

# Law, art, and time in the architecture of the High Court: A chronotopic analysis

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## Abstract

Law does not exist in the abstract. Rather, it is performed and experienced within spaces: for example, in parliaments, courthouses, and prisons. Each of these spaces tell a story. How high a judge sits in a courtroom, which flags are flown above the parliament, and the thickness of bars on a prison cell all contribute to shaping a certain narrative. In buildings of national significance, the story told is that of a nation: its values, ideals, and history. Analysis of these narratives can provide deeper understanding of what a nation deems important and how the law treats its legal subjects.

This essay analyses the narrative produced by the art and architecture of Australia's High Court. It applies chronotopic theory to examine the spatial and temporal features of the Court and its effect on Australia's constitutional narrative. In literary scholarship, a chronotope refers to the forms of time and space that characterise particular genres: the 'distant future', for example, is definitive of the sci-fi genre. Chronotopic theory more broadly conceives these feelings of time and space to be interconnected and influential upon the overall tone of a narrative. This essay uses chronotopic analysis to explore the tension between past, present, and future within the High Court. It argues that the Court's art and architecture convey a story of Australia's colonial past as 'finished', erasing the past injustices of the law. The remedy, this paper suggests, is a larger and more critical body of artwork in the High Court, specifically works that reflect on the law's treatment of Aboriginal and Torres Strait Islander people.

## Introduction

The relationship between law and art is complex. Traditionally viewed as dichotomous, a growing body of literature now recognises the two as intricately interwoven; art critiques law, and law has a distinctly visual presence.<sup>1</sup> One of the clearest examples of this intersection is the study of legal architecture. In court buildings, law, art, and time fuse together.<sup>2</sup> Courts visually represent ideas about justice, looking to the past with the vision of creating a better future.

This essay examines the role of the High Court building in constructing Australia's 'constitutional imaginary'—defined as the narratives, myths, and customs that comprise a nation's cultural image.<sup>3</sup> It argues that while the Court has been central in expounding certain constitutional narratives, more can be done to ensure that these stories present an accurate, compassionate, and constructive reflection of Australian history. The essay argues that the High Court is a chronotope of the Australian constitutional narrative. It posits that as a chronotope, the Court has the power to imagine a better future through spatially representing the past. In addition, it analyses how successful the architecture of the High Court has been in exercising this spatio-temporal ability to encourage positive developments in the Australian constitutional narrative. The essay draws upon the work of Linda Mulcahy to argue that there are several aspects in which the Court's design rhetoric diverges from how it is corporeally experienced.<sup>4</sup> It argues

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<sup>1</sup> Costas Douzinas and Lynda Nead, 'Introduction' in Lynda Nead (ed), *Law and the Image* (University of Chicago Press, 1999) 1; Desmond Manderson, *Law And The Visual* (University of Toronto Press, 2018).

<sup>2</sup> Linda Mulcahy, *Legal Architecture* (Routledge, 2011).

<sup>3</sup> Chiara Bottici, *Imaginal Politics: Images Beyond Imagination and the Imaginary* (Columbia University Press, 2014).

<sup>4</sup> Mulcahy (n 2).

that these divergences shed light on differences between what the law is and what it perhaps should be. Finally, the essay suggests specific ways in which more may be done to bring the past into the present, to inform a better future through expanding the art collection of the Court. The example of the Constitutional Court of South Africa is used to illustrate this point.

## The High Court as a chronotope of the Australian constitutional narrative

In literary theory, the term ‘chronotope’ refers to the time-space features that characterise genres.<sup>5</sup> First termed by Mikhail Bakhtin, chronotopic analysis emphasises the ‘intrinsic connectedness’ of time and space.<sup>6</sup> Bakhtin argues that in a narrative context, space and time are inseparable.<sup>7</sup> They should not be viewed as two distinct dimensions, but as cohesive parts of space-time units.<sup>8</sup> A story set in a provincial town, for example, evokes not just a certain sense of place, but a specific feeling of time: as Bakhtin writes, ‘time, as it were, thickens, takes on flesh, becomes artistically visible; likewise, space becomes charged and responsive to the movements of time, plot, and history’.<sup>9</sup> In narratives, we see time and space involved in intimate discourse. Each endlessly informs the other. This same idea translates to a legal context.<sup>10</sup> Kant, in his *Critique of Pure Reason*, identifies time and space as the lenses through which the whole world is experienced.<sup>11</sup> Law, like everything else, is known and felt only through time-space.

While the term ‘chronotope’ is relatively new to the architectural sphere, theorists such as Eisenstein and Alexander have applied it to describe ‘visual storytelling’, where architectural elements contribute to a broader narrative or enhance the drama of actors within the space.<sup>12</sup> The architecture of the High Court of Australia is thus open to chronotopic analysis. It is a ‘point in the geography of a community where time and space intersect and fuse’.<sup>13</sup> The space of the High Court sees judges look to the past to construct the future. Laws made there extend in spatial and temporal directions simultaneously. They stretch outwards to the edges of Australian territory, while reaching crossways in time, informing both the mythical moment of colonisation and the not-yet-lived future.<sup>14</sup> The space projects this collective memory. While explicitly designed with certain constitutional narratives in mind,<sup>15</sup> these stories are interpreted and shaped by the way individuals interact with the visual field. Moving through the building, we find ourselves projecting onto the concrete, wood, and glass the landmark cases that have gone before, and envisioning those still to come.

In *Chronotopes of Law*, Mariana Valverde explicitly identifies the courtroom as a legal chronotope.<sup>16</sup> Valverde’s focus is on how specific points in legal time create or shape different legal spaces and vice versa,<sup>17</sup> such as how the space of a court is transformed into a court of law when it is pronounced ‘in

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<sup>5</sup> Mikhail Bakhtin, *The Dialogic Imagination: Four Essays* (University of Texas Press, 2017).

<sup>6</sup> Ibid 84.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid 84–85.

<sup>10</sup> See, eg, Mariana Valverde, *Chronotopes Of Law* (Routledge, 2015); Desmond Manderson, ‘Chronotopes in the Scopic Regime of Sovereignty’ (2017) 32(2) *Visual Studies* 167.

<sup>11</sup> Immanuel Kant, and Paul Guyer (ed), *Critique of Pure Reason* (Cambridge University Press, 1998); Valverde (n 10) 32.

<sup>12</sup> Lily Alexander, ‘Storytelling in Time and Space: Studies in the Chronotope and Narrative Logic on Screen’ (2007) 37(1) *Journal of Narrative Theory* 27, 28.

<sup>13</sup> Keith Basso, ‘Stalking with Stories: Names, Places, and Moral Narratives among the Western Apache’ in Edward Bruner (ed), *Text, Play and Story*, (Waveland Press, 1984), 19, 44–45.

<sup>14</sup> See, eg, *Mabo v Queensland [No 2]* (1992) 174 CLR 1, 204.

<sup>15</sup> See, eg, Christopher Kringas (EMTB Architects), ‘A Building for the High Court of Australia: Conditions for a Two Stage Design Competition’ in *High Court of Australia (Stage I Competition) Report*, December 1972, (National Capital Development Commission, July 1972), 13–14, 20.

<sup>16</sup> Valverde (n 10) 16.

<sup>17</sup> Ibid.

session'.<sup>18</sup> This essay adopts a slightly different approach. Whereas Valverde's focus is synchronic, analysing single given points in time,<sup>19</sup> this essay attempts to analyse the High Court's narrative across time. It understands the architecture of the High Court as a work of art participating in anachronic discourse.<sup>20</sup> That is, it embodies different temporalities within a single spatial representation to speak across time. This essay examines not just what the space of the High Court says about Australia's constitutional imaginary when it was designed, but what it means when interpreted now, and may come to mean in the future.

## The High Court's cross-temporal narratives

The High Court was designed by architects Kringas and Madigan. The two intended the Court to be a neutral space, embodying the idealised objectivity of the Court.<sup>21</sup> However, architecture and art are inherently subjective disciplines and reflect certain times and tenses.<sup>22</sup> Legal scholar Mulcahy observes that 'legal architecture can associate law with tradition and conservatism, or can equally well symbolise a commitment to change and innovation'.<sup>23</sup> I argue that while the architecture of the High Court is progressive and committed to change, the artwork is firmly grounded in conservatism with colonial undertones.

The High Court's brutalist ideology commits itself to the future.<sup>24</sup> Born out of a postwar desire for societal renewal, brutalism reflects progress, innovation, and a radical vision of a better tomorrow.<sup>25</sup> The High Court's aesthetic is futuristic and unpretentious. Simple bold geometric shapes characterise the space. The exposed metal scaffolding and use of raw materials such as concrete and glass give the court a scientific aura. It revolts against the prewar frivolity of traditional courthouses.<sup>26</sup> The High Court appears anachronistic next to the classicism of Old Parliament House, like a building transported from the future to the present. The Court's design is informed primarily by ideas about what the law should be.<sup>27</sup> In the courtroom, the judge's platform is raised only slightly. Justice is visually represented as cooperative rather than conflict-based.<sup>28</sup> A public ramp zigzags its way through the space. The law is shown to aspire to accessibility, with representative democracy intended to be visualised as the foundation of the law's legitimacy.<sup>29</sup> The culmination of the court's architectural design aspects give the space a distinctly future tense.

The art of the High Court stands in stark contrast to its architecture. While the building looks to the future, the art imagines the past. The Court's art collection is limited. Conventional black and white portraits of previous judges adorn the walls. A granite slab embossed with the words used to inaugurate the first High Court bench hangs outside Court 1.<sup>30</sup> Emphasis is placed upon ritual and tradition. The *States Wall Mural* stretches through the vertical space. Being 18 metres high by 8 metres wide, the mural dominates the visual field. It represents Federation as the mythical moment in which the nation of Australia was born, casting a nostalgic glow over this coming together of the states.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Manderson (n 1); Georges Didi-Huberman, 'Before The Image, Before Time' in Claire Farago and Robert Zwijnenberg (eds) *Compelling Visuality: The Work of Art In and Out of History* (University of Minnesota Press, 2003), 31.

<sup>21</sup> Kringas (n 15).

<sup>22</sup> Ibid.

<sup>23</sup> Mulcahy (n 2), 1.

<sup>24</sup> Oli Mould, 'Brutalism Redux: Relational Monumentality and the Urban Politics of Brutalist Architecture' (2016) 49(3) *Antipode* 701.

<sup>25</sup> Reyner Banham, 'The New Brutalism' [1955] (December) *Architectural Review*.

<sup>26</sup> Mould (n 24).

<sup>27</sup> Kringas (n 15).

<sup>28</sup> Mulcahy (n 2).

<sup>29</sup> Kringas (n 15).

<sup>30</sup> High Court of Australia, 'Artworks of the High Court', *High Court of Australia* (Web Page, 18 October 2019) <<http://www.hcourt.gov.au/artworks>>.

The history of Australia before white settlement is largely unacknowledged within the High Court. There is only one artwork by an Indigenous artist. The nine panel series *Today now ... we all got to go by same laws* by Rosella Namok (2003) tells a complicated story of law and time.<sup>31</sup> It is a hopeful image, depicting traditional Indigenous law and culture as continuing to operate within contemporary Australian law.<sup>32</sup> The law, through the display of this artwork, retrospectively inserts itself into this tale of cultural preservation. Australia's colonial past is depicted as a finished story, rather than an ongoing reality. The law's contribution to eroding Indigenous law and culture is not represented. This same nostalgic temporalisation is carried through the art of the court. The past is represented in warm sunny hues, while representations of the law's failings and injustices are absent.

As Mulcahy highlights, there is a 'conflict between the future-oriented modernist discourse of growth and improvement' of the architecture and 'nostalgic temporalisation' of the artwork of the court.<sup>33</sup> While the Court's brutalist ideology depicts Australia as a nation committed to change and progress, the artwork reveals a tendency to adorn Australia's sordid past with a rosy-coloured hue.

## Art as a means of bridging the gap between the Court's conflicting tenses

The concern with the conflicting tenses of the art and architecture of the High Court is that the law looks to the future without proper regard for the past. In *The Right to Look*, visual culture theorist Nicholas Mirzoeff criticises governments that visually represent their authority as self-evident.<sup>34</sup> He speaks of the 'performative right to look'; that is, the right to question what is visually common and why.<sup>35</sup> In *Representing Justice*, legal scholars Resnik and Curtis observe that it is common practice for modern courts to leave out 'less-upbeat' representations of justice.<sup>36</sup> Why is it that only one side of justice is being represented in the High Court, and what do we stand to gain from giving visual place to less-upbeat stories of justice?

By representing the legal injustices of the past, we can aspire to a higher degree of judicial consciousness. In 'South Africa's Blue Dress', Eliza Garnsey remarks upon the ability of art to evoke a deeper understanding of the corporeal effects of the law beyond the courtroom.<sup>37</sup> South Africa's Constitutional Court houses an extensive and emotionally charged collection of artworks. To access their chambers, judges must walk past the photo series *Twenty-Six Punishment Cells and Lavatory*. This series of photographs taken by David Goldblatt in 1999 show the isolation cells that held black male prisoners during the apartheid era. The images hold judges accountable, serving as a reminder of the law in its less majestic form, and the way it impacts on human dignity and is felt upon a body in a cell.

If our concern is with undermining the legitimacy and authority of the law through giving visual presence to judicial failings in a public courthouse,<sup>38</sup> then perhaps this style of work, which privately reminds judges of the impact of the law, offers a compromise. Unlike more visceral works, like that of the *Judgement of Cambyses*—a 1498 painting which shows a corrupt judge being skinned alive—Goldblatt's photo series is not aimed at inciting fear in judges.<sup>39</sup> It instead attempts to provide a quiet place for judicial introspection. It is for the gaze of judges rather than the public. In her 2019 study on the effect of the art collection in South Africa's Constitutional Court, law and art theorist Eliza Garnsey recorded one judge's description of the collection as making him 'softer, more human, and able to

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Mulcahy (n 2), 3.

<sup>34</sup> Nicholas Mirzoeff, 'The Right To Look' (2011) 37(3) *Critical Inquiry* 473.

<sup>35</sup> Ibid 478.

<sup>36</sup> Judith Resnik and Dennis Curtis, *Representing Justice* (Yale University Press, 2011).

<sup>37</sup> Eliza Garnsey, 'South Africa's Blue Dress: (Re)imagining Human Rights Through Art' (2019) 24(4) *Angelaki* 38.

<sup>38</sup> Resnik and Curtis (n 36).

<sup>39</sup> Ibid.

understand human beings a lot better'.<sup>40</sup> He continues that 'if there was no work of art at the Court, I would imagine that would not happen'.<sup>41</sup> The decisions of judges made within the space of the High Court are felt far beyond its walls. Art can work to remind judges of these potential effects on people and society, and so contribute to a heightened degree of judicial consciousness. It can also, as Resnik and Curtis note, remind the public of the burden that having to pass judgment may have upon judges.<sup>42</sup> The heightened judicial consciousness inspired by critical court artworks thus contributes to constructing a narrative of learning from the errors of the past, to create a better future.

Similarly, giving a more human face to justice and the law can re-empower the legal subject. Legal art and architecture affect spatial power dynamics. As noted by Mulcahy:

Each time a section of floor is raised, a barrier installed or a segregation route added it has the potential to create insiders and outsiders in a space ostensibly labelled 'public'.<sup>43</sup>

The ramp acts as the court's main circulation route.<sup>44</sup> While the public appears central to the workings of the court, they enter through the lowest part of the court building: a separate entrance beneath the first floor of the court. The ceremonial entrance on the first floor that leads directly to the public hall is closed off. A series of safety checks are carried out before entering, which in one sense illustrates a distrust of the public.<sup>45</sup> As intended by High Court architect Christopher Kringas, '[p]rivacy increases as the space rises'.<sup>46</sup> The upper levels are inaccessible, experienced only as a barred staircase. As famed architect Le Corbusier writes, 'a staircase separates, a ramp connects'.<sup>47</sup> From the outside, a member of the public can see through the main section of the court, but the topmost section remains visually impenetrable. Le Corbusier observes '[a]rchitecture is experienced as one roams about in it',<sup>48</sup> moving through the High Court space, the legal subject is largely disempowered.

Art has the potential to bridge this gap, re-empowering the legal subject. A comparison which helps to highlight this point is the difference in emotional affect between the National Gallery of Australia and the High Court. While both follow similar design laws—both were designed by the same firm and follow a new brutalist aesthetic—the emotional affect of each space is very different. In his article on 'new brutalism', Banham writes that a brutalist design is incomplete without a human presence 'almost overwhelming' the architecture.<sup>49</sup> Brutalism needs vivid images of human association—that is, 'dressing by the art of inhabitation'—to infuse life and colour into the spaces and achieve its ethic of social progress.<sup>50</sup> This is the difference between the space of the court and gallery. The art of the gallery in and of itself infuses this life, colour, and human association into the space, also works to attract people to the space to further invest it with human association. In the gallery, the people overpower the space, whereas in the court the large open spaces overpower the people. By populating the court with art that tells very human stories of the past, the space can work to empower the legal subject, reaffirming the role of the public in Australia's constitutional narrative.

Visual representations of past injustices and more hopeful futures also work to make the space, and by extension the law, feel more empathetic for litigants. In a study of how survivors of violence interact with judicial spaces, Barb Teows observed a common remark of litigants that court spaces feel cold and distant. One litigant described the courtroom as 'a dead place ... there's no warmth there, no emotion'.<sup>51</sup> While our court processes appear to be shifting to become more understanding of human needs and

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<sup>40</sup> Garnsey (n 37).

<sup>41</sup> Ibid.

<sup>42</sup> Resnik and Curtis (n 36).

<sup>43</sup> Mulcahy (n 2) 1.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Kringas (n 15).

<sup>47</sup> Kenneth Frampton, *Le Corbusier: Architect of the 20th Century* (Thames and Hudson, 2001) 141.

<sup>48</sup> Flora Samuel, *Le Corbusier and the Architectural Promenade* (Routledge, 2003).

<sup>49</sup> Banham (n 25).

<sup>50</sup> Mould (n 24).

<sup>51</sup> Barb Teows, 'It's A Dead Place: A Qualitative Exploration of Violence Survivors Perceptions Of Justice Architecture' (2018) 21(2) *Contemporary Justice Review* 208.

dignity by emphasising alternate dispute resolution, and cooperation and settlement, courthouse aesthetics are still catching up. The 2003 *Body Maps* series in the South African Constitutional Court presents self-portraits of 12 Cape Town women with HIV. The visual stories conveyed are vivid and deeply personal. Ncedeka Mbune's portrait shows her holding the daughter she lost to the virus in her arms as blisters cover her body. The image is visceral, with its display in the court giving significance to the subjective individual experiences that the law's stubborn objectivity does not acknowledge. Art that depicts people's subjective experiences with the law gives legal subjects who move through the space a chance to regain the individuality that they lose for the sake of objectivity and anonymity before the law. Art can inject empathy, emotion, and understanding into the space where the law is carried out, promoting more human treatment of litigants within judicial spaces.

## Conclusion

This essay has argued that the High Court building plays a central role in constructing Australia's constitutional imaginary. As a chronotope of the Australian constitutional narrative genre, the building has the unique ability to offer symbolic acknowledgement and reparation of past injustices in order to encourage a more just future. However, more can be done to spatially bring the past into the present: in particular, a realignment of the tenses of the art and architecture of the courthouse. While the architecture of the court looks to the progressive future, the art romanticises and misrepresents the past. Contemporary examples, including the Constitutional Court of South Africa, demonstrate the ways in which the proliferation of empathetic art can be used to ensure the Australian constitutional narrative evolves in a positive direction.

## Bibliography

- Alexander, Lily, 'Storytelling in Time and Space: Studies in the Chronotope and Narrative Logic on Screen' (2007) 37(1) *Journal of Narrative Theory* 27: doi.org/10.1353/jnt.2007.0014
- Bakhtin, Mikhail, *The Dialogic Imagination: Four Essays* (University of Texas Press, 2017)
- Banham, Reyner, 'The New Brutalism' [1955] (December) *Architectural Review*
- Basso, Keith, 'Stalking with Stories: Names, Places, and Moral Narratives among the Western Apache' in Edward Bruner (ed), *Text, Play and Story* (Waveland Press, 1984)
- Bottici, Chiara, *Imaginal Politics: Images Beyond Imagination and the Imaginary* (Columbia University Press, 2014): doi.org/10.7312/columbia/9780231157780.003.0005
- Didi-Huberman, Georges, 'Before The Image, Before Time' in Claire Farago, and Robert Zwijnenberg (eds) *Compelling Visuality: The Work of Art In and Out of History* (University of Minnesota Press, 2003)
- Douzinas, Costas, and Lynda Nead, 'Introduction' in Lynda Nead (ed), *Law and the Image* (University of Chicago Press, 1999)
- Frampton, Kenneth, *Le Corbusier: Architect of the 20th Century* (Thames and Hudson, 2001)
- Garnsey, Eliza, 'South Africa's Blue Dress: (Re)imagining Human Rights Through Art' (2019) 24(4) *Angelaki* 38: doi.org/10.1080/0969725x.2019.1635823
- High Court of Australia, 'Artworks of the High Court', *High Court of Australia* (Web Page, 18 October 2019) <<http://www.hcourt.gov.au/artworks>>
- Kant, Immanuel, and Paul Guyer (ed), *Critique of Pure Reason* (Cambridge University Press, 1998)
- Kringas, Christopher (EMTB Architects), in *High Court of Australia Stage I Competition Report* (1972, National Library, Canberra)
- Mabo v Queensland [No 2]* (1992) 174 CLR 1, 204
- Manderson, Desmond, 'Chronotopes in the Scopic Regime of Sovereignty' (2017) 32(2) *Visual Studies* 167: doi.org/10.1080/1472586x.2017.1324252
- Manderson, Desmond, *Law and the Visual* (University of Toronto Press, 2018)

Mirzoeff, Nicholas, 'The Right To Look' (2011) 37(3) *Critical Inquiry* 473

Mould, Oli, 'Brutalism Redux: Relational Monumentality And The Urban Politics Of Brutalist Architecture' (2016) 49(3) *Antipode* 701: doi.org/10.1111/anti.12306

Mulcahy, Linda, *Legal Architecture* (Routledge, 2011)

Resnik, Judith and Dennis Curtis, *Representing Justice* (Yale University Press, 2011)

Samuel, Flora, *Le Corbusier and the Architectural Promenade* (Routledge, 2003)

Toews, Barb, 'It's A Dead Place: A Qualitative Exploration of Violence Survivors' Perceptions Of Justice Architecture' (2018) 21(2) *Contemporary Justice Review* 208: doi.org/10.1080/10282580.2018.1455511

Valverde, Mariana, *Chronotopes of Law* (Routledge, 2015)