What’s the Matter with Price Gouging?

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Prices for essential goods are likely to increase when a disaster strikes, should that event decrease available supplies of these goods, increase demand, or both. Sometimes these price increases are condemned as “price gouging” or “profiteering.” Such labels are not intended as simply descriptions of price increases; rather, they carry a strong negative moral valence. In many cases, the moral wrong of these price increases is identified as wrongfully gaining from another’s misfortune. Consider the common view that “[i]t is not free enterprise, that’s taking advantage of other people’s misery” (Rushing 2004, A-1). In other cases, price gouging is condemned as unfairly taking advantage of others’ needs, language that is often associated with exploitation.

But it isn’t clear from these kinds of sentiments when a price increase amounts to price gouging or why, if at all, certain price increases following disasters are morally worrisome. Moreover, there are many reasons to think that price increases can create a net benefit for a community following a disaster. As one critic of anti-price gouging legislation puts it:

Price to the left of the intersection of the supply-and-demand curve and you are guaranteed to vaporize whatever you are attempting to keep inexpensive. . . . The reason that gasoline is disappearing from service stations across the nation is because station owners aren’t gouging with sufficient gusto. Whether out of a misguided sense of kindness, concern about what politicians might think, fear of bad press, or the desire to keep customers happy, they are pricing below what the market would otherwise bear and, as a result, their inventory has disappeared. Now, how are the poor being helped by service stations closing down for lack of fuel? Gas at $6 a gallon, after all, is better than gas unavailable at any price. (Taylor 2005)

Price increases lead to rationing by consumers and encourage increased production of scarce goods. If the aim of anti-gouging legislation is to prevent vendors from profiting too much from a supply disruption, then achieving this aim may come at the cost of a swift return to normal market conditions. In this paper, I discuss what moral wrongs, if any, are most reasonably ascribed to accusations of price gouging. This discussion keeps in mind both practical and moral defenses of price gouging following disasters.

Before proceeding, I should note very clearly what I do not mean to be covered by the potential wrongness of price gouging. Sometimes price gouging is accompanied by other factors that overdetermine the wrongness of the action. A hotel might advertise a normal price for rooms but then demand that potential customers pay much more in person. Workers might arrive in a disaster area, demand a higher than normal deposit for repairs, then leave without doing any of the contracted work. A disaster can make deception and fraud more likely and easier to get away with, and these wrongs will sometimes accompany price gouging. However, the wrongs of deception and fraud are distinct from the wrongs of price gouging. Therefore, I will assume that neither deception nor fraud are present in my subsequent discussion in order to focus on the specific wrongs associated with price gouging.
PRICE GOUGING AND RESPECT FOR OTHERS

If there is something morally wrong with price gouging, it is not that gouging causes direct harms or economic inefficiency. In fact, a critique of price gouging will need to confront the positive moral value of the efficiencies and rationing effect created by price increases.

As I have noted, many anti-gouging laws are limited to price increases on certain goods that are tied to basic human needs. I believe that this characteristic of anti-gouging legislation offers an important insight regarding what is morally objectionable about price gouging. As not all types of price increases trigger the worry about gouging, it is not price increases themselves that motivate this concern. Rather, I would argue, it is price increases that undermine equitable access to certain, essential goods that motivate the worry about price gouging.

Put another way, worries about price gouging are engaged when price increases cut off poor consumers from necessary goods, not when price increases are unfair. We might think that price increases following a disaster are unfair in the sense that they allow for a large shift in the social surplus of the interaction in the favor of the vendor. If the normally functioning market serves as a benchmark for a fair transaction and fair distribution of the social surplus generated by that transaction, then the disaster shifts the equilibrium point between supply and demand in such a way that the vendor can now charge unfair prices for her products (Wertheimer 1996).

To see that it is not fairness, per se, that motivates concerns over price gouging, consider an example. An avalanche outside of an exclusive ski resort blocks the only road to the resort on New Year’s eve. Because this road is blocked, a group of wealthy revelers at the resort no longer have access to a resupply of champagne that was to be used to celebrate the new year. While there is food, drink, and shelter to meet everyone’s essential needs until the road is cleared, there is far too little champagne on hand to ensure that everyone will be able to make a toast at midnight. Because of the high value placed on participating in the midnight toast by the resort’s wealthy patrons, the owners of the limited remaining supply of champagne are able to clear unusually high profits by selling their supplies.

The actions of these vendors could certainly be considered unfair by the lights of the normally functioning market. But to label these actions as a case of price gouging strains the normal use of the term. Consider that the language surrounding gouging typically focuses on the vulnerability created by the disaster and the desperation of consumers to meet their basic needs. As the Attorney General of Texas put it, following gouging accusations in the wake of hurricane Ike, “They took advantage of the fear and the needs of people who were evacuating the Gulf Coast region, and they jacked up prices” (Elliott 2008). Price hikes for gasoline following that same hurricane again focus on the absolute needs of consumers: “It’s sad to think that merchants would take advantage of people who are already struggling to fill their gas tanks just to get from home to work or from home to church and back” (Jackson Sun 2008). While the would-be champagne drinkers may be desperate to participate in the New Year’s toast and willing to pay unusually high prices to do so, their desperation is of an entirely different kind than that which normally motivates the charge of gouging. It is the desperation of individuals for essential goods, rather than simply the unfairness of the transaction, that motivates accusations of price gouging following a disaster.

Having located the wrongness of price gouging in access to essential goods, we can now say more about the duty that price gouging violates. To be specific, I would like to argue that price increases following a disaster can undermine equitable access to the goods essential to minimal human functioning. When price increases do so, they violate the norm of equal respect for persons. Respect for persons is often understood in terms of a duty to treat others as ends in themselves. More specifically, this respect is expressed both through recognizing that human animals are capable of forming and acting on a conception of the good life but need material support in order to do so (Hill 1991).

Proponents of various ethical theories can agree that basic respect for human persons will entail two components: Negatively, we should not interfere with others as they live out their conception of the good life given reciprocal respect and non-interference. Positively, we should aid others in forming and living out their conception of the good life, particularly by ensuring that they have the minimal means of developing such a conception. An attitude of respect for others will be expressed through our actions, including non-interference, positive support, and other expressions of the equal value of all human persons (Anderson 1993).

At first glance, it would seem that placing limits on the functioning of the market through anti-gouging legislation would run counter to the goal of respecting others’ freedom to pursue their conception of the good life. In the first place, I have discussed how price increases efficiently bring new supplies of essential goods into the market and help ration existing supplies. In this way, free markets serve as a means of supplying the goods essential to forming and acting on a conception of the good life.

Secondly, in their ideal form, markets carry their own value as institutions that protect and enlarge human freedom. By offering a space in which consumers can
freely negotiate, consume, and exit exchanges, markets ensure that consumers are not beholden to any particular vendor in their pursuit of the good life. Adam Smith specifically defends markets in terms of their historical role in undermining the oppressive feudal system of production (Satz 2007). Under a feudal system, serfs are tied to single masters and denied the freedoms of movement and exit created by a well-functioning market. Without the freedom to exit from the feudal relationship, the serf is condemned to take whatever terms of exchange are offered by her master. In a market, on the other hand, the “tradesman or artificer derives his subsistence from the employment, not of one, but of a hundred or thousand different customers. Though in some measure obliged to them all, therefore, he is not absolutely dependent on any one of them” (Smith 1976, 420). Markets guarantee legal protections for persons so that the equal right to make exchanges is enshrined as an entitlement, creating political equality between richer and poorer (Anderson 2004). The moral concern that justifies the idealized institution of the market, then, is an interest in providing the material means to and institutional protection of individual freedom.

Conditions following a disaster can be highly non-ideal for a market, however, at least from the perspective of a stable balance between supply and demand. A disaster potentially results in a reduction of supply and spike in demand for some or all essential goods. While price increases reflect a new, post-disaster balance between supply and demand, over the short-term this new equilibrium point can be particularly disruptive to the lives of the poorest members of a community. Until the pricing signals created by the new equilibrium increase supplies of essential goods, prices will remain high and supplies may be insufficient to meet demand. This gap between supply and demand is morally troubling because the goods in question are essential to minimal human functioning and may be out of reach for the poorest members of the affected community. While price increases in a free market represent one means of restoring supplies and rationing existing stock of essential goods, anti-gouging legislation offers an alternative approach to this problem.

There are many good reasons to think that, following a disaster, an unfettered free market does not best serve the freedom-enhancing purpose by which it is morally justified. While unfettered price increases work toward efficiently promoting increases in the supply of essential goods following a disaster, the concern that motivates price gouging laws is that an unfettered market in these goods runs counter to the goal of equity, a key component of respect for persons. This failure of equity is most evident in terms of the distribution of scarce essential goods within the affected community. While price increases can decrease consumption rates of essential goods, they do so at the cost of giving the wealthiest members of a community the greatest access to limited supplies. This access is created in two ways. First, and most obviously, wealthy persons will have greater financial means with which to bid on scarce resources when they have been located (Ramaswasy 2005). Second, these persons will likely have greater access to the information and transport needed to locate and reach scarce resources. In an idealized market, free competition lowers prices in order to put essential goods into the hands of all but the poorest members of a community. Following a disaster, free competition gives greater access to these goods to those who have the greatest resources within a community.

Under these conditions, the market does not act as the great equalizer and vehicle of individual freedom praised by Smith. Instead, for the period of time between the occurrence of the disaster and when the market again becomes competitive and prices normalize, the market serves to distribute scarce and essential goods on the basis of pre-existing privilege within a community.

While the wealthiest within a community certainly have many advantages over the poor in a market under normal conditions, the market can be defended as creating greater supplies of essential goods at lower prices than would be available within a restricted market. This defense of unfettered markets becomes stronger when a social safety net is included for the poorest members of a society in order to ensure access to essential goods for all. These defenses of the market break down, however, following a disaster. During the period between the disaster and the point where price signaling delivers sufficient supplies of essential goods to the affected community, unfettered price increases do little good for the neediest within a community. These prices may have a long-term beneficial effect of increasing supplies of essential goods and lowering prices, but over the short-term they create a rationing scheme that favors the wealthy over the poor. Because these goods are essential to basic human functioning, rationing of goods such as food, medicine, and shelter in a way that disadvantages the poorest members of a community creates a disfavored class during the period immediately following the disaster. Members of this class are not merely inconvenienced but, because the goods in question are considered essential, face a threat to their basic well-being.

The message sent by a rationing scheme that favors the wealthy is that greater value is given to those members of a community who have the good fortune of being members of the most well-off class. Members of disadvantaged classes are sent to the end of the line for the distribution of scarce essential goods, with a disproportionate share of the burden created by the disaster. A system that gives all persons roughly equal access to essential goods, on the other hand, reaffirms the equal value of all persons through the equal right of all to the goods essential to minimal human functioning. Anti-gouging legislation can be designed to limit price increases, thus fulfilling the egalitarian goal of giving all persons roughly equal access to essential goods following a disaster. Communities that fail to protect all persons through such legislation will fail to express equal respect for their members by instead allowing their wealthiest members unequal access to essential goods.

In the absence of anti-gouging legislation, we can also assess the behavior of individual vendors who have legally sanctioned opportunities to raise their prices on essential goods following a disaster. While legal, this behavior can be morally impermissible. All of us share a general duty to further the goal of access to essential goods for all persons. This duty is a form of a general duty of beneficence, where we are granted latitude in determining which needy persons to aid in this manner. Our relations to those persons whom others, however, can help specify this general duty (Reader 2003) (Kitty 1999) (Walderon 2003) (Snyder 2008). Following a disaster, a vendor’s general duty to ensure others’ access to essential goods can become more
focused, targeting the members of her community who will vie for access to her supplies. The vendor’s decision as to how to ration her limited supplies—whether by ability to pay for the goods or through some other, more equitable means—will have a direct impact on her customers’ access to these goods. Should she choose to ration her goods according to ability to pay, then she will fail to discharge her duty of beneficence toward all those in her community in need of essential goods or, rather, privileging the wealthiest members of her community.

Of course, merchants normally set their prices at the highest point the market will bear with little moral condemnation. Why, then, would it be impermissible to do so following a disaster? In an idealized market, competition is established through hard bargaining—that is, seeking out the best terms of exchange for oneself. This bargaining takes place between people in roughly equal positions, where the consumer has the option to exit the exchange in search of better terms. Even when the exchange involves an essential good, the ability to select from multiple vendors and flexibility as to when the good is purchased preserves the consumer’s option of exit from any given exchange. When functioning in this way, the institution of the market transforms the self-interested nature of hard-bargaining into a vehicle for generating efficiencies in the production and distribution of goods. At the same time, the market remains a venue in which to pursue one’s own conception of the good life through the consumption and exchange of goods.

But these institutional protections are undermined when normal competition is disrupted by a disaster. When this happens, hard-bargaining has different implications. Competition, adequate supplies of essential goods, and flexibility as to when these goods are purchased all expand access to essential goods for all members of the community. When these conditions are disrupted, the self-interested motivation of hard bargaining is no longer limited by the institutional protections of a well-functioning market such as consumers’ power of exit from the exchange. Instead, self-interest unconstrained by a well-functioning market fails to protect the access of the poorest members of the communities to the goods essential to minimal human functioning.

Following a disaster, then, a vendor who increases her prices in the face of inelastic demand and diminished supply will undercut access by the poorest members of her community to essential goods. In doing so, she will fail to demonstrate the value of equitable access to these goods for all members of her community. If the vendor’s own livelihood has not been threatened by the disaster—through, for example, the destruction of supplies or damage to buildings—then these price increases serve merely as an opportunity for the vendor to reap unusual profits. Instead of discharging a specified duty of beneficence to all members of her community, with whom she now stands in a special relationship of dependence, the vendor merely looks to her own good. These profits can be compared to those accrued under a well-functioning market, where they are conjoined with efficiencies that are spread more evenly across the community through decreased prices and increased supplies.

In short, the market disruption brought on by a disaster can have two important effects from the perspective of price gouging. First, the loss of access to essential goods can create a pool of persons to whom the vendor is connected in a relationship of dependence and to whom the vendor has a special responsibility. Second, the institutional protections of an ideally functioning market can become undermined. If so, a vendor who chooses to charge the highest prices the market will bear and thereby distributes her goods according to ability to pay will fail to demonstrate equal respect for all members of her community. Taken together, these effects create the opportunity for price gouging by the vendor, even when anti-gouging legislation has not been enacted in her community.

A vendor, facing this criticism, can appeal to the rationing effect of her price increases. How can she be accused of undermining equitable access to essential goods when her actions serve to ration those very same goods? When compared to a rationing scheme where prices are capped at pre-disaster levels, her choice of rationing mechanism meets the needs of the community taken as a whole better than would be the case if prices were capped. In fact, it seems that true disregard for the needs of others takes place through price gouging legislation that would force caps on essential goods, distributing them on a first come, first served basis. Granted that a random distribution might seem more fair than distribution according to ability to pay, price caps do not limit consumption. Price increases by the vendor, on the other hand, serve to ration her goods.

This response must be judged on the basis of the range of alternatives available to the vendor. If alternative rationing schemes are available to the vendor and consistent with equal respect for all persons, then this response becomes less convincing. In the next section I will discuss forms of price gouging legislation and conduct by vendors that can avoid the moral wrongs discussed in this section. I conclude that more equitable means of distribution are available that still encourage new supplies to enter the market and preserve a rationing effect.
OBJECTIONS

Matt Zwolinski (2008) argues against both the effectiveness of price gouging legislation and the immorality of price increases that are typically condemned as gouging. His positive argument hinges largely on the benefits created by price increases, which I have largely granted in this paper.28 In order to strengthen my argument as to the immorality of these price increases, I will respond to two of Zwolinski’s central arguments. First, I will address the ‘non-worseness claim’ (NWC) that it cannot be morally worse to engage in a voluntary and mutually beneficial exchange than no exchange at all. Second, I will consider Zwolinski’s argument that price increases do not exhibit a failure of respect for consumers.

Zwolinski asks how we can criticize vendors who engage in voluntary and mutually beneficial exchanges while we ignore those who do nothing to help the needy in disaster areas:

On the other hand, to the extent that we hold that price gougers are guilty of mutually beneficial exploitation, we hold that they are acting wrongly even though their actions bring some benefit to disaster victims. On the other hand, many of us do nothing to relieve the suffering of most disaster victims, and we generally do not view ourselves as acting wrongly in failing to provide this benefit—or, at least, we do not view ourselves as acting as wrongly as price gougers. (Zwolinski 2008, 356–57)

This ‘non-worseness claim’ asks why we should condemn those who help bring needed supplies into disaster areas as ‘gougers’ when we do not condemn those who stay home, helping no one.29 That is, how can it be morally worse to engage in a voluntary and mutually beneficial interaction than to do nothing at all?30

In response, I believe that we must take the long view when assessing the moral principles underlying our actions. Individual actions, such as charging high prices for essential goods or sitting on one’s couch in response to a disaster, may not tell the full story as to one’s responsiveness toward the basic needs of others. One is not required to respond to every disaster nor every needy person in order to live a morally praiseworthy life. However, a pattern of failure to respond to the needs of others can exhibit a greater level of indifference toward the basic needs of others than is exhibited through a single instance of price gouging.

Zwolinski is right to note that some of those who charge market clearing prices following a disaster might be motivated both by self-interest and the benefits created for some consumers (Zwolinski 2008, 337–68). These motives may be morally superior to those of the person motivated to enter the disaster zone purely by self-interest. My point is that the person who chooses not to enter the disaster zone may be motivated purely by self-interest or have other, morally laudable responses toward the basic needs of her fellow humans. As the non-gouger’s duty of beneficence has not been specified in the way that, as I have argued, the gouger’s duty has been specified, she retains leeway as to how she will discharge this duty.

In order to assess a non-gouger’s underlying moral motivation, we must consider her responsiveness to others who lack access to essential goods. For example, does the non-gouger rise from her couch to help some other persons in situations of desperate need? Or is she solely moved to maximize her own welfare? In the latter case, the non-gouger can be accurately assessed as being guided by more morally problematic principles than those that guide a gouger who is motivated both by self-interest and the needs of others. The NWC, then, is false when motivations are assessed through sets of actions rather than single, morally ambiguous actions.

A second concern raised by Zwolinski also hinges on the positive consequences created by price gouging. Given that the exchanges I have been discussing are mutually beneficial and voluntary, Zwolinski questions whether placing limits on these exchanges is in keeping with respect for others:

Exploitation might plausibly be argued to manifest a lack of respect for the personhood of the exploitee. But laws against price gouging both manifest and encourage similar or greater lack of respect. They manifest a lack of respect for both merchants and customers by preventing them from making the autonomous choice to enter into economic exchanges at the market-clearing price. They send the signal, in effect, that your decision that this exchange is in your best interest is unimportant, and that the law will decide for you what sorts of transactions you are allowed to enter into. (Zwolinski 2008, 352–53)

That is, if consumers are not forced into these exchanges—and in fact they desperately seek them out—how can it be consistent with respect for others’ choices to rule them out of bounds?

I have argued that proper respect for the needs of others demands that vendors moderate their price increases and engage in non-price rationing. This argument does not hold that agreements between vendors and consumers at market clearing prices are coercive. Rather, vendors ought to limit their price increases and legislators ought to pass laws requiring vendors to do so. These restrictions aim to aid the entire post-disaster community while distributing essential goods more equitably. My claim is not that individual freedom is unimportant, but that the market may not support freedom equitably following a disaster.

Zwolinski defends his position by noting, “Price gougers treat their fellow human beings as traders, rather than as brothers and sisters in the Kingdom of Ends. But to treat someone as a trader is still a far cry more respectful than treating him as an object” (Zwolinski 2008, 359). Perhaps so, but I have argued that a disaster disrupts the market in a way that makes it inappropriate to treat one’s fellow human beings as traders. When the market is functioning under normal conditions, it can be appropriate to treat one’s fellow humans as traders in market transactions, especially in the presence of an adequate social safety net. This is so because the institution of the market creates a space in which self-interest and hard bargaining enhances the freedom of all persons. Following a disaster, however, the market fails to behave in this way over the short-term, pricing the poorest members of the community out of the market for essential goods.

Treating one’s fellow humans as traders is appropriate under conditions where trading in the market enables efficient and reasonably equitable access to essential goods. The justification for treating others as traders, however, is not that persons...
are appropriately understood as purely self-interested actors who are disinterested as to others’ capacity to obtain essential goods. Rather, treating others as traders is one way, in the setting of a well-functioning market, to help others to efficiently and reasonably equitably obtain those essential goods. The conditions where it is appropriate to treat others as traders can break down because trading is merely instrumentally valuable toward respecting others as vulnerable persons in need of support in order to engage in minimal human functioning. When market conditions change so that trading no longer serves to support reasonably equitable access to these goods and where other, more equitable options are available, then treating others as traders is inconsistent with respect for persons as rational but vulnerable agents.

A choice between market clearing and pre-disaster prices represents a false dichotomy. Instead, I have argued, price increases following a disaster should be limited to reflect changes in risks and business costs to the vendor and perhaps a small premium as well. These price increases should also be coupled with caps on purchases of essential goods by consumers. I have provided an argument for why we should attempt to adopt legislation that protects consumers in a post-disaster market and am optimistic that creative solutions to the shortcomings of existing legislation can be found. However, I also grant the possibility that these policies cannot be reflected in price gouging legislation without being so detailed as to restrict efficient increases in supplies of essential goods or so flexible as to be capricious in their application, as Zwolinski charges.

But, if not, my argument still stands as a guide for the behavior of individual vendors whose actions can be more sensitive to local context. Raising prices on essential goods can fail to express appropriate respect for others. Even if it is not illegal to raise prices on essential goods following a disaster, I have argued that it can be immoral to do so. While on the macro level price gouging legislation might undermine the price signaling effect needed to address the needs of the community affected by the disaster, individual vendors can, and should, choose to constrain their prices to reasonable levels out of an interest in the basic needs of all those around them.

CONCLUSIONS

If my account of the wrongness of price gouging is correct, it supports three major conclusions. First, the moral wrongs associated with price gouging should be understood generally as failures of respect for others. Vendors who ration scarce essential goods according to ability to pay undercuts the goal of equitable access to essential goods within their community. This failure of respect takes place in a setting where the vendor owes a specified duty of beneficence to her customers and alternative means of achieving price signaling (through modest price increases) and rationing (through purchasing caps) are available.

Second, price gouging is only possible in transactions involving some good essential to living a distinctly human life. Price increases for diamonds, for example, are not instances of price gouging under my account. Moral wrongs, such as unfairness, may accompany price increases for non-essential goods. These wrongs, however, are distinct from the wrongs I have ascribed to price gouging.

Finally, the potential for price gouging will depend on the extent and strength of non-market social institutions for distributing essential goods. If these institutions are in place prior to a disaster and survive that event, price gouging is unlikely to occur even if vendors freely raise their prices in the post-disaster market. Individuals are more highly susceptible to price gouging in communities where entitlements to essential goods are weak or non-existent. Therefore, the moral wrong of price gouging cannot be reduced merely to price increases for essential goods following a disaster, even if these prices cannot be justified by increased costs.

These observations depend on an account of price gouging as a kind of failure of respect for others, but I hope to have shown that this account tracks well with widespread intuitions as to when and why certain price increases are morally problematic while revealing where those intuitions are unjustified. In practice, determining whether gouging has taken place will require great attention to local context, as shaped by the goal of equitable access to goods that meet the essential needs of consumers.

NOTES

1. I am grateful to Robert Leider, Maggie Little, Daniel Levine, Leigh Anne Palmer, David Skarbek, Justin Weinberg, and Matt Zwolinski for their extensive comments on earlier versions of this paper. I am also thankful to the participants in a presentation of an earlier version of this paper at the 2008 APA Pacific Division Annual Meeting.

2. For example, a proposed federal anti-gouging law bans “taking unfair advantage of the circumstances related to an energy emergency to increase prices unreasonably.” See http://thomas.loc.gov/cgi-bin/query/z?hd110:hr:01252: (accessed May 28, 2008). New York’s anti-gouging law (NY GEN BUS §396-c) is justified by the need to prevent vendors “from taking unfair advantage of consumers during abnormal disruptions of the market.” In broader terms, USA Today condemns gougers as ‘Vultures’ (McCarthy 2004).
Similarly, Florida Governor Charlie Crist complained that “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” (Jacob 2004, F1). 3.

I will use the term ‘disasters’ to include any event that creates physical damage to a discrete area, disrupting the normal functioning of the market. These events include both natural disasters such as hurricanes and man-made disasters such as terrorist attacks.

4. See, for example, Joseph Trenta (2004).

5. For a helpful summary of US anti-gouging laws, see Skarbek & Skarbek 2008.


10. When explicit justification for anti-gouging legislation is given, references to ‘unfair’ prices is most common. The language of unreasonableness and gross price increases, drawn from the common law tradition, are frequent as well (Rapp 2005/2006).

11. If one feels that ‘price gouging’ can appropriately apply to the champagne example, we can discriminate between two senses of price gouging. ‘Fairness gouging’ can apply to price increases on all goods following a disaster or other market disruption while ‘needs gouging’ will be limited to price increases on essential goods. As I argue, ‘needs gouging’ is at the heart of the moral wrong that is typically associated with gouging.

12. The goods essential to minimal human functioning are supported through various non-essential goods. For this reason, I will also discuss non-essential goods like electrical generators, gasoline, and ice that are, in many communities, instrumental to the durability of essential goods such as food, water, and adequate shelter. Insofar as the essential goods are relevant to the wrongness of gouging, these non-essential goods will be relevant as well.

13. Of course, disinterest will take place as to what corresponding regulatory environment best supports this freedom-enhancing function.

14. This point has been made by authors as diverse as Milton Friedman (1962) and Amartya Sen (1999).

15. There is a long history within Judeo-Christian and Islamic thought condemning excessive price increases against vulnerable populations. These restrictions are motivated by concerns about oppression of the weak. Consider, for example, Leviticus 25:14: “And if thou sell ought unto thy neighbor, or hayest ought of thy neighbor’s hand, ye shall not oppress one another.” More generally, see Brewer 2007, 1104–06.

16. In some cases, even wealthy persons following a disaster may not have the immediately available resources to afford price increases on essential goods. When referencing ‘the wealthy’ I intend those with the resources available to afford price increases rather than those with the greatest savings and assets within a certain range, as is often the case, even to an anonymous reviewer for pointing out this ambiguity.

17. Moreover, such a system, even if it could be established, would likely create or exacerbate a black market in essential goods (Rockoff 2002). See also Abbi Raghunathan (2005).

18. By the standards of fairness, the price might be morally problematic. At the least, however, the vendor does not gauge his customer by the standard I am proposing.

19. There is some disagreement on this point, however. Geoffrey Rapp (2005/2006, 533–59) argues that anti-gouging laws are economically justified in two ways. First, they help preserve hard currency reserves when a disaster or terrorist attack disrupts electronic payment systems such as ATMs. Second, they counteract the effects of pricing irrationality that prevent efficient pricing during market disruptions.

20. Zwolinski discusses price increases among vendors who bring goods into the post-disaster market whereas I have focused my discussion on vendors with goods already in the market. The risks and opportunity costs faced by outsiders may be different from those of locals, meaning that outsiders and locals may be justified in offering different prices for their goods based on different levels of risk and cost. I discuss the relevance of vendors’ risks and costs to post-disaster prices in the previous section. The source of these goods, however, is not relevant to the basic moral wrong of price gouging.

21. Alan Wertheimer (1996, 289–93) describes the non-worseness claim as holding that an interaction Y between A and B cannot be morally worse than no interaction at all if Y makes both A and B better off when compared to a baseline of no interaction. In other words, the NWC denies the possibility that a mutually beneficial exploitative interaction can be morally worse than no interaction at all.

22. Reforms and standardization of existing legislation have been suggested. Anita Ramastrasy (2005) argues that anti-gouging legislation should give clear guidance as which price increases are impermissible while allowing increases that reflect changes in costs and risks for vendors. See also, Page & Cho 2006.

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