

PRZEMYSŁAW KACZMAREK¹

The Identity of the Judge in Visual Culture: The Role as Ritual²

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Abstract

The article attempts to present the identity of the judge through the metaphor of the role as an interactive ritual. The framework of this ritual can be described by means of both intersubjective factors (e.g. legal rules) and individual factors (the subjectivity of the role performer). I apply this conception to the iconic symbol of justice in public space, which is usually associated with the figure of a woman whose eyes are covered with a blindfold, holding the scales of justice in one hand and a sword in the other. It is a visual symbol of the judge; one that is comprehensible to both lawyers and the public.

In carrying out this task, I refer to sociological and anthropological research in the field of visual culture. This perspective determines not only the subject matter covered by the theses formulated in the article but also the research method. It is assumed that visual representation constitutes a communication channel that has a great impact on individual and social memory. For this reason, the presentation of the role of the image and the methods of its interpretation is important for the debate about the role of the judge and the image of the judge in public space. This approach to the subject, which consists in shifting the emphasis from text to image, also rehabilitates the significance of visual representation in jurisprudence, a field traditionally dominated by the view that law is a linguistic phenomenon.

Keywords: visual culture, the identity of the judge, the professional role, liminality.

¹ Ph.D. Habil. Przemysław Kaczmarek – Faculty of Law, Administration and Economics, University of Wrocław (Poland); e-mail: przemyslaw.kaczmarek@uwr.edu.pl; ORCID: 0000-0002-3436-4043.

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PRZEMYSŁAW KACZMAREK

Tożsamość sędziego w kulturze wizualnej. Rola jako rytuał³

Streszczenie

Celem artykułu jest przedstawienie tożsamości sędziego kształtowanej na wizji roli jako rytuału interakcyjnego. Ramy tego rytuału można opisać za pomocą czynników intersubiektywnych (np. reguła prawna) oraz indywidualnych (podmiotowość wykonawcy roli). Ujęcie to odnosi się do ikonicznego symbolu wymiaru sprawiedliwości w przestrzeni publicznej. Jest on zwykle kojarzony z postacią kobiety, z oczyma przesłoniętymi przepaską, trzymającą w jednej ręce wagę, a w drugiej – miecz. To symbol wizerunku sędziego, czytelny zarówno dla prawników, jak i społeczeństwa. Realizując postawione zadanie, odwołuję się do socjologicznych i antropologicznych badań w zakresie kultury wizualnej. Wyznacza ona nie tylko przedmiot dokumentacji też sformułowanych w artykule, ale i metodę badawczą. Zakłada ona, że wizualizacja obrazu jest kanałem komunikacyjnym silnie oddziałującym na pamięć indywidualną oraz społeczną. Z tego powodu przedstawienie roli obrazu, a także metod jego interpretacji, jest ważne dla debaty o roli sędziego i jego wizerunku w przestrzeni publicznej. Takie ujęcie tematu, polegające na przesunięciu akcentu z tekstu na obraz, ma również i tę wartość, że rehabilituje znaczenie wizualizacji kulturowej w prawoznawstwie, w którym dominuje pojmowanie prawa jako zjawiska językowego.

Słowa kluczowe: kultura wizualna, tożsamość sędziego, rola zawodowa, liminalność.

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Introduction

In April 2004, the world was shocked to see images of Iraqi prisoners humiliated and subjected to various forms of torture in Abu Ghraib, an American prison on the outskirts of Baghdad. The photograph of a prisoner, standing on a box with a hood over his head, electrical wires resting next to his hands, came to symbolise the abusive side of the United States' military operations in the Middle East. The visual experience of seeing such photos certainly also had a deep impact on public awareness; partly because looking at images is nowadays far more common than reading texts. Visual representations saturate many areas of life, such as politics, fashion and music. With regard to the last area, visual experience turns a music concert into a spectacle, in which the play of lights, visuals and stage design are key elements, and the video that accompanies a song plays a role as important as that of the sound layer.⁴ Not only do visual images move us – they have come to constitute a communication channel that has a huge impact on individual and social memory.⁵ This diagnosis can also be applied to legal discourse. As Leslie J. Moran emphasises, cultural images of the justice system co-create the identity of people who perform the role of a judge, influence the image of legal institutions, and shape social awareness.⁶

Due to the narrow scope of this article, my analysis of the judge's identity in visual culture will focus on the iconic symbol of justice as a reference point.⁷ This visual representation usually depicts the figure of a woman whose eyes are covered with a blindfold, the scales of justice in one hand and a sword in the other.⁸ As a visual representation of the judge, this symbol is comprehensible to both lawyers and the public. I intend to draw on this image to demonstrate that the identity involved

⁴ P. Sztompka, *Socjologia wizualna. Fotografia jako metoda badawcza*, Warszawa 2005, p. 14.

⁵ On the topic see J.B. Thompson, *Nowa widoczność*, transl. P. Polak, [in:] M. Boguni-Borowska, P. Sztompka (eds.), *Fotospołeczeństwo. Antologia tekstów z socjologii wizualnej*, Kraków 2012, p. 330; D. Smołucha, *Wizualizacja zjawisk i nowe obszary komunikacji obrazowej w stechnicyzowanej kulturze*, [in:] B. Bodzioch-Bryła, L. Dorak-Wojakowska, D. Smołucha (eds.), *Wzrokocentryzm, wizualność, wizualizacja we współczesnej kulturze*, Kraków 2017, p. 172.

⁶ L.J. Moran, *Judging Pictures: A Case Study of Portraits of the Chief Justices, Supreme Court of New South Wales*, "International Journal of Law in Context" 2009, 5(3).

⁷ On the topic of symbols in law, see J. Jabłońska-Bonca, *Prawo w kręgu mitów*, Gdańsk 1995, pp. 147–157.

⁸ J. Unterschütz, *Symbole i alegorie prawa w malarstwie (na podstawie wybranych dzieł)*, Elbląg 2014, p. 5.

in the judge's role can be treated as a ritual. Its framework can be described by means of intersubjective factors (e.g. a legal rule) as well as individual factors (the subjectivity of the role performer).

I intend to complete this task in three steps. First, I will analyse the meaning and functions of visual culture (Section 2). In the next step, I will focus on the iconic symbol of justice in the public sphere (Section 3). I will use this as a basis for presenting the identity of the judge, the framework of which is determined by the metaphor of the role as ritual (Section 4). Sociological and anthropological research in the field of cultural visualisation, as well as role theory, will be important points of reference throughout this paper.

Visual Culture

According to Piotr Sztompka, visual culture has two basic components: the iconosphere and sociosphere.⁹ The former covers images that we see in our social environment, such as sculptures, graffiti, murals or billboards. These images, created with the intention of conveying a specific message, are meant to shape social consciousness in some way. The sociosphere, on the other hand, encompasses the 'observable surface of social life'.¹⁰ Here, human action forms the content of a visual impression. In both the iconosphere and sociosphere, however, a crucial feature of visual culture is the recognition that the practice of seeing is a cultural construct.¹¹ For this reason, the relationship between an image and a person can be represented by means of a relational approach. An image shapes the consciousness of the person who is looking, but at the same time looking can be seeing, which is brought about through the mediation of the cultural background. Another feature of visual culture, as a field of research, is the focus on the context in which works are created. Lastly, the study of visual culture also recognises the image as being an important communication medium in various spheres of everyday life activities.¹²

There are several reasons for the growing importance of visibility, which finds expression in declarations to the effect that we now live in a predominantly visual culture. Researchers firstly focus on social changes and the heightened status of

⁹ P. Sztompka, *Wyobrażenia wizualna i socjologia*, [in:] M. Boguni-Borowska, P. Sztompka (eds.), *Fotospoleczeństwo. Antologia tekstów z socjologii wizualnej*, Kraków 2012, p. 13.

¹⁰ Ibidem.

¹¹ W.J.T. Mitchell, *Przedstawianie widzialnego: krytyka kultury wizualnej*, transl. G. Bryda, [in:] M. Boguni-Borowska, P. Sztompka (eds.), op. cit. 2012, p. 119.

¹² N. Mirzoeff, *Czym jest kultura wizualna?* transl. M. Krywult-Albańska, [in:] M. Boguni-Borowska, P. Sztompka (eds.), op. cit. p. 162.

images in social life. This process has been influenced by the increasingly widespread techniques for creating, preserving and disseminating images in public space. In this regard, visual images make communication faster, and probably also more accessible.

Social reasons for the rise of visibility also encompass that which Sztompka has called life in a society of icons.¹³ This is exemplified by the visual saturation of many spheres of everyday life, and is evident from omnipresent images of various kinds, e.g. murals, billboards, which operate as forms of information transfer in the world of media, politics and fashion. Sztompka also emphasises the growing importance of visual culture in his diagnosis of a society of self-presentation. According to this diagnosis, our identity is significantly influenced by how other people evaluate us, especially those whose opinions count for something in the social circles in which we function. This mechanism – which is also described by Charles H. Cooley, as well as Erving Goffman – is clearly gaining in strength: the desire to clearly define one's identity and compare oneself to other people is one of the hallmarks of our times.

The importance of visibility is also influenced by the cognitive factors associated with the characteristics of this form of communication. Thus, a film showing a roller coaster ride may induce dizziness in viewers who would have remained entirely unaffected by a verbal description of this situation.¹⁴ Richard K. Sherwin focuses on this aspect of visual images, noting that they have a strong impact on viewers, especially in the emotional sphere.¹⁵ Hence, when in court, lawyers now tend to provide visual presentations of: a) evidence, e.g. in the reconstruction of events, or b) their line of argumentation. These techniques exploit the social belief in the objectivity of visual presentations. Moreover, lawyers' use of images fulfils social expectations regarding the visual presentation of arguments.¹⁶ Lastly, this form of message conveyance is a good communication channel, since it is conducive to improving the comprehensibility of the thought being expressed. A good example of this is the ruling of the Court of Appeal in Sweden in 2009, which made use of images to depict the chain of events and present the facts of the case under

¹³ P. Sztompka, *Wyobrażenia wizualna i socjologia*, p. 15.

¹⁴ R.K. Sherwin, N. Feigenson, Ch. Spiesel, *Law in the Digital Age: How Visual Communication Technologies are Transforming the Practice, Theory, and Teaching of Law*, "Boston University Journal of Science & Technology Law" 2006, 12, p. 242.

¹⁵ R.K. Sherwin, *Introduction: Law, Culture, and Visual Studies*, [in:] A. Wagner, R.K. Sherwin (eds.) *Law, Culture, and Visual Studies*, Dordrecht–Heidelberg–New York–London 2014, p. XXXIII.

¹⁶ R.K. Sherwin, N. Feigenson, Ch. Spiesel, *op. cit.*, pp. 231–232.

consideration. The ruling won the Plain Swedish Crystal 2010, a plain language award, for the creation of a message that is understandable to the public.¹⁷

In addition to the social and cognitive reasons mentioned above, it is worth noting others which concern changes in the humanities. At least since the mid-1990s, it has been possible to observe changes that – especially following the work of Gottfried Boehm and Tom Mitchell – can be defined as embodying the visual turn.¹⁸ These changes are registered in the process of shifting the emphasis from text to images in different spheres of social activity. Recently, the image has become a central theme in the humanities. One can also add that the term ‘image’ denotes an event or situation recorded, for instance, on canvas or film, but also aspects of social life that are present on the retina.¹⁹ An example of the latter conception is provided by the architecture of a building, which constitutes an expression of social structures in which we operate.²⁰

The visual turn can also be considered as advocating a research method. In this case, images can be treated as tools with which we can describe our subject matter. When dealing with a picture, mural or other image, we can ask what it says. The answer may vary, depending on the method of image interpretation we employ. According to Sztompka, one can distinguish at least three perspectives of image analysis: from the point of view of a) the author of the work or b) the work of art – its function in public space, or c) the recipients of the image.²¹

The first of these perspectives is focused on the person who created the image. The questions of who produced the image, for what purpose, and with what intention – are questions that can be asked in an attempt to learn about the author’s subjectivity and intentions.²²

The second perspective posits that the image ‘is a sign or arrangement of signs behind which cultural meanings are hidden’.²³ In this respect, Ronald Barthes’ distinction between denotation and connotation can be put to use. Denotation answers the question of what one sees in the image, and thereby encompasses the issue of what the image represents. Connotation, on the other hand, allows one to

¹⁷ H. Haapio, S. Passera, *Visual Law: What Lawyers Need to Learn from Information Designers*, <https://blog.law.cornell.edu/voxpop/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers/>

¹⁸ P. Sztompka, *Wyobrażenia wizualna i socjologia*, pp. 21–22. Cf. K. Olechnicki, *Antropologia obrazu. Fotografia jako metoda, przedmiot i medium nauk społecznych*, Warszawa 2003, p. 60 ff.

¹⁹ P. Sztompka, *Wyobrażenia wizualna i socjologia*, p. 23.

²⁰ W. Kawecki, *Od kultury wizualnej do teologii wizualnej*, „Kultura – Media – Teologia” 2010, 1, p. 26.

²¹ P. Sztompka, *Socjologia wizualna*, p. 77 ff.

²² Ibidem, p. 77.

²³ Ibidem, p. 81.

draw attention to the associations that the image evokes; not only from the point of view of individual judgements, but above all from the point of view of cultural rules. Seeing a person in a picture, you can discern not only that person's sex, race but also the expression of their face and the items they are holding in their hands. Frequently an image also reveals aspects of the social and political context in which people or objects are presented. The image can therefore fulfil three basic functions:

- 1) informational-documentational – the function here is to stimulate attention and imagination;
- 2) heuristic – the aim here is to broaden visual processes;
- 3) socio-political – the aim here is to advocate certain values and attitudes or to put forward criticisms of certain social practices.²⁴

Images which have come to operate as symbols in public space usually perform all three of these functions.²⁵ This is documented by the image of justice, which is represented by a) Themis, a reference to the Greek goddess, or b) Justitia, the Roman personification of justice, in public space.

The third of the above-mentioned perspectives focuses on the audience and the institution that co-shapes the framework of the image, mediating its reception.²⁶ Here emphasis is placed on the fact that how the image is interpreted is influenced by the visual competence of the recipient as well as by the form of communication.

The Identity of the Judge in the Cultural Image of Justice

According to Linda Mulcahy, there are several reasons why lawyers underestimate the visual image of law. One pertains to the symbolic sphere, according to which divine laws are transmitted through text. As Mulcahy notes, in Judeo-Christian culture texts are treated as a sacred source, most frequently disseminated by priests.²⁷ Another reason for the neglect of the visual sphere is the strong position that legal text holds in legal culture, especially in the continental system.²⁸ Law is considered to be a linguistic phenomenon, and therefore the legitimacy of legal authority is seen as residing in texts. The development of the legal sciences has led to legal text

²⁴ My presentation refers to the findings of Piotr Sztompka, see *Socjologia wizualna*, p. 71 ff.

²⁵ *Ibidem*, p. 15.

²⁶ *Ibidem*, p. 90.

²⁷ L. Mulcahy, *Eyes of the Law: A Visual Turn in Socio-Legal Studies?*, "Journal of Law and Society" 2017, 44, p. 117.

²⁸ *Ibidem*.

having a privileged position in the study of law, at the expense of other factors. This process, manifested in text-centric thinking, is evident both in legal education and professional practice.²⁹ However, the aforementioned spread of visual culture and its saturation of the social space entails that there is potential for change in how the role of the image is perceived, and this is already becoming noticeable in legal science.³⁰ Such developments can be justified by historical arguments. The visual representation of the law has long been a feature of public space.³¹ The images of Themis or Justitia can be treated as social representations of justice – and, more precisely, of the role of the judge.³² These images are present in public space; they can be seen on court buildings or in the lecture halls frequented by law students. For instance, a sculpture depicting Themis is located in the hall of the Council of the Faculty of Law, Administration and Economics of the University of Wrocław.

As I. Bennett Capers observes, a gaze is bilateral.³³ On the one hand, the image of justice can be seen as an indication of how to perform the role of a judge. On the other hand, the process of looking can also tell us something important about ourselves, in terms of what we see in this visual representation. For this reason, according to Capers the blindfold can signify not only the judge but also society. For a judge, the function of the blindfold can be interpreted as an expression of either: a) a claim to impartiality or b) a cognitive schema: it is not me who takes the action, but rather the role; I am only a cog in the institutional machine of justice.³⁴ In turn, with regard to the social aspect, when discussing the potential costs of the blindfold, Capers gives the example of the prison system, and more specifically what happens behind prison walls, and thus practices to which society gives its tacit consent. This enigmatic blindfold is like a mirror; thus, it also blinds the viewer.

²⁹ E. Łętowska, *Bariery naszego myślenia o prawie w perspektywie integracji z Europą*, „Państwo i Prawo” 1996, 4–5, pp. 45–46.

³⁰ J. Jabłońska-Bonca, op. cit., p. 148. The graphic image of the law is presented by Jerzy Zajadło, see *Graficzny obraz systemu prawa: prawo, estetyka, estetyka prawa?*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji” 2016, CIV, Z. Pulka (ed.), pp. 51–60.

³¹ R. Ducato, *De iurisprudencia picturata: Brief Notes on Law and Visualisation*, “Journal of Open Access to Law” 2019, 7(1), p. 1; L. Mulcahy, op. cit., pp. 112–113.

³² J. Resnik, D. Curtis, A. Tait, *Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere*, [in:] A. Wagner, R.K. Sherwin (eds.), *Law, Culture and Visual Studies*, Dordrecht–Heidelberg–New York–London 2014, p. 516 ff.

³³ I.B. Capers, *Blind Justice*, “Yale Journal of Law & the Humanities” 2012, 24(1), p. 182.

³⁴ Felix Frankfurter pointed out this distinction in his interpretation of the role of the blindfold as a sign of indifference and impartiality in the *Cassell v. Texas* case, see J. Resnik, D. Curtis, *Inventing Democratic Courts: A New and Iconic Supreme Court*, “Journal of Supreme Court History” 2013, 38(2), p. 223.

Peter Goodrich presents a similar interpretation of the blindfold.³⁵ In his opinion, the blindfold can be interpreted not only as covering the judge's eyes but also as preventing us from seeing what the judge is doing. That is why Capers argues it is necessary to instil a different image of justice in society.³⁶ Such strategies are already being implemented, although not on the scale that would have a decisive influence on the social perception of the judge's position.

Having noted this process, let us turn to the mural *Justice as Protector and Avenger*, which was painted in the courtroom of the federal court in Aiken (South Carolina) in the 1930s.³⁷ In the centre of the mural is a young woman with dark skin, looking ahead. She is wearing a blue skirt and a bright red blouse with a white band around her waist. The woman – who walks barefoot, and is deprived of the traditional characteristics of Themis, such as a sword, the scales of justice or a book – quickly became a symbolic memorial of events that had recently taken place in South Carolina, the victims of which were black teenagers. On the one hand, her dress, which seems to invoke the colours of the American flag, emphasises the socio-cultural roots of the woman. On the other hand, it seems to pose a question about the identity of the American nation. The mural also provoked a debate on the principles of law, thus concerning impartiality and equality before the law, but also with regard to skin colour and gender. As a result, less than a month after the image had been unveiled, it was decided that it should be removed.³⁸ However, this did not put an end to the debate. At the same time, another mural was painted on the wall of a court in Ada County, Idaho.³⁹ It depicts a lynched Native American, his hands tied behind his back, while armed white men stand next to him. This picture seems to represent a reversal of justice; it is a monument to improper practices in the American justice system. Despite the controversy that this mural aroused, it was decided in 2007 that it should remain on the wall, as a sign of the times and as a kind of warning.⁴⁰

A visual representation of the justice system can also be found in Wrocław: in front of the entrance to the Wrocław district court, there is a bronze statue of

³⁵ P. Goodrich, *The Foolosophy of Justice and the Enigma of Law*, "Yale Journal of Law & the Humanities" 2012, 24(1), p. 141 ff.

³⁶ I.B. Capers, op. cit., pp. 188–189.

³⁷ Painted by Stefan Hirsch in 1938.

³⁸ In the end, the painting was not actually removed but placed behind curtains. See J. Resnik, D. Curtis, *Re-presenting Justice: Visual Narratives of Judgment and the Invention of Democratic Courts*, "Yale Journal of Law & the Humanities" 2012, 24(1), especially pp. 70–72; J. Resnik, D. Curtis, *Inventing Democratic Courts*, pp. 224–225.

³⁹ J. Resnik, D. Curtis, *Re-presenting Justice*, p. 73.

⁴⁰ *Ibidem*, pp. 73–74.

Justitia, cast in bronze. It is the work of Theodor von Gosen, a Wrocław sculptor, from 1934. Initially, this statue depicted a standing woman, looking ahead; golden rings were placed in the pupils of her eyes to emphasise the glow of her vision. Justitia holds a sword in one hand and scales in the other. In 2006, the sculpture was reworked, and a yellow metal band was placed over her eyes. The justification for this alteration appealed to the principle of the judge's impartiality. According to this argument, the blindfold symbolises that judges are guided by the rule of law, rather than their own individual reasons. However, this line of argumentation was questioned: it was emphasised that the subjective agency of the judge is actually important for the administration of justice. As a result of this debate, the blindfold was removed.

In society, the visual representation of the judge's identity is also influenced by court-based reality TV programmes.⁴¹ The overriding image that emerges from such programmes is the decisive role of the judge in the courtroom. If one analyses this image, it suggests that positive law is a stabilising factor and determines rules of conduct; and in turn, the personality of the judge has an impact on the way the case is conducted, as well as on the content of the court decision. However, this kind of visual representation also has its potential dangers. Key ones include: a) people assuming the TV image is identical to the actual justice system, and b) the social awareness of the court process, for instance in Poland, being shaped on the assumptions of the American system, on which most of the reality show programmes are based.⁴²

The Professional Role as Ritual: The Liminal Identity

The visual representation of the judge presented above can be interpreted in the light of the metaphor of role as ritual. This conception is present in both legal discourse and social theory.⁴³ Ritualism in the legal professions is visible not only in the context of the actions performed and patterns of conduct but also in the robes of judges and lawyers in court, and in the architecture of the courtroom.⁴⁴ Erving Goffman employs the metaphor of the role as ritual. This respected resear-

⁴¹ L.J. Moran, B. Skeggs, R. Herz, *Ruth Herz Judge Playing Judge Ruth Herz: Reflections on the Performance of Judicial Authority*, "Law Text Culture" 2010, 14, p. 198 ff.

⁴² R.K. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture*, University of Chicago Press 2000, pp. 4–5.

⁴³ O.G. Chase, J. Thong, *Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors*, "Yale Journal of Law & The Humanities" 2012, 24(1), p. 221.

⁴⁴ *Ibidem*, p. 224.

cher of social life suggests that this metaphor encompasses two aspects of performing a role.⁴⁵ The first is based on the concept of a rule as a model of conduct that is endorsed by the world of institutions. The second aspect, however, is the concept of the face, which symbolises the subjectivity of the person performing the role.

In the light of the visual representation of the role of the judge presented above, I propose an interpretation in which the scales of justice embody the notion that rules are a stabilising element in the judicial administration of justice. In this conception, the scales represent an intersubjective factor that demarcates the boundaries of individual judgement. However, the judge's face, as well as the blindfold, suggests that the issue of who the judge is cannot be treated as irrelevant to the process of interpreting the law. For me, the state of suspension between the intersubjective and the individual, which is visible in the metaphor of the role as ritual, is a framework within which one can describe the identity of the judge. Thus, the proposed role performance model assumes that intersubjective patterns of conduct do not deprive the person who uses them of their subjectivity. At the same time, the ritualisation of these models creates a formalised structure in which the individual operates. Their actions are legitimised by the authority of the institution. A similar approach to ritualisation can be found in the work of Roy A. Rappaport. According to him, ritual is: 'the performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers'.⁴⁶ Rappaport also applies this conception to the roles performed in the courtroom.⁴⁷

The following features of rituals follow from this definition: a) they are shaped more by the institutional structure than by the performer of the role, b) formality, c) invariability, and d) performance.⁴⁸ According to Rappaport, these qualities complement each other.⁴⁹

The first of these features emphasises the importance of intersubjective factors, e.g. institutional practice, for the way the role is performed. However, this does not entail the marginalisation of the subjective factor, the person in the role. The American anthropologist indicates that it is possible to change a ritual, to modify the current practice.⁵⁰ It is precisely the role performer who has an influence on the ritual.

⁴⁵ E. Goffman, *Rytuał interakcyjny*, transl. A. Szulżycka, Warszawa 2006, p. 5 ff. I wrote in more detail on this topic in the book: *Dystans do roli w zawodzie prawnika*, Warszawa 2019, pp. 148–151.

⁴⁶ R. Rappaport, *Ritual and Religion in the Making of Humanity*, Cambridge 1999, p. 24.

⁴⁷ *Ibidem*, p. 35.

⁴⁸ *Ibidem*, p. 24 ff.

⁴⁹ *Ibidem*, pp. 26–27.

⁵⁰ Cf. *ibidem*, p. 74 ff.

The second feature of the ritual is formality. This property emphasises that one's conduct in the role is based on standards, which are repetitive in nature and determine in detail the way the institution requires people to act.⁵¹ An example of such formalisation is the standardisation of acts performed by a judge, attorney and other participants in court proceedings. The opposite of formalisation is the freedom and spontaneity in the performance of actions.

The third feature is invariability: rituals are 'more or less' invariant.⁵² Rappaport emphasises that the potential variability of the actions performed is a consequence of the subject's agency. Who a person is has significance for the way the role is performed. According to Rappaport: 'There is the possibility of, or even the necessity for, some choice to be exercised by performers even within the most invariant of liturgical orders'.⁵³

The fourth and final feature is performance. The explication of this dimension emphasises the subjectivity of the person in the role. When analysing this aspect, Rappaport indicates the differences between the metaphors of role in ritual and theatre.⁵⁴ The former assumes participation and some agency, which is lacking in the vision of the role as theatre. In the latter case, the person plays the role envisaged without having any influence on the content of the activity.⁵⁵ In the theatre metaphor, performing a role is a kind of game, imitating everyday life. This does not mean, obviously, that in the metaphor of ritual all roles are equal. The extent of the judge's agency is different from that of a witness or lawyer in the courtroom.

According to Rappaport, with regard to the messages conveyed by ritual, two types can be distinguished: self-referential and canonical.⁵⁶ Self-referential messages communicate the position of an individual in the social structure. In contrast, canonical messages do not allow for the role performer's freedom of expression, but rather express the formal character of the ritual. If I understand this distinction correctly, it aligns with Goffman's proposed framework. Thus, the role as ritual can be characterised by the two terms mentioned above: rule and face. In my opinion, they provide a convincing account of the tension between what is intersubjective and what is individual when the identity of the role and the person who performs it are shaped.

⁵¹ Ibidem, pp. 33–34.

⁵² Ibidem, p. 36 ff.

⁵³ Ibidem, p. 36.

⁵⁴ Ibidem, p. 39 ff.

⁵⁵ Ibidem, p. 42.

⁵⁶ Ibidem, pp. 52–54.

The vision of the role as ritual is supported by the research of both Arnold van Gennep and Victor Turner on the notion of liminality.⁵⁷ The former researcher presents the rites of passage in the light of three phases: separation (preliminal), transition (liminal) and incorporation (postliminal).⁵⁸ These stages describe the trajectory of change in the shaping of human identity. While the first stage describes the process of moving away from the identity of one social group to another, the third stage emphasises the adoption of a new identification, which is determined by the group with which the individual comes to identify themselves. The liminal phase is crucial for us. It is characterised by the process of transition between different ways of identification, and therefore, as Turner emphasises, people in this phase 'are simultaneously members (by ascription, optation, self-definition, or achievement) of two or more groups whose social definitions and cultural norms are distinct from, and often even opposed to, one another'.⁵⁹ In this sense, the identity of a person in a role is constructed from multiple identities.

This aspect has been developed by Jonas Söderlund and Elisabeth Borg, who present the prevailing ways the concept of liminality is considered in the study of social structures.⁶⁰ One of the approaches distinguished by the authors is that of ritualisation: studies which consider the ritualisation of liminality focus on the way a role is performed.⁶¹ The concept of ritualisation stresses that a role can be understood as drawing on a regulatory framework. Within such a framework, different images of the profession can be distinguished, taking into account the different tasks associated with it. Liminality, however, describes the process of transitioning between roles or tasks within a single profession. This approach to roles assumes that subjectivity is retained in professional activity. The identity of a person in a role can be presented by means of two concepts: narrative and fragmentation. I use the concept of fragmentation to describe the social practices in which we participate. In this approach, performing the role of a judge, barrister or notary involves taking into account the rules and standards that regulate these practices. However, adhering to these norms does not entail excluding individual morality, which falls under the narrative dimension of identity. This emphasises, firstly, that when an individual performs the role of a judge, for instance, they retain their

⁵⁷ R. Schechner, *Performatyka. Wstęp*, transl. T. Kubikowski, Wrocław 2006, p. 76 and 84–88.

⁵⁸ A. van Gennep, *The Rites of Passage*, transl. M.B. Vizedom and G.L. Caffee, Chicago 1960, p. 11; V. Turner, *Dramas, Fields, and Metaphors. Symbolic Action in Human Society*, New York 1975, p. 233.

⁵⁹ V. Turner, *Dramas, Fields, and Metaphors*, pp. 233–234.

⁶⁰ J. Söderlund, E. Borg, *Liminality in Management and Organization Studies: Process, Position and Place*, "International Journal of Management Reviews" 2018, 20(4), p. 880 ff.

⁶¹ *Ibidem*, pp. 893–896.

subjectivity and are responsible for their actions. Then, secondly, the narrative dimension of identity at the directive level is taken to mean the maintenance of continuity in the shaping of identity. Thus, on the one hand, the practices in which we participate have an impact on who we become, but on the other hand, who we are has an impact on the roles that we perform in the social sphere.

The liminal conception of the role also implies taking into account different claims, which are sometimes in conflict with each other. For this reason, as I have already indicated in another article, the pedagogy of liminality subjects the two ways of performing a role to criticism.⁶² The first way involves being guided in one's professional activity only by institutional morality. Thus, in this case, the criticism concerns the exclusion of individual judgement from legal rules and the actions taken. On the other hand, the criticism of the second model focuses on the application of individual morality in professional activity, which is accompanied by simultaneous marginalisation of the institutional factor.

Concluding Remarks

In the debate on the visual representation of the law, it is stressed that the current image of the judge as a mouthpiece of the law should be modified.⁶³ In order to contribute to this end, I have primarily made Themis my point of reference as the image of justice. I interpret this visual representation in the light of the metaphor of the role as ritual. In this approach, the identity of the role has a liminal character. The liminal approach to professional roles has the potential to make valuable contributions to the discussion on the image of the judge. Bearing this in mind, several arguments can be highlighted.

Firstly, the conception of the role as ritual can be applied to the visual representation of the judge's profession in the form of Themis – the image that is common in public space. Here the understanding of the identity of the role is shaped by the concepts of the rule and the face. On the one hand, they embody the stabilising function of the law, and on the other hand, they emphasise that the law, as a mechanism for the regulation of social relations, needs to be operated by jurists. Moreover, who judges and lawyers are is not without significance for the way the profession is performed. The tension between what is intersubjective and what is individual,

⁶² V. Turner, *Proces rytualny. Struktura i antystruktura*, transl. E. Dżurak, Warszawa 2010, p. 123. I presented these findings in the article: *Wykonywanie roli zawodowej: prawnik liminalny*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2020, 82(3), p. 21.

⁶³ Cf. I.B. Capers, op. cit., pp. 188–189.

which is constitutive of the identity of the role, can be referred to the symbols of Themis: the scales of justice and the blindfolded eyes. I interpret them as illustrating the tension between that which is intersubjective and that which is individual.

Secondly, the conception of the role as ritual entails that the ritual shapes the identity of the person in the role. This identity can be defined thanks to the category of liminality, which is used to denote the shift whereby one's identity is shaped through the process whereby a single identification becomes an identity that one defines in the light of the various social practices in which one participates. In outlining this approach, reference can be made to the two concepts already mentioned: narrative and fragmentation, which shape the identity of the person.

Thirdly, the liminal vision of a lawyer is a cultural visualisation, and one that is already present in legal discourse. Its social roots can be found in Hollywood cinematography.⁶⁴ Documenting this, Orit Kamir refers to John Ford's film *The Man Who Killed Liberty Valance* (1962). The film shows various ways of identifying Ranse Stoddard, a young lawyer who arrives in Shinbone. One of them identifies Stoddard as a hero, whose goal is to build a civil society. On the other hand, another identification illustrates a slightly darker side because the lawyer, on being challenged to a duel by the local villain, Liberty Valance, is able to kill him. This experience, which has an impact on the protagonist's future, does not overshadow the narrative dimension of Stoddard's identity, which is shaped on the pillars of liberal democracy.

Fourthly, the metaphor of the role as ritual also aligns with the demands for the democratisation of the judicial process. The aim here is to ensure the openness and public character of the judicial process and to recognise the subjectivity of all the participants in the court proceedings. As I pointed out above, the metaphor of the ritual rehabilitates the subjectivity of not only judges but also of other people, such as the public, who are defined as participants of the event.

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⁶⁴ O. Kamir, *Hollywood's Hero-Lawyer: A Liminal Character and Champion of Equal Liberty*, [in:] A. Wagner, R.K. Sherwin (eds.), *Law, Culture and Visual Studies*, Dordrecht–Heidelberg–New York–London 2014, p. 747 ff.

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