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Economies of Mind: A Collaborative Reflection

Dinesh Khosla and Patricia Williams

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Pat Williams is also a professor at CUNY Law School, having taught previously at Golden Gate University School of Law. Currently she is teaching in the areas of commercial transactions and administrative agencies, as well as Law and a Market Economy. She graduated from Wellesley College and Harvard Law School. Her fields are Contracts, Consumer Law and Uniform Commercial Code.

In the fall of 1984, we collaboratively taught a course entitled Law and a Market Economy. In terms of the traditional curriculum, the course incorporated elements of Contracts, Property and Jurisprudence. Having something to do, perhaps, with the chemistry of that particular audience of first-year students, our course ended up being something far more than that. We engaged in a comparative analysis of how societal goals are reflected in economic structures and of what sorts of structures might be created to achieve those goals. The course became a synthesis of each of our visions and ideologies, a sharing of our very different cultural myths and political dreams.

As we proceeded through the semester, and as our lectures began to overlap into the sort of pleasing perceptual grid which law professors love to flutter, like butterfly nets — over the minds of their students, we became aware of two distinct voices in those lectures, two voices which came from deep within a single source of consciousness.

One was the voice of market economy. It was a familiar voice, the voice which drives much of our present economy; it was the voice of the impulses of having, using and transferring which characterize most of the materialistic and social opportunities of our world. Contracting, promising and relying give shape to that voice and lend it its power.

The second was that of gift economy, a voice whose resonance comes from the impulses to share and to give. As an economic force, it exists in some parts of the world, but in most of our experiences, it is the voice of a bygone era.

Alone, we found, each of those voices suffers serious limitations; weaving both of them into the framework of human needs resolves those limitations to a great extent. The fugue, the simultaneous voicing of gift and market ideals, took us closer, we believe, toward a model of a humane and non-exploitive society. The process of attempted synthesis recognized the essential polarity of the two voices — gift exchange, representing the impulse toward wholeness, and market exchange, tending to nurture the parts — and yet allowed for the fact that the languages of each are no more than two differing systems of symbols working to describe and resolve the same reality of need. The discourse which follows is an attempt to summarize the themes of our work together as we reflect on the roles of values and ideology in legal education.

* * *

Market: (cantankerously) I don't want to be here. I don't need to be justified. If you'd just leave me alone, I could get about the business of feeding, clothing and enriching people.

Gift: (sotto voce) You do bring food and clothing into the marketplace, but it is *I* who enrich people, with the passage of gifts in a community.

Market: Buying and selling is nothing more than an efficient and sophisticated form of giving and receiving.

Gift: Are you willing to sell without buyers? I, the true gift, have released, in giving, the expectation of immediately reciprocal receipt. I exist as more than a linear relationship between two benefits, two detriments, two points, two people. I am circular. What I give stays inside as well as goes beyond. And when I give something to another which also remains inside myself, I have committed an act of supreme trust, in allowing a part of myself to travel beyond my control. The matter of receiving is made diffuse because I may not get back my gift or its equivalent from that other. My trust is that I will get something back from someone, at some time; and when that gift is indeed returned, when it has passed out of sight, into the unknown and comes back, then the circle of giving is complete.

Market: It is precisely that same trust, which, when applied to the marketplace, enhances the ability of transactors to plan and see their

expectations bear fruit, and which allows them a maximum degree of freedom of choice.

Gift: But the mood of my trust is very different. The ambiance is encompassing. There is no bargain in this trust, there is no offer, no qualified acceptance or condition in this gift. There is a joy of giving. There are rituals associated with giving, rituals that foster a bond between giver and receiver. So it is not giving in the sense that you are used to. I am full of warmth. In giving I receive. I possess nothing, so that I may give.

Market: I gather, so that I may give; I possess, accumulate, profit and reinvest. In this way, I redistribute.

Gift: Your accumulation implies stagnation. In the circularity of gift, the wealth of a community never loses its momentum. It passes from one hand to another; it does not gather in isolated pools. So all have it, even though they do not possess it and even though they do not own it. And because of that circularity of motion, whatever wealth there is becomes abundant, because your food is my food, my clothes are your clothes. Abundance is all around because it is not interpreted from the perspective of strictly numerical accumulation, but instead from the perspective of satisfaction.



Sharing vs. profit

Market: But if we are both poor, your food won't feed either one of us. I allow the self room to provide for itself, through notions of basic survival such as appropriation and exclusivity. I use possession to sustain and increase the self, and thus enhance the citadel of all selves.

Gift: You allow the self to emerge but not merge. The citadel of a self identified through possession puts moats between people, moats literally and figuratively sized according to the metes and bounds of one's estate. And there is limitation in that, and isolation. I sustain and increase the self by passage of the gift, from one to the second to the third. With each passage, the circle increases, and wealth increases in proportion. The increase also stays in motion, not with the person who gave or received. The increase moves with the object.

Market: Your increase is not substantiative; you call satisfaction profit. You create bonds but not bread.

Gift: Let me tell you a story. I was working in an Indian village a few years ago. One afternoon some people in the village approached me and said, "Will you participate in a ritual tomorrow morning?" I asked what the ritual was about; they said that it was about sun worship.

The ritual started before sunset that afternoon and ended at sunrise the next morning. I participated in a most profound manner. Late in the afternoon, I was sitting on the bank of a river that brings water to the thirsty villages of India. I was sitting there with a huge white sheet spread in front of me, and everyone from that village, after they offered prayers to the Sun God, came and dropped small pieces of food on that white cloth. I had food before me which could feed easily 500 people. The food came from the untouchables; the food came from the Brahmins; the food came from the rich and from the poor, from the crippled and from the healthy. The food came from every corner of that village.

So what did I do? I gave back the food — or redistributed it, you might say. And for one day, all disadvantage disappeared. Suddenly there were bonds where none had been before. Untouchables' food was eaten by Brahmins, and the rich fed the poor. There was a community, however shortlived.

That is how I bring bread, through bonding. I enhance the self in relation to others, not alone. It is very important, this "intangible" sustenance. Gift feeds people in three ways: it creates community, it creates good will, and it is itself an expression of good will.

Market: Your circle works well for those within the circle. But might I ask how the untouchables fare by the light of an ordinary day? Does not a self dependent on others risk oppression and stasis? The bonds of community can constrict creativity, and conformity may masquerade as ritual. I bring freedom from all that. I release the individual from bonds-turned-into-shackles and allow the self to choose the standards by which it shall be governed. The benefits of such compartmen-

talized responsibility should not be dismissed as merely alienating. The ability to bargain easily and anonymously enhances a sense of power over the past and minimizes fear about the future; division of labor is facilitated, and creativity is liberated.

Gift: Yes, I have great respect for the power of compartmentalized responsibility. I remember that in the wake of the disastrous chemical spill in Bhopal, India, the president of Union Carbide stated that he would accept "moral responsibility" but would not admit "legal liability." I remember that the death of 2500 people and the injury to some 200,000 more was frequently and summarily attributed to "valve failure," "defective product," and "elements of fault."

It is my concern that your market theories of law have infused every aspect of human sensibility with a protectionist philosophy that is bizzarely incongruent given the rich potential of that sensibility. This incongruent application has inspired a set of structural justifications for levels of irresponsibility whose reach far exceeds the original domain of laissez faire, and which account for the way in which some of society's most abominable acts of disenfranchisement are quietly accomplished.

Market: That's not fair. You could not have done much better than I in the face of so colossal a mishap. You wring your hands and call the loss incalculable, which accomplishes nothing. I am structured to at least try to calculate the loss, on however small a level. It is this accounting which is offensive to you, not the lack of an accounting.

Gift: I am not talking about the accounting of cost-benefit analysis. Such accounting rips community to pieces, sees only monetary value, and accounts only to the will of the willful and possessed. In my accounting, legal structures must accommodate not merely pecuniary values, but also the spiritual, religious, aesthetic, social and moral. The spirit of the gift brings forth the self as part of a whole relationship: it brings forth the individual self, the group self, the emotional self, the religious self.

Market: (allegriissimo con staccato) Spirit?!! Religion?!!

Gift: Calm down. The spirit of which I speak describes the totality of the self, pertains to an ego that is larger than that of an individual participant. To say it very simply, the surplus, the profit, the spirit of gift nourishes those parts of our being that are not entirely personal, but which are derived from nature, ecological balance, social connection, political connection, race, hierarchy for some, non-hierarchy for others, and God, if you believe in God.

Market: I see. But you are talking about a form of social contract whose exchange rate is beyond value, whose interconnectedness makes

everything priceless. And if things are that mythically, unknowably complicated, how can you ever risk anything? Price is nothing more than a quantifier of risk; and if risk is beyond quantification, how could society ever have produced those infinitely varied designer togs in which you wrap yourself, or all the automobiles in which you have ever luxuriated, or the tropical fruit you ingest in December, or the ice cubes which pop out of your refrigerator door in August? I bring exactitude to the chaos of wandering emotionalism; I bring clarity to the undefined; I mark off the essential from the immaterial; I transport goods from point A to point B; I get things done.

Gift: You take things out of the circle. When you take things out of the circle, community dies. The lines of your exchange do not connect people. Wealth loses its motion because you make profit by retaining things. Wealth gathers in a few hands; some have, others don't, and even if there is abundance there is scarcity.

Market: I exist because there is a need for me to exist. I exist because you created the objective conditions which caused me to come into being. I exist to satisfy the need for freedom of action, freedom of choice, and material variety. I exist to provide innovation, excitement and possibility. Yes, I bring a taste of estrangement from the status quo, but I give the opportunity for a universe of new relationships.

I came to be because you created an insatiable urge for division from the whole and for specialization of thought. I came because the self divided itself into past, present, and future, I created a form of contract which recognized those divisions as discrete parts and which could, by such recognition, bind them back together again. I came because the self learned to talk, to promise, to drive language-stakes around the borders of ideas which were then called "property".

I came to help you. I didn't beg to be here; you wanted me.

* * *

Even as we write this, the temptation to assign one or the other of the voices to one or the other of us is great. But it is as impossible to do so now as it was during the course of the semester. We found ourselves confronting, sharing, and crossing over sides of the argument constantly. The voices of both market and gift spoke from within each of us, and each of us spoke in two voices.

But even this small level of synthesis was not easy. We had both underestimated the extent to which the gift voice is dismissed as nostalgic or impossible; and we had forgotten the joy which merely describing a community premised on an economy of sharing can bring. We

were forcefully reacquainted with the degree to which the relentless dissection of our own law school experiences had shut out, from the matrix of compartmentalized consideration, large parts of our selves. We remembered how market economy had been served to us as though it were a whole, the purest of ideological visions; we remembered how the economy of gift was brushed aside as a utopian dream, as an intangibly universalized myth. In the end, the synthesis we achieved was simply in revealing the myth of gift as a forgotten but graceful ideology, and the vision of pure market theory as a secularized dream. In that revelation, we hope, are contained the seeds of a legal vocabulary based on compassionate universalism and greater understanding.

DOONESBURY by Garry Trudeau

