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*From "Miserable Dens" to
the "Marble Monster":
Historical Memory and the
Design of Courthouses
in Nineteenth-Century Philadelphia*

THIS IS A STORY ABOUT BUILDINGS of justice. The history of courthouse design in nineteenth-century Philadelphia, from Congress Hall in 1800 to the city hall completed in 1901, reveals how one city constructed its houses of the law. But it is also a story of the broader process of city building, in which the physical manifestations of the modern municipality replaced the vestiges of the colonial city. In the battle over the shape and uses of urban space, the historical memory of Philadelphia's earlier courts and community played a crucial role. Philadelphians framed their struggle over building the modern city apparatus in terms of preserving past ideals of the law and community, even as they hastened the arrival of the future bureaucratic municipality. In the process of debating the past and the future, they remade both.

The story of Philadelphia's growth as seen through the development

I would like to thank Michael Katz, Michael Lewis, Liam Riordan, and David Goldston for their insightful advice on revising this article.

of its public buildings is, on one level, the story of the movement from a society of "island communities," as Robert Wiebe has called them, where personal, informal relations were the norm, to the modern industrial world, where bureaucracy, centralized authority, and professionalism came to rule.¹ But this pattern has been shown to be far too simple: the image of a wave of modernization washing over traditional society has been replaced with far more subtle metaphors of negotiation, resistance, and compromise. Viviana Zelizer has offered the best challenge to one central aspect of modernization: commodification. Countering the theory that sees the progressive, unstoppable commodification of society's objects and values, Zelizer argues that there was a competing movement toward "sacralization," by which objects invested with "sentimental or religious meaning" were either removed from the "cash nexus" or, on entering the marketplace, gained hugely inflated values. Thus, for example, by the end of the nineteenth century, children became "emotionally priceless" but as exploitable, income-producing members of a family "economically useless."²

Zelizer's concept of sacralization has applications beyond the question of commodification. For what her study of "priceless children" indicates is that what may be gained in the transformation to a modern society is not the sacralization of specific objects, but a more general desire to maintain objects that are already sacred. Thus, even as the courts were absorbed into the grasping arms of the rational and centralized modern municipality, there was a desire to sanctify the law, to ennoble the judges and the process, to glorify the courthouse and courtroom, and raise it above mere bureaucracy. To accomplish this, builders of the houses of justice drew on the historical status of judges and the crucial place of law in American society.

The concern for historical memory, then, is one form that "sacralization" took in the nineteenth and early twentieth centuries.³ Unfortunately,

¹ Robert H. Wiebe, *The Search for Order, 1877-1920* (New York, 1967)

² Viviana A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (New York, 1985), 11

³ A number of recent works have begun to explore this important aspect of American history. See, for example, Michael Kammen, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York, 1991), Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge, 1983), David Glassberg, *American Historical Pageantry: The Uses of Tradition in the Early Twentieth Century* (Chapel Hill, 1990), David Lowenthal, *The Past Is a Foreign Country* (Cambridge, 1985), George Lipsitz, *Time Passages: Collective Memory and American*

historians have only just begun to recognize how intimately collective memories are connected to the physical landscape, both man-made and natural. In general, historians have tended to focus more on written memory and on oral history as the main sources of collective memories; even the history of historic preservation is a subfield still in its infancy.⁴ In this article I build on the work of Maurice Halbwachs, a pioneering scholar in the field of collective memory who decisively linked collective memories with physical landmarks. Collective memories, he argued, are not only “socially constructed”—a favorite phrase of historians—but literally “constructed”: that is, they are built into the physical landscape and recalled through repeated encounters. In his essay on the meaning of the past in the Holy Land, Halbwachs put it succinctly: “A society first of all needs to find landmarks.”⁵

The experience of Philadelphia indicates that the act of building and using public spaces in nineteenth-century America was also an exercise in creating history. At each point in the creation of Philadelphia’s courthouses, there was a debate about how history would be preserved or destroyed, vindicated or desecrated by the proposed designs. Collective memories regarding courthouses and the conduct of law in Philadelphia—based in part on real experiences but also on nostalgic inventions—played an important role in shaping the physical manifestations of the law throughout the century. The successive attempts to manage a burgeoning judicial system were framed by questions of how to embrace the future of modern city organizational forms while maintaining continuity with an idealized legal and communal past. The conflict often turned on an unspoken debate about the role of the past in the modern world.

The design and location of courthouses in Philadelphia brings this neglected aspect of nineteenth-century public discourse into sharp relief. The story of changing courthouse design is in one sense very much like the story of other institutions created or transformed in the nineteenth century. Like the department store and other public buildings, the court-

Popular Culture (Minneapolis, 1990); and John Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton, 1992).

⁴ It is interesting to note, in fact, that in *Memory and American History*, an early compilation of the new scholarship on memory, none of the essays deals directly with memory and landscape; see David Thelen, ed., *Memory and American History* (Bloomington, Ind., 1989).

⁵ Maurice Halbwachs, “The Legendary Topography of the Gospels,” in Lewis Coser, ed., *On Collective Memory* (Chicago, 1992), 222.

house revealed society's new obsession with size, organization, and centralization. Courthouses changed from being informal, hierarchical settings for an elaborate ritual of deference and communal order to being rationally organized places, where professionals came to dominate the rituals of the courtroom and state machinery took over judicial responsibility from private initiative. The exterior form and style of the buildings reinforced these shifts, symbolizing the growing power of the municipality and glorifying its national aspirations. The courthouse at the beginning of the nineteenth century was an unassuming home for justice; by the end of the century, it was a thundering declaration of law's empire.

A closer look into the designs of the courthouses and uses of space as envisioned by their designers shows that reverence toward the law manifested itself in architectural attempts to maintain a historical connection to the history of justice in the United States. One of the twin pillars of the nation's political culture—along with democracy—the law, and consequently courthouses, held a particularly venerable role in American life and historical consciousness.⁶ In nineteenth-century Philadelphia there were frequent references—in words and in stone—to the history of law as understood and invented by city leaders.

Philadelphia, too, held a special place in the mind of America. More than almost any city save Boston, Philadelphia possessed a venerable history. For much of the time from 1682, when William Penn made it the first planned community in the colonies, to 1800 and the movement of the federal government to Washington, D.C., Philadelphia could lay claim to being the foremost city of the country. The burden of history was felt by Philadelphia's nineteenth-century boosters as they sought to maintain and then reclaim Philadelphia's preeminent position among American cities. These city builders carefully drew on the city's and nation's past as they sought to build a civic complex of buildings to match their vision of Philadelphia's future.⁷

Courthouses and other public buildings were not unique in their use

⁶ Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill, 1989), 232.

⁷ For a discussion of nonarchitectural efforts to unify and glorify the city through the manipulation of collective memory, see David Glassberg, "Public Ritual and Cultural Hierarchy: Philadelphia's Civic Celebrations at the Turn of the Century," *Pennsylvania Magazine of History and Biography* (hereafter, *PMHB*) 107 (1983), 421-48.

of historical references. Rummaging through the past for styles and symbols to guide the morals of the growing republic was a powerful preoccupation of late-nineteenth-century elites. Allegorical murals and busts of famous Philadelphians, like Penn or Franklin, watched over the bustling activities of commerce, quietly blessing (the designers hoped) the transactions below. Nevertheless, the commitment to preserving and promoting not only the symbolic monuments of an earlier judicial era, but the very tone and culture of the law of an earlier time, set the courthouses and city hall apart. In private banks and stores, references to the past were applied like a light wash of ornament across modern warehouses of commerce. In the courthouses, attempts to include past values of the law in modern buildings went much further; evidence is found, as we shall see, not only in facade styles and sculptural ornamentation but also in the arrangement of the courts and the private studies provided for judges.

To observe the tensions revealed in courthouse design and understand the meaning of city building in the nineteenth century, then, we must, as Betsy Blackmar has written, “penetrate the facades” and peer inside.⁸ If we look at the interiors of courthouses, their layout and operation, and listen to the complaints about the conditions, the debate over new courts and the tortured development of the present city hall, we will find a fascinating story of the struggle to shape the city in the image of the past and the future.

We begin with the courts in chaos.

“All order is lost,” cried the *Public Ledger* in May of 1839. The courthouse of Philadelphia, rather than being the “solemn and august temple of law-adjusted equity and right” had become a place of “noise, confusion, levity and contempt . . . The crowd is huddled into one confused and chaotic mass; and no energy on the part of the court can

⁸ Betsy Blackmar, “Re-walking the ‘Walking City’: Housing and Property Relations in New York City, 1780-1840,” *Radical History Review* 21 (1980), 132.

secure order and quietude.”⁹ The litany of problems, the *Ledger* found, was endless. Lack of space had led to adjournment of court sessions. There were no rooms for juries to meet privately. Lack of ventilation made the crowded rooms almost unbearably hot and stuffy. Plaintiffs, witnesses, and lawyers had difficulty broaching the crowd. Everyone had a hard time hearing the proceedings. At least once prisoners managed to disappear in the confusion.¹⁰

The condition of the courtrooms affected more than efficiency or appearance. The state of the courthouse bode ill for the legal order of the city. “The law to be effective,” the editors of the *Public Ledger* warned, “must win the respect of the people. To effect this, their administration should be invested with dignity; and those who approach the tribunal where justice is administered, should encounter nothing calculated to excite contempt. The miserable dens and holes into which our Courts are now forced to shrink, are certainly of a character to excite any feeling but respect.”¹¹ The state of the courthouse was a disgrace to Philadelphia. Not only did the courthouse put Philadelphia to shame compared to its neighbors but it reflected badly on the city’s respect for the law. “On the scale of pride,” the *Ledger* wrote,

we can imagine no excuse for the general indifference to this matter. No public building is more useful, more frequented, or more exposed to observation than our Court houses, and every consideration of pride and public taste should induce us to make our temples of justice, at least,

⁹ *Public Ledger*, May 13, 1839 I deal primarily with criminal courts in this article. The names and functions of the courts changed several times in the course of the nineteenth century. Until 1836, criminal cases were handled by the Mayor’s Court (founded in 1701 and serving the city) and the Court of Quarter Sessions, which handled criminal cases from the rest of Philadelphia County (as well as noncriminal cases from throughout the county). Briefly, from 1838 to 1844, criminal cases were handled in a Court of Criminal Sessions. Thereafter, until 1875, criminal jurisdiction lay with the Courts of Quarter Sessions. The District Court, established in 1811 to handle civil cases, was disbanded in 1875. After 1875 and the reorganization of the entire judicial system at the state constitutional convention, criminal cases were handled by a series of Magistrates’ Courts. The Supreme Court of Pennsylvania, which played an important role in the design of the city hall and its courtrooms, held a Philadelphia circuit. See Steinberg, *Transformation of Criminal Justice*, 99-100, 58-59. Also see Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History, 1623-1923* (New York, 1922), 213-16, 355-57.

¹⁰ *Public Ledger*, Sept. 3, 1839, cited in Steinberg, *Transformation of Criminal Justice*, 13.

¹¹ *Public Ledger*, May 13, 1839.



Fig. 1. J. C. Wild, "State House." Lithograph on paper from J. C. Wild, *Views of Philadelphia* (Philadelphia, 1838), plate 11. (Historical Society of Pennsylvania) Congress Hall is in the foreground.

respectable. Philadelphia is actually disgraced by the sordid and mean appearance of her Court rooms.¹²

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¹² *Public Ledger*, May 13, 1839.



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¹² *Public Ledger*, May 13, 1839.

Both exteriors and interiors of courthouses reflected the purposes of the judicial system. The courthouse in Philadelphia, like those in Virginia and New England, was a stately structure, the most prominent building in colonial Philadelphia. The Supreme Court chamber in the old State House (Independence Hall) was a typical example of the colonial courtroom. At one end of the courtroom was a raised bench for the judges. The jury sat perpendicular to the bench, while lawyers, witnesses, and clerks sat on benches facing the judge. Two more sets of seats—for spectators or the grand jury, when in session—faced the judges. Finally, spectators stood behind the bar, usually on a stone floor. Early courthouses were characterized most obviously by their simplicity of appearance. Whether the courthouse looked on the outside like a private home (as in New England) or a “strong box” (as in the South), inside the courts were unornamented, simple, but carefully arranged spaces. Courthouse design of the colonial period reflected the primacy of the process of the law and only secondarily its visual symbolism.

Such was the state of the courthouse when the city reclaimed it in 1800. But while Congress Hall had been built to emulate the earlier courthouses, it soon bore little resemblance to them. The courthouse was unable to shelter all the business of Philadelphia’s courts. In order to accommodate the continued presence of state and federal courts, as well as the ever-expanding business of city courts, the courts spread to other spaces in the Independence Square buildings. It did not take long before the solid Georgian house of the law had lost much its dignified appearance.

Throughout the century, the building was repeatedly altered to make space for the increasing work of the courts. In 1818 the interior of the courthouse was radically changed. The main entrance was moved from Chestnut Street to Sixth Street, thereby allowing the first floor to be split into two courtrooms. Similarly, the second floor vestibule was removed and the stairway moved to the center of the building to allow for a new courtroom on the north side.¹³

The physical transformation of the courthouse had as much to do with changing conceptions of use as it did with the simple demand for more space. For example, we can chart shifting attitudes toward the role of spectators. Although they had long been accommodated in the design

¹³ See renovation reports and plans in the Independence National Historical Park archives.

of courthouses, they were slowly removed. Citizen observers had always held an ambiguous place in the courthouse. They were the crucial third element in the judicial ritual—along with the judge and the litigants—for it was these spectators who gave the court legitimacy as a community forum and allowed it to serve its role as teacher of deference in a hierarchical society. And yet, spectators had rarely played their role correctly; colonial courts had a history of loud and rambunctious spectators long before the *Public Ledger* complained about them in 1839. So spectators were welcomed—indeed encouraged to attend—but only if they followed a carefully prescribed role.

When Congress Hall was returned to the city for use as a courthouse, it inherited the galleries for spectators that Congress had requested. The courts maintained these galleries for a relatively short time. By 1818 the House gallery was removed; the Senate gallery was closed off in the 1820s and finally removed in 1835. Part of the reason, of course, was the need to accommodate new courtrooms. But removal of the galleries was also a rejection of the spectators' behavior; rather than being interested citizens, lending legitimacy to the proceedings and learning from the process, elite observers saw only vagrants and idle voyeurs. "The moment the doors are open," one reporter noted in 1839, "the standing corps of soaplocks and loafers rush in, and . . . appropriate to themselves in an unceremonious manner all the seats inside of the bar, so that when the attorneys, reporters and parties really interested in the proceedings of the court come in, they are compelled to stand and gaze on."¹⁴ An exasperated *Public Ledger* resigned itself to the confusion, declaring: "The Criminal Court appear to have the powers of a magnet."

Although it may have made a good story for the *Ledger*, the chaotic courthouse was not a fiction. By the beginning of the nineteenth century the balance between the informal and hierarchical components of the colonial courts had been lost, placing a "popular and unruly stamp on the courtroom." Even the "minor judiciary," the neighborhood aldermanic courts that served as the first level of justice and, on the surface, recreated the colonial system of respected magistrate and deferential populace, was more often than not a farce. In action these local courts functioned in a much more haphazard and, to some, dangerously demo-

¹⁴ *Public Ledger*, May 13, 1839.

cratic manner. The aldermen were the least elite of the city's leaders and could hardly command the deference paid to earlier magistrates. The courts became places of high drama and popular entertainment, with uproarious laughter, running commentary, and corruption of every kind keeping the system teetering on the edge of disarray. The system of "private prosecution," as described by Allen Steinberg, is one in which the role of the public that had been essential but discreet in the colonial courts had become loud and dominating. Thus by 1839, and the *Public Ledger's* exasperated outburst, the city had had several decades to watch and worry about a judiciary growing out of control.

The call for new public buildings began early in the century and continued to grow. Only in 1849, however, did the city issue a formal call for proposals for new buildings to replace both the courthouse and the city hall. While the competition never produced a building, and all the drawings have disappeared, John Haviland's eloquent defense of his own plan remains. It is a fascinating view into the conflict over what statement a courthouse should make. Haviland was one of Philadelphia's most celebrated architects, having made a name for himself as an "architect of prisons," including the Eastern State Penitentiary in Philadelphia and the Tombs in New York City.¹⁵ Responding to the call for order and efficiency, Haviland appropriately argued for a courthouse that would be a "machine for state power."¹⁶ His design relied on strong historical precedent, both in architectural design and siting. On the outside, he paid visual respect to Independence Square as the business, governmental, and spiritual heart of Philadelphia. His description of the inside of the courthouse indicates his desire for the building to serve, as in the colonial era, as a communal center.

Haviland's plan called for an "edifice which shall be a monument to our civil taste." Rather than two buildings, a courthouse and a city hall, Haviland wanted to build one "grand imposing whole" on Walnut Street, with wings reaching almost the length of the park to Chestnut Street. He argued against placing the building directly behind Independence

¹⁵ See Matthew Baigell, "John Haviland," Ph D diss, University of Pennsylvania, 1965. Haviland was an important early nineteenth-century champion of Greek and Egyptian styles.

¹⁶ John Haviland, *Communication to the County Commissioners, City Councils, and County Board, on the Subject of New Public Buildings for the City of Philadelphia* (Philadelphia, 1849), 5.

Hall lest he “disfigure . . . this Temple of Liberty” with a far more imposing building or merely overwhelm the “modest House” of Independence with a vastly larger Georgian edifice. Haviland’s building was to be a smoothly running judicial “machine.” Following the directive of the grand jury that had called for the “convenience and connection of courts” to counter the haphazard and constantly shifting arrangement of courts in Congress Hall and Independence Hall, Haviland offered an efficient plan for dispensing justice.¹⁷ All the courtrooms would be on the second floor of the building, with each court attached to rooms for the jury, judges, witnesses, and counselors. Beneath each court would be a prothonotary’s office, complete with dumb-waiter and speaking tubes to send records up to the courtroom.¹⁸

The movement and guarding of prisoners, which had always been a problem for the courts, was given special attention by Haviland. In Congress Hall prisoners were brought through the street from Walnut Street Prison (across from Haviland’s proposed site) and into the courtroom through the main doors past witnesses and spectators. The problem had become worse with the completion of his Eastern State Penitentiary, far from Independence Square. By providing a special lockup for prisoners, Haviland hoped to prevent the catastrophe of losing prisoners or delaying trials.

Finally, Haviland addressed the thorny question of spectators. In an effort to mediate between the needs and desires of a law-hungry citizenry and those of an ever-expanding legal system, he came up with an ingenious solution that would continue to be used. Acceding to public demand for space in the “most frequented” courts, Haviland included “*spacious galleries* [his emphasis] . . . for the accommodation of the spectators.” But the spectators would be strictly limited to these galleries; the floor of the courtroom would be “for the exclusive use of those who are transacting business.”¹⁹ The courts would remain a theater, but now audience participation was no longer an essential part of the play. Thus, in all these ways, the courthouse, like Haviland’s Eastern State Penitentiary whose modern notions of solitary incarceration were symbolized by the panopti-

¹⁷ Grand Jury circular quoted in Haviland, 9.

¹⁸ Haviland, 6-7.

¹⁹ Haviland, 6-7.

con and radiating spokes of cells, the 1849 courthouse building would be a metaphor for a modern ideal of efficient justice.

Even as Haviland embraced his task of designing a courthouse for the modern city, like future courthouse architects, he was ambivalent about the rapid expansion in people and municipal apparatus. In making a strong statement about the power of the municipality, he also felt a public building should shield itself from the impact of the modern city. The city hall and courthouse, he argued, should be set away from "all that is calculated to detract from the interest it should inspire." Haviland was especially concerned about the noise that engulfed the Independence Square area, the heart of commercial Philadelphia. The "daily noise from vehicles," he wrote, "which evidently must increase, processions and military parades, cause continual interruption both to the business of the courts and offices." The "quiet of the square," away from Chestnut Street, Philadelphia's Broadway, would provide a better setting for the judicial system. The bustle of carriages and people, indicative of the growing city, which had made the new courthouse necessary, also shaped its design. Haviland desperately turned the courthouse inward to avoid the city's noxious products. It was a conscious, though clearly futile, attempt to resist the unsavory aspects of the modern city.

Haviland offered a compromise to bridge the growing chasm between the needs of an efficient judicial system and a fascinated populace, the pragmatic goals of the growing municipality and the effort to preserve an ideal of law that still held sway in the memories of some Philadelphians. But there were others who argued more forcefully for a return to the past. David Paul Brown, a well-known lawyer of the first half of the century, recorded his pointed view of the law in Philadelphia in 1856. His views had wide currency in the debate over how to solve the problems of the chaotic courthouse. Brown blamed the disturbing conditions of the courthouse on the "wretched arrangement, or rather derangement, of our court rooms."²⁰ First and foremost, he hated the mixing and mingling of lawyers, spectators, and the judge. "We have sometimes almost been at a loss to know, from the bustle, and confusion, and hurry

²⁰ David Paul Brown, *The Forum; or Forty Years Full Practice at the Philadelphia Bar* (3 vols., Philadelphia, 1856), 1:559-67.

of the occasion, whether it was a *riot* or a *trial*, that was going on." Spectators freely took seats within the bar, making it difficult to identify counsel and clients. And few of the spectators had any "laudable purpose" in attending court; most were "mere loiterers, or perhaps loungers, who are influenced more by curiosity or indolence." If the parties—judge, lawyers, and spectators—were more clearly separated and the spectators muzzled, the "confusion and bustle that now exist, would be superseded by quiet and harmony, and our courts of law would become what they were designed to be—sacred temples, dedicated to Justice—and enjoying the respect and reverence of the people."

Brown looked to the judge to create order in the court. His model was the faithful magistrate of colonial days, raised almost to the position of a religious leader. The judge should, Brown argued, through his personal stature and official position, create a smooth, efficient court operation and remind people of their "degree, priority, and place" in society. He chastised those judges who acted like mere dissatisfied employees of the state.²¹ Philadelphia, lamented Brown, was "a melancholy exception" to the order that existed in British courts and even courts in other states. Brown's vision, unlike other critics of the courts, was reactionary. He certainly did not look forward to the "machine of state power" that Haviland had laid out, and he rejected the "Fast Age" that he found himself living in. Instead, he wanted to recreate the solemn, orderly courthouse of a more deferential world. But he longed for a world that had never existed as he described it and certainly was no longer possible.

In 1854, after years of debate, Philadelphia finally decided to consolidate itself with the thirteen townships, six boroughs, and nine districts in the county surrounding it. A prime reason for consolidation had been to create a county-wide police force to combat growing crime and the administrative nightmare that a vast region with multiple localities caused.²² With the creation of an enlarged new police force, there came

²¹ Brown, 1 563 "The old judges," he reminded his readers, "never jumped to a conclusion before the premises had been stated or thumped upon the bench, or wielded the mallet or gavel like an auctioneer or read a newspaper or fidgeted and wriggled in their seats, as if dissatisfied with their salaries, or labors, or with both"

²² Elizabeth M Geffen, "Industrial Development and Social Crisis, 1841-1854" in Russell F Weigley, *Philadelphia A 300 Year History* (New York, 1982), 359

a huge increase in the number of cases brought to the courts at Congress Hall.

Beyond the legal problems brought by consolidation were the symbolic and psychological ones. With consolidation, Philadelphia became an immense city of 565,000 people with an area of 129 square miles.²³ Adequate for the colonial capital, which extended barely six blocks from the Delaware River, the civic buildings on Independence Square were hardly respectable for the massive city Philadelphia had become. Embarrassing comparisons of Philadelphia's civic buildings with the town halls of former villages—now just neighborhoods of the city—spurred the drive for new municipal buildings.²⁴

In 1860 the Building Committee of the City Council sponsored a competition to replace the woefully inadequate buildings on Independence Square with a municipal building and courthouse. Both would be placed on Penn Square, facing each other across Broad Street. Unfortunately, desperation for the new buildings and a lack of understanding of architectural practice made for a lackluster competition. The three plans submitted were hotly contested in a debate over how best to harness the past in the effort to symbolically integrate the new city.²⁵

John McArthur, saddled with a controversial site, nevertheless produced a shrewd winning design that spoke to the desire to visually associate the city with a venerable past (figs. 2, 3).²⁶ Recognizing that

²³ Russell F. Weigley, "The Border City in the Civil War, 1854-1865," in Weigley, *Philadelphia*, 368

²⁴ The newspapers dwelled on this embarrassment throughout the search for new public buildings. In 1889, *The Call* complained that "probably no large city in America can show such court rooms as Philadelphia, and probably no city would want to. All of the old rooms in which courts are held are ill conditioned and wholly inadequate, and residents of this city in showing visitors around carefully avoid mentioning the little old-time places in which Judges, lawyers, jurors and witnesses are compelled to sit several hours daily. Even Camden has better and more commodious court rooms than Philadelphia."

²⁵ My discussion of this competition has been greatly aided by conversations with Michael Lewis about his work on City Hall and the Philadelphia architectural profession generally.

²⁶ Descriptive information comes from McArthur's drawings and plans published in an unidentified source at the Library Company of Philadelphia. Although best known for his Second Empire-style city hall, John McArthur, who had worked in Philadelphia since 1848 when he won a competition for the House of Refuge, was a "thorough-going eclectic." In his many commercial and religious buildings in Philadelphia, he freely switched between gothic, romanesque, classical, and even Tudor styles. See Lawrence Wodehouse, "John McArthur, Jr. (1823-1890)," *Journal of the Society of Architectural Historians* 28 (1969), 271-83.

Philadelphia needed to make a national statement, he offered a stern but imperial classical design for the two buildings. The courthouse, however, was clearly to be the more imposing building: a steep stair led past a heavily rusticated first floor up to the double-columned portico. Above was a much more ornate, colonnaded bell tower. The tower anchored two wings that were recessed to emphasize the two-story, colonnaded end buildings.

Here, finally, was Philadelphia's attempt to build a Greek "temple of justice." While other cities early in the nineteenth century had built their courthouses in this style, Philadelphia had curiously avoided it. Philadelphia had been called the "Athens of America," in part because it was an early setting for Greek Revival buildings, such as those by Benjamin Latrobe, William Strickland, John Haviland, and Thomas Ustick Walter. It seemed natural that Philadelphia cloak its legal system in the mantle of Greece and republican Rome.

Despite the fact that the Greek Revival was an accepted style with a long tradition in Philadelphia, McArthur's design pointed in a different direction. Rather than copying precisely the forms and proportions of Greek temples, as Thomas Jefferson had done with the statehouse in Richmond, McArthur generally emulated classical forms, seeking to exploit the style's powerful image as well as play on the specific associations with the ancient democracy. Indeed, the Building Committee cared little about specific style but much more about how well the building would advertise Philadelphia's greatness.²⁷ And yet, the design also made explicit references to another building; it was not simply an allusion but almost a copy of the Capitol in Washington, including the recently altered dome by T. U. Walter. Clearly, the design was meant to draw attention to

²⁷ Interestingly, the Building Committee hoped that the new city hall would challenge not only other cities but other great Philadelphia buildings. In its specifications for the building, the City Council expressly requested that the exterior marble, whatever the style, be "equal in color and quality to that in the Merchant's Exchange building." Further, the heating and ventilation systems "must be equal to that in the Pennsylvania Hospital in Pine St and the Continental Hotel." There was, then, a double competition reflected in the design of city hall—one for dominance within the city, one for dominance among the other great cities of the nation. *City Council Circular*, Sept 27, 1860

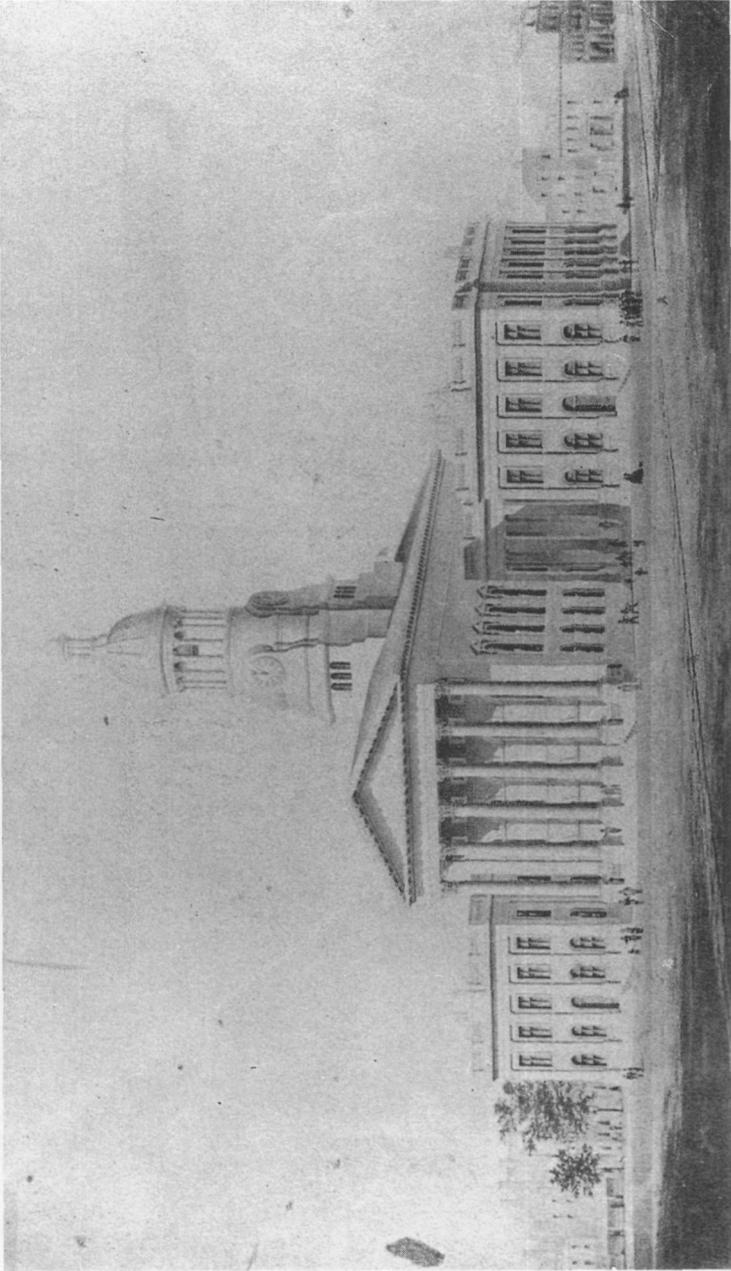


Fig. 2. John McArthur, Perspective view of the courthouse proposed for the Penn Square site, 1860. (Society Print Collection, Historical Society of Pennsylvania)

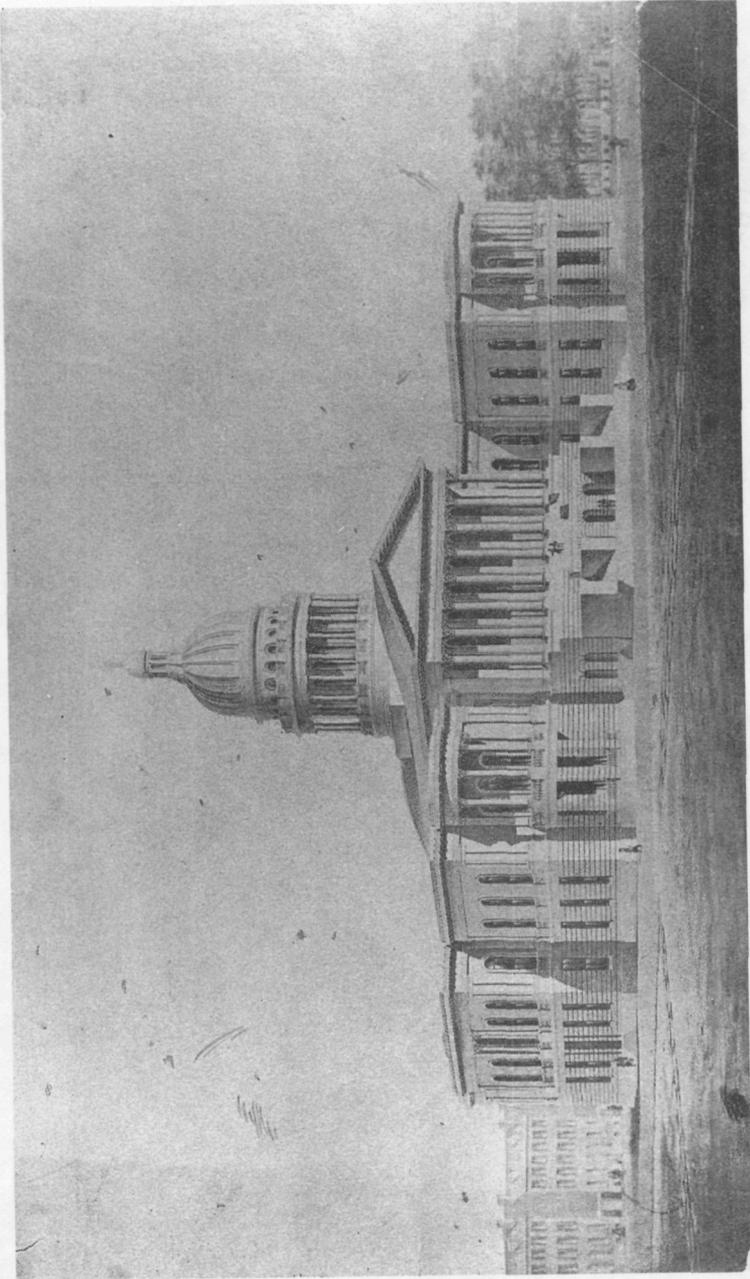


Fig. 3. John McArthur, Perspective view of the city hall proposed for the Penn Square site, 1860. (Society Print Collection, Historical Society of Pennsylvania)

Philadelphia's former place as the national capital and its effort to become the first city once again.²⁸

While the form of the building served as Philadelphia's challenge to other cities of the nation, McArthur's interior plan was characteristically clear and efficient, appealing to city officials who sought a remedy for the confusion at Congress Hall. A large central "conversation hall" led to two wings with courtrooms. Distinct rooms for juries, court offices, and judges were provided, and a separate entrance and waiting space for prisoners was created, eliminating the mingling David Paul Brown had so detested.

McArthur's plan marks the arrival of the professional municipal court system. The "professionals" of the court received spaces they had never had previously. For instance, the prothonotary—the keeper of the records and motions—was given a sizable office on each floor to handle the bureaucratic business of the courts. The district attorney, who would come to dominate the legal system, was given a small office on the first floor, indicating that the battle with the private prosecution system for control remained undecided. "Retiring rooms" for judges—in the back of each courtroom—were a new invention. After years of complaining about the stress of their work, judges were finally given a separate place within the court. In McArthur's plan, the retiring rooms were simply small sitting rooms with a bathroom. While they were the ancestors of the judge's chambers of modern courts, in 1860 they were hardly conceived of as places of study.²⁹

McArthur's efforts on the inside of the building—shaping the process of law—were aimed at eliminating informality in the courtrooms. Colonial courts were highly structured places, but they were also familiar places. By the 1830s informality—confusion and chaos some said—dominated aldermanic courts and even the central municipal courts in Congress Hall. The new courthouse was a concerted effort to remove the disorder and familiarity and create a setting where cases could be decided quickly and professionally.

²⁸ The importance of the courthouse in urban life and in public debate in Philadelphia particularly was given powerful visual testimony: the figure of Justice sat atop the dome of McArthur's courthouse whereas a statue of Liberty stood atop the Capitol.

²⁹ In 1862, surely under the influence of this plan, "retiring rooms" were built onto the back end of Congress Hall.

On the outside—in the form, style, and symbols of the architecture—the building was deeply rooted in historical references, some highly particular to Philadelphia and some far removed from it. The Greek Revival style referred to the Second Bank of the United States (a virtual copy of the Parthenon, located next to Independence Square) and Strickland's Merchants Exchange. The dome reminded Philadelphians of their city's role as the first home of the federal government. But there was little to remind people of the traditions of law that Philadelphians had experienced fifty years earlier. The places of the law had become subsumed within the larger project of building the modern city government. History, carefully chosen and manipulated, would serve the end of legitimating the modern city.

Although it was the grandest proposal for a courthouse in the 1860 competition, McArthur's plan was soon relegated to the trash heap. The plan was criticized by cost-conscious citizens and a jealous Samuel Sloan (whose "Byzantine style" design was rejected) as lavish and the contracting system for building it corrupt. Behind these disputes and petty jealousies, however, lies a more fundamental discomfort with the statement McArthur wished to make. Several newspaper editorials embraced Sloan's desire to keep the public buildings on Independence Square with its Revolutionary associations. The move to Penn Square, although intended as the seat of government by William Penn, was a radical move westward from the physical and psychological center of the eighteenth-century city. While the council was eager to hurl itself headlong into the future, others resisted by recalling the sacred ground of Independence Square.

Whatever the virtues and criticisms of McArthur's plan, the coming of the Civil War destroyed all hopes for a monumental courthouse. But the problems faced by the courts did not go away. As the Civil War ended, Philadelphia, with its eye still on a new public building, constructed a temporary courthouse to relieve the burden on Congress Hall.

Despite Haviland's admonitions against encroaching on Independence Square without due respect to the historic buildings there, in 1867 the city finally answered the cries for new space for judicial business. It was a functional building that would serve the needs of the burgeoning business of the court, as debate and planning for a more substantial courthouse continued. Although the building made no pretensions to rival McArthur's 1860 design, the new courthouse on Independence Square incorporated many of McArthur's innovations. Although its con-

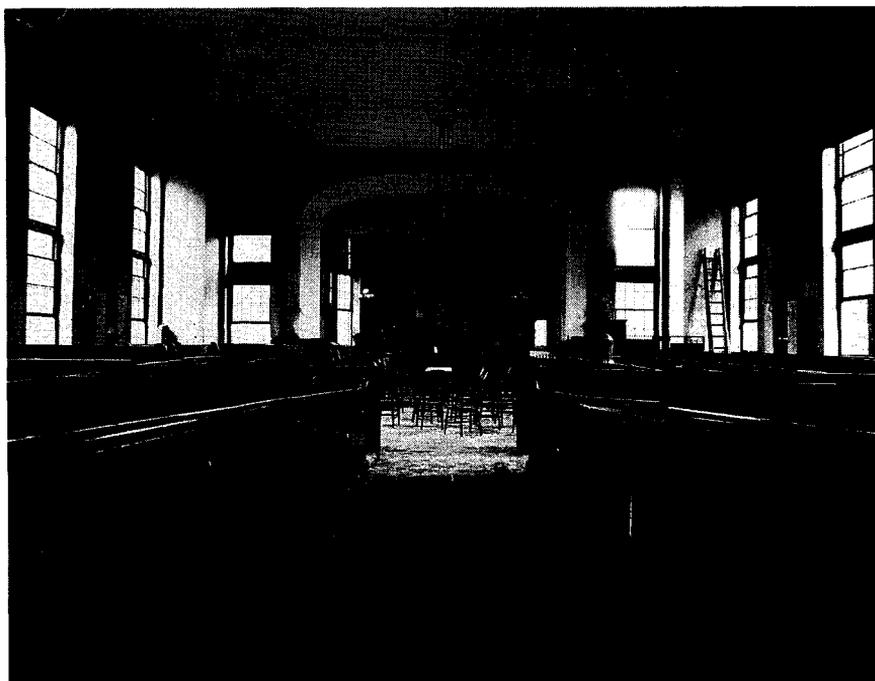


Fig. 4. Courtroom in new courthouse, Independence Square site. Photo, 1895. (A. P. Smith Collection, Atwater Kent Museum)

struction was primarily motivated by pragmatic concerns, the new courthouse reflected the growing importance the past would play in courthouse design.³⁰

The layout of the building conveyed a clear message: the building was to be an efficient administrator of justice. The centerpiece of the building, the courtroom, was organized and structured to eliminate the courtroom confusion of Congress Hall (fig. 4). “In the new room,” the *Ledger* declared, “the judges will be able to maintain order and decorum. . . . There will be none of the confusion incident to the transaction of business in the old court room. . . .” The business of the court was

³⁰ *Public Ledger*, Feb. 14, 1867. All quotes concerning the new courthouse, unless otherwise noted, come from this long article; other descriptive information also comes from the photographs in the A. P. Smith Collection at the Atwater Kent Museum. As far as I know, the architect of this building is unknown.



Fig. 4. Courtroom in new courthouse, Independence Square site. Photo, 1895. (A. P. Smith Collection, Atwater Kent Museum)

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separated from spectators and the bar, now watched over by a deputy sheriff. The spectators, still present and surely raucous despite the watchful eye of the sheriff, sat on a raised platform in "pews." Following Haviland and McArthur's lead, the procession of prisoners in and out of the building was carefully planned, with a trapdoor leading directly into the dock. More than in any previous court, the prisoner was separated from the other participants during the judicial process.

The search for order in the conduct of justice had a long history, but there were new concerns that shaped the design of the new courthouse. Corruption—of the judges, witnesses, and jurors—became an obsessive concern in the design. The jury area in the courtroom was in the northeast corner "separated from the spectators as well as their fellow jurors, and no one can approach them for any purpose without being noticed by the court." The jury rooms were strategically placed on the mezzanine above the second floor, so that "outside parties" could not influence them "except by passing in sight of the officers." The judges were set away from all parties by a "massive walnut stand, with rail and panel." "Removed from the reach of parties," judges would not be subject to the "constant interference of members of the Bar and others who may wish to secure favors." As the importance of the judge as a professional arbiter grew, so too did the fear of his corruption.³¹

If the interior of the building reflected pragmatic concerns of administering justice, the exterior revealed the symbolic power of Independence Square (fig. 5). Aesthetically, the building was an undistinguished variation on the Georgian theme of the other Independence Square buildings. The Greek and Egyptian styles were reflected in the granite rustication on the first floor (similar to McArthur's courthouse) and the Doric pilasters running the height of the second floor. But this was hardly a "temple of justice." McArthur made his association of the law with the national Capitol almost literal, but the new courthouse was hardly intended as a statement about the place of law in America. Indeed, so unsure was the city government that the building would be recognized as a courthouse that they placed a small sign by the front entrance: "Court of Common Pleas, No. 1." Where once the Greek had been lauded as the appropriate

³¹ Allen Steinberg suggests that the fear of judicial corruption comes out of the perceived, and largely real, corruption of the aldermanic courts. Steinberg, *Transformation of Criminal Justice*, 182.

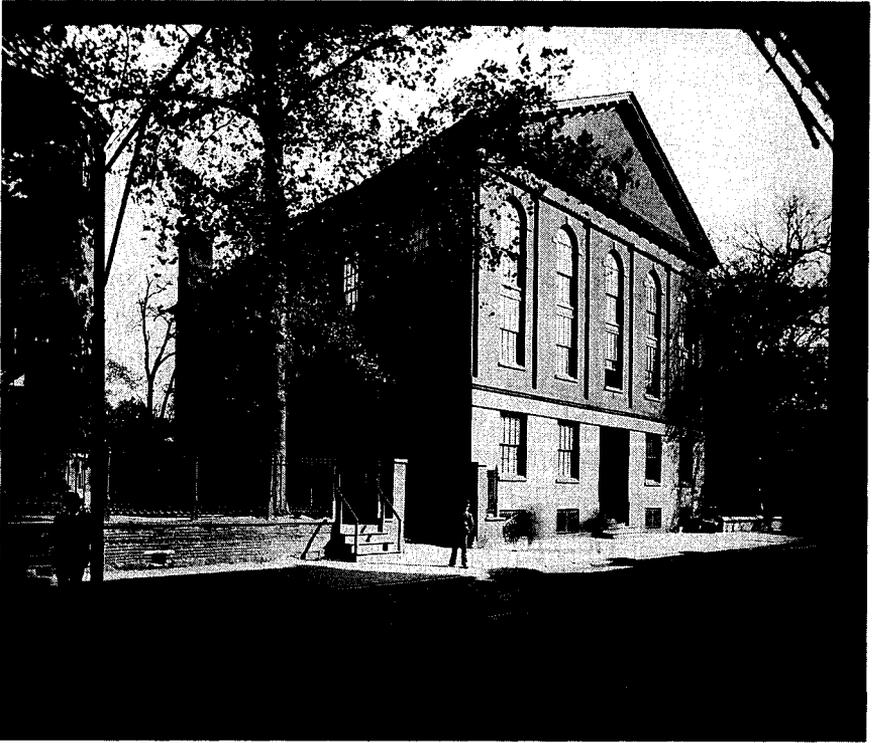


Fig. 5. New courthouse, Independence Square site, constructed 1867. Photo of Sixth Street facade, 1895. (A. P. Smith Collection, Atwater Kent Museum)

“national” style of American democracy, the style of the new courthouse presaged the colonial revival.

Soon after the *Ledger*'s lavish praise for the building, it became clear that the new courthouse was not to be the answer to the judiciary's problems. The much-heralded courtroom was found to be noisy, and the hallways crowded as ever with witnesses, litigants, and lawyers. This temporary building is a tragic figure in our story: it was meant to be a simple building designed to ease the pressure on a system undergoing great expansion and change. Instead, it was caught in the middle of social, legal, and architectural trends, and was unable to succeed either

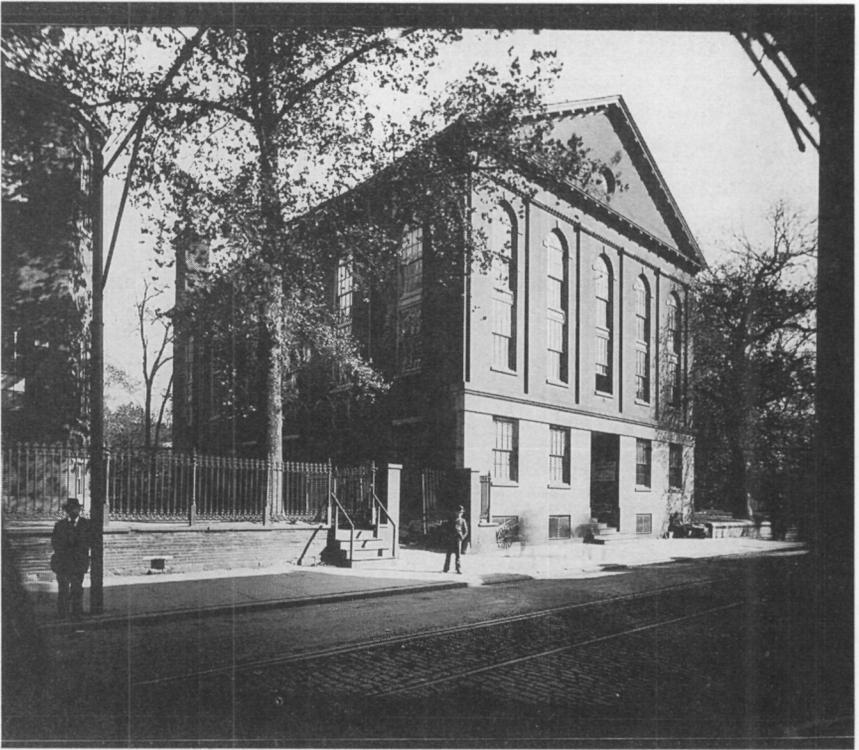


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as an efficient legal machine or a worthy addition to the sacred space of Independence Square.

The call for a new city hall in 1869 was, in a way, merely a continuation of the movement started in 1860, but delayed by the Civil War. But the war was not simply a hiatus; it had enhanced Philadelphia's economic power and prestige. With a growing population of 675,000 by 1870, an expanding area, a vast railway system, "there was a feeling abroad that war's end meant a new beginning."³² Mayor Benjamin Brewster celebrated the laying of the cornerstone in 1874 by declaring his "superstition" that Philadelphia "will again be as it once was, the real metropolis of the nation."³³

Brewster's hopeful words gave no hint of the brutal debate over the location, design, and construction of the new city hall, which had simmered for much of the century, that had been raging hotly for several years, and would remain contentious even beyond the building's completion in 1901. Faced with a bold move westward to the center of the modern commercial and industrial city, where the Pennsylvania Railroad would soon originate and John Wanamaker would open his department store, Philadelphians argued fiercely about the city's future, and the future of its past.

The result of the arduous debate and building process was a civic structure thoroughly "modern" and "traditional." The city hall was a symbol both of the city's attempt to embrace fully the organizational structures of the modern city, at the same time that it surrounded itself with references to the past. Haviland's plan of 1849 paid respect to the buildings of Independence Square, and McArthur's 1860 plan stylistically recalled the nation's Capitol. But only in the new city hall, the most modern of city buildings, were legal traditions fully incorporated. The convergence of these trends was no accident: the city hall set in stone the modern municipality and thus made possible and necessary the celebration of the community's past. The "sacralization" of the eighteenth-

³² Dorothy Gondos Beers, "The Centennial City, 1865-1876," in Weigley, *Philadelphia*, 417-470

³³ "New Public Buildings, On Penn Square in the City of Philadelphia," *Address of Hon Benjamin Harris Brewster, at the laying of the Corner Stone, July 4, 1874* (Philadelphia, 1874), 17

century courthouse and judicial system proceeded in tandem with its modernization.

To herald this optimistic new era in Philadelphia's history, the city set out to create municipal buildings on a scale beyond what any city had thought possible. At the end of 1868 a commission was established to erect new city buildings, commonly referred to as the "Public Buildings." The competition, initiated in April 1869, was much more professional than the haphazard one held in 1860. The controversy over the Penn Square plan of 1860 had led T. U. Walter, the celebrated architect of the Capitol renovation and consultant to the commission, to recommend that the new city hall be built on Independence Square.³⁴

The jury for the competition, chaired by Walter, chose from seventeen entries. With Walter apparently coaching McArthur on his design in the months before the competition, McArthur was awarded the first-place prize of \$2000, once again beating out Samuel Sloan.³⁵ McArthur's design was a vast U-shaped building that would surround Independence Hall on three sides in a manner reminiscent of the Louvre (fig. 6). Seeking to create a monumental, "modern" building but also pay due respect to the square, McArthur followed the "prevailing taste of the age" in choosing the Second Empire style, but carefully planned the building so that it would not overwhelm Independence Hall.³⁶ He set the main tower of the municipal building far back from the street and completed the wings of the buildings fronting Chestnut Street with subdued, almost domestic facades in order to soften the impact of the massive building. Interestingly, the specifications required that Independence Hall be preserved but assumed that all the other buildings, including the two courthouses, would be removed. While the sanctity of Independence Hall had been established, it would take another twenty-five

³⁴ *Circular to Architects who may prepare plans for the New Public Buildings to be erected on Independence Square in the City of Philadelphia* (Philadelphia, 1869). Perhaps the best overview of the city hall debate can be found in John Maass, "Philadelphia City Hall: Monster or Masterpiece," *ALA Journal* 43 (February 1965), 23-30, although Brewster, op. cit., also gives an extensive, albeit biased, summary of the early history of the building. See also Michael P. McCarthy, "Traditions in Conflict: The Philadelphia City Hall Site Controversy," *Pennsylvania History* 57 (1990), 301-17.

³⁵ Michael J. Lewis has charted how Walter and McArthur met on several occasions before the competition due date, and how Walter openly favored McArthur. See "'Silent, Weird, Beautiful': Philadelphia City Hall," *Nineteenth Century* 11 (1992), 14.

³⁶ The phrase is quoted in Wodehouse, "John McArthur, Jr. (1823-1890)," 27.

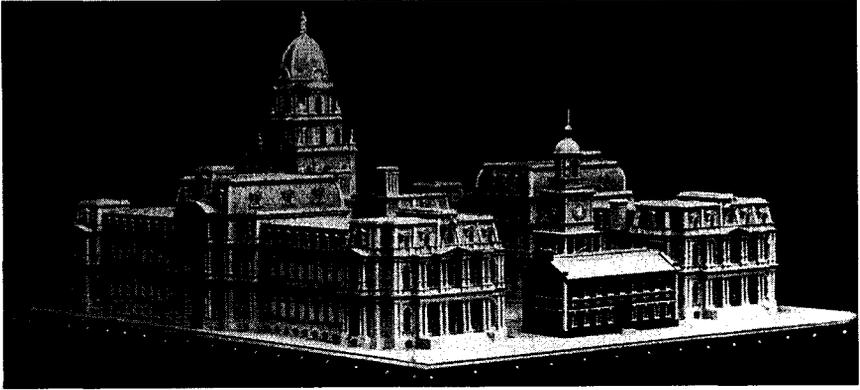


Fig. 6. John McArthur, Model of the public building proposed for the Independence Square site; view from northeast. Wood, Dec. 1869. (Library Company of Philadelphia)

years before Congress Hall and the old City Hall (the first home of the Supreme Court) would be deemed worthy of preservation.

Despite McArthur's and the commission's honest efforts to balance competing interests on Independence Square, controversy broke out almost immediately. In 1860 critics had charged that municipal buildings belonged on Independence Square at the heart of the city; in 1869 new critics charged that the commission's plan would, in Walter's words, "*desecrate* the sacred enclosure."³⁷ The Pennsylvania legislature soon found itself called in to arbitrate an increasingly acrimonious debate. It established a new "Commission for the Erection of Public buildings" in August 1870 and required that the location be decided by public referendum. The public buildings debate occupied the press for much of 1870 and into 1871, even after a strong majority voted for the Penn Square site. In September 1870 the new commission met and chose McArthur for the third time. From a fight over location, the debate moved to the issue of whether there should be one grand building or separate municipal buildings. Wielding its vast new authorities, the commission switched plans, even after construction had begun, and started on one city hall. The decision to place a huge building amidst the crossroads of the city led to the "great intersection debate" in the public press. Several farsical schemes were offered to resolve traffic problems, such as placing the

³⁷ Quoted in Lewis, "Philadelphia City Hall," 15.

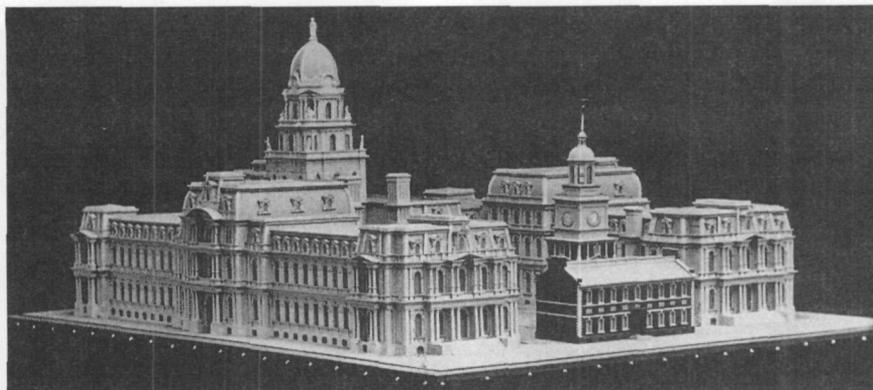


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³⁷ Quoted in Lewis, "Philadelphia City Hall," 15.

building on wheels so that it could be moved out of the way when a carriage passed down Market or Broad Streets. Another suggested attaching balloons to each corner and floating the building above Penn Square (fig. 7).

By enveloping the courts within the city hall, McArthur and the commission had made it plain that the judicial system would become another part of the municipal machinery. Often ignored in the story of the new city hall, however, has been the role of the courts in the design. From the start of construction, the judges exerted an enormous amount of influence over the design of their new home. Part of the reason, of course, was the ever-increasing business of the courts and the ever-decreasing quality of their physical environment. Furthermore, in the debates that raged in the press over the location of city hall, the Supreme Court of Pennsylvania had played the crucial role in pushing the project through.³⁸ Finally, and most importantly, there was also a sense that the courts remained the most important of state functions. In arguing for the economy of four buildings over one, the *Public Record* suggested that “the only buildings really needed are those for court purposes.” Judge Willson, in a tour of the building in 1889, had little patience for the concerns of other city offices: “Is it not really more imperative to look after the accommodations for the courts than any other department of the city?”³⁹

The courts were rewarded for their patience in enduring the horrendous conditions of their courtrooms, as well as for their loyalty to the commission in the face of tremendous opposition.⁴⁰ The judges were given the first views of McArthur’s architectural plans—freely criticizing them, incidentally—and were repeatedly consulted throughout the development of the design.⁴¹ Samuel Perkins, the much-lambasted chairman of the

³⁸ In two cases, *Baird v. Rice* (1871) and *Wheeler v. Rice* (1877), the court rejected challenges to the existence of the commission. On several other occasions the court paved the way for the commission to exercise an almost limitless right over the city budget. See Roger Butterfield, “The Cats on City Hall,” *PMHB* 77 (1953), 448.

³⁹ *Reports of Committees, Commissioners for the Erection of the Public Buildings* (Philadelphia, 1889), 110.

⁴⁰ There was also the much more immediate fear that the Supreme Court would simply leave the city and hold its sessions elsewhere in the state.

⁴¹ Butterfield, “The Cats on City Hall,” 448.

THE NEW BUILDINGS.

HOW IS THIS FOR HIGH?

Plan for the Public Buildings at Penn Square—They Are to be Suspended in the Air by a Balloon—The Judges to be Pulled Up in a Bucket—Allison and Paxson on a String—Advantages of the Plan—The Probable Result.

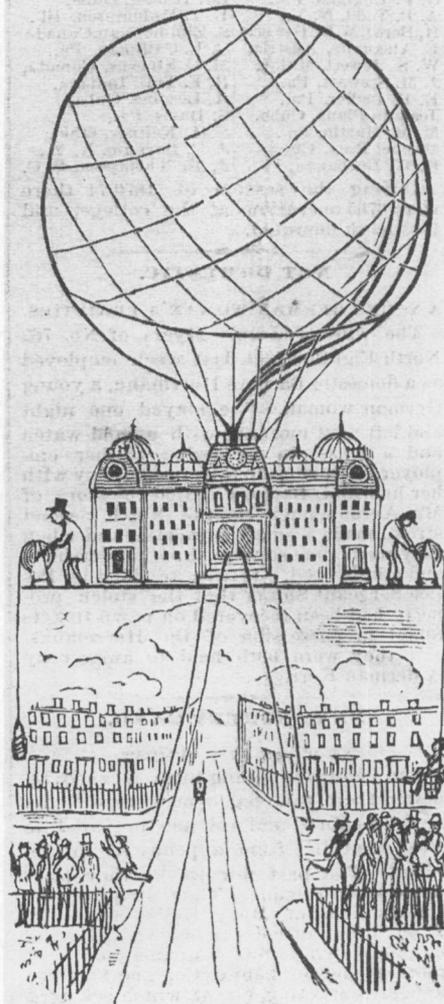


Fig. 7. An ingenious proposal for resolving the dispute over the location of the new city hall. Cartoon from the *Philadelphia Post*, Feb. 27, 1871. (Samuel Perkins Philadelphia Public Buildings Scrapbook, Historical Society of Pennsylvania)

commission, made the court's importance clear at the opening of the Supreme Court rooms in 1891. The "accommodation of the courts," he said, "was given the precedence in the duties enjoined upon the commission." He went on to pay very direct thanks to the court for dispensing with the challenges to the commission. Indeed, the State Supreme Court had been the first tenant to move into the new city hall, occupying temporary quarters on January 1, 1877, before finally settling into its luxurious permanent quarters in 1891.⁴² To a large degree, then, the building of city hall was motivated and directed by the needs of the judicial system.

As in the 1860 plan, the courts' complaints were heard and acted on by the ever-vigilant McArthur. The complaints—suspended briefly by the building of the new courthouse on Independence Square—returned stronger than ever. Not surprisingly, the problems were similar. But now, as the logic of the modern municipality beckoned ever more vigorously, the tensions between the ideal of the modern courthouse and that of its colonial ancestor grew sharper.

After an especially trying day in 1889, with witnesses unable even to enter the courthouse, and with new city hall seemingly never to reach completion, Judge Gordon called in the grand jury and delivered a tirade about the conditions of the criminal courthouses on Independence Square (figs. 8, 9). His speech to the captive audience was recorded and supported unanimously by the city papers in the following days. The public outcry that followed his fury led McArthur and Perkins quickly to invite the presiding judges on a tour of the slowly rising city hall. Faithfully recorded by a committee clerk, it is a fascinating look into the thoughts of these new professionals.

Like the blistering attacks on Congress Hall hurled by the *Public Ledger* in 1839, these indictments fifty years later reflected pent up frustration of years of horrendous conditions and years of waiting for a remedy. "Here is the condition of things which you see," Judge Gordon lectured to a packed court:

a courtroom crowded so that there cannot be anything like orderly proceedings; a jury so situated that a crowd of spectators are in close contact with

⁴² "Proceedings, January 5, 1891, at the Opening of the new courtrooms, in the City Hall, Philadelphia," Commissioners for the Erection of the Public Buildings (Philadelphia, 1891), 5.

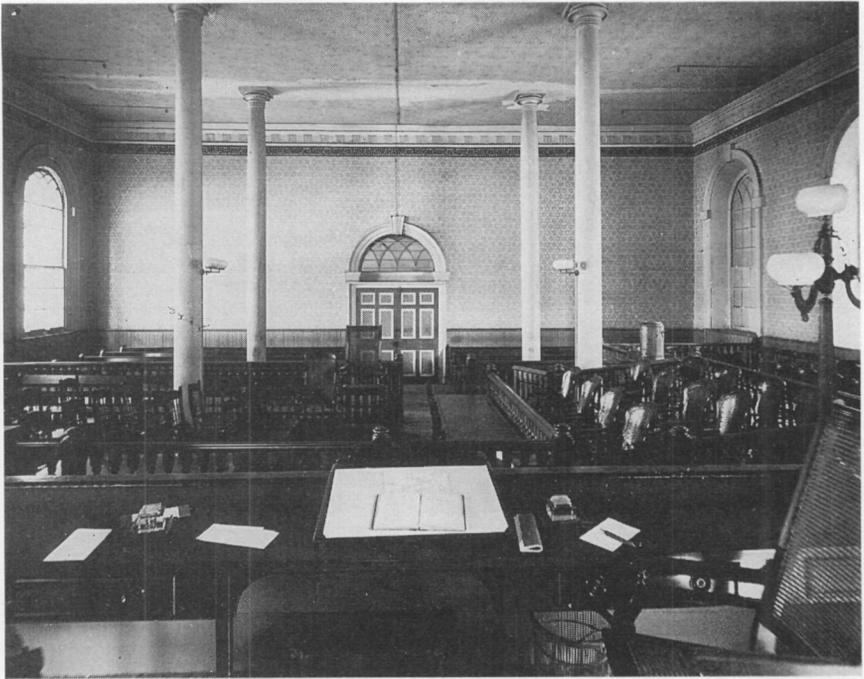


Fig. 8. Judge Gordon's courtroom in Congress Hall, south half of first floor. Photo, 1895. (A. P. Smith Collection, Atwater Kent Museum)

them; the dock situated in the end of the room in such a position that the prisoners cannot see the jury, counsel or court. Women, scores of them, crowded together; a low ceiling, a close, limited courtroom, with all the nauseating effects of so many causes of pollution of the atmosphere. . . . We are obliged to come here—jurors, witnesses and lawyers—and we are not given the facilities that in multitudes of other causes of more solemnity, but probably of less importance are accorded. . . . The jury hears things it should be ignorant of, and cases are continued over and over again because witnesses are absent, kept away often because they either cannot gain entrance to the room or else cannot stay and endure its offensiveness.⁴³

The “old courthouse ought to be torn down,” concurred George Graham, the district attorney. “It is saturated with the expectorations of centuries

⁴³ *The Call*, Jan. 11, 1889; *Evening Telegraph*, Jan. 10, 1889; *The Record*, Jan. 12, 1889.



Fig. 9. Office in old city hall, Fifth Street. Note the drawing of the new city hall above the fireplace. Photo, 1895. (A. P. Smith Collection, Atwater Kent Museum)

. . . the accommodations are not fit for decent people.”⁴⁴ For some observers and participants, the history held within the walls of the old courthouse had turned rotten; they sought nothing less than a cleansing—physical and psychological—of the court system.

But the judges, the bearers of traditional ideals of the law, were equally concerned that the courts be able to fulfill their older purpose: teaching the importance of a society based on rule of law through solemn proceedings in a dignified setting. The courtrooms were “utterly unbecoming the dignity of the Court, and unworthy of this great commercial and manufacturing city—the largest in the State,” declared Perkins at the opening of the Supreme Court. *The Day* sounded an ominous note in 1871, declaring that “if this bickering [over the location of the city hall] is to continue, nothing will be done, and the musty, dingy, cobwebbed piles which now disgrace and incommode us will continue to bear upon their lintels the legend—let him who enters abandon hope.”⁴⁵

The clearest message from the plan of city hall is that order and efficiency would prevail. The planning of city hall reflected the desire to order and rationalize the law, centering it in a state bureaucratic apparatus, and limiting the participation of the public. The building would be square with offices located on both sides of a wide hallway that ran around the entire building. At each corner would be a stunning octagonal stairwell with adjacent elevators. The courts would occupy the entire south half of the building, from the first through the sixth floors, with an array of offices attached to each court. McArthur addressed the perennial problem of noise by placing as many courtrooms as possible on the courtyard side, and attaching double doorways to dampen the effects of the busy hallways.

In their remarkable tour in 1889, the judges were impressed by their new quarters. The plan included enough courtrooms of generous dimensions to comfortably hold the business of the courts well into the future.⁴⁶ More than in any previous plan, the new city hall arranged for all the participants in the judicial process to be strictly separated. The judges had their own consultation rooms reached by private elevators; prisoners

⁴⁴ *Reports of Committees*, 142, 136.

⁴⁵ *The Day*, June 22, 1871.

⁴⁶ Perkins was positively exuberant about the size of the main criminal courtroom: “You can pretty nearly put the whole court-house right in here.” *Reports of Committees*, 157.

had a separate entrance and “criminal elevator” by which they could be whisked “in a twinkling” to their holding cells on the sixth floor, where all criminal cases would be held; juries, witnesses, and clerks had distinct spaces where they would go to fulfill their functions. The courtrooms were arranged with a clear eye to efficiency. The strict separation of the bench, the bar, and the gallery was enforced by a sheriff. Furthermore, in the larger courtrooms, there were separate doors for spectators and for the bar, not to mention the back entrance for the judge.

In the new city hall, the judge was treated as a modern professional requiring appropriate spaces to study, consult, think, and relax. At the opening of the Supreme Court, Perkins explained the responsibilities of the judges as thinkers:

Probably the most arduous part of the labors of the Judges, though hidden from public view and but little appreciated, consists in the study of cases and consultation upon their disposition. The people hardly think of it; the Bar themselves do not realize the responsibility which rests upon the Judges in consultation . . . It is only right that the rooms provided for these purposes should be such, in all respects, as that the surroundings shall conduce [*sic*] to the most favorable application of the mind to its work.⁴⁷

A new law library, a crucial part of the “judicial machinery,” complemented the consultation rooms. Formerly housed in “dusty and gloomy quarters” in the Athenaeum building, it would be given “the most ornate and elegantly-appointed quarters for a law library in America and probably in the world.”⁴⁸

The clearest statement of change from the courthouse as a setting for moral affirmation of the community to a setting for the mechanical resolution of legal entanglements, can be found in the almost obsessive concern with the technical features of the building. Samuel Perkins showed off the features of the new city hall that would leave behind forever the disease-ridden courthouse he so detested. The ventilation and heating systems of city hall would allow for almost instantaneous adjustment of the temperature of fresh air brought into each courtroom. Furthermore, wall paneling for the courtrooms would be marble and granite, rather than wood, because they “will not admit nor harbor any

⁴⁷ “Proceedings, January 5, 1891,” 15.

⁴⁸ *Times*, March 31, 1898; *Bulletin*, Dec. 2, 1897.

vermin.” Similarly the walls would be “tiled, or painted in encaustic colors, which can be washed and which will not accumulate the foul and poisonous exhalation that wall-paper would.” What mattered first and foremost in the new city hall was that the machinery of the law functioned well, that the drivers of the machine, the judges, did not get tired out, and that they could operate in peak form and at peak speed. And the judges, long plagued by the “polluted” environment of the Independence Square courthouses, eagerly went along with Perkins’s cleansing mission. Less concerned with the beauty or symbolic message of their new home, they assented to a tour of the basement ventilation system before visiting the courtrooms.⁴⁹

Within the laboratory for modern ideals of the law that the new city hall had become, elements of an older courthouse ideal remained. Spectators, who were the greatest problem and were, in part, the impetus for a new courthouse, again had a peculiar place. It would be logical to expect greater restrictions on the number of spectators in the courtrooms, for they could only impede the smooth process of justice. Perkins would have agreed: “I have been personally asked by members of the bar, on account of one thing that they object to in the new court-house, and that is that the rooms should not be made so large as to invite the public merely as spectators. That is what members of the bar have said to me; what the practice is I do not know.”⁵⁰

The judges, however, reacted ambivalently to Perkins’s sly suggestion. On the one hand, Judge Willson reminded his fellow judges that the courts are “not crowded with desirable people, but with people who should not be there.” And yet Judge Gordon, in complaining that one of the courtrooms was too small, responded to Perkins: “A spectator has legitimate business in the court-room.”

Perkins: “Where are you going to draw the limits?”

Judge Gordon: “You cannot draw the limits.”

Similarly, to make more room in one of the smaller courtrooms, Perkins suggested eliminating seating for witnesses not being questioned. Judge Gordon protested:

⁴⁹ *Reports of Committees*, 156, 140.

⁵⁰ *Reports of Committees*, 96.

Judge Gordon: "They cannot be excluded; the defendant's witness[es] have a right to hear each other testify."

Perkins: "Is there not a right to exclude witnesses?"

Clearly, Perkins was unfamiliar with the law. He was more concerned with creating an efficient courtroom than with creating a forum for the public display of the law.⁵¹

Though now hidden away in consultation rooms and retiring rooms to decipher the law, judges were still seen in their traditional role as respected magistrates, bearers of objectivity and wisdom. Even at the end of the century, judges' prestige came from two distinct sources. On the one hand, they were seen as elite negotiators of disputes between private litigants; on the other, they were the experts at the pinnacle of a new bureaucratic legal system. While supplying the judges with the accoutrements of a professional lawyer—a consulting room, a first-class library—the designers of city hall also retained the ceremonial position of the judge in the courtroom, surrounding them with allegorical sculpture designed to celebrate the role of the judge as holder of wisdom and knowledge. The judge's new prestige as professional arbiter came naturally out of his older prestige as a wise and objective magistrate.

The ornamentation of the law library, the consultation room, and the courtroom celebrate not a modern industrial society and centralized state but rather older values of the law. The Supreme Court, the most luxurious of the courtrooms, had marble paneling, a mahogany bar, walls covered in mohair fabric, and a mosaic surrounding a plush carpet (fig. 10). The judge's bench, rather than being a plain wooden affair, held marble blocks with caryatids between figures of Law, Justice, and Jurisprudence. The consultation room walls were painted with a fresco depicting figures representing Truth, Harmony, Reason, Wisdom, Science, Law, and Philosophy, as well as the classical characters Solon, Brutus, and Plato (fig. 11). On the north wall, Mars and Minerva were depicted leading the tribute-bearers to Pericles "as restorer of order to Greece." Whether or not the architect expected the judges to gain inspiration from the allegorical figures as they rendered their decisions, the ornamentation

⁵¹ *Reports of Committees*, 95-96.

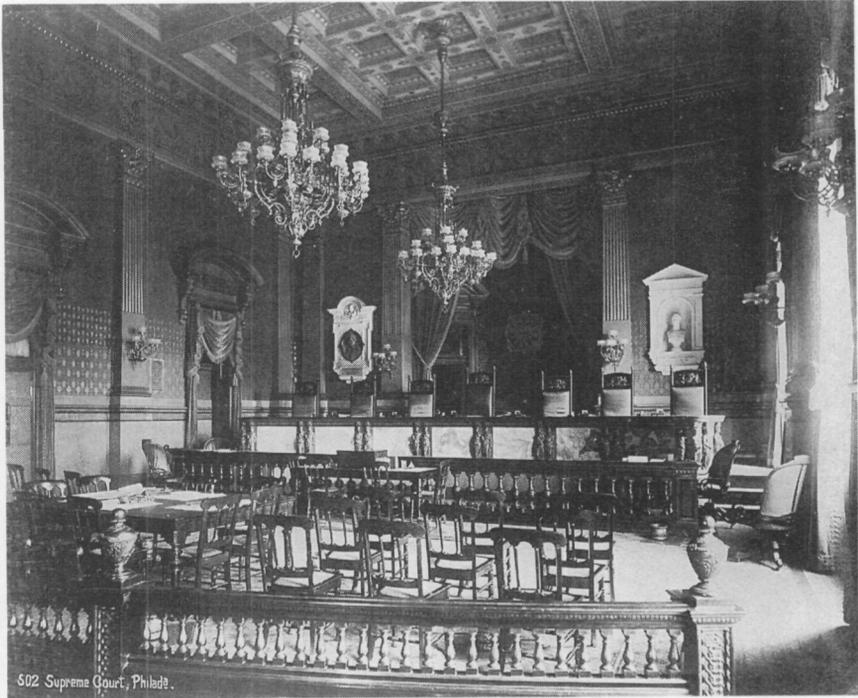


Fig. 10. Courtroom for the Supreme Court in new city hall. Photo, ca. 1901. (Penrose Collection, Historical Society of Pennsylvania)

suggests that the judges were to be seen as heirs to these heroes of the past.⁵²

For most citizens, however, the messages conveyed by the organization and symbolic ornamentation of the courtrooms remained hidden. For them, it was the dramatic exterior of city hall, its basic form and facade, that they “read” daily. And yet, although the mammoth marble “Pile,” as it was often called, seemed to convey architecturally a single, overarching message about the power of the modern municipality, it in fact contained competing attitudes about whether the values of the city would be found in the future or the past.

On its most basic level, the vast building, encompassing all the city

⁵² *Turner's Guide to and Description of Philadelphia's New City Hall or Public Buildings, the largest and grandest structure in the world* (Philadelphia, 1891), 31-32, 36.

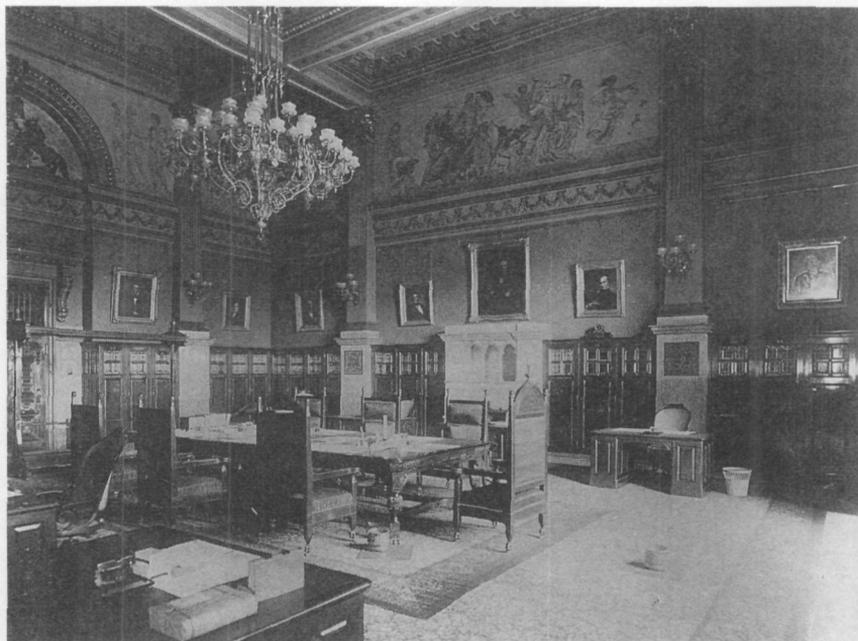


Fig. 11. Consultation room for the Supreme Court in new city hall. Photo, ca. 1901. (Penrose Collection, Historical Society of Pennsylvania)

offices, placed in the middle of the intersection of the two great streets of the city, is a celebration of state power. The lengthy debate over whether the “public buildings” would be one, two, or four was resolved in favor of the one vast building to acknowledge and celebrate Philadelphia’s importance. The *Sunday Mercury* of August 1, 1871, argued for “one grand edifice . . . [that] could be seen at great distances from the north, south, east, and west, and which would mark this great central point of the city in a manner befitting its extent and prosperity.” The building’s power came from its most obvious effect, that of overwhelming size and grandeur; actual style mattered little. Not just a monumental building, city hall was to be, according to one common nickname, a colossal “Pile.”

City hall was built this way in order to compete with other cities. Virtually every report issued by the commission and every guide book to the city included a chart showing the comparative size of Philadelphia’s city hall and other great structures of the world, including St. Peter’s, the Great Pyramid, Cologne Cathedral, the United States Capitol, as

well as other city halls.⁵³ Similarly, the commission spent freely of the city's money to face the building in marble, rather than the cheaper granite. Only marble could make city hall a "conspicuous specimen of Philadelphia's taste and culture in art."⁵⁴ Mayor Brewster urged Philadelphians to see city hall as more than a sign of the city's prosperity and a symbol of the power of municipal government: "We are erecting a structure that will in ages to come speak for us as with 'the tongues of men and angels.' This work [will] in some far off future day be all that remains to tell the story of our civilization, and to testify to the dignity and public spirit of our people." For Brewster, city hall was to be Philadelphia's temple, not unlike the "greatest achievement of the chosen people," the "vast temple" created by Solomon.⁵⁵ Since it would soon become clear that Philadelphia was not to be the first nor the second city of the nation in commerce and industry, the new city hall was more a desperate attempt to secure the appearance of greatness than any reflection of true stature.

The desire to convey a moralistic message about the role of law is best represented in the fantastical sculpture program of Alexander Milne Calder. Calder, grandfather of the modern artist, Alexander Stirling Calder, was hired in 1872 to design the sculptural program of city hall. For the next twenty years he crafted hundreds of figures for the facades and interiors of the building, producing what is surely the "most ambitious sculptural decoration of any public building in the United States up to its time."⁵⁶

The sculptural program is stunning in its extent and allegorical variety. Great figures of the city's history, great events in the city's and the nation's past are represented. Beyond these motifs, Calder created figures to represent the seasons, the continents of the earth, animals from each of the continents, the four races of the world, industry, agriculture,

⁵³ From *Turner's Guide*, 5 Height City Hall, 547 ft 3 1/2 inches, Cologne Cathedral, 510, Great Pyramid, 480, St Peter's, 448, U S Capitol, 287, square feet of city halls Philadelphia, 1,147,672 sq ft, Detroit, 212,170

⁵⁴ *Sunday Mercury*, Oct 12, 1873

⁵⁵ *Address of Hon Benjamin Harris Brewster*, 19-20

⁵⁶ George Gurney, "The Sculpture of City Hall," in *Sculpture of a City Philadelphia's Treasures in Bronze and Stone* (New York, 1974), 97 The authorship of the sculptural program remains in some doubt While Calder was the sculptor, there is strong reason to believe that McArthur played an important role in determining which figures would be depicted



Fig. 12. Alexander M. Calder, "Remorse," plaster model for sculpture program for the new city hall. Photo, ca. 1883. (Samuel Perkins, *Sculpture and Ornamentation of the New City Hall*, Historical Society of Pennsylvania)

commerce, and every science and art and Christian value imaginable.⁵⁷ But there is an underlying philosophy. By placing the building, and hence the government and the community, at the heart of the natural, the animal, and the human realms, Calder offered a vision of a more unified world. His was a hopeful vision of integration, of past and present, peoples and endeavors, where segmentation and rationality had come to reign.

The decision to build one enormous municipal building had eliminated the possibility of articulating a particular style for the courthouse, but Calder attempted to signify at least that part of the building where the courts were located. On the south, or "law" entrance, and on the west entrance, where prisoners were driven in, he produced a heavily symbolic set of sculptures (figs. 12-14). The head of Moses, standing for law,

⁵⁷ Ironically, the figure symbolizing Architecture is seated in front of a classical Greek temple.



Fig. 13. Alexander M. Calder, "Sympathy," plaster model for the sculpture program for the new city hall. Photo, ca. 1883. (Samuel Perkins, *Sculpture and Ornamentation of the New City Hall*, Historical Society of Pennsylvania)

served as the keystone for the south entrance.⁵⁸ A blindfolded figure of Justice looked down on the street from an upper floor. On the west entrance, a head of Sympathy above the arch was framed by panels of thistles and thorns. A head bound in chains, signifying Pain, served as the keystone; inside the arch were threatening tigers' heads and hissing snakes. Calder hoped that "the hapless felons passing through the arch leading into the Sheriff's office, for instance, might look up at the figures of Justice and Mercy overhead and repent."⁵⁹ "The deduction to be drawn from this," Samuel Perkins explained to the City Council as it

⁵⁸ Perkins explained the symbolism of Moses, citing Leviticus 19:15: "at once a lawgiver and judge, whose inspired words, 'Ye the person of the poor, nor honor the person of the mighty; but in righteousness shall thou judge thy neighbor.'" Perkins quotes the chief justice who spoke the same day to law students, adding that they "might well be written in letters of gold and hung over every judgment seat in the land." "Proceedings, January 5, 1891," 8.

⁵⁹ Margaret Calder Hayes, *Three Alexander Calder: A Family Memoir* (Middlebury, Vt., 1977), 108.



Fig. 14. Alexander M. Calder, "Pain," plaster model for the sculpture program for the new city hall. Photo, ca. 1883. (Samuel Perkins, *Sculpture and Ornamentation of the New City Hall*, Historical Society of Pennsylvania)

toured the building, "is that the way of the transgressor is hard."⁶⁰ Unfortunately, the council members who saw the sculptures had little faith in their efficacy. "I am afraid," Mr. Monroe said, "the effect will be lost on the prisoners."⁶¹

Calder assumed that his sculptural program could teach morality through references to traditional examples of virtue and suffering. The offender could be reintegrated into the community, Calder implicitly argued, through exhortation, threats, and Christian benevolence. In the final analysis, Calder's effort was in vain, as Mr. Monroe recognized. It bespoke a feeble attempt to use traditional moral devices to reclaim for the law an integrating, edifying function, beyond merely applying the appropriate rule to a dispute.

⁶⁰ Interestingly, this is the same phrase used at the laying of the cornerstone of Haviland's Eastern State Penitentiary. See Thomas Wilson, *Picture of Philadelphia, for 1824: containing the Picture of Philadelphia, for 1811, by James Mease, MD.* (Philadelphia, 1823), 58.

⁶¹ *Reports of Committees*, 156.



Fig. 15. New city hall under construction. Photo by James Monaghan, July 12, 1883. (Society Photo Collection, Historical Society of Pennsylvania)

The final irony in the design of city hall is that citizens did not learn from the allegorical sculpture of the facades, and neither did they read it as a symbol of Philadelphia's greatness nor as a symbol of society's dedication to the "logical and human" or the "miraculous and poetic." Instead, it came to be seen in its time as a symbol of the corruption of the modern city (figs. 15, 16).⁶² "It must stand in the very heart of Philadelphia," Agnes Repplier wrote, "to bear witness against the people who erected it . . . as an illustration of what can be accomplished by an irresponsible building commission."⁶³ For many, Benjamin Brewster may have been sadly right: city hall was "the story of our civilization."⁶⁴

⁶² In recent years, after numerous calls for its demolition (beginning with Paul Cret in the 1920s and continuing through Louis Kahn), City Hall has found new supporters who see it as one of the great public buildings of the nineteenth century.

⁶³ Agnes Repplier, *Philadelphia: The Place and the People* (1898; reprint, New York, 1925), 375.

⁶⁴ Howard Gillette, Jr., has done the best job of telling the City Hall story in terms of a corrupt "new political machine." See "Philadelphia's City Hall: Monument to a New Political Machine," *PMHB* 97 (1973), 233-49. He points out the irony of Brewster's statement.

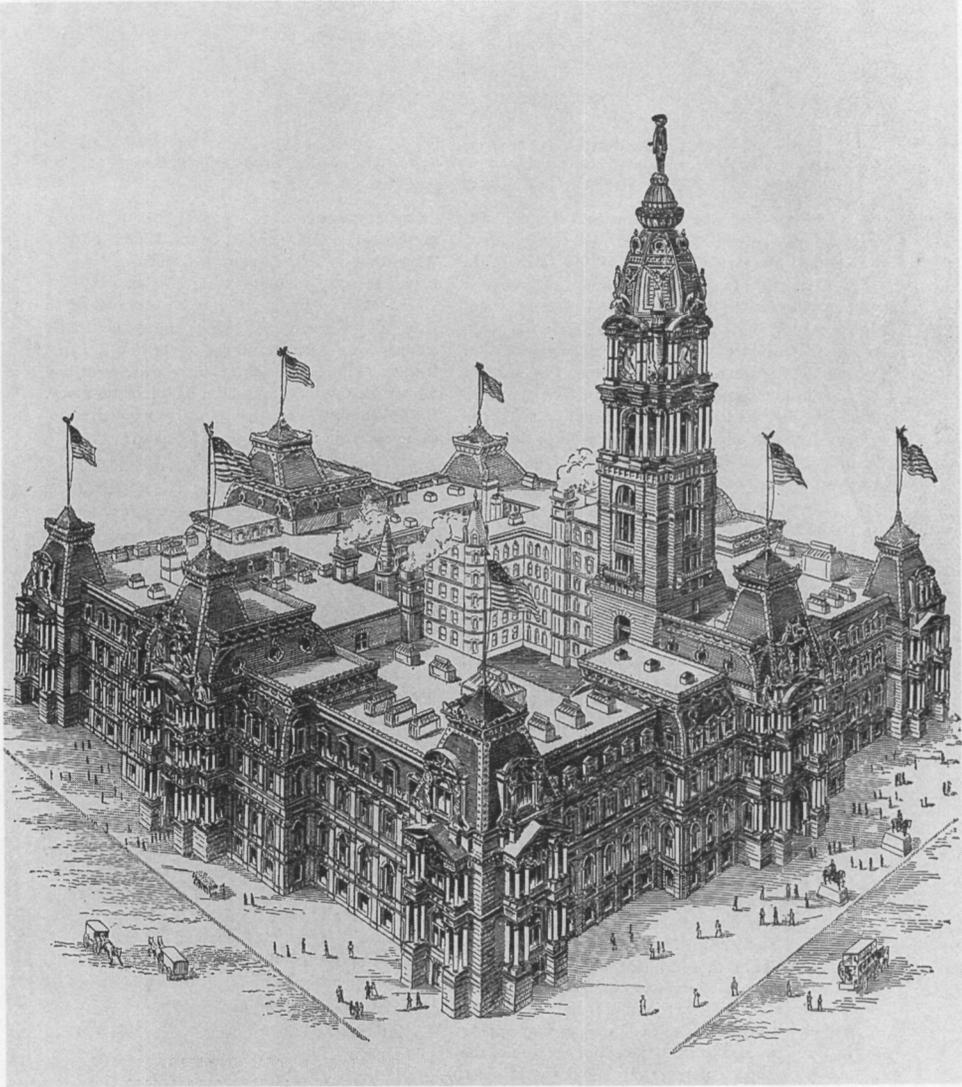


Fig. 16. "The Public Buildings in Philadelphia. Commenced 400 B.C. Will be finished doubtless within the memory of the oldest inhabitant." Cartoon, ca. 1898 [?] A snide commentary on the pace of construction of the new city hall. (Society Print Collection, Historical Society of Pennsylvania)

The decades-long battle for this new courthouse and city hall had been for many Philadelphians a series of lessons in the new dangers posed by the modern city: corruption born of uncontrolled, concentrated municipal power. If the physical form of City Hall had been designed to symbolize Philadelphia's post-Civil War return to dominance among the nation's cities, the process of choosing the site, selecting the architect, and actually building the "marble monster" had negated the intentions of the designers.⁶⁵ Thirty years, twenty million dollars, and endless graft scandals later, few appreciated City Hall and its courtrooms as architectural masterpieces or as carefully crafted lessons in civics. The courthouses of the early nineteenth century had, as we have seen, offered their own indictments of civic life. But faced with new, seemingly unfathomable and unmanageable public hazards, some longed for those "miserable dens."⁶⁶

Epilogue

In 1895, as the city hall crawled toward completion and the city offices began to vacate their spaces in Independence Square, Alfred Percival Smith commissioned a photographer to create a record of the buildings before they were destroyed or restored to their eighteenth-century condition for use as a national museum. The 182 glass-plate negatives methodically display each room of Independence Hall, the Supreme Court, Congress Hall, and the new courthouse (figs. 4, 5, 8, 9). The photographer sought out the beds for juries crammed into the third floor of the new courthouse, records piled to the ceiling in the "wing" buildings, and stacked chairs in the witness rooms of the new courthouse. The clutter of cramped offices, the tired, decrepit courtrooms, and the narrow hallways show the conditions described by the furious Judge Gordon in 1889.

The methodical nature of the Smith series, the careful record of each room, usually from several angles, however, suggests that Smith

⁶⁵ The term "marble monster" comes from an article in the *Evening Bulletin*, Aug 30, 1876, quoted in Butterfield, "The Cats on City Hall," 440 Other terms included "The Job," "The Obstruction," "The Marble Elephant," "The Nuisance," "The Public Folly"

⁶⁶ As this article is published the city is in the midst of renovating its city hall, once again trying to make the public buildings, and the courtrooms within them, symbolize the visions and ideals of the city. It is, I believe, no surprise that economic development plans have at their heart the trumpeting of Philadelphia's past as the birthplace of the American system of government

recognized that the move from Independence Square to Penn Square and the new city hall marked an important shift in the city's history; he thought it important to record the change. We do not know precisely why A. P. Smith decided to undertake this project. As a University of Pennsylvania law school graduate, he may have wanted to record the place where his school had held classes for several years. Or perhaps he wanted to leave a pictorial recollection of the courthouse before plans for returning the Independence Square buildings to their eighteenth-century appearance were put into effect. His collection is fascinating in part because it offers us the chance to see A. P. Smith as a nostalgic antiquarian *or* as a celebrant of the modern metropolis. He may well be both.

In order to celebrate the opening of the new courtrooms in Penn Square, it may have seemed natural, even obligatory, to record what they would replace. And the touch of nostalgia we sense in the photographs was appropriate to the endeavor: to recognize the loss of the past would ease the move into the modern and unknown (figs. 17, 18). Viviana Zelizer has posed sacralization as a cultural force that resists and opposes modernization, but she may have it backwards. It was only when the ideal of a well-oiled machine of rational justice was created that a wholehearted celebration of the past traditions of the city and the judicial system became possible—even necessary. Although the rise of the modern municipality had eliminated the “miserable dens” of the antebellum period, for judges and the citizenry, it had brought with it the potentially frightening “marble monster.” The cloaking of the “marble monster” beneath the garb of the law’s supposedly more personal, deferential past was aimed at building order in the midst of chaotic social change. “Invented traditions,” Eric Hobsbawm has written, “use history as a legitimator of action and cement of group cohesion.”⁶⁷

Zelizer’s theory of sacralization is enormously valuable for illuminating the contested nature of modernization, but it fails to recognize that sacralization is, in fact, a part of modernization. She argues that the sacralization of children was primarily a cultural change that strongly resisted and shaped the market. What is apparent in the story of courthouse design in Philadelphia is that the sacralization—of the city’s and judicial system’s past—is an essential aspect of modernization of the city governmental structure.

⁶⁷ Eric Hobsbawm, “Inventing Traditions” in *The Invention of Tradition*, 12.

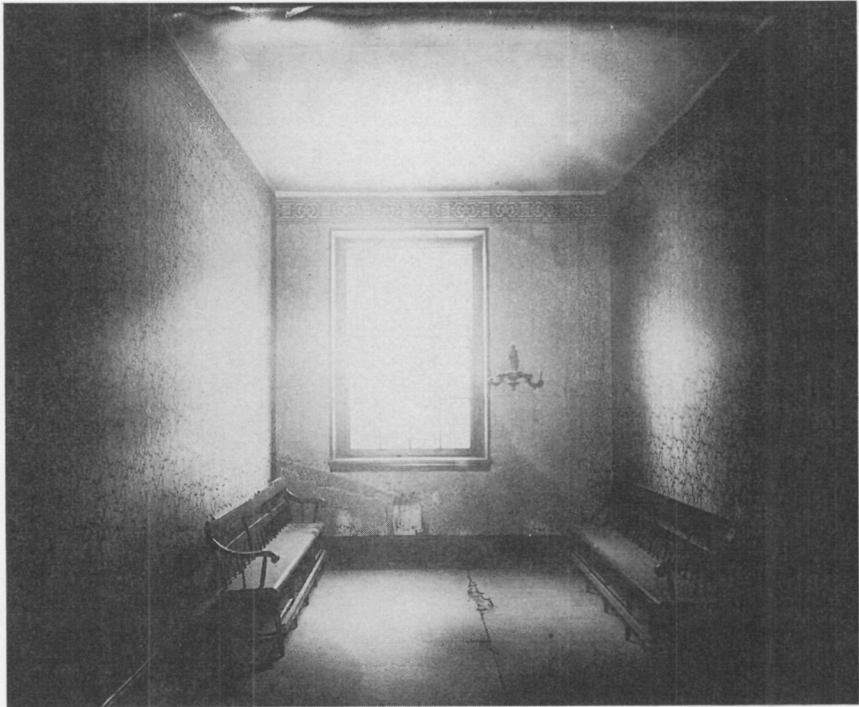


Fig. 17. Waiting room in the old courthouse, possibly Congress Hall. Photo, 1895. (A. P. Smith Collection, Atwater Kent Museum)

What is most telling, then, about A. P. Smith's photographs is the very subject of his attention—the empty and dilapidated offices of the city government. This act of looking back, hoping to preserve physical emblems of the past, can be seen as a crucial, if paradoxical, response to a world that seemed increasingly skeptical of tradition. It is no coincidence that as the centralized municipality came into full bloom there was a strong desire to preserve the buildings of Independence Square: invented traditions proliferated just at the time when many declared that society had no need for tradition. In the end the story of Philadelphia's courthouses is more than a battle of styles or economic interests or competing judicial systems; it is a story of the place that the past should hold in the present.

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