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POPULAR SOVEREIGNTY AND THE JUSTICE PROCESS: TOWARDS A COMPARATIVE METHODOLOGY FOR OBSERVING COURTROOM RITUALS*

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Public buildings have been variously argued to be authoritarian or democratic, embodiments of ancient traditions or exemplars of popular sovereignty. How can we weigh up or test these claims for courtrooms, and more specifically courtrooms as living environments? This paper sketches out the contours of a framework for carrying out empirical research on court performances within their spatial and symbolic environment, based on comparisons of four judicial hearings. Two are jury trials, in Paris and Liverpool; two are guardianship hearings, in Paris and Melbourne. These preliminary case studies provide contrasts of national system (Civil Code and Common Law), as well as type of jurisdiction (criminal and protective). The observation method uses insights from several traditions: Garapon's work on judicial rituals, Taylor's work on architectural history, and Goffman's work on encounters. The comparisons show the different styles and expressions of sovereignty represented in the different court settings, but identify also ambiguities and uncertainties in developing interpretations.

KEY WORDS: Popular sovereignty; court processes; juries; guardianship; judicial rituals; observation methods

INTRODUCTION

How should we "read" public buildings (such as courtrooms) and ceremonies (such as trials)? The paper reviews some attempts to link architectural styles and political preferences, examines debates about rituals and their relevance

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to understanding courts, and then examines a case study of a 19th-century French murder trial. Issues raised in these literature reviews are developed in four contemporary case studies, covering two quite different court types and traditions. Two jury trials (in Paris and Liverpool) and two types of guardianship hearings (in Paris and Melbourne) are described.

The purpose of this exercise is to come up with the outlines of a methodology for observing, recording, and comparing court spaces and practices. Of particular interest is the way state and citizen relate to each other, how sovereignty is represented, and how abstract concepts like "visibility" achieve expression in the settings and performances of the court.

ARCHITECTURE AND AUTHORITY

Public buildings, such as legislatures, presidential palaces and courts, can be argued to embody a "signature of power" (Lasswell, 1970). Democratic régimes, Lasswell argues, prefer openness with public activities being visible to the public. Prominent windows and doors and central locations help communicate this message. Meanwhile authoritarian régimes prefer to enclose themselves behind walls, barriers and gates. Alternatively, it could be argued that popular régimes might have less need for monumental displays to sustain allegiance, while more conservative governments might construct "open" buildings to present the appearance of inclusiveness or because their power is based on display (Dovey, 1999). Different readings may suit different cases; the point here is that there is likely to be some relationship between forms of authority and their representations in buildings, though that relationship may vary.

The design of public buildings, such as American city or town council chambers, may also reflect changing political values (Goodsell, 1988). Grand council chambers built between 1865 and 1920, with magnificent staircases and ornate ceilings illustrate "imposed authority" (p. 53). Councilors sit facing the mayor, while the public sit facing the councilors' backs. Council chambers built between 1920 and 1960 are less flamboyant. The council has been turned around to "confront" the public, who face the council segregated from them by clearly visible markers such as railings. Meanwhile chambers built after 1960 suggest a "joined authority" (p. 142). Barriers, if present, are more subtle, while increased use of amphitheatrical curves tend to create an impression of intimacy and equality (p. 159).

Like Lasswell, there is a clear teleology implicit in Goodsell's narrative, with contemporary U.S. designs been seen as more advanced or democratic than other alternatives. It might be asked how much of the real business of

the council is conducted in the open forum (with its "joined authority" and comfortable seating), and how much is carried out, in private, in offices hidden from the public gaze? This question assumes particular importance when trying to make sense of the public performance of a court hearing.

RITUALS AND COURTS

"Ritual" in English-language study of courts has a largely negative connotation. Trials have been analyzed as "degradation rituals" (Garfinkel, 1956; Carlen, 1976; King, 1978; McBarnet, 1981), ordeals to re-victimize victims (Edwards & Heenan, 1994), silence defendants (Asma, 1999), capricious events shaped in part by the personal styles of judges (Conley & O'Barr, 1990) or, at best, relatively harmless, time-wasting bureaucratic activities (Feeley, 1979). Linguistic analysis of rape trials confirm the way defense lawyers can inflict degradation on complainants by drawing on gendered stereotypes (Matoesian, 1993; 1995) while abused women are excluded from effective participation in the courtroom by legal strategems (Beaman, 1996).

The gloomy picture provided by this literature might accurately describe many court activities but it is not very helpful for identifying variation in court practices that would allow alternatives to be explored. Garfinkel notes that understanding status degradation ceremonies provides the opportunity to "render denunciation useless" (Garfinkel, 1956, p. 424); most of those who use his approach tend to assume the humiliation strategies generally work.

There are many other forms of ritual besides degradation ceremonies. For Garapon (1997), rituals are what make justice possible. The design of courtrooms, ceremonies, icons and images, costumes, and stylized interactions not only provide a context for justice but also are indispensable foundations for producing justice. Garapon identifies judicial authority in the past, in religious myths of foundation and primitive desire for revenge, in the monarchy of the *ancien régime*, and in the role for judicial processes to restore natural harmony severed by crime and evil. But symbolism and space are amenable to rational intervention and reform. We need to fill public life with new, more democratic symbols that resonate with contemporary understandings (see Tait, 1994, p. 322); courts should be re-configured to embody more fully the will of the sovereign people.

If Garapon's approach can be described as a "grand" approach to rituals, Goffman (1969) can be seen as providing greater emphasis on more subtle, everyday aspects of human behavior. As a social psychologist, Goffman

develops a way of seeing and talking about "interaction rituals" (1967), standardized patterns of behavior within small groups. He provides a language to talk about how individuals protect and defend their image, how groups deal with conflict, inadvertent mistakes or overt challenges. For Goffman, the social order is produced by groups as they relate to each other. His main interest is in how people co-operate to avoid conflict, save face and preserve civilized behavior.

Goffman provides a way of analyzing public activities, like meetings, in terms of the production of alliances and boundaries (1961). He describes how meetings are managed, particularly through the development of alliances in which participants acknowledge and respond to each other to carry out the business of the meeting. But sometimes participants may not be invited to join the alliance or choose to remain on the margins; this allows Goffman to analyze boundary-setting and exclusionary behavior. This approach lends itself to court processes which Anne Vittoria uses in relation to guardianship hearings in Kansas (Vittoria, 1992).

Garapon and Goffman use the word "ritual" in slightly different ways, although both draw on Durkheim for their inspiration. Both emphasize the way rituals are social practices that create or reproduce social order, produce identity (as citizens or members of a community), and provide a religious or transcendent dimension to life. However, for Goffman an exchange of smiles or a nod of acknowledgment might constitute a ritual whereas, for Garapon, the term is reserved for more formal practices, such as swearing in a jury or pronouncing a sentence. Also for Garapon, the use of symbolism (including architecture, clothing, imagery and liturgical structures) is a central part of ritual, linking past and present, historical memory with contemporary performances.

LINKING ARCHITECTURE AND COURT PROCESSES

Katherine Fischer Taylor shows how to enliven the reading of a building by reconstructing a major event it hosted (1993). The year is 1869. The setting is the new criminal courts in Paris built to reflect the emerging emphasis on the visual spectacle and the spoken word. A young Alsatian mechanic, Jean-Baptiste Troppman, is charged with killing a family and stealing their property. The ceiling is lavishly painted and includes references to Truth as light. Light streams in from the windows over the jury and onto the defendant, and the standard picture of the crucifixion above the president uses golden colors to catch the light. The public are fascinated by the display and applaud the performances.

Taylor argues that the courtroom in use reflects not one form of authority (as Goodsell tends to suggest for council chambers), but combines imperial, royal, republican, and universal themes. The written code underlying the trial is the Napoleonic Code, a universal standard; but a personal oath of allegiance has to be sworn to the Emperor. The robes judges wear provide a direct link to the monarchy, while the judges (both presiding judge and prosecutor) form part of the imperial state machinery. The dossier represents the secret interrogation of the suspect inherited from the Ancien Régime; it is used by the presiding judge to guide the public trial. But the written word has to be transformed into the spoken word to become evidence for the jury, a democratic innovation introduced during the Revolution. The jury represents the sovereign people engaging in direct democracy, although the Empire has attempted to attenuate this role by ensuring that jurors are selected from those who were "supporters of law and order" (p. 35). The murder weapons are laid out on a table under the eyes of the jury, serving as their visual equivalent of the dossier used by the president. The formal code guides the judge; the jury are responsible to themselves, to their *intime conviction*. They make decisions not just about guilt or innocence but also about extenuating circumstances (Gruel, 1991). Taylor's analysis identifies the diversity of styles and images of sovereignty that were expressed in a court performance and relates these practices to the physical and symbolic environment of the courtroom.

METHOD

Four court hearings are used to begin the task of developing a methodology for observing and recording court practices and for identifying expressions of sovereignty. Two are from the criminal arena (jury trials) and two from a protective jurisdiction (guardianship hearings). Criminal courts deal with crime, suspects, victims, and punishment. Protective courts look after people who are vulnerable, safeguarding their civil rights, property, and access to social opportunities. One tends to be highly visible, the stuff of TV dramas and public debate; the other is largely unknown and is likely to be of interest only to the people immediately affected. One is likely to use the grand stage of a major criminal court, the other a more modest and smaller-scale environment.

The hearings also represent two legal systems, Civil Code and Common Law (Cohen, 1999; Cappelletti, 1989). Civil Code systems formally place more reliance on the written code and pre-trial investigations; while

Common Law approaches tend to be based more on precedent and adversarial procedures. But what happens in practice?

The observations reported below are based on field notes made by the author in February 2000 during court observations made in Paris and Liverpool.[1] Fieldwork was organized in terms of court sessions rather than trials. One morning was spent at the first session of a murder trial in the *cour d'assises*, another morning watching a *juge des tutelles* handling guardianship matters. In Liverpool several jury trials were followed. Many of the participants (judges, prosecutors, advocates) also provided their perspective on the events. (In both cities a range of other courts and hearings were attended to get a wider sense of context). The guardianship comparison in Australia is based on an evaluation of guardianship tribunals in Australia carried out with Terry Carney (Carney & Tait, 1997).

The key to this approach is *comparison* between courtroom spaces and practices in similar courts in different legal systems. One advantage of a comparative approach is that it may allow issues to be identified that are not visible in an examination of a single jurisdiction. This is based on Garfinkel's style of research, of making the familiar appear strange, to identify the rules shaping its operations (1967). The "strangeness" comes from the comparative analysis; each appears strange from the other perspective.

Notes were made of the use of space, symbolism, light, interactions between participants, dramatic moments, with particular emphasis on issues of sovereignty. The two sets of comparison allow features to be identified that seem strange or unexpected from the perspective of the other. The observation method provides a way of recording and interpreting difference.

Jury Trials

Murder at Créteil

Créteil sits on the suburban fringes of Paris. Its main criminal courtroom is on the ground level, at the center of the building and entered from the large waiting area. Natural light streams in from above through a central shaft above the central well of the court. Justice in France is represented as feminine, while crime is generally seen as masculine. This 1970s courtroom has no bust of Marianne or painting of male villainy. It is not necessary. The judges, the prosecutor, and the advocate are all women; the defendant is a man.

The courtroom forms a circle around the central well. At the front behind the long curving table sits those who will deliver judgment: the presiding judge, two judge-assessors and nine jurors.

Jurors are at the front. This is the most visually striking feature of the setting to an Anglo-American observer. As the dice are drawn by the president from a distinctive wooden and steel box, the numbers become names and the citizen-judges take up their position at the front table according to the order they are drawn. They will later be asked to speak in that order when they enter the jury room (together with the three judges) to decide on guilt and sentence.

On one side the defendant sits, or rather stands, for a long period of the morning will be taken up with his story. The defendant was sleeping rough in a warehouse (where he also worked) after his wife had thrown him out. During the night one or more men came into the warehouse apparently to steal some scrap metal. He got out his gun and killed one of them. The case is about whether it was murder or self-defense.

Confronting him from the far side of the room towers the prosecutor of the Republic; she occupies the highest point of the room. In the previous century she would have ranked above the presiding judge. Today they rank as peers, though the old spatial hierarchy remains. Beneath the suspect is his advocate. She follows up questions put by the president, but her main chance to speak will be at the end when she sums up her case to the jury.

Below the prosecutor is an area reserved for the *partie civile*, victims or family members of the victim. Sometimes visiting judges are permitted to sit there but, today, the president rules that the role of the *partie civile* is so important that, even if no-one turns up to use it, it must be left empty to emphasize the symbolic impact of the crime. Today the widow and child of the man who was killed are present. The boy appears to be about 10.

The defendant tells his story, eloquently, and with grand sweeping gestures. He repeatedly points to the center of the pit to the murder weapon, a gun under a glass case, visible to all. He appears contrite and humbled and expresses sorrow. Unfortunately it is sorrow for himself rather than the victim and the judges huddle together, apparently to share their annoyance at this refusal to provide a full confession. At one stage the presiding judge scolds him for talking in disrespectful tones about the victim and reminds him that the *partie civile* are present. He looks chastened, turns to the widow of his victim and offers an apology: "*Je m'excuse*".

The jury can see the suspect's face and hear him clearly. The president can angle her face slightly to face the defendant, although she sometimes prefers to angle her face away as if to listen and reflect. The prosecutor can see everything; with her strong voice she has no need of a microphone and pushes it away from her. A witness who stands too far from his microphone is given a firm push in the back by a court official. The only participant who seems a little disadvantaged by her position is the advocate; she will

probably develop a sore neck from twisting around to whisper up to her client, warning him not to contradict forensic evidence. Audibility is not a problem in this courtroom, although what was understood may have varied. The defendant could hear every word; he just did not seem to hear what was being said.

What forms of sovereignty can be read from this display? An initial reading of the trial (treating it as "strange" from a Common Law viewpoint) would note the high levels of participation, as well as the audibility of the exchanges and the visibility of the parties. Using such cues, the trial might be said to represent *dispersed sovereignty*. The circular shape seems to create a space in which all the parties can participate effectively. Each party represents a different aspect of the relationship between state and citizen.

The prosecutor, standing at the highest point of the room, represents public safety. Her job is to demand, on behalf of the people whose order has been disrupted by the crime, revenge.

The jurors, sitting at the front, represent the sovereign people sitting in judgment. No body could therefore be above the sovereign people acting directly, responsible only to their own consciences (Héraud & Maurin, 1998).

The defendant can tell his own story in his own words. He can ask questions of the witnesses. He can even interact with the *partie civile*. The defendant represents the citizen exercising his rights to a public hearing of the charges against him and with a chance to participate fully in the trial.

The *partie civile* are also fully included. They are made welcome by the judge, and the *huissier* sits beside them and generally looks after them. They are invited to ask questions. The boy asks about cigarette butts at the scene of the crime; this gets at the heart of the issue of how many intruders there were. The president takes the question up and pursues it further.

The public can hear everything that is said and can see participants' faces when they speak. The only exception to this is the witnesses who face away from the public.

The president is clearly at the center of the action, asking questions and maintaining order. The script to which she continually refers to is the dossier prepared by the *juge d'instruction*. She represents the public interest in visibility of justice and display of the state's commitment to confront disorder.

Perhaps the only one who seemed to be somewhat left out is the advocate. She asks questions of witnesses and can make her final address to the jury. But the direct participation of the defendant in his own defense made her role appear secondary.

Certain lines of engagement can be visualized in the spatial setup of the courtroom. One can imagine a line of denunciation drawn on the long axis

from the prosecutor to defendant, sweeping through the display table at the front of the court. Her eyes were on him unless she chose to look away. The line between the defendant and president is more oblique, both have to turn slightly to make eye contact. A line of accusation could be imagined from the *partie civile* in the lowest part of the court, symbolically humbled by the blow he had imposed on their family. Meanwhile the jury sits directly opposite the public they had been drawn from; this would be the broadest line of all, the line of representation, reminding the jury of their origins and their responsibilities.

An alternative reading of the trial would see the visibility and audibility of the trial as evidence of good stage management. The dossier produced for the trial represents the secret state behind the public performance, the hours of interrogation and investigation behind closed doors. As the trial proceeds, a new law is before the legislature designed to make the process more public, regulate pre-trial detention and allow jury decisions to be appealed. (*Le Monde*, June 1, 2000). The exercise of sovereignty will change its forms of display.

Groping on Merseyside

The Liverpool Crown Court is in the heart of what was once Britain's foremost trading city. It is perhaps not surprising that the first matter we see (setting the date for a trial) is brought under the Immigration Act. It seems to deal with people smuggling, although it is hard to hear the conversation between the lawyers and the judge and most of it uses formal legal terminology; the public seems to be eavesdroppers on a private conversation between legal professionals. Another case deals with charges of rape; the man is in custody, but the victim and main witness have returned home to Portugal. Could the prosecution use a remote TV link with Portugal? Or should the suspect be released on the grounds that without a witness there is no likelihood of a jury conviction? The judge schedules a hearing for this, promising to consult the European Convention on Human Rights. The legality of pre-trial detention seems to be the focus of the interaction.

The jury trial we watch is in a low cruciform room with warm oak panelling. The court began life in 1984, when vertical hierarchies were out of favor; the Bench is raised but not as markedly as courts built a decade later. All the lights are on, although there is no need for them. The sun streams in from the left side, over the jury. The defendant sits at the back, well behind his barrister. The central space of the court is taken up with rows of pews

and tables for lawyers; most of this is empty today. In more serious cases there would also be instructing solicitors who mediate between barrister and client. Today the barrister needs to consult with his client a couple of times; he has to walk around the end of the pews and round to the long rail at the back of the court.

On trial is an elderly man charged with grabbing the bottom of a woman in her mid-twenties in a supermarket aisle. He was standing in front of the dairy section. She reached in front of him to get some yogurt for her children and felt a hand on her buttocks. He claimed he was steadying himself. At issue was whether this touch constituted an indecent act. He could have had the case heard in the magistrate's court but he had elected trial by jury in the Crown Court.

The jurors read out their oath from a card; one stumbles slightly and is asked to start again from the beginning.

The prosecution calls his witnesses (the complainant and her mother). The defense wants to call the defendant's wife who is in a wheelchair. It will be necessary to get a taxi to bring her to court. The judge announces "if I have the power to do so, get her a taxi". After much discussion, it is decided that that will not be necessary but the point is made with the jury present that the man is elderly with a frail wife in a wheelchair. At another trial that day the jury was sent out of the room while a debate took place about the admissibility of evidence.

Most of the interactions are directed from the triangle formed by the judge and the two lawyers. The base of the triangle is extended to the witness box. Behind this long axis sits the defendant and the public. This form is similar to the early form of council chamber referred to by Goodsell as "imposed authority". The jury sit on the side close to the witness stand but, when witnesses face the lawyers, they look away from the jury. Sometimes the witness is instructed to "direct your answer to the jury" but this seems designed more to attract the jury's interest than change the witness's posture. The lawyers read from statements given to the police to elicit oral evidence from the witnesses. The judge sometimes interrupts to clarify statements or direct the lawyers. On one occasion, the barrister asks the complainant to read an extract from her statement. The judge interjects, saying, "Get her to read the whole paragraph. The sentence is in context". The request is to the lawyer rather than directly to the witness. Lawyers are the licensed intermediaries, the link between the judge and the defendant, judge and witness, defendant and witness.

The only dramatic moment of the trial is when the barrister asks the complainant whether she recalls being convicted of aggravated assault and robbery. In England and Wales (unlike France), the defendant's prior record

cannot be mentioned before the jury; if this is done inadvertently, the jury would usually be discharged and a new trial ordered. The same protection does not apply to the complainant.

The lawyers sum up and the judge charges the jury, summarizing the evidence and their role to "establish the facts": did the defendant touch the complainant, where, was it deliberate, and was it indecent?

There are several features of the process that appear "strange" using the French jury trial as the benchmark. Participation is restricted. The lawyers set the agenda and direct the performance, with the judge sitting back as a neutral umpire. The defendant and witnesses speak within a restricted code in response to questions while their broader arguments and justifications are delegated to their legally trained intermediaries. The defendant is mostly silent. There is almost no display of the defendant's character, style of thinking or way of moving which would have allowed jury members to develop any *intime conviction* about him. (Not that they were asked to do this; they merely had to rule on "the facts".) They could form some impression of the complainant from her criminal past but the defendant was but a sketchy figure known only from disputed reports of a fleeting encounter at the dairy section of a supermarket.

The room also looks quite different from the French courtroom. The jury are on the side (as they had been in France at an earlier period), the defendant is at the back outside the active area, and spectators are confined to the side suggesting a more marginal role for the public. The judge and lawyers are all men and wear wigs. But the center of the room is also different: in the Créteil courtroom there is a large central well around which the parties are aligned, a mostly empty space housing the evidence table and the witness stand. In England and Wales the center is colonized by lawyers, the benches are burdened with books, files, statutes, and regulations. In the Civil Code trial, the center stage is reserved for the visual and the oral; in the Common Law trial the written word is given a more prominent position. This might seem odd given the importance of the dossier in French trials. But, in France, the dossier represents the summarized past of the secret *instruction*, the present belongs to the hunches and instincts, the moral sense and sensibilities of the jury.

Power seems to be dispersed, but more narrowly than in France. The prosecutor and barrister play a central (and equal) role while the lay participants are more marginal. The judge initially has a more minor role at the trial as umpire rather than director but has a larger part in decision-making. If the defendant is found guilty, the judge will decide on culpability and sentence. An appeal court may review that decision, and sentencing discretion may be restricted by Parliament.

Even though the defendant is less voluble than his French equivalent he has a power he would not have in France: the right to a jury trial for a minor offense. This reflects in part the extensive use of lay magistrates in the lower courts, a right already in the process of being abolished.

Guardianship Hearings

Architectural Silence in Paris

The *juge des tutelles* is a specialized role dealing with protective matters: children and adults who need a substitute decision-maker or who are particularly vulnerable, and some issues of inheritance. However it is usually a part-time job, and most *juge des tutelles* spend the majority of their time dealing with the variety of other matters that come before a lower court, the *tribunal d'instance* (MEFI, 1998, p. 32). The hearing we attend is held in a plain medium-sized office, larger than those of a *juge d'instruction*. The building was converted from an office building in the late 1990s for judicial purposes. The room is just large enough for the judge and *greffier*, a desk, an electric typewriter, and half a dozen chairs. It would meet Garapon's definition of "architectural silence"; there are no symbols of state authority or justice except some volumes of the *Code Civile* (Garapon, p. 200). There are no advocates present. It could be just any office. The day is overcast and the room is fairly dark. One case deals with a young woman with a psychiatric disability who needs a financial manager to handle a compensation payout. This is approved. Another deals with inheritance for the illegitimate child of a rich man who had been ignored in his will. This is too complicated to sort out now and is adjourned.

In between is the matter of a teenage boy from Sri Lanka who has been smuggled into France on a lorry. Unlike the equivalent guardianship jurisdictions in the Anglo-American world, there is no restriction of judicial protection to those with a disability. He is living in Paris with one relative while his application for asylum is considered, but the only relative who can speak French fluently lives outside Paris. He needs someone to handle his legal affairs and schooling. A *conseil de famille* is proposed. This involves the judge as chair of a family council, which will meet again when required. The relative outside Paris is appointed as *curatelle*, to make legally recognized interventions on his behalf, but he will continue to live in Paris (where there are suitable schools). This will be difficult because education authorities may resist requests from those living outside their *arrondissement*. But, if there is a problem, the *curatelle* should phone the judge and ask for her

assistance. Sometimes such responsibilities are entrusted to an *association* (a charity) or the local council's welfare office. The judge's powers do not deal only with legal matters. She can also exercise powers in relation to social security benefits and health care which would frequently be handled in other countries by social security and mental health tribunals (MEFI, 1998, p. 13)

All the activity in the room is centred on the judge. All lines of authority radiate from her, both to those in the room and the agencies outside. She invites the people into the room and asks permission for us to observe. (The hearing is not public, so permission of participants is required.) She tells them where to sit, asks the questions and comes up with the solutions. Her role is inquisitorial, confirming or filling in the gaps in the dossier. She cross-checks answers with others present in the room. She creates an atmosphere of inclusion and ensures that the subject of the application understands what is happening and has his views listened to. She invites the participants into an alliance with her, through use of gesture, words of encouragement, and her interest in them. At first they are anxious and pull the chairs away from the table to create greater distance. Then they sit in a semi-circle, relaxed if slightly cramped, while she sits behind the desk with her dossier.

She will attempt to get her judicial colleagues dealing with the immigration issues to get the matters handled locally. She will take on less accommodating agencies who require papers, authorizations, approvals. If the jury trials in France and England illustrate dispersed authority, this jurisdiction is clearly based on centralized authority. This could be described as paternalism, but it is based on the practical needs for legal authority in a highly regulated society. According to the government review of adult guardianship in 1998, the "institutional landscape" in the minds of the legislators had been an equilibrium between four elements, "the familial, the judicial, the medical and the social" (MEFI, 1998, p. 29). The reality is quite different, with judges acting in the virtual absence of the other institutional players.

Inquisitorial Justice in Melbourne

Australian guardianship tribunals appear to be fairly similar to the French *juge des tutelles*. The tribunals act in an inquisitorial manner, actively seeking out information and eliciting evidence from doctors or others with relevant information (Carney & Tait, 1997). Medical evidence is scrutinized and sometimes rejected. They base their questions on a written report available in advance to the parties. As with the French hearings, there are rarely lawyers present.

The tribunals generally act to include the person for whom the application is made into an alliance, by welcoming them, acknowledging them and seeking their opinions. The hearings can get lively:

Board: Have you had a chance to read the (medical and social work) reports?
Person: I've already read it. It's all bullshit; excuse the language.
Board: We want to give you a chance to respond to it.
Person: Thank you, thank you very much. I don't believe that she should have actually done it (made the application). That really sucks.
Board: Do you know what today's application is about?
Person: I know everything. You don't have to keep reassuring me.

The participants generally sit in a semi-circle behind a table. In Victoria, a two-table solution was adopted after a participant had reached over and tried to strangle the President. Despite the initial similarities with the French model, there are quite important differences. Physically the rooms are generally more ornate. The NSW Guardianship Board has hearing rooms with a magnificent view of Sydney Harbour Bridge. The Western Australian Board makes use of paintings and planters (Kennedy & Tait, 1999, p. 47). The Victorian Board had coats of arms to indicate state authority. Whereas the *juges des tutelles* have rooms probably based on the familiar form used by *juges d'instruction*, the Australian tribunals started with coffee tables based on a mediation model.

The hearings are public, although disclosures about individuals may not be published without the tribunal's permission. One crucial piece of furniture in the room is the telephone: tribunals routinely seek further information during hearings to update or confirm written reports.

The Australian guardianship tribunals are lay tribunals though many of the members are legally trained. They are conscious that they are not "real" judges; they do not have the authority wielded by French *magistrats*. They do not stand in a relationship of undisputed authority to other agencies; they work alongside with or against other agencies. In particular, several states have a Public Advocate or Public Guardian, acting as a force for mutual accountability. They have accessible appeal bodies. So the tribunals operate in a system more accurately described as dispersed authority. Being less powerful, they are also more conscious of the limits of their authority and frequently (at least in Victoria) reject applications on the grounds that a "few white lies" will be more successful in moving an aging relative out of a hazardous housing situation than a legal document. They also have extensive review procedures, and orders tend to be limited in time and functions.

Tribunal members are also more precarious than those working within the security and status of a corps of professional magistrates. State governments in Australia have replaced tribunal members with new members more sympathetic to their political views, failed to renew the tenure of presidents and, on some occasions, regarded tribunal appointments as suitable sinecures for their supporters. The Victorian tribunal was merged with a range of other tribunals into a large mega-tribunal, although retaining a separate "guardianship list". So while the visible performance of Australian guardianship tribunals appears similar to those of *juges des tutelles*, the less visible institutional framework makes the tribunals both more vulnerable and more accountable than their French counterparts.

DISCUSSION

This comparison between four styles of legal hearing has provided some suggestions about possible ways to read court spaces and practices, and think about how this relates to authority and sovereignty. The key to the observations is the *comparisons* specifically those between types of court (jury trial, protective hearing) and national systems (Civil Code, Common Law).

The comparisons provide benchmarks against which the distinctive features of a judicial process can more easily be seen. The "strangeness" of a particular set of practices can be identified, and various interpretations offered. By chance all four observations were based on systems that were about to experience substantial change, so there was already a public debate about their suitability, and there is the possibility of before-after comparisons.

Whether or not the preliminary observations about the content of the judicial practices hold up is an open question. Certainly more systematic recording of court practices would need to recognize the range of variations within each system. Such variation would include: French jury trials in older, more acoustically challenging courtrooms, and with male judges; North American jury trials where the jury decides on penalty; French *juges des tutelles* who act in the more perfunctory way reported in the government review of the jurisdiction (MEFI, 1998); Australian guardianship tribunals chaired by magistrates or judges. A wider range of legal business might also be included, such as summary justice in lower courts, plea bargaining, and civil disputes. Another crucial test would be the various forms of circle sentencing, family group conferencing and mediation panels used in criminal and civil matters in several countries (see Alder & Wundersitz, 1994).

The ways of recording and coding sovereignty that were identified included:

- dispersal or concentration of power in the visible court process;
- the different expressions of state power represented in the process;
- roles played by lay decision-makers and non-professional participants;
- lines of engagement between participants (participation around a circle, confrontation across an evidence table, exclusion behind talking backs);
- physical center of court (around central well, table or row of benches);
- ways of using light and associating light with justice;
- dispersal or concentration of power in the backstage part of the judicial process;
- status accorded the defendant or protected person in the hearing: as silent or voluble, as bystander or active participant, at the back of the action or visually included in the circle; and
- public participation in the process, as decision-makers, as members of an audience or as *partie civile*.

Democracy may have spatial configurations with which it is more or less compatible. Symbolically the concept of an alliance draws participants into a circle, and spatially a circle seems to provide maximum opportunities for inclusion, improving visibility (of faces) and audibility. Whether the circle is around a table (as in the two guardianship court observations) or around the well of the court depends on the scale of the operation. The triangle configuration of the English court meant that both the defendant and public saw mostly the backs of the two people who were most influential in shaping the trial. Yet the triangle also illustrated the balance of power between prosecution and defense which was somewhat missing from the circular arrangements. Any attempt to describe the shapes of popular sovereignty should recognize their complexity and ambiguity.

Different expressions of sovereignty may co-exist, and support varying interpretations, as Taylor and Dovey point out. "Visibility", for example, is not a simple concept. The use of transparent materials like glass may allow things or people to be seen but varying uses of light dazzles or conceals, creates ambiance or illuminates objects worthy of notice.

The comparison between types of court and national systems also allows us to see what is not seen, to identify features of the process that are not visible or not apparent in the other system. What is concealed in the French jury trial is the secret interrogation that informs the visible dossier. What is unseen in both systems is the decision-making process itself, by the jury;

and in France the reasoning for level of culpability and sentence are also shrouded in secrecy. What is largely unseen in the Australian guardianship hearing is the network of other agencies that support the system. Conclusions based only on the visible display are necessarily partial but a systematic approach to recording the public display allow us to identify some of the complex expressions of sovereignty that shape both frontstage and backstage performance.

Notes

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1. These observations were carried out jointly with Antoine Garapon and Katherine Fischer Taylor.

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Biography

David Tait teaches sociology at the University of Canberra in Australia. His research interests include sentencing reform, juries, lay tribunals, and the use of metaphor in public policy. Recent work has included a study of architecture and psychology in courtrooms (with Louise St. John Kennedy), and guardianship tribunals (with Terry Carney).