Bringing Cultural Practice Into Law: Ritual and Social Norms Jurisprudence

Andrew J. Cappel

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.
BRINGING CULTURAL PRACTICE INTO LAW: RITUAL AND SOCIAL NORMS JURISPRUDENCE

Andrew J. Cappel*

I. INTRODUCTION

The past decade has witnessed an explosive growth in legal scholarship dealing with the problem of informal social norms and their relationship to formal law.¹ This article highlights a sa-

* Associate Professor of Law, St. Thomas University Law School. J.D., Yale Law School; M.Phil., Yale University; B.A., Yale College. I would like to thank Bruce Ackerman and Stanley Fish, both of whom read prior versions of this paper, for their help and advice. I also wish to thank Robert Ellickson for his encouragement in this project. In addition, valuable suggestions were made by participants when a version of this paper was presented at the 2000 Law and Society conference in Miami. Among the many of my present and former colleagues at St. Thomas who have provided helpful critiques, I particularly wish to thank Jean Thomas, Beverly Horsburgh, Fred Light, Siegfried Wiessner, and Peter Margulies, with special thanks to former Dean Dan Morrissey for initially encouraging me to study the role of ritual in legal and informal legal practice.

lient feature of our common social practice integral to the generation, maintenance, and transformation of social norms (as well as to many formal legal practices), the significance of which has been largely unappreciated in the mass of literature: the fact that many norms and political/legal practices are produced by and grounded in ritualized activity. In a society that is highly

---


2. There is a brief discussion of the role of ritual in creating trust in informal social norms in Allan Gibbard, Norms, Discussion, and Ritual: Evolutionary Puzzles, 100 ETHICS 787, 798-99 (1990). Additionally the role of “ritual” (more broadly defined for purposes of this article) in changing social meanings is briefly outlined in Lawrence Lessig, The Regulation of Social Meaning, 62 U. CHI. L. REV. 943, 978-80, 1008-14 (1995), and in promoting group solidarity in ELLICKSON, ORDER, supra note 1, at 233-36. See also POSNER, SOCIAL NORMS, supra note 1, at 54; Etzioni, supra note 1, at 174. None of these, however, fully explore the connection between ritual and informal norms, particularly their ability to create a source of sacred authority opposed to that of the state. Recently, economist Michael Chwe has analyzed the role of ritual in the context of the rational actor model of social coordination. See generally MICHAEL SUK-YOUNG CHWE, RATIONAL RITUAL: CULTURE, COORDINATION, AND COMMON KNOWLEDGE 3-8 (2001). According to Chwe, ritual practices help solve coordination problems that can arise when members of a group who wish to adopt a certain course of action are inhibited from doing so because they do not know whether they will be joined by others. See id. Ritual provides group members with the common knowledge that others are also like-minded, by providing the opportunity for participants to make public representations of their preferences for a given course of action. This is an important insight, but it only addresses a single aspect of the ritual phenomenon. Chwe does not take into account the way that ritual directly affects the preferences of individual actors for a certain course of action (or set of norms). Moreover, Chwe’s conception of common knowledge, which focuses only on what individuals know about the intentions of others, ignores the critical way that ritual (1) establishes the conceptual framework of obligation within which individual actors make decisions, and (2) helps stabilize the intersubjectively shared linguistic and cultural meanings that make communication possible at all. In particular, Chwe’s approach largely ignores problems of social trust and the way that ritual creates “hypertrust” among the participants in a ritual community. While some aspects of social norms can be understood in terms of coordination problems among like-minded individuals, many others need to be conceptualized as collective action problems, modeled in terms of noncooperative games such as Prisoner’s Dilemma, that raise serious issues concerning the problems of defection and free-riding. In these cases, a substantial premium is placed upon one player’s
secularized, relative to other eras and cultures, it is difficult to see the impact of ritualized activity on our norms and beliefs, and easy to dismiss ritual as a vestigial remnant of an earlier era, surviving (perhaps barely) in isolated practices cabined off under the general rubric of "religion." This dismissal, however, is misleading on two counts. Limiting our conception of ritual to formal religious practices ignores the pervasiveness of ritualized activity in more mundane aspects of human activity—"secular rituals" that have been documented for decades by anthropologists and ritualists.\(^3\) More important, such a view ignores a critical feature of human life at its most basic: ritual is deeply embedded in human ontogeny,\(^4\) in our communicative practices, and in the way that our mind organizes and shapes perceived reality. The defining and ineliminable traits of humanity include not only rationality and language, but also the \textit{homo ritualis} nature of a human being. The ability to create and perform rituals underlies many of our rational and communicative faculties (in both practical and evolutionary senses). This ability has important implications for our understanding of informal norms, formal law, and our deepest notions of fairness and legitimacy. To see the world from the perspective of the pervasive cultural practice of ritual is to see new patterns in the rich tapestry of human behavior, breaking down the distinctions between our linguistic, cognitive, emotional, and rational capacities, in a way that better reflects the way life is lived as an interconnected whole.

The fundamental insight upon which this article is based is that there are a number of cultural media through which a social

---


norm can be instantiated in social life, and that the specific medium adopted has important implications for the normative order. Specifically, a norm that is generated by, or reinforced in connection with, ritualized practices is likely to be clearer and more widely understood, more strongly held, and less susceptible to change than norms instantiated in other ways. Because of its central role in our communicative and cognitive systems, ritualized behavior forms a fundamental constitutive element in the underlying cultural, social, and linguistic background in which all evolution and transformation of normative orders occurs, including changes implemented by self-interested, rational actors. As it helps create and maintain informal social norms, ritual simultaneously provides the most important, and in many cases the only, vehicle for the creation of our notions of higher values, unquestionable authority, and ultimately of the sacred, in both the religious and secular spheres. As a result, the ritualization (or deritualization) of social norms has an inevitable impact on larger issues of morality, legitimacy, and justice, extending beyond the norms themselves.

The distinctive way that ritualization affects social norms can be intuitively captured by considering the differences between norms of safety governing traffic at a stoplight and norms of solidarity among members of a labor union that are perpetuated at communal dinners and ritualized songfests (singing "Solidarity Forever"). The sequence for stop and go at the traffic light is arbitrary and purely conventional, based upon general convenience and common practice; the meaning of red and green signals could be reversed without difficulty, provided enough people agreed to follow the new convention. Additionally, merely conventional norms often have implications only within their own sphere of activity—in this case traffic safety. In contrast, we have a deep understanding of the difference between such conventional norms and ritual labor norms. Ritual norms stir up powerful emotions and are a strong motivational force compelling compliance, with a correspondingly strong resistance to alteration. Moreover, ritually instantiated norms of solidarity ultimately have an impact far beyond the sphere of employer/employee relations, involving concerns such as the dignity of labor and the moral obligation of mutual assistance.

These distinguishing features are not merely the result of context, but reflect the impact of the ritual process itself upon human cognition, emotions, communication, and understanding of higher values.

A practice-based approach of the type offered here differs in certain crucial respects from both the cultural and rational actor theories more commonly employed in the analysis of informal norms, while incorporating elements of each. Like recent cultural theory of norms and laws, this perspective views culture as a set of artifacts or tools with which we actively organize and act upon our understanding of reality. But unlike many of these theories, this perspective rejects a strong "interpretivist" or hermeneutic view that treats culture primarily as a set of codes, texts, or traditions, and sees the evolution of social norms as the primary result of interpreting or contesting these traditions.

6. Although differing from other practice-based theories, this approach shares a number of their central concerns such as: the importance of emotion and the human body; the significance of temporality on human action; the critical importance of repetitive behavior in stabilizing a social order; the way that everyday practice "instantiates" higher-level normative considerations; the interaction of material practices with symbolic structures; and the way that cognitive practices are "situated" in everyday forms of activity. See, e.g., PIERRE BOURDIEU, OUTLINE OF A THEORY OF PRACTICE (Richard Nice trans., Cambridge Univ. Press 1977) [hereinafter BOURDIEU, OUTLINE]; PIERRE BOURDIEU, THE LOGIC OF PRACTICE (Richard Nice trans., Stanford Univ. Press 1990) [hereinafter BOURDIEU, LOGIC]; MICHAEL COLE, CULTURAL PSYCHOLOGY: A ONCE AND FUTURE DISCIPLINE 124 (1996); EDWIN HUTCHINS, COGNITION IN THE WILD (1995); Randall Collins, On the Microfoundations of Macrosociology, 86 AM. J. SOC. 984 (1981); R. Friedland & R. Alford, Bringing Society Back In: Symbols, Practices, and Institutional Contradictions, in THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 223-62 (Walter W. Powell & Paul J. DiMaggio eds., 1991) [hereinafter THE NEW INSTITUTIONALISM]; Marshall Sahlins, Individual Experience and Cultural Order, in THE SOCIAL SCIENCES: THEIR NATURE AND USES (William Kruskal ed., 1982), reprinted in MARSHALL SAHLINS, CULTURE IN PRACTICE: SELECTED ESSAYS 277 (2000). For influential practice-based approaches to formal law (albeit differing significantly from the one presented here), see generally PAUL W. KAHN, THE CULTURAL STUDY OF LAW (1999); W. MICHAEL REISMAN, LAW IN BRIEF ENCOUNTERS (1999). Practice based considerations are also important in pragmatist legal theorizing, notably Richard Posner's "activity theory" of adjudication. See RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 456-57 (1990). The practices discussed by Posner in this work, however, relate exclusively to activities within the legal profession, without consideration of the impact of specific cultural practices within the broader society. See id.

7. See infra notes 8-10 and accompanying text.

8. See ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 219-25 (2000), for a summary and critique of "interpretivist" theories. Although Amsterdam and Bruner differentiate their views from interpretivist/constructionist models, their heavy emphasis on the role played by canonical narratives in legal and normative considerations appears to constitute yet another form, albeit substantially modified, of interpretivist/hermeneutic discourse. Interpretivist theory is
stead, this article focuses on the way that a specific social practice, in this case ritualization, ultimately shapes and constrains the values, interpretations, and understandings that underlie every system of social norms. This emphasis on cultural practice reflects the fact that we simply cannot talk sensibly about interpreting cultural artifacts without taking into account the impact of the specific concrete cognitive and institutional structures within which the interpretive process takes place. Conceptual systems survive poorly in the absence of social practices that sustain them.9

Like current rational actor models, this article's treatment of ritual and social norms reflects a form of methodological individualism. Ritual is an important vehicle through which individuals actively define themselves as members of a normative community, communicate amongst themselves normative commitments, internalize prevailing norms, and act to transform normative systems. A ritual-based perspective is thus to a large extent compatible with the dominant rational actor paradigm of informal social norms. It is not, however, reducible to this paradigm. A ritual perspective highlights one of the most important ways that individual rationality depends upon, and is shaped by, a broader sphere of human communicative and social activities, exploring factors that are generally treated as non-problematic in game theoretic models.10 This in turn points out some of the ways that cost-benefit analysis of social norms can and should take greater explicit account of cultural factors.

Finally, focusing on ritual practices allows us to incorporate


[10] Indeed, too sharp a dichotomy between methodological individualism and holism appears problematic under careful analysis. For example, as Edwin Hutchins has powerfully argued, because virtually everything that we do in the course of everyday task-performance reflects a division of cognitive labor within society, in many ways it makes little sense to sharply distinguish individual cognition (including "rationality" stricto sensu), from more systemic forms of cognitive processing (or vice versa); what needs to be explained is the complex interrelationship between the two. See HUTCHINS, supra note 6, at 185, 239-62; see also JOHN R. SEARLE, THE CONSTRUCTION OF SOCIAL REALITY 25-26 (1995); James V. Wertsch, Mediated Action, in A COMPANION TO COGNITIVE SCIENCE 518, 525 (William Bechtel et al. eds., 1998).
recent advances in our understanding of the role of emotion in human thinking into the study of informal social norms, and the realization that our capacity for thought is ultimately grounded in organic brains and physical bodies. A combination of emotional and physical factors has been shown to affect a wide range of human communicative, cognitive, and social activities. Ritual's unique blend of emotion, physical performance, and communicative activity not only helps explain why the process of ritualization has such a profound and distinctive impact on social norms, but also makes ritual an ideal vehicle through which to gain a better understanding of how emotion and physicality operate in our cognitive and social lives.

Part II of this article briefly reviews current cost-benefit and sociocultural theories concerning the development of informal norms, and suggests how a ritual perspective can resolve significant aporias that currently exist in each type of theory and can unify these approaches in the context of studying ritualized norms. Part III defines the ritual process and highlights the salient features of ritual practice. It shows the pervasiveness of both religious and secular rituals in our everyday life. Part IV discusses ritual's "constitutive" role, including the ways that it influences human communication, cognition, and social interaction so as to provide the framework within which a society creates, maintains, and changes systems of informal norms. Part V looks at the impact of ritualization on social norms in operation during the course of everyday life, with particular emphasis on the role played by human emotion and physicality in promoting a stable and effective system of norms. Part VI offers a ritual perspective on the question of when formal law should substitute for informal norms (or vice versa). It continues with a discussion of the impact that formal state law can have on civil society's ability to create and articulate its sense of the sacred through ritual practice, and briefly highlights two well known cases. In Employment Division v. Smith and Boy Scouts of America v. Dale, the Supreme Court's failure to fully understand the rit-

---

11. There has been some discussion of certain aspects of the embodied nature of human cognition and its impact on formal law, notably by Steven Winter. See, e.g., Steven L. Winter, A CLEARING IN THE FOREST: LAW, LIFE, AND MIND (2001).
12. See infra Part II.
13. See infra Part III.
14. See infra Part IV.
15. See infra Part V.
16. See infra Part VI.
ual implications of the case before them resulted in highly problematic answers to the question of the scope of the state’s authority to regulate the sacred. A brief conclusion is offered in Part VII.

II. CURRENT PERSPECTIVES ON NORMS

A great deal of progress has been made over the last decade in our understanding of informal social norms, both on a theoretical level and in empirical studies documenting the existence and efficiency of informal norms in fields as widely varied as bee-keeping and sumo wrestling. Most of these studies focus upon the development and maintenance of beneficial normative structures by self-interested rational actors, and arose in response to a growing awareness that most of human activity is regulated by informal norms rather than by formal law. Moreover, earlier sociologically-oriented studies have conspicuously failed to develop a coherent explanation for why norms arise in the first place and how they change. The new studies adopt a non-cooperative game theoretic approach, generally employing some form of the Prisoner’s Dilemma.

17. See infra Part VI.
19. While recognition of the importance of norms can be traced back at least to Weber and Durkheim, the fullest expression of this view of norms is associated with Talcott Parsons. See, e.g., TALCOTT PARSONS, ON INSTITUTIONS AND SOCIAL EVOLUTION 174-77, 188-209 (Leon H. Mayhew ed., 1982). For criticisms of Parson’s views as “oversocialized” and ignoring individual rationality and choice, see CHONG, RATIONAL LIVES, supra note 1, at 12-44; ELLICKSON, ORDER, supra note 1, at 149-55; Dennis H. Wrong, The Oversocialized Conception of Man in Modern Sociology, 26 AM. SOC. REV. 183 (1961).
20. In a classic Prisoner’s Dilemma, two players have the option of adopting a
At the heart of new norms literature is a central problem of social coordination: how, given the presence of utility maximizing rational actors, can cooperation occur despite incentives for such individuals to act in their own self-interest? A collective action problem exists wherever social welfare would be enhanced if everyone cooperated to adopt a certain type of behavior, but because the benefits are diffusely spread throughout the community, and significant costs are incurred by each individual in adopting the cooperative solution (either directly or in terms of lost opportunities for individual maximizing activity), individuals are tempted to defect from the cooperative solution and seek to maximize their own benefits while “free riding” on the cooperative activity of others. This pessimistic model, however, seriously underestimates the large amount of cooperation that is empirically observed. Norms theorists argue that cooperation is promoted by the presence of informal social norms that inhibit the ability of individuals to free ride by raising the cost of defection from cooperative behavior, thereby serving social welfare enhancing functions, and that such a utilitarian bias for informal social norms has been well documented by a wide variety of empirical studies.

mutually cooperative outcome (e.g., to work together) or to defect from cooperation (e.g., shirking from such labor). The payoff for mutual cooperation for each player is greater than what otherwise would be gained if both go it alone and do not cooperate. What complicates matters, however, is that each player will do even better if she chooses to defect from cooperation and the other player chooses to cooperate, with the cooperating player thereby receiving a nugatory “sucker’s payoff.” It is assumed that players cannot communicate with one another (other than by decisions made in the course of the game itself), and cannot make binding commitments between themselves to coordinate strategies. Players in Prisoner’s Dilemma and other cognate games are normally assumed to be fully rational and to have perfect knowledge of their own and opponents moves, as well as of the payoff structure of the game. The rules of the game are assumed to be fixed. The equilibrium strategy for both players in a single play of a classic Prisoner’s Dilemma is to defect. See JAMES D. MORROW, GAME THEORY FOR POLITICAL SCIENTISTS 78-79 (1994).

21. A classic paradigm is the problem of a common pool resource that will be exhausted by overuse. Individuals have an incentive to maximize their own take while relying on others to restrain their consumption. If free riding becomes widespread, the cooperative solution breaks down and the potential gains from collective action are lost. See, e.g., ELINOR OSTROM ET AL., RULES, GAMES, AND COMMON-POOL RESOURCES 15-16 (1994).


23. See ELICKSON, ORDER, supra note 1, at 167-83. According to Ellickson, this
In the literature, this type of cost-benefit approach takes two main forms. The first focuses on the community’s ability to deter noncooperation by imposing costs for norm violation, either in the form of guilt or through the use of informal social sanctions (e.g., negative gossip, public chastisement, ostracism). A norm exists and is effective whenever there is a widespread and well-known consensus in favor of the type of behavior that the norm encourages. The weight of this consensus, combined with the willingness of norm adherents to sanction defectors, results in reaching an equilibrium position at a relatively high rate of compliance. In general, a key element to the establishment of consensus and equilibrium is the fact that the normative standard has been internalized (through childhood socialization, education, etc.) by a sufficient number of individuals. If we accept that individuals value social esteem very highly, competition to enhance one’s social status by complying with widely acknowledged norms, and seeking to avoid the reputational damage resulting from norm violations, can also facilitate the formation of a stable system of social norms.

Internalization and esteem can often work together in a common structure, where some norms are widely internalized, while others rely primarily upon mechanisms of public esteem for their effective-


See Cooter, Expressive Law, supra note 1, at 587 (norm as “effective consensus obligation”); Cooter, Normative Failure, supra note 1, at 954-55.

See, e.g., McAdams, Origin, supra note 1, at 355-65.
ness.\textsuperscript{27}

The second cost-benefit approach focuses on the way that players in a non-cooperative game situation can achieve cooperative results by means of signaling their intentions to others through symbolic acts.\textsuperscript{28} Individuals who wish to cooperate identify each other by sending symbolic messages that separate themselves from non-cooperators.\textsuperscript{29} Signals are selected from the available stock of symbols in the prevailing culture.\textsuperscript{30} Because signaling is generally costly, only cooperators will normally be expected to incur this cost in order to signify their cooperative intent. Having thus identified each other, cooperators will transact with one another to the exclusion of non-cooperators, and a stable normative order is thereby created without the need to impose costly sanctions in order to secure compliance; a social norm thus marks an equilibrium point where adherence to a certain type of behavior constitutes an effective symbol that distinguishes cooperators from non-cooperators.\textsuperscript{31} A social norm generally persists until it fails to perform its signaling function adequately, either because it is so broad or inexpensive that everyone issues the same signal, or so narrow or costly that no one signals, at which time it may be replaced by a more effective symbol of cooperative intent.\textsuperscript{32}

In both of the foregoing approaches, the evolution of individual social norms and of normative orders is often viewed as resulting from the activity of rationally self-interested "norm entrepreneurs."\textsuperscript{33} There is a "market" for norms in which self-conscious, socially aware suppliers of norms see where new or improved norms would be welfare enhancing and seek to introduce them to the public in return for personal satisfaction, material reward, social prestige, or some other factor. Promoters of efficient norms are rewarded by the population in general through, among other means, enhanced esteem (under the esteem model) or increased cooperation in mutually beneficial transactions (according to the signaling model).\textsuperscript{34}

\textsuperscript{27} See id. at 364.
\textsuperscript{28} See Posner, Symbols, supra note 1, at 768.
\textsuperscript{29} See id.
\textsuperscript{30} See id. at 774.
\textsuperscript{31} See POSNER, SOCIAL NORMS, supra note 1, at 34.
\textsuperscript{32} See Posner, Symbols, supra note 1, at 774, 790-91.
\textsuperscript{33} See, e.g., POSNER, SOCIAL NORMS, supra note 1, at 29-32; Lessig, supra note 2, at 985-86; McAdams, Origin, supra note 1, at 371.
\textsuperscript{34} See Robert C. Ellickson, The Evolutionary of Social Norms: A Perspective
While cost-benefit approaches have deepened our understanding of informal social norms and have produced some impressive empirical results, some cogent criticisms have been offered against certain aspects of this theory. One criticism is that they often fail to take into account the impact of a community's specific history and traditions on social norms. By viewing norms largely as external constraints on individual (non-cooperative) preferences, current theory cannot adequately account for the fact that norms almost certainly influence preferences because they constitute much of the cultural environment in which our underlying predisposition, tastes, and choices develop as well. Moreover, treating norms as solely extrinsic factors, combined with the common assumption that preferences are fixed, paints a distorted picture of the process whereby individuals internalize normative standards, making them appear more clearly and indelibly etched into the minds of socialized individuals than is actually the case. As a result, current theory has difficulty taking into account the obvious fact that different people internalize norms to a greater or lesser extent, and that different types of norms have greater or lesser internal motivational force to compel compliance, nor can it fully explain the fact that the motivational force of norms can change over the lifetime of an individual.

Additional aporias in these current models exist at an even deeper level than these sociocultural criticisms—at the level of human communicative and cognitive abilities. Rational actor theories assume a great deal of shared background knowledge on the part of individuals in a specific normative community, as well as stable practices and rules that structure the game itself.

from the Legal Academy 23-28 (Yale Law Sch., Program for Studies in Law, Econ., and Pub. Policy, Working Paper No. 230, 1999). Whether or not this process leads to the creation of optimal norms and optimal supply of beneficial norms, is hotly contested. See infra notes 373-75 and accompanying text.

35. See Etzioni, supra note 1, at 171-74. This fundamental significance of culture and concrete social relations underlies much of the current sociological study of market behavior, which stresses how exchange activity is “embedded” in sociocultural networks. For a review of this literature, see John Lie, Sociology of Markets, 23 ANN. REV. SOC. 341, 349-51 (1997).

36. See Robert C. Ellickson, Bringing Culture and Human Frailty to Rational Actor Models, 65 CHI.-KENT L. REV. 23 (1989); Etzioni, supra note 1, at 162-63.

37. See CHONG, RATIONAL LIVES, supra note 1, at 220; Etzioni, supra note 1, at 167-69.

38. See infra notes 332-48 and accompanying text.

39. In the language of game theory, “common knowledge.” See MORROW, su-
This background knowledge includes items such as stable, inter-subjective understandings pertaining to the literal meaning of a social norm and of the circumstances under which a norm has been violated, the costs and benefits for cooperative or non-cooperative behavior, and the shared meaning of cultural symbols. Factors such as these inform the practices, rules, and payoffs that give internal structure to the games themselves; in the absence of this relatively fixed background knowledge, game theory cannot model behavior. (Even without adopting a game theoretic perspective, it is intuitively obvious that human cooperative activity and social norms themselves could probably not exist without stable systems of mutual understanding. Try to imagine a functioning system of norms where everyone understood all of the norms differently.) Game theoretic models also make relatively strong assumptions concerning human cognitive capacity: even those predicated on bounded, rather than full rationality, assume that individuals display impressive powers of unbiased decision-making, recall, and probabilistic judgment.

Our ability to achieve widely shared, stable, and mutually intelligible background understandings depends upon human linguistic ability (in terms both of formulating our ideas and in communicating them so that they can be understood by others). Yet we know that human language (as well as the social meanings and norms constructed from language) is potentially infinitely plastic, and thus subject to ambiguity or indeterminacy. Similarly, cognition is subject to severe limitations in its ability to accurately recall and process information. Because these weaknesses in communication and cognition occur outside of our awareness, deeply embedded in our implicit patterns of thinking, speaking, and acting, it is difficult to model them in terms of formal decision theory. For many pragmatic pur-
poses, it is sufficient to treat the existence of relatively stable linguistic/cultural understandings and of adequate cognitive resources as assumptions. In daily life, linguistic meanings and social understandings do for the most part remain relatively stable, and our cognitive resources are sufficient to more or less successfully navigate the social world.

But something important gets left out. The latent problems of ensuring stable intersubjective communicative activity and background knowledge, and of overcoming human cognitive limitations, are successfully resolved by a complex interaction that necessarily includes, in addition to cognitive, emotional, and physiological resources, the utilization of cultural practices and artifacts such as ritual. These faculties work together to allow us to function successfully in the world, and exert a reciprocal impact upon one another. From the point of view of this article, the critical consequence is that the ritualization of social norms has profound repercussions in terms of our processes of thought and language, and that these in turn help determinatively shape the system of norms itself.

Alongside cost-benefit theories, there have recently been several attempts to reintegrate cultural considerations into the study of social norms without returning to the type of determinist assumptions that plagued earlier sociological models. One such approach has developed out of the new cost-benefit literature itself. Social meaning theories argue that actions, and the norms that govern those actions, not only have an instrumental effect, but also express meanings. Preferences for certain types of norms therefore reflect, at least in part, preferences for the

(2001). See generally Lessig, supra note 2 (for an attempt to do so in the limited context of the role of government in sustaining or altering the social meanings of actions).

44. For example, the development of writing helped overcome limitations on individual long-term memory by permitting us to offload a significant amount of information to material storage media. At the same time, it also fundamentally altered human cognitive processes; cross-cultural studies have shown that members of literate societies literally think differently in certain important respects from members of pre-literate societies. See JACK GOODY, THE INTERFACE BETWEEN THE WRITTEN AND THE ORAL 164-167, 290-300 (1987); see also MERLIN DONALD, ORIGINS OF THE MODERN MIND 269-75 (1991) (evolution of human cognition influenced by presence of "external symbolic meaning representations"); CHWE, supra note 2, at 1-18, 98-99 (noting the link between ritual and successful communication); COLE, supra note 6, at 116-45 (discussing the role of artifacts in human cognition); Wertsch, supra note 10, at 518-25 (indicating that cognition is "mediated" through use of artifacts).

45. See infra notes 46-48 and accompanying text.
meanings with which those norms are associated; a change in the social meaning of an action will affect one's choice to engage in the activity itself.\textsuperscript{46} Social meanings may be contested, but more frequently they form a kind of implicit, uncontested "background" knowledge, and therefore may be very hard to change.\textsuperscript{47} Some commentators have suggested that government take a robust role in using the "expressive function" of law, its ability to publicize societal approval or disapproval of an activity, and thereby to change its social meaning, in the case of norms that are inefficient, discriminatory, distributionally unfair, or otherwise seriously infringe on personal autonomy.\textsuperscript{48}

Social meaning theories thus provide significant cultural input into our understanding of social norms, but because the scope of their explanatory power is restricted largely to the limited context of analyzing the ways that governmental agents can self-consciously reinforce or alter existing social meanings of norms, they do not address, other than obliquely, the broader issue of cultural development in general. Moreover, because social meaning theories ultimately fall back on rational actor mod-

\begin{footnotesize}
\begin{list}{\textsuperscript{46.}}{\usecounter{footnote}}
\item See, e.g., Sunstein, supra note 22, at 909, 940-41; Cass R. Sunstein, \textit{On the Expressive Function of Law}, 144 U. PA. L. REV. 2021, 2030-31 (1996). A frequently cited example is smoking, where the social meaning has changed from positive to negative with the publication of health concerns in the Surgeon General's report and in widely publicized studies on the effects of second-hand smoke. See Lessig, supra note 2, at 1025-34; Lawrence Lessig, \textit{The New Chicago School}, 27 J. LEGAL STUD. 661, 667-68. Lessig has outlined a number of methods whereby a norm entrepreneur can create or alter a given social meaning. See Lessig, supra note 2, at 991-1015 (techniques of "tying," ambiguation, ritual, and inhibition).
\item See, e.g., TIMUR KURAN, \textit{PRIVATE TRUTHS, PUBLIC LIES} 176-95 (1995) (examining "the unthinkable and the unthought"); Lessig, supra note 47, at 683-85 (contrasting "type A" (contestable) and "type B" (implicit) social meanings); Lawrence Lessig, \textit{The Puzzling Persistence of Bellbottom Theory: What a Constitutional Theory Should Be}, 85 GEO. L.J. 1837, 1841-42 (1996); Sunstein, supra note 22, at 920, 923. For examples that the existence of implicit meaning is also of central concern to anthropological investigations of culture, see MARY DOUGLAS, \textit{IMPLICIT MEANINGS: SELECTED ESSAYS IN ANTHROPOLOGY} 3-7 (1999); to philosophical inquiries on language and consciousness, see JOHN R. SEARLE, \textit{INTENTIONALITY: AN ESSAY IN THE PHILOSOPHY OF MIND} 160-71 (1983), and to cognitive studies of law, see WINTER, supra note 11, at 87-92.
\end{list}
\end{footnotesize}
els to explain cultural change, they cannot adequately account for changes in a cultural network that occur to some extent independently of individual rational activity. A more ambitious attempt to examine the general process of cultural development, and autonomous processes of cultural change, has been undertaken by new "epidemiological" theories of culture, which have been recently introduced into legal discourse from the social sciences.

According to these theories, cultural artifacts can be

49. See, e.g., Lessig, supra note 2. Similarly, Dennis Chong grounds his otherwise culture sensitive account of social norms on models of economic maximization. See CHONG, RATIONAL LIVES, supra note 1, at 224-28. Along with Chwei’s interpretation of ritual as common knowledge and Eric Posner’s signaling theory, in all four of these theories, the meaning (cultural model) of a specific social practice and the specific way that such a practice or belief is intersubjectively transmitted is largely ignored. In providing a syntactic analysis of the issues, these theories presume preexisting preferences (and their accompanying cultural meanings), which are then manipulated in a purely formal manner in accordance with the rules of cost-benefit rationality, without regard to the specific semantic content (meaning) of these cultural representations. Yet one of the most robust findings of recent cognitive science is that we cannot make such a sharp distinction between form and content. It is now believed that much of human thought is organized in terms of widely shared cognitive models rather than as collections of formal rules. See, e.g., WINTER, supra note 11, at 186-222; P.N. Johnson-Laird, Formal Rules Versus Mental Models in Reasoning, in THE NATURE OF COGNITION 587-624 (Robert J. Sternberg ed., 1999); see also infra notes 183-86 and accompanying text. These context dependent models provide the framework in which more formal types of reasoning occur, and place constraints upon the types of choices that can be made. See Douglass North, Institutions and Economics, in A COMPANION TO COGNITIVE SCIENCE, supra note 10, at 713-20. Moreover, our choice of which model to choose in a given situation is generally not the result of formal, rule based decision making, but arises from an unconscious process of pattern association, by which we make our selection on the basis of analogy to similar types of problem solving situations that we have previously encountered, or because certain models have become entrenched in our minds due to repeated use. See id.; see also infra note 186 and accompanying text. Moreover, it appears likely that not only do these models structure and constrain the decision space of possible choices, but they also govern the way that we use rationality itself. Rather than possessing a context independent general mental faculty, our use of probabilistic reasoning and means-ends rationality is dependent on the specific context of a decision-making situation, as well as on the mental models that we employ. See, e.g., GERD GIGERENZER, ADAPTIVE THINKING: RATIONALITY IN THE REAL WORLD 129-65, 209 (2000) (discussing use of mental models in probabilistic reasoning); JEAN LAVE, COGNITION IN PRACTICE: MIND, MATHEMATICS, AND CULTURE IN EVERYDAY LIFE 156-58, 188-89 (1988) (discussing how the type of rationality utilized by individuals in problem solving depends upon the specific contextual situation in which reasoning occurs).

50. The generic term "epidemiological" is employed to refer to a group of related theories that have been recently developed in several different disciplines to model the processes of cultural evolution. The term itself is associated with the work of Dan Sperber. See DAN SPERBER, EXPLAINING CULTURE: A NATURALISTIC APPROACH 25-27 (1996). A very similar "cultural models" theory has been recently advanced by Naomi Quinn and Claudia Strauss, which differs from Sperber’s the-
analytically divided into conceptual units, each of which contains a certain amount of cultural know-how; these units are stored and processed in the mind in the form of discrete mental representations, and the collection of these mental representations, together with the brain's organic substrate, constitutes each unique individual as a cultural and social actor. Much of our cultural knowledge provides the fundamental tools that we use to understand and navigate through the world.

Cultural units replicate through processes of intersubjective transmission. Unlike other forms of replication, however, the replication of concepts is inexact. Among other factors, human creativity, cultural borrowings, and our penchant for reusing a piece of cultural know-how in a wide variety of different contexts and purposes, guarantee that cultural units will proliferate in a profuse variety of loosely related forms, and to a large extent, this accounts for the existence of cultural change and development. Moreover, due to the limitations of human cognitive capacity, cultural units must in effect compete with one another for representation to consciousness, and not all have the same survival capacities: some are more memorable, or more useful, or more prominent in the outside environment. In addition, the existing cultural knowledge in a person's mind can filter out conflicting new information, creating a cognitive bias against change. By a process analogous, but not identical to

ory primarily in the assumptions made about the architecture of human cognition. See STRAUSS & QUINN, supra note 8, at 8-10. For a slightly different variant of this approach, based on Richard Dawkins' concept of "memes," see DANIEL C. DENNETT, DARWIN'S DANGEROUS IDEA: EVOLUTION AND THE MEANINGS OF LIFE 335-69 (1995). It is this theory, with modifications, that has been introduced into legal discourse by J.M. Balkin. See J.M. BALKIN, CULTURAL SOFTWARE: A THEORY OF IDEOLOGY 42-97 (1998). What unites all of these approaches is their emphasis on the way that humans form mental representations of specific concepts or other units of culture, and how the interplay of the specific features of these representations with human cognitive processes can account for autonomous cultural development.

51. See, e.g., DENNETT, supra note 50, at 342-45 (discussing "memes"); SPERBER, supra note 50, at 77-78 (discussing private "mental representations"); Naomi Quinn, Research on Shared Task Solutions, in A COGNITIVE THEORY OF CULTURAL MEANING, supra note 8, at 137, 139-40 ("cultural models").

52. See, e.g., Dorothy Holland & Naomi Quinn, Introduction to CULTURAL MODELS IN LANGUAGE AND THOUGHT 3-40 (Dorothy Holland & Naomi Quinn eds., 1987).

53. See, e.g., BALKIN, supra note 50, at 54-73.

54. See id.

55. See id.

56. See, e.g., DENNETT, supra note 50, at 345-52; SPERBER, supra note 50, at 70, 105-08 (noting that there are different rates of attractiveness in human minds of dif-
biological natural selection, certain mental representations predominate and achieve relative stability over time, as commonly agreed upon cultural constructions. New cultural concepts that are particularly well adapted for the pre-existing mental/cultural landscape can rapidly spread in a relatively uniform manner among members of a population ("cultural contagion"), while less favored aspects of cultural creativity fail to gain wide acceptance. An important implication of this approach is that many aspects of culture cannot be understood functionally, in terms of survival or optimally for human use, because the selection process is biased toward the propagation of the cultural concepts themselves, not the actual human beings who hold them.

Epidemiological theory has a number of significant virtues. Above all, it explains how cultural factors can become widely intersubjectively shared and can also change in a way that is (at least sometimes) autonomous from human purposive activity. Further, this theory explains the reasons that deeply entrenched cultural concepts and social norms can be pathological rather than beneficial for human activity. Moreover, because these processes occur in the first instance within the minds of individuals, we avoid the need to posit the existence of supraindividual entities (like a collective consciousness), which have proved problematic in prior theorizing. In addition, these theories provide a satisfying explanation for the fact that many important cultural artifacts, like ritual, are used in a number of different contexts and for different purposes, and can have repercussions in very different spheres of human activity.

At the same time, however, an epidemiological approach, in its current form, possesses some critical limitations on its usefulness for analyzing complex cultural phenomena. In emphasizing the role played by epidemiological theories in cultural development of abstract, autonomous mental representations, these theories can overly de-emphasize the role played by concrete factors such as social structure and institutions in cultural

57. See, e.g., DENNETT, supra note 50, at 345-52. While Sperber rejects a biological evolutionary model, his "epidemiological" model is in fact compatible with such an approach. See id., at 358-59; BALKIN, supra note 50, at 303 n.32.


59. See, e.g., BALKIN, supra note 50, at 71-72.
transmission and replication. Moreover, the causal connection between mental representation and human actions, which are ultimately what we want to explain, often remains tenuous. Among other things, we need to know how (and to what extent) mental representations provide motivational force for action, how they are projected in our communication with others, and how the results of our actions, and the specific form in which the action occurs, reflexively impact upon the mental representations themselves. In addition, the emphasis these theories place on the autonomy of cultural units and their processes of selection and dissemination can obscure the fact that many of our most deeply entrenched cultural artifacts and practices continue to exist precisely because they are functionally useful for individual purposive activity or for the human species as a whole. They comprise tools that we often simply cannot stop using, even if some of their effects are not beneficial or even pathological. In some cases, the anti-functionalist bias implicit in epidemiolocal theory morphs imperceptibly back into a revived interpretivism, with the consequent devaluation of human agency.

All of these concerns ultimately relate to a deeper issue: the high level of abstraction at which epidemiological models have been developed. Mental representations are abstract entities, largely divorced from psychological, social, or physical context, and the details of the selection process for successful representations are left vague; the evolution of a cultural unit occurs through the interplay of a potentially infinite number of survival factors, many contingent, all unweighted. Thus, while we may be able with luck to trace the historical evolution of a single cultural concept, it is difficult to use epidemiological theory as it currently stands to make statements of general applicability, to generate positive predictions of change, or to detect common

60. See Robert Aunger, The Electric Meme: A New Theory of How We Think 18-19, 21 (2002). As a result, “a number of real weaknesses debilitate the epidemiological analogy . . . . “ Id. at 18. For examples of the need to more fully integrate social and institutional factors into our understanding of the spread of cultural concepts, see Mary Douglas, Thought Style Exemplified: The Idea of the Self, in Risk and Blame: Essays in Cultural Theory 211 (1992) (criticizing lack of attention to social institutions in Dennett’s memetic theory of culture); North, supra note 49; see also William H. Sewell, Jr., A Rhetoric of Bourgeois Revolution 33-40 (1994).

61. See Spyer, supra note 50, at 61-66; Aunger, supra note 60, at 19.

62. This notion underlies the influential view that culture provides a type of “toolkit” for human use. For a review of this literature, see Paul DiMaggio, Culture and Cognition, 23 Ann. Rev. Soc. 263, 267-68 (1997).
patterns in the ways that cultural forces influence the thoughts and decisions of individuals in a community. Such a high level of theoretical abstraction is not a flaw per se, but it has the unfortunate consequence that we cannot ask many of the questions that are most relevant to the study of informal norms: why are some norms stable, effective, and widely mutually intelligible, and others less so; how do norms gain motivational force; what are the specific processes that govern a change of norms, promoting or inhibiting innovation; and what are the likely repercussions of an alteration of a social norm, or the replacement of an informal norm with another method of social control (such as formal law), on other spheres of human activity.

Many of these difficulties can be ameliorated (if not fully resolved) by shifting analysis to a less abstract level. By focusing on the concrete social practices, such as ritual, whereby mental representations of cultural artifacts such as social norms are publicly instantiated in the social sphere, and thereby intersubjectively communicated, we can take into account the types of institutional, functional, and causal considerations that otherwise remain problematic. The ritualization of social norms profoundly affects how norms are mutually understood, transmitted, and changed; the stability, effectiveness, and motivational force of the norms; and the way that they become incorporated into our sense of self and our view of the world. At the same time, because the ritual process operates in a relatively uniform manner in different contexts and upon different individuals, we avoid problems of methodological sterility: we can make valid predictions about the impact of ritualizing social norms on individuals and their behavior. This allows us in turn to join, in the context of ritualized norms, a cultural perspective with the more analytical approach characteristic of cost-benefit theories, and thereby gain a deeper understanding of the specific ways that informal social norms operate in our daily life.

III. THE ENDURING IMPORTANCE OF RITUAL

Ritual can be defined as the performance of a more or less invariant sequence of formal acts and utterances not entirely encoded by
This definition takes a middle ground between including virtually every type of formal and repetitive social interaction as ritual (thus rendering the concept useless as a tool for analysis), and a definition so limited that it applies only in the context of formal religion. In keeping with this definition, we can identify eight elements that characterize ritualized activity.

The first is **formalism**. Ritual invariably involves use of a structured set of words and bodily gestures. The ritual process is highly conventionalized, and employs a "restricted code" of communication characterized by: (1) a limited means of expression; (2) a correspondingly limited ability to convey information; and (3) a resulting sharp limitation on the freedom of receivers of ritual communication to interpret the meaning of this communication in more than one way. As part of its formality, ritual practice is **invariant**. Ritual activities involve precise repetitions of utterances and gestures; too great a deviation by participants from the standard form of performance will cause the performance to lose its ritual character. Closely related to formality and invariance is **rule governance**. Rituals are governed by complex codes of orchestration regulating the sequence and performance of ritual activities, and possibilities for innovation are constrained by second-order rules that prescribe the appropriate way that a ritual can change or its meaning be altered.

---

65. Thus, for example, certain types of events, like theater and athletic contests, are generally excluded from this definition of ritual inasmuch as they do not entail performance on the part of the audience, who remain passive spectators. See id. at 37-46. For a contrary view emphasizing the ritualized nature of these activities, see Felicia Hughes-Freeland & Mary M. Crain, Introduction to Recasting Ritual: Performance, Media, Identity (Felicia Hughes-Freeland & Mary M. Crain eds., 1998) [hereinafter Recasting Ritual].
68. See Bell, supra note 66, at 150; Rappaport, supra note 64, at 36-37. Ritual invariance should be distinguished from other social activities of a highly routinized nature, such as the act of a person washing himself or herself, or the mechanical actions of workers on an assembly line. See id. at 150-51.
69. See id. at 153-55.
70. See Bell, supra note 66, at 235; David I. Kertzer, Ritual, Politics, and Power 12 (1988); Ingjerd Hoëm, Clowns, Dignity, and Desire: On the Relationship Between Performance, Identity, and Reflexivity, in Recasting Ritual, supra note 65, at 21-43.
Virtually all rituals make use of elaborate symbolism, and these symbols are themselves frequently elaborated into complex structures of mythic thought. In addition, many rituals, including those without specific religious content, are tied to ideas of the sacred. Notions of sacrality are inextricably linked to the use of special symbols, sites, and objects for ritual purposes, which further distinguish ritualized from non-ritualized (everyday) activity. This association with the timeless quality of the sacred is reflected in another distinctive feature of the ritual process: ritual is routinely thought of as reflecting a long-standing tradition (even if the ritual is in fact of relatively recent origin).

Ritual is realized through physical performance. In an obvious sense, there can be no ritual without performance. More specifically, performance serves the critical function of socially and cognitively "framing" the ritual process in the minds of participants. Performance creates the relevant ritual community (the participants in the ritual), and demarcates those activities (and associated norms) from more mundane aspects of daily life.

Finally, the most characteristic hallmark of ritual activity is that a significant portion of the performance involves expression that is not encoded by the performer. Ritual performance can be roughly divided into two elements: (1) physical participation in the performance itself, and (2) the ritual "canon," the linguistic or paralinguistic "text" uttered or otherwise invoked by participants. In ordinary communicative action, a speaker encodes her own thoughts and conveys them to the recipient. In contrast, because of the invariance of the performance, others have normally encoded the text of the ritual canon, often far in the past.

71. See BELL, supra note 66, at 155-59; KERTZER, supra note 70, at 9.
73. See infra notes 262-67, 412-14 and accompanying text.
74. See BELL, supra note 66, at 155-59.
75. See id. at 145-50; Eric Hobsbawm, Introduction to THE INVENTION OF TRADITION 1-14 (Eric Hobsbawm & Terence Ranger eds., 1983).
76. See BELL, supra note 66, at 159-64.
77. See id.
78. See RAPPAPORT, supra note 64, at 32-33.
79. For example, in a Catholic mass, neither the words of the liturgy nor the bodily acts of the celebrant convey any information about an individual's current state of mind; the textual "meaning" of the canon has been encoded centuries ago. For this reason, it does not matter who the individual celebrant happens to be, so
As a result, the verbal canon cannot convey any new ideas reflecting the current state of mind of the speaker, who is, after all, simply reciting someone else's words or repeating stock gestures. The meanings of the canon (and of the social norms associated with canonical meanings) remain fixed through successive performances by participants.

These characteristic features of the ritual process are most fully exemplified in the various traditional genres of ritual activity, such as rites of passage, calendrical rites, rites of exchange and communion, rites of affliction (healing rituals), and ritualized feasting, fasting, and festivals. While contemporary society is characterized by a relative sparsity of these types of practices compared to preceding periods or to non-Western cultures, all of these categories of ritual practice continue to retain their vitality, and such rituals can often have an important significance in an individual's life: the Jewish bat mitzvah (rite of passage); calendrical holidays both secular (Thanksgiving) and religious (Easter); the rituals that surround holiday gift-giving, and the rites accompanying death. In particular, political ritual remains extremely widespread. The development of democratic politics beginning in the eighteenth century has arguably promoted the salience of political rites and symbolism as cultural phenomena. In his classic treatment of political ritual, David long as he is an ordained priest.

80. See Bell, supra note 66, at 93-137 (providing an outline of such genres).

81. See, e.g., id. at 173-209. Various explanations, none fully convincing, have been put forward to explain this phenomenon, notably the relative secularity of modern Western society, the rise of widespread literacy, and the process of division of labor and concomitant social differentiation, which weakens the role played by ritually organized communal institutions in everyday lives. See, e.g., Robert N. Bellah, Beyond Belief: Essays on Religion in a Post-Traditional World 16-43 (1970) (secularism); Douglas, supra note 67, at 54-68 (decline in communal authority over individuals); Goody, supra note 44, at 165-67 (literacy).

82. See Ronald L. Grimes, Deeply into the Bone: Re-inventing Rites of Passage 28 (2000).

83. See Bourdieu, Logic, supra note 6, at 98-111.

84. For example, the fundamental role played by the dynamic increase in political ritual and symbolism in revolutionary France has been richly documented. See generally Lynn Hunt, Politics, Culture, and Class in the French Revolution (Victoria E. Bonnell ed., 1984); Mona Ozouf, Festivals and the French Revolution (Alan Sheridan trans., 1988). For the importance and ubiquitousness of political ritual in contemporary society (in addition to the sources cited below), see generally Robert N. Bellah, Civil Religion in America, 96 Daedalus 1 (1967). For a similar inventory of ritual patterns in American civic life, see John F. Wilson, Public Religion in American Culture 74-88 (1979).
Kertzer\textsuperscript{85} not only shows the powerful way in which political ritual and symbolism construct political realities, but richly documents a wide variety of rituals embedded in the political system: inaugurations,\textsuperscript{86} political rallies,\textsuperscript{87} state funerals,\textsuperscript{88} state visits from foreign dignitaries,\textsuperscript{89} the symbolic use of national flags and coinage,\textsuperscript{90} rites of induction for membership in political movements,\textsuperscript{91} town council meetings,\textsuperscript{92} congressional hearings,\textsuperscript{93} and televised statements by political candidates surrounded by powerful symbols of legitimacy.\textsuperscript{94}

Moreover, the overall decline in the amount of traditional ritual practice has not entailed a genuine diminution in the importance of ritualized activity. Rather, there has been a shift in ritual style towards different, nontraditional types of practices.\textsuperscript{95} Such “ritualized” practices are characterized to a greater or lesser degree by the same indicia of ritual as the traditional genres, and to a large extent perform the same types of functions associated with traditional ritual practices. The practices are also frequently secular in nature.\textsuperscript{96} Examples of such “ritualized”

\begin{itemize}
\item \textsuperscript{85} See KERTZER, supra note 70.
\item \textsuperscript{86} See id. at 24, 57-59.
\item \textsuperscript{87} See id. at 164-65; DON HANDELMAN, MODELS AND MIRRORS: TOWARDS AN ANTHROPOLOGY OF PUBLIC EVENTS 41-42 (1990).
\item \textsuperscript{88} See KERTZER, supra note 70, at 142-44.
\item \textsuperscript{89} See id. at 32, 92-95.
\item \textsuperscript{90} See id. at 20.
\item \textsuperscript{91} See id. at 17.
\item \textsuperscript{92} See id. at 49-50, citing Johan Olsen, Local Budgeting: Decision-making or Ritual Act?, 5 SCANDINAVIAN POL. STUD. 85 (1970) (ritualized nature of public town council meetings); see also ROBERT A. DAHL, WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY 133 (David Horne ed., 1961) (ritualized behavior in American municipal government).
\item \textsuperscript{93} See KERTZER, supra note 70, at 91.
\item \textsuperscript{94} See id. at 11; see also W. Lance Bennett, The Ritualistic and Pragmatic Bases of Political Campaign Discourse, 63 Q. J. OF SPEECH 219 (1977). For examples on the manner in which television can promote widespread performance in ritual acts, see GRIMES, supra note 82, at 273-80 (televised and cyber funerary rituals); GREGOR GOETHALS, THE TV RITUAL: WORSHIP AT THE VIDEO ALTAR 36-56 (1981); Daniel Dayan & Eilihu Katz, Electronic Ceremonies: Television Performs a Royal Wedding, in ON SIGNS 16 (Marshall Blonsky ed., 1985); Felicia Hughes-Freeland, From Temple to Television: The Balinese Case, in RECASTING RITUAL, supra note 65, at 44-67.
\item \textsuperscript{95} See, e.g., BELL, supra note 66, at 185, 190, 202; DOTY, supra note 5, at 98 (human society as essentially ritualistic); Peter Burke, The Repudiation of Ritual in Early Modern Europe, in THE HISTORICAL ANTHROPOLOGY OF EARLY MODERN ITALY: ESSAYS ON PERCEPTION AND COMMUNICATION 223 (1987) (“[A]ll societies are equally ritualised; they merely practice different rituals . . . .”).
\item \textsuperscript{96} See Hughes-Freeland & Crain, supra note 65; Sally F. Moore & Barbara G. Myerhoff, Introduction to SECULAR RITUAL, supra note 3, at 3-24.
\end{itemize}
practices have been found in activities as diverse as: participation in Alcoholics Anonymous; Labor Day cookouts; feminist rituals; ethnic festival activities; Earth Day demonstrations; the modern Olympic Games; historical pageants; the experience of childbirth in modern American hospitals; hazing rituals by fraternities and sports teams, and evidentiary and other procedures used in Anglo-American courts. Ritualized elements have also been found in business practices and other forms of organizational behavior, which serve to achieve a unified culture and sense of trust among members. To be sure, not all of these activities possess the same degree of affective force among participants, nor do they have an equal ability to enact powerful social meanings and instantiate durable social norms. Yet to some degree or another, all of them possess these capacities as a natural entailment of the ritual form.

The extent to which pervasive and imperceptible ritualized behavior exists in our society can better be seen by considering a few more detailed examples of the way in which ritual impacts upon complex types of social interaction. Significantly, all concern everyday "secular" rituals, rather than formal religious rites.

Urban Gang Criminality. The problem of gang-related vio-

---

97. See BELL, supra note 66, at 202.
98. See id.
100. See BELL, supra note 66, at 237. On the importance of ritual in the formation of ethnic identity, see KERTZER, supra note 70, at 20-21.
105. See Sebastian Junger, First the Ordeal, N.Y. TIMES, Mar. 11, 2000 at A15.
106. See Arthur L. Stinchcomb, On the Virtues of the Old Institutionalism, 23 ANN. REV. SOC. 1, 6-10 (1997). Judicial trials themselves have also been analyzed as ritual processes. See, e.g., VINCENT CRAPANZANO, SERVING THE WORD: LITERALISM IN AMERICA FROM THE PULPIT TO THE BENCH 6-7 (2000).
107. See John W. Meyer & Brian Rowan, Institutionalized Organizations: Formal Structure as Myth and Ceremony, in THE NEW INSTITUTIONALISM, supra note 6, at 41.
ence and the costs imposed upon the community (generally inner-city minority communities), both in terms of victimization of law-abiding citizens and in the breakdown of social institutions, is well-known. Intriguingly, much gang activity appears to be highly ritualistic, most notably in connection with initiation rites, but also encompassing distinctive clothing, speech, and objects. It appears that these features help to create a microcosmic representation of social reality, and to produce a social meaning for the norms of violence instantiated in connection with these rituals. An anti-cosmos is created, predicated upon meanings and values antithetical to those of the community at large. Conversely, introducing "counter" rituals has at times proved quite effective in curbing this kind of socially deviant behavior.

Hunting. Probably from the beginning of humanity, hunting has been a focus of ritual activity, both in terms of adolescent rites of passage and as a form of cult activity. In contemporary American society, many of the same features can be observed: a rite of passage remains an important feature of a young person's first hunting experience with parents or friends; hunting is a repetitive activity in which neophytes are gradually initiated into the lore of hunting; and a strongly communal aspect is created by participating in the hunt. Hunting sites, frequently visited, can take on a special significance, similar to that of sacred sites in other forms of ritual behavior. Also, like other forms of ritual practice, hunting has a timeless quality. It is en-


109. See, e.g., STEVEN L. SACHS, STREET GANG AWARENESS: A RESOURCE GUIDE FOR PARENTS AND PROFESSIONALS 79-123 (rites of initiation, symbols, clothing, language).

110. See BELL, supra note 66, at 151 & n.52.

111. The anthropological literature on this topic is enormous. See, e.g., DOUGLAS, supra note 47, at 22-28 (hunting as communal ritual among the Lele in West Africa); VICTOR TURNER, THE FOREST OF SYMBOLS: ASPECTS OF NDEMBU RITUAL 11-12 (1967) (hunting cult among African Ndembu people).

112. See, e.g., Help for Non-Sporting Spouses, OUTDOOR LIFE, Nov. 1999, at 18 (on child's first hunting experience and how hunting strengthens family ties); Sibling Rivalry, N. AM. WHITETAIL, Nov. 1999, at 46 (hunting as ongoing family experience).
visioned as a family tradition handed down from generation to generation that evokes archetypal images of our hunter-gatherer ancestors. Additionally, hunting has a well known affective quality that can most clearly be seen in the emphatic reactions expressed by hunting groups at the threat of gun control laws. Indeed, the social identity of some communities appears to be defined, to some extent, by this activity. Hunting also provides a clear example of the way in which beneficial social norms can be instantiated in connection with ritualized activity. Because hunting can be quite dangerous, norms of safety are inculcated into children from an early age, often in the form of rigid, easy to remember maxims or other mnemonic devices.

Scouting. The Boy Scouts of America offers a rich example of the way in which formalized ritual functions in the instantiation of social norms deemed beneficial to society. Central is the Scout Oath, which is recited by participants at virtually every major scouting event. The basic canon of the oath is elaborated in the Scout Law, which prescribes specific norms associated with the oath (e.g., to be trustworthy, helpful, obedient, courteous, and thrifty). The Boy Scout Handbook further provides concrete examples of ways to fulfill the norms embodied in the Scout Oath, and instructs scouts to continually evaluate the extent to which they adhere to these norms. From personal experience I can vouch for many other ritualized activities connected with scouting. Bodily posture may be rigidly prescribed (e.g., standing at attention); the beginning and end of many events (including waking up and lights out at campouts) may be ceremonially marked; formal rites of passage mark be-

113. See Camps, Kids, and Safaris, RIFLE HUNTING, Fall 1999, at 52 (interaction of modern American and traditional African hunters on safari); Sibling Rivalry, supra note 112 (on family tradition).

114. Note the difficulties that were experienced by the Labour Party in trying to ban fox hunting in England, owing to opposition from rural communities. See Proposed Ban on Fox Hunting Draws Big Protest in London, MIAMI HERALD, Sept. 23, 2002, at 6A.


116. See infra notes 422-24 and accompanying text for a discussion from a ritual perspective of the recent Supreme Court decision in Boy Scouts of America v. Dale concerning the right of the Scouts to exclude homosexual scoutmasters.


118. See id. See also id. at 7-9 for other examples of ritualized activities, such as saluting, use of special signs and handshakes, and reciting the Pledge of Allegiance.
coming a member of the scouts and of achieving higher rank; and older troops can have a strong sense of tradition and follow special customs, unique to themselves. The net effect is to establish a specific group identity, a mini-universe of sequenced events, postures, and utterances that reinforce the normative world encapsulated in the Scout Oath canon, and to profoundly affect individual behavior and values outside the context of scouting.

Voting. Public choice theory has found it difficult to explain why people vote, in light of the fact that the probability of any single vote changing the outcome of an election is outweighed by the cost of voting itself.\textsuperscript{119} To overcome this theoretical problem, recent scholarship has suggested that the decision to vote is promoted by a social norm.\textsuperscript{120} While this is certainly true, such a view misses an essential dimension of the problem. Voting is not just norm-governed, but is also a ritualized practice. The voting process substantially meets all of the criteria discussed above for ritualized behavior. It is repetitive and the formalities involved in casting a ballot are rigidly stylized and highly rule governed. Formality, external encoding, and a limited code of expression are further emphasized by the fact that generally (excepting the unusual case of a write-in ballot) the voter must choose among the candidates listed on the ballot, or vote yes/no on a given issue. Additionally, the voting booth constitutes a quasi-sacral site, set apart from normal routines of life, where the voter engages in the performative (ritualistic) act. Moreover, the act of voting is enmeshed in a host of other political rituals, ranging from participation in campaign events (either personally or through television) to the formal ritual of the inauguration of the winning candidate. Indeed, Kertzer and others have characterized voting as the central performance in an entire complex of "electoral rituals."\textsuperscript{121}

\textsuperscript{119} See, e.g., DONALD P. GREEN & IAN SHAPIRO, PATHOLOGIES OF RATIONAL CHOICE THEORY 70 (1994). Of course, the 2000 presidential election results have highlighted the potential impact of a small number of votes on the larger electoral process.


\textsuperscript{121} See, e.g., KERTZER, supra note 70, at 49. The performative and ritualized aspects of voting appear even more clearly in the historical record. Prior to the adoption of the secret ballot, voting was an open, public, and communal act. See EDMUND S. MORGAN, INVENTING THE PEOPLE 174-233 (1988) (describing the rituals surrounding electioneering and voting in eighteenth century Britain and America).
IV. THE CONSTITUTIVE FUNCTION OF RITUAL

The persistence of myriad ritualized practices in a largely secular society turns out to be a reflection of the constitutive role that ritual plays in our speaking, thinking and acting, as well as in the way that we organize and create our perceptions of reality. This section explores this "constitutive" aspect of ritualization and its profound impact on informal social norms.

A. Ritual As Communication

1. Social Norms and Communicative Failure

In most real world situations, communicative activity is a pervasive feature in the generation and maintenance of systems of informal social norms. Both experimental evidence and fieldwork strongly suggest that even a limited amount of communication between individuals faced with a collective action problem can significantly enhance the likelihood of a cooperative outcome. But even where explicit communication is rare, there still must be a widespread, intersubjective consensus concerning shared background assumptions, rules, and meanings. Because these factors are all conceived of and expressed through language, the inherent problems of human communication cannot be ignored. This point has been obscured by the practice of modeling collective action problems in terms of non-cooperative game theory that ignores the possibility of communication among players outside the context of moves in the game itself.

The innate plasticity of language lends itself to problems of ambiguity, referential indeterminacy, and lying, and tends to cause erosion in generally accepted linguistic meanings during the course of everyday practice. These types of limitations on human communicative activity can potentially impose devastating transaction costs on the ability for human interaction to establish stable normative orders. If the meaning of fundamen-

122. See Ostrom et al., supra note 21, at 167-69.
123. See Chwe, supra note 2, at 96-99.
124. In the context of informal social norms, transactions cost analysis has been traditionally applied to the process by which norms are developed and applied in a system of social control, both with respect to the costs of regulating behavior through norms (for example, the cost of informal sanctioning), and especially to costs that can prevent the generation of beneficial norms in the first place. See Ellickson, Order, supra note 1, at 173-74. The analysis offered here considers additional types of costs that have generally been ignored (or valued at zero) in prior discussions. On the need to enlarge our conception of transactions costs beyond
tal terms had to be constantly negotiated in the course of our interactions with others, the effort required to search for and develop common understanding would likely overwhelm the system and outstrip human cognitive capacity.\textsuperscript{125} Too great a degree of malleability or too rapid a rate of change in the meaning of norms would likewise inhibit the formation of a stable system. Preferences for norms among the population would be subject to continual shifts, reflecting changes in the social meaning of the activity in question, thereby inhibiting the formation of a stable equilibrium around a set of norms as well as the establishment of a coherent set of reputational rewards for norm adherents and sanctions for norm violators.\textsuperscript{126} If we imagine the understanding of the precepts of informal social norms and the content of social meanings as a statistical average—that enough of the population understand them in the same way so as to establish a common understanding of the norm—ordinary usage and inherent flexibility constantly threaten this critical mass.\textsuperscript{127} These problems occur both in systems of formal and informal social control,\textsuperscript{128} but are arguably more intractable with informal control systems that lack authoritative interpreters.\textsuperscript{129}

\textsuperscript{125} See, e.g., OSTROM ET AL., \textit{supra} note 21, at 327-28 (on the need for individuals to find others sharing the same mental heuristic to facilitate cooperative behavior); see also CHONG, \textit{RATIONAL LIVES}, \textit{supra} note 1, at 216.


\textsuperscript{128} Carol Rose has noted how formal law tends to fluctuate between clear rules ("crystals") and more formless standards ("mud") and back again. Here, however, stabilization of clear meanings can be accomplished through the agency of an authoritative interpreter, either by the act of a legislature or by explicit agreement between two affected parties. See Carol M. Rose, \textit{Crystals and Mud in Property Law}, 40 STAN. L. REV. 577 (1988), \textit{reprinted in} CAROL M. ROSE, \textit{PROPERTY AND PERSUASION} 199-232 (1994). For a perceptive analysis of judges' attempts to deal with problems of linguistic ambiguity in formal law, see LAWRENCE M. SOLAN, \textit{THE LANGUAGE OF JUDGES} (1993).

\textsuperscript{129} In the context of informal social directives, Kent Greenawalt has shown how difficult it is for a basketball player, instructed by her coach "[D]on't shoot; run out the clock," or for a housekeeper, instructed to "buy soupmeat every Monday from Store X" to interpret how to carry out these instructions in light of pragmatic ambiguity, the potentially multiple contexts in which the instructions may have to be applied in the course of the game or of shopping, and of the potential semantic ambiguity of key terms (such as "soupmeat"). \textit{See generally} Kent Greenawalt, \textit{From the Bottom Up}, 82 CORNELL. L. REV. 994 (1997). The potential for such ambiguity is
These types of communicative problems give rise to three potential types of "cultural" transaction costs that have a particular importance for informal social norms. The first is the problem of trust. There must be a minimum threshold level of trust among members of a society without which successful cooperative activity simply cannot occur. One way that social trust is achieved results from a human cognitive bias towards trust and a provisional belief, subject to later disapproval, in the veracity of information that we receive. This bias is relatively weak, however, and individuals can, and do, take into account the possibility of deceit. A sense of trust is also established by repeated successful social interactions among individuals, or by a process of signaling that one is a trustworthy partner. These processes too are subject to limitations, however, and where the level of social trust is sufficiently low, people rarely engage in the types of social interaction that can give rise to beneficial social norms.

Another type of potential cost relates to the question of how we determine under what circumstances a social norm has been violated. Unlike the case of idealized game theoretic models, in real social interactions the line between adhering to and violating a norm is often unclear. The meaning of the norm may be fuzzy, the relevant social context may be ambiguous, and we cannot look into another person's mind in order to determine whether her partial compliance with normative behavior reflects genuine cooperation, or whether her partial noncompliance re-

---

130. See generally North, supra note 49; Eve E. Sweetser, The Definition of Lie: An Examination of Folk Models Underlying a Semantic Prototype, in CULTURAL MODELS IN LANGUAGE AND THOUGHT, supra note 52.
131. See North, supra note 49; Sweetser, supra note 130.
132. See OSTROM ET AL., supra note 21, at 323.
133. See id. at 328; DOUGLAS & NEY, supra note 9, at 168-69.
134. See Posner, Inefficient Norms, supra note 1, at 1699; Gillette, supra note 24, at 825.
135. Note, for example, that the definition of cheating in a social-contract situation depends upon the perspectives of the parties included, and appears to be highly content and context dependent. See Leda Cosmides & John Tooby, Cognitive Adaptations for Social Exchange, in THE ADAPTED MIND 163-91 (Jerome H. Barkow et al. eds., 1992).
flicts a defection.\textsuperscript{136} Even something as apparently straightforward as deciding whether or not someone is lying turns out often to be indeterminate.\textsuperscript{137} One way that individuals deal with this difficulty is by developing social heuristics to make rough and ready determinations as to when behavior slips across the border into defection or a lie.\textsuperscript{138} Such individual heuristic rules, however, may not be widely shared, and thus may prove ineffective in establishing and stabilizing a widely shared understanding of what types of behavior constitute compliance or defection from norms, thereby adding a significant element of costly uncertainty into the system of social interaction.\textsuperscript{139}

Third, any system of informal social norms that is (or seeks to be) social welfare enhancing requires that individuals perform a relatively complicated process of mental accounting, so as to reduce the complex realities of the world into a relatively simple set of prices, costs, benefits, and payoffs. The process of organizing widely disparate phenomena according to a common metric can be problematic, involving significant information loss and the question of how to correlate information obtained from incommensurably organized systems. This problem is particularly acute for many norms in which the context of application is far removed from market or market-like activity and the availability of formal prices or relatively accessible quasi-prices.\textsuperscript{140}

\textsuperscript{136} This corresponds to Lessig’s argument that deviation from a norm can only be determined by reference to a commonly understood meaning of the norm. As discussed below, ritual is an important method through which meanings are “objectified” (in Lessig’s terminology) and thereby made more effective. \textit{See} Lessig, \textit{supra} note 47, at 680-81.

\textsuperscript{137} Research in cognitive linguistics has shown that in many common situations, people with full knowledge of the relevant factual background (including the intention of the speaker) still appear unable to decide whether a given statement should be categorized as a lie. In experiments, subjects were presented with three proposed conditions for the definition of a lie: (a) the speaker believes that a statement is false; (b) the speaker intends to deceive; and (c) the statement is in fact false. Where all of the conditions are met, the respondents have no difficulty in identifying the statement as a lie; conversely where none of the conditions are met, they have no difficulty categorizing the statement as a non-lie. Where only some conditions are met, however, the subjects frequently became confused and unable to categorize the statement as a lie or as a non-lie. \textit{See} Linda Coleman & Paul Kay, \textit{Prototype Semantics: The English Word Lie}, 57(1) LANGUAGE 26 (1981); Sweetser, \textit{supra} note 130, at 43-44.

\textsuperscript{138} \textit{See} Sweetser, \textit{supra} note 130, at 47.

\textsuperscript{139} \textit{See} OSTROM \textit{ET AL.}, \textit{supra} note 21, at 327-28 (discussing the importance of finding partners with shared mental heuristic frameworks).

\textsuperscript{140} This does not necessarily mean that individuals cannot create a workable price system in these contexts. Robert Ellickson has suggested that individuals can
In theory, it is possible that these difficulties could be resolved solely by the use of cost-benefit mechanisms like sanctioning, conferral of esteem, and signaling to promote uniform understandings. Sanctions can prevent individuals from adopting idiosyncratic meanings of social norms that deviate too far from common understandings, and conferral of esteem can promote consensus around a dominant understanding of a new normative model. Alternatively, as individuals become aware of a problem of variant meanings, they can signal their individual understandings of a new meaning to one another, until a new equilibrium is achieved wherein a sufficient percentage of the population adopts the new understanding.

There are ample reasons to believe, however, that this cannot be the whole story. Sanctioning and signaling are costly, and therefore are only feasible where not too many semantic and cultural meanings are continually "up for grabs." Variations in cultural meanings and the understanding of norms may often occur imperceptibly, on the largely unobservable cognitive/linguistic level, and therefore not be amenable to conscious sanctioning or conferral of esteem. Such a procedure would also be very cognitively inefficient. When we consciously adopt a decision to sanction or signal, we utilize a type of explicit, "de-
liberative" cognition.\textsuperscript{142} This deliberative style places strains upon human information processing and short-term memory resources, and is notoriously inefficient compared with more "automatic" cognitive processes.\textsuperscript{143} As a result of factors such as these, the evidence strongly suggests that cost-benefit mechanisms constitute only part of the way that we acquire and retain cultural concepts like social norms.\textsuperscript{144}

These problems of communicative practice are resolved (in a satisfactory, although not optimal fashion), by a much more complex interaction that involves basic processes of human cognition and the use of cultural artifacts, along with social practices like signaling and sanctioning.\textsuperscript{145} Cultural practices like ritual play a central role in this process, providing vital tools to help resolve difficulties that would be hard, if not impossible, to deal with in any other way. It is here that the real work of ritualized behavior begins.

2. Problems of Reference: Ambiguity and Lying

Ordinary speech typically uses conventional linguistic terms to convey a wide variety of information concerning the actual or possible states of affairs in the world or of the psychological state of the sender. The flexibility inherent in this type of communication allows a sender to communicate fine gradations of meaning corresponding to the infinite variety of distinct states of affairs that can exist in the actual world.\textsuperscript{146} This flexibility in-


\textsuperscript{143} See D'ANDRADE, supra note 142; Sloman, supra note 142.

\textsuperscript{144} Thus, theories of learning emphasize, in addition to explicit correction/sanction mechanisms, the ability of learners to obtain information through direct observation, verbal exchanges, and emulation of adult exemplars. See, e.g., BAMBI B. SCHIEFFELIN, THE GIVE AND TAKE OF EVERYDAY LIFE: LANGUAGE SOCIALIZATION OF KALULI CHILDREN 5 (1990); TOMASELLO, supra note 4, at 81-82; R. MURRAY THOMAS, HUMAN DEVELOPMENT THEORIES 75-84 (1999). Similarly, generative linguistic theories of the process whereby children achieve linguistic competence stress, in addition to an innate "language instinct," direct emulation of adult discourse patterns. See, e.g., STEVEN PINKER, THE LANGUAGE INSTINCT 286-93 (1994); see also STRAUSS & QUINN, supra note 8, at 94 ("Human learning depends on more than appropriate rewards and punishments.").

\textsuperscript{145} On the role of cultural factors in communication and group cognition, see, e.g., D'ANDRADE, supra note 142, at 207-12; HUTCHINS, supra note 6, at 261-62; Andy Clark, Embodied, Situated, and Distributed Cognition, in A COMPANION TO COGNITIVE SCIENCE, supra note 10, at 506, 509-10, 515.

\textsuperscript{146} See RAY JACKENDOFF, FOUNDATIONS OF LANGUAGE: BRAIN, MEANING, GRAMMAR, EVOLUTION 38-39 (2002); RAPPAPORT, supra note 64, at 151.
herent in language is not found in animal communication, and enables us not only to communicate, but also to engage in most if not all of what we think of as higher thought, such as planning or decision-making.147

Such freedom of expression is obtained at a cost, however, which is implicated in the very flexibility of language itself. First, there is the problem of ambiguity. Although context in many cases allows a listener to infer the correct meaning of a semantically ambiguous expression, this is not always the case.148 Ambiguity can also result from problems of linguistic framing, where the basic lexical meaning is clear enough, but where its use in a specific pragmatic context is inappropriate or confusing.149

Lying is also a problem. Formal semanticists separate declarative sentences into two categories. A sentence is linguistically true (or false) if its truth (or falsehood) is determined solely by the semantics of the language, and it is not necessary to verify any facts about the nonlinguistic world in order to determine its accuracy (e.g., "If John is a bachelor, then John is unmarried.").150 This is in contrast to a sentence that is empirically true or false depending upon the state of affairs in the nonlinguistic world.151 All empirically true or false declarative statements are potentially subject to the problem that the sender is consciously or unconsciously transmitting a message that, although unambigu-

147. See DEACON, supra note 4, at 79-101; RAPPAPORT, supra note 64, at 4-11; ANTHONY WILDEN, SYSTEM AND STRUCTURE: ESSAYS IN COMMUNICATION AND EXCHANGE 166-77 (1972).

148. See, e.g., RAY JACKENDOFF, SEMANTIC STRUCTURES 9 (1990) (noting that indeterminacy is "rampant" in lexical concepts); JOHN LYONS, LINGUISTIC SEMANTICS: AN INTRODUCTION 56-60, 266-68 (1995); PINKER, supra note 144, at 69-70.

149. See, e.g., Charles Fillmore, Frames and the Semantics of Understanding, 6 QUADERNI DI SEMANTICA 222 (1985). Fillmore has also provided a well known example of the framing issue: although it is tautologous that a "bachelor" is an "unmarried man," is the Pope really a bachelor? See Charles Fillmore, Towards a Descriptive Framework for Special Deixis, in SPEECH, PLACE, AND ACTION: STUDIES OF DEIXIS AND RELATED TOPICS 31, 34 (R.J. Jarvella & W. Klein eds., 1982), quoted in GEORGE LAKOFF, WOMEN, FIRE, AND DANGEROUS THINGS 70 (1987).

150. See ADRIAN AKMAJIAN ET AL., LINGUISTICS: AN INTRODUCTION TO LANGUAGE AND COMMUNICATION 230-31 (4th ed. 1995); see also RONNIE CANN, FORMAL SEMANTICS: AN INTRODUCTION 13-23 (1993). This is not the place to enter the vexed linguistic dispute as to whether or not semantic representations are ultimately grounded in referential truth conditions. In many forms of everyday discourse, truth conditions and logical entailment do play a significant role in communication. See JACKENDOFF, supra note 146, at 328-29.

151. See AKMAJIAN ET AL., supra note 150, at 230.
The nature of ritual performance as communicative activity serves significantly to mitigate such difficulties. The enactment of any rite necessarily entails the simultaneous performance of two types of performances, the “canonical” and the “self-referential.” As a result of this dual structure, ritual performance requires the transmission of two separate messages containing distinctly different content and expressing contrasting relationships between the signifier and the signified. The meaning of any ritual, and in particular the strong sense of obligation on the part of participants to norms instantiated in connection with ritual activities, are to a large extent the result of the interaction between these two components of the ritual process.

This dual communicative process is unique to ritual. Canonical performance is associated with the expression of the canon’s statements and beliefs. Because the canon is invariant, its reiteration in repeated rituals provides no information about current states of affairs to the participants; rather, any information conveyed has an abstract, timeless quality. For example, periodic recitation of the sh’ma by an Orthodox Jew conveys no new information as to the meaning of the words, or the state of mind of the speaker. This is particularly true inasmuch as the canon cannot express the performer’s own thoughts and feelings as the cannon has not been encoded by the performer. The self-referential aspect of the ritual, in contrast, involves the message conveyed by the performer about her current state of affairs and state of mind through participation in the ritual process itself. This type of performance is treated as self-referential because communicating information about the participant’s current social and mental condition to others inevitably and fundamentally also conveys information to herself about her psychic state, social position, and sense of obligation to the social and linguistic conventions and norms generated in the ritual process. For example, while private rituals, such as a Catholic saying the rosary or an Orthodox Jew reciting morning prayers, do not convey information to third-parties, they do reaffirm the

152. See id; RAPPAPORT, supra note 64, at 11-17.
153. See infra notes 172-76 and accompanying text.
154. See infra notes 172-76 and accompanying text.
155. See RAPPAPORT, supra note 64, at 52-58.
156. See id. at 54-58.
157. See id. at 51, 54-58.
participant's state of belief, at that moment, in the dogmas and norms of Catholicism and Judaism.

The importance of this aspect of self-referentiality can clearly be seen by analyzing ritual communication from a semiotic perspective. Using Peircean categories, we can say that ordinary discourse is primarily conducted with "symbols": abstract signs that designate a signified solely on the basis of conventional usage. In addition, ordinary discourse normally privileges the underlying meaning of a statement (the signified) over the words used to express such statements (the signifiers), which ideally should provide a transparent linguistic medium. In contrast to ordinary discourse, self-referential ritual communication commonly utilizes indexical and/or iconic forms.

An "indexical" sign represents the signified by displaying a physical relationship between signifier and signified, whereas an "icon" is a physical object that represents the signified by virtue of the fact that the icon and the signified possess certain physical elements in common. Take, for example, the fundamental decision to participate in a ritual. The bodily act of participation constitutes a physical indexical sign of compliance with the concepts and norms associated with the ritual's invariant canon; it indicates membership in the ritual community, rather than merely symbolizing it. Thus, physical participation in a ritualized practice conveys to others and to the participant a representation of an otherwise unknowable internal psychic state. At the same time, the relationship between signified and signifier is reversed in ritual communication. The emphasis is placed upon the form of expression itself. The invariable canon (the ostensible signified) is already known and can reveal no new meanings in successive ritual performances. Rather, the information conveyed about the current status and mental state of the performer due to the ritual acts (signifiers) themselves is what makes it sig-

---

159. See Bell, supra note 66, at 129; Rapaport, supra note 64, at 54-67.
160. See Herbert H. Clark, Using Language 156-59 (1996); 1 Lyons, supra note 158, at 102-07.
161. Bodily actions in particular have a powerful impact on both an individual's self-identity and also on messages transmitted to others. See, e.g., Bourdieu, Logic, supra note 6, at 66-79; Douglas, supra note 67, at 69-87; see also infra notes 317-20 and accompanying text.
162. See Rapaport, supra note 64, at 54-58.
Ritual communication thus reduces important sources of referential indeterminacy and opacity by physically creating—in the presence of oneself and of the other participants—a number of key referents. In this way, ritual performance can also be said to move otherwise empirically true or false communication toward the state of being linguistically true, by embedding in the performance itself many of the empirical data necessary to determine the truth of the statement. This communicative value of the physical and sensory nature of ritual performance is even more significant if, as cognitive linguists suggest, our most basic grounding of reference for the meaning of statements by others arises from the kinesthetic awareness of our own bodies.

This physical, self-referential ritual communication constitutes an important part of the larger semantic category of "paralinguistic" phenomena. Paralinguistic features include various physical actions, including vocal signals (e.g., tone of voice), gestures, and facial expressions, which play a supporting role in verbal communication. Paralinguistic signals allow us to communicate that which we can only express with difficulty (if at all) by means of words. They also provide a metalanguage through which we frame the pragmatic effect of our discourse on our listeners, subtly articulate social relationships, and express our public attitudes and social personalities. In evolutionary terms, paralinguistic signaling is a very old and widespread phenomenon, employed by many nonverbal animals as well as by human beings in conjunction with verbal communication. All natural languages contain paralinguistic features, and arguably all verbal communicative systems must be complemented with paralinguistic practices that can express the otherwise hidden or inexpressible, and can provide metalinguistic

163. See id. at 53.
165. See 1 LYONS, supra note 158, at 61.
166. See id. at 61-66; GREGORY BATESON, STEPS TO AN ECOLOGY OF MIND 370-72 (Univ. of Chicago Press 2000) (1972).
167. See BATESON, supra note 166, at 370-72.
context for our utterances. In both animals and humans, probably the most important functions of paralinguistic communication are precisely these interpersonal social aspects: when a dog playfully pretends to bite his owner, it is paralinguistically signaling that it is friendly (and therefore would not in fact harm the owner); when a speaker addresses a physically restless or inattentive audience, the paralinguistic expression is that the audience views the speaker as not worth paying attention to.

The interaction of invariant canon with indexical, iconic, and self-referential performance thus creates a sense of confidence among observers that the ritual participant will adhere to the content of the ritual canon and its associated norms in the face of the potential problems of ambiguity and lying. Ritual communication forces participants to make relatively unambiguous statements concerning their current status and mental state, which makes it much more difficult for an individual performer to dissemble her meaning or make it ambiguous. Indexical/iconic communication and the signifier/signified inversion provide concrete indicia of the performer's otherwise unobservable intention to comply with the ritual's content and with those norms associated with the ritual. Through metalinguistic communication, the ritual process also creates a social relationship that ritual anthropologist Roy Rappaport termed "hypertrust": a participant's heightened sense that others actually believe what they are saying and will act accordingly. For example, I may promise to be your ally, but it is much more powerful if I physically dance an "alliance dance" with you.

168. See 1 Lyons, supra note 158, at 64-65.
169. See id. at 67; Bateson, supra note 166, at 370-72; Wilden, supra note 147, at 172-73.
170. See Rappaport, supra note 64, at 54-58.
171. See id. at 57-58.
172. See id; Pascal Boyer, Religion Explained 245 (2001) (ritual participation signals to others that participant "will cooperate regardless of cost"); Deacon, supra note 4, at 402-04 (use of ritual to make the concept of "peace" concrete and emotionally motivating). There is also evidence from neuroscience suggesting that ritual behavior creates a deep sense of trust among participants by acting directly on the neuromodulators in the brain. See Walter J. Freeman, How Brains Make Up Their Minds 11 (2000). The self-referential aspect of ritual performance and the ability to demonstrate to others, in a very powerful manner, our adherence to ritualized beliefs and norms, is similar to the types of activity analyzed by Eric Posner in his theory of signaling, and my discussion of ritual communication is in a number of ways compatible with his thesis. See, e.g., Posner, Social Norms, supra note 1, at 24 (on "rituals of mutual assurance"); see also supra notes 33-38 and accompany-
These self-referential and metacommunicative aspects of ritual communication are especially important in situations where the signified is of a covert or incorporeal nature, especially social concepts such as honor, prestige, worthiness, and influence. Because the referents for these abstract qualities are either intangible or—as in the case of social attributes—only come into existence through ephemeral and highly contextual social interactions, it is often difficult in ordinary discourse to articulate the full meaning of such terms. An individual has prestige when enough people defer to her, and the deference is of significant quality, but it is difficult to capture this highly nuanced reality in a set of formal truth conditions. It is likewise often difficult to be precise about the degree to which a person enjoys attributes like honor or prestige. Moreover, because of this imprecision, we face the problem of the lie and of strategic behavior. For instance, every political candidate claims to be “the people’s choice,” but is this true or simply a political stratagem to gain the support that she does not in fact currently have? There are, however, certain fundamental differences. For example, by treating symbolic action simply as the passive demonstration of cooperative intent (low discount rate), Posner’s analysis ignores the active role that self-referential ritual signaling plays in affirmatively creating the very framework of obligation and of the terms of cooperation. See infra notes 172-73 and accompanying text. On the importance of distinguishing, in the context of social norms, an affirmative obligation from other types of behavior, see Cooter, Normative Failure, supra note 1, at 954. There is also a sign of a more fundamental disagreement. In the context of ritual practice and ritualized norms, I simply cannot accept Posner’s view that a social norm is simply a behavioral regularity resulting from signaling behavior, lacking independent motivational force. See POSNER, SOCIAL NORMS, supra note 1, at 28. The overwhelming evidence from decades of ethnographic study has documented the power of ritual practice to transform the obligatory into the affectively desirable. See infra notes 262-63 and accompanying text. In addition, viewing social norms in this manner does not fit well with much of our new understanding of how physicality and emotion affect human rationality and the motivational sources of human behavior, including the role played by the ritual process on the workings of human cognition. See FREEMAN, supra, at 11. See infra notes 317-31 and accompanying text. These same objections also apply to Chwe’s publicity theory, which treats ritual action as fundamentally a way to create common knowledge in order to solve social coordination problems. See CHWE, supra note 2, at 1-18. From this perspective, Chwe’s argument that “[W]idespread ritual signs of dominance do not by their omnipresence evoke transcendence but are rather more like saturation advertising…” appears to be far too reductive. CHWE, supra note 2, at 21.

173. See DEACON, supra note 4, at 402-08; JACKENDOFF, supra note 146, at 299. According to Jackendoff, highly abstract objects can only be understood through metaphor based on concrete objects. See id. On the role of metaphor in ritual, see infra notes 193-97 and accompanying text.

174. Similarly, successful national politicians (above all successful presidential candidates) routinely claim a “mandate” from the voters, even if (as was the case in
Note that this class of intangible social abstractions includes many of the basic building blocks of social categorization and entitlement that are necessary for a community to create social norms in the first place. Through self-referential ritual communication, the meanings of such abstractions become accessible by being linked to tangible significations. Whenever a politician is seen in the presence of adoring crowds during an electoral ritual, the physical act of the crowd participating in a rally indexically represents the candidate's popularity, while the very presence of the crowd itself (presumably as part of a larger group of supporters) conveys the same message iconically. It is one thing to say that I am popular, another to appear in the midst of a throng of supporters. For example, Martin Luther King's march in Washington was a demonstration in the fundamental sense of the term; the march not only asserted support for the civil rights movement, it also displayed (literally "demonstrated") this support. Moreover, in some cases, the ritual act itself actually creates the signified, and thus itself creates its own truth conditions. If a society accords prestige on the basis of competitive public distributions, then those individuals who display larger ritual distributions ipso facto have more prestige; higher status is a necessary entailment of ritualized generosity. Similarly, a po-

175. On the way that such abstract "constitutive" rules establish the institutional reality that undergirds social interaction, see SEARLE, supra note 10, at 43-51. As for basic entitlements as a viable system of informal norms, see ELLICKSON, ORDER, supra note 1, at 174-77. Ellickson's analysis is limited to property rights (and the supplementary rules that protect these rights), and purely distributive norms such as charity. But the category of entitlements underlying a social order has been profitably extended to take into account such intangible features as trust, status, and honor. See, e.g., POSNER, SOCIAL NORMS, supra note 1, at 56-58 (discussing status); JON ELSTER, THE CEMENT OF SOCIETY 116-18 (1989) (discussing honor). Bourdieu has likewise highlighted the importance of abstract "symbolic capital" in his social exchange theory. See, e.g., PIERRE BOURDIEU, LANGUAGE AND SYMBOLIC POWER 1-102 (John B. Thompson ed., Gino Raymond & Matthew Adamson trans., 1991).

176. See RAPPAPORT, supra note 64, at 141-42; see also DEACON, supra note 4, at 401-10.

177. See RAPPAPORT, supra note 64, at 55.

178. On the importance of iconic demonstration in communication, see CLARK, supra note 145, at 174-76.

179. On truth conditions and entailments, see generally 1 LYONS, supra note 158, at 163-76.

180. See BELL, supra note 66, at 120; RAPPAPORT, supra note 64, at 77-80. A good example of how a distributive ritual creates social prestige is the potlach ritual
litical candidate's prestige and popularity itself are (at least partly) instantiated by the very presence of the crowd. Arguably, ritualization is the only way that the full import of these concepts can be represented in the mind.

The repetitive and self-referential nature of the ritual process, combined with the fixed nature of the ritual canon, promotes an internalization of these norms and models that is relatively uniform and subject to less interpersonal variation than in other cases. In this context, the fact that the ritual canon is rigidly fixed and not encoded by any individual performer becomes particularly significant. Canonical texts and the cultural models and norms that they embody or reinforce are quintessentially public in nature; by their constant public exposure, they come to exist outside the realm of privately understood and internalized cultural models, meanings, and norms. These texts come "pre-interpreted" from the outside in a public and fixed manner, sometimes from the distant past, so that their meaning is highly over-determined, and these stock interpretations appear to participants as an inevitable part of an objectively ascertainable natural order of things. Consequently, these models and norms come to be understood in roughly the same way by the entire community of ritual participants, and such participants are more likely to give esteem to adherents and sanction violators precisely because they feel that these models and norms are not the result of individual judgment, but rather reflect social or even cosmic truths.

The foregoing does not mean that the ritual process can completely eliminate the problems of ambiguity and falsehood. It is possible that a performer may later renege upon the pledge to fulfill an obligation formally undertaken in the ritual process. See Sahlins, Cosmologies of Capitalism, supra note 6, at 448-52. See generally Chiefly Feasts: The Enduring Kwakiutl Potlatch (Aldona Jonaitis ed., 1991); Irving Goldman, The Mouth of Heaven: An Introduction to Kwakiutl Religious Thought (1975). Similarly, in Melanesia an individual's social status and personal identity are largely culturally defined by the nexus of (often ritualized) gift-exchange reciprocity relationships. See Douglas & Ney, supra note 9, at 93.

181. See Kertzer, supra note 70, at 165.

182. See, e.g., Doty, supra note 5, at 21. Bakhtin makes a similar point about the overdetermined "completedness" of language, character, and temporality in the case of the epic genre (which, of course, is closely associated with both myth and ritual). See M.M. Bakhtin, The Dialogic Imagination 30-34 (Michael Holquist ed., Caryl Emerson & Michael Holquist trans., 1981) (indicating mythic and ritual language as "single-meaning codes").
Nevertheless, ritual provides the framework for obligation itself.\textsuperscript{183} Accepting the precepts of a canon and its associated norms by a ritual performance is a public, social act, to some extent distinct from the performer’s actual mental state. Acceptance does not necessarily entail belief. However, the act of pledging one’s self in a ritual is a public commitment to the obligations entailed by the pledge, and a failure to perform the obligations constitutes a violation of this self-commitment. The distinction is important. A failure to fulfill a ritually pledged obligation constitutes a violation of the ritually constitutive normative order, but does not challenge or disrupt this order.\textsuperscript{184} As a result, a public, ritually enacted pledge provide for a standard by which the performer herself can evaluate her own behavior; moreover it also—as a result of the performer’s public act of acknowledging the normative universe—provides a solid basis for third-party sanctioning of norm violations, based upon the performer’s own pledge to comply.

3. \textit{Problems of Change: The Stabilization of Meaning Against Conventional Drift}

Cultural conventions, including informal norms, always remain open to the potential erosion of their generally understood meanings, and therefore may be subject to losing their ability to order human thought and behavior.\textsuperscript{185} I term this ero-

\begin{itemize}
\item \textsuperscript{183} See RAPPAPORT, \textit{supra} note 64, at 119-24.
\item \textsuperscript{184} Indeed, it has plausibly been argued that this sense of obligation, generated out of the ritual process, constitutes the fundamental grounding of moral systems in all human cultures (dating from the beginning of the species). \textit{See id.} at 104-06; DEACON, \textit{supra} note 4, at 393-410.
\item \textsuperscript{185} \textit{See, e.g.,} RAPPAPORT, \textit{supra} note 64, at 17-18. This insight is also central to epidemiological explanations of cultural development. \textit{See supra} note 50 and accompanying text; \textit{see also} AMSTERDAM & BRUNER, \textit{supra} note 8, at 231-39 (disintegration of established meanings is necessary for cultural development). One of the most striking examples concerning the connection between ritual and stability of meaning involves not just shifts in meaning within a language, but the loss of language itself. Ethnographers have noted that while speakers in Papuan New Guinea are traditionally bilingual in their own local vernacular and in a pidgin dialect that forms the regional lingua franca, younger speakers tend to be competent only in the pidgin. This disappearance of the vernacular is surprising in light of the voiced concern among elder vernacular speakers about this loss of local language and tradition. One reason for the disappearance of the local vernacular is predictable: the impact of modernization as a result of increased contact with the outside world. The second, however, is unexpected and significant. The conversion of villagers by Roman Catholic missionaries has undermined the traditional ritual structure, which used the vernacular language. As a result, unconsciously the villagers have subtly devalued the use of the vernacular in favor of the pidgin (used in Catholic rites),
\end{itemize}
sion of meaning "conventional drift."

We have within our minds "cognitive (or cultural) models," abstract, schematic structures that provide the conceptual framework through which we process and interpret outside events, and organize many domains of experience. These cognitive schemas form the implicit, taken-for-granted models of the world that we use to make sense out of a chaotic phenomenal reality, provide dynamic structures through which we reason, and incorporate the ideologies and values (such as social norms) of a culture that render it unique. Cognitive models are generated and maintained in the minds of individuals by a process of associative learning, characterized by repeated exposure to the same types of stimuli and by pragmatically successful use of the models in reasoning and problem solving. A cultural concept, or a practice, such as following an informal social norm, takes on an intersubjectively understandable social meaning if its underlying cognitive model is mutually intelligible and widely shared among community members through exposure to similar life situations, common practices of socialization and education, and exposure to well-publicized exemplars.

The potential for conventional drift arises because such centripetal factors, which promote stable, mutual understandings of

with the result that they no longer invest much effort in ensuring that their children understood the local language. See DON KULICK, LANGUAGE SHIFT AND CULTURAL REPRODUCTION 20-21, 72 (1992).

186. See, e.g., KERTZER, supra note 70, at 83; STRAUSS & QUINN, supra note 8, at 93-96; Holland & Quinn, supra note 52.

187. See STRAUSS & QUINN, supra note 8, at 77-78; Holland & Quinn, supra note 52, at 22-27.

188. See STRAUSS & QUINN, supra note 8, at 53-56, 125 (discussing the importance of repeated associations for creating, maintaining, and learning cultural models). This pattern of associative learning reflects the fact that for many types of reasoning, the human mind reflects a type of "connectionist" (or "pattern associator") structure. See, e.g., id. at 48-84; STEVEN PINKER, WORDS AND RULES: THE INGREDIENTS OF LANGUAGE 103-119 (1999); see also MICHAEL R.W. DAWSON, UNDERSTANDING COGNITIVE SCIENCE 36-65 (1998). For an application of connectionist theory in the context of contractual norms and legal doctrines, see Beverly Horsburgh & Andrew Cappel, Cognition and Common Sense in Contract Law, 16 Touro L. Rev. 1091 (2000). On the importance of problem solving ability, see JOHN H. HOLLAND ET AL., INDUCTION: PROCESSES OF INFERENCE, LEARNING, AND DISCOVERY 277-79, 283 (1986) (reviewing experimental data on human use of "pragmatic reasoning schemas"). Indeed, people will continue to use flawed decision-making models, even if they are informed of this fact, if these models remain pragmatically useful in the common events of everyday life. See id.

189. See STRAUSS & QUINN, supra note 8, at 122-30. On the processes through which cultural models like social norms are internalized by individuals, see infra notes 3334-52 and accompanying text.
cultural models and allow these models to be used to solve shared tasks, are offset by corresponding centrifugal tendencies, which can potentially cause individuals to understand cultural models in diverse, and even contradictory, manners. This potential forms part of the general phenomenon that cultural units are resistant to exact replication. More specifically, it unavoidably arises from the way that humans, as language-using creatures, think and communicate.

In contrast with the instinctual programming of animals, which greatly limits the conceptualization and response to a given condition, the plasticity of language permits virtually limitless ways in which situations can be conceptualized and, within the limits imposed by physical reality, allows infinite potential responses. Language thus makes it possible to conceive of alternative worlds: to say “Christ is king” is inevitably, by the nature of grammar itself, to admit the possibility that “Christ is not king.” This possibility, always inherent in language, to imagine alternative orders greatly increases grounds for disorder and misunderstanding. The conception of the possible always threatens the stability of the actual, and it is only when alternative orders can be imagined that the problem of disagreement arises.

Among the centripetal forces promoting shared understandings are two that are especially relevant to the process of ritualization. Recall first that a member of a community acquires her fund of common cultural models through associative learning; models become internalized, retained, and shared by individuals in a relatively uniform manner through repeated exposure and reinforcement. The second point relates to the use of metaphor in natural language. Our discourse is permeated by metaphorical tropes. Sometimes the meanings of metaphors are open-ended, indeterminate, and subject to creative reinterpretation, as in the case of poetic diction. Most metaphors that

190. See STRAUSS & QUINN, supra note 8, at 98-101, 109-110, 115-118, 120-22, 131-34; DiMaggio, supra note 62, at 282 (noting that meanings are rarely fixed).
191. See STRAUSS & QUINN, supra note 8, at 23, 33 (criticizing “fax model” of cultural transmission).
192. See RAPPAPORT, supra note 64, at 17-22.
194. Note also the use of the open-ended texture of metaphor in the process of
we employ in ordinary discourse, however, are conventional, and encapsulate a fixed meaning of a cultural model. These metaphors enable us to clarify what we mean to others by providing a powerful, easy to understand exemplar of the underlying cognitive model that we have in mind, drawing on familiar images from everyday life or common bodily perceptions. This not only reduces possibilities for misunderstanding or divergent interpretation, but also, because our use of these stock metaphors is so pervasive, it subliminally reinforces, on a constant basis, such stable interpersonal understandings of common cultural concepts.

Ritualization harnesses these features of associative learning and metaphorical usage that exist on the micro-levels of personal thought and communicative interaction, and plays them out on a larger stage. The result is a powerful clarification, stabilization, and reinforcement of commonly shared linguistic and cultural meanings of ritualized social norms.

The essence of ritual is the repetitive performance of a fixed and invariant canon, which reflects widespread cultural models and associated norms. Repetition by participants thus serves to reinforce these models, even where such reinforcement may not otherwise be available either in ordinary linguistic usage or in the form of dominant cultural exemplars. This reinforcement is particularly important where the scope of shared cultural models, for example, fundamental conceptions of honesty and fairness, encompasses widely disparate geographical or social groups, and where significant divergences in the understanding of cultural symbols and norms are accordingly more likely to oc-

lexical development. When a linguistic community lacks a term for a new object or event, it generally does not invent a new word, but metaphorically extends an existing term (e.g., the use of nautical terms for airplanes). See AKMAJIAN ET AL., supra note 150, at 43-44.


196. For example, in describing marriage, Americans frequently resort to metaphors of a well-made product (e.g., “[W]e forged a lifetime proposition”), to emphasize a widely shared cultural model of marital lastingness, along with a concomitant normative commitment to make the marriage a success. See STRAUSS & QUINN, supra note 8, at 143.

197. See id. at 104-41; Naomi Quinn, The Cultural Basis of Metaphor, in BEYOND METAPHOR, supra note 193, at 56, 68, 74, 81 (metaphors iterate, emphasize, and fix in the mind cultural models).
Thus, a shared ritual process can provide a unifying influence around a common set of understandings and practices.

The kind of reinforcement that occurs through ritual performance is far more powerful than through other mediums. Because cultural models are abstract and schematic, they establish conceptual categories on the basis of a relatively small number of prominent features. As a result, the human mind need not take into account an infinite (and overwhelming) variety of sensory and symbolic stimuli. The ritual process interacts with and complements such schematized conceptual models. Rituals highlight a limited series of vivid images: the external images displayed in the ritual process correspond to the salient features of the relevant cognitive cultural model. Consequently, ritual 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.

Metaphor pervades the ritual process. Ritual symbolism metonymically represents salient (often intangible) entities and events: when the President delivers an address, alongside him appears the flag as symbol of the Nation. Ritual also evokes synecdochic, part-for-whole relationships: the ritual site may become the entire cosmos, which may be timeless, encompassing all eternity. More fundamentally, the ritual process is itself a metaphoric event, physically enacting a metonymic relationship between objects or concepts. Ritual performance can thus function in the same way as common linguistic metaphors, to clarify and stabilize the meaning of underlying cognitive/cultural models. In general, ritualized metaphor tells us what we already

198. See Strauss & Quinn, supra note 8, at 131.
199. See, e.g., D'Andrade, supra note 142, at 122-49.
200. See Kertzer, supra note 70, at 82-83; see also Schieffelin, supra note 144, at 5, 113-14 (discussing the role of ritual song and poetry in strengthening previously socialized feelings of reciprocity).
201. See Kertzer, supra note 70, at 90.
202. On this “totalizing” effect of ritual practice, see infra notes 258-70 and accompanying text.
know, and tells it clearly and repeatedly.

One way to view ritual, therefore, is to see it at the apex of an unbroken continuum of cognitive, linguistic, and social mechanisms for ensuring stable intersubjective understandings. This continuum begins at the micro-level of individual cognition,205 and reaches its fullest development in formal public ceremony. The primary cultural meanings and norms that are implicitly imparted by caregivers to children in their families of origin in the early learning process are subliminally stabilized through our ordinary conversational practices, and thus are replicated in the form of widely shared rites and myths.206

4. Digital Representations of an Analogic World and the Problem of Incommensurability

The previous discussion focused on ritual solutions to potential weaknesses in our use of language to communicate. Ritual also plays an important role in two more general aspects of information transmission, both linguistic and non-linguistic. The first relates to the disparity between the way information is organized in digital and analogic systems. The second concerns the problem of transmitting information across incommensurably organized systems.

Many of the phenomena in the outside world are composed of a seamless reality characterized by minute distinctions and classifications that imperceptibly merge into one another at the edges. In information theory, information of this type is termed "analogic" (or "continuous"), referring to entities and processes whose values change through continuous imperceptible gradations.207 In contrast, in the "digital" mode of information, the values of entities and processes do not change through contigu...
ous infinitesimal gradations, but in discontinuous leaps.\textsuperscript{208} Symbols can be either analogic (e.g., cries of pain which vary according to intensity) or digital (like mathematical notation).\textsuperscript{209} The virtue of a digital system of information is that it increases clarity, and permits more complex messages to be transmitted, but only at the expense of an accurate depiction of phenomena.\textsuperscript{210}

The analogic/digital disparity is one facet of a broader problem of transmitting information across otherwise incommensurable information systems. In cybernetics and systems theory, information systems are incommensurable where they are not organized according to a common metric or "language" through which information is organized, evaluated, and compared.\textsuperscript{211} For the study of informal social norms, problems of incommensurability principally arise in the interaction of three systems: the human psychophysical system, the physical environment, and the social system, all of which organize and process information in distinct ways. Each individual's personal system is concerned with organic and psychological factors,

---

\textsuperscript{208} See Bateson, supra note 166, at 372-74; John R. Pierce, An Introduction to Information Theory: Symbols, Signals & Noise 65-67 (2d rev. ed. 1980); Wilden, supra note 147, at 155-57, 191. For a cultural perspective on information theory, and its relevance to myth and ritual, see Edmund Leach, Genesis as Myth, Discovery 1962, reprinted in 2 The Essential Edmund Leach, supra note 206, at 29, 29-32; Edmund Leach, Ritualization in Man, Phil. Transactions of the Royal Soc'y, of London, Series B 251 (1966), reprinted in 1 id. at 158-64 (role of digitalized "bits" to convey information over background "noise" in ritual/mythic language) [hereinafter Leach, Ritualization].

\textsuperscript{209} See Rappaport, supra note 64, at 87. Linguistic communication is generally digital in nature, while physical types of paralinguistic communication are analogic. See Paul Watzlawick et al., Pragmatics of Human Communication 61-62 (1967).

\textsuperscript{210} See Fred I. Dretske, Knowledge and the Flow of Information 135-42 (1981); see also Pierce, supra note 208, at 131-32; Wilden, supra note 147, at 163, 168; Rappaport, supra note 64, at 88.

\textsuperscript{211} This notion of incommensurability was developed in the context of philosophy of science. See Paul Feyerabend, Against Method 210-13 (1975); Thomas Kuhn, The Road Since Structure 33-57 (2000). For a useful introduction to the literature in this area of, see Steve Fuller, Social Epistemology 99-138 (1998). For a discussion of incommensurability from a communication/linguistic perspective, see Lakoff, supra note 149, at 322-37. In the legal literature, the incommensurability problem has generally been discussed from a perspective somewhat different than the linguistic and systems theoretic approach presented here (in particular by emphasizing the potential problem of the "incompatibility" of different forms of knowledge). See generally Incommensurability, Incomparability, and Practical Reason (Ruth Chang ed., 1997); Symposium, Law and Incommensurability, 146 U. Pa. L. Rev. 1169 (1998).
ultimately connected to the growth and health of the organism, the gratification of its desires, and ultimately, its survival.\textsuperscript{212} These processes may be subconscious and therefore unknown even to the individual experiencing them, and many are analogic.\textsuperscript{213} Individual thought is characterized by analogic tropes (e.g., imagery, allusion, analogy, metaphor, and symbolism), at least as much as by exclusively logical, verbal formulations.\textsuperscript{214} In contrast, the social system in which an individual operates refers to external social, economic, demographic and political events, entities or processes, and concerns the maintenance and transformation of social orders. Thought in this context is characterized by a much greater prominence of conscious, rational, and verbal processes, largely digital in nature.\textsuperscript{215} The environmental system is composed of a series of complex relationships that exist in the physical world, and is not directly comparable with either the intrapersonal or social systems, because it includes the needs and actions of many species other than human beings.\textsuperscript{216}

The fact that these systems are incommensurable does not mean that the information contained in one system is not relevant to the other. Systems are normally considered incommensurable when there is no common metric against which information in one system can be compared to information in another.\textsuperscript{217} For example, individual opinions, feelings, and preferences are obviously relevant to the social order as a whole. Due to the lack of a common metric, however, it is problematic for relevant information from one system to be conveyed to another system in terms that are meaningful to the different type of informational structure of the recipient system. These difficulties of the analogic/digital dichotomy and system incommensurability pose obvious problems for the generation of beneficial social

\textsuperscript{212} See RAPPAPORT, supra note 64, at 97-101.

\textsuperscript{213} For example, emotions are often regulated by continuous minute secretions of chemicals throughout the neurological system. See ANTONIO DAMASIO, THE FEELING OF WHAT HAPPENS 67 (1999); WILDEN, supra note 147, at 156.

\textsuperscript{214} See, e.g., BATESON, supra note 166, at 138-42 (distinguishing "primary" and "secondary" process thinking); LAKOFF, supra note 149 (discussing metaphor); PINKER, supra note 188, at 279, 282 (discussing how human language capacity is a hybrid of rules and analogic structures); Fernandez, in BEYOND METAPHOR, supra note 193; Friedrich, Polytropy, in BEYOND METAPHOR, supra note 193 (indicating that human thought is characterized by multiple types of tropes).

\textsuperscript{215} See BATESON, supra note 166, at 139; RAPPAPORT, supra note 64, at 99.

\textsuperscript{216} See supra note 211.

\textsuperscript{217} See supra note 211.
norms (and formal law as well). Norms exist in terms of the social system, but they cannot properly regulate behavior if they cannot reflect relevant input from the internal systems of individual actors, or if they do not have a predictable impact on individual behavior. Similarly, norms cannot properly regulate the impact of human activity on the environment if information about the environment is not available to us in cognitively and socially usable form. This poses particularly acute problems for cost-benefit procedures, which require individuals to perform mental accounting in which complex analogic information from a variety of formally incommensurable systems (like the psychic and environmental) must be translated into a digital system of discrete quasi-prices governing norm-following behavior. There is substantial disagreement about the importance of these problems: at one extreme, it is argued that they preclude application of straightforward cost-benefit procedures in many spheres of activity, at the other, incommensurability is viewed as a purely illusory phenomenon.

Incommensurability is real and ubiquitous, but it does not completely prevent the passage of information between incompatible systems. Incommensurability has traditionally been treated primarily as a problem of translation; systems are commensurable only if each concept in one system can be directly translated into corresponding terms of the other system, preserving truth conditions (think of a word-for-word translation of French into English). However, this is too limited a conception; relevant information can pass between systems in modes other than literal translation, and many systems are thus at least partially commensurable. In communications theory, this process is termed transduction, whereby information flows from one system in a form understandable in terms of the other, but only subject to considerable modification. The most important method for transduction, and the only form used in many types of systemic interaction, is digitalization. Thus, our brains often interact with our musculoskeletal system by means of digi-

218. See, e.g., ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS 44-64 (1993).
220. See, e.g., DAVIDSON, supra note 195, at 183-98; see also LAKOFF, supra note 149, at 327.
221. See LAKOFF, supra note 149, at 310-17, 322-24, 327-28, 336.
222. See RAPPAPORT, supra note 64, at 101.
223. See WILDEN, supra note 147, at 159, 185.
talized pulses of electrical or chemical signals.\textsuperscript{224} The fact that digitalization achieves transduction by increasing clarity of a transmission at the cost of nuanced accuracy explains, for example, why we can communicate facts about our internal state to others through language, yet we also intuitively recognize that our individual physical/psychic system knows experiences, states, and feelings that cannot be fully expressed through this digitalized medium.

Ritual is a culturally pervasive and powerful method to achieve informational digitalization. Because of its self-referential nature and use of a restricted communicative code, ritual forces communication towards a digitalized (often binary “yes/no”) mode.\textsuperscript{225} For example, one participates in a ritual (thereby assuming all of the obligations that this entails) or one does not. Ritual canon expresses itself in fixed, stylized units of meaning, which likewise have a restricted or binary nature characteristic of digitalization.\textsuperscript{226} Rites of passage provide a clear example of the way that ritual practice achieves transduction from the individual to the interpersonal social system. From the perspective of individual childhood development, the passage from childhood to adulthood is a complicated, analogic process reflecting nuanced and graduated changes in physical and psychological development. A puberty rite, in contrast, occurs at a fixed age and establishes as a social reality the adulthood of the participant, regardless of the contextual physical and psychological factors. In terms of the social system, prior to the rite, the individual is considered a child, but after the rite, the individual

\textsuperscript{224} See DAMASIO, supra note 213, at 126, 346 & n.4; WILDEN, supra note 147, at 159.

\textsuperscript{225} See RAPPAPORT, supra note 64, at 89-97. In addition, the clarity of the digitalized message instantiated through the ritual process is further enhanced by the repetitive nature of many ritual performances, which instill redundancy into the process of ritualized communication. In information theory, redundancy is characterized by extra informational details that are theoretically unnecessary for a transmission to be understood, but that reduce the uncertainty that might otherwise cause a failure of communication due to background noise or errors in transmission; in particular, redundancy is a ubiquitous and necessary quality of all linguistic communication. See PIERCE, supra note 208, at 39, 149-50; PINKER, supra note 144, at 177-78. Successive performances of the same invariant ritual convey no new information to participants (and are therefore formally redundant), but rather serve to drive home the meaning of the ritual, and of the norms associated with it, in an unambiguous manner. See Leach, Ritualization, supra note 208, at 164.

\textsuperscript{226} See generally EDMUND R. LEACH, CULTURE AND COMMUNICATION: THE LOGIC BY WHICH SYMBOLS ARE CONNECTED 47-64 (1976); LEACH, Genesis, in 1 THE ESSENTIAL EDMUND LEACH, supra note 206; RAPPAPORT, supra note 64, at 89-97.
is considered an adult.\textsuperscript{227} The binary nature of the rite thus allows analogic information concerning individual maturity, located in the individual’s private physical and psychological system, to be expressed publicly in the incommensurable sphere of social activity.\textsuperscript{228} To give another example, electoral rites reduce the complex views of voters about the issues and the candidates to a binary either/or decision between rival candidates or positions, or (in the case of proportional voting systems) greatly reduce the number of choices that can be expressed.\textsuperscript{229} Similar transductive properties have been noted in rituals that mediate the information flow from the environmental system to the social system, ranging from relatively straightforward seasonal rites (such as a harvest festival) to very complex ritual systems that minutely track and express the impact of human agricultural and hunting activities on environmental resources.\textsuperscript{230}

Ritual also plays another important role in transducing relevant information across differently organized systems, one that is not achieved by most other social or cognitive transductive mechanisms. Ritual serves to justify and reconcile us to the loss that occurs when information must cross system borders. Even though such loss is inevitable, in many cases it may appear to be highly problematic, and lead us to question the validity of the transductive process itself. For example, as lawyers, we are acutely aware that in court proceedings, issues such as truth, guilt, and fault can (at best) be grasped as approximations of a much messier reality: objective indicia such as intent in a contract dispute can never fully reflect the subjective beliefs and understandings of the parties; the suffering of crime or tort victims can never be fully expressed in an interpersonal, social setting; and any determination of culpability is a binary distinction that probably cannot take into account the more nuanced features of legal and moral responsibility. Voting in a political democracy poses similar problems. Much of what a voter believes and feels about a candidate or issue inevitably cannot be reduced to the type of restrictive (yes/no) choice that collective decision-making generally requires. We often feel that no electoral option fully reflects how we feel and what we want, and

\textsuperscript{228} See PINKER, supra note 188, at 286-87.
\textsuperscript{229} See RAPPAPORT, supra note 64, at 90.
\textsuperscript{230} See id. at 266-67.
we are right to feel this way. Due to the limitations of digitalized communication, we can no more represent our full subjective opinion with a ballot than we can ever fully express the full range of our subjective experience in words. Loss of personal input is particularly significant under majoritarian decision rules, where it is virtually certain that someone's belief that she will be made worse off will ultimately be ignored in the final decision.231

It is no accident that voting is a ritual and that trials are pervaded by ritual practices. Ritualization allows us to overlook or accept the informational defects latent in each system. The self-referential nature of ritual binds a participant to a normative acceptance of a process, in this case a legislative or judicial decision. Additionally, ritual participation can evoke powerful emotional support for such a practice or make a different practice unimaginable. Finally, because of the tight connection between ritual and myth, ritualized practices—like those used in voting and in trials—can become integrated into the structure that our culture uses to organize its most basic beliefs about how the world should work. Thus jury trials, although often criticized, remain popularly viewed as the keystone of American judicial procedure; the majoritarian "one person, one vote" standard articulates an affectively powerful touchstone for American notions of democratic legitimacy.

B. The Cognitive Aspects of Ritual: Attention and Memory

In our discussion of human communication, we noted a number of ways that ritual affects individual cognitive processes, such as the way that ritual interacts with schematic mental models and how it facilitates cognition by digitalizing input that we receive from the outside world. In this section, we look at ritual's impact on two additional cognitive properties: attention and memory. Neither attention nor memory is a uniform phenomenon: we pay more or less attention to a given situation, or to specific events within a given context; our recall may be less than fully reliable. Such variability, however, is not completely random; it is structured in certain predictable ways, and the ritual process exploits these regularities to focus attention on the norms instantiated in a ritual, and to make them highly memo-

231. On the problematic aspects of majoritarian voting rules, see DENNIS C. MUELLER, PUBLIC CHOICE II 43-57 (1989).
We can only apply a social norm (either to oneself or to the behavior of others) if we are paying sufficient attention to the situation, and attention is likewise required to learn new norms. Yet because we lack sufficient cognitive resources to be equally aware of everything, some elements are always grounded in the forefront of our consciousness, while others remain in the implicit background. If we are distracted from paying attention to relevant information, we can make mistakes of judgment. For example, if I am lost in thought and fail to greet an old friend when I see her, she may justifiably feel aggrieved by my insensitivity; due to my inattentiveness, I have failed to notice social cues triggering the application of a relevant norm, thereby committing a gaffe.

Ritual helps us focus attention on relevant social norms by virtue of its ability to frame social contexts and of its repetitive nature. As Erving Goffman long ago observed, much of our daily social interaction, such as greetings, farewells, etc., takes the form of "interaction rituals," characterized by repeated use of a limited set of linguistic and bodily symbolic actions. One purpose of this ritualistic behavior is to frame the social context, and thereby focus our attention on the relevant social features of the situation. The framing of ritual performance as a special occasion is especially prominent in more formal ritual processes, and likewise focuses attention on the event and on the norms that are instantiated as part of the ritual process.

Use of a system of informal social norms also requires that we adequately recall both the content of the relevant norm itself, and the social contexts in which the norm is applicable. But our memory does not function like a computer disc, a storage and retrieval system that unproblematically preserves information in fixed form to allow us to recall past events exactly as they happened. Human memory is organized in a highly plastic phenomenon. Due to the physical architecture of human neural sys-

233. See, e.g., JONATHAN BARON, THINKING AND DECIDING 267-72 (2d ed. 1994) (role of "attention bias" in causing incorrect judgments); ALVIN I. GOLDMAN, EPISTEMOLOGY AND COGNITION 351 (1986); Arthur S. Reber et al., Implicit Versus Explicit Learning, in THE NATURE OF COGNITION, supra note 49, at 475.
234. See ERVING GOFFMAN, INTERACTION RITUAL 5-95 (1967).
235. See id. at 113-16; ERVING GOFFMAN, FRAME ANALYSIS 247-86 (1974).
tems, our memory of a single object, such as a hammer, is not stored in one place in the brain; rather, various aspects of the hammer (e.g., touch, feel, function, etc.) are stored in different locations. In the act of remembering, we literally reconstruct in our consciousness the image, emotions, and bodily sensations associated with the recalled event. This reconstruction is never an exact copy of the previous event. When information from the outside is encoded in memory, there are systematic biases that make certain aspects more easily accessible to consciousness than others; when we retrieve items from memory, our current situation can affect the content of what we reconstructively remember. Our current circumstances also appear to continuously modify, on an unconscious level, the content of memories laying dormant in the mind. Yet for all of this plasticity, we do consciously retain sufficient continuity in our recollection of past events so as to go about our daily activities, retain a unified sense of self, and identify other individuals and social settings in terms of a comprehensible narrative of events. As in the case of communicative activity, this stability is the result of evolutionary, physical, and social factors, in which ritual plays a significant role.

In ritualizing behavior, we make the ritual canon and the associated norms more amenable to (relatively) faithful storage and reconstruction. Part of this amenability is a function of increased awareness; by focusing on the situation, the ritual participant is more capable of coding relevant information into memory. In addition, ritualization facilitates ease of encoding by the fact that it tracks directly onto the schematic structures through which our thoughts are organized. Moreover, because our ability to access relevant information at a later time is significantly increased if the situation in which the information is presented is especially vivid or emotionally charged, the framing function of the ritual process, in conjunction with for-

236. See DAMASIO, supra note 213, at 220-22.
237. See id.; HOGARTH, supra note 43, at 92-93.
239. See DAMASIO, supra note 213, at 224-28.
240. On the relationship between attention and memory, see KUNDA, supra note 238, at 163-64.
241. See supra notes 199-200 and accompanying text for discussion of the relationship between ritual and mental representations.
242. See KUNDA, supra note 238, at 171-72.
mality and use of unusual symbols, can make memories associated with ritual exceptionally vivid and easily retrievable. The emotionally charged atmosphere of ritual performance, together with the bodily performances that accompany all ritual practices, also help ritually instantiated memories to remain less likely to be unconsciously modified between the time of encoding and the time of recall. Finally, because information is more likely to be accurately recalled if the stimuli are repeated with a short time interval between exposures, the periodicity of many ritual practices strongly facilitates our ability to remember ritualized norms.

So far, this discussion has concentrated primarily on norms that we consciously remember and apply to ourselves or to others. Often, however, our social judgments and behavior are governed by norms and reactions that evade explicit awareness and deliberative control. Cognitive psychologists term such processes "implicit" or "automatic" behavior because these processes are not explicitly available for introspection or deliberation. Implicit forms of learning and action are necessary for reasons of cognitive economy; such processes are much more efficient than explicit deliberative thought. Our implicit judgments and reactions in specific social settings are created associatively by repeated (often unconscious) exposure to the same type of social situation, and appear to be embodied in specific neurological tracks, carved out of the brain’s neuronal architecture, that in effect “short-circuit” the processes of conscious awareness. Automatic behavior is then triggered by situational cues that reflect a familiar configuration of elements.

It is readily apparent that a great deal of our learning and application of informal social norms involve automatic processes like this. This is most clearly seen in everyday “mindless” social

243. See STRAUSS & QUINN, supra note 8, at 92-93 (indicating how emotion strengthens the neural connections that underlie cultural models). See infra notes 309-35 and accompanying text for information on the relationship between ritual, emotion, and cognition.

244. On the significance of this “spacing effect,” see GOLDMAN, supra note 233, at 221-26.


246. See KUNDA, supra note 238, at 288-303; Kihlstrom, supra note 245, at 176.

247. See KUNDA, supra note 238, at 303-04.

248. See id. at 307; Kihlstrom, supra note 245, at 192-97.
etiquette. It is also evident in action that is more significant, such as the norm against theft. We usually do not consciously deliberate whether to take another's belongings whenever we have an opportunity to do so. Unthinkingly, we just don't do it. Just as ritual can focus our conscious awareness and memory of explicit forms of normative behavior, it also reinforces the impact of norms on implicit judgment and behavior, by virtue of the repetitive nature of each ritual performance, and the constancy of periodic reenactments. Repetition of words and gestures in a ritual performance necessarily involves a corresponding repetition in our minds of the norms associated with the ritual canon and rules governing our social judgments and behavior. It is these repeated associations that help form the cognitive and neural patterns that ground our automatic norm-governed conduct in much of everyday life.

C. Ritual Constitution of Social Reality

R ritual has a third constitutive role, in addition to facilitating communication and cognition. The fact that humans must employ schematic mental structures in order to organize and comprehend an otherwise bewilderingly complex reality, together with the fact that these mental categories are disseminated and intersubjectively understood in the form of widespread cultural models, entails that much of our understanding of reality is in some way socially created. The most obvious forms of social construction relate to specifically "social" phenomena such as the presence of status hierarchies in a culture and various types of social roles. Its more pervasive impact, however, arises from the way that we construct our implicit, cultural background knowledge of the way the world works, of time and space, and of our conceptions of the sacred. Without this background knowledge, all rational social interaction, much less the development of normative orders, would be extremely problematic, if not impossible. Ritual has always formed an important vehicle through which we create the background framework of our

249. See KUNDA, supra note 238, at 270-72.

250. Arguably, a great deal of our ability to make complex social judgments reflects automatic properties. See, e.g., KUNDA, supra note 238, at 307; John A. Bargh, The Automaticity in Everyday Life, 10 ADVANCES IN SOC. COGNITION 1, 50 (1997), quoted in Kihlstrom, supra note 245, at 178-79.

251. See, e.g., SEARLE, supra note 232, at 175-96.

252. See id.
social interactions, and one that has distinctive features and performs unique functions.

1. **Performative Language and the Construction of Reality**

Ritual communication is characterized by a high density of performative and commissive statements.²⁵³ Speech act theory defines a performative statement as a statement that does not convey information about the state of the world, but rather by its very utterance creates and realizes a state of affairs.²⁵⁴ When the president-elect takes the inaugural oath, it is the recitation itself that makes him the President, at the precise moment of the recitation. "Commissive" (or "explicit performative") statements are promises or pledges through which the speaker binds herself to a specific course of action.²⁵⁵ In a manner similar to performatives, it is the act of saying the promise that creates the obligation upon the speaker to perform.²⁵⁶ For example, among the Maring people of New Guinea, neighbors promise to help one another against enemies by performing a ritual "alliance dance."²⁵⁷ Another example is the pledge of allegiance in America, with its implication that the performer binds herself to act in a manner consistent with the interests of her country.

At the same time that they create status or obligation, however, performative and commissive statements expressed in ritual also immediately and imperceptibly merge into the realm of facticity. Unlike declaratory sentences, performative and commissive statements cannot be disproved; because they create their own satisfaction conditions, they cannot be false.²⁵⁸ After an authorized individual dubs someone a knight or inaugurates someone as President, he is, as a matter of fact, a knight or a President. Similarly, after a ritually enacted pledge, the performer is bound by the obligations undertaken, even if she later


²⁵⁴. See STEVEN C. LEVINSON, PRAGMATICS 226-42 (1983) (discussing the relevant terminology of Austin and Searle's theories).

²⁵⁵. See id.

²⁵⁶. See JOHN SEARLE, SPEECH ACTS 60 (1969).

²⁵⁷. See RAPPAPORT, supra note 64, at 79-80.

²⁵⁸. See AKMAJIAN ET AL., supra note 150, at 374; LEVINSON, supra note 254, at 243-46.
Because many of the conceptions and norms instantiated through the ritual process are unfalsifiable, they take on the appearance of unchallengeable, immutable truths. Thus, the provisional, contingent, and created nature of concepts and obligations instantiated in the ritual process become transmuted—in a manner described by anthropologist David Kertzer as "sleight of ritual"—into the world of facticity and thereby into a "natural" part of everyday life. The precepts and norms instantiated through the ritual process can thus form a type of implicit, background knowledge that is difficult consciously to challenge, because it appears to be integral to and a fundamental part of the "real" world as it is, or to reflect timeless, unchanging tradition. At times, derogation or violation of norms might thus be literally unthinkable. In many cases, because the meanings of ritually instantiated norms have an immutable quality in the minds of most if not all individuals in the relevant community, they are less likely to be deviated from, either by idiosyncratic interpretation or by outright rejection.

Ritualization thus tends to insulate a normative order from the ordinary give and take of everyday life, by locating it instead in the realm of implicit, timeless reality. By doing so, ritual promotes the stability of these orders against too rapid change, and also against gradual deterioration as more and more people choose to violate a norm. It also provides one of the important methods by which informal social norms obtain their specifically normative character, reflecting not only what we do, but what we ought to do, because such norms reflect the world as it truly exists. This stands starkly in contrast to conventions that exist solely on the basis of the fact that a high percentage of the population adheres to them. Such conventions can be violated or individually reinterpreted without the community believing that they are violating the natural order of things. Insulation of so-

---

259. See RAPPAPORT, supra note 64, at 166; SEARLE, supra note 232, at 62.
260. See RAPPAPORT, supra note 64, at 164-68.
261. See KERTZER, supra note 70, at 48-50.
262. See, e.g., BELL, supra note 66, at 167 (noting that people are largely unaware of how they construct social practices through ritual); KERTZER, supra note 70, at 101; TAMBIAH, supra note 253, at 123-66; Bloch, supra note 67.
263. See BELL, supra note 66, at 145-50.
264. See Leach, supra note 127, at 320 (noting such "statistical" norms and conventions).
265. See RAPPAPORT, supra note 64, at 126-30.
cial norms from the vagaries of everyday practice is further enhanced by the self-referential nature of ritual performance. Through the periodic self-referential display of adherence to ritually instantiated norms, an individual binds herself to publicly understood normative definitions and standards, and is thereby inhibited from reinterpreting these standards or from arguing that the norms do not apply to her. Norms can be violated, but generally the normative structure remains intact. 266

2. Totalization, Communitas, and the Creation of the Sacred

Everyday life confronts the individual with discrete and divided units of reality. Time is at a minimum divided into past, present, and future, and generally is more formally subdivided according to the logic of the calendar and the clock. In addition to such mechanical formulations, we also conceptualize time in socially relevant units such as an individual's change from childhood to adult status, or time as reckoned from some culturally significant event (e.g., the birth of Christ or the foundation of a constitutional republic). The fact that we use different conceptions of time in different situations is a constant feature of social life in general and law in particular. 267 Space is likewise subdivided into units: the planet and the cosmos, different nation-states, the distinction between locality and larger cultural or political units. All of these divisions reflect social and cultural, as well as geographical considerations.

Because the ritual process frames ritual performance as a unique and exceptional experience, 268 it helps demarcate relevant units of social time. Micro "interaction rituals" delineate the temporal scope of everyday social interactions; on a larger scale, a rite of passage marks the transition to adulthood. Rituals also can demarcate significant spacial divisions, most notably between ordinary space and ritualized "sacred" space, either religious or secular (for example the White House). Paradoxically, however, the ritual process not only can create distinctions in time and space, but also can conflate and thus obliterate these

266. See id. at 205.

267. See BOURDIEU, LOGIC, supra note 6, at 80-84 (noting on the social nature of time in everyday practice); KAHN, supra note 6, at 40-60 (commenting on the social and cultural components of time and space in the context of the legal system).

268. For examples on the function of framing in the ritual process, see BATESON, supra note 166, at 182; MARY DOUGLAS, PURITY AND DANGER 64 (1966); GOFFMAN, supra note 233, at 58.
distinctions altogether, and create a framework within which a condensed symbolic microcosmic portrayal of the world can be produced. The result is that ritual tends to "totalize" lived experience; that is, to collapse in the minds of participants divisions of time, space, and social structure into a unified cosmological structure that is experienced by each participant as a totality.

One way that the ritual process accomplishes such totalization reflects the metonymic nature of ritual performance and symbolism, which permits the currently enacted ritual drama to be metaphorically extended to encompass our understanding of the world as a whole. Additionally, formal ritual unifies in a single moment the three basic rhythms of human temporality. Ritual gestures, chants, and breathing reflect the physiological rhythms of organic beings. At the other extreme, the invariant ritual canon, which may be centuries old, corresponds to society’s historical memory, and this sense of timelessness is accented by the periodic repetition of this canon in recurrent ritual performances. These two rhythms fuse with the third, the normal time of ordinary social interaction, to form a special, unitary ritual time, which constitutes a unique "time out of time." Such a union of temporalities also occurs in less formal ritualized practices by infusing current reality with a sense of timeless tradition. Traditionalism is a fundamental characteristic of all ritual and ritualized practices. For example, a Thanksgiving dinner conflates present time with that of an idealized colonial past; hunting evokes timeless traditions that create a linkage between contemporary hunters and their remote human ancestors.

Additionally, ritual and ritualized activities are frequently performed at special sites. The conjunction of special sites with the eternal, "time out of time" temporality of ritual performance has the effect of breaking down geographical as well as temporal

269. See, e.g., BELL, supra note 66, at 160; HANDELMAN, supra note 87, at 81.


271. See supra notes 201-206 and accompanying text.


273. See BELL, supra note 66, at 168; see also Barbara Myerhoff, A Death in Due Time: Construction of Self and Culture in Ritual Drama, in RITE, DRAMA, FESTIVAL, SPECTACLE 149, 159 (John J. MacAlone ed., 1984).
divisions. This breakdown may occur because the ritual site becomes a microcosm of an eternal, cosmic process (as particularly in the case of religious ritual). On the other hand, the simultaneous performance of ritual or ritualized activities in many places can likewise have the effect of dissolving geographical separation. For example, voting takes place in a number of locations on Election Day, but is perceived as the single action of a unitary entity (the sovereign People), in a way that transcends the physical separation of the actual electorate.

This totalizing aspect of ritual has important implications for ritualized social norms. One implication relates to the way that ritual breaks down spacial differences. It is well established that transactions costs are likely very high where bargaining to establish beneficial social norms entails the agreement of a relatively large number of parties separated by wide geographic distances, for example the costs of locating all of the necessary parties, or bringing them together in one forum. Furthermore, as Robert Ellickson has noted, prospects for cooperative behavior appear to be significantly enhanced in the setting of closely-knit communities. Yet many of the most important informal social norms, for example the generalized norm against theft, are internalized and transmitted across widely dispersed communities of strangers. Ritualization constitutes a very significant way for informal social norms, which typically lack the institutionalized territoriality of formal laws, to overcome problems of geographic dispersion. Due to the invariance of the ritual process, a ritual can generally be performed in the same way any number of times in any number of locations. As a result, multiple rites performed among a dispersed population create localized fora for participation that act to build consensus on the local level for a normative order that is unitary and uniform. The most obvious examples of this process are of course the ethical precepts of the great world religions, whose rites can promote uniform belief structures among believers scattered widely around the globe.

274. See, e.g., BELL, supra note 66, at 157-59; ELIADE, supra note 272, at 35; RAPPAPORT, supra note 64, at 209-10.
276. See supra note 23 and accompanying text.
277. See, DOTY, supra note 5, at 104; see also CHWE, supra note 2, at 61-66 (explaining how ritual helps build common knowledge among members of otherwise weakly organized social networks).
Ritual shares similar properties with social hierarchies and structures, and with time and space. On the one hand, many aspects of social class distinction, like honor or prestige, can be partly or wholly created through ritual. In addition, it is well documented that ritual processes can be manipulated by aristocracies, clergies, or single party state apparatuses in order to maintain the dominant position of their members. At the same time, however, ritualized activities tend to “totalize” society by dissolving perceptions of social distinction. Victor Turner has described how many ritual practices commonly emphasize what he terms “communitas”: feelings of social cohesiveness, shared human interests, and concerns, coupled with a sense of equality of all human beings. These feelings stand in stark contrast to the actual division of society into hierarchical (and frequently unequal) classes and other socio-political divisions. During the ritual period, this feeling of communitas can break down ordinary distinctions between groups and classes, while at the same time functioning to stabilize these hierarchies during non-ritual periods. The communal feelings of solidarity generated by the ritual reduce the potential for disorder directed against the hierarchical system itself. The generation of communitas can clearly be seen in certain rites of passage and rites of inversion (such as Carnival) where the advantaged are temporarily deprived of their privileged status and can be insulted by the greater mass of ordinary people or forced to act as their servants. It can also be discerned in more familiar contexts, such as political rites where a candidate shakes hands with voters (thus breaking physical barriers and emphasizing that the candidate too is a “common man” rather than a member of the elite), or in political speechmaking addressed to a unitary sovereign people (“my fellow Americans”) undistinguished by race, sex, or class.

By emphasizing such transcendent notions of eternity, infinity, community, and sacrality, ritual can generate powerful feelings of trust, and especially of belief in and commitment to the

279. See id. at 125-30, 176-78.
280. See id. at 125-30.
281. See Bell, supra note 66, at 126-28; Natalie Zemon Davis, The Reasons of Misrule, in Society and Culture in Early Modern France 97-123 (1975); Kertzer, supra note 70, at 55.
282. See, e.g., Kertzer, supra note 70, at 49, 55-56.
norms and precepts contained within the ritual process. "Ritual transforms the obligatory into the desirable." 283 Indeed, this potential ability to generate tremendous affective force has been extensively documented by many observers of the ritual process. 284

The way in which ritual simplifies a complex, divided reality into an integral whole thus plays an important role in allowing society to create binding, socially acknowledged, and emotionally motivating obligations amidst a welter of conflicting individual opinions and beliefs. But the impact of ritual's totalizing effect, and its ability to create a microcosmic world of immutable time, limitless space, and homogenous community, extends even further: ritual is the primary vehicle through which all humans create the sacred. 285 Through ritual participation we confront the infinite and the eternal; out of this encounter with the ineffable we ground our conception of the ultimate postulates, unquestionable and inaccessible to reason alone, upon which we anchor our ultimate understanding of reality and give meaning to our lives. 286 The connection amongst ritual, the sacred, and the basic postulates of our existence is clear enough in the religious context: participation in holy rites creates the aura of the sacred that valorizes belief in a religious creed and leads the believer to organize relations with other people and the cosmos in accordance with divine precepts.

But the sacred is not solely a religious phenomenon, and transcendent, unquestionable postulates exist in the secular world as well. 287 Commonly known in American law as "We the People," in American democracy, the ultimate authority upon which the entire legal edifice is postulated falls upon the "Peo-

283. TURNER, supra note 111, at 30.
285. There is a vast literature describing this phenomenon. See, e.g., BELL, supra note 66, at 155-59; DURKHEIM, supra note 284, at 455-61; RAPPAPORT, supra note 64, at 276-312; RICOEUR, supra note 204, at 40-51.
286. See BELL, supra note 66, at 75 (ritual performance "[v]alidates cultural values that cannot be proven real and correct in any other way"); RAPPAPORT, supra note 64, at 277-81; DAN SPERBER, RETHINKING SYMBOLISM 95-99 (Alice L. Morton trans., 1975) (noting that sacred symbolism expresses logically unverifiable ultimate truths); Ricoeur, supra note 204, at 49.
287. See, e.g., KERTZER, supra note 70, at 37-38 (sacralization of power in political rites); Moore & Myerhoff, supra note 96, at 20-21; Barbara G. Myerhoff, We Don't Wrap Herring in a Printed Page: Fusion, Fictions, and Continuity in Secular Ritual, in SECULAR RITUAL, supra note 3, at 200-02.
ple," indeed, even authoritarian and totalitarian regimes have recourse to formal recognition of popular sovereignty as the putative source of their legitimacy. Yet this sacred notion of a "sovereign people" is an abstract, transcendental, unitary entity, distinguishable in important ways from the mere aggregation of individuals who compose the body politic.288 "We the People" is an elaborate symbol through which we conceptualize an abstract sovereignty that cannot be directly encountered in everyday life and therefore is not capable of being comprehended other than in symbolic form.289 This symbolism is constructed through a host of political rituals, of which the most important is ritualized voting.290 For this reason, those political scientists who have studied the restoration of democratic government after previous autocratic regimes have discovered that the most important factor in the legitimization and consolidation of nascent democratic regimes is the prompt implementation of electoral politicking.291

It seems obvious that informal social norms (and formal law for that matter) will become more stable and hence more unquestionable the closer that they can be associated through ritualization with such an aura of sacredness, of a transcendent legitimacy coming from outside human society itself.

3. Solidarity Without Consensus

The symbolism inherent in ritual communication has additional properties that also provide the constitutive framework for a stable normative order, while at the same time facilitating the ability of a community to make beneficial changes in social norms when it so desires. It does so because of ritual's ability to achieve "solidarity without consensus."292 This article thus far has emphasized the ways in which ritualization can stabilize and facilitate widespread transmission of norms and their ac-

288. See MORGAN, supra note 121, at 55-77, 263-287.
289. See KAHN, supra note 6, at 77-78; KERTZER, supra note 70, at 6-7; Michael Walzer, On the Role of Symbolism in Political Thought, 82 POL. SCI. Q. 191 (1967). Ritual also allows us to comprehend abstract social constructions like political sovereignty. See DEACON, supra note 4, at 403; TURNER, supra note 111, at 49-50 (ritualization makes the invisible visible); supra notes 172-75 and accompanying text.
290. See KERTZER, supra note 70, at 90.
companying social meanings. Ritual symbolism, according to its very nature, however, can also promote social solidarity in support of systems of social norms in the absence of a broad consensus of individuals concerning the precise meaning of a norm or on all of the fundamental values underlying a normative system.

Ethnographic studies have identified two universal types of dominant, or "key" symbols employed by cultures: elaborating symbols, which allow us to form categories by demarcating relevant distinctions between entities in the physical and social worlds, and summarizing symbols that combine diverse elements of reality into an undifferentiated whole. In ritual contexts, the more important types of symbolism involve summarizing symbols, which have two distinct properties that differentiate them from other types of symbolic signaling. The first involves condensation, where ritual symbols bring together a wide variety of thoughts and actions in a single formation that synthesizes these disparate meanings into a single focus. The second distinguishing feature, related to the first, is that ritual symbols are multivocalic (or polysemic). Even though, as a result of condensation, a number of social meanings are synthesized into a single symbol, they retain a portion of their original autonomous nature. Ritual symbolism can be analogized to musical chords, in which each note retains its identity while at the same time contributes to a larger synthetic whole. Because a given symbol retains all of its constituent significata, the same symbol may be interpreted in different, and potentially contradictory ways. For example, blood can simultaneously symbolize feminine reproductive qualities (by analogy to menstruation) and masculine power (by analogy to hunting). Likewise, the national flag

293. See Ortner, supra note 270, at 1338-40. In contrast to this dichotomy, Posner's signaling theory appears to treat all symbols as potentially elaborating; on this view, Ortner's "summarizing" symbols are simply signals that fail to achieve an effective Bayesian separating equilibrium. See POSNER, SOCIAL NORMS, supra note 1, at 18-27. But Ortner's point is that some symbols must elicit from a wide group within a community this type of messy, largely uninformative and unanimous as- sent, precisely in order to form the cultural framework within which the process of distinction and elaboration can occur. See also RAPPAPORT, supra note 64, at 254-56.

294. See Ortner, supra note 270, at 1340.

295. See TURNER, supra note 111, at 28-30.

296. See id.

297. See RAPPAPORT, supra note 64, at 255-56; BOURDIEU, LOGIC, supra note 6, at 88.

298. See, e.g., KERTZER, supra note 70, at 69.

299. See TURNER, supra note 111, at 41-42.
and the concept of a national homeland can evoke incompatible conceptions of the nation as a homogeneous, organic entity and as a heterogeneous collection of social groups joined together by adherence to a common abstract conception of human rights and dignity. For this reason, ritual symbolism is always potentially ambiguous; the symbol has no precise meaning understood by everyone in the same way in every context.  
  
This does not mean, however, that in specific contexts symbols do not have a single widely intersubjectively understood and accepted primary meaning. Each ritual process tends to create—in the specific context of the precepts and norms associated with that ritual—a hierarchy of meanings among the diverse significations that are combined in a single symbol. In this way, the process privileges a predominant meaning that has general acceptance or appeals to a commonality of interests. The nonprivileged meanings still exist, although pushed into the background. Characteristically, therefore, ritual symbolism engenders a joining together of opposites. Solidarity is achieved in connection with the widely accepted, dominant, general meaning of a symbol and the norms associated with it, while disparate secondary meanings can also be held concerning less fundamental matters. Above all, support can be widespread concerning the obligatory aspect of a social norm, that it is something one ought to do, without similar consensus about the reason why we ought to do it, or the social values underlying the norm, both of which can be variously interpreted by different ritual participants without destabilizing the normative system. Ritual thus promotes adherence to norms even in the absence of commonly shared values.

300. See, e.g., JEAN-DENIS BREDIN, THE AFFAIR: THE CASE OF ALFRED DREYFUS 275-98 (Jeffrey Mehlman trans., 1986) (noting the clash of differing conceptions of the nation in France during the Dreyfus affair). See also KERTZER, supra note 70, at 69.

301. See KERTZER, supra note 70, at 11; SPERBER, supra note 286, at 51-84.

302. See TURNER, supra note 111, at 52 (discussing "paramount meanings").

303. See BOURDIEU, OUTLINE, supra note 6, at 132-39; KERTZER, supra note 70, at 69-70.

304. See KERTZER, supra note 70, at 67-75; RAPPAIORT, supra note 64, at 102-03; see also Lessig, supra note 2, at 1010 (discussing the role of "ambiguation" in the creation of social meanings); Steven Lukes, Political Ritual and Political Integration, 9 SOCIOLOGY 289 (1975) (discussing ambiguity in political ritual symbols). A similar distinction underlies recent discussion of the difference between shared, "public" meanings of actions and their private interpretations. See, e.g., SPERBER, supra note 50, at 61-63; Anderson & Pildes, supra note 48, at 1524.
In the case of social norms, the capacity of ritual symbolism to promote solidarity without consensus works in tandem with the widespread social phenomenon: there is a difference between "social consensus," a general agreement about the appropriateness of certain actions under certain circumstances, and "cultural consensus," agreement among people about the specific social meaning of such an action.\textsuperscript{305} Thus, people can agree on a course of action even where they disagree about its ultimate meaning and underlying rationale and values. To return to the example of the flag: while individuals may disagree about the precise meaning of the "nation," or on the positive values that are embodied in the nation-state, they may nevertheless agree on the obligation of citizens to defend the country against foreign invasion, albeit for different reasons. As our discussion of self-referentiality has noted, obligation arises out of participation in the ritual practice itself (such as pledging allegiance to the flag), regardless of the exact nature of the beliefs underlying this participation. The social consensus instantiated in ritualized norms relates to actions, and the appropriateness of actions, and not to individual beliefs. Self-referential acceptance of ritualized canons and norms publicly obligates the participant to the entire package of group norms instantiated by the ritual process, even if she disagrees with some of these norms, interprets them differently from the majority of group members, or even intends to violate them.\textsuperscript{306} Ritual thus provides for a commonality of action, and for a common standard for judging the acceptability of individual acts, without the need for continual resort to a welter of shifting or conflicting individual beliefs and opinions about the precise meaning or propriety of these norms.

The ability of ritualized practices to create consensus without unanimity is extremely important and explains certain aspects of normative behavior that are problematic both for cost-benefit and sociological interpretations of norms. From the cost-benefit side, it remains difficult to explain exactly how rational individuals are able to overcome the transactions costs associated with bargaining to establish a new social norm or change an old one, even where the initial collective action problem is solved through the agency of a norm entrepreneur or by the

\textsuperscript{305} See James W. Fernandez, Symbolic Consensus in a Fang Reformatory Cult, 67 AM. ANTHROPOLOGIST 902 (1965).

\textsuperscript{306} See KERTZER, supra note 70, at 68; RAPPAPORT, supra note 64, at 122-23; Ortner, supra note 270, at 1340.
state (using the expressive function of law). This is particularly true where the norm applies beyond the sphere of small and relatively homogenous closely-knit communities to a larger realm encompassing a large, geographically dispersed, and socially and culturally heterogeneous population. Ritualizing norms provides a way for these costs to be significantly decreased. Ritual can elicit widespread consensus on certain key issues while allowing for individual disagreement concerning secondary matters, rationales, and values. Consequently, the number of items that must be agreed upon in order to establish or change a normative order is greatly reduced, thus improving chances that a large group can come to an agreement. At the same time, due to the self-referential nature of the ritual process, a ritual participant binds herself through ritual performance to an entire package of concepts and norms, even ones to which she would not have agreed had these concepts and norms been separately negotiated. The end result of this process is thus that minimal grounds of agreement yield maximal support for a normative order.

From the sociological perspective, theories have traditionally assumed that in order for a system of social norms to be effective in regulating behavior, there must be a widespread internalized consensus supporting the entire normative structure.307 Such an assumption, however, appears to pose a major obstacle to explaining how social norms can and do change. In the case of ritualized norms, however, this problem disappears when we note that such norms partake of the typical ritual feature of solidarity without consensus: social solidarity to obey norms may be widespread and effective, while the underlying secondary meanings, rationales, and values may be widely diverse. Therefore, although ritual tends to make social norms highly durable, the potential always exists for questions, contention, and ultimately change.308

V. RITUALIZED NORMS IN ACTION: EMOTION, TEMPORALITY, AND INTERNALIZATION

Until now, we have been looking at how ritual provides the

307. See, e.g., Etzioni, supra note 1, at 158, 167-70.
308. See, e.g., Hoëm, supra note 70, at 25-38 (discussing the ritual contestation of
traditional norms of selfhood and morality in Micronesia). Note also in this regard
the analogous role played by symbolism in Anthony Giddens’ theory of structura-
tion. See ANTHONY GIDDENS, CENTRAL PROBLEMS IN SOCIAL THEORY 107-08 (1979).
linguistic, cognitive, and social framework within which normative orders occur. Many of these constitutive aspects of ritualization also have an important impact on the way that social norms are understood and applied in the give and take of everyday life; for example, ritualization makes certain norms more durable and powerful by making them the unquestioned "way of the world," or even sacred. This is a fundamental point. Because ritual, like all artifacts, has multiple uses and impacts, where a culture employs ritualization in a constitutive sense as a means of overcoming limitations in human communication and cognition, it inevitably creates side effects that profoundly affect how ritualized norms operate "in action." In this section, our focus shifts entirely to such practical considerations. Primarily we look at the way in which the emotion and sense of eternal time generated by ritual performance makes ritualized norms more likely to be adhered to by members of the community and how ritual promotes the internalization of norms by individuals. The section concludes with a modern example that ties together the ways in which the constitutive and practical effects of ritualization affect the ability of social norms to solve a collective action problem in the real world, in this case the problem of overhunting faced by Native Americans in Canada.

A. Ritual, Emotion, and Motivation

The previous discussion has skirted around the implications of a key attribute of the ritual process: its propensity to elicit strong emotional responses in the minds of participants. It is now time to take this critical factor into account. By looking more closely at the nature of human emotion, and at the ties between emotion, reason, and ritual, we can see more clearly how ritual creates such strong emotional responses, how cultural practices like ritual influence individual preferences for informal social norms, and how emotional factors, augmented by the ritual process, undergird the very rational capacities that individuals in a society use to create and understand such norms.

Until fairly recently, human cognition was viewed primarily as a computational, information-driven process lacking significant motivational and affect-laden factors. Of late, however, social psychologists have compiled an impressive array of empirical data showing that emotional factors profoundly interpenetrate both cognition and our ability to make judg-
ments. These factors color how we think, plan, and make judgments in these situations, such as the way that we search memory for relevant data, the amount of effort we are willing to expend in making an accurate judgment, the inferential rules that we apply in making such judgments, and the larger structure of our beliefs that we bring to the encounter.

In addition, we all have emotionally-driven motivations, deeply tied to our sense of self, to maintain and enhance our own self-regard, and an equally emotionally motivated understanding of our relationship with other people and with events in the outside world. Individuals appear to orient their understanding of social situations by emotionally coding the status, role, and expected behavior of participants. These codings are reflected in stable, long term emotional dispositions towards actors and events ("affect"). Much of our sense of ourselves and of self-worth, particularly in social settings, is determined by the aggregate of these emotional dispositions. As a result, individuals generally seek to enter into and conduct social interactions with others in such a manner as to confirm identity reinforcing affective dispositions. When this is not possible, the result is an unpleasant, transient emotional state reflecting the disturbance caused by the failure of the situation to fulfill normative affective expectations, together with a cognitive sense of disorientation resulting from the fact that our affect-laden expectations about how the world works appear to be disconfirmed. Confronted with such a situation, an individual normally will cognitively recharacterize the situation so as to realign cognitive understandings into congruence with the long-term affective expectations. There does not appear, therefore, to be any clear

309. For a summary of this literature, see KUNDA, supra note 238, at 211-63.
310. See KUNDA, supra note 238, at 211-63.
311. See id. at 220-23.
312. See, e.g., NEIL J. MACKINNON, SYMBOLIC INTERACTIONISM AS AFFECT CONTROL 83-121 (1994).
313. See id. at 127-29. It is this emphasis on “hot,” affective factors that distinguishes the recent work in social cognition from older theories, such as Festinger’s theory of cognitive dissonance, that focused exclusively on cognitive concerns.
314. See id. at 22-24. Thus, for example, where a friend of mine treats me rudely or otherwise betrays my friendship, I might initially respond to the situation by cognitively reinterpreting the event in terms of a temporary alteration in the way that I normally expect my friend to behave (e.g., “she’s having a bad day”). Where the mistreatment is more serious or prolonged, however, I am forced to alter my cognitive categorization of the other person in order to maintain my emotionally based sense of self: she is not really my friend.
distinction between affect and reason; both interact together to produce the judgments and behavior that we employ in everyday life.

Recent developments in neuroscience have both confirmed and extended our knowledge of the intimate ties between emotion and rationality. An emotion, understood physiologically can be characterized by a complex set of simultaneous alterations in body state in response to a stimulus, including changes in the state of: (i) the central nervous system; (ii) the body’s musculoskeletal responses; (iii) electrical skin conductivity, and, (iv) the chemical state of the brain. That portion of the brain’s prefrontal cortex, which is responsible for continuously monitoring and regulating conditions within the body, processes these changes in bodily state by coding the stimulus event in terms of its characteristic emotional response. It also provides a (cognitive) evaluation of the emotion as positive (pleasurable) or negative (unpleasant). The result is to create an emotion-based “dispositional response” built into and relying upon on the same neural substrate as the cognitive processing of information. When a stimulus is repeated, either through an encounter with the outside world or in the form of a mental thought or image, the accompanying emotional coding is recreated, either physically in the body itself (think about how your stomach may turn at a frightening or disgusting thought), or by an “as if” process that produces a virtual replica of these physical responses in the brain itself.

An emotion becomes a feeling when it is processed in a second-level set of neural connections that self-reflexively links the physical state corresponding to an emotion with the mental image that causes the emotional response. It is in this manner that we can become consciously aware of our emotional responses to the world, and talk intelligently about “feeling an emotion” in response to a given situation. Moreover, the same reflexive monitoring of bodily states, in relation to mental or en-

315. See DAMASIO, supra note 213, at 50-81. For a comprehensive review of human and animal research, see D. Michael Bitz & Jean Seipp Bitz, Incompetence in the Brain Injured Individual, 12 ST. THOMAS L. REV. 205 (1999).
316. See ANTONIO DAMASIO, DESCARTES’ ERROR: EMOTION, REASON, AND THE HUMAN BRAIN 134-36, 173-75 (1994) (discussing the “somatic marker” hypothesis); Bitz & Bitz, supra note 316, at 244-45.
317. See DAMASIO, supra note 316, at 136-38.
318. See id. at 184.
319. See id. at 279-95.
environmental inputs, appears to underlie consciousness itself, both the core consciousness of ourselves as entities in the world, distinct from our environment, and also to the more extended type of consciousness through which we understand ourselves as unique individuals with our own autobiography, beliefs, and dispositions. Consequently, given the ubiquity of emotional coding in cognition and in the production of consciousness, all of our activities, including rationality itself, are permeated with affective factors.

This emotional coding process appears to be indispensable for full human reasoning. For example, in many practical reasoning situations, we are generally confronted with a far wider variety of possible choices than we can feasibly cognitively process according to the decision theory calculus of formal rationality. Absent any way to limit the number of possibilities under consideration, making a decision could entail an almost literally endless comparison of alternatives. In normal humans, the fact that these various options have all been positively or negatively emotionally coded in the brain permits us to drastically reduce the number of possible alternatives by almost instantaneously rejecting those options that would lead to an emotionally negative or less preferred outcome. In contrast, patients with damage to that part of the prefrontal cortex governing emotional coding simply cannot reason with full rationality, and in some cases cannot reach even the simplest decisions, becoming lost in the realm of unlimited possibility.

The ultimate grounding of both emotion and feeling in bodily states provides an important key for understanding how ritual can have such a profound emotional impact on participants. Recall that perhaps the most salient distinguishing feature of ritual is that it invariably involves physical performance. It is this feature, for example, that separates ritual participation from related activities like being a spectator at an athletic event or a play, which by virtue of its passive nature does not have the same emotionally transformative properties as ritual. The precise, formalized movements inherent in ritual participation,
such as singing, breathing, reciting, standing, and gesturing, all operate directly upon the body to create positive emotional states in connection with the ritual process. This ability to directly influence the bodily substrate of our emotional lives, and to generate correspondingly powerful affective force, is unique to ritual among social practices, and probably is a principal reason that ritual activity remains so potent and widespread in modern life.

The bodily based, affective power of the ritual process plays an important role in ritual's ability to establish an effective and stable system of informal social norms. Emotional coding enhances attention and thus recall of ritually instantiated norms. Because emotion and cognition are functionally and neurologically interrelated, the emotionally charged nature of the ritual experience also influences the way that ritually instantiated norms are cognitively processed. For example, ritualized norms are likely to be accepted by participants more uncritically, and the underlying justification for such norms is made more persuasive, than would otherwise be the case with other social practices. Moreover, once ritualized norms become power-


325. See DAMASIO, supra note 213, at 196-98.

326. For examples on the interrelationship between emotion and cognitive processes, see BOYER, supra note 172, at 230-40; DAMASIO, supra note 213, at 40-41, 41 n.4, 80-81; HOGARTH, supra note 43, at 57-67; KUNDA, supra note 238, at 232-33 (concerning the specific nexus among emotion, cognition, and ritual); Bitz & Bitz, supra note 315, at 257-60.

327. See lain D. Edgewater, Music Hath Charms . . .: Fragments Toward Constructionist Biocultural Theory, with Attention to the Relationship of "Music" and "Emotion," in BIOCULTURAL APPROACHES TO THE EMOTIONS, supra note 324, at 153, 168-69 (describing how ritual music induces a general emotional response making participant susceptible to concepts associated with the ritual); see also KUNDA, supra note 238, at 256-57; Fernandez, supra note 324. In addition, neurological evidence reveals that during the ritual process, the nondominant (usually right) cerebral hemisphere forms the center of neural activity, inducing a style of thinking marked by holism, high levels of emotion, and by non-linear (associationist) thought, while causing characteristic responses in the somatic system; the ritual state may subsequently engage both hemispheres simultaneously so as to create a fusion, apparently unique to the ritual process, between these types of thought processes and more
fully coded into long-term affective dispositions, individual behavior will strongly resist, to the point of cognitively recharacterizing observed reality, events that threaten the stability of the normative-affective structure.

Moreover, the affective aspect of ritual interacts with ritual's more cognitive, constitutive functions to further strengthen an associated system of social norms. Because emotional coding creates a short list of alternatives for conscious deliberation, our thought processes are biased towards positively charged emotional outcomes, such as acting in conformity with ritualized norms, to the exclusion of other alternatives. At the same time, ritualization tends to limit our ability to conceptualize noncooperative alternatives, by virtue of its ability to make such norms appear to be an unchallengeable part of our implicit knowledge about the natural order of affairs in the world. At the extreme, this combination of emotion and cognition can strengthen normative orders even further by transforming norms into part of an affectively desirable, sacred truth.

One critical consequence of this interplay between ritual's cognitive and affective aspects is that the ritual process can create, deepen, or even alter individual preferences for a given norm or a system of norms. Much of human motivation for action, and

linear, analytic rationality. The result of these somatic and neurological changes is to create in the participant a sense of harmony, and of oneness with the world and with members of the community. See ANDREW NEWBURG ET AL., WHY GOD WON'T GO AWAY 77-90 (2001); Barbara Lex, The Neurobiology of Ritual Trance, in THE SPECTRUM OF RITUAL 122-37 (Eugene D’Aquili et al. eds., 1979). This appears to form the neural substrate for ritual's ability to create, *inter alia*, the affective sense of communitas among participants that frequently accompanies ritual performance. See RAPPAPORT, *supra* note 64, 226-30.

328. This, of course, contradicts the common economic assumption of stable individual preferences over outcomes. See Gary S. Becker & George J. Stigler, *De Gustibus Non Est Disputandum*, 67 AM. ECON. REV. 76 (1977), reprinted in GARY S. BECKER, ACCOUNTING FOR TASTES 24-49 (1996). More recently, however, Becker has modified his position, and has developed a theory positing that while individuals have stable metapreferences, their preferences over everyday outcomes can vary in light of changing levels of “personal” and “social” capital. See GARY S. BECKER, *Preferences and Values*, in ACCOUNTING FOR TASTES 3-23. For a similar analysis in the context of social norms, see CHONG, RATIONAL LIVES, *supra* note 1, at 98-103. Possibly the impact of ritual activity on individual preferences and choices can be accommodated by theories like this as a form of personal, cultural, or social capital; more likely, however, especially in light of ritual’s ability to act directly on the neurological and physiological bases of preference and choice, we probably must accept the fact that in the case of ritual, individual preferences for outcomes can and do change and do so in predictable ways. In general, cognitive psychologists have not accepted the normative assumptions of economics and decision theory, and instead treat utilities and values as learned behavior, changing over time. See
therefore motivation of preferences over outcomes, cannot be understood solely in terms of biological drives or cognitive computations, but instead is governed by affective considerations. On a neurological level, every event is emotionally coded as a set of unique physical responses with positive or negative value; these evaluations appear to form the fundamental basis of our preference structure, and also bias our thinking towards achieving these goals. Because ritual acts directly upon the physiological bases of human emotional response so as to achieve great affective power, it can operate in a manner that powerfully reinforces and deepens the desirability (positive emotional coding) of norms associated with the ritual process. Ritual makes adherence to specific social norms highly desirable, and enhances the willingness of individuals to sanction violators, even in cases where, on the basis of self-interested rationality alone, adherence would make little sense. For example, the positive feelings of communitas among diverse social groups that are engendered as part of the ritual process permit stable normative systems to exist even where adherence to these norms results in inequalities of goods or opportunities.

We noted at the beginning of this article that one of the traditional weaknesses of cost-benefit theories of social norms lies in their inability to explain how cultural factors such as social norms not only constrain individual preferences, but also influence the nature of these preferences themselves. We can now see how this process occurs, at least in part, in the context of one distinctive cultural practice: ritualization. Where a system of informal social norms is instantiated through ritual, a feedback effect is created that recursively strengthens emotion-based preferences for the norms. At the same time, due to the subtle


329. See KUNDA, supra note 238, at 232-33; STRAUSS & QUINN, supra note 8, at 101-110.

330. On the neurological codings of pleasure and pain as the source of human preferences, see DAMASIO, supra note 316, at 198-200, 262-64. Moreover, the various levels of positive or negative emotional coding allow us to rank choices among alternatives. See id. at 199. It is currently not clear how Damasio's findings, which suggest that conscious human choices are ultimately grounded in (although not necessarily directly reducible to) a basic hedonic physiological substrate, relate to the economic theory of preferences, for example whether (or to what extent) these neurosomatic "preferences" meet the traditional economic assumptions of completeness, reflexivity, and transitivity.

331. See TURNER, supra note 111, at 176-78. For similar observations in the context of inequalities of political power, see KERTZER, supra note 70, at 49.
interplay between emotion and cognition, ritualization limits the conceptual field within which individuals can rationally assess whether or not to comply with the norms, and to conceive of possible alternatives. Individual cost-benefit analysis can and does still occur, but its scope is shaped and constrained by social practice on models.

This phenomenon has three significant implications for our understanding of informal social norms. First, we must incorporate into the models that we use to analyze norm-driven behavior the fact that widespread social preferences for ritualized norms are likely to be much stronger (and the payoffs for cooperation and penalties for defection correspondingly greater) than for norms instantiated in other ways.332 Second, we cannot assume in the case of ritual that individual preferences for norms remain fixed, because ritualization can act directly upon the brain’s emotional/neural substrates so as to alter both our preferences and our observed behavior. Thus, it has long been recognized that participation in rituals can cause profound changes not only in an individual’s behavior, but in her self-evaluation of her behavior, so as to “reshape” the entire person.333 Consequently, preferences for a system of norms will likely not remain the same where the norms become ritualized, or, conversely, be-

332. From a game theoretic perspective, one result is that ritualization may actually alter the payoff structure far enough in favor of cooperation so as to transform the game from a Prisoner’s Dilemma into a game whose structure is more conducive to cooperation. Suppose, for example, that each player’s anticipated payoff from successful cooperation in complying with ritualized social norms, after taking into account the emotional benefit derived from knowing that one is acting according to ritual prescriptions, exceeds the payoff for unilateral defection. The game may now take the form of an Assurance Game, where each player’s best strategy depends upon whether or not the other player can be expected to cooperate. See Michael W. Macy, Beyond Rationality in Models of Choice, 21 ANN. REV. SOC. 73, 78 (1995) (discussing the structure of Assurance Game); Ostrom ET AL., supra note 21, at 293-95 (contrasting Prisoner’s Dilemma and Assurance Game models in the context of common pool resource allocation). Given this structure, and in light of ritual’s demonstrated ability to create hypertrust among community members, we should anticipate a high degree of adherence to norms. To the extent that ritualization may make defection virtually unimaginable, the model could even shift towards a cooperative structure, characterized by binding agreements among players to cooperate. See MORROW, supra note 20, at 75-76 (discussing cooperative games). On the ways that ritual can solve coordination problems within game theoretic models, see CHWE, supra note 2, at 97-98.

333. See, e.g., BELL, supra note 66, at 151. Note in particular the extensive use of ritual in certain types of family therapy (in particular “Milan Group” methods), to act directly upon and reorganize family psychological and interpersonal dynamics. See GRIMES, supra note 82, at 337-40; Laird, supra note 99, at 144-45. See generally RITUALS IN FAMILIES AND FAMILY THERAPY (Evan Imber-Black et al. eds., 1988).
come de-ritualized; additionally, we should anticipate a rapid shift in support when one set of ritualized norms replaces another.\textsuperscript{334} Finally, ritualization provides a powerful way out of collective action problems that are otherwise inherent in efforts to change an existing set of dominant social norms. Because ritual can generate tremendous affective support for associated norms, members of the ritual community, even when a small minority, may still be willing to endure the costs of social ostracism while agitating for desired social change, particularly if their ritual activity clothes these norms with the aura of the sacred. It is no accident that the initial impetus for both the ante-bellum abolition movement and the modern civil rights movement occurred largely in religiously oriented contexts.\textsuperscript{335}

B. Action and Time

Several hypotheses have been advanced suggesting that emotion plays an important role in the way that individuals discount future events, specifically by ensuring that people do not value present outcomes too highly against future consequences.\textsuperscript{336} Current cost-benefit theories of norms agree that an affective normative order cannot exist where most individuals calculate whether currently to cooperate or defect using a very high discount rate.\textsuperscript{337} If someone does not value much what will happen in the future, the prospect of receiving informal sanctions, disesteem, or ostracism will not influence the decision to violate a social norm for the sake of short-term benefits.

Recent neurological findings confirm that emotional coding of events is indeed a necessary condition that enables us to take

\textsuperscript{334} Such rapid shifts in support for a norm or a system of social norms, resulting in “norm cascades,” have been extensively analyzed. See, e.g., Timur Kuran & Cass R. Sunstein, \textit{Controlling Availability Cascades}, in \textit{Behavioral Law and Economics, supra} note 140, at 374, 374-97; Timur Kuran, \textit{Ethnic Norms and Their Transformation Through Reputational Cascades}, \textit{27 J. Legal Stud.} 623 (1998). A similar notion is captured in epidemiological models by the notion of “cultural contagion.” \textit{See supra} notes 48-59. Given the powerful potential effect of ritual practice on preferences for, and adherence to social norms, ritualization (or deritualization) must be added to the factors that have previously been found to create and sustain such cascades, such as availability of information and concern for reputation.


\textsuperscript{337} \textit{See, e.g., Posner, Social Norms, supra} note 1, at 160.
proper account of the future. When the brain suffers severe trauma to the ventromedial lobes that contain that part of the prefrontal cortex where the emotional encoding of information principally occurs, this results in an inability to experience the emotional responses that normally accompany the reasoning process, and a corresponding inability to take into account the future positive or negative outcomes of current choices. Trauma victims remain consciously able to understand the concept that a certain course of action will lead to an unpleasant result in the future. The problem is that because the prospect of future consequences lack emotional coding, they lack motivational force. Consequently, in experimental settings, patients consistently make incorrect choices that reflect current conditions without reference to future negative consequences. In social situations, this inability to take into account negative future public opinion concerning one's actions, or the possibility of future sanctions or reprisals, can render the behavior of trauma victims uncontrollably sociopathic.

The powerful ability of ritual to positively encode emotional, informal social norms, and to negatively encode norm

---

338. See DAMASIO, supra note 316, at 217-22; Bitz & Bitz, supra note 315, at 254-57.
339. See supra note 338.
340. In one well known experiment, normal subjects and persons with injury to the brain's ventromedial frontal lobes engage in a "gambling game" involving four separate decks of cards from which the player can draw in any order. The players seek to maximize their total return from betting on the game. The rewards from drawing certain cards from the first two decks are high, but so is the risk of loss, and normative probability theory postulates that the optimal strategy is to draw from the other two decks, which have lower rewards but significantly lower risks. At the outset of the game, players are unaware of either the payoffs or probabilities connected with drawing cards from each deck. Within a few plays, normal players are able to develop a heuristic strategy of maximizing success by playing only from the second pair of decks. They do so, without any formal probability analysis, because large initial losses from playing from the first two decks cause these decks to be coded with the emotion of "danger" and thereafter avoided. In contrast, the brain damaged patients continue to play (and lose) from the first two decks, and continue to do so even after the payoffs, probabilities, and optimizing strategy have been explained to them. They rationally understand these issues, and are not insensitive to losing, but lacking a functioning emotional coding system, they are not motivated to guard against future negative outcomes and therefore continue to pursue a high-risk strategy for current gain, oblivious of the future consequences. See DAMASIO, supra note 316, at 212-17. Inability to generate emotional response due to prefrontal cortex trauma has a similar effect in the case of the neurological disorder pain asymbolia, in which otherwise cognitively and neurologically normal patients are indifferent to the prospect of incurring serious bodily injury. See TODD E. FEINBERG, ALTERED Egos: HOW THE BRAIN CREATES THE SELF 2-4 (2001).
341. See DAMASIO, supra note 316, at 3-33, 178.
violations, thus likely plays an important role in influencing the
discount rate of rational actors in favor of conformity to norms.
Note particularly ritual's ability to create strong affective feel-
ings of communitas, of the desirability of membership in the
community. Such feelings may provide a powerful motiva-
tional bias towards avoiding future social disesteem or ostracism, even at the expense of sacrificing present gains that might
accrue from violating a norm.

A second way that ritual can influence the way we value the
future is cognitive rather than affective, and operates by expand-
ing the temporal framework in which we understand the conse-
quences of our current actions. Recall that the act of ritual per-
formance frequently leads to the breaking down of temporal
distinctions in the mind of the participant. The present is thus
seen from a new perspective, that of eternity, and this perspec-
tive, although only transitorily experienced during the ritual
process, can color our subsequent calculation of the conse-
quences of our actions, making us more aware of their impact
upon the future. Conceivably this occurs whenever someone
experiences a profound religious experience, and finds her un-
derstanding of her relationships with others transformed by
knowledge of "the big picture," or where an environmental rit-
ual focuses the minds of participants on the consequences of
their current behavior on the lives of their grandchildren. It is
certainly a phenomenon well known to medieval economic his-
torians who find in the wills of merchants large bequests to reli-
gious houses to say prayers for the decedent's soul: rational
maximizing is different when the relevant temporal unit ends
not with death but with Judgment Day. To the extent that rit-
ual succeeds in generating in our minds such a long-term per-
spective, the more likely we are to adhere to social norms that
provide long run benefit to ourselves and others.

3. Internalization of Norms

Most current theories of informal social norms, both cost-
benefit and more sociological models, predicate the effectiveness
of informal social norms to some degree upon the extent to
which such norms, or values and meanings associated with

342. See supra notes 267-71 and accompanying text.
343. I owe this insight to a great teacher of medieval economic history, the late
Harry Miskimin. See also BECKER, supra note 328, at 11.
these norms, have been internalized by a significant proportion of the relevant community. Widespread internalization is often necessary in order to ensure that most individuals follow the norm.\footnote{See, e.g., CHONG, RATIONAL LIVES, supra note 1, at 25-26.} Moreover, widespread internalization of norms and associated values makes individuals more confident to sanction norm violators,\footnote{See Cooter, Decentralized Law, supra note 1, at 1668.} provides the basis on which the community confers social esteem and reputational benefit,\footnote{See McAdams, Origin, supra note 1, at 358-61 (arguing that for esteem to be able to create effective norms, there must be a consensus on the esteem-worthiness of a given type of behavior).} and promotes the common understandings of the meanings of the symbols which are relied upon by individuals to signal their cooperative intent.\footnote{See, e.g., Posner, Symbols, supra note 1, at 774.} In many of these theories, internalization is assumed to occur as a result of childhood socialization and remains largely unchanged in adulthood. Additionally, the process of internalization is often viewed in abstract, almost binary terms: either a norm is internalized or it is not, with little allowance made for the fact that the content of the norm may be ambiguous in the mind of the individual, much less that the individual may have internalized multiple, potentially contradictory norms all of which are potentially applicable to the same type of behavior.\footnote{See, e.g., KERTZER, supra note 70, at 81 (noting that indeterminacy is caused by more than one available cultural model or mental schema).}

The problem is that the actual process of internalization is not so simple and abstract. Internalization does not work like fax reproduction, providing an exact and indelible copy.\footnote{See Claudia Strauss, Models and Motives, in HUMAN MOTIVES AND CULTURAL MODELS 8-9 (Roy G. D'Andrade & Claudia Strauss eds., 1992).} Like all linguistically structured processes,\footnote{On the primary role of language in childhood socialization, see SCHIEFFELIN, supra note 144, at 1-20.} the internalization of norms is subject to problems of ambiguity concerning the precise meaning of the norms that are being inculcated, and it is therefore quite possible that children may internalize somewhat different understandings of the same norm.\footnote{See STRAUSS & QUINN, supra note 8, at 77-78.} Moreover, the meaning of even clearly internalized normative standards can dissipate over time through the process of conventional drift. This article has already noted the ways that ritual can help overcome problems raised by the potential ambiguity of norms and stabilize norms against the potential erosion of their meanings.
There are two additional ways, however, in which ritualization further promotes powerful internalization of a stable normative order.

The first relates to the motivational force of informal norms. Recall that social norms, like the rest of our knowledge of the social world, are instantiated in the mind as cognitive/cultural models. In order to influence behavior, however, these models must not only organize our perceptions of the world in computational terms, but must also induce individuals to \textit{want} to support the norms encapsulated in these models. Effective internalization of social norms thus requires that the associated cultural models be inculcated with sufficient motivational force.\footnote{See Roy G. D'Andrade, \textit{Afterword} to \textit{HUMAN MOTIVES AND CULTURAL MODELS}, supra note 349, at 225, 225-32; Strauss, \textit{supra} note 349.} In addition, although childhood internalization of cultural models and norms is very powerful, its effects are not indelible, and the motivational force of internalized norms can fade over time in the course of everyday practice or as individuals are introduced to new experiences. As a result, the socialization/internalization process must continue throughout adulthood, through the continual reinforcement of previously internalized models, norms, and values.\footnote{See \textit{id.} at 132-33; Strauss, \textit{supra} note 349, at 14-15; D'Andrade, \textit{supra} note 352, at 227.}

There are a number of factors that influence the motivational force of cultural models in the internalization process. Three are of particular importance. The first is the frequent repetition of the cognitive model, so as to entrench the model's schematic structure firmly in the mind.\footnote{See \textit{id.} at 17-21; \textit{supra} note 349, at 176-77; see also the discussion and sources cited \textit{supra} notes 40-42, 143.} The second is inculcating strong positive emotional associations with the model, so as to make acting in conformance with the model affectively powerful.\footnote{See, e.g., \textit{supra} note 352, at 227.} Neurological research suggests that this is accomplished, at least in part, by the (physical) coding of thoughts and images in the brain. Finally, powerful motivation arises where the internalization process institutes a connection between a cultural model (social norm) and an individual's self-identity.\footnote{See \textit{id.} at 104-08; \textit{supra} note 352, at 227; Dorothy C. Holland, \textit{How Cultural Systems Become Desire: A Case Study of...}}
Absent these factors, individuals may enact lip-service conformance to a normative value (without acting on it), or act according to conventional routine. They likely will not, however, develop the type of substantial, internalized commitment that a system of norms requires to be effective, particularly where the norms require that an individual act contrary to short-term interest.

Ritual is a repetitive act that, through the nature of its symbolism, directly reinforces the schemata underlying the cultural models (including norms) that are instantiated through the ritual process. Through its ability to act directly on the bodies of participants, ritualization powerfully encodes positive emotional responses for associated social norms. Recall, in addition, that when these ritually encoded emotions become accessible to consciousness as feelings, they play a constitutive role in our extended consciousness as part of our autobiographical selves, that is, of our understanding of ourselves as actors, distinct from our environment, with a history and set of beliefs and desires that are qualitatively our own. This core autobiographical self is extremely stable, and we will cognitively recharacterize our understanding of the world in the face of information that threatens, on an affective level, this sense of identity. At the same time, ritual also acts on a cognitive level to make the norms instantiated through the ritual process a part of the taken-for-granted "world as it is" in which we function. The result is that ritualized norms can become deeply implicated in our very sense of self and self-esteem, and thereby become, in the profoundest sense, "internalized."

The second way that ritual facilitates the internalization of norms relates to the way that we prioritize the various social norms to which we are introduced in the process of social learning. In this regard, the metaphor of internalization as fax replication is particularly misleading, in so far as it implies that cognitive models such as social norms constitute unique originals to

*American Romance, in* HUMAN MOTIVES AND CULTURAL MODELS, *supra* note 349, at 61-89. For a discussion of this same phenomenon from the perspectives of rational action and traditional sociological reference group theory, see CHONG, RATIONAL LIVES, *supra* note 1, at 47-51.

357. See STRAUSS & QUINN, *supra* note 8, at 133-34; Roy G. D'Andrade, Schemas and Motivation, in HUMAN MOTIVES AND CULTURAL MODELS, *supra* note 349, at 23, 36-37.

358. See DAMASIO, *supra* note 213, at 224-26; see also *supra* notes 312-14 and accompanying text.
be subsequently reproduced. In reality, in the process of internalization, a child (or an adult, for that matter) may be introduced to more than one cultural model or norm that can apply to a given situation, and these models or norms may differ greatly or even be contradictory. At times these models or norms are organized vertically in the individual's mind, so that a single model or norm is applied to all analogous situations. But this is by no means always the case. Conflicting models and norms can also be organized horizontally, i.e., different models or norms are applied in roughly analogous situations based upon small variations in context. Alternatively, an individual may synthesize multiple cognitive models or norms into a personal, idiosyncratic hybrid. In cases where many individuals have internalized multiple versions of a cultural model or norm in a horizontal organization or in an idiosyncratic synthesis, the resulting indeterminate and shifting understanding and application of the normative standard could be expected to inhibit the formation of a stable equilibrium around a widely accepted dominant meaning.

In order to see how ritualization helps overcome the problem of internalization of multiple potentially applicable models and/or norms, recall the property of condensation inherent in many of the symbols that are employed in ritual practices. Condensation allows multiple meanings to attach to the same symbol, while permitting a dominant meaning to arise. Ritual thus promotes in the minds of participants a kind of vertical organization of related meanings and norms, which can take into account the reality that we generally internalize more than one relevant cultural model/norm, while at the same time inhibiting the potential of such multiple internalizations to prevent a community from developing a stable normative order.

4. Example: The Cree of James Bay

This section concludes with an example of how ritualization, in both its constitutive and practical aspects, affects the way that informal social norms operate in everyday life. The story begins, as these stories generally do, with a collective action

359. See KERTZER, supra note 70, at 81; Claudia Strauss, Research on Cultural Discontinuities, in A COGNITIVE THEORY OF CULTURAL MEANING, supra note 8, at 210.
361. See id.
362. See id. at 230 ("[W]e are only as consistent as we need to be . . .").
problem, in this case involving the hunting of wild geese by the modern Cree Indians of James Bay, Canada. Because geese flying over the Cree territory are a common pool resource, it would be expected that absent an effective system of social control, individual hunters would not limit their kills, and that the resulting overhunting would incur a net social loss. This collective action problem is further complicated by problems of transmitting information between distinct systems, in this case between the social and ecological systems. Geese are intelligent enough to be sensitive to intensive hunting activity, and will cease flying over Cree territory if they become aware that they are being hunted.\textsuperscript{363} Environmental conditions such as this constitute a particularly complicated analogic system of data that is incommensurable with systems of rules that organize human behavior.\textsuperscript{364} In particular, it is difficult for a society to develop a system of rules governing human behavior that can accurately track small, nuanced gradations in the local environment (e.g., the incremental effect of human activity on the geese’s awareness that they are being hunted), which may nevertheless have a significant impact upon the ecological system as a whole (the overall supply of geese).

The Cree Indians resolve these problems by utilizing a complex series of rituals, such as communal feasting, all of which emphasize a notion of mutual reciprocity between men and animals. If humans respect the geese by not killing too many, the geese will in turn reward them with good hunting.\textsuperscript{365} Closely associated with these rituals are a series of bright-line norms that specify the conditions under which hunting should or should not take place in a given area (thus providing a simplified digital method for dealing with environmental changes), along with a set of norms that confer social status upon careful hunters and social ignominy upon careless ones.\textsuperscript{366}

These ritual processes can create strong emotional responses, and participants sometimes report experiencing a “body-spirit” reciprocity whereby the identity of the hunter merges with that of the animal. This provides strong affective force for the norms of reciprocity that proscribe excessive hunt-

\textsuperscript{363} See Colin Scott, Science for the West, Myth for the Rest?: The Case of James Bay Cree Knowledge Construction, in \textit{NAKED SCIENCE}, \textsl{supra} note 140, at 69, 76-80.

\textsuperscript{364} See \textit{RAPPAPORT}, \textsl{supra} note 64, at 98.

\textsuperscript{365} See Scott, \textit{supra} note 363, at 81-84.

\textsuperscript{366} See id.
ing of geese.\textsuperscript{367} It also enables relevant environmental information to be transmitted in a form that is easily comprehensible to human social actors. By anthropomorphizing the animals, human hunters can gauge the impact of their hunting activities by asking "what would the goose think."\textsuperscript{368} Finally, the strength of these rituals and norms is increased by the incorporation of the concept of human/animal reciprocity into Cree myths, which transform the norms into parts of a timeless, sacred, cosmic pattern.\textsuperscript{369}

The result is that the Cree adopt a careful rotation of hunting areas under the leadership of experienced hunting leaders, and thereby avoid problems of overhunting. In stark contrast, nearby areas whose inhabitants do not possess a similar ritual/mythic structure, and where the number of killings is only regulated by game laws, frequently experience significant overhunting problems.\textsuperscript{370}

VI. RITUAL AND THE SUBSTITUTABILITY OF LAW FOR NORMS

One of the great merits of the new norms literature is that it has focused attention on the ways in which formal law and informal norms act as alternative, and potentially interchangeable, methods of social control. This has resulted in a reexamination of the circumstances under which formal legal regulation can and should be substituted for informal social norms, or, conversely, that informal norms should be taken into account by legislators and judges. The problem of substitutability is at present poorly understood, and poses one of the most vexing yet most important issues confronting future norms scholarship.\textsuperscript{371}

In this section, the discussion shifts from a primarily descriptive account of ritualized activity to the more explicitly normative considerations that govern the decision of whether to replace

\begin{itemize}
  \item \textsuperscript{367} See id. at 75, 84.
  \item \textsuperscript{368} See id. at 79-80.
  \item \textsuperscript{369} See id. at 74.
  \item \textsuperscript{370} See id. at 79. The type of mythic-ritualistic process involving hunting that is described here is not limited to the Cree, but constitutes an important element in the cultures of indigenous peoples throughout northern Canada. See SAHLINS, supra note 6, at 449-50, 544. See ROY A. RAPPAPORT, ECOLOGY, MEANING, AND RELIGION (1979), for another example of the role of ritual in establishing environmental norms. See DOTY, supra note 5, at 76-102; Dillon & Abercrombie, supra note 206, at 54; Leach, Ritualization in Man, supra note 208, at 158, for information on ritual as the "symbolic intercom" between facts in the world and mythic structures.
  \item \textsuperscript{371} See Lessig, supra note 47, at 686-87.
\end{itemize}
ritualized norms with formal law.

Substitutability in this case involves not only the interaction between formal law and individual rationality, but also their interplay with a third, cultural factor, ritual, which acts as a tool mediating between the individual and the community without being fully controlled by, or assimilated into either. To further complicate matters, the fact that we instantiate some norms through ritual has social and cultural ramifications extending well beyond the types of considerations normally encountered in the case of non-ritualized norms. On the constitutive level, ritualization impacts upon the cultural, social, and linguistic framework within which norms are created, maintained, and changed. On the practical level, it has a profound influence on the interaction of reason and emotion to strengthen individual commitment to normative orders. On an ideological level, ritual creates communal solidarity and, more importantly invokes our sense of sacred authority and legitimacy. The substitution of a law for a ritualized norm (or vice versa) is likely to have an effect on some, if not all, of these considerations, and one that may be very hard to foresee in the context of ex ante policymaking. Indeed, because of the ways that ritual acts upon deep structures of social communication and the individual's comprehension of shared social meanings, the participants themselves may be unaware of their impact.372

Accordingly, it is critical that we learn to ask the right questions. This section will highlight a number of issues that are unique to ritual (or are particularly salient in the ritual context), and to suggest how these considerations should be taken into account when making any decision concerning a potential substitution.

A. Efficiency

A great deal of research recently shown that informal social norms are efficient (or at least welfare enhancing), particularly with respect to norms existing outside the commercial sphere.373

372. Recall the imperceptible but precipitous collapse of bilingualism in New Guinea as a result of alterations in ritual practices. See supra note 185.

373. For examples of a relatively optimistic assessments of the efficiency of many social norms, see ELLICKSON, ORDER, supra note 1, at 167-83; Cooter, Decentralized Law, supra note 1. For examples of views that many norms are likely to be inefficient (and that even efficient norms are unlikely to arise in optimal quantity) due to problems of collective action, strategic behavior, and information asymme-
and on the related question, the extent to which the evolutionary process of norm generation ultimately tends to produce increasingly welfare enhancing norms in optimal levels without the need for formal intervention. In this interpretation, formal law should normally replace informal norms in cases of manifest inefficiency stemming from factors such as collective action problems, externalities, or significant information asymmetries. Conversely, it is suggested that law incorporate norms where these norms have obvious efficiency advantages, in particular because the social actors who actually create the normative structure may enjoy informational advantages specific to the practices in question over legislative and judicial lawmakers.

Because ritualization is primarily a procedural practice for instantiating and maintaining beliefs, values, and norms in the social sphere, a focus on ritual cannot provide definitive answers as to the substantive efficiency either of a given norm or of the development of the normative system as a whole. The importance of a ritual perspective lies rather in its ability help us judge the likely effectiveness and efficiency of these norms in the job of regulating behavior. Ritualized norms have distinctive qualities—different both from other types of informal norms and from formal law—that can hinder or enhance the efficient operation of a normative system, and a careful consideration of these features therefore goes to the heart of decisionmaking concerning whether to employ law or norms to regulate behavior in specific contexts.

So far, this article has shown how ritualization provides powerful support for the creation and maintenance of an effective system of social norms. Ritualization enhances the effectiveness of an associated normative system by providing the framework in which an individual unambiguously commits herself, and others, to adhering to social norms. It enhances the clarity of norms against potential erosion of meaning, and focuses memory and awareness on relevant norms in situations where they are potentially applicable. Ritualized norms can be-

tries, see, POSNER, INEFFICIENT NORMS, supra note 1; Gillette, supra note 24; Jody S. Kraus, Legal Design and the Evolution of Commercial Norms, 26 J. LEGAL STUD. 377 (1997).

374. See Krauss, supra note 373.

375. See, e.g., Cooter, Decentralized Law, supra note 1. But see, e.g., Bernstein, Immanent Norms, supra note 18, at 1766-69 (opposing incorporation of business norms into formal law due to detrimental impact on business relationships).
come largely unquestionable, part of our implicit way of describing to ourselves how the world works, and in some cases part of an unchallengeable, sacred cosmos. Ritualization promotes profound internalization of norms, making them part of the participant's fundamental sense of self, and provides powerful affective motivation for complying with norms.

These features may also, to some extent, characterize norms instantiated through non-ritualized procedures like formal law, but often only to a lesser degree. Moreover, in the case of some of the most powerful characteristics of ritualization, the analogues in formal law are weak or non-existent. Legal institutions generally provide little scope, other than indirectly through voting and other political rituals, for individuals to express the powerful kind of self-referential, physical/emotional sense of commitment to legal norms that they commonly do for ritualized informal norms. Additionally, the powerful, positive emotional force towards compliance with ritualized norms may be absent in the case of formal law, with its emphasis on state-administered sanctions for noncompliance, and often cannot be duplicated by a relatively weak and diffuse sense of community approval or disapproval that may be communicated by law's expressive function. Individuals frequently do not internalize, or "act in the shadow" of much of formal law, in contrast to the way that ritual can turn norms into an integral part of an individual's sense of self.376

Ritualization also significantly affects the transactions costs associated with operating a system of informal norms, acting so as to make the system more stable and more effective than might otherwise be the case.377 Profound internalization of social

376. See, e.g., ELICKSON, ORDER, supra note 1, at 141-47; Andrew J. Cappel, A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926), 101 YALE L.J. 617 (1991) (indicating that social norms rather than formal law govern many aspects of urban development).

377. This analysis ignores the costs of the rituals themselves, including costs to performers for participation (e.g., lost time), which can themselves be significant. In the case of existing rituals and rituals that develop more or less spontaneously (or through the agency of professional "ritual entrepreneurs"), I assume that the costs of participation are at least offset by the benefits enjoyed by participants from their participation; this in turn allows me to focus on the positive and negative network externalities of ritualization (e.g., communication, trust) as they affect informal social norms, on possibilities for strategic behavior within the ritual community, and on the potential impact of legal regulation of the ritual process. For a similar analytical framework in the context of explicitly religious practices, see Posner, Religious Groups, supra note 1, at 40. For a discussion of the recent prolifera-
norms, and the powerful positive affective force associated with compliance makes individuals more willing to sanction norm violators. At the same time, the emotional impact of ritual practice on individual discount rates, makes norm violators more sensitive to the prospect of future and renders informal sanctions and social ostracism more costly to recipients. The result of ritualization is to decrease the costs of enforcing compliance, while increasing the costs of noncooperation.

Ritualization also decreases other transactions costs. "Cognitive" costs arise due to limitations on human cognition and memory, which have the potential to inhibit rational behavior. Ritual focuses awareness and enhances the recovery of relevant norms from long-term memory; it preserves norms in memory in a relatively immutable manner; it makes norms more cognitively efficient by moving them from the realm of explicit reasoning to that of implicit response. Ritual also reduces more traditional types of transactions costs. Widespread ritualization of norms within a community can overcome problems posed by geographic dispersion, while ritual's ability to achieve solidarity without consensus helps limit the issues that must be negotiated in establishing, maintaining, or changing social norms to a manageable number. Finally, ritual can be very effective in resolving problems associated with passing information between dissimilar systems, thereby decreasing the costs both of gathering the information that may be relevant to making norms welfare-

---

of for-profit ritual entrepreneurs, who provide innovative ritual services to customers, see GRIMES, supra note 82, at 308. At the same time, the cost of a ritual system may sometimes be a significant factor in whether or not a society will support a given system of rites, as in the case of a centralized organization that sponsors rituals that no longer are effective in inculcating their message (as arguably was the case towards the end of the Soviet Union), or in a centralized decision to install new rites or significantly modify older ones. Note, for example, the current discussion concerning the amount of money the states are willing to spend on improving and making more publicly acceptable the electoral rituals whose legitimacy has suffered in the wake of the 2000 election debacle. Historians similarly have suggested that one of the many causes of the Protestant Reformation was a reaction against the loss of productive time that resulted from the lush profusion of rituals and holy days that characterized late medieval Catholicism. On the other hand, a certain amount of ritual activity is probably immune from this type of cost-benefit calculus, being required for humans to be able to communicate important concepts that cannot be understood and transmitted in any other manner. See RAPPAORT, supra note 64, at 139-41. This would be all the more true if, as has been argued, ritual constitutes an indispensable preliminary step in human capacity for symbolic manipulation that underlies basic language competence. See DEACON, supra note 4, at 400-10. Such a view would appear to be confirmed by cross-cultural evidence that ritualization forms an essential part of human ontogeny. See sources cited supra note 4.
enhancing, and of making this information accessible to human actors in a way that can provide meaningful guidance.

Formal law can capture some, but not all of these qualities, and not always as successfully. It is well known, for example, that enforcement costs associated with formal law tend to be significantly higher than for informal norms. More interesting are the problems connected with information flows. Recall how elegantly the ritualized maxim of reciprocity "think like a goose" can immediately transform sensitive environmental data into meaningful guidelines for action. To accomplish similar results in formal law would normally require a complex and costly process of ex ante scientific information gathering, the formatting of this data in a manner usable by policymakers, and the casting of policy decisions into verbal regulations that can be disseminated among the effected population. Even where all of these steps are undertaken, the result may not be effective. There is empirical evidence suggesting that in at least certain situations, the scientific methods employed in policymaking simply cannot take all of the relevant environmental and social information into account, thus vitiating attempts at successful formal regulation. All of these considerations suggest that, at least in some cases, replacing suboptimal ritualized norms with superficially more efficient formal laws may not have the desired effect, as any putative efficiency gain that might be derived from the new laws could be more than offset by higher costs or diminished effectiveness in regulating behavior.

In other situations, however, efficiency considerations might justify more aggressive intervention by formal law. This is particularly true with respect to society's ability to change existing norms and make beneficial improvements. Informal norms are commonly viewed as being in general more conducive than formal lawmaking to producing efficient welfare enhancing results by virtue of their greater flexibility and sensitivity to subtle changes in local conditions. In the case of ritualized norms, however, there is reason to be skeptical of such claims. Because of the repetitive nature and affective force of ritual practices, ritually instantiated norms are likely to enjoy

378. See, e.g., Cooter, Normative Failure, supra note 1, at 947.
379. See, e.g., M. Estellie Smith, Public Policy, Sciencing, and Managing the Future, in NAKED SCIENCE, supra note 140, at 201, 212-13.
380. See, e.g., Cooter, Decentralized Law, supra note 1, at 1646; Cooter, Normative Failure, supra note 1, at 948.
very strong support even where they may have outlived their usefulness or been shown to have inefficient impacts. As a result, the introduction of new normative proposals, whether due to efforts of self-conscious norm entrepreneurs or as the result of a more diffuse and anonymous process of cultural “contagion” of new ideas, is likely to encounter more resistance than would otherwise be the case, particularly where existing norms are viewed as part of the natural order of the world or of a sacred cosmic structure. Consequently, the ritualization of a set of norms may well exhibit a significant lock-in effect that inhibits future innovation. Moreover, the way in which ritual serves to transform the contingent into the factive—obscuring social construction by making it appear to be part of an immutable natural order—can inhibit the ability of even acute potential norm entrepreneurs to see opportunities for beneficial innovation. Because they are thus prone to problems of cultural inertia, ritualized norms might in many cases be highly inflexible and difficult to make more efficient, possibly more so than in the case of formal law.

In addition, even where the need for innovation becomes apparent, the ritual process tends to restrict the types of innovation that are available. Concepts and norms associated with the ritual process are exemplified through stylized ritual actions and utterances, generally embodied in a complex symbolic structure, and frequently articulated in mythic discourse. New rituals are devised out of portions of existing rites and the meaning of pre-existing symbols and myths is contested and ultimately, subtly reinterpreted. The combined weight of this structure ensures that, in general, changes do not occur wholesale, replacing the old structure with new norms, rituals, symbols, and myths, but rather take place incrementally. The fact that change generally is channeled into adaptations of previous meanings and practices limits the free scope for change and innovation. Thus a new norm may well be adopted because it fits in most easily with pre-existing ritual and symbolic structures, rather

381. On lock-in effects in the context of informal social norms, see Gillette, supra note 24. Sociologists have noted a similar “cultural inertia” inhibiting social innovation. See Chong, Values, supra note 1, at 2101-02. Arguably, ritual forms a particularly formidable source of cultural inertia.

382. See BELL, supra note 66, at 235; KERTZER, supra note 70, at 12; Hobsbawm, supra note 75.

383. See KERTZER, supra note 70, at 12.
than because it provides the optimal solution to a perceived problem.

Ritualization can also promote inefficient results by virtue of the fact that ritual processes (and accompanying social norms) are subject to manipulation by groups seeking to impose costs upon outsiders. Inasmuch as ritualized activities tend to sharply separate the world into participants and non-participants, and to invest participants with an affective sense of communitas combined with claims to special status, ritual communities are potentially likely sources of discriminatory norms. Likewise, within a group, ritual can become the source of inefficient strategic behavior where the ritual process is controlled by a small group (e.g., the dominant party in a totalitarian state) that can manipulate popular participation in rituals for its own benefit. In such cases, robust legal intervention may well be justified.

Although significant, these inhibitory effects should not be overestimated. Because of the capacity for innovation within the framework of a ritual structure, ritual and its symbolic and mythical concomitants (including social norms) do not act as purely conservative forces upholding the status quo, but are also capable of significant dynamic change. This article has noted how religious ritual helped solidify the early abolitionist movement in the antebellum period; at the same time, the conversion of slaves to Christianity provided them with the opportunity to create norms of solidarity and freedom. Contemporary society also offers a number of examples of spontaneous ritual innovation designed to change or modify norms of behavior, although some may not operate within the context of formal religious practices. Significantly, a number of these practices address issues that pose notoriously intractable problems for formal law. For example, rites have been invented to help heal and offer public support to victims of domestic violence, and to focus community attention and censure upon its perpetrators. Non-

384. For examples of the problems associated with using social norms to externalize costs onto outsiders, see Ellickson, Order, supra note 1, at 249-50; McAdams, Cooperation and Conflict, supra note 1, at 1004-08; Posner, Inefficient Norms, supra note 1, at 1722-23.


386. See Kertzer supra note 70, at 11-12.

387. See Beverly Horsburgh, Jewish Women's Use of Ritual As a Means of Em-
sectarian divorce rituals have proliferated, in which the divorced couple signify the end of the marriage in a formal and public way. These rites not only help heal the psychological wounds of a divorce, but also help re-establish trust and a cooperative framework for future interaction (such as raising children). In Japan, popular abortion rites help mediate and diffuse the tension between the reality of abortion and moral or religious disapproval of the practice in a way that is not possible in the non-ritualized context of American society. Feminists have turned to ritual in order to publicize women's lack of recognition in public institutions, and to provide a means for women to experience self-affirmation. Recall as well that the ritualization of norms can in some cases—like abolitionism in the antebellum United States—can actually help overcome the types of collective action problems that typically accompany efforts to introduce new norms, where the proponents of the new norms are highly motivated to agitating for change despite strong social disapproval.

There may be similar reasons for not simply displacing ritualized norms with formal law in cases where the ritual process instantiates discriminatory norms. At times, it may be possible to remedy these problems without losing the advantages that ritualized norms possess in terms of effectiveness and cost, by instead using law to open up the ritual community to outsiders, to increase the ability of ordinary people to participate in the control of ritual activities, or to foster growth within civil society to create a multiplicity of ritual communities, so that it is more difficult for one to dominate the others.

B. Destruction of Social Capital

Another important criterion to take into account is the potential impact of a substitution of law for norms on the stock of "social capital," features of social organization such as trust,
norms, or networks, which facilitate cooperation and a society’s ability to overcome collective action problems. Social capital is generated by communal activities that require repeated communication and coordinated activity among members, giving rise to norms of reciprocity that influence behavior so that an individual’s cooperative efforts will be reciprocated, rather than exploited, by others. The importance of social capital has been documented in studies relating to, inter alia, local politics, use of common pool resources, and urban planning. In contrast, cultures that possess low levels of social capital and social trust tend to be characterized by weak institutions (including weak regulatory norms), low levels of social development, and limited ability to effect cooperative solutions.

The concern is that the substitution of formal law for informal norms can potentially alter the meaning of social relations and thereby destroy valuable social capital associated with these norms. This can occur directly, as when laws conflict with baseline social norms of reciprocity or fairness, or indirectly, where formal law alters the underlying social conditions that engender social trust and the production and maintenance of useful norms. Arguably, the very replacement of a normative structure with formal law, even if both have roughly identical substantive content, can diminish social capital as norms of reciprocity based upon trust among individuals and sanctions based upon moral and reputational concerns are replaced by an extra-communal third-party system of compliance and enforcement.

Such concerns become particularly acute in deciding whether to replace ritualized norms with formal law, because

393. See ROBERT D. PUTNAM ET AL., MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 167-71 (1993); see also JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 300-21 (1990).
394. See PUTNAM ET AL., supra note 393, at 171-76.
395. See id.
396. See OSTROM ET AL., supra note 21, at 319-29.
397. See Pildes, supra note 392, at 2067-69.
398. See DOUGLAS & NEY, supra note 9, at 166-69; OSTROM ET AL., supra note 21, at 327-29.
399. See Pildes, supra note 392, at 2069-70.
400. For example, it is possible that replacing informal norms that govern business relationships can have the unintended effect of lessening the sense of trust among businessmen by placing them in a more legal, and therefore adversarial, type of relationship, and of replacing an expansive notion of reciprocity with narrow regard for strict legality, thereby encouraging, rather than discouraging, exploitative behavior. See Bernstein, Immanent Norms, supra note 18, at 1766-69.
the ritual process can significantly augment a society's stock of social trust and social capital in ways that extend beyond ordinary types of social interactions.

The self-referential nature of the ritual process goes beyond the ability of ordinary social interaction to create trust among individuals, creating "hypertrust" among members of the ritual community. Recall in particular how ritual utilizes paralinguistic features to express social relations that cannot be adequately communicated in words. While paralinguistic features are an aspect of all face-to-face communication, the physicality and iconicity of ritual performance serves to cement among participants feelings of commonality, reciprocity, and trustworthiness more powerfully and convincingly than otherwise.

Ritual can be distinguished from other forms of participatory activity that create social capital by virtue of its transformative effects upon the participant. The physical, affective properties of the ritual process promote a high degree of internalization that, together with the factive nature of the ritual process, makes adherence to norms of reciprocity among members of the community appear particularly inevitable and desirable. This is further enhanced by ritual's potential ability to temporarily dissolve social distinctions, evoke a strong sense of community, and allow participants to view their conduct towards others from a timeless perspective, set apart from considerations of short-term gain. At the same time, because ritualization can influence individual preference in favor of norms of reciprocity, it can also help create the very types of concrete, successful, cooperative activities that support social trust.

To the extent that the substitution of formal law for a ritually predicated normative structure impairs the continuance of robust ritual activity, we should expect that potentially valuable social capital may be destroyed, and that compliance with law-based cooperative norms therefore may be less vigorous than in the case of their ritualized counterparts. Indeed, the removal of the affective support of ritual for a set of normative practices can potentially lead to a cascade effect away from widespread internalization of such norms that may only be partly offset by compliance with the new, law-based normative structure.

401. See RAPPAPORT, supra note 64, at 39-40.
402. For information on cascade effects, see supra note 334.
C. Degradation of the Ritual Process

While considerations of efficiency and destruction of social capital are important, there is a larger issue at stake that arises not only in the case of the substitution of formal law for ritualized norms, but also in the larger context of the relationship between law and ritual in general. In addition to its impact upon ritualized social norms, formal state law may have an impact, directly or indirectly, on the ritual process itself, and can prescribe or impair a community’s very ability to engage in ritual practice. The problems raised whenever law impinges upon social practices of ritualization are particularly complex and troublesome in light of ritual’s constitutive function—not only its ability to facilitate communication and generate meaning and obligation—but especially its connection with the implicit, background knowledge that we share about the world, and above all, ritual’s central role in forming and instantiating human conceptions of the sacred.

Formal law can have a negative impact on ritual in several ways. Most obviously, it may outlaw ritual practices entirely. More subtle but no less important, effects can result where formal law replaces norms that, although not included in the ritual process itself, are closely associated with it. Where the law conflicts with the ritual/mythic structure, and the law is widely observed by the community, the likely result is the devaluation of the ritual process. Alternatively, a community may adjust its ritual/mythic structure in conformity with the new legal order, but if these changes are too abrupt and obviously driven by expediency, this could itself cause widespread cynicism and a decline in ritual practice. Appreciable damage to ritual processes may also occur, at least in some cases, even where formal law merely restates and incorporates the content of ritually instantiated norms. Rituals may now be perceived as redundant and fall into disuse. Even if this is not the case, substitution can still have a profound (possibly deleterious) impact on ritual.

---

404. See, e.g., DOUGLAS, supra note 67, at 37-53.
formal social norms are largely a manifestation of oral culture, whereas formal law (at least in the modern state) quintessentially involves written statutes and opinions. It is well established that as literate culture progressively pervades a previously orally based sector of society, it causes fundamental transformations in ritual practices. Such transformations can potentially impair the role played by ritual in facilitating the generation and maintenance of norms, in the articulation of fundamental social meanings, and in the creation of the legitimate and the sacred.

Because the impact of ritualization is so subtle and multifarious, damage to ritual processes can have significant unintended consequences on social practices (including informal norms), which may not even be perceptible at the time. In New Guinea, the replacement of traditional rites with Christianity has played an unexpected and almost unnoticed role in the disappearance of indigenous languages. In contemporary Western society, many observers have noted a connection between the current relative sparsity of socially accepted ritual practices and widespread dissatisfaction concerning the fundamental meaning of one's life and relationship to others, and with the difficulties that many individuals encounter in coping with important economic, social, or biological transitions. A well-intentioned effort in parts of West Africa during the past few decades to stamp out rituals relating to accusations of sorcery resulted in unintended, and particularly tragic, consequences. It turned out that proscribing these rituals, instead of eliminating witchcraft accusations, removed the social constraints that had previously served to limit the scope and impact of accusations of witchcraft. As a result, existing social tensions imploded into an intensified series of sorcery allegations, accompanied by prolonged and bloody witchhunts. The moral of these stories: the disruption or displacement of ritual practice by central authority, notably state law, can undermine the social and communicative framework necessary for the existence of effective social norms, and can do so in a highly unpredictable manner.

406. See GOODY, supra note 44, at 170-71.
407. See discussion supra note 185.
408. For a trenchant analysis in the context of the way that we deal with death in contemporary American society, see GRIMES, supra note 82, at 281-82.
409. See DOUGLAS, supra note 47, at 77-94.
410. See id.
But the problem posed by potential disruption, displacement, or devaluation of ritual practice by law extends even deeper, to the very bases of human conceptions of the sacred, of authority, and of legitimacy. A common misconception is to equate the sacred with a body of beliefs (or texts) handed down through tradition, and to view practices as more or less simply the acting out of these beliefs. Such a view, however, by focusing only on the content of sacred beliefs and texts, is radically incomplete. Belief and practice exist in a reciprocal relationship, and no system of beliefs can long retain its sacred character in the absence of periodic rites, the physical, emotional practices that put the participant in direct connection with the sacred, and thereby instantiate a belief system as a sacred object. Moreover, the content of a set of sacred beliefs within a community is always subtly changing, even in the case of well established religions. Over time, these beliefs may have changed so much as to be virtually unrecognizable from the standpoint of earlier belief structures within the same tradition. Yet we view all of these beliefs as part of the same sacred tradition, and the main reason that we do is that they have been instantiated as sacred by a common set of ongoing ritual practices. Arguably, considerations like this demonstrate how ritual occurs logically before beliefs, just as we know that, from historical and evolutionary perspectives, ritualization predated and formed the indispensable basis for substantive systems of sacred belief. Ritual not only expresses our notions of the sacred, it creates them; the legiti-

411. Failure to clearly grasp this point not only bedevils courts, see infra note 395 and accompanying text, but afflicts commentators as well. See, e.g., Steven L. Carter, Religious Resistance to the Kantian Sovereign, in 37 NOMOS: THEORY AND PRACTICE 288 (Ian Shapiro & Judith Wagner DeCew eds., 1995). Frank Ravitch has argued that the privileging of religious belief may reflect a subtle canonical understanding of Protestantism, with its relatively anti-ritualistic theology, as the best exemplar of religious activity, at the expense of the more practice-oriented religious sensibilities of Catholicism, Judaism, and Islam. See Frank S. Ravitch, Judicial Interpretation and the Free Exercise Clause, (2000) (unpublished manuscript on file with author). This may well be true, but it is important not to draw too hard a distinction; no religion is fully orthodoxic or orthopraxic, each combines elements of belief and ritual practice, albeit in varying degrees. See BELL, supra note 66, at 191-97.

412. See RAPPAPORT, supra note 64, at 395-96 (discussing the reciprocal nature of belief and practice, and on the need for ritual to periodically recreate the sacred); see also ANTHONY F.C. WALLACE, RELIGION: AN ANTHROPOLOGICAL VIEW 102, 104, 107, 243-44 (1966) (noting that ritual has instrumental priority over religious belief).

413. See DEACON, supra note 4, at 322-24; RAPPAPORT, supra note 64, at 371-73, for information on the historical and evolutionary primacy of ritual.
macy of the authority of a religious leader or political official exists largely to the extent that this legitimacy is continuously re-enacted in a series of religious or secular rites.\textsuperscript{414}

This centrality of ritual in the creation of the sacred raises fundamental problems when law encroaches upon ritual practice. We already encounter serious dilemmas when law curtails actions that are mandated by a set of sacred beliefs, but which are not direct constituents of the ritual process itself, such as the ability of an Orthodox Jew in the American armed forces to wear a yarmulke in his everyday duties.\textsuperscript{415} From a non-state centered, cultural/ritual perspective, cases like this demonstrates a clash between two equal sacred authorities, both instantiated by the same group through two different sets of ritual practices: participation in the ceremonies of Orthodox Judaism; and participation in the various political rites that create the sacred basis of a democratic society. In such cases, the identification of an authoritative rule of recognition may be impossible, and the imposition of state law becomes a mere exercise in coercion, or as Robert Cover memorably phrased it, "jurispathy."\textsuperscript{416}

Problems of legitimate authority become much more acute when law curtails fundamental ritual practices themselves. In this case, law arrogates to itself all of the sacred/symbolic authority, precluding a group from the very creation of its own sacred reality. Yet from a cultural perspective, there is no basis for privileging one ritually created sacred authority to the exclusion of others; all of them are normal ways that a society goes about its business of making sense of the world and relationships between human beings. There is a serious practical danger as well. Given the primary role of the sacred in human conceptions of authority and legitimacy, and the fundamental role of ritual in the creation of the sacred, the banning of ritual practices can leave the state with a monopoly of sources of authority at the expense of civil society; it is no accident that totalitarian regimes abuse the ritual process by trying to capture all of the ritual practices, and by outlawing, burdening, or replacing non-state rituals that create rival sources of legitimacy.\textsuperscript{417}

\textsuperscript{414} See KERTZER, supra note 70, at 24-25, 37-42; RAPPAPORT, supra note 64, at 429-30.
\textsuperscript{415} See Goldman v. Weinberger, 475 U.S. 503 (1986).
\textsuperscript{417} See, e.g., KERTZER, supra note 70, at 45-46, 115 (discussing Soviet attempts to
ference with central ritual activities thus differs from conflicts between law and nonritual practices and beliefs, and is a far more serious matter.

This is because excessively burdening or proscribing core ritual practices does not merely limit an individual's ability to publicly express or follow the tenets of her sacred beliefs, it destroys the entire system of sacrality, preventing individuals or groups from the very creation of the sacred, and delegitimizing the entire belief system instantiated as sacred through the ritual process. Furthermore, whenever state law conflicts with specific beliefs or nonritual practices, there at least remains the possibility for members of a ritual community to accommodate the demands of larger society without losing their identity, by means of creative reinterpretation of the meaning of certain beliefs, changes in the text of the ritual canon, or ritual innovation that can integrate new norms into the sacred structure. Indeed, this process of adapting to a changing outside world is a normal part of the growth and creativity of sacred systems, both inside and outside the context of formal religion. The imposition of state law to the exclusion of fundamental ritual practices removes this possibility, leaving the effected group few choices.

In our constitutional structure, many of these potential conflicts are avoided by the First Amendment protection of religion, along with longstanding statutory exemptions of religious organizations from certain types of regulation. But gaps remain, resulting in an extensive (and frequently incoherent) body of United States Supreme Court case law relating to government regulation of the sacred. A ritual perspective, incorporating the insight that ritual largely creates the sacred, allows us to see these cases in a new light.

An extended study of this problem is beyond the scope of this article, but I offer two examples to show what a ritual based analysis would look like. Each focuses upon one particular problematic aspect of the current jurisprudence. The first, arising in the context of formal religious practice, is the confusion that can result from failure to distinguish between the capacity appropriate Christian rites and to devalue existing religious rituals). See generally LANE, supra note 385.

418. See RAPPAPORT, supra note 64, at 283-87 (indicating the locus of the sacred in ritual practice).

419. Note, for example, the frequent introduction of nonsexist language into established religious liturgies by liberal sects.
of ritual to create the sacred, and the specific beliefs that are made sacred in this way. The second relates to the problems that arise in the case of secular rituals. From a cultural perspective, these rituals are often largely identical to formal religious practices in their ability to instantiate the sacred and may even be viewed by participants as quasi-religious, but they do not fit within the narrow legal rubric of "religion."

The first problem is exemplified in Employment Division of Oregon v. Smith, where an anti-drug norm codified as law conflicted with the ingestion of peyote as a sacrament in the rituals of the Native American Church. From a ritual perspective, the fundamental error made by the Court in upholding the Oregon statute was its explicit rejection of any attempt to determine what should have been the decisive issue: the centrality of the use of peyote in the Native American religion. It is precisely at this point that the erroneous conflation of a religion's ritual practices with its structure of beliefs (and with the non-ritual acts that arise from these beliefs) becomes pernicious. Certainly, we may well hesitate at the prospect of a secular court trying to decide which of a religion's beliefs are more central than others, a subject about which even theologians may disagree, and which in any event is inherently subjective in the minds of individual members of a religious group. The same is true for nonritual practices (such as wearing a yarmulke in daily life) that allow an individual to express these beliefs. But ultimately the core of the sacred does not reside in such beliefs and practices, but in the ritual processes by which they are instantiated. These, in contrast, are public and objective, and the specific elements which comprise a given religion's ritual process (along with their relative importance within the ritual structure) can be determined. In Smith, it was the central sacrament of the Native American ritual system that was being attacked by the state law. Thus, by ignoring the

---

421. According to the majority, such an inquiry would constitute an impermissible attempt by the Court to determine the relative importance of religious beliefs and practices. From this starting point, the Court further reasoned that because we cannot weigh the relative importance attached to different religious beliefs and practices, the religious pluralism of the American people would ensure that virtually any law could be subject to claims that it violated someone's sacred values and belief, thus potentially undermining the state's ability to regulate behavior at all. Faced with this unpalatable alternative, the majority established a bright-line rule that no First Amendment violation occur where the effect of a neutral and generally applicable state law incidentally burdens religious beliefs and practices. See id. at 880.
ritual/non-ritual distinction, and by privileging belief and expression over ritual practice, the Court’s majority allowed the state to undermine the very process whereby religious beliefs and practices acquire and retain their sacred character.

The failure of law to recognize the capacity of secular rituals to instantiate the sacred lies at the heart of the Supreme Court’s decision in Boy Scouts of America v. Dale, where the Court held that the Boy Scouts could legitimately refuse to allow gay men to act as scout leaders. Scouting seemingly does not fall into the traditional category of religion, and so the Court decided the case on the basis of the Boy Scout’s right of expressive association. Yet such an analysis clearly misses, from a social and cultural perspective, much of what is really going on. Recall that scouting is permeated by rituals designed to inculcate values into its members in precisely the way that we have previously defined the sacred: implicit, unquestionable, and ultimately unprovable postulates upon which we build our understanding of how the world works and how we are to act in it. Just as in Smith, Dale concerned a potential clash between a legally codified social norm (an antidiscrimination law aimed against intolerance) and a group’s ability to create and articulate its own conception of the sacred. A cultural/ritual perspective thus frames the issue on the same factual question that the Court avoided in Smith: to what extent does formal law impede the ritual processes through which the sense of the sacred and its associated beliefs are created? Arguably, in contrast with Smith, sexual orientation does not appear to pose an impediment to the practice of the fundamental scouting rituals. What is important, however, is that a critical cultural issue cannot even be addressed in the language of current jurisprudence or legal commentary because of the way that we ignore the power of secular ritual and cabin off all discussion of the sacred within the context of formal religious traditions. A ritual perspective in these situations is critical. Aside from allowing us to identify the problems, it offers the possibility to adjudicate such claims in a principled manner.

423. See id. at 644.
424. For a discussion of scouting as a ritualized activity, see supra notes 116-17 and accompanying text.
VII. Conclusion

Ritual forms an integral part of human life, and ritualization has a profound impact not only on social norms themselves, but also on larger issues of morality, legitimacy, and fairness. The full implications of human ritual practice on these issues fall outside the scope of this article, and must await further investigation. This article, however, attempts to sketch out the contours of what such a study would look like, and the problems that it would address. In addition, this discussion underscores a fundamental point: studies of both formal law and informal norms need to take into account the multifarious ways that multi-use, co-evolved artifacts and social practices, such as ritual, cut across the analytical boundaries that we customarily erect in the study of law, cognition, society, and culture. Moreover, a careful study of these practices can reveal unexpected patterns of regularity. This ultimately leads towards development of a full taxonomy of the most important forms of cultural practices (and their practical implications), that can clearly explicate the concrete bases, or microfoundations, upon which much of the social and legal orders rest.

The description of the function and importance of ritual that is presented here, in particular with respect to ritual's role in the creation of the sacred, is not intended as an unqualified endorsement of ritual behavior. Like any other cultural tool, ritual can be employed for evil, as well as beneficial purposes; the same human impulse that gave rise to Mozart's Requiem also underlies the Nuremburg rallies and the destruction of the World Trade Center. Nor should my discussion leave the impression that ritual is an undifferentiated phenomenon, or a unitary vehicle for social cohesion. In my analysis, I have treated ritual to some extent in the form of a Weberian ideal type, in order to make more explicit the essential features of ritual practice and ritual's continuing vitality in contemporary life. Real life, of course, is more complicated. Not all rituals share identical features; not all are equally effective or emotionally satisfying; not all equally partake of ritual's unique ability to sacralize. Some have become "mere" rituals, impotent vestiges of our culture's prior history. Moreover, while some rituals powerfully create social trust and solidarity, others are sites of conflict and contestation.

Yet for all that, we live in a web of ritual behavior, whose cumulative effect appears to be very much of the type that I have
described. Ultimately, the reason for ritual's longevity and ubiquity lies in the fact that it enables us to think, feel, and communicate important things that cannot be done in any other way. On a deeper level, all human beings must construct meanings "in a world devoid of intrinsic meaning but subject to causal laws, not all of which are known." Ritualization remains perhaps the most basic and powerful way that we possess in order to mediate between our symbolically constructed meanings and the brute facts of life, constituting and framing our rational and emotional faculties. As such, ritual behavior will probably continue in some form or other as long as our species exists, and its significance, having been made explicit, must be subject to serious discussion in the law.

425. RAPPAPORT, supra note 64, at 21.