‘Justice’

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**Chapter 1: Doing the Right Thing**

In the summer of 2004, Hurricane Charley roared out of the Gulf of Mexico and swept across Florida to the Atlantic Ocean. The storm claimed twenty-two lives and caused $11 billion in damage. It also left in its wake a debate about price gouging.

At a gas station in Orlando, they were selling two-dollar bags of ice for ten dollars. Lacking power for refrigerators or air-conditioning in the middle of August, many people had little choice but to pay up. Downed trees heightened demand for chain saws and roof repairs. Contractors offered to clear two trees off a homeowner's roof — for $23,000. Stores that normally sold small household generators for $250 were now asking $2,000. A seventy-seven-year-old woman fleeing the hurricane with her elderly husband and handicapped daughter was charged $160 per night for a motel room that normally goes for $40.

Many Floridians were angered by the inflated prices. "After Storm Come the Vultures," read a headline in USA Today. One resident, told it would cost $10,500 to remove a fallen tree from his roof, said it was wrong for people to "try to capitalize on other people's hardship and misery." Charlie Crist, the state's attorney general, agreed: "It is astounding to me, the level of greed that someone must have in their soul to be willing to take advantage of someone suffering in the wake of a hurricane."

Florida has a law against price gouging, and in the aftermath of the hurricane, the attorney general's office received more than two thousand complaints. Some led to successful lawsuits. A Days Inn in West Palm Beach had to pay $70,000 in penalties and restitution for overcharging customers.

But even as Crist set about enforcing the price-gouging law, some economists argued that the law — and the public outrage — were misconceived. In medieval times, philosophers and theologians believed that the exchange of goods should be governed by a "just price," determined by tradition or the intrinsic value of things. But in market societies, the economists observed, prices are set by supply and demand. There is no such thing as a "just price."

Thomas Sowell, a free-market economist, called price gouging an "emotionally powerful but economically meaningless expression that most economists pay no attention to, because it seems too confused to bother with." Writing in the Tampa Tribune, Sowell sought to explain "how 'price gouging' helps Floridians." Charges of price gouging arise "when prices are significantly higher than what people have been used to," Sowell wrote. But "the price levels that you happen to be used to" are not morally sacrosanct. They are no more "special or 'fair' than other prices" that market conditions — including those prompted by a hurricane — may bring about.

Higher prices for ice, bottled water, roof repairs, generators, and motel rooms have the advantage, Sowell argued, of limiting the use of such things by consumers and increasing incentives for suppliers in far-off places to provide the goods and ser vices most needed in the hurricane's aftermath. If ice fetches ten dollars a bag when Floridians are facing power outages in the August heat, ice manufacturers will find it worth their while to produce and ship more of it. There is nothing unjust about these prices, Sowell explained; they simply reflect the value that buyers and sellers choose to place on the things they exchange.

Jeff Jacoby, a pro-market commentator writing in the Boston Globe, argued against price-gouging laws on similar grounds: "It isn't gouging to charge what the market will bear. It isn't greedy or brazen. It's how goods and ser vices get allocated in a free society." Jacoby acknowledged that the "price spikes are infuriating, especially to someone whose life has just been thrown into turmoil by a deadly storm." But public anger is no justification for interfering with the free market. By providing incentives for suppliers to produce more of the needed goods, the seemingly exorbitant prices "do far more good than harm." His conclusion: "Demonizing vendors won't speed Florida's recovery. Letting them go about their business will."

Attorney General Crist (a Republican who would later be elected governor of Florida) published an op-ed piece in the Tampa paper defending the law against price gouging: "In times of emergency, government cannot remain on the sidelines while people are charged unconscionable prices as they flee for their lives or seek the basic commodities for their families after a hurricane." Crist rejected the notion that these "unconscionable" prices reflected a truly free exchange:

This is not the normal free market situation where willing buyers freely elect to enter into the marketplace and meet willing sellers, where a price is agreed upon based on supply and demand. In an emergency, buyers under duress have no freedom. Their purchases of necessities like safe lodging are forced.

The debate about price gouging that arose in the aftermath of Hurricane Charley raises hard questions of morality and law: Is it wrong for sellers of goods and ser vices to take advantage of a natural disaster by charging whatever the market will bear? If so, what, if anything, should the law do about it? Should the state prohibit price gouging, even if doing so interferes with the freedom of buyers and sellers to make whatever deals they choose?

**Welfare, Freedom, and Virtue**

These questions are not only about how individuals should treat one another. They are also about what the law should be, and about how society should be organized. They are questions about justice. To answer them, we have to explore the meaning of justice. In fact, we've already begun to do so. If you look closely at the price-gouging debate, you'll notice that the arguments for and against price-gouging laws revolve around three ideas: maximizing welfare, respecting freedom, and promoting virtue. Each of these ideas points to a different way of thinking about justice.

The standard case for unfettered markets rests on two claims — one about welfare, the other about freedom. First, markets promote the welfare of society as a whole by providing incentives for people to work hard supplying the goods that other people want. (In common parlance, we often equate welfare with economic prosperity, though welfare is a broader concept that can include noneconomic aspects of social well-being.) Second, markets respect individual freedom; rather than impose a certain value on goods and ser vices, markets let people choose for themselves what value to place on the things they exchange.

Not surprisingly, the opponents of price-gouging laws invoke these two familiar arguments for free markets. How do defenders of price gouging laws respond? First, they argue that the welfare of society as whole is not really served by the exorbitant prices charged in hard times. Even if high prices call forth a greater supply of goods, this benefit has to be weighed against the burden such prices impose on those least able to afford them. For the affluent, paying inflated prices for a gallon of gas or a motel room in a storm may be an annoyance; but for those of modest means, such prices pose a genuine hardship, one that might lead them to stay in harm's way rather than flee to safety. Proponents of price-gouging laws argue that any estimate of the general welfare must include the pain and suffering of those who may be priced out of basic necessities during an emergency.

Second, defenders of price-gouging laws maintain that, under certain conditions, the free market is not truly free. As Crist points out, "buyers under duress have no freedom. Their purchases of necessities like safe lodging are forced." If you're fleeing a hurricane with your family, the exorbitant price you pay for gas or shelter is not really a voluntary exchange. It's something closer to extortion. So to decide whether price-gouging laws are justified, we need to assess these competing accounts of welfare and of freedom.

But we also need to consider one further argument. Much public support for price-gouging laws comes from something more visceral than welfare or freedom. People are outraged at "vultures" who prey on the desperation of others and want them punished — not rewarded with windfall profits. Such sentiments are often dismissed as atavistic emotions that should not interfere with public policy or law. As Jacoby writes, "demonizing vendors won't speed Florida's recovery."

But the outrage at price-gougers is more than mindless anger. It gestures at a moral argument worth taking seriously. Outrage is the special kind of anger you feel when you believe that people are getting things they don't deserve. Outrage of this kind is anger at injustice.

Crist touched on the moral source of the outrage when he described the "greed that someone must have in their soul to be willing to take advantage of someone suffering in the wake of a hurricane." He did not explicitly connect this observation to price-gouging laws. But implicit in his comment is something like the following argument, which might be called the virtue argument:

Greed is a vice, a bad way of being, especially when it makes people oblivious to the suffering of others. More than a personal vice, it is at odds with civic virtue. In times of trouble, a good society pulls together. Rather than press for maximum advantage, people look out for one another. A society in which people exploit their neighbors for financial gain in times of crisis is not a good society. Excessive greed is therefore a vice that a good society should discourage if it can. Price-gouging laws cannot banish greed, but they can at least restrain its most brazen expression, and signal society's disapproval of it. By punishing greedy behavior rather than rewarding it, society affirms the civic virtue of shared sacrifice for the common good.

To acknowledge the moral force of the virtue argument is not to insist that it must always prevail over competing considerations. You might conclude, in some instances, that a hurricane-stricken community should make a devil's bargain — allow price gouging in hopes of attracting an army of roofers and contractors from far and wide, even at the moral cost of sanctioning greed. Repair the roofs now and the social fabric later. What's important to notice, however, is that the debate about price-gouging laws is not simply about welfare and freedom. It is also about virtue — about cultivating the attitudes and dispositions, the qualities of character, on which a good society depends.

Some people, including many who support price-gouging laws, find the virtue argument discomfiting. The reason: It seems more judgmental than arguments that appeal to welfare and freedom. To ask whether a policy will speed economic recovery or spur economic growth does not involve judging people's preferences. It assumes that everyone prefers more income rather than less, and it doesn't pass judgment on how they spend their money. Similarly, to ask whether, under conditions of duress, people are actually free to choose doesn't require evaluating their choices. The question is whether, or to what extent, people are free rather than coerced.

The virtue argument, by contrast, rests on a judgment that greed is a vice that the state should discourage. But who is to judge what is virtue and what is vice? Don't citizens of pluralist societies disagree about such things? And isn't it dangerous to impose judgments about virtue through law? In the face of these worries, many people hold that government should be neutral on matters of virtue and vice; it should not try to cultivate good attitudes or discourage bad ones.

So when we probe our reactions to price gouging, we find ourselves pulled in two directions: We are outraged when people get things they don't deserve; greed that preys on human misery, we think, should be punished, not rewarded. And yet we worry when judgments about virtue find their way into law.

This dilemma points to one of the great questions of political philosophy: Does a just society seek to promote the virtue of its citizens? Or should law be neutral toward competing conceptions of virtue, so that citizens can be free to choose for themselves the best way to live?

According to the textbook account, this question divides ancient and modern political thought. In one important respect, the textbook is right. Aristotle teaches that justice means giving people what they deserve. And in order to determine who deserves what, we have to determine what virtues are worthy of honor and reward. Aristotle maintains that we can't figure out what a just constitution is without first reflecting on the most desirable way of life. For him, law can't be neutral on questions of the good life.

By contrast, modern political philosophers — from Immanuel Kant in the eighteenth century to John Rawls in the twentieth century — argue that the principles of justice that define our rights should not rest on any particular conception of virtue, or of the best way to live. Instead, a just society respects each person's freedom to choose his or her own conception of the good life.

So you might say that ancient theories of justice start with virtue, while modern theories start with freedom. And in the chapters to come, we explore the strengths and weaknesses of each. But it's worth noticing at the outset that this contrast can mislead.

For if we turn our gaze to the arguments about justice that animate contemporary politics — not among philosophers but among ordinary men and women — we find a more complicated picture. It's true that most of our arguments are about promoting prosperity and respecting individual freedom, at least on the surface. But underlying these arguments, and sometimes contending with them, we can often glimpse another set of convictions — about what virtues are worthy of honor and reward, and what way of life a good society should promote. Devoted though we are to prosperity and freedom, we can't quite shake off the judgmental strand of justice. The conviction that justice involves virtue as well as choice runs deep. Thinking about justice seems inescapably to engage us in thinking about the best way to live.

**What Wounds Deserve the Purple Heart?**

On some issues, questions of virtue and honor are too obvious to deny. Consider the recent debate over who should qualify for the Purple Heart. Since 1932, the U.S. military has awarded the medal to soldiers wounded or killed in battle by enemy action. In addition to the honor, the medal entitles recipients to special privileges in veterans' hospitals.

Since the beginning of the current wars in Iraq and Afghanistan, growing numbers of veterans have been diagnosed with post-traumatic stress disorder and treated for the condition. Symptoms include recurring nightmares, severe depression, and suicide. At least three hundred thousand veterans reportedly suffer from traumatic stress or major depression. Advocates for these veterans have proposed that they, too, should qualify for the Purple Heart. Since psychological injuries can be at least as debilitating as physical ones, they argue, soldiers who suffer these wounds should receive the medal.

After a Pentagon advisory group studied the question, the Pentagon announced, in 2009, that the Purple Heart would be reserved for soldiers with physical injuries. Veterans suffering from mental disorders and psychological trauma would not be eligible, even though they qualify for government-supported medical treatment and disability payments. The Pentagon offered two reasons for its decision: traumatic stress disorders are not intentionally caused by enemy action, and they are difficult to diagnose objectively.

Did the Pentagon make the right decision? Taken by themselves, its reasons are unconvincing. In the Iraq War, one of the most common injuries recognized with the Purple Heart has been a punctured eardrum, caused by explosions at close range. But unlike bullets and bombs, such explosions are not a deliberate enemy tactic intended to injure or kill; they are (like traumatic stress) a damaging side effect of battlefield action. And while traumatic disorders may be more difficult to diagnose than a broken limb, the injury they inflict can be more severe and long-lasting.