RITUAL WISDOM AND RESTORATIVE JUSTICE

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Behind the judge’s bench in our courtroom in Haywood County, North Carolina, a plaque displays a bias-relief rendering of the Ten Commandments. Between the two tables of this Biblical code stands a blindfolded Lady Justice holding her scales. Our local village atheist, rebuffed in another dispute in the court, brought suit against the County to remove the plaque as an establishment of religion. ACLU lawyers and noted theologians weighed in, contesting whether this was simply a “secular” symbol or a blatant imposition of a particular religion. The case dragged on through appeals courts, only to become moot when the plaintiff died. His wife, a fundamentalist Baptist, refused to take up his cause. The plaque, having cost the County some $40,000 in fees, remains.

In the course of this well-publicized contest no one ever pointed out that the two symbols – the commands of Israel’s ever-watchful and protective God and the blind judge weighing competing claims – are rooted in very different notions of justice. The God of the Commandments seeks out the oppressed and vindicates their cause. The blindfolded lady impersonally weighs competing claims to find a judgment removed from the contexts of the disputants. The confusion of the two principles, so vividly set forth in this contested plaque, permeates our system of justice as well. The conflict of symbols reinforces a confusion of practices and theories.

This experience reminded me forcefully of the deep connection between symbolism and practice in the law. It also reminded me that we often cannot see these connections because we are so captured by the simple distinctions between “secular” and “sacred” that shape our discourse and vision. What we need to learn is how legal and judicial practices are deeply rooted in symbols and rituals. In order to make any basic changes in the
practice of law and of the courts we have to attend to the symbolic as well as the jurisprudential dimensions of our practices.

Hamline University’s Symposium on Advanced Issues in Conflict Resolution self-consciously explored these connections. The format of the symposium – an extended conversation – was itself a new ritualization of a professional gathering. Rather than the rituals of presentations and papers to audiences, it instituted a circle of conversation around evolving themes. It put a round table at the center, set with objects to focus our attention on key values that should shape our interaction. There were no benches, tables, lecterns, or pulpits to set experts over against laity. The rituals of our gathering that evolved within this setting were themselves fundamental to the practices we wanted to explore – practices of mediation at the table, of gathering in circle to encourage and to hear each voice, and of seeking common solutions to problems.

Symbols and rituals are indispensable for our efforts to contain, transform, and resolve conflicts. Without them, our conflicts are reduced to the exercise of brute force and the loss of all the values of cooperation and mutuality that make life in community possible. Therefore, our search for justice in the midst of conflict must take symbols and rituals seriously and discerningly, especially when we try to introduce new forms for dealing with conflict and restoring relationships.

The concept of ritual focuses our attention on the way our important gatherings, whether for feasts or judgments, have the character of drama. The display of symbols and the regular repetition of certain words, actions, and patterns of interaction give people a sense that they are participating in something deeper, more permanent, and therefore “true.” Ritual relates our actions of the moment to a timeless drama that gives meaning, and therefore authority to what we do. Our rituals and the whole environment in which they occur – setting, time, clothing, and furnishings – gain symbolic meaning and authority to the extent they imitate this ideal drama. Indeed, we ordinarily operate within a fairly small number of dramas about justice, punishment, reconciliation, and forgiveness. To move beyond them in an effort to establish new
understandings of justice requires enormous attention to these symbolic factors.

Ritual and symbols exercise their peculiar social power in at least three ways: by legitimating action, by ordering relationships, and by enabling people to “rehearse” their participation in the resolution of conflict.

I. LEGITIMATING AUTHORITY

Rituals are repeated patterns of action that have a symbolic character. That is, their meaning is not fully explained by their immediate practical effect, as when I hand someone a glass of wine. They become ritual when this action occurs in a setting and context that reminds participants of something that transcends the moment, as when I hand someone a cup of wine within a church setting of worship. In the first action, I was simply relieving a guest’s thirst at a meal. In the second, I was enabling them to participate in a complex relationship in a church community with many layers of meaning attached to the life of Jesus as the Christ.

Because of this power, rituals enable people to connect what they are doing to a “deeper” level of reality that embraces and transforms time. That is why very archaic rituals, whose historical origin is unknown, have such great power. Those who can connect their present actions, through ritual and symbol, to this world of permanence find a basis for legitimating their authority. To the degree we accept the reality of the world to which the ritual points, then we accept their authority. Indeed, we accept it “voluntarily.”

To legitimate our actual patterns of judicial, meditative, and restorative action we enact them as a kind of rehearsal of a more ultimate pattern of justice. The ritual patterns we rehearse in our courtrooms and at our conference tables are efforts to emulate a deeper or higher pattern that can lend legitimization to our daily search for justice. In doing so, we not only justify our practices but we also subject them to a higher standard of justice. The power of legitimization also carries within it the power of critique. The
critique, however, is only as powerful as the drama in which the ultimate form of justice is set forth.

We can see this dynamic in the two models of the traditional court and the practices of restorative justice. The traditional courtroom, like the traditional church, was designed with several levels, the highest level having the greatest authority. To the extent that people believed in a hierarchical universe, this architecture established an effective pattern of authority for the court. The “higher” drama that might critique as well as legitimate this form was first of all that of the fatherly God of Israel, who punished as well as redeemed his people. This is, I think, why the Ten Commandments have presented such an issue in courtrooms in our southeastern states. For the more secular minded, of course, the blindfolded lady provided an alternate source of legitimization as well as critique of self-interested or prejudiced judges.

As long as people believed that truth was the word of one supreme authority, then court rituals focused on the final words of the judge and the respectful silence of everyone else. As people moved away from this worldview and began to see life in terms of circles of energy, courtroom architecture reduced its vertical articulations and took more circular forms. When people began to see truth as arising in the deliberations of people gathered in a circle of equals, then rituals, such as that of the “talking piece,” emerged to guide this deliberation in order to evoke maximum participation in a process of speaking and listening.

The circular processes of committees, task forces, teams, huddles, and mediation gatherings began to become more authoritative for people. Circle rituals began to augment or replace rituals of ascent and descent as legitimate bases for seeking a just resolution of disputes. At this point the dramatic models of restorative justice are not elaborated enough to discern ways that they can critique the actual processes of these circles. However, it is fairly clear that there are ways circles can intimidate people into unwanted agreements or mask over painful negative truths underlying the injury in question for the sake of social harmony.
Every ritual has to be seen in terms of the way it shapes legitimate authority. This is crucial not only for common consent to the outcomes of judicial processes but also for their critique. There are real choices to be made at this fundamental level and we need to be discerning about them.

II. ORDERING RELATIONSHIPS

The second way rituals and symbols shape our efforts to seek justice is by ordering the relationships among actors. Rituals, like drama, require the assumption of roles. The classic courtroom rituals clearly identify judges, advocates, jury, plaintiff, victim, offender, and the general public, as well as many others. Each is constrained by role definitions that organize the action according to a certain conception of authority and the requirements of justice. The roles themselves are organized according to a script flowing from one of our shared dramatic scenarios about justice. The action is further defined by the organization of space and other symbols. By all these symbolic means people leave behind their ordinary roles, scripts, and life dramas to participate in an authoritative and binding resolution of their conflicts. Ritual organizes them for this action.

Ritual first of all organizes the actors in order to remove them from the relationships they may have or have had outside the ritual process. The ritual process and its symbolic environment place the actors into a set of relationships according to the purposes of the process. Sometimes we do this in order to protect victims from alleged offenders. Ritual provides a safe setting for the pursuit of justice. Sometimes we need ritual and symbols to distance judges from those who are judged or are pleading their particular interests. In circle processes, this legitimization of transcendent justice rests in the wisdom of the group process itself. Each understanding of the transcendent character of judgment requires a different ritual form.

In providing an alternative pattern for organizing people’s relationships, ritual enables people to transcend their ordinary lives
by entering into a “higher,” more public drama. In a sense they become a different kind of person. Indeed, our very word “person” originates in the Latin “persona,” the theatrical mask that was also used to speak of the capacity of someone to enter into a court of law. The existing role definitions of “defendant,” plaintiff,” “lawyer,” or “judge” powerfully determine what the participants can and cannot do in the drama of the court. Sometimes this transformation in role can give them a power and protection that enables greater truth-telling and discernment, but sometimes it can also falsify and deny the wider communal context of the judicial process.

In the traditional courtroom, for instance, as my example of the plaque evidenced, people have been ordered in a way that puts the judge, and in certain respects the jury, as impartial, indeed even blindfolded, arbiters of decisions and outcomes. In restorative justice circles, people are ordered in a way to put their collaboration and the restoration of their community at the center of things. The first tends to screen out the wider community context, while the second draws it in.

In the traditional courtroom, people are organized in order to repress the violence and irrationality that is presumed to lie just below the surface of human affairs. The rituals of circles tend to assume that truth-seeking and the desire for peace lie just below the surface of the anger and alienation fostered by anonymous social structures or other collective forces. It seeks to evoke participation rather than repress aggression. While the traditional drama of adversarial justice-seeking assumes, like Lady Justice, that we are weighing or balancing competing interests, restorative justice, symbolized in gathering around the table, assumes that we are trying to find our common good.

By setting boundaries, establishing patterns of relationships, and evoking key scripts and scenarios, rituals order relationships in ways that incline people toward one concept of justice-seeking and right relationship rather than another. To be effective, however, these patterns of dramatic organization have to
be connected to patterns already acted out in people’s ordinary lives.

III. REHEARSING ACTIONS

Rituals are dramatic scripts in which we act out our version of a more ultimate drama, in this case, the drama of establishing justice and right relationships. The rituals of our judicial system are complex tapestries of many little scripts that we have rehearsed in our ordinary lives. We emerge in the little dramas of recognition as babies, laughing at the parent who hides behind a door. Then we proceed to more complex dramas of make-believe, of befriending others, and even of lying and deceiving. Our lives are further shaped not only by the dramas we enact in daily life, but by the dramas of theater, film, books, and stories. Whenever we learn the dramatic forms for apologizing, for extending forgiveness, for establishing an atmosphere of mutual listening and discernment, we are building up the ritual forms for the larger drama of restorative justice. Without the basic dramatic forms that we rehearse in ordinary life, we cannot sustain these patterned actions within the stressful and tense engagements encountered in judicial processes. The little dramatic scripts, roles, plots, and actions of our lives prepare us, whether appropriately or not, for the actual settings where we are seeking justice in the midst of conflict and injury.

If, in their daily life, people rehearse rituals of subordination, silencing, command, or retribution, they will enact these dramatic forms in judicial settings. If they rehearse dramas of participation, of conversational inquiry, and negotiation, then they will seek to bring these into the formal process of justice-seeking. A ritual perspective thus requires that we take account of the interplay between the formal processes of justice-seeking and the environing culture and community in which they take place. Any effort to change the rituals of justice requires attention to the wider rituals of the culture in which they take place.
Nothing is more richly dramatized in our society than the pursuit of justice, whether in film, theater, or literature. However, the dramatic forms we operate with remain fairly limited. In our present search for justice we usually operate within the dramas of being judged guilty or innocent. The complex dramatic model of finding, within a communal setting, a way to restore health to a community is still in the process of emerging into our ritual culture of justice-seeking. If new institutions for seeking restorative justice are to become central, they will have to cultivate both the transcendent dramas that might legitimate them and also the little dramas of everyday culture in which people can rehearse their participation in them. A ritual perspective provides a kind of wisdom for cultivating these dramas and seeing how our rituals and symbols might enable us to live into them as we seek a way of justice that serves our human need for community and healing.