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COLLECTIVE
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RELATIONS, AND
LEGAL PLURALISM

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COLLECTIVE IDENTITIES, PROPERTY RELATIONS, AND LEGAL PLURALISM

Research Guidelines¹

1. *Organisational and practical aspects (Forschungsökonomie)*

The MPI for Social Anthropology has *one* research programme and not two or two and a half, as one might guess if one looks at its organisational set-up with two directors and a planned project group which might result in a third subunit with a director of its own.

All three sub-programmes

- Integration and conflict
- Property relations
- Legal pluralism

have been designed in a way to overlap partly and partly to complement each other: i. e. they share a central theme and complement each other in some of the specific perspectives on this central theme.

This thematic coherence needs to be maintained for the following reasons:

- *Comparability of the work of individual researchers.* It is due to mere biographical hazard that the director of the sub-programme on Integration and conflict which deals with inclusive and exclusive aspects of collective identities (Schlee) has spent much of his research life in Africa, and similar contingencies of life have led the director of the Property Relations sub programme (Hann) to do his research in Eurasia. Now both directors have recruited junior researchers. A majority of these plan to work on the same continent as the director whose sub-programme they have joined and some do not. This statistical bias – that most staff members who stress the ‘collective identities’ aspect of the shared theme work on Africa and most researchers who stress the ‘property relations’ aspect work on Eurasia, has no systematic or logical reason at all. Collective identities are not less important in Asia than in Africa, and anyhow collective identities cannot fruitfully be studied without taking property relations into account and vice versa (v. Part II). It is therefore desired that all individual research projects, irrespective of their geographical setting,

¹ This paper was presented at the staff colloquium of the MPI on January 24, 2000.

should provide interesting case material and theoretical inspiration to several or ideally all other individual research projects in addition to feeding onto a higher level of theorizing.

- It may happen that the two sub-programmes may move apart. If important theoretical discoveries are made at opposite ends of the shared thematic spectrum, a split may occur. But to the extent that new insights can be planned and the future be foreseen, we expect a higher dividend (Erkenntnisgewinn) from integration than from specialization into unrelated or weakly related areas.
- The crisis of research funding has affected the Max Planck Gesellschaft much less than other research institutions like universities or museums. Also our institute is funded in a way to enable us to do empirical research for relatively long periods and to do so on a rather large scale, i. e. to have many researchers in the field and then to report back from many different parts of the world. Not to use this situation for comparative evaluations which cross-cut the sub-programmes and continental divides would mean to forego the opportunities which our relatively large size offers us. Of course, interregional comparison can also be based exclusively on library work. But library work does not offer the opportunity to address questions to work in progress which then can be modified to deal with these questions. And to do library work exclusively we would not need this institute.

2. Thematic links

It does not require much imagination to give examples for links between collective identities (c), property rights (p) and problems of legal pluralism (l). Some such links are:

- Collective property rights require definitions of the collectivities involved (c, p).
- Incentives and disincentives for manipulating the affiliation to a collective identity tend to be provided by different property rights and entitlements of these collectivities (c, p).
- If different kinds of law coexist in a geographical setting, we can expect rules about or at least debates about which type of law is to be applied to which group of people under which circumstances (c, l).
- Whether or not a culturally or religiously defined group is permitted to have its own civil law and to follow its own rules of inheritance etc. has important consequences on the transfer of property (c, p, l).

This list can easily be expanded. Because of the interrelatedness of these problems, it does not come as a surprise to us if we learn from the history of anthropology that leading anthropologists have been interested all three fields of knowledge at the same time. I here take just one example, Fredrik Barth.

In his work about entrepreneurs in northern Norway, Barth (1963) shows the embeddedness (to take up Thurnwald's term later adopted by Polanyi) of property relations in other types of social relations and the role expectations connected with different social identities.²

Trenk (1991: 508 f) says that in doing so Barth anticipated later debates about Property Relations.

In spite of his pioneer role in the field of property rights, Barth is best known, on the ground of his seminal introduction to the collected volume on *Ethnic groups and boundaries* (1969) as the founder of the modern, and still most widely accepted theory of ethnicity³. Ethnicity is one special, though often ill-defined, type of social identity. In more analytical terms ethnicities are instances of "identities" and "differences". That would mean that if Barth turned up here today, it would have to be debated whether he would belong into Abteilung I or Abteilung II and he would have strong claims to both affiliations.

Barth has discussed ethnic re-affiliations in the light of normative systems. The *pashtunwali*, the customary law of the Pashtuns, has the independently acting head of a household who is ready to defend his rights at all times and by all means, including violence, as subjects of the law, as the ideal-type units which

² Barth (1963: 6), not unlike Schumpeter, perceives the innovative combination of factors of production as the mark of an entrepreneur: „To the extent that persons take the initiative, and in the pursuit of profit in some discernible form manipulate other persons and resources, they are acting as entrepreneurs. It is with the factors encouraging and channelling, or inhibiting such activity, that we shall be concerned“ (quoted by Trenk 1991: 508 f). Such a pursuit of profits causes social costs, while the success of this pursuit, wealth, is also a cause of social prestige. Trenk goes on to explain: „Unternehmer können solche sozialen Kosten nur dadurch vermeiden oder minimieren, dass sie bestehende Verbote heimlich übertreten oder gewisse Beziehungen abbrechen. Wegen ihrer sozialen Isolation sind Außenseiter und Fremde dabei häufig in einer vorteilhaften Position, Einheimischen dagegen kann es eher gelingen, bestehende Beziehungen zu manipulieren oder zu ihren Gunsten zu nützen.“

³The differences between him and his best-known critic Abner Cohen (1974) appear rather small in comparison with the differences between both these positions and earlier views of ethnicity. Some of the criticism is also rather far-fetched.

interact in the social and legal world of the Pashtuns. Some men do not have the means to live up to this ideal and have to appeal to the protection of others. Among the Pashtuns this is shameful, but not so among the neighboring Baluch, among whom it is perfectly acceptable to serve a lord and to enjoy his protection. Certain Pashtuns who have sought refuge among the Baluch are therefore quite happy to continue to live as Baluch, because as dependents of bigger players they can rise higher on the Baluch normative scale than they could ever move on the scale of the Pashtuns. Different social identities come with different laws and moralities and with different "standards of excellence". This is a line of inquiry which would also fit well into our future Abteilung III.

In the volume on *Ethnic groups and boundaries* there is also a contribution by Haaland on the Fur and Baggara of Western Sudan. Rich Fur farmers invest in cattle, move down the mountain and join the Baggara Arab nomads in the lowland. Here people who invest in certain types of property better change their ethnicity accordingly.

All this illustrates that serious work on any of the three subjects

collective identities,
property relations,
legal systems,

automatically leads the researcher to the other two.

The examples which I have quoted to support this assumption are over thirty years old and I could have cited much older ones. But we would not have proposed to found this institute if we did not think that there are still many unanswered questions left in the area of research defined by this triangle.

Stable versus instable identities

It has been shown for the interlacustrine area (Rwanda, eastern Congo) that the "Banyamulenge", frequently mentioned in the media in recent years for their role in violent events in Zaire/Congo, who split from the Banyarwanda about 200 years ago, share no clans with the Rwandese. As it is unlikely that the split between those who migrated and those who remained behind, neatly followed clan-lines in all cases, this strongly suggests that at least the clans which we find among the Banyamulenge are all younger than 200 years (Newbury 1980).

In what is now northern Kenya and southern Ethiopia the present ethnic groups might be somewhat older. They may have developed since the 16th century. But they -the Gabbra, Rendille, Sakuye, and others - are linked by a set of yet older relationships. They share numerous clans. These clan affiliations have survived processes of ethno genesis which have involved linguistic and religious re-affiliations. These interethnic clan links bridge wide cultural gaps and geographical distances (Schlee 1994).

So we can distinguish between cases in which ethnic groups are older than the clans and others in which the clans are older than the ethnic groups, and the course of time to which both ethnic groups and clans are exposed appears to pass faster in some areas than in others.

At this point we can do one of two things: we can either join the longstanding debate on primordialism versus situationalism and see whether we can add some wisdom to it by either stressing the stability of social units or their relatively transient nature, depending on the examples we select. This may not sound terribly attractive. Alternatively we may try to explain these variations. Once we accept the variations in the data (instead of stereotypically explaining all observations away by ascribing them to a researcher's bias or one or the other "school"), it is not difficult to find the right type of question to ask about them:

Under which conditions are clan identities stable and ethnic identities fluid and under which conditions is it the other way round?

Or, more generally:

What are the conditions of higher or lower time stability of collective identities?

It would be good to examine these questions in the light of many different cases. The conditions alluded to are expected to comprise positive and negative incentives for stability and change. I would first look for these in the field of power relationships and in the field of property relations.

Cross-cutting versus congruent (coterminous) categories

Among other ethno-linguistic and religious groups, in eastern Anatolia we find Zaza-speaking Kurds of Alevi creed. Other Zaza speakers are Sunni Muslims. We also find both versions of Islam among Kurmanc speaking Kurds and we find them among Turks. The awareness of these similarities and differences has increased through labor migration. Before they came to Germany many Kurds thought that all Kurds would be like those of their own valley. The fact that ethnic and religious affiliations cross-cut, opens a field of situational

identification to an intelligent actor. An Alevi Kurd, without even having to tell a lie, can stress his Alevi affiliation when speaking to an Alevi Turk or he can stress his Kurdish affiliation when speaking to a Sunni Kurd etc. (Firat 1997, Schlee & Werner 1996).

One such situation of cross-cutting ethnic and religious ties has come under pressure in Eastern Poland. Although the reality has always been much more complex, there are strong ideological forces at work which suggest that a proper Pole has to be a Roman Catholic, a proper Ukrainian either Orthodox or Eastern Catholic, and that smaller groups should make up their minds into which of these neat larger ethno-religious categories they want to fit (Hann 1996, 1998).

More generally: Groups and categories defined by different criteria can either cross-cut or not. In the latter case they can share a boundary (be coterminous) or they can be completely separate. There are historical situations in which cross-cutting ties of all sorts proliferate⁴ and other historical situations in which there are forces at work which postulate that categories defined by different criteria (say linguistic and religious ones) should coincide. I.e. the identity games people play can be completely different in different places at different times.

What are the conditions affecting the choice of these options? Factors like "modernization" and the "nation"-state and the opportunities and threats going out from globalization processes certainly need to be looked at. At this point it would be tedious and superfluous to reiterate that these touch on forms of entitlement, on property rights and questions of legal pluralism. So I hope to have made the point that these really form one area of research and not three.

To avoid one possible misunderstanding: I do not want to link questions of collective identity to property rights by explaining group boundaries in economic terms by group interests. This would definitely fall short of our needs. We cannot define group interests before clearly circumscribed groups have emerged. If, in a situation of group formation, the composition of an emerging group changes, also their perception of their interests might change. I. e. who belongs to whom and why cannot be explained in economic terms, at least not exclusively. One of the most outspoken critics of economic reductionism is, of all people, the outstanding economist Hirshleifer. For him the question of social identification comes first. In discussing the economic key concept 'efficiency', which is obviously directly related to costs and benefits,

⁴ In the cases where cross-cutting ties exist or even proliferate, they do not always have the socially integrative effects they are commonly believed to have. There are also cases in which cross-cutting ties have played a role in conflict escalation (Schlee 1997).

the core of economic rationality, Hirshleifer says: "...efficiency is always relative to the boundaries of the society or group envisioned. ... We all draw the line somewhere, at the boundary of 'us' versus 'them'. *Efficiency thus is ultimately a concept relating group advantage over competing groups.*" (cited by Anderson & Simmons 1991: 8, emphasis in the original).

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