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TRIAL BY VIRTUAL COURTROOM: DOES THE TECHNOLOGY STRENGTHEN OR DIMINISH THE RULE OF LAW?

I INTRODUCTION

Though the idea of virtual courtrooms has floated around since the rise of information technology,[1] it is not until recently that the courts have seen its implementation as viable in the foreseeable future. There is growing tension between the 'inherently conservative and complex nature of court (where) reforms of courts occur at a glacial pace,'[2] and the fact that society is moving online, which was enormously accelerated during COVID-19. In this essay, I consider the impact that virtual courtrooms, in both criminal and civil jurisdictions, have on the rule of law and whether the technology strengthens or diminishes the principle. A particular focus will be had on access to justice, the right to a fair trial, and open justice, all of which are heavily entrenched into the concept of the rule of law. I conclude that virtual courtrooms can not only be effective in upholding the rule of law, but they present as an opportunity to modernise the rule of law, provided that the key features of public courtrooms, fair jury selection, and online professionalism are observed.

II BACKGROUND

A Virtual Courtrooms

The Supreme Court of New South Wales describes a virtual courtroom as 'bring(ing) the physical courtroom to a virtual space' through the use of digital technology progressing court cases without the need for any participants to attend the courthouse in person.[3] Jury trials that use virtual courtrooms are conducted by video conference, whereby the judge, counsel, plaintiff/applicant, defendant/respondent, and all twelve jurors appear side by side in squareboxes on a computer screen.[4] Although yet to be carried out in Australia, it is standard practice internationally, and in Australian mock-trials, that jurors will only be selected if they have access to a private room and stable internet connection.[5]

Jury trials conducted by virtual courtrooms are yet to be implemented in Australia. The shortcomings of the Australian court's technology system were truly noticed during the wake of the pandemic in March 2020. Whilst the United Kingdom, the United States and, Canada were making moves to conduct criminal jury trials online, Australia was simply not equipped to do the same.[6] Fortunately, 'lockdown' in Australia did not last long and trials resumed relatively quickly, eliminating the immediate need to conduct trials in any way other than in person.

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1 Fredict Lederer, 'The Road to Virtual Courtroom?' (1999) 60(1) *South Carolina Law Review* 800.

2 Joe McIntyre, Anna Olijnyk and Kieran Pender, 'Courts and COVID-19: Challenges and Opportunitiesin Australia' on AUSPUBLAW (04 May 2020) <https://auspublaw.org/2020/05/courts-and-covid-19-challenges-and-opportunities-in-australia>.

3 Supreme Court of New South Wales, *Fact Sheet: The Virtual Courtroom* (Web Page, April 2020).

4 Jason Bosland and Judith Townend, 'Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom' (2018) 23(4) *Communications Law* 183.

5 David Tait et al, *Towards a Distributed Courtroom* (Western Sydney University, 2017).

6 Justin Jouvenal, 'Justice by Zoom' *Washington Post* (Web Page, 13 August 2020) <https://www.washingtonpost.com/local/legal-issues/justice-by-zoom-frozen-video-a-cat--and-finally-a-verdict/2020/08/12/3e073c56-dbd3-11ea-8051-d5f887d73381_story.html>.

Studies and mock-trials have received positive feedback that the technology itself functions generally well.[7] This paper will therefore not address any issues arising from the workings of the technology, as it is evident that there are virtual courtrooms in access for Australia to use.

B The Rule of Law

Australia as one of the few countries in the world without a Bill of Rights, and a Constitution that hardly spells out any rights to the equivalent, relies on upholding the rule of law to safeguard basic statutory and common law rights.[8] Relevant to this paper, Justice Kirby relies on the following elements to explain the principle:

1. The prerequisite of fair and public trials, conducted without undue delay.
2. The law must be accessible and, so far as possible, intelligible, clear and predictable.
3. The judiciary and other adjudicative procedures, such as the jury, must be fair and independent.
4. The maintenance of equality of all before the law.
5. The absence of indefinite detention without trial.[9]

These can be summarised into three well-known Australian legal principles, namely, 'access to justice', 'open justice', and the 'right to a fair trial'. Considering these principles were formed in a court system that requires physical presence, a virtual courtroom significantly impacts these principles as we know them.

III ACCESS TO JUSTICE

Under Australian law, access to justice is not simply a service, but a common law right.[10] The High Court has held that it is a person's 'right to unimpeded access to the courts can only be taken away by express enactment.'[11]Despite this, it is a longstanding, and widely recognised issue that obtaining the means to access justice is simply unattainable for many Australians.[12] This is however not limited to Australia and is the reality for most legal systems across the world.[13] It is universally accepted that the high cost of obtaining legal advice and the slow speed at which the court turns over cases are the main difficulties to accessing justice[14] Some have argued that the implementation of virtual courtrooms can be used to significantly reduce some of these barriers.[15]

As established, virtual courtrooms create a situation whereby physical attendance in the courthouse is no longer needed. Money is to be saved in many areas, especially for remote litigants who bear the cost of travel, taking time off work, and accommodation. Considering that

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7 Matthew Terry, Steve Johnson and Peter Thompson 'Virtual Court Pilot Outcome Evaluation' (Ministry of Justice Research No 21/20, December 2010); David Tait et al (n 5).

8 Justice Michael Kirby, 'The rule of law beyond the law of rules' (2010) 33(1) *Australian Bar Review* 195.

9 Lord Tom Bingham, 'The Rule of Law' (2007) 66(1) *Cambridge Law Journal* 67, 81.

10 Justice Steven Rares, '*Is Access to Justice a Right of Service*?' (Access to Justice: Taking the Next Steps Symposium, Australian Centre for Justice Innovation and the Australasian Institute of Judicial Administration, 26 June 2015).

11 *Coco v The Queen (1994)* 179 CLR 427.

12 Law Society of South Australia, *Submission to the Productivity Commission Inquiry into Access to Justice* (4 November 2013).

13 The United Nations Office on Drugs and Crime, *Global Study on Legal Aid* (Report, October 2016).

14 Ibid.

15 See, eg, Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019).

remote parties are the most at-risk group of litigants when it comes to accessing the justice system,[16] virtual courtrooms are an immediate solution for some of these issues. Counsel no longer has to charge their clients to travel to and from the courthouse. When taking into consideration the standard practice of counsel arriving at court at least fifteen minutes before the scheduled hearing time, as well as the likelihood of adjournments, the idea of virtual courtrooms becomes more attractive for those obtaining legal advice. The ability for counsel to 'zoom in' one minute before a hearing commences, or if an adjournment takes place work on other matters in their office, allows for an inconceivable amount of money to be saved.

Not only do virtual courtrooms ease the cost for the parties, but they can also financially benefit the state. One mock-trial found the following 'cost savers' to result from virtual courtrooms:

- Reduced prisoner transportation costs resulting from defendants remanded in police custody not having to be taken to court for their first hearing.[17]

- The rate of defendants failing to appear at court for their first hearing was 1% in Virtual Courts, compared to 5% in the comparator area, resulting in a saving for the police, who had fewer defendants to track down when a warrant was issued for their attendance at court, plus additional savings for courts and prisons.[18]

- Enabling custody cases to be heard on the day of charge resulted in non-cashable savings on overnight police cell costs.[19]

In regards to the increase in efficiency of virtual courtrooms, the study found the following:

> the biggest time benefits occurred when charge and hearing took place on the same day, a situation that was relatively rare in traditional court cases, but which accounted for the majority of cases in the pilot (57% of cases in the pilot took place on the same day, compared to 12% in the comparator area).[20]

Further, it seems beneficial to have virtual hearings as it would increase the number of same- day hearings due to the defendants' physical location no longer being an issue that would have otherwise impeded the speed of the process.

A Access to the Legal System vs Access to Justice

Having access to the court system is one thing, having access to justice is another. Feedback given by parties involved in real-life virtual courtroom trials, not mock-trials, would suggest this method does not really serve justice. A London trial which was moved to Skype as a result of the pandemic left the daughter of the man who was at the centre of a serious medical treatment case feeling left somewhat dehumanised from the experience.[21] She explains that the term 'remote justice' is fitting as justice is indeed distant. She goes on to say, I 'can't see the lawyers in the flesh, can't look them in the eye and I am rendered invisible when their camera is off…I wanted my Dad to have his day in court – not in someone's front room'.[22] She described that the informal

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16 Law Society of South Australia, *Submission to the Productivity Commission Inquiry into Access to Justice* (4 November 2013).

17 Ibid 10.

18 Ibid 5.

19 Ibid 4.

20 Ibid 5.

21 Cecelia Kitzinger, 'Remote Justice: A Family Perspective' (29 March 2020) *Transparency Project* <http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/>.

22 Ibid.

nature resulted in the lawyers calling her father by his first name rather than Mr F, which she considered 'disrespectful'.[23]

In a different matter, a barrister who had forgotten to mute themselves during a break was overheard by a party who described the following: 'I overheard a barrister's door ring, followed by the voice of a visitor expressing surprise that the hearing was not yet finished: the barrister (then) voiced frustration and expressed that the hearing was a waste of time as the outcome was foregone a conclusion'.[24] If this is the sort of feedback being received from litigants of 'real' virtual courtroom proceedings, not merely the mock proceedings, can virtual courtrooms really be said to strengthen 'access to justice' — or merely increase access to the legal system? It seems that a 'weighing up process' may need to occur: does access to a speedier and more cost-efficient legal system outweigh the risk of public dissatisfaction?

Justice Michael Kirby affirmed in 1998, that '(when) considering how to use these new technologies, we need to remember that the public will judge the courts on their ability to find just solutions to human problems, not the technology which they are able to bring to the task.'[25] As such, the problems identified may be solvable, rather than inevitable trade-offs. For example, to eliminate public dissatisfaction as described above, judges may conduct online court from their offices or courtrooms rather than their homes. Further, court staff may be encouraged to avoid over-familiar interaction with lawyers. If the courts are able to develop a more personalised experience via virtual courtrooms with access to justice at the forefront of their mind, then this may be a real opportunity for access to justice, and in turn, the rule of law, to be strengthened.

B Litigants and Technology

As might be expected, if litigants do not have access to sufficient technology to use virtual courtrooms, then anything but their physical presence in the courtroom will avail. The Australian Digital Inclusion Index demonstrates that in 2017, 14% of Australians were without any internet connection in their homes.[26] Of great concern is the high proportion of Indigenous Australians that are without internet connection. Indigenous Australians already face an overwhelming number of issues stemming from the current legal system as it stands today. These include a disproportionate amount of Indigenous Australian deaths in custody, over- representation of Indigenous Australians in prison, and the general cultural barriers of the court system.

Further, people from non-English speaking backgrounds, people with disabilities, and elderly people are groups of litigants that are more likely to be without internet connection. The Family Court of Australia has however overcome such issues by making the election of remote trials a decision of complete judicial discretion. In *Walders &* McAuliff[27] and *Harlen & Hellyar*[28] both Judges allowed for adjournments due to recognising that one of the parties to the matter had poor computer skills due to being in one of the aforementioned groups. Therefore, this model of judicial discretion is a feasible and encouraged option to be followed if future online trials face issues as to computer technology access.[29]

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23 Ibid.

24 Ibid.

25 Justice Michael Kirby 'The Future of Courts: Do They Have One?' (1998) 9(2) *Journal of Law, Information and Science* 141.

26 Australian Digital Inclusion Index, 'Digital Inclusion in Australia' <https://digitalinclusionindex.org.au/about/about-digital-inclusion/>.

27 *Walders & McAuliffe* [2020] FCCA 1541.

28 *Harlen & Hellyar (No.3)* [2020] FamCA 560.

29 See, eg, Felicity Bell, Michael Legg, Joe McIntyre and Anna Olijnyk , Submission to the House of Commons Justice Committee, *Inquiry into Court Capacity*.

IV THE RIGHT TO A FAIR TRIAL

Not only does the International Covenant on Civil and Political Rights recognise the 'right to a fair trial' as a fundamental human right,[30] but it is a well-entrenched common law principle in Australia.[31] Deane and Gaudron JJ took this one step further stating that the principle is even entrenched in the Constitution.[32] The reason for its importance stems from the notion that those who are charged with a crime, are at risk of their fundamental human right of freedom being taken from them.

When the possibility of a virtual courtroom was first considered, academic Fredric Lederer stated:

> In the simplest criminal case, minor traffic infraction, a virtual courtroom would be easy to create and likely regarded as a blessing by most. Criminal cases in which incarceration is a possible sentence present obvious problems: jailing a virtual image of a convicted defendant is hardly satisfactory.[33]

Does this remain the attitude of today's society? A reoccurring theme in discussion is the idea that 'jurors may look less favourably on an accused person appearing on a screen than in court, feel less empathy and be more willing to convict.'[34] This of course having a dire consequence on the right to a fair trial if proven to be true. The proposition in fact instigated the Supreme Court of Queensland to conduct a virtual mock-trial in order to explore the validity of this claim.[35] Ultimately, the study made no findings to the like describing that:

> We found defendants appearing via video were no more likely to be found guilty than if they were sitting beside their lawyers in court. However, if the defendant was isolated in a dock – the normal situation in most courts – he was significantly more likely to be considered guilty. It seems that isolation in the dock is worse for defendants than isolation on a screen.[36]

Although the above mock-trial had positive outcomes for defendants, considering what is at stake for defendants in criminal trials, much more research must go into whether or not online courtrooms impact juror's finding of guilt or innocence. Arguably, less consideration may be had when the risk for losing fundamental human rights is lower, for example, in the context of a civil trial or as stated above 'minor traffic' incidents.[37] As such, it is appropriate for Australia to have civil trials and minor criminal trials roll out before serious criminal trials can even be contemplated.

A International Mock-trials

As previously discussed, Australia was not remotely equipped to move criminal trials as well as jury trials online in the wake of the pandemic.[38] The dearth of experimentation in virtual mock-trials in Australia compared to other countries deems it necessary to look at studies conducted internationally, which interestingly do not paint the same 'pretty picture' as described above. A

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30 *International Covenant on Civil and Political Rights* opened for signature 19 December 1996, [1980] ATS 23 (entered into force 23 March 1976) art 14.

31 *Dietrich v The Queen* (1992) 177 CLR 292.

32 Tait et al (n 5).

33 Lederer (n 1).

34 Tait et al (n 5) 17.

35 Ibid.

36 Misha Ketchell, 'Courts are moving to video during coronavirus, but research shows it's hard to get a fair trial remotely' (April 10 2020) *The Conversation* <https://theconversation.com/courts-are-moving-to-video-during-coronavirus-but-research-shows-its-hard-to-get-a-fair-trial-remotely-134386>.

37 Lederer (n 1).

38 Jouvenal (n 6).

mock-trial conducted by the United Kingdom Ministry of Justice found that defendants are more likely to plead guilty and receive longer sentences when appearing virtually as opposed to in person.[39] Studies further find that asylum seekers appearing virtually are less likely to participate in their tribunal hearing leading to a higher chance of being deported.[40] Whether or not this means that defendants too are less likely to engage in virtual hearings is unclear, however, it is a reasonable inference to draw.

B Jury Selection

In an open discussion of the 'pros and cons of virtual courtrooms', lawyers and judges in the United States considered the technologies on jury selection.[41] Virtual courtrooms require a stable internet connection, and the further away one is from the metropolitan area, the worse their internet is likely to be. This raises the question as to whether trials conducted online are going to attract 'one type' of juror when in fact they are meant to be representative of the whole community.[42] It was suggested that perhaps the more technologically advanced individuals were, the more likely they would be chosen to participate as a juror whereby millennials fall into this category.[43] As such, Douglas Barrell advise that millennials tend to be 'more liberal', narrowing the political diversity of jurors. Further, mock-trials conducted in the United Kingdom highlighted the very real possibility that elder 'jurors may find (virtual courtrooms) alienating and stressful beyond what should be reasonably expected of a juror performing their civic duty' where this would 'lead to an unrepresentative sample of jurors taking part.'[44]

There are also concerns that jurors are more likely to get distracted in their own homes, having access to the internet and their own belongings.[45] Conversely, it has been suggested that jurors may in fact be more comfortable and thus more willing to ask questions and engage in the proceedings.[46] Though these issues raised here are extremely plausible, as of yet, they are only speculation. This means that future research may be able to shed light on this issue and if an unrepresentative jury is indeed being selected then research may also be able to determine ways in which this can be overcome. Having a model whereby jury trials are 'mixed' in that the jury is half online and half in person may facilitate a representative selection. Further, having a pre- wired government offices with technology devices may also be used by those without access to stable technology or technology generally.[47] As such, these issues again may be described as 'solvable' rather than inevitable compromises.

C Trial by Media

Further arguments made against the implementation of virtual courtroom echo the same arguments made concerning 'trial by media'. The fundamental reason for restricting jurors from using technology, such as phones, during the trial, and having them all deliberate in the same, private room is to minimise outside influences, (arising from real life and social media), from being prejudicial to their verdict.[48] Even with these restrictions in place, several re-trials have

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39 Matthew Terry, Steve Johnson and Peter Thompson 'Virtual Court Pilot Outcome Evaluation' (*Ministry of Justice Research* No 21/20, December 2010.

40 Ingrid Eagly, 'Adjudication in Immigration' (2015) 109(4) *Northwestern University Law Review* 988.

41 Miles Mediation & Arbitration, 'The Pros & Cons of Virtual Jury Trials' (YouTube, 29 July 2020) < https://www.youtube.com/watch?v=9s64ZfdZSeY>.

42 Ibid.

43 Ibid.

44 Ketchell (n 36).

45 Miles Mediation & Arbitration (n 35).

46 Ibid.

47 Susskind (n 15).

48 Roxanne Burd and Jacqueline Horan, 'Protecting the Right to a Fair Trial in the 21st Century – Has Trial by Jury Been Caught in the World Wide Web?' (2012) 36(1) *Criminal Law Journal* 103.

been ordered and verdicts quashed as a result of jurors conducting research online.[49] This is only likely to be exacerbated with technology being easily accessible for virtual jurors, for it is a computer conducting the trial to begin with.

Although Judge Colvin of the Georgia Court of Appeal on the topic of virtual courtrooms notes 'at some point we have to be willing to move beyond where we are to get people their day in court', [50] it seems impossible to extend this to criminal jury trials when the maximum imprisonment penalties are attached to a defendant, without diminishing the rule of law.

V OPEN JUSTICE

The High Court of Australia has repeatedly upheld the principle that a court-room must, in almost all circumstances, be physically open in order to serve justice.[51] It has been suggested that the idea of open courts originates from Magna Carta, to ensure that royalty and non-royalty are treated equally under the law.[52] Indeed the High Court affirms that 'the rationale of the open court principle is that court proceedings should be subjected to public and professional scrutiny, and courts will not act contrary to the principle save in exceptional circumstances.'[53] It is clear that dire consequences will be had if open justice is not upheld during court proceedings using a virtual courtroom.

Virtual courtrooms clearly do not facilitate a physical public gallery. This is not to say however that public viewings of court proceedings simply cannot be ascertained. A statement issued by the Judiciary of England and Wales suggested the following ways to achieve open justice in light of the new technology:

> (a) one person (whether judge, clerk or official) relaying the audio and (if available) video of the hearing to an open court room; (b) allowing accredited journalists to log in to the remote hearing; and/or (c) live streaming of the hearing over the internet.[54]

Australian academics identify that 'restricting access to accredited journalists is a partial cure at best, preventing other interested observers from attending'.[55] The ramifications of this range from all over the spectrum. Most concerning is a situation whereby the family members of victims and defendants of criminal trials are restricted from being able to support their loved ones. For a victim experiencing immense trauma, and a defendant whose freedom is at risk of being taken, this is extremely worrisome.

As to live-streaming, some warn against the possibility that the increased publicity may discourage jurors' participation.[56] For example, a virtual trial was live-streamed in Ontario and had 150 viewers on YouTube at any one time throughout the entire 7 hours of the proceeding. Although not a virtual courtroom, the 'Queensland Floods Class Action case,[57] which was the first court case to be streamed by the Supreme Court of New South Wales, now has over 10,000

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49 *R v K* (2003) 59 NSWLR 431; *R v Benbrika* [2009] VSC 142.

50 Miles Mediation & Arbitration (n 41)

51 *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378.

52 Suzanne Abram, 'Problems of Contemporaneous Construction in State Constitutional Interpretation' (2000) 38(1) *Brandeis Law Journal* 613.

53 *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378 [44].

54 Judiciary of England and Wales, *Civil Justice in England and Wales: Protocol Regarding Remote Hearings* (20 March 2020).

55 McIntyre, Olijnyk and Pender (n 2)

56 Jennifer Farrell (2014) 'The transformative power of technology: Enhancing open courts?' (2014) 5(1) *Australian and New Zealand Computers & Law Journal* 16.

57 *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater* (No 22) [2019] NSWSC 1657.

views collectively.[58] The more contentious the issue, the numbers would only be expected to rise. Though this may be evidence of an increase in public participation in turn strengthening open justice, leading to more public scrutiny and judicial accountability, it may lead to jurors feeling less comfortable to participate due to so many eyes being placed upon them.[59] Jurors, who have the ability to take one's freedom away should be actively participating as much as possible, without the worry of receiving public backlash. This situation is however most likely to play out during a criminal trial that is highly publicities — which again supports the notion that criminal trials which attach to it maximum penalties cannot be sufficiently carried out by virtual courtrooms.

It has further been submitted the practical application of making every virtual court proceeding available to the public would lead to 'open justice not be(ing) entirely intact' as 'reporters often rely on guidance from court staff and the ability to move between court-rooms to effectively cover justice.'[60] Nevertheless, over-time, mock-trials may discover other ways to properly execute the implementation of trials without exposing open justice to risk. For example, Australian academics have suggested 'for audio of video recordings to be made publicly available online following the conclusion of a hearing', an option worth exploring.[61]

What has become clear, is that if Australia executes virtual courtrooms properly, there is a real possibility to create a system whereby open justice is actually enhanced as a result. As Lord Justice Toulson of the Supreme Court of the United Kingdom once observed the 'practicality of upholding the principle of open justice 'may need reconsideration from time to time to take account of changes in the way society and the courts work.'[62] Indeed, there seems to be no greater time, but now.

VI INFORMALITY

The physical aspects of an in-house courtroom are completely lost when switching to virtual courtrooms. Despite the Supreme Court of New South Wales effort to uphold the view 'virtual courtrooms are still formal courtrooms (where) all usual court etiquette, protocol, procedures and restrictions apply,'[63] this simply is not the case. It is impossible to replicate these same physical elements over a computer screen. His Honour Justice Ball states the following in respect to virtual courtrooms during the covid-19 pandemic:

> A degree of formality remains important. It is one mechanism by which all participants are reminded of the importance of the proceedings both to the community as a whole as a manifestation of the rule of law and to the individual litigants and witnesses, for whom the outcome of the proceedings can have major financial and reputational ramifications.[64]

Despite these concerns, an Australian mock-trial found that this is not to be feared as the virtual courtrooms 'do not make trials seem any less serious or real.'[65] The study concluded that 'jurors accepted the distributed condition trial as even more 'real' than a trial with the standard configuration even if they recognized that seeing the accused in the dock was the normal situation

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58 Supreme Court of New South Wales, 'Queensland Flood Case Action' *Supreme Court of NSW* (Web Page) <https://www.youtube.com/c/SupremeCourtofNSWAustralia/videos>.

59 Farrell (n 56)

60 McIntyre, Olijnyk and Pender (n 2)

61 Ibid.

62 *R (on the application of Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618, 631.

63 Supreme Court of New South Wales, *Fact Sheet: The Virtual Courtroom* (Web Page).

64 *Blackmores Ltd v Jestins Enterprises Pty Ltd* [2020] NSWSC 1177 (Ball J).

65 David tait et al (n 5).

(and) it is likely that in real trials seeing parties on a screen would not be considered unusual.'[66] Therefore, this may actually be an opportunity to 'revamp' and modernise a system that has been described as 'attracting a public image of the judiciary as a closed, self- reproducing entity, embedded in archaic traditions, resistant to change and disconnected from ordinary citizens and contemporary values.'[67]

VII CONCLUSION

In closing, the following quotation rings true to the implementation of virtual courtrooms: 'it is not the strongest that survives, nor the most intelligent, but the one that best adapts to change.'[68] It is no doubt that a virtual courtroom impacts the principles of 'access to justice', 'open justice', and 'the right to a fair trial'. It simply has to impact them, for these principles were first created during a time where virtual courtrooms, let alone technology, were not at all in the foreseeable future.

Australia now places itself in a prime position to watch and learn from other countries, such as the United Kingdom and the United States, as they continue to use virtual courtrooms to survive the pressures arising from COVID-19. Carefully designed, Australia has the opportunity to use the virtual courtroom as a way of modernising the rule of law as we know it, developing it into a principle that resonates much more true to a society of the twenty-first century. Virtual courtrooms cannot only shape, but they can strengthen the rule of law. This essay has outlined the reasons to be in agreeance with Kirby J's views of the impact of virtual courtrooms and the rule of law: 'I trust that the abiding principles will continue to govern our courts and that Australia's judges and lawyers will never lose sight of the hole in the wall.'[69]

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66 Ibid 69.

67 Sharyn Anleu and Kathy Mack 'The Work of the Australian Judiciary: Public and judicial Attitudes'(2010) 20(3) *Journal of Judicial Administration,* 3.

68 William Megginson, 'Lessons from Europe for American Business' (1963) 44(1) *Southwestern Social Science Quarterly* 3, 4.

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