

PRICE GOUGING LAWS AND GOODS' PRICES IN POST-DISASTER TIMES

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In *The Problem with Price Gouging Laws*, Michael Giberson does a critique of the anti-price gouging laws. In many places, the state has set a cap on goods' prices in post-disaster times. Then, he compares the consequences of the law with the previous situation, where the market had complete liberty to manage the goods. Giberson's arguments against the price gouging law are based on four grounds: virtue, welfare, freedom and fairness. In general terms, he does a consequentialist analysis of the situation. This can be seen in the first two grounds he mentions. In the former, he brings Michael Sandler's virtue argument against price gouging round to his point of view. He argues against price gouging law ethics stating that "emotion [...] anger and outrage [...] play a special role in revealing the morality of the anti-price gouging law position" (2011, 51). He adds that this cannot be the reason to decide in public policy. Afterwards, he says that "Sandel's virtue argument does not justify itself in terms of result" (2011, 51). And in the latter, he critiques the law asserting that "they keep goods and services from being used where they are most needed" (2011, 50). Concerning the market freedom, and mentioning Jeff Jacoby, he maintains that "It's how goods and services get allocated in free society" (2011, 50). And as for the fairness, he affirms that it is unfair "to place a particularized obligation to sacrifice on a discrete segment of society, named merchants" (2011, 51). Summarizing, if the law does not improve the situation in terms of "the civic virtue of shared sacrifice for the common good" (2011, 51), says Giberson, "interference with that pricing freedom raises serious questions (2011, 51)".

Here, I will offer some empties of Giberson's defense of the free market managing goods after a crisis. And then I will suggest a possible way to fix the empties. With the purpose of criticizing the thesis, I will throw two ideas: the moral heterogeneity and the view of poor. With the former, I will challenge Giberson's moral virtue and consequentialist idea; with the latter, I will attack his fairness and welfare argument. Firstly, Giberson's moral view is consequentialist, i.e. he values the virtue in relation to the consequences. But as Charles Taylor says in *The diversity of goods*, "the ethical is not a homogene-

ous domain, with a single kind of good, based on a single consideration" (1982, 142). Therefore, apart from the morality of the consequences, the morality of the goods' distribution process has to be taken into consideration. And in the case price gouging is allowed, taking advantage of the needed people is not going to be persecuted. Secondly, the people who have less are who bear more with the free market after a crisis. In addition, as Lee Dwight says in *Making the Case against "Price Gouging" Laws*, "it is no longer clear that "price gouging" laws benefit the poor" (2015, 594). Hence, the poor people in both cases are the more disadvantaged. What happens with the wellbeing of the poor? Is this situation fair? Moreover, in times of crisis can the distribution process of primary goods be done in a morally acceptable way? Maybe, only with a stricter control of the market the goods can be reached by everybody. An entity which could control the existing goods, manage them and offer to everybody. Even to the poor. Even with respect. Even though I am not giving a concrete solution, I maintain that moral heterogeneity and the situation of the poor are two good reasons to invest in this direction.

Of course, this last idea can be attacked in many ways. It is not practical. It is only a reason to research the field. In this paragraph, I will collect the oppositions to the idea of controlling the market in crisis or natural disasters. I will list five objections to the idea. First, it could be said that there has been a reduction of freedom. The merchants would not have that right to sell freely. Second, I do not offer a real concrete alternative of controlling the market and distribute the goods. Giberson could say against: "it is admitted that giving merchants the freedom to pick their own prices does a better job than alternative way of getting goods and services to where they are needed" (2011, 51). Third, in a consequentialist and economic view, it can be said that self-interest and the laws of supply and demand of the market are not respected. These can derive in a disruption of the market taking into account the geopolitical outlook. And that could signify a higher damage for the whole society, not only for the poor. Four, probably the worse off would be the multinationals. And this neither looks very fair. And five, it could be pointed that it is normal that

the poor are who suffer more and that therefore there is nothing wrong with the free market situation.

I accept all the possible objections. However, while the free market rules in post-disaster situations, people who are treated as opportunities and the poor are who bear more the crisis. In order to finish this position paper, I will offer two analogies to enforce the control view. Firstly, I will compare the control of the market with the political transparency. Indeed, Byung-Chul Han in *The transparent society* suggests that political transparency, which carries control, has been imposed to replace the moral fragility (2013, 92). Perhaps, the market needs something similar. Secondly, I will compare price gouging with the disaster capitalism, described by Naomi Klein in *The Shock Doctrine: The Rise of Disaster Capitalism*. She denounces that a branch of supporters of free market see post-disaster situations as the perfect opportunity to remodel the society (2007, 46). Indeed, price gouging could be seen inside the disaster capitalism. In conclusion, although I have not proposed a real alternative to manage the goods, I have given some reasons of why the market control option has to be considered.



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