

THE LEGAL FUNCTION OF RITUAL

GEOFFREY P. MILLER*

INTRODUCTION

Rituals—ceremonies of birth, death, marriage, initiation, healing, harvest, or religious observance—are found in all known cultures, and appear to have been performed for tens of thousands of years. They speak to people’s core emotions and reveal values that a society holds dearest. Because their expression is conventional and obligatory, they join the individual in solidarity with the group. As such, they are part of a society’s “essential constitution.”¹

These general functions of ritual reveal an obvious similarity to law. Law also joins the individual in solidarity with the group. It also imposes on people certain conventional and obligatory forms of behavior. And, like ritual, law is part of the essential constitution of human societies—a set of shared understandings about how political power is to be allocated among, and exercised by, the members of a given social organization.

In some respects, rituals also resemble social norms—forms of rule-governed behavior that are defined and enforced outside the formal legal system.² Like both rituals and laws, norms control behavior, at least in the

* Stuyvesant P. and William T. III Comfort Professor of Law, New York University. For helpful comments on earlier drafts of this Article, I would like to thank participants at workshops at New York, Yale, Columbia, and Vanderbilt Universities and—among others—Mary Anne Case, Oscar Chase, Robert Ellickson, David Garland, Kent Greenawalt, Sandra Langs, Forrest Miller, David Richards, Helen Hershkoff, Yochai Benkler, Thomas Franck, Clayton Gillette, Eric Posner, Richard Stewart, and Ruti Teitel. The staff of the New York University Law Library, and especially Jeanne Rehberg, provided outstanding assistance in locating obscure sources. For intellectual inspiration and a valued correspondence, I thank Mary Douglas.

1. VICTOR TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 6 (1969) (quoting Monica Wilson, *Nyakyusa Ritual and Symbolism*, 56 *AM. ANTHROPOLOGIST* 228, 240 (1954)).

2. Rituals bear an obvious relationship to norms and can even be conceived of as forms of norms. See ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 233–34 (1991) (discussing “constitutive norms” that hold groups together). David Garland describes rituals as a “specific kind of normative event, a collective means of enacting and affirming certain norms, values and social relationships.” Private correspondence between David Garland, Arthur T. Vanderbilt Professor of Law, New York University School of Law, and Geoffrey Miller (Feb. 20, 2001) (on file with author). For Garland, rituals are “one of the modes whereby norms are upheld, not a category of controls that is separate from norms.” *Id.* Despite the undeniably close relationship between rituals and norms, however, the two modes of social action can usefully be distinguished. Rituals do not generally set forth particular rules or standards for behavior, but rather define social roles within which people are ex-

sense that if a person does not conform to a norm, he or she is likely to experience a sanction. Moreover, because norms are socially constructed, they join the individual to the group. Although some social norms may not appear basic to the organization of society (for example, rules of etiquette at the dinner table), others are fundamental (for example, norms against incest or murder).

Rituals, norms, and laws thus appear to share some common functions, even if their modes of expression are distinct. The aim of this Article is to draw out some elements of that common purpose.³ The general thesis is that rituals, like laws and norms, control behavior by encouraging beneficial actions and discouraging harmful ones.⁴ The role of ritual in influenc-

pected to act. Although these roles may generate regularities of behavior that resemble norms, they operate differently and have application to a broader category of life situations. Norms, we might say, define how one ought to *act* in particular settings; rituals define how one ought to *be*.

3. The relationship between ritual, norms, and law is virtually unexplored in the legal literature. An interesting exception is Andrew J. Cappel, *Bringing Cultural Practice into Law: Ritual and Social Norms Jurisprudence*, 43 SANTA CLARA L. REV. 389 (2003). Cappel's paper investigates the role of ritual in defining, stabilizing, and enhancing compliance with social norms. The present Article takes a different approach, conceiving of ritual as mechanisms for aligning individual identities with social roles.

4. Several qualifications to the theory should be noted at the outset. First, discussion of "ritual" in the abstract cannot encompass the richness and variety of meanings that a given institution may possess in its specific cultural setting. Rituals are complexly orchestrated performances, often extending over substantial reaches of space or time, and including many participants, multiple perspectives, and various media of expression. An adequate understanding of any particular ritual requires that it be examined as a whole and considered in its unique social setting. Nevertheless, so long as the limitations on the project are kept in mind, cross-cultural comparisons can be useful. See Paul B. Roscoe, "Initiation" in *Cross-Cultural Perspective*, in GENDER RITUALS: FEMALE INITIATION IN MELANESIA 219 (Nancy C. Lutkehaus & Paul B. Roscoe eds., 1995) (contrasting comparativist and interpretive positions in contemporary anthropology and endorsing a qualified version of the comparativist approach, which admits the possibility of cross-cultural comparisons).

Second, in emphasizing the legal function of ritual, I do not deny the many other functions that rituals can also perform. Like other forms of human conduct, rituals can have multiple causes and serve multiple ends. Rituals may contribute to the creation of a sense of a meaningful universe in which people live; permit people to manage ambiguities in social life; operate as arenas in which people negotiate social relationships; alleviate anxieties about unknown or uncontrollable threats; facilitate communication between individuals and spiritual forces or beings; enhance and dignify stages of human development; provide structures of legitimacy that can be appropriated or otherwise manipulated by political groups; reduce stress; or simply provide a satisfying aesthetic experience.

Third, I do not mean to imply that the behaviors associated with ritual can be simplistically separated from other aspects of life. Most contemporary social theorists dispute the possibility of such a separation. See PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (Richard Nice trans., 1977); PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* (Richard Nice trans., 1990); GODFREY LEINHARDT, *DIVINITY AND EXPERIENCE: THE RELIGION OF THE DINKA* (1961); GILBERT LEWIS, *DAY OF SHINING RED: AN ESSAY ON UNDERSTANDING RITUAL* 6 (1980); T.O. Beidelman, *Some Sociological Implications of Culture*, in *THEORETICAL SOCIOLOGY: PERSPECTIVES AND DEVELOPMENTS* 499 (John C. McKinney & Edward A. Tiryakian eds., 1970).

Fourth, in arguing that rituals serve a legal function, I do not claim that they will always be beneficial. Although survival of a ritual through extended periods of time suggests that it has good effects, some rituals may be neutral or even harmful from a social point of view. See, e.g., Robert M. Keesing, *Introduction*, in *RITUALS OF MANHOOD: MALE INITIATION IN PAPUA NEW GUINEA* 1, 23 (Gilbert H. Herdt ed., 1998) [hereinafter HERDT, *RITUALS OF MANHOOD*] (arguing that male initiation

ing behavior in the service of an ostensibly broader good can be termed its “legal function”—that is, the idea of law is employed generally to describe attempts by the broader society, enforced if necessary by compulsion, to impose social controls on individual behavior.⁵

As a mechanism for social control, ritual can be contrasted with laws and norms. Laws exert their coercive influence largely through the force of state action, imposed by police, prosecutors, courts, and prisons. Norms compel observance principally by means of extra-legal social sanctions such as rebuking, shaming, gossiping, or shunning.⁶ For ritual, the coercive force is exercised, not chiefly through *ex post* sanctions, but rather through the *ex ante* technique of assigning social roles to individuals and inducing them and others to accept the roles thus assigned as natural and appropriate. For the ritual subject, this process consists of causing the person to identify subjectively with the social role to which he or she is assigned. For others, the process consists of publicly identifying the ritual subject as constituted by the social role. In either case, people act in role-appropriate ways, not only because they fear external sanctions for deviating from the social role, but also because it would be painful to act otherwise.⁷

The mechanism by which rituals affect behavior offers certain advantages and disadvantages as compared with laws and norms. Because rituals shape identity, they do not require the costly mechanisms of enforcement that are part of the apparatus of the law. Nor do rituals need the level of private enforcement required for social norms.⁸ To the extent they are suc-

rites in Papua New Guinea, by reinforcing strong conceptions of male dominance, may have harmful effects not only for women, but for the society as a whole).

5. I will not attempt to provide a formal definition of ritual—a subject that has troubled anthropologists for generations. I have in mind the kind of social performances that nearly all observers would agree possess the characteristics of ritual, without worrying too much about where the line between ritual and nonritual is drawn in doubtful cases.

6. People may also “internalize” norms, although this proposition is disputed. Eric Posner gives little scope to internalized norms, relying instead on self-interest as an explanation for cooperative behavior. See, e.g., ERIC A. POSNER, *LAW AND SOCIAL NORMS* (2000). Robert Cooter, on the other hand, places greater emphasis on internalization. Robert Cooter, *Normative Failure Theory of Law*, 82 *CORNELL L. REV.* 947 (1997). Richard McAdams recognizes that both internalization and self-interest play a role. See Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 *MICH. L. REV.* 338 (1997). As to internalization of laws as a reason for compliance, see TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990) (Except when expected sanctions are severe, legal obedience is largely a function of perceived legitimacy of the law.).

7. Rituals are not unique, of course, in shaping identities and thereby controlling behavior. All sorts of socialization techniques (parenting, schools, religious instruction, etc.) serve a similar function, as do broader social institutions in which people function in their daily lives, such as popular culture and even language itself. However, rituals supplement these other types of identity-formation mechanisms. Given the importance, and indeed pervasiveness, of ritual in many human cultures, it appears that ritual may offer something that other forms of socialization cannot perfectly emulate.

8. This is not to say, of course, that private enforcement of ritually prescribed roles is unimportant; a person who fails to live up to the requirements of a social role is likely to experience significant

cessful at shaping identities, rituals are largely self-enforcing. On the other hand, rituals require large expenditures in the service of shaping identity. Laws and social norms, in contrast, require lower expenditures for their creation. Compared with other forms of social control, rituals are cheap *ex post* but costly *ex ante*.

This theory of ritual supports several suppositions about the conditions in which ritual will assume social importance compared to other forms of social control. A given society is likely, in some rough sense, to adopt a mix of rituals, norms, and laws that maximizes the surplus of social benefits over social costs. Other factors being equal, a society is likely to employ relatively more ritual if it is small, homogenous, and insulated from technological or economic shocks. Societies are likely to employ less ritual if they are large, diverse, and rapidly evolving. Very few societies, however, will opt for exclusive reliance on a single form of social control: the vast majority will employ some mix of laws, norms, and rituals.

This Article is structured as follows. Part I outlines the theory. Part II examines three categories of ritual: rituals of reformation (initiation, marriage, and installation); renewal (services, patriotic ceremonies, and sacrifice); and restoration (confession, purification, and cure). Part III compares ritual with laws and norms as mechanisms for social control. It ends with a brief conclusion.

I. THEORY

A. *Ritual as Social Control*

For societies to function cooperatively, it is helpful if people are able to rely on one another without having to monitor another's behavior closely or to line up backup plans in the event that a partner defaults on some obligation or promise. The process often requires that people expose themselves to harm by taking actions in reliance on another's actions. Executory contracts, in which one party performs before the other, provide an obvious example, but the phenomenon is much broader. We rely on others all the time outside the contractual setting.⁹ The ability to depend on others to follow basic cooperative norms is part of the glue that holds society together. But people often have an incentive to defect from these cooperative

private sanctions for his or her default. However, if ritual is generally successful at aligning personal identities with social roles, these sanctions should not usually be needed.

9. When we ask for directions, for example, we do so with a fairly high degree of confidence that our informants will not deliberately mislead us.

behaviors. If they have more to gain by defecting than by cooperating, cooperative norms may not turn out to be reliable. And if many people defected, everyone—even the defectors—would be worse off in the long run.

The dynamic processes of defection and cooperation are modeled, in modern economic and social theory, in the classic problem of the prisoner's dilemma.¹⁰ Two suspects accused of committing a crime are separately interrogated. If neither confesses, both will go free. If both confess, each will serve some time in prison (say, six years). If one confesses and the other does not, the one who confesses will serve only a short sentence (say, one year), but the one who does not confess will serve a long term (say, twenty years). In such a situation, it is in the joint interest of both prisoners to claim innocence—i.e., to “cooperate.” However, each knows that if he claims innocence and the other confesses, he faces twenty years in jail. He can avoid the twenty years by confessing (“defecting”), which will guarantee a term of only six years. If the prisoners do not trust one another, each will confess, resulting in an outcome which is worse for both than what could have been accomplished by cooperating.

The prisoner's dilemma conundrum illustrates one aspect of a basic problem of social organization. The tiny society of two prisoners could be improved if each could make a reliable commitment to the other, before being interrogated, that he will not confess. What is true for the prisoners also holds in many more general contexts. It is often the case that everyone can be made better off if people make credible commitments *ex ante* to cooperate with one another, even though, *ex post*, it may turn out to be in a person's interest to defect. In the absence of transactions costs, people could and would make all possible mutually beneficial commitments, and all such commitments would in fact be honored. However, in the real world, transactions costs are large, and enforcement of individual contracts is uncertain. We cannot rely on individual contracting to achieve a desirable level of commitment to socially beneficial conduct. Societies therefore supply institutions which, in rough fashion, substitute for the commitments that it would be rational for people to make in the ideal, but impossible, world of zero transactions costs.

Law is one such institution. It is a form of social control, imposed by human beings on other human beings, and justified as necessary or desirable as a means for advancing the general good. A principal function of law is to deter opportunistic behavior that serves the interest of individuals at the expense of the society as a whole (such as theft, fraud, or breach of

10. On the prisoner's dilemma, see generally ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

contract). This concept of law has influenced thinking about law for many years.¹¹

Norms can also be understood as institutions for social control. The study of these informal mechanisms has recently emerged on the cutting edge of legal theory, through the work of scholars such as Lisa Bernstein,¹² Robert Cooter,¹³ Robert Ellickson,¹⁴ Dan Kahan,¹⁵ Lawrence Lessig,¹⁶ Richard McAdams,¹⁷ Eric Posner,¹⁸ Richard Posner,¹⁹ Richard Epstein,²⁰ Paul Mahoney and Chris Sanchirico,²¹ Cass Sunstein,²² and others. Each of these writers, in different ways, recognizes that people can be motivated to behave in socially desirable ways through means other than the threat of formal legal sanction.²³ Especially in close-knit communities, where people interact with one another on a repeated basis, social norms can supply an effective framework for action that preserves the social fabric and controls the propensity for self-interested behavior.²⁴

11. The perspective of law as social control is associated most prominently with Roscoe Pound. See ROSCOE POUND, *SOCIAL CONTROL THROUGH LAW* (Transaction Publishers 1997) (1942). But Oliver Wendell Holmes, the Legal Realists, and many others also endorsed variants of this view. The perspective on law as social control can be traced at least back to Edward A. Ross, a mentor of Pound's whose work, now largely forgotten, was influential in the early part of the twentieth century. See EDWARD ALSWORTH ROSS, *SOCIAL CONTROL: A SURVEY OF THE FOUNDATIONS OF ORDER* (1901).

12. See, e.g., Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992).

13. See Cooter, *supra* note 6.

14. See ELLICKSON, *supra* note 2.

15. Dan M. Kahan, *Social Meaning and the Economic Analysis of Crime*, 27 J. LEGAL STUD. 609 (1998); Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349 (1997).

16. Lawrence Lessig, *Social Meaning and Social Norms*, 144 U. PA. L. REV. 2181 (1996); Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995).

17. Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003 (1995); McAdams, *supra* note 6.

18. See POSNER, *supra* note 6; Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 J. LEGAL STUD. 765 (1998); Eric A. Posner, *Law, Economics, and Inefficient Norms*, 144 U. PA. L. REV. 1697 (1996); Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, 63 U. CHI. L. REV. 133 (1996).

19. See, e.g., Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 AM. ECON. REV. 365 (1997). Posner's earlier work on primitive law should also be mentioned in this context. See RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* 174-206 (1981).

20. Richard A. Epstein, *The Path to The T.J. Hooper: The Theory and History of Custom in the Law of Tort*, 21 J. LEGAL STUD. 1 (1992).

21. PAUL G. MAHONEY & CHRIS W. SANCHIRICO, *COMPETING NORMS AND SOCIAL EVOLUTION: IS THE FITTEST NORM EFFICIENT?* (Univ. Va. Sch. L., L. & Econ. Working Paper No. 00-15, 2001), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=229694.

22. Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996).

23. Not all these scholars, however, would endorse the proposition that social norms are beneficial for society overall.

24. The effect of norms is not limited to close-knit communities, however. See Geoffrey P. Miller, *Norm Enforcement in the Public Sphere: The Case of Handicapped Parking*, 71 GEO. WASH. L. REV. 895 (2003).

In this Article, I analyze ritual as a form of social control similar to, although distinct from, the domains of law and norms. Long a principal focus of research in the fields of anthropology, psychology, sociology, and comparative religion,²⁵ ritual appears on the surface to be far removed from legal theory. Because ritual does not ordinarily establish general rules of behavior (other than rules for the proper conduct of the ritual itself), it does not appear similar to laws or norms. Rather, ritual appears to be a matter for private conscience, spirituality, and placing the participant in contact with unseen or transcendental forces. Notwithstanding its apparently unusual or esoteric content, however, ritual is very much of a part of the overall system of social control.

Rituals control behavior by (1) defining social roles, (2) assigning social roles to individuals according to some principle of attribution, (3) demanding that the assignees conform their personal identities to the social roles so assigned, and (4) encouraging others to identify and treat the assignees as constituted by the role.²⁶ Because they shape identity, rituals

25. William Robertson Smith, Émile Durkheim, and Henri Hubert and Marcel Mauss provided early grounding in the nature and functional importance of ritual. See W. ROBERTSON SMITH, LECTURES ON THE RELIGION OF THE SEMITES: THE FUNDAMENTAL INSTITUTIONS (1969) [hereinafter ROBERTSON SMITH, LECTURES] (emphasizing the centrality of ritual in religious life); ÉMILE DURKHEIM, THE ELEMENTARY FORMS OF RELIGIOUS LIFE (Karen E. Fields trans., 1995) (emphasizing the role of ritual at organizing human relationships); HENRI HUBERT & MARCEL MAUSS, SACRIFICE: ITS NATURE AND FUNCTION (W.D. Halls trans., 1964) (viewing sacrificial rituals as means by which people could communicate with and in some sense control divine forces). Alfred R. Radcliffe-Brown, following Durkheim, added important insights in the 1940s and 1950s. See A.R. RADCLIFFE-BROWN, THE ANDAMAN ISLANDERS (1948) [hereinafter RADCLIFFE-BROWN, ANDAMAN ISLANDERS]; A.R. RADCLIFFE-BROWN, STRUCTURE AND FUNCTION IN PRIMITIVE SOCIETY (1965) [hereinafter RADCLIFFE-BROWN, STRUCTURE AND FUNCTION]. More recent scholars—Victor Turner, Jonathan Z. Smith, René Girard, Walter Burkert, and Maurice Bloch, among others—have extended, and in some respects revised, the work of these pioneers. See TURNER, *supra* note 1; Jonathan Z. Smith, *The Domestication of Sacrifice*, in VIOLENT ORIGINS: RITUAL KILLING AND CULTURAL FORMATION 191–205 (Robert G. Hamerton-Kelly ed., 1987); JONATHAN Z. SMITH, MAP IS NOT TERRITORY: STUDIES IN THE HISTORY OF RELIGIONS (1978); JONATHAN Z. SMITH, TO TAKE PLACE: TOWARD THEORY IN RITUAL (1987) [hereinafter SMITH, TOWARD THEORY IN RITUAL]; RENÉ GIRARD, VIOLENCE AND THE SACRED (Patrick Gregory trans., 1977); WALTER BURKERT, HOMO NECANS: THE ANTHROPOLOGY OF ANCIENT GREEK SACRIFICIAL RITUAL AND MYTH (Peter Bing trans., 1983) [hereinafter BURKERT, HOMO NECANS]; WALTER BURKERT, CREATION OF THE SACRED: TRACKS OF BIOLOGY IN EARLY RELIGIONS (1996) [hereinafter BURKERT, TRACKS OF BIOLOGY]; MAURICE BLOCH, FROM BLESSING TO VIOLENCE: HISTORY AND IDEOLOGY OF THE CIRCUMCISION RITUAL OF THE MERINA OF MADAGASCAR (1986) [hereinafter BLOCH, BLESSING]; MAURICE BLOCH, PREY INTO HUNTER: THE POLITICS OF RELIGIOUS EXPERIENCE (1992) [hereinafter BLOCH, PREY INTO HUNTER].

The notion that rituals relate the individual to the society has a long provenance in anthropology. Durkheim, for example, argued that rituals strengthen the bonds attaching the individual to society. DURKHEIM, *supra*. Radcliffe-Brown expressed a similar view when he commented that ritual maintains “a certain system of sentiments by which the conduct of the individual is regulated in conformity with the needs of the society.” RADCLIFFE-BROWN, ANDAMAN ISLANDERS, *supra*, at 233–34. These scholars and their successors, however, have not employed the methodology of contemporary legal theory and have not developed a theory of ritual as social control along the lines set forth below.

26. For discussions of the identity-shaping function of ritual, see, for example, Michio Kitahara, *A Function of Marriage Ceremony*, 16 ANTHROPOLOGICA 163 (1974); Nancy D. Munn, *Symbolism in a*

“transform people.”²⁷ If they are successful, rituals produce not just a temporary emotion or catharsis, but rather a permanent change in identity conforming to the society’s expectations of right conduct. Suitably transformed, people fulfill the social expectations coded in ritual, not only to avoid sanctions from others, but also—even primarily—because acting in a socially appropriate manner is consistent with the person they experience themselves to be. If they did not behave according to the role, they would experience emotions signaling a violation of identity: disgust, shame, guilt, anxiety, or horror.²⁸ To avoid these painful feelings, and to experience the pleasurable sense of felicity that comes with acting consistently with one’s sense of identity, people conform their behaviors to the dictates of the social role.²⁹ At the same time, rituals encourage others in the society to identify the subject with the social role, and thus to treat him or her in a role-appropriate fashion. Because ritual exercises a powerful influence over behaviors, it is appropriately conceived of as a form of social control.

Ritual Context: Aspects of Symbolic Action, in HANDBOOK OF SOCIAL AND CULTURAL ANTHROPOLOGY 579 (John J. Honigmann ed., 1973); Fitz John Porter Poole, *The Ritual Forging of Identity: Aspects of Person and Self in Bimin-Kuskusmin Male Initiation*, in RITUALS OF MANHOOD: MALE INITIATION IN PAPUA NEW GUINEA, *supra* note 4, at 99; Evan M. Zuesse, *Meditation on Ritual*, 43 J. AM. ACAD. RELIGION 517–53, 524 (1975) (“[A]n identity that is built up through actions and the interconnections with an environment is one that requires ritual to the same degree that it requires a meaningfully structured cosmos.”). Radcliffe-Brown also appears to have endorsed some version of the identity-formation theory of ritual, although he was not particularly explicit on this point. See RADCLIFFE-BROWN, STRUCTURE AND FUNCTION, *supra* note 25, at 146 (noting that rituals “serve to regulate and refine human emotions” and adding that “partaking in the performance of these rites serves to cultivate in the individual sentiments on whose existence the social order itself depends”).

27. BRUCE LINCOLN, EMERGING FROM THE CHRYSALIS: STUDIES IN RITUALS OF WOMEN’S INITIATION 6 (1981).

28. For an economic expression of the concept that personal identity can overcome the prisoner’s dilemma problem, see Amartya Sen, *Goals, Commitment, and Identity*, 1 J.L. ECON. & ORG. 341 (1985). In conceptually related work, Robert H. Frank argues that certain emotions serve as “precommitment” devices that deter people from acting in ways that serve their own self-interest at the expense of the society as a whole. See ROBERT H. FRANK, PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS (1988).

29. On social roles, see Sunstein, *supra* note 22, at 909. By “social role,” I mean some relatively general set of expectations, beliefs, values, attitudes, and behaviors to which a person who is assigned a particular label by the culture is expected to conform. There are obviously significant differences among different roles. Some roles are relatively permanent—for example, being a man or a woman. Some are temporary—for example, being homecoming queen or vice president for marketing. Some are pervasive in a person’s life—being married to someone or being a priest. Others are less integral—being a member of the local library board. Not all roles are implemented by rituals, but rituals do appear to exercise an important function when the social role in question is long-lasting and integral in a person’s life. I thank Eric Posner for stimulating thoughts, in private correspondence, about the nature of social roles and ritual.

B. *How Rituals Shape Identity*

Many of the distinctive features of ritual can be understood as serving the function of shaping identities.

Rituals, together perhaps with associated myths,³⁰ offer a model of reality through which individuals can understand themselves.³¹ Through the performance of the ritual, people come to accept the model and to conceptualize their own identities, as well as the identities of others, within its terms. When they thereafter view the world through the ritual framework, they see confirmation in the external world of the equation of personal identity with social role. They are more likely to experience themselves and others as constituted by the social roles and to act accordingly.

Rituals provide reference to ideal situations to which people aspire. Rituals illustrate the way things ought to be,³² and thereby supply a moral framework to guide people's understanding of their lives. Seeing the world through the moral framework, people then experience the roles assigned to them and others through the ritual process as just, fair, and appropriate.

Ritual shapes identity through drama.³³ Because one *participates* in rituals, rather than merely observes, one loses the protective distance between self and other, observer and observed.³⁴ Rituals thus speak to the "whole person" and not just the cognitive mind.³⁵ By enacting instead of simply observing the ritual, a person comes to own its message as part of his or her sense of self. Participants, moreover, feel a certain sense of responsibility for the ritual's success—feelings that can facilitate identification with the ritual and acceptance of the social roles that the ritual process assigns to the participant and others.

Rituals are enacted at key transitions in a person's life when he or she is likely to be receptive to influences on identity. These transitions include life crises such as birth, childhood, puberty, betrothal, marriage, pregnancy,

30. The relationship between myth and ritual has perplexed anthropologists for years and probably will never admit a generally recognized explanation. That *some* relationship exists between the two, however, is beyond dispute. For discussion, see CATHERINE BELL, *RITUAL: PERSPECTIVES AND DIMENSIONS* 5–8 (1997).

31. See Cappel, *supra* note 3, at 446 (describing how ritual facilitates the social construction of reality).

32. See, e.g., SMITH, *TOWARD THEORY IN RITUAL*, *supra* note 25, at 111.

33. A point stressed by Robertson Smith, who consistently maintained that the participatory element was central to the institution of ritual. See ROBERTSON SMITH, *LECTURES*, *supra* note 25.

34. See Cappel, *supra* note 3, at 435 ("[R]itual performance firmly fixes cultural models in the minds of the participants in a much more unmediated and less ambiguous manner than ordinary processes of conversation and social practice, because it can act directly upon the basic cognitive components of comprehension.").

35. TURNER, *supra* note 1, at 43.

parenthood, or death of a loved one.³⁶ People are likely to be more receptive to influence in these situations because the circumstances tend to be charged with emotion and because these are occasions where identities are changing.

Rituals command attention.³⁷ They do so through devices such as hypnotic intonations, sacred music, silence, synchronized actions, and emphasis on precision. Space is also important. The architecture of ritual can act as a “focusing lens,” establishing the possibility of significance by “directing attention” in a specially pronounced way.³⁸ Rituals also command attention through what is taboo or prohibited: by declaring what must *not* be done, they demand that participants concentrate intensely on their behavior within the ritual frame. Even the apparently irrational or nonsensical aspects of rituals may focus the mind.³⁹ Because people try to make sense of the world around them, the nonsensical element stimulates increased attention to the process.⁴⁰ Participants become “totally immersed in the proper execution of their complex tasks.”⁴¹ With greater attention comes an enhanced probability that the ritual will impress itself on the person in some fundamental way.

Rituals use all available media and communicative strategies—songs, chanting, drumming, poetry, dance, costume, stories, humor, processions, drama, jokes, sports, lighting, speeches, shouting, cursing, taste, scent, touch, pageantry, symbolism, divination, trance, and more—as a means for reaching the individual through all available sensory and cognitive inputs.⁴²

Rituals, moreover, require that participants engage in actions of their bodies rather than their minds alone.⁴³ People must stand, sit, march, and

36. A point stressed in the foundational work of van Gennep. See ARNOLD VAN GENNEP, *THE RITES OF PASSAGE* 3 (1960).

37. See SMITH, *TOWARD THEORY IN RITUAL*, *supra* note 25, at 103 (“Ritual is, first and foremost, a mode of paying attention.”).

38. *Id.* at 104.

39. See FRITS STAAL, *RULES WITHOUT MEANING: RITUAL, MANTRAS AND THE HUMAN SCIENCES* (1989); Frits Staal, *The Meaninglessness of Ritual*, 26 *NUMEN* 2 (1979) [hereinafter Staal, *Meaningless of Ritual*].

40. See LEWIS, *supra* note 4, at 19–20 (discussing the “alerting” quality of ritual); Harvey Whitehouse, *Rites of Terror: Emotion, Metaphor and Memory in Melanesian Initiation Cults*, 2 *J. ROYAL ANTHROPOLOGICAL INST.* 703, 710 (1996) (describing how a “cognitive crisis” resulting from upheaval of everyday understandings results in long-term mnemonic effect).

41. Staal, *Meaningless of Ritual*, *supra* note 39, at 3.

42. See, e.g., S.J. Tambiah, *A Performative Approach to Ritual*, 65 *PROC. BRIT. ACAD.* 113 (1979) (discussing how media are combined in ritual).

43. See Cappel, *supra* note 3, at 462 (Ritual “invariably involves *physical performance*.” (emphasis in original)). In this respect ritual differs from myth, which does not require bodily movements for its performance. See Zuesse, *supra* note 26, at 517–30, 518.

dance. Rituals thus create a nonverbal impression on the individual that is retained in the body in the form of muscle memory.

Rituals often occur outside of the usual framework of time and space.⁴⁴ The various sensory inputs that normally situate a person in his or her environment are removed. Because the person is deprived of experiential anchors, he or she is likely to be more susceptible to being impressed by the ritual at a basic level of identity.

Rituals also remove social anchors. They take participants outside the ordinary play of the social order. In many religious services, all worshippers are equal, at least in theory, no matter what their relationships of hierarchy, status, and kinship in the outside world. In initiations, novices may be placed in an unstructured egalitarian community in which ordinary status relationships are absent.⁴⁵ By creating a radically unfamiliar social environment, unstructured by ordinary relationships of social status, ritual opens participants to the possibility of basic change in personal identity.

Language reinforces this sense of separation. Ritual speech tends to be inflated and formalized. People use a different vocabulary during rituals and speak in unusual tones of voice. The speech patterns found in ritual both emphasize to participants the importance of the process and highlight the separation of the ritual process from ordinary social interactions.⁴⁶

Rituals often connect participants with a realm of experience or reality that is beyond the norm. Rituals can evoke a sense of the “sacred,” higher than and separate from the material plane.⁴⁷ Feelings of awe, mystery, and wonder may accompany this experience.⁴⁸ Similarly, rituals are often experienced as deeply meaningful.⁴⁹ By connecting people with a transcendent sense of reality and meaning, rituals encourage people to be open to changes in their sense of self.

Rituals impress themselves by inflicting stress. People may change basic habits and behaviors. They may be required to fast or eat extrava-

44. See TURNER, *supra* note 1. For an application, see, for example, ANDRÉ DROOGERS, *THE DANGEROUS JOURNEY: SYMBOLIC ASPECTS OF BOYS' INITIATION AMONG THE WAGENIA OF KISANGANI, ZAIRE 200-07* (1980); Cappel, *supra* note 3, at 450-51 (describing how rituals, by being performed at special sites, have the effect of breaking down geographical as well as temporal divisions).

45. See TURNER, *supra* note 1, at 128-29.

46. See Tambiah, *supra* note 42, at 126.

47. The idea that ritual connects the sacred and the profane worlds is a basic theme of Durkheim's *Elementary Forms of Religious Life* and is found in many studies of the ritual process conducted since.

48. John G. Galaty, *Ceremony and Society: The Poetics of Maasai Ritual*, 18 *MAN* 361, 380 (1983) (Rituals create a sense of mystery and “an indeterminacy and an unresolvable locus of wonder.”).

49. See, e.g., LINCOLN, *supra* note 27, at 108 (observing that “a sense of meaning is the greatest benefit that any ritual can bestow”).

gantly. They may abstain from sexual relations⁵⁰ or engage in unfamiliar sexual conduct.⁵¹ They may be socially isolated or placed in unusual proximity with strangers. They may ingest mind-altering drugs or engage in hypnotic repetitive actions. They may be induced to experience fear, terror, and anxiety.⁵² Physical pain may be inflicted,⁵³ and cruel forms of hazing are not uncommon.⁵⁴ These various stresses can make the participant receptive to changes in identity that would not be possible if the person's normal mechanisms for maintaining physical and psychological equilibrium were fully operational. The painful or terrifying experiences become imprinted in the participant's mind and remain with him or her for life.

Some rituals emphasize change in identity by altering anatomy. Male and female genital mutilation are examples,⁵⁵ but other forms of bodily alteration are practiced—pulling teeth, cutting fingers, piercing earlobes, severing the septum of the nose, tattooing, scarification, etc. Even if the body is not altered permanently, a person's appearance may be temporarily changed; he or she may wear a costume or mask, display a new hairstyle, or be daubed with paint, blood, or ashes. People may be expected to change their facial expressions or posture. They may be symbolically transformed, as among the Navaho where older women “mold” the novice by giving her a massage.⁵⁶ All these techniques help to take the individual outside of his or her usual self and thereby condition the participant to be more receptive to changes in his or her self-concept.

Rituals are repeated many times over the course of a person's life. In the iterated performance, people enrich their experience through associated memories. Just as a tune from the past can evoke bygone days, so the experience of ritual can bring a person into contact, through memory, with

50. See TURNER, *supra* note 1, at 104.

51. See GILBERT H. HERDT, *GUARDIANS OF THE FLUTES: IDIOMS OF MASCULINITY* (1981) (describing how boys undergoing initiation in one Papua New Guinea culture are coerced into frequent homosexual relations with older boys and men).

52. See BURKERT, *TRACKS OF BIOLOGY*, *supra* note 25, at 30–32 (addressing uses of fear, terror, and anxiety in religious experience); Whitehouse, *supra* note 40 (use of fear in male initiation rites in Papua New Guinea).

53. See Alice Schlegel & Herbert Barry, III, *The Evolutionary Significance of Adolescent Initiation Ceremonies*, 7 AM. ETHNOLOGIST 696, 697 (1980) (About two-thirds of boys' initiation ceremonies and one-third of girls' ceremonies involved infliction of pain.).

54. See, e.g., Gilbert H. Herdt, *Fetish and Fantasy in Sambia Initiation*, in *RITUALS OF MANHOOD: MALE INITIATION IN PAPUA NEW GUINEA*, *supra* note 4, at 59. Among the Sambia of Papua New Guinea, boys during one period of their initiation rites are beaten by switches in order to “open the skin,” pierced and caused to bleed profusely out of their noses, and flayed by stinging nettles. *Id.*

55. See Geoffrey P. Miller, *Circumcision: Cultural-Legal Analysis*, 9 VA. J. SOC. POL'Y & L. 497 (2002); Geoffrey P. Miller, *Female Genital Mutilation: A Cultural-Legal Analysis* (Pub. L. & Legal Theory Working Paper Series, Working Paper No. 8, 1999).

56. See LINCOLN, *supra* note 27, at 20.

important life events and significant emotions. Rituals thereby gain another, prereflective pathway into identity.

Rituals often establish a hierarchy ranging from highly desirable to less desirable, and thereby establish a kind of token economy in which people gain rewards for complying with social expectations. A person starts with a less desirable role and moves up the social scale to new roles, gaining prestige, power, and self-respect in the process.⁵⁷ By making the role to be obtained highly desirable, rituals can provide incentives to the individual to display the behaviors incident to that role and to eschew behaviors associated with other, less-desirable roles.

Rituals provide conventional forms for expressing emotions. People who are in the grip of emotion are likely to be more receptive to changes in their personal identities than people who are not experiencing an unusual emotional state. By offering a channel through which people can experience emotions, rituals offer a framework for the expression of affects that appears natural and appropriate. People who express emotion through ritual come to experience the framework itself as normative, and thus more readily accept the validity and appropriateness of the social roles prescribed by the process.

Further, rituals may channel and control negative emotions that are triggered by an adjustment in the ritual subject's social role. Jealousy, disappointment, and envy frequently accompany significant status changes. If these emotions were not allowed expression within the ritual frame, they could erupt in uncontrolled and dangerous ways. Rituals frequently allow these emotions to be expressed and even endorse them to some extent, but channel them into safe modes of expression that reduces the chance that they will result in dangerous behaviors later on. Others who are affected by the subject's change in social status are thereby induced to act consistently with the new social roles.

C. The Benefits and Costs of Ritual

Like all human institutions, rituals have benefits and costs. The principal benefit of ritual, from the standpoint of the theory of social control, is that if successful, it induces people to act in ways that the society deems to be wholesome and discourages people from acting in ways that the society deems to be harmful.

57. Rituals of initiation, which provide novices with powerful incentives to aspire to initiated status, are classic examples.

Significant benefits of ritual are achieved through the assignment of social roles to individuals. Many such roles can be defined by ritual, but some appear so frequently as to be nearly paradigm cases. For example, rituals of initiation create new “adult” roles for novices. Whatever their physiological status, novices are not adult from a social point of view until they have successfully completed the initiation. Associated with being an adult, typically, is the role of gender: at the close of the initiation period, initiates are considered to be men or women, with different social expectations pertaining to each. Other roles that are commonly assigned by ritual are those of being married, being a warrior, being a member of some institution, being a parent, holding public office, and being a citizen.

Having assigned a social role, rituals prescribe behaviors appropriate to the role and beneficial to the society or to the group creating the ritual. An initiated man, for example, may be expected to demonstrate an “exemplary moral career” and show “masculine virtue in strength, bravery, cunning, and stoicism.”⁵⁸ An adult woman may be expected to display competence at the tasks of being a wife and mother.⁵⁹ A married person may be expected to settle down, to produce children, and to restrict his or her sexual activities to the socially sanctioned mate. A person who has been elevated to a position of responsibility may be expected to display qualities of leadership and to place the interests of the institution above his or her own needs or desires. A parent may be expected to take responsibility for raising children. A citizen may be expected to display patriotism and loyalty, and to sacrifice his or her self-interest to protect the community against threat.

The social roles defined by rituals tend to be ideals, not capable of being fully realized by many. But as models, they exert a powerful force shaping aspirations. If the ritual process is effective at aligning individual identity and social role, people will display a higher degree of cooperation and a lower degree of defection from arrangements that often (although not always) benefit all members of a society *ex ante*.

Rituals have costs as well as benefits. They can be expensive to stage. Indeed, in some cases, one of the functions of the ritual itself appears to be the ostentatious display of extravagance.⁶⁰ The costs of staging a ritual include food, drink, lodging, costumes, adornments, facilities, entertain-

58. Poole, *supra* note 26, at 103.

59. See, e.g., CORINNE A. KRATZ, AFFECTING PERFORMANCE: MEANING, MOVEMENT, AND EXPERIENCE IN OKIEK WOMEN'S INITIATION (1994).

60. E.g., the potlatch among Indian tribes of the American Northwest. For a discussion of these and other conspicuous forms of ritual expenditures, see MARCEL MAUSS, THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES (Ian Cunnison trans., 1967).

ment, and gifts. These costs will vary with factors such as the length of the ritual and the number of guests. Rituals also impose opportunity costs—the costs of alternative activities that are foregone by participants.⁶¹

Ritual imposes costs that cannot be measured in financial terms. As already noted, some rituals inflict physical and emotional pain. Rituals impress themselves on a person's natural constitution—the set of behaviors, endowments, and gender identities towards which people are predisposed at birth or which they develop as a result of early childhood experience. For some, the “convergence of personhood and selfhood”⁶² is easy. For others, the “behavioral surgery”⁶³ needed to conform personal identity and social role is more difficult. Such individuals experience shame, guilt, and confusion.⁶⁴ For nearly all, the process of identity-shaping contains at least some element of violence towards the subject.⁶⁵

The costs also include the rigidities that ritual may introduce into a society, which may impair the society's ability to cope effectively with exogenous shocks.⁶⁶ If, for example, the ritual process demarcates “the special purposes to which land, or huts, or stock, or material objects, are put at any one moment,”⁶⁷ it is unlikely that the society will adjust well to rapidly changing economic or technological demands.⁶⁸ Similarly, if the ritual process places the individual in elaborate and compulsory gift-relationships with others, the consequence may be to reduce incentives for individual entrepreneurship in a developing market economy.

61. The opportunity costs of ritual are likely to be larger if the ceremony is in some sense compulsory. If people are forced to participate, rather than merely invited to do so, they will attend the ceremony even when doing so requires them to sacrifice valuable alternative uses of their time. If the ritual is not compulsory, people will find ways to avoid participating when attractive alternative pastimes are available.

62. Poole, *supra* note 26.

63. HERDT, *supra* note 51, at 305.

64. The classic conflict in this regard is that of people whose affective preference is for people of the same sex but who are expected to behave as heterosexuals in their social roles. But the phenomenon of conflict between social role and personal identity is obviously much more general in scope.

65. For studies emphasizing the coercive effects of some initiation rituals, see, for example, AUDREY I. RICHARDS, CHISUNGU: A GIRLS' INITIATION CEREMONY AMONG THE BEMBA OF ZAMBIA (Tavistock Publ'ns 1982) (1956); LINCOLN, *supra* note 27.

66. See JAMES L. PEACOCK, CONSCIOUSNESS AND CHANGE: SYMBOLIC ANTHROPOLOGY IN EVOLUTIONARY PERSPECTIVE 219 (1975) (contrasting traditional ritual activity with economic modernization).

67. Max Gluckman, *Les Rites de Passage*, in *ESSAYS ON THE RITUAL OF SOCIAL RELATIONS* 1, 30 (Max Gluckman ed., 1962).

68. See, e.g., ROY A. RAPPAPORT, PIGS FOR THE ANCESTORS: RITUAL IN THE ECOLOGY OF A NEW GUINEA PEOPLE (enlarged ed. 1984) (analyzing ritual process in one New Guinea people that regulates productive activities, such as relationships between people, pigs, and gardens, in order to preserve cultural and manage ecological problems).

Rituals may also impose costs by serving the interests of powerful groups at the expense of others. For example, a ritual may perpetuate a subordinate status of women or persons of low status. Some in the society may benefit from such rituals—men, or high-caste groups—but others are harmed. Rituals, moreover, are inherently conservative, in that they tend to maintain a status quo that can perpetuate relationships of dominance or oppression.⁶⁹ The harms experienced by the subordinated group must be factored into any assessment of the costs of ritual in a particular society.

D. *Ritual Efficiency*

We can relate these concepts of ritual benefits and costs in the notion of ritual efficiency.⁷⁰ A ritual is socially efficient if, holding other factors constant, it (roughly) minimizes the sum of the costs of the ritual and the costs of not having the ritual.⁷¹ As a culture invests in ritual, it gains a benefit in the form of undesirable behaviors deterred or desirable behaviors induced. In general, the more a society invests in ritual, the greater benefits it obtains. The more elaborate the pageantry, the more extended the process, the more intense the emotions, the larger the discomfort imposed on the participants, the more likely it is that the ritual will have a lasting effect. At some point, however, the marginal benefit in terms of undesirable behavior deterred or desirable behavior induced will start to decrease, while the marginal costs of the ritual will increase. The efficient point is to expend resources on ritual up to the point where the benefit of an additional unit of expenditure on ritual exactly equals the cost of that unit.⁷² Beyond this point, additional expenditures on ritual might further decrease undesirable behaviors or induce desirable ones, but the costs of doing so would

69. This is a principal objection of progressive theorists such as Bruce Lincoln. See BRUCE LINCOLN, *DISCOURSE AND THE CONSTRUCTION OF SOCIETY: COMPARATIVE STUDIES OF MYTH, RITUAL, AND CLASSIFICATION* 53–127 (1989).

70. The concept of ritual efficiency is different from that of ritual “efficacy,” which refers to the methods and strategies that are employed to accomplish the objectives of a ritual. See KRATZ, *supra* note 59, at 14–53 (defining ritual efficacy as “how . . . people accomplish what they say they do through ceremonies”). A ritual that is efficacious, in that it successfully accomplishes its goals, would not necessarily be efficient if the costs of achieving the goals outweighed the benefits.

71. The model assumes that other things are equal and thus does not here address the alternative forms of social control (e.g., laws and norms) that might be operative in the society. Similarly, the model does not take account of other functions of ritual, besides that of social control, that might result in expenditures on ritual that differ from what would be optimal on these functional grounds alone. Finally, the model assumes that the behaviors deterred by ritual are undesirable for the society as a whole. In reality, some rituals serve the interests of powerful groups rather than the entire society. In such a case, the ritual process might be efficient in terms of the powerful groups but not for the culture as a whole.

72. This is a simple form of Gary Becker’s model of optimal law enforcement. See Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968).

outweigh the benefits. This is the point where the social surplus—the difference between social benefits and social costs—is maximized. A society that makes efficient use of ritual will cease investing in the process before all undesirable behaviors are eliminated or all desirable behaviors induced.⁷³

Whether given societies are ritually efficient, in the sense that they expend an optimal amount of social resources on the ritual process, is impossible to test with any sort of precision. Most of the costs and benefits of ritual are not quantifiable. Moreover, there is no reason to believe that every society displays ritual efficiency, and certainly different societies will be ritually efficient to different degrees. Some societies may even be ritually dysfunctional; they will expend too much or too little on ritual, or may use rituals to impose roles that are not desirable from a social point of view. We may, however, posit that in general societies are likely to display a tendency towards ritual efficiency, because doing so will increase the wealth and stability of the society and thus contribute to its long-range success in competition with other groups.⁷⁴

A society displaying ritual efficiency will allocate social resources across rituals depending on the nature of the problem that the ritual addresses. Other things being equal, we can expect that the amount of resources that a society expends on a given ritual will be a function of the risk that the participant, now or in the future, will not conform his or her behavior to the prescribed social role. This consideration suggests that a society is likely to expend more resources on rituals that impose relatively large changes in identity as compared with rituals that impose only minor changes.⁷⁵ Similarly, a society is likely to expend more resources on rituals during which the change in status is *imposed* on the individual as compared to rituals where the individual voluntarily assumes the social role. If the role is imposed rather than voluntarily assumed, there is a greater risk that the inoculation will not “take,” and the participant will, sooner or later, start to behave in role-inconsistent ways. Societies are also likely to expend

73. In fact, rituals often fail to accomplish their apparent purpose. Despite the emphasis in the marriage ritual on loyalty and fidelity to one's spouse, divorce is common. For discussions of the fact that rituals do not always accomplish their intended effect, see DAVID GARLAND, *PUNISHMENT AND MODERN SOCIETY: A STUDY IN SOCIAL THEORY* (1990) (analyzing failed rituals); DROOGERS, *supra* note 44, at 372 (concluding that boys' initiation rituals among the Wagenia of Zaire affected the behavior of initiates only marginally: they added the “final touches” rather than effecting major changes).

74. Some evidence for a tendency towards ritual efficiency can be gleaned from the fact that rituals sometimes disappear when they are not longer needed. For example, curative rituals addressed to the smallpox goddess in Sri Lanka disappeared when Western medicine eradicated the disease. See Tambiah, *supra* note 42, at 129.

75. See Kitahara, *supra* note 26, at 165 (“The greater the difference between one's attitudes before and after the transition, the more elaborate the rite of passage which one experiences.”).

greater resources on rituals when the roles to be assigned are seen as important,⁷⁶ so that failure to display the behaviors demanded by the role will be costly.⁷⁷ And societies are likely to expend greater resources on rituals that establish relatively encompassing identities (gender, adulthood, marriage) than on rituals that establish more specific ones (graduation from school, assumption of office).

E. *Celebration and Violence in the Ritual Process*

In encouraging cooperation and discouraging defection, rituals utilize two principal “moods” or general qualities of emotional tone, one positive and the other negative. I refer to these moods as “celebration” and “violence.” Celebration and violence reflect contrasting poles of tension within the ritual process. Together, they give ritual an ambiguous quality that contributes to its susceptibility to many meanings and interpretations. These contrasting emotional moods reflect different aspects of the role of ritual in shaping personal identity to conform to social roles.⁷⁸

The celebratory mood serves several purposes. First, celebrations, because they are out of the ordinary and often marked by extreme behavior, are memorable experiences. Ritual celebrations, accordingly, are likely to have a greater impact than are less emotionally charged events. The celebratory element in ritual thus provides another means by which the ritual process can reach and mold the identity of a participant at a deep, rather than a superficial, level.

Second, celebration in ritual reflects and channels the emotions that accompany the occasion. Usually, these are positive feelings—joy at the birth of a child, satisfaction of a bountiful harvest, happiness of lovers making a commitment. Ritual embodies and expresses these positive feelings, thus reinforcing the linkage between personal identity and social role and enhancing the perception that the ritual itself is a natural and legitimate part of social life. Even if a participant is not particularly inclined to feel cele-

76. See LINCOLN, *supra* note 27, at 91 (conjecturing that “the presence of women’s initiation in a given culture is a mark of the importance of women within that culture and of the culture’s willingness to recognize this publicly and institutionally”).

77. For example, a culture’s expenditure on female initiation rituals may be a positive function of the degree to which women are seen as essential to the material success of the culture or to the prestige enjoyed by men within the culture. See Paul B. Roscoe, *In the Shadow of the Tambaran: Female Initiation Among the Ndu of the Sepik Basin*, in GENDER RITUALS: FEMALE INITIATION IN MELANESIA, *supra* note 4, at 55, 81 (explaining elaboration of female initiation rites among the Abelam group of Papua New Guinea as reflecting the degree to which men are thought to depend on women for success in the competition for prestige and political success).

78. Celebration and violence are not the only moods observed in rituals; funerals, for example, are characterized by sadness and mourning.

bratory about the event, moreover, the requirement that he or she *express* a celebratory mood can induce good feelings not previously present—much as the act of smiling can itself make people feel happier.

Third, celebration offers a reward to participants for conforming their personal identities with the social identity defined in the process. Celebration is pleasurable. In ritual celebrations, the participants express the feelings of security and joy that accompany acts of commitment to group solidarity. Even if one celebrates an *event*, such as a marriage, one is also celebrating solidarity with others who share in the joy of a successful outcome. What we celebrate is a commitment to a particular way of being, and the putting aside of other possible ways of being.

Many rituals are also marked by violence.⁷⁹ As compared with celebration, which is usually explicit in ritual, violence assumes a number of different forms and may lurk beneath an ostensibly neutral or even positive appearance. But it is usually possible to identify violent elements within a celebratory frame. In some cases, principally but not exclusively in rituals of initiation, ritual violence takes the form of painful or disfiguring operations on the body of the participants. Prominent among these is male and female genital mutilation. But genital mutilation is far from unique. Scariification, piercing, and other anatomical interventions are observed. Participants in rituals may also be subjected to assaults that do not result in anatomical changes. Novices are beaten, whipped, scourged, bled, silenced, terrified, humiliated, deprived of food and drink, forbidden to wash, and forced to eat nauseating substances.⁸⁰ Ritual violence may be displaced to another object, such as an animal or a prop.⁸¹ Ritual violence can also be experienced as a form of play—mock battles, kidnappings, and verbal confrontations. Violence may also be threatened: ritual officials or supernatural beings may menace participants with terrifying consequences for misconduct.

A theory of ritual as social control suggests several roles for ritual violence.⁸² First, the violence of ritual reflects, symbolizes, and in some re-

79. See generally BLOCH, BLESSING, *supra* note 25 (discussing violent aspects of circumcision rituals in Madagascar); BLOCH, PREY INTO HUNTER, *supra* note 25 (outlining a more general theory of violence in ritual); FIONA BOWIE, THE ANTHROPOLOGY OF RELIGION 151–89 (2000); BURKERT, HOMO NECANS, *supra* note 25; Donald F. Tuzin, *Ritual Violence Among the Ilahita Arapesh: The Dynamics of Moral and Religious Uncertainty*, in RITUALS OF MANHOOD: MALE INITIATION IN PAPUA NEW GUINEA, *supra* note 4, at 321; VIOLENT ORIGINS, *supra* note 25 (entire collection).

80. See, e.g., DROOGERS, *supra* note 44, at 200–07 (describing the sufferings imposed on initiates in boys' camps after circumcision).

81. Scapegoat rituals are an example. See GIRARD, *supra* note 25.

82. The theory of ritual violence as social control through identity manipulation differs from the leading theories in the literature. René Girard argues that ritual violence manages impulses that would otherwise threaten to destroy social stability. By displacing these impulses onto a safe victim that

spects directly implements the process of identity alteration. Because violence is memorable, its infliction impresses an indelible memory on the subject. Violence may be necessary, moreover, because the process of identity change may require the application of force. People do not naturally grow into a social role. They may be born with a genetic endowment, or may through early childhood experience develop a personal identity, that is at odds with the social role. Ritual excises these inconvenient aspects of the self in a process so profound as to “rattle the very gates of life and death.”⁸³ Inflicting violence on the ritual subject may be necessary if the requisite identity change is to be assured.

Second, ritual violence provides a mechanism for managing negative emotions that often accompany significant changes in social status. Ritual offers a channel through which these feelings can be divested of their dangerous quality and “attached to components of the normative order.”⁸⁴ To manage such emotions, the ritual process needs to employ symbolism sufficient to represent the bad feelings and to contain them within the frame of an orderly social system.

Celebration and violence are not mutually exclusive: a ritual can display elements of both moods. Nor are celebration and violence substitutes; it is not the case that a ritual displaying high levels of celebration must therefore employ low levels of violence. Some rituals evince high levels of both celebration and violence, while others display modest levels of each. However, it is often the case that one or the other of these moods will be the dominant theme. For example, as discussed below, in weddings, the dominant theme is celebration, whereas in exorcisms, the dominant theme is violence.

nevertheless displays similarity to the original object, the culture reinforces social bonds. Girard's theory is explicitly functional: he observes that if violent impulses were not displaced through ritual, the bases for material prosperity within the culture would be threatened. *See id.*

Maurice Bloch proposes a different approach to the violence in ritual. Bloch's book on Madagascar argued that ritual violence takes the form of conquests in which social superiors attack and dominate inferiors and thereby reaffirm existing status hierarchies. BLOCH, BLESSING, *supra* note 25. His later theory argues that ritual violence is a mechanism through which participants can separate themselves from the immediate process of their lives, come to see themselves as permanent and transcending, and return to the ordinary enterprise of life in an energized and superior form. BLOCH, PREY INTO HUNTER, *supra* note 25.

Freud's earlier work on the origins of religion and culture is also relevant. Freud believed that many forms of ritual as well as nonritual behavior—totemism, taboo, sacrifice, even religion as a whole—was the product of an Oedipal conflict in which a horde of brothers rebelled against and killed their patriarchal father in order to gain access to females previously monopolized by the dominant male. *See SIGMUND FREUD, TOTEM AND TABOO: RESEMBLANCES BETWEEN THE PSYCHIC LIVES OF SAVAGES AND NEUROTICS* (A.A. Brill trans., Dover Publ'ns 1998) (1918).

83. HERDT, *supra* note 51, at 305.

84. TURNER, *supra* note 1, at 52–53.

Other things being equal, we can expect that celebration will be an important motif in the case of rituals that reflect the participants' voluntary choices. When people willingly seek out a change in their social roles, or when they seek to reaffirm social roles that they have already assumed, they are likely to experience the role as consistent with their personal identities. Because celebration in ritual expresses the sense of felicity that accompanies the identification of personal identity and social role, it is likely to find greatest expression when people voluntarily seek out the role. But when the assignment of social roles is compulsory and not willingly sought out by individuals, we are likely to observe higher levels of violence and lower levels of celebration. This follows from the premise that rituals shape identity, and that the shaping of identity is, or can be, a violent act committed by the community against the individual going through the transformation.

Both violence and celebration are likely to be positively correlated with the magnitude of the identity change. Violence is an important mood in rituals that effect large changes in identity because the larger the change in identity or the more pervasive the identity being prescribed, the greater is the likelihood of deviation between social role and the ritual subject's natural propensities and inclinations. Violence may be necessary to ensure that the transition succeeds when the social distance to be surmounted is large. Celebration is also likely to be an important mood when large changes in identity are being undertaken, because, if the process is successful, it results in a significant enhancement in the felicity that accompanies group solidarity. On the other hand, rituals that effect only small changes in identity—or that merely reinforce identities already established—are unlikely to manifest high levels of either violence or celebration, although both moods are likely to be present to some extent.

F. Legitimacy

Because the ritual subject is required to mold his or her behavior to a social role, the question naturally presented is why the group has the right to impose such restrictions. Ritual, like other forms of social control, faces a need for justification. To establish its legitimacy, it must demonstrate that the demands it makes on the individual are appropriate in terms of broader social benefits.

Rituals are legitimated, in part, through being performed. The performative aspect involves participants in the ritual and gives them a degree of responsibility for its success. In effect, performance of ritual places members of the group in the position of ratifying and endorsing its legitimacy.

Ritual also establishes its legitimacy through the fact that it follows an apparently precise script, replicated each time the ritual occurs.⁸⁵ The precision of ritual reminds participants that they are engaging in something that has been done since time out of mind. Continuity assures participants that the demands of ritual do not represent *ex post* opportunism by any current member of society.⁸⁶ Because the ritual has been performed without apparent change for so long, its demands appear desirable and good. And, by indicating that rituals will continue in the future, knowledge of their long history reassures participants that they will not thereafter suffer expropriation at the hands of others.

Intellectual justification is also employed to justify rituals. In many cases, a narrative or myth provides an account of the ritual's origins. Usually, such an etiology will contain elements that have legitimacy in the culture—for example, the protagonists may be revered ancestors or gods with authority in the culture.⁸⁷ Rituals may also be justified through etymologies. The symbols utilized by the ritual are explained by the sounds of the name assigned to them, which is associated and given meaning by being traced to some primary word or etymon.⁸⁸ Usually, the etymology is fictitious, depending only on similarity of sounds. But within the culture, the etymology becomes part of the explanation of the ritual. The ritual elements receive validation by being associated with and explained by these linguistic roots.

As the society becomes more sophisticated, professional intellectuals may further rationalize the mythological, narrative, or linguistic explanations by embedding them in systems of abstract thought.⁸⁹ These formal systems enhance the legitimacy of the ritual because they illustrate its pro-

85. This is not to say that rituals do not evolve or change over time. They clearly do change, and the change reflects human agency. See MARGARET THOMPSON DREWAL, *YORUBA RITUAL: PERFORMERS, PLAY, AGENCY* (1992) (emphasizing transformation of ritual by participants). Nevertheless, rituals appear to display a relatively high degree of continuity over time. Moreover, when change occurs, it is usually disguised.

86. This assurance, of course, may not be warranted, because political groups can and do attempt to alter the meaning of ritual performances in order to serve their immediate ends. For an interesting case study, see BLOCH, BLESSING, *supra* note 25.

87. A point documented with respect to Vedic sacrificial rituals, in J.C. HEESTERMAN, *THE BROKEN WORLD OF SACRIFICE: AN ESSAY IN ANCIENT INDIAN RITUAL* (1993). For an account of certain stories in the Book of Genesis as providing a justification for and regulation of the ancient Israelite sacrificial ritual, see Geoffrey P. Miller, *Ritual and Regulation: A Legal-Economic Interpretation of Selected Biblical Texts*, 22 *J. LEGAL STUD.* 477 (1993).

88. See TURNER, *supra* note 1, at 11.

89. So, for example, the Christian ritual of the Eucharist is accounted for by an etiological origin story—the Last Supper as described in the Gospels. But systematic theologians have ramified it into a highly sophisticated body of thought and analysis centered on the doctrines of Real Presence and Transubstantiation.

fundity and also convey the endorsement of a professionally qualified cohort who themselves claim prestige in the society.⁹⁰

II. APPLICATIONS

Having set forth a concept of ritual as a form of social control, we are in a position to examine particular types of rituals within the theoretical framework.

The function of rituals in shaping identity suggests the following typology.⁹¹ Rituals of *reformation* shape identity directly. They attempt to “form” a person by aligning his or her personal identity with a social role that the person has not previously occupied. Rituals of *renewal* reinforce the role-identity thus formed and thereby protect against regression to an old identity or evolution into a new one. They can be thought of as “booster shots” designed to maintain the efficacy of the formative rituals. Rituals of *restoration* come into play when the individual has fallen away to one degree or another from the social role prescribed by a ritual of reformation. Restoration rituals are designed to cure the problem by bringing personal identity and social role back into alignment.

The distinction between rituals of reformation, renewal, and restoration is not exclusive, in that many if not most rituals display more than one of these features. For a novice, an initiation rite is principally one of reformation, because it is intended to shape identity and recast him or her as an adult. But the novice may also, in the process, be required to confess and abjure former misdeeds—an act of restoration that places him or her in a proper status as a person in good social standing, qualified to undergo transformation into a social adult.⁹² For an adult participant, meanwhile, the ceremony is likely to be one of renewal: by participating, the adult is called on to recommit to a social role as well as to the overall structure of

90. However, purely intellectual accounts will rarely be presented as a complete explanation of the ritual. If the ritual could be fully explained in rational terms, then the rationale for its performance would be undermined. Thus, theological explanations for ritual tend to emphasize the limits as well as the value of rationality: the ritual, ultimately, will be understood as carrying an element of mystery that cannot be explained on rational grounds alone.

91. Anthropologists have attempted to categorize rituals in different ways. Catherine Bell, for example, identifies six categories of ritual action: rites of passage; calendrical and commemorative rites; rites of exchange and communion; rites of affliction; rites of feasting, fasting, and festivals; and political rituals. BELL, *supra* note 30, at 94. Ronald Grimes offers a categorization based on ritual “modes,” including ritualization, decorum, ceremony, liturgy, magic, and celebration. RONALD L. GRIMES, *BEGINNINGS IN RITUAL STUDIES* 35–51 (1982). The categories discussed here are based on the function of ritual at controlling behavior; they are different from, but not necessarily inconsistent with, these other systems.

92. See KRATZ, *supra* note 59, at 197–212 (confession of social debts in Okiek girls’ initiation).

roles within which the ritual is performed.⁹³ In part because many rituals include elements of reformation, renewal, and restoration, the various types of rituals identified by anthropologists tend to flow into one another: initiation is related to sacrifice,⁹⁴ and sacrifice merges with trance.⁹⁵ The classification of ritual into one of the three categories can be thought of as the identification of a dominant theme, rather than an exclusive function. Even if initiation rituals have elements of renewal and restoration, their dominant theme is the formation of a new identity in the initiates, and therefore they are properly classified as rituals of reformation.

A. *Rituals of Reformation*

1. Initiation

Among the most important rituals of reformation are initiation ceremonies. These take a child and mold him or her into an adult man or woman who, in theory at least, expresses the culture's ideals of proper behavior for persons enjoying adult status.⁹⁶ Through the process of initiation, the neophyte is "created anew"⁹⁷—"reshaped or molded physically and psychologically so that society's values can be inscribed on his or her body and mind."⁹⁸ Initiation rituals, in other words, shape the personal identity of the novice by conforming it to a social role.⁹⁹

93. See LINCOLN, *supra* note 27, at 108 (stating that at rituals of female initiation, "[t]hose in attendance have their feeling of solidarity—the sentiment that holds society together—renewed by their participation in the rite").

94. See BLOCH, PREY INTO HUNTER, *supra* note 25, at 24 (identifying a "fundamental connection" between sacrifice and initiation).

95. See LUC DE HEUSCH, SACRIFICE IN AFRICA: A STRUCTURALIST APPROACH 216 (Linda O'Brien & Alice Morton trans., 1985) (viewing trance and sacrifice as part of a more general system).

96. This is not to say, obviously, that all initiation rituals serve this purpose alone, or that initiation rituals can easily be compared across cultures. Ritual complexes within particular cultures will inevitably reflect differences in modes of subsistence, social ideals, gender relations, and history, among other factors. For an account emphasizing the differences in rituals of female initiation among two Sepik peoples of Papua New Guinea, see Brigitta Hauser-Schäublin, *Puberty Rites, Women's Naven, and Initiation: Women's Rituals of Transition in Abelam and Iatmul Culture*, in GENDER RITUALS: FEMALE INITIATION IN MELANESIA, *supra* note 4, at 33.

97. See LINCOLN, *supra* note 27, at 21.

98. BOWIE, *supra* note 79, at 169.

99. The analysis suggested here is significantly different from the psychoanalytic approach to initiation, which has tended to emphasize the importance of male circumcision. Freud posited that circumcision represents a form of ritualized castration, through which the bond of identification between father and son that originally formed during the Oedipal period is enhanced. FREUD, *supra* note 82, at 131 n.87. Bruno Bettelheim, also writing in the analytic tradition, sees circumcision as expressing the boy's envy of women and his wish to experience female conditions such as menstruation. BRUNO BETTELHEIM, SYMBOLIC WOUNDS: PUBERTY RITES AND THE ENVIOUS MALE (1971).

This function of initiation can be placed in the context of the problem of cooperation and defection already discussed. In the prisoner's dilemma game, as we have seen, the problem of cooperation can be overcome if both prisoners can make reliable commitments, *ex ante*, to cooperate rather than defect. The problem could also be overcome, however, if instead of making credible promises to cooperate, the prisoners simply *were* people who cooperate—people whose identity is that of a cooperator. Imagine that each prisoner has a computer chip inserted into his brain that has the power to control his behavior and that is irrevocably programmed to cause the prisoner to claim innocence regardless of the pressure the prosecutors might apply to induce a confession. Now the prisoners would cooperate, not because they agreed to do so, but because they had no choice in the matter. Initiation rituals can be understood as functioning somewhat like this computer chip. If effective, they program the novice to behave in ways demanded by the social role into which he or she is being initiated. They create cooperators. They do this by causing the novice to experience his or her personal identity as congruent with the social role.¹⁰⁰

The value of initiation rituals, understood within this framework, is likely to depend on whether the society in question is insular or cosmopolitan. In insular societies, it will often be the case that a person has no realistic choice about whether to deal with someone. Kinship status, religious obligation, or practical necessity may necessitate dealings between people who might not otherwise wish to have anything to do with one another. Even if someone does not have direct dealings with a compatriot, he or she will often deal indirectly with the person because of the tightly interconnected nature of insular societies. In this situation, where people must rely on others not of their choosing, there is a high value to social institutions that ensure that *everyone* with whom one deals will satisfy at least some minimal standard for cooperative behavior.

A military patrol behind enemy lines provides an illustration. This small society displays two features that characterize insular societies. First, the soldiers are mutually reliant: every member entrusts his or her life to every other. The person on watch must not fall asleep, and the person in charge of the ammunition must not forget to bring it along. Second, the soldiers have no choice about their comrades, who are simply assigned to work together. In these conditions of mutual reliance and lack of partner

100. Obviously, initiation rituals are not always successful at molding identities; even in societies characterized by elaborate and painful rituals, some initiates end up behaving in ways labeled deviant by their culture. However, the process need not be perfect for it to be beneficial. If initiation is even somewhat effective at aligning personal identity with social role, the effect can be to enhance the trust levels in the society.

choice, all members of the patrol can benefit if everyone has undergone initiation rituals (hazing and boot camp) that mold them into reliable soldiers.

When we move to cosmopolitan societies, there is still an obvious benefit to initiation rituals that cause people to identify with social roles commanding cooperative behavior. The benefit, however, is less significant than in the case of insular societies. The reason is that in a cosmopolitan society, people have a choice about the others with whom they interact. People can seek out persons they know to be trustworthy and reliable, and avoid persons they know to be unreliable. The ability to select one's partners provides a significant protection in cosmopolitan societies. Moreover, the same power of choice provides a powerful incentive for voluntary cooperation. If I get a reputation as an unreliable person, people will not seek me out with beneficial offers of business or social interaction. I will be poorer and less happy. I have an incentive to act in a cooperative way in order to develop a reputation as someone with whom others can safely deal. Because a cosmopolitan culture provides built-in incentives to cooperate, it is less essential that individuals be socialized into cooperators through the medium of rituals of initiation.

Other considerations complicate this analysis, however. Although cosmopolitan societies offer opportunities for choice in partner selection that are far greater than the available options in insular societies, they suffer from a disadvantage when it comes to actually exercising that choice. In insular societies, people usually have good information about their compatriots. If they had a choice of partners, in other words, they could choose well; the problem is that they lack partner choice. In cosmopolitan societies, in contrast, people have much greater partner choice, but also have less reliable information about potential partners. Compared to residents of insular societies, residents of cosmopolitan societies have more partners to choose from but may not choose as well. This information problem lowers the advantages that citizens of cosmopolitan societies enjoy and provides a reason to maintain rituals of initiation in such societies. It is doubtful, however, that the advantage is sufficient to make initiation rituals as valuable for cosmopolitan societies as they are for insular ones. Cosmopolitan societies have developed various mechanisms other than ritual for overcoming information problems. These include informal social mechanisms (reputation), private market mechanisms (markers of reliability such as completion of a demanding graduate program), and legal doctrines (contract-at-will, protections for statements of opinion, rights of association).

Eric Posner's work suggests still another reason why one might observe initiation rituals in cosmopolitan society, notwithstanding the extensive partner choice that such a culture offers to its members.¹⁰¹ Quite apart from whether they are actually efficacious at shaping identities, initiation rituals may work as a signal of otherwise unobservable qualities. People who have undergone initiation, for example, may be perceived as more reliable than people who have not undergone the ritual. Thus, rituals can offer a technique for overcoming the information problem that makes partner choice unreliable in cosmopolitan societies. In this respect, the severity of the ritual may add credibility by screening out false signals. If the ritual is painful or costly, it will send a more reliable signal than if it is pleasurable or cheap.¹⁰² However, notwithstanding the potential value of rituals as carriers of information, it appears unlikely that they will often be cost-effective signals in a cosmopolitan society, given the probable availability of other signals which may be less costly or more reliable.

The upshot of this rather complex analysis is that in insular societies, initiation rituals can offer potentially significant value as a means of overcoming the prisoner's dilemma problem by shaping people into cooperators. In cosmopolitan societies, such rituals have value because they generate cooperators and because they provide a means for signaling cooperative traits. However, because people enjoy a high degree of partner-choice in cosmopolitan societies, these benefits are lower than the comparable benefits of initiation rituals in insular societies. The analysis suggests that initiation rituals are likely to be more important in insular societies than in cosmopolitan ones—a conjecture that appears to be borne out by observation.

The idea of ritual efficiency suggests that initiation ceremonies will often involve large social expenditures in the insular societies where they have their greatest utility. The transition in identity that the initiate undergoes in such ceremonies is large. Initiation rituals can turn "gentle boys" into "warriors capable of killing rage, stealthy murder, and bravery."¹⁰³ Further, initiation ceremonies are usually imposed rather than being voluntarily elected. Novices are not given much of a choice whether to undergo the process; their alternatives are to be excluded or reviled. And the social roles governed by initiation tend to be encompassing. Initiations turn children into adults, boys and girls into men and women. It is not surprising,

101. See POSNER, *supra* note 6.

102. This was a reason Maimonides gave for the rite of circumcision: because circumcision was a "hard thing," it was, he said, a reliable method for distinguishing between Gentile and Jew. See 3 MOSES MAIMONIDES, THE GUIDE OF THE PERPLEXED 610 (Shlomo Pines trans., 1963).

103. Keesing, *supra* note 4, at 3.

therefore, that many initiation ceremonies employ a wide range of costly techniques and strategies for identity alteration.

Initiation rituals tend to display relatively high levels of both celebration and violence. The violence in initiation rituals reflects the function that is being performed: the novice is subjected to a form of psychic surgery in which his or her identity is molded into a new social role.¹⁰⁴ The violence inflicted on the body of the novice both effects a transformation of identity and symbolizes the transformation that has been accomplished.¹⁰⁵ The celebration in initiation appears to reflect the culture's perception—or perhaps more accurately, its assertion—that the novice has successfully passed over the threshold into adulthood. To complete the ritual, the novice must shed his or her childish identity and come to self-identify as an adult man or woman as those roles are defined within the culture. The celebration of ritual reflects the perception of congruence between personal identity and social role. In general, we may predict that in rituals of initiation, the element of violence will tend to be more in evidence early in the process, when the novice is undergoing the transformation into an adult. The element of celebration will tend to emerge as the dominant motif late in the process, when the novice has successfully completed his or her trials and been certified as an adult.

2. Marriage

Marriages are nearly universal features of human societies. They are rituals of reformation because, if successful, they facilitate a change in social status: the bride and groom cease being “single” and assume the role of “married.”¹⁰⁶

The theory presented above suggests that if cultures are willing to devote substantial resources to the marriage ritual, it must be because, at least in part, the ritual discourages people from acting in socially undesirable ways or encourages them to act in socially desirable ones. The value of the social role appears to be the following. Marriage is the principal ritual that holds human beings together in a pair bond that facilitates and enhances

104. Even celebratory and peaceful forms of initiation, such as baptism, can be understood as containing a subtle subtext of violence: although usually conceptualized as a washing away of sin, baptism is also, in some sense, a symbolic drowning.

105. For example, the scars inscribed on a woman's body during initiation ceremonies among the Tiv of Nigeria “are simultaneously the means of her transformation and the visible mark that this transformation has been completed, making each girl a woman.” LINCOLN, *supra* note 27, at 49.

106. Depending on the society, this may include a change in attitude towards sexual behavior, which may be strongly disapproved before marriage and required afterwards. See Kitahara, *supra* note 26, at 164–66. Marriage rituals have other functions, of course; among others, they facilitate the forging of bonds between social groups.

paternal investment in children, as well as the transmission of wealth across generations. Left to their own devices and wishes, men and women may display promiscuous sexual behavior, and their investment and involvement with their children may be weaker than society would prefer. Marriage creates a socially sanctioned space in which society approves and encourages sexual intercourse, childbearing, and commitment of resources for rearing and educating children.¹⁰⁷ The obligations of fidelity and permanence that are sealed through wedding ceremonies evidence the fact that one important purpose of marriage is to hold the parents in the union and place them in the position of guardian and protector of children.

Certain features of marriage rituals can be understood as facilitating the process of assigning a new social role to the couple and encouraging them to align their personal identities with the role so assigned. For example, in general, the couple can be expected to desire the union. They experience the felicity that accompanies the successful alignment of personal identity and social role. Weddings offer ample opportunities for the couple to express these emotions in the company of their family and friends. The celebratory mood in marriage reinforces the alignment between personal identity and social role as well as the legitimacy of the ritual itself.

Marriage rituals recognize that felicity does not always last. Marriage is a long-term proposition, and there is always the possibility that one or both of the spouses will become dissatisfied. However sacred the marriage vows, they are often broken, threatening the social value of the institution. Within marriage ceremonies, we may discern the presence of elements of coercion that appear to respond to this risk. These may help explain the odd subtext of violence that lurks beneath the mood of celebration in marriages.

At many Christian weddings, the guests throw rice at the bride and groom. This practice can be the occasion for hilarity. But what does the rice throwing symbolize? The assembled members of the community are pelting the newlyweds with small, hard objects. This is not friendly, but hostile. The act of simultaneous group throwing "is an aggressive gesture, like beginning a fight, even if the most harmless projectiles are chosen."¹⁰⁸ Why would the assembled guests pelt the couple? Because the community is acting out, in an ostensibly lighthearted but in fact serious drama, the traditional penalty for violating the marriage vows. Symbolically, the throwing of the rice represents a ritual stoning of the couple, the prescribed

107. See Elisabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901 (2000) (describing the social control function of the social norms that are commonly associated with marriage).

108. BURKERT, *HOMO NECANS*, *supra* note 25, at 5. Burkert's observations are in the context of an analysis of Greek sacrificial rituals, but their relevance to the throwing of rice at a wedding is obvious.

biblical penalty for adultery. The message of the rice throwing is that the bride and groom will be closely watched by the community, supported if they follow the rules, but penalized if they fall away. This message is reinforced by other elements of covert violence in the ritual, such as the anonymous defilement of the bride and groom through soaping the wedding vehicle or tying tin cans behind.

The traditional Jewish marriage ceremony contains similar elements. The groom is called to the Torah the Shabbat before the wedding, and the congregation showers him with candy, raisins, and nuts. This pelting of the groom is said to be symbolic of the congregation's wishes that the couple enjoy a sweet and fruitful marriage. Again, however, the mass throwing of small, hard objects at the groom may be understood as more than a friendly act. As in the Christian ceremony, this act has elements of a ritual stoning designed to warn the groom of the risks he faces if he breaks his vows and commits adultery. Other elements of the Jewish wedding ceremony partake of violence as well. The officiating Rabbi breaks a plate after the bride and groom sign the marriage contract. This appears on the surface to be an odd gesture bespeaking separation and violence—particularly odd because it occurs immediately after the couple have committed themselves to a life together. It seems that the breaking of the plate warns the couple of the consequences they can expect if they break the covenant. The exhilarating ride in a chair traditionally given to the bride and groom during the post-wedding celebration may convey a similar message: the couple are sustained by the community, but also threatened with a frightening sanction in the event that the support is withdrawn.¹⁰⁹

Marriage affects the interests of many people. The change in status effected by the ceremony is profound, implicating basic features of social organization such as kinship or the allocation of wealth. Not surprisingly, therefore, marriage rituals are directed in part at participants other than the bride and groom. Most participants desire the status change and therefore share in the celebration wholeheartedly. But others may have mixed or negative feelings. Family members may resent "losing" a sibling or child; competing claimants on family wealth may dislike the assets being given to the couple; and rejected suitors may nurse anger and disappointment.

109. Another feature is the tradition that the groom breaks a glass at the conclusion of the ceremony. This may convey a further warning about the sanctity of the marriage covenant and the risks of breaking it. Traditional interpretations for the breaking of the glass are that it symbolizes the breaking of the bride's hymen or that it wards off evil spirits. See Alan Unterman, *Judiasm*, in RITES OF PASSAGE 113, 132 (Jean Holm ed., 1994). Another tradition holds that the action is a gesture of remembrance for the destruction of the Temple in Jerusalem. *Id.* at 131–32.

Marriage rituals offer channels for managing these potentially dangerous feelings. Consider the practice of “giving away” the bride. The bride’s parents may feel angry and upset about losing a daughter, but whatever their feelings, they must publicly relinquish their continuing claims on her. Or consider the ceremony of cutting the cake. The resentment of competing claimants on family wealth is addressed, to some extent, by this ritual element, which symbolically divides desirable assets among the participants.¹¹⁰ Those who partake of the cake symbolically express their acceptance of the proposition that the allocation of wealth incident to the marriage is fair and good.

Marriage rituals can also be understood as incorporating elements designed to manage the feelings of disappointed suitors. The European charivari, or the American shivaree, consists of mock musical assaults committed against the bride and groom on the wedding night, committed by drunken young men of the community.¹¹¹ These institutions permit disappointed suitors to express hostility towards the couple, but also require them to commit themselves to respect the marriage rights thereafter. The ceremony of throwing the bride’s garter to unattached males, although not itself a violent ritual element, appears designed to channel potentially angry emotions that the bride’s removal from the marriage market might evoke. The garter symbolically transfers the bride’s sexual availability, thus reassuring disappointed suitors that other women will be available to fill the role now foreclosed to the bride. The groom’s throwing of the corsage may serve a similar role for disappointed women.

In cultures with extended kinship ties, a marriage often pits family groups against one another over matters such as wealth transfers or where the marrying couple will live. The resentments associated with these issues threaten the peace and stability of the culture. Some marriage rituals channel these emotions by controlled displays of violence. Sometimes the bride is taken with a rite of capture in which she is expected to struggle against her abduction by the groom and his companions. In other cultures, it may be the poorer party—bride or groom—who is kidnapped by the richer party’s family.¹¹² More generalized battles between competing groups may

110. In this respect, the cutting of the cake resembles rituals of sacrifice discussed below, which appear to symbolize the fairness of the society’s rules for distributive justice. See *infra* notes 128–41 and accompanying text.

111. See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 313, 1608 (4th ed. 2000).

112. See Christopher Lamb, *Buddhism, in RITES OF PASSAGE*, *supra* note 109, at 10, 29 (describing kidnapping practices incident to marriage among Tibetan Buddhists).

also occur.¹¹³ When these hostilities are allowed expression within the framework of the ritual, they can be controlled so that they do not break out into behaviors more threatening to social welfare.

3. Installation

Rituals of installation are ceremonies that mark the transition of an individual into an office of authority within a society.¹¹⁴ Classic installation rituals are coronations and inaugurations.¹¹⁵ Because rituals of installation involve assumption of office, political authorities often manage these events. But rituals of installation can involve offices that are not political in the narrow sense; they may celebrate the elevation of a minister to a pulpit or a law professor to a deanship.

In terms of the legal function of ritual, the key factor informing the structure of these rituals is the nature of office.¹¹⁶ By establishing offices and endowing them with authority, societies economize on the costs of group decision making and facilitate the application of force to individuals whose behavior fails to comply with group norms. Institutions of office, in short, are necessary to manage the basic social compact of cooperation and to effectively police against defection. The creation of office, and the installation of a particular individual in the office so created, however, create costs of their own. First, there is the danger that rival candidates or their supporters will refuse to accept the elevation of the victor, leading to political instability.¹¹⁷ Second, there is the danger that others will not respect the authority of the office or its occupant, especially if incited to insubordination by the disappointed candidate's party. Finally, there is the danger that

113. Van Gennep, writing in 1908, describes a marriage ritual among the Khond of southern India. When a marriage had been agreed to by the respective families, the girl would be delivered in the company of other young women of her village to the groom, who would stand in the road accompanied by other young men of his village armed with sticks. "The women attack the young men, hitting them with sticks, stones, and clods of earth, and the boys defend themselves with their sticks." In another group, the bride's brothers engage her betrothed in a mock battle, first wounding him in the leg, and finally hitting him on the head with a club. VAN GENNEP, *supra* note 36, at 127-28.

114. Also included in this category are the (comparatively rare) rituals of de-installation, such as the defrocking of a priest.

115. For an anthropologist's account, see Meyer Fortes, *Ritual and Office in Tribal Society*, in *ESSAYS ON THE RITUAL OF SOCIAL RELATIONS*, *supra* note 67, at 53.

116. I use the idea of "office" in an everyday sense, as meaning a social role that carries with it obligations and responsibilities, and that is generally recognized as conferring certain authority over others. The concept has been an important concern of sociology at least since Max Weber's *The Protestant Ethic and the Spirit of Capitalism*, but the development of the idea within the field of sociology is not the concern of this Article. See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 16 (Talcott Parsons trans., Charles Scribner's Sons 1958) (1904).

117. See Gluckman, *supra* note 67, at 43-47 (addressing how rituals of installation can alleviate the rancor felt by the disappointed candidate or his supporters).

the person elevated to the office will use the powers so conferred to serve his or her own self-interest rather than that of the broader society. A basic problem of governmental design is to minimize the sum of the cost of private defection from cooperative norms and abuse of trust by persons holding public office.¹¹⁸ Rituals of installation are one means by which a society responds to this problem.

Installation in office transforms identity. The person is no longer simply an individual, but also the holder of an office. If successful, the installation ritual can have a dramatic effect. A person is perceived as “growing” into the position, and thereby becoming somehow different than he or she had previously been. As Meyer Fortes describes a Tallensi man who had been installed into a tribal office, “[a]lmost overnight, an ineffectual old man was turned into a dignified, self-confident, and authoritative, if somewhat garrulous, leader.”¹¹⁹ The legal function of a ritual of installation is to mediate and facilitate this transformation of identity. It can therefore be classified together with rituals of initiation and marriage as a ritual of reformation.

The identity being transformed by a ritual of installation is not ordinarily as encompassing as some other identities, such as adulthood, gender, or marital status. Thus, rituals of installation are unlikely to call forth the same level of expenditure as rituals marking transformation to these more fundamental identities. On the other hand, if the office is particularly important, it will affect the lives of many more people in the society than the transformation of an individual’s personal status. Thus we can expect—quite obviously—a higher level of social expenditure on rituals that mark the installation in office of higher-level officials than lower-level ones.

Because the party assuming office nearly always consents to the position—indeed, usually, ardently desires it—rituals of installation are primarily celebratory in spirit. However, rituals of installation are likely to have a subtext of violence as well, reflecting and managing the dangers associated with the creation of the office. This violence may be expressed directly in the form of symbolic gestures¹²⁰ or ritualized abuse.¹²¹ Or the violence

118. This is the fundamental project of a republican form of government and a principal objective of the Framers of the United States Constitution. For discussion, see Geoffrey P. Miller, *Rights and Structure in Constitutional Theory*, SOC. PHIL. & POL., Spring 1991, at 196.

119. Fortes, *supra* note 115, at 68.

120. When English subjects are knighted, for example, the monarch touches them on the shoulder with a sword. This appears to be a symbolic beheading representing the consequences that the office holder can expect if he fails to live up to the behaviors expected of a person in his position.

121. For example, in certain African status elevation ceremonies, the office holder is rudely abused and reprimanded by the community before being installed in his stool. See TURNER, *supra* note 1, at 170–72.

may be manifested in the form of stringent taboos or other controls that the ritual imposes on the official.¹²² Ritual violence may also be directed against people who might refuse to accept the legitimacy of the office or of the person being installed into it. The ritual constitutes a public recognition of the legitimacy of the office and its holder. Thus, installation rituals, particularly in the political sphere, may be accompanied by conspicuous displays of military power, conveying the threat of severe sanctions against anyone who dares contest the officeholder's authority.

B. *Rituals of Renewal*

There is always a risk that the social identity prescribed by the ritual will not "take"—that over time, the individual will commence, or revert to, behaviors that are inconsistent with the social role as prescribed by the ritual. People need continuing inoculations in order to maintain the close linkage between their personal identities and social roles. Rituals to perform such inoculations can be termed as rituals of renewal.¹²³ They do not assign a new social role, but rather dramatize an existing status relationship and thus serve to reinforce it.¹²⁴

1. Services

The many rituals that punctuate ordinary life can be seen as serving the function of continuing alignment of identity and role. A Christian goes to church and takes communion. The ritual of the church service serves to remind the person of his or her role, say, as a believing Christian who has been confirmed in the faith. Through repeated performance of the ritual, the individual is reminded of his or her social role and reaffirms a commitment to it.

Ordinary services tend to be embedded in larger cycles temporally marked by certain rituals conceived of as more important. Christian church services, for example, may be structured with reference to where the service stands relative to important occasions such as Christmas, Easter, Good Friday, or Epiphany. Jewish services are structured with reference to the major holidays and also by means of the progressive reading of Torah and Haftorah sections throughout the year. Muslim services are also organized

122. See Fortes, *supra* note 115.

123. They might also be referred to as rituals of intensification, because they intensify the individual's commitment to the social identity defined by ritual. See Douglas Davies, *Christianity, in RITES OF PASSAGE*, *supra* note 109, at 41, 47.

124. See FRANK W. YOUNG, *INITIATION CEREMONIES: A CROSS-CULTURAL STUDY OF STATUS DRAMATIZATION* (1965).

around major holidays. Through this means, the routine performance of religious observations is tied to larger structures of meaning that offer a comprehensive system within which an individual may conceive of his or her identity.

2. Patriotic Rituals

A different form of renewal is expressed in patriotic rituals. The social role coded by these rituals is that of a citizen. The purpose of the ritual is to help align the individual's sense of identity with the social role of being a citizen of a nation or other political group. If the ritual is effective, the participant will conceive of himself or herself *as* an "American" (or whatever other country or political entity claims that person's allegiance). Patriotic rituals can be classed as rituals of renewal because participants do not, by virtue of participating in them, change their identities, but rather renew and recommit themselves to an identity already in place.

Patriotism can be useful to the overall society, in large measure because the identity of a patriot implies a willingness to sacrifice one's own interests—indeed, one's own life—for the good of the country in times of crisis. When it comes to the demands of patriotism, individuals have a strong interest to defect from cooperative arrangements demanded of civilians during times of military exigency. People may want to avoid going to war, or, if in the service, to avoid getting in harm's way. Others who do not serve may also have an incentive to defect.¹²⁵ Thus, we observe rituals designed to maintain "patriotic sprit," i.e., people's sense of identity as a member of the political group. Other things being equal, we can expect societies to invest greater resources in patriotic rituals as perceived external threats to national interests become more salient.¹²⁶

Patriotic rituals tend to display symbolic violence.¹²⁷ Military and quasi-military parades, martial music, overflights of jets, and the explosions of fireworks are common features. Patriotic rituals also focus, frequently, on martyrs of the nation—war heroes, unknown soldiers, and others who have made the "ultimate sacrifice." Even the celebration of patriotic rituals tends to have a certain violent tenor, as in the case of the

125. For example, during the Second World War, American civilians were asked to comply with rationing programs, adhere to price controls, and purchase war bonds.

126. These rituals, of course, are subject to manipulation by political leaders eager to manufacture citizens who are willing to sacrifice their personal interests for the leaders' agendas. Consider the Nazi Party's heavy use of patriotic rituals designed to stimulate loyalty to the Fatherland.

127. For an analysis of the connection between violence and patriotism, see CAROLYN MARVIN & DAVID W. INGLE, *BLOOD SACRIFICE AND THE NATION: TOTEM RITUALS AND THE AMERICAN FLAG* (1999).

“oohs” and “aahs” of awed witnesses to fireworks bursts or the regimented precision of a marching band. The violence of these rituals symbolizes the demands that the country is prepared to make of its citizens in a time of national peril—and the readiness with which the citizen is expected to respond to the call for help.

3. Sacrifice

Any society, even the most primitive, must address the problem of distributive justice. At its most abstract level, the problem takes the form of the prisoner’s dilemma already discussed. Significant economies can be realized if people join together in productive activities rather than act individually. But when people join together to produce commodities, they face the problem of how to allocate the fruits of their labor. *Ex post*, it is in everyone’s individual interest to seek to appropriate as large a share of the social product as possible. But if one person takes a great deal for himself, it will leave less for others. If people do not believe that they will receive a fair share at the end of the day (at a minimum, as much as they would be able to obtain for themselves by working alone) they will not want to join in the productive process in the first place. Opportunistic expropriation of the social product by individuals threatens the implicit contract of cooperation that gives people an incentive to join in the society in the first place. *Ex ante*, therefore, it is in everyone’s interest to make a credible commitment to share the surplus in an equitable way and to refrain from seeking to expropriate everything for oneself. Defining the equitable sharing rule is the core problem of distributive justice.¹²⁸

A classic example of the problem of distributive justice in primitive cultures occurs in the institution of the hunt. A group of hunters cooperates to kill an animal. Now they face the problem of how to divide it. The division of the slain animal encompasses, in symbolic form, the entire problem of distributive justice, because it involves the issue of how the fruits of cooperative activities should be allocated among the members of the society. All hunters have an interest in cooperating to kill the animal, because no one hunter can accomplish the task alone. Once the animal is dead, however, their interests diverge. Each hunter has an incentive to take as much of the carcass as he can. Squabbling or violence about sharing, however, may not only be hurtful in itself, but may also reduce the incentive

128. See generally JOHN RAWLS, A THEORY OF JUSTICE (1971). For an interpretation of Locke’s theory of property as expressing similar concerns about distributive justice in the allocation of the productive surplus, see Geoffrey P. Miller, *Economic Efficiency and the Lockean Proviso*, 10 HARV. J. L. & PUB. POL’Y 401 (1987).

people have to cooperate in hunting in the first place. Society is better off if the spoils are distributed according to some sharing rule deemed reasonably just by the members.

Sacrificial rituals, observed in many parts of the world and exceedingly ancient in origin,¹²⁹ are concerned in part with problems of distributive justice.¹³⁰ They appear to derive from the hunt and can be interpreted as referring symbolically to the problem of distributing the carcass of the killed animal.¹³¹ Typically, the person making the sacrifice shares the food with others according to precise rules of allocation.¹³² If the society supports a class of ritual officials to oversee the sacrifice, the priests will perform the killing and divide up the parts, taking a portion for themselves in exchange for their services. The basic trade-off is this: the participant promises not to monopolize the available social resources and agrees to a regime for fair allocation among the group. In exchange, the individual gets assurances of protection for his share as well as some degree of support should he be unable to provide for himself.¹³³

Like other rituals, sacrifice conforms personal identity to social role. In the case of sacrifice, the social role is that of citizenship—being a mem-

129. See BURKERT, *HOMO NECANS*, *supra* note 25, at 9 (“Animal sacrifice was an all-pervasive reality in the ancient world.”).

130. This is not to say that distributive justice is the only function of sacrifice. Like many complex social institutions, sacrifice serves multiple functions and has many meanings across cultures. See generally DE HEUSCH, *supra* note 95 (emphasizing wide variety in sacrifices as reported in the scholarly literature).

Nor is this to say that sacrifice is the only form of ritual concerned with distributive justice. See, e.g., Gluckman, *supra* note 67, at 39 (Many rituals address the “fundamental conflict [that] arises out of the common interest which society has in the fertility of fields and flocks and women, while it is precisely over fields and flocks and women that individuals come into competition and dispute.”).

131. Walter Burkert focuses on the importance of the hunt in the ritual of sacrifice. See BURKERT, *TRACKS OF BIOLOGY*, *supra* note 25, at 142; BURKERT, *HOMO NECANS*, *supra* note 25. Burkert, however, does not associate the institution of the hunt with the problem of distributive justice. He argues, instead, that food is offered to others as expiation for the acting of killing the sacrificial victim.

132. See, e.g., Galaty, *supra* note 48, at 375 (Maasai ritual of ox sacrifice); BURKERT, *HOMO NECANS*, *supra* note 25, at 37–38 (The sacrificial meal is “particularly subject to sacred laws that regulate social interaction in distributing, giving, and taking.”).

133. The notion that rituals of sacrifice are means for coping with the problem of distributive justice is different from anthropological accounts. Early scholars such as Robertson Smith, Henri Hubert, and Marcel Mauss recognized that sacrifice served a social function but conceptualized it as a relationship between the celebrant and the deity. The function of sacrifice was to establish a channel for safe interaction between humans and gods, and an avenue for a gift exchange in which the celebrant offers food to the god as propitiation or as an exchange for favors. See ROBERTSON SMITH, *LECTURES*, *supra* note 25 (viewing sacrifice as a means by which devotees, by eating the flesh of a totem animal, became assimilated with it and with one another); HUBERT & MAUSS, *supra* note 25 (viewing sacrifice as a means by which people communicate with divine forces through mediation through the sacrificial victim). René Girard, in contrast, views animal sacrifice as a response to the pervasiveness of violence in human society. The terror of uncontrolled killing in human societies is channeled into the controlled world of sacrifice, through a process of scapegoating in which the animal becomes the socially safe repository for aggressive impulses. GIRARD, *supra* note 25.

ber of a polity¹³⁴ characterized by a principle of distributive justice that is accepted as fair by all.¹³⁵ That sense of solidarity with the group is sealed by the act of eating and drinking together, the classic symbol of social union.¹³⁶ If sacrifice is effective, the participant will refrain from taking more than the share of the social surplus that is allocated to him by the society's principle of distributive justice. Moreover, because sacrifice is usually a public act, the participant can demonstrate to others that he is a good citizen who can be relied on to behave appropriately when it comes to the allocation of the surplus. People thereby can have greater assurance that they will not be taken advantage of by others when they follow the social rules on resource allocation.

Sacrificial rites display features of all three types of ritual discussed in this Article—reformation, renewal, and restoration. For example, a sacrifice may be performed at the conclusion of an initiation (reformation) or as part of a ceremony of cure (restoration). The most fundamental meaning of sacrificial rituals, however, appears to be that of renewal. The individual who participates in them is typically reaffirming solidarity with the group rather than establishing it for the first time.¹³⁷ The renunciation inherent in sacrifice symbolizes the fact that, in affirming the society's principle of distributive justice, its members must resist the temptation to take more than their share of the social surplus. The sacrificial ritual is essentially a commitment to a constitution and to nationhood.¹³⁸

134. By "polity," I mean only some relatively organized social group; the term would include clans and tribes as well as nation-states.

135. Thus, in the ancient world, communities at all levels of organization constituted themselves through sacrifice: families, guilds, cities, and even larger social groups. See BURKERT, *HOMO NECANS*, *supra* note 25, at 35–36.

136. See VAN GENNEP, *supra* note 36, at 29; ROBERTSON SMITH, *LECTURES*, *supra* note 25; BURKERT, *TRACKS OF BIOLOGY*, *supra* note 25, at 150 (Sharing of food is a "basic form of collaboration among humans.").

137. Durkheim conceived of this function as a sort of recharging of a battery. In discussing sacrifice among Australian tribes, he observes that "all forces, even the most spiritual, are worn away with the passage of time if nothing replenishes the energy they lose in the ordinary course of events . . . The people of a totem cannot remain themselves unless they periodically renew the totemic principle that is in them." DURKHEIM, *supra* note 25, at 342.

138. For an argument that even the United States, a society without formal national rituals of sacrifice, maintains a symbolic sacrificial system establishing our identity as a nation, see MARVIN & INGLE, *supra* note 127, at 1 (arguing that violent blood sacrifice is what makes enduring groups cohere, and that the U.S. political system is organized around a sacrificial system in which the flag functions as a "bloodthirsty totem god who organizes killing energy"). Marvin and Ingle display considerable insight into the role of sacrifice in defining nationhood and in recognizing that apparently "primitive" rituals can often be discerned, in disguised form, within contemporary society. But they fail to offer a convincing explanation for why the institution of sacrifice should be efficacious to achieve this purpose, contenting themselves with the mystical-sounding idea that the "totem god of society" must "eat its worshippers to live." *Id.* at 4.

In representing the basic rules for allocating the social surpluses, the institution of sacrifice depends on the claim that the allocation is fair. For developed cults, this often means that the allocation function is placed in the hands of some person endowed with authority of office. To ensure the fairness of the allocation, such individuals should not be identified or aligned with any particular clan, party, or interest. Thus, such individuals tend to be set apart from the ordinary play of interests that characterizes the competition for resources in social groups.¹³⁹ The impartiality required of these officials can be understood as a precursor to, or symbolic of, the basic political idea that legitimate government must not play favorites, at least among persons of equal status. At the same time, the priest's share of the meal symbolizes the right of the government to be paid (through taxes or otherwise) for its contribution to preserving order and maintaining a fair allocation of the surplus.

Like other rituals, sacrifice displays elements of celebration. Sacrificial meals are often joyful events in which family, friends, and others may join together in fellowship and enjoyment. The celebration of sacrifice is an indication that the ritual has succeeded in its function aligning personal identity with social role. Sacrifice is an expression of solidarity and mutual support. It celebrates the perception that the participants are good citizens—that is, people whose personal identities are strongly identified with the basic political ideals of the society in which they live.

Sacrificial rituals are also fraught with violence. The violence in the sacrificial ritual is explicit, because the core of the rite is the killing of an animal. Violence may also be present in the form of a diffuse but palpable sense of danger, as expressed, for example, in the fear that if the ritual is not performed according to the precise ritual specifications, the gods being summoned will become angry and exact vengeance. The underlying theoretical or mythological framework of sacrifice is also often structured

139. Among the Maasai, for example, the ritual leaders who officiate at ox sacrifices are expected to demonstrate supreme qualities of impartiality and fairness: they must adopt a humble demeanor and must avoid fighting, insults, or other divisive behavior. Their age-mates must show them proper respect and must accept their mediation and obey their judgments. See Galaty, *supra* note 48, at 370.

In the case of ancient Israelite sacrifice, the impartiality of the priests was coded, in part, in the representation of the Levites as a specially qualified caste of ritual officials. To reinforce the idea of Levites as impartial and unbiased, the Bible recounts that they alone of all the tribes received no share in the allotment of lands after the conquest of Canaan. *Joshua* 14:4 (King James). As a landless tribe, the Levites were insulated from the most important interest that would tend to separate groups within the society—the competition over territory and disputes about boundaries. Levites are likened to guests in the territories of the various tribes; and in this capacity, they had a powerful interest in maintaining impartiality as between all the competing interests in the broader culture. *Nehemiah* 10:28–32 (King James).

around themes of violence.¹⁴⁰ The violence of sacrifice can be understood, in part, as reflecting what is being given up by a member of society, who agrees by virtue of his membership to forego the impulse to take more than his socially sanctioned share of the wealth. This is the violence of the rule of law. Although we tend to think of the rule of law as benign, in fact it is imposed on us with violence. The rule of law depends on the state's claim to a monopoly over the use of coercive force. If I attempted to get more than my fair share of the social resources, for example by engaging in strong-arm robberies on the street, I would quickly be apprehended and punished by the coercive apparatus of state power.¹⁴¹

C. *Rituals of Restoration*

Cultures may do more than provide “booster shots” to maintain the identity-shaping efficacy of initiations. Societies that rely heavily on ritual often recognize that the social identity as defined by ritual is fragile. People may deviate from the social role established by the ritual process. To deal with such cases, societies often provide rituals of restoration. The purpose of these rituals is to restore the normal condition of a person when it has been compromised by some error or offense.¹⁴² These rituals purport to realign the individual and social identities, and thereby reduce the threat to society that the continued existence of a disparity between these identities would create.

1. Purification

Purification ceremonies are classic rituals of restoration. They deal with the polarity, found in various ways in many cultures, between purity and pollution. As described by Mary Douglas, the concept of pollution relates to some sense of things being out of place—of objects crossing

140. For example, Vedic rituals of animal sacrifice are a series of precise, comprehensive, and exhaustive rules that dictate each element of a celebrant's behavior. The rules themselves do not explicitly convey violence. But the rules are explained by mythological tales that, as J.C. Heesterman describes in his book, *The Broken World of Sacrifice*, “speak of an entirely different order. They continually refer to conflict, contest, and battle.” HEESTERMAN, *supra* note 87, at 48.

141. The more diffuse elements of the violence of ritual may reflect deeper social anxieties about the fragility of the social compact. If the sacrificial ritual does not accomplish its function of bonding personal identities to the social role of citizens, there is a danger that the rule of law will break down into a war of all against all. The detail and specificity of the rules regarding the proper conduct of the ritual may be one measure of the extent of anxieties about this danger in some societies.

142. See DE HEUSCH, *supra* note 95, at 5 (One common purpose of sacrificial rites is to “restore the normal physical condition of man—his health, or his status—which has been compromised by some ‘offence.’”).

boundaries into regions where they do not belong.¹⁴³ The perception of things crossing boundaries creates a sense of anxiety because it suggests a threat to the basic categories that structure a people's sense of the natural order. We may hypothesize that in the dialectic of purity and pollution, some cultures code the risk that people will cease to experience their ritually prescribed social role as congruent with their personal identities, and therefore will revert to ritually "impure" behaviors that are inconsistent with the social ideal. In the event that pollution occurs, these societies prescribe ritual mechanisms, which must be followed precisely, to restore purity and ward off the risk of retribution or harm.¹⁴⁴

A noteworthy feature of purification rituals is that they often deal with inadvertent boundary crossings.¹⁴⁵ Thus, in the case of purification rituals, the problem being addressed is somewhat different than in other rituals of restoration. In a purification ritual, the subject has usually not intended the disjunction between personal identity and social role. Rather, in the usual case, the problem occurs because the role fell away from the individual—that is, the individual, who wishes to remain in a socially appropriate role, finds himself or herself in a different role as a result of an accidental or negligent pollution. The purification ritual restores the congruence between individual identity and social role, not by effecting changes in the person, but by changing the social role that person occupies, and thus restoring the person to a status which he or she had previously occupied.

Because the subjects of most purification rituals do not knowingly violate taboos and wish to return to their appropriate social roles, we do not expect to see large amounts of violence in the performance of these rites.¹⁴⁶ Violence is not needed because the subject's personal identity is consonant with the prescribed role. We are not likely to observe large amounts of celebration in purification rituals either. Because purification merely gives back to an individual something that he or she once had but lost, the restoration of the social role is not a cause for the same type of celebration as might be indicated, for example, if the person was assuming a new and desirable social role. Thus, purification rituals are likely to be technical in spirit rather than violent or celebratory.

143. MARY DOUGLAS, *PURITY AND DANGER: AN ANALYSIS OF THE CONCEPT OF POLLUTION AND TABOO* (1966).

144. See RADCLIFFE-BROWN, *STRUCTURE AND FUNCTION*, *supra* note 25, at 205–11.

145. For example, if a culture views a menstruating woman as taboo for men, any contact with her, however inadvertent, may be viewed as polluting.

146. Violence can, however, be expected to play a role when the subject has knowingly caused his own pollution and displays an unwillingness to correct the matter voluntarily.

2. Confession

Another ritual of restoration is that of confession and absolution. These rituals invite the individual to own up to, and to abjure, certain socially disapproved behaviors. Atonement or expiation associated with confession allow the person to obtain dispensation from the punishment that would otherwise follow from his or her bad behavior.¹⁴⁷

An important function of confession is to deal with a problem that the emotion of shame creates for maintaining alignment between individual identity and social role. Shame is an exceedingly painful emotion which, if it works properly within a ritual context, will deter people from behaving in role-inconsistent ways. But because shame depends in its structure on the perception of others observing the individual, it also encourages people to disguise or hide the fact that their personal identities may have deviated from their social role. When people hide this fact, it becomes difficult for the culture to detect, or to correct, failures in the ritual process. Worse yet, because shame affects self-esteem negatively, it can contribute to a downward spiral in which people increasingly abandon control over their behavior and become “shameless.” In the worst case, shame may result in deviant subcultures that offer alternative social roles destructive to the roles prescribed by the broader culture.¹⁴⁸ Confession is a means by which a society can manage the risk that, because of shame, people will hide deviations between personal identity and social role. Confessions induce people to overcome shame, admit their shortcomings, and experience a degree of sincerity in their behavior.

Rituals of confession do not appear to reflect high degrees of either celebration or violence. Confessing one’s sins or misdeeds is not ordinarily a reason to rejoice.¹⁴⁹ Because confession recognizes that personal identity and social role have fallen apart, we cannot expect ritual to express the felicity that is the hallmark of genuine alignment of identity and role.

Nor does confession appear a particularly violent act. Because the individual who confesses is ostensibly a penitent—someone who wishes to be reconciled with his appropriate social role—the ritual does not recognize a need to enforce the adjustment of identity and role with coercive vio-

147. The *isoma* ritual of the Ndembu people, described by Victor Turner, is an example: this is a means by which women can overcome fertility problems thought to arise because the person has been quarrelsome or has been a member of a group riven by quarrels. TURNER, *supra* note 1, at 12.

148. See JOHN BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION 12–13 (1989).

149. However, confession does reestablish a relationship of sincerity between the individual and the broader society, and thus can be a precursor to other aspects of the ritual that are celebratory. For example, the confession of sins by a believing Catholic is conducive to the experience of celebration during Mass.

lence. To use violence in this setting would be tantamount to denying that the individual is sincerely penitent, a strategy which would likely detract from the efficacy of the confession. Even if people are not actually very penitent, the very act of confessing and abjuring sins may instill a degree of remorse if it is not undermined by social meanings tending to deny its sincerity. Yet penitence can be faked, and confessions are rarely completely voluntary. Apparently for this reason, confessions can be tinged with violence.¹⁵⁰ As Foucault observes, confession is “ritual that unfolds within a power relationship, for one does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile.”¹⁵¹

3. Cure

Many societies maintain rituals for curing disease, demonic possession, or other negative bodily or mental conditions.¹⁵² In developed societies, at least during the past hundred years or so, these rituals have faded in importance as medical science has grown into a discipline that helps more people than it harms. Yet in even the most developed countries, people continue to make large expenditures on healing rituals and remedies. Pilgrims still travel to Lourdes, and thousands seek relief from faith healers, preachers, and practitioners of traditional medicine. When we turn to pre-industrial societies, we observe an even greater share of social wealth being expended on curative rituals.

Some curative rituals can be understood and analyzed within the framework of this Article. These rituals attempt to realign the subject’s personal identity with his or her proper social role. They are classifiable as rituals of restoration because they seek to reestablish a proper social identity from which the person has fallen away.¹⁵³ If successful, they can have a marked effect: the patient, emerging from the ritual, may even seem to “have developed a new personality.”¹⁵⁴

150. Consider the confessions of defendants in totalitarian state trials.

151. 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 61–62 (1978).

152. See generally MAGIC, FAITH, AND HEALING: STUDIES IN PRIMITIVE PSYCHIATRY TODAY (Ari Kiev ed., 1964) [hereinafter MAGIC, FAITH, AND HEALING].

153. See e.g., TURNER, *supra* note 1, at 18 (The *isoma* ritual of the Ndembu is intended to accomplish the “restoration of the right relationship between matriliney and marriage; reconstruction of the conjugal relations between wife and husband; and making the woman, and hence the marriage and the lineage, fruitful.”).

154. John Gillin, *Magical Fright*, in READER IN COMPARATIVE RELIGION: AN ANTHROPOLOGICAL APPROACH 353, 361 (William A. Lessa & Evon Z. Vogt eds., 1958).

Curative rituals that shape identity include cases where the patient's condition is attributed to sin.¹⁵⁵ Such people have fallen away from their social role as adults who behave appropriately according to the norms and values of the society. In this case, the ritual process is likely to include confession and absolution, and thus to merge with the category discussed above.¹⁵⁶

In other cases, the patient's disease is attributed to the action of demons or other hostile forces that invaded the body or mind. Here, the curative ritual is likely to encourage the subject to conceive of his or her problematic behaviors as the actions of a foreign being. The subject is then led to experience the invading agent as radically foreign to the subject's identity, and thus feel disgust and horror at the situation.¹⁵⁷ The subject then cooperates with the ritual practitioner in expelling the invader. Any resistance to the expulsion is attributed to the demon rather than to the ritual subject, thus preserving the premise that the subject's "true" identity wishes to reestablish control.

The role of identity manipulation in curative rituals is nicely illustrated in an exorcism rite from southern India described in a recent paper by Isabelle Nabokov.¹⁵⁸ The typical subject of these exorcisms is a young woman who is unhappy in her marriage and sexually rejecting of her husband. Diagnosed with demonic possession, she is led to a shrine where she is required to fast and engage in other purifying activities. During the ritual itself, the demon inside her is badgered by exorcists who apply "extreme forms of pressure" including escalating levels of "verbal abuse and physical violence." Eventually the demon makes an appearance. The demon—whose name and personal history often bear an uncanny resemblance to the victim's own circumstances—confesses that it is he who caused the confusion in the marriage and rendered the victim apathetic, aggressive, and childless. At the culmination of the ritual, an exorcist tears the head off a chicken and shoves the bloody neck into the victim's mouth, inducing the demon to leave her body. Nabokov argues that this ritual functions as a device for controlling a woman's desire for forbidden sexuality. Through the exorcism, the subject is induced to identify that desire with a demon who is experienced as evil and foreign. The goal of the ritual is "forcibly to

155. See Weston La Barre, *Confession as Cathartic Therapy in American Indian Tribes*, in *MAGIC, FAITH, AND HEALING*, *supra* note 152, at 36.

156. See *supra* notes 147–51 and accompanying text.

157. Thus, as in the Sinhalese exorcism rite, the affected individual is required to publicly reject the introjected agent in the presence of kin and neighbors. See Tambiah, *supra* note 42, at 143–44.

158. Isabelle Nabokov, *Expel the Lover, Recover the Wife: Symbolic Analysis of a South Indian Exorcism*, 3 *J. ROYAL ANTHROPOLOGICAL INST.* 297 (1997).

remove the [demon] from the woman's head and to make her accept that her husband and not the demon is her rightful lover."¹⁵⁹ The ritual subject is thereby induced to return to the "safety and structure of the patriarchal family fold and women's proper role in it."¹⁶⁰ This ritual, in other words, is a form of psychic manipulation. It responds to the perception that a ritual of reformation—marriage—has not been effective at permanently aligning the woman's personal identity and her social role. The exorcism induces the subject to experience as profoundly foreign and disgusting that part of herself which is inconsistent with the social role. Through the exorcism, the subject is induced to expel that part of her identity and thereby to reassume her "proper" role as a married woman within the framework of that culture's definition for how such a person should behave.

As this example illustrates, curative rituals are often characterized by violence. They may involve assaults on demons or other supernatural beings who are terrifying, powerful, and loathsome. If sorcery is viewed as the source of the person's affliction, the culture may employ counter-spells and violence against the suspected evildoer.¹⁶¹ The presence of violence in these rituals would be expected given that the function of the ritual is to return the individual to his or her social role by expelling or destroying the force that is causing the deviant behavior. The level of violence, moreover, may be particularly large because of the fact that the ritual process has failed to accomplish its end of ensuring alignment of personal identity and social role. Having failed once, the risk that the process will fail again is enhanced.

Although violence is likely to be the principal motif of curative rituals, celebration may also be displayed. If celebration occurs, it will appear towards the end of the process, as a mark that the ritual has accomplished its intended goal of curing the misalignment of identity and role.¹⁶²

III. THE RELATIONSHIP BETWEEN RITUAL, LAW, AND NORMS IN CONTROLLING BEHAVIOR

Having presented a theory of ritual as a form of social control, we are now in a position to develop its points of similarity and contrast with two other principal systems of social control: social norms and law.

159. *Id.* at 312 (emphasis added).

160. *Id.*

161. See MAGIC, FAITH, AND HEALING, *supra* note 152, at 12.

162. For example, the *isoma* ritual of the Ndembu—which is performed in order to cure women's gynecological and reproductive problems—culminates in the *ku-tumbuka*, a festive dance that celebrates the woman's return to her proper social role as wife and mother. See TURNER, *supra* note 1, at 14.

Ritual is related to and interpenetrates with both social norms and law.¹⁶³ Norms may be a source of law—as in the case of rules adopting the customs of merchants in the trade.¹⁶⁴ Law also may be a source of norms, or of ritual—for example, Congress can enact a statute requiring the celebration of a patriotic holiday. Law may attempt to restrict¹⁶⁵ or mandate¹⁶⁶ rituals. Rituals also condition law. Legal proceedings contain many elements of ritual—the robes of the judges, the design of courtrooms, the requirement of formalized respect for the court. Ritual performances are governed by norms, and rituals may influence people to observe norms.¹⁶⁷

But rituals, laws, and social norms are related on a deeper level. All three respond to the problem of social organization described at the beginning of this Article: the fact that society can be made better off if institutions police against the tendency of its members to take opportunistic advantage of the basic arrangements that make society possible in the first place.

We have seen that rituals control behavior by assigning social roles and influencing the ritual subject, as well as others in the society, to accept the roles so assigned as a natural and appropriate part of the subject's identity. Laws control undesirable self-interested behavior by prohibiting it and by providing state sanctions to prevent, detect, and correct violations.¹⁶⁸ Social norms also control undesirable self-interested behavior by specifying rules and standards for conduct, enforced by private parties outside the formal legal process.¹⁶⁹

163. The degree to which law asserts authority over ritual is a function, in part, of the nature of the government. In liberal democracies, the power of law either to compel or to prohibit the observance of rituals is limited, whereas in other systems—for example, theocratic states—the law plays a much greater role.

164. Epstein, *supra* note 20, at 1–2.

165. See *Employment Div. v. Smith*, 494 U.S. 872 (1990) (upholding state's power to subject sacramental use of peyote to general criminal prohibition on use of the substance); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (invalidating city ordinance banning ritual sacrifice of animals).

166. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (invalidating requirement of saluting the flag in public school).

167. A point stressed in Cappel, *supra* note 3, *passim*.

168. So fundamental are these institutions to the project of social control through law that the threat of coercion by government agents claiming a monopoly over the legitimate use of force is sometimes said to be the very touchstone of "law." See generally H.L.A. HART, *THE CONCEPT OF LAW* 20–25 (2d ed. 1994) (discussing the Austinian notion that law consists of orders backed by threats issued by the sovereign). This is, of course, not the complete story. People also obey the law, in part, because they believe in it, or because, even if they do not believe in the law, they accept it as the judgment of a political process which they believe to be legitimate.

169. Norms serve other functions than controlling self-interested behavior, of course. For example, sometimes, they may simply offer efficient conventions for the organizing of human behavior—such as the norm that pedestrians pass one another on the right—at least in countries with right-hand side driving rules.

In some cases, two or more of these systems may overlap in coverage.¹⁷⁰ For example, the police will ticket people who park in “handicapped” parking spots without a valid permit,¹⁷¹ but the regime of legal regulation is powerfully supplemented by private enforcement.¹⁷² Ritual may also command performance (or nonperformance) of acts that are covered by norms or laws. For example, the marriage ritual commands that the partners honor one another by remaining sexually faithful. Sexual fidelity within marriage is also a salient social norm.¹⁷³ And laws have long prohibited adultery. Laws, norms, and ritual combined to sanction the conduct.¹⁷⁴

In other cases, the task of controlling conduct may be restricted to one or another domain. For example, in some societies—including ours—a limited amount of tax fraud does not violate either a social norm or the identity of citizenship that rituals enjoin. People are rarely censured when they fail to pay sales tax on items ordered out of state, even if the law requires that they report and pay. Enforcement here occurs in the legal realm if it occurs at all. Neither law nor ritual requires that people stand to the right on escalators if they are not climbing or descending; but in some societies, this practice has developed as a widely observed social norm. Neither law nor social norms require that people engage in heroic or extraordinary efforts on behalf of others if they have not agreed to do so in advance, but such conduct may be demanded as a result of the social role that is instilled by ritual.

Other things being equal, a given society is likely to opt, at least roughly, for a mix of ritual, laws, and norms that achieves the highest surplus of social benefit over social costs. The tradeoff is complex and will vary depending on the particular characteristics of a given society. However, some general observations appear salient. First, we may compare ritual, laws, and norms along the dimension of the costs of enforcement. As compared with other forms of social control, ritual has certain advantages here. If ritual is effective, it shapes a person’s identity in such a way that he or she experiences satisfaction from behaving in accordance with the social role and abhors behavior that contravenes that role. Such an individual will

170. See RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY* (2001) (Laws and norms sometimes overlap in coverage.).

171. See Geoffrey P. Miller & Lori S. Singer, *Handicapped Parking*, 29 *HOFSTRA L. REV.* 81 (2000).

172. See Miller, *supra* note 24.

173. See generally Scott, *supra* note 107.

174. The fact that high rates of adultery occur, notwithstanding the overlapping prohibitions of laws, norms, and ritual, is one illustration of the fact that no program of social control is likely to provide complete deterrence.

act in socially approved ways on his or her own, without being compelled to do so *ex post*, and, moreover, will encourage others to do so.¹⁷⁵ Ritual, in other words, is essentially self-enforcing to the extent that members of the society come to experience their personal identities and the identities of others as congruent with the social roles defined in the ritual process.

Social norms may also be self-enforcing to some extent. People sometimes internalize norms so that they comply with the rules even when they are not compelled to do so by threat of *ex post* sanction. To this extent, social norms, like behaviors demanded by ritually established social identities, may be self-enforcing. But many social norms are not internalized and require external sanction to be effective. Moreover, internalizing a social norm may be an intellectual process in which the individual comes to believe that the norm is something that *ought* to be followed because doing so is good for the society. Such intellectual processes may be effective at governing behavior in some people, but they are unlikely to be as effective as control of behavior through identity. People often act contrary to their professed values and beliefs, especially if they can avoid being called to account for doing so. In contrast, people rarely act contrary to their sense of identity, because identity itself is the wellspring of action. Thus, even people who have internalized social norms on an intellectual level are often at risk for deviating from those norms when the incentives to deviate are large. The upshot is that social norms are less likely to be self-policing than are rituals. For a social norm to be effective, it may be necessary for members of the group to monitor others to ensure that they are complying with the rules and to engage in costly sanctioning behavior (rebuking or shaming) if they detect violations.¹⁷⁶

Law, along this continuum, appears to require the greatest expenditures on *ex post* enforcement. Although some abide by the law because they internalize it and believe it is right to do so, the fact that a particular rule is embodied in law is often seen as little reason to comply. People rarely insist that law is worthy of respect and compliance simply *because* it is the law, without reference to its underlying justifications. Where the law deviates from behaviors that people would otherwise follow, it usually has little effect beyond the threat of *ex post* sanctions. And when people follow the law for reasons other than fear of being caught and sanctioned if they disobey, it is often because the law embodies norms of behavior that they

175. See Sen, *supra* note 28, at 349 (observing that if individual identity is aligned with social welfare, the prisoner's dilemma can be overcome without formal contract and enforcement).

176. For discussions of social sanctions for norm violations, see Richard A. Posner & Eric B. Rasmusen, *Creating and Enforcing Norms, With Special Reference to Sanctions*, 19 INT'L REV. L. & ECON. 369 (1999); Miller, *supra* note 24.

would follow in any event. To the extent that legal rules are not enforced by systems of social norms or ritual, they require costly enforcement devices.

Thus, other things being equal, ritual tends to be cheap to enforce *ex post*; social norms tend to be relatively inexpensive to enforce (but more expensive than ritual); and law tends to be expensive relative to the other two means of social control. This principle suggests that where *ex post* enforcement is costly, ritual is likely to assume relatively greater importance, but where *ex post* enforcement is cheap, ritual is likely to have relatively less importance. Thus, we are likely to see greater reliance on ritual in the case of behaviors that are difficult for third parties to observe, or where it is difficult because of the factual complexity of a situation to specify rules with reasonably determinate application. Ritual is also likely to assume greater importance relative to law when the apparatus of legal enforcement is ineffective (due to corruption, weak government, or disrespect for the law). On the other hand, where it is relatively inexpensive to monitor behaviors, where defined rules of behavior can be set forth in advance with reasonable clarity, or where government enforcement is strong and respected, ritual is likely to play a relatively smaller role.

Although ritual enjoys an advantage over laws and norms with respect to the costs of enforcement, it is inferior to these alternative forms of social control with respect to the costs of establishing itself in the first place. Ritual, as we have seen, often requires large social expenditures *ex ante*. Moreover, because ritual shapes identities, it can be understood, in some sense, as harming the individuals who are its subjects. Indeed, this element of harm appears to be coded in the ritual process itself through the symbolic performance of violent acts. And ritual, because it is conservative, i.e., not easily changed or revised, can impose limits on a society's ability to adapt to shocks and in particular to cope with rapid technological change.

Compared with ritual, social norms appear somewhat cheaper to establish *ex ante*. We do not, in fact, have a well-developed theory for how social norms evolve and develop. Some norms appear to emerge spontaneously as a result of the need for people to coordinate their activities within a society (e.g., a norm for passing on the right). Others may have evolved from a concrete historical event (where did baseball's tradition of playing "Take Me out to the Ballgame" during the seventh inning stretch originate?). Still other norms may arise as a result of manipulation by interest

groups or “norm entrepreneurs.”¹⁷⁷ This process of establishing social norms is certainly not costless and may involve “rent seeking” expenditures among competing interest groups seeking alternative norms.¹⁷⁸ However, compared with rituals, social norms appear in general to be more flexible for society and less intrusive in the lives of individuals.

Law, it would appear, is less costly *ex ante* than either norms or rituals. This is not to say that law is cheap in any absolute sense. Competing interest groups expend social resources on lobbying, litigating, or otherwise seeking governmental actions favorable to their interests. Candidates campaign for office, which especially in recent years can be an expensive undertaking. Laws require legislatures, staffs, budgets for publication and promulgation, and so on. Nevertheless, these costs are probably lower than the costs of establishing social norms or rituals with comparable effects on behavior and social welfare. Further, laws do not impose the costs on individuals that are exacted in the ritual process and that are present, although to a much lesser degree, in the process by which social norms are established. Laws do not, in general, seek to influence or control people’s identities or assign social roles to involuntary subjects. The fact a law is on the books does not change a person’s identity, even though he or she may elect to comply with it. Thus, laws do not impose the psychic violence on individuals of the sort that can be observed in some rituals.

What predictions, if any, can we make about the expected incidence of laws, rituals, and norms in different sorts of societies? Any such predictions must be entertained with caution, given the inevitable complexities of the issues. The following, however, appear to be relatively plausible in light of the concept of ritual as social control. First, we are likely to observe a higher ratio of ritual to law in smaller, relatively homogenous groups than in larger groups. In smaller groups, ritual is likely to be more efficacious at shaping identity than in larger groups, in which the effect of ritual at providing people with a coherent system of meaning and social roles is likely to be dissipated by the impact of other cultural systems and values.¹⁷⁹ Further, as we have seen, the lack of effective partner choice in smaller societies places a premium on identity change through ritual as a means for

177. The phrase is from Cass Sunstein. See Sunstein, *supra* note 22, at 929.

178. See GEOFFREY P. MILLER, *Norms and Interests*, 32 HOFSTRA L. REV. 637 (2003). On rent-seeking, see MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1971).

179. See DAVID LOCKWOOD, *SOLIDARITY AND SCHISM: ‘THE PROBLEM OF DISORDER’ IN DURKHEIMIAN AND MARXIST SOCIOLOGY* (1992) (distinguishing between “social integration,” which binds the individual to the group through moralizing and ritual, and “system integration,” which produces social order by ensuring that the various social subsystems are well integrated). I thank David Garland for bringing Lockwood’s work to my attention.

controlling self-interested behavior.¹⁸⁰ Conversely, we are likely to observe relatively more law in broader, culturally diverse groups, on which ritual is likely to have less effect.¹⁸¹

Ritual is likely to play a larger role in societies that are relatively insulated from technological change and a smaller role in societies that are in the midst of rapid development. The reason is that ritual tends to fix social relationships, including social relationships that structure technological production, in a relatively rigid form. The rigidity of ritual is by no means absolute; rituals can and do evolve in response to changed circumstances. But ritual is clearly less flexible than other means of social control, such as law. When social relationships are fixed, the culture is likely to resist rapid technological change and to experience instability in the face of technological change that does occur.¹⁸²

We are likely to observe relatively more ritual, and less law, in societies where the political system is unstable or the legal system is weak. It is perhaps for this reason that we observe a certain degree of ritualization occurring in impoverished neighborhoods where the effectiveness of state control is low. In such neighborhoods, organized religion is likely to play an important role, and outlaw groups, such as gangs, may implement their own forms of ritual in order to provide their members with incentives to engage in behaviors that are beneficial to the gangs, even if harmful to the broader society.

As to norms, it is hard to make a prediction based on technological and economic conditions. Like rituals, norms are, other things being equal, more likely to play an important role in small social groups in which people deal with one another through repeat interactions, because in such settings, the incentives to behave cooperatively with others is larger. Moreover, because social norms appear less “sticky” than rituals—they are susceptible to relatively rapid change in response to changed conditions—norms appear better adapted than rituals to cope with rapid technological developments. Thus, social norms continue to govern large domains of behavior even in modern industrial societies. Because these considerations cut in somewhat different directions, it is difficult to make a firm prediction as to

180. See *supra* notes 100–03 and accompanying text.

181. In fact, this appears to hold true, at least for rituals classified as rites of passage. Turner notes that such rituals “are found in all societies but tend to reach their maximal expression in small-scale, relatively stable and cyclical societies, where change is bound up with biological and meteorological rhythms and recurrences rather than with technological innovations.” VICTOR TURNER, *THE FOREST OF SYMBOLS: ASPECTS OF NDEMBU RITUAL* 93 (1967).

182. The hypothesis that less technologically sophisticated cultures tend to be more ritualized is borne out in observation. See Gluckman, *supra* note 67, at 2 (observing that tribal society displays greater ritualization than modern society).

how changes in social conditions will affect the importance of social norms as devices of social control.

Regardless of the particular society involved, the trade-off between ritual, norms, and law is unlikely to generate a “corner solution.” That is, we are unlikely to see any society opting for all ritual, all law, or all norms; instead, we are likely to observe varying mixes in different societies. In fact, that is what we do observe: even in highly advanced industrial societies, rituals still shape identities, while even in preindustrial tribal cultures, principles of tribal law usually play a role in structuring social relations and resolving disputes. Social norms can be observed at work in societies of all levels of sophistication and development.

CONCLUSION

This Article has provided a legal theory of ritual. It argues that one—although not the exclusive—role of ritual is to control behavior by assigning social roles and aligning individual identities with social roles so assigned. Rituals employ an impressively varied and effective arsenal of strategies that appear useful at reaching people at the level where their senses of identity are susceptible to change. Other things being equal, many societies are likely to display a degree of ritual efficiency, in the sense that social expenditures on ritual will approximate the point where the marginal costs of an additional unit of expenditure equal the marginal benefits.

Ritual provides both “carrots” and “sticks” to induce the proper alignment of individual and social identities. From the positive point of view, rituals offer celebration to people who have successfully adjusted their sense of individual identity to the prescribed social role and to others who recognize and endorse this change. On the other hand, the social role is compulsory, not only for the individual asked to assume it, but also for everyone else whose obligation it is to respect the rights and privileges that the role confers. The compulsory nature of ritual—the “stick”—is reflected in the violence that is explicit or implicit in many rituals.

Because rituals are compulsory, they require justification. Rituals are legitimated in several ways, including the fact that they offer a model of the cosmos through which participants can understand their lives; that they are performed; that they remain relatively stable over long periods of time; and that they are elaborated by narratives, myths, etymologies, and intellectual theories.

The theory of ritual as social control suggests the utility of a typology based on the nature of the control being exercised. Rituals of reformation—including initiation rites, marriages, and installation ceremonies—seek to

mold individual identities into new social roles. Rituals of renewal—such as ordinary services, patriotic ceremonies, and sacrificial rituals—act as “booster shots” that reinforce the connection between personal identity and social role. Rituals of restoration—including purification, confession, and cure—are corrective in nature: they bring individual identity back into alignment with the social role when there has been a break or threat of break between the two.

The aspect of ritual discussed in this Article can be referred to as its “legal function” because its effect, at the most general level, is similar to the effect of laws and social norms. Laws, norms, and rituals all serve the general goals of preserving the fabric of social cooperation and deterring the tendency that individuals would otherwise have to defect from the social compact when doing so would serve their opportunistic self-interest. Rituals, however, accomplish this function in somewhat different ways than laws or norms. Rituals are cheap *ex post* because they are self-enforcing: people experience unpleasant emotions when they act against their sense of personal identity, and accordingly they usually do not do so. Norms and laws are more costly to enforce because some external sanctioning mechanism—either ordinary people who rebuke the violator, or police, courts, and other legal institutions—impose a formal sanction for noncompliance. On the other hand, the change in personal identities that appears to be an objective of ritual is costly for societies. Norms and laws appear to be less costly along this dimension. Ritual is cheap to enforce *ex post* but costly to impose *ex ante*.

The theory of the legal function of ritual generates several suppositions about the expected incidence of ritual, norms, and law across different cultural conditions. Societies are likely to expend more resources on ritual, relative to law, when they are small, homogenous, and tight knit; when they are relatively insulated from technological change; and when they are politically unstable or undeveloped. As to norms, theory does not offer definite predictions: they appear likely to play an important role across a wide range of cultures and states of technological development. A theory of social control that includes laws and norms should not be considered inclusive unless the influence of ritual is also considered.