

Hecker, Christian; Nutzinger, Hans G.

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Christian Hecker, Hans G. Nutzinger*

Economy and Justice: A Conflict without Resolution?*

Problems of justice, such as high managerial salaries or the introduction of minimum wages, today arouse a lot of public attention and debate. This hints at the general fact that “justice” cannot be reduced to mere efficiency questions as economists very often tend to assume. Therefore, this paper deals with opportunities to include aspects of social justice in economic analyses. The authors describe the historical development from the Aristotelian concept of justice (which includes both *iustitia commutativa* and *iustitia distributiva*) via the medieval idea of *pretium iustum* towards the classical liberal approach of Adam Smith (which excludes almost all aspects of distributive justice from the analysis of economic problems). The “social question” in the 19th century revealed the limits of classical liberalism; nevertheless, the vision of increasing “wealth of nations” became true for most market-oriented economies during the 20th century. But problems of poverty remained, especially for many countries of the South, but also for some strata of the population in successful market economies. Therefore, the limits of a pure liberal concept of justice even in modern market societies are revealed which in turn indicate the necessity of an integrated approach that applies the instruments of contemporary economics, but also allows for the restrictions of the liberal point of view. In contrast to present-day neo-liberalism, the approach of “ordo-liberalism”, originated by Walter Eucken, which distinguishes between the “frame order” of an economy and the economic process itself offers various opportunities to deal with current questions of justice, e.g. in the field of climate protection or in the issue of minimum wages, in a way which combines elements of justice with prerequisites of economic efficiency. These examples are discussed at the end of the paper.

Key words: Aristotelian concept of justice, pretium iustum, liberalism, neo-liberalism, ordo-liberalism, social question, climate protection, problems of poverty, integration of justice issues

* Prof. Dr. Hans G. Nutzinger, Lehrstuhl Theorie öffentlicher und privater Unternehmen, Universität Kassel, D – 34109 Kassel, Germany. E-mail: nutzinger@uni-kassel.de.

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1. Introduction

A look at the current controversies in economic policy over issues such as minimum wages or high managerial salaries shows that economic and moral arguments are often put forward with equal determination in newspapers and political debates. So, for instance, both redistribution measures and a greater liberalisation of markets are being called for, in many cases also from the point of view of justice. In contrast, it is in particular economists that regularly warn against neglecting economic laws of matter by “moralising” issues of economic policy. A look at history shows the following: From the earliest days of Christianity, the relationship between the abstract ethics of economic conduct and the concrete behaviour of the actors in practice (including that of the Christian churches) has been characterised by fierce conflict but also by efforts to bring about practical compromise (see Brentano 2008 [1923], Essays II and III, for instance). However, the contradiction between economic practice and ethical norms had already been a typical feature of classical Greek philosophy as Aristotle reveals in his contrasting account of household management to meet actual needs (*oikonomia*) and chrematistics (the art of getting wealth) (Aristotle: Politics, Book I, 1253 b¹). Therefore, this paper will attempt to not only go over the history of these conflicting relationships but to also outline a way in which moral postulates – based on traditional philosophical ethics and the demands of Christian social doctrines (which, besides Biblical sources, also avail themselves of the philosophical traditions of classical antiquity) – and the functional requirements of a modern and increasingly globalised economy may be connected with each other (even though they cannot be reconciled).

We’ll proceed in six steps: Following a brief survey of the Aristotelian-Scholastic concept of the just price (Section 2), we’ll outline how economics, in the works of Adam Smith (1723–1790), became a science in its own right by taking leave of the traditional Aristotelian-Scholastic notions of justice for the most part (Section 3). Section 4 will deal with the subsequent period where distributive and redistributive justice, both in economic theory and practice, were superseded to a great extent by the ideas of efficiency and increase in wealth. As a first attempt at reintegrating aspects of justice into economics, we will then discuss the idea of social justice by setting legal preconditions for economic activity with special emphasis on “ordoliberalism”, which mainly developed in the German speaking countries. We’ll also compare “ordoliberalism” with “neoliberalism”, which was influenced decisively by Anglo-American liberalism and which takes a critical to negative attitude towards the provision of a legal environment by the state and prefers the spontaneous order that is supposed to develop in the long term and more or less on its own from the competitive activities of the market participants under the aspect of mutual advantage.

In the last section but one, we’ll focus on the fascination exercised by the liberal reduction of justice to transactional justice and adherence to the legal order in force, especially on economic thinking. But we will also deal with the limitations imposed on this approach in a world where aspects of material justice cannot be excluded altogether, neither in practice nor in theory. For one thing, political recommendations that

¹ English terms quoted from the translation of Politics by Benjamin Jowett, in “The Internet Classics Archive”, www.classics.mit.edu/Aristotle/politics.html.

are technically well founded will fail to have an effect if people regard them as “unjust” and do not accept them. For another, the distinction between efficiency aspects and distribution aspects, which is useful and feasible in more simple cases, cannot be extended – neither theoretically nor practically – to more complex situations such as the guarantee of environmental commons like a stable climate or biodiversity. From this description of the problem, the last section will develop some ways of integrating aspects of material justice into the current economic debate, which – while taking note of the functional logic of the economy – will also consider the theoretical and practical limitations of this approach.

2. The Aristotelian-scholastic concept of the just price

As is well known, Aristotle (384-322 BC) developed the ideas of *arithmetic* or *commutative justice*, which is oriented towards the equality of performance and counter-performance in barter relations and the equality of value of injury and compensation, and *geometric* or *distributive justice*, which is determined by the qualitative aspect of adequacy and dignity beyond equivalence (Nicomachean Ethics, Book V, 1131 a; Politics, Book V, 1309a).² In this context, distributive justice is to take precedence over commutative justice in terms of methodology since the former plays a part in the shaping of the original position with regard to rights and ownership, while the latter ensures that bartering does not fundamentally change this position.³

Mediaeval Scholasticism embraced these concepts of commutative and distributive justice in the form of *iustitia commutativa* and *iustitia distributiva* and developed them into the concept of the “just price” (*pretium iustum*), which was to have a decisive impact on mediaeval thinking in its entirety. From these concepts and in connection with Christian and Jewish concepts of justice, Scholastic theologians and philosophers, in particular Thomas Aquinas (about 1225-1274), derived yardsticks that were more or less concrete and against which justice in economic processes of exchange was to be measured. This concept of the “just price” is characterised by the fact that all economic actors are placed within a societal order considered to be just in terms of biblical revelation and natural law. Barter relations, too, were to contribute to maintaining this order; in addition, they were to ensure the producers’ livelihood and the availability of adequate quantities of all goods required without cheating on the buyers.

In order to correctly understand the idea of the “just price” today, it is important to first call to mind that mediaeval society and economy were characterised by a multitude of regulations, trade barriers, and regional and sectoral monopolies and can in no

² In modern times, especially when the welfare state emerged at the end of the 19th century, *iustitia redistributiva*, which is often subsumed under the term of *iustitia distributiva* (this is not without its problems; cf. Helmstädter 1997) and refers to the redistribution of wealth in society according to ethical norms, something Aristotle had not yet considered in this way, was added to distributive justice, which had ceased to be feasible when society was no longer composed of estates (see section 5 below).

³ So, for instance, Aristotle points out: “For it is by proportionate requital that the city holds together: ...” (Aristotle: Nicomachean Ethics, Book V, Chapter 5). This statement clearly shows that Aristotle’s concept of justice has a conservative tendency by aiming to preserve a social order deemed just from the influence of economic processes.

way be compared with a modern competitive economy. For this reason, stopping market participants from cashing in on people's plight or ignorance ("asymmetrical information") by making them "pay through the nose" was a central concern of Scholastic economic ethics. Another thing to be prevented was the suppression of legal claims by aspects that were solely dominated by power.

The argument put forward by the majority of Scholastic scholars essentially aimed to simultaneously implement *iustitia commutativa* and *iustitia distributiva* since, in mediaeval thinking, the value attached to a good or service was inseparable of the person and/or the social status of the person supplying it. On the basis of Aristotelian theory, Thomas Aquinas, for instance, called for a proportional remuneration of work that was to take account of aspects of social status: "For exchange to be just, as many shoes should be exchanged for a house or for a man's food, as the labor and expense of the builder or farmer is greater than that of the tanner" (Thomas Aquinas: *Sententia libri Ethicorum*, Book V, Lesson 9). The idea that an adequate remuneration was to enable all estates and trades to fulfil their functions within an ordered society based on the division of labour was of decisive importance in this context.

However, this link between criteria of adequacy and those of equivalence, in modern parlance the combination of aspects of distribution and aspects of allocation, inevitably resulted in problems since it was not possible as a rule to achieve an accord between estates-based notions of personal dignity and the logic of equivalence inherent to exchange, which does not take cognizance of the personality of the market participants involved. This conflict already emerged in the course of the Middle Ages. The Scholastics tried to cope with the resulting theoretical and practical problems by making a rather flexible use of their terminology, i.e. by achieving a kind of compromise between theory and practice. This is borne out in particular by the fact that the just price in Scholastic writings is usually based on a *latitudo*, i.e. a latitude within which barter relations may take place (Sturn 2007a: 103-108). The assumption of such *latitudo* is connected with the acceptance of the functional logic of economic processes, which cannot be controlled by ethical norms alone. Another compromise was to be seen in the fact that the number of valuation factors was increasingly extended beyond considerations of mere cost (*labores et expensae* [labours and expenses] (cf. for instance Brentano 2009 [1923]: Essay II) so that subjective aspects of usefulness and advantage asserted themselves to an increasing extent. Put in the much later economic terminology of the 19th century, one could say that there was an increasing shift from the objective doctrine of values to a subjective one.

This is illustrated by the responses to the question as to what parameters should decide the determination of "just prices" in individual cases, where a great variety of Scholastic doctrines can be found. Heinrich von Langenstein (1325-1397), for instance, called for prices to be calculated on the basis of the livelihood befitting the station of the producers (Schachtschabel 1939: 117 f.). In contrast, Antonin of Florence (1389-1459) suggested that prices should be oriented towards usefulness (*virtuositas*), scarcity (*raritas*), and desirability (*complacibilitas*), which combines objective and subjective standards (Giers 1941: 139). Important differences in opinion emerge in particular in connection with the question about the extent to which the value attached to a

good, or the needs of the producers are to be regarded as normative-objective or as subjective parameters.

Altogether, the development of the Scholastic argument evinces an increasing subjectivation of these standards as has already been suggested. John Duns the Scot (1250-1308), for instance, already emphasised the point that – in the final analysis – the “just price” also depended on the subjective value attached to a good or service by the partners in an exchange (Schachtschabel 1939: 111-113). Similarly, in the opinion of Thomas Cardinal Cajetan (1469-1534), the author of one of the most important Renaissance commentaries on Aristotle’s work, it was acceptable to strive for a higher station in life by means of economic activities, which is to say that the boundaries of “needs befitting one’s station” could no longer be cited as stable parameters of price formation (Koslowski 1988: 265 f.). In this way, then, *latitudo* does not only denote latitude with regard to concrete price fixing on the market but can also be interpreted as a manifestation of an increasing subjectivation of theoretical criteria.

However, in cases where a free exchange really takes place and monopoly positions on the market are not exploited through “usury”, many Scholastic authors do not find it hard to ethically justify or at least tolerate actual market prices. In such cases, the consent of the market participants is regarded as a sign that the exchange in question and the price asked are appropriate. Thus, the Scholastics do not close their minds to the experience that a market that is open to all interested parties provides all participants with the chance to freely express their assessments and needs and, on that basis, take economic decisions. In such cases, the “problems associated with usury” (as a result of regulation, asymmetrical information, and monopoly positions on the market) cannot play a part; however, the “problems associated with poverty“, especially those of “widows and orphans”, continue to exist in keeping with the precept of love of neighbour in the Jewish and Christian traditions.⁴

While the recognition of a latitude (*latitudo*) of acceptable prices and the inclusion of ever new valuation factors reflected the functional economic logic of an increasingly dynamic society, they also resulted in correspondingly reducing the potential for a normative shaping of economic relations. Thus, the failure to distinguish between aspects of allocation and aspects of distribution and the associated search for compromise which, in practice, often had a detrimental effect on distributive justice, ultimately resulted in a situation where the teaching of ethical concerns – especially those derived from the Christian precept of love of neighbour – could only have a very lim-

⁴ However, late mediaeval literature did not always adequately distinguish between these two aspects since expecting the poor to pay prices that - albeit high - were justified by the costs of production could also be condemned as “usury”, especially where essential goods were concerned. Many centuries later, socialism, in particular that of the GDR, which among other things regarded itself as an atheist opponent of the churches, unknowingly fitted in with this tradition, for instance by subsidising the price of bread, rolls, and children’s clothes, in order to help low-income parts of the population. When the Communist system collapsed in 1989/90, a clever observer aptly commented on the mistaken logic on which such measures were based by arguing that the state should stop subsidising the price of rolls because it was not the rolls that were poor but, at most, certain groups of consumers.

ited effect.⁵ After all, giving the tradesmen a bad conscience was easier than exerting an influence on actual prices, and it was not unusual for those who cashed in on market monopolies and accumulated wealth to engage in compensatory welfare for the local poor.

The 18th century collapse of the feudal system and the triumph of “capitalism” resulted in the development of a rapidly growing group of wage labourers. This “doubly free labourer” (Karl Marx 1867, MEW 23: 223) was not only free from feudal and absolutist constraints with respect to deciding who he wanted to work for but also “free” from everything that prevented his selling his labour, in particular financial or tangible assets that would permit him to support himself. Not least was he “free” from the formal and informal rights to protection he had previously been able to assert as a feudal dependant and which, albeit very limited, had by no means been ineffective. The obsolete patriarchal obligations to protect subordinates, no matter how imperfect they may have been, ceased to exist without initially being replaced by extensive new “social networks” that provided the free wage labourers with a measure of security in the event of want or illness. After all, the new wage workers were just contracting parties on a free job market, which, in most cases, abounded with cheap labour (a “reserve army of labour”). In combination with the conditions in the factories, which were intolerable in many cases, this sorry state of affairs constituted the essence of the “social issue” that dominated discussions on economic policy and social ethics in the latter half of the 19th century.

As a result of the challenge posed by the “social issue”, new approaches to business ethics emerged in the late 19th century, especially in the Roman Catholic Church but also in wider circles. The objective of these approaches was to re-integrate the normative heritage of Scholasticism into the economic argument, but this time in a more contemporary fashion. This Scholastic heritage especially called for:

- (1) a secure livelihood for all economic actors,
- (2) a secure social cohesion,
- (3) the ability of the citizens to provide for their families and, finally,
- (4) putting an end to people taking advantage of monopolies or asymmetrical information.

Some of the important more recent approaches include the following in particular: Gustav von Schmoller’s (1838-1917) historico-ethical school of economics, and solidarism (as an early manifestation of Catholic social doctrine) as exemplified by Heinrich Pesch (1854-1926) and Oswald von Nell-Breuning (1890-1991), which are still deeply rooted in Aristotelian-Scholastic thinking (cf. Hecker 2008: 64-134). In the middle of the 20th century, ordoliberalism as founded by Walter Eucken (1891-1950) represented an important further development. Eucken’s approach is characterised by the very fact that it succeeded in dissolving the combination of aspects of allocation

⁵ This is illustrated by late Spanish Scholastics of the 16th century (cf. Hecker 2008: 57 f.).

and aspects of distribution, which had been recognised as problematic, while for the most part maintaining the above ethical objectives.⁶

3. Extensive leave-taking from the concept of justice in the works of Adam Smith

Roughly but not simplistically speaking one may argue that – since and through Adam Smith – modern economics has only developed into a science in its own right that is distinct from moral philosophy and theology by abandoning the comprehensive classical Aristotelian concept of justice and essentially confining it to one aspect of the problem, i.e. transactional (“commutative”) justice. Using the later terms of Scholasticism, Aristotle, as has already been mentioned at the outset of this paper, distinguished between *iustitia commutativa* (commutative justice), which is oriented towards equivalence of value, and *iustitia distributiva* (distributive justice), which is determined by adequacy and dignity beyond a quantitative equality of value.

In *The Theory of Moral Sentiments* (1759), Adam Smith, who had originally intended to realise the Aristotelian triad of *ethics*, *economics* and *politics* in his work, virtually excluded this comprehensive concept of justice from economics.⁷ He was definitely aware of this fact; when he explains that the “the most sacred regard is due to ... the rules of justice” and that these rules are “accurate in the highest degree, and admit of no exceptions of modifications, but such as may be ascertained as accurately as the rules themselves ...” (Smith: *The Theory of Moral Sentiments*, Part III, Chapter VI), he explicitly refers to the meaning of this word, which “... Aristotle and the Schoolmen call commutative justice” (ibid., Part VII, Chapter I).⁸

It is only the rules of this (commutative) justice that are “precise, accurate, and indispensable” (Smith: *The Theory of Moral Sentiments*, Part III, Chapter VI). The other virtues, which – following the previous limitation to *iustitia commutativa* – now include *iustitia distributiva*, are relegated to the realm of aesthetics as far as their binding nature and regulatory character are concerned, and this realm permits of different individual considerations. Smith concludes:

⁶ The link between ordoliberalism and the ethical postulates of Scholasticism can be seen in a memorandum written by the Freiburg Bonhoeffer Circle in World War II, among other documents. The memorandum pointed out among other things that the market price was equivalent to the “just price” of Scholasticism if certain requirements were met (including regulation of monopolies and a minimum social security for the workers (cf. Denkschrift 1979: 139)).

⁷ It is interesting to note that in *The Wealth of Nations* (1776) the term “justice” is used almost exclusively in the sense of “justice system” and “administration of justice”.

⁸ The fact that Adam Smith exclusively refers to commutative justice when he discusses justice is also borne out by his following exemplification of the term: “If I owe a man ten pounds, justice requires that I should precisely pay him ten pounds, either at the time agreed upon, or when he demands it. What I ought to perform, how much I ought to perform, when and where I ought to perform it, the whole nature and circumstances of the action prescribed, are all of them precisely fixt and determined” (Smith: *Theory of Moral Sentiments*, Part III, Chapter VI). Thus, the justice Smith calls for essentially comprises contractual fidelity and equivalence of money and service.

“The rules of (commutative) justice may be compared to the rules of grammar; the rules of the other virtues, to the rules which critics lay down for the attainment of what is sublime and elegant in composition. (... These latter rules) are loose, vague, and indeterminate, and present us rather with a general idea of the perfection we ought to aim at, than afford us any certain and infallible directions for acquiring it” (The Theory of Moral Sentiments, Part III, Chapter VI).

By confining justice to mere transactional justice as a binding social norm, Adam Smith undoubtedly qualified for entry into modern monetary economies, whose primary criterion of course is arithmetic equivalence.

Although Smith already modified the concept of justice in his main ethical work, *The Theory of Moral Sentiments*, the consequences of his disciplinary “uncoupling” of ethics and economics clearly manifest themselves in other documents: After *The Wealth of Nations* (1776), a book about the kind of *economics* that complied with Smith’s *ethics*, he was unable to implement his original plan to write a book on *politics* in accordance with the Aristotelian triad, a substantial part of which was to be about *justice*, since he had already dealt with the concept of justice in its market-adequate dimension of *transactional* (“*commutative*”) *justice* and assigned the other aspects of the concept to the realm of private virtues, which could not be a *political* subject. A few months before his death, Adam Smith – in his preface to the final edition of *The Theory of Moral Sentiments* (6th edition, 1790) and well aware of the very short span of lifetime left to him – expressed his ongoing intention to deal with the issue of justice in a separate work,⁹ but this was not to come about: Since he died only a few months later, he was unable to implement his putative plan to complete a third volume whose focus was to be on justice and law. However, there is reason to suspect that Smith wished to prevent others, even his closest friends, from posthumously keeping his promise to publish a work on jurisprudence. Speaking from his deathbed in his last days, he ordered his servants to burn his unpublished manuscripts, which are very likely to have included his expositions on justice and law as the central focus of the volume on *politics* he had originally planned. Adam Smith probably realised himself that his reduced concept of justice went beyond the old Aristotelian triad of *ethics*, *economy* and *politics* in that it no longer provided for aspects of justice beyond *institia commutativa*.¹⁰

⁹ “In the last paragraph of the first Edition of the present work, I said, that I should in another discourse endeavour to give an account of the general principles of law and government (...). In the *Enquiry concerning the Nature and Causes of the Wealth of Nations*, I have partly executed this promise; at least so far as concerns police, revenue, and arms. What remains, the theory of jurisprudence, which I have long projected, I have hitherto been hindered from executing, by the same occupations which had till now prevented me from revising the present work. Though my very advanced age leaves me, I acknowledge, very little expectation of ever being able to execute this great work to my own satisfaction; yet, as I have not altogether abandoned the design, and as I wish still to continue under the obligation of doing what I can, I have allowed the paragraph to remain as it was published more than thirty years ago, when I entertained no doubt of being able to execute every thing which it announced” (Preface to Smith: *The Theory of Moral Sentiments*).

¹⁰ Although it is no longer possible to prove this assumption since the manuscripts were burned, it is nevertheless more than mere speculation. The passages referring to justice

4. Increase in wealth and efficiency in the place of (re-)distributive justice

Things seem quite obvious: Economics, also and especially in its practical real-life form, takes the place – at least in normative terms – of external regulatory *politics*,¹¹ something that is no longer required in a comprehensive sense once the many superfluous feudal and absolutist regulations have ceased to be in effect, which merely prevent the *system of natural liberty* from developing in such a way as to increase wealth. In this way, then, the obsolete *primacy of politics* and the systematic presentation of this field of activity have ceased to be relevant since politics seems to have dwindled to a general condition of economic action (and more likely to a disruptive factor in every further case of “intervention”):

“All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men” (Smith, *The Wealth of Nations*, Book IV, Chapter IX: 687).

Thus, good governance becomes correspondingly simple as the “sovereign” can confine his activities exclusively to internal and external security, a reliable administration of justice, and “erecting and maintaining certain public works and certain public institutions” (Smith: *The Wealth of Nations*, Book IV, Chapter IX: 687 f.).¹² In this way,

and law in *The Theory of Moral Sentiments* and *The Wealth of Nations* repeatedly show that Smith was primarily concerned with adherence to established law, in particular the equivalence of performance and counter-performance and respect for existing proprietary rights. Also, we have the student notes of Adam Smith’s *Lectures on Jurisprudence*, which confirm this very trend.

¹¹ In the Scholastic tradition, this combination of functional and normative aspects was particularly evident in the concept of the “just price” (*pretium iustum*). On the one hand, by introducing the idea of *latitudo*, this concept wished to take account of the variability of price fixing on the market and the changeability of external conditions, while on the other hand being expected to ensure the conditions of “social cohesion and their *theological integration*” (quote in the original German text from Sturn 2007b: 93).

¹² “The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society. According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or

Adam Smith firmly calls upon the state to acknowledge the intrinsic logic of the economy and thus the need for politics to withdraw from this area; the *justice* demanded here includes commutative justice, the guarantee of an independent judiciary, and adherence to all applicable laws and regulations by all participants but no kind of redistribution.

Of course, Smith did not fail to notice that this intrinsic logic of the economy requires infrastructure as well as certain public goods to be provided (“certain public works and certain public institutions”), but that is almost the sum total of legitimate interference by the state. In addition, aspects of distributive justice can be seen to some extent in the duty to make “provision for the public defence” (Smith: *The Wealth of Nations*, Book V, Chapter I, Part I), which – just like “the expense of justice” (*ibid.*, Book V, Chapter I, Part II) and the “expense of public works and public institutions ... for facilitating the commerce of the society” (*ibid.*, Book V, Chapter I, Part III, Article I) – can be counted among the conditions under which a real market economy can function. In contrast, “the expense of the institutions for the education of youth” (*ibid.*, Book V, Chapter I, Part III, Article II) (i.e. public primary schools) and “institutions ... for the instruction of people of all ages” (i.e. religious instruction), which are also mentioned in Book V, Chapter I, Part III (of *The Wealth of Nations*), do not only qualify as prerequisites for a market economy in functional terms but can also be interpreted under the aspect of a distributive justice.¹³

By factually abandoning the Aristotelian triad of ethics, economics and politics, that is to say by relegating politics to a principal guarantee for the conditions of eco-

small number of individuals, though it may frequently do much more than repay it to a great society” (Smith: *The Wealth of Nations*, Book IV, Chapter IX: 687).

¹³ In 1776, Smith described the need for the state to prevent in the people “that sort of mental mutilation, deformity, and wretchedness, which cowardice necessarily involves” (*The Wealth of Nations*, Book V, Chapter I, Part III, Article II: 787f.) in the same manner as “a leprosy or any other loathsome and offensive disease ... from spreading itself among them, though perhaps no other public good might result from such attention besides the prevention of so great a public evil” (*ibid.*). With respect to the need for a general primary education, he added: “The same thing may be said of the gross ignorance and stupidity which, in a civilised society, seem so frequently to benumb the understandings of all the inferior ranks of people. A man without the proper use of the intellectual faculties of a man, is, if possible, more contemptible than even a coward, and seems to be mutilated and deformed in a still more essential part of the character of human nature. Though the state was to derive no advantage from the instruction of the inferior ranks of people, it would still deserve its attention that they should not be altogether uninstructed. The state, however, derives no inconsiderable advantage from their instruction” (*ibid.*). According to Smith, this advantage consists in driving out “the delusions of enthusiasm and superstition ... among ignorant nations” besides making them “more decent and orderly”, more likely to resist “the interested complaints of faction and sedition”, and “less apt to be misled into any wanton or unnecessary opposition to the measures of government”. Also, “in free countries, where the safety of government depends very much upon the favourable judgment which the people may form of its conduct”, the people’s disinclination “to judge rashly or capriciously concerning it (the government)” constituted another advantage.

conomic action in a *system of natural liberty*, Smith essentially expressed only that which had already established itself in the practice of the UK, which was the most modern country in the world at the time. In this respect, by limiting justice mainly to equality of value with respect to performance and counter-performance, Smith also adjusted to the manner in which problems of justice were being “communicated” in the then dominant discipline of economics, i.e. as problems of equivalence. In as much as the realisation of this system of natural liberty was still hampered by feudal and absolutist barriers – the constraints imposed in later times by the welfare state were not even imaginable at the time –, the message of classical liberalism stated that the realisation of a society in which wealth was created and increased merely required existing regulations to be removed.

Thus, to some extent Smith theoretically implemented those things in particular that the modern practice of his own country but also other trading nations called for: The far-reaching elimination of distributive aspects from the discourse on justice complied with the reduction of the concept of justice to the regulatory idea and the corresponding practice of commutative justice in the form of an exchange of equivalents, which was in keeping with the precepts of economics. In a system of natural liberty, the allocation of goods via the market is determined primarily by prices as opposed to aspects of dignity.¹⁴ Indeed, to some extent transactional justice is the central condition under which a market economy can function successfully. At this point, a connection can be recognised with a remark of Hegel who, in his preface to *Outlines of the Philosophy of Law* (Grundlinien der Philosophie des Rechts, 1821), described how philosophy lags behind reality: “... the owl of Minerva spreads its wings only as twilight descends.”

However, there are not only systematic and real-life reasons for the exclusion of non-commutative aspects of justice in classical liberalism since classical liberalism combines its programme with a welfare promise and hence, indirectly, with a substantial promise of justice. The reference to the equivalence-oriented conditions of the economy and the comment on focusing in particular on improving the situation of the poorer strata of society in a “progressive state”,¹⁵ something which Adam Smith emphasised too, also has the following function: In the course of the general increase in

¹⁴ The only important exception Smith permitted was “the expense of supporting the dignity of the sovereign” since “in point of dignity a monarch is more raised above his subjects than the chief magistrate of any republic is ever supposed to be above his fellow-citizens”, which means that “a greater expense is necessary for supporting that higher dignity. We naturally expect more splendour in the court of a king than in the mansion-house of a doge or burgomaster” (Smith: *The Wealth of Nations*, Book V, Chapter I, Part IV: 814).

¹⁵ In 1776, Smith wrote: “It deserves to be remarked, perhaps, that it is in the progressive state, while the society is advancing to the further acquisition ..., that the condition of the labouring poor, of the great body of the people, seems to be the happiest and the most comfortable. It is hard in the stationary, and miserable in the declining state. The progressive state is in reality the cheerful and the hearty state to all the different orders of the society. The stationary is dull; the declining, melancholy” (*The Wealth of Nations*, Book I, Chapter VIII: 99).

wealth, the issue of distributive justice is not only described as inadmissible in theory (i.e. in the sense of a binding social norm), but its significance is also questioned at a practical level. The issue of a just distribution of goods and riches beyond *iustitia commutativa* in accordance with distributive justice and subsequently also redistributive justice¹⁶ (which Smith and classical liberalism could not yet know but would certainly have considered a violation of the system of natural liberty), in short the issue of *social justice* in the sense of a state-controlled (re-)distribution did not present itself to classical liberalism, which was also attributable to the fact that it worked on the assumption of a quantitative and qualitative onward development of all classes of society under the conditions of free market exchange – a condition which, for large parts of the proletariat that emerged in the early phase of industrialisation, definitely did not always exist. Owing to the disregard for the ensuing social problems large parts of society had to grapple with, the representatives of liberal ideas were soon accused of callousness (Manchester liberalism).

Thus, in a much-simplified form, the second half of the classical-liberal argument can be summarised as follows: The 18th century liberals, especially Adam Smith, who, not without reason, chose *The Wealth of Nations* as the title of his principal work on economics, largely subscribed to the following view, which on the whole was confirmed by the development of history, at least in the countries of the North: The contentious static question as to the appropriateness of distributing given properties and incomes should be replaced by the far more important dynamic question as to the conditions for creating and increasing the wealth of nations. To the extent that this replacement succeeded, the issue of distributive justice would become less important, at least in practical terms, since the poorest and weakest members of society would also derive benefit from a higher national income. The fact that this process did not go off without interruptions and setbacks in the 19th century sparked socialist criticism of “capitalism” 150 years ago in a similar way as “globalisation” does today, which – if it is not placed in an adequate institutional framework and permitted to have vastly different effects in different parts of the world – will, as it were, proceed as a natural phenomenon according to its contemporary propagandists.¹⁷

It is in particular when calling to mind the Christian-Jewish tradition and its link with Aristotelian ethics in the Scholastic concept of the “just price”, which combined market price aspects (and thus aspects of transactional justice) with concepts of ade-

¹⁶ The category of redistributive justice is directed at a redistribution of parts of the national income that is oriented towards social norms and can be seen as a development of *iustitia distributiva* with respect to a society that is no longer divided into estates.

¹⁷ Obvious ideological links with 19th century Manchester Liberalism, especially in the UK but also in France, can be seen here. In contrast, Eduard Bernstein’s “revisionist” approach (1910) is worth noting. Bernstein relied in particular on the self-organisation of the worker’s movement through trade unions and politics as a counterforce to the social ills of the 19th and early 20th century, as opposed to the state (whose principal political leaders were anti-working class for the most part); the state, according to Bernstein, is important only to the extent that legal provisions and institutions for the protection of the working class can be wrought from it.

quacy and dignity (and thus distributive justice),¹⁸ that the relative progress contained in the liberal message and its contrast with the tradition of Christianity and classical antiquity becomes especially apparent: As a variation on the well-known Biblical admonition “But seek ye first the kingdom of God, and his righteousness; and all these things shall be added unto you” (Gospel according to Matthew, Chapter 6, Verse 33), which is still concerned with the comprehensive justice (of God), classical liberalism makes an appeal in the opposite direction, approximately along the following lines: “Seek ye first the creation – and not the distribution – of the wealth of nations, and all other things shall be added unto you.” The fascinating thing about this idea is to be seen in the fact that this liberal version, while not being unreservedly confirmed in the more than two centuries that have since passed (there were times when it was not valid, for instance during the radical social changes in the time of industrialisation, and it does not apply to all people on earth as is borne out by today’s North-South conflict), it has nevertheless become a formative influence on the economic development of many countries worldwide. However, the problem of social justice remained on the agenda and could not simply be replaced by focusing on general prosperity.

5. Social justice as part of the “framework”? Ordoliberalism versus neoliberalism

In the middle of the last century, German ordoliberalism attempted to “capture” the aspect of social justice, something it recognised in principle, by taking account of ethical aspects beyond transactional justice and accepted economic criteria in the form of a suitable framework of regulations; this, however, was the very thing that excluded these aspects from the economic process and distinguishes ordoliberalism from other liberal variants. The shared feature of the different variants of liberalism since Adam Smith is that they call upon the state to acknowledge an “intrinsic logic” or “functional logic” of the economy, that is to say they demand that the state should respect an area of economic self-regulation upon which it cannot intrude without detrimentally affecting the prosperity of almost everyone involved. However, the spectrum of liberal views differs significantly in the attitude towards the way the economic order should relate to other functional areas/areas of life, in particular law and order. In this context, another difference between the above liberal views pertains to the question about the extent to which such systems of order result from spontaneous competitive processes or deliberate human action.

It is interesting to note that this preliminary decision on the malleability of systems of order also impinges on the response to the question whether and to what extent it is permissible or possible to strive for objectives of justice beyond equivalence of value, i.e. objectives exceeding mere *commutative justice*. In a slightly simplistic account that ignores many distinctions and interfaces, two leading liberal economists of the last century may be cited by way of illustration: Walter Eucken, the principal theorist of the “Freiburg School” of *ordoliberalism*, and Friedrich August von Hayek who, initially in the U.S. and subsequently as Eucken’s successor in the German-speaking

¹⁸ Cf. especially Sturn (2007a) for a balanced presentation of this difficult concept of *pretium iustum* on which many very diverging opinions exist.

area, became what can probably be described as the most significant representative of *neoliberalism*. The two liberal economists were on good terms with each other and agreed for the most part on many practical issues. However, they differed on important matters as far as their theoretical foundation was concerned, and these differences resulted in different views on the issue of justice as a question of economic policy. Eucken's reverting to the mediaeval Scholastic concept of *ORDO* is no coincidence, the difference being that he no longer strives for a divine order but for functioning rules on competition. Also, justice beyond *iustitia commutativa* is no longer to be found in the individual acts of exchange but in the prevailing conditions of the economy.

Hayek's thinking is determined primarily by the idea of competitive self-evolution, which mainly but not exclusively refers to the economic system, and he uses the catchy phrase of "spontaneous order" to express this view. His central message, which distinguishes him from ordoliberalism, is the view that systems of economic and social order (such as the law, language, or market economy) are "results of human action but not of human design". While Eucken ponders over the central ethical question "How can the modern industrialised economy have a functioning order worthy of human life?" (Gatermann), Hayek believes that "the problem of the origin or formation and that of the manner of functioning of social institutions was essentially the same (Boettke 1998): the institutions did develop in a particular way because the coordination of the actions of the parts which they secured proved more effective than the alternative institutions with which they had competed and which they had displaced".

Those who like Eucken strive to create an order worthy of human life expose themselves to the neoliberal reproach of "constructivism" and the "presumption of knowledge", which was voiced by Hayek in particular, because they presuppose an availability of pieces of information and their convertibility into concrete forms of order for the order they have created that far exceeds the objective and subjective possibilities of man. Also, according to Hayek, such endeavour would aim at achieving something that the competition of ideas and institutions brings about on its own in the course of time to a far greater extent than human calculation could ever aspire to. First of all, Walter Eucken's theoretical starting point is entirely different: "The competitive order of the market will not fulfil itself of its own accord. (...) It is not enough to realise certain principles of law and for the rest leave the development of the economic order to itself" (translated from Eucken 1952: 373, cf. Koslowski 2000). However, that which Eucken wishes to achieve with his ordoliberal concept cannot be called voluntaristic constructivism either since his guiding principle of a liberal economic policy aims for the "implementation of a workable price system, a system of complete competition *as a basic principle of economic constitution*" (translated from Eucken 1952: 254). This common orientation towards competition (for Hayek competition was a historical competitive process of evolutionary enforcement, whereas Eucken regarded it as a task of shaping, which was facilitated by the economic policy of the state and had to be performed anew time and again) definitely results in agreement on many practical issues even though, until this day, Hayek and the Chicago School on which he had a formative influence attach greater credence to the self-healing powers of competition – even vis-à-vis anti-competitive activities on the part of many partici-

pants in this process – as opposed to the possibilities of governmental competition policy, on which Eucken and ordoliberalism rely as a result of the historical experience of the abuse of market power, especially in the first half of the 20th century.

However, the principal difference between the two main streams of liberal thinking can be seen in the handling of the justice issue by Hayek and Eucken. Eucken's regulatory concept is known to be based on *seven constituent principles* that are intended to safeguard the competitive order in terms of economic constitution, and *four regulatory principles* that will be added if and in as much as the concrete competitive order continues to be hampered by “forms of order alien to the system”, in particular “natural monopolies”,¹⁹ or contains other “weaknesses and deficiencies that require correction” (1952) even when all constituent principles of the concrete competitive order are being adhered to. In his discussion of the constituent principles Eucken very firmly stressed his belief that inequalities in the distribution of property and income (which he acknowledges as a problem of economic policy) are essentially attributable to incomplete competition. Thus, the safeguarding of the competitive order by means of economic policy, which he considers desirable, would automatically solve most of these problems.²⁰ Eucken does not only acknowledge the meaningfulness of a concept of *social justice* that transcends transactional justice but also believes that an appropriate regulatory shaping of the process of competition is the very thing that will solve the problem of justice for the most part.

Eucken goes even one step further in his regulatory principles and accepts that it is possible or even necessary to correctively intervene in the primary distribution of income and property, which initially develop “spontaneously” on the factor and goods markets. Even though he subscribes to the view that the “mechanics of prices of complete competition is better – notwithstanding numerous deficiencies – than distribution as a result of arbitrary decisions by private or public entities”, reference to the market does not solve the distribution issue for him. Eucken (1952: 300) concedes:

“... this (market-type) mechanics of distribution, too, leaves unanswered questions and requires correction. Significant differences in the distribution of purchasing power arise, which results in production being steered towards meeting relatively insignificant needs, while urgent needs of other recipients of income remained unsatisfied. The inequality of incomes results in a situation where luxury products are being manufactured while urgent

¹⁹ This expression refers to a situation in which one supplier is able to make optimum provision for a market on the basis of technological conditions (decreasing average costs).

²⁰ Eucken put this in concrete terms when he wrote (in 1952: 316): “Different incomes in an economy are partly attributable to different services on behalf of the consumers and partly to monopolist or other positions of power in the individual markets. The distribution of income will not become a problem of justice in an economic sense until the level of income is determined by positions of power in the market and ceases to be determined by relations of scarcity. The formation of the famous big fortunes of the past hundred years, too, is attributable not so much to income from property as to the powerful positions in the market held by such people as *Rockefeller*, *Carnegie* etc. ... Thus, social justice should be achieved by creating a workable overall order and by subjecting the formation of income to the strict rules of competition, risk, and liability.”

needs of low-income households remain to be satisfied. In this respect, then, the distribution which takes place in the competitive order needs to be corrected.”

Progressive taxation is the principal means by which this correction is to be brought about.²¹ As this kind of intervention in the primary distribution on the markets by means of adjustment policy does not stand in the way of the competitive order (providing that the tax progression is not so strong as to have obstructive effects on investment), Eucken even believes that there is a number of good reasons for this progressive taxation and regards it as a means of counteracting a development of economic processes that is ethically doubtful.

All these material aspects of justice don't mean a thing to a neoliberalism à la Hayek. Friedrich August von Hayek refuses to distinguish between necessary and luxury needs (according to Hayek, the “right” assortment of goods is determined exclusively by the market as a result of effective demand), and he sees no reason why “social justice” should be called for, which – as *justitia distributiva* and *justitia redistributiva* – would no longer remain within the admissible boundaries of market self-regulation and thus go beyond mere *justitia commutativa*.

Following on from the classical-liberal tradition since Adam Smith but even going beyond it, Hayek would rather confine justice and equality to the applicability of the same rules for all:

“Equality of the general rules of law and conduct, however, is the only kind of equality conducive to liberty and the only equality which we can secure without destroying liberty. Not only has liberty nothing to do with any other sort of equality, but it is even bound to produce inequality in many respects. This is the necessary result and part of the justification of individual liberty: If the result of individual liberty did not demonstrate that some manners of living are more successful than others, much of the case for it would vanish” (F. A. Hayek: Quotes – Philosopher of Liberty).

Hayek highlights the importance of innate differences and attempts to substantiate the “importance of environmental factors” by stating that “the importance of individual differences would hardly be less if all people were brought up in very similar environments” (a statement for which there is no empirical evidence) (Hayek 1958: 7). Consequently, for Hayek equal treatment does not mean that – with respect to the ideal of all people being equal or the human dignity to which they are entitled – there should be an institution, let alone a guarantee, which would enable all people to exist in society in real terms and to realise their, albeit different, abilities and expectations. In keeping with the traditional liberal demand for proportional taxation according to the principle “leave them as you find them”, which does not change income and property relations between taxpayers, Hayek derives the following conclusion from his concept

²¹ “Income tax progression in the competitive order has an entirely different, i.e. a social purpose. It is to correct the process of distribution within the framework of the competitive order. This fact also delineates the boundaries of this progression. It (progression) must not be permitted to continue to the extent that the tendency to invest drops off Even though progression is necessary from a social point of view, it is equally necessary that investment should not be jeopardised by progression. This, in principle, denotes the lower and upper ceilings. The financial policy of the individual countries has to gauge where these boundaries are to be drawn *in concreto*” (Eucken 1952).

of equality: “The equality before the law which freedom requires leads to material inequality. [T]he desire of making people more alike in their condition cannot be accepted in a free society as a justification for further and discriminatory coercion” (Hayek 1958).

Hayek’s neoliberalism, in keeping with Smith’s limitation of the concept of justice to the justice of rules – i.e. contractual fidelity and adherence to the laws and regulations applicable to all, irrespective of their social status –, probably goes a step further than Smith (or rather a step back behind Smith) in his statement on “social institutions” (without further differentiating between them):²² “... that certain benefits are attendant on social institutions does not mean that we could make them accessible to all if only we wished to do so, or that, if they were reserved for just a few, others would be deprived of them“ (Hayek 1958: 11). Since he explicitly mentions education in this context, it is to be feared that in Hayek’s view this area, too, should be organised in accordance with the principle of commutative justice, i.e. exclusively along market economy lines, thereby differing from Smith who – as an exception – permits arguments of distributive justice to be included in education. This, indeed, would be a retrograde step as compared with Adam Smith.²³

6. Fascination and limitations of the liberal reduction of justice

In the current debate on economic policy, the Anglo-American type of (neo-)liberalism has clearly gained the upper hand, which is borne out at the national and EU levels as well as by the announcements of international institutions such as the WTO, World Bank, and IMF. Supply-oriented economic reforms in many countries, deregulation on the job market, and denationalisation of publicly owned assets illustrate this observation. Even the current finance and real-estate crisis in the U.S., which, on both sides of the Atlantic, has triggered doubts about the economic self-regulation of these areas and given rise to the demand for a tighter governmental control of financial institutions, is most unlikely to cast serious doubt on the dominant (neo-)liberal keynote of discussions on economic policy. On what, then, is this obvious fascination of neo-liberal ideas based that prevails even in situations where the shortcomings of unbalanced market liberalism become apparent?

We believe that the strong fascination of liberalism, also and especially in the current discussion on economic policy and social politics, is attributable to several sources, of which we can only give an incomplete list:

1. Liberal theory avails itself of a sophisticated theory of market and price formation. Not only does the principle of equivalence of value, which is an expression of commutative justice, correspond to the logic of market exchange but it is also

²² Hayek (1958) merely discusses “the family, inheritance, and education” in a general sense.

²³ The “constitutional economics” of U.S. economist James Buchanan, who won the 1986 Nobel Prize in Economics donated by Sweden’s central bank, occupies an intermediate position between Euckenian “ordoliberalism” and Hayekian “neoliberalism”; “constitutional economics”, after all, deems a prior commitment to the regulations of a constitutional order necessary, but by doing so provides far greater scope for economic self-regulation than Eucken’s *Ordo* concept (cf. Buchanan 1987).

particularly appropriate for mathematical modelling and quantitative calculation. This fact has elevated economics to the rank of “queen of social sciences” and has made it the only social science for which a “Nobel Prize” donated by Sweden’s *Riksbank* (central bank) – not by the Nobel foundation itself – is awarded every year since 1969.

2. Since the late 19th century, starting with Léon Walras and Vilfredo Pareto, this mathematical clarification has resulted in the development of a theory of general equilibrium and an efficiency-oriented welfare economics (that is, however, blind to distribution issues), which also permitted deficiencies in the market process (put more precisely here as technological externalities with respect to production and consumption) to be captured theoretically and used as a basis for deriving suggestions for economic action.²⁴
3. The specification of Smith’s idea of an increase in prosperity brought about by the welfare economic concept of a “Pareto optimum” – Pareto optimum refers to a situation in society where it is no longer possible to improve the well-being of one individual without harming at least one other individual (cf. Sohmen 1976) – directed the interest of theoretical economics and practical economic policy towards the search for “Pareto improvements”, i.e. the search for situations where both – or put more generally: all – participants can improve their well-being through cooperation, e.g. cooperation in trade. The identification and utilisation of such potentials for cooperation substantially contributed to the fact that the liberal hope for a general increase in prosperity also received empirical confirmation in many cases.
4. This rather static concept of exchange is complemented by a dynamic perspective of competition established in particular by Joseph A. Schumpeter (1912), which makes continuous innovation (new products and processes) by “pioneer entrepreneurs” the central characteristic of market development.

However, on the other hand the theoretical stringency of the market-liberal vision and the great importance justly attached to individual freedom resulted in a situation where market considerations and the expectation of ensuing advantages were applied to areas where, for good reasons, the underlying social conditions do not comply with the principle of market exchange. The most striking example in this context is the area of politics, which in the majority of liberal foci is inevitably purported to act merely as a “troublemaker”. Accordingly, concepts of distributive and redistributive justice don’t mean a thing to most liberal thinking, and Hayekian neoliberalism even explicitly opposes them. This, then, results in the major issues for which reductionist liberal arguments are criticised and which, again, we can only partially list here:

1. The exclusive consideration of rights of individual freedom in liberal theory may lead to social inequalities that deny the disadvantaged the opportunity to live under decent conditions. Also, such inequalities result in a situation where the right

²⁴ One of the most recent and impressive examples in this context is the EU-wide CO₂ Emission Trading System (ETS) to limit the discharge of carbon dioxide, which poses a threat to the global climate; cf. Rudolph, 2006. For the general logic of corrective taxes in an economic policy based on welfare economics see in particular Sohmen (1976).

to take responsibility for one's life choices, which liberalism holds in such high esteem, becomes useless for the people concerned.²⁵ Rights such as freedom of movement and free choice of occupation are of very limited use to people denied such things as adequate food or basic health care (cf., for example, Sen 1988). Also, it would hardly be realistic to expect people who cannot benefit from the advantages of a liberal society to stick to the rules set by such a society such as the principles of commutative justice (cf. Hampicke 2005). This is borne out by social unrest in countries with pronounced inequalities, which time and again leads to rights including liberal rights of freedom such as the protection of property being jeopardised.

2. The division of labour highlighted by liberal theory since Adam Smith as the source of wealth is not only implemented in the development of new products, services and markets but also and in particular through business enterprises²⁶ and hence calls for a legal and social influence to be exerted in this area. Looking at the "working environment" thus created within enterprises under the aspect of mere outside market interaction will result in serious theoretical problems for the understanding of the firm as a social institution, and practical problems of economic and social policy that may well be even more serious (cf. for instance Nutzinger 1976).
3. Even though liberal theory definitely accepts the existence of *external effects*, i.e. third-party effects not at all or only insufficiently accounted for in market exchange, it underestimates the significance of this fact: The liberal optimality assumption for the market can only be maintained *sensu stricto* when external effects represent a rare and clearly identifiable exception from the rule of a complete exchange of equivalents; however, the ubiquity of these effects should trigger a critical review of this optimality assumption, which is often made in an axiomatic fashion.²⁷ This also applies in view of the advice given by standard economics

²⁵ So, for instance, Amartya K. Sen (himself a Nobel Prize winner in Economics like Hayek) distinguishes between negative freedom ("freedom to act") and positive freedom ("freedom to achieve"). According to Sen, positive freedom is associated with actually having at one's disposal options required for shaping one's life according to one's choices (cf. Sen 1994).

²⁶ This was already illustrated by Adam Smith (1776, *The Wealth of Nations*, Book I, Chapter I): His well-known example of pin-making describes the manufacture-type, i.e. intra-organisational, division of the manufacture of a product (in this case a pin) into many "distinct operations" without intermediate product markets being involved. However, in his analysis in Book I, Chapter III of the things by which the division of labour is limited, Smith refers to the size of the market and the division of labour between different trades and activities without ascertaining the difference between these two types of division of labour (Smith: *The Wealth of Nations*).

²⁷ It goes without saying that, conversely, the implicit trust in the state and the corresponding optimality assumption regarding political regulations, too, must be subjected to a similarly critical review with respect to their concrete circumstances as has been demanded above for market interaction.

(which is justified in principle) that instead of taking a “nirvana approach”²⁸ here one should compare the failure of the market and the failure of bureaucracy with each other in each instance before calling upon politics to take concrete action.

4. The difficult interaction between “economy” and “politics” is illustrated in particular by the technological progress, which – as Schumpeter (1912) already emphasised – represents a desired result of competition, also in the areas of new ideas, technologies, products and services. While liberal theory calls for proprietary rights to be protected absolutely as a prerequisite for an efficient market exchange, it is in no way able to guarantee the value of these proprietary rights. On the contrary: It is in particular the dynamics of competition, by which neoliberalism sets such great store, that tends to depreciate existing property rights by technological progress time and again. A look at the situation of the people affected by such developments and thus also the acceptability of such innovations shows the need to at least provide the losers of competitive processes with some basic protection that enables them to build new lives for themselves. Otherwise, owing to the latent insecurity of market-controlled economic processes, consequences may result that seem problematic, also from the point of view of efficiency.
5. Without such compensatory measures, a sub-optimal investment in human capital (especially initial and continuation training) will be the principal threat when people fear too much depreciation as a result of market processes. As far as politics is concerned, the principal objective is to avoid lengthy and costly distribution struggles between the losers and winners of innovation, which will ultimately have obstructive effects on investment in many cases. Such struggles may inflict greater damage on society as a whole than a sensible balance between the overall economic interest in innovations that boost productivity and the compensatory interests of those who have lost their “status quo”. In this context, instruments of “social cushioning” but especially an improved adaptation on the part of the work force to new technological demands through participation in qualification and training measures may represent a superior alternative as compared with a contentious enforcement of efficiency requirements, both from efficiency and distribution considerations.
6. Against this background, the economic idea of weighing the pros and cons of certain institutional regulations should also be viewed in relation to the effects of economically founded suggestions in other areas of life. Economic solutions that can easily be justified from the point of view of efficiency theory and that call for or even enforce greater commercialisation, for instance in education and health care, while for the most part ignoring distributive consequences, may definitely appear problematic from an extended perspective of efficiency, i.e. in cases where they are accompanied by a lack of acceptance of the existing economic and politi-

²⁸ Economists of different persuasions use the terms “nirvana approach” or “model Platonism” to criticise the wide-spread tendency in this branch of science to work on the assumption of ideal worlds and to directly put reality to the touchstone of these worlds instead of comparing concrete and available alternative courses of action with one another.

cal order and may thus trigger off costly “follow-on problems”. Already, for practical reasons, such foreseeable “follow-on problems” should be included in the suggestion proper to ensure that the desired “efficiency” in the sense of maximum advantages and minimum disadvantages is actually achieved. The idea of “vital policy” (Rüstow 1953; Müller-Armack 1976), i.e. the integration of the living conditions and opportunities of wage and salary earners into the system of market economy, also in terms of life experience, continues to be and is again of particular importance, especially regarding cultural diversities and the peaceful co-existence of different cultures.

7. The genesis of a new “trans-disciplinary” science, that is to say *ecological economics* as the *science and management of sustainability*, which emerged in the wake of the sustainability demands put forward by the World Commission on Environment and Development (WCED 1987) and which is specifically concerned with fairness between contemporary and future generations and between people in the countries of the North and the South, illustrates the significance of distributive and redistributive issues of justice in solving global environmental problems, some of whose economic relevance is attributable to the fact that an economically efficient budgeting is neither conceivable nor possible without natural bases that are solid in the long term.²⁹
8. This consideration leads to another fundamental objection: The distinction between “efficiency” and “distribution”, which is useful in simple contexts, as well as the tendency of economists to confine themselves to transactional justice and thus to aspects of efficiency for reasons of expedience cannot be maintained in more complex situations such as the *protection of global environmental commons*, a topical example of which is the threatened stability of the climate of the earth (cf. for instance de Haan et al. 2008). Thus, the distinction between allocation and distribution already suffers from conceptual difficulties here since necessary “concessions” by the countries of the North to the countries of the South may be interpreted on the one hand as a compensatory distribution policy, which is the very prerequisite for a global climate pact to come off.³⁰ On the other hand, such “concessions” may also be interpreted as a belated payment of remuneration by these advanced countries to the rest of the planet for having utilised the natural resources of the earth, in particular the stability of the climate, for their own purposes for more than 200 years without any payment whatsoever and without reference to any acceptable measuring unit such as surface area or population, thereby depriving mankind as a whole of these resources. A worldwide “climate pact” seems to be the only peaceful solution to this problem. Both from a theoretical-conceptual and a practical political perspective, we are dealing with a prob-

²⁹ Cf. also Nutzinger (2000). For the difficulties of a proper analysis of the complex subject of “sustainability and justice” in schools, in particular in the face of many imponderables, even in the well-researched field of “climate change”, refer to the recent 2008 study by de Haan et al., which bears the same title in German (Nachhaltigkeit und Gerechtigkeit).

³⁰ The importance and the difficulty of this issue have been drastically demonstrated of late by the failure to come to an agreement at the Copenhagen summit in December 2009.

lem that is basically one of economics, i.e. an extended negotiation of mutual benefits among a large number of participants. In this negotiation, the aspect of “transactional justice” has ceased to possess the conceptual stringency postulated by Smith (1759), which means that it has to be complemented by climate stability, both from a conceptual point of view and with respect to the practical protection of an environmental common from which everyone involved benefits.³¹

From these aspects, we conclude the following with respect to the current situation: Just as economics, which – 230 years ago – became distinct from moral philosophy and thus developed into an independent discipline, has to (again) take up issues of justice today, also for systematic reasons, practical economic policy must again tie the central idea of efficiency, which has an affinity only for commutative justice, to aspects of distributive and redistributive justice, not only for practical reasons but also on account of the haziness of the concept of efficiency in more complex situations, especially where the solution of global environmental problems is concerned. This does not mean that we have returned to the mediaeval Scholastic concept of *pretium iustum*, but we are making extended use of the insights of efficiency-oriented economics in order to establish the most realistic reference point possible to the challenges of our time and in this way facilitate practical applicability.

7. Ways of including aspects of material justice in the current economic debate

Beyond a reference to Christian standards or standards of moral philosophy, the extension of the concept of efficiency, which was rendered plausible in the preceding section, shows the importance to be attached – for purely practical reasons alone – to a reintegration of norms of material justice into the concept of efficiency-oriented economics.

Today, it is primarily the demand for the protection of human dignity including all persons involved (Hecker 2008: 276-281) that has proved to be the central ethical norm for integrating considerations of justice into the analysis of economic processes. The postulate of human dignity culminates in Immanuel Kant’s “categorical imperative” derived from the definition of man as a rational being capable of moral responsibility. The “categorical imperative” demands that human beings should be treated “never merely as a means, but always at the same time as an end” (Kant 1797). According to Catholic social doctrine and the socio-ethical writings of Protestant theologians, human dignity manifests itself as an expression of the fact that man was created by God and in the image of God, which accounts for the exceptional character of human work, especially when compared with all other goods (Korff 1999: 219-221). On this note, the 1965 Pastoral Constitution *Gaudium et Spes* of the Second Vatican Council, among other documents, states that “man is the source, the center, and the purpose of all economic and social life” (Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, promulgated by His Holiness, Pope Paul VI, on December 7, 1965, Chapter III – Economic and Social Life). It is in particular with respect to preserving the bases of existence of future generations that the aspect of hu-

³¹ For the idea of a climate pact cf. Nutzinger (2005).

man dignity includes aspects of environmental protection and the conservation of resources, especially non-renewable ones.

The category of social justice, which was developed in particular by representatives of Catholic social doctrine and ordoliberalism, provides a way of operationalising the postulate of human dignity, besides taking up central Scholastic objectives of economic ethics³² and permitting differentiation into various sub-categories. Thus, in accordance with the pioneering thinkers of ordoliberalism and social market economy, the categories of justice of performance, of opportunity justice, and of justice of need present themselves as essential aspects of social justice.³³ One more thing that may be mentioned here is inter-generational justice, which adds an inter-generational perspective to the three above categories. This type of justice centres upon the requirement that future generations should be guaranteed opportunities for development equal to those available to our generation.

This multi-dimensional model of justice is mostly equivalent to the idea of “Social Irenics” developed by Alfred Müller-Armack, which intends to achieve a balance between the ideas of liberalism and socialism as well as Protestant and Catholic social ethics (Müller-Armack 1950). The importance of free market processes and prices is justly emphasised here with reference to the enforcement of justice of performance. The underlying basic idea, which is also relevant from an ethical point of view, aims at ensuring that – in free markets where a number of ideal-type conditions are met –³⁴ each supplier is paid according to the contribution he has made towards overcoming the prevailing shortages in society. At this point, the link with the idea of efficiency in liberalism also becomes apparent. In addition, the concept of justice of performance reflects the fundamental liberal belief that everyone is entitled to the results of the work he has done³⁵ and that this right can only be contested if legitimate rights of others, e.g. rights to redistribution measures to secure the minimum subsistence

³² This also shows that the Scholastic considerations on shaping economic processes should be interpreted as a system-oriented approach aiming to arrive at a humane solution of societal problems in the face of actual economic conditions rather than as an authoritarian approach to shaping the world in accordance with Church dogmatics.

³³ It is in particular Eucken, Röpke, Rüstow, and Müller-Armack who repeatedly refer to these three categories of justice when they discuss the term of social justice in their writings (cf. Hecker 2008: 205-234).

³⁴ This includes in particular the existence of a competitive equilibrium along neo-classical lines (free access to the market for all suppliers and demanders, absence of distortions of competition, external effects and asymmetries of information, no relevance of public goods), the guarantee of opportunity justice, the acceptance of the existing purchasing power distribution, the recognition of consumer sovereignty as well as a certain stability of market prices, which permits the suppliers to develop a reasonably reliable supply planning. Also, there should be no major power imbalance among the market participants (cf. also Hecker 2008: 275-346).

³⁵ These ideas can be justified especially by John Locke’s labour theory (Second Treatise on Government, Chapter V [Of Property]).

needs,³⁶ stand in the way of that right.³⁷ The ideal-type character of the conditions stated in Footnote 33 clearly shows that in most cases these conditions cannot be considered fulfilled in real life. This observation shows the significance of instances of intervention by the economic and social policy of the government on behalf of opportunity justice, justice of need or inter-generational justice at other levels of the economy that make it possible for the market to fulfil its ethical potential for the enforcement of justice of performance. Since trade-offs often occur with respect to the implications of these postulates of justice,³⁸ the need to weigh up the different norms regularly emerges in practice, something John Stuart Mill had already described by way of example (cf. Mill 1969: 259).

The principle of human dignity prohibits limiting oneself to a one-dimensional concept of justice such as the Hayekian one, which merely guarantees protection against unwanted interference by others without considering the actual living conditions and opportunities of the citizens. Instead, besides the guarantee of liberal rights of freedom, the claim to live life in dignity calls for rights to involvement and participation in the tradition of distributive justice.

In connection with the objective of a rule-oriented and thus, from a regulatory angle, consistent weighing up of different categories of justice, the concept of social market economy, which goes back to Müller-Armack for the most part, presents itself as a suitable instrument of implementation since it is directed at implementing the above norms of justice at different levels of economic life. The regulatory shaping of competition in the sense of controlling monopoly power and curing market failure, which may manifest itself in the form of technological external effects, for instance, plays an important part in this context. In this way, important prerequisites are fulfilled to ensure that the market mechanism can truly result in justice of performance being implemented. The regulation of competition must be complemented by a delib-

³⁶ John Stuart Mill already pointed out that the citizens' right to dispose of their individual income was circumscribed by the obligation to make adequate contributions to the performance of public tasks (cf. Mill 1977: 276).

³⁷ From an economic point of view, the category of justice of performance primarily considers the individual character of the national income. On the one hand, the aggregate income of each national economy presents itself as the sum of innumerable privately achieved components of performance that are related to the rights of the respective service suppliers. On the other hand, this income also represents an aggregate income jointly produced by the social division of labour, an idea to which distribution objectives based on concepts of justice can be added since an individual performance without the involvement of other participants is almost inconceivable (cf. Thielemann 2006). This results in the postulate that both the individualist and the social character of the national income should be taken into account and that a balance is to be found between the resulting claims.

³⁸ The most obvious trade-off arises over justice of performance versus justice of need since a performance-related salary, for instance, can result in a situation where an employee can no longer earn a living on his own because his ability to provide required services is very limited.

erate redistribution of the results and/or starting conditions of market processes in the sense of opportunity justice, justice of need, or inter-generational justice.

In methodical terms, the principle of opportunity justice should take priority over the principle of justice of need, which is in accordance with the approach followed by many ordoliberalists (including Alexander Rüstow and Wilhelm Röpke among others). This classification primarily represents a methodical order of importance that takes account of the fact that a fair distribution of starting opportunities seems a suitable means of minimising the subsequent need for redistribution on the one hand while, on the other hand, being more easily compatible with liberal rights of freedom than an approach that is purely demand-oriented. Today, these considerations result in particular in the demand that all social strata should have equal access to education. However, the need for taking additional redistribution measures in accordance with the justice of need continues to exist in addition to permit those whose efforts are not sufficiently rewarded by the market to live in dignity as well. An important instrument in this context is the payment of social security benefits by public institutions that secure the minimum subsistence needs of every citizen on the basis of a legal claim, thereby making the citizen independent of the arbitrariness associated with purely private welfare programmes.

The importance of market processes for the enforcement of justice of performance is the basis from which all pioneering thinkers of social market economy derived the demand that the state should intervene in economic affairs in such a way as to be in conformity with the market so as not to stand in the way of the regulating function of the market. This approach takes the second tenet of welfare economics into account, which is directed at the possibility of considering opportunity justice and justice of need in the organisation of the initial distribution and which – in connection with the establishment of efficient barter relations – refers to the significance of market prices in a competitive equilibrium (cf. in this context Sen 1987: 31-38).

In this way, then, opportunity justice and justice of need, which are primarily realised through measures of redistribution in economic practice, methodically precede or succeed the market mechanism. Thus, on the one hand, they start from the results of the market processes and transform them on the basis of normatively justified distribution objectives. On the other hand, they vary the initial conditions of market-regulated activities by exerting an influence on purchasing power distribution and thus the demand curve in the form of justice of need, or changing the supply curve, for instance through measures for the promotion of training, in the form of opportunity justice (cf. Hecker 2008: 469 f.).

In the past few years, the discussion surrounding climate protection and the preservation of non-renewable resources has in particular increased public awareness of aspects of inter-generational justice. When dealing with this category of justice, the following practical problem immediately presents itself: Representatives of future generations cannot assert their interests on markets or in processes of political decision-making and must therefore be represented by other means, for instance by governmental institutions or institutions of civil society. In addition, there is a problem of information considering that the needs of future people can only be anticipated to a very limited extent, even given good will.

In view of these problems, focussing primarily on the development opportunities of future generations seems the best option with regard to inter-generational justice in order to make diverse opportunities available to all future people that are equivalent to those provided for our generation. These opportunities include a minimum provision of vital natural resources in the sense of “basic ecological rights”, the absence of which seems to preclude a life in conditions fit for human beings (cf. Lerch 2003; Lerch/Nutzinger 2004: 55-58); if such ecological minimum conditions of human existence are not ensured, the person affected by the lack of those minimal preconditions cannot set his own goals or realise opportunities for decision-making. For this reason, “basic ecological rights” seem to be a permissible concretisation of “distributive justice”, also from an enlightened and liberal point of view, i.e. as an indispensable prerequisite for political, societal and economic participation. But it will not always be possible to smoothly reconcile aspects of sustainability with respect to planning (in order to ensure future options for action) and “justice” within and between the generations (cf. de Haan et al. 2008: Chapters 3 and 4). However, the societal consensus on required considerations and compromises among conflicting points of view that will then be called for in turn presupposes that all members of society enjoy freedom of action and decision, thereby also taking the guarantee of “basic ecological rights” for granted.

The controversy over the enforcement of living wages is another topical example of the presence of justice issues in public debate. Those in favour of minimum wages laid down by the government demand that people working a full-time job should earn enough to cover their living expenses. This postulate is in accordance with the principle of justice of need, which already played a decisive part in the Aristotelian-Scholastic theory of the “just price” and met with a positive response, especially on the part of Catholic social doctrine. However, from an economic perspective, the danger of an increase in unemployment is to be pointed out here since – working on the assumption of a neoclassical model of the job market – a rise in the price of the factor of work will entail a drop in demand for that factor. It seems realistic to fear, especially in the case of Germany, that a minimum wage commensurate with a living wage of about eight euros an hour would noticeably exceed the marginal productivity of low-qualified full-time work and thus not be compatible with the objective of fighting unemployment.

Against this background, the demand for lower bounds on wages laid down by the government will always be problematic when – on the basis of a demand-related argument – minimum wages are called for that do not comply with market conditions (cf. Hecker 2008: 405-425). On the other hand, a pay policy that – under the aspect of justice of performance – aims to establish a minimum wage in compliance with market conditions, that is to say a minimum wage that takes the productivity of low-qualified labour into consideration, would not attract this criticism. This is in accordance with the arguments put forward by Eucken and Müller-Armack who regard minimum wages as an instrument to prevent individuals in distress from being exploited or to fight distortions of the market such as monopsonies on the labour market or an abnormal behaviour of labour supply. From the perspective of regulatory policy, this clearly shows that the job market should not be regarded as a suitable

channel for enforcing postulates of justice of need. Making such excessive demands on the market mechanism would rather lead to a situation where the ability of the market to act as a regulatory instrument would be adversely affected, which, as a result, would also prevent the ethical potential inherent to the market from being fulfilled.³⁹

At this point, therefore, the need of the market-controlled justice of performance to be complemented by other norms of justice must be pointed out as a matter of priority. Thus, the concept of an “in-work benefit” presents itself as an obvious model to connect justice of performance with a supplementary consideration of justice of need; this concept leaves wage setting to the dynamics of the market as far as possible and, if need be, allows for a demand-oriented subsidising of such wages by government transfer payments. Shifting responsibility for ensuring justice of need to the state by subsidising low-qualified labour can be justified in terms of the principle of subsidiarity⁴⁰ by pointing out that business enterprises operating in a competitive market cannot be expected to pay regular and long-term wages that exceed the productivity of the respective employees.⁴¹ Thus, apart from the guidelines of justice of performance, the associated release of employers from paying living wages primarily results from the inclusion of economic contiguities, which are also relevant from an ethical point of view since economic inefficiencies may have an adverse effect on the situation of all concerned.⁴²

The cases discussed here illustrate by way of example what an integration of aspects of justice into the analysis of economic problems could be like in practice. They clearly show that in this way potential solutions may be found that are both rational from an economic point of view and acceptable from an ethical perspective, thereby doing greater justice to the complexity of the underlying problems than methods that are exclusively concerned with the guarantee of efficiency.

³⁹ In addition, such conduct would again mix up aspects of allocation and aspects of distribution, something that already turned out to be a problem in connection with the medieval idea of the “just price” and was justly condemned by ordoliberalism.

⁴⁰ Modern economic ethics often uses the term *Ethical Displacement* in this context (cf. Steinmann/Löhr 1994: 108).

⁴¹ This dilemma can be illustrated as follows: Even though asking an employer to pay adequate wages is an ethically sound request, he can hardly be expected to contribute towards reducing existing unemployment by hiring employees whose wage exceeds the anticipated productivity, thereby jeopardising – not least under competitive conditions – the long-term survival of his enterprise and thus *all jobs of the company*.

⁴² Sen uses the following words to describe the relationship between the target figures of efficiency and justice: “On the one hand, justice cannot really be indifferent to efficiency as inefficiencies may have detrimental effects on all participants. Conversely, the following applies: When the performance of individuals depends at least partially on the justice or injustice of mechanisms of distribution, efficiency cannot be indifferent to justice” (translated from Sen 1998: 15).

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