JUSTICE & THE RULE OF LAW AS ARTEFACT: THE DESIGN OF THE UK SUPREME COURT

DISSERTATION

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Figure 1 : Lady Justice, standing over the Old Bailey, pre-dating the Supreme Court by many decades : note the symbolism of this iconic statue located as it is at the heart of British Justice, but miles away from The Supreme Court across London.

ABBREVIATIONS

CRA : Constitutional reform Act 2005

HMCTS : Her Majesty's Courts and Tribunals Service, formed in 2011

HMCS : Her Majesty's Courts Service

HRA : Human Rights Act.C.42.(1998)

MOJ : Ministry of Justice, formed 2007

UKSC : Supreme Court of the United Kingdom, formed 1st October 2009

UK : United Kingdom

ACKNOWLEDGEMENTS

This MA dissertation has been a revelatory journey. I have discovered new friends and associates, rekindled old passions and developed new ones, developed new skills and recovered my self as a Designer.

Ultimately it has allowed me to reset my path in Design as an Interior Architectural Designer, until recently an invisible discipline in its own right.

Special thanks must go to my very supportive husband Sean Enright, and sons Jack and William, to my tutors at the University of Lincoln, Dr Raymund Konigk and Dr Anna Catalani, and to my tech savvy friend Marie-Louise O'Neill, all of whom have helped enormously.

ABSTRACT

THE RESEARCH PROBLEM

The concept of justice is an integral part of every democratic society. What exactly it means in any age is always the subject of debate but there is no doubt that it exists. The aspiration to achieve justice is timeless, transcending history and national borders and acknowledged by some of the most influential texts in UK history: The Magna Carta, in 1215, The American Constitution in 1787, The Great Reform Act in 1867, the Universal Declaration of Human Rights in 1948, The Human Rights Act in 1998. (1) The UKSC is the means by which this aspiration is secured: the bricks and mortar and golden robes, are all the physical manifestation of a national aspiration to be governed justly and in accordance with the rule of law. It is the highest point of arbitration between the individual and the state. Its rulings reflecting the constant tensions between competing interests, shaping the relationship between the state and those it seeks to govern. This Masters Study explores the interface between the aspiration for justice, the intangible artefact of the rule of law, and the architectural design of its physical space : a UK Supreme Court building, hereafter UKSC. It asks the question what is the appropriate artefact to give physical expression to the presence of the intangible cultural artefact the rule of law?

RESEARCH METHODS

Qualitative research of the relevant available literature on the history, semiotics and materiality of courts has been reviewed and discussed, and is found to substantiate the premise that the rule of law may be considered an intangible cultural artefact. The review of literature to inform and underpin this study has focussed on two key areas of knowledge: the history of the UKSC and the recognition of justice as an artefact to give expression to its intangible presence. The contemporary and philosophical texts listed in the bibliography were also reviewed to elicit support for the premise of justice as an artefact that reflects the desire of a nation to be governed by the rule of law. It was found that there is a paucity of published material available addressing the materiality and tangibility of justice in the UK courts estate. The delimits of the study precluded a design for a new Supreme Court building. The purpose of this study is to produce the knowledge and understanding required for the designers of future Supreme Courts buildings.

FINDINGS

The processes and parameters which must be accommodated in a court are largely understood by architects and designers, so this work is not intended as an architectural critique of the current UKSC home at the Middlesex Guildhall. However it shows clearly that the design of the UKSC lacked a deep understanding of the concept of justice and the rule of law and how it can best be represented in the architectural presence of a UKSC building. It exposes the intentions of the government to remove physical courtrooms replacing them with virtual courts, which will reduce access and not improve it as they assert. And it reveals an absence of critical thinking in the design professions, and the necessity for the development of the language and research tools with which to conduct further research. The research methodology with delimitations elicited answers to the research question but it is the exploration which has yielded the most rewards since this is a new field of thought with very little existing literature nor even the linguistic tools with which to discuss it. Ultimately it has opened more areas of inquiry which will require their own methodologies of research to be designed. It has become clear that a research of philosophical approaches may be necessary to provoke debate and stimulate thought in this new area of study.

CONCLUSION

The insertion of the UKSC into the Westminster Guildhall has resulted in an unsatisfactory design that involved the destruction of the interiors of a Grade II*Listed cultural heritage building. Those events have foreshadowed a massive court closure scheme and a revolutionary rethink on what the physical manifestation of a court should be.

The UKSC is of great social and political importance in the UK. It defines the rights and responsibilities of the state, commerce and the individual. It is the final safeguard of liberty and justice. This research asks how the interior architecture of the court should encapsulate these aspirations and responsibilities. Recent events have shown that it is necessary to reassert the balance of powers between executive, legislature and judiciary, and the one key way to achieve this might be to construct a new UKSC building, using the opportunity to start a national conversation about the place and importance of the UKSC within our democracy, educating people about its pivotal role and purpose for all in society, and providing opportunities for public engagement with justice and the rule of law.

The case is made for the legitimacy and timeliness of this work and for further research to explore the reach of its implications. The ultimate aim would be to be able to produce an interior and architectural design guide for a new UKSC building. This might then be tested through a design competition scheme for a new UKSC building.

At this time of sweeping reform and the potential destruction of the courts estate it is important to record all that might be lost, research and develop the language required across the design disciplines and initiate public debate about the issues before an important aspect of our cultural heritage is lost forever.

It is asserted that the proposed research and debate would open up the court to scrutiny, improving public access, and result in a design process capable of producing a beautiful and iconic building fit for both purpose and the aspirations of a nation.

In essence, as Sir Winston Churchill said in the House of Commons after the chamber was damaged by bombs during World War II:

"We shape our buildings, and afterwards, our buildings shape us".
(Churchill, W. 1944)

Because this is so we must ensure that our great and iconic buildings of state remain true to purpose and that new buildings for the great institutions of our democratic state are executed with appropriate semiotic and architectural references.

NOTES:

1. See Poster No. 2 The UK Supreme Court : History & Context.

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Figure 2 : Detail from original painting of Court 1 of the UKSC, author's own work.

OUTLINE OF RESEARCH PROBLEM

INTRODUCTION

"I am an academic, trying to listen to and learn from the same materials that are here on exhibition." (Miller, P. 9, 2008)

It is in this spirit that this work has been undertaken.

Begun as a reaction to the proposals to close large numbers of court rooms across the UK, ostensibly because they are inefficient and outdated, it has developed into a study of both the intangible as well as the tangible qualities of court buildings which might be lost to our society in the name of expedience.

It is has necessitated an examination of the historical, cultural, religious, aspirational, socio political, and legal development of Justice and the rule of law in the UK and of the effects of architecture and interior architectural design of courts buildings upon it.

Ultimately it has generated its own momentum and perhaps asks more questions than it can answer. The work to answer those questions will become the subjects of further research (2).

BACKGROUND

Most democratic societies that recognize the rule of law have a Supreme Court. Whatever the culture of the people or the language, the building that emerges is the physical manifestation of a national aspiration for justice, due process and the rule of law. Their architecture and design express the nature and gravity of a common aspiration. In the UK the Supreme Court is the highest and final point of arbitration between the individual and the state, its rulings shape society and its independence from the executive is fundamental to the constitution.

In every democratic society there is usually a healthy degree of tension between the executive that makes the laws and the judiciary who subject those laws to scrutiny. In the UK this is usually through judicial review of government actions.

In the UK a new and important dynamic was the passing of the Human Rights Act 1998 (Human Rights Act. C.42. (1998)) which incorporated the European Convention into domestic law and gave the judiciary a much wider power to subject government actions to judicial scrutiny.

In the aftermath of the Act a deluge of legal challenges followed on behalf of diverse groups, such as prisoners, travellers, mental health patients , migrants and benefits claimants, who claimed infringements of their human rights by the Government. This line of cases culminated in a series of highly publicized deportation cases involving terror suspects. Government impatience with the judiciary reached a nadir and tensions between successive governments and the judiciary rose steadily.

In the years that followed a series of Home Secretaries have complained that the judiciary were frustrating the will of Parliament and the popular press became increasingly critical of human rights decisions that appeared to favour deportees and terror suspects. The public respect in which the law is held has diminished and the government has played a part in bringing this about. After the Court of Appeal Brexit decision both the Lord Chancellor, Liz Truss, sworn to defend the independence of the judiciary, and the prime minister wrote about *'Europhile judges'* frustrating the will of the people (Slack, J. 2015) in a way which implied that the judges had not been true to their oaths

This important dynamic has been compounded by the effects of austerity and legal aid cuts and has allowed the MOJ to announce in April 2014 that HMCTS will deliver a reform programme designed to deliver a cost saving of over £100 million per year by 2019. This has been proposed without a Royal Commission and only limited consultations, presenting a massive cost saving campaign as a benefit to the people when in fact there are significant adverse consequences which have not been explored.

There is constant tension between the principles that define the rule of law and the laws that democratically elected legislatures enact. As the figurehead of the UK judiciary the Supreme Court asserts both leadership of the judiciary and plays a pivotal role in managing the separation of powers between the judiciary, the executive and the legislature.

The court building itself may be seen as the physical interface between the intangible cultural artefact of justice and the society which it serves. It may also be said that ***"The forms in which governments represent themselves provide windows into their aspirations. Courts – in democracies – can be a venue that enables discursive public exchanges through procedures aiming for a participatory parity."*** (Resnik and Curtis, 2011, 377)

Thus the UKSC building has great social and political importance and a huge role to play at the interface between the UK and the rest of the World.

In 2009 the newly created Supreme Court took up residence in the hastily refurbished and fitted out Middlesex Guildhall, just on the other side of Parliament Square. This new location was intended as a physical symbol demonstrating Separation of Powers between the Executive, the Legislature and the Judiciary, and that the Judiciary function independently and are not under the control of nor influenced by the other two arms of the UK democracy.

This was an extremely significant gesture to make, since the independence of the judiciary underpins the UK democracy and has been a key tenet of the constitution for several hundred years. The history of the doctrine of separation of powers can be traced back to ***Aristotle's Politics*** (H. Rackham trans 1932) and can be found in the philosophical works of John Locke (Laslett, 1988). However, it was the French Jurist Baron Montesquieu who gave the doctrine clear voice in his book *'Esprit de Lois'* (The Spirit of Laws) (Montesqueiu, 1748) through extensive discussion. Simply put he asserts that no one person or body should be vested with all three types of power. His concern was that "***there would be an end to everything if the same man or body were to exercise all three powers".*** This is the distinction between a democracy and a dictatorship.

However, there has been a growing imbalance of powers in the UK over the last 10-20 years, with poorly opposed Governments seeking greater autonomy from the checks and balances built into the constitution. There is now open hostility from the press towards the Judges, sometimes fostered by the Government.

This has been seen very graphically in recent coverage of R (Miller) v Secretary of State for Exiting the European Union (3) (4). In this landmark case the Court of Appeal decided that the Government does not have the power under the Crown's prerogative to give notice pursuant to Article 50 for the UK to withdraw from the European Union. The Daily Mail (Slack, J., 2015) and the Daily Telegraph, (Dominiczak, P., Hope, C., McCann, K. ,2016) in particular chose to pillory and even threaten the three most senior judges in the country when they ruled that the Government was not acting within the Law by seeking to bypass Parliament. This would preclude a Members debate and deprive the MPs of the opportunity to vote as representatives of the people. Instead the Government intended to use the Royal Prerogative to trigger Article 50 rescinding the Act through which the UK became a part of the EU. The court did not directly rule that the constitutionally correct route would be through a vote in the Houses of Commons and the Lords, but they did say that to use the Crown's Prerogative instead would be "***contrary both to the language used by Parliament in the 1972 Act and to the fundamental constitutional principles of the sovereignty of Parliament."*** (R (Miller) v Secretary of State for Exiting the European Union, 2016) The 1972 EU Communities Act was made by Parliament and can only be unmade this way.

The government encouraged the press and the public to vilify the judiciary by suggesting the judges had not been true to their oaths and had attempted to thwart the democratic will of the people. Ultimately the government and its supporters seemed to hope that the Supreme Court could be bullied into taking the government line. It is submitted that this has been a part of a much wider trend.

NOTES:

2. see Addendum.
3. see Image on page.
4. R (Miller) v Secretary of State for Exiting the European Union. Heard at the High Court, 3. Nov 2016, before the Lord Chief Justice of England and Wales, The Master of the Rolls, Lord Justice Sales.

The Supreme Court subsequently heard R V (on the application of Miller and another) (respondents) v Secretary of State for Exiting the European Union (Apellant),(5) giving their judgement on 24th January 2017. The Supreme Court found by a majority judgement that ***"the terms of the ECA, which gave effect to the UK's membership of the EU, are inconsistent with the exercise by ministers of any power to withdraw from the EU Treaties without authorization by a prior Act of parliament."*** (R V (on the application of Miller and another) (respondents) v Secretary of State for Exiting the European Union (Apellant), 2017)

The Miller case was a successful attempt by an individual citizen to challenge the government by using the courts. The judiciary have a duty to act and think independently, swearing an oath to ***"do right to all manner of people after the laws and usages of this realm without fear or favour, affection or ill will."*** They are bound by this oath to consider an action brought to the courts by an individual citizen to challenge a government acting without due process and ignoring parliamentary sovereignty. It became a scandal that the then Lord Chancellor, Liz Truss, chose not to follow her own oath, sworn on appointment, ***"to respect the rule of law and defend the independence of the judges"***, (CRA, 2005). This sequence of very recent events demonstrates clearly why the Supreme Court should inhabit a physical setting with which the independence and impartiality of the Judiciary is communicated, both visually, and by its presence.

It is more important now than perhaps at any other moment in recent modern history that the Supreme Court, as the highest Court in the UK and the figurehead of the Judiciary, is seen to be truly independent of the both the Executive and the Legislature.

It is clear that some of the Supreme Court Justices themselves have been disappointed with the approach taken by the government towards the provision of an appropriate building (6).

Judge Moses, interview with The Telegraph 11/05/06 :
"It is one of the most disgraceful things that they won't build a new building for the most important court in the land. I feel so strongly about that. It shows a terrible meanness of spirit and a complete misunderstanding of national culture and pride...the Treasury won't pay for one justifiable opportunity to make a new public building. When you go to the Supreme Court in Washington, I defy you not to have a lump enter your throat as you walk up those steps. And that's what the building should do."

Lord Steyn, Law Quarterly Review, April 2005. *A Phoenix from the Ashes?* Accommodating a new Supreme Court :
"In every constitutional democracy, large or small, the Supreme Court is accommodated in a dignified building fit for a co-ordinate branch of the government. To accommodate our Supreme Court in an unsuitable building would be a signal to the world that the values of constitutionality, legal allegiance to the rule of law and equal justice for all are not held in high regard in our country."

Sir Stuart Lipton, letter to The Times, 30th June 2006 :
"***This new project should honour our great civic traditions of providing outstanding buildings in appropriate locations to enhance our position as a nation. We're all creatures of our environment, and visitors and foreign businesses come to this country because of our historic civic values. The proposed conversion of the Middlesex Guildhall to Supreme Court illustrates current government practice of seeking the lowest cost option which will have the least impact and benefit to society. The institution of the Supreme Court is a vital one and it should be housed with dignity in a skilfully designed building fit for the purpose, rather than as a compromise where cost is the prime driver."***

This dissertation examines closely the concept of the Supreme Court and what it represents, as a basis for the theory that it should be allowed to manifest itself in a way which demonstrates its presence and the powerful position it

Figure 3 : High Court's Article 50 decision: how newspapers around the world reacted to the Brexit ruling. *Telegraph* Reporters 4 November 2016. www.telegraph.co.uk [accessed 23.08.2017].

must occupy within the UK constitution. It is part of an active cultural heritage of the people of the UK, and must be both accessible to and representative of those people.

The conclusion to the study in Chapter 4 will ask whether the relocation of the court into a refurbished council building, was a squandered opportunity to show that the concept of balance of powers between the executive (government), the legislature (parliament) and the judiciary (the courts and lawmakers) is alive and functioning well, allowing the democracy to thrive and continue to develop with society.

Lord Hope was concerned that as a building the Middlesex Guildhall "***makes no statement to proclaim its existence. It cannot be said, to use the Lord Chancellor's own adjective, to be a 'prestigious' building. In comparison with its surroundings, there is nothing about it that suggests that anything of very great importance happens there.***" (7) (L. Q. R. 2005, 121 (April), 253-272, p.13).

The decisions taken by the Executive with regard to the provision of a building for the new Supreme Court were driven by cost and expediency. This was of course a decision taken at the height of a recession, and perhaps justifiable in that context alone. The decision to re–use an historically important building is only adequate if the issue is looked at in a superficial way. If confined to accommodating the processes of the court the refurbishment and reconfiguration of the building has not been a practical failure.

However in their haste the government drove a coach and horses through the protections conferred by its Grade II* listing sending out an unfortunate message, foreshadowing and perhaps encouraging the Courts Reform programme.

As Lord Steyn points out "***To accommodate our Supreme Court in an unsuitable building would be a signal to the world that the values of constitutionality, allegiance to the rule of law and equal justice for all are not held in high regard in our country.***" (L. Q. R. 2002, 118 (Jul), 396).

Ultimately the government has chosen to ignore the deep semiotic importance of the court as heritage, both tangible and intangible, which may be to the detriment of due process at a time when loss of the respect for the rule of law undermines democracy and the peaceful pursuit of life and business in the UK.

CONCLUSION

The aim of this research is to distil the elements which should drive a design for a supreme court building when one looks at the rule of law as a force, and not just a process, and to establish design guidelines for an appropriate physical setting for processes of justice in the UK.

There are key aspects which will need to be addressed: to research and analyse the history, examine the Supreme Court as an artefact in its own right, and propose a detailed design brief for architects, interiors architects, designers and interested individuals to rely on. This would help to educate people about its true role and purpose, and its importance to the health of the UK democracy. It would open the court to both scrutiny and criticism but ultimately would crystallise into a beautiful and iconic building fit for both purpose and the aspirations of a nation.

The aim of this work will be to provoke debate and stimulate imaginations and to provide a working framework for the ideas generated to become design proposals for a new building for the UK Supreme Court.

NOTES:

5. R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Apellant) Heard at the Supreme Court 24 Jan 2017.
6. The following 3 quotes are all from The Guildhall testimonial by SAVE Britains's Heritage, 2004.
7. (L.Q.R. 2005, 121 (April), 253-272, p.13).
8 (L.Q.R.2002, 118 (Jul), 382-396.Final para.).

Figure 4 : Justices of the Supreme Court leave the Supreme Court of the United Kingdom in Parliament Square, London *Reuters, Independent.*

HISTORY & CONTEXT

CHAPTER ONE

1.1 INTRODUCTION

On the 12th June 2003 Tony Blair's Labour government announced a Cabinet reshuffle which contained the surprising decision to alter the office of Lord Chancellor and to establish a new United Kingdom supreme court. This was a U-turn for this government and may have been precipitated by the opportunity afforded by the retirement that same day of the incumbent Lord Chancellor, Lord Irving of Lairg, who had been in post since 1997.

There had been no consultation with the judiciary, no Royal Commission report, nor had the Cabinet been consulted and all learned of this enormous constitutional reform without warning through a press release.

Indeed, Lord Hope,(9) the most distinguished Scottish lawyer of his generation, recalls that "***The press notice of June 12, 2003 gave few details***" and that the Law Lords were told that "***there was to be a new Department of Constitutional Affairs, that the post of Lord Chancellor was to be abolished,***" and that "***a new Supreme Court was to be created to replace the existing system of Law Lords operating as a committee of the House of Lords. There was no suggestion that the Government were proposing that there should be a period of consultation on any of these issues.***" (Hope, LJ. 2005) Since the February of that same year the Government's impatience with the judiciary was growing on a number of fronts. This was exemplified by the remarks of David Blunkett MP, Home Secretary, who was quoted in The Independent as saying: "***Frankly, I'm personally fed up with having to deal with a situation where Parliament debates issues and the judges then overturn them.***" (Blunkett,D.2003)(10)The announcement came at a time when relations between the Judiciary and the government were at a low. Blunkett's frustration came after a series of setbacks experienced by the government where laws passed and enacted by parliament had resulted in cases being brought by litigants who believed that these new laws contravened their rights. For instance, the deportation case of hate preacher Abu Qatada (11) with Theresa May as Home Secretary, which raised the issue of whether the government's policy of deportation of terrorist suspects was legal. In these cases, and others like them, governments were trying to extradite/ deport terror suspects but the courts ruled in several of these cases that they could not be deported to jurisdictions where torture was used. This would be in contravention of their human rights as set out by the Human Rights Act 1998 (12). The decision to remove the Law Lords from Westminster was a political decision, taken by the government of the day. This was not a result of pressure from the judges, very few of whom had expressed interest in the idea of separating the Law Lords from the Parliament at Westminster. With the notable exceptions of Lord Steyn (13) and Lord Bingham (14) and elements of the legal elite (15).

Graham Gee points out that "***Rather, it was, for better or worse, a political project. It was conceived in private and without consulting a single judge, by the then prime Minister, Tony Blair***", (Gee, G et al. 2015) (16) In July 2003 the Department for Constitutional Affairs published *Constitutional Reform : A Supreme Court for the United Kingdom* stating that "***The Government believes that the establishment of a separate Supreme Court will be an important part of the package of measures which will redraw the relationship between***

Figure 5 : Court One in session.

the Judiciary, the Government and Parliament and increase our judge's independence" (17).

There has been much discussion since on the motives and merits of this decision, but in the context of this study it must be sufficient that the new Supreme Court was thus formed and a search begun for a suitable building.

So it was in this context that the justices engaged with the government in a hopeful but pragmatic effort to set up the new Supreme Court.

"***Subsequently, government officials worked closely with the Law Lords to identify Middlesex Guildhall on Parliament Square as a suitably dignified, spacious and accessible building to house the Court, all the while conscious of the political imperative to keep costs down.***" (Gee, G et al. 2016) (18).

Mention is made of this process, albeit fleetingly, early in the Design & Access Statement for the alterations and refit of the Middlesex Guildhall (19).

"***1.2 Site Selection Process***
In 2004 a comprehensive evaluation of a number of buildings within the Central London region was undertaken. The property evaluation exercise was based on the statement of requirements agreed with the Law Lords. The initial search generated a long list of 48 properties but only five of which, after closer scrutiny against a number of criteria (size, operational efficiency, adaptability and suitability), merited further consideration. After further analysis a short list was agreed, namely: Stewart House, St Dunstans House, Central Criminal Court, New Wing, Somerset House and Middlesex Guildhall."

It is interesting to note that at no point was there any consideration given to the idea of locating the Supreme Court anywhere in the country other than London. All of the 5 short-listed properties are located within a mile of the Houses of Parliament. It seems also that little or no consideration of the possibility of a new building, this idea having been dismissed very early because of the relatively high costs of a site and construction. This may indicate London-centric thinking, together with an obvious preference by the new Lord Chancellor to prioritise the demands of government over any need for the new Supreme Court to be understood in its proper place within the constitution.

The Design & Access Statement goes on to say :
"***The significant advantage of locating the UK Supreme Court in the Middlesex Guildhall is associated with its proximity to and symbolic representation of the Judiciary, the Legislature, the Executive and the Church in the centre of London, around parliament Square.***"

This is the extent of the attempt by the executive to understand the nature and importance of the Supreme Court to the delivery of Justice and of the Rule of Law and of its place in the constitution and at the heart of the democratic processes. The senior judiciary spent time in reflection and some of this thinking has surfaced in their speeches and articles of the time, but largely their concerns have remained unanswered. In particular, Lords Hope and Steyn have committed their concerns in speeches and articles in legal journals, perhaps because the judiciary are constrained by convention to refrain from making statements that may be deemed political or critical of the government or executive branches of the state.

Lord Hope describes the circumstances of the inception of the new Supreme Court, and expresses the hope that the Scottish Parliament building at Holyrood be taken as a model for the new Supreme Court, describing the building itself as making a public statement that it is "***for a nation that believes in itself"*** and that ***"believes also in the value of democracy***" (20).

Fabian Evans, then Resident Judge of Middlesex Guildhall Crown Court, in a letter to The Times, vented his fury about the imminent destruction of his court.

"***Apart from government ministers and a handful of civil servants who are hastily, and no doubt loyally, implementing government policy, there are few if any who, with any knowledge of the facts, are enthusiastic for the conversion of Middlesex Guildhall into premises for the Supreme Court. Even the Lord Chancellor used guarded language when he first announced that the location was his 'preferred option'.***"

"***The public should also take note that there are no current plans to replace the seven criminal courtrooms in Westminster or, as was proposed, elsewhere in Greater London. This will mean that the victims of more than 300 cases will have to wait for justice and bide their time while they are added to the backlog of other work with which the London courts are currently burdened. These figures are likely to be compounded within a few months.***"

"***It is not too late to think again. There is no need to hurry about the creation of suitable premises for the highest court in the land. Middlesex Guildhall is fit for its present purpose and the justices of the Supreme Court deserve a new building fit for their own.***" (21) (22).

Against the backdrop of discussion and dissent from the judiciary Lord Hope recounts that Lord Falconer, the Lord Chancellor, "***assured the Select Committee that he would not enact legislation without ultimately providing suitable accommodation.***" Then, at the end of the report stage of the Constitutional Reform Bill he inserted a *'sunrise'* clause, the effect of which ***"is that it is he and not the Law Lords who will have the final say"***. (23) On 14th December 2004, the Lord Chancellor announced that Middlesex Guildhall was his preferred option, justifying his decision on its location on Parliament Square, its ability to provide key requirements for the Supreme Court and on its value for money.

Many felt that a new building would have been far cheaper and more effective. Marcus Binney of SAVE Britain's Heritage launched a campaign ***"opposing the damaging proposals for the conversion"***, (24) and when Westminster Council granted consent for the new court , SAVE took the case to judicial review on the basis that the decision was contrary to national and local policy on the treatment of listed buildings. This challenge was unsuccessful.

On 1st October, 2009 judicial authority was transferred away from the House of Lords and the Supreme Court came into being. The newly refurbished Middlesex Guildhall was opened as the new UK Supreme Court. Whilst the Court's composition has changed little since its transition from Appellate Committee in the House of Lords it retains largely the same powers and maintains a similar case-load. Administratively the court is larger, with a higher public profile and required to manage its own affairs. It has its own larger staff of civil servants, ***"more reflective of Whitehall than of Westminster"***, (Gee et al, 2015). The agenda set for the court by this branch of HMCTS staff is clear to see from the yearly statements of the court business as envisaged by a branch of the executive. (25) It is almost entirely dedicated to cost saving and planning, with an introduction from the president of the court to lend it credibility.

A key aim, that of visibility to the public, has been increased through its own press office, issuing press releases, live streaming hearings online, and openness to the public, with the court open for ***"seven open access days"*** a year and providing ***"a welcome for court users and visitors from across the world to the building on all working days"*** through a ***"dedicated Reception desk"*** (UKSC Business Plan for 2016-2017), with 250,000 visitors between 2009 and 2013 (26).

It has been portrayed by the government as ***"a twenty-first century institution steeped in the business like culture of new business management"*** (Dewry, G. 2003). However it is notable from the most recent UKSC Business Plan 2016-17 that the independence of the court and its purpose as the final and supreme bastion of justice and the rule of law in the UK is barely acknowledged, and then only does so on the final pages in *Annex A, Aims and Objectives* ***"Our aim is to provide an environment which enables the Justices of the Supreme Court to carry out their duties in an effective, visible and accessible way, and which best develops the rule of law and the administration of justice, both in the UK and in the countries which use the JCPC."*** Point 2 goes on to say that ***"The UKSC will maintain and increase confidence in the administration***

NOTES:

9. Lord Hope was the most senior Scottish judge of his generation, becoming a Lord of Appeal and later one of the new Justices of the Supreme Court

10. (Rt Hon David Blunkett MP, Home Secretary, quoted in The Independent, 20th February 2003.)

11. (RB & U (Algeria) and OO (Jordan) v Secretary of State for the Home Office Department [2009] UKHL 10)

12 Human Rights Act 1998 abbreiates to HRA 1998

13. 'The Case for a Supreme Court'(2002) 118 Law Quarterly Review 382,

14 *'The Evolving Constitution'* (2002) European Human Rights Law Review 1,

15. *'A House for the Future'*, (Cm 4534 2000) a submission by JUSTICE to the Royal Commission on the Reform of the House of Lords.

17. Department for Constitutional Affairs (2003) *Constitutional Reform: A Supreme Court for the United Kingdom*

16. Gee, et al, *The Politics of Judicial Independence in the UK's Changing Constitution*, (2015) Cambridge University Press.p194 17 Dept. for Constitutional Affairs, Constitutional Reform: A Supreme Court for the United Kingdom (July 2003), para 7

18. Gee, et al, *The Politics of Judicial Independence in the UK's Changing Constitution*, (2015) Cambridge University Press. p194

19 Planning application and Listed Buildings permission submitted by Architects Feilden & Mawson, May 2006 and amended version received 09/03/07, Design & Access Statement, p 2.

20. Lord Hope's Speech :.*A Phoenix from the Ashes?* Accommodating a New Supreme Court. 121 Law Quarterly Review. L.Q.R. 2005, 121(April), 253-272

21 Judge Fabian Evans, Letter to the Editor of The Times 28th June 2006

22. Quotes which feature in SAVE Britain's Heritage *'The Guildhall Testimonial'* 2004 Marcus Binney and other contributors.

23. Lord Hope's speech *A Phoenix from the Ashes?* Accommodating a New Supreme Court p14, L.Q.R270

24. The Guildhall testimonial was the pamphlet produced by SAVE Britain's Heritage to put forward their case and to gain support.

25. UKSC Business Plans Published yearly.

26. UK Supreme Court, Annual Report and Accounts 2012-2013 (London: HC 3 2013), p37)

of justice throughout the United Kingdom. It will promote transparency in, accessibility to and knowledge of the ways in which justice should be rightly administered. It will thereby promote knowledge of the importance of the Rule of Law, not least as a guarantee of democratic freedom." (27).

It is a point made almost as an afterthought in a final Annex of the report and some critics have suggested the MOJ are merely paying lip service to these concepts. Some Supreme Court Judges have been openly critical of the government's refusal to make proper financial provision for the court. The Business Plan does not explain how they intend to achieve their stated aims, but the assertion that this must in great part be effected by the building itself upon those who use or visit it is the main force of the argument made in this dissertation. It should have been a primary requirement of the design brief for the provision of an appropriate building for the UKSC and this will form the basis for the Design Brief suggested in the final conclusion of this research study as a guide to future provision of an alternative UKSC building or to those who wish to build new supreme courts in other jurisdictions.

Attempts are also made to assert another key aim, that of the promotion of the independence of the court from the executive, with the following statement found almost as an afterthought in the final pages.

"The UKSC will continue to be publicly recognised as unequivocally independent of political influence an interference; and it will remain visibly separate from both the executive and the legislature and be publicly acknowledged as such." (28).

It is submitted that these statements are considered subsidiary, by the Supreme Court's civil service at least, and not important enough to be stated in the main body of the document. Despite being set up as an independent branch of the civil service, whose specific task is to support these key tenets of the functioning of the Supreme Court, this elucidates clearly the differences in priorities between the senior judiciary who seek to imbue the SC building with the ***"majesty of justice and the rule of law"***, and their civil service team, who are responsible for ensuring that the building functions as a place where the processes of justice are carried out.

As Lord Hope states (29) ***"The conclusion that I would draw is that the Lord Chancellor lacks the resources that would be needed to meet the challenge of creating a new building. Critically, the project appears not to have the support of the Treasury. No additional cash is to be made available.' 'A major constitutional change has been proposed, but the government has no wish to embark on a scheme that might be thought to be at risk of being criticised on the ground of lavish exposure." "The political climate is for cost cutting, not for the building of a new acropolis." "But if this is all the Government can do for them, it will not be a Phoenix that will rise, reinvigorated, from the ashes that are left when the House of Lords bids farewell to the Law Lords." "I fear that the building which will provide the setting for the new court will be a shadow, a poor relation, of that which they will have left behind."***

1.2 TODAY'S POLITICAL CONTEXT

The Courts Bill proposed in the recent Queen's Speech (30) will soon be put to Parliament seeking to enact the *'Great Reform'* of the Courts which Theresa May's government has been working towards. The government wish to introduce virtual courts, online court hearings where very often the public and litigants are not in a court as we know it. The reform is being proposed under the guise of modernizing justice, making it quicker and more accessible. Critics of the Bill suggest that saving costs is the main agenda by shrinking the courts estate. The closure of 86 courts has already taken place and many more are in prospect.

A more recent document written by Her Majesty's Courts and Tribunals Service entitled *'Justice Matters : Changing something that matters'*, (31) asserts three major changes to the way in which justice will work in the UK: the use of new technology to reduce the requirement for participants in legal proceedings to be physically present in court, the shrinkage of the courts estate as a consequence of the contention that a physical court is not necessary where virtual courts replace them, and the delegation of judicial responsibilities to civil servants to further reduce the reliance on , and costs of, the judiciary.

This broad statement of intent is the opening salvo of the Courts Reform Programme and begins with the statement: ***"Our justice system matters- for every citizen and for the role we play in the world. In just a few short years we will revolutionise how justice is administered with the lives of real people at its heart. Even if they only touch it once and fleetingly, the experience we want to deliver will be one where every customer feels that they've been treated fairly and with respect; that what matters most to them matters equally to us."*** And goes on to say that they are setting out to ***'transform the way we think and feel about how we serve our customers' investing £1bn to 'transform the setting of justice". "Justice will no longer be viewed as a slow process played out in a physical courtroom. Instead, it will be a faster, easier to use service developed according to customer needs, delivered in the way that's most appropriate and effective."***

The mistakes that beset the creation of the Supreme Court are about to be repeated on a grand scale with the government inflicting sweeping changes onto the Judiciary and the courts estate, in this instance using the language of the supermarket to address the public.

1.3 NEW TECHNOLOGY

We are told that of the £1bn investment over £700m is ***"for the Reform Programme itself, with approximately £270m for developing the Common Platform in partnership with the CPS". "A third of the funding will come from the sale of the buildings we don't need."*** (32) ***"Historically, the question 'where will justice be delivered?' had only one answer; in court. There was only one answer because there could only be one answer. But if the ancients had what we have now, they'd have come to the same conclusion we've come to: justice can and should be delivered where it's most appropriate and most proportionate. If it's a seriously difficult case, or a serious crime, that place can only be in front of the full majesty of the court, in full view of the public. But a speeding fine? Society now has confidence in modernity; it is now ready to accept that for the majority of cases, delivering justice online is wholly appropriate."*** (33).

Neither who *'the ancients'* are nor where the line will be drawn between serious crime and a speeding fine is addressed. There is a danger of relegating the rule of law, justice and the role of the judiciary to a mere function of the civil service. This is not the only front upon which these battle lines have been drawn, but there is scope for future research into the effects that these reforms will have on the quality and integrity of justice in the UK.

1.4 SHRINKAGE OF THE COURTS ESTATE

It is stated that ***"We have reduced the size our estate over the past few years and we will look to reduce it still further"... "The slimmed-down estate we'll manage will be optimised to operate in a modern way. Today's court fixtures and fittings often create an intimidating experience. Wherever possible and appropriate, we will pull out the fixtures and fittings and allow ourselves the ability to conduct hearings in a setting that is proportionate."... "When we decide that a certain building is no longer what we require – either it's in the wrong location or it can't be modernised in the way we need it to be – then we will sell it. Which buildings, we don't yet know. As soon as we do, we will tell you. The Royal Courts of Justice and Central Criminal Court will remain."*** (34).

NOTES:

27. UKSC Business Plan for 2016-2017, p38.
28. UKSC Business Plan for 2016-2017, p42.
29. In 'A Phoenix from the Ashes? Accommodating a New Supreme Court' (2005) 121 Law Quarterly Review 253.
30. Hansard 21 June 2017, Volume 626.
31. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p3.
32. The Common Platform is the IT developed to make Courts paper free. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p8.
33. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p9.

It is clear from the use of language here that the real agenda is to sell off assets and that no attempt to rationalise or preserve valuable heritage is to be made. Under *'Access to justice – in courts and tribunals'* they say that ***"With fewer buildings, we will provide alternative provision for customers who need to appear in court. Appearing in court will no longer mean physical presence"*** (35).

1.5 DELEGATION OF JUDICIAL RESPONSIBILITIES

A further innovation to speed up justice proposes that ***"Judges will delegate more of their tasks to HMTCS staff to move cases along more quickly"*** (36).

This is a blurring of the separation of powers. No attempt made to address the legal aspects of this decision, nor it seems to consult the judiciary. They posit a *'Customer Service Centre'* where ***"Perhaps 20% of the queries we will handle will require a deeper legal or quasi-legal knowledge than most of our people have so there'll be a 'second tier' of HMCTS experts on hand to offer support in these cases."*** (37) No attempt is made to address the fact that lawyers are trained and qualified and regulated for a reason... to protect the vulnerable against the power of the state.

Later they say *'people unhappy'* with their benefits decisions will be able to *'talk with a judge'* online. This is a clear abrogation of the responsibility of the judiciary to deliver fair and transparent justice to all.

The proposed 1/3 reduction in their staff, and announce that they 'have created a new Tribunals Caseworker role to handle some delegated judicial functions. Only *'complex matters'* will be referred to a judge, creating another pseudo - judicial role to be presumably carried out by a completely unqualified civil servant, with no legal training and no independence from the civil service. Clearly this can only be a backwards step for the rule of law in this country. They give this as ***"only one early example of the opportunities emerging for people to learn new skills in different roles as we progress with our transformation"*** (38).

Referring in their summary to *'judicial decision-makers'*, allowing single magistrates to sit as *'single justice'* with a *'legal adviser'*, and *'specially trained court staff authorised to exercise certain aspects of the court on behalf of a judge'*, thus effectively removing legally trained and qualified personnel from the courts, without any attempt to address the legal basis for their proposals.

The legal profession has begun to react, as they become aware of the radical nature of these reforms. Andrew Langdon, QC, Chairman of the Bar has encouraged barristers to stand up ***"for the value of traditional human, physical, real face to face contact in the delivery of justice by one of Her Majesty's judges"***, who, he hopes, will be seated, ***"not in a pop-up or a mobile court, but a place where the majesty of the law is still discernible."*** (ref) (39). His words run counter to the prevailing wind of court modernization and virtual justice. However, the dynamic of the courtroom must not be underestimated, he says. ***"The humanity of physical presence is, I suggest, an important component in the delivery of justice."***

Raising the ultimate spectre of replacing *'judicial decision makers'* with Artificial Intelligence Lord Neuberger, President of the Supreme Court, referred to the use of Artificial Intelligence in a trial at a Magistrates Court where the AI has achieved a 73 percent success rate compared to a normal Magistrates bench (40).

Clearly this is in fact a massive cost cutting exercise dressed up as a *'Great Reform'* for the benefit of the public, and presented in the patronising language of the supermarket. It is clear that they intend to sell off much of its assets, and reduce the courts estate hugely, removing access to justice for the more vulnerable of society, and removing independently appointed judges from some areas of justice altogether, with the sole motivation of cost cutting. These changes would require an Act of Parliament to, in effect, remove the right for a person's case to be heard by a judge where it is provided for in law. The recently proposed Courts Bill announced in the Queen's Speech does not contain such a proposal.

1.6 CONCLUSION

The UKSC and its location was decided in a hurried and ill considered manner, without adequate consultation, in the face of judicial opposition. The resultant building is only superficially successful and is not fit for the purpose if justice is recognized as an intangible artefact and not just legal process. This is part of wider process by which our court heritage is being sold off. The tangible cultural heritage of the courts is at risk and further research is required to ensure its protection.

This is fluid and developing situation in which great losses of cultural heritage may occur. This back-door attack on the integrity of the judicial function through the Courts Estate is a part of that developing picture and this study aims to bring light to the matter so that others may take appropriate action.

Tom Bingham (41) is remembered by his peers as one of the most able lawyers to fill that office in the last century. After his retirement Bingham authored the highly influential *'The Rule of Law'* and posthumously won the Orwell Literature prize. It has become a classic of modern literature. His book expounds the meaning and importance of the rule of law in a democratic society and reminds us of the importance of the rule of law to everybody in modern day society. However, he warns us too that ***"aspiration without action is sterile. It is deeds that matter. We are enjoined to be 'doers of the word, and not hearers only' (Epistle of James, 1:22). And it is on observance of the rule of law that the government depends"*** (Bingham, T. 2011).

NOTES:

34. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p10.
35. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p11.
36. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p11.
37. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p11.
38. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS. p14.
39. Andrew Langdon, QC ...
40. Lord Neuberger, President of the Supreme Court speech 4th July.
41. Tom Bingham, Baron Bingham of Cornhill, (1933-2011), judge and jurist, served as Master of the Rolls, Lord Chief Justice and Senior Law Lord, and is celebrated as the greatest lawyer of his generation.

Figure 6 : Gina Miller led the case against Government triggering Article 50.

Figure 7 : The Supreme Court of the United Kingdom.

TANGIBLE Vs INTANGIBLE

CHAPTER TWO

2.1 INTRODUCTION

"We have a right to expect the building which houses our Supreme Court to be, in Lord Steyn's words, 'a signal to the world' that the rule of law and equal justice for all are values that are held in the highest regard throughout the United Kingdom. If there is to be a signal to the world, it has to be visible. Above all it is the building in which the court is housed that must provide it. The new court will, after all, have no other symbols. There are no plans for the justices to wear robes, let alone wigs. There are no plans for any form of ceremony, for a mace or for anything else of that kind." (Lord Hope, 2005).

This Chapter discusses the interplay between tangible and Intangible, visible and invisible, material and immaterial, physical and ideological, object and process, wave and energy. It examines why these 'other symbols' are no longer deemed suitable artefacts of justice in the context of a modern Supreme Court, and why it is therefore so important that the architecture and interior design of the Supreme Court building provides the authority and 'majesty of the law' for all to read the presence of justice therein.

In 2003 UNESCO published the Convention for the Safeguarding of the Intangible Cultural Heritage, giving their definition and standards for those concerned with its safeguarding.

Intangible Cultural heritage is described as ***"the practices, representations, expressions, as well as the knowledge and skills (including instruments, objects, artefacts, cultural spaces), that communities, groups, and, in some cases, individuals recognise as part of their cultural heritage. It is sometimes called living cultural heritage. It is sometimes called living cultural heritage, and is manifested inter alia in the following domains:***

- ***Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;***
- ***Performing arts;***
- ***Social practices, rituals and festive events;***
- ***Knowledge and practices concerning nature and the universe."*** (UNESCO, 2003).

Hitherto UNESCO's concern has been to identify, define and list the attributes of intangible and tangible cultural heritage where it has come under threat from, at worst, attempts by governments to eradicate their own minority cultures, but in many cases simply from the lack of impetus from its own people, not enough of whom want to learn how to transmit and keep their cultural traditions alive. A UNESCO listing in UNESCO List of Intangible Cultural Heritage in Need of Urgent Safeguarding encourages societies to recognize and support their diverse cultural heritage. It is strongly arguable that UK justice and the rule of law is a category of Intangible Cultural Heritage, where its counterpart, the Tangible Cultural Heritage, would therefore be the Courts buildings. It could then be asserted that Justice and the rule of law is endangered by the government's *'Great Reform'* programme for the courts estate, since the

Figure 8 : The entrance hall to the UK Supreme Court.

Courts buildings in use in the UK are greatly endangered by it's proposals.

With regard to the courts estate HMCTS say: ***"We have reduced the size our estate over the past few years and we will look to reduce it still further.' 'The slimmed-down estate we'll manage will be optimised to operate in a modern way. Today's court fixtures and fittings often create an intimidating experience. Wherever possible and appropriate, we will pull out the fixtures and fittings and allow ourselves the ability to conduct hearings in a setting that is proportionate.' 'When we decide that a certain building is no longer what we require – either it's in the wrong location or it can't be modernised in the way we need it to be – then we will sell it. Which buildings, we don't yet know. As soon as we do, we will tell you. The Royal Courts of Justice and Central Criminal Court will remain"***. (HMCTS,2016) (42).

It is clear from the use of language here that the real agenda is to sell off assets and that no attempt to rationalise or preserve valuable heritage is to be made. Many of these buildings and their interiors are greatly valued and have listings to protected them from alterations and destruction. Many of these so called *'intimidating'* fixtures and fittings perform a purpose and have been doing so successfully as part of the court function for decades or far longer.

UNESCO's definitions are useful but present a difficulty where the intangible qualities can only be understood through their tangible elements, in particular in public buildings whose architecture and interiors are full of artefacts whose design has been to facilitate this human interpretative process of the intangible values within those spaces. This may be said of the courts, whose purpose is to transmit and house justice through both its tangible and intangible elements (43).

It is submitted here that Justice and the Rule of Law are part of an Intangible Cultural Heritage which is evolving and functioning in its primarily social context, a democratic society. The UNESCO definitions set up a dichotomy which favours the preservation of Intangible and Tangible Cultural Heritage which consists of traditional practices and artefacts that no longer have a place in a living society, and which are to be revered and preserved through legislation and in museums.

It is notable, however, that the UNESCO List of Intangible Cultural Heritage in Need of Urgent Safeguarding does not include any reference to courts anywhere in the world, although the list contains very little cultural heritage in the western world which requires safeguarding. This could either be because we in the west are already quite good at recognising and protecting our intangible cultural heritage, but it is more likely that we often fail completely to recognise it. It is unclear if this is because democracies tend to be more stable societies which recognise their own diversity in cultural heritage or are simply oblivious to them (44).

It is submitted here that this is what has happened by degrees over the past two decades in this country. Despite this, Justice and the Rule of Law is not yet recognised as an Intangible Cultural Heritage, as an oral tradition, nor are the Courts yet recognised as the Tangible Cultural Heritage, the place essential physical presence of Justice (45).

In the context of the continuous flux of historical, cultural, socio political, and legal development of the rule of law, it is possible and useful to think of Justice and the Rule of Law as an intangible artefact, and the courts as tangible artefacts, as a mechanism within which the design of buildings to house justice may be identified and discussed.

2.2 WHAT IS JUSTICE?

The aspiration for justice is at the heart of civilization. It has been conjured and elucidated through drama and literature and art, discussed and debated at every level of society, its presence required within a democracy, its' pursuit the preoccupation of philosophers and thinkers of the last thousand years, since people began to write.

This can be seen from a selection of important quotes which still hold great significance to society today:

"Sendeth rain on the just", Matthew 5.45, The World English Bible.

"Justice delayed is justice denied", Magna Carta, 1215 (Breay and Harrison, 2015).

"Let justice be done, though the World perish", Emperor Ferdinand I, 1503-64, translated from Latin ***"Fiat justitia et pereat mundus"***.

"Let justice be done though the heavens fall", William Watson, 1559-1603.

"Yet shall I temper so justice with mercy", Paradise Lost, John Milton, 17th Century.

"Justice should not only be done, but should be manifestly and undoubtedly be seen to be done", (Hewart, L. J. 1924).

"Justice is open to all", Miscellanea at Law by R. E. Megarry, 1955.

Yet it remains intangible, evidenced in its absence in revenge, civil disorder and war. Despite this everyone, from a small child, can recognise injustice when they see it although justice itself is hard to elucidate, clearer in its absence than in its action.

The qualities of Justice are evident but invisible, transcending all social classes and divisions, national identities and cultural differences. It is an intangible whose absence and presence may be felt, whose effects are tangible. Its value is to bind us all to each other, to protect us all from one another, and to allow us all to aspire to be greater, individually and collectively. It's presence is a prerequisite for democracy, and the protection of its independence is at the heart of the UK constitution. It is continually shaped by the interaction of people with the rule of law. Whether it is an artefact in its own right is unclear at this stage of the research, but that is the effluent of the rule of law is clear. One does not exist without the other (47).

The Doctrine of Equity is an example of how the courts have tried to avoid being diminished by case law and strive to give effect to justice.

"Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis all the same thing in a Chancellor's conscience." (48) (Selden, J.,1984) This was an attempt to give physical form to an intangible property. In other words, justice is so intangible as to be only imaginable as an entity inhabiting the chancellor's conscience.

2.3 WHAT IS THE RULE OF LAW?

The mechanism by which Justice is given effect so that justice may prevail and must be present in all democracies as a pre requisite.

As Tom Bingham points out in his seminal text The Rule of Law, reference was first made to the Rule of Law in a British Statute: The Constitutional Reform Act 2005 which ***"provides, in section I, that the Act does not adversely affect (a) the existing constitutional principle of the rule of law; or (b) the Lord Chancellor's existing constitutional role in relation to that principle"*** (Bingham, T. 2011).

He goes on to say that ***"one might have expected the Constitutional Reform Act to contain a definition of so obviously important a concept as the rule of law. But there is none"***. Instead we must read its presence from the system

NOTES:

42. *'Justice Matters : Changing something that matters'*, Crown Copyright, Sept 2016, produced for HMCTS., p10.
43. See Chapter 3 Materials & Immateriality.
44. This is an area of relevance which clearly requires further research into Cultural heritages across the World, as will be suggested in the recommendations for future research at the close of this dissertation.
45. See Chapter 4: Place Not Space, 4.2 The Creation of Place.
46. LJ Hewart, R v Sussex Justices, Kings Bench Reports, 1924, v.1, p259.
47. The nature of justice as the effluent of the rule of law is unclear and requires further study. Whilst the rule of law may be defined as an artefact justice itself is an aspiration and the result of the action of the rule of law in a democratic society. But since clearly one cannot exist without the other this study will continue to refer to them collectively.
48. (Selden, J.,1984, p223-224.

of law and justice, the court buildings of which are an integral and pivotal part, particularly in modern times as the other traditional artefacts of the court such as wigs and gowns, gavels and mitres, are all left behind in the name of modernity, accessibility and transparency.

2.4 WHAT IS AN ARTEFACT?

The result of every human activity may be called an artefact, but generally it refers to the resultant material things. Most artefacts are things constructed to fulfil a function.

*"**An object of any type made by human hands... are representative artefacts but experience as it occurs has immediacy, but no permanence: its value is ephemeral. Recalled and reconstituted experience lacks immediacy, but it does have a certain durability in personal consciousness and in the minds of persons who listen and look: this experience has meaning by virtue of being reflected on, of being consciously held, and of having a public – or potentially public – existence.**"* (Tuan, 1980).

Ultimately the Rule of Law is an artefact: man made, for the use of man, because man aspires to justice.

R. Konigk adduces that ***"The artefact then also consists of that which is external to the artefact and it becomes necessary to consider the artefact more broadly: the artefact can act as agent of a cultural schema. Through its memetic content the artefact is a cultural agent encoded within its paradigm: '[a]s such the artefact is active within the cultural system'"*** (Konigk, 2015: 2.3.2, p43) (Fisher, 1992:17).

Thus artefacts are vested with meaning in day to day life, as well as when used in cultural representations. Semiosis, the processes through which artefacts become meaningful is not well understood. For the interior and architectural designers of courts buildings it is an important area of future research to understand what makes these become signs from which people to draw social inferences.

Artefacts are central to all cultures and all artefacts together form material culture. In cultural semiotics Roland Posner defines artefacts as ***"intentional or unintentional consequences of human actions"*** (Posner, 2003).

2.5 JUSTICE AND THE RULE OF LAW AS INTANGIBLE CULTURAL ARTEFACT

Justice and the rule of law can be defined an intangible force, created by man for the protection of the individual, which must be done in public, and cannot be delayed: ***"justice delayed is justice denied"*** (Magna Carta, 1215). Chief Justice Hewart (1924) said: ***"justice should not only be done, but should manifestly and undoubtedly be seen to be done."*** This statement implies that whilst intangible justice and the rule of law does have presence, if it is not seen to be done then the judicial process does not command respect. This is the true purpose of a court and LCJ Hewarts' observations have been adopted by all other jurisdictions that adhere to the rule of law.

The concept of justice and the rule of law as intangible artefact provides a mechanism which allows the qualities of justice to be identified and discussed. Justice is man made; for the use of man. Because man aspires to justice.

This analysis provides a new perspective on the physical manifestation of justice and the rule of law. It can be asserted that it is a part of the UK's Intangible Cultural Heritage, as described by UNESCO, in the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and deserving of its protection. Complementary to this UNESCO have produced Ethical Principles wherein in states:

"3. Mutual respect as well as respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between states and between communities, groups and, where applicable, individuals."

"8. The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage."

"9. Communities, groups, local, national and transnational organizations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of intangible cultural heritage or the communities who practice it."

2.6 THE COURT BUILDING AS TANGIBLE CULTURAL ARTEFACT

It follows that the significance of ***"the interface between the physical environment of the court and the fundamental principle that justice should be seen to be done,"*** (Mulcahy, 2007) is pivotal to this study but the intangible quality of justice should not obscure the reality; that it is an artefact.

The focus is on the transmission of meaning where justice is the process of creating meaning from the rule of law. This semiotic relationship in the context of the interior architectural design of the courts becomes the practice of spatially expressing the synthesis between the court and justice. The court building becomes the physical sign of the intangible cultural artefact justice, with a tangible presence of its own, where its interior and exterior public spaces are a physical interface with society.

When the designer and engineer responsible for the construction of a vast temple complex at a Buddhist Monastery in Scotland asked the Abbot, Akong Rinpoche, what the purpose of the building would be, he demurred, saying that he didn't understand the question. Asked why he thought he needed it he replied ***"I don't need it: You do! My body is my temple!"*** (50).

The same rationale has been applied to the construction of churches, and great cathedrals for centuries, and underpins the spiritual value of these great public spaces. The public spaces of a successful court building perform a similar function, connecting people to the higher state which they seek. The architecture of the approach, the entrance, the vestibule and public halls of access and meeting, the court rooms, must all convey a sense of place. The buildings can at once shape human experience and be shaped by it.

Writers, philosophers and artists have all tried to use their creative gifts to describe and convey the majesty of buildings In William Golding's *'The Spire'*, (Golding, W. 1964) the human condition of those overseeing and constructing the great cathedral at Salisbury is sieved through the overarching needs of the people to create a space where they might know their God.

As our civilisation has developed so there has emerged a similar need to create the spaces where we might all meet and know Justice.

NOTES:

49. Akong Rinpoche : Chöje Akong Tulku Rinpoche (25 December 1939 – 8 October 2013) was a Tulku in the Kagyu school of Tibetan Buddhism and a founder of the Samye Ling Monastery in Scotland. This quote is taken from a conversation with his design team during the early stages of the construction of the Temple at Samy Ling., circa 1986

2.7 CONCLUSION

Considering the material presence of the court and the semiotics of Justice the UKSC ***"may be viewed as a specific material domain and the way its form is employed to become the fabric of our culture"*** (D. Miller, 1998). Hence justice may be considered a *'tertiary artefact'* where ***"material and immaterial aspects of culture as well as their history are embedded"*** and can ***"act as agents of change"*** and as an *'artefact of expression'* (Diaz-Kommonen et al, 2004).

It follows that the presence of Justice and the rule of law as intangible cultural artefact, may be read from the court building's architecture and interior design and as such the court becomes tangible Cultural Heritage deserving protection, as stated by UNESCO:

"To be kept alive, intangible cultural heritage must be relevant to its community, continuously recreated and transmitted from one generation to another."

"Safeguarding measures to ensure that intangible cultural heritage can be transmitted from one generation to another are considerably different from those required for protecting tangible heritage (natural and cultural). However, some elements of tangible heritage are often associated with intangible cultural heritage. That is why the Convention includes, in its definition of intangible cultural heritage, the instruments, objects, artefacts and cultural spaces associated with it." (UNESCO,2003).

Therefore, designed as a cultural space a new UKSC building may assert the importance of justice and the rule of law within the UK democracy, and by extension the judiciary. A semiotic approach taken to this design process might also ensure that the building signals the artefact justice to society, along with the promise of transparency of process, greater public access, and protection for the independence of the judiciary. This approach may allow the architecture of the court to redress recent hostile press treatment (51).

As Aileen Kavanagh (2010) points out, a new court building ***"does not make the judges independent, because they already were independent. But it does make them more visibly independent."*** It serves to emphasise the message and passes it on to subsequent generations, which UNESCO say is a key requirement for the protection of Intangible Cultural Heritage.

Aside from the constitutional Separation of Powers, an effective method of safeguarding Justice and the rule of law would be to consider it as an Intangible Cultural Heritage and its' Courts, their tangible expression, considered as Tangible Cultural Heritage. This would enable their true values to democratic society to be recognized and protected, and would provide a clear basis for the design of future courts. This may provide a useful construct through which to conduct future research, proposals for which may be found in the final chapter of this study.

The principles of culturally shared meaning and attribution in the context of courts buildings require exploration and research. Material culture takes an active part in creating the complex web of interacting meanings and influences we call culture.

NOTES:

50. As discussed in Intro :of Chapter 3.1 three most senior Judges in the UK were pilloried on the front pages of the Daily Mirror (Slack,2016) and The Daily Telegraph (Dominiciczak,2016) provides evidence of worsening public respect for due process and the rule of law.)

51. This graphic attempts to explain the relationships between the Intangible cultural artefact of Justice and the Rule of Law and the physical court building as tangible cultural artefact.

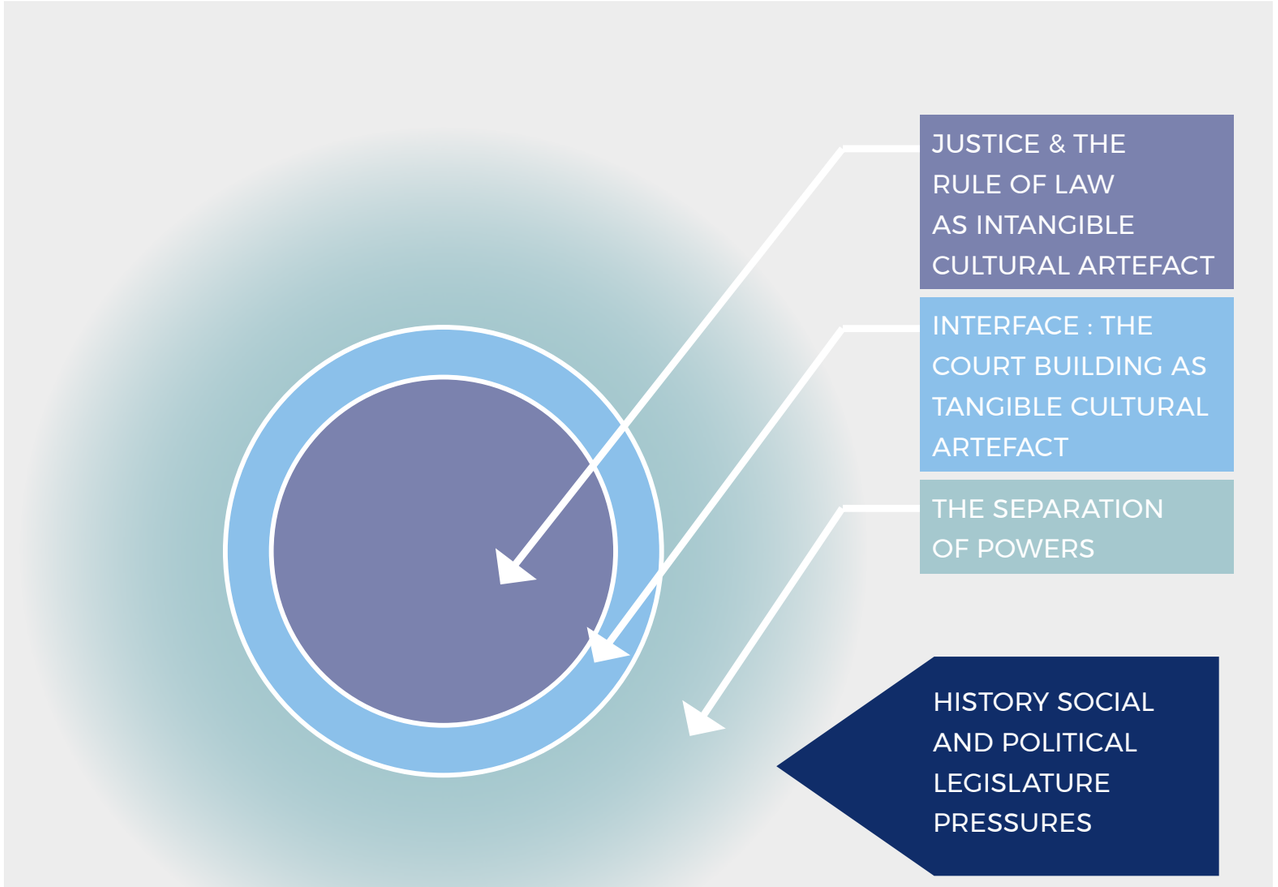


Figure 9 : Schematic showing UKSC building as physical interface between Justice and Society, author's own work.

MATERIALS & IMMATERIALITY

CHAPTER 3

3.1 INTRODUCTION

"Phenomena exist in the material world. Material makes thoughts tangible. Materials manifest the world."

"Architecture is defined by physical components that are materials. Materials are the substance of things. And there is no way to convey oneself except by language – language created by means of an impression in a particular medium. Expression is possible only by using specific materials." (Vivray, 2011) (52).

This Chapter explores the relationship between the materials used in the courtroom and public spaces of the court building and the presence of justice and the rule of law as read by the court users.

The question is asked ***"Is there such a direct relationship, and if so how are those material finishes read?"***.

Lord Hope speaking about the design of the new Supreme Court spoke wistfully of the Palace of Holyrood in Edinburgh as an example of what architecture could achieve and lamenting what the designers of new Supreme Court had so obviously failed to attain.

"No one who enters the chamber [at Holyrood], with its wide and open design and its remarkable arching roof of oak beams and latticed steel, can fail to be impressed by the sheer scale and ambition of the place. Here is architecture at its most adventurous and most exciting. But there is dignity here too, and a reassuring balance between the floor where the work is done and the long and ample public galleries that surround it on three sides. The accommodation in the Parliament is, of course, far more than would be needed for a supreme Court. But the public statement that this chamber makes, that this is a Parliament for a nation that believes in itself and that believes also in the value of democracy, could serve as a model for it too." He later asks of the proposed location for the new Supreme Court "***will that place be suitable for the Supreme Court of the United Kingdom? Will it have presence, and will it have dignity?"*** (53).

As the most respected Scottish Law Lord and Supreme Court judge of his generation, (54) these are strong words, lamenting the loss of opportunity to create a great architectural space for the Supreme Court, the greatest court in the land, and the most important constitutional change in recent history.

He also warns that ***"If the surroundings are too understated, the atmosphere of authority that a visitor would expect of a supreme court will be almost, if not entirely, invisible."*** This observation invites us to ask what are the material characteristics of a court which might create the *'authority'* referred to, and how can these elements of the design ensure that the court is *'visible'*?

Figure 10 : Juxtaposition of tangible cultural artefacts with new interior, within the Supreme Court building.

3.2 MATERIALITY

To define materiality has been the philosophical work of great minds throughout the ages. In 59 B.C. the Roman poet and philosopher Titus Lucretius Carus wrote the didactic poem 'Of The Nature of Things' to try to explain Epicurean philosophy to his Roman audience. He says that to him ***"It seems hard to believe that there can be found among things anything of solid body. For the thunderbolt of heaven passes through walled houses, as do shouts and cries; iron grows white hot in the flame, and stones seethe in fierce fire and leap asunder; then too the hardness of gold is relaxed and softened by heat, and the ice of brass yields beneath the flame and melts; warmth and piercing cold ooze through silver, since when we have held cups duly in our hands we have felt both alike, when the dewy moisture of water was poured in from above. So true is it that in things there is seen to be nothing solid."*** (Carus, T. L. 59 B.C.).

Interpreting for us, M. Kretzer explains that ***"For Lucretius every thing in the world is either matter or void. All that is tangible, that can be perceived with human senses has to exist and is therefore of material character."*** (Kretzer, M. 2017). For Semper, in 1878, describing the ideal architect, ***"Materiality and spirituality are closely linked, but does not value one over the other since to him the creative idea is at the core of architectural design. Form thus is not a fixed entity, but rather a continuously changing and becoming configuration"*** (Semper, 1878).

A modern definition states that ***"Materiality communicates and shapes. It consists not only of physical structures but is part of the inter-subjective and subjective realm that makes up social relations. And in turn, the physical world made social comes to constitute people through its very materiality. The spaces and places around us construct us as we construct them."*** (Dale and Burrell, 2008) For some designers of things this may mean that ***"materiality is socially produced and at the same time produces social relations"***. (Conrad, Richter.2013) In contrast to this assertion Louis Kahn defines materials as ***"spent light"*** and describes ***"architecture (as) the thoughtful making of spaces,(...) the creating of spaces that evoke a feeling of appropriate use"*** (Kahn, L . 2003).

It is perhaps obvious that the material characterisics of the architecture, the interior furnishings and fitments, the lighting and even the temperature all combine to create the space. ***"Bound to each other, the architectural and the material are considered inseparable."*** (Hill, J. 2006, p2).

In contemporary design practice different designers will follow their individuality and their interpretations of the design brief will be diverse. Most will fall naturally somewhere in the space between these ideas.

3.3 MATERIALITY IN THE CONTEXT OF THE UK SUPREME COURT

The idea of the materiality of spaces can be used as a lens through which the material aspects of the presence of justice in a court building may be viewed. The material substance of these spaces must be worked by its designers to effect meaning to the court buildings allowing court users to read and feel the presence of justice. Judges have said that where the courtrooms and public spaces of a court building overawe its users, then there are no outbursts of public disorder in court, nor disrespectful behaviours (54). This must mean something: that the architecture and interiors have a positive effect on those that use it. That effect, and how to recognise it, document it and understand it is what is considered here. The value of it in our existing Courts Estate needs to be recorded before it is subjected to the Great reform programme currently proposed, and the key elements understood so that the effect may be reproduced in future post – reformist courts buildings.

The creation of the main public and court spaces is an opportunity to create a sense of place. The architecture of these spaces is both visible with physical and visual elements, and invisible, imbued with shared social meanings. Such space is not neutral and its materiality carries the idea of interaction between the artefact justice and those people who come to that place to interact with it.

Traditionally the presence of Justice in a court building has been conjured and elucidated through the architecture and artefacts of the court. The fittings and furnishing, upholstery and carpentry, art and sculpture, lighting and together with the wigs and gowns, gavels and all come together to enhance the architecture and scale of the space.

"The role and importance of materiality thus includes much more than structural properties but equally informs a person's experience of a building through its aesthetic, visual, and haptic qualities as well as its associated social, cultural, and historical meaning." (Kretzer, M. 2017).

3.4 REPRESENTATIONAL ARTEFACTS

There is a shifting emphasis of iconographies, and material artefacts in courts which must follow the socio-political development of their national characteristics.

"... while an ancient practice, adjudication has been reconstituted and acquired four attributes - independent decision makers, requirements of public access, a new ideal of fairness, and equal access for and treatment of all. A tour of many new courthouses, serving as new icons of justice, captures adjudication's centrality. Governments explain their decisions to case their courts in glass and to bathe them in light as representing the values - transparency, accessibility and accountability - that undergird the exercise of force. These facilities often marry old Renaissance forms with newer technologies and aesthetics as they embrace the iconography of the Virtue Justice, augmented by an array of objects created through materials ranging from cloth and clay to bronze and steel. Two ideals entailed in the democratic commitment of access to justice – playing out in the buildings and their use - need to be disentangled. One is that all persons have access to using the law. This new equality puts pressure on the visual displays within courthouses. Social movements about equality and identity reshaped both the images of justice and the dockets of courts." (Resnik, J. and Curtis, D. 2011. p15).

In the case of the new Supreme Court refurbishment we know that the justices themselves had decided to give up the wigs and gowns, gavels and thrones, and other traditional artefacts, preferring to present a more modern looking court to the public. However, it is unclear how much of this ambition filtered into the design brief for the building. It is arguable that the gravitas and majesty, the symbolism and solemnity of the court was removed from the court along with its original fittings and furnishings as a part of the refit. It is clear that the materiality of the original Middlesex Guildhall as a busy working court building was not valued by the government of the day, who allowed it to be partly stripped out despite the implied protections of its Grade II* listing, and despite vociferous and well presented arguments against this from academic architects and pressure groups of the day.

"These three interiors are unsurpassed by any other courtroom of the period in terms of the quality and completeness of their fittings.' 'The building is constructed using the finest craftsmanship of the period including decorative work in stone, wood, plaster and stained glass." "The building is the most accomplished example of this architect's work." (Statement of Importance, August 2004, English Heritage, 2004).

The Grade II* listing implies that the Middlesex Guildhall that the building and its original interiors were intact. English Heritage often refuse to list buildings of a similar date where their interiors have been lost or altered, so it is significant that their listing was ignored by the government. The interiors were allowed to be largely stripped out. It is not clear how the legalities of this act of

NOTES:

52. Erwin Vivray, 2011, p8.
53. Lord Hope, Law Quarterly Review, April 2005. *'A phoenix from the ashes? Accommodating a new Supreme Court'* L.Q.R.265.
54. See 9.
55. Carus,T.L. 59 B.C., p43.
54. Reference in particular to a conversation with HHJ Pini at Lincoln Crown Court, 23/05/2017. It is a beautiful, powerful and atmospheric Victorian gothic building located inside towering castle walls, which now hold a museum dedicated the Magna Carta.

destruction were achieved.

"In law it is the 'building' that is listed, but what constitutes a building is not entirely clear. The 1971 act defines it thus '...any structure or erection and any part of a building structure or erection.'" "In the case of Middlesex Guildhall, the furniture falls into this [latter] category, all the more so as it is a fundamental part of the design of the building, vitally important to understanding its history and function." ..."That Westminster City Council has allowed Government to walk all over law and established listed buildings precedent is extremely discomforting." Marcus Binney, President of SAVE Britain's Heritage, Stop this folly, 2006 (55).

Dr Kathryn Ferry in her role as Senior Architectural Adviser to the Victorian Society, was at pains to explain that ***"If the building was redundant the extent of alteration required to create the Supreme Court facility would still have to be justified against the criteria set out in PPG15. As it is, Middlesex Guildhall is currently in beneficial use as a Crown Court able to function within the existing layout and with the original furnishings. We therefore believe that the scheme which has been given consent by Westminster Council is contrary to government guidance"*** (56).

Whilst John Hardy, was close to the truth of the matter when he elucidated the need for curation of the courts buildings. ***"It appears to suffer, like so many Government buildings, from the lack of a 'curator' with a proper archive of information. A building of such historical importance needs an informed explanation of its interior symbolism and iconography. The romantic, impressive and 'fit for purpose' embellishment of the Middlesex Guildhall is equal in importance to that of the Palace of Westminster. I wonder if those who are prepared to see the completeness of its interiors destroyed, would be equally happy to see its exterior and that of the Palace of Westminster disfigured?"*** (57).

Some of the Court furniture, like the judge's throne surmounted by heraldic beasts from Court 1, were at first put on display in the new Basement Museum. The remaining furnishings removed were put into storage, ostensibly for re-use in a new court to be built to replace the Crown Courts displaced by the Supreme Court at Middlesex Guildhall. No one seems to know what has happened to all these original furnishings, and the busts designed by the sculptor Henry Charles Fehr RBS (1867-1940), which were designed for the building at the same time as the friezes around the main entrance illustrating King Henry III granting a charter to the Abbey of Westminster,and of King John granting the charter to the Barons at Runnymeade. Middlesex Guildhall is widely acknowledged as Fehr's masterpiece, now no longer whole (58).

The well respected architectural historian Professor Gavin Stamp was unequivocal in his condemnations. ***"The Middlesex Guildhall is one of the best secular buildings of the Gothic Revival, and certainly one of the very best of the 20th century." "What is a revelation is the quality of the interior." "The Middlesex Guildhall is a rare and special building, of the highest quality. When it is appreciated that it is not redundant but in regular use as an Assize Court, the proposal to mutilate the interior for a purpose which would be better served by a new building seems as monstrous as it is gratuitous."***

Since the original interiors which clearly were venerated for their beauty and the qualities as artefacts were removed, it is not clear how the design brief would address the material aspects of the new court to provide the *'dignity and presence'* the judiciary hoped for.

3.5 IMMATERIALITY

The question of the immaterial is important when considering the corporeal and technological aspects of architecture and design and healthy theoretical discourse prevails throughout art and architecture, as well as economy, society, psychology and the information technologies.

It is an empirical fact of the Universe that nothing can be created out of nothing. The First Law of thermodynamics explains that energy within a closed system is always conserved, never created nor destroyed. It can only ever change its state of being. The Second Law of Thermodynamics describes *'entropy'* (F Rudolph Clausius) which tells us that in nature any system tends towards disorder. This creates an *'arrow of time'* (F Professor Brian Cox) which means that time must always run forwards and never backwards so that everything in the universe is heading towards an eventual death. However Life itself seems to hold back the tide of entropy and triumph over it such that civilisations have grown up and developed. As conscious beings we have developed systems of thought and behaviour to counteract the disordering effect of the passage of time and this is what we mean by *'civilisation'*. This construct requires the creation of artefacts such as justice and the rule of law.

The semiotics of the materiality of places of justice is not well understood , and there is a considerable body of research to be done to enable design practice to develop the architectural syntax to express justice and the rule of law as artefact.

In modern theory an approach towards immateriality has produced the art object, or 'non object' where focus is redirected from the purely visual perception to a broader communication of perceptions. This allows the object to become a creative process in its own right. There is a shift towards ephemerality and experience where the aesthetic no longer resides only in the material but also in the interaction between people and their environment.

This is where an analogy with a wave helps. In a wave we see the water moving and crashing onto the beach, and we feel and hear that energy. However in reality it is not the water that is moving but rather the energy moves through the water. The thunderous noise of the crashing wave and the force felt in the water is the translation of the energy carried in the wave into other forms, ones that we can hear and feel. But it is the object that we see, the wave, that has most meaning for us. We cannot see the water at a molecular level nor the wave energy within it. That is simply how human beings are wired, so the removal of the material object in the case of the courts buildings and their physical artefacts and attributes, will present a difficulty to most people, since we all need to see, hear and feel those things, even though the immaterial object, justice, is the primary energy in that place.

3.6 CONCLUSION

Considering the material presence of the court, the specificity of Justice as an artefact, the UKSC ***"may be viewed as a specific material domain and the way its form is employed to become the fabric of our culture"*** (D. Miller, 1998). Hence justice may be considered a *'tertiary artefact'* where ***"material and immaterial aspects of culture as well as their history are embedded,"*** and can ***"act as agents of change"*** and as an ***"artefact of expression"*** (Diaz-Kommonen et al,2004) and it follows that the presence of Justice, the artefact, may be read from the building's architecture and interior design. Therefore, a new UKSC building may assert the importance of the judiciary within the UK democracy, and as Aileen Kavanagh (2010) points out ***"it does not make the judges...independent, because they already were independent. But it does make them more visibly independent"***.

The recent hostile press treatment of three most senior Judges in the UK on the front pages of newspapers (59) provides evidence of worsening public respect for the courts. Now is the time to re-assert the importance of the courts within the realm of the public consciousness. It is not the time to dispose of their interiors and artefacts which in some cases for hundreds of years have made it possible for the presence of justice and its force for good in society to be felt in the courts buildings, without any attempt at documenting and constructing a mechanism for understanding what we are about to lose. We are not yet so sophisticated a civilisation that we may take such things for granted. It is still

NOTES:

55,56,57. All quotes from the Guildhall Testimonial, edited by Marcus Binney for SAVE Britain's Heritage, 26 August 2004.

58. Source: Colchester War Memorial Souvenir, Editor Edgar A. Hunt JP MRCS, LRCP, LSA Colchester 1923.

59. Daily Mirror (Slack, 2016) and The Daily Telegraph (Dominiciczak, 2016).

the case that justice must be seen to be done and that it must be possible for the public to read the courts buildings and their public spaces and to know that these are the habitats of justice and the rule of law. The material interior treatments of the Courts buildings confer as much of that information as do their architecture and their settings within our cities. Certainly, in the case of the UKSC many of the artefacts housed within were designed with that purpose in mind and have been in situ since the building was constructed. Much of this has now been lost. Once an understanding of how the immaterial presence of justice and the rule of law are manifested and experienced through the material aspects of the building has been gained it can be re applied as part of the Design Brief/ Guidelines for new courts buildings. It is to be hoped that this ensures that the wisdom gained throughout the last 800 years of administering justice is not lost to future generations. For most visitors to the courts the perception of justice and the rule of law gained from the material qualities of the object are as important as the immaterial qualities of the non object.

This is expressed very succinctly by David Eagleman: ***"We dont experience objects as they are; we experience them as we are."*** (Eagleman 2016).

In the Courts experience really is everything and the law really ought to be King.

Figure 11 : The Library of the Supreme Court.

DESIGN BRIEF: PLACE NOT SPACE

CHAPTER FOUR

4.1 INTRODUCTION

The newly refurbished Middlesex Guildhall fell far short of hopes and expectations for a great new public building for the UKSC. Lord Hope made clear his disappointment with the planned designs for the Supreme Court. ***"My concern is with the public areas. It is, above all, with the quality and dignity of the main entrance to the building, the entrance hall itself and of the hearing rooms. ... they will fall well short of the standards which a visitor to the Supreme Court for the United Kingdom would expect."*** (Lord Hope,2005) (60).

The Client Brief from the civil service states ***"The key requirement is to provide a single building to house the newly created United Kingdom Supreme Court and the department that provides the administration and support for that Court." "The Courts are to have the atmosphere of a "learned seminar room"*** (61).

This is the sole allusion to any requirement to consider the presence of justice in the design process. The wording of the Client Brief betrays a fundamental failure to understand the importance and the scope of the undertaking.

A key element of the Brief was that the parties should all be seated at the same level, and not as was the existing, and prevailing, situation, with the judges elevated on a platform. This was to enhance the perception of access to the proceedings but required devastating alterations to the existing court. It was to achieve this that the gloriously carved wooden dais, and bench, throne and dock were removed. This betrays a lack of understanding of the importance of sight lines in a working court. In a crown court the judges are not elevated to remove them from the public fray, but to allow good visibility of them for all of the participants, particularly the jury and the dock. In a Supreme Court there is no jury or dock, but it is still the case that all who are there wish to be able to see and be seen by the judges.

Clearly there were consequences of the brief failing to properly understand the nature of the work undertaken by the Supreme Court. Lord Hope points out that ***"An inevitable consequence, too, is that our lives will be much more cloistered than they are at present. The rooms that we will occupy will be at different levels in a three-storey building, and security will require our accommodation to be separated entirely from the public areas. The opportunities for even the most casual interaction with others in the same building and after the working day will be rather limited"*** (62). That there were benefits to being thrown together in a small space has been lost. Judges, who might find themselves at odds over ethical issues brought before the court, would simply have to get along with each other despite their differences of positions. The relative lack of space before had a positive effect whilst they now find a great deal more space and privacy, which a designer working in the absence of a detailed brief might legitimately envisage as an improvement. Instead it is an example of the consequences of hasty design without a thorough brief.

Best practice in architectural design would develop a brief from a thorough process of research, interviews and analysis involving all of the key court user groups, including the media and the public. There is no evidence of this and

Figure 12 : Israeli Supreme Court.

it seems that the new Supreme Court has been hastily accommodated into an existing Crown Court building. The original furniture and fittings were mostly removed in contravention of their Grade II* Listing and placed in storage, promises made for their re – use in proposed new courts buildings never materialising.

These actions stand in stark contrast to the sentiments expressed in the Court Standards and Design Guide, . This states clearly that ***"Courthouses... are the visible manifestation of one of the most fundamental principles upon which our society is based."*** (HMCS, 2010) (63).

It is clear that the approach of the civil service to the design of court buildings has radically altered over the last 10 years. This may be taken as a reflection of a sea change in government policy.

The dramatic and devastating demolition and alterations to the Listed Grade II* existing courts of the Middlesex Guildhall to make way for the new UKSC can be seen as the beginning of a far greater programme of change to the courts estate than was envisaged at that time. It also marks a profound change in policy towards the previously sacrosanct interiors of the great courts of England, protected through their English Heritage listings. The unsuccessful judicial review of the governments decision to override the Grade II* listing brought by SAVE Britain's Heritage (64) has allowed HMCTS to believe that it can simply rip out courts interiors unopposed if it so desires.(HMCTS,2016) (65).

There is clearly no appetite for the creation of a new building for the UKSC within the government The opportunity to create an iconic and appropriate building in a location to unite a very divided UK at a critical moment in history has been lost for now.

However it must be hoped that the political will to create a proud national building fit for purpose will emerge as awareness of the issues raised in this study begin to filter into public consciousness. Once the rule of law is seen as a force and not just a process the impetus will come to create a suitable place for it which can carry and communicate the meanings of justice to its nation.

The research proposed will reveal the key drivers for a design for a UKSC building. The consideration of design principles for a successful scheme will reveal the absence of appropriate language with which to discuss this force at work and of the importance of place, where 'place' has the architectural meaning (66).

4.2 THE CREATION OF PLACE

Most people would recognize injustice or the absence of justice, and are able to value justice itself. So too most people are aware that a 'sense of place' is of great importance to them, but are often only aware of that in its absence. We are surrounded by places which are imbued with strong social meaning by virtue of the constant human social interaction with and within them. It is a natural expression of our society.

In architectural analysis descriptive and qualitative phenomenology focusses on the meanings and experiences of place, where perhaps the most important element is perception. Experience is the factor which transforms every space to a place which carries meaning for people. *'Sense of place'* describes people's attachments to and relationships with physical spaces.

How an artefact such as justice and the rule of law becomes an invisible vessel of meanings for society and how that the presence of that vessel turns a space into a place of public importance is the issue at the heart of this study.

That "***artefacts are invested with meaning in daily life situations as well as when used in cultural representations"*** is an aspect that has received little attention. ***"Their cultural role is complex and ties in with mental representations and social structures in a number of ways."*** (Siefkes, M. 2012).

That designers and architects should look closely at the meanings of the artefacts they are designing into spaces seems obvious. There is a tradition in design which studies the semiotics of artefacts through analysis of their interaction with people from a cognitive perspective. However this tradition seldom discusses the meanings of the artefacts and focusses on ergonomic design and the avoidance of design mistakes. (Norman,1988,1993) It is apparent that justice and the rule of law simply has not been recognised as an artefact in its own right. That this is the case is the main force of this work and that the value of doing so allows designers of the spaces for justice, the courts, to become places full of the meaning of the rule of law and capable of communicating it.

How best to create that sense of place, *'placemaking'*, is an architectural challenge which is becoming more critical with globalisation. It places the emphasis of design on the creation of places where meaningful human interactions may occur. Public architecture which creates a sense of place has been the desire of man since the earliest public structures were built.

In a purely pragmatic approach the established analytical tools of space syntax may be applied to the main public spaces of the courts across the courts estate to provide a systems analysis of how the courts work in terms of their processes. However this does not address the semiotics of the courts and can only be is a part of the process of planning the space and designing the place.

New research is needed to explore the courts as places where justice resides and to develop the socio/legal and architectural language with which to do so. There is an urgent need for research to develop the language required to discuss and develop understanding across the design disciplines, as well as that of intersecting disciplines of law, politics, public policy, and the specialisations of the heritage and materiality of artefacts.

Interdisciplinary research is also required to enable understanding of the importance of creating a sense of place in the courts. An important part of this process will be to incorporate the tangible and intangible aspects of the cultural heritage of justice. As established earlier in this study (67) justice can be defined as an intangible cultural heritage, (68) and it may be inferred that the courts are therefore tangible cultural heritage. In the UK the courts buildings are under imminent threat from the Courts Reform programme (F ref) which does not recognise their importance as the tangible cultural heritage of justice of the UK. It follows that the intangible cultural heritage of justice and the rule of law are also under threat from these reforms. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. (UNESCO, 2003 Paris) provides a useful framework with which to give a structure and global context to the proposed reforms. There is a demonstrable need to develop research which incorporates both the intangible and tangible aspects of the required research (69).

4.3 THE BIGGER PICTURE: ACCESS TO JUSTICE FOR ALL

Access to the courts is raised as a fundamental necessity of any democracy, most particularly by the recently retiring Head of the Supreme Court, Lord Neuberger, who said that ***"In the consultation re recent closures, much was made by HMCTS of the statistic that 95% of 'citizens could still access a court in an hour in a car'"***. It is obvious that the most vulnerable in our society are likely to be forced to use expensive public transport, which will surely take far longer and cost them far more. This can only discourage people from using the courts and restrict their access.

In a speech on 3rd July 2017, Lord Neuberger, President of the Supreme Court, addressing an audience of Australian judges and lawyers spoke of access to the law, saying that ***"While access to law is important, access to legal advice and representation is equally important but more challenging. Access to legal advice and representation is of course a fundamental ingredient of the***

NOTES:

60. Lord Hope's Speech:.A Phoenix from the Ashes? Accommodating a New Supreme Court. 121 Law Quarterly Review. L.Q.R. 2005, 121(April), 253-272.

61. 1.3 Client Brief.

62. Lord Hope's Speech:.A Phoenix from the Ashes? Accommodating a New Supreme Court. 121 Law Quarterly Review. L.Q.R. 2005, 121(April), 253-272.

63. Viewed at Cambridge University Library, on CD-ROM, 12th May 2017-05-11.

    This book was the standard guide for the architectural design of Courts buildings and has been out of print since 2010, although prior to that it was commonly referred to as 'The White Book' and was usually to be found on the shelves of most architect's practices. (F The book is now unavailable except in CD-ROM format which do not contain the appendices. The only complete hard copy is available in Dublin. Nothing has been published by the government to replace this useful guide since the inception of the Ministry of Justice, The MOJ is the government department, whose head is the Minister of State for Justice and the Lord Chancellor (the same person), and is also responsible for human rights law and, since 2010, for constitutional policy.

64. SAVE Britain's Heritage (F publishing a report *'The Guildhall Testimonial'* from which these quotes are derived).

65. *'Justice Matters : Changing something that matters'* (HMCTS, Crown Copyright, Sept 2016).

66. See Addendum 1 : Proposal for Further Research, Chapter 4.

67. See Chapter 2, 2.5 Justice and the Rule of Law as Intangible Cultural Artefact.

68. See Chapter 2, 2.6 The Court building as Tangible Cultural Artefact F according to the UNESCO definition ref relevant chapter etc.

69. See Addendum: Proposal for Further Research, Chapter 4.

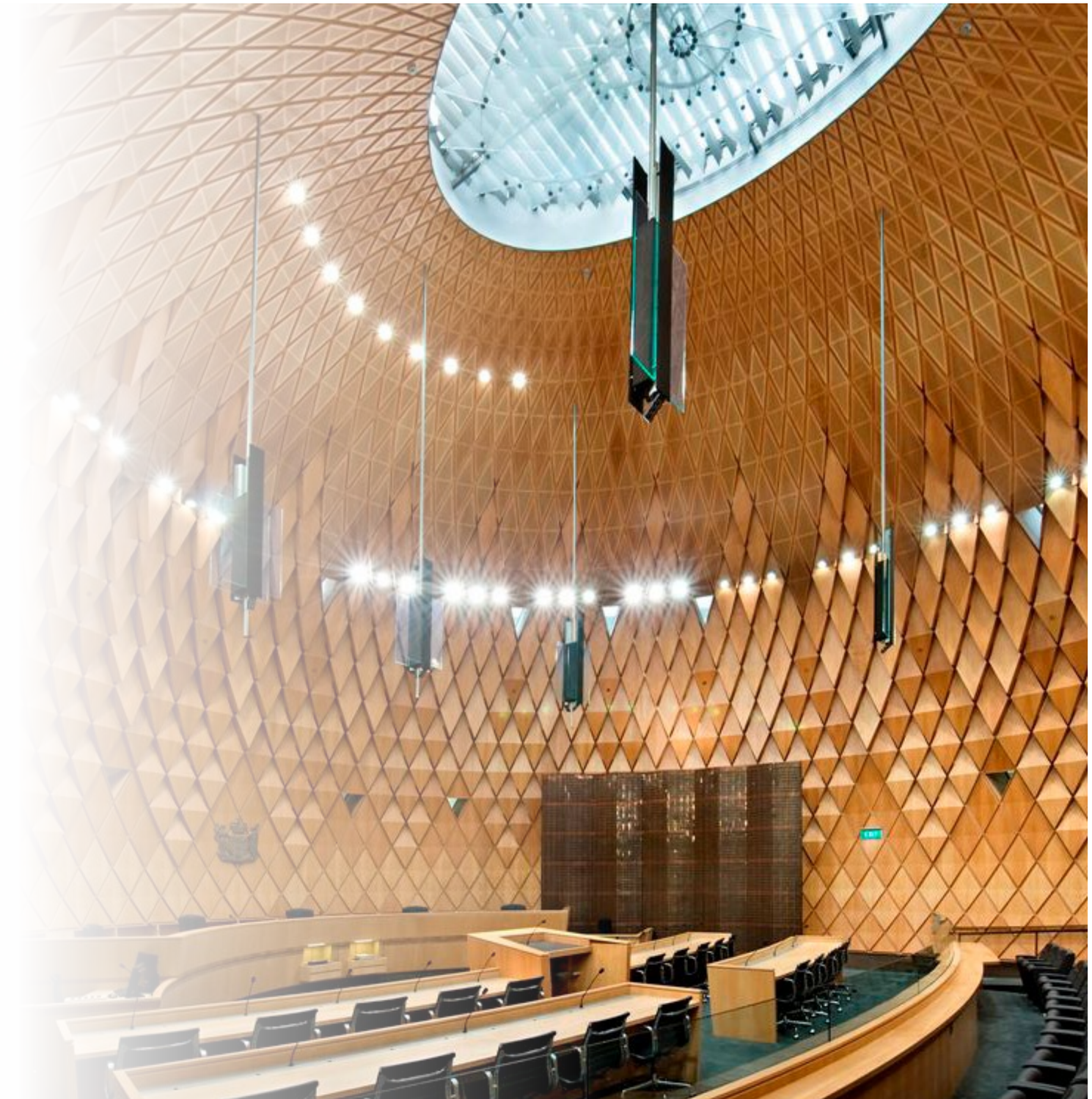


Figure 13 : The Supreme Court of New Zealand.

rule of law, and the rule of law together with democracy is one of the two principal columns on which a civilised modern society is based."

"And if it does not exist, society will eventually start to fragment. That is not merely a fragmentation in the sense of the gulf between rich and poor, which leads to real frictions and difficulties if it gets too wide. It is a fragmentation which arises when people lose faith in the legal system: they then lose faith in the rule of law, and that really does undermine society. The sad truth is that in countries with a long peaceful and democratic history such as the UK (and, I suspect, Australia), we face the serious risk that the rule of law is first taken for granted, is next consequently ignored, and is then lost, and only then does everyone realise how absolutely fundamental it was to society."

In what many legal professionals see as a threat to access to justice HMCTS propose Flexible Operating Hours pilots, due to begin this autumn at Blackfriars Crown Court, and at Manchester and Brentford Civil and Family courts, ostensibly with the support of the judiciary. Lord Justice Fulford, as *'Judge in Charge of Reform'*, says that ***"the pilots will enable us to establish whether we can use our court estate more effectively"***. The use of *'we'* attempts to impart a collaborative approach of all court users which so far does not exist. Recent objections from the bar cite working conditions and how the longer hours and shift proposals will adversely affect diversity in the bar in the short term, and on the bench in the longer term, affecting mothers of young and school age children disproportionately. Andrew Langdon QC, Head of the Bar Council, wrote on 3rd August 2017, to Lord Justice Fulford, as *'Judge in Charge of Reform'*, and sets out the concerns of the bar who ***"fear the impact on diversity at the Bar given the consequences on those with caring responsibilities"***.

The result of the pilot scheme may be self fulfilling because list offices are already scheduling lists which do not contain long or complex cases, creating bias in the trial from the outset. Objections to the pilot scheme have centred on the practical difficulties that will result and the impact on diversity on the legal profession. A live Equalities Statement issued 17th August 2017 sets out the pilots in detail and attempts to address the concerns of court users. by role or profession. It does not contain any reference to the public or the media, either as visitors or as key stakeholders in the courts system and estate. This omission belies the key issues at stake here, that of access to justice. Whilst HMCTS assert that a justice system where courts buildings are replaced with virtual courts improves access, the professional court users do not agree and see the Reform Programme as little more than a cost cutting exercise which will reduce access.

The statistics generated as a result of the pilots will only tell a part of the story and will require independent analysis and interpretation by impartial academics who understand both the function of the courts as places of justice and the importance of those places. It is the natural progression of this work to develop that language and to deliver from an academic base the analysis which incorporates both the tangible and intangible elements of this reform programme.

These observations are central to the issue of the design of the Supreme Court, but more importantly it also extends to the entire courts estate, which is under threat of negative and potentially disastrous change by the government's proposed programme of reform. Losses to the courts estate are imminent whose true value may not be understood until it is too late to remedy.

The key to managing the outcome of this pilot is in the interpretation of the results. It has been suggested that an independent source, perhaps a university, undertakes this analysis, and this is essential since the HMCTS will not be regarded as impartial. Any conclusions can only be supported by an independent analysis.

Any analysis will require that the language of justice, its qualities, the importance of place, materiality, and the manifestation of the rule of law be developed.

4.4 THE FUTURE

It could be argued that the lack of a strong guiding brief at the moment of inception of the new UKSC was largely due to the absence of proper understanding of the court, its processes and purpose, but most importantly, as a figurehead for the rule of law in the UK. Whilst the solutions provided were pragmatic, it has become clear over the progression of this study that there has been very little research on the broader issue of how architecture can be used to create places for justice and the rule of law. There is therefore no clear body of research for the designers of court buildings to refer to, although reference may be found to the materiality of objects within the courts, and on the semiotics of public spaces.

It is apparent that the original aim, to produce a Design Brief for a new and more appropriate UKSC building, is not yet possible. In fact it has identified a need for extensive further research in the disciplines of architecture, law, materiality and cultural heritage. It would seem that the answers to the research question lies at the intersection of these disciplines (70).

Jeremy Bentham, 19th Century philosopher, jurist and social reformer, proposed that for philosophical analysis, one rationale was that of 'truth', a second was 'education', a third 'disciplinary.' Applied to the research question this reveals a path towards an understanding. Firstly one must understand the ephemeral nature of what justice and the rule of law really is and its meaning in a democratic society, through research. Secondly one would need to find a mechanism by which this can be communicated to all those concerned with the design, through a comprehensive design guide to educate and inform. Thirdly a discipline must be developed within which the process of design can take place, which develops the architectural linguistics needed and can impart rigour and integrity to that process. Using this path of philosophical enquiry within a multidisciplinary collaborative approach to the necessary research could produce a Design Brief (71).

There are two clear reasons why this work is necessary to the future of the delivery of justice in the UK.

Firstly the reforms proposed by the HMCTS are clearly motivated by cost savings and do not prioritise the quality of the justice delivered by the courts. Secondly there is a grave misunderstanding afoot, conflating the quality of the delivery of justice with the quality of justice delivered.

It is the stated aim of HMCTS that with the adoption of the processes which go with the use of new IT, remote online access of key participants, the use of AI in some cases, there will further loss of physical court rooms and their buildings. The buildings and their staffing are the most expensive part of the courts estate and the intention is to reduce them to the absolute minimum.

4.5 CONCLUSION

Less than 10 years ago the government's prevailing philosophy on court design was encapsulated in the concept that a court must be the visible manifestation of justice. This policy has been replaced. Under the new dispensation a court is redefined as a resource only with no reference to the sensibilities articulated in the Courts Design Guide and not necessarily requiring a building.

Central to the proposed Great Reform of the Courts are the questions of what is a court and how the design of a court building affects the quality of justice.

The Supreme Court is the highest court in the land, there is only one and as such is a focus for this work at this level. But whilst we still have the great courts estate to hand it is timely to ask what qualities these public buildings have, how they convey to people the importance of justice and the rule of law, and how they engage and facilitate access to all.

The aspiration for justice has been given effect through the continuous creation of the rule of law, as an intangible artefact. The courts are the physical spaces created to give effect to the presence of justice and the rule of law, as tangible artefacts. UNESCO's definitions found in its protective conventions (72) allow justice and the rule of law to be defined as Intangible Cultural Heritage and the courts as Tangible Cultural Heritage. The government policy shift which has generated the proposed reforms endangers the courts and undermines the intangible artefact of the rule of law, threatening justice itself.

The current political context provides the impetus to begin research on the wider courts estate during this period of change. The design principles generated by such a study will apply not only to the Supreme Court but to all of the UK courts. Design principles derived from a study where the empirical state of justice and the rule of law is asserted to be that of an artefact ought to over reach any political agenda and provide a broader and more flexible framework for the design of new courts. This will allow design guidelines which reflect the constant and live flux and flow of the rule of law and provide meaningful physical places where the presence of justice may be felt and interacted with by all those seeking it.

It is necessary to be able to describe and discuss these intangible aspects of the delivery of justice. The cross disciplinary nature of the research will necessitate some work which is collaborative in nature in order to stimulate the development of the linguistic framework required. This is time critical. Once courts are removed there will be no going back to record the way in which they work, effectively or not. There will be no replacing what has been lost if there is no language to describe the importance of place, and the materiality of the courts. This research must be started now, while these courts still function, will make it possible for this intangible information to be gathered.

This is the hope for the next phase of research, for which this work must be considered a pilot study. It would be a timely and valuable achievement to re-assert justice and the rule of law through the examination of justice as an intangible cultural artefact, and its courts as tangible cultural artefacts deserving of the protection of society. This is a difficult task, engaging disciplines other than architecture and design. Further research and discourse is required between disciplines to fully explore the interrelationships between tangible and intangible, visible and invisible, material and immaterial, physical and ephemeral, object and process. This form of the work proposed is suggested in the Addendum to this study as the basis for a PhD whose precise form and scope will emerge from the process of research proposed (73).

NOTES:

70. See Abstract. It asks the question *"what is the appropriate artefact to give physical expression to the presence of the intangible cultural artefact the rule of law?"*.

71. See Addendum: Proposal for Further Research, Chapter 4.

72. See Chapter 2, 2.1 and 2.5 for UNESCO definitions.

    UNECSO list of Intangible Cultural Heritage in need of Safeguarding
    https://ich.unesco.org/en/purpose-of-the-lists-00807

    UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
    https://ich.unesco.org/en/convention

73. See 4.4 para 3.

ADDENDUM 1 :

PROPOSAL FOR FURTHER RESEARCH

INTRODUCTION

This PhD study proposes to explore the interface between an intangible ideology, the pursuit of justice, and the architectural design of it's physical spaces: the UK Courts estate.

The work of this MA dissertation has revealed the urgent need for the places of justice in the UK to be recorded, for the language with which to do so to be developed , for a methodology to be proposed, and for a value to be formally placed on what is our most important and indispensable tangible cultural heritage. The design disciplines of architecture and interior design are uniquely placed to undertake responsibility for this research and there is a great need for at least research to document these changes for the benefit of future research. This programme of closures has already begun, with 83 magistrates and other courts closing this year alone, apparently without objection or the chance to document the buildings. So far only 2 Crown Courts are listed for closure but this is only phase one of the programme. There seems to be no possibility of accountability for the resultant effects on the perceptions of quality and delivery of justice in the UK.

A measured and independent approach, which delivers the analysis and linguistic tools with which to discuss the intangible cultural heritage of justice and the rule of law must be asserted and undertaken by an independent body such as a university. It will be the work of the further PhD study to develop the academic language of both the law and of interior architecture and architectural humanities and provide an analysis of the existing court rooms and their public spaces in court buildings all across the UK. This will provide a base line from which the effects of the reform programme may be measured, and a means to record and discuss the tangible and intangible, material and immaterial aspects of the design of the existing courts before they are lost.

A new design solution which treats justice as an artefact may provide a timely and more effective design solution. It can be argued that government interference has resulted in a loss of respect for the judiciary. In the aftermath of the Brexit decision Theresa May and other government minsters made personal attacks on the judges who gave the decision of the court implying they had not given independent decisions in accordance with their oaths of office. Despite the fact that successive Lord Chancellors have sworn an oath of office to defend and uphold the independence of the judiciary, the independence of the judiciary is threatened by this process of innuendo and personal attacks. It is the time to re assert the purpose of justice and the rule of law.

HMCTS are clearly driven by government policy to cut the cost of justice in the UK. They state that the only courts which they do not intend to consider for closure or radical refit/ remodel are the Supreme Court, the High Courts in the Strand and the Central Criminal Court, the Old Bailey. The courts estate is shrinking fast and a case must be made for a more considered approach. This work must begin now, 86 courts will have been closed by the end of this year, and are already lost to the study.

The UK Courts estate is of great social and political importance. Research is now urgently required to explore and understand the tangible and intangible effects of the courts buildings upon the quality and experience of justice delivered in the UK. A multidisciplinary approach using qualitative and quantitative methods is required, and the vocabulary developed to articulate theories and concerns for the future of courts architecture in the UK and how their interior architecture should encapsulate the aspirations and responsibilities of our great democracy. This timely multidisciplinary research will directly address these issues in the face of the imminent Great Reform programme proposed in the Queens Speech and will provide an analysis of the success and failure of that programme over the next 3 to 5 years.

RESEARCH OBJECTIVES

To establish the proposition that the UK Courts are not just a physical objects, nor just a process, rather it is justice, a force at work, an artefact itself, which drives the design of the court building.

RESEARCH METHODOLOGY

QUALITATIVE HISTORICAL RESEARCH

of the relevant literature will drive an analysis of the current Courts Estate buildings. The proposal reviews the relevant literature with discussion thereof to substantiate the premise and guide the research. The research methodology and delimitations sets out the research, designed to elicit answers to the research question. The case is made for the legitimacy and timeliness of this work. Ultimately a new set of guidelines is proposed based on the premise of justice as artefact.

The proposed research will consist of 3 elements :

- An historical research and a review of all the existing literature to provide a basis for the arguments for this research.
- An observational research to carefully assess and set a datum from which future observations can be measured, together with the same research repeated at the end of the period of change.
- An analysis of the data and an updated review on the literature to provide the new picture emerging after the proposed reforms.

OBSERVATIONAL RESEARCH

Using carefully designed and researched questionnaires and observation sessions at a selected number of 10-20 courts, picked to cover the whole range of variations of the court situations, types and circumstances, and evenly spread across the country evenly to eliminate regional bias ,during the period of the proposed great reform programme.

- Ancient courts buildings which are being closed and replaced with new buildings.
- Ancient and modern courts which are being stripped out and refitted.
- Modern courts buildings which are being closed down.

- New courts buildings built during this process.
- Repeated east/west and north/south for comparatives across breadth of country.

All to be measured observationally by reference to a group of courts which are not to be altered physically, both ancient and modern, as a datum for the overall observations taken during the period of change.

This will require a visit and perhaps several days working inside each court, observing, conducting questionnaires with a set cross-section of court users, to a prescribed format for continuity.

Plus another similar set of visits to the same courts towards the end of the process of change.

Analysis of this data, together with other data such as court performance statistics. (NB. permission must be sought to use them.)

COMPARATIVE STUDY:

Similar visits to courts in other jurisdictions, to enable comparative analysis.

A sample of such courts, large enough and broad enough culturally to be truly reflective of the world and to give a global context to this set of issues.

It is necessary to research and analyse the history and philosophy of justice, alongside the buildings histories of the UK courts as they exist before this programme of great change begins. Perhaps, even, start a national conversation about the value and importance of the UK Courts Estate within our democracy, educating people about its true role and purpose, providing opportunities for public engagement with justice and the rule of law. The ultimate aim would be to provide a Design Guide for new courts which would be fit for both purpose and the aspirations of a nation.

COMPARATIVE PERSPECTIVES

Explore the question of what is the value and what are the limits of comparative approaches to design of UK Supreme Court, looking for instance at the relatively recent New Supreme Courts of Israel, New Zealand, Australia, Ireland, Singapore, and South Africa.

Prepare an analysis of different supreme courts using relative areas of public space: court space, shown as ratios and tabulated, generating key relationships and use 1:200 sketch plans to illustrate. Extrapolate this information to develop guidelines for new supreme court designs.

CONCLUSION

It is proposed that this is an outline for the shape of the new research required to address the issues of the design of any future Supreme Courts buildings, and that the proposed new Courts Design Guide should include all types of court, and be fit for purpose in a future where the role and use of virtual technology must be addressed and incorporated where it is effective and fair and does not undermine the aspiration for justice nor the role of the rule of law.

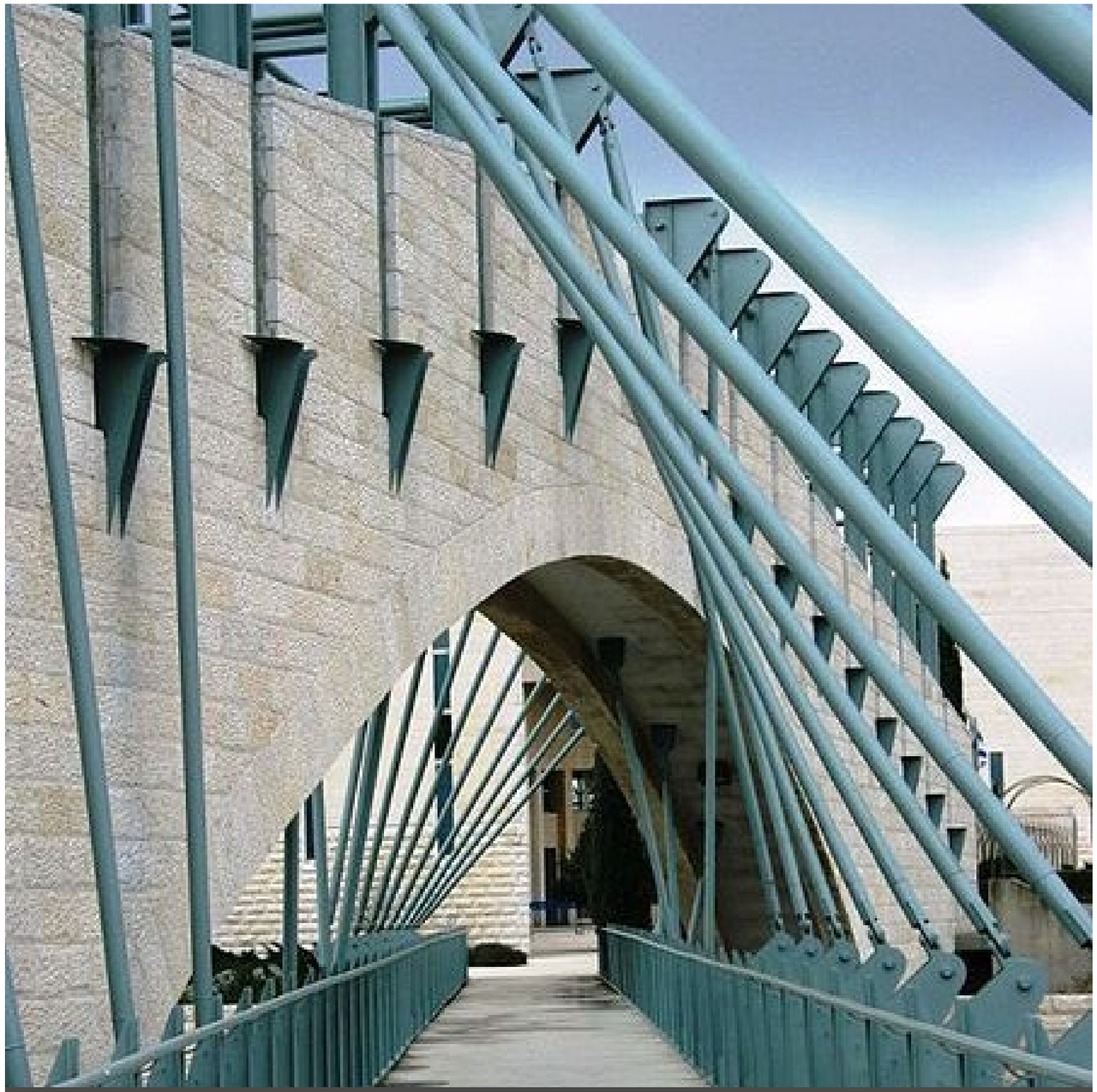
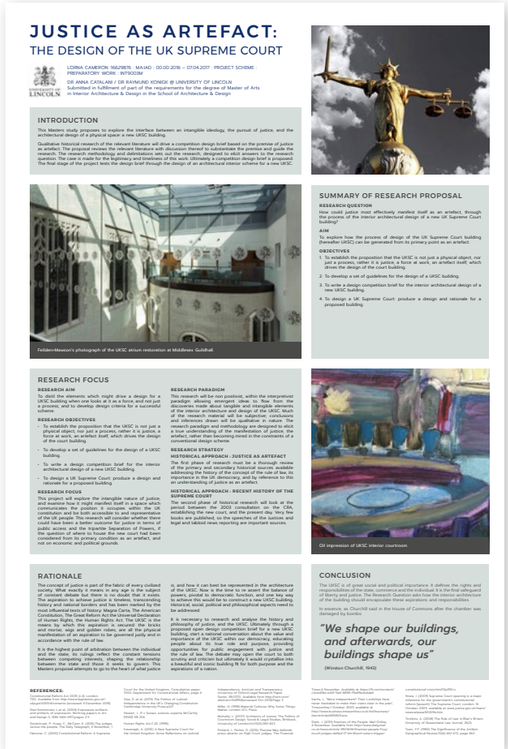
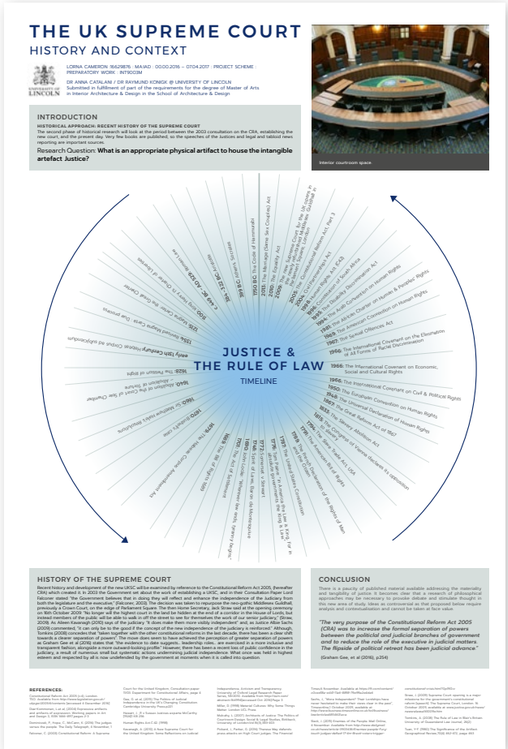


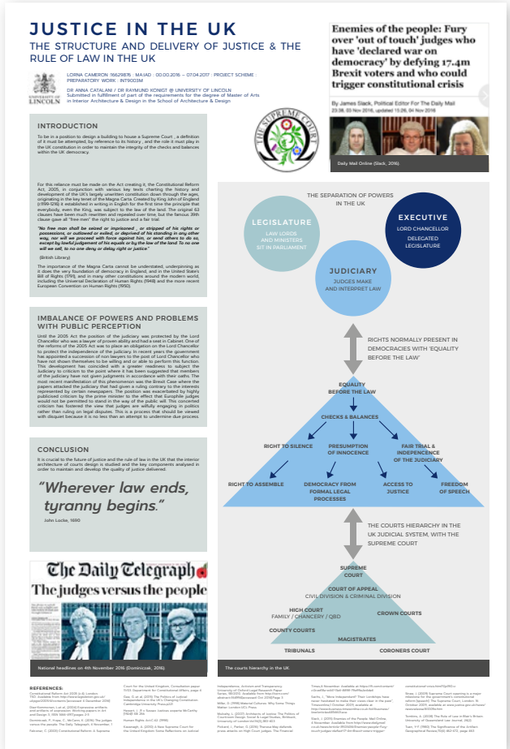
Figure 14 : Israeli Supreme Court.

ADDENDUM 2 :

ACADEMIC POSTERS







JUSTICE AS ARTEFACT:

THE DESIGN OF THE UK SUPREME COURT

LORNA CAMERON :16629876 : MA:IAD : 00.00.2016 – 07.04.2017 : PROJECT SCHEME : PREPARATORY WORK : INT9003M

DR ANNA CATALANI / DR RAYMUND KONIGK @ UNIVERSITY OF LINCOLN
Submitted in fulfillment of part of the requirements for the degree of Master of Arts in Interior Architecture & Design in the School of Architecture & Design

INTRODUCTION

This Masters study proposes to explore the interface between an intangible ideology, the pursuit of justice, and the architectural design of a physical space: a new UKSC building.

Qualitative historical research of the relevant literature will drive a competition design brief based on the premise of justice as artefact. The proposal reviews the relevant literature with discussion thereof to substantiate the premise and guide the research. The research methodology and delimitations sets out the research, designed to elicit answers to the research question. The case is made for the legitimacy and timeliness of this work. Ultimately a competition design brief is proposed. The final stage of the project tests the design brief through the design of an architectural interior scheme for a new UKSC.

Feilden+Mawson's photograph of the UKSC atrium restoration at Middlesex Guildhall.

SUMMARY OF RESEARCH PROPOSAL

RESEARCH QUESTION

How could justice most effectively manifest itself as an artefact, through the process of the interior architectural design of a new UK Supreme Court building?

AIM

To explore how the process of design of the UK Supreme Court building (hereafter UKSC) can be generated from its primary point as an artefact.

OBJECTIVES

1. To establish the proposition that the UKSC is not just a physical object, nor just a process, rather it is justice, a force at work, an artefact itself, which drives the design of the court building.
2. To develop a set of guidelines for the design of a UKSC building.
3. To write a design competition brief for the interior architectural design of a new UKSC building.
4. To design a UK Supreme Court: produce a design and rationale for a proposed building.

RESEARCH FOCUS

RESEARCH AIM

To distil the elements which might drive a design for a UKSC building when one looks at it as a force, and not just a process; and to develop design criteria for a successful scheme.

RESEARCH OBJECTIVES

- To establish the proposition that the UKSC is not just a physical object, nor just a process, rather it is justice, a force at work, an artefact itself, which drives the design of the court building.
- To develop a set of guidelines for the design of a UKSC building.
- To write a design competition brief for the interior architectural design of a new UKSC building.
- To design a UK Supreme Court: produce a design and rationale for a proposed building.

RESEARCH FOCUS

This project will explore the intangible nature of justice, and examine how it might manifest itself in a space which communicates the position it occupies within the UK constitution and be both accessible to and representative of the UK people. This research will consider whether there could have been a better outcome for justice in terms of public access and the tripartite Separation of Powers, if the question of where to house the new court had been considered from its primary condition as an artefact, and not on economic and political grounds.

RESEARCH PARADIGM

This research will be non positivist, within the interpretivist paradigm allowing emergent ideas to flow from the discoveries made about tangible and intangible elements of the interior architecture and design of the UKSC. Much of the research material will be subjective; conclusions and inferences drawn will be qualitative in nature. The research paradigm and methodology are designed to elicit a true understanding of the manifestation of justice, the artefact, rather than becoming mired in the constraints of a conventional design scheme.

RESEARCH STRATEGY

HISTORICAL APPROACH : JUSTICE AS ARTEFACT

The first phase of research must be a thorough review of the primary and secondary historical sources available addressing the history of the concept of the rule of law, its importance in the UK democracy, and by reference to this an understanding of justice as an artefact.

HISTORICAL APPROACH : RECENT HISTORY OF THE SUPREME COURT

The second phase of historical research will look at the period between the 2003 consultation on the CRA, establishing the new court, and the present day. Very few books are published, so the speeches of the Justices and legal and tabloid news reporting are important sources.

Oil impression of UKSC interior courtroom.

RATIONALE

The concept of justice is part of the fabric of every civilized society. What exactly it means in any age is the subject of constant debate but there is no doubt that it exists. The aspiration to achieve justice is timeless, transcending history and national borders and has been marked by the most influential texts of history: Magna Carta, The American Constitution, The Great Reform Act the Universal Declaration of Human Rights, the Human Rights Act. The UKSC is the means by which this aspiration is secured: the bricks and mortar, wigs and golden robes, are all the physical manifestation of an aspiration to be governed justly and in accordance with the rule of law.

It is the highest point of arbitration between the individual and the state, its rulings reflect the constant tensions between competing interests, shaping the relationship between the state and those it seeks to govern. This Masters proposal attempts to go to the heart of what justice is, and how it can best be represented in the architecture of the UKSC. Now is the time to re assert the balance of powers, pivotal to democratic function, and one key way to achieve this would be to construct a new UKSC building. Historical, social, political and philosophical aspects need to be addressed.

It is necessary to research and analyse the history and philosophy of justice, and the UKSC. Ultimately through a proposed open design competition brief for a new UKSC building, start a national conversation about the value and importance of the UKSC within our democracy, educating people about its true role and purpose, providing opportunities for public engagement with justice and the rule of law. The debate may open the court to both scrutiny and criticism but ultimately it would crystallise into a beautiful and iconic building fit for both purpose and the aspirations of a nation.

CONCLUSION

The UKSC is of great social and political importance. It defines the rights and responsibilities of the state, commerce and the individual. It is the final safeguard of liberty and justice. The Research Question asks how the interior architecture of the building should encapsulate these aspirations and responsibilities.

In essence, as Churchill said in the House of Commons after the chamber was damaged by bombs:

"We shape our buildings, and afterwards, our buildings shape us"

(Winston Churchill, 1943)

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THE UK SUPREME COURT

HISTORY AND CONTEXT

UNIVERSITY OF LINCOLN

LORNA CAMERON :16629876 : MA:IAD : 00.00.2016 – 07.04.2017 : PROJECT SCHEME : PREPARATORY WORK : INT9003M

DR ANNA CATALANI / DR RAYMUND KONIGK @ UNIVERSITY OF LINCOLN
Submitted in fulfillment of part of the requirements for the degree of Master of Arts in Interior Architecture & Design in the School of Architecture & Design

Interior courtroom space.

INTRODUCTION

HISTORICAL APPROACH: RECENT HISTORY OF THE SUPREME COURT

The second phase of historical research will look at the period between the 2003 consultation on the CRA, establishing the new court, and the present day. Very few books are published, so the speeches of the Justices and legal and tabloid news reporting are important sources.

Research Question: **What is an appropriate physical artefact to house the intangible artefact Justice?**

HISTORY OF THE SUPREME COURT

Recent history and development of the new UKSC will be examined by reference to the Constitutional Reform Act 2005, (hereafter CRA) which created it. In 2003 the Government set about the work of establishing a UKSC, and in their Consultation Paper Lord Falconer stated "the Government believes that in doing they will reflect and enhance the independence of the Judiciary from both the legislature and the executive," (Falconer, 2003). The decision was taken to re-purpose the neo-gothic Middlesex Guildhall, previously a Crown Court, on the edge of Parliament Square. The then Home Secretary, Jack Straw said at the opening ceremony on 16th October 2009: "No longer will the highest court in the land be hidden at the end of a corridor in the House of Lords, but instead members of the public will be able to walk in off the street to see for themselves the work of our senior judiciary," (Straw, 2009). As Aileen Kavanagh (2010) says of the judiciary "It does make them more visibly independent" and, as Justice Albie Sachs (2009) commented, "it can only be to the good if the concept of the new independence of the judiciary is reinforced." Although, Tomkins (2008) concedes that "taken together with the other constitutional reforms in the last decade, there has been a clear shift towards a clearer separation of powers". The move does seem to have achieved the perception of greater separation of powers as Graham Gee et al (2016) states that "the evidence to date suggests... leadership roles... are exercised in a more inclusive and transparent fashion, alongside a more outward-looking profile." However, there has been a recent loss of public confidence in the judiciary, a result of numerous small but systematic actions undermining judicial independence. What once was held in highest esteem and respected by all is now undefended by the government at moments when it is called into question.

CONCLUSION

There is a paucity of published material available addressing the materiality and tangibility of justice. It becomes clear that a research of philosophical approaches may be necessary to provoke debate and stimulate thought in this new area of study. Ideas as controversial as that proposed below require analysis and contextualisation and cannot be taken at face value.

"The very purpose of the Constitutional Reform Act 2005 (CRA) was to increase the formal separation of powers between the political and judicial branches of government and to reduce the role of the executive in judicial matters. The flip-side of political retreat has been judicial advance."

(Graham Gee, et al (2016), p254)

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JUSTICE IN THE UK

THE STRUCTURE AND DELIVERY OF JUSTICE & THE RULE OF LAW IN THE UK

UNIVERSITY OF LINCOLN

LORNA CAMERON :16629876 : MA:IAD : 00.00.2016 – 07.04.2017 : PROJECT SCHEME : PREPARATORY WORK : INT9003M

DR ANNA CATALANI / DR RAYMUND KONIGT @ UNIVERSITY OF LINCOLN
Submitted in fulfillment of part of the requirements for the degree of Master of Arts in Interior Architecture & Design in the School of Architecture & Design

INTRODUCTION

To be in a position to design a building to house a Supreme Court , a definition of it must be attempted, by reference to its history , and the role it must play in the UK constitution in order to maintain the integrity of the checks and balances within the UK democracy.

For this reliance must be made on the Act creating it, the Constitutional Reform Act, 2005, in conjunction with various key texts charting the history and development of the UK's largely unwritten constitution down through the ages, originating in the key tenet of the Magna Carta. Created by King John of England (r.1199-1216) it established in writing in English for the first time the principle that everybody, even the King, was subject to the law of the land. The original 63 clauses have been much rewritten and repealed over time, but the famous 39th clause gave all "free men" the right to justice and a fair trial.

"No free man shall be seized or imprisoned , or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice."

(British Library)

The importance of the Magna Carta cannot be understated, underpinning as it does the very foundation of democracy in England, and in the United State's Bill of Rights (1791), and in many other constitutions around the modern world, including the Universal Declaration of Human Rights (1948) and the more recent European Convention on Human Rights (1950).

IMBALANCE OF POWERS AND PROBLEMS WITH PUBLIC PERCEPTION

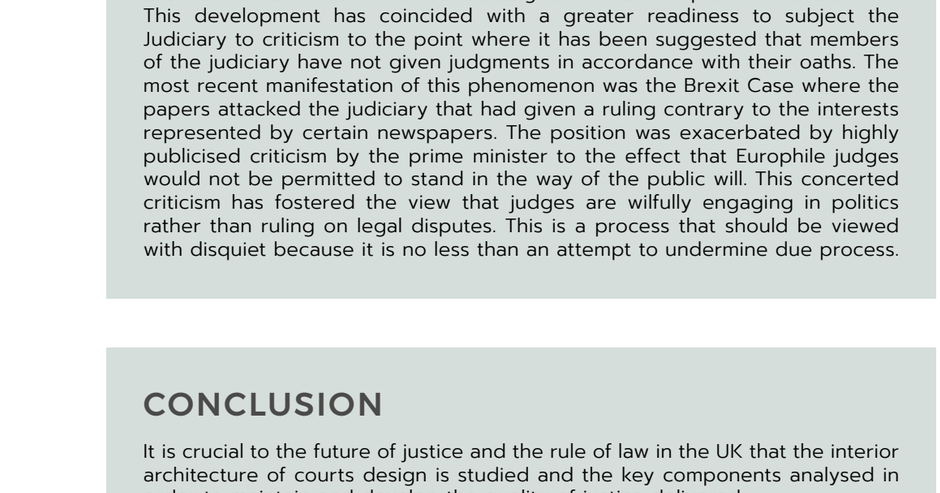
Until the 2005 Act the position of the judiciary was protected by the Lord Chancellor who was a lawyer of proven ability and had a seat in Cabinet. One of the reforms of the 2005 Act was to place an obligation on the Lord Chancellor to protect the independence of the judiciary. In recent years the government has appointed a succession of non lawyers to the post of Lord Chancellor who have not shown themselves to be willing and or able to perform this function. This development has coincided with a greater readiness to subject the Judiciary to criticism to the point where it has been suggested that members of the judiciary have not given judgments in accordance with their oaths. The most recent manifestation of this phenomenon was the Brexit Case where the papers attacked the judiciary that had given a ruling contrary to the interests represented by certain newspapers. The position was exacerbated by highly publicised criticism by the prime minister to the effect that Europhile judges would not be permitted to stand in the way of the public will. This concerted criticism has fostered the view that judges are wilfully engaging in politics rather than ruling on legal disputes. This is a process that should be viewed with disquiet because it is no less than an attempt to undermine due process.

CONCLUSION

It is crucial to the future of justice and the rule of law in the UK that the interior architecture of courts design is studied and the key components analysed in order to maintain and develop the quality of justice delivered.

"Wherever law ends, tyranny begins."

John Locke, 1690


The Daily Telegraph

The judges versus the people

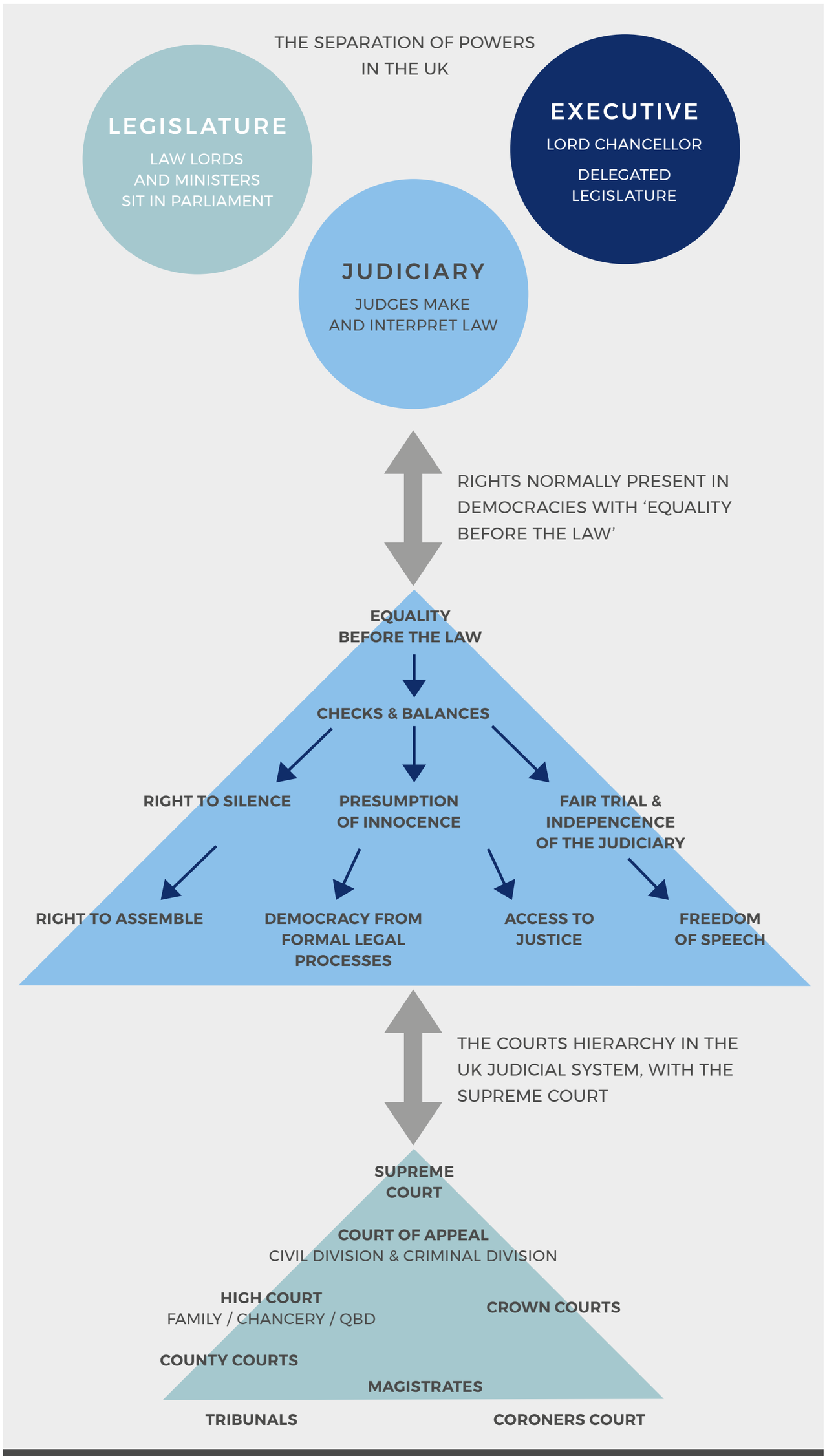
May pledges to uphold Brexit vote as High Court rules Article 50 must pass through Parliament

National headlines on 4th November 2016 (Dominiczak, 2016).


Enemies of the people: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4m Brexit voters and who could trigger constitutional crisis

By James Slack, Political Editor For The Daily Mail
23:38, 03 Nov 2016, updated 15:26, 04 Nov 2016

Daily Mail Online (Slack, 2016).



The courts hierarchy in the UK.

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TANGIBLE Vs INTANGIBLE

GIVING PHYSICAL EXPRESSION TO THE PRESENCE OF THE INTANGIBLE ARTEFACT JUSTICE & THE RULE OF LAW

UNIVERSITY OF LINCOLN

LORNA CAMERON :16629876 : MA:IAD : 00.00.2016 – 07.04.2017 : PROJECT SCHEME : PREPARATORY WORK : INT9003M

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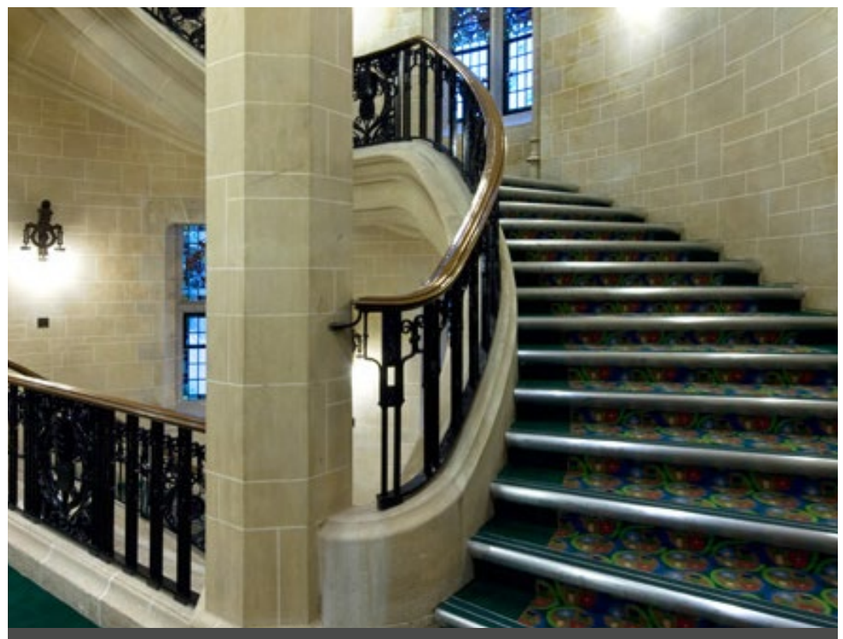


Feilden+Mawson's photograph of the UKSC staircase at Middlesex Guildhall.

INTRODUCTION

To consider Justice as an artefact a broad definition of 'artefact' must be made... the difference between objects and artefacts explored and reference to the material and immaterial/tangible and intangible dialectic discussed.

Justice is a complex ideological process and its meanings within our society... created by man for the benefit of society. It is a set of ideas and principles, some of which are tangible, some intangible, and which all produce a process which must necessarily be housed in a building – a highly tangible object. This tension between the tangible and intangible aspects of the Court will be a strong generator in a design for a Supreme Court. It is the place, metaphorically and physically, where the search for the immutable law transcending politics, fashion and favour, and existing equally for the benefit of everyone.

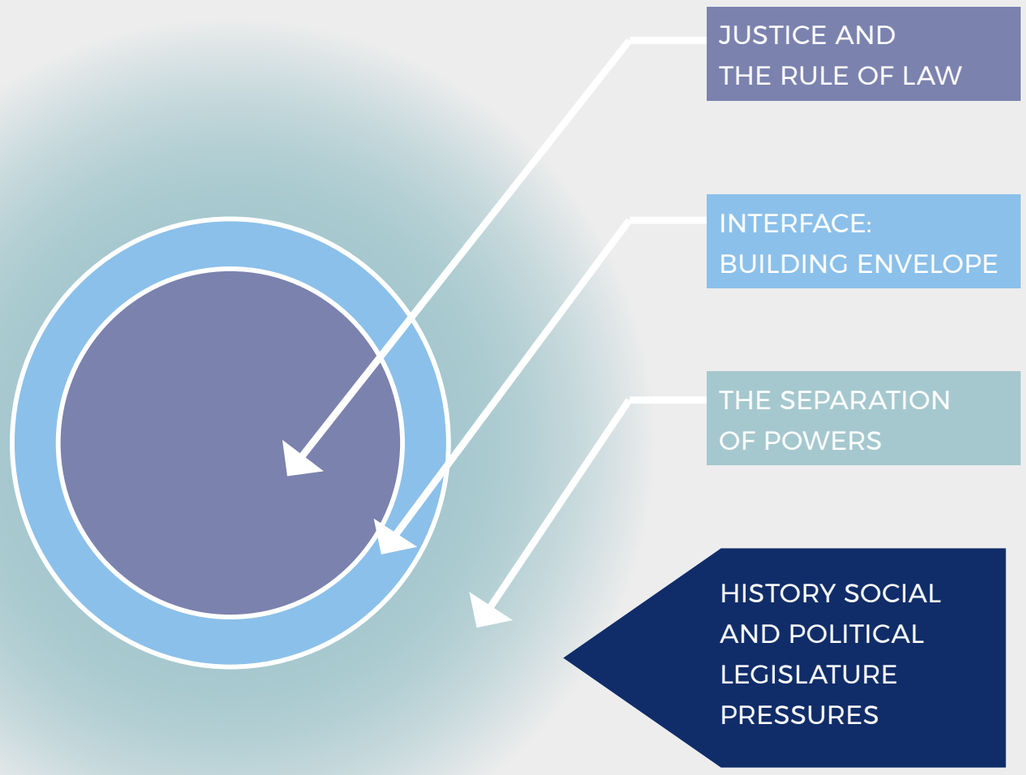


Figure: 1.1: Schematic showing UKSC building as physical interface between Justice and Society

JUSTICE AS ARTEFACT

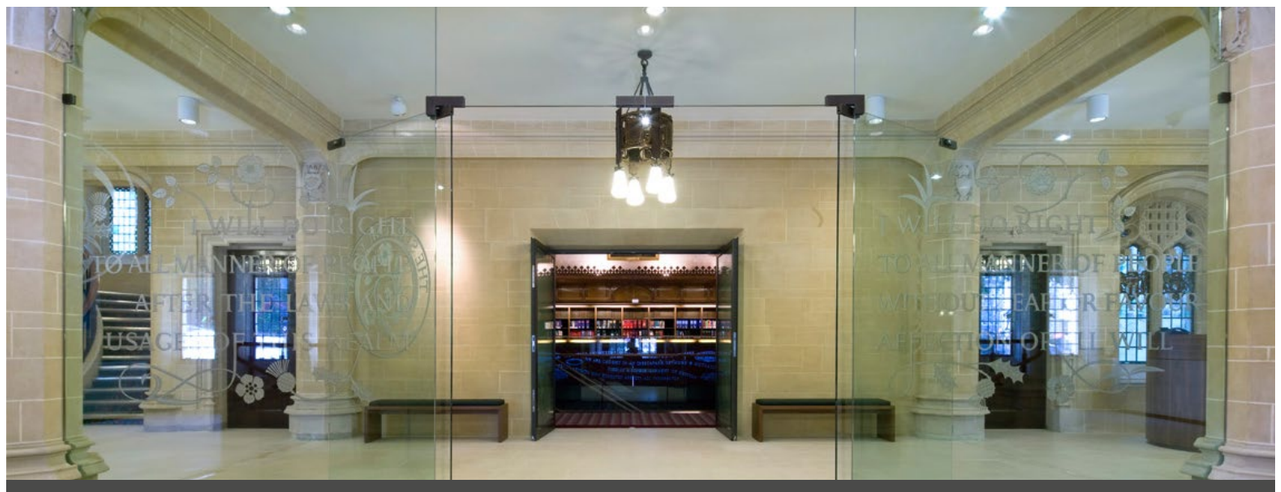
Justice can be defined an intangible force, created by man for the protection of the individual, which must be done in public, and cannot be delayed: "justice delayed is justice denied" (Magna Carta). It is an aspiration common to all, crossing faiths and nationalities.

However as Chief Justice Hewart (1924) said: "justice should not only be done, but should manifestly and undoubtedly be seen to be done." This implies that whilst intangible justice does have presence and if it is not seen to be done then the judicial process does not command respect. This is the true purpose of a court. It follows that the significance of "the interface between the physical environment of the court and the fundamental principle that justice should be seen to be done," (Mulcahy, 2007) is pivotal to this study but its' intangible quality should not obscure the reality; that it is an artefact. It is a part of the UKs Intangible Cultural Heritage, as described by UNESCO, (2003), providing a new perspective the physical manifestation of justice.

DEFINITION OF ARTEFACT

In his article : "The Significance of the Artefact , Yi-Fu Tuan tells us that, in 1980, "A modern dictionary of anthropology defines an artefact as "An object of any type made by human hands. Tools, weapons and sculptured and engraved objects are representative artefacts" but he goes on to say that "Experience as it occurs has immediacy, but no permanence: its value is ephemeral. Recalled and reconstituted experience lacks immediacy, but it does have a certain durability in personal consciousness and in the minds of persons who listen and look: this experience has meaning by virtue of being reflected on, of being consciously held, and of having a public – or potentially public – existence." He also states that "A city provides a public setting for action, which Arendt characterises as "activity that goes on directly between men without the intermediary of things". In Dr Lily Diaz- Kommonens' paper on "Expressive artefacts and artefacts of expression", (Diaz-Kommonen,L et al (2004) she concludes that "As a conceptual tool, the notion of artefact can indeed be used to gather the multidimensional aspects and elements of practice as they converge of the objects resulting from human activity. It can also provide a lens, or perspective, that allows us to better describe the boundary territory where discourse and community subject and object interact. In doing so, it may help us to lay a more tangible foundation for a design discipline that seeks to study , analyse, and describe how multiple practices are embedded in objects resulting from human activity."

Diaz-Kommonen, L et all (2004), Helsinki. Arendt, H. (1959). The Human Condition. N.Y. Doubleday Anchor Books.



Feilden+Mawson's photograph of the UKSC entrance restoration at Middlesex Guildhall.

RESEARCH METHODOLOGY

RESEARCH AIM

To distil the elements which might drive a design for a UKSC building when one looks at it as a force, and not just a process; and to develop design criteria for a successful scheme.

RESEARCH OBJECTIVES

- To establish the proposition that the UKSC is not just a physical object, nor just a process, rather it is justice, a force at work, an artefact itself, which drives the design of the court building.
- To develop a set of guidelines for the design of a UKSC building.
- To write a design competition brief for the interior architectural design of a new UKSC building.
- To design a UK Supreme Court: produce a design and rationale for a proposed building.

RESEARCH FOCUS

This project will explore the intangible nature of justice, and examine how it might manifest itself in a space which communicates the position it occupies within the UK constitution and be both accessible to and representative of the UK people. This research will consider whether there could have been a better outcome for justice in terms of public access and the tripartite Separation of Powers, if the question of where to house the new court had been considered from its primary condition as an artefact, and not on economic and political grounds.

RESEARCH PARADIGM

This research will be non positivist, within the interpretivist paradigm allowing emergent ideas to flow from the discoveries made about tangible and intangible elements of the interior architecture and design of the UKSC. Much of the research material will be subjective; conclusions and inferences drawn will be qualitative in nature. The research paradigm and methodology are designed to elicit a true understanding of the manifestation of justice, the artefact, rather than becoming mired in the constraints of a conventional design scheme.

RESEARCH STRATEGY

HISTORICAL APPROACH: JUSTICE AS ARTEFACT

The first phase of research must be a thorough review of the primary and secondary historical sources available addressing the history of the concept of the rule of law, its importance in the UK democracy, and by reference to this an understanding of justice as an artefact.

HISTORICAL APPROACH: RECENT HISTORY OF THE SUPREME COURT

The second phase of historical research will look at the period between the 2003 consultation on the CRA, establishing the new court, and the present day. Very few books are published, so the speeches of the Justices and legal and tabloid news reporting are important sources.

RESEARCH ETHICS

Since no material will be accessed which is not already in the public domain no special permissions will be required. The appropriate University of Lincoln pro forma application for ethical approval has been submitted.

DELIMITATIONS

It is only realistic within the scope of this study to look at the UK history of the rule of law through 20thC/21stC. Information will come from research of primary and secondary historical texts, speeches, journal papers and news reports. The UKSC is far more recent, limiting research to between 2003, and the present time. The scope of this study will not permit discussion of the construction detail of a new building.

PROJECT PLAN & PROJECTED WORK

Historical research.

This diachronic historical research looked at synchronically will inform the design and material presence of a new building.

Produce a competition design brief.

As justice will be considered as a material artefact, with an "specific material domain" (D. Miller, 1998), it is necessary to codify it's requirements in a design brief.

Design a new UKSC building for the UK from the brief created.

This will provide a valuable stress -test for the Competition Brief and feedback will form a key part of the research.

CONCLUSION: IMPORTANCE OF THE STUDY

Since the pragmatic solutions to re-siting the court in a recession may have had far reaching consequences for public respect for the UKSC a new design solution which treats justice as an artefact may provide a timely and more effective design solution. It can be argued that government interference has resulted in a loss of respect for the judiciary. In the aftermath of the Brexit decision Theresa May and other government minsters made personal attacks on the judges who gave the decision of the court implying they had not given independent decisions in accordance with their oaths of office. The independence of the judiciary is threatened by this process of innuendo and personal attacks. Now is the time to re assert the purpose of justice and the rule of law.

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FIGURES • SPEECHES • REFERENCES

FIGURES

Figure 1 : Lady Justice, standing over the Old Bailey, pre-dating the Supreme Court by many decades : note the symbolism of this iconic statue located as it is at the heart of British Justice, but miles away from The Supreme Court across London. www.mirror.co.uk [accessed 10.05.2017].

Figure 2 : Detail from original painting of Court 1 of the UKSC, author's own work.

Figure 3 : High Court's Article 50 decision: how newspapers around the world reacted to the Brexit ruling. *Telegraph* Reporters 4 November 2016. www.telegraph.co.uk [accessed 23.08.2017].

Figure 4 : Justices of the Supreme Court leave the Supreme Court of the United Kingdom in Parliament Square, London *Reuters*, *Independent*. www.ukbusinessinsider.com [accessed 23.08.2017].

Figure 5 : Court One in session. www.express.co.uk [accessed 23.08.2017].

Figure 6 : Gina Miller led the case against Government triggering Article 50. www.express.co.uk [accessed 23.08.2017].

Figure 7 : The Supreme Court of the United Kingdom. www.magnacarta800th.com [accessed 26.07.2017].

Figure 8 : The entrance hall to the UK Supreme Court. www.bbc.co.uk [accessed 26.07.2017].

Figure 9 : Schematic showing UKSC building as physical interface between Justice and Society, author's own work.

Figure 10 : Juxtaposition of tangible cultural artefacts with new interior, within the Supreme Court building. www.moroso.it [accessed 26.08.2017].

Figure 11 : The Library of the Supreme Court. www.forums.canadiancontent.net [accessed 25.08.2017].

Figure 12 : Israeli Supreme Court. www.en.wikipedia.org [accessed 28.08.2017].

Figure 13 : The Supreme Court of New Zealand. www.icedesign.net.au [accessed 26.08.2017].

Figure 14 : Israeli Supreme Court. www.pinterest.com [accessed 26.08.2017].

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