

Courthouse design and décor can communicate messages to users about the guiding philosophies and expectations that the public and professionals hold regarding the law. For example, “the monolithic and grand exterior of courthouses...narrate[s] the awe-inspiring strength and seriousness of the process and garner its respect from the public” (Toews, 2018). Monumental columns, ornate fixtures, concrete or marble finishings, and regal symbols are common in Canadian courts (Toews, 2018). Increased surveillance via security or metal detection, and limited transparency via windows are also common choices (Santry, 2013). Below is an image of the Provincial Law Court of Alberta which reflects the latter characteristics:



Figure 1. Image of the Provincial Law Court of Alberta. Its blocky exterior and limited visibility make it appear fortress-like. Image taken on November 28, 2019.

These designs communicate a two-way message that the courts are authoritative and important, leaving their users feeling insignificant and emotionally neglected beneath the law’s unwavering sovereignty (Toews, 2018). This structural narrative can further remove court operations from the population it is dedicated to serving: the public. Parallel to the formal proceedings which use legal vocabulary and dress, the appearance of the courthouse can exclude those unacquainted with judicial formalities.

Maass et al. completed a study in 2000 investigating the effects of courthouse architecture on the cognitive processes of potential users. Participants were shown photos of an older, medieval-style courthouse and a modernized courthouse both from Northern Italy. The older courthouse is described as having a “residential look, warm colours, large windows, [and] a large wooden door” (Maass et al., 2000), while the newer courthouse is “a massive, gray, semi-circular building, with narrow windows and an entrance enclosed between two huge walls” (Maass et al., 2000). It is conclusive that transparency, a sense of community, and warmth are the main design themes of the older building. Surveillance, stateliness, and intimidation reminiscent of Bentham’s Panopticon are prioritized in the modern courthouse, similar to modern Canadian courthouses which lack the warmth and collective trust present in community courts. The 120 participants were asked to imagine they were accompanying an accused friend to court and to report their estimates of the likelihood of their friend’s conviction if the trial was set at either courthouse. Remarkably, participants felt greater discomfort when presented with the modern courthouse and estimated a greater likelihood of conviction if the trial took place there (Maass et al., 2000). If members of the public are convinced that conviction rates will be higher in these modern courthouses, this could have serious consequences on everyday users of the court system. What if these unconscious sociological effects bleed into the proceedings and actual conviction rates? Modern courthouse aesthetics are not necessarily the most effective form of judicial administration and perhaps not how Canadian courthouses should be physically modeled, as they reflect an expectation that the law is retributive and lacks any community efficacy. In this context, community efficacy refers to the potential for courthouses to incite positive and collective engagement among court users to meaningful assist in crime control (Hipp & Wo, 2015).

While surveillance in the courthouse is meant to provide users with peace of mind about their safety, rigid security systems can often backfire and amplify existing anxieties. Throughout history, Canadian courthouse designs have remained cold and sterile, with metal detector screening, bulletproof glass, and security guard numbers on the rise (Santry, 2013). Criminal defence lawyer Brennan Smart claims, “To jury members, it gives the impression that society is very dangerous. They’re convinced it’s a jungle out

there. It taints the jury before they’ve even started their job” (Santry, 2013, para. 40). These false perceptions can increase the longevity of the tough-on-crime neoliberal movement and reduce the perceived legitimacy of restorative justice practices which “facilitate justice experiences and achieve goals that are healing, transformative, and meaningful” (Toews, 2018) for survivors and criminalized individuals. Moreover, Smart’s observation suggests that juries could be pre-disposed to convicting or giving harsher sentences given the socio-spatial effects of their surrounding environment. Overall, these obsessive safety mechanisms allow for the assumption that immediate threats exist in the courthouse and “create a discourse of stigma that call for exaggerated power relations” (Corrigan, Robertson, & Anderson, 2018).

In fairness, security mechanisms must be in place to prevent injury and to keep order, as violent exchanges do occur in court (Santry, 2013), although not to the degree that is expected based on how rigorous the systems are in Canada. Rather, this point questions the effects that overstated security can have on courthouse users, such as the increased stigmatization and alienation of offenders, a weakened sense of user safety, and a heightened sense of urgency in handing down harsh, tough-on-crime judgements to protect the public.

Linda Mulcahy argues in her examination of the politics of courtroom design that the public community has been marginalized by the struggle for territory within Canadian courtrooms (2007). This has emboldened the adversarial approach wherein input from community members and non-governmental organizations (NGOs) is assumed to have no value in the criminal justice system when in reality, they have a lot to offer. Courts in Canada are open to the public, but Mulcahy suggests that the public is restricted from contributing to justice in a meaningful way. Their legitimacy is called into question in the legal arena, as all “legitimate” legal actors take the forefront of the room. This includes judges, lawyers, the accused, and even the jury, who are elected for legal duty. The community’s role as a spectator is thus reinforced by their placement behind barricades. While court decisions can lead to restorative justice, perhaps restorative justice measures and community inclusion can be granted even earlier in the criminal justice process. Prioritized space allocation and involvement for NGOs and

the community as stakeholders in courtrooms could facilitate more effective criminal justice outcomes and reduce incarceration as the most probable outcome for Canadian offenders.

The courthouse itself also lacks the necessary space for external organizations and agencies, such as mental health workers, Legal Aid, John Howard Society of Canada, Elizabeth Fry Society, and Indigenous courtworkers (Santry, 2013). Courthouse architects historically would not have known about the new rocketing demand for such services, but Canadian courthouses should be evolving along with the transforming legal landscape.

It is important to understand that courtrooms are restrictive, and they employ a discourse only navigable by those in the legal profession where the public has no value (Corrigan, Robertson, & Anderson, 2018). Restorative justice models have demonstrated that NGOs and the community have a key role in repairing the harms of crime and offering more effective outcomes for victims, offenders, and public safety (Wilson et al, 2002). Implementing this model into the criminal justice system through space allocation and a rejection of the traditional legal discourse and conservative neoliberal ideologies may be worthwhile. Also, space and respect for service agencies in courthouses is essential for serving the public and ensuring the excellence and integrity of the Canadian criminal justice system.

The Experiences of the Accused in Court

Courthouses and courtrooms may in part be designed to deter offenders from acting out and to encourage them to reflect on the gravity of their act and punishment, but in practice it is detrimental to offenders' growth and overcoming of their deviant role in society (Rossner et al, 2017).

The criminal courtroom is laid out such that the "judge [is] seated on a raised dais, the defence and prosecution facing the judge, and the community, including the victim, seated behind a barrier— [which] speak to the expertise of the judge and the competition that occurs between the defence and prosecution" (Toews, 2018). This adversarial philosophy communicated through court layout emphasizes the pitting of the offender against the state and their eventual punishment. The highly visible positioning of the offender near the center

of the courtroom, blocked by barricades, amplifies their perceived stance in society; they are deviant and need to be segregated from the public—even though the Canadian legal system supports innocence until proven guilty (Rossner et al, 2017). Furthermore, the need for a security guard within a few footsteps of the accused, and the standard act of shackling the offender in the courtroom can heighten fearful emotions from the public, media, and victims (Santry, 2013). It reflects a stigmatized identity as a dangerous offender to the accused themselves, labelling them within the judicial space among other environments.

For example, a recent study by social psychologists suggests that partitions and bars in courtrooms create "an 'opposition' or other which can serve to signal segregation, place or inequality", and that raised floors "become the physical manifestation of hierarchy of power" (Mulcahy, 2007). The augmentation of height and barriers between judges, who are highly educated and distinct in their power and authority, and the criminalized persons, who may have experienced grievous and criminogenic life circumstances, can exaggerate the alienation of the accused and reinforce feelings of helplessness in overcoming their criminal pathways. This power dynamic is even more disturbing for the female accused as a male judge looms over her, resurfacing the power struggles that many criminalized women have experienced before (Balfour & Comack, 2014). The study also mentioned the significance of spatial relations in *Venables v United Kingdom* in 1999, where a juvenile defendant's case resulted in a breach of the European Convention on Human Rights. The dock under which Venables was standing was raised in the hopes that he could better see what was transpiring, but the act instead heightened his discomfort and exposure to the media, whose presence was hostile. He cried throughout the trial and drew shapes on the floor with his shoes (Mulcahy, 2007). According to the author, this case illustrates the paralyzing effect that excessive courtroom exploitation can have on young, vulnerable accused.

Tim Hennis, the defendant of a murder case in North Carolina, appealed his case due to the admission of evidence in the courtroom. Graphic photographs of the crime scene and autopsy examination were projected right above the defendant's head ("*State v. Hennis*," n.d.). Hennis asserted that "the state's use of slides and photographs of the victims' bodies

addressed and impressed the emotions of the jury more forcefully than its logic and that, because the probative value of evidence was far outweighed by its prejudicial impact, he was deprived of a fair trial" (*State v. Hennis*, n.d. para. 8). A new trial was ordered due to unfair admissibility of evidence. Clearly, the physical and spatial display of evidence is also an important factor in courtroom usage and should be considered in explorations of courtroom functionality.

The emphasis on the accused's deviance in courtrooms is the beginning of a long-winded identity struggle that offenders face in prison and the community upon release, and this issue is even more urgent for juvenile offenders who begin the labelling process in their youth.

Victim Navigation through the Criminal Justice System

The survivors of crime are left as idle spectators despite having a significant stake in the outcome of trials. Even with the new prioritization of victim needs through victim advocacy and service, the Victim Bill of Rights, increasing use of victim impact statements, and a growing body of support for restorative justice, "many victims [still] experience the justice process as re-victimizing because... they are relegated to the sidelines of their own experiences, receive little validation and vindication, and achieve little, if any, reparation of the direct losses they experienced because of the crime" (Toews 2018). Victims and their families are thus neglected throughout the process, unable to make meaningful contributions in contrast to the legal professionals monopolizing the judicial space. As such, trials in Canadian courtrooms can be damaging for victimized parties who are silenced by a history of judicial traditions and restrictive design choices. The way judicial outcomes are reached without consulting victims ultimately minimizes the extent to which victims' needs are addressed by a system meant to serve them and the public.

As stated earlier, courthouses lack available space for local services and agencies, including those that can assist victims, such as Victim Services (Santry, 2013). This can be a huge detriment to victimized parties who are usually unfamiliar with the court process and how to navigate the legal system. Furthermore, victims may not be aware of Victim Services at all,

as there is little to no promotion of it at least in the Provincial Law Court of Alberta, other than word of mouth or documentation that must be requested. Victim Services are provided by a combination of government, police, and non-profit organizations, and their services include crisis or emergency intervention and response, as well as critical incident stress debriefings (Allen, 2014). 90% of providers in Canada also supported victims by helping them partake in their trial via "court accompaniment, assistance with victim impact statements and victim or witness preparation" (Allen, 2014, para. 8). Finally, many victim services provide information to victims about "hearings, offender relocation, and offender release", among other important services such as medical support, transportation, counseling, shelter, monetary compensation, and restorative justice programming (Allen, 2014, para. 8). These services are integral to the wellbeing of victims and not only their ability to navigate the justice system but also their ability to overcome their victimization and feel a renewed sense of empowerment. The physical exclusion of such services from Canadian courthouses only serves to limit client accessibility and put victims at risk for re-traumatization in court and everyday life following the distressing incident(s) they experienced.

Meaningful support is generally absent within the courtrooms themselves. An austere decorum exists within courtrooms where visible distress such as venting anger, or crying, is not allowed to accompany the proceedings. A crime survivor from Toews' analysis referred to court as "a dead place, suggesting that it didn't offer the life and hope desired by survivors" (2018), such as opportunities to express pained or joyful emotions, safely speak about their experiences, or feel respect for their humanity. Rather, the cold and unemotional "civility" of Canadian courthouses further strips victims of their dignity. Furthermore, attending trial is often a new and unfamiliar situation for most visitors, so naturally being in a state of high alert is common. Victims in the study noted key characteristics such as "hard materiality (stone, cement, marble, brick), bland colours, institutional furniture, and even fake plants)" (Toews, 2018) that magnified the unworthiness of their unique emotions and experiences in the courthouses.

In the heat of the moment, vulnerable parties may want to rush out of the courtroom to find respite. Victim-specific waiting rooms which designate private

space for victims and witnesses can provide emotional relief and reduce stress. Unfortunately, the existence of these rooms is very limited across Canada, and a single room within a whole courthouse is not enough to provide consistent comfort (Toews, 2018).

Victims of violence needing a safe retreat from their perpetrator is also a narrow possibility; in the crowded lobby of a courthouse in Sherwood Park, victims are forced to face their perpetrators within close quarters. Local lawyer Peter Court says that “sexual assault victims are sometimes taken by police to a nearby McDonald’s as there is nowhere inside the building they can wait safely for trials to start” (Santry, 2013). The widespread issue of privacy and safety is most detrimental to victims of violence and assault, but it extends to contenders in family and youth court, traffic court, civil court, and other justice departments as well.

Victims are one of the greatest stakeholders and most vulnerable parties in criminal trials, yet their contributions and feelings of safety are severely neglected within the Canadian courthouse. Reconstructing the space to better provide areas of respite for victims would reduce the risk of re-victimization in court and other poor psychological effects. Empowering victims with the ability to contribute meaningfully to the justice process, specifically in a restorative manner, as well as providing the necessary services in the courthouse to address victim needs are key solutions.

The Niqab: A Double-Edged Obstruction of Justice

The ideological and performative space of the courtroom needn’t be neglected in the discussion of Canadian courts. The way actors are presented in court must be examined to better understand the polarizing nature of the courtroom and how this may hinder the fair administration of justice. I draw on the example of *R v NS* to illustrate the expressive inequalities faced by many ethnic and religious ethnicities in the Canadian criminal justice system.

N.S. is a Muslim woman who attended trial in Ontario in 2008 with the goal of testifying in an inquiry involving childhood sexual assault charges against her uncle and cousin. She wished to testify wearing her niqab, a religious garment that conceals the face except for the eyes. Per the Canadian criminal justice system, the accused has the right to face their

accuser, and N.S.’ case caused the court to question the strength of her affiliation to the Muslim faith and whether she should be allowed to testify wearing a niqab. Eventually, the case was appealed and made it to the Supreme Court of Canada, where the justices were extremely divided in how to approach the issue (Bhabha, 2014).

According to an article by Stephanie Voudouris (2013), the main hesitancy from the justices revolved around how covered N.S.’ face was when she wore her niqab. It was difficult for the accused to see her face, and justices worried that not being able to see a witness’s face or expressions would impact the effectiveness of cross-examinations and resulting decisions.

During the debate, Justice Abella argued that seeing less of a witness’s face does not significantly impair a judge’s ability to assess the credibility of a witness and that a complainant should not be forced to “choose between her religious rights and her ability to bear witness against an alleged aggressor” (Voudouris, 2013, para. 10). Furthermore, the niqab is an integral part of N.S.’ religious identity as it is for many Muslim women. Forcing her to remove it upon testifying would run the risk of making her feel uncomfortable in court, as though her privacy is being invaded. Her discomfort and altered demeanor, as a result, could be wrongfully misinterpreted as dishonesty, even though some of the justices argued that viewing her demeanor was crucial to a fair trial.

Voudouris (2013) adds that a decision like this would force N.S. to remove a piece of clothing before her accusers, who were implicated in sexual assault. Not only does this instigate similar feelings of exposure and humiliation present in sexual assault victimization, but it would also reinforce the traumatizing shifts in power that occur between the assaulted and the assaulter.

Finally, the dangers of a decision which would potentially require Muslim women to remove their niqabs in court could prevent them from reporting crime and testifying against the accused—this would be a grievous miscarriage of justice to religious minorities who share the same or similar religious garb.

Throughout the appeals process, N.S. asserted her freedom of religion in the courtroom, although the

final decision was less than favourable. Provincial judges must consider a lengthy, interpretive criterion to determine whether witnesses should be allowed to wear niqabs in courtroom. Essentially, a person does not have the absolute right to wear a niqab when testifying in court in Canada, even though witnesses wearing other religious garb such as crosses or kippahs are given much greater lenience. While the decision does not represent a complete ban on niqabs in the courtroom, it still acts as an obstruction of justice for Muslim women as opposed to a security risk. Overall, the circumstances of N.S. provoke questions about our justice system and whether it supports or demeans the rights of ethnic and religious minorities in Canada. If legal spaces are consistently marginalizing minorities, how can system officials, society, and discourse conclude that the system is blind and fair?

Conclusion

Between 2016 and 2017, 357,642 cases were completed in adult criminal courts throughout Canada (Miladinovic, 2019). As such, an even greater number of people experienced these vital institutions in the year, including public viewers, professionals, defendants, and victims. Client experience in the court setting, as well as scholarship that critically examines courts is extremely important; as Toews (2018) outlines, Court buildings can be understood as living systems or cultural environments in which decisions are made about people's lives, property, and civil rights. A court is not just a set of rooms, corridors, and entrances, it is a social and emotional world. This living world is negatively impacted by intimidating exteriors, a deficiency in warmth, excessive security systems, lack of space for client services or respite, the politicization of religious garments in court, and many other spatial issues. These problems impact all parties involved in the criminal justice processes and drastically weaken the effectiveness and legitimacy of Canadian courts in the fair administration of justice. Budget and staffing cuts made by the United Conservative Party are expected to further burden an already overworked justice system, meaning that the enhancement of court spaces in Alberta will not be a priority in the coming months (Wakefield, 2019).

Fortunately, not all hope is lost. Canadian courts are slowly but surely transforming to meet their needs. In the past 30 years, the Provincial Law Court of Alberta has been implementing specialized courts

that consider the specific circumstances present in certain cases; these include mental health court, Indigenous court, drug court, and domestic court. These courts can address the issues of re-traumatization and stigma that could occur in regular criminal court, and they also provide a safer space for proceedings ("Special Courts", n.d.). While this is a step in the right direction, the hours are limited. Mental health court only runs on Mondays, Wednesdays, and Fridays, and with a growing demand, regular criminal courts will be used for overflow or some defendants will be prone to prolonged trial dates. Deficiencies could be addressed by allocating more space to community organizations and service agencies that specialize in high-demand areas of concern.

The Calgary Courts Centre opened in 2007. It is 24-storey, with 73 courtrooms, space for 360 external staff, and includes large libraries and a glass atrium. Its welcoming appearance and availability for service providers "represents all the principles of law and justice both in a very fresh new way, reflecting the energy and prosperity of the province" (Santry, 2013, para. 10). While there is a stark contrast between the Calgary Centre and the Provincial Law Court of Alberta, the latter is currently undergoing renovations that may lead to positive outcomes as seen below:



Figure 2. Image of the public entrance of the Provincial Law Court of Alberta. Image taken on November 28, 2019.

The glass panels are a new addition that could signal a progressive change in Canadian architectural design; the courts will no longer appear intimidating or enigmatic to its visitors, but perhaps more transparent, both structurally and symbolically.

With these positive changes, hopefully, greater recognition of how court space is utilized is on the horizon. There is no easy, practical solution that can address heightened security precautions, but perhaps designating security guards and sheriffs more proportionately throughout the courthouse can reduce anxieties rather than having a large number concentrated at the entrance. Also, inclusivity in court spaces should apply to religious and ethnic minorities who may already suffer from limited access to justice for other reasons such as economic disadvantages and the inability to afford legal counsel, transportation, time to take off work, or language barriers that make it difficult to understand the proceedings. Lastly, the empowering principles of the restorative justice model should be considered in the physical design of future courthouses in Canada, as this would contribute to greater outcomes for all parties in the criminal justice system. This would include the elimination or reduction of physical barriers and docks in courtrooms. A more communal layout would encourage participation, such as having all court attendees seated in a circular formation similar to restorative justice circles.

Regarding issues for future research, there was limited data concerning how the accused perceive courthouses and courtrooms in Canada. This data would help expand on the experiences of the accused in court and offer a more diverse perspective. Also, there was scarce data on how certain populations including rural users are affected by typical courthouse locations in Canada. Analyses of these physical structures would certainly benefit from a critical examination of court placement.

In conclusion, justice is not blind, and the architectural space that houses the proceedings of justice has not been designed blindly, either. To have an effective criminal justice system, it is imperative to question the implications of both the function *and* form of our public institutions and determine how these elements synergize to perpetuate centuries-old, misleading discourses about Canadian legal affairs.

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