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ECONOMICS, ETHICS, AND THE LIMITS TO EFFICIENCY THEORY

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Abstract: This paper develops a substantial critique of the normative background assumptions that are not only the formulation of fundamental economic theories but are also, in part, those which sociological/ political theories are based on. However, this does not lead up to any “supplement to efficiency considerations” which up till now has dominated economics; it rather supersedes them. It will be demonstrated that the supposed rationality behind the cost-benefit analysis used by economists – in correspondence to neo-classical economic theory – in order to calculate, mathematically for instance, the ideal climate policy is based on wrong normative assumptions. The idea behind terminologies like “ethics” and “theories of justice” that most social scientists have adopted will be corrected in the process of this review. Furthermore, these ideas are neither “vague”, nor do they solely correspond to the will of “majorities”, “governments”, or “cultures”. In the end, preference theories have to be qualified as (less convincing) ethics themselves.

Keywords: fundamental economic theory, sociology and political theory, preference theory

INTRODUCTION AND PROBLEM SPECIFICATION

Science is the methodical and rational search for truth and justice – in the end, for its own sake. In the case that “facts” are to be found objectively, we are talking about “truth” and in the case that “norms” are to be justified objectively, we are contemplating “justice”. For some years, economics have played a more and more prominent role within the debate about both “facts” and “norms” in regard to which should appropriate policy be based on. One of the most important examples¹ is climate policy, especially the economical ideas of Nicholas Stern and IPCC, as they have been very important and helpful for the climate debate during the last years. Even though there is more than one scientific approach to climate economics, all of them -at least if they can be assigned to the neoclassical approach to economics- are subject to more or less substantial and often simply over-looked criticism.

Climate economics deals with the calculation of the most cost-efficient climate policy. This idea also underlies the economical parts of the IPCC-Reports. Looming damages of climate damage, climate policy costs and climate policy benefits (translated into monetary values) are thus generally netted in economics to come to an optimal path of climate protection.² The underlying principle is the idea of efficiency. This traditional welfare economic cost-benefit method, however, has a fundamental problem. “Exact data” in climate economics and in the IPCC may be convenient for many politicians and media representatives, and

especially appear to be so. Seemingly “exact data”, however, disguises concealed facts and assumptions about climate facts and normative goals. If these assumptions are wrong or questionable, the figures are worthless and ultimately a dishonored suggestion of objectivity. Even if “exact data” scientifically - and even more politically and for reasons of media coverage – may appear seemingly attractive, we shall see below that the economic approach is a disguised theory of justice, namely, the dominant theory of the climate debate. Unfortunately, the theory proves untenable in important parts. Along the way this paper, thus, criticizes the restriction of the term “science”, which is commonly reduced among natural scientists and economists to descriptive statements and especially to quantifiable information.

The problematic descriptive assumptions of climate economics have been analyzed elsewhere.³ (Important aspects of this analysis were that economists (a) tend to underestimate the expectable climate damages (with regard, e.g., to wars on natural resources), that they do not really manage (b) to include uncertain, future events and developments “precisely” into cost calculations, and (c) that they do not realize the impossibility of “unlimited economic growth” in a physically limited world. We also showed that climate policy so far was not successful at all, measured against a global (!) minus 80 % climate gas emissions goal by 2050 – at the moment, we have had plus 40 % since 1990!) Nevertheless, the focus of this article is not on the descriptive aspects (which seriously damage economic climate policy analysis), but on the normative assumptions of economics. Why should we care about climate change and its terrible consequences for future generations (and people in developing countries which were not the major pollutants) at all? Why don’t we let consumers decide (by their factual preferences)? This paper aims to criticize this point of view which eventually leads to a review and a critique of the preference based decision theory typically used in economics.

EPISTEMIC AND THEORETICAL BASIS

Thesis: The Core of Sustainability Ethics

This leads to not towards none (natural) scientific or empirical, but rather a normative question, i.e. a question of “ought” or judgment. To what extent ought the (uncertain, but possibly drastic) negative and irreversible consequences, possibly after a consideration of present interests, be prevented or accepted? Because from an empirical nature, observation as such does not logically follow that this observation is normatively welcome or unwelcome; even this basic fact is not sufficiently present in the economic and scientific debate.⁴ This leads us into the field of ethics or theory of justice (the terms are used here interchangeably). In the following, it will be shown that climate economical models are not only based on question-able descriptive assumptions (see above), but also questionable normative and ethical assumptions. However, many economists would argue that their discipline has nothing to do with ethics at all when cost-benefit calculations or the efficiency of certain paths of possible climate policy are examined.⁵ It will be seen below, however, that this is probably incorrect.

To see this, some more general thoughts are necessary. Let’s assume the following thesis: A society is just where everyone can live according to their own ideas, and everyone else can too - where everyone alike (!) has a right to freedom, and conflicts of freedom are resolved through democratic means such as a separation of powers. Human coexistence would be just if human rights or liberties (Freiheitsrechte), the rights to the basic preconditions of freedom, and certain other freedom supporting arrangements (“additional freedom conditions”), respectively, were optimally achieved, including the ever-necessary balancing conflict resolution between the competing spheres of freedom. The considerations in the following sections will briefly try to show that this is the only necessary and possible criterion of justice, if only one interprets it right. Suffice it say

that with a proper (re-)interpretation of democratic legal systems with respect to all of the following statements there is convergence of a genuinely ethical and (in free democracies) legal perspective, since human rights are the subject of international treaties and national constitutions.⁶ The right to freedom is often referred to as human rights themselves, which could be split up as general freedom of action, freedom of assembly, freedom of occupation, freedom to own property, religious freedom, freedom of speech, etc.⁷ Legal and ethical traditions, however, often only parenthetically consider the protection of fundamental preconditions of freedom such as life, health, and subsistence (e.g. a basic access to energy, a sufficiently stable global climate) as well as the freedom of future generations and people in other parts of the world.

However, there is a strong argument that the protection of fundamental preconditions of freedom is already logically inherent in the concept of freedom itself: For without those basic preconditions there can never be freedom. An argument for the expansion of freedom in an intergenerational and global dimension will be given below. More detailed, ethical and legal arguments for this “new” freedom - different from the classical liberal model of the West and in the sense of freedom worldwide and for all generations - were subject elsewhere.⁸ The whole concept may be called sustainability ethics. Sustainability means the idea to strengthen intergenerational and global justice in politics, law, and ethics.

A key Distinction: Anthropology (homo economicus) versus Normative Preference Theory (efficiency) Theory

The important thing is this: all these considerations are part of a theory of justice. In contrast, a theory of action describes the purely factual behavior of humans, unlike a normative (moral or legal) consideration based on the theory of justice, which refers to how people ought to behave and how societies should be arranged. Instead of action theory one can also use the terms anthropology or the idea of man. Unfortunately much confusion is linked to a common misunderstanding that an idea of man erroneous was something normative, a picture of how man should be or how the society should be. This leads to a blurring of anthropology and the theory of justice. That the economists’ common theory of action, which assumes that man is only self-interested, is oversimplifying what has widely been noticed in the last decades, though some economists might still use it. This is a theory of action saying “man is purely factually (almost) only self-interested”, i.e. Thomas Hobbes’ theory of the homo economicus, is the focus of controversy in many discussions with economists. This doctrine, however, which helps economists explaining and forecasting possible factual development will not be analyzed here. Elsewhere it was shown in this regard how companies, voters/ consumers, and politicians are often linked in vicious circles to each other - and how factors such as conformity, emotional perception problems with spatiotemporal long-term consequences of own actions, self-interest, incorrect traditional values, technical-economic path dependency and structures of collective interests have thwarted drastic climate protection efforts.⁹ Even though economic anthropologies do not always reach this necessary differentiation, their reference to the human tendency to self-interested behavior makes a valuable contribution (in fact the concepts of the homo economicus has correctly been modified in the last few decades and today is quite close to the ideas just presented).

Therefore, the real problem of economic theory is not what Marxist economists often target: (a) the empirically reasonably accurate descriptive anthropology of the mainly self-interested man. The problem is neither (b) any theory of happiness of life. With respect to the principle of freedom, such a theory of happiness lacks any general standards, so that there cannot be such a theory at all. Hence, an analysis of the dispute

between some economists, who may see a particular increase in happiness as the result of economic struggle for profit, and their Marxist-inspired critics, who instead deem living a life of solidarity (as is allegedly a true human desire) happiness increasing, is unnecessary on a theoretical level. In that regard, a freedom based democratic ethical and legal framework does not set any defaults, since there is no objective criterion for “happiness”, and freedom allows no binding idea on happiness, too. However, a less “resource focused” ideal of happiness would help many people recognize that their own freedom be restricted for the intergenerational and global freedom’s sake.

However, the problem is rather the (not only climate) economics underlying theory of justice, i.e. the efficiency theory or normative preference theory, as it is called in this context. Thus, the problem is not mainly descriptive anthropology but the normative theory of how human beings and societies should be.

Why the Economic Efficiency Theory (Normative Preference Theory) Is Ethics Itself – Also on the Concepts of Objectivity and Rationality

In order to show that an objective theory of justice is possible and that it must have the content that was briefly mentioned above - and that the efficiency theory and normative preferences theory is a different but incorrect theory of justice – we first have to consider a question following from the given arguments on freedom: Is there a reason to deem the principle of freedom and its consequences (perhaps globally equal per capita emission rights) objectively just? Justice in this sense means the general rightness (Richtigkeit) of any social order. Thus justice is not something “additional”, which can be formulated after demanding prosperity or something similar. Any idea of how a society should be (even a simple “a society should be as rich as possible, and the distribution of wealth does not matter” or just “right is whatever the sum of the empirical preferences is”), is inherently a concept of justice, no matter whether it is right or wrong.

Theories of a successful society – as can be found work in moral philosophy, law, normative politics or moral theology – are per se concerned with justice, like physics or biology or sociology deal per se with a descriptive truth (even if some research might result in untrue findings, and therefore fails to meet the claim). The basic idea of neo-classical (including climate) economists that it was necessary to maximize wealth as expressed in valuable goods, is thus neither trivial nor can even be classified as “empirical”. This basic idea is rather a normative concept - it is an ethics (of efficiency), which appears for the first time in Thomas Hobbes, like the homo economicus. Unlike anthropology it is not meant to explain or predict anything, but rather propose right decisions. It follows:

- “Efficiency versus justice” or “efficiency versus ethics” as an alternative, as some economists¹⁰ and their critics are used to state it, is just wrong. The interesting question – see above – is whether the ethics of efficiency is right or wrong. Consequently, there is no point, if the IPCC in its fifth progress report wants to include an ethics or theory of justice analysis (the terms are synonymous) “in addition” to the efficiency analysis. This is again erroneously assumes, that ethics (or justice) was a kind of diffuse part of the questions of social life, such as issues that seem somehow “very important” or even appear to have a religious connotation.¹¹
- The controversy “ethics versus efficiency” rather concerns the question whether to a greater extent social equality in certain material goods as defined by increased redistribution should be reached. However, this is a more specific question. We come back to this shortly at the end of the paper.

But is there an objective ethics? Are there any objective, universal standards in a post-metaphysical, global, multi-cultural world (regardless of whether they are called “ethical” or “efficient”)? That statements of fact, e.g. as regards anthropology or climate data, although partially uncertain and hard to prove, can be basically true and therefore objectively reason-able, i.e. rational, is seldom contested. Less clear is whether moral and legal norms may be correct and objective/ rational. Many economists, including Stern, implicitly assume that only economic and empirical (natural) sciences can be rational. It will therefore be outlined briefly, that there are indeed rational and objective norms and that freedom is their basic principle.¹² But first we have to define the following terminology¹³:

- “Objective” means “not subjective”, thus not subject to special perspectives, cultural backgrounds or settings - that is universal and valid everywhere.

- Reason, respectively rationality refers to the ability, to decide questions with reason, i.e. objectively. When it comes to the question of the rightness of moral and legal principles of justice – here freedom and the rules for balancing conflicting freedoms that can be derived from it – this is called normative reason. On the other hand, instrumental reason and theoretical reason are related to facts. Instrumental reason is concerned with the question what means can implement any norm which is assumed to be right, e.g. a specific climate target (or a very selfish target as a theft) most effectively – e.g. through an emissions trading. Theoretical reason regards the determination of facts without any concrete related action, such as the scientific climate research. Economist usually only accept the balancing aspect of normative rationality; the subject of this balancing, however, are preferences expressed in monetary values. That this is not convincing we will see in the further course of analysis.

Whether there are objectively valid, i.e. rationally provable, norms and facts, is distinct from the - correct - observation that factually humans are often biased by subjective views when trying to determine facts and norms. This tendency for a subjective point of view is a natural one. But this by no means proves that objectivity - for example through careful examination and discussion with others - is altogether impossible.¹⁴ We can consider the following example: It may be true that there are scientists who express their opinions for or against the presence of human-induced climate change because they expect financial benefits. Their statements were therefore not objective but subjectively distorted. But this does not mean that it is impossible to gain objective and unbiased insight on climate change. Furthermore, the finding that often perspectives are very “subjective” logically requires that there are objective perspectives – otherwise the subjective nature of those subjective perspectives could not reasonably be determined.

With respect to normative questions (unlike questions of fact) economists, sociologists, and political scientists mainly deny the possibility of objective statements altogether. For (not only climate) economists “norm” is usually just what people purely factually prefer. Rational were only quantifying (!) considerations, which transformed the not rationally verifiable preferences into a single “currency” (money) and thus made them comparable. If an economist asks for the right climate policy, he usually does not ask: What climate policy framework does freedom (including the freedom of those spatially and temporally far away as well as balancing rules derived from freedom) set under which then various political decisions are possible? Economists would usually rather ask: How much would people living today be willing to pay for a stable global climate and what would be the advantages and disadvantages of climate change on the one hand and climate policy on the other hand, expressed in market prices? Such a preference theory might get to the conclusion: Valid is what all can agree on. Or: Valid is the mathematical sum of preferences respectively

expressed in money. Political scientists often tend to say: Valid are simply the actual preferences of the respective major-ity.¹⁵ It is important to note that in any case even though these perspectives are founded on a theory of self-interested behavior or anthropology (*homo economicus*), as was mentioned above, they can still strictly separately be considered. To put it bluntly, one can use the following simple formula: "People are in fact purely self-interested" (= anthropology) - "and this is a good thing, and listening to the purely factual preferences of the people is the best order of society" (= theory of justice, specifically the normative preference theory).

PREFERENCE THEORY VERSUS DISCOURSE ETHICS

Why the Normative Preference Theory Is Not Convincing

The normative preference theory is the theoretical basis of how much climate change the respective economists deem objectively right, respectively efficient.¹⁶ Any other approach, especially a normative argument without "figures", as will be developed in the course of this analysis, is usually declared unscientific and irrational. There are, however, strong objections against the preference theory not only but also with respect to climate protection:

- Quite familiar in neo-classical is the objection is that the standard methods to identify the actual preferences as numeral values simply do not work. The relevant issues and the necessary balancing of interests just cannot adequately be represented through prices. And it is impossible to detect actual preferences from real economic transactions on the basis of some kind of "disclosed morality of markets" (not even if *de facto* preferences as such were normatively relevant!). And even if this somehow were possible, must future damages not be discounted. This whole aspect of "simply not functioning" is subject of a separate section. Instead, it shall be shown here – and this might come as a surprise to economists – that regardless of those "application problems" the preference theory as such is unconvincing:
- According to the preference theory, our purely factual will is *per se* right (one could only ask whether the average utility, the sum of utilities or a genuine consensus shall be accounted for). Any normative test of "how the world actually is" is no longer *pre-sent*. The theory of justice or ethics as independent discipline would be pointless and abolished *per se*.
- But we are not only facing a practical, but also a logical problem. For this is a naturalistic fallacy: Why should our purely factual preferences ("is") be considered to be correct *per se* ("ought")?
- Furthermore, the question arises: Should the factual ignorance as to the needs of future generations who cannot express any preference today *per se* be correct?
- If one pleads for majority rather than average preferences, there is the further question: whose preferences are meant? Can 50.1 % of a society take any decision, or 73.4 %, or 84.5 %? And why should the majority *per se* always be right without any limits (as envisaged by a liberal democracy in the form of guarantees of freedom)?
- But particularly, the preference theory of justice entails a logical self-contradiction. For whoever says that there are no general normative propositions, and therefore general preferences should be determinative, makes a general statement about norms. The statement "everything is relative with respect to norms" refutes itself. The possibility of objective morality just cannot logically be contested. Its denial contradicts itself.
- It should be noted that all these arguments also apply with respect to some kind of ethics that is not

based explicitly on preferences, but goes something like: “Just is that society that represents the current de facto *national traditions*.”

All this does of course not mean that, for example, self-interested preferences - or de facto national traditions - do not play a major role for the factual enforcement, i.e. the governance of climate protection. It was only pointed out that a normative (moral or legal) justification of climate protection – or a normative limitation or refutation – cannot be based on those preferences. But the principle of freedom, including its rules of balancing might be suited for this purpose. This principle can take future generations into account, is not subject to any of the problems of the type just described, while retaining the basic intention - everyone should be able to determine themselves – and derives it compellingly.

The Case for A Theory of Justice Based on Discourse Rationality As A Better Alternative to the Preference Theory

However, this is correct only under a major condition: namely, if the principle of freedom, including all principles derivable from it, founds the universal standard for justice. But why should this be right? And why should such a statement possibly be “objective”? We can briefly consider the following: In a pluralistic world we necessarily argue on normative issues. Even fundamentalists and autocrats do so inevitably, at least occasionally. And they avail themselves of the human language. But who argues with reasons (i.e. rational, i.e. with words like “because, since, therefore”), who uses phrases like “X is valid because of Y” with respect to normative questions logically assumes (a) the possibility of objectivity in morality, and (b) the existence of freedom - whether he wants it de facto or not¹⁷:

1) We imply logically that normative questions can be decided using reasoning at all and ergo objectively and not only subjectively, preference based, otherwise we contradict ourselves. We assume this (a) even every day when we pose normative theses and justify them, that is, attach them with the claim of objective acceptability (rather than to present them only as subjective). And it would be almost impossible never to use words such as “because, since, therefore” with respect to normative questions. Thus there is no escape from the fundamental possibility (!) of objectivity in normative issues. We even logically imply the possibility of objective statements (b) if we say: “I am a skeptic, and say there are objectively only subjective statements about morality.” This statement can only be valid if there is objectivity. Thus, the criticism raised towards objectivity voids itself.

2) We also logically imply that potential discourse partners deserve equal impartial respect. Reasons are egalitarian and the opposite of violence and degradation, and they are addressed to individuals with intellectual autonomy. Without autonomy, one cannot assess reasons. No one could say: “My theory X and its reasons could easily be refuted by Mr. P, but you, Mr. Q, as a fool, should believe in it.” And no one could say: “After we had P silenced we finally were able to convince us that Y is a good reason for X.” Therefore, it contradicts the very meaning of “reasons”, to understand the act of reasoning as relative to the person of the addressee – a reason is convincing and can be tested by anyone. Someone who gives reasons in a conversation about justice (i.e. uses sentences with “because, since, therefore” etc.), but then disputes the other’s respectability ergo contradicts what he assumes logically.

This means, logically, whoever engages in the dispute of justice based on reason must respect the partner as equal - regardless of whether he is aware of the implications of his reasoning or whether he intends to reason only to persuade the other one, for it is all about strictly logical implications of our speech (but not about our

purely factual self-image which per se does not imply anything). The respect for autonomy as self-determination as required by reason must apply to the individual and therefore mean respect for individual autonomy: collectives as such are in fact no possible discourse partners. This is rather the individual human being arguing.¹⁸

This is the justification for the principle of respect for the autonomy of individuals (human dignity¹⁹). In addition, but hardly distinguishable this also founds the principle that justice means independence from subjective perspectives (impartiality/ Unparteilichkeit). From this in turn follows the right to freedom for all people²⁰ – and only the principle of freedom. Due to the lack of compelling reasons, other principles cannot interfere with the principle of freedom. Therefore, the same freedom based self-determination, along with its supporting pre-conditions, is the sole criterion of justice. Being man in general, after all, requires necessarily (only) the right to self-determination for all. And this right to freedom applies to all people, even if I never talk to them. For reasons in issues of justice (unlike statements made in private or aesthetic issues) are addressed to anyone who could potentially disprove them – therefore, I have to recognize all people as to be respected, as soon as I occasionally use reasons, and that everyone does. This in turn is made clear by the following control example. No one could seriously say: “The absent Mr. P could immediately refute my theses - but because of your stupidity you should believe them.” This, of course, is no valid reasoning.

The principle of freedom is thus universally founded. And because potential discourse partners are included, as we have just seen, I must also concede freedom to people living spatially and timely far away. This is (a) one of the key arguments for the extension of the principle of freedom to future generations, thus for global justice and intergenerational justice and hence for sustainability - in addition (b) to the idea that freedom as such implies protection exactly there, where freedom is threatened. A “Kantian discourse ethics” concept of reason and autonomy, as outlined here, in this case opts different from a “economic-Hobbesian” concept. However, both concepts are concerned with freedom. But for the discourse ethics, not just in the sense of consumer sovereignty and factual consumer preferences.²¹

The Balancing Processes – Efficiency Through Quantifications And Discounting?

Solving the generational and global conflict between many competing freedoms, i.e. determining the right amount of climate policy, is not an easy task. Both, the normative weighing or balancing itself and the relevant facts, which are necessary to find out in how far a certain normative concern is actually affected, are characterized by uncertainty. As regards the climate facts, we already encountered this problem supra. It is also possible to ethically and similarly legally derive rules of balancing (Abwägungsregeln) from the principle of freedom and infer institutions of balancing (as has been done elsewhere in more detail²²). A rule of balancing is, for example, that the factual basis of a decision has to be determined as carefully as possible.²³

Another rule is that only freedom and the (broadly understood) freedom conditions are possible concerns that are relevant for balancing. Another one is that freedom and its fundamental and “further” conditions may only be interfered with as far as it is necessary to strengthen other freedoms and freedom conditions. Yet another rule – again, already inherent in the very concept of freedom itself – promulgates that if someone shall be obliged ex ante to prevent or ex post to remedy impairment of a freedom, this should wherever possible be the causer of the impairment. Still another rule was derived elsewhere, namely the precautionary principle: even under uncertain circumstances, the interference with freedom or its conditions need be recognized, but possibly with less weight. Many other rules can be derived. In all this there generally is no “one correct” result

of balancing. This is true for climate policy as well. Consequently, there is certain leeway with respect to a just climate policy - but not arbitrarily large. And the bodies which have to use this leeway within the framework of the balancing rules are not arbitrary, too: Rather, an institutional rule can be derived from freedom saying that a decision maker which can be elected and deselected has to make the decision. Where necessary, further concretization must be made by authorities and courts obeying to the principle of the separation of powers; furthermore, there must be constitutional courts to verify compliance with the balancing rules.²⁴

Economists, however, quantify all interests concerned and calculate what the “right” level of climate protection is. Everything that has a value for people, i.e. that a respective factual preference exists, is translated into monetary terms, including life and health – or it is disregarded.²⁵ Specific rules of balancing are unnecessary within the framework of such an approach. The facts of benefits and harm merge with the preferences. This sounds attractive insofar as no leeway is required – theoretically “exactly one” policy recommendation can be made and the results are “exact figures.” This, however, is problematic in several ways. First, the underlying normative preference theory in itself is not convincing. Second, already benefits and damages, which have a market price, lack sufficiently precise facts if, as with climate change, the entire world economy is involved with unmanageable numbers of individual actions, and also periods of more than 100 years. Third, there are, as already indicated and now further demonstrated, more insurmountable problems of application of the preference theory²⁶.

The calculation of climate change costs (and, in comparison, climate policy costs) disguises the fact that essential concerns cannot be quantified in monetary terms²⁷, e.g. (massive) damage to life and health. For the absence of damage to life and health from climate change has just no market price, neither has peace in the sense of “absence of conflicts over resources.” Thus both cannot reasonably be quantitatively be used to offset the economic effects of climate change and climate policy. Neither can an artificial market price be determined for concerns without an actual market price, as economists are doing by the “hypothetical willingness to pay” for life and health, i.e. the absence of hurricanes, wars, etc. This is already true since those willingness is fictitious and therefore not very informative (that not taking a preferences based on a “morality of markets” does not help is discussed immediately after when analyzing the discounting method). Moreover, the willingness to pay is of course limited by the ability to pay and would lead to the remarkable result that, e.g., Bill Gates’ interests are worth much more than a Bangladeshi’s, because Bill Gates can pay a lot and the Bangladeshi can pay nothing. This is also noticed by Stern, contrary to the economic mainstream, and yet he suddenly uses monetary values for “non-market effects”.²⁸ If he accounts the same amount for every human, this is in fact true (see below), but in the context of the preference theory without justification and therefore inconsistent.

Another problem of climate economics is discounting²⁹. Future damages are said to weigh less than today’s. This is understandable, at least superficially, if the victim today and in ten years is the same person. But why should a Bangladeshi’s damage in 50 years (1) per se be less important than my damage today? One could say: future people cannot express any preferences today, so they are uninteresting. This idea is, as has been indicated, inherent in the preference theory. But then, consequently, one would not have to discount, but to completely disregard someone’s damage, who is not yet alive. And compared to those living today the discounting is inconsistent with regard to the passage of time. Given the preference theory, why should an economist is allowed to dictate whether I have a present preference and should not care for the future? The expectation of perpetual growth (2) also cannot justify discounting, whether with respect to those already

living today or to future generations. The limits of growth shall be recalled. Also (3) the empirical observation of real market prices (“morality of markets”), which according to many economists expresses the preference for the pre-sent over the future, does not justify discounting. For (a) there are no observable market or interest rate developments that would say anything about what factual preferences exist in terms of damages over several centuries – and with irreversible character. Moreover, (b) drawing conclusions from market prices, only considers the preferences of today’s people.

Those preference determination based on a “morality of markets” is criticized by Stern (stating this as a criticism against most other economists)³⁰, but not the growth-oriented discounting. Stern certainly offers an argument for discounting which is at least worth considering: (4) the uncertain probability of future losses. However, whether this can be mathematically expressed is doubtful. At least where no mathematical probability can be determined, a supposedly clear discount rate is ultimately arbitrary, and therefore is not superior to general balancing rules as where introduced above. And even if all this could be disregarded, discounting would only be possible if the respective damage could actually be expressed in monetary terms despite the above criticism. And this is often not the case.

All this shows once again the fundamental problem of (not only but especially climate) economic approaches: behind seemingly clear mathematical results, assumptions are concealed which are far from universally compelling, but are rather contestable in important respects. This criticism is not limited to normative assumptions (e.g. to discounting and the preference theory) but is also directed at factual assumptions: e.g. on the extent of looming climate damage or the growth idea. Hence, it is impossible to calculate the correct amount of climate protection and the associated distributional issues required by morality and legal principles. It is rather necessary to make climate policy decisions within the limits set by the described rules of balancing - worldwide and nationally. As repeatedly indicated such a decision must mean more climate protection than previously.

Briefly stated³¹: (1) the existing climate policy is very often too optimistic and probably already disregards the balancing rule that its decisions must be based on a correct factual basis: In particular, the recent actions are probably erroneously deemed suitable to avoid the looming of drastic damage caused by climate change. (2) Furthermore, politics so far has not taken into account in its decision-making that the basic right of freedom also has an intergenerational and a global cross-border dimension and therefore the legal positions of future generations and the proverbial Bangladeshis have to be considered in parliamentary/ legal decisions.³² (3) The human right to a subsistence minimum as elementary precondition for freedom (which is a right of those living here and now, but also inter-generationally and globally) can be overcome in balancing only in limited areas because freedom is pointless without this physical basis.

But this right also includes a basal energy access and at least somewhat stable global climate. This in turn requires drastic climate policies. This, too, has currently not been taken into account by decision-makers. Similarly, it has not been considered that the scarce remaining emissions budget would probably have to be distributed equally in the face (a) of its scarcity, and (b) of the imperative nature of at least low emissions for human survival.³³ An egalitarian distribution is also proposed by Stern, but with the mistaken reason (relying on the uncertainty of the burden of proof) that there was ultimately no reason to argue against an equal distribution.³⁴ By the way, it should be mentioned once again that all this is meant as a both ethical and legal statement.

To verify the factual basis of a political decision, economic research is undoubtedly extremely valuable - and it also helpful for balancing to the extent that goods with a market price are concerned and unvarnished figures are generated which also account for, e.g., the costs of possible climate wars (this is not included in the Stern Report³⁵). If a calculation is done, one should at least try to include all the real monetary costs to the extent they are recognizable. In this way, economists can provide crucial factual material for balancing – within the frame-work of the overall balancing theory. It shows for instance that the actual monetary damage to the climate such as crop failures or other weather damage would be more expensive than an effective climate policy. These are key benefits of the IPCC reports and the Stern Report. Equally important are statements on the probabilities of events. In our view, however, economists and natural scientists can often only provide those probabilities with a lower degree of precision than one would expect.

The natural conditions of climate change and the global economy are simply too complex. A perhaps more modest, not normative, also less quantifiable and less focused on natural science – a climate economics which is merged with the other climate social sciences within the framework of a balancing theory could be a feasible consequence. Provided, however, that climate social science is concerned with these themes: limits of growth, a normatively and logically rigorous theory of justice, a theory of balancing, anthropology, also a governance and control theory which is based on more than purely economic perspectives. In governance, too, climate economics is and remains very important, but again not exclusive. It is therefore a welcome development that Stern admits the omissions of the economic approach – if only generally and without addressing the basic problems of growth and preference theory.³⁶

On the other hand, the efficiency theory must be defended against John Rawls' accusation stated under the (once again) misleading heading "efficiency versus justice." Rawls criticizes that the efficiency theory - in other words, the utilitarian and Hobbesian ethics – does not recognize absolute rights, i.e. rights that cannot be offset by other rights, not to be confused with universal rights meaning "everywhere applicable"!.³⁷ Even though this is true for the efficiency theory, just as it is for the balancing approach advocated in this study, given the many possible collisions of freedoms, which are at the heart of (climate) policy, there is little need to do so. Absolute guarantees of freedom are only rarely justifiable, mainly when balancing would undermine the liberal character of the system as a whole (for example torture in order to convict criminals).

CONCLUSION

Now, some key points on economics, efficiency, and ethics can be summed up as follows: (also climate) ethical findings are not empirical, and especially no natural scientific observations, they are rather normative (= judgment / ought) findings. Even though the application of an ethical or legal norm often refers to scientific (factual) questions, these facts do not infer as such any ethical or legal result. Furthermore, the basic principles of ethics, although normative in their nature, can objectively be specified. Ethics is not "subjective" or "mere convention", and is not founded on "axioms" with arbitrary starting points. On the other hand, the actual decision of specific ethical issues is somewhat blurry.

Yet, the balancing rules and the institutional competences limiting the discretion are again objective. Since ethics is generally concerned with the conflict between different interests, every ethical decision is ultimately a balancing problem between conflicting freedoms (and their preconditions). Absolute obligations or strict balancing prohibitions (e.g. an absolute right to environmental stability at any price which cannot be balanced with other interests) are ethically and legally hardly justifi-able.³⁸ This does not mean that the balance

can be resolved by a mathematical quantification - even though “figures” have the advantage with respect to politics and the media that they allow complex statements to be easily displayed. Therefore “figures”, even if they represent a new welfare index, as defined by Amartya Sen and others, for the “landmark gross national product” (the latter being calculated on the basis of valuable goods) as it is currently discussed in France, can only be symbols, but no replacement for complex balancing.

NOTES

1. In this article, this is only an example; for more details on climate change see Stern 2006; Stern 2009; Ekardt 2010; Ekardt 2011.
2. See, e.g., Posner 1986, p. 85 et seq.; Nordhaus, 2008, p. 5.
3. See Ekardt 2010.
4. Stern 2009, p. 86 et seq. only hints at that problem and immediately forgets about it again.
5. See, e.g., Nordhaus 2008, p. 175 et seq.; Böhringer/ Welsch 2009, p. 261 et seq.
6. Ethics is not only developing the principles of liberal democracies parallel to the law. In the following, it will be shown that it is also justifying them and, thereby, providing an ultimate basis for law; on the relation of law and ethics, see Ekardt 2010b, § 1 A. (Law always combines normative and instrumental rationality).
7. As regards content, there is no further significance for this differentiation – apart from the idea that the constitutional lawmaker has in parts (pre) structured the balancing of colliding freedoms (see below) by deciding about their weight within the catalogue of fundamental rights.
8. For a detailed analysis of the theory of justice, see Ekardt 2011, § 3-7.
9. For references, see *supra* fn. 40.
10. See e.g. Stern 2006; Stern 2009.
11. Unfortunately, the day-to-day and often even the scientific (if not philosophical) usage of the word “ethics” is rather arbitrarily. It does not make any sense, however, to classify medically assisted suicide or the protection of embryonic stem cells as “ethical problems” and to leave out other societal questions that are normative as well (e.g. the scope of economic freedom).
12. There are justification models that are (in parts) similar to the one we will develop here – yet, without the link to the questions of sustainability and climate protection. Cf. Alexy 1995, p. 127 et seq.; Illies 2003, p. 129 et seq.; Kuhlmann 1985; to some extent Habermas 1983, p. 56 et seq.; implicit Ott/ Döring 2004, p. 91 et seq. The classics Immanuel Kant and John Rawls remain, in contrast, at least incomplete with regard to the theoretical basis of their substantiations although basic terms like rationality, human dignity, freedom, impartiality and separation of powers can be associated with them.
13. See Habermas 1991; Ekardt 2011.
14. Berger/ Luckmann 1960, p. 2 have shown and advocated this differentiation in their classical (and often misperceived) analysis.
15. Many times this is not expressed openly but presupposed implicitly; cf. only Stern 2009, chapter 5; Panther 2006, p. 21 et seq.; differing Ott/ Döring 2004, p. 41 et seq. and *passim*.
16. See, despite their contrariness, Stern 2009, chapter 3 and 5 and Nordhaus 2008, p. 38 et seq. and 59 et seq.
17. So called negative or transcendental pragmatic arguments of the following kind have been used by Alexy 1995, p. 127 et seq.; Illies 2003, p. 129 et seq.; Kuhlmann 1985, *passim*; implicitly also Ott/ Döring 2004, p. 91 et seq. and *passim*. The structure of a negative (and not deductive) argument with which an infinite regress or a

“randomly chosen axiom” can be prevented goes back to Platon, Augustinus and Thomas of Aquin (as a logical figure but not referring to the issue at hand).

18. A whole set of fictive or real arguments against this justification of (1) the possibility of rationality and (2) of human dignity and impartiality as sole universal principles that can be deduced from rationality are discussed by Ekardt 2011, § 3.

19. The principle of human dignity itself is not a freedom right or human right. It is not a norm at all that refers to any kind of singular case, neither ethical nor legal. Human dignity is rather the reason for human rights (in contrast to being a norm/ a right on its own); it, therefore, guides the application of other norms – in our case, different types (realms) of freedom that belong to human beings – and proclaims autonomy as the central idea of our legal system. The “inviolability” of human dignity and its visible – in norms like Art. 1 par. 2-3 of the German constitution and the EU Charter of Fundamental Rights – character as a “reason” shows that all this is not only philosophically but also legally correct. For the current state of discussion, see Ekardt 2011, § 4 B.; Ekardt/ Kornack 2010; for a contrasting viewpoint, see Böckenförde 2003, p. 809 et seq.

20. That freedom exists because of dignity is, e.g., explicitly stated in Art. 1 par. 2 of the German constitution (it says “darum” (= therefore) exists freedom, i.e. because of human dignity, and is also supported by the explanatory documents (Gesetzgebungsmaterialien) on the EU Charter of Fundamental Rights; see Ekardt/ Kornack 2010.

21. Although following a different path, this is also the conclusion of Rothlin 1992 and Ott/ Döring 2004, p. 78 et seq. and 91 et seq.

22. Cf. supra fn. 40; similar Susnjar 2010.

23. The actual decision for a certain extent of climate protection policy based on the weighing and balancing of interests or efficiency thinking is itself a normative statement and not a factual one (even if, as demonstrated, within the limits of the above-mentioned rules balancing procedures have, this normative statement is to be regarded objective). Facts alone can never deliver decisions as they are only possible if normative criteria are available.

24. Furthermore, one can deduce that there should be a decision on the national or transnational level, whichever is suited best for it (the global level in case of climate protection policy); see Ekardt/ Meyer-Mews/ Schmeichel/ Steffenhagen 2009, chapter 1, 3 and 5.

25. Cf. Nordhaus 2008, p. 4; critical also Burtraw/ Sterner 2009.

26. Cf. Ekardt, Theorie, § 6; Mathis 2009, p. 113 et seq.; Otsuka, Philosophy & Public Affairs 2006, 109 et seq.; Meyer 2006, p. 136 et seq.

27. For a critique concerning this matter see Ekardt 2011, § 6; in parts also Mathis 2009, p. 113 et seq.; Otsuka 2006, p. 109 et seq.; Meyer 2006, p. 136 et seq.

28. Conceding to this is Stern 2009, p. 92.

29. For a detailed and critical analysis of the problem of discounting, see Unnerstall 1999, p. 320 et seq.; cf. also Rawls 1971; supporting the method of discounting is Birnbacher 1988.

30. Cf. Stern 2009, p. 80 et seq. and 95 et seq.

31. On a legal and ethical level that also implies: in case of actions against lawmakers constitutional courts have (or had) to decide in favor of the plaintiff and force lawmakers to rethink and re-decide on their respective climate protection policy with the following aspects in mind. In more detail, cf. Ekardt 2010a.

32. Focusing less on the preventive level and (in our opinion suboptimal) more on the subsequent level of

liability is Verheyen 2006.

33. With regards to ideas on a substantial climate change policy, including a (virtual) per-capita-distribution of emission-rights as the basic criterion for “climate justice” (with some modifications concerning the problem of the industrialized countries’ historical emissions), see Ekardt 2011, §§ 6, 7; Ekardt/ von Hövel 2009, p. 102 et seq.

34. The approach developed here, in contrast to Sen 1999, has justified (and not only asserted) universal freedom and, therewith, the relevance of its preconditions (and, furthermore, a theory from which rules structuring the balancing process can be deduced). These advantages also exist compared to “theories concerning basic human needs” (inspired by Marxist or Rousseauian ideas); in addition, the latter also have the flaw of mixing descriptive anthropology and normative theory of justice. Also, they do not have a method to determine its basic categories (what is there a “need” for?) and they mingle justice and conceptions of what a “good life” is supposed to look like (with potentially authoritarian tendencies). Viewed against this background, Ott/ Döring 2004, p. 78 et seq. seems to be problematic.

35. Stern 2006, p. 151, only very generally speaks about more and more „instability“.

36. Cf. Stern 2006, p. 149 et seq.

37. Cf. Rawls 1971, p. 19.

38. Based on what was demonstrated here one could also try to give an answer to the question whether the often repeated accusations of economic efficiency analysis to be blind on one eye for questions regarding distributive justice are correct. This answer would probably be: yes and no. Because, there is no way to deduct a strict imperative that says we have to redistribute extensively. Certain “social elements” result from theory of justice with respect to the balancing procedure, like a right to a subsistence minimum; beyond that the lawmaker has a wide margin for questions of distributive justice. Cf. Ekardt/ Heitmann/ Hennig 2010.

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