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The following chapter deals with the historical development of judicial spaces and the direct influences thereof on the Pretoria Magistrates Court.

CHAPTER 5.

Development of judicial spaces

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The following chapter of this study will focus on the historical context and discourse that gave shape to the spaces of the legal system and influenced the typology of the court of law.

THE EARLY COURT

According to Mulcahy (2011) the judicial typology is a very recent invention and the culmination of progress in social practices and customs surrounding the litigation of society. The early examples of judicial practices observed in history amongst societies like the Athenians, Celts and Teutons, suggest that the practice of law was done in the open and with the community as witness.

Sacred spaces like a circle of stones, moot hills or a prominent tree were used to gather a community and deliberate matters of social importance. The description of these spaces can be found in ancient writings like Homer's Iliad and the Jewish Talmud. The fact that sacred ritual and judicial practices share the same space, points to the fact that law and the execution of it has always enjoyed importance in society (Mulcahy 2011, Resnik & Curtis 2011).

This form of judicial practice and spaces are still present in many rural African societies. One such example is of the Ambo Wareda communities in Ethiopia. Here the Oromo people elect elders from the community to adjudicate judgement over civil matters in a traditional legal system called a Jaarsumma, while sitting under a tree called a Dhaddacha. Although Ethiopia's formal court system is established, this form of traditional law is still highly respected and courts often refer cases back to these less informal systems (Bayeh et el 2015; Muchie & Bayeh 2015).

Figure 5_1 Justice underneath a tree.

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THE COURT IN THE MIDDLE AGES

As time progressed it seems that judicial spaces and practices moved into the centre of the community. Prior to the fifteenth century, judicial practices were held in public spaces like markets, gatehouses, castles and churches and were seen as great generators for commercial activity.

In these public spaces there seemed to be no particular demarcation for the court except for a series of columns or the hanging of canvas. So movement in and out of the court happened frequently and without control, even in the middle of trial proceedings (Mulcahy 2011; Resnik & Curtis 2011).

From the 15th century onwards, with the increased importance of the written word over oral tradition, the legal process and judicial ritual moved ever increasingly into enclosed spaces and dedicated facilities. Although the movement towards specialised spaces made practical sense, it also contributed to the authority of the legal system and increased control over the process. The establishment of courthouses was used as a symbolic extension of the local ruler's authority and contributed to the increased isolation and elevation of the judiciary (Resnik & Curtis 2011).

The processes culminated into what Mulcahy (2011) termed as the 'height in court design' in the 19th century where specialised courthouses were developed with specialised layouts and increased separation of participants.

Through this development, the following key principles in the development and manifestation of judicial spaces can be recognised.

Figure 5_2 Middle ages market.

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Separation and segregation

Hierarchy of participants has always been a theme in the judicial system, but as time progressed this hierarchy increasingly took form in spatial manifestation. The first manifestation thereof was subterranean access for prisoners into the courtroom.

The next manifestation came with the advent of the adversarial trial in the 16th century. This meant that lawyers claimed more space in the trial and courtroom, while the judge moved to the position of mere umpire and the public ever closer to the door (Mulcahy 2011, Resnik & Curtis 2011).

Another factor was the increased consideration for the purity of testimony and the protection of vulnerable witnesses, which lead to the increased control and segregation of the public. Finally the courtroom became a prominent political space where judges and lawyers moved up the social ladder.

Segregation enhanced the drama and theatrics of the judicial ritual and helped to elevate the judiciary to new elite social standing. This ushered in the development of private spaces for the judiciary in the court, which in time grew to lavish retreats (Mulcahy 2011, Resnik & Curtis 2011).

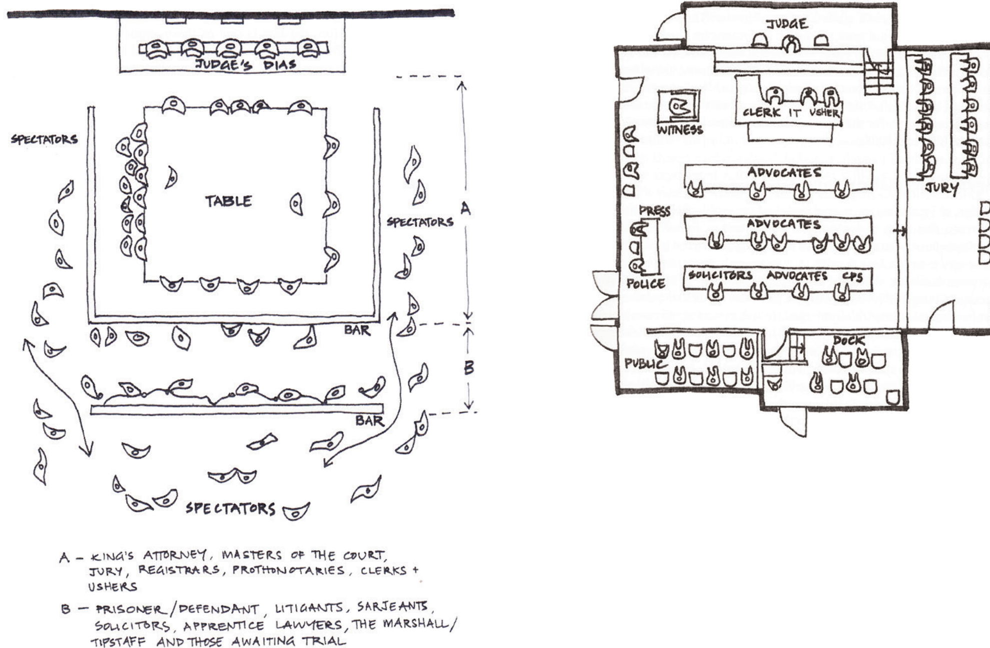

Figure 5_3 Development of the court through the ages. Left: Court in seventeenth century (Mulcahy 2011:4)
Right: Contemporary Royal Court (Mulcahy 2011:47)

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PRESUMPTION OF INNOCENCE

As segregation and separation progressed in the spaces of the legal system, two key principles in the judicial ritual became eroded. That was the presumption of innocence and the right to representation. Separation of the judge and accused progressively increased as the attorney became more prominent.

The lawyer became the mediator between judge and accused, in time rendering direct contact rare and deluded. Increased specialisation meant that testimonies needed expert opinion and representation.

This meant that very personal testimonies which would in normal circumstances be discussed in intimate settings, now needed to be communicated over long distances and with many mediators to interpret. In this setting Mulcahy (2011:75) refers to the notion that:

'space can be seen as contributing to a ceremonial stripping of dignity'

PUBLIC AND THE MEDIA

As the courtroom progressed into an ever-increasing closed and controlled environment segregating and separating the participants from one another, the same marginalisation of the accused also manifested in the spatial considerations for the public. Mulcahy attributes it to the

'fear of uncharted or unscripted performances and physical and mental "contamination"
(2011:83)'.

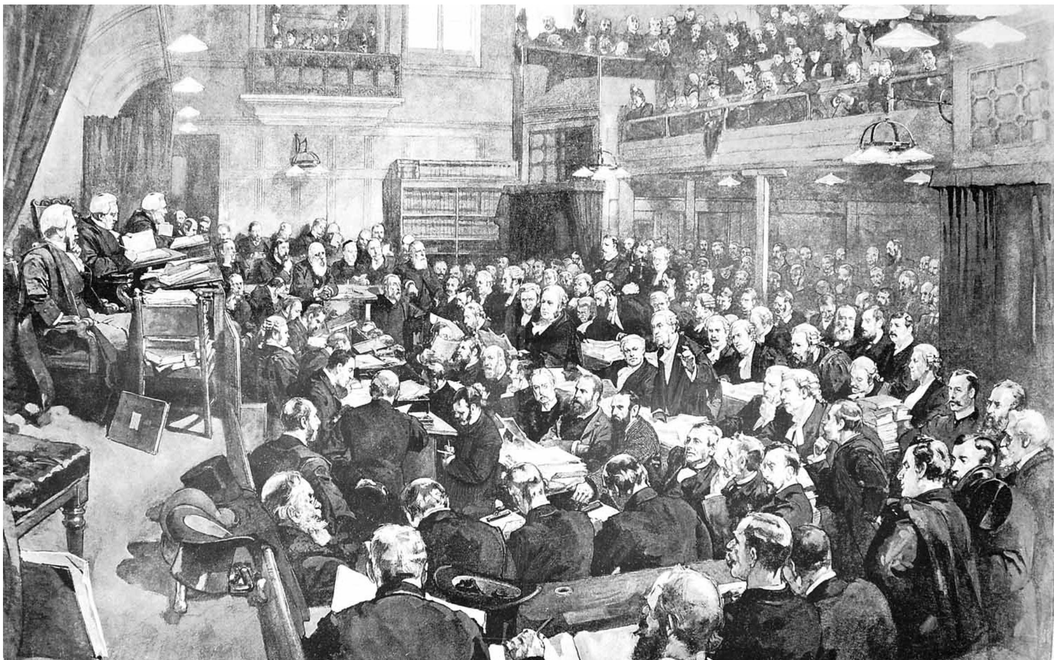

Figure 5_4 The Parnel inquiry, [image online] available at: http://www.old-print.com/mas_assets/full3/J3421841/J3421841119.jpg access on: 2016-10-20

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So as space for the public was reduced and continually restricted, the prominence of the press grew as public representatives.
In part this development was encouraged as it presented the judiciary with greater control over smaller crowds. And yet it became a direct contradiction of the principles of public participation, which gave the courts legitimacy. It undermined the concept of the open trial as the symbol of crimes not only against victims, but society at large.

It robbed the public of the role of auditors and the opportunity to be educated in matters of the law. It sanitised the court, creating elitist spaces and diminishing the status of the court as the social gathering space it enjoyed in pre-Victorian times (Mulcahy 2011; Resnik & Curtis 2011).

Thus the press rose in prominence in the trial ritual and with them rose their spatial claim within the courtroom. This meant that the press become mediators between the judiciary and the public, acting as interpreters of the law and educators in legal matters. This discourse is clearly manifested in the spatial considerations as the space allowed for public fell from 200 in the 19th century to 25 currently (Mulcahy 2011).

Mulcahy (2011:84) conclude these observations well by stating:

'Just as the defendant in the modern trial could be said to have been silenced by their lawyer, so too it could be argued that the participation of the press in the trial has in turn justified the sidelining of the public they claim to represent'

Figure 5_5 Media outside Palace of Justice [image online] available at: http://cdn.mg.co.za/crop/content/images/2014/09/11/mediaoscartrial_landscape.jpg/1280x720/ access on: 2016-10-17

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THE HEIGHT OF COURT DESIGN

According to Mulcahy (2011) the height of court design was seen during the 19th century, which was greatly influenced by the Enlightenment and the industrial revolution. During this time there was great emphasis on the development of specific typologies for public functions of which the law court was one.

These law courts were publicly funded by wealthy benefactors and so their monumentality and scale became symbols of the status of the judiciary and the position of the middle class. This reflected a society based on individualism and personal improvement (Adam 1990:62; Tzonis & Lefaivre 1986:1; Resnik & Curtis 2011).

A great battle of the styles ensued between the neo-gothic and neo-classical revivalists to find an appropriate language for the authority and dignity of the law. The attraction to the Greek neo-classical was the perfect mathematical and symmetrical order, symbolising the birth place of democracy and representing purity. Roman classicism was also very popular as it signified the romantic association with the active and serious civic sphere of ancient Rome (Mulcahy 2011; Tzonis & Lefaivre 1986).

This discourse is best reflected by Mulcahy (2011:117) who states that

'...from the 18th century there was a growing acceptance that a sober and solemn Doric order or chaste Ionic was more suited to courthouse design than the frivolous Corinthian.'

Figure 5_6 Neo-classical court

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The 19th century saw these newly-developed public building typologies as the first challengers to the church as a primary public meeting space. The scale and mass of the new monumental court signified the challenge by the law as a new secular religion. Architects who had been developing ecclesiastical devices found a new expression in these secular typologies.

'The most important point to be grasped here is not just that legal architecture aped religious architecture in this era but that law became a type of religion and its temples sometimes considered more worthy of attention than the churches they sometimes dwarfed' (Mulcahy 2011:130).

The most important development in the judicial typology observed by Mulcahy (2011) during this period was the increased reactions to fear. The courthouse of the 19th century was as much about the celebration of the violence of law as it was of civic pride. This fear of the working class stemmed from the violence of the French Revolution (1789) and thus there was an increased need of the middle class to be separated from those they deemed dangerous and dirty. During this period many of the newly constructed courts displaced slums as a symbolic cleansing of society by the law.

Thus the law court became spaces of self-contained privacy, enforcing societal hierarchy in its halls. It became spaces in which the public was educated in the fear of the law and where the achievements of the industrialists could be celebrated (Mulcahy 2011; Resnik & Curtis 2011).

Figure 5_7 Protesting women at Marikana [image online] available at: http://natoassociation.ca/wp-content/uploads/2013/06/2012_southafrica_miners.jpg access on: 2016-10-17

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It is the opinion of this study that the principles of the 19th century court design, its inherent symbolism and the discourse it represented, had a direct influence on the design of the Pretoria Magistrate's Court. The first obvious evidence thereof is the neo-classical façade.

This stylistic application and its simplified yet strictly ordered facade communicates a direct link to the discourse developed and refined in England and exported to South Africa. The various thresholds and strict internal circulation order enforces the ideals and hierarchies developed during the 19th century based on fear, control and exclusion.

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