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## Chapter 10: Reciprocity, exchange, gifts, contracting, trust (the anthropology of commutative justice)

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## **Chapter 10: Reciprocity, exchange, gifts, contracting, trust (the anthropology of commutative justice)**

The anthropology of law borders at the anthropologies of religion, \*of\* economics\*, and of politics\*. Interdisciplinary work in these \*four\* fields is essential. \*Moreover\*, this raises the issue whether to approach each of the \*four\* overlapping areas from the \*legal\*, economic\*, religious resp. political science side, or \*from the anthropological one\*. This chapter argues\*, as to all four subdisciplines,\* in favor of the latter. \*Particularly, concerning the subdiscipline of economics literary opinions are split as to whether economic anthropology has to be studied starting from economics or from anthropology. In the following text, reasons will be given why anthropology has to set the standards for an interdisciplinary study of economic anthropology, not economics.

\*Pursuing this path, Chapter 10 reports on (I.) an overview of the mainstream results of economic anthropology adding some critical\* remarks and, (II.) because of their special importance for modern political tasks, the anthropology of the market and of competition, including the anthropologies of giving thanks and corruption. As in all chapters, a bibliography closes the chapter (III.).

\*Of course, economic anthropology covers more than these selected questions. A more complete treatment includes several of the following items, and even this list is too short to describe the important and exciting subdiscipline of economic anthropology:

- the difference between an exchange value economy with its superadditive individual market that enables control of cost, and a use value economy with its non-rivalous objective market that lacks control of cost and requires political dictatorship,
- the formalism – substantivism issue (see below I.),
- the liberal paradox and the issue of sustainable economic liberty (on this see W. Fikentscher 2004 Part Two),
- the issues of environmental protection, cultural adequateness, economic development, non-discrimination and fair economy,
- the role of law in individual markets and the global financial and economic crisis of the years 2006 to 2010,
- the issues of non-market allocations, collective goods, and economic spheres (see W. Fikentscher 2004 Part Three),
- non-Western total (= post-axial age)economies, and
- institutional aspects of economic anthropology.

The text to follow is limited to salient issues of the interface of law and economics. Modern economic anthropology as such must be left to a more detailed discussion. A recently

published monograph attempts to do some first steps.<sup>1</sup> Other preparatory studies include several lectures.<sup>2\*</sup>

### I.. Formalism or Substantivism? Two Determinisms, the Role of Empiricism, and a Farewell to Neoclassics

The approach to economic anthropology chosen here is neither psychological, nor sociological, nor sociopolitical. It uses of the tools of micro-economical and (to a lesser degree) legal empirical anthropology. Empirical anthropology (in contrasted to philosophical anthropology) is a social science divided into cultural and biological anthropology (see Chapter 1). Both these branches research and define the conditions of the human being in a comparative way, and in their mutual interdependence.<sup>3</sup> For example, regarding intellectual property and competition, the biological branch researches possible innate predispositions, and the cultural branch the various cultural shapes which intellectual property and competition may take in legal-economical reality. Underlying the economic issues of anthropology are two general human themes: the liberty to decide what to do with one's life (= the freedom *to*; for instance, but not only, in the economic sphere), and – when this liberty has produced retainable results – the liberty to own (= the freedom *from* interferences).<sup>4</sup> If these two themes build on innate human universals, in order not to be counterproductive law has to meet certain biological functions.<sup>5</sup>

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<sup>1</sup> The monograph is W. Fikentscher, "Culture, Law and Economics: Three Berkeley Lectures", Berne & Durham, NC, Stämpfli & Carolina Academic Press (2004).

<sup>2</sup> W. Fikentscher, "Intellectual Property and Competition - Human Economic Universals or Cultural Specificities?: A Farewell to Neoclassics, 38 IIC 137 – 165 (2007) which was contributed to the Conference "Intellectual Property and Behavioral Science", co-sponsored by Gruter Institute for Law and Behavioral Research, Portola Valley, California/USA, and Max-Planck Institute for Intellectual Property, Competition, and Tax Law, Munich, August 28/29, 2006, abbreviated version in <http://www.bepress.com/giwp/default/vol4/iss1/art1>; similar lectures were presented, with shifting focuses, at Arbeitsgemeinschaft Humanethologie, Max-Planck-Institut für Verhaltensphysiologie (i.L.) und Max-Planck-Institut für Ornithologie, Andechs, 17. – 18. 6. 2006 (titled "Eigentum und Wettbewerb: Ethnologische Universalien oder kulturelle Besonderheiten?"); Ramapo College of New Jersey, Mahwah, New Jersey/USA, School of Contemporary Arts, November 28, 2006 (titled "Intellectual Property and Competition: Indigenous Law Between Universal Norms and Cultural Relativism" – a special thanks goes to Mark Howenstein and his students - ); further "Visions for Applied Knowledge", Andechs Conference of the Center for Human Sciences (HWZ), University of Munich, December 5, 2006 (on the contrast between "Empiricism" and "Models"); and "Antitrust in Developing Countries and a Less Economic Approach", see the unpublished protocol of a presentation at the Seminar on Competition Law in Developing Countries, NYU School of Law and Max Planck Institute for Intellectual Property, Competition and Tax Law, New York 27 Oct. 2007, drafted by Mark-Oliver Mackenroth, 2009: Max-Planck Institut für Geistiges Eigentum, Wettbewerb und Steuerrecht, Munich 2009.

818 W. Fikentscher, Law and Anthropology, Reader Law 265.7 & LS 190, University of California School of  
at Berkeley, Spring 2000, 2; cf., idem, Modes of Thought.(1995/2004), 77, 91.

<sup>4</sup> On the tensional relationship of these two basic economic interests W. Fikentscher, Wettbewerb und gewerblicher Rechtsschutz, Berlin 1958: C.H.Beck.

<sup>5</sup> See Chapter 7 IV ; Léopold Pospisil, Le droit comme concept opérationnel fondé empiriquement, 13 Droit et cultures, Revue semestrielle d'anthropologie et d'histoire 5 – 23 (1987) at 17.

The micro-economical and legal approach raises a preceding issue: (1) are there economic laws and other generalities that apply to all cultures, and therefore claim to be observed in the first line, such as the laws of supply and demand, limited resources, unlimited needs, rational decision, utility maximizing, marginal utility, cost, perfect competition and market, property rights, and acting under risk and uncertainty, before there can be a cultural specification; or, (2) do we better start ascertaining the cultural variations of doing business (including the handling of material and intellectual property and of competition) before one can arrive at economic and legal generalities? The issue is the main methodological topic in economic anthropology.<sup>6</sup> In this debate, the former position, moving from transcultural economic generalities (such as the doctrine of marginal utility) to cultural variations later, received the name “formalism”.<sup>7</sup> The latter position, starting from the wealth of cultural variations and empirically looking for common points of view and points of contact for comparisons, is called “substantivism”.<sup>8</sup> Both are discussed below.

### 1. The formalist argument

The strength of the formalist argument rests upon the success of *neoclassic* economic theory in the second half of the 19<sup>th</sup> century. Neoclassics were preceded by classical economics (Adam Smith (1776), David Ricardo (1817), Th. R. Malthus, N. W. Senior, J. Mill, J. St. Mill, J. B. Say, etc.), a theory that explains *observed* economic behavior by researchable rules of general application. After 1870, the writings of Gossen (1854), W. S. Jevons, L. Walras, C. Menger, A. Marshall, F. Y. Edgeworth, J. B. Clark, V. Pareto) and others turned economics into a science that *postulated* economic behavior under certain fixed theoretical requirements.<sup>9</sup> Such requirements are marginal utility, rational choice, perfect competition, perfect market, property rights, and other “generalities”.<sup>10</sup> The formalist camp finds the neoclassic economic concepts and laws to be so strong and convincing that they apply them to preindustrial

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<sup>6</sup> Martin Rössler (1995, 2005); Jochen Schumann (1992); cf., Harold K. Schneider (1974); Hertz (1998), 21 f.

<sup>7</sup> Chief protagonists: Raymond Firth (1952; 1967); Melville Herskovits (1952); Harold K. Schneider (1974); the leading German economic ethnologist Martin Rössler shares the formalist view because “economy follows always and everywhere certain inherent patterns of regularity”. However, Rössler also stresses the frequent shortcomings of neoclassic economic theory to do justice to the economic specificities of many preindustrial ethnic groups. Nonetheless, Rössler holds the basic ideas and laws of neoclassicism in principle applicable to all economies in the world.

<sup>8</sup> Chief protagonists: Bronislaw Malinowski (1920; 1922); Karl Polanyi (1957); George Dalton (1961; 1965); Marshall Sahlins (1969; 1974). Why the opposing doctrines received these labels cannot be discussed here, see, e.g., Rössler (2005), 33 ff. Raymond Firth and Melville Herskovits took the lead of the formalist group. Rössler does not discuss this issue in terms of universals v. specificities. But asked whether these “inherent patterns” of regulations amount to universals, Rössler’s answer would probably be yes.

<sup>9</sup> Rössler (2005), 34 ff.; Gregory (1982; 1997); Appadurai 1986; H. K. Schneider (1974).

<sup>10</sup> This change of paradigms is also called the „marginalistic revolution“, for details see, e. g., Blaug 1985, Boland 1985, Rössler (2005), 35 – 45, 128 – 131.

societies as well.

## 2. The substantivist answer

The substantivists refer to the many forms of economic behavior which, in terms of Western economic science, can only be labeled ineffective and irrational, such as potlatching or circular gift-giving in the Kula style.<sup>11</sup> To quote one voice: “Western economists assume that scarcity is universal, which it isn’t, and that in making choices, individuals try to maximize personal profit. However, in non-industrial societies..... people maximize values other than individual profit. Furthermore, people often lack free choice in allocating their resources”.<sup>12</sup>

The other neoclassic tenets show significant flaws when applied to the wealth of economic realities, even beyond Rössler’s doubts: The laws of supply and demand do not work in moneyless societies. As Kottak remarks, resources are often unlimited. Needs, always unlimited in neoclassics, are often limited. Rational decisions are lacking in ceremonial exchanges. In turn, utility maximizing and the concept of marginal utility often yield to what appears as irrationality. Cost calculation is missing whenever ideologies prevail. Perfect competition and perfect market exclude rivalry and are therefore opposites of competition and market.<sup>13</sup> Property rights may take very different shapes and lack a coherent theory of cost and participation.<sup>14</sup> Acting under risk and uncertainty is just as culture-specific as are societal structures.<sup>15</sup>

Regarding the interface of economics and anthropology, the alternative between the formalist and the substantivist position does not only affect a basic approach to economic anthropology. This alternative touches upon a general societal and science-theoretical attitude towards the social science of economics as such. As explained in more detail elsewhere (W. Fikentscher 2004, XV - XVIII), contemporary public interest in economics is mainly directed at neoclassic model thinking, and not at empirical, including cultural, observation and evaluation. This is reflected by the policy of selecting the Nobel laureates in economics during the last decades. Representatives of neoclassic model-theoretic deductionism prevailed in receiving Nobel prizes. The policy supported the catchword of “Chicago School”, a version of A.v.Hayekian paradox-free unfettered “discovery liberalism”, in contrast to the Franz-Böhmian freedom-

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<sup>11</sup> B. Malinowski, Kula: The Circulating Exchange of Valuables in the Archipelagoes of Eastern New Guinea, 20 Man 97 – 105 (1920); Rolf Ziegler, The Kula Ring of Bronislaw Malinowski: A Simulation Model of the Co.Evolution of an Economic and Ceremonial Exchange System, Bavarian Academy of Sciences, Philos.-Historical Class, Proceedings (*Berichte*) Fasc. 1/2007, Munich 2007: Verlag der Bayerischen Akademie der Wissenschaften, Commission C.H. Beck. See also note 292, below.

<sup>12</sup> C. Ph. Kottak, 4th ed. 1987, 144 (not contained in later editions). For other substantivists, see note 4, above. My own position in Culture, Law and Economics, Berne & Durham 2004, is substantivist, without giving detailed reasons. For literary attempts – none of them having been convincing – at bridging the opposing views, see, e. g., Rössler (2005), 128 - 131.

<sup>13</sup> W. Fikentscher, Culture, Law and Economics (2004), 119 – 178, with references.

<sup>14</sup> See, e.g., Rössler (2005), 97 f. on the one hand, and W. Fikentscher, Culture, Law and Economics (2004), 37, 185, on the other.

<sup>15</sup> W. Fikentscher, Modes of Thought (2004), 183, and at the different modes of thought.

paradox-avoiding “sustainable liberalism”. When this Nobel prize policy reached its limits, it turned to game theoretical achievements – again model-oriented. Then, side fields of economics were acknowledged (history, psychology) but even here rewarding original deductive *model* thinking dominated. A “substantivist” researcher whose “lab” is real economic life, empirically observed and inductively generalized, cannot be found among the laureates nor - as far as can be seen - among those who consult United Nations and other pertinent organizations. It is the return to classic economic empiricism which is overdue. It is time to return to economic realities, empirically to be researched, including cultural-economic realities. Instead of fittingness of models, appropriateness for humans is the core issue of today’s economic science (W. Fikentscher 2007, 144 – 149).

### 3. Two determinisms in conflict

The main incongruency between economic neoclassics (formalism) and economic ethnology (substantivism) lies in the clash of two determinisms: Neoclassic economy does not aim at explaining observations of economic occurrences, but at establishing a *model* for a given economic behavior, namely, rational, utility maximizing, cost conscious, etc.<sup>16</sup> Thus, neoclassics deductively and normatively postulate and study model-conformity of actions of an ideal type of economic agent, called *homo oeconomicus*, in accordance with economic general rules. Neoclassics are not relevant for reality, and defy empiricism.<sup>17</sup> Economic ethnology, on the other hand, is determined culturally by observable economic behavioral specificities, and has no *raison d’être* but empiricism. These two determinisms oppose one another, and meeting half-way miss each other. This may be a reason why conciliatory theories are so difficult to find.

### 4. The role of empiricism

The decision between these two determinisms depends on the role to be assigned to empiricism. There is a debate on generalities and specificities, dating back to medieval times, on *universalia*. At the time the issue of this debate was whether universal concepts such as grace, sin, spirit, family, people, property, etc., contain a thing that in reality exists, or whether universal concepts represent only designations for summed up bits and pieces, specificities, without real life. The first position was called universalism, the second nominalism. Since the Church taught, concepts of universal nature, universalism was methodologically convenient for its work. Nominalism had the reputation of criticizing religion.<sup>18</sup>

Famous *universalists*, also called *realists* because of the assumption of universals existing in reality, were William of Champeaux and Duns Scotus. Both insisted on a conception introduced to Christianity by St. Augustin that universals exist even before they become visible (*universale ante re*). The empirical element of this line of thought consisted in the admonition to check and judge the truth of the existing ideas. The most renowned *nominalist* was William Ockham, a skeptic of *realiter* existing universals, and as such an empiricist

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<sup>16</sup> Rössler (2005), at 36 f., 39, 71. Obviously, globalization seems to support neoclassics.

<sup>17</sup> Rössler (2005), 37 f.

<sup>18</sup> In recent times, the *universalia* debate has regained philosophical importance in connection with issues such as rationalism, skepticism, empiricism, and relativism, see W. Stegmüller, *Glauben, Wissen und Erkennen: Das Universalienproblem einst und jetzt*, 1965, 1974.

(*universale post rem*). Abélard and Thomas Aquinas developed a mediatory theory holding that universals exist but only to a degree determined by the investigator, and the act of identifying the contents of the concept *not to be detached* from the universal to be known (*universale in re*). This third, mediatory, theory carries Aristotelian *entelechia*, inherent purposefulness, into the knowing of universals and is thus in conformity with other Thomist thinking. But it is not empirical.<sup>19</sup>

After pre-Socratic theory of judgment, Socratic belief in the existence of ideas, and Platonic dialog as a means of interpersonal probing ideas with the aim of assertion and acceptance, Aristotelian *entelechia* was an animistic atavism harking back to pre-axial-age belief in soul-and-meaning carrying things. It became of historical importance that both Islam and Thomism learned from Aristotle, not from Parmenides and Plato. Tad Beckman writes: "The later dialogues (scil.: of Plato) take up subjects of natural science. Ironically, since this was the side of Plato's writing that most appeal to the Arab scholar(s)/scientists, this was the Plato that passed through centuries of Arab translation and commentary and, from there, into 13<sup>th</sup> century Europe along with Aristotle. It was not until the 16<sup>th</sup> century that Europeans uncovered the true diversity of Plato's thinking".<sup>20</sup>

Other cultures did not develop these ideas and practices. In such cultures we will find a reluctance to use doubt and dialog, a fact, that, e. g., in exchanges between Christians and Muslims should be considered. Since market is a dialog on values, and dialog requires its participants to engage in Parmenideian judgments about the object of the dialog in a superadditive manner, Islam uses a different concept of market than the West.<sup>21</sup>

The Islamic mode of thought shares this foreignness to Platonic dialog with other modes of thoughts.

The German foreign minister (1961 – 1966) Gerhard Schröder was once asked by Russian Premier Minister Kosygin: "Can you tell me, what is the meaning of opposition?" Schröder answered: "The opposition is the government of tomorrow". This was no wise answer because Kosygin now had to fear opposition as a tool of counterrevolution and an obstacle to right government. What both politician did not understand is that all government wants to govern "right", but that this "right" governing follows from dialog, not from a single opinion. From the incomplete insight into the truth of things it follows that one opinion alone almost certainly cannot be right. In many countries and their cultures – Italy, Spain, Iran, Argentina, Chile, Nicaragua, Venezuela, etc. – the only alternative is between Don Camillo and Peppone. The choice is between being tied to the apron strings of infallibly dictated religious values and of infallibly dictated cadre defined use values. Something like the alternative between being tied to the apron strings of totalitarianism on the one hand and human liberty to think and freely opt for values on the other has not reached public consciousness. Human minds are shaped for Platonic dialog, not for Aristotelianism, because the mammal brain is built for the evaluation of choices, not for the belief in the essence of things.

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<sup>19</sup> Cf., W. Fikentscher, *Methoden des Rechts*, I 365 ff., 404 ff.; II 413; III 8, 10, 331; IV 454, 485.

<sup>20</sup> Tad Beckman, *Plato, Notes*, <http://www4.hmc.edu:8001/humanities/beckman/PhilNotes/plato.htm>. On superaddition, see III., *supra*.

<sup>21</sup> See text near note 30, below. More in W. Fikentscher (2004), 212 – 225, with authorities.

Prince Asfa-Wossen Asserate, grand nephew of the last Ethiopian Emperor Haile Selassie wrote in an article, entitled "I have a Dream", in ZEIT Magazin No. 40 of September 27, 2007: "I dream that we include the word "opponent" in our language. Because we do not know this word in Amharic. It does not exist in any of the 2,000 African languages. We have only one word for "friend" and another for "enemy", in between there is nothing. Therefore, opposition is synonymous with hostility". An absence of superaddition cannot be characterized better.

Thus, the background to the three theories of the medieval *universalia* debate is the degree of permission to empirically check truth-verity. The medieval philosophers, when dealing with the *universalia* problem, were looking out for freedom of judgment founded on empirical research. Therefore, a historical argument leads to the result that in view of the two conflicting determinisms empiricism, and thus the ethnological - cultural - determinism wins over the economical one. This facilitates the question for modern universals: The starting point is ethnological empiricism, hence human universals have to be gained by induction. They are not preconceived generalities. The issue whether property and competition are human universals or cultural specificities may best be tackled from the empirical ethnological side.

The next question is: How can human universals empirically be ascertained? And more precisely in the present context: Are tangible and intellectual property among these universals?

## 5. Where Neoclassic Economics Fail

The empirical approach to a decision between universals and specificities raises a serious conflict with neoclassic economics. It is not only empiricism as being the heritage of a medieval dispute about knowing things that invites us to follow the empirical path. The medieval controversies lie way behind now-a-days' issues of philosophy and the humanities. All the more, they are extraneous to modern theories of economics and hardly mentioned at all when there is talk of epistemological alternatives.

Yet, empiricism is a backbone of modern epistemology as much as it has been since the musings of pre-socratic philosophers. Parmenides' teachings point to what today is Western (Greek-Judaic-Christian) thinking: that here is a subject, out there an object, and that both are connected by a third, to be called thinking. To that subject is given the chance the option of a judgment based on reasoning: "this is true because....", "this should be so because....", or "this is beautiful because...." Truth-related, moral, and esthetic judgments are the three propositions a human being can render, and each of these three judgments requires critical (and thus time-related) observation.. This three-step process subject – thinking – object implies an activity of checking and probing – always against a background of doubt. It is called empiricism. Empiricism is not just checking reality against a preconceived model. It is observation in preparation of generalities, and an indispensable corollary of science, including the science of economics.<sup>22</sup>

The opposite of empiricism is the deduction from preconceived models or ideal states. Two pairs of distinctions should not be confused: Firstly, there is universalism vs. nominalism, a

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On a more modern, quite similar version of this three-step process, based on *sola gratia*, see René Descartes, *Meditationes de prima philosophia*, German transl., R. Descartes, *Meditationen über die Grundlagen der Philosophie*, neu herausgegeben v. Lüder Gäbe, durchgesehen v. H. G. Zekl, Hamburg 1960: Felix Meiner Verlag, e. g. in the summary on p. 29, lines 32 – 39.

distinction focusing on the belief or disbelief in the existence of general concepts. Secondly, there is the distinction between empiricism vs. deduction from models, focusing on whether judgments are made by inductive concluding from observations or deductive applications of models. Arguably, defensible are the following four positions: empirical nominalism, model nominalism, empirical universalism, and model universalism. The approach chosen in this book is empirical universalism, in the anthropology of economics, and in general. This position conforms to “modern economy”, but not to “neoclassic economy”.

The early modern economists *were* empiricists in deed. Adam Smith, David Ricardo and the other theorists mentioned above (see above II., 1., observed economic facts and drew their conclusions from such observations. The marginalist revolution (see again II 1.) contributed to defining ideal economic states (perfect competition, perfect market, marginal utility, *homo oeconomicus*, utility maximizing, antitrust “more economic approach”, applying statistics instead of the law, non-time-related efficiency, etc.) and compared economic reality with them. Utility marginalism became a center piece of neoclassic economics. Economics became a reality-removed, time-removed, postulative theoretical program. Empiricism did not disappear at all, but was downgraded to an instrument for proving that reality did not meet the predefined model standards.<sup>23</sup> However, this methodological syncretism mixes two incompatible standards: inductive conclusion based on empirical observation against deductive derivation from non-empirical prescript. From postulative behavioral programs one cannot gain an economic theory that describes reality.

This is not the place to repeat the long list of shortcomings of neoclassic economics : non-competitive concepts of market, submarkets, and of competition itself; assumptions of market anonymity, misjudgment of market shares and their proof; misguided theory of so-called market failures; mistaking potential competition and contestable markets; misjudgment of substitutability, of “adverse selection”, and of appreciability of monopolies and less incisive restraints of competition; disregard of the factor time; unclear role of property, of intellectual property protection, and of private claims in market law; general unusability for national and international antitrust (including world trade) evaluations and policies (such as the relationship between “competition” and “trade” in WTO and ICN), deregulation, consumer, small business, and fair trade policies); mistaking the protection of free and inability to explain the role of collective goods in a free economy; and of the working of fair competition as “paradoxical” – the long list of shortcomings of neoclassic economics ends about here.<sup>24</sup>

Some points of minor importance could be added, but there is at least one more reason worth mentioning why neoclassic economics run aground when exposed to the demands of practice-oriented economic theory and policy. The difficulty follows from economic needs and practices in less favored nations such as developing countries and countries which border on economically strong neighbors. Examples are Nigeria’s problems with big oil corporations, Indian reservations whose peoples’ traditions and skills are exploited by outside businesses, Ukraine’s dependence on Russian natural gas, and Canada’s general economic dependence on the US.

The legal protection of economically weaker partners poses well-known issues. In the areas of

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To give only one example from recent times: Frank Trosky, *Heterogene Erwartungen auf dem Geldmarkt*, Berlin 2006: Duncker & Humblot.

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Details of that „list“ and reasons are contained in W. Fikentscher, (2004b), 134 ff.; idem, *Markt oder Wettbewerb oder beides?*, GRUR International 2004/9 (Festschrift Rudolf Krasser), 727 – 731; see also Tobias Holzmüller, review of W. Fikentscher (2004), 55 AJCL367 – 370 (2007).

intellectual property protection and unfair trade practices, it has been proposed, as a consequence of the theory of the individual market,<sup>25</sup> to let the plaintiffs of the weaker economies resort to their own local courts which, jurisdiction assumed, apply their own laws and legal principles and ideas, and let the plaintiffs, if successful, try to get titles of execution granted by the courts of the more powerful nations.<sup>26</sup> There is no reason why this local-court-and-local-law approach should not work in antitrust matters in the same manner.<sup>27</sup> Defendants in the economically stronger countries will ask their courts to block transborder rules of conflicts on transborder-recognition of judgments. However, in general, courts are reluctant to rely on the public policy (or *ordre public*) defense against transborder executions when concepts and values of law are involved that speak in favor of the plaintiff, such as property protection, free and fair competition, trust, reliance on a given promise, equal treatment under the law, non-discrimination, due process, etc. Reluctance gets even stiffer when these concepts and values have found recognition in international instruments such as the UN Charter, the Human Rights Declaration, WTO, or TRIPS.<sup>28</sup> Law's efficiency lies in its decentralization. execution by invoking public policy (lack of mutuality will not work).

What makes transborder effects of local legal protection so convincing is the general idea of law behind the claim in question. Reaping where one has not sown, or abusing a monopoly are practices that meets with disapproval in many jurisdictions, Nigeria, Zuni, Hopi, Ukraine, Canada included. Thus, the protection granted against such behavior is based on universals. These universals are ideas the existence of which is assumed, their assumption being based on empirical observation. The requirements of empirical universalism are met.

As already in the context of empiricism, the empirical approach to universals can be traced back in the history of philosophy. Different approaches towards empirical and categorical concepts can be found all over Western history. Greek philosophers were among the first to stress the triade of the individual self, the object, and thinking relating the former to the latter. The importance of this subject-object-thinking triade for the anthropological theory of societal ordering was used in Chapter 9. The importance for the anthropological theory of human engagement in the economy is another application of Greek thinking to a contemporaneous issue. It will be remembered from the discussion in Chapter 9: Parmenides (appr. 540 – 470 B.C.), the pre-Socratic philosopher, describes in a poem that on his voyage to knowing (*episteme*) he is guided by Dike, the goddess of this-worldly (non-mystic) justice. Parmenides

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<sup>25</sup> W. Fikentscher (2004), 119 – 178; idem, Mehrzielige Marktwirtschaft auf subjektiven Märkten: Wider das Europa- und das Weltmarktargument, in: Immenga, Ulrich u.a.(Hrsg.), Festschrift E.-J. Mestmäcker, Baden-Baden 1996: Nomos, 567-578.

<sup>26</sup> W. Fikentscher, Geistiges Gemeineigentum – am Beispiel der Afrikanischen Philosophie, in: Ansgar Ohly *et al.* (eds.), Perspektiven des geistigen Eigentums und Wettbewerbsrechts, Festschrift Gerhard Schricker zum 70. Geburtstag, Munich 2005: C.H. Beck, 3 – 18. Examples used in this article are taken from African tribes, Australian aborigines, Zuni Pueblo, NM, and the Hopi Nation.

<sup>27</sup> W. Fikentscher, Die Rolle des Marktes in der Wirtschaftsanthropologie: Marktorganisation und das globale Wirtschaftsrecht, in: Christoph Engel & Wernhard Möschel (Hrsg.), Recht und spontane Ordnung, Festschrift für Ernst-Joachim Mestmäcker zum 80. Geburtstag, Baden-Baden 2006: Nomos, 199 – 230.

<sup>28</sup> A recent example of such reluctance: OLG Naumburg of Feb. 9, 2006, WuW 2006, 932 – 936, where service of a US American antitrust class action for treble damages was granted in Germany and the public policy defense raised against it by German defendants was dismissed although German law does neither know class actions in comparable cases, nor treble damages at all.

held that his thinking were between himself and the objects his of environment, and that in this way he was able to empirically judge these objects as true, good, or esthetically beautiful. Socrates, Parmenides' student, as interpreted by Socrates' student Plato, expanded this quest for critical judgment to dialog. Aristotle, Plato's student, by way of his *entelechia*, returned to quasi-animist dealing with inherent meaning and purposiveness of things. Islam and scholastic Christianity adopted Aristotle. Only later, Parmenides and Plato's later writings were discovered by the Humanists, too late to be adopted before closing of the door of knowing in Islam occurred, but giving rise to Reformation and Enlightenment. Thus in the West, making use of time as a straight line, a tradition of "judgment theory" based on doubt and discussion was developed that today prevails in Western cultures, whereas Islam does not make use of the self-responsible Parmenidean judgment and, correspondingly, of time-as-a-straight line, or empiricism. What in the West is dialog, in Islam is discovering the other and bargaining with him for reality. Muslims do not speak *about* or *on* something, but *speak "it"*. Speaking about or on something would imply a critical, including self-critical, distance between the speaker and what is said. In strict monotheism, this is a sacrilege because it doubts the wisdom and power of God<sup>29</sup> For judging economic data this difference in modes of thought is obvious and far-reaching.

The main reason is that Parmenides' judgments and Plato's dialogical investigations are epistemological methods to be used for what above has been called empirical universalism. No deductions from models occur. The empiricism of universalism forbids the neoclassic approach. This means that neoclassic concepts are apt to interpret ethnographic economics. Neoclassics are even in the way of interpreting them. It is enough that local courts decide according to local law and the other jurisdictions concerned do not resort to the public policy defense because the legal policies pursued are similar. This makes commons (*Allmenden*) protectible in legal systems which do not know commons. This makes the *droit moral* to tribal secrets protectible in legal systems that have neither tribes nor secrets nor *droit moral*. Thus, the individual market and one of its corollaries, the local-court theory, provide for protection against exploitation: Starting from empirical universals, reality-removed neoclassic models may be discarded, and the smaller unit may receive protection of property and economic freedom, including those concerning collective goods. Property and freedom are inherent, universal values and innate building blocks of human law. Law need not borrow values, neither universal nor culture-specific ones, from other social or natural sciences, something authors of "realisms" keep proposing.<sup>30</sup> To apply the local-courts approach, centralized law is just as dispensable as identical concepts of person, market.

Neoclassic economic theory can make some economic decisions more predictable, even calculable. But for modern, national and global, politico-economical statements across time, such as antitrust and unfair competition policies, discussions about economic justice, globalization issues, or foreign aid consulting, it is time to say a farewell to neoclassics. At

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<sup>29</sup> Cf., Lawrence Rosen (1984); Khaled Abou El El Fadl, *Islam and the Challenge of Democracy*, a Boston Review Book, ed. By Joshua Cohe & Deborah Chasman, Princeton & Oxford 2004: Princeton Univ. Press, 28 f.

<sup>30</sup> Critical assessments of legal realism (in the singular) in A. Sarat & J. Simon (eds.), *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism*, Durham & London 2003: Duke Univ. Press. For a Kantian refutation of legal realisms (in the plural), see W. Fikentscher (2004b), 14 – 18. A realism appearing on the horizon seems to be psychological realism, cf., O. Goodenough (2006); Krieger.....

least in these areas, economic theory can benefit from empiricism and comparative concept-forming and evaluations. An *Empirical Economic Theory* fits our time better. It is due to replace neoclassic model economics by a new conception, both more close to reality and to human beings, that works with individual markets, rivalry-oriented (“incomplete”) competition (as “best”), empirical data including those from the various cultures, and inclusion of the economy into political responsibility. For ethnoeconomics, substantivism is a consequence.<sup>31</sup>

## II. The present mainstream: markets, property, and competition. Anthropologies of giving thanks and of corruption

Rather complete presentations of economic anthropology can be found in the textbooks on cultural anthropology by Conrad Phillip Kottak and Marvin Harris. For the purposes of the following presentation, one can follow their descriptions and add from other sources (such as Karl Polanyi, George Dalton, Elman Service, Paul Bohannan, Marshall Sahlins, Katherine S. Newman, Anthony Leeds, Andrew Vayda, Michael Mühlich, Heinzpeter Znoj, Ekkehart Schlicht, and Martin Rössler).<sup>32</sup> To account for the present state of economic anthropology the

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<sup>31</sup> One need not share radical tribal revivalism (e.g., Peters 2006; Lundberg 2006) to see that intertribal justice and intertribal trust may - be it in part - assume the role state sovereignty has played, since Hugo Grotius installed the sovereign nations, linked in trust (*fides*) to each other, in the place the Roman Empire held since Caesar's times, cf., W. Fikentscher, *De fide et perfidia, Der Treuegedanke in den "Staatsparallelen" des Hugo Grotius aus heutiger Sicht, Sitzungsberichte d. Bayer. Akademie d. Wissenschaften, Phil.-Hist. Klasse, Heft 1, Munich 1978: (Comm. C.H. Beck), 56 – 64. In such a world, rules of conflict of laws and of public policy defense against recognition of judgments would play a prominent role: *fides* between the cultures instead of *fides* between the sovereign states. It would be an upheaval of the cultures against the unholy alliance of neoclassic economists and abused state sovereignty*

<sup>32</sup> See also the footnotes below. Here is a non-complete list of authorities of economic anthropology: Harris, *Cultural Anthropology*, 98 ff.; Kottak, *Cultural Anthropology*, 182 ff.; Raymond Firth, *Primitive Polynesian Economy*, London 1939: Routledge and Kegan Paul; Karl Polanyi, *The Great Transformation*, Boston 1944: Beacon Press; Marvin Harris, *Cows, Pigs, Wars, and Witches.: The Riddles of Culture*, New York: Random House, 1974; Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, New York: Free Press, 1954; French orig. 1925; Melville J. Herskovits, *Economic Anthropology: A Study in Comparative Economics*, 2<sup>nd</sup> ed., New York: Knopf, 1940, 1952, title of 1<sup>st</sup> ed.: *The Economic Life of Primitive People*; M. J. H. distinguishes between simple (= personal, direct, and specific, p. 14) and complex economics; Paul Bohannan, *Some Principles of Exchange and Investment Among the Tiv of Nigeria*, *American Anthropologist* 57 (1955): 60-70; idem, *Social Anthropology*, New York: Holt, Rinehart & Winston, 1963; Karl Polanyi, “The Economy as an Instituted Process,” in: Karl Polanyi, Conrad M. Arensburg & Harr W. Pearson (eds.), *Trade and Market in the Early Empires*, Glencoe, Ill.: The Free Press, 1957, 243-270, reprinted in: E.E. LeClair and H.K. Schneider (eds.), *Economic Anthropology: Readings in Theory and Analysis*, New York: Holt, Rinehart and Winston, 1968, orig. 1961: 122-143; Leopold J. Pospíšil, *Kapauku Papuan Economy*, New Haven, CT: Yale University Publications in Anthropology No. 67, 1963, reprinted by Human Relation Area Files (HRAF) Press (New Haven, CT, 1972) ; Anthony Leeds and Andrew Vayda (eds.), *Man, Culture and Animals*, Washington; D.C.: American Association for the Advancement of Science Publ. No. 78, 1965; E.R. Wolf, *Peasants*, Englewood Cliffs, NJ: Prentice-Hall, 1966; Elman Service, *The Hunters*, Englewood Cliffs, NJ.: Prentice-Hall, 1966; George Dalton (ed.), *Tribal and Peasant Economies*, Garden City, NJ: Natural History Press, 1967; idem, *Primitive Money*, in: idem (as before), 254 – 281; Marshall Sahlins, *Production, Distribution and Power in a Primitive Society*, in: A.F.C. Wallace (ed.), *Men and Cultures: Selected Papers of the Fifth International Congress of Anthropological and Ethnological Sciences*, Philadelphia, PA:

choice of sources used here may seem arbitrary.<sup>33</sup>

## 1. Fund theory and other fundamentals

Basic economic anthropology can be found in *Karl Polanyi*, *Conrad Phillip Kottak*, and *Marvin Harris*. Polanyi (1968) sees economy as a bundle of exchanges, and the three types of exchanges are: market, redistribution, and reciprocity. The essence of economy according to

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University of Pennsylvania Press, 1960; idem, *Poor Man, Rich Man, Big-Man, Chief: Political Types in Melanesia and Polynesia*, *Comparative Studies in Society and History* 5 (1963): 285-303; idem, *Tribesmen*, Englewood Cliffs, NJ: Prentice-Hall, 1968; idem, *Stone Age Economics*, Chicago: Aldine, 1972; Paul Bohannan and Laura Bohannan, *Tiv Economy*, Evanston, Ill.: Northwestern University Press, 1968; Richard B. Lee, *What Hunters do for a Living, Or: How to Make Out On Scarce Resources*, in: Yehudi Cohen (ed.), *Man in Adaptation: The Cultural Present*, 2<sup>nd</sup> ed. Chicago: Aldine, 1974, 87-100; Richard B. Lee and I. DeVore (eds.), *Kalahari Hunter-Gatherers: Studies of the Kung San and Their Neighbors* (Cambridge, MA: Harvard University Press, 1977); Robert Dentan, *The Semai: A Non-violent People of Malaya*, New York: Holt, Rinehart and Winston, 1968; J. Clammer (ed.), *The New Economic Anthropology*. New York: St. Martin's Press, 1966; Elman R. Service, *Origins of the State and Civilizations: The Process of Cultural Evolution*, New York: Norton, 1975; Jack Goody, *Production and Reproduction: A Comparative Study of the Domestic Domain* (Cambridge, UK: Cambridge University Press, 1977); Katherine S. Newman, *Law and Economic Organization: A Comparative Study of Preindustrial Societies*, Cambridge, UK: Cambridge University Press, 1983; Philip D. Curtin, *Cross-cultural Trade in World History*, Cambridge etc. 1984: Cambridge University Press (main interest: trading with cultural enclaves); Norbert Rouland, *Legal Anthropology*, Stanford, CA: Stanford University Press, 1994 (French orig.: *Anthropologie Juridique*. Paris: Presses Universitaires de France, 1988), 126 ff., 133 ff.; Stuart Plattner (ed.), *Economic Anthropology* (Stanford, CA: Stanford University Press, 1989); T. Ingold, *D. Riches and J. Woodburn, Hunters and Gatherers*, Vol. 2, New York: Berg, St. Martin's, 1991; Leopold J. Pospíšil, *Obernberg: A Quantitative Analysis of a Tirolean Peasant Village*, New Haven, CT: Connecticut Academy of Sciences, 1995 (one of the rare quantitative studies in economic anthropology); Schlicht, *On Custom in the Economy*, supra note 23; Martin Rössler, *Wirtschaftsethnologie*, 2<sup>nd</sup> ed. Berlin 2005 (1<sup>st</sup> ed. 1999): Reimer (includes microeconomic and historical issues);

*on behavior and economics*: Russell Korobkin, *A Multi-Disciplinary Approach to Legal Scholarship: Economics, Behavioral Economics, and Evolutionary Psychology*, 41 (2001) *Jurimetrics*: 319-336;

*comparative remarks* in Fikentscher, *Wirtschaftsrecht*, Vol. 1, 102-105, 124-133; idem, *Modes of Thought*, 183 ff., 256, 264 ff., 337, 377, 423, 456 (e.g., on so-called competition-free cultures, at 263 f.); see also idem, *Competition, Culture, and Economic (De-)Regulation*, in: Hanns Ullrich (ed.), *Comparative Competition Law: Approaching an International System of Antitrust Law*, Proceedings of the Workshop, Bruges, College d'Europe, July 3-5, 1997, organized in cooperation with Wolfgang Fikentscher and Ulrich Immenga, Baden-Baden 1998: *Nomos*, 77-91 (with a brief discussion of some of the above-mentioned authorities); idem, *Market Anthropology and International Legal Order*, in: Theodor Baums, Klaus J. Hopt & Norbert Horn (eds.), *Corporations, Capital Markets, and Business in the Law*, Liber Amicorum Richard M. Buxbaum,

London etc. 2000: Kluwer Law International, 157-176; idem, *Market Anthropology and Global Trade*, in:

Christopher Heath & Kung-Chung Liu, *Legal Rules of Technology Transfer in Asia*, The Hague etc. 2002, 255-264 = <http://demo.bepress.com/cgi/preview/cgi/?article=1069&journal=bejeb1>.

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A somewhat more systematic overview: Wolfgang Fikentscher, *Law and Anthropology: Texts, Materials, Readings*, Spring Term 2000, University of Berkeley School of Law, Berkeley, CA, Chapters 10 and 11 on contracts and property.

anthropologists Kottak and Harris consists in a series of attributes: For Kottak, economy is a population's production, distribution, and consumption of resources (p. 182). For Harris economy is a set of institutions that combine technology, labor, and natural resources to produce and distribute goods and services (p. 98). According to Kottak economy has several possible motivations, not just maximization of profits (p. 182). Harris distinguishes what he calls economizing (in a wide sense) as an activity that varies between cultures as to its premises and consequences, from economizing (in a narrow sense) that is maximizing benefits while minimizing cost (p. 98).<sup>34</sup>

*Fund theory* and its implications, as developed by Kottak as one of the economic motivations \*forms\* a basic part of economic anthropology. Kottak divides the activity of economizing (in a wide sense) into five "funds" (five-fund theory): Economizing may contribute to (1) subsistence, (2) replacement, (3) a "social fund", (4) a "ceremonial fund", (5) or making rent, be it for a superior who collects taxes, or for private ends. Rent-seeking, according to Kottak, leads to unequal distribution of means of production (p. 186), thus to stratification of society, divided labor, urbanization, and finally to the forming of states (p. 182 ff.). From rent-seeking also follows what in economic theory is called scarcity (p. 185). In a stable subsistence or replacement oriented society, whether or not enriched by a social or ceremonial fund, people may say: "We have all we need." In a society with divided labor, (that is, after what V. Gordon Childe called the urban revolution around 8000 B.C.E.,<sup>35</sup>) scarcity becomes synonymous with a lack of resources in the rent fund.

Apparently only the rent fund, with its specific concept of scarcity in a society of divided labor, brings about economic alternatives and, hence, rivalry. This is important for the concept of the individual (or subjective) market, which should be distinguished from the objective market that may also be found in subsistence, replacement, social fund and ceremonial fund societies. It is this rivalry which is essential for having competition, defining the market in the individual, subjective sense. The (sometimes romantic) theories on "non-competitive societies" established to explain their economies and social structure by Cushing, Benedict, Kramer & Sigrist and others disregard this aspect of the fund theory.<sup>36</sup>

In the absence of rent-seeking, economizing promotes subsistence, replacement, social, or ceremonial goals, or several of these at once. Kottak adds another goal without giving it fund character: peace. To the tribes it was adaptive to specialize for exchange in trading with other villages for peace-making.<sup>37</sup> This kind of trade did not have in mind the exchange of goods

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<sup>34</sup> See also Plattner (1989), cited in note 11, supra, at 13.

<sup>35</sup> See below, section 3: V. Gordon Childe, *The Dawn of European Civilisation*, London: Kegan Paul, Trench & Trubner, 1925); idem, *The Urban Revolution*, *Town Planning Review* 21 (1950): 3 - 17. On Childe, see also notes 123 & 412, and text near note 145.

<sup>36</sup> Frank H. Cushing, *My Adventures in Zuni, Palmer Lake, Colorado 1967*: Filter Press (orig. 1882); Ruth Benedict, *Patterns of Culture*, New York 1934: Mentor Book; Fritz Kramer & Christian Sigrist, *Gesellschaften ohne Staat: Gleichheit und Gegenseitigkeit (Societies without State: Equality and Reciprocity)*, Frankfurt/Main 1978: Syndikat; for a critique of the theories of non-competitive societies, see Wolfgang Fikentscher, *Modes of Thought* (1995), 263.

<sup>37</sup> Kottak 187, quoting Napoleon Chagnon, *Yanomamo: The Fierce People*. 4<sup>th</sup> ed. (New York: Harcourt Brace, 1992; 1<sup>st</sup> ed. 1983); and B. Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea*,

and services for getting materials, or useful items, nor was urbanization intended. Instead, regional exchange networks for clay pots, hammock, or shells (as in Malinowski's description of the Kula trade of the Trobrianders)<sup>38</sup> served to make or keep peace. Specialization sometimes takes care of local identities as assets in this peace-seeking. One aim of this desired peace may be obtaining marriage partners from neighboring villages, a practice which may lead to veritable "rings" of exchange.<sup>39</sup> Thus, trade was done for peace, not to fight scarcity. Or, it was peace which was scarce. Kottak calls this the embedding of the economy in society ( p.188).

## 2. A discussion

Economist Karl Polanyi's distinction of the three principles of exchange, the *market* principle, *redistribution*, and *reciprocity*, is to serve cross-cultural economic studies.<sup>40</sup> Several anthropologists, including Harris and Kottak, followed his lead. Polanyi's trichotomy may be the one most in use of economic anthropology.<sup>41</sup>

According to this trichotomy, the market principle governs modern consumer markets; redistribution is the principle of collecting the production and redistributing it by chieftain, pharaoh, king, or emperor; and reciprocity is said to prevail in bands in tribes who hunt and

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London, 1922, reprinted New York 1961: Dutton. See also B. Malinowski, *Kula: The Circulating Exchange of Valuables in the Archipelagoes of Eastern New Guinea*, *Man* 20 (1920): 97 – 105; see also note 266, above.

<sup>38</sup> See preceding note.

<sup>39</sup> Norbert Bischof, *Das Rätsel Ödipus (The riddle Oedipus)*, Munich 1985: Piper.

<sup>40</sup> For Polanyi see note 860, above, and Karl Polanyi, *Anthropology and Economic Theory*, In: Morton H. Fried (ed.), *Readings in Anthropology*, 2 vol. New York 1959, 165: Crowell; - *Reciprocity* is a form of exchange, through which goods (including services) are traded between two parties with respect to each other's performance; detailed study shows that there are several kinds of this mutual relationship, E. R. Service, *Primitive Social Organization: An Evolutionary Perspective*, New York 1962: McGraw-Hill; idem, *The Hunters*, Englewood Cliffs 1966: Prentice-Hall; M. D. Sahlins, *Tribesmen*, Englewood Cliffs, NJ 1968: Prentice-Hall; idem, *Stone Age Economics*, Chicago 1972: Aldine; cf., also, Raimund Jakob & Wolfgang Fikentscher (eds.), *Korruption, Reziprozität und Recht (Corruption, Reciprocity, and Law)*, Berne 2000: Stämpfli; and Serge-Christophe Kolm, *La bonne économie: la réciprocité générale (The Good Economy: General Reciprocity)*, Paris: Presses Universitaires de France, 1982; idem, *Modern Theories of Justice*, Cambridge, MA: MIT Press, 1996; idem, *La philosophie de l'économie*, Paris 1986: Seuil; Kolm's focus is on an economy that works "*don contre don*;" for the anthropological distinction between generalized, balanced, and negative reciprocity, see in particular the text in subsection 15, infra; reciprocity is usually applied to economic forms of exchange; however it exists also in the context of honor and reputation: A Plains Indians' saying goes, "You are known by the greatness of your enemies;" - *Redistribution* is the distribution of goods, which have earlier been collected. - On *markets* see infra.

<sup>41</sup> For Kottak, see note 860, above, 181 ff; for Harris, see note 860, above, 15 ff (concepts), 82 ff. (production), 105 ff. (reproduction), 122 ff. (economic organization), 140 ff.; the tribal capitalism of the Kapauku Papuans of New Guinea, as described by L. Pospíšil, *Kapauku Papuan Economy*, see note 860, above, marks an irregularity for Harris that does not fit into his system; for this, see Katherine S. Newman, see note 860, above, 171 ff.; and L.Pospíšil, *Empiricism and the Marxist Theory of Law: A Dialectic Contradiction*, in: Bernhard Grossfeld at el. (eds.), *Festschrift Wolfgang Fikentscher*, Tübingen 1996: Mohr Siebeck, 178 - 199, at 188 - 190.

gather and then engage in sharing and exchanging with neighboring tribes or clans.

In evolutionary terms, Polanyi steps backward from more modern types of exchange to those of chiefdoms and early states, and from there again backward to typical tribal forms of life. Speculative as it is, Polanyi's trichotomy appears persuasive to this day because it furnishes an easy categorization of various types of exchange in existence.

An easier understanding of these contexts may result when turning this sequence downside up, starting from hunting and gathering tribes, engaged in reciprocal exchange, and proceeding to chiefdoms and kingdoms with their possibly distributive economic policies, and again from there to proto-states and modern states and their markets. The authorities named above observe that in ethnographic history and comparison various economic types may overlap and partly coexist.

### 3. Early trade

If one applies the historical occurrence of the axial age to Kottak's five-fund theory, to Polanyi's three principles of exchange, and to Childe's two-revolutions and three-step evolution of humankind, the market principle, generated by the rent fund and the urban revolution is a product of the post-axial age. This is confirmed by what we know about early cities and their trade relations both with each other and with their cultural surroundings.<sup>42</sup>

Of course, there were markets in pre-axial age times. The Pueblos of Taos and Pecos (cities of farmers) traded with the Plains Indians (hunters and gatherers), Navajo, and Ute in a fashion that is quite similar to a modern market. The Plains Indians exchanged their produce, such as buffalo hides, for Pueblo crops and crafted utensils. However, the Plains Indians, Apache, Comanche, among others, were not permitted to enter the fortified Pueblos. They had to stay outside at a certain distance where they put up their tipis or wickiups, or just slept in the open. Trading was done on a field, as found to the east of Pecos Pueblo for example. This barter trade sometimes turned into hostilities. Pecos Pueblo was indeed raided so often by Comanche and other Plains Indians that the Pueblo – already weakened by diseases - was finally abandoned in 1849. Its survivors moved to the only other Towa-speaking Pueblo of Jemez.

Taos Pueblo traded in a similar way with Navajo, Ute, and other (at that time) semi-migrant tribes. Maybe a tribute to the trading partners Taos adopted the buffalo dance although there were no buffaloes in the Taos area. Still, the danger of being attacked because trading turned into raiding was such that the Taos people tried to protect themselves, by way of an intertribal arrangement, by asking for the military aid of the Jicarilla Apache in case of emergency. Thus, the Jicarilla helped protect Taos for a long time in history. But - as I was told in Jicarilla Apache in 1996 - every time the Jicarilla had assisted the Taos citizens and went home again, "some Taos girls were missing" so that today some Jicarilla Apache trace their family histories in part back to Taos. This seems to have been the price for the military assistance and, as a last resort, a trade-off for Taos commerce with the plains tribes. On the Northwest American coast, the Chinook were famed traders, and farther north the Tlingit are known to have traded with

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See the literature in note 860, above, especially Harris, Kottak, Pospíšil' and Sahlins (ibid.). Newman (1983) is silent on markets.

landlocked Athabascan tribes.

These rather well-known cases are retold here to point out that pre-axial age cultures used commercial relations that may be called markets. Proto-states such as the Inca and Maya Empires knew market places. The urban revolution with its separation of the population into groups with different and specialized commercial economic activities - farmers in the open country and specialized craftsmen in the places of agglomeration (blacksmiths, tanners (= *gerbers*), potters, weavers, etc.) - called for geographic places of exchange protected from hostile interferences. This might have been the origin of the market concept.

An intermediate form between the do-it-all farmer and the urban specialist is the farmer who specializes in a certain farm-related activity and offers his qualified service to other farmers, by going from farm to farm, leaving his own farm for a while under the temporary care of his wife and servants. Here do-it-all farming and specialization are combined without the need of a city. One of these migrating specialists was the saddler who took care of making and repairing the leather utensils needed for farming.<sup>43</sup> But the services of part-time migratory farmer-specialists were an intermediate form of exchange. They eventually lost their importance to specialists, some of them having given up farming and permanently living in cities. This called for the establishment of "market days", or markets.

On the other hand, certain forms of markets such as long-distance trading combined with personal (subject-connected) credit relations, known - according to the Anonymous Jamblich - from the Ancient Greek community of city states clearly belong to post-axial age phenomena. Thus, "market" is not a sufficient description of the exchanges that are of interest here. There are very different types of markets and market economies.

It should be noted that long distances alone do not necessarily indicate post-axial age market relations. Malinowski's report of the Kula<sup>44</sup> and the description of the trade of the Caribou Eskimo by K. Birket-Smith<sup>45</sup> show that barter trade in pre-axial age manner was effectuated over rather long distances. The Caribou Eskimo traveled hundreds of miles to meeting places where they bartered jade, weapons, hides, and other produce from hunting activities. The difference to the Ancient Greek trade within the *koiné* consists in the long-distance trust and credit elements that lack in Eskimo culture but were present in Greece. Douglass C. North sees "the market" as an institution as an effect of early long-distance trade.<sup>46</sup> This derivation misses the decisive distinction between pre-axial-age barter markets (which may have

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<sup>43</sup> Another specialist, at least in traditional Upper Frankonia (today Northern Bavaria), was the professional sheep shearer

who seasonally went from farm to farm when the sheep had to be shorn. Since the sheep were called *fekles*, that is, little cattle (cf. Indo-European: *fecus* – *feculus*, *pecus* – *peculus*; hence *pecuniary*, *Val Fex* in the Grisons), that seasonal migratory sheep shearer was the *feklshearer*, or *feknsher*, or *fikentscher*.

<sup>44</sup> See note 66, *supra*.

<sup>45</sup> K. Birket-Smith, *The Caribou Eskimo: Material and Social Life and Their Cultural Position*. Report of the Fifth Thule Expedition 1921 - 1924, vol. 5, Copenhagen: Nordisk Forlag, 1929.

<sup>46</sup> Douglass C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge 1990: Cambridge Univ. Press, 118 ff.; the same must be said to Kimbrough, Erik O., Vernon L. Smith, & Bart J. Wilson (2008). *Building a Market: From Personal to Impersonal Exchange*. In: Zak (2008), 280 – 299.

involved long travel) and post-axial-age long-distance trust and credit markets such as the Greek koiné and the (Christianity-influenced) Roman Empire under Justinian's Corpus Juris law with its legalized long-term business relations.<sup>47</sup> The institutional theory (whether in its descriptive or prescriptive application) cannot explain this distinction; whereas the modes-of-thought approach can.

Harris's distinction between barter markets and price markets<sup>48</sup> which refers to the use of money, does not suffice to identify the essential types of markets because money could be used on short-range markets with "arm's-length" relationships, as well as for long-range credit markets. And both arm's-length and long-range credit markets can work without money. Coined money may certainly play a role for the definition of certain types of markets, but it need not. Thus, there are many more forms of markets to be distinguished. Therefore, another proposal has been made elsewhere to refine the market concept. Accordingly, at least the long-range trust-market principle is a creation of the axial age and earlier types of exchange: reciprocity, redistribution, and short-range barter markets, developed in the animistic world (= "animism in a wide sense," "primal cultures").<sup>49</sup>

4. Economic types and total economies (text with footnotes<sup>50, 51</sup> and<sup>52</sup> is *not included*; here, a parallelism of the distinction between religious types and total religions, and the distinction between economic types and total economies, is discussed).

#### 5. Personalized vs. impersonalized trade

The relationship between the *market concept and early economies* raises a number of issues. The apparent difference between the market economy and earlier "economic types" has brought about attempts at interpretation. A recent example is that of James Gordley in the *International Encyclopedia of Comparative Law*.<sup>53</sup> In a highly readable chapter on contract law in pre-commercial societies he evaluates the teachings of Melville Herskovitz, Marshall Sahlins, Max Gluckman, Paul Bohannan, Raymond Firth, Leopold Pospíšil, and others and

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<sup>47</sup> On time and belief system, Wolfgang Fikentscher, *Methoden des Rechts* (Methods of law), vol. I (1975), 283; idem, *Modes of Thought* (1995), 394 ff.; idem, see note 302.

<sup>48</sup> Harris, *Cultural Anthropology*, see note 66, *supra*, at 98 f.

<sup>49</sup> For details, see Wolfgang Fikentscher, *Modes of Thought* (1995), Chapter 6 and 7. Examples for short-range business, e.g., in Hugo Lanz, *Die neubabylonischen harrânu-Geschäftsunternehmen*, Berlin 1976: Schweitzer.

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<sup>53</sup> James Gordley, "Contract in Pre-Commercial Societies and in Western History," in: Arthur von Mehren (chief ed.), *International Encyclopedia of Comparative Law*. Vol. VII: Contracts (1997). Tübingen & Boston: Mohr Siebeck & M. Nijhoff. Chapter 2 Sec. 1 - 102, pp. 3 - 51. Similarly, Kimbrough et al, see note 862, above.

develops his own doctrine of pre-commercial contract law. In this context, drawing a fundamental line between “personalized” and “non-personalized” contract law.”, Gordley resumes a distinction made by Plattner, Granovetter, and Sahlins<sup>54</sup>. Personalized transactions, he points out, are common in pre-commercial societies in which the transaction is embedded in a network of social relations.<sup>55</sup> In personalized transactions, the obligations between parties go beyond those undertaken in any particular transaction (Gordley, at 3). Gordley says that there are four main problems of contract law in a personalized system: preventing substantive unfairness; dealing with the unexpected; determining when an agreement is binding; and remedying a breach.

According to Gordley, the main instrument of a fair exchange is reciprocity, either in its generalized form (kinship and friendship induced exchange without immediate or exact-value related return of benefits), or in its balanced form (need of timely and approximate reciprocation in cases of increased social distance). Gordley does not mention a third form of reciprocity, proposed by Elman Service and Marshall Sahlins: negative reciprocity (great social distance and most urgent need to reciprocate at equal value in order to prevent hostilities or disconnection of contact). Gordley, Kimbrough and all the others who believe that there is a development from personal to impersonal markets miss the distinction between individual and objective markets, in other words, between rivalry-defined and rivalry-free markets. Already Adam Smith knew that only rivalry-defined markets are markets fit for the working of the invisible hand, and that those markets all are personal (W. Fikentscher 2004, 107 – 178; idem 2007; see also below under 7.).

## 6. Kinds of reciprocity

Service and Sahlins were among the first who distinguished three subtypes of reciprocity: generalized or positive, balanced, and negative.<sup>56</sup> The distinction found wide acclaim. Service’ and Sahlins’ tripartite system is applied below as well.

a. *Generalized reciprocity* addresses the situation that advantages are mutually exchanged, one in view of the other (in Roman law: *do ut des, I give because you give*), between persons or groups of persons, spread over a longer distance of time, and without precise counting of the values of the exchanged goods (including services). A typical example is the tradition that the parents raise and feed the children, and later the children, having become of age, support and feed the elderly. This “generation treaty” (*Generationenvertrag*) is based on principles that apply in many cultures, and underlie modern social security systems. Another example is the

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<sup>54</sup> Plattner, see note 66, supra, 210; Granovetter, “Economic Action and Social Structure: The Problem of Embeddedness,” *Am. J. Sociol.* 91 (1985): 481 - 510; M. Sahlins, *Stone Age Economics*, see note 66 supra, 185 - 187.

<sup>55</sup> Plattner, 210.

<sup>56</sup> Service 1966; Sahlins 1968, 1972. A view from modern contract law, accentuating the element of reciprocity: Ian R. Macneil, *The New Social Contract: An Inquiry Into Modern Contractual Relations*, New Haven, CT: Yale University Press, 1980. In ethology, generalized reciprocity, typical for kinship and association, is called “symmetry-based reciprocity;” balanced reciprocity, typical for social contingency situations, is called “calculated reciprocity;” and negative reciprocity, typically accidental, sentiment-oriented, and close to mistrust, is called “attitudinal reciprocity,” communication Frans de Waal, June 2000.

practice among Northwestern coastal tribes to give a potlatch in good years, for one's own tribe and also for neighboring tribes, expecting that a neighboring tribe that fared well fishing will return the invitation in a bad year. Exchanges of this kind are not based on penny-pinching. They require good and peaceful relations between the exchange partners.

b. *Balanced reciprocity* exists in a relationship when both sides are ready to engage in an exchange over a shorter span of time and with a more precise counting of the values to be exchanged. Examples are everyday's sales and other contracts, whether cash or credit. Relations must not be peaceful over a longer period of time, as in the case of generalized reciprocity. But under conditions of imminent conflict, balanced reciprocity is improbable. Sacrifices to spirits and gods are also special forms of balanced reciprocity: humans transfer goods to the other-worldly sphere in expectation of other-worldly grace.<sup>57</sup>

c. The least peaceful exchanges of the shortest duration are based on *negative reciprocity*. Whether negative reciprocity fits the pattern of reciprocity and the category of the personalized contract at all is a matter of doubt. Negative reciprocity is characterized by minimal trust and maximum insistence on equal value of gift and counter-gift. According to Uwe Wesel, negative reciprocity is "totally impersonal" (*völlig unpersönlich*).<sup>58</sup> It is practiced, for instance, in "silent trade": one side, e.g., hunters and gatherers, deposits meat, berries, and other collected natural produce in the absence of the offerees, at an agreed place, and later - in the absence of the offerors - the other side, for example horticulturalists, picks up what has been stored and replaces the goods taken with field crops and utensils. Meeting face to face is avoided because of the likelihood of fighting. Silent trade has been asserted for rain forest inhabitants in their trade with neighboring cultivating groups. If the offering side regards the counteroffer as insufficient, the counter-offer will be left in place. The other side is expected to add up to the counteroffer or risk the break-up of the exchange relation. The parties do not meet to avoid confrontations.

A similar setup is followed between the Las Vegas Paiute Tribe and the Las Vegas city police. For historical reasons, the Las Vegas Paiute live in a reservation settlement in the northern part of Las Vegas. Due to their strong tribal police force, the Paiute are able to effectively contribute to maintaining "law and order" in that at times unruly neighborhood. Criminals caught in the act are picked up by Paiute tribal police and delivered at a city police station. In turn, the city refrains from interfering with Paiute reservation life and grants the a wider range of self-government than may be customary for some reservations. Neither side aims for a formal agreement. The mutual understanding is no secret, but kept discrete. No use is made of "cross-deputization" (mutual assistance between tribal and state police) as would result from a formalized agreement, as in the case of Santa Clara Pueblo and the city of Espagnola, NM.

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<sup>57</sup> Geza Róheim, *Ethnology and Folk-Psychologie*, 3 *International J. of Psycho-Analysis*, 189 – 192 (1922); Pamela J. Stewart & Andrew Strathern (eds.), *Exchange and Sacrifice*, Durham 2007: Carolina Academic Press; Pierre Bonte, Anne-Marie Brisebarre & Altan Gokalp (eds.), *Sacrifice en Islam: Espace de temps d'un rituel*, Paris 1999: CNRS Editions; on the context of sacrifice, value and freedom W. Fikentscher, *Gedanken zu einer rechtsvergleichenden Methodenlehre*, Festschrift Carl Heymanns Verlag, Cologne 1965, 141 – 158, at 57 f.

<sup>58</sup> Uwe Wesel, *Frühformen des Rechts in vorstaatlichen Gesellschaften: Umriss einer Frühgeschichte des Rechts bei Sammlern und Jägern und akephalen Ackerbauern und Hirten (Early Forms of Law in Pre-State Societies: Sketch of an Early History of Law Among Gatherers and Hunters and Acephalous Cultivators and Herders)* (Frankfurt/Main: Suhrkamp, 1985).

The Las Vegas Paiute example is a case of successful silent trade in public services between representatives of two cultures.<sup>59</sup>

Another example of negative reciprocity in the form of silent trade is reported from upstate New York: Farmers offer fruit and vegetables on road side tables expecting that passers-by drop the money, indicated on a price list, into an open jar. The jar is nailed to the table. A colleague from Chicago commented that in Illinois such silent trade would mean that everything “would go”: fruit, vegetables, jar, money, and table (personal communication, 1986).

An extreme case of negative reciprocity is mutual respect based on enmity of equal violence. African tribesmen may observe peaceful behavior towards each other if they belong to tribes that are sworn enemies and neither tribe has ever succeeded in defeating the other. Has one of the tribes succumbed to the other, the tribesmen avoid meeting (Asserate 170 ff.). In trench warfare situations during World War I it is said that Bavarian troops avoided shelling the French in turn for not being shelled by them. When a Prussian contingent of artillery was deployed to reinforce the Bavarians and, not knowing of the deal, started to shoot at French soldiers that customarily moved around without taking cover, the Bavarians shouted apologies that “these stupid Prussians” spoiled good manners.

If “personalized” means meeting face to face, or knowing the identity of the other side, negative reciprocity is not a case of personalized exchange. Only if “personalized” can be understood as a bilateral relationship even with unknown partners, negative reciprocity would fit the system as developed by Gordley. But this expanded interpretation of “personalized” (including unknown partners) appears too imprecise to define personal relations. Therefore, negative reciprocity would have to be rejected as a case of contractual relationship in a pre-commercial culture. However, to the extent that silent trade and other phenomena of negative reciprocity exist (or have existed) as confirmed by my own observation in Las Vegas, Nevada, and the New York state example, the only possible conclusion is that the concept of contract in “pre-commercial” societies cannot be defined by personalized relations. The sociologist Hubert Rodingen developed a similar distinction of near range and far range social relationships.<sup>60</sup> Applied to law, near range amounts to a personalized contract system, far range to an impersonal (my interpretation of Rodingen’s distinction). Rodingen does not discuss negative reciprocity. For him it would fall under far range. Thus, negative reciprocity raises some doubt on the “personalized contracting” and “near range” social relations. Thus, pre-commercial cultures know impersonal trade.

d. *Belated reciprocity* is a kind of reciprocity not yet mentioned in anthropological literature, at least not under that name. It is an invitation to or insistence on reciprocal exchange from the side of a person to whom a gift is given in violation of a culturally relevant law, custom, or etiquette. Examples are mentioned in Chapter 1 I. 2. f.: A tourist presents to a Han Chinese hiking boots. Both are preparing a mountain hike together. Donating boots may be interpreted

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<sup>59</sup> The role of the Las Vegas Paiutes as part of the police force as an example of silent trade in public services is taken from the author’s unpublished field notes of 1998.

<sup>60</sup> Hubert Rodingen, *Pragmatik der juristischen Argumentation: Was Gesetze anrichten und was rechtens ist* (Pragmatics of Legal Argumentation: What Laws Generate, and What Justice Means), Freiburg & Munich 1977: Alber.

as an indication to leave as soon as possible and is therefore an insult. To save the situation, the receiver might offer a price or (even a minimal) counter-gift, and the donor is well advised to accept. Reciprocity, albeit belated, is a strong proof of just and fair behavior, so that it may serve as a pacifier

if things go wrong. Admiring something may be interpreted, or misinterpreted, as claiming something. To fence off the real or presumed claim, the owner of the admired object may prefer to resort to belated reciprocity by granting the claimant a gift which can even be the admired object itself.

e. Reciprocity can be used to facilitate or stabilize marriage. There are two types of reciprocal gifts, *bridewealth and dowry* (see, e.g., Kottak 225 ff.; Bohannan 1992, 76 f.). Bridewealth (*Brautpreis*) is paid in connection with a marriage by the groom or his family to the bride or her family in recognition of her rearing, loss of labor, and addition of her children (still to be born) to the groom's family, failing marriage may involve the obligation to return the bridewealth. Dowry (*Mitgift*) is paid in connection with a marriage by the bride's family to the groom or his family in recognition of the groom's taking care of the bride. Dowry may evidence a low social status of women and may assume abusive forms (officially it is prohibited in India); but dowry may also be a practical means to help the young couple start the new household. Typically, bridewealth and dowry occur in patrilineal societies. In matrilineal groups children belong to mother's family anyway and no "progeny price" need to be paid, and the young couple will often profit from uxori-locality (living with the wife's family). A rare custom in matrilineal societies is *groomwealth*.

f. The general human feeling that reciprocity is "setting things right" and therefore doing justice to all concerned (as illustrated under a. through d., above) applies to the other-world as well. This causes humans to offer sacrifices to gods or spirits of nature: Since something valuable is given to them, one may expect something in return, rain, fertility, health, peace. Extrapolating belief systems (W. Fikentscher 1975a, 235 ff.) do not sacrifice. Some of them replace reciprocity by trust. Abraham's rejected offering (Genesis 22) forever breaks with reciprocity in Judaism, Christianity, and Islam, demonstrating *sola gratia*, and allowing self-responsible value judgments (W. Fikentscher 1965, 157 as to Judaism and Christianity; Islam limits the authorization that is contained in the removal of reciprocity by a "God-willing" proviso). In general, the relation between reciprocity and trust is reverse proportional.

\*g. Apparently rarely used is the term of a kind of reciprocity that does not only look to the other side of the reciprocal exchange but also to intern relationships between the several partners on one side of the exchange: *pooled reciprocity*. It occurs when more than one person engage in helping together to meet the reciprocal obligation, such as the members of a hunting party.

h. *Determinist cultures* may have difficulties with reciprocity because spiritual power decides what a member of society deserves to receive. Thus, travellers report that members of the Muslim minority in western China (Hui) are reluctant to engage in a reciprocal deal with Han Chinese allegedly because of the difficulty to determine what is owed among humans. How serious this problem is and whether it is aggravated by the fact that the Hui are a minority needs further study.\*

## 7. Kinds of competition

The distinction between personalized and impersonal contracting is also questionable seen from the opposite side, the side of the *market*. In principle, market economy is personal. Impersonal markets are the stock markets as well as situations that Walther Eucken described as markets without the intent of the market participants to engage in a strategy because they know that they are too unimportant for pursuing a strategy. Walther Eucken called this *vollständiger Wettbewerb* - complete competition (a confusing expression since absence of competitive strategies is hardly indicative of complete competition).<sup>61</sup> Complete competition in this sense needs to be distinguished from perfect competition. Under perfect competition, the market participants are indefinitely small and therefore cannot influence one another by any strategy. In complete competition, market participants are not indefinitely small, but definitely small and know that they cannot influence the market and behave correspondingly. Storage facilities permitting, they behave as "quantity adapters." Notwithstanding linguistic difficulties, perfect competition defines the absence of competition, and complete competition defines a *very weak* form of competition in certain atypical situations.<sup>62</sup> The "real" competitive market is "individual" or "subjective" in the sense that it involves rivalry and the ability to engage in strategies. Thus, the "real" competitive market requires the knowledge who might be, or potentially become, a competitor. In this sense, the modern market of an individual market participant is always personal. In the individual (= subjective) market, rivalry exists, as shown in the following graph ("the invisible hand made visible"):

### **Follows graph**

This is corroborated by the theory of the modern efficient market as a superadditively coherent entity of common laws, morals, and trust, as developed in Chapters 1 and 5 (subsection 10), *supra*. In order to know who is, or potentially may become, my competitor, one has to "know" him, if not by name, then by identifiable competitive trade relation. In this sense, all modern individual, and thus competitive, markets are personal. Impersonal markets are objective markets, defined by good, place, time, and possible absence of competition. This is illustrated below:

Recent warnings that shopping on the Internet can be abused by identity manipulations confirm the – preliminary – result. The warnings were issued by consumer organizations

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<sup>61</sup> Walter Eucken, *Grundlagen der Nationalökonomie* (Foundations of National Economy), 6th ed. 1950, 95 ff.; for a critique, Borchardt & Fikentscher (1957), 1 ff.

<sup>62</sup> W. Fikentscher, *Wirtschaftsrecht*. Bd. 2: *Deutsches Wirtschaftsrecht* (Economic Law, vol. 2: German Economic Law), Munich 1983: C. H. Beck, 188 f.

stating that “you should always know whom you are dealing.” There is hardly a more convincing proof that the individual (that is: *rivalry-defined*) market is not anonymous. It is interesting that internet trading (e.g., “e-bay”) develops its own sanctions based on *personal* contact and reliance. E-bay transaction partners may rank each other’s reliability by applying a one to five star scale, and this ranking is visible for every internet user. Unreliable partners receive what is called a “negative feedback”. This may be so business-damaging that every effort will be made to indemnify the injured side. What is more personal within what you would think to be one of the most impersonal forums of trading?

#### 8. Superaddition as prerequisite for the working of the invisible hand

From the foregoing something follows which up to now has gone almost unnoticed when the working of the invisible hand was discussed and admired. Adam Smith was perfectly right when he stated that the baker who bakes bread for others who are hungry does this not for benevolence or because he is a charitable person, but in order to make a profit (and thus make his living). At first sight, to promote the common good by egoistically fostering one’s own advantage appears paradoxical, and this seemingly counter-intuitive result made Adam Smith’s “invisible hand” famous.

It should not be forgotten that Adam Smith was a professor of moral theory and his “Wealth of Nations”

has also to be seen as part of his moral studies and writings. For the working of the invisible hand, Smith postulated three requirements: (1) there has to be a law binding and if necessary exposing both the baker and his customers to legal sanctions, (2) there has to be a common moral order for supplier and buyer to ensure trustworthy behavior on either side, and (3) monopolies (we would today say: restraints of competition) have to be absent. These three requirements for gaining altruistic effects from egoistic behavior, in turn, require something not thought of before: superaddition. The reasons are the following: The law and the moral order have to be valid for either side of any deal, and the market on which the deal is to take place, needs to be individual (= subjective). Without market rivalry, there would not be competition, and competition is necessary for the working of the invisible hand because any absence of competition is destructive for the invisible hand. Thus, only individual markets – defined by rivalry – enjoy the working of the invisible hand. Individual markets are superadditive entities – as the Anonymous Jamblich remarked around 500 B.C. - , whereas objective markets are not. On objective markets – defined by not more than good, location, and time – the invisible hand cannot produce its salutary effects, it simply does not exist. Only in a superadditive system of mutual trust and reliance, selfishness works in the way Adam Smith empirically – and not deduced from modles - observed it. Outside of superadditive cultures, selfishness works against trade and commerce..

#### 9. Economic correlates?

Are there identifiable correlations of economic types to forms of societal orders? In economic and legal anthropology, a much discussed topic is the possible relationships between economic types of living and forms of society. Theories of how to combine types of production, allocative results, and allocative modes such as reciprocity and redistribution,

with societal forms such as bands, tribes, early states have already been reported.<sup>63</sup> Our discussion of these issues left us in doubt of any convincing parallelity. There were tribes that traded, such as the pre-entrada pueblos and the Viking merchant warriors on their way through what is now Russia to the Black Sea. On the other hand, there is evidence of early states with no developed credit market economy such as the Inka Empire and Old-Egypt. There seems to be no easy way from making one's living to forming a government, in contrast to what Marx thought to be iron rule of historical materialism.

There have been attempts to correlate the three main cultural types (hunters-gatherers; reproducers - herders, horticulturalists, early farmers - ; and city dwellers living under a regime of division of labor), with political organization, economic forms, and religions. As stated earlier (in Chapter 9 IV, near note 323), too many combinations can be verified to establish a convincing set of correlations. It seemed that the present stage of anthropological research does not permit conclusions of this sort: "they were hunters and gatherers, and therefore they were animists, and their political system was an egalitarian big-man society, and their economy rested on reciprocity": or: "they lived in cities, used division of labor so that not everyone did everything, and therefore they had a king, their economy was redistributive, and they were polydaimonists". Yet, some basic correlations between cultural traits and complexes were detected. Are there forms of economy that are "typical" for given cultures, at least in the manner of a "central type" (in contrast to a Weberian "ideal type")? If one applies synepeia analysis (see Chapter 6, above) to the correlation issue, a purely "etic" approach to addressing that question is avoided, and correlations between cultural type, social ordering, the role of consensus, economic forms, belief systems and philosophical systems, might result, at least in rough strokes. "Deterministic" prescriptions, albeit limited, seem possible: The economic side of this topic deserves some remarks here.

On the level of Synepeics I, the societal group usually calls itself "men" (Navajo: *dinee*; Old Germans: *diët*, or *deut*; Hokkaido's Ainu: *Ainu\*Inuit*: *Inuit\**). Equality and egocentrism are strong (see Pospíšil on the Kapauku). Leadership is assigned to non-hereditary "big men". While a difference in wealth and influence may be visible, no formal societal strata exist. Communal decisions are made by consensus taking the form of time-consuming palaver with basically equal voice (no vote). Economically, allocation of scarce goods is provided for by acquisition (hunting, gathering, fishing), distribution (e. g., by the successful hunter to the village), and reciprocity, the two latter in a mutual relationship of balancing one another: Today, I was a good hunter and will share my prey with you, tomorrow you may reciprocate when you will have success. Trading (usually by barter) pacifies. Animism in the wide sense (= primal religions) is the typical belief system. Epistemologically, tribes and nations vary in their philosophy of knowing things, but usually develop knowledge from tribal traditional stories which may include sceptical ontologies (Navajo, Pueblos). The system is rather stable.

On the level of Synepeics II, the "discovery of the other" may come as a shock (Bandelier: The Delight Makers; the Hethites for Ancient Egypt). Moreover, the institution of the big man, as the authority for merely the in-group, is no longer sufficient. The group needs a chieftain,

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See Katherine S. Newman's attempt (1983), and section 2, supra.. Paul J. Zak (2008), 259 – 279, who investigated trust degrees in different countries believes that trust is a "deeply human" theme. This may be convincing but culture may take different attitudes towards trust and even warn against it. The question whether correlates between economy and societal organization exist is a subissue of the more general question of cultural determinism; see for this Chapter IV, above.

or king, not only as a leader but even more as a representative. The chief or king needs officials and police. Societal strata develop (Alfonso Ortiz for the Tewa Pueblos). Consensus takes the form of consulting the chief, with different or no voices according to strata. The system is less stable, both inside and outside: The strata fight for hierarchical order, and equality decreases. At the same time, the strata idea is bound to be exported, giving rise to fights for appropriate hierarchies on the “international” scene. There is no conceptuality of over-arching (superadditive) unit. *Economically*, the presence of a central power enables taxing and redistribution, and exchanges may be centralized in short-range markets (even if there may be long travels to the market places). Similar to distribution and reciprocity on the level of Synepeics I, redistribution and (short-range) market are somewhat balancing each other. Of course, acquisition, distribution, and reciprocity may exist along with redistribution and short-range markets, since there are fluid borderlines between the economic forms. But the stronger the power of the chief or king, the weaker distribution and reciprocity become. The “black market” emerges.: People try to circumvent redistribution by the accustomed system of reciprocity. Redistribution is stronger in economies with storable products such as corn (Ancient Egypt), and weaker in areas of non-storable products (Hawaiian pineapple). Political centralization leads to hierarchies in the world of spirits and demons. Polytheistic panthea develop from egalitarian spirits of nature (Hesiod). Politically successful nations integrate, but subjugate foreign gods to their own gods, which leads to even more hierarchical systems of gods, goddesses, and demi-gods (Greece, Rome). Failing “international” political leadership expresses itself in equally powered gods (Sumer). Epistemologically, the absence of superaddition prevents a critical distance between subject and object. Objects are not “thought-about”. Parmenideic (or Platonic, i.e. dialog-related) ontology and epistemology are missing. Instead, reality has to be bargained for (Lawrence Rosen 1984). “Competence” prevails, causing instability, often short-term.

The thinking on the synepeical level III – the search for overarching concepts and evaluations, fit for comparison - opens up the possibility of a non-hierarchical international order based on *fides* (also in economics as trust and reliance) in the sense of Hugo Grotius (1603, 1625). *Dar-al-Islam* vs. *dar-al-harb* cannot be the last words. The greater *jihad* – self-restraint in view of a victory – may have an epistemological corollary. Then, in economics, greater *jihad* inaugurates the long-range trust and credit market. Trust may unfold its efficiency. The underlying belief system is a secularized version of Ancient Greek, Judaic, and Christian believes in equality, human dignity, and a mandate to be active. Epistemologically, democracy rests on Parmenides’ trias of subject, object, and thinking: One is entitled to doubt and to critically think about something, casting one’s opinion into judgments about the true, the morally good, and the esthetically agreeable. The subject-object relation is never direct and possession-acquiring, but reflected by thinking (with Plato in a dialogic shape). Distanced critical thinking is a requirement for the thinking in superadditive units. It consists in making dependent the cognisance of superadditive objects, in other words: systematic thinking in generalizations and specializations, on a culturally very specific kind of thinking, namely, the Parmenideian distance-keeping between the individual observer and the judgment to be made. It submits the practical working with superadditive objects, for example the establishment of a fail-safe capitalist economy in Hernando de Soto’s sense, a government for Iraq or Afghanistan, or a Palestinian state, to the willingness to engage in a Platonic dialog. Especially Christianity accepted this Parmenideian sceptical – and time-related - world view in matters of alleged moral superiority and wisdom (Matthew 13.29, 30 - the parable of wheat and weed, which played a central role in 16<sup>th</sup>-century debates about tolerance - ; 1. Thessal. 5, 21 – Christian epistemology in religious matters - ). The disapproval of Judaism/Christianity

and its secular product, the “Western” way of life, by Muslims, Buddhists, Hindus, Totalitarians and others finds its explanation, it seems, not so much in different contents of belief but in an education to be patient, to wait and doubt, to examine and reflect, to serve and to participate in dialog, and to build this distanced but attached targeting of objects on superadditive entities, as symbolized in institutions such as synagogue and church. There is of course Christian fundamentalism, too. But this is rather taken for granted by followers of competing belief systems.

The foregoing reduces societal structures to three “central type” models or cultural types: big men society, chieftaincy (*exousia*, as defined in *Luke 22.25,26*), and cooperative (*archontes*, as defined in *Romans 13.*), which in turn are correlative to typical economic forms, belief systems, and ontology-epistemology philosophies. Consensus takes typical different forms and solves different tasks in all three models. That these generalizations – broad and imprecise as they may appear – become possible is probably due to the integration of the inside-outside distinction into cultural comparison, as a part of anthropological analysis, which is a method facilitating consideration of the cultural modes of thought, with a focus on economy. This was the point to be made here.

History demonstrates not only the way from (I) to (II) to (III). It may reverse this development and return to atavistic forms of correlated culture attributes. When in 1572 during the post-Jagiellonian constitutional deliberations the Polish nobility, the *szlachta*, insisted on consensus among the more than 500 noble families, this immobilized the Polish government, compared to the pre-democratic progress made in Western Europe by the irenists in Italy, Switzerland, France, the Netherlands, and England. In Western Europe, representative democracy began to develop from Presbyterian church law which used presbyters to represent the community for certain tasks. It is an atavism to assume that a political delegate is not bound by the interest of the *whole* but only by the interest of the *local* constituency she or he is coming from.. A government that interferes with the business of another government in favor of a single firm (“Pfizer letters”, Boeing dispute between US and EU, Monsanto) misses the superaddition of the state it represents to the outside, and takes a part for the whole. Modern international bilateralism and reciprocity misses the advantages and efficiencies of superaddition, that is, of enjoying the whole as being more than the sum of the parts. Bilateralism and reciprocalism deteriorate possible long-range trust relations to a serious of short-range and short-term exchanges.

The cultural types described above not only may sequentially move forth and back through history. They are also interrelated. In economy (as a part of culture), this means that there is a *law of the interdependence of economic forms* (for example in allocation): regular distribution reduces the need for reciprocity; less far-range means more reciprocity; less redistribution means more short-range markets (cf., the black-market phenomenon, or corruption); law-based and internalized long-range trust and credit markets reduce the risks associated with short-term dealings; etc.

#### 10. Monetary types

The following sub-section on kinds of (a.) money and (b.) credit are not necessary for the progress of ideas. They are mentioned here for the purpose of at least partly completing the nutshell description of economic anthropology.

a. The different *kinds of money* are another main theme in economic anthropology, alongside the basic topics of what economy is about, and the theories on the kinds of exchanges. In the foregoing, economic types in pre-axial age cultures are investigated according to the categories of types of production, types of allocative results, and types of allocative modes such as distribution, reciprocity, redistribution, and market. In economic anthropology, there are exchanges with and without money. Speaking more broadly, involvement of money and credit directs the focus to the payment side of an economic exchange. Exchanges including money, as a counter concept to the types of exchanges discussed before, involve types of money, or monetary types. Looking at the opposite side of economic exchange, money, more allocative modes can be identified, as "money types."

Paul Bohannan distinguishes three types of money, according to the function it has.<sup>64</sup> (1) Money can work as a means of facilitating an exchange ("I pay you this amount in reciprocal exchange for your delivery"). (2) Instead, money may have the purpose of serving as the standard for value ("your cow is only .....worth"). (3) Or, finally, money can serve as a means of payment without any reference to exchange or to value ("you have to pay income tax, war reparations," etc.). It seems that money may have further functions, for example the indication of wealth and power (round stones as "fa" money in Polynesia; copper among the Tlingit). It is a bit artificial to count these situations to the value standard category and to say that a person, a chief, a monastery, a sodality etc. is "worth" something within the meaning of the second of the before mentioned three types. Next, there are certainly types of money that can be divided numerically, such as the dollar, and those that cannot, such as pieces of jade in Inuit trade or dentalia shells in Chinook commerce (cases where the borderline to bartering becomes imperceptible). For the purposes of the following, we will restrict the discussion to the three generally acknowledged types in Bohannan's sense.

Money does not necessarily serve all (three or more) functions. If it does, it is called general purpose money, if not, special purpose money. Most anthropologists employ these distinctions. According to my research, Chinook dentalia, along the Northwest Coast of North America, served as general purpose money, however on short distances. By adding the distance over which money is used, an additional criterion of distinction could be introduced.

b. Similarly, *credit types* can be identified. They become of interest if credit is involved as types of allocative modes. This is not the place to go into details of pre-axial age or post-axial age non-Western credit types.<sup>65</sup> Such types depend on the prevalent allocative modes and the functions and purposes of money involved.

However, the story of the Anonymous Jamblich is illuminating (W. Fikentscher 2004, 30 ff.) because it demonstrates both the essence of credit, the meaning of the individual market in its long-distance version, and the importance of the axial age as such: Throughout history, philosophers of economy were fascinated by the phenomenon that general welfare develops from the egoism of merchants. Anonymous Jamblich compared the general wealth of the

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<sup>64</sup> Bohannan, *Some Principles...*, see note 66, supra; a critical view on the concept of debt in economic anthropology: Heinzpeter Znoj, *Tausch und Geld in Zentralsumatra* (Berlin: Reimer, 1995), see also Martin Roessler, *Wirtschaftsethnologie*, Berlin: Reimer, 1999.

<sup>65</sup> An example: Michael Mühlich, *Credit and Culture*, Berlin: Reimer, 2000.

Greek city states, the poleis, which did not possess much gold, with the widespread Persian poverty that existed despite the immeasurable gold treasure owned by the Persian Great King. Anonymous Jamblichus solved this paradox by stating that the Greek merchants' activity and spirit that apparently caused Greek wealth. This activity in a certain spirit was caused, in turn, so Anonymous Jamblichus, by the manifold relations of trust and *credit* that existed, as an economic and legal framework, both within and between all city states of the Greek *koiné*, the Greek Community. A mental achievement, credit, in combination with a legal setting proved to be of greater weight and of higher value than gold. The Greek *koiné* was an individual (= subjective) market. Each Greek merchant trading in certain commodities, knew each other within the home city, and in other cities as well.

Distance trade was in use, but by crediting a merchant, something new entered the economic scene: the Greek Tragic Mind offered the possibility of becoming self-organized, similar to the Greek contingent at Marathon. The superaddition works also with respect to a common market. There was competition within a club of members of that superadditive entity. Each member wanted to live under one law of liberty, equality, and economic fairness.

The Greek Tragic Mind is a turning point from pre- to post-axial age modes of thought (W. Fikentscher, 1995/2004, Chapter 9).. At Anonymous Jamblichus's time (450 B.C.E), total economies with their objective and individual markets emerged, and credit relations upon the latter became practiced, as later increasingly throughout the Roman Empire. There was an economic unit which was more and different from the addition of bilateral economic relationships.

## 11. Economic spheres

The theory of the *economic spheres* represents a further important doctrine of economic anthropology. Working among the Tiv of Nigeria, Paul and Laura Bohannan discovered what they called economic spheres.<sup>66</sup> Kottak, giving the credit to the Bohannans, calls these spheres "spheres of exchange in multicentric societies". The Tiv exchange food for small livestock or tools and vice versa, but they do not exchange these items of daily supply for items that belong to another economic sphere, such as cattle, large bolts of white cloth, metal bars and - formerly - slaves. Nor may, as a rule, these objects which indicate social standing be exchanged with objects from the economic sphere of daily supply. However, the items of the latter category can be traded among each other: cattle for metal bars, large bolts of white cloth for cattle and - formerly - slaves for either cattle, metal bars, or bolts of white cloth. The Tiv also exchange women, but only women for women, not women for tools, or women for cattle. An example for the economic sphere of women, the market for women, so to speak, is the Tiv wardship system, according to which a male member of the tribe is responsible for a number of women, his wards, for whom he may arrange marriages in exchange for wives for himself or for others, or wards for his "ward pool". Thus, Bohannan concludes that the Tiv have three distinct spheres of economy. On a more abstract level, the first sphere relates to subsistence, the second to prestige, and the third to marriage partners.

Economic spheres do exist not only among the Tiv. In Chinook trade, slaves formed a separate

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<sup>66</sup> Laura Bohannan & Paul Bohannan, *The Tiv of Central Nigeria*. London 1953:: International African Institute; Paul Bohannan, *Justice and Judgment Among the Tiv*. London & Oxford 1989: Oxford Univ. Press (1<sup>st</sup> ed. 1957)

economic sphere. Classical Roman law excluded certain commodities from trade (*res extra commercium*). Two-US-Dollar notes exist but can practically only be found in connection with horse-race bettings. In contemporaneous Germany, certain high-value bank notes are tradeable only among a closed number of traders and for limited purposes.

Exchanges *within* one sphere are called conveyances. If, in rare cases, exchanges are performed between spheres, for example - in times of want - metal bars for livestock, the exchange is called conversion. Conversions from the subsistence sphere to the prestige sphere will contribute to the honor of the recipient. Only a rich person can do this. Instead of giving savings to Savings and Loan Banks, not existing in Tivland when the Bohannans' research was done, surplus values were stored in the prestige sphere. A conversion from the prestige sphere to the subsistence sphere, for example sacrificing cattle for food and small livestock in order not to starve, entails shame. Emptying one's bank account in a money crunch, in our economy, is tantamount to a loss in social standing..

Potlatching among the Tlingit, Tsimshians, Haida, Kwakiutl, Salish, and other Northwestern North American tribes involves a conversion of food, clothing, and other items of everyday sustenance into items of the prestige sphere.<sup>67</sup> A population reduced by white man's diseases, fluctuating periods of abundance and shortage of salmon and herring, and other ill fate led to concentrating wealth from trading with the Europeans in the hand of a limited number of tribal members. In order to maintain an equilibrium between favored and disfavored villages without resorting to social stratification, potlatches are needed from time to time to convert abundance into prestige and to draw from this "account of prestige" in periods of need when other villages hold their potlatches. Potlatches, by means of conversions, serve to reduce the impact of altering periods of wealth and want, prevent undesired stratification, and generate an alliance of potlatching tribes. Thus, a potlatch may work both ways: it honors one side and shames the other. In addition to this inherent economic meaning (which seems to be declining in importance), potlatches have an identification effect: creation, migration, adventure, and family stories are told, statuses and alliances reconfirmed, and the coherence of the tribe is maintained.

To the Western reader of ethnological literature, potlatching may appear as a totally illogical, weird system of annihilating man-created or -owned values. Such cultural distancing overlooks that Western culture has developed similar, and judged by the intent pursued, almost identical means of value extermination: the property tax with its variations (*impuesto de patrimonio*, *Vermögenssteuer* – an old Socialist demand). Property taxes reduce man-created and -owned values without redistributing them to other members of society, as occurs by other taxes. Property taxes do not contain productive or reproductive elements. As in a potlatch, they merely reduce what certain people have, born from a feeling that "there is too much" and that this impedes life.

A modern and extreme form of conversion happened in post-war Germany. In the early 1950s,

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<sup>67</sup> E.g., Stuart Piddocke, "The Potlatch System of the Southern Kwakiutl: A New Perspective," in: Andrew P. Vayda (ed.), *Environment and Cultural Behavior* (Garden City, NY: Natural History Press, 1969), 130 - 156; Andrew P. Vayda, "Economic Systems in Ecological Perspective: The Case of the Northwest Coast" in: Morton H. Fried (ed.) *Readings in Anthropology*, vol 2, 1961; reprinted New York: Crowell, 1968, 172 – 178; F. Boas, *Kwakiutl Ethnography* (H. Codere, ed.), Chicago 1966: Chicago Univ. Press (orig. 1897).

after the currency reform of 1948 and the beginning of the Germany economic recovery, tax revenues soared to an unprecedented level. The young Federal Republic of Germany became "too rich," similar to the Northwest Indian chiefs before the next potlatch. Instead of spending the unexpected revenue for political purposes Friedrich Schaeffer, then Minister of Finance in Chancellor Adenauer's first cabinet, let the incoming money simply disappear in a fictive account. That fictive tally, not to be accounted for in the budget, finally amounted to seven billion Deutschmarks. The disappeared money soon received the nickname *Julius Turm* (Julius' Tower) after a historical building of the Fortress Spandau near Berlin where in the eighteenth and nineteenth centuries the Prussian king had hoarded the state's gold reserves. Schaeffer may have been the only finance minister in world history who had too much money. He potlatched the excess revenues away, by converting them into international standing. Later, when Germany joined NATO, after a long national and international debate, part of the money was used to fund the new military.

## 12. An anthropology of giving thanks. Corruption

A comparative anthropology of giving thanks has yet to be written. In "Out of Africa" Isak Dinesen tells of a seemingly total absence of a feeling of gratitude from the side of Kikuyu tribal people whom she says she had "helped", for example in cases of illness. Frank Linderman (143 f.) reports the same of Northwestern Indians. In Taos, NM, I was told the story of a white American lady tourist who, impressed by a guided tour through Taos Pueblo, asked a native onlooker: "How do you say "thank you" in your language?". The addressed Taos citizen frowned and turned away silently. The tourist was taken aback.

Kottak suggests that in a hunters society it may be grossly impolite to say thank you to the successful hunter or fisherman who comes home and distributes the meat, or to the successful collector of berries or other food. His or her duty to distribute to the entitled receivers is self-evident, and expressing thanks might even include doubts in his or her hunting, fishing, or gathering expertise. Moreover, on another day another hunter, fisherman, or gatherer may be successful so that the duty to share easily changes from one food provider to the next. Saying thank you in this setting makes little sense.

There may be another explanation: The feeling of gratitude means to be conscious of a necessity, or etiquette, of reciprocally granting an advantage to somebody or something (a human, an animal, a spirit, a god, blind fate, etc.) that has granted an advantage to oneself. "Granting an advantage" means, in this context, that the giver transfers upon the other something that belongs to the giver's sphere: property, time, effort, attention, thoughts, care, etc. In a culture that does not assign these goods to a person's sphere in form of an extended concept of ownership, these goods are for free and therefore not fit to be thanked for. Every culture assigns to its participants something to be owned, but the dividing line between ownables and free items varies greatly. A "thank you" is only due for granted ownables. All that lies beyond the limits of culturally approved possessions is unfit for saying "thank you". Here the reason may be found behind the attitude found in some developing countries, and among affirmative action recipients, for not showing much gratitude, including the insistence on common heritage of mankind, and equality of opportunities..

A special kind of giving thanks, often in advance, is bribery. Corruption represents a negative

side of reciprocity, and its anthropology is worthy of study. To judge the legality, or impropriety, of corruption, each specific cultural situation has to be evaluated.<sup>68</sup>

### 13. Mainstream economic anthropology

The present state of the art in economic anthropology, described above, can be illustrated, in rough strokes, in the following graph:

**Graph: Traditional system of economic anthropology, see next page:**

The rather refined teachings and distinctions of economic anthropology can be used for practical work and the building of theories. However, five points of criticism may be raised, aiming to improve the present system of economic anthropology and thus to adapt it to even better use. Three points have already been addressed:

(1) There is a hitherto unexamined relationship between the theory of funds and the concept of market. Only in the context of the rent fund it is possible to generate what keeps a market running, that is, the alternatives between two or more competing offers or demand requests.

(2) The sequence: market - reciprocity - redistribution ought to be rearranged, corresponding to probable evolution, to reciprocity - redistribution - market.

(3) There are even more rudimentary forms of economic allocation than the traditional system of “exchanges” provides (1) acquisition by hunting, fishing or gathering, and (2) simple distribution (here called distributive sharing). Acquisition and distributive sharing are not “exchanges”.<sup>69</sup> Preempted taking, peace keeping, care for supporters, protracted infancy, balanced reciprocity (unlucky hunters) or general reciprocity (the elderly ones) may be the

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<sup>68</sup> See the contributions to Raimund Jacob & W. Fikentscher (eds.), *Korruption, Reziprozität und Recht*, Schriften zur Rechtspsychologie vol. 4, Bern 2000: Stämpfli; W. Fikentscher, *Ersatz im Ausland bezahlter Bestechungsgelder*, Besprechungsaufsatz zu BGH of May 8, 1985, IV a ZR 138/83, IPRax 2/87, 86 (mit K. Waibl).

<sup>69</sup> Jan Pettit, *Utes: The Mountain People*. Rev. ed. Introduction by Eddie Box (Boulder, CO: Johnson Books, 1990), 39: “When a group went out to hunt, the person who killed an animal was entitled to the skin, but the meat was divided equally among all the people. The kill would be brought into camp where the hunter would divide up the game by cutting portions from the animal and giving them to whomever came to get them”. This is what here is called “simple distribution”; see also J. Woodburn, *Sharing is not a Form of Exchange: An Analysis of Property Sharing in Immediate-Return Hunter-Gatherer Societies*, in Chris M. Hann (ed.), *Property Relations: Renewing the Anthropological Tradition*, Cambridge 1998: Cambridge Univ. Press, 48 – 63; Uwe Wesel, (1979), who convincingly remarks that prey sharing is different in many tribes, but follows the same intention to protect the non-hunting part of the population.

main reasons for distributive sharing. Equal treatment is anticipated reciprocity. Herein lies the truth of the Coase phenomenon: It is to be expected that people distribute reciprocally.. But distribution comes first.<sup>70</sup> Thus, there are economic types which are not exchanges. Therefore, the word "exchange" used in the context of economic anthropology may be replaced by "allocative mode". It may be said that the four allocative modes are distributive sharing, reciprocity, redistribution, and "market."

(4) However, the main criticism above is directed against the indiscriminate use of the word "market". Even Marvin Harris's distinction between "barter" and "price" markets does not suffice to catch the wealth of empirically observable forms of what has been called "market." Thus, when one discusses the economic types and total economies in the anthropology of economics, what some call "market" in reality takes several forms. The forms of market are best derived from three pairs of distinction:

(a) First, there is the distinction between objective "anonymous" markets as statistical or political entities, defined by good, area, and time, but not by competitive rivalry, on the one side (e.g., "the world brick market"), and non-anonymous, competitive, and therefore "individual" ("subjective") markets on the other ("the Southern Bavarian/Eastern Suebian brick market"). An individual market is the aggregate of a market participant's perspectives of this participant's alternatives for supply or demand, and the rivals of this participant for such supply and demand.

(b) Second, there is a distinction between pre-axial age markets and post-axial age markets, both shaped by the pre- and post-axial age modes of thought, respectively.

(c) Third, there is a distinction between short-time and short-range markets, such as a bazaar, a barter market, the cheese market in Alkmaar/Netherlands, all markets where credit is not used, not asked for and not granted, on the one hand, and long-time and long-range markets involving trust, and credit, such as the trade by way of accreditation or in bills of exchange on the other. These long-time and long-range markets may aptly be called trust markets.

Since pre-axial age markets do not include long-range trust relations and since the three pairs of the possible combinations are mutually exclusive, there are six logical possibilities to construe a market. However, in practice, only four of them are economically important combinations: (1) pre-axial age subjective short-range markets (e.g., Pueblo barter trade), (2) pre-axial age subjective long-distance markets (e.g., Kula expeditions, Eskimo jade and utensils exchange meetings), (3) post-axial age objective markets ("Libya, the corn chamber of Ancient Rome" as discussed in history books), and (4) post-axial age individual (= subjective) trust markets (e.g., the Californian car insurance market). In particular, some but not all post-axial age markets - according to the prevailing mode of thought - are characterized by far-range exchange relations that include credit and trust relations, as well as their participants' rights and duties.

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On sharing and sharing habits among chimpanzees see, for example, Frans de Waal. *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*. Cambridge, MA 1996: Harvard University Press, 136 f. (etiquette), 142 (joint hunting), 143 (status enhancing), 160 (revenge).

#### 14. An improved outline

Thus, in the following graph on economic anthropology, the lower left corner of the foregoing graph, containing the terms barter market and price market, are replaced by at least three positions: pre-axial age subjective short-range markets, post-axial age objective markets, and post-axial age subjective long-range trust and credit markets. Even more complete is the addition of the three distinctions so that combinations can be made. Here follows a graph which contains the proposed changes in economic anthropology:

**Graph: Modernized system of economic anthropology, see next page**

The illustration demonstrates that “free economy” and “economic liberalism” as described, for example, by Adam Smith is a rather culture-specific mode of allocating scarce goods. It requires superaddition, rivalry, and long-range trust. Its problem lies in the conflict between the ethics of effort and the ethics of demand, and the resulting social injustice of unpaid effort. How to organize superadditive individual long-range trust markets that avoid social injustice (*soziale Marktwirtschaft* = constituted market economy) involves issues that cannot be discussed here (cf., W. Fikentscher 1983b, Ch. 2 IV; idem (1993), 905 – 907; idem, An Environment-conscious Constituted Market Economy, in: idem, *Freiheit als Aufgabe*, Tübingen 1997: Mohr Siebeck, 12 – 44; a report in: *iwd* No. 25 of June 19, 2008, 5, defines constituted market economy by four factors: freedom, social justice, subsidiarity, and legal protection of competition)..

15. The role of antitrust for the rule of law and for economic development (this discussion is here *not included*, given its mainly economical nature; footnote<sup>71</sup> is however retained, since it refers to the failure of introducing economic liberalism to Russia in 1990 without heeding the necessary control of economic power by competition law)

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<sup>71</sup> University of Michigan (Ann Arbor, MI) (ed.), *Peace and Prosperity at Hand, Yet at Risk*, report on the William W. Cook Lecture 1995 by Professor Jeffrey Sachs, 38 *Law Quadrangle Notes*, Spring 1995, 3 – 4; W. Fikentscher, *Freiheit als Aufgabe, Freedom as a Task*, Tübingen 1997: Mohr Siebeck, IV; idem (2004), 206, 270.

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