

## ***Gauzy Allegory and the Construction of Gender***

“Every people has a past, but the dignity of a history comes when a community of scholars devotes itself to chronicling and studying that past.”

Sonia Sotomayor, *MY BELOVED WORLD*<sup>1</sup>

### **Introduction**

Commemorative iconography, including representation in national monuments, statues, parks, stamps, and currency, creates public memory and reinforces the values of a nation. In the United States, women are rarely represented in iconography. Moreover, when they are represented, they are, more often than men, represented allegorically rather than historically.

The impact of allegorical representation has not been widely addressed in legal discourse,<sup>2</sup> nor has this been the lens to consider commemoration and public memory. Indeed, I am not aware of terminology that adequately addresses the concept of gendered commemorative silence exacerbated by allegorical representation.<sup>3</sup> For this reason I chose the label “Gauzy Allegory” to invoke notions of allegorical women cloaked in flowing robes who have no reality beyond their idealized, allegorical form. What is Liberty’s first name? Who is Justice and was she born blind, or did she become so?

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<sup>1</sup> Sonia Sotomayor, *MY BELOVED WORLD* (Vintage Books 2013).

<sup>2</sup> *But see* Tricia Cusack and Sighle Bhreathnach-Lynch, *ART, NATION AND GENDER: ETHNIC LANDSCAPES, MYTHS AND MOTHER-FIGURES* (Ashgate Publishing Limited 2003). Cusack notes All nations are premised upon particular divisions of gender, which normally privilege men as historical and political agents, while associating women with household, family and tradition. Statues of heroic historical men abound in the public spaces of the nation-state as exemplars for the present, reflecting the fact that: ‘agency and power are invested in the male not the female body.’ Meanwhile, the nation, with its abstract civic values, is commonly allegorized in images of stereotypical female figures.

*Id.* at 1 (citations omitted).

<sup>3</sup> This lack of terminology, in and of itself, presents a bit of a problem. As Kristen Konrad Tiscione explains, “We need better words for talking about these status issues. Words that describe not how we feel, but what is happening.” Kristen Konrad Tiscione, “*Gender Degradation*”: *New Words to Tell an Old Story*, *THE SECOND DRAFT*, Vol. 28, No. 2 (2015). Tiscione traces the work of Catherine MacKinnon who put a label on sexual harassment, resulting in an actionable harm. *Id.* at 29-30. She emphasizes the need to create language to refer to these harms, stressing that, “[b]y giving a name to something we have no common words to describe, we can validate our collective experience.” *Id.* at 31.

Professor Jessica Fink coined the term *gender sidelining* to refer to the variety of ways in which women are “sidelined, upstaged, or otherwise marginalized” in a range of experience, including employment, media, politics, sports, and the like.<sup>4</sup> Focusing on this concept, this paper attempts to address the issue of allegory and commemorative silence, asserting that the quantitative and qualitative underrepresentation is a troubling form of gender sidelining. We will begin with the statistics: how are women featured in American iconography?

Finding that women are rarely featured and historical women almost never featured, we will then consider a construct of gender that will inform our understanding of the legal and political consequences of commemorative silence. Our focus will then turn to a brief discussion of how iconography constructs public memory, and how allegorical representation is both a socially and politically gendered as well as an inferior form of representation. After reviewing a few frustrating attempts to address these disparities, we will consider other ideas for addressing this problem of gender sidelining, including identifying a name for the disparate impact this has on not only the history of women, but also on a more accurate representation of American public memory.

## **A. Commemoration and Public Memory**

### **1. Commemorative Women: Who, What, Where**

Iconography is defined as “the visual images and symbols used in a work of art or the study or interpretation of these.”<sup>5</sup> Women are underrepresented on every form of American iconography. Female representations in monuments, statues, street names, stamps, and currency<sup>6</sup> are rare and, when a woman does appear reflected in these iconographic formats,

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<sup>4</sup> Jessica Fink, *Gender Sidelining and the Problem of Unactionable Discrimination*, 29 STAN. L. & POL’Y REV. \_\_ (2017) (forthcoming).

<sup>5</sup> Oxford Dictionary (Oxford University Press 2018).

<sup>6</sup> I have chosen here to focus on certain *national* symbols – monuments and statues as places of public memory, currency and stamps as symbols of American power and authority. It should be noted that there are other forms of public communication where women and minorities are grossly underrepresented. According to numerous studies, women are far less represented in high school history textbooks. Textbooks, while not the focus here, can be viewed as a form of commemoration: “history textbooks act as vehicles or channels through which legitimated past knowledge, as contained in the curriculum, is presented to the ultimate consumers of this product – the school-going youth. This is the case because textbooks are powerful cultural, ideological and political tools of the society in which the youth they are aimed at are socialised.” Annie Chiponda; Johan Wassermann, *Women in History textbooks - What message does this send to the youth?*, YESTERDAY & TODAY, No. 6, 14, December 2011. Women are far less represented in history textbooks and, in all likelihood, other commemorative forms, because of the male-centric focus on political and military history.

she is often represented allegorically rather than historically. This is true at both the national and local level, although historical representation is more likely at the local level.<sup>7</sup> In this section we will focus on the lack of historical representation on a few types of national iconographic forms.<sup>8</sup>

*Monuments, Statues, and Parks:*

According to a CNN story, there are 152 monuments in the United States and less than 2% honor historical women.<sup>9</sup> Time.com reports that only 9% of outdoor sculptures in the Smithsonian American Art Museum art inventories catalog feature women, and some of those representations are allegorical.<sup>10</sup> The CNN author wryly observed that

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“[N]obody notices the lack of representation at first because we are so enculturated to accept male-centric attitudes in our curricula. Statements about women’s achievements are often brief, and women are portrayed as more of the supportive caretakers. The most celebrated accomplishments in history textbooks are usually achievements in war, in which women’s contributions are dramatically underrepresented. A study by M.K Tetrault said that “textbooks placed an emphasis on political, diplomatic and military history instead of social history and, as a result, women’s achievements in the private sphere were left out.”

Megan Gospe, *Women Underrepresented in History Textbooks*, University of Idaho Women’s Center’s Blog, <https://uiwomenscenter.wordpress.com/2015/10/30/women-misrepresented-in-history-textbooks/>.

<sup>7</sup> See generally, Martha Norkunas, *MONUMENTS AND MEMORY: HISTORY AND REPRESENTATION IN LOWELL, MASSACHUSETTS* (Smithsonian Institution Press 2002).

<sup>8</sup> I chose to focus a select number of federally-regulated, national iconographic forms, including monuments, statues, parks, stamps, and currency, as I felt these forms created the type of *national* public memory that sidelined female participation in U.S. history. Of course, other nationally recognizable representations should also be considered, including those that appear in popular culture.

<sup>9</sup> Shachar Peled, *Where are the women? New effort to give them just due on monuments, street names*, <https://www.cnn.com/2017/03/08/us/womens-monument-project-trnd/index.html>. The three monuments were all erected in the past decade and include the “Harriet Tubman Underground Railroad National Historic Park in Maryland, the Belmont-Paul Women’s Equality National Monument in the District of Columbia, and the Rose Atoll in the US territory of American Samoa, named for a female explorer.”

<sup>10</sup> Maya Rhodan, *Inside the Push for More Public Statues of Notable Women*, <http://time.com/4903612/women-statues-san-francisco/>. Rhodan observes, “Among the work listed are allegorical like “Self Denial” at the New Haven County Courthouse, “Inner Light” in Silver Spring, Md., and, of course, the Statue of Liberty.” See also Peled, *supra* note XX (noting that, according to the Smithsonian American Art Museum’s online inventories catalog, there are 5,575 outdoor statues of historical figures and only 10% portray women). This number may actually be inflated. A similar search using the filters “outdoor sculptures,” “portraits,” and “women” yielded 560 results, some of which were sculptures

“[n]one of the 30 national memorials managed under the park service specifically honor women, though there's one named after a shrub, the four-wing saltbush (Chamizal).”<sup>11</sup>

Women do not fare much better in Statuary Hall in the United States Capitol building, where there are 100 statues, two per state, and only nine depict women.<sup>12</sup> The nine state contributions include Alabama (Helen Keller), Colorado (Florence Sabin), Illinois (Frances E. Willard), Minnesota (Maria L. Sanford), Montana (Jeannette Rankin), Nevada (Sarah Winnemucca), North Dakota: (Sakakawea), Washington (Mother Joseph), and Wyoming (Esther Hobart Morris). Time.com reports that, out of 411 national park sites, only nine are dedicated to women's history.<sup>13</sup> While most of these feature historical women including Clara Barton, Eleanor Roosevelt, and Harriet Tubman, one features the allegorical representation of Rosie the Riveter.<sup>14</sup>

### Stamps:

Women are featured less often on United State stamps. The national nonprofit organization Equal Visibility Everywhere (“EVE”)<sup>15</sup> notes, “Stamps send a message from the government to the citizenry about who and what is valued, serving as a sort of “Who's Who” of American history.”<sup>16</sup> According to EVE's website, representations of men on stamps

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of men by female sculptor, e.g., the Martin Luther King, Jr. Civil rights memorial by sculptor Lisa Reinertson.

<sup>11</sup> Peled, *supra* note XX

<sup>12</sup> Architect of the Capitol, The National Statuary Hall Collection, <https://www.aoc.gov/capitol-hill/statues>.

<sup>13</sup> Rhodan, *supra*, note XX

<sup>14</sup> Jennifer Errick, National Parks Conservation Association, *Trivia Challenge: The 8 National Parks Devoted to Women's History*, <https://www.npca.org/articles/1142-trivia-challenge-the-8-national-parks-devoted-to-women-s-history>. Errick explains “This [Rosie the Riveter] park boasts an impressive memorial to the estimated 18 million women who joined defense and support industries during World War II, with photos and quotes from real-life “Rosies,” and a walkway that features a timeline of events from the war's home front.” With respect to the Rosie the Riveter as an allegorical representation, Sarah Hawkes explains, “The imagery of ‘Riveters’ we are accustomed to served as allegory; the war propaganda used ‘Rosie’ as a metaphorical representation of the millions of women (of all colors and socio-economic classes) who took action during war time when patriarchal order was relaxed.” Sarah Hawkes, U. S. History Scene, *Who Was Rosie the Riveter?, The American Factory Women of World War II*, <http://ushistoryscene.com/article/rosie-the-riveter/>.

<sup>15</sup> Equal Visibility Everywhere, <http://equalvisibilityeverywhere.org/who-we-are/> (explaining “EVE is a group of people committed to creating Equal Visibility Everywhere for women. Founded in March 2010, we are a national not-for-profit dedicated to achieving gender parity in the symbols and icons of the United States.”)

<sup>16</sup> Equal Visibility Everywhere, Stamp Out Stamp Bias!, <http://equalvisibilityeverywhere.org/what-we-do/stamps/>

outnumber representations of women three to one.<sup>17</sup> The United States Postal Service honored 206 individuals on commemorative stamps between 2000 and 2009 and only 43, or 21%, were women.<sup>18</sup> The American Philatelic Society reports that 155 stamps picturing or honoring women were issued between 1998 and 2008.<sup>19</sup> Earlier depictions of women on U.S. stamps were more likely to feature allegorical representations. For example, between 1873-1953, 52 stamps featuring women were created.<sup>20</sup> Of those, six portray Spanish monarch Queen Isabella I of Castile, 15 portray historical representations of women, and the remainder are either allegorical<sup>21</sup> or commemorate women's groups in some attenuated fashion.<sup>22</sup>

EVE contends that this bias is accentuated by the USPS's selection of topics for souvenir stamp books such as "Legends of Baseball" or "Early Football Heroes," which tend to categorically exclude women.<sup>23</sup> EVE asserts that, not only is the USPS aware of the imbalance, the bias against women is "intentional, since the vast majority of stamp collectors are male and the postal service believes that male collectors prefer to buy stamps

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Fred Baumann, American Philatelic Society, *The First Fifty Women on United States Stamps*, <https://stamps.org/userfiles/file/albums/Women.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (explaining "[f]ully 23 of these are goddesses or allegories, including the 11 designs used on seldom-seen newspaper and periodical stamps of 1875 and 1895, four personifications of Liberty, and three representations of the magnificent 15,000-pound bronze Statue of Freedom that crowns the Capitol Dome in Washington, D.C.")

<sup>22</sup> Baumann notes

The remainder are stamps I collectively characterize as "She, the People." Little-known or unnamed, they huddle with their spouse and child as the Pilgrims land at Plymouth Rock, await rescue by the National Guard, or help their brother plant a tree on Arbor Day. One is a working woman marching proudly with the men for the National Recovery Act in 1933, elder sister of the Women in the Armed Services of 1952. Many are generic, but some are remarkably moving. Among them are the mother and daughter looking on in terror as the fallen horse that drew their covered wagon is put out of its misery on the 1898 10¢ Hardships of Emigration stamp. For any woman, this would surely be the most dramatic and depressing American commemorative of this eight-decade era were it not for one other: the Gold Star Mothers issue of 1948.

<sup>23</sup> Equal Visibility Everywhere, Stamp Out Stamp Bias!, <http://equalvisibilityeverywhere.org/what-we-do/stamps/> (asserting that "many of the topics the USPS selects for stamp blocks fundamentally exclude women, such as the "Legends of Baseball" (20 stamps), "Baseball Sluggers" (four stamps), "Distinguished Marines" (four stamps), "Classic Movie Monsters" (20 stamps), or "Early Football Heroes" (four stamps).")

featuring men. Yet in catering to the collector market, the USPS is marginalizing half the population and negating women's achievements."<sup>24</sup>

Currency:

Federal currency consists of paper money (bills) and coins. Ruth Anne Robbins and Genevieve Tung explain that although most Americans do not discern a difference between paper money and coins, coins and paper money are produced and regulated by different entities in the Treasury.<sup>25</sup> Neither entity has chosen to feature women on currency, however. Historical representations of women, as opposed to allegorical representation, are extremely rare. With respect to paper currency, Pocahontas was featured on the back of the twenty dollar note in the 1860s, and Martha Washington appeared on the one dollar certificate in the 1880s and 1890s.<sup>26</sup>

According to the EVE website, women are no better represented on American coinage:

- The first woman to be pictured on an official U.S. coin was Queen Isabella of Spain, who appeared on the Columbian Expedition Quarter Dollar coin in 1893. The next coin to depict women — real women, not mythological images of “liberty” — was the 1937 North Carolina Half Dollar, which showed Virginia Dare and her mother Elinor on Roanoke Island.
- The Susan B. Anthony Dollar was introduced in 1979 and withdrawn from circulation after a year. It was briefly re-issued in 1999.
- The only other coins featuring women are essentially collector's issues: the 1995 Special Olympics Silver Dollar, featuring Eunice Kennedy Shriver; the 1999 Silver Dollar depicting Dolley Madison; and the 1999 Sacagawea Gold Dollar.<sup>27</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Genevieve B. Tung & Ruth Anne Robbins, *Beyond #thenew10-the Case for A Citizens Currency Advisory Committee*, 69 RUTGERS U.L. REV. 195, 226 (2016) (explaining that “[v]ery few of us realize that coins and bills are produced by two different entities within Treasury: the U.S. Mint and the Bureau of Engraving and Printing, managed by two separate directors and subject to two separate legal frameworks.”)

<sup>26</sup> Brian Resnick, *An Extremely Brief History of Women on U.S. Paper Currency*, *The Atlantic*, <https://www.theatlantic.com/politics/archive/2015/06/an-extremely-brief-history-of-women-on-us-paper-currency/454458/>. See also *Equal Visibility Everywhere, Currency*, <http://equalvisibilityeverywhere.org/what-we-do/currency/>. The site explains “Martha Washington’s portrait appeared on the face of the \$1 Silver Certificate of 1886 and 1891, and the back of the \$1 Silver Certificate of 1896. There hasn’t been a single woman’s face on our paper currency since then.” *Id.* Recent efforts to address the lack of female representation on U.S. currency resulted in an announcement to replace the image of Samuel Jackson with that of Harriet Tubman on the twenty-dollar bill. See generally, Tung and Robbins, *supra* note XX.

<sup>27</sup> *Equal Visibility Everywhere, Currency*, <http://equalvisibilityeverywhere.org/what-we-do/currency/>

These commemorative representations on monuments, statues, parks, stamps and currency reflect not only the values of our nation, but who should be remembered and valued. The lack of female representation, together with a tendency to feature women allegorically rather than historically, demonstrates a powerful form of gender sidelining.

## 2. Iconography and the Construction of Memory

Commemorative iconography creates public memory. “[T]o commemorate is to ‘call to remembrance,’ to mark an event or a person or a group by a ceremony or an observance or a monument of some kind.”<sup>28</sup> Commemorations may or may not be permanent, but are designed to be a noticeable representation of public memory.<sup>29</sup>

Commemorative iconography tells a history constructed by society, not necessarily reflective of all or actual history.<sup>30</sup> Of course, this does not mean that commemoration is entirely divorced from history, but it most certainly represents a *selective* history.<sup>31</sup> The past is reflected not on the basis of “historical scholarship but from a much more complicated and interwoven set of relationships to mass media, tourist sites, family tradition, and the

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<sup>28</sup> Kirk Savage, *History, Memory, and Monuments: An Overview of the Scholarly Literature on Commemoration* 1 National Park Service, Organization of American Historians, <https://www.nps.gov/parkhistory/hisnps/npsthinking/savage.pdf>

<sup>29</sup> *Id.* (noting that “commemorations might be ephemeral or permanent; the key point is that they prod collective memory in some conspicuous way.”)

<sup>30</sup> Laura Mattoon D’Amore, Jeffrey Meriwether, *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* xvi (Cambridge Scholars 2012). The authors explain that “[h]istorians sometimes imagine that commemoration captures history, but actually commemoration creates new narratives about history that allow people to interact with the past in a way that they find meaningful.”

<sup>31</sup> Jay Winter, *Sites of Memory*, in *MEMORY: HISTORIES, THEORIES, DEBATES* 313-14 (Fordham University 2010) Winter explains, “[c]ommemoration requires reference to history, but then the contestation begins. Whose history, written for whose benefit, and on which records? The contemporary memory boom is about history, to be sure, but historians are not its sole or even its central proprietors.” Winter therefore emphasizes that “[t]he term historical remembrance is one that is an alloy, a compound, which we need because the two defining concepts we normally use, history and memory, are insufficient guides to this field.” See also Brian L. Ott, Carole Blair, and Greg Dickinson, *Places of Public Memory, The Rhetoric of Museums and Memorials* (University of Alabama Press 2010). The authors assert:

To be sure, most of what passes for public memory bears at least some arguable resemblance to or some trace of a ‘real’ past event. Most public memory is not purely or deliberately fictitious, in other words. But we must acknowledge public memory to be ‘invented,’ not in the large sense of a fabrication, but in the more limited sense that public memories are constructed of rhetorical resources.

*Id.* at 13.

spaces of our upbringing with all their regional, ethnic, and class diversity – to name just a few factors.”<sup>32</sup> Public memory as national culture, moreover, “does not represent what is there but asserts what is imagined to be there: a homogenized fixed common culture.”<sup>33</sup> This then is a fiction, as the culture of any nation is not likely unitary, and the national culture, reflected selectively, is necessarily “reflective of particular interests, rarely those of women” or other minorities.<sup>34</sup>

Public statues and monuments create powerful places of public memory, particularly in the national landscape.<sup>35</sup> These places of public memory reflect the history, values, and beliefs of dominant groups. In *Confronting the Past: Feminist Cultural Counter-Memory and Anti-Hegemonic Memorializing at the Women's Rights National Historical Park*, Dianna Winslow explains that we should not consider iconographic representations of national historic events as mere records of a “shared history or common experience,” but rather “dominant remembering as ‘hegemonic cultural memory.’”<sup>36</sup> And this dominant remembering is closely tied to power as authority, as “[c]ompulsory schooling, national commemorations, participatory cultural celebrations are all socially configured frameworks for remembering and can be manipulated in subtle ways to exercise control of how people think about the past, and therefore to control how they respond in the present.”<sup>37</sup>

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<sup>32</sup> Ott et. al., *supra* note XX at 2. Comparing public memory to personal memory, the authors explain that both are “understood to be a highly selective, adaptive process of reconstructing the past, shaped by present needs and contexts.” Thus, “societies in fact reconstruct their pasts rather than faithfully record them, and that they do so with the needs of contemporary culture clearly in mind – manipulating the past in order to mold the present.” *Id.* (citations omitted)

<sup>33</sup> Cusack and Bhreathnach-Lynch, *supra* note XX at 9.

<sup>34</sup> *Id.*

<sup>35</sup> Note that commemorative practices are not limited to buildings, currency, stamps, and the like. Savage reminds us “commemoration entails not only building, naming, or shaping physical sites. Commemoration as a practice also involves ritual acts in and occupations of public space as well as other kinds of performance and consumption that may leave no lasting trace on the landscape.” Savage, *supra* note XX at 9.

<sup>36</sup> Dianna Winslow, *Confronting the Past: Feminist Cultural Counter-Memory and Anti-Hegemonic Memorializing at the Women's Rights National Historical Park* in Laura Mattoon D'Amore, Jeffrey Meriwether, *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION 179-180* (Cambridge Scholars 2012) (citations omitted) (referring to collective memory as “effective ‘social glue,’ creating ‘cohesion, consensus, and solidarity.’”).

<sup>37</sup> *Id.* (citations omitted). Winslow emphasizes, “Monuments and memorials are one way to “solidify,” to literally set in stone, memories the monument’s sponsors wish to keep in front of the public gaze. Accomplishing a stable, unified perception of history, national identity, or any other collective understanding depends on a (usually) conscious effort on the part of some established public entity.” *Id.* at 180.

Thus, the way in which dominant culture manifests itself in commemorative practice underscores the relationship between commemoration, power, and authority.<sup>38</sup> Monuments and statues create powerful places of public memory. Federal currency is similarly a governmental representation of power and authority.<sup>39</sup> Representations of historic “individuals on banknotes serve not only as role models but also as constant reminders of who our role models can be; this is because banknotes are accessed by entire populations.”<sup>40</sup> This manner of asserting authority then generates and perpetuates cultural capital, which “derives from those who steer the historical conversation. Its source also lies with the public’s perception of an historical event or location’s importance.”<sup>41</sup> Where a segment of society is absent from commemorative view, it is correspondingly absent from recognition and power.<sup>42</sup>

Correspondingly, from a feminist perspective, it is important to consider not only the lack of historical representation, both quantitatively and, by virtue of allegorical representation, qualitatively, but also how that absence created and maintained hierarchies and contributed to sidelining.<sup>43</sup> Allegorical representations are, by their very nature,

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<sup>38</sup> Lenore Metrick-Chen, *The Chinese of the American Imagination 19th Century Trade Card Images*, VISUAL ANTHROPOLOGY REVIEW 122, Volume 23 Number 2 (Fall 2007) (stressing that “One way a nation asserts its historical legitimacy is by creating a self-referential persona through its images.”).

<sup>39</sup> Tung and Robbins, *supra* note XX at 199-200 (noting that “[m]oney is seen as a symbol of the state. The imagery used on currency signifies its credibility” and emphasizing, “this validation is all the more important for paper money that has no intrinsic value.”)

<sup>40</sup> Hansika Kapoor, *Women on Banknotes are Associated with Greater Gender Equality*, livemint.com, <https://www.livemint.com/Sundayapp/shqa8Z3CxyjxfcGtTIHUcl/Women-on-banknotes-are-associated-with-greater-gender-equali.html> (March 24, 2018). Kapoor asserts, “Focusing on women’s successes (via acknowledging their national importance) sets them up to be role models, having the potential to help form positive and egalitarian representations of women and men in society.”

<sup>41</sup> Laura Mattoon D’Amore, Jeffrey Meriwether, *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* xiii (Cambridge Scholars 2012) (citations omitted).

<sup>42</sup> Debra L. DeLaet and Elizabeth Mills, *Discursive Silence as a Response to Sexual Violence in Global Society: from Title IX to Truth Commissions* (noting that “Absence of words—the absence of stories and voice, the absence of history as articulation of a past, the absence of a tradition that knows itself—constitutes absence of power.”) DeLaet and Mills explain, “If public voice is seen as a central manifestation of power, then silence is traditionally viewed as the opposite. ‘Within the current democratic politics of voice, however, silence is almost always taken up as an absence of power, as an issue to be raised on behalf of the less powerful to contest their marginalization, exclusion, or domination. Silence in this context marks those who have not been properly heard, who are not listened to, or who have yet to come into their own voices.’”

*Id.* (citations omitted).

<sup>43</sup> Scott, *supra* note XX at 1055.

symbolic of other concepts.<sup>44</sup> And allegorical representations in American iconography may involve complex visual cues. So, for example, the allegorical figure of Justice has historically been reflected with a variety of material attributes, the signification of which is not always entirely clear.<sup>45</sup> Moreover, it is ironic and troubling that these female allegorical representations were so often employed to represent political concepts and constructs from which women were excluded.<sup>46</sup>

## **B. Gender as the Lens for Sidelining**

As a paper directed at gender sidelining, it is useful to ground our examination of the gendered commemorative practices in the United States in a frame of reference for both the term gender and the possible analytical framework it provides. In *Gender: A Useful*

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It has not been enough for historians of women to prove either that women had a history or that women participated in the major political upheavals of Western civilization. In the case of women's history, the response of most non-feminist historians has been acknowledgment and then separation or dismissal (“women had a history separate from men’s, therefore let feminists do women's history, which need not concern us”; or “women’s history is about sex and the family and should be done separately from political and economic history”). In the case of women's participation, the response has been minimal interest at best (“my understanding of the French Revolution is not changed by knowing that women participated in it”). The challenge posed by these responses is, in the end, a theoretical one. It requires analysis not only of the relationship between male and female experience in the past but also of the connection between past history and current historical practice. How does gender work in human social relationships? How does gender give meaning to the organization and perception of historical knowledge? The answers depend on gender as an analytic category.

<sup>44</sup> See e.g., Cusack and Bhreathnach-Lynch, *supra* note XX at 2 (exploring “particular conjunctions of nation, gender and visual representation in seven countries . . . [and] . . . demonstrat[ing] how nations across the modern world, from Western and Eastern Europe to Canada are systematically gendered in ways that relegate women to symbolic rather than active roles in the polity [and] how this gendering is embodied in visual art.”)

<sup>45</sup> Ruth Weisberg, *The Art of Memory and the Allegorical Personification of Justice*, 24 *Yale J.L. & Human.* 259 (2012). Weisberg explains:

Although we may be familiar with allegory as a representation of an abstract idea or concept usually involving humans or animals, we tend to be less knowledgeable in regard to allegory as a system of complex visual signs. Figures such as Justice have traditionally been accompanied by significant props or material attributes that identified them and elucidated their meaning. They were part of a vast array of embodiments or personifications that served multiple purposes, the most important of which was the organization of an elaborate conceptual system of values.

*Id.*

<sup>46</sup> See generally section XX *infra*.

*Category of Historical Analysis*, Joan W. Scott explores the topic of terminology in feminist historical analysis.<sup>47</sup> Beginning with an examination of how the use of the term *gender*, as opposed to *women* or *female*, informs feminist scholarship, Scott observes, “Those who would codify the meanings of words fight a losing battle, for words, like the ideas and things they are meant to signify, have a history.”<sup>48</sup> She notes that American feminists chose the term *gender* in order to emphasize the “fundamentally social quality of distinctions based on sex [as well as] . . . the relational aspect of normative definitions of femininity.”<sup>49</sup> The term was also thought to be transformative within the discipline, opening up a new manner of inquiry. Reflecting on the comments of other feminist historians, she explains that early attempts to write women into history required a new examination of the historical significance of gendered experience, and one which was dependent not only on including missing female voices into historical analysis, but on examining the relational history of men and women.<sup>50</sup> In this way the term *gender* as opposed to *women* expands the framework

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<sup>47</sup> Joan Scott *Gender: A Useful Category of Historical Analysis*, *THE AMERICAN HISTORICAL REVIEW*, Vol. 91, No. 5, 1053 (Dec., 1986) (noting that the word *gender* “denoted a rejection of the biological determinism implicit in the use of such terms as ‘sex’ or ‘sexual difference.’”)

<sup>48</sup> *Id.* at 1053.

<sup>49</sup> *Id.* Scott explains:

Those who worried that women's studies scholarship focused too narrowly and separately on women used the term ‘gender’ to introduce a relational notion into our analytic vocabulary. According to this view, women and men were defined in terms of one another, and no understanding of either could be achieved by entirely separate study. Thus Natalie Davis suggested in 1975, ‘It seems to me that we should be interested in the history of both women and men, that we should not be working only on the subjected sex any more than an historian of class can focus entirely on peasants. Our goal is to understand the significance of the sexes, of gender groups in the historical past. Our goal is to discover the range in sex roles and in sexual symbolism in different societies and periods, to find out what meaning they had and how they functioned to maintain the social order or to promote its change.’

*Id.* (citations omitted).

<sup>50</sup> *Id.* (stressing that “the writing of women into history necessarily involves redefining and enlarging traditional notions of historical significance, to encompass personal, subjective experience as well as public and political activities. It is not too much to suggest that however hesitant the actual beginnings, such a methodology implies not only a new history of women, but also a new history.”) Scott emphasizes the relationship between feminist inquiry and those of class and race, noting that the

way in which this new history would both include and account for women's experience rested on the extent to which *gender* could be developed as a category of analysis. Here the analogies to class (and race) were explicit; indeed, the most politically inclusive of scholars of women's studies regularly invoked all three categories as crucial to the writing of a new history. An interest in class, race, and *gender* signaled first, a scholar's commitment to a history that included stories of the oppressed and an analysis of the meaning and nature of their oppression and,

for study, as it can be “used to suggest that information about women is necessarily information about men, that one implies the study of the other,” and the terms opens the inquiry into social relationships between men and women, including the “exclusively social origins of the subjective identities of men and women.”<sup>51</sup>

In order, then, to understand this expanded lens for an historical inquiry of gender, gendered relationships, and gendered significations of power, Scott articulates a definitional framework that is useful for our inquiry here: namely, how the lack of female representation in American iconography sidelines American women. Her definitional framework focuses on two aspects of gender which she describes as related but analytically distinct.<sup>52</sup> The first aspect is constitutive and focuses on how social relationships evolve based on perceived differences between men and women.<sup>53</sup> The second aspect of gender requires an examination of how gender informs the signification of relationships of power.<sup>54</sup>

With respect to the constitutive aspect of social relationship, Scott emphasizes four interrelated elements. The first involves cultural symbols that may invoke more than one, and possibly conflicting, symbolic representations.<sup>55</sup> With regard to this element, Scott highlights symbols such as Mary and Eve, noting that, for historians and indeed for the inquiry at issue here, “the interesting questions are, which symbolic representations are invoked, how, and in what contexts?”<sup>56</sup>

The second element comprises “normative concepts that set forth interpretations of the meanings of the symbols, that attempt to limit and contain their metaphoric possibilities.”<sup>57</sup> This is again a useful lens for our current inquiry as these normative concepts are expressed in political, religious, and educational doctrines and often invoke binary oppositions of male and female, setting up normative categories that appear to be fixed.<sup>58</sup>

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second, scholarly understanding that inequalities of power are organized along at least three axes.

*Id.* (citations omitted).

<sup>51</sup> *Id.* at 1056.

<sup>52</sup> *Id.* at 1067-70.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 1067. Scott clarifies, however, that “[c]hanges in the organization of social relationships always correspond to changes in representations of power, but the direction of change is not necessarily one way.” *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* (noting that this symbolic focus extends as well to “myths of light and dark, purification and pollution, innocence and corruption.”)

<sup>57</sup> *Id.* at 1067-68.

<sup>58</sup> *Id.* at 1067 (explaining that these normative concepts “are expressed in religious, educational, scientific, legal, and political doctrines and typically take the form of a fixed binary opposition, categorically and unequivocally asserting the meaning of male and female, masculine and feminine.”)

To the extent that “these normative statements depend on repression of alternative possibilities . . . [s]ubsequent history is written as if these normative positions were the product of social consensus rather than of conflict.”<sup>59</sup> The emphasis on symbolic meaning and the normative concepts that inform such meaning provides a useful framework for evaluating the impact of allegorical representation.<sup>60</sup>

The third aspect of gender as constitutive of social relations includes reference to politics and social institutions and implicates a new framework for historical analysis.<sup>61</sup> Scott argues that the “point of new historical investigation is to disrupt the notion of fixity,” and she encourages an inquiry into the mechanisms that lead to an “appearance of timeless permanence in binary gender representation.”<sup>62</sup> Inquiry into the mechanisms that produce gendered commemoration will arguably be helpful in responding to this form of gender sidelining.<sup>63</sup>

The final element of Scott's focus on gender as constitutive of social relationships is subjective identity.<sup>64</sup> Scott admonishes historians to explore the mechanisms by which society substantively constructs gendered identities.<sup>65</sup> The identification of those mechanisms can then be employed to examine the context in which gendered identities are constructed, such as social organization and cultural representations.<sup>66</sup>

Together with the consideration of gender as a constitutive element of social relationships, Scott urges feminist historians to consider gender as a signifier of power.<sup>67</sup>

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<sup>59</sup> *Id.* at 1067-68. Scott further explains, “An example of this kind of history is the treatment of the Victorian ideology of domesticity as if it were created whole and only afterwards reacted to instead of being the constant subject of great differences of opinion. Another kind of example comes from contemporary fundamentalist religious groups that have forcibly linked their practice to a restoration of women's supposedly more authentic “traditional” role, when, in fact, there is little historical precedent for the unquestioned performance of such a role.”

<sup>60</sup> See *infra* section C (3).

<sup>61</sup> Scott, *supra* note XX at 1068

<sup>62</sup> *Id.*

<sup>63</sup> See *infra* section C (2).

<sup>64</sup> Scott, *supra* note XX at 1068-69.

<sup>65</sup> *Id.* at 1068. (emphasizing that subjective identity must be explored, in part, because “real men and women do not always or literally fulfill the terms of their society's prescriptions or of our analytic categories.”)

<sup>66</sup> *Id.* at 1068 (encouraging historians to “relate their findings to a range of activities, social organizations, and historically specific cultural representations.”)

<sup>67</sup> *Id.* at 1069 (noting that “[g]ender is not the only field, but it seems to have been a persistent and recurrent way of enabling the signification of power in the West, in Judeo-Christian as well as Islamic traditions”). Scott clarifies, “It might be better to say, gender is a primary field within which or by means of which power is articulated.”

She asserts, “concepts of gender structure perception and the concrete and symbolic organization of all social life. To the extent that these references establish distributions of power (differential control over or access to material and symbolic resources), gender becomes implicated in the conception and construction of power itself.”<sup>68</sup> This concept resonates with the current inquiry about how symbolic representations of gender in American iconography and, specifically, the tendency to commemorate women in an allegorical and attenuated manner has troubling implications for gender sidelining – American iconography becomes the symbolic representation of differentiated power as the female experience is silenced both quantitatively<sup>69</sup> and qualitatively.<sup>70</sup>

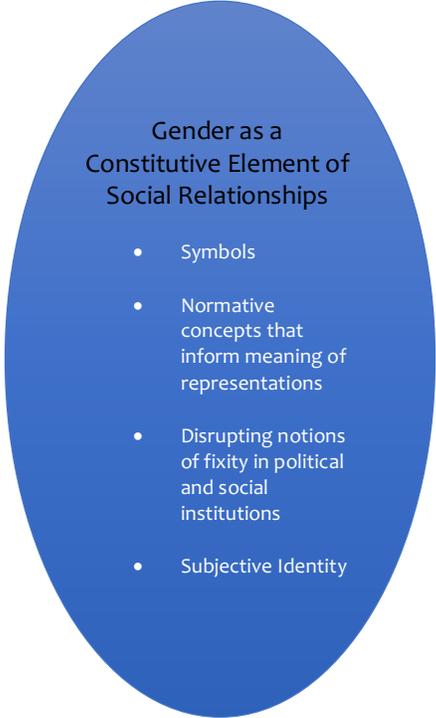
Thus, Scott’s two-fold lens through which historians consider gender can be represented as such:

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<sup>68</sup> *Id.*

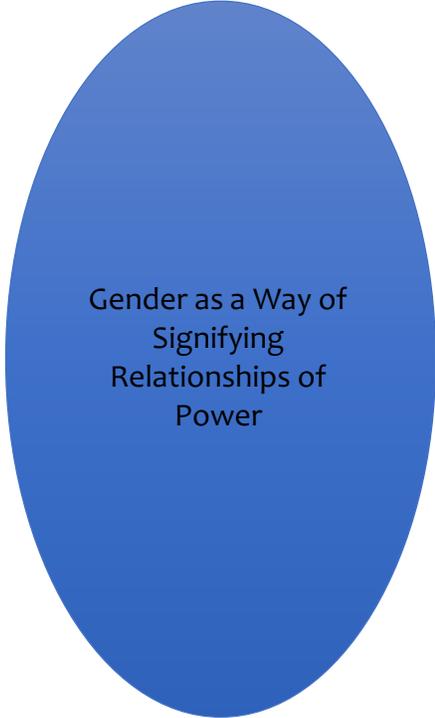
<sup>69</sup> *See supra* Section A.

<sup>70</sup> *See infra* Section C.



Gender as a  
Constitutive Element of  
Social Relationships

- Symbols
- Normative concepts that inform meaning of representations
- Disrupting notions of fixity in political and social institutions
- Subjective Identity



Gender as a Way of  
Signifying  
Relationships of  
Power

Using this two-fold lens, with its separate but related focus on gender as both constitutive of social relations and as a signifier of power, enables us to “decode meaning and to understand the complex connections among various forms of human interaction.”<sup>71</sup> Scott notes that “[w]hen historians look for the ways in which the concept of gender legitimizes and constructs social relationships, they develop insight into the reciprocal nature of gender and society and into the particular and contextually specific ways in which politics constructs gender and gender constructs politics.”<sup>72</sup> She acknowledges, however, “politics is only one of the areas in which gender can be used for historical analysis.”<sup>73</sup> Thus, gender provides a lens to view other social and cultural aspects of society, including the influence of iconography and public memory on hierarchies and sidelining.

The acknowledgement that gender as Scott describes it is multidimensional reinforces why our discussion of gendered representation in American iconography will necessarily traverse varied interdisciplinary terrain, including, for example, politics, history, iconography, semiotics, and art. An inquiry into the impact that American iconography has on sidelining compels us to consider public memory, another interdisciplinary inquiry, which has been examined from a variety of disciplinary perspectives, including the humanities, social sciences, art history, landscape historians, and the like.<sup>74</sup>

Indeed, commemoration and public memory studies ask the type of question addressed in this paper. As the authors of *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* note,

Current trends in the study of historical memory are particularly relevant to our own present—our biases, our politics, our contextual moment—and strive to name forgotten, overlooked, and denied pasts in traditional histories. Race, gender, and sexuality, for example, raise questions about our most treasured myths: where were

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<sup>71</sup> *Id.* at 1070.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See, e.g., Carole Blair, Greg Dickinson, and Brian L. Ott, *PLACES OF PUBLIC MEMORY*, 1 (explaining “We began this project with the belief that exploring the relations among rhetoric, memory, and place is of crucial importance to understanding contemporary public culture”). The authors explain, “Public memory increasingly preoccupies scholars across the humanities and social sciences. Further, much of their scholarship suggests at least by implication that memory places are rhetorical.” See also, Kirk Savage, *History, Memory, and Monuments: An Overview of the Scholarly Literature on Commemoration*, National Park Service, Organization of American Historians, <https://www.nps.gov/parkhistory/hisnps/npsthinking/savage.pdf>. Kirk Savage similarly acknowledged the varied disciplines that might inform our inquiry, explaining, “the collective memory field continues to expand beyond its traditional base in sociology, history, and art history and embraces the work of geographers, landscape historians, ethnographers, archaeologists, and other academic practitioners.”

the slaves at Jamestowne? How do women or lesbians protect and preserve their own histories, when no one else wants to write them? Our current social climate allows us to question authority, and especially the authoritative definitions of nation, patriotism, and heroism, and belonging. How do we “un-commemorate” things that were “mis-commemorated” in the past? How do we repair the damage done by past commemorations? These are all decidedly modern questions that entirely reimagine the landscape of commemoration as it has been practiced, and studied, before.”<sup>75</sup>

We will be asking similar questions, and in order to address them, the reader will benefit from some direction. Reinforced with the statistics on the lack of historical representation on American iconography and armed with an analytical framework for the constitution and construction of gendered relationships, including the acknowledgement that such gendered relationships are a signifier of power and authority, we now turn to an examination of commemorative silence,<sup>76</sup> particularly in terms of allegorical representation. Against the inevitable conclusion that the lack of representation is troubling and an assertion that allegorical representation is inferior to historical representation, we will consider recent efforts to address these disparities. We then conclude with questions about how to further address these issues.

### **C. Commemorative Silence and the Illusion of Allegory**

The influence of American iconography, used to communicate power and authority but largely devoid of female and minority representation, solidified (literally and figuratively) hierarchy in American culture.<sup>77</sup> Catherine McKinnon explains “[w]ords and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized. Social supremacy is made, inside and between people, through making meanings.”<sup>78</sup> The underrepresentation of women in American iconography creates a commemorative silence that is particularly

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<sup>75</sup> Laura Mattoon D’Amore, Jeffrey Meriwether, *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* xvi (Cambridge Scholars 2012).

<sup>76</sup> This in an effort to go beyond mere observation of the phenomena. See Scott, *supra* note XX at 1056 (noting that approaches by historians to consider gender “fall into two distinct categories. The first is essentially descriptive; that is, it refers to the existence of phenomena or realities without interpreting, explaining, or attributing causality. The second usage is causal; it theorizes about the nature of phenomena or realities, seeking an understanding of how and why these take the form they do.”)

<sup>77</sup> Scott, *supra* note XX at 1063. Scott explains, “[h]ow can we account within this theory for persistent associations of masculinity with power, for the higher value placed on manhood than on womanhood . . . I do not think we can without some attention to symbolic systems, that is, to the ways societies represent gender, use it to articulate the rules of social relationships, or construct the meaning of experience.”)

<sup>78</sup> Levinson, *supra* note XX at 65-66.

powerful when we consider how women are often represented allegorically. Allegorical rather than historical representations of women have troubling implications, including the fact that it is an inferior form of representation, subject to misinterpretation and, in the context of U.S. history, an ironic and potentially misleading form of representation in the contexts where it is most often appears.

### 1. *Why the overall lack of representation?*

One reason for the lack of female representation in American iconography is simply the nature of commemoration itself. Historically, American culture focused primary commemorative efforts – especially at the national level in important places like Washington, D.C. – on public accomplishments including those involving military or political success, areas of history where women were not likely to be present. This implicates an explanation offered by many feminists as to the oppression of women relating to the public/private and natural/civilized divide between male and female participation in society.<sup>79</sup> Mira Yuval-Davis explains, “Much of the feminist literature, while pointing out and objecting to the fact that women have been ‘hidden from history’ accepts the naturalized locations of men in the public sphere and women in the private sphere.”<sup>80</sup> Asserting that the public/private distinction is “fictional,” Yuval-Davis nonetheless acknowledges that it has “been used to exclude women from freedom and rights.”<sup>81</sup>

With regard to the natural/civilized distinction, feminists have posited that the “identification of women with ‘nature’ has been seen not only as the cause for their exclusion from the ‘civilized’ public political domain, but also as the explanation of the fact that in all cultures women are less valued socially than men.”<sup>82</sup> Explanations along these lines point to the ways in which females and males “create,” the former create naturally by reproduction, the latter “are free/forced to create culturally.”<sup>83</sup> And “[s]ince human beings everywhere rank their own cultural products above the realm of the physical world, as every culture is aimed at controlling and/or transcending nature, women end up with an inferior symbolic position.”<sup>84</sup>

The commemoration of military accomplishment, a public endeavor, results in failure

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<sup>79</sup> Nira Yuval-Davis, *GENDER AND NATION* (Sage Publications 1997). Yuval-Davis explains that “[m]uch of the explanation of women’s oppression has been related to their location in a different social sphere from that of men. Two such binary divides have been the public/private and the natural/civilized domains.” *Id.* at 5.

<sup>80</sup> *Id.* (citations omitted). Yuval-Davis resists this explanation as complete, however, asserting that “this division is fictional to a great extent as well as both gender and ethnic specific”).

<sup>81</sup> *Id.* (citations omitted).

<sup>82</sup> *Id.* at 6 (citations omitted).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

to include historic women. Scholars have asserted a connection between military service and full citizenship rights, noting that “[a]s sacrificing one's life for one's country is the ultimate citizenship duty, citizenship rights are conditional on being prepared to fulfil this duty.”<sup>85</sup> As women were not historically part of the fighting force, their contributions to military endeavors are not reflected in iconography.<sup>86</sup> Martha Norkunas asserts, “Men constructed monuments to mark their own patriotic deeds in the public sphere. Women, in the more constricted sphere of the home, embroidered images of obelisks and urn memorials using a visual grammar in which granite monuments stood for heroic men and willow trees for weeping women.”<sup>87</sup> This represents a gendered value system, as Simone de Beauvoir has noted that “It is not in giving life but in risking life that man is raised above the animal: that why superiority has been accorded in humanity not to the sex that brings forth but to that which kills.”<sup>88</sup> While these may be plausible explanations for the lack of overall representation, the use of the female form to represent abstract ideals rather than historical women is further relevant to considering gender sidelining.

## 2. Why allegory?

Allegorical representations of women in the United States trace their roots back to ancient representations of Egyptian, Greek, and Roman goddesses.<sup>89</sup> The Cardinal Virtues were historically depicted as women.<sup>90</sup> Woman as nation is a recurrent theme across the world, with many countries utilizing a female form for the nation, likely implicating associations of motherhood.<sup>91</sup>

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<sup>85</sup> Yuval-Davis, *supra* note XX at 93 (noting that “there have often been arguments, both by feminists and by those who opposed them, that the entry of women into the military is the precondition for women's achievement of full citizenship rights.”)

<sup>86</sup> *But see id.* at 94. Yuval-Davis notes

This does not mean, however, that there have not been constructions and images of women as warriors throughout history - from the Amazons to the American women soldiers in the Gulf War. These images usually have either enhanced the constructed unnaturalness of women as fighters, or been made in such a way as to collude with more generalized notions of femininity and masculinity in the society from which the women fighters have come.

<sup>87</sup> Norkunas, *supra* note XX at 95. (“Women were denied commemorative representation because they had not officially served the nation in war or politics.”)

<sup>88</sup> Yuval Davis, *supra* note XX at 6 (citations omitted).

<sup>89</sup> See Rebecca K. Lee, *Justice For All?*, 65 Vand. L. Rev. En Banc 217, 226–28.

<sup>90</sup> Ruth Weisberg, *The Art of Memory and the Allegorical Personification of Justice*, 24 YALE J.L. & HUMAN. 259, 263 (2012) (noting, “Justice, Prudence, Fortitude, and Temperance—are typically depicted as goddesses in classical billowing gowns with their distinctive attributes.”)

<sup>91</sup> See generally, Cusack and Bhreathnach-Lynch, *supra* note XX, exploring the use of female representations of nation in various countries, including the female forms of Britannia, Mother Russia, and The Maid of Finland.

In the modern period, the national territory, regarded as the body of the nation, bounded, vital and indivisible, is anthropomorphized in metaphorical references such as 'arteries' (road and rail communications), but above all by being gendered as female: 'She' (the nation; the country). Thus the nation is frequently allegorized as female, a [virginal] motherland needing to be defended by its masculine warriors and represented . . . by motherly or maidenly figures.<sup>92</sup>

It is likely that American commemorations that display female allegorical figures were intended to invoke familiar and powerful ancient communicative representations and to capitalize on their legitimizing feature.<sup>93</sup> So, to the extent that "[s]trong traditions had existed since antiquity of allegorical images and depictions of the virtues as females,"<sup>94</sup> American commemorations featuring female allegorical figures benefitted from their historic significance. These images "appeared in metaphorical texts and allegorical imagery, often associated with mystical movements, as spiritual expressions of connectedness with God or at least with prosperity."<sup>95</sup> Thus, female allegorical representations may have been

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<sup>92</sup> *Id.* at 6.

<sup>93</sup> Winter, *supra* note XX at 16. Winter explains, "at the end of the nineteenth century, new nation states and preeminent imperial powers deepened the repertoire of their ceremonial activity. Such flourishes of the majesty of power were then immediately sanctified by a spurious pedigree. To display ceremonies with a supposed link to ancient habits or forms located in a foggy and distant past created an effective cover for political innovation, instability, or insecurity." See also Cusack and Bhreathnach-Lynch, *supra* note XX at 6 (explaining that "[f]emale allegorical figures pleased and persuaded their audience: 'as a weapon of delight, the female appears down the years to convince us the messages she conveys'").

<sup>94</sup> Stefanie Schäfer-Bossert, *The Representation of Women in Religious Art and Imagery: Discontinuities in "Female Virtues"* in GENDER IN TRANSITION: DISCOURSE AND PRACTICE IN GERMAN-SPEAKING EUROPE, 1750-1830, 138. The author explains "In these traditions, all society's welfare depended on observance of the cardinal virtues (Prudence, Fortitude, Temperance, and Justice) and the theological virtues (Hope, Faith, and Charity), which stood above all others in Christian tradition. All of these virtues were depicted in human form. Prudence was connected with Sophia, the wisdom of God, and so was related to the divine trinity."

<sup>95</sup> *Id.*

used to legitimize the values of the new nation, including Justice,<sup>96</sup> Liberty, and Truth.<sup>97</sup>

Others have theorized that initial female allegorical representations – replicated throughout history but whose roots may be less than clear – correspond not with some political intention of the creator, but because of the linguistic origins of the concepts they represent. So, for example, according to a book addressing allegorical representations in Renaissance Italy,<sup>98</sup> Academia, Agriculture, and Democracy were represented with the female form, while Assistance, Credit, and Tax were male.<sup>99</sup> Deconstructionist scholar Barbara Johnson and others have explained that the gendered-origins of these allegorical representations reflect not some intended signification of the artist, but the gender of the Italian noun the allegories represent.<sup>100</sup>

Notwithstanding this possible benign explanation for the use of the female form to communicate abstract values, the reality of both female underrepresentation and representation by allegory in American iconography has several troubling implications. Indeed, Johnson acknowledges that “[j]ust because the image’s gender derives from a ‘mere’ linguistic fiction (the gender of a noun) does not mean that the existence of half-clad, nameless women on the walls and ceilings of public spaces . . . has not shaped the cultural messages addressed both to women and to men.”<sup>101</sup>

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<sup>96</sup> Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 YALE L.J. 1727, 1729–31 (1987) (citations omitted). “For much of the Western world’s history, Justice has been depicted as a large female figure, sometimes draped, sometimes naked, holding or surrounded by a series of props identified as her attributes. Commonly, she carries a scale and/or a sword. Occasionally, Justice has a cornucopia or fasces (a bundle of rods). Sometimes Justice stares evenly at us, at other times her eyes are in shadows, and in some depictions, she is blindfolded—although sometimes the blindfold has open spaces through which her eyes appear. Upon occasion, an ostrich stands next to Justice; in a few instances, a crane is present.” *Id.* at 1741-42 (citations omitted).

<sup>97</sup> See e.g., Katherine C. Sheehan, *Toward A Jurisprudence of Doubt*, 7 UCLA WOMEN’S L.J. 201 (1997). Sheehan notes “Liberty, Truth, the Muses, Justice, and other powerful forces and ideas are often portrayed allegorically as feminine. These figures, however, deny real women any role in the projects--government, philosophy, poetry, law-- they enable.” *Id.* at 262 (citations omitted).

<sup>98</sup> Barbara Johnson, *THE WAKE OF DECONSTRUCTION* 65 (Blackwell Publishers 1994) (referring to “an important book of Renaissance allegorical images: Cesare Ripa’s *Iconologia*, published in Rome in the 16002”).

<sup>99</sup> *Id.* at 66-67.

<sup>100</sup> *Id.* at 67 (asserting, “The genders of the figures are based solely on the genders of the Italian noun. Their gendered embodiment thus arises out of a non-referential, intralinguistic aspect of language.”)

<sup>101</sup> *Id.* at 73 (arguing that “[i]t is just the ‘cause’ of the cultural messages cannot easily be tied to intentions”)

### 3. *Implications of Allegorical Representation:*

Allegorical representations are a symbolic communicative form and can therefore be ambiguous. The use of female allegorical representation can be viewed as an objectification of the female form. Moreover, in most contexts in which we see a form of female allegorical representation in American iconography the context of its use is ironic and arguably insulting.

- a. Allegory as an idealized, symbolic, and potentially ambiguous commemorative representation.

In INTERPRETATION AND ALLEGORY: ANTIQUITY TO THE MODERN PERIOD, Jon Whitman explains the lack of a systematic history of allegorical interpretation. “Allegorical interpretation is not exactly a single ‘kind’ of interpretation. To engage ‘it’ seriously is to encounter not just a system of beliefs or a set of conceptual ‘norms,’ but a series of critical negotiations. Acts of interpretive allegory are transactions between fluctuating critical communities and formative texts.”<sup>102</sup> The fact that historians, art historian, theologians, and others who engage in the interpretation of allegorical references do not agree upon a process or framework of study suggests that allegorical representations of women will not likely yield clear or consistent interpretations about women themselves, or about the abstract ideas their creators intended to communicate. Nonetheless, studying the signification of allegorical representation in iconography is in keeping with Scott’s work on gender as a lens, particularly with regard to symbolic and normative concepts associated with gender.<sup>103</sup> And addressing the troubling consequences associated with allegorical representation reinforces Scott’s characterization of gender as a way of signifying relationships of power.<sup>104</sup>

In this semiotic sense, allegorical representation, as opposed to historical representation, is an inferior manner of commemorating women.<sup>105</sup> The allegorical representation takes the female form to communicate an abstract ideal. Historical representation, in contrast, memorializes and honors an actual person.<sup>106</sup> The prevalence of

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<sup>102</sup> Jon Whitman, INTERPRETATION AND ALLEGORY: ANTIQUITY TO THE MODERN PERIOD 5-6 (Brill 2003)

<sup>103</sup> Scott, *supra* note XX at 1067-69.

<sup>104</sup> *Id.* at 1069-1070.

<sup>105</sup> Theresa M. Kelley, REINVENTING ALLEGORY 136 (Cambridge University Press 1997). Kelley notes that female allegorical representation has been used to ““consolidate the power of the state . . . [and] [b]y making women into allegorical spectacles excludes them from action and history.” *But see* Stefanie Schäfer-Bossert, *supra* note XX at 146-47 (observing that, with respect to “theological and spiritual art and imagery of the seventeenth and eighteenth centuries, “although the biblical images conveyed the notions of female meekness, self-sacrifice, and rejection of the body, the powerful representation of femininity in the allegorical figures counterbalanced this phenomenon.”)

<sup>106</sup> Schäfer-Bossert, *supra* note XX at 139-40 (citations omitted). Schäfer-Bossert observes that the “allegorical picture is devoid of feeling and life, for it does not refer to a concrete woman [and that] [s]cholars in gender studies have sometimes asserted that historical

historical men in commemorative images, contrasted with the allegorical representations of women, communicates very different political messages. “One depicts the male in the historical present and legitimizes him through his profession and his social prestige; the other makes women appear ahistorical by means of mythological metaphor.”<sup>107</sup> Some scholars of theological gender studies therefore posit that allegorical representations of women in religious representation memorialize gender inequality and assert “that the invisibility of woman in the divine symbolism conforms to and thus normalizes her social marginalization, her dependent, second-place status.”<sup>108</sup>

We can concretize the message conveyed by male representation, even if symbolic, in a more meaningful way than with forms of female representation, which is more typically an allegorical representation. Marina Warner observes that there is “a common difference between male and female figures conveying ulterior meaning. The female form tends to be perceived as generic and universal, with symbolic overtones; the male as individual, even when it is being used to express a generalized idea.”<sup>109</sup> Moreover, the allegorical form of representation is an idealized version of woman. No woman can live up to this idealized version, so we can discount women and their contributions.<sup>110</sup> Representations of men can reflect the range of human traits, including flaws, because men get to be men – these are historical representations. Highlighting John Bull as the typified Englishman, Warner asserts, “if John Bull appears angry, it is *his anger* he expresses; Liberty [in contrast] is not representing *her own freedom*.”<sup>111</sup>

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allegory is not representative of life and is therefore not to be used as a concrete source for understanding human experience.”

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 139

<sup>109</sup> Marina Warner, *MONUMENTS & MAIDENS: THE ALLEGORY OF THE FEMALE FORM* 12 (Atheneum New York 1985). These symbolic connotations are in keeping with Scott's observations regarding the symbolic and normative concepts that construct gender. See Scott, *supra* note XX at 1067-68.

<sup>110</sup> Not only can we not live up to an idealized version of woman, the idealized representation constrains women. Hilary Robinson explored the impact of allegorical Mother Ireland, noting that the “images of suffering Mother Ireland and the self-sacrificing Irish mother are difficult to separate. Both serve to obliterate the reality of women's lives. Both seek to perpetuate an image of Woman far from the experience, expectations and ideals of contemporary women.” Hilary Robinson, *Becoming Women: Irigaray, Ireland and Visual Representation* in *ART, NATION AND GENDER: ETHNIC LANDSCAPES, MYTHS AND MOTHER-FIGURES* 113 (Ashgate Publishing Limited 2003). Robinson concludes the “iconic and multi-faceted figure of Mother Ireland, and the social ideal of the self-sacrificing mother both set reductive limits on any horizon of possibilities for each other and for actual women.”

<sup>111</sup> *Id.* (emphasis added) (noting that Liberty “herself is caught by the differences, between the ideal and the general, the fantasy figure and the collective prototype, which seem to

The fact that this allegorical representation is less than clear is particularly troubling in light of the impact American iconography as a form of public memory has on its populace, including Scott's notion of gender as a manner of signifying relationships of power.<sup>112</sup> American iconography signals to the public what is important, what should be remembered and, in the political context, what should be obeyed: "As has long been suggested by non-lawyers, the signs of law, its foreign languages, its prolixity, its convolution, and increasingly its images, are in significant measure not supposed to be understood but rather to be observed, revered, and obeyed."<sup>113</sup>

The figure of Justice demonstrates the complicated meaning evoked by allegorical representation. As Dennis E. Curtis & Judith Resnik observe, "[f]or much of the Western world's history, Justice has been depicted as a large female figure, sometimes draped, sometimes naked, holding or surrounded by a series of props identified as her attributes."<sup>114</sup> Curtis and Resnik explore the contested meaning over how Justice's eyes have been depicted over time.<sup>115</sup> This lack of clear meaning within the allegorical iconographical representation has disconcerting consequences:

Disputes about how to show Justice's 'face' and about Law's 'sight' reflect the analytic challenges that have engaged philosophers from John Locke to John Rawls, as they parsed the relationships among sensory perceptions, intuition,

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hold through the semantics of feminine and masculine gender in rhetoric and imagery, with very few exceptions.").

<sup>112</sup> See Scott, *supra* note XX at 1069-70. Scott emphasizes the legitimating function of gender and asserts,

sexual difference is a primary way of signifying differentiation.<sup>47</sup> Gender, then, provides a way to decode meaning and to understand the complex connections among various forms of human interaction. When historians look for the ways in which the concept of gender legitimizes and constructs social relationships, they develop insight into the reciprocal nature of gender and society and into the particular and contextually specific ways in which politics constructs gender and gender constructs politics.

*Id.* at 1070.

<sup>113</sup> Peter Goodrich, *The Foolosophy of Justice and the Enigma of Law*, 24 *YALE J.L. & Human.* 141, 144 (2012) Goodrich laments "The images are flags, ensigns, symbola heroica, the choral identificatory insignia that a populace can follow but only the few, the *iuris periti*, the legally learned of whom there are ever fewer to be found today in the trade schools that generally pass for legal academies, can properly interpret and understand." *Id.*

<sup>114</sup> Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 *YALE L.J.* 1727, 1741-43 (1987) (noting that "[s]ometimes Justice stares evenly at us, at other times her eyes are in shadows, and in some depictions, she is blindfolded—although sometimes the blindfold has open spaces through which her eyes appear.") (citations omitted).

<sup>115</sup> Dennis E. Curtis & Judith Resnik, *REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS* 13-14, 91, 97 (Yale University Press 2011).

evidentiary truths, and cognition. The question of sight has also been engaged by leader of justice systems acknowledging the histories of exclusion and unfair subordination based on the gender, race, ethnicity, and class of disputants. Although most of the iconographic of Justice placed around courthouses is complacent rather than provocative, the controversies over blindfolding unveil a persistent disquietude about state application of laws.<sup>116</sup>

b. Allegory as Objectification

Objectification has been argued to be a primary source process by which women are subordinated.<sup>117</sup> Comparing feminism to marxism, Catherine MacKinnon asserts that “[s]exuality is to feminism what work is to marxism: that which is most one's own, yet most taken away.”<sup>118</sup> Therefore, in her view, “[s]exual objectification is the primary process of the subjection of women.”<sup>119</sup>

Allegorical representations of women, often nude (which is easier to do when the artist is not representing an actual person), can be argued to objectify women. Art historians including Cynthia Eller have contrasted representational signals of “nude” vs. “naked,” with nude as “is the body as produced by culture, through art, while the naked is simply a body without clothing.”<sup>120</sup> The terminology foreshadows a very different reception by the audience, with the “nude elicit[ing] murmurs of aesthetic appreciation; the naked elicit[ing] shock and embarrassment. And, not insignificantly, exposed female bodies are typically ‘nude,’ while male bodies similarly exposed are ‘naked.’”<sup>121</sup>

Interestingly, this was not always the case. Eller explains that classical Greek and Renaissance representations often featured the male nude form.<sup>122</sup> But by the seventeenth

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<sup>116</sup> *Id.* at 91.

<sup>117</sup> Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory, Signs*, Vol. 7, No. 3, *Feminist Theory* (Spring, 1982).

<sup>118</sup> *Id.* at 515.

<sup>119</sup> *Id.* at 541.

<sup>120</sup> Cynthia Eller, *Divine Objectification: The Representation of Goddesses and Women in Feminist Spirituality*, *JOURNAL OF FEMINIST STUDIES IN RELIGION*, Vol. 16, No. 1 (Spring, 2000) 34-35 (citations omitted).

<sup>121</sup> *Id.* Eller notes “‘The female body, omnipresent in all visual media, suggesting nudity even when clothed, finds no equivalent in the male nude who, when he appears, is quickly covered by silence, suppression, and outrage.’” *Id.* (citations omitted).

<sup>122</sup> *Id.* Eller explains:

Classical Greeks favored male nudes long before they began to peel away the clothing of their goddesses. Late medieval artists routinely portrayed a naked Jesus suffering on the cross, as well as a naked Adam and Eve being expelled from the Garden of Eden. Renaissance artists painted nude men in-secular contexts and, like contemporary feminist artists, sometimes used themselves as models. In fact, right

century, a new trend developed, “during which ‘the relationship between male artist and female model [was] sexualized, artistic creativity [was] equated with sexuality, and more specifically with male virility.’”<sup>123</sup> Feminist scholars have explained this transition in the context of patriarchal representation, asserting that during the stage of predominantly male nude representation, “the artist ‘identifies with God making man,’ while in the second case [featuring female nudes] he sees himself ‘as a Pygmalion who makes in every sense of the word his ideal woman.’”<sup>124</sup> This focus on the artist’s intention with regard to the representation is also featured in MacKinnon’s views regarding objectification, as she asserts, “women have not authored objectifications, we have been them. Women have been the nature, the matter, the acted upon, to be subdued by the acting subject seeking to embody himself in the social world.”<sup>125</sup>

The foregoing focuses attention on the *artist’s* intention with respect to the representation.<sup>126</sup> Objectification can also be explained in the context of the *audience*. As John Berger explains, “Women are depicted in a quite different way from men—not because the feminine is different from the masculine—but because the ‘ideal’ spectator is always assumed to be male and the image of the woman is designed to flatter him.”<sup>127</sup> These gendered dichotomies – naked vs. nude, actor vs. acted upon, entertainer vs. entertained – invoke the type of symbolic and normative binary relationships Scott identified in her construct of gender.<sup>128</sup> Our exploration of allegory as an objectified form of representation therefore illustrates the type of inquiry Scott promoted, that of examining how these constructs have developed in order to better challenge this notion of fixed, binary, gender representations.<sup>129</sup>

This is even more important because, after all, these female allegorical representations, objectified versions of gender, do not ultimately inure to the benefit of the gender. Indeed, as Eller underscores, “for whom do icons exist? Never for themselves. Their existence is always for another’s use.”<sup>130</sup> She therefore asserts, “it need not be surprising

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up until the late eighteenth century, the male model was the norm in drawing classes and art studios.

*Id.* (citations omitted).

<sup>123</sup> *Id.* (noting that “By the nineteenth century, male nudity disappeared almost entirely in Western art, while the naked female assumed center stage, with ‘nude’ even becoming a shorthand for ‘female.’”)

<sup>124</sup> *Id.*

<sup>125</sup> MacKinnon, *supra* note XX at 542.

<sup>126</sup> Eller, *supra* note XX at 34. (noting “This argument draws our focus back to the artist, for just as spectators are bound to some extent by the viewing conventions of their culture, so are artists. Again, this is something that spiritual feminists tend to overlook.”)

<sup>127</sup> John Berger, *Ways of Seeing* 64 (British Broadcasting Corporation 1972).

<sup>128</sup> See *supra* Section B.

<sup>129</sup> See generally, Scott, *supra* note XX

<sup>130</sup> Eller, *supra* note XX at 40-41.

that goddesses have been represented and worshiped in many locales on the globe without any concomitant rise in the social, political, or economic status of human women.”<sup>131</sup> Eller's observation underscores our next consideration, which is the irony of using the female form to represent certain American social or cultural ideals.

c. Irony of Allegorical Representation

Female allegorical representation in most forms of American iconography refers to aspects of society from which women have historically been excluded.<sup>132</sup> As a result, we can return to the usefulness of Scott's construct of gender as both constitutive of social relationships and gender as a signifier of relationships of power.<sup>133</sup> The use of a female allegorical form for Liberty, for example, has been questioned as a representative model for this ideal. In *IMAGING AMERICAN WOMEN: IDEA AND IDEALS IN CULTURAL HISTORY*, Martha Banta

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<sup>131</sup> *Id.* (stating “Even in the prehistoric world, which is reconstructed as a women's paradise in most spiritual feminist discourse, we have no hard evidence that goddess worship had any positive effect on the status of women, or indeed that goddess worship was not accompanied by worship of a far greater, unseen and never represented male god.”)

<sup>132</sup> Katherine C. Sheehan, *Toward A Jurisprudence of Doubt*, 7 *UCLA WOMEN'S L.J.* 201, 262 (1997). Sheehan observes, “Liberty, Truth, the Muses, Justice, and other powerful forces and ideas are often portrayed allegorically as feminine. These figures, however, deny real women any role in the projects--government, philosophy, poetry, law-- they enable.” See also Cusack and Bhreathnach-Lynch, *supra* note XX at 7. The authors explain that “women have often been given a special symbolic status in relation to the nation, while being distanced from active membership of the polity.” While America has not historically been referred to as the “Motherland,” Linda Edmondson provides a compelling examination of how that allegorical framework has gendered connotations in other cultures that have not inured to the benefit of women. Linda Edmondson, *Putting Mother Russia in a European Context* in *ART, NATION AND GENDER: ETHNIC LANDSCAPES, MYTHS AND MOTHER-FIGURES* 53 (Ashgate Publishing Limited 2003). Edmondson explains

There appears to be little correlation between the material image of nation and the actual power or status of the nation's female inhabitants, however that power or status is measured. The primary relationship of the mother-nation is with her sons, though her daughters are expected to fulfil (sic) their role as the mothers of the nation's sons. Women's status in society is perceived to lie in their role as the bearers and guardians of the nation's culture, However, this role is assigned to them, not an aspect of their power to initiate or direct. As women they stand alongside the nation, in a supporting role, rather than being integral to it. The imagery equates the female land with ‘mother earth’ or ‘mother nature, ‘whose intrinsically chaotic power must be both respected and controlled by its male rulers.

*Id.* at 61.

<sup>133</sup> Scott, *supra* note XX at 1067-70.

refers to an early suffragist employing the upraised arm gesture characteristic of the Liberty figure.”<sup>134</sup> She asserts, “[t]he Liberty gesture [of upraised arm] is also incorporated into an appeal by ‘Woman’—an allegorical figure who asks for political rights from a government which, all the willing to glorify the power of her image, is reluctant to grab power to actual women.”<sup>135</sup>

Jeannie Suk explored the concept of Privacy in constitutional theory as an allegorical woman.<sup>136</sup> Suk reveals the irony of female allegorical representation of Privacy as it obscures the very values Privacy in a constitutional sense purports to advance. She references the “ongoing legal conversation regarding the enforcement of domestic violence laws. In that debate, ‘privacy’ is sometimes described as a construct that operates to deny women the protection of law in favor of their husbands’ privacy.”<sup>137</sup>

The longstanding female representation of Justice is also ironic, as women have historically been excluded from the profession of law.<sup>138</sup> Judith Resnik acknowledges that the use of female allegory to represent Justice in societies that precluded women from participation in the legal profession began with European traditions that were then

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<sup>134</sup> Martha Banta, *IMAGING AMERICAN WOMEN: IDEA AND IDEALS IN CULTURAL HISTORY* 511 (Columbia University Press 1987)

<sup>135</sup> *Id.* at 510

<sup>136</sup> Jeannie Suk, *Is Privacy a Woman*, 97 *Geo. L.J.* 485 (2009). Suk explains, “Privacy—the concept at the core of the Fourth Amendment—is figured as a woman. The privacy debate operates on one level as a debate about what sort of woman we have in mind—respectable or battered, high- or low-status, in need of privacy or in need of protection.” *Id.* at 506.

<sup>137</sup> *Id.* at 499. Suk concludes:

To theorize privacy in the home is to imagine a woman, and the way she is imagined is bound up with the conceptions and the stakes of privacy both articulated and unspoken. Privacy is the lady of the house in her bath, the lady at home receiving callers, the battered wife in the disordered home. She embodies the sweet mystery of life, the imaginative essence of the privacy that the Constitution protects. Her body takes shape as privacy's object and subject, its fantasy and physicality. At home in the law, she is the wife of ambiguous virtue, the matron of bourgeois society, the victim of domestic violence. She represents contestation and conflict over the meanings and consequences of privacy in our legal tradition and evolving legal present.

*Id.* at 511.

<sup>138</sup> Aileen Sprague, *Women and the Law: The Symbolism and the Reality*, 16 *ROGER WILLIAMS U. L. REV.* 260 (2011) (noting “In light of the fact that it was only in the early decades of the twentieth century that women were allowed to enter the profession of law, it is somewhat ironic that a woman represents the iconic figure of justice and judging.”). Rebecca K. Lee, *Justice for All?*, 65 *VAND. L. REV. EN BANC* 217, 226 (noting “Justice's embodiment as a woman stands uneasily next to the long history of the law's exclusion of women from serving as judges in the United States and elsewhere.”)

replicated in the United States.<sup>139</sup>

Noting that “[t]his enduring symbol of power wielded in the form of a fair and balanced female arbiter of justice should have been a way-paver for women in the legal field,”<sup>140</sup> it is not altogether surprising that early suffragists co-opted the Justice image in an attempt to capitalize on the irony. Many of the early suffrage pageants were “notable for their public reenactment of women's mistreatment under a legal regime created and enforced by men—including the often-forgotten violation of suffragists’ civil liberties at the hands of various legal officials . . .”<sup>141</sup> These early suffragists therefore employed the figure of Justice to communicate their narrative of injustice.<sup>142</sup>

Similarly addressing the use of Justice symbolism in the suffrage movement, Kristin A. Collins addresses what she refers to as “Justice’s First Modern Feminist Role.”<sup>143</sup>

[T]he suffragists’ appropriation of Justice was distinctive in one very important respect: as a general matter, she had not been used to register critique of women's treatment under, or claims upon, the law . . . . The concern was not that reality should conform to the representation of law as a woman; rather, it was that the representation of law should conform with the reality of women's inferior legal status.<sup>144</sup>

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<sup>139</sup> Judith Resnik, *Reconstructing Equality: Of Justice, Justicia, and the Gender of Jurisdiction*, 14 *YALE J.L. & FEMINISM* 393, 396–97 (2002) (“European traditions depicted Justice as a woman but did not permit women to be judges. For centuries, the United States followed suit.”). Resnik asserts, “Unpleasant and horrific images of real women—scared, scarred, injured, killed—remind us of the distance at which law has kept women's safety. A significant source of justification for legal indifference came from the concept of jurisdiction. Women's bodies were placed within the domain of households, headed by males, who if white, had jurisdiction over both the women and children therein.” See also Lee, *supra* note XX at 226 (noting “Even the term ‘Lady Justice’ may contribute to a figurehead view of women in the judicial system as elevated but passive or ineffectual human beings.”)

<sup>140</sup> Sprague, *supra* note XX at 261.

<sup>141</sup> Kristin A. Collins, *Representing Injustice: Justice As an Icon of Woman Suffrage*, 24 *YALE J.L. & HUMAN.* 191, 202–03 (2012) (explaining that “Justice and justice iconography played an arguably more transgressive role in suffrage iconography”).

<sup>142</sup> *Id.* (noting that “suffragists used the figure of Justice to help construct and publicize a narrative of injustice.”)

<sup>143</sup> *Id.* at xx.

<sup>144</sup> *Id.* Collins notes this was not the first use of Justice by women to advance women’s issues. “At least two English queens—Elizabeth I and Anne— appropriated the female image of Justice in official portraiture to signal their authority as queens in a world dominated by kings. Such claims to legal authority by women were the rare exception . . .” *Id.* (noting that “early modern commentators were far more concerned with the inconsistency between

Collins' emphasizes that, "as women began to recognize their disenfranchisement and general political and legal disempowerment as a women's issue . . . suffragists appropriated Justice's female form to protest women's disenfranchisement as an injustice visited upon women as women."<sup>145</sup>

#### **D. A Few Responses: One Step Forward, Two Steps Back**

Of course, it is possible to change commemorations – monuments, statues, federal currency – to reflect new social and cultural practices and values. The authors of *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* remind us that, as culture changes so too do commemorations of public memory, and this process "layer[s] meaning to create a new historical memory. In this way, perception becomes reality, and those participants in the actual historical event who lost the opportunity to shape public understanding can face a drawn-out battle to reclaim their recollections in a manner that is publicly acceptable."<sup>146</sup>

Indeed, the failure to commemorate divested groups has been addressed in recent year. In *MEMORIAL MANIA: PUBLIC FEELING IN AMERICA*, Erika Doss explains that American memorials are "flourishing," a phenomena she calls "memorial mania" and attributes to "an obsession with issues of memory and history and an urgent desire to express a new claim those issues invisibly public contexts."<sup>147</sup> Doss situates these commemorations in political context, arguing that such efforts to correct or broaden commemorative displays "represent heightened anxieties about who and what should be remembered in America [and which groups should] control particular narratives about the nation and its publics."<sup>148</sup>

As a result of this renewed interest in commemoration and public memory, there have been efforts designed to address the lack of female representation and, particularly, to address more historical commemoration of women. These efforts, however, have often been frustrating and insulting. As we will see in this section, the struggle to incorporate revitalized commemorations within political institutions (whether physical institutions like the Capitol Rotunda or more general concepts of institutions such as the military), often runs counter to the deeply embedded symbolic and normative gendered constructs identified by Scott, but which nonetheless represent the type of work she encourages with

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women's legal inferiority and the practice of representing law's authority with a female figure.")

<sup>145</sup> *Id.* (citations omitted)

<sup>146</sup> Laura Mattoon D'Amore, Jeffrey Meriwether, *WE ARE WHAT WE REMEMBER: THE AMERICAN PAST THROUGH COMMEMORATION* xiii (Cambridge Scholars 2012) (citations omitted).

<sup>147</sup> Erika Doss, *MEMORIAL MANIA: PUBLIC FEELING IN AMERICA 2* (University of Chicago Press 2010)

<sup>148</sup> *Id.*

gender as a lens for historical study, that of disrupting notions of fixity in political and social institutions.<sup>149</sup>

One attempt to address the lack of female representation in an important public area concerned the placement of a statue of actual women - Elizabeth Cady Stanton, Susan B. Anthony, and Lucretia Mott – in the United States Capitol Rotunda. Courtney Workman emphasized the importance of this historical representation, noting the exhibition of the statue, titled *The Women Movement*<sup>150</sup> “in the Capitol Rotunda is an important step in honoring real women and their achievements rather than allegorical women. The female statues that Congress has traditionally supported are not historically based; they are fictional people that symbolize abstract meanings.”<sup>151</sup> This was not, however, an uncontroversial process.

The statue was designed in 1920 to commemorate the passage of the 19th amendment. Notwithstanding, the statue has been on a long and arduous journey and, since its creation in 1920, it has never been fully recognized by Congress.<sup>152</sup> Its reception in the Capitol was first stymied by the Joint Committee on the Library of Congress, the entity responsible for the placement of artwork in the Capitol.<sup>153</sup> The Joint Committee refused to accept the statue, forcing the National Women's Party to pressure Congress to take the monument.<sup>154</sup> Congress did agree to accept the statue but, upon receiving it, “quickly relocated it from the Rotunda to the *Capitol basement*, where it remained hidden for 75 years.”<sup>155</sup> There were three unsuccessful efforts by women's groups to enact legislation to

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<sup>149</sup> See *supra* Section B.

<sup>150</sup> Courtney Workman, *The Women Movement: Memorial to Women's Rights Leaders and in Perceived Images of the Women's Movement*, in Paul A. Shackel, *MYTH, MEMORY AND THE MAKING OF THE AMERICAN LANDSCAPE* 61 (University Press of Florida 2001). Workman explains that the statue was variously known as The Portrait Monument, The Women Movement, The Suffrage Statue, and Three Ladies in a Bathtub, the latter referring to what “detractors see as an unusual and cumbersome design.” *Id.* at 47.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 48 (“since its creation of 1920, and its unveiling before the Capitol building, the statue has never been fully recognized or sanctioned by Congress.”)

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* (emphasis added). Workman explains the statue's ignoble reception and subsequent treatment at the Capitol:

Following the dedication ceremony, the women's movement was displayed in the rotunda for two days before being removed and sent to a broom closet in the capital basement. Although the National Women's Party had agreed to the stipulation that the statue could not be displayed in the rotunda, the group objected to the willful mistreatment of the statue and made numerous complaints about its storage. In 1922, women's groups actually visited the capital to personally clean the faces of the three women, and act headlined in a 1922 article, “Angry Women Invade the Capitol.”

place the statue in the Rotunda.<sup>156</sup> The effort was finally successful on the fourth attempt, which occurred in 1995, that the not until the fourth attempt in 1995 did such lobbying bring success.”<sup>157</sup>

Notwithstanding the fact that the statue was successfully placed in the Rotunda, controversy over it remained. The symbolic value of the monument has been challenged as both unattractive, and as racist. With regard to the latter, the National Political Congress of Black Women challenged the lack of black representation, asking that an image of Sojourner Truth be carved into the statue. Workman explains that many African-American groups view the statue “as outdated and a biased reconstruction of the suffrage movement.”<sup>158</sup>

The challenges to the appearance of the statue provide an interesting framework for reviewing the complicated and contested nature of gendered commemoration, particularly when such commemoration is historical rather than allegorical. Challenged as “unattractive,”<sup>159</sup> Workman observes that “the purpose of the Capitol rotunda is not to present sculptures on the basis of their aesthetics; it is to commemorate the achievements of Americans and to recognize important moments in the nation’s history.”<sup>160</sup> Workman investigated the common criticism of the appearance of the suffragists and noted that the facial features of all historical humans displayed in the Rotunda could be described as “grim.”<sup>161</sup> The statues of men, however, unlike those of the suffragists, were life-sized and placed on pedestals while the suffragists were merely represented as busts. This gave the

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*Id.* at 52 (emphasis added).

<sup>156</sup> *Id.* (explaining that “in 1928, 1932, and 1950, women’s groups lobbied for legislation that would have returned the statue to the Rotunda”)

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 55 (citations omitted). “The National Museum of Women’s History, responsible for raising the necessary funds to relocate the statue, maintains that the museum fully intends to honor Sojourner Truth’s life and accomplishments (as well as those of other suffrage and women’s rights leaders, black and white), but that this statue “was intended to honor only the first three women to organize at a national level.” *Id.* (citations omitted). This is insufficient for some of the individuals who challenge the statue, including C. Delores Tucker who asserts, “the fact that so few remember the past in which African-American women did march for suffrage, not twice, but three times is telling evidence of the need to provide an accurate symbol for the twenty-first century generations to come.” *Id.* (citations omitted).

<sup>159</sup> The statue “was however consigned to the crypt of the Capitol, in part, allegedly, because of aesthetic objections to the sculpture, which, according to the Washington Post, had been “deliberately left... In an unfinished state to signify that the Struggle of women would continue with future generations.” Sanford Levinson, *WRITTEN IN STONE: PUBLIC MONUMENTS IN CHANGING SOCIETIES* 29 (Duke University Press 1998).

<sup>160</sup> Workman, *supra* note XX at 54.

<sup>161</sup> *Id.* (“The facial expression of every statue in the Rotunda is very similar and could best be interpreted as grim.”)

male figures “a posture that seems imposing and domineering[,] [t]heir stance and stature contribut[ing] to a feeling of superiority, but not necessarily of pride.”<sup>162</sup> The suffragists, in contrast, “do not look upward in idealization, nor downward in a dominating posture like the male statues. Their gazes are focused straight ahead, as though they are concentrated on the task at hand—a position and posture that can certainly be recognized as determination.”<sup>163</sup>

These physical representations give rise to very gendered impressions.

The posture of the male statues attaches them to a history of American individuality and strength; they are portrayed as leaders and conquerors, and their form implies that they have accomplished great things. Because we expect powerful men to have stern expressions, the statues comply with our notion of what great men are, and we associate this notion with pride. In contrast, great women are stereotyped as being moderate in personality, poised, and confident. A successful woman must be able to navigate socially, and this is not congruent with someone who is grim-faced. It is difficult to separate the purpose of the statue from the appearance of the women it portrays. The women cannot be viewed as successful because they are grim, and they are regulated to a subordinate position among the powerful male figures that surround them. This image is compounded by the fact that the women are sculpted as a bust.<sup>164</sup>

Reactions to these physical characteristics are reminiscent of Scott's normative concepts constitutive of gender.<sup>165</sup> Moreover, the observation of gendered reactions to the representation of those characteristics corresponds with the second half of Scott's framework, gender as a way of signifying relationships of power.<sup>166</sup>

It is thus disheartening that, in this rare display of historical commemoration in a national public place,<sup>167</sup> gendered notions of politics and power devalue the communicative impact of the display. It is further demoralizing that there is only one statue that is a partial, rather than full figure representation in the Rotunda: it is a statue of Martin Luther King, Jr.<sup>168</sup> For both of these representations it is ironic and insulting that activists who literally

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 54-55.

<sup>165</sup> Scott, *supra* note XX at 1067-68.

<sup>166</sup> *Id.* at 1069.

<sup>167</sup> A further irony relating to the statue arises when considered in connection with Lady Liberty. Liberty – an allegorical female representation – is larger than life while the suffragettes, appearing next to life-size historical men, are not only smaller than life size but are not fully represented at all, appearing as mere torsos.

<sup>168</sup> *Id.* at 55 (“The only other personage in the Rotunda who is represented by a bust is Dr. Martin Luther King, Jr. The King statue and *The Woman Movement* are the only two statues

spent so much time on their feet in marches were represented without those tireless feet.

Another example of challenging attempts to commemorate historical women in American iconography is the effort to increase the visibility of women's roles in military activity. In her paper *WOMEN WARRIOR MEMORIALS AND ISSUES OF GENDER IN CONTEMPORARY AMERICAN PUBLIC ART*,<sup>169</sup> Erika Doss notes that, notwithstanding the fact that “[w]omen—real women, not symbolic and allegorical figures—are practically invisible in American memorial culture,” “[t]his limited representation of women in American history is occasionally disrupted.”<sup>170</sup> Doss observes that American women have played a role in war commemoration, highlighting women groups that worked to commemorate the role of women in American military history including the American Gold Star Mothers<sup>171</sup> and the National Park Service's dedication of the Women's Rights National Historical Park.<sup>172</sup>

Doss' work on military commemoration and gender reveals that efforts by women to commemorate military history have evolved, with recent initiatives representing “a major cultural shift in American memorial culture toward a more democratic and inclusive sensibility, one that seeks to represent and even reckon with absent, and ignored, subjects in the national narrative.”<sup>173</sup> Notwithstanding the foregoing, these recent efforts underscore the heavily masculinized nature of military commemoration and divisions within female groups as to the appropriate way to commemorate female members of the military. Doss explains that “[w]hile these memorials recognize and pay tribute to women in the military,

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that represent minorities in the Rotunda, as well.”)

<sup>169</sup> Erika Doss, *WOMEN WARRIOR MEMORIALS AND ISSUES OF GENDER IN CONTEMPORARY AMERICAN PUBLIC ART*, *Public Art Dialogue*, 190–214, Vol. 2, Issue 2, (September 2012).

<sup>170</sup> *Id.* at 190.

<sup>171</sup> This is an interesting commemorative effort insofar as it seeks to memorialize the role of mothers sending their male family members to battle, as opposed to recent efforts to commemorate female soldiers. Doss explains that

After World War I, American Gold Star Mothers orchestrated the recovery and return of the bodies of U.S. soldier dead to U.S. soil, and raised funds for the establishment of various Gold Star cemeteries and honor courts across the nation.<sup>4</sup> In 2011, a bill to establish a Gold Star Mothers National Monument was introduced in the U.S. House of Representatives. One design for the proposed memorial, to be located in the nation's capital, features a life-size bronze statue of a grief-struck mother, dressed in clothing dating to the 1940s, “grasping the dreaded Western Union telegram in her hand ... looking off into distant, but cherished memories of her warrior son.”

*Id.* at 192-93. Doss also addresses commemorative efforts by the United Daughters of the Confederacy and the Daughters of Union Veterans whose commemorative efforts have been challenged by many as racist.

<sup>172</sup> *Id.* at 191

<sup>173</sup> *Id.* at 190.

they elide its dominating masculinity and simultaneously reinforce contemporary American infatuation with all things war.”<sup>174</sup>

Turning to another form of American iconography, currency, we see similar resistance to commemorating historical women. On April 20, 2016, Treasury Secretary Jacob J. Lew announced that Harriet Tubman's image would replace the image of President Andrew Jackson on the twenty-dollar bill.<sup>175</sup> While this was an important step forward for the commemoration of women on federal currency, it was also a process fraught with frustrating setbacks. Ruth Anne Robbins and Genevieve Tung explained the journey in their article, *Beyond #thenew10 – The Case for a Citizens Currency Advisory Committee*.<sup>176</sup> The authors note that historically, “the portraiture and imagery featured on American currency has consistently asserted and reified the singular importance of one type of American: white, male politicians and statesmen, largely from the executive branch.”<sup>177</sup> Noting that several inquiries were made over the years to include female representation on United States currency,<sup>178</sup> the authors trace the grassroots efforts of the Women on 20s organization which pressured the Treasury to respond to efforts to recognize a woman on federal currency.<sup>179</sup>

Initially, the organization conducted a highly public and successful campaign to raise awareness and invite participation on which historical female figure should be featured on currency.<sup>180</sup> As a result of these efforts, on June 18, 2015, Treasury Secretary XX Lew responded, but alarmingly announced the decision to replace not *Jackson's* image on the twenty-dollar bill, but with *Alexander Hamilton's* image on the ten-dollar bill. Not surprisingly,

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<sup>174</sup> *Id.* (emphasizing that “gender issues remain central not only to the experiences of women in the U.S. military but to how they are remembered and commemorated.”)

<sup>175</sup> Tung and Robbins, *supra* note XX at

<sup>176</sup> *Id.* at

<sup>177</sup> *Id.* at 197.

<sup>178</sup> *Id.* at 213 (noting “several examples of letters inquiring, in particular, about the lack of female representation on the money”).

<sup>179</sup> *Id.* at 217-222.

<sup>180</sup> *Id.* at 217-218. The authors explained the process employed by Women on 20s:

The founders began by considering a group of sixty accomplished American women. Each “candidate” was appraised for both the impact that she had on society and the level of difficulty that she had faced in pursuing her goals. After this internal winnowing, they sent a list of their top thirty candidates to a group of approximately one hundred advisors—including many women's history experts—who judged the candidates based on the same criteria. A final list of fifteen candidates was then presented to the public for a vote.

*Id.* (citations omitted). Notably, the committee only considered historical figures – not allegorical representations.

“[m]any women were disappointed to have asked for a place on the \$20 and be offered the \$10, a bill of lesser value and smaller circulation.”<sup>181</sup>

Following the announcement, the Treasury sought public comment in a series of town hall meetings,<sup>182</sup> discussions with history scholars<sup>183</sup> and, evidently, a meeting with Hamilton enthusiast Lin-Manuel Miranda.<sup>184</sup> In April 2016, the Treasury announced its decision to feature Harriet Tubman on the twenty-dollar bill.<sup>185</sup> While the result was a favorable recognition of historical female commemoration on federal currency, Robbins and Tung conclude that, while “we applaud the final result, Treasury's process created confusion, excluded stakeholders from the true discussions, and resulted in surprise endings. All of this could have been avoided, and should be avoided in the future.”<sup>186</sup>

### E. New Ideas?

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<sup>181</sup> *Id.* at 220 (noting that the women “were not alone: admirers of Alexander Hamilton, including the former Federal Reserve Board of Governors Chairman, Ben Bernanke, stepped forward to protest the displacement of his portrait from the \$10 note.”).

<sup>182</sup> *Id.* at 218-19 (noting that “[d]uring the summer and fall of 2015, Secretary Lew and Treasurer Rios both held town-hall-style meetings--largely with groups of college students--on multiple occasions. Most of these gatherings were open to the press.”)

<sup>183</sup> *Id.* at 219 (revealing that “Over the same period, Lew and Rios also held meetings with distinguished history scholars, all of which were closed to the press and the public. Treasury has been reluctant to share information about these conversations; our Freedom of Information Act request for the notes or minutes of one such meeting has been pending for over a year.”).

<sup>184</sup> *Id.* at 220-221. The authors explain

Lew did, however, meet privately with Lin-Manuel Miranda, ostensibly to talk “about the enduring mark Alexander Hamilton left on our nation's history.” As Miranda put it in a subsequent message to his Twitter followers, “I talked to @USTreasury about this on Monday. Sec. Lew told me ‘you're going to be very happy.’ #wegetthejobdone.”

*Id.* (citations omitted).

<sup>185</sup> *Id.* at 221. The authors emphasize the less than revealing explanation offered by Lew: In April 2016, Treasury abruptly took down the website it had created to promote #thenew10. Its web address automatically redirected to a new website called “Modern Money,” which introduced Treasury's new plans for the \$20, \$10, and \$5 bills. Lew also released his online open letter explaining his decision. He thanked Americans for sending “more than a million responses” to his original announcement that a woman would be honored on the currency. He attributed the decision to honor Harriet Tubman on the \$20 to “thousands of responses we received from Americans young and old.” He did not mention the Women On 20s campaign, though it seems improbable that Treasury was unaware of their targeted efforts . . .

<sup>186</sup> *Id.* at 222.

So, what are additional approaches to address these disparities? As noted, the nonprofit organization Equal Visibility Everywhere has many projects targeted at a variety of iconographical representations, including currency, stamps, monuments, statues, media representations, holidays, and street names.<sup>187</sup> The organization is raising awareness, providing information and, where applicable, proposing legislation to address the problem. The Women on 20s was also a grassroots, non-profit organization with a more focused goal – to place an image of a historical woman on the twenty-dollar bill.<sup>188</sup> Having persuaded the Treasury to do so, it now states the following as its mission: “Our work ahead will be to make sure the next administration stays on track with currency change promises to promote and further elements of equality.”<sup>189</sup>

What are additional ways that women in the legal profession can aid in these efforts? Some American iconography is regulated at the federal level, such as United States currency. As such, we can focus our attention on the laws and regulations that address which images appear on federal currency. Similarly, national monuments are regulated federally. Local efforts would likely be even more successful. Judith Resnik cautions, however, that “in the United States, local officials have many times been ahead of the national government in generating rights of personhood [and] . . . local commitments are always essential to implementation of legal norms. But national action is also needed.”<sup>190</sup>

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<sup>187</sup> Equal Visibility Everywhere, <http://equalvisibilityeverywhere.org/>. The EVE website notes the following goals:

EVE will work to change the culture and face of America one symbol at a time. We will:

- encourage state legislatures to add more statues of women to National Statuary Hall;
- suggest women for the U.S. Postal Service to commemorate on stamps;
- propose that municipalities name streets and buildings after prominent female citizens, and persuade school systems nationwide to increase the number of schools named after women;
- encourage the government and private sector to include women in the celebrations of our nation's heritage;
- analyze the gender ratio of monuments and memorials on the local, state, and national level, and encourage greater representation of women;
- advocate the full and fair treatment of women and women's history in our nation's museums;
- urge our government to include more women's images on our coinage and to print a second set of paper money featuring images of great American women; and
- educate the private sector regarding the lack of female images in media representations.

<sup>188</sup> Women on 20s, <http://www.womenon20s.org/about>.

<sup>189</sup> Women on 20s, <http://www.womenon20s.org/about>.

<sup>190</sup> Judith Resnik, *Reconstructing Equality: Of Justice, Justicia, and the Gender of Jurisdiction*, 14 YALE J.L. & FEMINISM 393, 398 (2002) (citations omitted). (noting that “[p]olitical decisions at that level both memorialize and inscribe justice by deeming certain forms of injury to be so fundamental that they are constitutive of national identity.”) She explains, “Today, it would

[Panel Suggestions?]

## Conclusion

This paper had a limited focus – the lack of female representation on American iconography. There are of course other underrepresented and disenfranchised groups in United States history. It is important for us all to understand the public memory we create with iconography so that it is clear that we need to memorialize underrepresented voices. “Counterpublic versions of remembering . . . [forms of] ‘cultural countermemory,’ are effective antidotes to hegemonic cultural memories.”<sup>191</sup> This type of active remembering, and memorializing, should not be limited to ensuring more diverse representation, but should also persuade us to ask questions about why certain stories have not been told. “Rather than the active forgetting that comes from willfully homogenizing histories and experiences, active remembering requires a relationship between acknowledging the past and while enacting a different future in a refusal to give up or get over it.”<sup>192</sup>

This active remembering is facilitated by many aspects of Scott's focus on gender as a useful framework. We see the normative associations with symbolism, challenges to binary representations of the sexes, and gender as a signification of power reflected in American iconography. It is noteworthy that there is one aspect of Scott's framework that cannot be implicated here – the notion of subjective identity. We cannot question Liberty about her motives, or Justice about her challenges. Even Rosie the Riveter's authentic experience is hidden in gauzy shadows, underscoring how female experience is hidden by allegorical representation.

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be “un-American” to prohibit marriages among individuals with differing racial identities. But that national normative commitment is less than fifty years old. Moreover, it took persistent national pressures and the Civil War to enable African-Americans to be able to marry each other.” *Id.* (citations omitted).

<sup>191</sup> Winslow, *supra* note XX at 180-181.

<sup>192</sup> *Id.* Winslow emphasizes that

This might be accomplished by asking different questions than we are used to asking. Instead of looking at only the fact of the failure to get the women's vote for forty years, we might ask what in the system allowed for that to be so, and what is the collective responsibility for keeping those mechanisms in place. Rather than debate where unified efforts between women's activist groups broke down, we might ask what systemic beliefs functioned to wedge those groups apart.