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Lady Justice: The Goddess, the Myth, the Legal Metaphor: An Investigation into the justice behind the visual metaphor and the influence of her female form.

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Lady Justice: The Goddess, the Myth, the Legal Metaphor

An Investigation into the justice behind the visual metaphor and the influence of her female form.

Written by Ella Al-khalil Coyle

*Abstract: The following investigation centres around the legal, visual metaphor Lady Justice. It produces a chronological analysis of her composition and application from her medieval origins as the goddesses Ma'at, Themis, Dike and Justitia, through to her use in 21st century political cartoons. It consults relevant key works of Law and Literature, primarily: Christine de Pizan's *The Book of the City of Ladies*, William Shakespeare's *the Merchant of Venice*, Langston Hughes's *Justice*, and Franz Kafka's *The Trial*, in order to determine both what form of justice the metaphor represents, and what role her gender plays on the metaphor's operation. It finds that, throughout her extensive application and development, Lady Justice represents a core Justinian concept of justice, wherein justice is 'the set and constant purpose which gives each man his due'. On the matter of her gender, it finds that Justice's femininity, and subsequent assumptions surrounding gendered norms and customs, are exploited to help the metaphor communicate its representation of justice. It is found particularly relevant that her gender, as Joanne Conaghan observed, secures that with the proper handing, Justice is controllable. However, the final chapter finds that, in a 21st century context, where 15th century gendered assumptions no longer hold high social value, the embedding of these gendered norms in the communication of Lady Justice's metaphor no longer successfully serves the same rhetorical purpose and instead poses a potential risk to her representation of a Justinian theory of justice. The investigation concludes by suggesting that, regarding the changing polarity of Lady Justice's gender, it is a matter that will likely require a development of the metaphor, either in its composition, as with the addition of the blindfold in the renaissance, or a shifting in its chosen presentation of justice. Ultimately, the topic as a whole is one of great interest and one which should be followed over the coming years.*



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An investigation into the justice behind the visual metaphor and the influence of her female form.

2023 MJur Submission

Durham University Law School

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Copyright

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Introduction

“Whether called ‘Lady Justice’, ‘Justitia’ or simply ‘Justice’, the white female figure in flowing robes, with scales in one hand and sword in the other, casting a stoic gaze, often behind a blindfold, is perhaps the most ubiquitous of legal symbols. Legal spaces are so drenched with this image that its meaning goes without saying.”¹

Lady Justice is everywhere, from courthouses, to legal memorabilia and legalistic television series; legal spaces are drenched with her image, so much so that, according to Wardle, her meaning goes without saying. This investigation interrogates that assumption and seeks to determine Lady Justice's precise meaning, from where it originates, and how it has been maintained, developed, or threatened over the course of its application.

It must first be distinguished how the image of Lady Justice is instantly and uniquely recognisable, especially when compared to the lexicon of Renaissance iconography:

"A woman looking into a mirror does not speak to all of us as Prudence. A woman with a lion skin or a broken column does not call Fortitude to the contemporary mind, nor is a woman carrying a bridle and a pitcher understood in this society as Temperance. Yet show us a hulking woman with scales, blindfold, and sword, and the association is immediate: Justice."²

¹ Ben Wardle, ‘Lady injustice: inequality and legal iconography’ in Jani McCutcheon and Fiona McGaughey *Research Handbook on Law and Literature* (Edward Elgar, 2020) 239.

² Dennis E. Curtis and Judith Resnik, "Images of Justice" (1987) 96 *The Yale Law Journal* 1727, 1730.

Curtis and Resnik suggest, in response to their observation on Justice's particular distinction, that we have been explicitly taught to recognise the image of justice above that of other similar virtues.³ They claim that is, in part, due to her political usefulness.⁴ There is a unique attractiveness for those in power to attach themselves to Justice.⁵ Narratives of justice have a specific potency in societal governance, as John Rawls said, it is "the first virtue of social institutions."⁶ Cathleen Burnett also commented on the political power of the metaphor, calling Lady Justice one of "those symbols associated with the political community likely to be objects of the broadest and most enduring attachments."⁷ It stands to reason that the two could go together, her broadness serving to secure her endurance, and perhaps increase her political value. Whilst the image of justice is instantly recognisable, when attempting to clearly ascertain for which theory of justice the figure stands, there is little certainty. Her scales represent the balance of justice, but that could be legal, moral or universal balance, and they could weigh anything from pure morality, to evidence or legal advocacy.⁸ This ambiguity is true for every attribute and accessory of the metaphor, the figure may be notably recognisable, but that recognisability does not translate to metaphorical clarity.

Furthermore, in their introductory description, Curtis and Resnik highlight four attributes of the figure: she is a woman, with scales, a sword, and blindfold. However, Wardle's description made no mention of a blindfold. A metaphor which at times has unimpaired sight and at other times is blindfolded, is certainly too complex to go 'without saying', and decidedly requires more consideration.

³ Curtis and Resnik (n 2) 1731-1734.

⁴ Ibid.

⁵ Ibid.

⁶ John Rawls, *A Theory of Justice* (OUP 1971) 3.

⁷ Cathleen Burnett, "Justice: Myth and Symbol" (1987) 11 *Legal Stud F* 79; and Roger W. Cobb and Charles D. Elder, "The Political Uses of Symbolism" (1983) 1 *American Politics Quarterly* 305, 79.

⁸ Curtis and Resnik (n 2) 1754-1755.

Therefore, there is significant scope and necessity to interrogate the figure and investigate the precise operation of the metaphor being promoted throughout legal spaces. This thesis is devoted to two separate, though connected, research aims. The first concerns the establishment of Lady Justice as a metaphor and the justice she represents, with the objective to ascertain not only what form of justice she portrays, but if that remains consistent. The second research aim is focused on the 'Lady' element of the metaphor and is devoted to deciphering what role, if any, the femininity of justice plays, and if it has been altered by the increased involvement of women in the legal sphere.

Both questions consider the metaphor over time, therefore the primary structure will be a chronological study of relevant key moments in the metaphor's creation and development. The investigation will begin by exploring Lady Justice's ancient mythology, before moving onto her deployment as a metaphor from the early middle ages to present day. The two questions are explored alongside each other, but as the investigation enters contemporary considerations, where both feminist analysis and female legal agents become more prominent in the legal sphere, the influence of Lady Justice's femininity will be considered more principally.

In historical and mythological terms, Lady Justice is most significantly connected to four goddesses across three major ancient religions: the Egyptian goddess Ma'at, the Greek goddesses Themis and Dike, and the Roman Justitia.⁹ Each of these mythologies was heavily inspired by its predecessor, and the image of Lady Justice was born from the compounding development of Ma'at to Justitia.¹⁰ While she is most often connected directly to the later goddess, the modern figure maintains attributes which require an understanding of each of her predecessors' unique mythologies.

⁹ Jacques de Ville, "Mythology and the Images of Justice" (2011) 23 *Law & Literature* 324, 325.

¹⁰ *Ibid.*

However, it is considered significant that Lady Justice was moulded in the image of Justitia, in its support for and establishment of a Roman approach to her jurisprudence. The *Institutes of Justinian* defines justice as “the set and constant purpose which gives to each man his due.”¹¹ This is presently argued to be a highly salient definition of justice upon which to map the metaphor of Lady Justice. Her blindfold establishes an indiscriminate view of ‘each man’, her scales proclaim what he is due and her immortality and divinity not only give her purpose but secure her constancy. Furthermore, her authority is supported in her mythology through her proximity and connection to the high gods, as well as her indispensability as she is, herself, inherently necessary to the survival of the creator gods.¹²

Chapter one, presents and analyses the chosen goddesses, their mythologies, and how they contributed to the development of Lady Justice. It then argues that image and metaphor is representative of Justinian justice where justice is ‘the set and constant purpose to render to each man his due’. The chapter itself is divided into two parts: one focused on the exploration of Lady Justice's mythology and the justice she represents, and the second focused on mapping the metaphor onto Justinian justice. To aid the latter aim, the definition is broken down into four categories through which the metaphor and definition are analysed: Justice and Permanence, Justice and Obligation, Justice, Authority and Enforceability, and Justice and Equality.

The first chapter establishes the history of Lady Justice and maps that image onto the Justinian concept of justice, but that is the metaphor in isolation. Chapter two begins the chronological examination of Lady Justice’s application to determine if those findings remain true. The metaphor

¹¹ J. B. Moyle (tr) *Institutes of Justinian* (OUP 1911) 4.

¹² Ville (n 9) 324.

undergoes significant development as a result of the reformation, therefore this investigation chooses to begin just before then, in 1405, using Christine de Pizan's novel *The Book of the City of Ladies* to establish a pre-reformation view of the metaphor. This view is found to be acutely connected to ideals of natural law as a result of Lady Justice's divinity and the high level of importance given to Catholic ideology in the establishment of justice. Furthermore, Pizan's radical viewpoint allows for the influence of Lady Justice's gender and the value which her gender provides the metaphor in placing it outside the operation of mortal law and justice, which is governed solely by men. It is also argued that social gendered norms endow the metaphor not only with notions of nobility in its pursuit, but also the notion that "with proper handling, the lady is controllable."¹³ Part two extends through the developments of the European religious reformation, culminating in the first major development; the addition of the blindfold. The addition of the blindfold is considered to be a sign of Lady Justice altering in order to maintain fidelity to relevant interpretations of Justinian justice, as a result of developing Catholic theology and the rise of pressures from growing Northern European Protestantism.

Chapter three is particularly ambitious, as it traces the development and analysis of the metaphor from the 15th through to the 20th century. The chapter consults non-religious arguments as instigators for the addition of Lady Justice's blindfold, Battista Fiera's satirical dialogue on the futility of representing justice *On the Painting of Justice*, a reading of William Shakespeare's *The Merchant of Venice* wherein Shylock is representative of the figure of justice, and finally Langston Hughes's poem *Justice* and Franz Kafka's *The Trial*, which both use Lady Justice as a means through which to critique a specific societal conception and deployment of 'justice'. Throughout the chapter, Lady Justice is found to have maintained her representation of a Justinian view of justice, but it is argued that she is stripped of her divine qualities and made human in the wake of

¹³ Joanne Conaghan, *Law and Gender* (OUP 2013) 244.

establishing a positivist legal order. Furthermore, the influence of her gender, so far as it demarcates her potential to be controlled, is considered to be a centrally vital aspect of the metaphor's success.

The fourth chapter is centred around the second research question, the influence of Lady Justice's gender, and considers its implication on the type of Justice she represents. This chapter is entirely focused on the 21st century presentation of the metaphor, and finds the influence of her gender to be unmanaged and notably complex. As a result of the promotion of gender equality in legal and judicial fields and the promotion of deconstructing patriarchal ideologies, the opportunistic manner in which Lady Justice's gender is being exploited is a less successful tool, and often met with public backlash. It is relying on assumptions which, particularly in a post #MeToo landscape, no longer align with social consciousness. Where that is not the case, the metaphor's gender remains a concern as it prompts a direct equation between Lady Justices and the icon, which does not aid and in some instances impedes, its representation of justice. This investigation argues that the tensions being witnessed between the influence of her gender and her role as an institutional metaphor are akin to the struggles that arose regarding the manipulation of lawyers and decreased support in a natural conception of law and justice in the 15th century. Suggesting perhaps Lady Justice is on the precipice of a similar development as was observed then, in order to adjust to the new role of women in the legal and judicial fields and to accurately represent modern principles of gender equality.

This investigation concludes in response to its research questions by finding that Lady Justice is an articulate representation of Justinian's justice which has been developed over time to maintain fidelity to that jurisprudence and its modern interpretations. Furthermore, throughout the majority of its popularity, the gender of Lady Justice has been utilised in opportunities where it can further specific commentary but was not a predominant attribute of the metaphor. That finding, however, is

seen to change with the increasing prevalence of women as Lady Justices where, with increasing frequency, Lady Justice is used as a symbol for women in law and women's justice. It is yet to be seen if the effects of this final development will threaten the metaphor's credibility as a universal symbol of justice or result in a purposeful development to align with modern jurisprudence and principles of gender equality.

Chapter One: A Goddess of Justice, Exploring Mythology and Justinian's Justice

The aim of this chapter is to establish what the metaphor of Lady Justice is, from where it originated and how it aligns with Justinian justice. To do so, it is necessary to first outline and analyse the mythological routes of the goddess, determine how they formed the modern figure and metaphor and map those findings onto the Justinian theory of justice.



Figure 1: Central Criminal Court statue of Lady Justice, Old Bailey, London.¹⁴

First, the general form of the figure under investigation should be drawn. Lady Justice is, most famously, a statue. In England, she is most prominently represented in the statue atop the Central Criminal Court (CCC) building in London (figure 1). There, a golden Lady Justice is seen standing on a sphere, her arms are stretched out straight holding a sword in one hand and a set of balanced

¹⁴ Chris Dorney, Adobe Stock Image, accessible via https://stock.adobe.com/uk/images/lady-justice-statue-at-the-old-bailey-in-london-uk/373887560?asset_id=373887560.

weighing scales in the other. In this instance, her hair is cut short, and she is wearing a crown with five large spikes and flowing Roman robes. Her sword symbolises her authority, it enables her to enact punishment and represents the force and power of judgement.¹⁵ Her weighing scales are themselves the instrument used to weigh the souls and morality of mortals, metaphorically they are also considered to represent the balance of evidence in relation to a legal claim, or the balance of action to judgment.¹⁶

The final necessary element of Lady Justice's form to consider is her blindfold. The statue above the CCC is not seen wearing one, though the figure often sports a blindfold purported to secure her freedom from temptation and immoral influence.¹⁷ In more modern readings it also is interpreted to protect the equality of all agents before her.¹⁸ The addition of the blindfold and its inconsistent application will be of particular interest as this investigation attempts to deduce both what justice the metaphor purports, and what role her gender plays. It is undoubtedly a central characteristic of the metaphor, though one steeped in commentary and inconsistency.

Therefore, in addition to conversation of the CCC statue, it is necessary to consider definitions beyond those provided by one singular statue; this investigation had chosen to borrow Ripa's summation in order to provide a more complete definition of the figure.

“[Lady Justice] is robed in white, for the judge must be without moral blemish which might impair his judgment and obstruct true justice. She is blindfolded, for nothing but pure reason, not the often misleading evidence of the senses, should be used in making judgments. She is regally dressed, for justice is the noblest and most splendid of concepts.

¹⁵ Ville (n 9) 326; Martin Jay *Refractions of Violence* (Taylor & Francis 2003) 87, 97.

¹⁶ Ibid 338; Ibid 87.

¹⁷Curtis and Resnik (n 2) 1731.

¹⁸ Ibid.

The scale, used to measure quantities of material things, is a metaphor for justice, which sees that each man receives that which is due him, no more and no less. The sword represents the rigour of justice, which does not hesitate to punish.”¹⁹

Regarding Lady Justice’s mythology, there are four goddesses across three ancient religions, Greek, Roman and Egyptian, who will be presented. Though arguments are made for other forebears of Lady Justice across other religious mythologies, the four goddesses highlighted in these three mythologies, Ma’at, Themis, Dike and Justitia, hold the most direct links to the modern figure and present a sufficiently comprehensive and diverse account for the aims of this chapter.²⁰ The sufficiency in their diversity both establishes the universality of Lady Justice and traces the origins of each attribute present in the modern metaphor allowing those which are inalienable to be distinguished from those which have always been subject to alteration.

Part One of this chapter will present and analyse the goddesses within the structures of their mythology, from which key similarities and differences in their attributes and stories will inform an understanding of the composition and comprehension of the modern metaphor of Lady Justice. Each goddess's mythology contains information which is both expands and compounds what is found in the others, leading towards the creation of the final metaphor, most often presented in the image of the Roman Justitia.

Once the image and mythology of Lady Justice is clear, part two of this chapter will consider what justice the metaphor represents. Colloquially, Lady Justice could be estimated to represent an amalgam of the core instinct of what justice means in a lawful society. Though it is unclear as to

¹⁹ Cesare Ripa, *Baroque and Rococo Pictorial Imagery: The 1758-60 Hertel Edition of Ripa’s Iconologia* (Edward A. Maser (ed) Dover Publications Inc 1971).

²⁰ Ville (n 9) 338; Jay (n 15) 87.

what precise definition transpires from those instincts, and if that has remained consistent over time. It was the Roman goddess Justitia upon whose image the legal metaphor of Lady Justice was directly created, therefore part two of this chapter applies the Roman definition upon the metaphor and assess its fitness. Consulting the codification of Roman law, *The Institutes of Justinian*, Justinian's definition of justice is found to be a highly persuasive definition upon which to map Lady Justice as it not only makes rhetorical sense, but aligns with the development of the goddess into a legal metaphor.

Under this definition justice is “the set and constant purpose to give each man his due.”²¹ In order to examine this definition in relation to the metaphor, it will be broken down into four further categories: Justice and Permanence, Justice and Obligation, Justice, Authority and Enforceability, and Justice and Equality. These categories are employed as a way of breaking down the key elements of Justinian’s justice, in order to comprehensively explore Lady Justice's alignment and support further analysis.

Part One: The Goddesses and their Mythologies

1. Ma’at

Ma’at is the ancient Egyptian goddess of justice and the oldest of the four goddesses explored in this investigation. Her mythology establishes many of the fundamental characteristics of the manifestation of justice as a goddess, including Lady Justice's scales, her connection to the high gods, and the conceptual and cosmic importance of the goddess. Ma'at is the daughter of sun god and creator god Ra, she is generally tasked with the maintenance of cosmic balance and leads the Judgement of Orisis, wherein Ma’at weighs the souls of the dead.²² Ma'at is uniquely both a

²¹ Moyle (n 11).

²² Ville (n 9) 337.

goddess and a concept, meaning the term refers to the goddess who is the enforcer of justice, and the principle itself.²³

The concept of Ma'at is literally translated as the phrase "Truth-Justice"²⁴, and relates to order and balance on its largest and smallest scales simultaneously. Ma'at is cosmic, to understand such, Anna Mancini implores the reader to approach understanding Ma'at with a neutral mind, meaning without imposition of modern thought processes, morals or values.²⁵ Ma'at is not a concept based in morality so much as order. The Ancient Egyptian view of life is not as structured, nor fixated on logical systems as the European one; "in the Egyptian world all was unified, social and cosmic order, microcosm and macrocosm."²⁶ Ma'at was the core concept of Ancient Egyptian religion, representative of the unity of all forms of nature and culture:

"Ma'at is both a concept and a goddess. As a concept Ma'at represents truth, justice and order in corporate life, three ethical values which upon closer inspection prove to be based on the cosmic order."²⁷

Ma'at is as enduring a concept as Lady Justice is a statue. In Egyptian mythology she is not merely the representation of truth, justice and cosmic order, but she is the very concept itself, she is *physis* and *nomos*, the divine and the human. Though this is not the same for every goddess of justice, there is an observed pattern wherein Lady Justice contains multitudes, simultaneously representing concepts or realms which are traditionally kept separate, or could appear contradictory. Though unlike the modern metaphor, Ma'at represents her own theory of justice, she is not used as a tool for another system but is a system in and of herself.

²³ Anna Mancini, *Maat Revealed, Philosophy of Justice in Ancient Egypt*, (Buenos Books America 2004) 5-8.

²⁴ Ibid 7.

²⁵ Ibid 7.

²⁶ Ibid 11.

²⁷ Ibid 11-12.

Regarding the physical goddess's mythology, Ma'at, is described as above, and below, all, "the daughter and the life of Ra."²⁸ In various sources Ma'at is described all at once as the daughter, mother, and physical sustenance of Sun god Ra, establishing the metaphor's connection to authority.²⁹ Mancini explains how "the offering of Maat is the most important ritual of exchange between the Pharaoh and the sun."³⁰ The goddess of justice is the very nourishment of the gods, she could not be more vital. Before the high gods and creator gods can exist, they must first receive their life source by grace of justice. Justice is fundamental, she must exist before the Gods at large may function. The specific and vital link between Justice and the God of Gods is another observation that is seen throughout Lady Justice mythologies, wherein she is not just necessary for the operation of society, but personally connected to its highest deity.

Moving onto her accessories, Ma'at introduces the significance of external objects as necessities for Lady Justice to access her power. In the Judgement of Osiris ceremony the hearts of the dead would be weighed against Ma'at, or her hieroglyph, the feather, which is the first iteration of Lady Justice's weighing scales.³¹ The ceremony seeks to identify if each individual present has lived a life with the correct moral balance and Ma'at's hieroglyph symbolises ultimate purity, and the weightlessness a moral heart should carry.³² Feathers are incorporated further as a motif in various depictions of Ma'at, one is often placed in her hair and she is also commonly seen wearing

²⁸ Mancini (n 23) 30.

²⁹ Ibid 5.

³⁰ Ibid 5.

³¹ Ibid 6.

³² Ibid 6.

feathered wings.³³ Her wings represent both the lightness of morality and, by way of its capacity for flight, her proximity to divinity and power.³⁴

In the instances where she is not depicted with feathers, Ma'at holds an ankh, the ancient Egyptian symbol of life, and, on occasion she also holds sceptre in her hand to symbolise the eternity of her rule.³⁵ The sceptre, specifically, is an accessory both Justitia and Lady Justice have also been depicted holding. In, particularly modern, instances where the sceptre is added as an accessory, it commonly replaces the sword, which suggests the metaphor's enforcement strength lies more in her longevity and leadership as opposed to punishment.³⁶

Ma'at establishes many of the core features of modern Lady Justice. She represents the concept of truth-justice as well as the operation of its protection and enforcement on a literal and individual scale. Additionally, she prompts a reading of the goddess as something beyond logical bounds or confides, which is highly salient when considering the situation of the metaphor in modern legal thought. She is heralded as a concept as much as the being tasked with enacting it. Such is how Lady Justice can stand in the physical image of a goddess and represent the concept of justice itself. Furthermore, Ma'at's mythology highlights the significance of her external accessories and their multiple meanings, which will be considered in modern detail throughout the investigation.

2. Themis

³³ Ville (n 9) 336.

³⁴ Ibid 337.

³⁵ Ibid 336.

³⁶ Ibid 349.

The daughter of the gods of sky and earth (Ouranus and Gaia respectively), Themis was one of the Titans.³⁷ The Titans preceded the time of Olympia, they were the children of the Chaos, the first generation of born Gods.³⁸ Her mother, Gaia, is storied to have created the earth, in both the physical and abstract senses; she was the essence of the universe and creator of all primal forces.³⁹ Gaia's connection to the universe extended to her daughter Themis, whose role concerned both the distribution of justice in individual claims, and the maintenance of universal balance and harmony.⁴⁰ This conceptual cosmic capacity of the goddess is the first significant connection between Themis and Ma'at. Themis may not be herself a concept in the way Ma'at is, but the practice of the goddess of justice in its first conception in Greek and Egyptian mythology extends beyond the balance of souls to the balance of the cosmos at large. Such establishes a pattern wherein Justice goddesses hold a fundamental capacity regarding the balance of the justice at large, not just the claims of individuals.

In the Titan world, Themis was born of high rank, her significance secured by birthright. However, after the fall of the Titans, in the time of Olympus, it is her relationship to Zeus which secured her authority.⁴¹ Zeus lead the Titanomichy, the ten-year war in which the Olympians rose up and overruled the Titans, and subsequently became the ruler of Olympus and king of the gods.⁴² Themis became one of his most respected advisors and later his second wife.⁴³ She was considered Zeus's second hand, to the extent that he was frequently unable to act without her and where he was absent

³⁷ Ville (n 9) 343.

³⁸ Ibid 343.

³⁹ Burnett (n 7) 80.

⁴⁰ Ville (n 9) 345.

⁴¹ Ibid 333-345.

⁴² Hugh G. Evelyn-White (tr), *Hesiod, Homeric Hymns, Epic Cycle, Homerica*, (Loeb Classic Library Volume 57, William Heinemann 1914) ll 617-735.

⁴³ Ville (n 9) 344.

she assumed his position as ruler of Olympus.⁴⁴ Themis was specifically instrumental to the creation of the human world, and later instigated the events which triggered the Trojan War. Exemplifying how both Ma'at and Themis prioritise cosmic balance over strict morality.⁴⁵

Themis is also said to have nursed Zeus at birth, or rather lead him to nourishment, which is the second time a goddess of justice has been necessary for the survival of the high god.⁴⁶ This connection extends Lady Justice's importance beyond being a high ranked god, to being essential to the survival of the forces of power. This not only makes the goddess invaluable to the development and preservation of the Gods but establishes a fundamental conceptual link between justice and the foundation of society, compounding what was observed in Ma'at's mythology.⁴⁷

The earlier discussion of the unrestricted nature of the ancient Egyptian view of life, and unification of *physis* and *nomos*, is key to understanding Themis's development from the pre-Olympian era to the Olympian era. Pre-Olympian Themis is often considered to be one of nature, analogous to natural law, *physis*, and she is then said to transform in the Olympian time to a figure of *nomos*, or positive legal order.⁴⁸ This categorisation of Themis it is a natural extension from the want to logically separate and categorise supposedly contradictory qualities, however, Wolf claims that this would be an inaccurate characterisation of the goddess.⁴⁹ In his view, this conclusion and perspective of Themis is the result of imposing modern analysis and misinterpreting the Ancient

⁴⁴ Burnett (n 7) 80; and Ville (n 9) 344.

⁴⁵ Ville (n 9) 343-344.

⁴⁶ Ibid 343-344.

⁴⁷ Ibid 343-344.

⁴⁸ Ibid 344.

⁴⁹ Ibid 344-345.

Greek mind, which did not logically separate *physis* and *nomos* in the modern sense, just as Mancini states the Ancient Egyptian mind did not.⁵⁰

Wolf argues that Themis's change should be considered developmental rather than contrasting, an unfurling as opposed to a polar shift.⁵¹ Her development is prompted by her assumption of the Delphic oracle, which she takes over from her mother. In that position she declares the destiny of gods and mortals alike. Her responsibilities and powers form, but they do not change. She assumes a prophetic power as the oracle, ever-linked with *physis* and the fate of mortals, but also divine and representative of *nomos*.⁵² Themis grows from an earth goddess to an instigator of key Greek events, to eventually holding destiny itself. She is not representative of the dichotomy between *physis* and *nomos*, but a blend of both their powers, which would imply a higher compatibility of ancient Greek and ancient Egyptian logic than previously assumed.

This exploration of Themis has predominately demonstrated how similar the goddess is to Ma'at, and reinforces the key factors for the later metaphor of Lady Justice. It presents compounding evidence to support that Lady Justice is a high ranking and important goddess by her own right, but her importance comes from her connection to power. Irrespective of whether she is the daughter or wife of the high god, she is essential for their nourishment, making her indispensable for the sustenance and continuation of the relevant forces of power. Themis also confirms how Lady Justice goddesses place balance as a higher necessity than arguments based strictly in morality. Finally, Themis suggests the requirement for a theory that allows for the coexistence of *physis* and *nomos* where justice is concerned. Though there has been a lack of engagement with any

⁵⁰ Ville (n 9) 244.

⁵¹ Ibid.

⁵² Ibid.

accessories the figure may or should possess, that is answered for in Greek mythology with Themis's daughter Dike.

3. *Dike*

Dike, the child of Themis and Zeus, is one of the three Hoirai, all of whom hold the task of maintaining order and balance.⁵³ Dike is literally known as the season of justice, with the words 'dike' and 'justice' oftentimes used interchangeably in translations of Greek texts, suggesting a connection to the wider concept of justice, which is somewhat analogous to the premise of Ma'at.⁵⁴ The balance and weighing of individuals emerges with more force as a key trait of justice through an exploration of Dike, who also presides over a judgement of the dead ceremony, reinforcing the significance and establishing an inalienability of the goddesses scales.

Dike is, at first, an observer, but specifically an observer of mortals. Dike's relationship to, and history with the humans, is unlike any other goddess of justice. She carefully watches over the behaviour of man and reports her findings to her father Zeus.⁵⁵ Dike controls the preservation of justice, and is sent by Zeus to earth to teach mankind the rules of morality and just behaviour. Just as Themis was one of Zeus's most trusted advisors, Dike's word, as his daughter, is never questioned, and she will not stop until just balance of the facts, as she has interpreted them, is delivered, and her judgements lead directly to punishment.

“There is Virgin Dike (Justice), the daughter of Zeus, who is honoured and revered among the gods who dwell on Olympus, and whenever anyone hurts her with lying slander, she sits beside her father, Zeus the son of Kronos (Cronus), and tells him of men's wicked

⁵³ Hugh Lloyd-Jones, *Justice of Zeus* (University of California Press 1983) 50; and Ville (n 9) 344.

⁵⁴ Ville (n 9) 346 and 344.

⁵⁵ *Ibid* 346.

heart, until the people pay for the mad folly of their princess who, evilly minded, pervert judgement and give sentence crookedly.”⁵⁶

Dike is the most critiqued goddess of justice, she exhibits the most violence of the goddesses and is portrayed, as she gains more power and influence, to enjoy the retributive aspect of her role. Dike is a justice goddess who is explicitly spoken of as feared, and accused of prejudice or malice. As critiques of the figure are later explored, the above quotation from Homer's Hesiod is incredibly insightful, specifically in regard to the mortals impacted by the gods' behaviour. Ma'at and Themis's roles regard the maintenance of power, but Dike is seen as a force of power in and of herself.

Furthermore, though Ma'at was also the daughter of the high god, their relationship was not the same as Dike and Zeus's. Dike's relationship to her father Zeus influences the distribution of justice, her father is willing to act, as the quote from Hesiod suggests, on the perspective and volition of his daughter alone.

It is in the tragedies that Dike gains her sword and becomes a punisher of criminal wrongs.⁵⁷

Providing one of the origin routes for the sword Justice carries today which symbolises the strength and swiftness of the operation of justice. In this extension of her role Dike uniquely becomes a member of both the Hoirai and Moirai, the Horai were previous introduced as the seasons, but they are also conceptualised as light, they reveals the truth, with the Moirai being the actors of truth, they are the darkness, the secret agents who determine and allot each person's suffering.⁵⁸ The double-sidedness, or duality, of Dike is essential to her character and her capacity to complete such rituals

⁵⁶ Evelyn-White (n 42) ll 248-264.

⁵⁷ Ville (n 9) 346.

⁵⁸ Ibid 346.

and secure order, but, just as with Themis, her dual roles do not compete, they strengthen each other.

Dike may be the only goddesses who exhibits explicit violence or is accused of malice, but she is also the goddess with an observable need to do so, embodied in her rival, Adikia, who is said to represent injustice.⁵⁹ Justice is given a physical strength and violence not seen in other demonstrations but it is to further her objectives, as can be seen in figure 2 where Dike is pictured beating with a hammer.⁶⁰ Dike possesses explicit violence, so that injustice may be physically combatted, and she is the only representation of justice who is under attack, both by her perception of the immorality of humans, and literally by injustice through Adikia.



⁵⁹ Ville (n 9) 347-348.

⁶⁰ Ibid 348.

*Figure 2: Dike beats Adikia with a hammer/mallet.*⁶¹

Finally, in Dike's time as the leader of the underworld she leads a ritual of weighing souls, just as Ma'at does.⁶² However, instead of weighing it against herself, as a perfect just vessel like Ma'at, Dike would assess the value of the departed by weighing their guilt against their merits which would determine their fate in the afterlife.⁶³ The literal use of the scales is a key similarity between Ma'at and Dike and a compounding factor that cements the scales as one of, if not the most, important features of Lady Justice. However, it is Dike's method of weighing that offers the most significant and final consideration Dike provides for the understanding of Lady Justice.

Dike's duality is something that is seen in both Ma'at and her mother Themis, but the specific balancing of light and dark is unique to Dike and is recognised as inspiration for the references within poetry to 'the scale of Dike'.⁶⁴ Her scale holds its literal significance, but it also points to the internal balance of lightness and darkness endemic to the goddess, and to justice. The balancing of guilt and merit, light and dark, physis and nomos, individual and cosmic, harm and necessity, is perhaps the most fundamental characteristic of Lady Justice. Above all else, Lady Justice is the symbol of balance.

4. Justitia

The modern image of Lady Justice is most often accredited to, and oftentimes directly referred to as, Justitia, the Roman goddess of justice.⁶⁵ She is also the goddess with the most limited

⁶¹ Kunsthistorisches Museum, Vienna, Austria Museum Collection, Attic Red Figure, 550-500 B.C., Beazley Archive Number 200050.

⁶² Ville (n 9) 349.

⁶³ Ibid 347.

⁶⁴ Ibid 346.

⁶⁵ Ibid 325.

mythology, primarily because she is considered to be an example of Greek goddesses being directly absorbed into Roman mythology.⁶⁶ However, she has several distinctions from both the Greek and Egyptian justice myths, mainly the fact that she is not born of a high god. Whilst this fact could threaten the previously consolidated standing of Lady Justice as a highly powerful and authoritative goddess, it instead furthers the observation that Lady Justice's power and significance was not provided by her birth rank, but her operational connection to the king of gods.⁶⁷ In Justitia's case, though there is less literature on her relationship with Jupiter, the Roman king of gods, she is often drawn by his side, like Dike, holding her scales as the pair watch over the human world.⁶⁸ In the other mythologies explored, that relationship is far more important to her operation of power than her birth position. Themis, for example, loses her birthright in the Titanomichy. It therefore stands to reason that Dike's lack of high birth rank accentuates the fact that Justice's power is in her operation, as opposed to revoking her significance in any capacity.

Justitia's role also places a large emphasis on her scales, which the above conclusion on Dike declared as the most important aspect of Lady Justice. Justitia's scales are said to be the ones used in the Last Judgement, though the goddess is not always present, compounding the evidence found in Ma'at and Dike's mythologies and the goddesses analogous weighing scales and roles.⁶⁹ Justitia's mythology once again extends what was previously observed, in this instance regarding the significance of Lady Justice's accessories, as when Christ is depicted with a sword and scales he is said to then be the "son of justice".⁷⁰

⁶⁶ Ville (n 9) 349.

⁶⁷ Ibid 348.

⁶⁸ Guy Delmarcel, "Justitia, Examples and Allegories of Justice, and Courts in Flemish Tapestry, 1450-1550" in Mortimer Sellers and James Maxiner, *Ius Gentium: Comparative Perspectives on Law and Justice* vol. 66 (Springer, 2018).

⁶⁹ Ville (n 9) 350.

⁷⁰ Ibid 349.

Justice's accessories themselves hold the meaning or ability they provide for justice. It is the accessories which transform a figure into one of Justice, to such an extent that political cartoons can change the figure of the goddess entirely and it is still recognised as symbolising the goddess of justice if the figure is holding the scales and in a legal setting.⁷¹ Which is a key factor to remember when considering the importance of Lady Justice's gender. This exploration of her various mythological routes has found her accessories to be the key communicative elements of her metaphor, with near to no reference to her gender, making any resulting gendered observations additions of a particular society.

Justitia is the goddess most relevant to development of Lady Justice's visual depiction. It is unclear how often visual depictions of her were invoked by the Romans, as many suspected images of Justitia have been later instead attributed to the goddess Aequitas, who represented fairness.⁷² This is important because it allowed for the greatest opportunity to manipulate the visual presentation of the figure which would not have been possible with the wealth of imagery produced of Themis, Dike and Ma'at. Though it may not have been a conscious consideration of the time, in choosing to utilise the image of Justitia specifically, there was a greater opportunity to craft her into the image those in power wished her to take at the time. This exploration has so far established the origins of the sword/sceptre and the scales, but there has yet to be reference to Justice's blindfold. That is because it is not endemic to her mythology, but was instead a post facto addition, the development of which is a central aim of the second chapter.

⁷¹ In this satirical cartoon, Lady Justice is replaced with a turtle, but on a pedestal with her accessories, it still invokes the metaphor of Lady Justice. FIND FROM LAST DRAFT

⁷² Ville (n 9) 349.

Part Two: The Institutes of Justinian

Lady Justice, in her modern image, is most directly emblematic of, and still referred to as, the Roman goddess Justitia.⁷³ Making Justinian's definition of justice a natural starting place to seek a definition for the core metaphor.

This investigation takes the definition from *The Institutes of Justinian*, the codification of Roman Law, which sees justice defined as 'the set and constant purpose which gives to every man his due' and deconstructs it into four categories: Justice and Permanence, Justice and Obligation, Justice, Authority and Enforceability, and Justice and Equality. This analysis is framed specifically around the wording of the chosen translation however, Justinian's writing has also been translated as "...the constant and perpetual desire to give each one that to which he is entitled," and "...the constant and perpetual wish to render to each one his due."⁷⁴ This definition of justice is not adequate in explaining justice in the practical senses of its administration or how it interacts with injustice, but it is, as Anton-Hermann Chroust calls it, the classical formula for explaining what is meant in discussions of justice.⁷⁵ It means only to synthesise the core concept, which is seen to align with the aims of the metaphor.

The conclusion of this part finds Lady Justice to be a metaphorical representation of Justinian justice, which can be observed by applying knowledge of her history, and modern standing, onto an analytical breakdown of the definition. This section also introduces some of the basic criticisms levied against the definition of justice, such as to whom 'all men' is intended to refer, who decides what each man is due, and how that due is administered. As will be seen in later chapters, these

⁷³ Ville (n 9) 349.

⁷⁴ S. P. Scott, *The Civil Law Vol 7-8 The Enactments of Justinian. The Institutes* (The Central Trust Company 1932); and Thomas Collect Sandars (ed and tr) *The Institutes of Justinian* (Logman's, Green, and Co 1865) 77

⁷⁵ Anton-Hermann Chroust, "The Function of Law and Justice in the Ancient World and the Middle Ages" (1946) 7 *Journal of the History of Ideas* 298, 307-308.

fundamental criticisms follow the metaphor throughout her development, exemplifying, in many ways, her connection to the definition.

1. Justice and Permanence

If justice is 'set and constant' there is a certain permanence and inalienable quality given to the concept, which the figure must reflect. Lady Justice is a goddess. She is an immortal deity, she is constant and she is natural, she is divine. There is a constancy to the figure that exists outside of the lives of mortals which reflects the belief that justice is set, constant and perpetual. The use of the metaphor exemplifies the natural and cosmic quality given to justice in this definition, and as the religious influence upon jurisprudence diminishes, and subsequently the religious attraction to the metaphor of Lady Justice, it does not affect the constancy which she is seen to represent. By such point, the visual metaphor was itself longstanding enough to represent its own permanence. In each of her origins Lady Justice always resembles a deity, the presence of her immortality is not relevant for any authority on the substantive operation of justice but rather the general belief that it is enduring. Which allows her immortal nature, alongside her longstanding popularisation, secure the metaphor's representation of the permanence of justice.

2. Justice and Obligation

Whether a "purpose", "desire" or "will", there is a necessary element of justice which extends beyond it being declared to always exist, but that it is always wanted and needed. Justice is not just a set and constant fact of the universe, but a set and constant desire which must be executed. Therefore, it imposes an obligation, Lady Justice must complete the task of justice.

The necessity of justice is reflected in Lady Justice's connection to the high gods. Though she is more often born a high god herself, even where she is not she is ascended to the right hand side of

the highest god. She must always exist in connection to the high gods whether born into that position or not, which is where the addition of the will for justice's permanence is executed. The conclusion that justice is an uncompromisable and essential element of society extends throughout jurisprudential thought, exemplified in Christine de Pizan's appointment of Justice as the third virtue in *The Book of the City of Ladies* where Justice is the first, and most important, step in creating the city's operational society.⁷⁶

3. Justice, Authority, and Enforceability

In order to render to each man his due, there must be both a determination of what that due is to be, and a method by which it may be enforced. Justice must be enforceable and it must emanate from an authoritative source. James T. Shotwell highlights the key factor of this category, which is a constant issue arising from conceiving of justice in this manner.

““To render to every man his due” may mean as many different things as there are men to render or receive what think to be their due.”⁷⁷

The definition is authoritative without possessing specificity, which runs it, and the social perspective of justice into difficulty. However, this investigation is not necessarily concerned with the value of this definition of justice, but its representation by way of the Lady Justice metaphor. Lady Justice is given specific dispensation to represent an authority which may declare and enforce a man's due, as was most prominently exemplified by Dike. Lady Justice alone decides and enforces justice, though that is because she has divine power to assist her.

Throughout the mythology of her source's, Lady Justice has numerable connections to methods of determining a man's due. Either as the Delphic oracle, the holder of magic scales which weigh the

⁷⁶ Christine de Pizan, *The Book of the City of Ladies*, (Penguin Classics 1999) 7 and 203.

⁷⁷ James T. Shotwell, “Justice, East and West” 5 *Pacific Affairs* (1932) 393, 394.

lives, or hearts, or morality of mortals, or in her position as a divine observer of human conduct. There is deference to the truth and authority of her judgments because she is divine. As a metaphor, her scales are representative of her authority, and her sword is then responsible for representing enforceability in the metaphor. Her scales decide what is due, and her sword hold the capacity to exact that due.

Regarding justice enforcement it is necessary to briefly consider agency, both in regards to Lady Justice and the men to whom justice is delivered. There is a critique considered later in this investigation that justice must be fixed, it must be set and constant, and therefore Lady Justice has been conceived as a statue, her depiction is permanent, it is set in stone. However, the agency of Lady Justice is not as obvious as that synthesis implies. Ma'at, the first mythological source of the metaphor, was depicted with wings, which were necessary to reflect her divinity and unique capacity to possess ultimate truth. The dichotomy of Lady Justice needing agency and movement to obtain justice, and needing to be fixed and in stone to uphold the constancy of justice is a conflict which will be analysed throughout this investigation. However, it must be noted that the popular form of the metaphor prioritises her stillness.

Then there is the matter that in this definition, the men to whom dues are given are not conceived of as active participants of the justice process, but rather figures upon which justice is executed. Their agency as agents of justice and its restriction is a critique of this form of justice, but one which the metaphor of Lady Justice clearly represents, in so much as she stands for a unilateral conceptions of justice as outlined in the above discussion of Lady Justice's relationship to authority and enforceability. A critique of the definition which leads into the final category.

4. Justice and Equality

Justice and equality focuses on the ‘each man’ section of the definition and metaphor. In later renditions of Lady Justice, equality was argued to be secured in the visual metaphor through the introduction of her blindfold. The blindfold’s introduction and its changing connotations are notably complex and will be explored throughout the investigation, but in relation to the modern metaphor, her blindfold is considered to prohibit her from being subject to trickery or deceit and secure freedom from prejudice and the equal treatment of all.

Though concepts of every man at the point of drafting and under modern readings are notably different, Lady Justice’s blindfold begins to bridge this gap. However, where agents subject to justice do not have any involvement in the process there is a limitation to the extent to which equality can ever be protected, but that is a critique of the definition itself, not Lady Justice’s capacity to represent it as a metaphor. As a goddess who presides over all of mankind, and one who is blindfolded to shield her from temptation and deception, her design metaphorically holds that justice should be delivered to all men.

In conclusion, this chapter has explored the mythological routes of Lady Justice from Ma’at to Justitia and found the metaphor to be a clear representation of Justinian’s justice. The metaphor itself is a divine figure uniquely connected to the preservation of authority who, through her blindfold, weighing scales, sword, and rank, reflects the concept that ‘justice is the set and constant purpose which gives to each man his due’. The chapter highlighted the role of balance as the most fundamental role of Lady Justice and argues the metaphor is best understood when the constraints of modern logic can be relinquished.

Chapter Two: The Reformation, Gender and the Blindfold

Introduction

The mythology and development of Lady Justice aligns the legal metaphor with a Justinian concept of justice; she is an immortal figure, bound to her duty, holding a sword and balanced scales, representing the perpetual duty to cosmic balance and the deliverance to each man his due.

Furthermore, Lady Justice is often seen wearing a blindfold, which is interpreted as a commitment to her impartiality and the commitment to justice being decided for all men by the balancing of the scales.

Beginning the chronological study of the figure, this chapter considers sources across the 15th and 16th centuries. It primarily explores two fundamental aspects of Lady Justice, her blindfold and her femininity, within the context of the figure as a religious virtue.

Lady Justice has been connected to religious structures from her earliest traced development; Ma'at, Dike, Themis and Justitia were all deities, and when she was absorbed into modern society it was through a Christian lens.⁷⁸ There is an aspect of the metaphor which is connected to a fixed universal balance of morality and justice, supporting in that sense a natural theory of law, wherein the law is an observable force of the universe, with divine truths. Later chapters will consider what that will come to mean for the figure where natural law is not the leading jurisprudence, but that is irrelevant for the concerns of this chapter. The chapter as a whole determines that in the transformation of the goddess to a socio-political and legal metaphor, gendered assumptions and social norms were relied upon as active elements for the metaphor's operation, it also demonstrates how the metaphor maintains a commitment to Justinian's justice, even throughout significant religious and social development.

⁷⁸ Conaghan (n 13) 242.

Part one analyses Lady Justice in the novel *The Book of the City of Ladies*. It is arguably the earliest source of the metaphor being used as a character in a fictional piece of literature and offers a radical narrative through which to interrogate the traditional view of the metaphor. Published in 1405, Christine de Pizan's novel is also one of the first politically significant pieces published by a woman. It offers an account of Lady Justice which both establishes the significance of religion to the operation of the metaphor, and provides foundational commentary on the role of her femininity.⁷⁹

Part two turns to consider the addition of the blindfold, which is the most significant overt alteration made in the metaphor's history, and is seen to arise as a result of the religious reformation. During the European reformation, the perspective and polarity of sightlessness was changed, therefore, the presentation of Lady Justice had to be altered alongside it to maintain freedom from temptation and fidelity to both Justinian justice and modern theology. The matter of the blindfold's addition, particularly its semi-permeance, holds more complexity than its connection to religion, but that will be explored in chapter three.

Part One: The Book of the City of Ladies

Where justice is "the set and constant purpose to render to each man his due" the questions of authority in not only determining what each man's due is, but holding the power to render it upon him, are vital. In traditional considerations of Lady Justice that authority is, quite simply, God, as was seen in the exploration of justice and authority. Lady Justice is a religious figure, and the basis of her authority directly descend from her placement within religious structures of power. She is

⁷⁹ Edward M. Wheat, "'Now a New kingdom of Femininity Is Begun...'" The Political Theory of Christine de Pizan's *The Book of the City of Ladies*" (1999) 20 *Women & Politics* 23, 23.

ranked amongst the high gods, and is most commonly the daughter or wife of the king of gods, she is a prophetic oracle, underworld leader and second in command of Olympus. It is for these reasons, for her connection to natural law and cosmic balance, that Lady Justice is a particularly apt metaphorical representation of Roman justice. Her scales weigh souls, her prophecies declare truths, and her sword strikes the full force of justice; she holds cosmic knowledge of morality and balance, making her uniquely suited to represent the constant purpose to give to each man his due. She is immortal, she is a deity, and she holds divine access to each man's due.

During the early Middle Ages Lady Justice was brought into the fold of Catholic theology, and her natural and cosmic authority, and connection to divine power, translated into her materialising as one of the four Cardinal Virtues (alongside her sisters: Prudence, Temperance, and Wisdom).⁸⁰ She does not decide, as a result of the presentation of arguments, how the law should be applied, she represents, in her original form, the deliverance of justice and maintenance of legal, moral, and cosmic balance as it exists as a fact of nature. Throughout her development, she has necessarily had to adapt to not only adjust to changing jurisprudence but changing philosophy. Christine de Pizan's *The Book of the City of Ladies* permits a joint pursuit of the first and second research aims as it facilitates and understanding of the significance of religion to the metaphor, and introduces the exploitation and linguistic and communicative usefulness of her gender.

Christine de Pizan's *The Book of the City of Ladies* was published in 1405 and is considered "the first substantial work of political theory by a woman."⁸¹ To contextualise the radical nature of the novel, it was published almost 400 years before Mary Woolstonecraft's *A Vindication of the Right of*

⁸⁰ Curtis and Resnik (n 2) 1730.

⁸¹ Wheat (n 79).

Woman, the next major, and far wider referenced, work of political theory penned by a woman.⁸² Pizan's text follows the protagonist Christine, who is found lamenting on the difficulty of existing as a woman and thus inferior in the eyes of her God. She is then visited by three virtues, Lady Reason, Lady Rectitude, and Lady Justice, who help Christine build and populate the City of Ladies. The enterprise of the entire novel is to demonstrate to Christine the existing goodness, Godliness, and power of women through creating this city and sharing the stories of women from Medea to Mary Magdalene. The virtues also establish a dialogue between Christine to directly answer questions she has and respond to her concerns, with much of that dialogue revolving around God's views on the roles of the sexes. When prefacing the introduction of the city's inhabitants Lady Justice says following:

“We shall thus prove that God loves the female sex by showing that He endowed women, just as he did men, with the strength and fortitude needed to suffer terrible martyrdoms in defence of His holy faith, despite the fact that these women were only tender, young creatures.”⁸³

The very premise of the novel is designed in conjunction with access to God, his wishes and his worship, and it also operates off of the base assumption that women are not typically considered to be endowed with the qualities to which Lady Justice is referring.

In particular interest for the aims of this investigation, there are several conversations with both Lady Justice and Lady Rectitude wherein significant statements are made regarding the operation of legal justice and the involvement of women and Lady Justice in that process. Those comments, as well as the general presentation and operation of the myth and metaphor of Lady Justice throughout

⁸² Wheat (n 79) 24.

⁸³ Pizan (n 76) 203.

the novel, will be analysed in respect to how they further the understanding of what justice she represents and the role her gender plays.

Pizan's depiction of Lady Justice is first observed to be incredibly faithful to the goddesses multitude of mythology, which would support a Justinian conception of justice as argued in chapter one. However, the great and explicit focus on the divine element of her design extends the base meaning of the Justinian definition, reinforcing the divine and natural aspects of the goddess.

Additionally, whilst Pizan's work is radical for its time, there is a distinction observed that whilst the work has strong anti-misogynistic themes, it does not argue for precise gender equality, which is critical in regards to the second research question.⁸⁴ As will be argued, Lady Justice's femininity is not considered to be a purposeful element of her design, but an exploited tool utilised when crafting the meaning and operation of her as a symbol.

The novel opens with Christine's plea to God to understand why she was born a woman:

“With a deep sigh, I called out to God: “Oh, Lord, how can this be? Unless I commit an error of faith I cannot doubt that you, in your infinite wisdom and perfect goodness, could make anything that wasn't good... Yet here stand women, not simply accused, but already judged sentenced and condemned! I just cannot understand this contradiction. If it is true, dear Lord God, that women are guilty of such horrors as so many men seem to say, and as you yourself have said that the testimony of two or more witnesses is conclusive, how can I doubt their word?...Sick at heart, in my lament to God I uttered these and many other foolish words since I thought myself very unfortunate that He had given me a female form.”⁸⁵

⁸⁴ Wheat (n 79) 23-25.

⁸⁵ Pizan (n 76) 7.

Christine wants only to be good and to be able to worship her God, but believes her femininity stands in direct violation of that aim. She uses the evidence she says he has given her, that the testimony of two or more witnesses is conclusive and therefore women are judged, sentenced and condemned, and presents the conundrum in earnest. However, narrating, present day Christine speaks from a place of understanding her original plight as untrue and based in falsehoods. The addition of the narration makes her plea read as ironic. She is demonstrating a key contradiction to the reader; her presented view on the truth of testimony and its conclusions about the value of femininity, and denoting these words as foolish, cannot both be true. It is the natural position of the reader to align with the present day narrator, assuming the more recent opinion is to be considered the more correct one. Pizan has embedded into the first chapter the thought that there is an inherent error specifically with the understanding of testimony, truth, and justice in the society within which Christine lives, which is the first indication of the text's anti-misogynistic themes.⁸⁶

As outlined above, Christine's prayer provokes the three virtues to appear through a beam of light. All the goddesses then take turns to introduce themselves, Lady Justice is the last to do so and says the following:

“Next it was the turn of the third lady to speak: “My dear friend Christine, I am Justice, the most beloved of God's daughters since my being arises directly from His own, I live in heaven, on earth, and in hell: in heaven I exalt the glory of saints and the blessed spirits: on earth I divide up and allot to each person their share of the good or bad that each has done; and in hell I punish the wicked. I am ineluctable and immovable, having neither friend nor enemy who can overcome my will either by pity or by cruelty. My task is purely and simply to judge and repay everyone according to their just desserts. It is I who kept things in order since without me nothing remains stable. I am part of God and God is part of me: in effect,

⁸⁶ Wheat (n 79) 23-25.

we amount to the same thing.⁸⁷ Whoever follows me cannot go wrong, since my way is the true way. First and foremost, I teach all men and women who are of sound judgement and who believe in me to look into and correct themselves, to do as they would be done by, to apportion good without showing favouritism, to speak the truth, to avoid and detest falsehood, and to shun all forms of vice.”⁸⁸

This presentation of Lady Justice is notably faithful to her mythological routes, representing a combination of all of her mythologies. What is also made explicitly clear in this quotation is the connection between Lady Justice’s divinity and her authority. ‘My being arises directly from his own,’ that is to say she is an inherent necessity, existing directly from God, she is a part of him and him a part of her. Justice is inherently connected to the life of God, their existences intertwines, which is not a new addition to the metaphor but a remnant of the mythological narratives of Ma’at and Themis.

Extending the commentary on Lady Justice and religious authority, there is the matter of how this influences the justice she represents, particularly in regards to where the decisions of justice are decided and how they are applied. In a time of direct religious rule, from God through the King, Lady Justice’s religious post was a significant addition to her value and accuracy, it was a direct and literal aspect of the metaphor. She has the power and capacity to give to each man his due because she is, in many ways, a vessel for the will and operation of God. Furthermore, regarding what each man’s due precisely is, this image of Lady Justice supports the jurisprudence that there is a natural legal order, that justice is a fact of nature for which there is a correct balance. In her history Lady Justice’s scales weighed people’s souls, against her own, against pure morality, in order to

⁸⁷ This part of the quotation prompts a reminder of the original goddesses, and the thematic significance of Themis’s position in Olympus, seated at the right hand of Zeus and, at times, assuming his responsibility when he is absent. It equally conjures thoughts of Dike and Ma’at, who are both daughters of the God of Gods, thus they are part of God and God part of them.

⁸⁸ Pizan (n 76) 14.

determine the natural balance of justice.⁸⁹ In this design, Lady Justice's justice exists as a fact of the universe, which is not explicitly present in Justinian's definition, but it is not precluded, for the statement alone does not answer the question of how a man's due is to be decided, or from what authority it is to be enforced.

On the point of Justice's practice of weighing, there is no mention in this first introduction of any accessories held or used by the metaphor, though notably that is not too surprising as they are most important to communicating the metaphor through a visual medium. In this introduction, Lady Justice is given a voice through which she may communicate for what she stands, and in analysing her words they are consistent with the origins of the metaphor's goddesses and pose no threat to the general findings of the first chapter regarding Lady Justice as a representation of Justinian justice. Examining the introduction further, significant support is found for those findings. Justice says she allots "to each person their share of the good or bad that each has done; and in hell punish[es] the wicked", in other words, delivering to each man his due, and she she is "ineluctable and immovable", or set and constant/perpetual.⁹⁰

Furthermore, in regards to her connection to the goddesses of justice's mythology, Pizan's Justice details how she teaches humans moral lessons of truth and purity:

"I teach all men and women...to look into and correct themselves, to do as they would be done by, to apportion good without showing favouritism, to speak the truth, to avoid and detest falsehood, and to shun all forms of vice"⁹¹

⁸⁹ Ville (n 9) 337.

⁹⁰ Pizan (n 76) 14.

⁹¹ Ibid.

This comment immediately invokes thoughts of Dike, who was sent to earth to teach the mortals morality. Dike's unique closeness to Zeus is also explicitly remarked upon, with her supplanting his representatives on Earth.⁹² Furthermore, Dike is known to have lived on earth, heaven and hell.⁹³ All of this indicates that, whilst Pizan's work may have radical commentary and themes, its representation of Lady Justice is deeply accurate to the icon's origins and mythology, and it further supports the claim that the figure stands for a Justinian conception of justice.

The absence of accessories in her opening speech does not mean to say this Lady Justice does not have any, but that they came secondarily to her own testimony of her power, role and meaning. Looking further into the novel, there is not mention of the virtue holding any of Justice's the typical instruments, but she holds a measuring cup. Pizan's addition and choice of the measuring cup not only better emphasises her connection to natural law, but also her relationship to her gender as a result of the subsequent commentary on its adoption into Christine's society:

“This vessel of pure gold that you see me holding in my right hand is like a measuring cup, given to me by God my father, which I use to share out to each person exactly what he or she deserves. It is engraved with the *fleur de lys* of the Holy Trinity and, since It never gives out wrong measure, there are no grounds for anyone to complain about their lot. Mortal men have their own measuring cups which they claim to have derived from mine, but their judgement is never accurate as they always give too much to some and too little to others.”⁹⁴

In Pizan's universe Lady Justice holds a vessel which she likens to a measuring cup. It was given to her by God and supports the notion that this form of justice is a law of the universe and answers the procedural questions necessitated by Justinian's definition. There is an exact measure deserved,

⁹² Lloyd-Jones (n 53) 44, 100 and 107; and Katherine Olstein, “Pandora and Dike in Hesiod's Works and Days” (1980) 48 *Emerita* 295, 306-307.

⁹³ Ville (n 9) 336-348.

⁹⁴ Pizan (n 76) 14-15.

there is no involvement of advocacy, argument or interpretation, there are no grounds on which to complain, what each man is given is what they truly deserve. Where natural law is "... absolute law since it is not the result of any convention, but is discoverable by the exercise of reason," this form of justice is its precise embodiment. This access to divine truth is seen throughout her mythology, Themis as the Delphic Oracle help prophetic knowledge, and Dike and Ma'at both controlled scales which weighed the morality of human's very essences. The deliverance of justice, as metaphorically represented by the goddess, is either precisely correct, as the laws of nature, the universe, and divine power have stipulated, or it is incorrect.

To look once more at Chloros's definition of natural law, he says:

"The law of nature," wrote Grotius, "is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that in consequence such an act is either forbidden or enjoined by the author of nature, God."⁹⁵

This connection to God, as exemplified through the Lady Justice character in TBoTCoL, is essential in the understanding of Lady Justice's connection to natural law specifically as a divine entity.

Furthermore, a belief in natural law as ideal law, and its connection to nature and the divine creator, are found in every critical integer of Lady Justice's development, from the Greeks, to the Romans, to the renaissance.

Here justice is clandestine, it is immutable, however, that is not the reality of its operation within Christine's society. Justice tells Christine that mortal men have created their own cup, claimed to be embossed with her power, that does not yield the same results. Which both reinforces Lady Justice as the embodiment of the ideal, and denotes the reality of such justice in the same note. This

⁹⁵ A. G. Chloros, "What is Natural Law" (1958) 21 The Modern Law Review 609, 609.

clarification does two things, most prominently it demonstrates to Christine that one of the truths which she clung to in her denotation of women's value in her opening lament (the testimony of two or more men being true) is categorically false, which narratively is incredibly significant. However, for the needs of this investigation, it also tells the reader exactly what type of law and justice and what context the work is place, and, as will be seen when discussions of the reformation and renaissance begin, the value of a justice which cannot be dispensed by humans is necessarily in need of questioning.

When applying that analysis to consideration of the metaphor itself, the reader feels as though mortal men have taken Lady Justice's name and power in vain to craft legitimacy for their own systems of justice. In a novel about women, their inherent value, goodness and Godliness and their societal standing, the term 'mortal men' speaks specifically of men, in isolation. When Lady Justice is speaking to Christine those men are referred to as a 'they' clearly placing a separation between the group about whom she is speaking and Christine who, in turn, represents the plight of women. This is not a comment on all of man kind but specifically mortal men, who have misapprehended the meaning and history of a goddess and virtue.

The contemporary figure of Lady Justice was specifically crafted by men. This is not to say that fact alone highlights her gender as a grand misogynistic enterprise, but rather that the influence of gender is unlikely to be innocuous. There was no influence of female thought in her design, and furthermore she was designed for an industry from which women were notably absent. The crafting of an institutional metaphor of justice has little to no interaction with women and yet, as Joanne Conaghan highlights in the concluding chapter of her book *Law and Gender*, the question of why she is a woman is rarely given any thought at all, even in works around justice in female form.⁹⁶

⁹⁶ Conaghan (n 13) 242.

However, it seems as though the answer to why she is a female goddess relates more to her history. Ultimately, she is the adaptation of an ancient goddess, and whilst many mythological guardians of justice were female, like Themis, Dike, Ma'at and Justitia, many were also male, like the Norse God Forseti, the Mesopotamian God Mīšaru, and the Iranian God Mithra.⁹⁷ Lady Justice's form was largely predicted by the societies through which she emanated and their influence in the, particularly European, legal world. In the context of her mythology, Lady Justice's gender was as consequential as Apollo's or Artemis's, which is to say there is no convincing argument that it was led by any specific motivation. However, regarding the crafting of the goddess into a metaphor which has been incredibly successful and distinctly recognisable, the same cannot be concluded so quickly. The question is not why she is depicted as a woman, but why she has been so successful, and why her full figure was adopted for the metaphor's design as opposed to taking her staff, or scales or a sword which would be more akin to the medical industry's use of the Rod of Asclepius (Asclepius, Greek god of medicine) or the Caduceus (the staff of Hermes, Greek messenger God). In those instances it was the tools, and not the image of the Gods, which were most rhetorically valuable. However, the same is not true for Lady Justice.

Statues of Lady Justice physically placed the female form into a space in which women were not allowed to hold power. Women were outside the operation of the law, yet their likeness was frozen in paintings and stone and heralded above it as a symbol and metaphor.⁹⁸ Lady Justice, as she tells Christine, has been explicitly appropriated by the men who rule and control society. They claim

⁹⁷ Des Butler, "Entry into Valhalla: Contextualising the Learning of Legal Ethics Through the Use of Second Life Machinima" (2012) 20 *Legal Education Review* 85, 91; Jennifer Finn *Much Ado about Marduk* (Walter de Gruyter Inc 2017) 25; Mahshid Mikaeili, "Mirathism Rock Temple Architecture in Iran" (2022) 12 *New Era Journal* 8, 10.

⁹⁸ Curtis and Resnik (n 2) 1765.

their methods derived from Lady Justice, they herald her as an icon, but it is not true, there is no substance to it they simply use the comparison to garner their validity, but their measures are off.

Women's complete absence from legal spaces is incredibly significant in the communication of the figures metaphor, she is inherently an other and salient assumptions exist for her which would not exist for any other legal figure, real or fictional. Conaghan offers the view that the climate in the Middle Ages made Lady Justice's femininity a practically useful and tangible element of the metaphor to exploit.

“[T]he sheer historical out-of-placeness of women in the world of law is almost certainly a factor in accounting of the persistent portrayal of justice as female. Her gender sets Lady Justice apart from law, locating justice beyond the gritty reality of day-to-day legal practice.”⁹⁹

Interrogating Conaghan's remarks, it feels necessary to stipulate that Lady Justice is not a woman, she is a goddess, and the necessary separation between the figure and the humans over whom she presides should be achievable by her status as a goddess alone. Her existence as a goddess is fundamental to her authority and capacity to represent a metaphor of justice, as she needs the request power that accompanies her divinity. However, as a metaphor she is adopted into a human realm, and when cast in stone her figure becomes that more distinct. Her status as a goddess feels less influential where she is the only female figure in a space, highlighting her gender by mere contrast, where she is first and foremost a visual figure. Curtis and Resnik summarise this by clearly stating, “[s]ince judges were rarely if ever women, the use of a female figure suggests a justice removed from actuality.”¹⁰⁰ In the narratives of her mythology there is not a constant focus or reminder of her gender, because the narratives revolve around her actions and powers, but where

⁹⁹ Conaghan (n 13) 243.

¹⁰⁰ Curtis and Resnik (n 2) 1765.

she is solely presented visually, her gender is constantly identifiable, and gendered assumptions are invoked as they are relevant.

Conaghan's analysis and referenced examples of gender norms being exploited for legal metaphors makes the same influence on Lady Justice appear unavoidable:

“Justice is the exotic Other of law, a muse and source of inspiration to the legal mind.

Justice fires the ambitions and stokes the desires of the men of law, setting them off on a personal quest in her pursuit. When Sir Frederick Pollock depicted the common law as a medieval lady, protected and pursued by the knights of law, he was surely drawing upon chivalrous ideals to invest in his audiences a sense of the nobility of law as a path to pursue. Similarly when Benjamin Cardozo advised a class of graduates that ‘Our Lady Common Law has no lack of wooers’, his purpose was to instil in a new generation of gallant suitors the importance of approaching the law with an appropriate level of fidelity, respect and restraint. In both depictions the common law emerges as mysteriously and alluringly feminine, At the same time, we are being told that with proper handling, the lady is controllable.”¹⁰¹

The use of a woman as a vehicle through which to represent a legal concept, in this case the common law, invokes similar considerations of Lady Justice. The decision to employ a woman as the metaphorical symbol of the common law, and the like popularisation of a justice metaphor centred around the female form, are not coincidental. Pollock and Cardozo purposefully exploit social norms and gender roles, and they use the positioning of women in society to make a convenient metaphor through which to entice the pursuit of law. Lady Justice does become a muse, not solely for her mythological heritage, but for her composition, her femininity.

¹⁰¹ Conaghan (n 13) 243-244.

There is an opportunistic element to the metaphor which perhaps also relates to its popularity and success. Justice is heralded in a frozen, statted form, above judicial proceedings, it is a presentation of justice which is to be treated like a woman, she may be wooed and courted, pursuing her is noble and fruitful, and ultimately she may be controlled.¹⁰² This phenomenon is within what Pizan describes. None of these considerations or inferences are found in Lady Justice's mythology, none of this analysis is a consequence of her history or narratives, but rather of the medieval societal adoption of the goddess. Wherein a measuring cup of justice was taken from a female figure by a group of men, and her femininity was exploited as a metaphorical tool, in a society where women are not only excluded from the operation of justice, as Christine cries to God, but painted as guilty of horrors by men. Returning to Conaghan's words, "[s]uch gendered invocations help to flush out the masculine self-image which often lurks beneath the gender neutrality of legal form."¹⁰³

Outside of Lady Justice, the novel directly comments on women's isolation from the legal field and the influence of gendered social roles to that end in the section titled "Christine asks Reason why women aren't allowed in courts of law, and Reason's reply." It is written as follows;

"Most honourable and worthy Lady, your excellent arguments have satisfied my curiosity in so many areas. Yet, if you don't mind, I'd like you to explain to me why women are allowed neither to present a case at a trial, nor bear witness, nor pass sentence since some men have claimed that it is all because of some woman or other who behaved badly in a court of law.'

'My dear daughter, that whole ridiculous story is a malicious fabrication. However, if you wanted to know the causes and reasons behind everything, you would never get to the end of it. Even Aristotle, though he explained many things in his *Problemata* and *Categories*,

¹⁰² Conaghan (n 13) 244.

¹⁰³ *Ibid.*

was not equal to the task. But, dear Christine, to come back to your question, you might as well as why God didn't command men to perform women's tasks and women those of men...God gave men strong powerful bodies to stride about and to speak boldly, which explains why it is men who learn the law and maintain the rule of justice...men must enforce it though the use of arm and physical strength, which women clearly could not to...However, if there are those who maintain that women aren't *intelligent* enough to learn the law, I would contradict them by citing numerous examples of women of both past and present who were great philosophers and who excelled in many disciplines which are more difficult than simple learning the laws and statutes of men."¹⁰⁴

Withstanding the text's defence of female capacity, the removal of women from the legal sphere is so engrained it is not even presented as something for which advocacy is necessary. Even in an anti-misogynistic novel, the notion of male and female domains are so deeply entrenched that, despite the progressive rationale, the conclusion remains that court is not the place for women.

According to Reason, the only impediment to women's presence in the court of law, as council, judge or jury is their physical strength. The open assertion that women have beyond the necessary mental capacity is still a bold opinion for Pizan to write in 1405, which paints an even more dramatic understanding of the influence Lady Justice's gender would have had in legal spheres. That Lady Justice was being popularised as a legal figure throughout the 15th century, and yet women were not, under society, perceived to be intelligent, capable or, even in their most radical defence, strong enough to be present in court proceedings. Demonstrating the significance of Lady Justice's gender in court settings.

¹⁰⁴ Pizan (n 76) 29-30.

The Book of the City of Ladies provides an invaluable window into understanding the metaphor of Lady Justice in a legal society. Pizan's radical viewpoint openly interrogates more harmful applications of the metaphor, and reinforces the overwhelming strength of certain gendered norms and inequalities. Furthermore, it solidifies the metaphor's religious connection with equal strength, highlighting Lady Justice's close connection to God as fundamental to her power, influence, authority and access to the correct rulings of justice.

In regards to the form of that justice, Pizan's work reinforces the findings that Lady Justice is an emblem of justice wherein justice is the set and constant purpose to deliver to each man his due, but it also extends the discourse around the delineation of each man's precise due. Justice possesses access to certain knowledge, and presents a unilateral declaration ones due, obtained through instruments connected to divine truth and natural law. Regarding the second research question, her gender is seen to be astutely necessary in order to conveying the manner and method by which justice is understood as it is applied and enforced within societal confines.

Part Two: Religious Reformation and The Blindfold

Part one has used a relevant novel to thoroughly analyse the composition of the metaphor of Lady Justice employed in the Middle Ages. Her form and figure have been consolidated as a representation of Justinian justice, and her gender an exploited addition to further the specific agenda of utilising the goddess as a metaphor. However, when analysing Lady Justice in the Middle Ages it is impossible not to discuss her blindfold. The first records of Lady Justice being blindfolded were used in a negative context, largely as a result of the relevant Catholic theology on the virtues of sight. However, as polarity of such theology was reversed during the reformation, and with the rising pressures of Northern European Protestantism, the meaning of instances where Lady

Justice was blindfolded were almost entirely reversed, and it became considered a necessary addition for the metaphor to represent and protect the new reading of justice.¹⁰⁵

In a modern context the blindfold provokes thoughts of the protection of equality and the freedom from manipulation, even where that meaning is subverted to critique the lack of equality in the dispensation of justice, the subversion only stands because the original assumption exists. The important point to highlight is that the blindfold, is at its core, is assumed to be an accessory which adds positive meaning to the metaphor of the protection of justice. However, that was not the case in the first instances of the figure's sight being obstructed.

There was a distinct absence of references to blindfolds in any of Lady Justice's mythology, it is an addition made after she became a sociopolitical-legal metaphor and not one connected to her religious origin. Moreover, as aforementioned, the first instances of Lady Justice being blindfolded the blindfold were used to place negative connotations on the metaphor, and obstruct its operation.¹⁰⁶ Therefore, it is necessary to first establish and analyse how blindness on the figure of justice was originally perceived, before then analysing the motivations for its alteration and the consequences that posed for Lady Justice. Alongside this will be brief considerations of the political, religious and cultural landscape at large throughout the reformation and the renaissance, which saw the creation of many significant images of Lady Justice and a heightened engagement with her form. Though the blindfold is subject to a unique line of criticism, particularly throughout the 20th century, its core purpose is that of securing freedom from corruption and impartiality.

¹⁰⁵ Curtis and Resnik (n 2) 1746.

¹⁰⁶ Jay (n 15) 87-88.

Lady Justice's blindfold has been dubbed "[t]he most enigmatic of the attributes of Justice,"¹⁰⁷ and it is her only attribute not connected to any of her forbearers. Commenting on *Justitia*, Martin Jay writes:

"In its earliest Roman incarnations, preserved on the coins of Tiberius' reign, the woman with the sword in one hand, representing the power of the state, and the scales in the other, derived from the weighing of souls in the Egyptian Book of the Dead, was depicted as clear-sightedly considering the merits of the cases before her."¹⁰⁸

Justitia's sight was a necessary part of her design and actively included in her judgement process.¹⁰⁹ Furthermore, no examples of any of the goddesses' eyes being covered has been found by this investigation, which makes it unsurprising that the original connotations of a blindfolded Lady Justice was a form of justice who was being controlled and manipulated. Rendering the goddess unable to perform her role in the manner and form she was designed.

Traditionally, Catholic theology possessed a distinctly negative view towards sightlessness, as is perfectly exemplified through one of the statues carved onto the gates of the 1439 Strasbourg Cathedral.¹¹⁰ Among the figures, there is one of a woman who is claimed to metaphorically represent synagogues; she wears a blindfold and has a broken lance on her arm.¹¹¹ The figure is designed to be the antithesis to Catholic virtue, a warning of the fate of those outside the Catholic fold. The blindfold specifically demonstrates her resistance "to the illumination of divine light."¹¹² The figure presents the argument that separation from sight is separation from Catholic divinity,

¹⁰⁷ Jay (n 15) 87.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid* 87-88.

¹¹¹ *Ibid* 87-88.

¹¹² *Ibid* 88.

which is why where Lady Justice was first blindfolded, this was done to signify a severance from the metaphor's usual connotations.

Blindfolds being added to virtuous figures was not unique to Lady Justice, but rather part of a trend wherein various virtuous icons and symbols would be depicted wearing a blindfold, or being blindfolded, as a means to demonstrate their manipulation and undermine their virtuousness and divinity. Throughout the end of the 15th century, several figures had their vision impaired in the trend of this commentary.¹¹³ When the child Cupid was depicted as blind, for example, the blindness did not signify greater access to an impartial understanding of love's truth, as modern interpretations of Lady Justice's blindfold would suggest, but rather, as Erwin Panofsky claims, it was used to place Cupid on the wrong side of morality.¹¹⁴ That language is significant in understanding how severe original depictions of a blindfolded Justice were intended to be received. It presents an impossibility for a blindfolded Justice to be a virtuous one, she is on the wrong side of morality, justice is categorically unreachable.

However, even at the time there was some pushback to the persuasiveness of this argument, demonstrating just how complex the blindfold has always been. According to Keele's analysis, the first image of a blindfolded Lady Justice arguably displays that justice can preserve through all, even where she is blindfolded in an attempt to manipulate her, that is ultimately unsuccessful in thwarting her divine power.¹¹⁵

¹¹³ Jay (n 15) 87.

¹¹⁴ Ibid 87-88.

¹¹⁵ Ibid 87-88.



Figure 3: “Ship of Fools” by Albrecht Durer.¹¹⁶

The image in question is a wood engraving by Albrecht Durer which was one of several illustrations he did for Sebastian Brant’s collection of satirical poems *Ship of Fools*.¹¹⁷ In the image, figure 3, Justice’s eyes are being blindfolded by a jester behind her. There could be an avenue to consider that, following Keele’s argument, because Justice’s scales remain perpetually in-balance, even withstanding the covering of her eyes, that the image represents Justice’s capacity to withstand the attacks and manipulation of fools. However, when considering the image in conjunction with Brant’s poem, the argument that this is ultimately a display of Justice’s strength is rendered

¹¹⁶ “The Fool Ties the Eyes of Justice,” from Sebastian Brant, *La nef des folz du monde* (Lyon 1497) Bibliothèque Nationale, Paris.

¹¹⁷ Jay (n 15) 88.

unpersuasive. The fool is successfully manipulating justice, and his control is the focus of the image.

Brant's poems were written on the precipice of the reformation and within them he used satire to present his critiques of the operation of law and religion and the foolishness of society.¹¹⁸ The poem presents a view of lawyers as corrupt and manipulative, especially in the pursuit of justice, "lawyers are lords; but justice is rent and tore."¹¹⁹ That is what is seen in Durer's image, a fool is blindfolding Justice, displaying how the many fools Brant writes about, in this case the lawyers and judges, have blindfolded and manipulated justice for their wants and needs. In the image the jester had brought Lady Justice into the fold of foolishness. Desmond Manderson says on the image:

"A fool is applying the blindfold so that lawyers can play fast and loose with the truth. The urgent demand, which *Ship of Fools* articulated, to cleanse Europe's Augean Stables, ultimately unleashed a Christian revolution and the consolidation of secular, national, and legal power."¹²⁰

The meaning of the blindfold here is the direct antithesis of what it is used to represent on the figure in modern depiction of the metaphor. It is clearly a representation of Lady Justice's manipulation, and not her assurance of freedom from such actions. Martin Jay describes the addition of the blindfold covering the goddess's eyes as happening suddenly, and its meaning was altered just as quickly.¹²¹

¹¹⁸ Desmond Manderson, "Blind Justice" (2020) 66 McGill Law Journal 5, 5-6.

¹¹⁹ Sebastian Brant, *The Ship of Fools* (Alexander Barclay (tr), William Patterson 2006).

¹²⁰ Manderson (n 118) 5-6.

¹²¹ Jay (n 15) 88.

The motif of blindness was actively and purposefully changed during the Renaissance in greater faithfulness to the second Commandment.¹²² Under this view images should be resisted as they were considered to be vehicles of seduction and temptation; “lust for the eyes” as Augustine described.¹²³ Blindfolded, Lady Justice could avoid this seduction and “achieve the necessary dispassionate distance to render verdicts impartially.”¹²⁴

Subsequently, the cause for the addition is itself subject to specific debate. In the simplest terms, it was beneficial for several practical reasons, namely that it was an alteration to the metaphor which made it more appropriate as a symbol of Justinian justice as it was read in conjunction with new political thought and theology. Justice is the set and constant purpose to render to each man his due, and at the time, there was significant societal discourse around judicial manipulation, concerns evidenced in Brant’s *Ship of Fools*, Brant, himself, also being a lawyer.¹²⁵ It was no longer sufficient to claim one would render a man his due through the direct will of God.

To a degree, this alteration distances Lady Justice from her divine power, but it also from her Catholic identity. With the increasing popularisation of Protestantism and calls for a secularised legal system, occurring across Northern Europe.¹²⁶ There was a clear societal necessity for the practice of justice to be better protected, and for there to be more assurances and checks in the process of delivering a man his due.

¹²² *The Holy Bible, Exodus* (New International Version 1984) 20:4-6.

¹²³ Jay (n 15) 3.

¹²⁴ *Ibid* 88.

¹²⁵ Manderson (n 118) 5-6.

¹²⁶ Jay (n 15) 90-91.

Lastly, though not considered particularly persuasive by this investigation, it is necessary for the aims of the second research question regarding the influence of gender on the metaphor to briefly engage with Martin Jay's discussion on Lady Justice's gender potentially influencing the need for her blindfold. He argues that it could be considered to serve as a necessary counter to the "female gaze".¹²⁷ Jay's argument is based on the belief that women display different patterns and methods of moral reasoning to men. He says that male judgment is "abstractly universalist, decontextualised, and formalistic" whereas "its female counterpart... is more frequently sensitive to individual detail, narrative uniqueness, and specific contexts."¹²⁸ Therefore, the blindfold neutralises the potential issue. The blindfold does not take away her sight, but rather thwarts its 'female influence' so that it may more accurately serve "a legalistic justice based on the reductive equivalence of the exchange of principles requires."¹²⁹

The argument that women are inherently more emotional and less logical or rational than men, and the suggestion that their gender would impede them from ever being able to reach adequate legal judgement, is certainly outdated and can safely be considered baseless in modern academic thought. However, irrespective of their accuracy, Jay's commentary reinforces the strength of the influence gendered assumptions and norms have on the metaphor in her relevant societal context. In every instance observed thus far, she has been overtly linked to thoughts and standings of women within the relevant society. Gendered assumptions are found to be inextricable from the design of the contemporary legal metaphor that is Lady Justice.

¹²⁷ Jay (n 15) 95-96.

¹²⁸ Ibid 95.

¹²⁹ Ibid 96.

Chapter Three: From the Renaissance to the 20th Century

Introduction

Lady Justice has been seen to represent a Justinian form of justice, and has further demonstrated commitment to that representation amongst changing social cognition with the addition of the blindfold. However, there has yet to be analysis of Lady Justice in a modern or non-religious context, and it is still to be seen if and how the metaphor stands in those environments in regards to the efficacy of the metaphor and the justice represented. That is the task of this chapter, which, in pursuit of the first research question, explores both a non-religious interpretation of the addition of the blindfold, and takes the analysis of Lady Justice from the 15th century up to the 20th, where she can be seen in modern western societies, operating alongside a secular system of laws.

There is significant commentary throughout this chapter on what justice 'ought' to be and how she 'ought' to be presented. The addition of the blindfold and the decentralisation of religion opened up the avenue through which to philosophise and deconstruct the presentation of the metaphor. More than just the physical figure of a goddess, she had at this point become an overtly crafted legal and socio-political metaphor. The diminution of strictly religious and scripture based validation of lady justice increases the analytical perspectives and conclusion which arise from the figure. However, at its core, the metaphor withstands this all. As Keele said, even where individuals try to manipulate Justice, nevertheless she persists. This chapter ultimately demonstrates that, even withstanding critiques, the content of the concerns do not amount to Lady Justice being a poor representation of Justinian justice, but rather concerns with the insufficiencies of Justinian definition itself, and fundamentally, she still persists.

The first section in this chapter continues analysing the addition of Lady Justice's blindfold, but considers it outside of the religious purview. Whilst it was a religiously motivated addition, it is also argued that there are reasons outside of religious sentiment which prompted the change. This also promotes discussions of its semi-permanence and lack of consistent application as a tool meant to allow the metaphor to represent differing nuances and elements of justice, illustrated through Joos Damhouder's images on the cover of the *Praxis Rerum Criminalium*.

The chapter then considers key literary sources of Lady Justice from the Middle Ages to the 20th Century. It first examines Battista Fiera's 1490's fictional dialogue *On the Painting of Justice* which has direct parallels, and is therefore the perfect bridge, to the 20th century sources, Langston Hughes's poem *Lady Justice* and Franz Kafka's novel *The Trial*. It continues to consider each of the remaining sources in turn, in chronological order. Battista Fiera's dialogue remarks on the futility of creating a perfect metaphor of justice. There is always a way in which it will fail, or be inadequate. Not only is justice a complicated ideal, but in a society where there is not a faultless deployment of justice, there cannot be a perfect metaphor of it, for the two are tied, the ideal and its reality. This latter conclusion also holds considerable interest in the question of Lady Justice's femininity, but it pertains more to the themes to be discussed in chapter four, where the idea will be reconsidered.

The second section follows along in chronology and analysis William Shakespeare's *The Merchant of Venice*, from an unorthodox consideration of the classic trial scene, the argument that Shylock represents Lady Justice and, Portia represents Fortuna, is explored. Furthermore the argument is extended to establish a new manner by which to understand Lady Justice's usefulness as a metaphor, and that fundamentally her success hinges on her placement within the folds of society.

Langston Hugh's poem *Justice* and its critique of the injustice of the Scottborough Boys Trial by way of Lady Justice's blindfold is briefly analysed. The poem is a succinct synthesis of the fear that her blindfold does not offer impartiality nor equality but rather permits ignorance, deceit, and conceals the wrong doings of justice. However, this is not only a concern that has been with the figure since long before civil rights concerns rose to the forefront of political, legal and societal consideration, but is also a concern with the definition of Justinian justice and its relationship to authority, especially outside of the realm of natural law. Ultimately this source clarifies that whilst Lady Justice represents an ideal of justice, she is also representative of its flaws, and representative of the decisions made within any society wherein she is employed as a legal and socio-political metaphor.

As the investigation extends further into the 20th century, considerations around the influence of Lady Justice's femininity returns. Kafka is critiquing Justice, and alters the visual metaphor in a way he believes communicates his concerns. However, Kafka relies on the same societal gender norms and stereotypes that Sir Frederick Pollock and Benjamin Cardozo invoked to do so. When seen through a late 20th century lens, the previously useful gendered assumptions come to represent outdated views on gender and no longer hold the same strength.

The Blindfold Outside of Religion

Chapter two discussed how the blindfold was added to Lady Justice in the wake of theological developments on the values of imagery, and analysed how it was seen as a necessity to protect justice from corruption. This section presents the argument that the jurisprudence surrounding the blindfold's addition behinds to shattering the image of the metaphor as a perfect divine goddess who is free from the follies of humanity. Furthermore, there is remit to argue this attribute does not exist solely as a result of religious and theological necessity. Instead, as this section presents, there are

secular political motivations which not only influenced the addition of the blindfold, but can be seen as equally responsible for its popularity.

This investigation has already begun to uncover how complex and varied the blindfold has been. It is a later addition to the figure and is inherently enrobed in political and religious ramifications, particularly as it has no connection to her mythology. In that vein, this section argues that the blindfold's addition could be seen to mark an initial departure from the metaphor's attachment to the goddesses status as a deity, the blindfold effectively asserting that the metaphor is fallible and thus, in a sense, human. There is a particular lack of logic to a goddess being blindfolded, as Curtis and Resnik highlight:

“Unlike ordinary individuals, Justice must not be led astray by information that could undermine her judgements.”¹³⁰

There is an immediate recognition that the rules for Justice are, or should be, unlike those for ordinary humans. Justice should never have been in need of protection from vices and manipulation which could undermine ordinary individuals because she is not ordinary, she is not human, she is a goddess. When considering her mythology in more depth, it would appear the blindfold's addition undermines that aspect of the metaphor.

If Lady Justice was still conceived in a divine image, where she is God's favourite child, bestowed with unique access to divine knowledge of natural legal justice, a blindfold to protect her from corruption would boarder on inappropriate. The reversed polarity of sightedness in theological thought did not itself sustain a convincing argument that Justice herself would require a blindfold. The motivation was societal and marked a departure from any previous faithfulness to the icon's ancient mythology.

¹³⁰ Curtis and Resnik (n 2) 1755.

Sightlessness was already perceived as virtuous in Ancient Egypt and Greece, but the goddesses did not need to be blindfolded to operate as a deity. In Diocore of Sicily's and Plutarch's accounts of Ancient Egypt, they remark on the practice of judges being blind or sightless to ensure their perception as neutral agents, similarly to the contemporary.¹³¹ It was a symbol of impartiality, just as it was for Lady Justice when introduced in the sixteenth century.¹³² However, withstanding this concept as a popular societal belief, Ma'at was never depicted wearing a blindfold. In Ancient Greece sightlessness was similarly considered sign of neutrality, and blindfolds represented connection to the inner eye, which was said to help create a more accurate view into the future.¹³³ Nevertheless, no blindfold was ever added to depictions of Themis or Dike. In fact, it would have been considered inappropriate and nonsensical, particularly for Themis. The goddess possessed the power of prophecy, therefore she had no need to connect to her inner eye an attempt to create an accurate view of the future for she already had one by way of her divinity.¹³⁴

Lady Justice does not need the tools and protections mortals, and even several Gods do, she is the favourite daughter of the high God, she is an Oracle and she holds scales and measuring cups divinely endowed with the truths of natural justice and cosmic balance. What is necessary for human judges is not for the goddess of justice. Placing a blindfold upon her did more than maintain accuracy with modern theology and jurisprudence, it effectively made her a human symbol.

At the time of the blindfold's addition, there were newly emerging trends of distancing religion from the central operation of the law and the metaphor was being protected. Where she does not

¹³¹ Jay (n 15) 88.

¹³² Ibid.

¹³³ Burnett (n 7) 80.

¹³⁴ Ville (n 9) 354.

have the steadfast belief in her divinity as a source of authority, the metaphor must have something else on which to rely to demonstrate its fitness to serve as the dispenser of justice. Blindfolded Lady Justice knows what each man's due is to be, not because of access to natural legal justice and divine truth, but due to her witnessing of facts, advocacy, statutory provisions and principles of common law. Therefore, where judicial procedure is a profession and not force of the universe, its symbol requires protection from corruption and freedom from temptation. The addition of the blindfold shifts the authority which supports her access to power, it gives the figure an institutional legitimacy, and because the blindfold was suddenly added at the same time as the religious reformation, the two occurred simultaneously. Lady Justice was in need of legitimacy outside of her godliness, and that legitimacy came at the price of the metaphorical significance of her divinity.

Which is to say that the motivation to blindfold Lady Justice did not arise solely from the changing polarity, as has been suggested, but a myriad of societal conditions. Curtis and Resnik explore various arguments which have been put forth to interpret the success and popularity of the blindfold, one such argument being that of Justice Otto Kissel. Justice Kissel presents the argument that the blindfold's addition was specifically to align with the establishment of professional judges.¹³⁵ Where the judicial role was being considered an independent enterprise that stood outside of the direct control of the sovereign, Kissel argues that the blindfold was needed to protect judges from the influence of the sovereign.¹³⁶

Curtis and Resnik highlight how Kissel's argument parallels the approach found in Bob Cover's discussion of King Yannai and Simeon ben Shetah. The details of Cover's analysis do not offer any more detail necessary for this investigation, but rather it is simply significant to recognise that there

¹³⁵ Curtis and Resnik (n 2) 1757-1758.

¹³⁶ *Ibid.*

is support of the notion that the blindfold created a necessary separation between judges and the sovereign.¹³⁷ Particularly for the consequences it has on the perceived societal value of Lady Justice's divinity. Separation was explicitly placed between the judiciary, and those who serve in the line of divine appointment. Lady Justice now represents a justice wherein judicial figures must read, apply and make decisions on justice, and require specific protection from the sovereign, who was previously a connection to Lady Justice's own source of authority and legitimacy. Thus establishing a persuasive argument that the blindfold, whilst maintaining some religious motivation and support, served more, in practicality, to establish new authority for the metaphor where the divine underpinning of justice falters.

This is not, however, the end of considerations on the blindfold and the motivations and justifications for its additions, as there is still the matter that Lady Justice is not consistently blindfolded. In part, this is a natural result of her original design being sighted, and the previous image cannot be erased, so both exist. However, even with the blindfold's popularity it is not an inalienable feature of the icon, in modern depictions of the goddess, and its absence would not render the icon unrecognisable. In truth, the only accessory whose absence would make spectators seriously doubt the identity of the figure is the scales. The scales themselves are even used independently of the goddess on occasion, yet they still hold the reference to and implications of her metaphor, as can be seen when they are used in ceremonies to weigh souls of the dead, even where justice is not herself performing the ceremony. The blindfold, nor the sword, would ever singularly be used in an attempt to invoke connotations of justice.

That above observations on both the semi-permanence of the blindfold and unique power of the scales prove significant in conjunction with Marcílio Franca's argument around the duplicity to the

¹³⁷ Curtis and Resnik (n 2) 1758.

metaphor, where duplicity is not “an element of doubt but rather an element of certainty,” or “affirmative duplicity” as it is also referred.¹³⁸ Though it has been seen that blindfolded and sighted Lady Justice can hold the same metaphorical implications, Franca considers an argument “to overcome that dichotomy between blindfolded justice and the eyes of justice, what is visible and what is invisible, the superficial and the profound.”¹³⁹ Subsequently presenting a way of understanding them both to be purposefully separate, yet connected, variations of the metaphor.

Franca’s most persuasive example is in Joos Damhouder’s images of a double-faced justice on the cover of the *Praxis Rerum Criminalium*, 1567. The illustration shows a two-faced justice, sitting on a throne, seemingly presiding over a dispute. One of the figure’s faces is blindfolded and holding the scales, and the other sighted holding the sword. Franca argues that the positive aspect in dual representations of Justice is that they “escape a true/false or positive/negative reductionist opposition in the juridical iconography.”¹⁴⁰ This feels very true for the mythology and history of Lady Justice; it was seen time and again in her history that she did not represent light or darkness, procedural or natural, but both, she was the Morai and the Horai. Justice goddesses always contained multitudes, and that was somewhat simplified in the absorption of the figure into Roman society. Interestingly, this interpretation allows for a deeper connection to Lady Justice’s mythological narratives, even as it lessens her divinity. Franca says that interpreting and applying the law is itself a two-fold operation, and is not a singular entity, which is perhaps why there has been particular struggle in creating one singular representation of justice, as is particularly relevant in the forthcoming discussions of Battista Fiera’s dialogue.¹⁴¹ Under this analysis, Lady Justice has

¹³⁸ Marcilio Franca, “The Blindness of Justice: An Iconographic Dialogue between Art and Law” in Danilo Mandic et al. (eds), *See* (University of Westminster Press 2018) 185.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid* 168-169.

¹⁴¹ *Ibid* 186-188.

answered those concerns by also representing the sheer difficulty of representing justice by having more than one design for her visual metaphor.



Figure 4, *Praxis Rerum Criminalium*, Joos Damhouder 1567.¹⁴²

Justice must be blindfolded, and therefore be free from manipulation and temptation, when she considers the balance of evidence and interprets the law itself. In this two-faced portrayal, the blindfolded face of Justice is physically facing the past and, as it does so, is gazing towards the intent of statues' drafters, precedent, and the facts themselves. She considers, with blind impartiality all which has already passed. That is the face of justice who determines what each man is due.¹⁴³

¹⁴² Joos Damhouder, *Praxis Rerum Criminalium* (Apud Joannem Bellerum 1567).

¹⁴³ Franca (n 138) 186-188.

Whereas the justice who delivers that due to each man, must look forward, unimpeded, to consider how the force of justice should be applied, what the consequences and influence of that force could be. That face of justice must be able to look freely to the future and see all possibilities, with unrestricted sight, in order to determine how that force should fall.¹⁴⁴ Both are Lady Justice, both align with her fundamental jurisprudence, but they represent the duality of the scales and the sword, and specifically in the case of two-faced justice, they allow her to look to the past and to the future at the same time.

Analysis of the blindfold, as it pertained to the religious affiliation of the figure, found that the blindfold was symbolic of continued commitment to the principles of Justinian justice, as they were interpreted at that time, focusing primarily on the preservation of equality and freedom from manipulation. The blindfold protected the process of deciding, and delivering, a man's due, from the temptation of imagery and corruption. When looking at a non-religious analysis of the blindfold, that argument still stands as significant because the aims of Justinian justice are not themselves inherently theological, it is only the consideration of who is to decide what a man's due is where religion enters. Lady Justice was the embodiment of God's decision, of a theological natural law theory, but the motivation to blindfold Justice is also argued to represent the establishment of an independent professional judiciary, and give them freedom from the control of the sovereign, which would by extension be seen as the control of God.¹⁴⁵ Effectively removing the capacity of divinity from Lady Justice's metaphor, as divinity no longer held the same authority as a principal element of Justinian's definition. Additionally, it was more experimentally argued that the semi-permanence of the blindfold is a purposeful choice to create two states in which the metaphor of Lady Justice can be observed to represent the duality of legal interpretation and application in relation to the

¹⁴⁴ Franca (n 138) 186-188.

¹⁴⁵ Ibid.

delivering of justice, which presents a more complete understanding of the concept she represents.¹⁴⁶

Battista Fiera's Dialogue

The previous two sections have considered the addition of Lady Justice's blindfold, and, in doing so, have already begun to uncover the complexities of its implications. As the metaphor develops the implications of her accessories and their meaning only grow. Battista Fiera, the "Italian doctor and humanist" as Curtis and Resnik call him, dedicated a fictitious dialogue to the various symbolisms and ideal form the icon, with wider musings on the relation between art and jurisprudence. Titled *On the Painting of Justice* (hereafter *On Justice*), it was published in 1490 and follows an artist commissioned to create a portrait of Lady Justice as he consults several philosophers to help decide the best approach.

Mantegna: I began with Saxus Hippolytus. He said Justice should be represented with one eye; the eye being rather large and in the middle of the forehead; the eyeball, for sharper discernment, deep-set under a raised eyelid.

Momus: Suppose something happened behind her back? might she not be taken in the rear? will she be safe enough with only one eye in front? [I]f she had an eye at the back as well, she'd be still more queenly and majestic.

Mantegna: Erasmus the Stoic [said] . . . [t]hat she ought to be shown seated, and holding scales in her hand. But . . . make her one-handed. So that she couldn't throw in a makeweight, of course. [Marianus] instructed me to depict her standing, and with eyes all over her as Argus was of old. . . . And brandishing a sword in her hand to ward off robbers, and to protect the innocent and the unfortunate. . . . Astallius said she should be depicted sitting on a

¹⁴⁶ Franca (n 138) 186-188.

square marble chair with a slightly curved back, such as there was once at Lesbos, and measuring with a leaden rule.

Momus: To be sure, his was a milder image of Justice, since he left out the menacing sword; and he had good reason to fear she might have a fall. But why the leaden rule? Did he mean that Justice is sometimes twisted? For is not the common herd, remembering her waxen nose, loud in proclaiming that she is?

Mantegna: No, he didn't mean that she is twisted; but he said she was to govern with equity now and then to slacken the reins.

Momus: What did Fiera say?

Mantegna: [H]e enjoined me to depict her covered with ears as well.

Momus: Why? Was he afraid that she might become deaf?

Mantegna: He was. . . [and Astallius and Fiera also said] that Justice was to put on the habit of a penitent

Momus: So, they want her to be mortified! But didn't it occur to them to give her wings?

Mantegna: No one thought of that.

Momus: I am not surprised: They were afraid that she, fearing nakedness, might fly away again

Mantegna:[The Carmelite] has always maintained that Justice cannot be depicted at all.

Momus: And there he is certainly right. If all these different opinions of philosophers were so, I also agree with him. For how can you represent Justice both with one eye and many eyes; and how can you depict her with one hand only, and yet measuring, and at the same time weighing, and simultaneously brandishing a sword?-unless, of course, they are all raving mad. Flatly, the thing can't be done

Mantegna: Justice [the Carmelite said] is the will of God

Momus: [W]hat about human Justice?

Mantegna: He spoke about human Justice too, and no less to the point. Man, within the limits of his frail and fallible nature, is not unaware of Justice, and is subject to her laws; nor can he, by any deviation, however slight, escape them. . . . He did say that [Justice] was imprinted; from the outset so fixed in the core of our nature that Justice and Life might be reckoned sisters. For, he said, every- one is born with the instinct of self-protection, and with the desire to avoid pain. But why should someone impose upon another what he dislikes himself; and why should he grudge to others what he himself desires?

Momus: [D]id [your theologian] ever mention any decree of this divine justice that is so perfect and entire, whereby all men alike should be put on their guard . . . ?

Mantegna: Death, Momus, for everyone the last necessity, to be avoided by none. Sooner or later, we die, Momus; Death levels us all, the lowest and the highest: so sacred and stern is Justice.

Momus: . . . Now, Mantegna, I would no longer consider you a painter, but rather a very great philosopher and a consummate theologian, had you not portrayed Death instead of Justice.¹⁴⁷

It is not quite clear what Fiera intended to accomplish with this dialogue and where on the line between serious philosophy and satire he wished to land.¹⁴⁸ What is clear is the futility presented in the dialogue and its absurdist tone. The dialogue continually unveils more challenges with displaying one physical image of the concept of justice, and the potential impossibility of the task.¹⁴⁹ It has been discussed that the semi-permanence of Lady Justice's blindfold is itself a reference to this struggle, even if unintentional there is a particular difficulty in an enduring visual

¹⁴⁷ Battista Fiera, *De Iusticia Pingenda [On the Painting of Justice]* (James Wardrop tr, Lion and Unicorn Press 1957).

¹⁴⁸ Curtis and Resnik (n 2) 1763-1764.

¹⁴⁹ *Ibid.*

metaphor of justice. Whilst Justinian's definition still holds salience as the central conception of justice in modern day, the manner of which it is read, the values ascribed to how a man's due should be decided, whom should be authorised to deliver it, and who is regarded as a man, have all fundamentally changed. Fiera says to his audience that for one metaphor to have represented every changing conception and reading of that definition is perhaps futile and inherently absurdist. Fiera even recognises the competing philosophies out of which blindfolded Justice was born, where the notion of Justice being both the will of God and a human endeavour were trying to be reconciled.

The reference to death in the work is particularly interesting regarding the perceived role of Lady Justice. In referencing death as the only unequivocally levelling force, and suggesting that is what should be depicted by the figure, there are several possible comments being made. Curtis and Resnik suggest perhaps Momus's critique is that Mantegna would be taking the easy way out, passing on the judgement of justice to God and the afterworld, but Lady Justice presides, in various mythologies, over that underworld. The Last Judgement is her ceremony and the weighing of souls her responsibility.¹⁵⁰ Which is where this conflict between divine justice and earthly justice is again observed. Legal judgement is not a post-mortem concept.¹⁵¹ Furthermore, Fiera was writing just as the blindfold was becoming an addition of the figure, and his writing cries out for its need, Lady Justice needed modification for her earthly role.

In discussing the metaphor of Lady Justice, specifically in a prelude to analysis of the blindfold, Curtis and Resnik consider whether justice imagery has been "so sanitised that only benign or sympathetic aspects remain."¹⁵² They question whether she has come to exclusively possess positive

¹⁵⁰ Curtis and Resnik (n 2) 1764.

¹⁵¹ Ibid.

¹⁵² Ibid.

attributes and implications, and critique the value of that outcome on the metaphor. As the pair argue:

“The sword need not only represent, in Ripa’s words, the “rigour of justice,” but may also mean cruelty or an unwillingness to read compromises...the sword may represent only the limitations of formal Justice. Similarly, while the scales may be the mechanism by which, again, according to Ripa, a person “receives that which is due...no more no less,”...the scales, like the sword, have the potential for absolute rather than compromised outcomes; souls are weighed and sent to eternal life or damnation. Sword and scales need not only remind us that Justice can be powerful and correct; they can also be interpreted as indications of Justice as harsh, unsympathetic, and unyielding.”¹⁵³

Curtis and Resnik’s quote and the observation of the multiplicity of each of her attributes seems almost to be the answer to Fiera’s concern. Just as one can conceive of a thousand different ways to design the goddess as a legal metaphor for justice, so too can one conceive of a thousand differing ways to interpret the qualities she already possesses. Ultimately what Fiera’s dialogue establishes is that the shortcomings of the metaphor, and the impossibility of creating a singular static visual metaphor for human justice is an inherent aspect of the metaphor where she is applied to a procedural and positivist legal framework.

Reconsidering the notion of her sanitisation, whilst multiplicity exist in interpretation, it is true that the application of the metaphor hopes to conceal in ways the negative connotations of justice. Lady Justice has not been sanitised necessarily, because this was her purpose as metaphor. She is a symbol that is physically heralded above the law and legal spaces, over doorways, outside entrances, atop roofs. The principle of the metaphor is not to be a commentary on the darkness or difficulty of judicial machinations, instead she is the perfect ideal. That is why she is cast in stone,

¹⁵³ Curtis and Resnik (n 2) 1755.

and, to some, why it is rhetorically useful that she is a woman. There must be limits to her power, as Conaghan wrote “we are being told that, with the proper handling, the lady is controllable.”¹⁵⁴ If the Lady is, then so too is justice. The following discussion on *The Merchant of Venice* highlights how that controllability is the most important fact and needn't solely be achieved through her gender.

The Merchant of Venice by William Shakespeare

It is nearly impossible to engage in discussions of law, literature and gender without in some way recognising Shakespeare's *The Merchant of Venice*. The play centrally follows a lending agreement between Antonio, the merchant, and Shylock, a usurer, where the borrowed funds are unable to be repaid as stipulated, and the consequences for such are a pound of the merchant's flesh. The most important aspect for the purposes of this investigation is the court scene wherein the judgement on Antonio's debt and the lawfulness of its payment is addressed.

The leading voice of legal reasoning in this scene is Portia, the Lady of Belmont and at this point in the play, fiancé to Antonio. She appears in the middle of the court scene, disguised as a man, and makes the argument which saves Antonio's life. Before Portia enters the Duke, who is presiding over the court scene, makes one attempt to reason with Shylock and beseech him not to claim his bond:

DUKE: Make room, and let him stand before our face.

Shylock, the world thinks, and I think so too,

That thou but lead'st this fashion of thy malice

To the last hour of act; and then 'tis thought

Thou'lt show thy mercy and remorse more strange

¹⁵⁴ Conaghan (n 13) 244.

Than is thy strange apparent cruelty;¹⁵⁵

That is met by a speech from Shylock exploiting the ethical code of Venetian society and comparing his right to his bond to the rights of slave owners to do unto their slaves as they wish. Shylocks testimony, and refusal to deny his claims by goodwill alone, the Duke almost immediately is prepared dismiss the court, unless a leaned doctor arrives to determine the case.

SHYLOCK: What judgment shall I dread, doing no wrong?

You have among you many a purchased slave,

Which, like your asses and your dogs and mules,

You use in abject and in slavish parts,

Because you bought them: shall I say to you,

Let them be free, marry them to your heirs?

Why sweat they under burthens? let their beds

Be made as soft as yours and let their palates

Be season'd with such viands? You will answer

'The slaves are ours:' so do I answer you:

The pound of flesh, which I demand of him,

Is dearly bought; 'tis mine and I will have it.

If you deny me, fie upon your law!

There is no force in the decrees of Venice.

I stand for judgment: answer; shall I have it?

DUKE: Upon my power I may dismiss this court,

Unless Bellario, a learned doctor,

Whom I have sent for to determine this,

¹⁵⁵ William Shakespeare, *The Merchant of Venice* (Simon & Schuster 2010) 143.

Come here today.¹⁵⁶

Fortunately, such a doctor, or at least the guise of one, does arrive, in the form of Portia. She too begins by bargaining with Shylock and offering him three times his owed sum for him to display mercy and spare Antonio's life in return. She gives an impassioned speech on the value of mercy but it is rejected. Shylock will only be satisfied with his pound of flesh, which Portia agrees is rightfully his, but then uses the language of the agreement to restrain Shylock from claiming anything else. He may not cause the loss of a drop of blood, or any more or any less flesh than he is owed.

PORTIA: Then must the Jew be merciful.

SHYLOCK: On what compulsion must I? tell me that.

PORTIA: The quality of mercy is not strain'd,

It droppeth as the gentle rain from heaven

Upon the place beneath: it is twice blest;

It blesseth him that gives and him that takes:

...

SHYLOCK: Is that the law?

PORTIA: Thyself shalt see the act:

For, as thou urgest justice, be assured

Thou shalt have justice, more than thou desirest¹⁵⁷

However, that is not where Portia's legal advocacy ends. Once sharing this reading of the bond with the court, Shylock then begs to take the original payment offered by Portia, as the learned doctor,

¹⁵⁶ Shakespeare (n 155) 147-148.

¹⁵⁷ Ibid 154-164.

and forfeit his right to Antonio's flesh. Despite Basanio, the man for whom Antonio borrowed Shylock's money, agreeing to pay him in excess, Portia stops him. It is at this point she introduces another law that stipulates if any person outside of Venetian society, like the Jewish Shylock, attempts to take the life of any citizen, directly or indirectly, then all of his goods are to be seized. The goods are then equally distributed between the victim in question and the state, and the fate of the assailant is left at the mercy and discretion of the Duke.

SHYLOCK: I take this offer, then; pay the bond thrice

And let the Christian go.

BASSANIO: Here is the money.

PORTIA: Soft!

The Jew shall have all justice; soft! no haste:

He shall have nothing but the penalty.

...

PORTIA: What mercy can you render him, Antonio?¹⁵⁸

With the general outline of the court scene sketched and its most relevant moments understood, the investigation can now consider what bearing this has on the present discussion of Lady Justice. The analysis of *The Merchant of Venice* finds particularly that Lady Justice's white female identity is not an innocuous element of her days as a Roman goddess, but rather an actively utilised feature of the metaphor. It secures, as was highlighted in Conaghan's analysis, that she may be controlled, and in order for that to be so she must exist outside of the market's political interest, and therefore be unable to affect it. This analysis will argue that Shakespeare parallels that unique value in his use of Shylock, a character whose greatest error is refusing to accept his role within the market, and who exemplifies the consequences of justice trying to affect the law.

¹⁵⁸ Shakespeare (n 155) 154-164.

There is a natural desire to connect Lady Justice to Portia. She is a woman affecting justice in a time where women were not openly permitted to participate in court proceedings.¹⁵⁹ It has been repeatedly stated that Lady Justice's femininity made her an object that traditionally stood outside of the legal sphere, and that it was tangibly useful in allowing the metaphor to be an emblem of incorruptible justice. If women could not be legal agents, and Justice is a woman, she is not susceptible to the same faults and follies and can be the symbol of ideal justice.

However, that is not necessarily true for Portia. Not only is she a noble woman who, upon her marriage to Antonio, inherits her late father's extensive estate, but, as Ian Ward highlights, Portia affects justice as a man, and her male form is essential to her access to, and affectation of, justice.¹⁶⁰ Once that difference is clarified, Portia appears in a sense to be an inverted Lady Justice, a male presenting character who espouses to protect justice but whose content was created by a female character, as opposed to the female legal metaphor which was crafted by men.

Ellen M. Caldwell argues that Portia is better understood as Fortuna, particularly in how she takes control of her own fate and, in Caldwell's view, "undercut[s] the practice of conventional justice and Christian mercy."¹⁶¹ In this scene she is not the blindfolded justice representative of the set and constant purpose to render to each man his due, but instead a figure who blindfolds others, including the audience, and in doing so practises Venetian law with parodic partiality.¹⁶² It is obvious how she blinds the characters in the court scene, she wears a disguise to conceal both her

¹⁵⁹ Ellen M. Caldwell, "Opportunistic Portia as Fortuna in Shakespeare's *Merchant of Venice*" (2014) 54 *SEL Studies in English Literature* 349, 352.

¹⁶⁰ Ian Ward, *Shakespeare and the Legal Imagination* (CUP 1999) 90.

¹⁶¹ Caldwell (n 159) 349

¹⁶² *Ibid* 352.

gender and identity, and, in first attempting to bargain with Shylock, she conceals her argument surrounding the collection of his pound of flesh. However, none of this deceives the audience. The audience is aware that it is Portia under the disguise and it is also likely that they would have believed they were inside the play's twist alongside her, as the court scene was based on the common folktale "A Pound of Flesh", the outcome of which they would have been aware.¹⁶³

However, as the scene unfolds the audience learns she has in fact blinded them from the full extent of Shylock's peril under Venetian law. Believing, as they would have up until that moment, that they were in on Portia's many secrets, the audience would have been surprised at the introduction of a law which invalidated the bond at base value. Portia releases information at her own discretion, and conceals it in the same manner, undercutting the practice of conventional justice, where the evidence and facts can be seen on the scales. It is as if she holds the scales behind her back, which is not Lady Justice as this investigation has come to know her.

Furthermore, it is often Shylock's morality and compassion which are scrutinised, however, when looking at Portia's deliverance of her legal decision there is no evidence of compassion being a prominent factor.

"Rather than being a play about religious differences or even Christian superiority, *Merchant* argues pragmatism in opposition to romance and...the shrewdest merchant, Portia...forgets the new law of mercy in wielding law's letter over Shylock."¹⁶⁴

Her lack of mercy in wielding the law is particular notable when it is understood that Shylock's ultimate fate is already sealed. Even if he had relented and accepted Portia's deal and shown mercy,

¹⁶³ Charlotte Artese, "You shall not know": Portia, Power and the Folktale Sources of *The Merchant of Venice*" (2009) 5 Shakespeare 325, 325-328.

¹⁶⁴ Caldwell (n 159) 365.

by creating the bond and showing up to court with his knife and scales, he had already demonstrated a sufficient threat towards Antonio's life and therefore the same law could have been applied to him regardless. There was more than enough evidence of his immediate intent to follow through on the claiming of his bond, which would constitute an attempt on Antonio's life. Between this moment and Portia's later declaration, there is no further action which signifies a more legitimate attempt to take his life. His intent to make the attempt was clearly established, if not when he created the bond, then when they entered the court. The text provides no assurance that, were he to have shown mercy, Portia would not have still applied the full force of the law upon him.

Caldwell explores Portia's complex relationship with the law and justice and presents an interesting argument for her being seen as Fortuna. However, the only critical element for this investigation is the conclusion that she should not be considered representative of Lady Justice.¹⁶⁵ Caldwell then presents a compelling connection between Shylock and Lady Justice. Caldwell considers the argument that, as he holds a knife and scales in the court scene, Shylock could represent a figure of Lady Justice in the text.¹⁶⁶

Shylock is the only other character who displays the same level of investment in the details of the judicial decision making in the trial scene, and he is shown holding Justice's accessories. Doebler says in this act Shylock "claims justice" but "he does not represent it".¹⁶⁷ Arguing that by holding her accessories, Shylock represents an appropriation and parody of the figure, but that viewpoint rests on the predication that Shylock's interpretation of the law holds no respect or consideration for

¹⁶⁵ Caldwell (n 159) 349-352.

¹⁶⁶ Ibid 351-353.

¹⁶⁷ John Doebler, *Shakespeare's Speaking Pictures: Studies in Iconic Imagery* (University of New Mexico Press 1974) 57-60.

morality, which is not presently assumed to be true.¹⁶⁸ Therefore this investigation will explore the significance of Shylock potentially being an emblem of Lady Justice, and the consequences it holds for the metaphor's representation of justice.

Though it was argued that Portia's approach to the law was strict, both Doebler and Ward find that Shylock too takes a rigid letter of the law approach, without the consideration of compassion or mercy, claiming that it is his undoing.¹⁶⁹ However, as Ward recognises, there is also more complexity in Shylock's position.

“In response to Salerno's appeal for mercy, [Shylock] perceptively replied that mercy is not a concept which otherwise enjoys much currency in Venice. The ‘villainy you teach me’, he observes, ‘I will execute’. Ultimately Shylock's error is to fail to appreciate that no market is ever politically free. The Venetian market, like any other, exists to promote particular social and political interests...Shylock's defeat is necessary both in terms of the market interest and that of constitutional politics.”¹⁷⁰

He does consider mercy, but he does so from his perspective, from how it had been taught. Here is where he begins most to resemble Lady Justice, particularly in relation to her mythological narratives.¹⁷¹ Lady Justice was concerned with balance, more than considerations of morality or compassion. Dike, for example, was a violent goddess, who actively struck in the pursuit of balance. It appears relevant to claim that that is also what Shylock intended to do with exacting the conditions of the bond. He did not trust Antonio, nor did he want to lend to him. The play sees Shylock be spat at and called dog relentlessly. His stipulation of a pound of flesh is not equal to the

¹⁶⁸ Doebler (n 167) 57; Doebler cites Samuel C. Chew, *The Virtues Reconciled: An Iconographic Study* (University of Toronto Press 1947); Caldwell (n 159) 351-353.

¹⁶⁹ Doebler (n 167) 57-60; Ward (n 160) 131.

¹⁷⁰ Ward (n 160) 129.

¹⁷¹ Lady Justice's mythology is decided to be considered relevant to analysis of *The Merchant of Venice*, in spite of the observed severance of the metaphor from his mythological history, because of the influence of folklore and predetermined justice in the play's design, making consideration of mythology feel appropriate.

loss of the funds Antonio borrowed, but it is the balance of payment both of the funds and of Antonio's treatment of him.

From there it is interesting to consider in more depth Shylock's argumentation around slavery. He claims that Venetian law cannot both endorse the purchasing of people and slavery, but then deny the lawfulness of his bond on the ground of morality. However, that view of Venetian law and morality is reductive. Shylock fails not only to appreciate the market's interests, but also his own standings within it.¹⁷²

Shylock is not a Venetian, the law that ultimately defeats him is one governing the behaviour of aliens. Shylock fails to fully appreciate his position in the market, and its interests, but it is his lack of legal rights and standing which fail him most. Shylock tries to affect balance in Venetian society, but he exists outside of its operation, and therefore cannot even attempt to represent the deliverance of each man his due, because he has no authority upon which to deliver. However, that exact observation only draws him closer to the image of Lady Justice. His explicit alien status and the fact that he stands outside of Venetian legal society is analogous to Lady Justice's femininity placing her outside of Roman legal society. In this matter we come to understand that, in Shakespeare's world, Justice was not something which participated in the legal system, but something by which it would be affected, for better or for worse. Lady Justice has always been outside of the legal system, she had no agency within it and could therefore be its emblem. Shakespeare, in this court scene, uses Shylock as a method of communicating the manners in which the law may affect Justice, but Justice may not affect the law.

¹⁷² Ward (n 160).

Justice by Langston Hughes

What has yet to be explicitly explored is how the justice represented by the metaphor is also, critically, contextual. The above discussions of *The Merchant of Venice* began to bring the changing values of legal action and its relationship to justice into question, but the metaphor of Lady Justice is one which has been subject to extensive criticism where relevant perceptions on the quality of societal and legal justice are questioned. The metaphor of Lady Justice may closely resemble one theory of justice, but it is presently argued that she represents more than jurisprudence, she is similarly synonymous with the practical deployment of justice as a result of her placement and popularisation in judicial settings. She both represents the ideal and concept of justice, and stands as the emblem of the relevant observed enforcement of justice in a given society.

The purpose of discussing Langston Hughes's poem *Justice* is to highlight a particularly common thread of criticism against Lady Justice, her blindness. Criticisms of Lady Justice's blindness relate heavily to criticisms of systemic injustice and its relationship to the law. This section seeks both to understand the content and form of the commentary and suggest what consequences it has on the metaphor's capacity to represent justice. In both cases it is argued that this criticism of Justice is not a problem of the metaphor, or its capacity to represent Justinian justice, but rather highlight the shortcomings of the theory itself and its application.

Written in 1932 as the opening poem to his collection *Scottsboro Limited; four poems and a play in verse*, the poem *Justice*, and the whole collection was inspired by the 'Scottsboro Boys' trial. The trial itself took place in 1931 and saw nine young black boys, the youngest of which being 12 years old, found guilty, by an all-white jury, and sentenced to death for the raping two white women.¹⁷³

¹⁷³ The Editors of Encyclopaedia Britannica, "Scottsboro Boys" (Britannica Encyclopaedia 2023) <https://www.britannica.com/event/Scottsboro-case>.

The United States Supreme Court later overturned the convictions as a result of insufficient access to legal council, though many of the boys were tried, convicted again in later cases, all rulings were eventually overturned.¹⁷⁴ The Supreme Court rulings were landmark decisions, particularly in the establishing the rights for criminal defendants.

The poem was written in the wake of a trial which is now widely considered to have been openly discriminatory and indignant in its treatment of the black boys. Hughes invokes justice not as an abstract concept, or principle at large, but as the manifestation of justice as it was applied, or misapplied, in their trial.

That Justice is a blind goddess

Is a thing to which we black are wise:

Her bandage hides two festering sores

*That once perhaps were eyes*¹⁷⁵

Hughes's poem hinges on the reality that black Americans were not conceived of under the Justinian definition of 'each man'. He is claiming that Lady Justice's blindfold does not protect her from impartiality and corruption but blinds her to it. As was noted in the analysis of Fiera's dialogue, there are multiple positive and negative implications from every attribute placed upon a visual representation of justice, particularly one in a fallible human form.

In the case of Langston Hughes, however, his criticism of the blindfold is not an uncommon interpretation. There is a consistent argument that, irrespective of its intention to establish equality and freedom from manipulation before judicial decisions, Justice's blindfold instead permits Justice to negligently facilitate the perpetuation of systemic inequality under the law. Critically, however,

¹⁷⁴ Encyclopaedia Britannica (n 173).

¹⁷⁵ Langston Hughes, *Scottsboro Limited* (The Golden Stair Press 1932) 5.

for the purposes of this investigation, this is not a limitation or error in the design of the metaphor of Lady Justice, nor its maintained accuracy to Justinian justice, but rather it is seen to be a critique of Justinian's definition. Just as it fails to indicate from where the authority to decide and deliver a mans due is to be derived, it does not provide a definition of how 'each man' is to be understood, for the 15th and 21st century definitions would surely be different. Lady Justice's lack of adequate response to the same issue is a reflection of the definition's inadequacy, not of the metaphors design.

Lady Justice here is not being critiqued for wearing a blindfold, but rather the blindfold is being used as a means to communicate Hughes's commentary on the operation of the trial, and the subsequent values of justice she represents. She is a flawed metaphor of justice, not because of her design, but because of her concept of justice, and whilst Lady Justice has specifically shown to saliently align with a Justinian understanding of justice, this part of the metaphor's nature means she bears the faults of the actions of any systems which employ her.

The analysis of Langston Hughe's poem is a critical example of how the metaphor of Lady Justice is connected to the actions of a society where she is utilised as a legal and socio-political metaphor. Not only is this significant for the context of discussion in chapter four, but it also contributes to the observable value of Lady Justice's malleability. This stands not just when she is being controlled and shaped by authority, but also when being critiqued and taken apart by its opposition.

Franz Kafka's The Trial

Franz Kafka, as an author and legal doctorate graduate, has a particular influence in the law and literature space.¹⁷⁶ His final novel, *The Trial*, was first published in 1925, a year after his death. The manuscript was found alongside the possessions that were left to his friend Max Brod, who made the decision to both finish and publish the novel.¹⁷⁷ In terms of its inclusion of Lady Justice, Kafka presents a painting of the figure, with some alterations who her presentation which are meant to communicate the critiques of the legal system and the protagonist's K.'s experience and predicament, which is the central plot to the novel. The novel begins with K. being arrested, but he is never told on what grounds. The narrative then follows as K. as he attempts to understand the situation he is in, the legal claims against him and how he may overcome the guilty verdict he is being told is inevitable, all before he is executed, without ever receiving his trial. The law in the novel's world is oppressive and unknowable, both to those who enforce it and to those who it is thrust upon.

It is unsurprising that the presentation of justice in the novel is highly critical, but the manner in which Kafka uses Lady Justice to communicate his critiques relies on the association of gendered norms and assumptions, and further signifies the previously observed departure of the metaphor from her mythology and divine history. Similarly to Fiera's dialogue *The Trial's* commentary on Lady Justice is presented through a manipulation of the visual metaphor's composition, as a means of conveying what she should and should not be, but without the excess or satire. Though a critique of the presentation of the metaphor, Lady Justice is only used as the vessel through which to comment on the justice of the society in which she is employed, as with Langston Hughes's *Justice*.

¹⁷⁶ Samuel Wolff and Kenneth Rivkin, "Essay: The Legal Education of Franz Kafka" (1997-1998) 22 VLA J.L. & Arts 407, 407.

¹⁷⁷ Dieter P. Lotze, "One Commentator's Despair: Notes on the Structure of Kafka's *The Trial*" (1977) 6 Journal of Modern Literature 389, 389-392.

The commentary occurs when K, in one of his attempts to find a way out of his inescapable fate, meets with an artist, Titorelli. Whilst in his studio he finds a painting the artist was commissioned to create of Lady Justice by a member of the high court in which she has wings on her feet. The passage on his observation and the their exchange goes as follows:

“[K] was unable to interpret a large figure centred atop the back of the throne and asked the painter about it. “I still have some work to do on it,” answered the painter, taking a pastel crayon from the little table and adding a few strokes to the contours of the figure, without, however, making it any clearer to K. in the process. “It’s the figure of Justice,” the painter finally said. “Now I recognise it,” said K., “there’s the blindfold over her eyes and here are the scales. But aren’t those wings on her heels, and isn’t she in motion?” “Yes,” said the painter, “I’m commissioned to do it that way, it’s actually Justice and the goddess of Victory in one.” “That’s a poor combination,” said K. Smiling, “Justice but remain at rest, otherwise the scales sway and no just judgment is possible.”¹⁷⁸

Justice and Victory are, to K., a poor combination. In joining the two, they are stunted from existing freely and individually, but it is not primarily the concept of the painting including an amalgam of Justice and Victory that upsets K., that is sure a way for the reader to understand the way those in power view the principle of justice in this society, but it is the visual impact of the metaphor that upsets K. Most, with his final comment being in his distaste that she should ever be in motion. Which prompts the need to reexamine why Justice is most often portrayed as a statue, why she is carved in stone, it is the same reason she must be a woman. She is a statue for she must be fixed, but more importantly, she must be controllable.

¹⁷⁸ Franz Kafka, *The Trial*, (Chicken Book Inc. 1998) 145.

Lady Justice has taken on a meaning and a jurisprudence completely separate from her mythology or the deity's original composition. She may hold the same image, and her metaphor generally interpreted to mean the same thing, the set and constant purpose to render every man his due, but the social and legal analysis of that phrase has varied so dramatically, so too has the metaphor. Where she is not directly divine, and where she does not herself hold the gospel knowledge of justice, where she is human, the consequences of the figure are entirely changed. Ma'at wore wings, she was herself represented by a feather, Justitia was also depicted wearing the wings of an angel.¹⁷⁹ Justice was not afraid of motion because she was not vulnerable to the same follies as humans, she is a goddess. Kafka's invocation of the metaphor is another example in which she is stripped of her divinity and of possessing any particular power. Lady Justice must be 'set and perpetual', previously that was proved by her immortality, by her divine command and post as the Delphic oracle, in a modern context she can only be trusted to be set if she is physically cast in still imagery, in stone.

K.'s concern at the details of the figure are reflective of the concerns with the legal institution he is under. K. has gone to Titorelli in a desperate attempt for information on his arrest and what he can do to defend his innocence and save himself, and later in this scene the artist reveals to K. that his fate is, in all probabilities, set. The law in *The Trial* remains constantly in motion and the judiciary is purposefully vague all as a means to maintain dominance.¹⁸⁰ Therefore, Joseph's comments and this portrait of Lady Justice are an overt representation of his doomed fate in spite of his protested innocence. Debarati Chanda writes:

“The ambivalent nature of the image of Justice drawn by Titorelli clearly points out the impotence of law. The domination of law over the fate of an individual like Joseph K.

¹⁷⁹ Ville (n 9) 336 and 350.

¹⁸⁰ Debarati Chanda, 'Treatment of Law in Franz Kafka's 'The Trial'', (2015) 6 Indian Journal of Law and Justice 187, 191.

proves the hegemonic violence of the legal system engulfing the basic human rights of proper justice.”¹⁸¹

“The basic human rights of proper justice” are what is under attack, and Kafka manipulates the image of Lady Justice to represent that conclusion. However, it is the agency of Lady Justice which Kafka focuses on, not her blindness, K himself being blind to the charges against him, nor her sword, a weapon of immense, punitive, force, which is also itself linked to K’s execution, but her independence and agency, her freedom to move.

There were a number of avenues already embedded in the image of Lady Justice Kafka could have formed commentary based upon, however, he chooses to have the goddess mixed with the goddesses of the hunt, in the form of adding wings to her shoes. This addition is meant to reflect such an extreme alternation of the meaning of her figure, so abhorrent an addition, that K. fails to recognise the figure at all, despite her being the same all other things considered.

The salience of this comparison once finds itself routed and related to the comments of Sir Frederick Pollock and Benjamin Cardozo. Justice is to be pursued; she is to be wooed, she is to provoke the noble sentiments of chivalry. Lady Justice is a painting, she is a statue and the particular content and design of the metaphor, as it applies to a positivist legal landscape, was designed and placed by men in a time where women were othered and outside of judicial proceeding. Lady Justice relied upon the attractiveness of a woman who cannot move, who does not have agency. When needing to communicate the most deplorable image of Lady Justice, in an overtly oppressive and suffocating legal world, Kafka gives her agency. The strength of concern with her agency is, in no small part, fuelled specifically by assumptions surrounding an uncontrolled woman.

¹⁸¹ Chanda (n 180) 190.

The negative connotations on female agency, relating to Pollock and Cardozo's comments on the common law as a woman. Kafka's use of Lady Justice also stands against the depiction of women in the novel as a whole. Throughout the novel every female character is objectified or sexualised, none are provided agency, and the only instance where it is given to Lady Justice it is overtly negative. Against the patriarchal backdrop of the text, the exploitation of Lady Justice's gender as a metaphorical tool is irrefutable. In response to Lady Justice's gender and its influence on the metaphor, it is a tool that is used, in the light of relevant societal gendered norms, to establish salient assumptions on behalf of the metaphor. Most critically for her operation under a patriarchal legal system is the assurance that she is malleable.

Furthermore, per Chanda's analysis, Kafka is trying to specifically invoke themes of dominance. The use of a female figure as dominating over a male is essential to communicating the impermissibility of this conception of the law. This element of the metaphor is directly relying upon the inference of the widespread dominance of men over women in modern society, an inference which is seen to be relied upon further in reference to the visual metaphor, particularly throughout the #MeToo era. Additionally, the influence of the questioning and destabilisation of traditional patriarchal norms and the increased equality of women in the legal field and the promotion gender equality on this element of the metaphor is explored in chapter four.

Chapter four: The 21st century and Lady Justice as the Ladies of Justice

Introduction

The primary consideration of the final chapter of this investigation is the influence of Lady Justice's gender, and how it alters where women trend towards a position of equality in the legal sphere. The

previous exploration of her gender and its influence on the metaphor have explored how gendered assumptions are inextricable from the metaphor's composition. However, this has particularly been as a figure whose gender is contrasted against the legal landscape. Moving into the 21st century gender equality in legal professions, particularly the judiciary, is becoming something that is becoming not only a reality, but a respected and demanded one. Which means the term Lady Justice, in and of itself, does not solely linguistically belong to the metaphor. Instead of the assumptions as a result of her gender tending towards patriarchal concepts, they turn to the metaphor having a particular connection to plights of women's justice, and female jurists at large.

The first section considers several examples of art, namely one statue and several cartoons, engaging in critiques of justice, through applying patriarchal and misogynic associations to the figure. The first is a statue of the icon, erected by the anonymous artist Banksy, titled "Trust No One." It is another example of the construction and presentation of the metaphor being altered to critique the system for which she stands, and it does so by exploiting assumptions surrounding female sex workers. The negative social connotations, which had particular potency in 2004 when the statue was created, are used not just to degrade and critique the operation of justice in a society, but to do so through the degradation and criticism of women at large. Just as in the Middle Ages, the metaphor of Lady Justice is profiting off of the, specifically harmful, gendered norms and judgements placed on women. Continuing the observed trend of using negative gendered constructs, the second section looks towards a collection of comic strips, which all similarly wish to critique justice, and its mistreatment of those in power, but do so by directly placing the figure in a position of sexual assault. Most of the instances are based off of real alleged instances regarding the men in power under critique, President Trump, Justice Kavanaugh and President Zuma. However, their primary objective is to comment on these men's assault of the legal system and other systems of power, and the narratives of assault are a useful tool and double meaning for that end.

The final section considers the direct linguistic conflation between Lady Justice and Lady Justices, which is not to say that any individuals are legitimate facing confusing as to who the title is in reference to, but rather how in Dahlia Litwicks book, *Lady Justice: Women, the Law and the Battle to Save America* Lady Justice is used in the title and cover alone, to equate these female lawyers and judges to the icon, but in no way substantially connect them to or make any comment on the metaphor. Lady Justice is only being used in this instance because she is the image of a woman in the legal world. Furthermore, the investigation finally considers Taylor Simpson-Wood's article "The Rise and Fall of Bad Judge: Lady Justice Is No Tramp" where a fictional character of a female judge is critiqued and judged based on how she represents the metaphor of Lady Justice, which is not within any of the content surrounding the character, but an imposition placed upon her because she is a woman and she is a judge.

Ultimately what this chapter finds is that Lady Justice's gender has a profound influence on the metaphor. It was before conceived of as less significant because considerations of gender discrimination were not and gendered assumptions were both useful and socially relevant. Where the support for the original influence of her gender is revoked, and women do not remain outside of the legal realm, the implications of her gender's influence grow and become near uncontainable. It does not prevent her from still representing a Justinian concept of justice, but removes that as its most powerful rhetoric. As was true in Durer's art for Brant's Ship of Fools, the metaphor is facing a threat for which it will necessarily need to develop.

Part One: Justice Art and Female Bodily Autonomy

Banksy's 2004 *Trust No-One* statue stood in Clerkenwell Green, London at six meters tall. There, Lady Justice, with crown, scales, sword, and blindfold, stands on a golden globe, mimicking the

CCC statue. However, her dress is raised up above her belly button at the front. This reveals not only her undergarments but thigh high boots and a garter on her thigh which holds a one-dollar bill. It is the typical form of Lady Justice, but revealed to secretly be a sex worker. Banksy is implying that Justice, specifically legal justice, is a façade, a dress which can be lifted to reveal the corruption, bribery within, where those with means can succeed.¹⁸² Justice here is a literal commodity who can be bought and sold.¹⁸³



Figure 5: Banksy “Trust No-One”¹⁸⁴

In addition to the image Banksy wrote a flyer which distributed at the event where the statue was revealed. So as to not create any confusion of the piece’s intent or it’s target audience, they dedicated the piece to the:

¹⁸²Wardle (n 1).

¹⁸³ Ibid 254.

¹⁸⁴ Michael Pickard, Flickr, August 2004, available at <https://www.flickr.com/photos/pickard/447637956/in/album-72157600050255606/>.

“...thugs, bullies, liars, thieves, the corrupt, the arrogant and the stupid. Essentially it is dedicated to the entire British Legal system.”¹⁸⁵

Banksy’s message could not be clearer, he is calling the members of the British legal system corrupt, lying, thugs, thieves and bullies. He is attacking every element of their legitimacy and value. However, it is Lady Justice who is harmed and exploited in the communication of this critique of legal justice. Conaghan’s insistence that the metaphor of Lady Justice is female so that she may be controlled and precisely exemplified through Banksy’s statue.

However, Banksy’s metaphor relies on more than the action of making Lady Justice a commodity which is bought, but also the societally perceived moral impunity of sex work, specifically as it applies to women. Banksy is calling upon the full force of a culture of slut shaming, and not just making Justice a sex worker to convey her manipulation and control by those in power, but to brand her as immoral. The reason that image has the impact it does is because of the sexualisation of the female body, and the perceived illegitimacy of sex work. Here Lady Justice is categorically being treated, not as a divine entity, but as a human woman, pervious to the same shames and judgements as women within Britain’s 2004 social landscape.

This firm establishment of the equation made between Lady Justice and women is a trend that takes over the 21st century depictions of Lady Justice. It becomes an opportunity for double entendres and layers of references, specifically in relation to both sexual violence and judicial proceedings, two key connections between women and legal action. Lady Justice is forever tied to her gender, when the trend of criticising the operation of justice within a society by modifying the metaphor is so common, it invariably exploits the sheer metaphorical usefulness of her gender. It is an attribute that is exported, and easily so, particularly as it relates to the connection between abuses of power,

¹⁸⁵ Wardle (n 1).

and abuse of women. There are a number #MeToo era cartoons involving Lady Justice, legal and political figures who are accused of both mishandling justice, and sexual assault which critically creates the opportunity to establish this trend of double metaphors.



Figure 6: President Zuma raping Justice¹⁸⁶

The first cartoon considered is titled “The Rape of Lady Justice” by cartoonist Zapiro. It was created in response to the corruption claims against South African President Zuma.¹⁸⁷ A man previously accused of rape, President Zuma was, at the time of Zapiro’s cartoon, facing a number of criminal charges, they included one charge of racketeering and money laundering, two charges of corruption and twelve of fraud.¹⁸⁸

The cartoon depicts Zuma standing in front of a restrained and resisting Lady Justice who is being held down by his political allies as he undoes his trousers. From Zuma removing his trousers, the

¹⁸⁶ Zapiro, *Rape of Justice Cartoon 1*, Sunday Times September 7 2008, available at <https://www.zapiro.com/080907st>.

¹⁸⁷ Ibid.

¹⁸⁸ Matthew Burbridge, “Zapiro back in ANC’s sights” Mail & Guardian, June 2011, accessible via <https://mg.co.za/article/2011-06-13-zapiro-back-in-ancs-sights/>.

ANC telling him to “go for it, Boss!” and the cartoon’s title, it is clear that Zuma is about to rape justice with the aid of his allies. It is, undoubtedly, a rape metaphor, the uses of which, as Rachel Fraser argues, are inherently morally wrong and harmful.¹⁸⁹ The harmful impact of this metaphor, and many others of Lady Justice, are increased further as a result of their visual nature. The sight of Justice’s screaming face, particularly when paired with her blindfolded eyes, is undeniably harrowing.

Rachel Fraser’s theory on the ethics of the metaphor clearly establishes how the construction of such metaphors constitute the perpetuation and establishment of hermeneutical injustices and harm against women.¹⁹⁰ Even in instances where rape metaphors are not overly trivialising or triggering, where they rely upon the perception of rape as severe and abhorrent, they are not morally innocuous. They fundamentally rely on the abstraction of rape as the general exercise of control or domination (like Nehru’s presentation of the British imperial project as the “rape of the planet”). Which, as Fraser argues, takes rape away from being spoken of as it is, “the embodied violation of another person.”¹⁹¹ In doing so rape metaphors perpetuate and sustain hermeneutical injustices against women.

The continued connection between Lady Justice and female hermeneutical injustice is a concern. The overt use of her gender in justice commentary do not further the metaphor’s representation of justice but rather skew it. It establishes her gender as an active element of the metaphor’s design, necessary to communicating its meaning. Lady Justice’s gender’s only overt use prior to the popularisation of this commentary and double entendre was the way that it separated her from

¹⁸⁹ Rachel Fraser, ‘The Ethics of Metaphor’ (2018) 138 *Ethics* 728, 731.

¹⁹⁰ Fraser (n 189) 728.

¹⁹¹ *Ibid* 730; Jawaharlal Nehru, *Towards Freedom: The Autobiography of Jawaharlal Nehru* (Boston: Beacon, 1967), 272.

jurists, which as part two of this chapter highlight's is no longer metaphorically salient. Not only is this use of rape morally harmful, but it leads the concerns that her gender in a 21st century context poses a threat on her capacity to function as a metaphor for justice.

In a 21st century context, Justice's gender is not being used to invoke notions of chivalry, or to separate the figure from the legal world, because those assumptions and facts are now outdated. Instead, the themes of control previously associated with her femininity which aided her representation of justice, read as misogynistic and patriarchal to a modern audience. Zapiro's piece, as well as all others included in this section, faced significant backlash. In an interview with the Mail & Guardian newspaper Zapiro said "the last thing he wanted to do was to deliberately offend women."¹⁹² The comic was not designed to address Zuma's assault accusations, it is solely a critique of the operation of authority in this South African context, and the complacency of others and other groups in the alleged corruption. Which only increases the perceived connections between his political corruption and his acts of sexual violence.

Michelle Solomon presented another argument against the piece, which further supports the concern that the raping of justice and this connection to her gender is harmful to the internal operation of the metaphor. In another Mail & Guardian article titled "Rape will never be just another metaphor", she wrote, whilst she believes Zapiro's comment were sincere, she fears "his use of the metaphor is obscuring the very message he is trying to portray."¹⁹³ Arguing that his use of rape becomes the story and overpowers the commentary he was hoping to communicate.¹⁹⁴ The inclusion of a rape metaphor instantly negates the value of intentions of the piece as it renders it morally

¹⁹² Michelle Solomon, "Rape will never be just another metaphor" Mail & Guardian, June 2011, accessible via <https://mg.co.za/article/2011-06-14-rape-will-never-be-just-another-metaphor/>.

¹⁹³ Solomon (n 192).

¹⁹⁴ Ibid.

impermissible. Moreover, this cartoon extends the matter further, showing a severe lack of understandings of assault and rape by perpetuates rape myths, specifically those that a woman must be held down and physically restrained, with Justice's feet literally tied together in the image, to be raped.

Solomon goes on to argue that just because she was offended by the cartoon does not mean that she endorses censorship, and in reality, she does not want to stop Zapiro from exercising his voice, and neither, necessarily, is this investigation.¹⁹⁵ Zapiro has not done anything that has not been an element of Lady Justice since her application as a legal metaphor, however, it is observing that the climate is not longer supportive of this element of her design. Her gender is not only not innocuous, but it is posing a threat to her representation of justice, Justinian or otherwise. The temptation to utilise additional implications that arise as a result of her gender is clearly too great to ignore, and it leads to harmful metaphors and assumptions around the figure which do not connect to theories of justice.

Zapiro's cartoon was published in 2008, and the discourse around its harm being address in 2011. Though the #MeToo movement had been established by that time, it had not yet gained the virality it would later see as a hashtag in 2017 following the sexual assault accusations against Harvey Weinstein.¹⁹⁶ In the wake of which countless more allegations would come to light about notable figures in the media and within politics. Lady Justice enters this movement in a way predicated by her gender, and a particular amalgamation of concerns and allegations centred around American legal and political figures at the time, specifically President Donal Trump and Justice Brett

¹⁹⁵ Solomon (n 192).

¹⁹⁶ Megan Murphy, "Introduction to "#MeToo Movement"" 31 *Journal of Feminist Family Therapy* (2019) 63, 63.

Kavanaugh. The men in question were not only both alleged to have assaulted women, but they faced significant critique for their political positions and conceptions of justice.

Critiquing politicians and jurists for their application and conceptions of justice, through the metaphor of Lady Justice, is not a new concept, as was seen in analysis Langston Hughes's poem *Justice*, nor is it new that it has been based off of harmful assumptions or experiences of women, as was concluding in investigations of Frantz Kafka's *The Trial* and Banksy's "Trust No One." However, the specific rhetoric and power of the assault of justice to signify both the real allegations of assault against women, and the miscarriage of justice and political corruption, as in Zapiro's cartoon, is a concerning trend which is harmful both to women, in the perpetuation of rape metaphors, and Lady Justice as a metaphor.



Figure 7: When you're a star they let you do it.¹⁹⁷

¹⁹⁷ Adam Zyglis, Buffalo News 2018, from Michael Cavna "Viral Kavanaugh cartoon powerfully depicts the assault of Lady Justice", The Washington Post September 29 2018 accessible via <https://www.washingtonpost.com/news/comic-riffs/wp/2018/09/29/viral-kavanaugh-cartoon-powerfully-depicts-the-assault-of-lady-justice/>.



Figure 8: Don't scream.¹⁹⁸



Figure 9 Kavanaugh Trial Cartoon.¹⁹⁹

¹⁹⁸ Mike Peters, September 2018, accessible via <https://themoderatevoice.com/mike-peters-guest-cartoon-brett-kavanaugh/>.

¹⁹⁹ Bruce MacKinnon, Editorial Cartoon, The Halifax Chronicle Herald, September 28 2018 accessible via <https://www.saltwire.com/nova-scotia/opinion/editorial-cartoon-sept-29-2018-245696/>.

In the Trump and Kavanaugh phenomenon, there is a pattern of comics using the conditions of the figures' specific assault allegations to construct the methods in which they are depicted to assault Lady Justice. Whilst South African President Zuma had faced rape allegations in the past, and such surely added to the impact of Zapiro's comic, the cartoon itself was in response to his criminal charges and, notably, intimating that his political allies facilitating his corruption; it did not concern itself with any details of his assault allegations.

Critically, in these comics, the influence of Lady Justice's gender, its societal assumptions and connection to the experiences of real women, is more powerful in the metaphor than her focus on justice. The latter appears like an afterthought, or a lucky coincidence, though it is the reason piece can exist. Her femininity is used in these instances to call upon the notion of justice being controllable and subject to male domination, but it presents that as a fault and failing of the figure, more specifically as a failing of justice, which is not how Lady Justice's 'controllability' had been employed before. Frankly, the domination of women itself was not considered with the same distain as it is to modern sensibilities, therefore what was once rhetorically useful to the metaphor and its presentation of justice, now threatens it.

For example, in figure 8 Lady Justice's blindfold is raised and she looks toward Brett Kavanaugh who is groping her and covering her mouth as he says "Don't Scream!" Figure 7 is a similar cartoon of Donald Trump, where he is walking away from a statue of #MeToo Lady Justice, whose body is covered in handprints, with the implication that he groped the figure without her free consent as he says "When you're a star they let you do it." Implying her consent was only granted because of the power dynamic produced from his fame. Both cartoons are directly based off of the allegations or released information regarding the men and their sexual misconduct. In Kavanaugh's case his

accuser stated in her testimony that whilst the alleged assault was taking place, Kavanaugh covered her mouth so she could not scream, and Trump's "when you're a star" text is a direct quote from the 2005 "grab them by the pussy" audio which surfaced during his first presidential campaign.²⁰⁰

The creation of these cartoons, and the inclusion Lady Justice is opportunistic. It is an easy element to invoke both a criticism of the men's treatment of the law and justice, and how that is exemplified through their treatment of women. However, in relation to how it furthers an understanding of the metaphor of Lady Justice, the justice she represents, and influence of her gender, it is less simple or effective. It makes no significant commentary on the justice she represents. Unlike in other criticisms of the employment of justice in particular environments, it does not alter the figure or suggest a new analysis of a specific attribute of the metaphor's design, like the blindfold or winged feet, as representing that harm, instead her fault is her femininity. Her fault is her capacity to be subject to system abuse, to be subject to male domination and control. As though to say Lady Justice allows the concept of justice to be abused, mistreated and assaulted, because she is a lady, and is therefore inevitably harmed by systems she cannot overcome. It is the only critique of justice, by way of critiquing Lady Justice, which has rendered the statue unable to function as a metaphorical representation of the justice she represents.

The meaning of the cartoons is not to critique, or comment on, the assault allegations these men have faced, but rather use those circumstances as a vehicle to metaphorically represent their abuse of justice, critically, but for the metaphor of justice being depicted as a woman this opportunity to exploit hermeneutical injustice and male sexual violence against women would not exist.

²⁰⁰ Jane C. Time "Trump on Hot Mic: 'When You're a Star ... You Can Do Anything' to Women" NBC News, October 2017, accessible via <https://www.nbcnews.com/politics/2016-election/trump-hot-mic-when-you-re-star-you-can-do-n662116>.

Therefore, this is where a call for the development of the figure could potentially arise. Where the controllability of the figure, as a woman, is societally deemed to be a harmful gendered assumption, the metaphor begins to fail itself as a representation of Justinian justice. As a result, the metaphor may require development, just as she did during the Reformation when the theological perspective on sightedness changed, and when the divine influence in legal spaces became less attractive.

The final cartoon consulted by this investigation, created by Bruce MacKinnon, produces the same conclusions and findings of the other two, but will briefly be discussed separately simply to note the specific impact its design has on the issue present. It was designed to critique Kavanaugh's nomination, and subsequent assertion, to the US Supreme Court, in spite of the sexual assault allegation brought against him. The assault allegations were not the only reason Kavanaugh's fitness for the role was under critique, but it was a central concern to the appropriateness of his nomination for the role. The woman who brought forward the claims against Kavanaugh, Ms Christin Blasey Ford, did so specifically because of his nomination, and because she felt it was her civic duty to do so, stating "I am here today not because I want to be. I am terrified. I am here because I believe it is my civic duty to tell you what happened to me while Brett Kavanaugh and I were in high school."²⁰¹

This detail is given to support the argument that the use of Lady Justice in figure 9 is wholly inappropriate. As has been briefly asserted, rape metaphors are never morally innocuous and they in themselves are argued to constitute a harm and injustice. The cartoon in figure 9 is not only drafted with the details of Ms Blasey Ford's testimony, in regards to how she is pinned down and her mouth

²⁰¹ Guardian Staff, Christine Blasey Ford's opening statement in full, The Guardian September 28 2018 accessible via <https://www.theguardian.com/us-news/2018/sep/28/christine-blasey-fords-opening-statement-in-full#:~:text=I%20am%20terrified.,a%20letter%20to%20Chairman%20Grassley>.

is covered, but the design of the image of Lady Justice is drawn with blonde hair to specifically resemble Ms Blasey Ford's appearance.

This is not a salient way to use the metaphor of Lady Justice, or critique the justice of a society. It is solely a commentary on a judicial figures alleged illegal conduct, and has no bearings on the principle of justice at large. It exploits Lady Justice's gender as an easy way to add a double meaning and more impactful design to the image, but it represents an appropriation of the figure that bars her existence as a legal metaphor and paints her as a female legal metaphor. Connecting her more significantly to the protection, and by extension miscarriage, of justice against women, above that of the protection and miscarriage of justice against all.

This opportunity should not exist, and it is the first use of Lady Justice in the critiquing of the operation of justice within a society that leads to the direct consideration that there are concerns with the metaphor's design. This investigation of Lady Justice's gender is not suggested to hold a new influence on the metaphor, the controllability of Lady Justice and that being a purposeful part of her design has been seen as an aspect of metaphor throughout her application. However, the implications of that control are now being considered a negative attribute to justice, which is where the argument that it is becoming an unfit aspect if the metaphor is to continue to represent Justinian justice, is based.

Part Two: Lady Justice as Lady Justices

The final section of this investigation is a brief consideration of the fact that, unlike the commentary made of the figure in her employment in the Middle Ages, women are no longer relegated from legal proceedings. In fact, their equal appointment and representation in the field is becoming a demand of the current generation of jurists. It can no longer be said that "[s]ince judges were rarely

if ever women, the use of a female figure suggests a justice removed from actuality.”²⁰² Which has not lead to the confusion that Lady Justice was designed to literally represent female members of the judiciary, as a result of the metaphor’s longstanding history, however it has lead to a rhetorical fault which often leads Lady Justice to become a symbol no longer only of justice, or of women, but of all female jurists.

In an article titled ‘Women and the Law: the Symbolism and the Reality’, Aileen Sprague implies the goddess of Lady Justice were the literal predecessors of female judges.

“But, not surprisingly in light of the historical struggles for equality fought for by women in the United States in the late nineteenth and early twentieth centuries, women were precluded from the study and practice of law and denied the opportunity to emulate their mythical predecessors.”²⁰³

There is an observable tendency towards employing Lady Justice as an icon, specifically of female jurists, which affects Lady Justice’s capacity to be a metaphor for Justinian justice in a similar manner to the influence of male domination, as it is another attribute being given to the metaphor which has no connection to the representation of justice.

This chapter will consult one example in which Lady Justice is invoked, in name only, as a representation of and symbol for women in the law, which is Dahlia Litwicks book *Lady Justice: Women, the Law and the Battle to Save America*. Then it will consult one example wherein women are compared to Lady Justice, as though she is the specifically metaphorical representation for the standards and values of female jurists, which is Taylor Simpson-Wood’s

²⁰² Curtis and Resnik (n 2) 1765.

²⁰³ Aileen Sprague, “Women and the law: The Symbolism and the Reality” (2011) 16 Roger Williams University Law Review 260, 261.

article on the representation of a female judge in the tv show *Bad Judge*, titled “The Rise and Fall of *Bad Judge*: Lady Justice Is No Tramp”.

1. Dahlia Litwick's Lady Justice: Women, the Law and the Battle to Save America

Dahlia Litwick's book was written after Trump's presidential victory over Hilary Clinton, and is very much written in that context, inspired by the “lock her up” rhetoric which was used by Trump's presidential campaign to target Clinton.²⁰⁴ Throughout the book Litwick tells the stories of several female lawyers and legal activists and the work they completed during the time of the Trump administration, to counter the injustice argued to have been perpetuated by the American Republican Party. The book is described as “a brand-new and deeply inspiring account of the Trump years.” With the end of the blurb reading:

“*Lady Justice* is destined to be treasured and passed from hand to hand for generations to come, not just among lawyers and law students, but among all optimistic and hopeful Americans.”²⁰⁵

This is where it becomes necessary to stipulate that, while the shorthand for the book is *Lady Justice*, the only mention of Lady Justice in this book, is in its title. The content of the book surrounds female lawyers and legal argumentation, but Lady Justice is being used as an icon only, whilst this is in tangential connection to her figure as a justice metaphor, her use is more prominent as a figurehead for women in the judiciary.²⁰⁶ It is relying on the associated goodness and concepts of justice and morality in the figure, but it is far more heavily relying on her gender. Implying that the women in book are Lady Justice, they hold her same goals and, unlike male jurists, her image and gender.

²⁰⁴ Penguin Random House, “Lady Justice by Dahlia Lithwick” accessible via <https://www.penguinrandomhouse.com/books/598207/lady-justice-by-dahlia-lithwick/>.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

The metaphor of Lady Justice is not being invoked to make any comment on a concept of justice, Justinian or otherwise, but simply use the metaphor as a symbol and fire head for women and the law, and it works. As a rhetorical tool for that purpose it is very effective, and in that sense Lady Justice has become a symbol women in the law look towards and identify with, they see themselves as the same protectors of justice. This is expanded on in the following discussion of the television show *Bad Judge*, in which Simpson-Wood directly compares the fictional representation of a female judge to the image of the metaphor itself.

2. *Bad Judge*

Bad Judge was a television show which premiered in late 2014 and follows the principle character Rebecca Wright, who Simpson-Wood describes as:

“...a fiery redhead who drives a worthless van with a Native American mural painted on the side, a bumper sticker which reads, "If you are rich, I am single," and who has a penchant for breaking the rules and causing a scene wherever she goes. A sexually unapologetic party gal, she also happens to be a fictitious judge at a California Municipal Criminal Court and the lead character in the sitcom *Bad Judge*. According to the show's tagline, Rebecca will be seen "Upholding the rules by day. Breaking them at night.”²⁰⁷

She is a notably unconventional depiction of a judge, which Simpson-Wood takes considerable issues with. After detailing the influence of television on perceptions of the value and respect for the judicial process, and the influence of 'legal popular culture', Simpson-Wood goes on to heavily critique the show.²⁰⁸ Specifically, the character of Rebecca Wright and the suggested ramifications

²⁰⁷ Taylor Simpson-Wood, “The Rise and Fall of *Bad Judge*: Lady Justice Is No Tramp” (2016) 2016 *Revisit Forumul Judecatorilor* 110, 125.

²⁰⁸ *Ibid* 110.

she poses on the trust and perception of the judiciary, and the promotion of women within the judicial field.²⁰⁹

Simpson-Wood's criticisms of the character of Rebecca Wright and any considerations on whether she is an appropriate or inappropriate fictional representation of a judge, or what reflections and implicates she poses for women in the judicial field, are not being disputed or even engaged with in this analysis. The merit or demerit of her core argument is irrelevant. The consideration is the relevance Lady Justice to her discussion. At no junction is she considering or critiquing the theory of justice represented by the metaphor, or the operation of justice itself. Therefore, there should be no reason to argue that Rebecca Wright's character has any direct influence on the metaphor of Lady Justice, specifically no greater influence than any other fictional judge. That is, were her gender not now considered a core element of the metaphor.

Simpson-Wood casually invokes the metaphor, and its standards for judicial representation, as a means of processing critique of Rebecca Wright. Her invocation is casual specifically because she does not at any point justify or explain why discussions of Lady Justice are relevant to the behaviours or perceptions of judges. Lady Justice is not, or at least was not, a judge. Simpson-Wood states:

“Despite sometimes comedic screenwriting, the character of Rebecca Wright is a product of this "narrow ideological range" which is why the show erodes the prestige, honor, and respect that is owed to members of the judiciary and to the rule of law. It turns lady justice into a tramp.”²¹⁰

She then concludes the article by saying:

²⁰⁹ Simpson-Wood (n 207) 137.

²¹⁰ Ibid.

"The symbols of Lady Justice are not skimpy lingerie, a tequila bottle, and a used pregnancy test.²¹¹ They are the sword, the scales, and the blindfold. We need to restore them to her."²¹²

There are no other mentions to Lady Justice, or justification provided as to why Rebecca Wright's character has direct implications on the metaphor. How she categorically turns Lady Justice into a tramp, and replaces her accessories is unclear, because she should not, Lady Justice's metaphor is not designed to have any particular influence on the specific analysis of female judicial characters. However, the sheer casualness of Simpson-Wood's commentary implies rhetorically that is not the case. The truth of a metaphor lies equally in how it is commonly understood as well as how it is intended.

The Lady Justice which has been analysed throughout this investigation is not a symbol of female judges, she is a metaphorical figure of justice, not of women, or of judges. She is the image of a goddess who has been transformed into a metaphorical representation of a core Justinian conception of justice. However, as indicated in the titling of Dahlia Litwick's book, where women are becoming prominent members of the judiciary, Lady Justice is being used as a symbol and figure head of lady justices. The high level of connection made between female jurists and the metaphor is an observable reality, and will similarly influence the understanding of the metaphor as gender equality in judicial posts continues to be secured.

Furthermore, in that evaluation, it appears there needs to be a reconsideration of what is desired from a metaphorical representation and symbol of justice, if one is desired at all. Justinian's brief definition of justice seems to still satisfy the basic answer to what society deems justice should be. However, as has been seen throughout the invocation of Lady Justice, there is a frustration

²¹¹ All of these items are references to moments within the television show.

²¹² Simpson-Wood (n 207) 141.

regarding her lack of specificity and her lack of moral protections. Where justice is not a natural cosmic truth, and social acquiescence tends towards a positivist theory of law, those shortcomings do not have an answer, as they previously did in the power of the divine.

Modern discussions on theories of justice display a desire for ethical and social securities that Lady Justice and Justinian do not offer.²¹³ Lady Justice provides no moral assurances, or freedom from domination. In fact, as this investigation has argued, she represents a justice for which domination and controllability were positive attributes. Considering both the gap between that desire and the justice represented by the metaphor, as well as the observed manners in which the influence of the figure's gender on its representation on justice have changed, Lady Justice's future requires careful consideration.

It is presently argued that, in a 21st century context, there is reason to conclude that Lady Justice is increasingly becoming an insufficient representation of justice. This investigation therefore considers that these limitations may necessitate the metaphor's development, as was seen with the addition of the blindfold, in order to maintain the high metaphorical salience she once held.

²¹³ Serge-Christophe Kolm, *Modern Theories of Justice* (MIT Press 1996) 3; Sen Amartya, "What do We Want From a Theory of Justice" from Alejandra Macilla *Theories of Justice* (Routledge 2012).

Conclusion

This investigation has undertaken the task of exploring Lady Justice from her mythology, to her application as a legal metaphor in the Middle Ages, through to the present day. In doing so it has asked what form of justice is represented by and through the image, and how her gender influences the operation of the metaphor.

It has found that Lady Justice, throughout her development and deployment, has maintained a connection to a core Justinian concept of justice and has changed where necessary, to maintain fidelity to modern conceptions of that concept. This is most notably observed with the introduction of the blindfold as a semi-permanent feature of the metaphor. It explored the religious and non religious motivations for the addition of the blindfold, and the analytical significance of the blindfold's semi-permanent application. Although, in relation to the latter consideration, found it prompted meaningful analysis but did not significantly alter the metaphor's presentation of justice.

The application of the blindfold was also argued to have marked a departure from the metaphor's previously observed ties to a natural law reading of Justinian's justice, and therefore signified a demarcation from the figure's divine identity. Doing so allowed the figure to stand for an independent and professional judiciary under a positivist legal framework. What was also found is that stripping her divine capacities made her even more subject to applications of human assumptions, particularly surrounding her gender. Most principally, the promise that, as a woman employed in an exclusively male field, the metaphor protects that justice may be dominated and controlled. This is fundamental to the metaphor's salience and success, though will later have repercussions when social cognition surrounding male domination of women is altered.

The 20th century analysis found particular focus on criticisms of the application of justice through the metaphor, though it concluded that this did not limit the capacity to which she represented Justinian justice, but rather its interpretation and application within specific societal confines. However, when moving into the 21st century, the reliance on gendered assumptions, in a period of open deconstruction of patriarchal ideals and the combatting of male domination in the pursuit of gender equality, finds the influence of her gender to be harmful to the metaphor's representation of Justinian justice. The element of her gender, which before aided the communication of the metaphor's justice, is now more often seen to threaten it as a result of its misalignment with social consciousness and cognition. Further, even where the implications of her gender are not relying on harmful gendered assumptions, the realities of women as legal and judicial agents has permitted the use of the figure as a figurehead and symbol of female jurists, which also does not support or further her representation and protection of justice.

This investigation has explored the content of the justice which the metaphor represents, most notably it's connection to, and later departure from, a natural view of law. It is seen that she remains consistent to the core concept of the Justinian view of justice, but the influence of her gender in its most modern context threatens the centrality of justice in her usage. The final conclusions of the analysis of the metaphor suggest she may either lose her previously observed success and efficacy as a metaphorical representation of justice, or it will be a prompt for the development of the figure akin to that which was seen during and after the European religious reformation.

Originally inspired by Joanne Conaghan's concluding chapter to *Law and Gender*, where she asked why sources do not provide an answer for Lady Justice's femininity, this investigation has instead suggested that this is not the most pressing question regarding the figure's gender.²¹⁴ It has asked

²¹⁴ Conaghan (n 13) 242.

what she represents and who she is. It has found the most pressing area for her gender study is not why she was made in a female image, but what it means for her, now that she is not the sole woman in the legal sphere. The removal of her unique value in being separated from the judicial community by way of her gender no longer stands. Furthermore, neither do the 15th century gender norms and notions of chivalry which embedded her metaphor with such power. Who Lady Justice will be in this century, where female Justices only grow in number and influence, is still to be decided and is a necessary focus for literary and feminist jurisprudential study. The influence of gender, which once stood to further the metaphor's impact and communication of a core Justinian representation of justice, is now posing a threat to its capacity to do the same. The same gendered invocations of the Middle Ages cannot be relied upon if Lady Justice is to maintain the metaphorical accuracy and power which she is famous for holding. This investigation has attempted to introduce these concepts and concerns and begin the analysis on why the metaphor is tending towards an unfitness. It remains to be seen how future contributions will shape the continuation of the metaphor, and if this is a challenge she can overcome.

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