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WHAT ABOUT "PRICE GOUGING" BY EMPLOYEES?

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A COMMENTARY IN THE **BUSINESS ETHICS IN TIMES OF PANDEMIC VIRTUAL SYMPOSIUM**

ABSTRACT

The Covid-19 pandemic reveals a new phenomenon, unaddressed by the existing literature on "price gouging" in times of emergency. While merchants – getting large(r) remuneration for providing desperately needed goods – evoke public moral outrage for assumed "price gouging", employees – getting large(r) remuneration for providing desperately needed services – do not cause such outrage but rather experience moral appraisal for their valuable commitment. To address this inherent inconsistency of moral judgment, we propose to embrace insights from research on folk economics. By understanding the folk perception underlying public outrage at "price gougers," business ethics might better enlighten the moral (il-)legitimacy of anti-"price gouging" measures.

IN RECENT YEARS, there has been an extensive debate about the moral legitimacy of "price gouging" and anti-"price gouging" laws. Following the distinction between *market advocates* and *market moralists* (Wempe and Frooman 2018), market advocates have argued that in times of emergency radical price increases provide appropriate incentives for supplying the goods and services that are urgently needed, whereas market moralists have argued that, irrespective of the immediate material consequences, such "price gouging" also has a symbolic meaning that contradicts or even undermines the norm – and social practice – of solidarity as selfless help.

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Faced with a conflict between the immediate material consequences of strong price increases and moral interpretations of their symbolic meanings, market advocates and market moralists usually stand up for different sides of the spectrum.

As a case in point, Brennan and Jaworski (2016) argue that the immediate real-world consequences of price increases in competitive markets are morally desirable and that they therefore should trump the merely “semiotic” objections of market moralists. They hold that the effective help via markets, triggered by the price mechanism, normatively dominates any negative symbolic effects of price increases, particularly in view of the fact that the moral interpretation of symbolic effects is socially constructed and thus subject to change. Their normative argument can thus be summarized: “when there is a clash between semiotics and consequences, consequences win” (Brennan and Jaworski 2016: 62).

On the other side, Sandel (2009: 7–8) observes that people who are identified as “price-gougers” cause many citizens to develop strongly negative emotions. And as a moral philosopher, he argues (Sandel 2009: 7) that such emotions should not be dismissed as “atavistic” because they include a valuable hint for moral judgment:

> [O]utrage 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.

In effect, Sandel proposes that there are cases where the symbolic meaning should normatively trump the immediate material consequences of price increases because the erosion of norms can be more important than increased market supply.

The debate along this front line between market advocates and market moralists has not made much progress in recent years. There are no clear winners or losers in the debate, and both sides have therefore concentrated on shifting the burden of proof to the opposite camp—a clear indicator of an intellectual stalemate.

Covid-19 reveals an inconsistency in moral judgments

Against this background, it is interesting to note that in the midst of the Covid-19 pandemic, we become witnesses of a new phenomenon: While merchants – getting large(r) remuneration for providing desperately needed goods – evoke public moral outrage for assumed "price gouging," employees – getting large(r) remuneration for providing desperately needed services – do not cause such outrage but rather experience moral praise for their valuable commitment.

The media report a variety of stories where merchants providing medical supplies such as thermometers, antiseptics, or masks for much higher prices than usual have been chided as greedy norm violators. As of this writing, a New York City pharmacist has been arrested for hoarding and "price gouging" scarce N95 masks. According to Manhattan U.S. Attorney Geoffrey S. Berman, the defendant

> exploited an unprecedented crisis to engage in profiting. He allegedly spent over $200,000 accumulating N95 masks and then sold masks at inflated price, charging customers up to 50% more than he had paid to acquire those N95 masks (U.S. Department of Justice 2020).

Even for-profit companies express – or pretend to express – moral outrage at "price gougers," as Amazon does with its "zero tolerance for price gouging and longstanding policies and systems to prevent this harmful practice" (Amazon 2020).

In regard to "price gouging" by employees, however, consider the following case: Travel nurses to New York City have been given pay packages of over $10,000 per week or over $100,000 for a 13-week assignment plus quarantine pay with additional benefits such as expedited registered nurse licensure, free hotel rooms, free car rentals, and free airfare (Walker 2020). Clearly, the pay package compensates the additional working hours, the absence from home, and higher health risks. Nevertheless, compared to an average weekly salary of $1,689 (excluding additional benefits) for a registered nurse in New York prior to the corona outbreak (Bureau of Labor Statistics 2020), the premium pay is more than significant. In respect to "price gouging" claims against merchants that usually start at 10% price increase above actual costs, the discrepancy in the perception of "price gouging" by merchants and travel nurses is peculiar.[2] Until now, we have not yet noticed moral outrage at "vicious travel nurses."

What is the problem? The problem is an inconsistency in moral judgment: If one disqualifies the additional (because lucrative) performance of merchants as vicious "price gouging," one should also

[2] In the blogosphere, this has also been observed by Perry (2020).

morally disqualify the additional (because lucrative) performance of employees—irrespective of the benefits they provide to the people in need of help, solely focusing on the (assumed) negative symbolic impact on solidarity norms and the notion of selfless help. And vice versa: If one acclaims nurses for providing urgently needed help in times of emergency, one should also acclaim – or at least tolerate – merchants who provide urgently needed goods.

Market advocates and market moralists are asymmetrically affected by this problem. Market advocates seem to be fine with employees engaging in what critics call "price gouging," but so they are with merchants—as long as people in need are effectively helped via price signals and improved market incentives. However, they should at least be baffled why their judgment meets fierce opposition from public opinion in the second case but not in the first case. In comparison, market moralists face a much stronger challenge: If they morally disapprove of strong price surges incentivizing merchants, they should also morally disapprove of strong price surges incentivizing employees, although so far public discourse tends to regard travel nurses not as villainesses but as heroines.

Implication for the price gouging debate

We claim that this new phenomenon of publicly celebrated employee "price gouging" has the potential to stimulate fruitful interdisciplinary research and that it may even help to overcome the intellectual blockade in the debate between market advocates and market moralists. The crucial question to be asked from a business ethics perspective is this: *Are there good reasons to praise (price-incentivized) employees for helping emergency victims and at the same time chide (price-incentivized) merchants for doing basically the same?*

Before answering this *normative* question, we propose first to address the following question for *positive* research: Instead of accepting moral sentiments as the decisive criterion – or at least as a relevant hint or gesture – to appropriate moral judgment, we would recommend to embrace insights from empirical research on folk economics (Boyer and Petersen 2018). This strand of literature helps us to better understand the moral motivation underlying a public outrage at "price gougers."

A key characteristic of folk economics, i.e., the intuitive economics of laypeople, is the assumption that the world is a zero-sum game. This framing leads in various cases to a "zero-sum fallacy." As Johnson et al (2020: 2) show in regard to voluntary transactions of ordinary goods and services, people tend towards "win-win denial" where "buyers [are] consistently seen as less likely to benefit from transactions than sellers." With such a (fallacious) win-lose perception in mind, the marketplace becomes an arena of winners and losers—neglecting its working property of fostering mutual advantage.

Given this literature, it is standing to reason that the "folk" criticism of "price gouging" (mis-)perceives market behavior as a zero-sum game where "price gougers" not only refrain from assisting emergency victims in a selfless manner but even gain additional windfall profits—presumably at the expense of others. In sharp contrast, it is obvious for everyone how travel nurses are helpful in mitigating the detrimental impact of the Covid-19 pandemic. While nurses are naturally perceived to effectively help people in need, the solidarity effects of merchants who reduce local scarcity through market speculation are quite counterintuitive and far removed from everyday "folk" experiences since they involve information gathering, risk taking and logistics. Seen from this perspective, moral intuition differs with the actual circumstances, which explains why similar effects may trigger quite different – and even opposing – moral sentiments and according judgments.

We therefore identify a promising potential for empirical investigations whether the fallacies of "folk economics" might lead to fallacies of "folk ethics." Such research – even if strictly positive – would be valuable also on normative grounds: If "folk" moral intuitions are a *comprehensible* reason for praising (price-incentivized) employees and chiding (price-incentivized) merchants, it is more than questionable whether such sentiments provide a *legitimate* reason to do so.

In case future research corroborates what is right now not much more than merely a theoretical conjecture, namely that public outrage at "price gougers" is based on a "folk fallacy," business ethics could develop an answer to the normative question simply by clarifying the alternative: Modern society must choose between the currently practiced option of putting incoherent moral sentiments into law and the alternative option of demanding from citizens that they educate and civilize their feelings of anger, putting anger at “price gouging” in a similar category as the longing for revenge or homophobic varieties of disgust.

Finally, we would like to emphasize that being able to explain the inherent inconsistency observed in moral sentiments towards structurally analogous behavior of merchants and employees would be valuable—for theory *and* practice. On theoretical grounds, business ethics could enlighten the moral (il-)legitimacy of anti-“price gouging” measures and thereby facilitate a more fruitful debate between market advocates and market moralists, bridging existing gaps in interdisciplinary dialogue between economics, moral philosophy, and evolutionary psychology. On practical grounds, business ethics could enrich public discourse with novel insights for improved judgments. Price gouging is certainly only one issue in this regard, but an important one. As the Covid-19 pandemic makes clear, unsound moral reasoning can cost lives.

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