

Dynamism and cosmopolitanism in the historical construction of the representation of Justice*

Dinamismo e cosmopolitismo na construção histórica da representação da Justiça

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Abstract

This article aims to analyze the construction of the anthropomorphic representation of justice as representative of the homonymous ideal, discussing the symbolic conditions of its introduction into legal culture and whether this insertion occurred spontaneously or artificially. To this end, based on bibliographical and documentary research, a selection of the main symbols related to the representation of justice was examined, along with the respective principles and rules. Subsequently, a correspondence between their current and past meanings was verified, with the aim of clarifying the existence of an immutability (or not) of symbolism within law. Finally, it is concluded that, although the elements that comprise the representation of justice in the legal imaginary have been subject to reinterpretation, according to historical moments and the possibilities for change in their interpretation, their strength in the landscape of legal symbols remains.

Keywords: Symbols. Justice. Law. Principles.

Resumo

O artigo tem por objetivo analisar a construção da representação antropomórfica da justiça como representativa do ideal homônimo, discutindo as condições simbólicas de sua introdução na cultura jurídica e se essa inserção se deu de maneira espontânea ou artificial. Para tanto, a partir de uma pesquisa bibliográfica e documental, examinou-se um recorte dos principais símbolos relacionados à representação da justiça, com a indicação dos respectivos princípios e regras. Em seguida, verificou-se a existência de uma correspondência entre seus significados atuais e passados, no escopo de esclarecer a existência de uma imutabilidade (ou não) da simbologia dentro do direito. Ao final, conclui-se que, embora os elementos que compõem a representação da justiça no imaginário do campo jurídico tenham sido alvo de releituras, de acordo com os momentos históricos e as possibilidades de mudança em sua interpretação, a sua força no cenário dos símbolos do direito permanece.

Palavras-Chave: Símbolos. Justiça. Direito. Princípios.

1 Introduction

The present study aims to analyze the origin and presence of symbols and allegories in the legal scenario, from the representation of value itself to the architecture of the legal system and the props used by magistrates in the exercise of the judicial function, namely with the

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purpose of verifying whether the construction of the anthropomorphic representation of justice occurred spontaneously or artificially.

The investigation is justified by the need for a better understanding of the principles of law evoked by such allegories, in view of the strength of these principles in the construction of the imaginary of the field of law, an aspect that is fundamental in the understanding of any political and legal system (Carvalho, 1990). On the other hand, the clarification of the origin of these symbols will contribute to a better analysis of their meanings and practical developments in the field of legal science and forensic practice, in order to offer a critical overview in relation to preconceptions formulated and replicated by common sense on a daily basis about Justice and the images that give it symbolic meaning.

A symbol establishes a relationship of meaning between two objects, two ideas, or between objects and ideas, or between two images (Carvalho, 1990, p. 13). In a referential study in this field, Bourdieu (2002) clarifies that symbolic power is a fundamental element to understand the functioning of society, and Law and its forms deserve special analytical prominence, since it is an order that intends to remove arbitrary violence from social actors, including through the symbolic appropriation of the language of justice, within a field, which he called the "legal field".

Furthermore, the present study contributes to the investigation of the origins of the conservatism of the institutions of the Judiciary, indicating to what extent the immutability of its historical symbols is concrete and is sustained to this day.

A descriptive methodology was used, based on the investigation and description of the most relevant elements related to the phenomenon of the representation of justice and its institutions over time. It is also a qualitative research, because, in view of the impossibility of quantifying the reality investigated, the work is focused on understanding and explaining the emergence and modifications of its object, in order to elucidate the historical meanings of the allegories of justice for a given time, point out the traces of its evolution, relating them, in the end, to the jurisdictional and procedural principles of the Democratic State of Law. As for the procedures, the research used the bibliographic and documentary types, from the use of photographs, illustrating the symbols related to the topics of the present study.

The first section explores the symbology in law, using mainly the historical resource to offer a discussion about the iconographic symbolic elements in the stage of Justice, mainly as vectors for the construction of the aesthetic traditions of the legal scene, occupying, from its

dispositions in the architecture and language of this area, an important place in the imagination of its actors and society.

2 The historical construction of law in the light of the relationship between symbols and their meanings

From the anthropomorphic point of view, justice is traditionally represented as a blindfolded woman, carrying a sword and scales, who can be standing or sitting. This figure brings together elements present in the three great mythologies of the Ancient Age: Egyptian, where justice was portrayed in the personification of the goddess Maât; Greek, which brought the figures of Themis, goddess of oaths, and Dice, goddess of justice; and Roman, represented by Iustitia and Aequitas, according to the Hellenic tradition, respectively (Dorvidal, 2011, p. 154).

In Brazil, the influence of this mythological entity is such that a representation of it adorns the most important building of the national Judiciary. The marble work of the Italian-Brazilian sculptor Alfredo Ceschiatti, dated 1961, located in front of the Palace of the Federal Supreme Court, in the Praça dos Três Poderes, is taken care of. On the occasion, Ceschiatti represented a woman seated, blindfolded and carrying with her a sword that rests on her lap².

The elements that adorn this human representation of justice directly influence, for example, the symbolic construction of the Judiciary, whose jurisdictional activity of distributing justice, ideal as the most common representation, is carried out by its judges and other collegiate judicial bodies. Thus, the study of its construction and evolution also serves to analyze the development of the ideal of justice and the solidification of the judicial function of the State.

Martyn and Huygebaert (2018, p. 3) begin their work on Historical Legal Iconography with the exposition of the words of Jan Matthijsen, a *clerk* of the court of the city of Den Briel, Netherlands, in 1405, about the appearance that a court should have³. The scenario illustrated

² Franca Filho (2011) wrote about this work: "Exactly fifty years ago, in 1961, Alfredo Ceschiatti, from Minas Gerais, inaugurated his emblematic sculpture 'Justice', in front of the headquarters of the Federal Supreme Court, in Praça dos Três Poderes, in Brasília. The allegory, made of granite from Petrópolis, measures 3.30m high by 1.48m wide and, unlike most of the centuries-old iconography of Justice, portrays a seated Themis, devoid of scales and with her sword resting on her lap. There is no far-fetchedness, great twists or impenetrable nooks and crannies in its plasticity. There is, indeed, a certain concretist echo in the work, with its compact volume, its symmetrical and economical forms. The concise and uninterrupted lines give the figure of Ceschiatti an art deco *seriousness*. An austere and solemn Justice is taken care of, whose well-marked angles, upright posture and heavy planning give it a hieratic and formal air".

³ "The room will be clean inside and full of paintings and inscriptions with good and wise words, from which wisdom and cleverness can be acquired; so that someone says 'to contemplate is to be aware, to think about, to remember well'" (Martyn; Huygebaert, 2018, p. 3).

by the text lasts throughout the ideal of judicial architecture until the nineteenth century, supported by the thought that "practitioners of law used art to legitimize, explain and illuminate their judicial functions, to exercise their duty and achieve the ideal of justice".

In the same sense, Garapon (1999, p. 27) observed the prominence occupied by architecture in the panorama of the rites and symbols of Justice, emphasizing that judicial symbolism sought many of its elements in mythology, in the Bible, in history and in other domains, including the mythological and the cosmological, in a process of accumulation and overlapping of signs and symbols over time.

In fact, to this day, the power of speech of the architectural drawings of the forensic environment is visible. From decorative objects to the sumptuous buildings that house Courts, law offices and bodies of the Public Prosecutor's Office, everything seems to have a voice of its own, belonging to the very institution they represent and that, silently and permanently, whispers in the ears of those who pass through these places a message of tradition, antiquity and solemnity. The idea is created, albeit fictitiously, that authority has a face, a mouth and must speak to people, as a dimension of a liturgy that is the basis of a communicative space in the environment of justice (Heritier, 2014, p. 142).

For this reason, Garapon (1999, p. 25) pays special attention to the architecture of the "judicial space" in the discussion of judicial rituals: "the first gesture of justice consists in delimiting a place, circumscribing a space conducive to its realization. There is no knowledge of a society that has not reserved a special place for it".

Thus, it is necessary to consider that the communicative power of visual resources (from concrete elements, such as buildings, to abstract ones, such as a screen) in the space of justice is not a recent phenomenon. History is full, since its beginnings, of the use of drawings, engravings and other symbols as a form of language and of subconsciously transmitting a message to the interlocutor.

This discipline, however, only began to enjoy academic autonomy in the twentieth century. XVIII with the scientific emancipation of Art History (Meneses, 2003, p. 13), a historical moment when the result of the "systematic effort to collect and organize artistic images and symbolically decode their meanings" is materialized, an effort that will lead more than three centuries later to iconology as a scientific practice", which began with the Renaissance. During the French Revolution, for example, there was a great incentive to produce images as an instrument of political struggle.

At this point, it is necessary to distinguish the concepts of iconography and iconology, so that one can have a more accurate view of the object of study in question. While the first field of knowledge is restricted to the description of paintings and works of art, the second seeks, in addition to describing them, to interpret them, extracting the meanings attributed to the symbols from their historical and social context.

Such a distinction is evident when one understands the importance of knowledge of law, knowing what is or was at a certain moment in history, as well as the way in which the jurisdictional provision and administration of Justice took place, based on the symbols existing in the scenario and in the forensic dynamics of history, an object of study that fits into the iconology, "entering the broader field of how artists and jurists have interacted throughout the history of the West" (Martyan; Huygebaert, 2018, p. 9).

For the law and in the law, the use of veiled communications is materialized in the rituals and procedures of the "judicial ceremony", with all the solemnity that is proper to it (in addition to the pomp that may exist). This ceremonial already reveals a lot about the essence of forensics and, many times, through it, one can concretely visualize the governing principles of law and the foundations of justice (Garapon, 1999).

At this point, it is pertinent to highlight the observation of Heritier (2014, p. 142), when he defends the omnipresence of symbols in the political organization of various societies over time:

[...] in no historical period – from the Roman and medieval emperors to the popes, from Nazism and even contemporary multinational companies – have people not organized themselves without the assistance of a *mise en scène*, without the construction of an "aesthetic figure of the foundation", without recourse to music, ceremony, dance: law is not only a *systema iuris* composed of rationally interpretable norms, but also and always a *corpus iuris* wrapped in images, symbols, and myths, which aesthetically and dogmatically sustains the norm, increases it, and makes it presentable, credible, and anthropologically communicable.

In the legal environment, these symbols often appear endowed with rules that are presented to society as morally inviolable, defining prohibitions and taboos. To these figures, Branco and Dumoulin (2014, p. 487), anchored in the studies of Marrani (2010), give the denomination of "totem", which, in their definition, represents this "thing" endowed with a symbolic meaning for the individual or the group to which he belongs and which "serves as the basis for a system of beliefs that is the source of a social micro-organization".⁴

⁴Still on this topic, Branco and Dumoulin (2014, p. 487) point out that the quality and quantity of these totems can vary according to society. For example: the process of the Roman-Germanic system has a single totem, the judge, by virtue of his connection with the public power. On the contrary, in the English model, in addition to the judge characterized as a totem in the background, there is the process itself as the first totem.

In the Brazilian legal culture, the Judiciary itself and the people who embody it, that is, the magistrates, are part of the caste of totems, representatives of the state power that are conferred on them the power to judge and, in this way, intervene directly for good or for bad in the intimacy of the citizen. It is up to them to beat the "hammer" – even though this instrument, the *malhete*⁵, is not often part of the Brazilian forensic scene.

Now, to the judge, dressed in the toga, symbol of jurisdiction, all reverence is due. After all, it is the legitimately instituted state authority to intervene in human freedoms, declaring them right or wrong and, eventually, imposing sanctions as consequences for our practices incompatible with the legal system.

It is worth noting that, as a political activity, the elaboration and application of law should not obey only the rational discipline related to the understanding of the legal phenomenon from its positive norms. Such an illusion ignores the fact that beliefs and moral constructs are also important for the governability of our society and our lives, so that "above all, this shows that man is not only a mind to be controlled by the use of reason, but also a body politic to be liturgically understood as a message" (Heritier, 2014, p.144).

3 The main symbols of law and their meanings: the scales, the sword, the blindfold, the mallet and the olive tree

Justice, as a system of actors, rules and institutions, is materialized, in most Western countries, in the Judiciary, based on the tripartite construction of power, proposed by Montesquieu (1979), who developed past ideas – such as those of John Locke (1998) – and fostered later ones – such as those of the influential federalists Hamilton, Madison and Jay (1984). These theoretical contributions constitute a bundle of political dogmas that have shaped important constitutional movements, in whose dimensions the architecture rests (equally) on the justice system.

Therefore, from these political references, contemporary constitutionalism was forged, where the judicial activity of the State began to be exercised in the form of a monopoly, as a manifestation of national sovereignty itself, responsible for the resolution of disputes, including the Judiciary acting in the role of final interpreter and guardian of the Constitution (Chaves, 2017).

⁵Traditional judges' gavel of Anglo-Saxon tradition.

The Judiciary, as we know it today, bears symbols that date back to Classical Antiquity, considering that, despite its joviality as a segment of political power, the jurisdictional function is one of the oldest manifestations of the exercise of power by rulers. So, having absorbed this exercise, it ended up absorbing the Judiciary, too, its symbols.

As a legal fiction, the State-judge manifests itself in the figure of the courts (in a broad sense, defining themselves as organs of the Judiciary) and magistrates, citizens endowed with the power to judge, based on the state investiture conferred on them. They are, in this context, the very personification of Justice.

On this stage, the existence of a human representation of Justice in the judicial scene already raises a message to be transmitted to all actors in this environment, regardless of their function. This is because, since the Middle and Modern Ages, the presentation of such a figure has been closely linked to the legal world and the forensic environment that it represents, in a clear manifestation of an ideology behind its elements. It is not, therefore, a decorative or accessory element, but rather a "pragmatic advertisement function" based on the strength of the synthesis and communication of an icon (Sbriccoli, 2009, p. 2).

Thus, the ideals constantly represented by the symbols that adorn the courts or that are attributed to judges reveal principles, postures, behaviors and duties of observance obligatory by the courts, as institutions administering justice, and by magistrates, as individuals who apply the law.

Among the main symbols related to the ideal of justice, the judicial function and the judges, are the scales, the sword, the blindfold, the mallet and the olive tree. At the outset, it is necessary to analyze the scales. It is the oldest element that represents justice, although it has had different meanings since the first time it appeared with this meaning, in Egypt, as an instrument of judgment in the judgment of Osiris.

In Egyptian mythology, the scale was a true functional element, responsible for weighing the heart of the deceased in relation to the feather of the goddess Maât. In Greece, however, despite its function of weighing the acts on trial, the scales, if it tipped somewhere, would attest to the existence of disorder and chaos in the world. It is, therefore, an element of representation of balance.

In their *Dictionary of Symbols*, Chevalier and Gheerbrant (1990, p. 113), in addition to presenting other scenarios, where the scale is represented as an ideal of justice, explain that the

scale "is known as a symbol of justice, of measure, of prudence, of balance, because its function corresponds to the weighing of acts".⁶

In this context, the scales, present from the coats of arms of the courts to the logos of law firms, symbolize the ideal of justice: fair would be the balance between the actions of citizens, so that, acting in violation of the law, a certain individual makes the balance tip to one side, generating a displeasure for some of his peers. In effect, the scales and their plates would represent a "thermometer" of legality, understood as the absence of disrespect for legal precepts.

On the other hand, if the scales represent the judge's function in seeking social balance, the sword serves as a guarantee that this judgment will not be reduced to a consultation, to an opinion of the Court. It is the pledge that the Judiciary will enforce its decision and impose on the parties its understanding expressed in the decision.

The sword, therefore, represents the military power of the State, which uses force to enforce its sentence. It represents the attribute of coercibility of the law. In the words of Chevalier and Gheerbrant (1990, p. 392), "when associated with the scales, it relates more especially to justice: it separates good from evil, strikes the guilty".

In this context, the sword is not simply presented as a weapon, but has meanings closer to the civil justice it intends to protect (Sbriccoli, 2009, p. 14-15). It is the representation of a power inherent to justice. It is also, when in the hands of Justice personified, a shield, serving as a defense against attacks directed at his dignity, against those who do not recognize his prestige and challenge his decisions. It is worth remembering that normally the sword, although out of the scabbard, is always pointed at the ground or on the Lady's lap, never in a position of imminent attack. It can also be a sign of a "strong and active, [...] a reason for peace and prosperity for the *Republic*, but it is also a promise of shelter for the persecuted, protection of the defenseless, care for the mistreated and compensation."

Such representation contributes to the construction of the ideal that the State-judge does not emerge as an instrument of arbitrary legitimization of the strong over the small, nor as a public tool sought by those who wish to meet their individualistic desires for revenge. The sword, for example, more than a weapon, represents its inherent power, capable of enforcing its decisions for the subjects subjected to it. Furthermore, the effective recourse to force occurs

⁶ "The scales as a symbol of judgment are only an extension of the foregoing acceptance of divine justice. In ancient Egypt, Osiris weighed the souls of the dead; in Christian iconography, the scales are held by St. Michael, "the Archangel of Judgment; the scales of the Judgment are also evoked in the Koran; in Tibet, the scales for weighing the good and bad deeds of men are filled with white stones and black stones respectively. In Persia, the angel Rashn, placed at the foot of Mithras, weighs the spirits on the bridge of destiny; a Greek vase represents Hermes weighing the souls of Achilles and Patroclus" (Chevalier; Gheerbrant, 1990, p. 113).

only as a last resort, serving primarily as an artifice capable of morally and silently coercing society to observe its sentences and respect its deliberations⁷.

Alongside the scales and the sword, the blindfold (or band) usually placed over the eyes of the female figure that represents justice is one of the most commonly used symbols to represent the allegory of homonymous ideas. By the way, the image of the feminine is also present in several other efforts to construct imaginaries of political and social institutions. Carvalho (1990, p. 75) points out, for example, how the French Revolution appropriated the female figure, inspired by classical Rome, to serve as a representation of the new order, the republic. The feminine (*Marianne*) was then presented as a symbol of freedom, of the maternal, of care, elements that would also be present in the construction of the imaginary around the Brazilian republic, a century later, even though women had not been given the effective opportunity of any more active political participation at that historical moment.

Let us return to the discussion of the symbol of sale. Its emergence and evolution have the scope of representing the indifference of justice to the person at the time of his trial, equating all citizens on the same level below the law.

Chevalier and Gheerbrant (1990, p. 935) translate what the banner means in the popular imagination when they describe that the blindfold is a "symbol of blindness when [...] it is placed over the eyes. Themis, goddess of justice, is blindfolded to show that she favors no one and ignores those she judges."

Having presented the discussion on the three main objects that characterize the judicial scene, the judges and the value of justice, it is opportune to reflect further on some other elements, said to be secondary⁸, that make up Western legal mythology: the malhete and the olive tree.

The gavel – the traditional gavel of judges of the Anglo-Saxon tradition – is a curious element that, although absent in most countries with a Roman-Germanic legal tradition, is embedded in the popular imagination as a *literal longa manus* of the judge. The "hammer

⁷ Cathérine Kessedjian, professor at the Université Paris II Panthéon-Assas, added that the sword, in the context of the allegories of Justice, also signifies your readiness to act (class that is part of the discipline "The impartial and independent third party of international law: judge, arbitrator, mediator and conciliator", taught as a General Course of the first edition of the Winter Course in International Law of the Academy of International Law in The Hague, On 15 Jan. 2019).

⁸ They are understood to be secondary because they have a reduced visibility when compared to the other symbols: the malhete, because it is linked to the Anglo-Saxon legal tradition of the *common law* (United Kingdom and United States, notably), different, therefore, from our experience inspired by continental European law (*civil law*); and the olive tree, because it ended up falling into disuse with the reduction of the exposure of more traditional coats of arms and emblems.

strike", which concretely represents a request for decorum in the Court and indicates the end of a hearing, also highlights who has the final word in the process.

It is possible to associate this provision with the police power of magistrates during the conduct of hearings (Article 139, VII, Code of Civil Procedure) in addition to their decision-making power as the last subject to express an opinion on the situation, declaring it favorable to the plaintiff or the defendant. As a symbol representing brute force (Chavalier; Gheerbrant, 1990, p. 577), may also indicate the power that the judge has as an investigated state authority for the resolution of disputes.

Finally, the olive tree, the "tree of righteousness", is presented⁹. In fact, the tree appears associated with peace, based on the biblically narrated Judeo-Christian tradition that the leaf carried by the dove, coming from the mainland to Noah in his ark after the flood, belonged to the branch of an olive tree, thus marking the end of the wrath with which God had punished his people¹⁰; and, in the Greek and Roman scenario, the olive tree appears consecrated to Athena and Minerva, goddesses of wisdom, respectively (Chevalier; Gheerbrant, 1990, p. 656-657).

Figure 1 – Illustration *La paix et la justice*



Source: Peace Palace Library, 2012.

In *Albert Besnard's La paix et la justice* (1914), posted in the *Great Hall of Justice* (in The Hague, Netherlands), where the judges of the International Court of Justice meet for their

⁹ Expression used by Professor Cathérine Kessedjian, from the Université Paris II Panthéon-Assas, in the course "The impartial and independent third party of international law: judge, arbitrator, mediator and conciliator", taught as a General Course of the first edition of the Winter Course on International Law of the Academy of International Law in The Hague, on 15 Jan. 2019, in which one of the authors participated.

¹⁰"He waited seven days longer, and again let the dove out of the ark. And behold, in the evening she returned, bearing in her beak a green olive leaf" (Genesis 8:10-11).

deliberations, Irene holds an olive branch in her right hand, symbolizing peace (an attribute of which she is goddess) and victory, while in the other arm she holds Pluto, the god-child of prosperity (Wieringa, 2012, on-line).

It is an explicit message: peace can only be achieved through justice, and law, although it defends justice, does not project it as an end, but rather as the only means of building a peaceful global society. "Pacification through the resolution of conflicts is the main scope of jurisdiction" (Cintra; Grinover; Dinarco, 2014, p. 42).

Such allegories bear symbols that, among other functions, represent principles and/or rules of civil and criminal procedure that translate guarantees aimed at protecting the citizen in the face of the State's discretion against a poorly administered justice, used as an instrument of domination and personal revenge. In fact, since such symbols have a strong axiological value of what is expected of a fair justice system in a given social context, the legal principles, normative par excellence, represent institutes of mandatory observance by judges, members of the Public Prosecutor's Office, lawyers and other participants in the legal scene.

As previously analyzed, the scale evokes balance, harmony and order. In fact, the parity of the scales refers to the idea of equality between litigants, constitutionally supported by Article 5, *caput*, FC. In civil proceedings, the equality of litigants is treated as a duty of the judge, as provided for in Article 139, I, CPC.

In procedural terms, the principle of equality, which maintains the balance of the scales, represents the equal treatment to be given to the parties so that they can postulate their requests and support their arguments before the Judiciary, in order to achieve parity of arms (Cintra; Grinover; Dinarco, 2014, p. 72).

This procedural feature of the principle of equality includes the hypothesis that the party expresses itself on the facts raised in the case by the other, as well as the possibility of arguing orally in the courts and finding an intimate connection with the adversarial principle. However, this formal concept of equality, coined in the early days of the Rule of Law, in its first phase, called liberal, has recently given way to the material or substantial theory of equality, typical of the current Democratic phase of the Rule of Law.

In fact, historical experience succeeded in demonstrating that "the absentee ideal of the liberal State did not respond satisfactorily to the demands of the moment", culminating in the assumption, on the part of the State, of a posture aimed at correcting its structural anxieties, importing an intense economic intervention and orientation of State actions by objectives of social justice (Mendes; Branco, 2015, p. 137).

It is this ideal that will lead the legislator to adopt measures aimed at reducing structural inequalities through the elaboration of procedural and material laws that correct this flaw. In the synthesis of Cintra, Grinover and Dinamarco (2014, p. 73):

[...] and today, in the positive conceptualization of isonomy (equal opportunities for all, to be provided by the State), the realist concept is highlighted, which strives for *proportional equality*, which means, in short, equal treatment of those who are substantially equal. The apparent breach of the principle of isonomy, inside and outside the process, obeys exactly the principle of *real and proportional equality*, which imposes unequal treatment on the unequal, precisely so that, once the differences are supplied, substantial equality is achieved.

Among others, this is the reason why, in certain situations, the traditional procedural isonomy is mitigated, such as in the offer of a differentiated deadline for the Public Defender's Office to respond (Art. 43, I, Organic Law of the Public Defender's Office) and in the priority of judging cases of interest to people aged 60 (sixty) years or older (Art. 71, Statute of the Elderly).

The duty of equal treatment towards the parties is also manifested in the necessary equidistance of the judge in relation to the plaintiff and the defendant, so that he is guaranteed to judge with impartiality and impartiality. That is to say: "the *impartiality of the judge* is a guarantee of justice for the parties" (Cintra; Grinover; Dinamarco, 2014, p. 71).

To grasp this reality, it is enough to think that behavior tending to privilege a certain party would mean putting more weight on one of the scales, so that the natural consequence would be the weakness of the opposite side in sustaining this situation. Thus, the magistrate's commitment to the interests of one of the procedural poles is an inevitable source of damage to his adversary.

Next, there are principles invoked by the sword, a symbol of the power of justice to enforce its decisions. Immediately, it seems to us that this figure illustrates the principle of the inevitability of jurisdiction, conceptualized as an institute that justifies the State's power to impose its authority, exercised through the courts, by itself, regardless of the will of the parties, who display, before the State-judge, a situation of subjection (Cintra; Grinover; Dinamarco, 2014, p. 157).

In this line, since jurisdiction is a heterogeneous method of dispute resolution, it is necessary to ensure that the decisions of the Judiciary, as an impartial and disinterested third party, can effectively be applied in the case under analysis. In fact, the attribute of substitutivity of jurisdiction serves to apply to the dispute presented, replacing the role of the parties in the resolution of this claim.

The sword also recalls the powers conferred by law on the judge so that he can give effect to his decisions, considering that a justice system devoid of concrete means of coerciveness would render the entire exercise of judicial activity innocuous.

Finally, it is necessary to discuss the principles extracted from the blindfold that covers the eyes of Justice. The sash, inserted in the allegory of Justice, in the first half of the century. XVI, tried to legitimize a project of new criminal legislation that would no longer see *who* was judging, but would simply hear the facts imputed and give its verdict. In this sense, vision is dispensable to Justice, which is content to receive the facts in order to say the right: give me (narrate to me) the facts that I give you (I tell you) the right.

In this context, we speak of an impersonal exercise of the judiciary (Dinamarco, 2009, p. 227). That is, the judge does not judge as an ordinary citizen, based on his own moral burden, but as a citizen invested in the judicial activity to, on behalf of the State, apply the previously constructed law.

The banner would represent, therefore, the Justice's disregard for the characteristics of the parties and for other circumstances that do not help in resolving the merits of the case. In this way, social class, religion, academic background or any other attribute that can be used to describe someone who, it should be repeated, does not interfere in the outcome of the conflict are discarded by the courts. She is not interested in anything other than the facts.

It could also represent the fact that Justice does not privilege anyone: it acts equally before everyone. In Greek mythology, for example, while the blindfolded eyes of the goddess Fortune meant that luck was randomly distributed (Chevalier; Gheerbrant, 1990, p. 935), in the representation of Justice, we have that this intended ideology – when administered by the State – is materialized when offered to all, without distinction.

However, a new interpretation of the scale emerges, at the same time, that Justice does not allow itself to be attracted by the affairs of the world, so that, rejecting everything that society can offer it, it perseveres in its commitment to the correct and egalitarian application of the law.

4 The historical construction of the female representation of Justice: from Antiquity to the Middle Ages

According to Rousselet (1960, p. 5), in his *Histoire de la justice*, he states that, in all primitive societies, law appears intimately linked to religion. This is the case, the author exemplifies, of religions that typify as very serious the adultery committed by the woman,

whose "infraction" affects not only the family, but also God himself, so that, in order to avoid the fall of the divine fury on the clan, she must leave the community.

This interplay between the symbolic construction of secular judicial institutions, based on ancestral and religious elements, is widely discussed by Garapon (1999), not only in the discussion of the judicial scene – its architecture and rites – but also in the description of the celebrants, initiated into the office by solemn oaths. Its performance – in reserved spaces, segregated from the hearing, in many or all – is similar to religious rituals, as can be seen from the description of the function of the gate in the trial rooms:

We find a barrier in everything, identical in the interior architecture of the cathedral or the Christian church, whose purpose is to separate the choir from the faithful. The said barrier appears in Rome, during the Lower Empire. In the basilicas, the *cancell* enclosed the *cancel*, that is, the place where the emperor and his representatives were, or his image. It can be seen everywhere, from the Court of Cassation to the courts of instance, at every time in our judicial history, and in both the United States and France. The *cancel* is the most sacred space, the praetorium, the holy of holies, the furthest that can be reached (Garapon, 1999, p. 37).

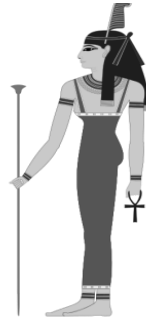
Drawing the same parallel, Bourdieu (2002, p. 240) states: "like religious practice, legal practice is defined in the relationship between the legal field, the principle of legal supply that is generated in the competition between professionals, and the demand of the profane". In fact, the fear of sacred vengeance moved ancient civilizations to elaborate the first codes of conduct that, full of religious characteristics, brought human justice closer to what was believed to be God's justice. In this context, the sacred symbols themselves come to represent the ideal of justice that was held in those times. Many of these icons have contributed to the fact that, today, we have an almost uniform figure (from the point of view of Western societies), representing Justice.

It does not require great intellectual effort to recognize its personification in justice, which is present in an impressive number of Palaces of Justice around the world, thanks to the presence of an element that has crossed the ages: the scales (Dorvidal, 2011, p.153).

The representation of the Lady of Justice, despite the popular imagination of being the Greek goddess Themis, is, along with the historical sources, a construction made from elements extracted from the conception of justice of the ancient Egyptians to revolutionary France. It is, therefore, a cosmopolitan figure (because it brings together elements from different civilizations), heterogeneous (such elements are varied) and artificial (it is not a representation that arose naturally, but rather created by the human ideal).

None of the deities who, in the great civilizations of the Ancient Age, represented Justice possessed uniform attributes to the point of affirming that the figure known today is the faithful representation of Maât (Ancient Egypt), Themis or Dice (Ancient Greece) and Iustitia or Aequitas (Ancient Rome).

Figure 2 - Egyptian goddess Mâat



Source: Portuguese Wikipedia, 2007.

The first of these, Maât, was, in Egyptian mythology, goddess of truth-justice, responsible for the judgment of the dead. The feather that she wears on her head was, according to tradition, deposited on one of the scales, signifying justice and truth, while, on the other side, hovered the vase, representing the heart of the subject submitted to judgment before Osiris (Chevalier; Gheerbrant, 1990, p. 114). Hence two results were possible: if the feather weighed more, he would be granted admission to paradise; otherwise, the heart prevailing over the adornment of Maât, the deceased would be condemned to the underworld.

It is, therefore, one of the first allegories of justice relating judgment and scales, which, at that time, did not distinguish divine justice and human justice (Mancini, 2007, p. 7). A statue of Maât even adorns the judges' room of the International Court of Justice, and was the gift offered by the Egyptian Government on the occasion of the inauguration of the Peace Palace in The Hague, Netherlands, headquarters of the International Court of Justice (ICJ) and the Permanent Court of Arbitration¹¹.

In fact, it is observed that, at this first moment, none of the characteristic elements of the current representation of justice – scales, sword and blindfold – are present in Maât. Only a prop of the clothing of this Egyptian goddess externalizes her link with the righteous, namely,

¹¹Information obtained from a speech by Professor Cathérine Kessedjian, from the Université Paris II Panthéon-Assas, in the course "The impartial and independent third party of international law: judge, arbitrator, mediator and conciliator", taught as a General Course of the first edition of the Winter Course on International Law of the Hague Academy of International Law, on 15 Jan. 2019.

her feather and, despite the intimate link between such an accessory and the scales, the latter remains as an instrument linked to Osiris, the divinity responsible for conducting the judgment.

Thus, even though they did not leave us a legacy of a legal system like the Romans, the Egyptians built a strong concept of justice, "which our modern mentalities do not understand well" (Mancini, 2007, p. 5). It is only with the consolidation of Greek mythology that the representation of justice – from a divine character – is approaching the format we know today.

According to Goyard-Fabre (2002, p. 1-2) he clarifies that, in the Hellenic mythological scenario, two deities share the ideal of justice: Themis, goddess of the order of the world and the balance of things and advisor to Zeus, and Dice, his daughter with Zeus, goddess of judgments, sister of Aletea, goddess of truth¹². Dicedois had different roles: the first would be to show men the path of conciliation and peace; then, understanding that men are not capable of acting in a spirit of serenity, she assumes an action based on sanctions and penalties.

Also according to the French philosopher (2002, p. 1-2), the prominent figure of the scale, in the scenario of mythological and sacred representation of justice, appears in Greece:

Since the century. V, Aeschylus' tragedies give the judgment a dramatic form in which the idea of justice as an absolute norm emerges, all together, allowing a judgment and its symbol to be carried. In fact, the transgression of this norm by violence or by *Hybris*¹³ causes an imbalance; it is necessary to re-establish the broken balance: the image of the balance is born. From now on, the goddess *Dice* would no longer appear on the horizon of myth: by installing in the world of men demands of justice that the order of their societies owes, she gives law the principle from which it must express itself.

Comparing the role of the scales in Egyptian and Greek mythologies, it can be seen that, in the judgment of Osiris, it was favorable for the deceased – and even desirable – that the scales tipped towards the plate containing Maât's plume, indicating its superior weight next to the heart of the one brought to trial. This is because the purity of that soul would be clear, culminating in the judgment of its claim before Osiris, favorably.

Here, the scale is not sought as a form of representation of balance, but as a necessary instrument to measure the weight of the infractions committed in life by the deceased. In order to obtain a trip to paradise, the more inclined the scales containing the feather, the more evident would be the goodness of the works done in life.

¹²It should be noted that, in the Greek scenario, justice and truth are represented by different goddesses, while in Egyptian mythology both rested on Maât.

¹³Hybris, in Greek mythology, was the *daemon* who personified insolence, violence, reckless pride, arrogance, and any outrageous behavior in general (cf. *theoi.com*).

Figure 3 - Greek goddess Dice carrying sword and scales

Source: Portuguese Wikipedia, 2011.

In Greece, on the other hand, the balance that tips to one side, whatever it may be, symbolizes chaos and disorder, which need to be reestablished and which, when achieved, will end with the equalization of their trays. In this sense, according to Greek thought, no imbalance in the balance has a positive character. The world must, imperatively, keep the scales at the same level, under penalty of compromising the order of things (scales) and, in this way, attracting the subjugation of Dice to restore the *status quo ante* through the application of penalties and sanctions (sword).

According to Lacerda (2010, p. 55-56), this representation would be attributed to the poems of Hesiod (eighth century B.C.), involving themes related to the (in)justices of life, of the weak (peasant) against the strong (the lord, the king). In this context, justice, represented as the daughter of Zeus, boasted – in addition to the feminine characteristic – the attribute of virginity, a virtue related to purification, far from blemishes, which represents, above all, the place of women and the feminine in the culture of the ancients. And he concludes: "Justice, therefore, is a 'pure' quality. Nothing better, therefore, than the image of a virgin to represent her."

The blindfold over the eyes of Justice, which, curiously, raises great divergences in its meaning, taking into account that, contrary to what is thought, it only appears as an attribute permanently linked to the allegory of justice in the Middle Ages.

In the Ancient Age, notwithstanding the existence, for example, of Cupid and Fortune¹⁴ – deities who wore a blindfold over their eyes – the ideal of justice constructed in this period did not tolerate a blind representation, in view of its attributes of proximity to light, search for knowledge and triumph of truth (Dorvidal, 2011, p. 160).

¹⁴"Also Eros [wears a blindfold]: which means that love hurts blindly. There is also a blindfold over the eyes of the goddess who represents Fortune, because the distribution of wealth is made at random" (Gheerbrant, 1990, p. 935).

Figure 4 – Illustration *Le foubande les yeux de la Justice*



Source: Das Narrenschiff,

The stripe over the eyes of the representation of Justice appears unexpectedly in 1494, from the joint work of the author Sebastian Brant, professor of law in Basel, Switzerland, and writer of satires, and the illustrator of his work *Das Narrenschiff* (Ship of the Fools, in Portuguese), who, at no time, intended to link the blindfold to the attributes of justice (Sbriccoli, 2009, p. 17).

In fact, the cartoon does not have Justice as its protagonist, but rather an individual – like a jester – tying a blindfold over the Lady's eyes, almost entirely restricting her vision. Mario Sbriccoli (2011, p. 17) points out that the engraving represents "the foolishness of people who provoke justice with reckless litigation, who postulate without having any rights, who refuse the composition of the process and then make it last, who believe they can bend the laws to their will", as well as the "fools who put a standard on Justice in the hope that it will not see its errors".

No other representation of Justice in the Ancient Age bears the attribute of blindness, which, in the Middle Ages, could not be considered an advantage, as it would violate discernment and lucidity, associated with the rectitude of judgment (Dorvidal, 2011, p. 154). Only at a later time, around the beginning of the century. The blindness of the allegory of Justice is presented as a definitive attribute, on the occasion of the promulgation, in 1532, of *the Constitutio criminalis Carolina*, promulgated by Charles V, Holy Roman Emperor, as a compilation of norms aimed at the inauguration of a new penal order in his Empire (Sbriccoli, 2011, p. 20).

In effect, the new order appropriates a symbol hitherto disseminated as a distortion of the ideal Justice and, based on a new interpretation given to the blindfold, comes to represent a new

concept of application of the criminal law, based on legality (written law) and equality (everyone is equally considered before the judge). Thus, what was once a vexatious caricature of justice, becomes its attribute of nobility, ethics and rectitude¹⁵.

Still in the words of Mario Sbriccoli (2011, p. 21), the scope of the adoption of our allegory of justice, aimed at the governed, was to present the new criminal justice, which "no longer looks at you, no longer recognizes you, that it will not know who you are when you are judged". It would be a message that, from that moment on, the judge would judge the facts, regardless of who committed them.

The discussion about the historical and symbolic sources allows us to affirm, therefore, that the construction of the figure of Justice is an effort of various peoples in the most diverse paths of History. In addition, its symbols represent attributes that undergo modifications to the present day.

5 Conclusion

The elaboration of an imaginary is an integral part of the legitimacy of any political regime (Carvalho, 1990, p. 10), a purpose that would also have, from a historical perspective, to also involve justice, as an integral part of the political system, including in contemporary constitutional regimes, although with colors of greater autonomy in relation to the other political powers. Nevertheless, it does not resent the need to legitimize itself symbolically. For this reason, many old symbols that are part of this imaginary are preserved or resignified by the various institutions that make up the justice system.

The blindfolded lady, standing or sitting, carrying the sword and the scales, a traditional representation of Justice, does not fully correspond to any Greek deity, nor Egyptian or Roman. The effort to reconstruct this symbol reveals that it is an artificial construction, made from various elements that, in the past, made up the divine ideal of justice – personified in Themis, Mâat and Iustitia, respectively – thus varying according to other values dear to the social standards of each moment.

¹⁵ This new legal panorama, however, is not well received by everyone. Some mentalities of the time did not approve of the new imperial legislation, which left no room for maneuver for the communities of the Empire, bypassing local jurisdictions (Dorvidal, 2011, p. 163). In fact, the mentality of the twentieth century. XVI resists considering as fair a justice that does not make distinctions between people and their qualities, so that "the idea of legal equality on which the new justice is centered pleases only a few and causes fear to all others" (Sbriccoli, 2011, p. 22).

In addition, the construction of the allegories – notably that of the female figure who represents Justice – was not the result of a static and definitive process, so that the figure known today as a symbol of justice has already been interpreted in a different way, including being judged, blindfolded, as a satire on the agility required by the effective jurisdictional provision.

In fact, despite the preservation of some elements over time, it is evident that the updating of the perception of the concept of justice, as a tutelage administered by the State in the figure of the constitutionally invested judge, requires the insertion of new artifices in these allegories or the granting of a new interpretation to the symbols already used, so that, although these concepts that have proven to be immutable throughout history exist, The judicial function is also a reflection of the worldview of the society in which it is inserted, and cannot be conceived as a *ready-to-wear product*, insusceptible to critical analysis and revision.

In particular, the growing and current process of affirmation of the Judiciary as an independent branch of the State, and no longer limited to the mouth of the law, gives rise to a debate on the differences between the vision that society has of its judges and the magistracy that they intend and take as "ideal".

However, the belief in the power of symbols to transmit a permanent, silent and subtle message to individuals remains firm, either to clarify certain factors or to provoke the adoption of behaviors within the scope of the procedural scene, involving a value (justice), an activity (judging), an institution (the Judiciary), a class of agents (judges) and places (forums and courts).

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