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BOUNDED RATIONALITY OF *HOMO CLASSIFICUS*: THE LAW AND BIOECONOMICS OF SOCIAL NORMS AS CLASSIFICATION

JANET T. LANDA*

INTRODUCTION

In the 1990s, law and economics scholars such as Robert Ellickson, Lisa Bernstein, Cass Sunstein, Richard McAdams, and Eric Posner, among others, focused their attention on the analysis of social norms as an alternative to law in regulating social behavior.¹ This led Lawrence Lessig to name the 1990s law and norms literature as the “New Chicago School” (“NCS”) and Ellickson as its founder.² But the origin of the new law and economics literature on social norms dates back to the early 1980s, when I published a series of three papers on social norms embedded in the “ethnically homogeneous middleman group” (“EHMG”).³ These norms serve as an alternative to contract law for the enforcement of contracts under conditions of contract uncertainty where the legal framework is not well developed.⁴ In addition, I published a paper on primitive contract law that focused on the Kula Ring, a gift-exchange system operating in the stateless societies in Papua New Guinea, which functioned to facilitate intertribal regional trade.⁵

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1. See ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1997); ERIC A. POSNER, *LAW AND SOCIAL NORMS* (2000) [hereinafter POSNER, *LAW AND SOCIAL NORMS*]; Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 J. LEGAL STUD. 765 (1998) [hereinafter Posner, *Signs, Symbols, and Social Norms*].

2. Lawrence Lessig, *The New Chicago School*, 27 J. LEGAL STUD. 661 (1998).

3. See McAdams' survey of the origins and development of the law and economics literature on social norms, *supra* note 1, at 343–50, including my 1980s papers, at 343 n.21.

4. See Janet T. Landa, *A Theory of the Ethnically Homogeneous Middleman Group: An Institutional Alternative to Contract Law*, 10 J. LEGAL STUD. 349 (1981); Jack Carr & Janet T. Landa, *The Economics of Symbols, Clan Names and Religion*, 12 J. LEGAL STUD. 135 (1983); Robert Cooter & Janet T. Landa, *Personal Versus Impersonal Trade: The Size of Trading Groups and Contract Law*, 4 INT'L REV. LAW & ECON. 15 (1984).

5. Janet T. Landa, *The Enigma of the Kula Ring: Gift-Exchanges and Primitive Law and Order*, 3 INT'L REV. LAW & ECON. 137 (1983).

Two features characterized the 1990s NCS social norms literature: (1) the emphasis on enforcement of norm-based rules (thus differentiating the NCS from the old Chicago school legal centralism tradition);⁶ and (2) the development of a signaling theory of social norms associated with the work of Eric Posner.⁷ In Posner's signaling theory of norms, he argues that individuals conform to norms in order to signal that they are reliable partners, thus facilitating the identification of cooperative partners. As the content of my early 1980s work on social norms embedded in the EHMG embody the above two features, my early work clearly falls within the NCS tradition. Since the 1980s, I have extended my law and economic analysis of social norms by incorporating insights from cognitive anthropology, evolutionary psychology, evolutionary biology, and bioeconomics. The expanded theory of social norms explicitly incorporates the cognitive foundations of social norms-as-classification, and economic man as the boundedly rational *Homo classificus*. An expanded theory of social norms throws new light on minority middleman success in various parts of the world, and on such pressing social problems as racial discrimination, racial profiling, ethnic conflict, and international terrorism.

The paper is organized as follows. In Part I, I discuss my early 1980s work on social norms and place the work squarely within the NCS tradition. I also discussed the cognitive foundations of social norms-as-classification in my 1981 theory of the EHMG, in which I incorporated key concepts in sociology and anthropology. In Part II, I discuss how I explicitly incorporated anthropologist Mary Douglas' cognitive approach to institutions in my expanded theory of social norms-as-classification. My social norms-as-classification approach links up with evolutionary psychology's view that people resort to classification as a fast-and-frugal heuristic under conditions of limited information. In Part III, I discuss the origins and functions of social norms when viewed from a evolutionary biology and bioeconomics perspective. In Part IV, I discuss my law and bioeconomics of Homogeneous Middleman Groups ("HMGs") functioning as "adaptive units" viewed from a multilevel evolutionary perspective. By providing evidence of HMGs functioning as adaptive units that outcompete other ethnic groups, I provided a very rare and important empirical example of a real world phenomenon that supports the controversial "group selection

6. See McAdams, *supra* note 1, at 343–50. The analysis of norms is not confined within law and economics. Economists such as Alexander Field have also analyzed norms from a microeconomics perspective. See Alexander J. Field, *Microeconomics, Norms, and Rationality*, 32 *ECON. DEV. & CULTURAL CHANGE* 683 (1984).

7. POSNER, *LAW AND SOCIAL NORMS*, *supra* note 1; Posner, *Signs, Symbols, and Social Norms*, *supra* note 1.

theory” in the field of evolutionary biology. I conclude, in Part V, with a brief discussion of the implications of an expanded theory of social norms-as-classification and the bounded rationality of *Homo classificus*.

I. THE EARLY 1980S LAW AND ECONOMICS OF SOCIAL NORMS LITERATURE

A. Theory of the Ethnically Homogeneous Middleman Group as a Club-like Institution for Contract Enforcement

Neoclassical economics of exchange—the Edgeworth and Walrasian exchange paradigm—assumes atomistic individuals engaging in costless exchange on an impersonal basis. In such a zero transaction costs world of exchange, institutions of actual capitalist market economies such as money, merchants, and contract law play no role. Ronald Coase, the founder of law and economics, characterized such zero transaction cost theoretical models as “Blackboard economics.”⁸ Over twenty-five years ago, based on my fieldwork on the Hokkien-Chinese merchants in Southeast Asia, I found that: (1) the marketing of smallholders’ rubber was dominated by a close-knit EHMGM, with five clans (Tan, Lee, Lim, Ng, and Gan) from Chuan-chow and Yung-chun counties in Fukkien province; and (2) Hokkien-Chinese traders self-consciously chose their trading partners on a kinship/ethnic or other particularistic basis because of the importance of identity under conditions of contract uncertainty, in which choice of trustworthy trading partners became very important.⁹ The empirical phenomenon of the EHMGM, with its network of personalized exchange, contradicts Neoclassical theory of impersonal exchange. Thus, I developed my theory of the EHMGM/ethnic trading networks in which “identity matters,” and “identity matters” became the central concept underlying my early 1980s publica-

8. In his Nobel Memorial Prize Lecture, Coase talks about the nature of “blackboard economics”: The concentration on the determination of prices has led to a narrowing of focus which has had as a result the neglect of other aspects of the economic system. . . . This neglect of other aspects of the system has been made easier by another feature of modern economic theory—the growing abstraction of the analysis, which does not seem to call for a detailed knowledge of the actual economic system or, at any rate, has managed to proceed without it. . . . What is studied is a system which lives in the minds of economists but not on earth. I have called the result “blackboard economics.”

R.H. COASE, THE INSTITUTIONAL STRUCTURE OF PRODUCTION: THE 1991 ALFRED NOBEL MEMORIAL PRIZE LECTURE IN ECONOMIC SCIENCES 2–4 (1991).

9. Janet T. Landa, *The Economics of the Ethnically Homogeneous Chinese Middleman Group: A Property Rights-Public Choice Approach* ch. 3 (1978) (unpublished Ph.D. dissertation, Virginia Polytechnic Institute and State University) (on file with Virginia Polytechnic Institute and State University; also on file with the University Microfilms International, Dissertation Copies, Ann Arbor, Michigan, Vol. XXXIX, No. 9, 1978).

tions,¹⁰ leading to the emergence of a new area of economics called the "Economics of Identity."¹¹

In these papers, I explained Chinese middleman success by developing a theory of the Chinese EHMG/ethnic trading network as a club-like arrangement in which Hokkien-Chinese traders cooperated with each other by providing themselves with club goods such as contract enforcement, capital/credit, and information in response to an environment lacking basic infrastructure (legal infrastructure, banking, and credit-rating institutions). Group enforcement of Confucian ethics of reciprocity (mutual aid) facilitated cooperation, enabling the members of the EHMG to outcompete other ethnic groups and appropriate the role of middleman-entrepreneur.¹²

Of the various club goods provided by members of the EHMG, the most important was contract enforcement via community enforcement of informal social norms (Confucian norms of reciprocity). I argued that under conditions of contract uncertainty, where the legal infrastructure for contract enforcement is not well-developed, a rational Chinese merchant will not randomly enter into transactions with anonymous traders. Instead, he will choose to trade with trading partners whom he can trust, thus personalizing exchange relations on the basis of kinship or ethnic ties. This is because embedded in these personalistic or particularistic exchange relations are shared social norms of behavior (Confucian ethics of reciprocity), which function to constrain traders from breach of contract; any trader who violates the ethics of the group will be punished and possibly ostracized from the group. Because the Chinese marketing network consists of a chain of interconnected middlemen links, the aggregate effect of traders' discriminatory choice of trading partners is the emergence of a self-organizing complex network of personalized exchanges, or an EHMG. The EHMG is a club-like arrangement that serves as an alternative to contract law and the vertically integrated firm for achieving cooperation and coordination of interdependent traders, hence economizing on contract enforcement costs in an environment characterized by contract uncertainty. The Confucian code of ethics thus serves as an extralegal institutional arrangement for the enforcement of contracts.¹³

10. See Landa, *supra* note 4; Carr & Landa, *supra* note 4; Cooter & Landa, *supra* note 4.

11. See JANET T. LANDA, TRUST, ETHNICITY, AND IDENTITY: BEYOND THE NEW INSTITUTIONAL ECONOMICS OF ETHNIC TRADING NETWORKS, CONTRACT LAW, AND GIFT-EXCHANGE (1994). Recently, George Akerlof & Rachel Kranton contributed a paper in this new field. See George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q.J. ECON. 715 (2000).

12. Janet T. Landa, *The Law and Bioeconomics of Ethnic Cooperation and Conflict in Plural Societies of Southeast Asia: A Theory of Chinese Merchant Success*, 1 J. BIOECONOMICS 269 (1999); Landa, *supra* note 9.

13. See Landa, *supra* note 4; Landa, *supra* note 9, ch. 5.

A theory very similar to my theory of the EHMG as an informal institutional arrangement for the enforcement of contracts has been developed by Avner Greif regarding the homogenous group of Maghribi-Jewish trading group in medieval Europe. Greif's theory, however, takes into account only reputational effects and punishments that constrained traders from breach and does not consider the role of social norms as constraints on breach, which is central to my theory of the EHMG.¹⁴ Greif's theory also does not include a theory of the emergence or formation of the Maghribi trading group.

B. Signaling Theory of Social Norms: Customs, Rituals, and Other Symbols of Individual and Group Identity

Jack Carr & I extended my theory of the EHMG to other homogeneous middleman groups ("HMGs"), including religious trading groups such as Jewish merchants in medieval Europe. We developed a formal club-theoretic model depicting the optimal size of homogenous trading clubs by analyzing the economic benefits (lowered breach costs) and costs (enforcement and information costs) of belonging to a homogenous trading club. We argued that the economic benefits outweighed the costs for a club member. We also explained how many seemingly strange rituals and customs of trading groups such as Jewish dietary laws, Jews lending to fellow Jews at zero interest, Chinese keeping of genealogical records, distinctive dress style, etc., were rational trading practices. First, we used signaling theory to argue that these rituals, customs, and other symbols of religious or group identity—such as clan names, dietary rules, language, dress, and religion—play an important signaling function in transmitting nonprice information about the identity of potential partners, thus economizing on information costs of identifying trustworthy or cooperative potential partners. Second, we argued that these symbols and rituals of group identity screen out outsiders by erecting barriers to entry for those outsiders who may wish to "free ride" on the benefits of club membership. We analyzed these two functions of customs, rituals, and other symbols of group identity by examining, as an example, Jewish dietary laws. Jews have a stringent set of dietary laws known as the *kashruth*. Why do members of these religious organizations restrict their eating behavior when there seem to be no apparent benefits from doing so?¹⁵ We argued that there are benefits:

14. See Avner Greif, *Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition*, 83 AM. ECON. REV. 525 (1993); Avner Greif, *Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders*, 49 J. ECON. HIST. 857 (1989).

15. Carr & Landa, *supra* note 4, at 153–54.

Dietary laws give religious members a feeling of shared values. These shared values give members of the religious organizations a sense of a common identity and distinguish them from nonmembers. It is exactly this difference between members and nonmembers that is needed to facilitate economic exchange under conditions of contract uncertainty. . . . Dietary laws also help identify club members, an especially important function if club members are geographically dispersed. Dietary laws discourage conversion by increasing the costs of joining the organization and thus serve as a barrier against those seeking to become members in order to receive the economic benefits.¹⁶

Shared symbols of identity lower the costs of identifying an individual, thus promoting in-group cooperation and social solidarity, as well as erecting barriers to entry for outsiders.

Of the various methods outsiders can employ to “free ride”/pass or mimic insiders—changing dress, changing surname, learning a new language, converting to a new religion, or changing ethnic identity—ethnic identity imposes the highest barrier to entry for an outsider belonging to a different ethnic group.¹⁷ Ethnic identity is like a peacock’s elaborate tail: it is very costly for an outsider from a different ethnic group to fake/pass as an insider.¹⁸ In this context, ethnicity serves as a costly signal for an outsider who wishes to pass as an insider. In addition, cultural transmission of Confucian social norms—via learning from parents, teachers, and peers—to the next generation of merchants, explains why the ethnic boundary of the Chinese middleman group persists over time.¹⁹

Outside the law and economics literature, Lawrence Iannaccone published a paper on religious groups which is very similar to the Carr-Landa 1983 paper. He explains that rational church members may benefit from bizarre behavioral restrictions, such as dietary restrictions or painful initiations, because such restrictions can overcome free rider problems associated with collective action.²⁰

Robert Cooter & I further extended my theory of the EHMG by developing a formal mathematical model depicting the relationship between the size of trading groups and the development of the law of contracts.²¹ We think of a trading group as an informal club-like arrangement for re-

16. *Id.* at 154.

17. Janet T. Landa, *Culture and Entrepreneurship in Less-Developed Countries: Ethnic Trading Networks as Economic Organizations*, in *THE CULTURE OF ENTREPRENEURSHIP* 53 (Brigitte Berger ed., 1991).

18. Janet T. Landa, *Bioeconomics of Some Nonhuman and Human Societies: New Institutional Economics Approach*, 1 *J. BIOECONOMICS* 95, 108 (1999).

19. See Landa, *supra* note 17, at 69–70.

20. Laurence R. Iannaccone, *Sacrifice and Stigma: Reducing Free-riding in Cults, Communes, and Other Collectives*, 100 *J. POL. ECON.* 272 (1992).

21. Cooter & Landa, *supra* note 4, at 16–21.

ducing breach of contract between members. If the group expands, then members gain the advantage of a more extensive internal market. On the other hand, as the group expands, personal relations become attenuated. For a given level of expenditure by the group on enforcement, the probability of breach will increase as the group becomes larger. We proved that membership in clubs will decline if contracts with outsiders become more secure. Taken together, the above three papers by myself and my coauthors in the early 1980s clearly fall within the NCS tradition.

C. *The Kula Ring Gift Exchange in Stateless Societies:
Primitive Contract Law*

The Kula Ring is a classic example in the anthropological literature of ceremonial gift-exchanges that exist in non-Western “stateless” tribal societies.²² It is a gift-exchange system carried on by different East Papuo-Melanesian tribal communities located in a ring of islands, hence the ring structure of the Kula. Twice each year, “Big-Men” of the various tribes lead large canoe expeditions to visit their Kula partners. Strict rules govern Kula exchange. The gifts exchanged must be two different kinds of valuables of equivalent value and travel in opposite directions in the Kula. A necklace must be given to a Kula partner located in a clockwise direction from the giver. At a future date, the recipient of a necklace must reciprocate with a counter-gift of an armshell to his Kula partner located in the counter-clockwise direction. Thus, the Kula is a delayed, reciprocal gift-exchange system: while the gift is given *voluntarily* by the original giver, the recipient who accepts the gift is *obligated to reciprocate* with a counter-gift at a future date. In order to become a member of the Kula Ring, a person must inherit a Kula object or magic from his father or mother’s brother.

Anthropologist Marcel Mauss and political scientist Singh Uberoi have interpreted the Kula gift-exchange as an institutional arrangement in which tribal leaders in stateless societies create political alliances among the different tribes so that Kula partners can come to one another’s islands to engage in peaceful commercial barter trade.²³ I have interpreted the ring structure of Kula exchange as an efficient way these tribal communities can enforce the rules of the Kula game.²⁴ I argued that the mechanism for con-

22. BRONISLAW MALINOWSKI, *ARGONAUTS OF THE WESTERN PACIFIC: AN ACCOUNT OF NATIVE ENTERPRISE AND ADVENTURE IN THE ARCHIPELAGOS OF MELANESIAN NEW GUINEA* (1922).

23. See MARCEL MAUSS, *THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES* 25 (Ian Cunnison trans., 1954); J.P. SINGH UBEROI, *POLITICS OF THE KULA RING: AN ANALYSIS OF THE FINDINGS OF BRONISLAW MALINOWSKI* (1971).

24. See Landa, *supra* note 5.

tract enforcement is built into the ring structure of Kula exchange: if any Kula partner holds on to the valuables for too long, then all other partners can identify the offending party because every Kula partner is directly and indirectly connected together in a circular trade network. Kula partners can impose social sanctions on the deviant Kula partner by forming a grand coalition to bypass the offending party, thus excluding him from barter trade. Kula gift-exchange is a classic example of a private ordering or extralegal arrangement for enforcing primitive contractual obligations across tribal boundaries in stateless societies.

Like names or dietary rituals, which transmit low cost information to potential trading partners belonging to the same ethnic group, gifts also perform a signaling function. In the Kula Ring, two different ceremonial gifts circulate in opposite directions perpetually around the ring of traders. It is by the use of two different kinds of gifts that the parties signal to each other their mutual intentions of entering into friendly political alliances; receiving gifts alone is not enough. In addition, I interpret customary practices associated with the Kula trade such as the use of totemic clan names, magical rites, and mortuary rituals as ways in which Kula traders economize on the costs of identifying members of the Kula Ring club, and at the same time erect barriers to entry against outsiders.

II. COGNITIVE FOUNDATIONS OF INSTITUTIONS

A. *Mary Douglas' Cognitive Theory of Institutions*

Rules of the game or institutions are important concepts in the new institutional economics, which includes law and economics.²⁵ Institutions, according to Douglass North, are the rules of the game in a society: "Institutions include any form of constraint that human beings devise to shape human interaction. . . . Institutional constraints include both what individuals are prohibited from doing and, sometimes, under what conditions some individuals are permitted to undertake certain activities."²⁶ North's definition of institutions includes both formal and informal institutions. Contract law is an example of a formal institution; conventions, customs, codes of conduct, ethics, and religion are examples of informal institutions.

Anthropologist Mary Douglas takes a very different view of the role of institutions. She criticizes the rational choice approach to institutions for

25. See LANDA, *supra* note 11, ch. 1.

26. DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 3-4 (1990).

relying heavily on individualist foundations (“methodological individualism”), and she argues that as a result rational choice theorists have great difficulty with the idea of group solidarity.²⁷ She supplements the weakness of the “unsociological” rational choice approach to institutions with a cognitive and classificatory theory of institutions that bridges the concept of the individual and the society. Douglas argues that in order for cooperation to occur, institutions need to be grounded by a cognitive device in order for individuals to be certain about one another’s strategies, thus generating the necessary trust in one another’s behavior.²⁸ For human discourse and cooperation to be possible, individuals have to agree on basic categories of thought, and that is provided by institutions that “define sameness,” “confer identity,” and “do the classifying.”²⁹ For Douglas, classification is a fundamental cognitive process based on institutions that define standard expectations of society. Institutions do the classifying for individuals by providing “labels”: “People have always been labeling each other, with the same consequences—labels stick.”³⁰ “Persons realize their own identities and classify each other through community affiliation.”³¹ Douglas’ cognitive approach to institutions can be linked with anthropologist Fredrik Barth’s important concept of an ethnic boundary:

[T]he ethnic boundary canalizes social life—it entails a frequently quite complex organization of behaviour and social relations. The identification of another person as a fellow member of an ethnic group implies a sharing of criteria for evaluation and judgement. It thus entails the assumption that the two are fundamentally “playing the same game”. . . . On the other hand, a dichotomization of others as strangers, as members of another ethnic group, implies a recognition of limitations of shared understandings, differences in criteria for judgement of value and performance, and a restriction of interaction to sectors of assumed common understanding and mutual interest.³²

B. Confucian Ethics of Reciprocity: Cognitive Map of a Hokkien-Chinese Merchant

From my fieldwork on Hokkien-Chinese merchants, I found that the Hokkien-Chinese merchants make a basic distinction between “us” (Hokkien-Chinese) and “them” (the outsiders: non-Hokkien-Chinese and non-

27. MARY DOUGLAS, *HOW INSTITUTIONS THINK* (1986).

28. *Id.* at 55.

29. *Id.*

30. *Id.* at 100.

31. *Id.* at 102.

32. Fredrik Barth, *Introduction*, in *ETHNIC GROUPS AND BOUNDARIES: THE SOCIAL ORGANIZATION OF CULTURE DIFFERENCE* 15 (Fredrik Barth ed., 1969).

Chinese). In addition, they make further distinctions based on the degree of "social distance"³³ of members within the Chinese ethnic boundary. Hokkien Chinese merchants in Southeast Asia carry a mental map of seven categories of people with varying degrees of social distance and hence varying degrees of trustworthiness as potential trading partners.

What determines the seven categories of people? Confucian ethics of reciprocity provide traders with the framework for classification. Confucian norms prescribe mutual aid obligations and reciprocity for members of the same Chinese dialect/ethnic group and do not extend mutual cooperation and reciprocity to outsiders (see categories six & seven below). Within the Hokkien-Chinese ethnic group, Confucian ethics further prescribe different degrees of mutual cooperation and reciprocity among the different categories of people based on degree of kinship or ethnic distance. Hence the first five categories below represent the "insiders" (trustworthy trading partners), while categories six and seven represent the "outsiders":

1. Near kinsmen from family
2. Distant kinsmen from extended family
3. Clansmen
4. Fellow villagers from China
5. Fellow Hokkien-Chinese
6. Other Chinese (Teochew, Cantonese, Hakka)
7. Other Ethnic Groups (European, Indians, Malays)

Classification of potential trading partners into seven categories based on the degree of social distance allows a Chinese merchant to infer the degree of trustworthiness of potential trading partners from signals or symbols of identity, thus economizing on information costs under conditions where information is scarce and costly to acquire.

Armed with this subjective "calculus of relations," a term coined by anthropologist Myer Fortes,³⁴ it is very easy for a Hokkien-Chinese merchant to identify a potential trading partner—by asking his name or where he comes from, by listening to his dialect, or by looking at his physical appearance—in order to place him in the correct category. Once the potential trader is properly identified and classified, the rational trader will then proceed with his actual choice of his trading partner.³⁵

33. For the concept of "social distance," see Marshall D. Sahlins, *On the Sociology of Primitive Exchange*, in *THE RELEVANCE OF MODELS FOR SOCIAL ANTHROPOLOGY* 139 (Michael Banton ed., 1965).

34. MYER FORTES, *KINSHIP AND THE SOCIAL ORDER: THE LEGACY OF LEWIS HENRY MORGAN* (1969).

35. Landa, *supra* note 4, at 359.

My 1981 theory of the EHMG did not explicitly recognize the cognitive foundations of social norms as classification until I read Douglas' work on institutions. Perhaps my use of sociologist Marshall Sahlins' concept of "social distance" and anthropologist Myer Fortes' concept of the "calculus of relations" can be thought of as equivalent concepts to Douglas' concept of "institutions doing the classification." After reading Douglas' work, I expanded my theory of the EHMG by putting my theory firmly on cognitive-classificatory foundations.³⁶ "*Homo economicus*" became "*Homo classificus*," a term I coined to describe a boundedly rational economic agent who sorts and classifies other people into relationship categories for the purpose of economizing on information costs. My expanded theory of social norms-as-classification establishes links with the "fast-and-frugal heuristics" developed by evolutionary psychologists Gerd Gigerenzer, Peter Todd, and the ABC Research Group.³⁷ Classification is one method that serves as a fast-and-frugal heuristic that economizes on scarce and costly information. Other fast-and-frugal heuristics, including recognition heuristics (such as name recognition, kin recognition, etc.), also economize on scarce and costly information.

By ignoring the concept of institutions-as-classification, with its related concepts of individual and group identity, economists as well as legal scholars have neglected to incorporate the cognitive-classificatory foundations of institutions, thus ignoring how people think of themselves and others in terms of categories of people.

III. THE BIOLOGY AND BIOECONOMICS OF MORAL SYSTEMS: IN-GROUP COOPERATION AND BETWEEN GROUP COMPETITION

So far, we have treated the existence and functions of social norms without asking about the origin of moral systems or social norms. Biologist Richard Alexander has provided a biological theory of the origins of moral systems:³⁸

Moral systems are societies with rules. Rules are agreements or understandings about what is permitted and what is not, about what rewards and punishments are likely for specific acts, about what is right and wrong. Although moral rules are somewhat different from legal rules, or laws, the two are not unrelated and frequently overlap. . . .

36. Janet T. Landa, *Cognitive and Classificatory Foundations of Trust and Informal Institutions: A New and Expanded Theory of Ethnic Trading Networks*, in RISKY TRANSACTIONS: TRUST, KINSHIP, AND ETHNICITY 129, 130 (Frank K. Salter ed., 2002).

37. GERD GIGERENZER, PETER M. TODD & THE ABC RESEARCH GROUP, SIMPLE HEURISTICS THAT MAKE US SMART (1999).

38. RICHARD D. ALEXANDER, THE BIOLOGY OF MORAL SYSTEMS 1 (1987).

I will argue that the concepts of moral and ethical arise because of conflicts of interest, and that—at least up to now—moral systems have been designed to assist group members and *explicitly not to assist the members of other competing groups*.³⁹

He argues that intergroup competition promotes in-group cooperation via the role of moral systems. “Humans alone play competitively group against-group on a large and complex scale.”⁴⁰ Jack Hirshleifer, a founder of bioeconomics, also emphasized the importance of social norms and sanctions in facilitating in-group cooperation as a means of outcompeting other groups:

[O]n all levels of life organisms have found it profitable to come together in patterns of cooperative association. But such cooperation is always secondary and contingent, in at least two respects: (1) in-group cooperation is only a means for more effectively and ruthlessly competing against outsiders, and (2) even within the group there will not be perfect parallelism of interests, hence cooperation must generally be supported by sanctions. . . . *Efficiency*, in this interpretation is meaningful only as a measure of group strength or advantage relative to competing groups in the struggle for life and resources. . . . A totally universalistic measure of efficiency is pointless; we must draw the lines somewhere, at the boundary of “us” and “them.”⁴¹

IV. THE BIOECONOMICS OF HOMOGENEOUS MERCHANT GROUPS AS “ADAPTIVE UNITS”: A MULTILEVEL EVOLUTIONARY PERSPECTIVE

Unlike law and economics scholars who emphasize the role of social norms as constraints, both Alexander and Hirshleifer emphasize the importance of social norms in promoting in-group cooperation so as to outcompete other groups. Are there real world examples of groups who through cooperation among in-group members outcompete other groups? The answer is: yes. I have provided a number of case studies of successful merchant groups operating in various underdeveloped countries that lack basic infrastructure: Chinese merchants in Southeast Asia; Chinese merchants in People’s Republic of China; the Jains-Marawari traders of India; the Hindu-Gujarat-Indian merchants in Central Africa; the Muslim-Indian traders in South Africa; the Lebanese traders in West Africa; and the Jewish merchants in medieval Europe and in present day Jerba, Tunisia, and Antwerp.⁴² Although these merchant groups originate in societies with very

39. *Id.* (my emphasis).

40. *Id.* at 79.

41. Jack Hirshleifer, *Evolutionary Models in Economics and Law: Cooperation Versus Conflict Strategies*, 4 RESEARCH LAW & ECON. 1, 50 (1982).

42. Janet T. Landa, *The Bioeconomics of Homogeneous Merchant Groups as “Adaptive Units”* (2004) (Paper presented at the Public Choice Society annual meeting, San Diego, California, March 22–

different cultures, all of them have adapted to the same environment of underdevelopment of their host countries in the same way. First, they form tightly-knit homogeneous merchant groups (“HMGs”) whose members cooperate among themselves by providing club goods such as contract enforcement, access to capital, credit information, etc. Second, the various HMGs all have social/religious norms that regulate members’ behavior, as well as sanctions for punishing those who violate the norms of the group by noncooperation, including free riding on the benefits of the HMG. My evidence of HMGs functioning as “adaptive units” provides a very rare and very important empirical example of a real world phenomenon that supports the controversial “group selection theory” in the field of evolutionary biology.

As biologist David Sloan Wilson, who has done a great deal to rehabilitate group selection theory,⁴³ said, referring to a previously published paper of mine:⁴⁴

If the Jews in medieval Europe, the Chinese in Southeast Asia, the East Indians in East Africa, etc. are all alike in some respects based on group-level adaptation to similar social environments, this is a very important example of convergent cultural evolution that needs to be showcased to demonstrate the power of the evolutionary perspective—both theory and empirical methods—for understanding religious groups in particular and all human groups in general.⁴⁵

V. BOUNDED RATIONALITY OF *HOMO CLASSIFICUS* AND IMPLICATIONS FOR AN EXPANDED THEORY OF SOCIAL NORMS AS CLASSIFICATION

In a world without transactions costs, institutions would be redundant. Institutions reduce transaction costs by reducing uncertainty. Institutions also economize on information costs by providing individuals with a cognitive map that classifies individuals into a few categories under conditions of limited and costly information. Economic man is a boundedly rational individual who adapts to his environment, which lacks basic infrastructure, by forming EHMGs to provide for club goods. *Homo classificus* also economizes on information by the use of classification and recognition

24, 2002; also presented at the annual meeting of the Society for the Scientific Study of Religion’s Conference on “Religion, Economics, and Culture” held in Kansas City, Missouri, October, 22–24, 2004). See also examples of homogenous trading groups in Janet T. Landa, *Underground Economies: Generic or Sui Generis?*, in *BEYOND THE INFORMAL SECTOR: INCLUDING THE EXCLUDED IN DEVELOPING COUNTRIES* 75, 80–95 (Jerry Jenkins ed., 1988).

43. For a comprehensive discussion about group selection theory, see ELLIOTT SOBER & DAVID SLOAN WILSON, *UNTO OTHERS: THE EVOLUTION AND PSYCHOLOGY OF UNSELFISH BEHAVIOR* (1998).

44. See Landa, *supra* note 12.

45. David Sloan Wilson, *Religious Groups and Homogeneous Merchant Groups as Adaptive Units: A Multilevel Evolutionary Perspective*, 2 *J. Bioeconomics* 271, 272 (2000).

fast-and-frugal heuristics. EHMGS thus are adaptive units that outcompete other ethnic groups in the struggle for scarce economic resources or opportunities. In the ruthless group competition for scarce resources or economic opportunities, successful middleman minority groups often become targets of racial hatred, racial discrimination, racial violence, and interethnic conflict.

My expanded law and bioeconomics theory of social norms-as-classification, embedded in EHMGS, can be generalized to all kinds of situations in which "identity matters," i.e., classification of different kinds of people into categories. It should provide social scientists with greater theoretical insights and policy implications when analyzing social phenomena such as minority middleman success in various parts of the world, changing identities and formation of new identities, racial discrimination, racial profiling, interethnic conflict, and international terrorism.