

# Power on a pedestal: How architecture creates, reinforces, and reflects power structures in the legal system

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## Abstract

Architecture—the language of buildings—is a language of both beauty and function. Architecture creates, reinforces, and reflects power structures. It is both a form of art and a physical control. This paper seeks to explore the influence of architecture in the legal context by comparing the architecture of the High Court of Australia and the United States Supreme Court. Through their design and construction, each court tries to invoke certain ideologies and mythologies that justify and legitimise the role of the judiciary in our society as ‘impartial’ arbitrators. This paper reviews several architectural features of each court, explains how those architectural features contribute to the creation and maintenance of the aforementioned ideologies and mythologies, and then reflects on the utility of making such representations to society at large. Importantly, the paper explores more than just the symbology of the courts’ various ornamentation and artworks; instead, it looks to the meaning imparted by the structure of the buildings themselves, focusing the locus of research not on the *courtroom* but the court as a whole.

## Introduction

This paper argues that architecture creates, reinforces, and reflects power structures in the legal system in several ways. At the macro level, the symbology, imagery, and meaning imparted to the buildings by these architectural features is one means of consolidating ideologies that legitimise the exercise of judicial power. At the micro level, architecture allows for the physical control of courtroom users, reinforcing relationships of power. To demonstrate these phenomena and explain how architecture influences the dynamics of power and human behaviour, this essay explores the architecture of the High Court of Australia (‘High Court’) and the Supreme Court of the United States (‘Supreme Court’).

These case studies are useful for two reasons. Firstly, a *comparison* of their architectural features, and the ideologies those features appeal to, is useful in highlighting the extent of architecture’s influence. Secondly, both courts are the crown of the judicial trees in their respective jurisdictions, making them particularly ripe for examination, as it is in institutions of national significance that countries tend to vest the most symbolic intent.<sup>1</sup> Indeed, both courts are rich in architectural detail and have been recognised as significant feats of architecture.<sup>2</sup> Unfortunately, it is this very attention to architectural detail that makes it impossible to discuss every feature of the courts in its entirety. Because the structure and furnishings of *courtrooms* have been extensively discussed by other researchers this will not be discussed.<sup>3</sup>

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<sup>1</sup> ‘Unicorns and Urinals’ The Troubling History of Contemporary Court Design’, Podcast (Voice Republic, 2018) <<https://voicerepublic.com/talks/unicorns-and-urinals-the-troubling-history-of-contemporary-court-design>>.

<sup>2</sup> *High Court Documentary* (High Court of Australia, 2010) <<http://www.hcourt.gov.au/about/high-court-documentary>>.

<sup>3</sup> See Linda Mulcahy’s excellent book *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge, 2010).

This paper will explore this argument in three parts. Part I conducts a brief literature review and defines the conceptual parameters of ‘architecture’ for the purposes of this paper. Part II examines the ‘macro’ architectural features—including location, construction, and outer shell—and Part III examines the ‘micro’ architectural features, or internal structure, of the courts. After reviewing the architectural features of each court in each section, the paper then explains how those architectural features contribute to the creation and maintenance of the aforementioned ideologies and mythologies, and then reflects on the utility of making such representations to society at large. Throughout, the paper draws on the scholarship of legal theorists, and works to apply previous observations about architecture and law to the context of the ‘highest courts’ in the Australian and American jurisdictions.

## I Defining ‘architecture’

There are many different definitions of architecture. It is a profession, process, product, building, ‘social art’, form of ideological expression, and a means of ‘coercive organization of social space’.<sup>4</sup> A common theme among these various classifications, however, is that the importance of ‘architectural objects’ goes beyond their physical form. Glenn argues that buildings are more than their mere physical form because they achieve some greater ‘social purpose’. Since built structures are not *only* used for shelter—there are examples of nomadic societies which thrived without them—she reasons that these ‘social purposes’, such as creating privacy and differentiating sacred places or places with particularised functions, must be the reason for their construction.<sup>5</sup> Foucault argues architecture’s ‘social purpose’ is control, since a building’s design dictates both the function that users derive from it and the way they interact with it.<sup>6</sup> Architecture is important because it can cause or prevent certain human behaviours.<sup>7</sup>

Others argue that architecture’s ‘social purpose’ is as a means of expression. As both a visual and textual (sensory) mode of communication, it often shares ideas more effectively than language. This is because it is more subtle and yet also more coercive than other modes of communication. For example, the design of a city is a persistent and pervasive, yet almost unnoticeable, influence on our daily lives and, as a form of social organisation, it is particularly effective because these ‘social rules’ are reinforced by *physical* boundaries.<sup>8</sup> Imagery is often better equipped than text to express concepts such as paradoxes and emotive appeal, as it can communicate ideas in a nonlinear fashion—meaning that unlike the written word, which must follow a singular and coherent narrative in order to be comprehensible,<sup>9</sup> imagery may present several conflicting narratives simultaneously. Like the written word, imagery may simultaneously offer different interpretations.<sup>10</sup> This is why art and law are effective vehicles for social critique: ‘[I]aw and art are the same thing ... they’re different vocabularies for criticising the same thing ...’.<sup>11</sup> As well as critique, which *reactively* influences society, architecture also offers a proactive opportunity for influence: ‘[i]f architecture depicts the nature of reality, then new ideas about reality can be demonstrated through manipulation of architectural symbolism’.<sup>12</sup>

In a judicial context, all of the above ‘social purposes’ apply. Courts are ‘differentiated’, not as a ‘sacred’ place in the religious sense, but as one that commands respect. Their very existence communicates a paradox about the nature of the law: both law and its buildings possess a public

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<sup>4</sup> Saul Fisher, ‘Philosophy of Architecture’, *Stanford Encyclopedia of Philosophy* (Web Page, 9 September 2015) <<https://plato.stanford.edu/entries/architecture/>>; see also Molly Glenn, ‘Architecture Demonstrates Power’ (Senior Thesis, Haverford College, 2003) <<https://scholarship.tricolib.brynmaur.edu/bitstream/handle/10066/714/2003GlennM.pdf?sequence=5&isAllowed=y>>.

<sup>5</sup> Glenn (n 4).

<sup>6</sup> Joseph M. Piro, ‘Foucault and the Architecture of Surveillance: Creating Regimes of Power in Schools, Shrines, and Society’ (2008) 44(1) *Educational Studies* 1.

<sup>7</sup> Paul Hirst, ‘Foucault and Architecture’ (1993) 26 *AA Files* 55; Linda Mulcahy, ‘Urinals and Unicorns’ (Speech, The Australian National University, 30 October 2018); Fisher (n 4);

<sup>8</sup> ‘Unicorns and Urinals’ (n 1).

<sup>9</sup> With the exception, perhaps, of some postmodern literature.

<sup>10</sup> Desmond Manderson, ‘Legal Theory: Art and Law’ (Lecture, The Australian National University, 31 July 2017).

<sup>11</sup> *Ibid.*

<sup>12</sup> Glenn (n 4).

character, but also exclude and control the public. Often, the courts are vehicles for social critique and change. However, the courts have an additional ‘social purpose’ unique from most other architectural objects.

## II The macro level: Ideological power structures

The power of the High Court and Supreme Court is legitimised by their implementation of ‘core Western value[s]’ of justice, such as impartiality, independence, and equality.<sup>13</sup> The public would not consent to arbitration if they believed the courts were arbitrary, unjust, biased, or corrupt—the ‘social contract’ would be broken.<sup>14</sup> There would also be no justification for undemocratic decision-making if the judiciary did not embody these ideologies.<sup>15</sup> The courts’ architecture, which acts as ‘monuments to legal tradition’,<sup>16</sup> reinforces this mythology, by promoting the image of the courts as keepers of these ideals.<sup>17</sup> But how?

### A Location

The High Court is situated at a lower elevation than (both new and old) Parliament House, manifesting in physical dimensions the power dynamic between the two branches of government written into the Constitution. This positioning represents the supremacy of the legislature, as height connotes power or dominance—think: the advantage of higher ground in a military battle, religious connotations of reaching toward the heavens, and the practicalities of mustering the resources needed to create grand structures.<sup>18</sup> The physical distance between the two buildings demonstrates the High Court’s independence and adherence to the separation of powers.<sup>19</sup> This is fitting, given the original design requirements stipulated the building should be:

visually related to the Parliament but at the same time must be seen to stand separate from, and independent of, the Parliament. In its constitutional independence, its objectivity of deliberation and freedom from political influence, the High Court can be seen as a powerful influence within this relationship.<sup>20</sup>

The Court’s position (Figure 1) halfway between Parliament and Constitution Avenue (the stretch of road on the opposite side of the lake, facing the Court) is symbolic of its role as an intermediary between the two—as the interpreter and enforcer of the Constitution on behalf of the Parliament—with one foot in the realm of statutory interpretation and the other in constitutional law. Thus, the High Court’s location is ‘a powerful expression of the basis of our democracy’.<sup>21</sup>

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<sup>13</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 2012), 3.

<sup>14</sup> Murray Gleeson, ‘Public Confidence in the Judiciary’ (Speech, Judicial Conference of Australia, 27 April 2002) <[http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleeson/cj\\_jca.htm#\\_ftn1](http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleeson/cj_jca.htm#_ftn1)>; Stephen J. Lee, ‘Impartiality in the Judiciary’ [1987] 14(2) *University of Queensland Law Journal* 136.

<sup>15</sup> Young (n 13), 3.

<sup>16</sup> ‘Unicorns and Urinals’ (n 1).

<sup>17</sup> Desmond Manderson, ‘Not Yet: Aboriginal People and the Deferral of the Rule of Law’ (2008) 29(30) *Arena Journal* 219.

<sup>18</sup> Roger Scruton, ‘Architecture’, *Encyclopedia Britannica* (Web Page, 2019) section ‘Symbols of Function’ <<https://www.britannica.com/topic/architecture/Symbols-of-function>>; Léopold Lambert, ‘Foucault and Architecture: The Encounter that Never Was’, *The Funambulist* (Web Page) <<https://thefunambulist.net/architectural-projects/foucault-foucault-and-architecture-the-encounter-that-never-was>>; Glenn (n 4).

<sup>19</sup> *High Court Documentary* (n 2).

<sup>20</sup> High Court of Australia, ‘The Building’, *High Court of Australia* (Web Page, 2010) <<http://www.hcourt.gov.au/about/the-building>>.

<sup>21</sup> *High Court Documentary* (n 2).

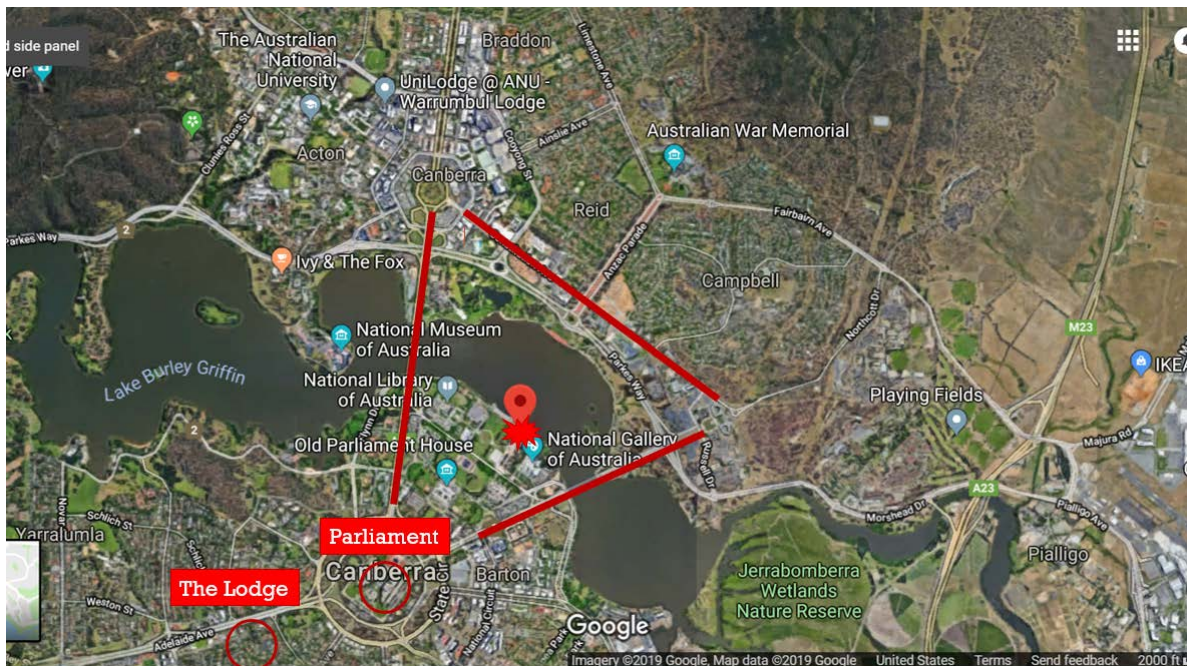


Figure 1: High Court location (indicated by red star-burst) relative to the position of Parliament House and the Lodge, the prime minister’s Canberra residence.

Source: ‘Canberra’, Google Maps (Screenshot of Google Maps search result, 30 September 2020) <<https://www.google.com/maps/place/Canberra+ACT+2601/@-35.298769,149.1349945,4438m/data=!3m1!1e3!4m5!3m4!1s0x6b164d69b05c9021:0x500ea6ea7695660!8m2!3d-35.2809368!4d149.1300092>>.

By contrast, at first glance, the location of the Supreme Court (Figure 2) implies a diminutive role for the courts relative to other branches of government. Although the institution was founded in 1789 as one of three coequal branches of government, it was not until 7 October 1935 that the Court was given a permanent home.<sup>22</sup> This is because, initially, the court was thought to be the weakest branch, for it controlled neither ‘the sword or the purse’.<sup>23</sup> Only in modern times has the Supreme Court gained the respect that would earn former Justice Anthony Kennedy the title ‘most powerful man alive’.<sup>24</sup> Thus, when designing Washington, the architect L’Enfant’s priorities were the White House and Capitol Building. Both buildings sit at the head of ‘two great open allées’ with ‘the radials [of diagonal streets] intersecting these focal points’.<sup>25</sup> This positioning connotes their power, as a path is a ‘location of movement’ which emphasises the structure at its end.

Unlike the White House and Capitol Building, whose locations speak to their relative importance, the Supreme Court’s location expresses obscurity or equality (depending on whether a negative or positive portrayal is made). The Supreme Court’s location was decried by the court’s architect, Cass Gilbert, because of its subordinate position to the Capitol and the ‘baronial’ Library of Congress.<sup>26</sup> It did not speak to the court’s independence. It is but one building on a city block. No pathways lead to the

<sup>22</sup> Judith Resnik, Dennis Curtis and Allison Tait, ‘Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere’ in Anne Wagner, Richard K Shirwan (eds), *Law, Cultural and Visual Studies* (Springer, 2014), 515, 521; Supreme Court of the United States, ‘The Supreme Court Building’, *Supreme Court of the United States* (Web Page) <<https://www.supremecourt.gov/about/courtbuilding.aspx>>; Jackie Craven, ‘About the U.S. Supreme Court Building’, ThoughtCo (online, 28 December 2018) <<https://www.thoughtco.com/us-supreme-court-building-by-cass-gilbert-177925>>; Supreme Court of the United States, ‘Architectural Information’, *Supreme Court of the United States* (Web Page) <<https://www.supremecourt.gov/about/archdetails.aspx>>.

<sup>23</sup> Alexander Hamilton, *The Federalist Papers No. 78* (The Judiciary Department, 1788).

<sup>24</sup> Alexander Hamilton, *The Federalist Papers No. 78* (The Judiciary Department, 1788); The Common Constitutionalist, ‘Justice Anthony Kennedy – More Powerful than Any President’ *The Common Constitutionalist* (Blog Post, 16 May 2017) <<http://commonconstitutionalist.com/political-stuff/justice-anthony-kennedy-more-powerful-than-any-president/>>.

<sup>25</sup> Glenn (n 4).

<sup>26</sup> ‘Architectural Information’ (n 22).

building and it blends into the rest of the city’s orthogonal plan.<sup>27</sup> The symbolic effect is one of obscurity. Glenn argues, in a more positive interpretation, that ‘[t]he symbol of a grid, paradoxically, is its very lack of symbolism. Precisely because all places are alike, the grid was a uniquely appropriate choice for [expressing] ... democracy’.<sup>28</sup> Yet the courts are the least democratic branch of government—this is the counter-majoritarian difficulty. So perhaps the ‘equality’ of the city block instead represents equal access to the law and equality before it. The location was chosen for its proximity to Union Station, which allowed easy transit for out-of-state visitors.<sup>29</sup> This physical measure taken by the court to encourage public participation supports the ‘equality’-based interpretation of the Supreme Court’s location. As Mulcahy notes, such facilitative measures—for example, comfortable waiting areas and kitchen facilities—have a very real impact on signalling inclusion or exclusion of visitors from the courts.<sup>30</sup>

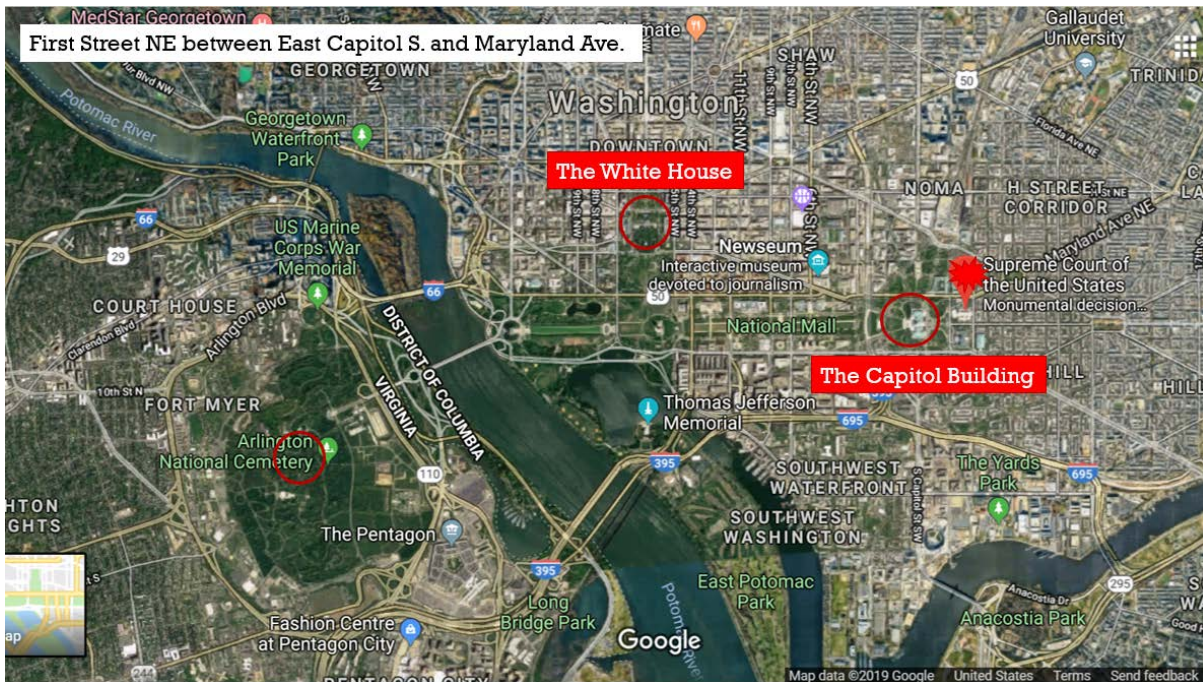


Figure 2: Supreme Court location (indicated by red star-burst) relative to the position of the Capitol Building, the White House, and Arlington National Cemetery.

Source: ‘Washington’, *Google Maps* (Screenshot of Google Maps search result, 30 September 2020)  
 <<https://www.google.com/maps/place/The+White+House/@38.8894621,-77.0488205,4357m/data=!3m1!1e3!4m5!3m4!1s0x89b7b7bcdecbb1df:0x715969d86d0b76bf18m2!3d38.8976763!4d-77.0365298>>.

## B Construction

Firstly, the very act of construction itself communicates the courts’ significance. The inside-outside distinction can focus a locus of power, as the act of enclosure itself identifies said structure as being of some social use distinct from the ‘other’ or ‘outside’, indicating ‘private or sacred areas and individual status’<sup>31</sup> and establishing the courts as residences of power. Also, the decision to build for courts a structure dedicated solely to the administration of justice signals to the public that the court’s ‘social purpose’ is a priority, and that they are powerful institutions to receive funding to sponsor their

<sup>27</sup> Glenn (n 4).

<sup>28</sup> Ibid.

<sup>29</sup> ‘Architectural Information’ (n 22).

<sup>30</sup> ‘Unicorns and Urinals’ (n 1).

<sup>31</sup> Glenn (n 4).

construction.<sup>32</sup> This is the point Glenn makes when saying that architecture signals cultural values via differentiation of ‘sacred’ spaces.<sup>33</sup> Their size further enhances this impression of importance. An architectural object’s size is uniquely positioned to communicate strength. This is because large buildings require wealth (or access to it) and a command over others and their labour. By creating such a building, a leader is demonstrating that they have ample reserves of both.<sup>34</sup>

Allocating the courts a discrete building also speaks to the courts’ independence. Instead of residing in multipurpose buildings, as was the case in medieval England, the status of judges as bureaucrats has been elevated above other administrative and executive functions.<sup>35</sup> This communicates both the importance and independence of the judiciary. Judges are no longer seen as ‘loyal subjects of the state’, and instead of being ‘on trial’ to the wider public, as Bentham supposes, their judicial function is hidden by a structure which segregates them from society.<sup>36</sup> Such allusions to independence and impartiality legitimise legal power. Young also adds that these ideologies create a different form of power, as the claim to impartiality masks the way the perspectives of dominant groups claim universality and that by ‘downgrading’ all of human experience into ‘unitary’ comparisons, it justifies hierarchical decision-making.<sup>37</sup> Not only are courts physically separated, however, but both the Supreme Court and High Court have been made into easily identifiable icons. This is an attempt to counter what Garapon calls ‘architectural silence’, wherein court houses become undistinguishable from other ‘regular’ buildings. Garapon says such ‘silence’ is ‘dangerous’ as it risks the ‘erosion of legal symbolism ... [that could] threaten the very foundations of the legal system’.<sup>38</sup> Striking architectural symbolism and features are thus used to differentiate the courts and highlight their significant role in society, distinct from other more ‘mundane’ administrative and/or bureaucratic functions.

Each court’s construction process communicates different assumptions about legal power—the design of the High Court is arguably democratic and participatory in origin, while the Supreme Court’s design was privately sourced.<sup>39</sup> The Supreme Court’s construction was instigated by the Chief Justice of the time, William Taft, who instructed Cass Gilbert to design ‘a building of dignity and importance suitable for its use as the [court’s] permanent home’.<sup>40</sup> By contrast, the High Court was built by the firm Edwards Madigan Torzillo and Briggs, who won a public competition with their design.<sup>41</sup> Their instructions were to create a building that ‘imparts a sense of strength and security. The visitor is made to feel aware of the rights, privileges and responsibilities of the Australian judicial system’.<sup>42</sup> It is ironic that the High Court, which has far less of a role in adjudicating rights-based conflicts, is then the one that appeals to the ‘rights’ of the people by requiring they have a say in the court’s construction. Given the current dialogue of income and racial inequality in the United States, and the fears of political court-stacking following the passing of the ‘Notorious RBG’,<sup>43</sup> comparable to the ‘shoulder-tapping’ process responsible for the court’s construction, this is one instance in which architectural interpretation perhaps *undermines* the Supreme Court’s judicial power or creates a different, less positive, perspective on it, depending on the user’s individual context.

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<sup>32</sup> Resnik, Curtis and Tait (n 22), 514.

<sup>33</sup> Glenn (n 4).

<sup>34</sup> Glenn (n 4).

<sup>35</sup> ‘Unicorns and Urinals’ (n 1).

<sup>36</sup> Resnik, Curtis and Tait (n 2222), 514; Judith Resnik and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (Yale University Press, 2011), 720.

<sup>37</sup> Young (n 13), 3.

<sup>38</sup> Resnik, Curtis and Tait (n 22), 527.

<sup>39</sup> This may also be due to the different eras in which the buildings were made—the Supreme Court in 1935 and the High Court in 1980: *High Court Documentary* (n 2); High Court of Australia (n 20).

<sup>40</sup> ‘The Supreme Court Building’ (n 22); Craven (n 22); ‘Architectural Information’ (n 22).

<sup>41</sup> *High Court Documentary* (n 2); High Court of Australia (n 20); Gough Whitlam, ‘High Court Design Competition Winner’ (Press Statement, 136, 8 October 1973).

<sup>42</sup> High Court of Australia (n 20).

<sup>43</sup> The popular nickname for former US Supreme Court Associate Justice Ruth Bader Ginsberg.

## C Outer shell



Figures 3 and 4: Comparison between the High Court of Australia (above) and other examples of brutalist architecture (below).

Sources: (3) Alex Proimos, 'High Court of Australia', *Wikimedia Commons* (Image, 20 January 2012) <[https://commons.wikimedia.org/wiki/File:High\\_Court\\_of\\_Australia\\_\(6769096715\).jpg](https://commons.wikimedia.org/wiki/File:High_Court_of_Australia_(6769096715).jpg)>; (4) Rory Hyde, 'Denys Lasdun—Royal National Theatre, South Bank, 1967–76' (*Flickr*, 10 March 2009) <<https://www.flickr.com/photos/roryrory/3757071005/>>.

The High Court successfully coopts the architectural style of brutalism (Figures 3 and 4) to convey authenticity and strength, implying the judiciary occupying the Court possesses the same qualities.<sup>44</sup> While brutalism has been described as a ‘model of bad taste’ and criticised as ‘cold’ and ‘austere’ because of its connotations of urban decay (the blank walls are a canvas for graffiti and it is expensive to maintain raw concrete),<sup>45</sup> its use in the High Court creates ‘a building of strength’ that ‘shows its raw meaning and ... intent’.<sup>46</sup> The court relies heavily on the brutalist practice of revealing natural materials<sup>47</sup> as a means of speaking ‘honesty’ through structure and material—a theme that is common among architects.<sup>48</sup> This has been achieved largely by a technique called ‘bush hammering’ in which a percussion instrument is used to ‘flake’ the surface of the concrete and expose the grains within.<sup>49</sup> The exposure of these materials is comparable to the court’s willingness to expose the reasoning in their judgments to the public. The building’s strength is a reference to the judiciary’s resoluteness and immovable impartiality, no matter the public opinion of the day. The history of the High Court holds many examples of handing down the correct *legal* ruling in the face of great public opposition—think, for example, of the *Communist Party Case*.<sup>50</sup> Interestingly, the High Court makes no further appeals to the weight of legal history, instead preferring to privilege its own relatively young history. Because of this youth, appeals to the ‘great weight of history’ (excluding appeals to Britain, which have gradually been discarded as Australia sought to forge its independence), are much less prominent in the Australian national discourse, and it is fitting that this tone is reflected in the design of its highest court.

Underpinning this overarching narrative of authenticity and strength are several more secondary narratives introduced by secondary architectural features.<sup>51</sup> Another possible interpretation is that brutalism’s reputation as a relic of a bygone era is reminiscent of the judiciary’s own gerontocratic reputation—speaking to a historical power that is increasingly challenged by progressive political narratives. Another interpretation/observation is how the intensity of the court’s brutalism is softened somewhat by the cascade waterfall which runs parallel to the ceremonial ramp at the Court’s forefront, with the moving water symbolising freshness and a willingness to change.<sup>52</sup> The waterfall is also made of South Australian speckled granite—many of the court’s materials are sourced locally. The use of these materials is an attempt to capture a unified national voice, appealing to an ideological ‘universality’ that Young says is essential to legitimise power.<sup>53</sup> Alternatively, it could be a reference to the federal compact underpinning Australia’s constitutional structure. The possibility that reasonable minds may differ as to the correct interpretation speaks to architecture/imagery’s capacity to convey subtle yet complex relationships of power—it is possible for the court to possess/exert all of these ideas of legal power at once.<sup>54</sup>

The 4,000 square metres of glass which dominate the High Court’s façade convey a similarly nuanced message about legal power. On the one hand, the same façade evokes ideas of transparency, accountability, and accessibility.<sup>55</sup> This is because glass lets in light, and light has long been a symbol of justice, from the Egyptian Sun Gods of Justice, to the Christian God of Light.<sup>56</sup> Glass has been used

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<sup>44</sup> *High Court Documentary* (n 2).

<sup>45</sup> Jessica Stewart, ‘Brutalism: What Is It and Why Is It Making a Comeback?’, *My Modern Met* (Web Page, 4 December 2018) <<https://mymodernmet.com/brutalist-architecture/>>.

<sup>46</sup> *High Court Documentary* (n 2).

<sup>47</sup> *Ibid.*

<sup>48</sup> ‘Unicorns and Urinals’ (n 1).

<sup>49</sup> High Court of Australia (n 20).

<sup>50</sup> *Communist Party v Commonwealth* (1951) 83 CLR 1.

<sup>51</sup> The High Court’s architectural style is a ‘primary’ feature because the style contributes to both the viewer’s initial impression and because it dominates every feature of the building. Individual components of the building—such as a water feature and walkway—are considered ‘secondary’ features because they do not constitute the ‘building blocks’ of architectural analysis (pun intended).

<sup>52</sup> High Court of Australia (n 20).

<sup>53</sup> Young (n 13), 3.

<sup>54</sup> Stewart (n 45).

<sup>55</sup> High Court of Australia (n 20); *High Court Documentary* (n 2); ‘Unicorns and Urinals’ (n 1); Resnik, Curtis and Tait (n 22), 514.

<sup>56</sup> Resnik and Curtis (n 36), 720.



in other courthouses, such as the Nantes Palais de Justice and the German Constitutional Court, to the same effect.<sup>57</sup> Glass also means the court is open to scrutiny from the public and Parliament alike. Moreover, the court has an unblemished view of the current Parliament house and can supervise it, as befits its constitutional role. Proponents of Canada's 'dialogue theory' of constitutional law might say the glass allows discourse between the two bodies, as the law continues to be reformed while it is batted between the two bodies like a shuttlecock. On the other hand, the downside to the 'voyeuristic control' granted by glass is that, just like a person looking in through a window, the court remains too far away to 'engage meaningfully and reciprocally' with Parliament or the public.<sup>58</sup> An alternative interpretation is that it is the public, not the judiciary, who are put under scrutiny, as the latter are sequestered in their private offices and court rooms.<sup>59</sup>

In contrast to the bold brutalism of the High Court, the neoclassical style of the Supreme Court (Figures 5 and 6) is a 'quieter, more reserved style' which evokes a legal power legitimised by elegance and age. The grand, timeless<sup>60</sup> nature of neoclassical architecture is especially evident relative to the 'flamboyant Beaux Arts style' of the Library of Congress which flanks the court.<sup>61</sup> Neoclassical architecture focuses on simple geometric forms, counterbalanced by dramatic flanking columns.<sup>62</sup> A 252-foot wide (roughly 77 metres) oval plaza and sweeping steps frame the entrance.<sup>63</sup> These arrangements, combined with height and the building's grand sense of scale (the foundations are 385 by 304 feet, about 117 by 91 metres<sup>64</sup>) intimidate visitors to the 'temple-like' building.<sup>65</sup> Stairs, in particular, are renowned for their ability to communicate 'monumentality'.<sup>66</sup>

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<sup>57</sup> Resnik, Curtis and Tait (n 22), 530.

<sup>58</sup> Ibid, 531.

<sup>59</sup> 'Unicorns and Urinals' (n 1).

<sup>60</sup> Unlike concrete, marble is known for its longevity: 'Architectural Information' (n 22).

<sup>61</sup> Resnik and Curtis (n 3636), 720; 'Architectural Information' (n 22); Craven (n 2222).

<sup>62</sup> Resnik, Curtis and Tait (n 22), 521; Editors of Encyclopedia Britannica, 'Neoclassical Architecture', *Encyclopedia Britannica* (Web Page, 2019) <<https://www.britannica.com/art/Neoclassical-architecture>>; 'Architectural Information' (n 22); Craven (n 22).

<sup>63</sup> 'Architectural Information' (n 22).

<sup>64</sup> 'Architectural Information' (n 22).

<sup>65</sup> 'Unicorns and Urinals' (n 1).

<sup>66</sup> Scruton (n 18), section 'Symbols of Function'.



Figures 5 and 6: Comparison between the Supreme Court (above) and other neoclassical architecture (below).

Sources: (5) Kjetil Ree, 'The Supreme Court of the United States', *Wikimedia Commons* (Image, 8 March 2007) <[https://commons.wikimedia.org/wiki/File:US\\_Supreme\\_Court.JPG](https://commons.wikimedia.org/wiki/File:US_Supreme_Court.JPG)>; (6) Marcus Cyron, 'Wiesbaden, Neoclassical Architecture', *Wikimedia Commons* (Image, 16 June 2013) <[https://commons.wikimedia.org/wiki/File:Wiesbaden,\\_Neoclassical\\_architecture\\_\(9066879713\).jpg](https://commons.wikimedia.org/wiki/File:Wiesbaden,_Neoclassical_architecture_(9066879713).jpg)>.

On both the western and eastern facades of the Supreme Court are pediments, carved by Robert Aiken and Herman A. McNeil respectively.<sup>67</sup> The pediments are saturated with democratic allusions and classical symbols of justice. The western architrave reads 'Equal Justice Under Law', while the eastern one reads 'Justice the Guardian of Liberty'.<sup>68</sup> The scenes depict Liberty, guarded by Order and Authority, as well as lawmakers from different ages and civilisations, including Moses, Confucius, and Solon.<sup>69</sup> Two seated marble figures, named 'Contemplation of Justice' (Figure 7) and 'Guardian of Law' (Figure 8), sit atop the stairs on the western façade.<sup>70</sup> These repeated references to legal history aim to create a shared history and narrative for visitors by recalling figures of centuries past, rather than recalling America's more recent and more controversial past.<sup>71</sup>

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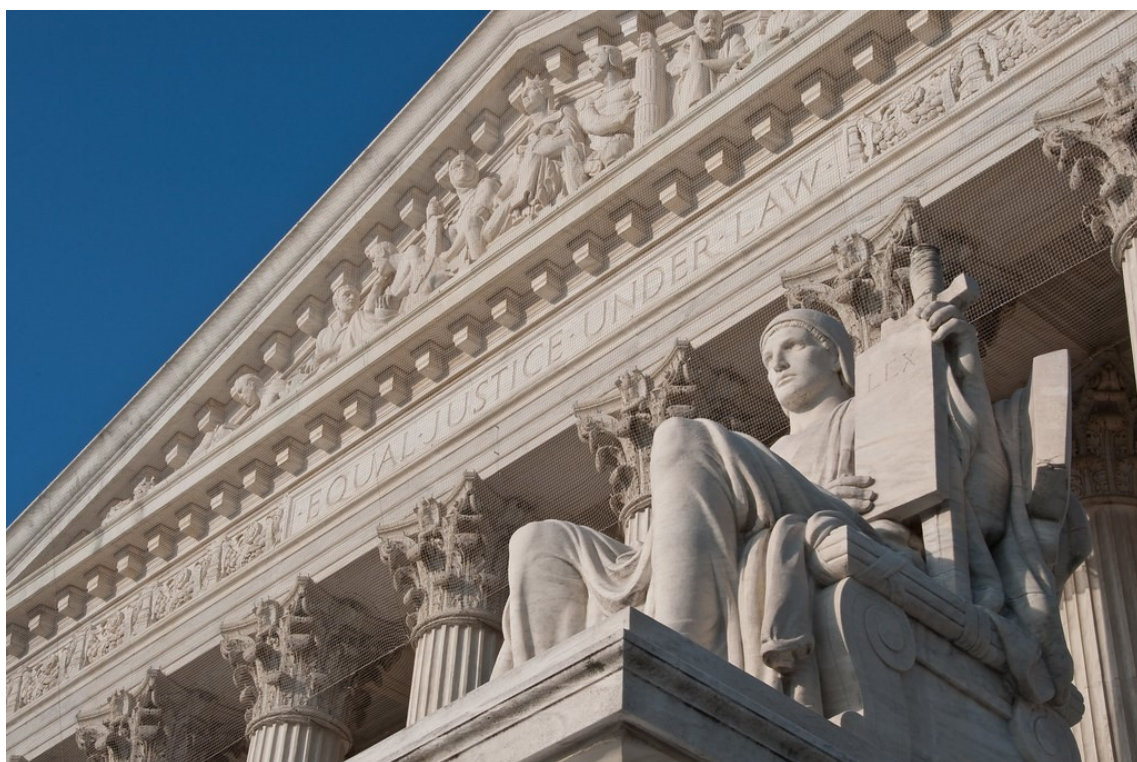
<sup>67</sup> Craven (n 2222).

<sup>68</sup> 'The Supreme Court Building' (n 22).

<sup>69</sup> Craven (n 22); 'The Supreme Court Building' (n 22).

<sup>70</sup> Craven (n 22).

<sup>71</sup> Although there is some question as to whether it adequately represents the 13.7 per cent of immigrants (Migration Policy Institute, 'U.S. Immigrant Population and Share over Time, 1850-Present', *Migration Policy Institute* (Web Page) <<https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-over-time>>) or the 38.8 per cent of non-whites (United States Census Bureau, 'Quick Facts', *United States Census Bureau* (Web Page, 2018) <<https://www.census.gov/quickfacts/fact/table/US/PST045218>>) in the American population.



Figures 7 and 8: The Contemplation of Justice (above) and the Guardian of the Law (below) statues at the western façade of the Supreme Court.

Sources: (7) Matt Wade, 'The Contemplation of Justice', *Wikimedia Commons* (Image, 9 September 2005) <<https://commons.wikimedia.org/wiki/File:ContemplationOfJustice.JPG>>; (8) Mark Fischer, 'Supreme Court', (*Flickr*, 7 June 2009) <<https://www.flickr.com/photos/fischerfotos/7526267232/>>.

### III The micro level: Physical power structures

This section focuses on the courts' internal structures and the way they influence movement. This analysis goes beyond the 'primarily visual and static' experience of architecture to examine the 'sensation of movement' and 'rhythm in spatial patterns'.<sup>72</sup> Society is replete with examples of 'political' structures which regularly use these 'sensations' and 'rhythms' to exert social control or influence.

An obvious example of social control is detention facilities, which often employ 'axial' architecture—and features such as fences, doors, and/or (Foucault's) panopticon<sup>73</sup>—for its ability to direct and subordinate people to the seat of power controlling the structure.<sup>74</sup> A less obvious example is churches, whose pews and narrow aisle lead focus to the altar, maximising the use of pathways/hallways/aisles to focus the flow of movement in one direction.<sup>75</sup> The Egyptian pyramids are another example of this phenomenon—the closer the visitor gets to the inner sanctum of a tomb, the more restrictive the pathway becomes as 'the columns in the halls take up more space, closing in and creating varying degrees of darkness ... the ceilings get lower and the space becomes more contained and darker' (Figures 9 and 10).<sup>76</sup>

By contrast, 'non-axial' architecture transfers agency to the user and gives them a choice about how to interact with the landscape, inviting participation. In giving users that choice, non-axial architecture also denotes equality.<sup>77</sup> These structures are characterised by open spaces, conflicting focal points, and circular or spiral pathways. Examples include the temple of the Sumerian Ziggurats and the fictional Jedi Temple (Figures 11 and 12).<sup>78</sup>

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<sup>72</sup> Fisher (n 4).

<sup>73</sup> Piro (n 6).

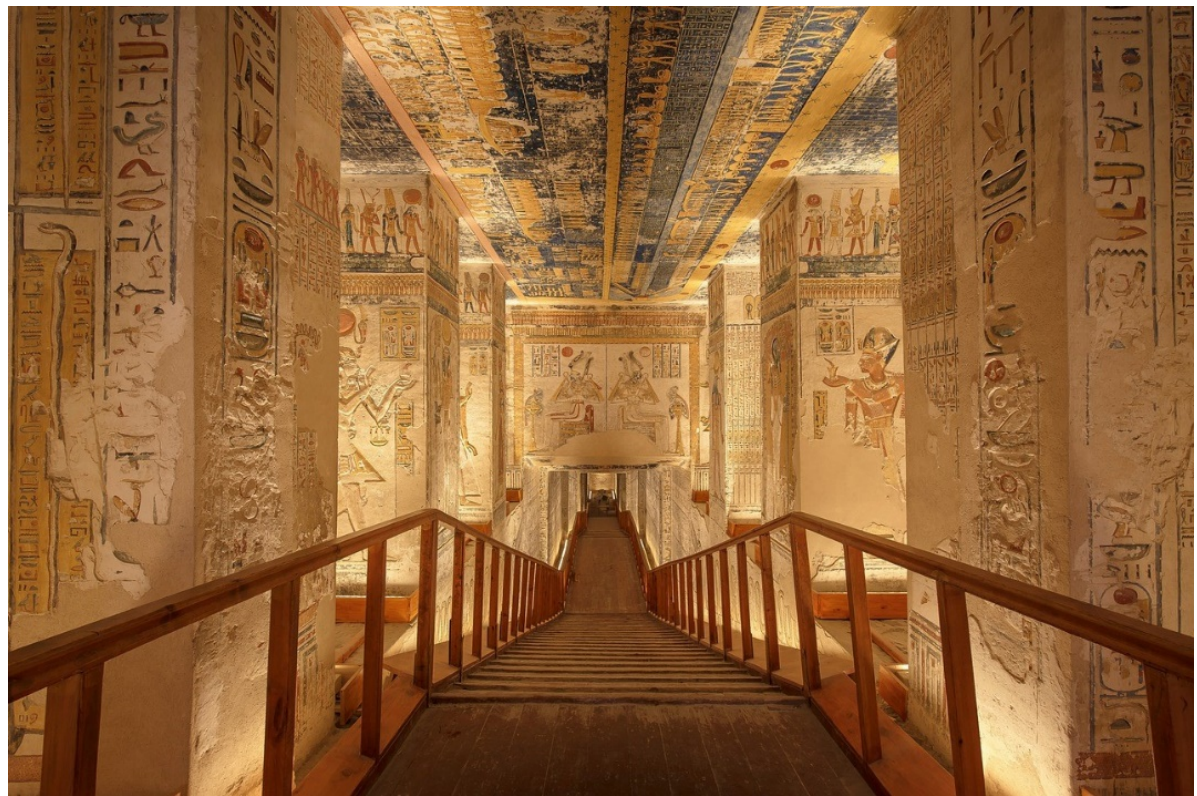
<sup>74</sup> Ibid.

<sup>75</sup> Glenn (n 4).

<sup>76</sup> Ibid.

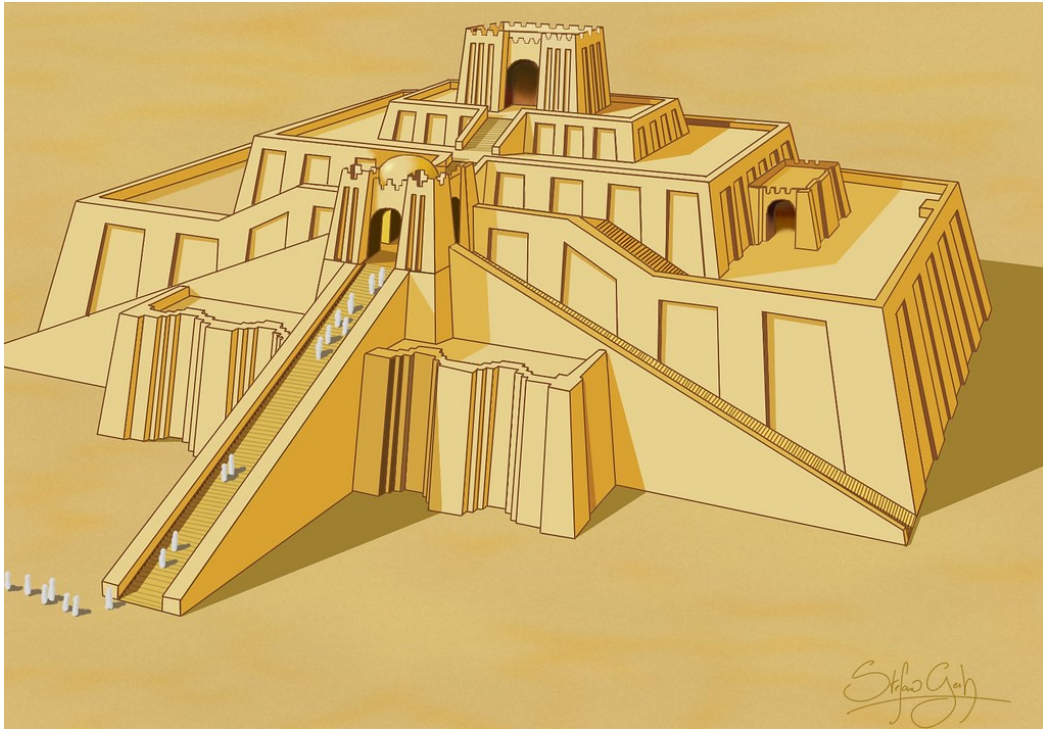
<sup>77</sup> Ibid.

<sup>78</sup> Ibid.



Figures 9 and 10: The Supreme Court Great Hall (above) with another example of axial architecture, the inner sanctum of an Egyptian tomb (below).

Sources: (9) Adam Fagen, 'Great Hall' (*Flickr*, 31 May 2016) <<https://www.flickr.com/photos/afagen/37645246345/>>; (10) Aldboroughprimaryschool, 'Egyptian Tombs', *Pixabay* (Image, 26 June 2019) <<https://pixabay.com/photos/tomb-egypt-ancient-brown-tomb-4300251/>>.



Figures 11 and 12: Examples of non-axial architecture—the Ziggurat, Ur (above) and the Jedi Temple (below).

Sources: (11) Stefano Gesh, 'Ur' (*Flickr*, 12 July 2020) <<https://www.flickr.com/photos/stefanogesh/5476471419/>>; (12) Lucas, 'Jedi Temple and Gandharan Stupa Reliquary' (*Flickr*, 16 January 2016) <[https://www.flickr.com/photos/ancientartpodcast/24888804042](https://www.flickr.com/photos/ancientartpodcast/24888804042/)>.

The Supreme Court is also a clear example of axial architecture and uses similar features as the above examples to exert control and influence over its occupants. The ‘Great Hall’ (contrast this to the High Court’s name for their foyer, the ‘Public Hall’) is entered via bronze doors. They weigh 6.5 tons each and their panels depict law’s development, with scenes depicting lawmakers as old as Achilles and as recent as Chief Justice Marshall.<sup>79</sup> Once again, both the size of the doors and references to legal history are used to impress. The hall is ‘clearly oriented in one direction, emphasising opposite walls that are far from one another, and provoking those who use the building to walk longitudinally within it’.<sup>80</sup> At the end of this hall is the courtroom itself.<sup>81</sup> The focus on the courtroom as the locus of power is reinforced by the colonnade. Since their use in Grecian temples, colonnades have been used to imply that something of significance lays behind them.<sup>82</sup> Such features both control visitors—in itself, an exercise of power—while also emphasising the court’s prestige and ideological power.

The High Court, however, is an example of non-axial architecture, demonstrating that the architects wish users to engage with the Court in a more participatory, and thus more empowered, fashion. Upon entry into the ‘Public Hall’, visitors are greeted by a ‘vast internal volume’ of space, arranged around the three ‘dimensions’ or courtrooms. The 24-metre high ceiling and glass wall add to the sense of spaciousness.<sup>83</sup> Upper levels are accessible via a broad ramp that directly faces the user upon entry.<sup>84</sup> As well as being a physical bridge, the ramp was intended to be the ‘bridge’ that links citizens to the courts, demonstrating accessibility and inclusion.<sup>85</sup> The building’s co-architect said the purpose of the design was to make it:

immediately obvious to a visitor that this is a place where they can freely walk around. The ramps invite access without being told what they do or going to a lift or going to a stair immediately.<sup>86</sup>

So, although visitors are not usually there by choice, since there is no other High Court they can turn to, it is significant that once inside the structure the architects deliberately avoided exerting control. The area is thus more ‘civic space’ than court and is frequently the venue for community gatherings.<sup>87</sup> Thus, the architectural experience of the High Court is one of exploration, rather passive reception, once more encouraging public participation.

## Conclusion

In conclusion, the courts partake in what Foucault calls ‘resemblance’ or ‘sympathy’, where architecture seeks to imitate their ideological ideal (for example, a church echoing the majesty of God).<sup>88</sup> In doing so, all the allusions to ideologies such as impartiality, equality, and justice, consolidate and legitimise the High Court’s and Supreme Court’s power, effectively creating, reinforcing, and reflecting power structures of the legal system. In short, just as ‘[w]hatever good things we build end up building us’, so too do the courts.<sup>89</sup>

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<sup>79</sup> ‘The Supreme Court Building’ (n 22); Craven (n 2222).

<sup>80</sup> Glenn (n 4).

<sup>81</sup> ‘The Supreme Court Building’ (n 22).

<sup>82</sup> Scruton (n 18), section ‘Symbols of Function’.

<sup>83</sup> High Court of Australia (n 20).

<sup>84</sup> *High Court Documentary* (n 2); High Court of Australia (n 20).

<sup>85</sup> Glenn (n 4).

<sup>86</sup> *High Court Documentary* (n 2).

<sup>87</sup> For example, concerts: High Court of Australia, ‘Sunday Concert Program 2020’, *High Court of Australia* (Web Page, 2020) <<http://www.hcourt.gov.au/about/concert>>; *High Court Documentary* (n 2).

<sup>88</sup> For a concise summary of Foucault’s opinions/theories on architecture, see Hirst (n 7).

<sup>89</sup> Jim Rohn, untitled, *A Yenny for My Thoughts* (Blog Post, 30 July 2017) <[https://ayennyformythoughts.wordpress.com/2017/07/30/whatever-good-things-we-build-end-up-building-us-jim-rohn](https://ayennyformythoughts.wordpress.com/2017/07/30/whatever-good-things-we-build-end-up-building-us-jim-rohn/)>.



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