Permanent Crisis Management, the Rule of Law, and Universal Basic Income: A Polycentric Approach

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Abstract: As a response to the COVID-19 crisis, governments have turned to various discretionary measures such as cash transfers to consumers and businesses with mixed results. Universal Basic Income (UBI) is back on the agenda as well. One of the main advantages of UBI, as scholars like F.A. Hayek, Milton Friedman, and James M. Buchanan have argued, is that it does *not* depend upon competent and benevolent government discretion—which is often in short supply—but upon pre-established rules. This paper argues that the UBI scheme holds tentative promise from the point of view of improving the institutional crisis preparedness of a complex socioeconomic order. The pre-established rules of UBI buttress the *rule of law* framework that improves the ability of economic agents to spontaneously coordinate their actions in times of crisis characterized by radical uncertainty, disequilibrium shocks, and institutional instability. Furthermore, UBI combines the distribution of fungible resources with the delegation of independent decision-making power to millions of crisis-struck individuals and communities. Compared to discretionary tax-and-transfer schemes, the rules of UBI therefore appear more compatible with the *polycentric* discovery of novel solutions from the bottom-up. In times of crisis, UBI may be relied upon as one cornerstone of what I shall call the *permanent crisis management* framework. Having such a permanent scheme may minimize - although it does not altogether eliminate - the need for discretionary transfers, targeted intervention, and technocratic management in times of crisis. However, this theoretical model of UBI as a facilitator of polycentric crisis preparedness faces several practical challenges that need to be addressed in further research.

1. INTRODUCTION

Imagine that an unknown crisis hits an unknown country. Not all regions of the country are affected equally. Rural farmers and small-town workers experience financial losses while some urban workers even see gains. Youth unemployment rises, but only in small rural towns in the North-East, and only temporarily. People clamour for handouts, better jobs, and better technologies to alleviate their acute suffering and to protect them against future shocks of this kind. Should we create a specially tailored relief program that provides targeted aid to unemployed young farmers and workers in small rural towns, e.g., in the form of targeted unemployment and crisis relief benefits (supplemented by in-kind services such as educational and retraining

programs)? Or should we institute a general program that provides a uniform, non-targeted income floor for the whole society? These questions have become increasingly topical as governments all over the world have turned to various discretionary measures, including temporary cash transfer programs, as a response to the COVID-19 crisis. World Bank reports that, as of December 2020, "a total of 215 countries or territories have planned or implemented 1,414 social protection measures […] with cash transfers emerging as the most widely used form of social assistance" (Gentilini, Almenfi, and Dale 2020, p. 2).

It *seems* obvious that the targeted approach that takes local needs and circumstances explicitly into account is the optimal approach. A general program operates blindly and lacks certain finesse. Given certain assumptions, societies stand to benefit more from competent discretionary crisis management authorities that produce well-functioning, specially tailored, and targeted solutions that reliably achieve their intended effects. Such programs can alleviate the identifiable suffering of identifiable people by tackling their identifiable problems in identifiable ways. Such prudent and benevolent rule by discretionary tax-and-transfer authorities constitutes a legitimate and noble aim of crisis management.

However, this paper attempts to show that there are major epistemic and technocratic problems with a crisis management framework that relies *exclusively* or *predominantly* on such discretionary authorities. These problems seem unavoidable once we absorb the insights of the political economic literature on complexity, radical uncertainty, and polycentricity (Knight 1921; Polanyi 2002; Hayek 1960, 1982, 1990; Ostrom 2005; Beinhocker 2006; Aligica & Tarko 2012; Colander & Kupers 2014; Aligica, Boettke, & Tarko 2019; Thiel, Blomquist, & Garrick 2019; Kay & King 2020). I suggest that there are three general lessons of this literature that need to be assimilated in developing a robust and resilient approach to institutional crisis preparedness: 1) Radical uncertainty, disequilibrium shocks, and economic insecurity are *permanent* and *systemic* features of a complex society that demand *permanent* and *general* institutional responses, and not merely *ad hoc* and *targeted* ones. 2) Complex market economies, especially in times of crisis, cannot be effectively controlled, let alone micromanaged, from the top down in a discretionary manner due to the inherent demandingness of the task at hand that exceeds all available technocratic competence. 3) As a result, discretionary crisis management authorities, although an eminently useful part of any comprehensive crisis management scheme, ought to be treated as institutionally subservient to a *permanent, rule-bound crisis management framework* that is tasked to solve society's problems "polycentrically" from the bottom-up.

What, if anything, does the complexity approach tell us about the relative effectiveness of various tax-and-transfer programs as part of crisis management? Although it does not provide anything close to a universal blueprint, it suggests some guidelines and constraints that need to be taken seriously. Once we humble ourselves in the face of complexity, the *primary* (or *default*) means, although not the *only* means, of helping particular people in particular circumstances, paradoxically enough, may be to help everybody equally through a *general, nondiscriminatory tax-and-transfer program*. Contemporary crisis management arguably suffers from an overreliance on discretionary methods, including discretionary cash transfer methods. Targeted interventions, although often desirable, should be made *supplementary* to a general, rule-bound tax-and-transfer program.

What might a crisis-aware and rule-bound tax-and-transfer program look like? As the most plausible candidate, I shall suggest a classical liberal model of Universal Basic Income (UBI) (Friedman 1962; Buchanan 1997; Hayek 1982; Tomasi 2012; Murray 2016; Steiner 2016; Fleischer & Lehto 2019; Zwolinski 2015, 2019). I will argue that UBI, a modest regular cash payment delivered to all citizens with minimal-to-zero means testing or conditionality, holds theoretical promise from the point of view of improving the institutional crisis preparedness of a complex socioeconomic order. One of the main advantages of the classical liberal UBI model is that it does *not* depend upon competence or benevolence in the government—which are often in short supply—but upon pre-established rules that are shaped by the normative principles of simplicity, generality, transparency, predictability, and nondiscrimination. The pre-established rules of UBI buttress the classical liberal *rule of law* framework that improves the ability of grant recipients to spend their money as they wish and to spontaneously coordinate their actions in the face of radical uncertainty *without* the discretionary intervention of emergency authorities. In this way, UBI combines the distribu-

tion of fungible resources with the delegation of independent decision-making powers to millions of crisis-struck individuals and communities. Compared to discretionary tax-and-transfer schemes, the rules of UBI therefore appear more compatible with the *polycentric* discovery of novel solutions from the bottom-up. In times of crisis, UBI may be relied upon as one cornerstone of what I shall call the *permanent crisis management* (PCM) framework, which refers to a set of stable institutional rules tasked to improve crisis preparedness. Having such a permanent scheme may minimize—although it does not altogether eliminate—the need for discretionary transfers, targeted intervention, and technocratic management in times of crisis.[1] The classical liberal UBI model therefore provides a viable and promising alternative to the inevitable push-and-pull politics involved in the discretionary tax-and-transfer state.

The structure of the paper is as follows. Section 2 explores the notion of permanent crisis management in the face of radical uncertainty and explains the polycentric model of governance based on the classical liberal rule of law framework. Section 3 explores three classical liberal Universal Basic Income (UBI) models as plausible candidates for the redistributive dimension of the rule of law framework. Section 4 briefly tackles some objections and offer some rejoinders. Section 5 concludes.

2. CRISIS MANAGEMENT, COMPLEXITY, AND RADICAL UNCERTAINTY

2.1. Crisis management and the problem of adaptation

A moment of "crisis," following its Greek etymology, requires the development and exercise of *capacities for effective decision-making* that allow agents to survive and thrive in a radically complex and uncertain world. (The verb "*krinein*" means "to decide" or "to judge.") Crisis management is inseparable from what in evolutionary theory and complexity theory is called *adaptation* (Holland 1992, 1995). Adaptation entails the continuous modification of one's behaviour in response to the challenges posed by a constantly changing environment: "The readjustments by which the organism adapts itself to the environment require time, and the farther ahead the organism can 'see', the more adequately it can adapt itself, the more fully and competently it can live" (Knight 1921, p. 101).

Two closely related concepts are useful here: *adaptive efficiency* and *resilience*. The former derives from New Institutional Economics, while the latter is more common in the polycentricity literature. In Douglass C. North's definition, "adaptive efficiency (…) entails a set of institutions that readily adapt to the shocks, disturbances, and ubiquitous uncertainty that characterize every society over time" (North 2005, p. 68). It is a close cousin to the concept of resilience which is defined as the "institutional capacity to cope with shocks and other challenges" (Tarko 2017, p. 103). Often in conjunction with robustness, resilience is widely discussed in systems theory and the polycentricity literature (Meadows 2009, p. 159; Ostrom 2005, p. 67; Tarko 2017, pp. 103-136; Carlisle and Gruby 2019, p. 945).

Crisis management, then, is a branch of evolutionary decision-making under radical uncertainty whose task is to increase the adaptive efficiency or resilience of agents within a complex system. Radical uncertainty is one of the "fundamental facts of life" (Knight 1921, p. 178), and in order to cope with it, agents must gather intelligence and exercise critical judgment as individuals and as members of social networks and collective institutions. Although not *every* small obstacle on one's path is serious enough to deserve the label of a "crisis," every moment is pregnant with unpredictable novelties and every seemingly stable equilibrium is a potential hotbed of disruptions. Such a continuous reshaping of existing structures, or what Schumpeter called "the perennial gale of creative destruction," is a permanent feature of a complex and interconnected social order (Schumpeter 2003, pp. 83-84). This implies that "moments of crisis" are neither rare nor fleeting but omnipresent in a complex society. Regardless of which particular disruptions are officially nominated as "crises" in the public consciousness, the unpredictable bubbling of the spontaneous order, through a ceaseless sequence of minor and major emergencies, continually disrupts the plans and expectations of human beings and forces them to adapt to a changing world.

The effective governance of a complex society is inseparable from what we might call *Permanent Crisis Management* (PCM). Creating a robust PCM consists of the identification, nurturing, and periodic reform of the institutional rules and norms that are the most conducive to increasing our individual and institutional resilience (or adaptive efficiency) in the face of radical uncertainty. One plausible solution, on the tempting assumption that resilience requires the abandonment of inflexible rules, is that the government should play the primary role of the benevolent and competent discretionary crisis manager:

> In the wake of crises, governments seem like the only entities who have the resources to meaningfully help survivors and the capability to restore disrupted services or provide needed goods and services. National and supranational governmental organizations are often seen as being in the best position to identify the problems, understand the circumstances, provide resources, direct action, and coordinate among the various constituencies following a major crisis (Haeffele & Storr 2020, p. 3).

What are the problems with this view? Let us again imagine that the society plummets into a difficult crisis that causes problems for millions of people in complex ways. Many people suffer. The suffering is not evenly distributed. People are looking for solutions. The solutions to the crisis are not obvious. What should the government do? If we limit our concern to the tax-and-transfer functions of the state, the government must answer (at least) the following questions: 1) Where and how should scarce socioeconomic resources be allocated to best alleviate suffering? 2) Where and how should scarce economic resources be allocated to discover long-run solutions to the crisis? 3) What proportion of social resources should be spent as a short-run investment to the relief of immediate suffering and what proportion as a long-run investment to the discovery of permanent solutions? 4) What are the most resilient parts in the system that need little help since they can survive on their own, and what are the most vulnerable parts of the system that need extra support? 5) Overall, which agents or institutions possess the best problem-solving capacities in relation to the unique needs of the ongoing crisis?

The above list is only suggestive. Available social resources, in any case, must be directed towards the parts of the system—agents and institutions—that need them the most, and away from those parts of the system—agents and institutions—that need them the least. Any robust management framework must find ways to enable institutions, individuals, and businesses to better adapt themselves to a radically uncertain environment. All of this demands immense epistemic competence from decision-makers so that they easily become "blinded by the illusion of control" (Meadows 2009, p. 169). The governance of a complex system must always be accompanied by technocratic humility in order to avoid what Hayek called "the fatal conceit" (Hayek 1990). Even the most competent leaders struggle to find an Archimedean point with which to exercise effective top-down control over the socioeconomic system: "Systems can't be controlled. But they can be designed and redesigned" (Meadows 2009, p. 169). More specifically, the *rules* of the system can be designed, redesigned, and tweaked. The normative focus of complexity-aware governance should move towards redesigning *the rules of the game* rather than intervening to advance or thwart specific outcomes produced *within* those rules. Clearly, some institutional rules are better than others at solving complex social problems. How do we identify them?

To answer this question, let me contrast two approaches, to be discussed below: 1) *the discretionary approach* to crisis management and 2) *the polycentric approach* to crisis management under the rule of law. These two approaches do not exhaust the possibility space for institutional design, but they offer a useful axis around which to analyse the issue. Although there are many things that people can collectively do to improve their lives in the face of radical uncertainty, I will argue that the polycentric approach forms the best foundation for effective governance in a complex and ever-changing world.

2.2 Discretionary vs. polycentric crisis management

The argument for the superiority of discretionary decision-making over alternative approaches in the production of resilient crisis management is based on two premises—one of them true and the other one false—from which it reaches an incorrect conclusion:

Premise 1: An effective crisis management framework must be agile and responsive in order to correctly interpret environmental signals and produce effective crisis mitigation strategies. (True.)

Premise 2: A discretionary authority not bound by rules is always (or predominantly) more agile and responsive than a permanent authority bound by established and inflexible rules. (False.)

Conclusion: Therefore, an effective crisis management framework must always (or predominantly) rely on a discretionary authority not bound by established rules. (False.)

The weak point in the argument is the second premise, that a discretionary authority not bound by rules is always (or predominantly) more agile and responsive than a PCM bound by established and inflexible rules. Proving the falsity of this premise entails explaining under what conditions a permanent authority bound by rules is *more* agile and responsive than a temporary discretionary authority not bound by rules. The solution to this puzzle will be found in the theoretical insight of complexity theory according to which the rule of law framework is a mechanism for delegating a major portion of permanent crisis management to the crisis-affected people themselves, i.e., to the heterogeneous, rule-following, freely acting, and interconnected agents, seen as avatars of "polycentric" social intelligence.

Here, I am using the term "polycentric" specifically in the sense given to it by Michael Polanyi (2002) which emphasises the interrelationship between the rule of law, individual freedom, and social learning. According to Polanyi, the "polycentric"—or "spontaneous"—"order is achieved among human beings by allowing them to interact with each other on their own initiative—subject only to laws which uniformly apply to all of them" (Polanyi 2002, p. 159).[2] A "polycentric task" is defined as any task "that can be socially managed only by a system of mutual adjustments" between freely acting individuals that are regularized under some set of abstract rules that determine the scope of individual freedom (Polanyi 2002, p. 184). Paradigmatic polycentric systems, for Polanyi, are science and the market economy (Polanyi 2002, p. 154). In polycentric systems, rules structure the interactions between rule-following agents. As other complexity theorists have noted, simple sets of rules can facilitate the emergence of surprisingly complex and advanced solutions since, through the spontaneous interactions between rule-following agents, "complex and delightful patterns can evolve from quite simple sets of rules" (Meadows 2009, p. 159). Let us call this the "simple rules" paradox in the governance of a complex system: *complexity* in the socioeconomic realm may best be governed by a set of relatively *simple* institutional rules that encourage complex, creative responses from the bottom up. (Of course, not just *any* set of simple rules will do.) Institutionalizing widespread freedom as a way of "[e]ncouraging variability and experimentation and diversity means 'losing control'" over the trajectories of the complex system (Meadows 2009, p. 160). Nonetheless, "losing control" in a *planned* way—what Meadows (2009, p. 170) evocatively calls "dancing" with the system—is often the only way we can hope to steer a complex system through a radically uncertain terrain.

Hayek aptly diagnosed the illusion: "To the naive mind that can conceive of order only as the product of deliberate arrangement, it may seem absurd that in complex conditions order, and adaptation to the unknown, can be achieved more effectively by decentralising decisions, and that a division of authority will actually extend the possibility of overall order. Yet that *decentralisation actually leads to more information being taken into account*" (Hayek 1990, pp. 76-77, my italics). It should be emphasized that these insights regarding the social value of epistemic decentralization are shared by most complexity theorists. Scholars may differ as to the best precise methods of achieving epistemic decentralization, but they all agree that

polycentric decision-making is an important feature of any workable solution (Hayek 1982; Polanyi 2002; Beinhocker 2006; Colander & Kupers 2014, Hodgson 2019). It is worth remembering that "seeing the social system as a complex evolutionary system is quite different from seeing it as a self-steering system requiring the government to play no role" (Colander and Kupers 2014, p. 5); the right question to not *whether*, but *how,* government should intervene. Although there are multiple governance frameworks that are compatible with polycentricity, I shall limit myself to the classical liberal framework of the rule of law, as interpreted by Polanyi and Hayek, as the most promising framework for my purposes.

Next, I shall explain how this framework facilitates polycentricity. First, we need to understand what the "rule of law" means. In the broad sense, it is a notoriously vague concept that refers to a constellation of interrelated legal norms, including the following: laws should apply equally to all citizens, not discriminate against particular individuals, be adjudicated in common courts, be transparently written, refer to future acts, be widely promulgated, etc. The concept has a somewhat more precise meaning in the classical liberal interpretation of the rule of law associated with John Locke (1988), David Hume (1777), A. V. Dicey (1979), F.A. Hayek (1960), and others. Indeed, it is impossible to disentangle the common notion of the rule of law from the liberal tradition since "every version of liberalism reserves an essential place for the rule of law. And the rule of law today is thoroughly understood in terms of liberalism" (Tamahana 2004, p. 32). In Dicey's succinct formulation, the liberal rule of law refers to "equality before the law" which he contrasts with the administrative or discretionary style of government (such as the French *droit administratif*) (Dicey 1979, p. 332). Elsewhere, he equates it with "the security given under the English [or any other] constitution to the rights of individuals" (Dicey 1979, p. 184). Dicey contrasts the rule of law with "every system of government based on the exercise by persons of authority of wide, arbitrary, or discretionary powers of constraint" (Dicey 1979, p. 188). This is reminiscent of Locke's argument that the liberal system of government naturally opposes any exercise of "absolute, arbitrary, unlimited, and unlimitable Power, over the Lives, Liberties, and Estates" of its citizens (Locke 1988, p. 148). The framework of the rule of law, from Locke to Dicey, was therefore a recipe for a limited, liberal government through which, in Hayek's words, "[t]he coercion which the government must still use [...] is reduced to a minimum and made as innocuous as possible by restraining it through known general rules" (Hayek 1960, p. 72).

The classical liberal rule of law framework provides an institutional scaffolding for improving crisis resilience through a polycentric framework within which millions of independent but interconnected agents can *self-organize* in a decentralized manner to solve social problems. As one of the leading systems thinkers put it: "The ability to self-organize is the strongest form of system resilience. A system that can evolve can survive almost any change, by changing itself" (Meadows 2009, p. 159). A polycentric system is a complex system that can survive almost any change by allowing its component parts (human beings and institutions) to self-organize themselves in creative ways that produce a spontaneous order as opposed to spontaneous chaos. The polycentricity literature is full of examples of how individuals and communities have been able to devise bottom-up strategies for dealing with various emergent problems (Ostrom 2005; Aligica & Tarko 2012). A recent collection of essays, *Bottom-up Responses to Crisi*s (Haeffele & Storr 2020), contains an overview of the resources that the polycentric approach has in analysing disaster management and crisis management. The authors argue that vulnerable communities "are more capable than sometimes perceived and do, indeed, participate in their own recovery" so that "individuals and local organizations who come together to respond to crises can be said to bring about recovery from the bottom-up" (Haeffele & Storr 2020, pp. 5-6). Since the rule of law facilitates the ability to self-organize from the bottom up, and since the ability to self-organize from the bottom up facilitates polycentric crisis management, the rule of law is an important cornerstone of any robust system of polycentric crisis management.

I have outlined two divergent approaches to crisis management. On the one hand, the discretionary crisis management model delegates large scale discretionary powers into the hands of a collective decision-making body whose practical wisdom ensures that the state has the adaptive capacity to respond prudently to unforeseen circumstances of time and place. On the other hand, the classical liberal rule of law model wishes to limit the discretionary powers of centralized authorities in exchange for the increased delega-

tion of discretionary powers into the hands of diverse and dispersed individuals for the purpose of achieving "polycentric" social intelligence. Both models are attempts to solve the problem of crisis management under uncertainty by delegating discretionary decision-making powers to agents based on their expected competences and learning capacities. But the two models rely on wildly different epistemic and technocratic assumptions. Political economy *can* and *should* incorporate insights from both perspectives in a mixed approach and it must carefully delegate scarce resources between different authorities. Arguably, the polycentric approach has not yet been utilised to its full potential. In the next section, I shall apply the classical liberal polycentric approach into the context of welfare state governance.

2.3. The rule of law, the polycentric order, and the welfare state

Some scholars have cast doubt on whether the classical liberal framework of the rule of law leaves *any* room for the welfare state. Richard Epstein (1985), for example, has argued that welfare rights are fundamentally incompatible with the common law foundations of the rule of law. After all, in the classical liberal tradition, the rule of law *primarily* refers to the abstract, general, and fixed rules of liberty, property, and justice (Locke 1689; Hume 1777; Hayek 1960). These rules constitute and protect "the rights of individuals" (Dicey 1979, p. 184). Nonetheless, from Locke to Hayek, classical liberalism has not only generally tolerated the government provision of public goods but has always been "congenitally open-minded about distributive questions" (Tomasi 2012, p. 167). What explains this seeming discrepancy?

For one, the concept of the rule of law is a *formal-procedural* one. Its basic function is to limit the scope of legitimate government action, protect individual rights, and enforce the legal regime of abstract and general rules that are equally applicable to all. Such an "empty" conception of the rule of law, defined in purely formal terms, is self-evidently compatible with several government programs and regulations, including the kinds of redistributive programs that constitute a classical liberal (or "limited") welfare state (Lehto 2015). It should come as little surprise that most contemporary theorists of the spontaneous order (Polanyi 2002; Hayek 1960, 1982; Hodgson 2019) have seen some legitimate role for a tax-and-transfer state as part of their political framework. Polanyi, for example, argued that the state has a role to play in "restricting the range of commercial activities by outlawing unsocial transactions" and in "making provisions for education, health and social amenities, which are insufficiently or unsatisfactorily supplied by commercial sources" (Polanyi 2002, p. 149). Hayek, too, tolerated a wide range of social policies as long as such actions "assist the spontaneous forces of the economy" and as long as "there is no violation" of the principle of the rule of law. Indeed, within those bounds, Hayek thought, "there are fields in which the desirability of government action can hardly be questioned," including a guaranteed minimum income scheme (Hayek 1960, pp. 331-332).[3] Most recently, Geoffrey Hodgson has argued that a "basic income guarantee [is] justified on the grounds that individuals require a minimum income to function effectively as free and choosing agents. The basic means of survival are necessary to make use of our liberty, to have some autonomy, to be effective citizens, to develop ethically, and to participate in civil society. These are conditions of adequate and educated inclusion in the market world of choice and trade" (Hodgson 2019, p. 204). Indeed, many polycentric scholars—including the arch-critic of "social justice", F.A. Hayek—have been consistent and long-standing supporters of what we today would call "welfare state" measures. To be clear, I do not wish to claim the rule of law should be taken to *recommend* a system of rule-based redistribution. I only wish to emphasize that it is *compatible with* it. Furthermore, it is evident that the contemporary political reality is characterized by the widespread acceptance of the tax-and-transfer state, and scholars should work under that assumption that this is unlikely to change any time soon.

So far, I have argued that the rule of law framework facilitates effective crisis management by upholding a regime of abstract and general rules that enable people to coordinate their actions in a way that makes it easier for them to discover polycentric solutions to emerging problems and better adapt to an uncertain world. That part of the rule of law framework that contains the abstract and general rules that are indispensable for achieving system resilience and crisis preparedness can be called the *Permanent Crisis Man-*

agement (PCM) framework. The PCM framework is compatible with a large range of rule-bound tax-and-transfer measures. What, if anything, makes UBI stand out among the alternatives?

In the next section, let me turn to the current UBI debate. First, I will look at how UBI has been proposed as a tool of crisis management. Then, I will explore three classical liberal UBI models. After that, I will explore the operational rules and meta-rules of the UBI system. I will show that a rule-based UBI system seems compatible with the PCM framework and therefore with the polycentric governance approach to crisis management.

3. UNIVERSAL BASIC INCOME: THE "RULE OF LAW" APPROACH

3.1. UBI, EBI, and crisis management

Universal Basic Income (UBI) has been proposed by some philosophers and economists as a potential replacement of, or a supplement to, the patchwork of existing tax-and-transfer programs (Friedman 1962, Brennan & Buchanan 1985; Pettit 2007; Widerquist 2013; Murray 2016; Van Parijs & Vanderborght 2017); and as a response to heterogeneous crises such as technological unemployment (Rifkin 1995, 2014; Munger 2018). Most recently, it has been proposed as a crisis response to the Covid-19 pandemic (De Wispelaere & Morales 2020). As a response to the COVID-19 crisis, several countries have implemented a wide variety of discretionary tax-and-transfer emergency measures in the form of direct cash transfers. Let me give two illustrative examples, from Canada and Jordan.

In the spring of 2020, the Canadian government set up a "Canada Emergency Response Benefit" (CERB) that gave "financial support to employed and self-employed Canadians who [were] directly affected by COVID-19" at a lump sum of "$2,000 for a 4-week period (the same as $500 a week)" (Government of Canada 2021). At the same time, on the other side of the world, in Jordan, the World Bank's ongoing "Emergency Cash Transfer COVID-19 Response Project for Jordan [has aimed] to provide cash support to poor and vulnerable households affected by the COVID-19 pandemic in Jordan." It has targeted hundreds of thousands of poor households affected by the pandemic (The World Bank 2020). The Canadian and Jordanian emergency programs are typical examples of "conditional" and "unconditional" cash transfers (CCTs and UCTs). In the global context of poverty relief, CCTs, UCTs, and UBI-like programs have been used with some success to solve various social problems across the world (Haushofer & Shapiro 2016; Lehto 2018: Banerjee, Niehaus & Suri 2019). They are paradigmatic examples of *discretionary*, *ad hoc* tax-and-transfer schemes applied to targeted subpopulations subject to a range of conditionalities.

A cash transfer program targeted to the whole (adult) population for the duration of an emergency with minimal (or zero) conditionality or means testing is called an *Emergency Basic Income (EBI).* It is to be distinguished from a permanent *Universal Basic Income (UBI).* An EBI has most of the features of an UBI, but an EBI is a *temporary measure* with a sunset clause, while UBI is a *permanent measure* that outlasts any particular crisis (De Wispelaere & Morales 2020). No full-blown EBI has been implemented anywhere. Emergency tax-and-transfer programs, from CCTs and UCTs to EBIs, can be helpful tools in solving various social problems during a crisis in the absence of a permanent basic income scheme. Temporary basic income programs have a clear sunset clause, so they are fiscally less burdensome than a full-blown UBI scheme. They may also be easier to push through a democratic process. At any rate, it is clear that discretionary tax-and-transfer programs, including EBI, are fundamentally incompatible with the idea of a *permanent* crisis management framework. Emergency programs are naturally impermanent and transitory. They are unlikely to be implemented very rapidly due to the slow nature of the democratic process, and yet they are likely to be demolished rapidly at the end of a crisis. This means that they will be unavailable when the next crisis hits unless they are reimplemented or replaced by another program. This is a problem if we accept that good governance in a socioeconomic environment characterized by permanent radical uncertainty requires *permanent crisis management*. If this is so, governments ought to focus on building a *permanent tax-and-transfer mechanism*, such as UBI, in advance of a crisis, rather than a temporary tax-and-

transfer mechanism, such as EBI, during one. For this reason, I shall now turn to analyse three proposed permanent UBI schemes which have the theoretical capacity to be integrated into the "rule of law" framework of permanent crisis management.

3.2. Classical liberal UBI schemes: Hayek, Friedman, Buchanan

In this section, I examine three examples of permanent, rule bound, classical liberal UBI schemes as plausible contenders of tax-and-transfer models that could be incorporated into the PCM framework: 1) Friedrich A. Hayek's case for *Universal Basic Income*; 2) Milton Friedman's case for a *Negative Income Tax*; and 3) James M. Buchanan's case for a *Demogrant*. The aim of this section is to explain how these three important classical liberal political economists (three Nobel Prize winners) have proposed UBI-like schemes in order to enforce rules of *general and nondiscriminatory welfare governance.* They all seek to make the redistributive state maximally compatible with obedience to the rule of law while minimizing the coercive, discretionary authorities of the tax-and-transfer state.

F. A. Hayek (1982, p. 143) explicitly tied his guaranteed "minimum income" scheme to the rule of law framework:

> The basic conception of classical liberalism, which alone can make decent and impartial government possible, is that government must regard all people as equal, however unequal they may in fact be, and that in whatever manner the government restrains (or assists) the action of one, so it must, under the same abstract rules, restrain (or assist) the actions of all others. Nobody has special claims on government because he is either rich or poor, beyond the assurance of protection against all violence from anybody and the assurance of a certain flat minimum income if things go wholly wrong.

Elsewhere, too, Hayek affirmed that an assured minimum income is compatible with individual freedom and the Rule of Law: "There is no reason why in a free society government should not assure to all protection against severe deprivation in the form of an assured minimum income, or a floor below which nobody need to descend. (…) So long as such a uniform minimum income is provided outside the market to all those who, for any reason, are unable to earn in the market an adequate maintenance, this need not lead to a restriction of freedom, or conflict with the Rule of Law" (Hayek 1982, p. 249). Despite Hayek's consistent and long-standing support for some kind of a basic income scheme (Hayek 1944, 1960, 1982), he rarely specified the details of his scheme. In fact, Hayek occasionally expressed an explicit preference for a *conditional* minimum income which seeks to exclude work-shy individuals and "hermitages" (Hayek 1990, p. 153). This has led some commentators to argue that Hayekian principles are *incompatible* with UBI (Rallo 2019). Regardless, there are convincing reasons to think that Hayek's own principles are compatible with, and may require, the abolition of means testing and conditionality (Zwolinski 2015, 2019). It seems likely that any conceivable bureaucratic machinery tasked to monitor eligibility would fall victim to an administrative "fatal conceit" (Hayek 1990).

Milton Friedman (1962), on the other hand, argued for a *Negative Income Tax* (NIT), which is basically a UBI model integrated into the tax system. Although there are some differences between NIT and UBI, the two schemes are mathematically identical in most relevant senses (Mankiw 2016). A less well known but equally interesting UBI model can be found in James M. Buchanan's *Demogrant* (Brennan & Buchanan 1985; Buchanan 1997, 2005; Buchanan & Congleton 1998). The Demogrant model reflects Buchanan's and his co-authors' long-standing concern to limit majoritarian rent seeking in the welfare state with the help of a constitutional application of the principles of generality and nondiscrimination to both the tax *and* the transfer sides of the fiscal state (Lehto & Meadowcroft 2020). Above and beyond the demogrant scheme, "specific actions aimed at discriminating favourably or unfavourably […] would be out of bounds" (Buchanan 1997, pp. 171–172).

In this section, I have outlined three models of UBI: Hayek's *Universal Basic Income*, Friedman's *Negative Income Tax*, and Buchanan's *Demogrant*. Despite their differences, they are rather similar classical liberal models that satisfy the requirements of the rule of law. I have not sought to determine which one of them is the best model. My only claim is that they all count as legitimate ways of applying the principles of the rule of law to the tax-and-transfer state. What these models have in common is their emphasis on rule-following, nondiscrimination, and generality as normative constraints on the tax-and-transfer state. These features make them resilient tools of *permanent crisis management* in a radically uncertain world.

3.3. The *operational rules* and the *meta-rules* of the UBI model

Since the UBI system can be seen as composed of abstract and general rules, equally applicable to all, it is compatible with the "rule of law" approach to welfare state governance. Next, let me analyse these rules of the UBI system. The UBI scheme can be broken down into its *operational* rules and *meta-rules*. Some of the key *operational* rules of UBI are: 1) **GENERALITY**: The abolition of discretionary leeway within the benefit system and the elimination of all exemptions. When the government raises or lowers the amount of UBI for one person, it has to raise or lower it for every other eligible person as well. 2) **NONDISCRIMINATION**: Eligibility and exclusion criteria are non-discriminatory. Nobody who meets some general and simple criteria can be denied full and equal access to the program. 3) **SIMPLICITY**: UBI runs on few, transparent, and clearly articulated principles. This makes it easy to set up and monitor; 4) **AUTOMATABILITY**: UBI can run itself semi-autonomously with limited administrative oversight. In fact, the rules of the UBI system can theoretically be fully automated on a computer.

The operational rules of the UBI system can be summarized, roughly, as follows:

1) *Universal eligibility* (e.g., "all adult citizens are eligible").
2) *Universal tax liability* (e.g., "all taxpayers have to contribute").
3) *Nondiscrimination* (e.g., "no person can be denied access to the grant").
4) *Regularity of payment* (e.g., "once a month").
5) *Medium as cash* (e.g., "delivered in dollars").
6) *Sustainable sufficiency threshold* (e.g., "the amount shall be €700 per month").

What is less discussed in the literature is that these rules—which we may call *operational rules* of the UBI system—should be complemented with higher-order rules—what I shall call *meta-rules of the* UBI system—that define the legitimate avenues for reform and institutional adaptation. No UBI system is complete without some specification of the meta-rules that surround it. The robustness of the UBI system as crisis management tool depends on the right combination of operational and meta-rules. The rules of the tax-and-transfer system should be made sufficiently *permanent* and *inflexible* in order to encourage long-term planning but also sufficiently *impermanent* and *flexible* so as to make the system capable of being changed and adapted to new needs and circumstances. The best way to increase adaptability is to enact binding *meta-rules* that specify the legitimate procedures by which the government can *modify the parameters of the UBI system* without suspending them altogether. The meta-rules may or may not be implemented as explicit *constitutional* rules (Buchanan & Congleton 1998; Berggren 2000; Murray 2016).

Plausible meta-rules may dictate, for example, that "UBI should be indexed to the CPI" (or some other relevant indicator); or that "fundamentally reforming or abolishing the UBI system should require a parliamentary supermajority"; or that "the generosity of the UBI grant is to be revised in the parliament every four years." Such rules limit the expression of reformist impulses into legitimate channels. To take another example, imagine a meta-rule which states that "under an officially declared state of emergency, emergency authorities are empowered to enact discretionary tax-and-transfer measures according to their prudent discretion; but they are *not* empowered to strip anyone of their UBI." Such a meta-rule could be used to demarcate the optimal division of labour between discretionary authorities and the permanent UBI system in the PCM framework. A flexible crisis management meta-rule could also take the form of a scalable, two-tiered

system in which one has "a permanent, low-level basic income already in place that can be dialed up to the required payment level as the need arises" (De Wispelaere & Morales 2020, p. 6). It should be noted that these are offered as *illustrative* examples of meta-rules; I am not advocating for them specifically. The appropriate mix of UBI meta-rules is beyond the scope of my analysis.

4. THE SHORTCOMINGS OF UBI: SOME OBJECTIONS AND REJOINDERS

UBI is a very imprecise tool of governance. It seems predictably ineffective against some types of crises: 1) crisis that are better solvable using in-kind means, 2) crises that are purely local in effect, and 3) crises that are exceptional or existential. Let me tackle them in turn: 1) *Crises that are better solvable using in-kind means*. For example, if there is a dangerous terrorist on a bombing rampage across the country, it would be better to simply send in police forces or the military to deal with the issue rather than to send money. A cash grant like UBI may, at best, provide *additional* relief to the individuals involved, but it is unlikely to solve the crisis on its own. 2) *Crises that are purely local in effect*. UBI is best suited to solving crises that are widely dispersed across the whole economy over a long period of time. If a particular crisis is concentrated in a single geographical location or a brief moment in time, UBI casts too wide a net. That said, UBI can still provide important *additional* relief until (if ever) a locally appropriate solution is found, agreed upon, and implemented by the authorities. 3) *Crises that are existential or exceptional*. This includes those crises that put the very sustainability of the PCM into question. For example, imagine that the economy crashes into a deep depression which destroys the viability of the UBI scheme. Or imagine that the government mismanages its monetary policy so severely that the value of the currency drops to near zero. Such examples of *fiscal crisis* and *monetary crisis* cannot be solved with the help of the UBI system since they undermine the functioning of the cash nexus itself. Furthermore, some UBI schemes may contribute to a fiscal or a monetary crisis themselves. Such UBI schemes are incompatible with the requirements of the PCM framework.

In some circumstances, the UBI system will have to take the back seat to other kinds of measures. However, it may be that such crises are rarer than they may appear. Many crises that *appear* to be clearly not solvable by cash may have a dimension to them that happens to be solvable by cash after all; many crises that *appear* to be purely local in effect may have unintended ripple effects to other parts of the system or to the system on the whole (which is especially true in a highly interconnected and complex society); and many crises that *appear* to be exceptional or existential may nonetheless have components that *can* be remedied or alleviated by UBI. As it stands, the capacity of general cash transfer programs to facilitate creative solutions to the ever-present disruptive challenges of socioeconomic complexity is still underappreciated. Furthermore, the optimal solution is almost certainly some mixture of general and targeted crisis management approaches. To avoid a false dilemma, I have argued that UBI should be the *primary* or *default* method of providing cash relief that can be supplemented by carefully bounded discretionary and targeted approaches.

Such a mixed approach becomes doubly important once we realize that the literature on polycentric resilience highlights the danger of relying on universal blueprints, even promising ones, as "panaceas" (Ostrom, Janssen, and Anderies 2007). This suggests that the classical liberal rule of law based UBI scheme is not a panacea that is guaranteed to work everywhere but rather a contingent model whose effect depends upon contextual factors and interactions with the different elements of the system. Furthermore, a monolithic system like UBI—even one that facilitates polycentricity—can create bottlenecks that crowd out alternative arrangements and introduce institutional fragility into the system. It is therefore advisable to diversify and invest additional economic resources into complementary (state and non-state) arrangements that introduce redundancy into the system (Rayamajhee, Bohara, and Storr 2020).

Before concluding, let me tackle the objection that the UBI scheme is "unrealistic" from the point of view of practical politics. In fact, UBI models have been experimented with in several countries with promising if inconclusive results, most recently in Finland between 2017-2018. Based on decades of accumulated data, "[r]esults from the various experiments show consistently that basic income does not substantially affect labour supply but increases well-being." (Kangas, Jauhiainen, et al. 2020, p. 188; see also Lehto 2018, pp.

13-33) UBI is already within the realm of political feasibility in some countries, although it is likely to continue to face strong political and ethical opposition in the foreseeable future.

5. CONCLUSION

One pandemic will subside, but another crisis will soon take its place. In a complex economy, people are coping with several crises—big and small—at any given time. Resilience under conditions of *permanent* radical uncertainty demands a framework of *permanent crisis management* (PCM). Discretionary interventions, including discretionary tax-and-transfer programs, are an important part of any comprehensive crisis management framework, but my paper has sought to challenge the conventional wisdom that nondiscriminatory, rule-based measures are always, by definition, "inflexible" or "maladaptive." On the contrary, I have argued that a rule-based UBI scheme has an advantage over discretionary welfare state measures because the inflexibility of its rules makes it paradoxically more capable of guiding the polycentric social order and mobilizing its complexities. The rule of law framework can be used as a robust scaffolding for individual freedom and creativity that reliably generates flexible adaptations to local circumstances of time and place. The "rigid" rules of UBI 1) strengthen the rule of law framework in a way that 2) facilitates the discovery of creative, experimental, and polycentric solutions from the bottom up; this, in turn, 3) enables people and institutions to better adapt themselves to radical uncertainty, which results in 4) improved crisis resilience and social intelligence on the system level.

Paradoxically, it may be best to *give up* on trying to control the minute details of the socioeconomic system in order to effectively provide relief to, and discover solutions to, various local, amorphous, fleeting, and individuated problems. There is an "invisible hand" to the spontaneous adaptations under the UBI system that often outsmarts the "visible hand" of the discretionary tax-and-transfer authority, especially in times of crisis. Government can often do more by focusing on the big picture, i.e., the rules of the game, including *the rules of redistribution*, to strengthen the PCM framework and institutionally prepare for the next inevitable crisis. My argument can be summed up in a maxim: "When in doubt—even if it seems tempting—do not deviate from the rule of law. Instead, redesign its rules to fit the new context." This is taken to contain a generally valid policy prescription (although not an unassailable one) for permanent crisis management. Limiting the scope of redistributive discretion is neither defeatism nor a callous abandonment of the needs of the poor. On the contrary, abandoning poor people to the mercy of discretionary tax-and-transfer authorities is arguably the more callous and dangerous approach. The UBI framework institutionalizes a legal commitment to guaranteeing access to basic resources to all citizens via the classical liberal rule of law framework. The inflexible rules of the UBI system not only limit government discretion but also secure a system of welfare entitlements more robustly than alternative arrangements.

None of this suggests that the UBI system is the end of the road. Firstly, UBI is at best only a necessary but insufficient part of a more comprehensive crisis management framework that requires a broad commitment to the rule of law, private property rights, open markets, and respect for individual rights. Secondly, UBI will almost certainly have to be supplemented with other tax-and-transfer programs and emergency regulations whose desirability and appropriateness will have to be evaluated separately in each circumstance by appropriate authorities. Thirdly, the UBI system itself will have to be adapted to changing circumstances with the help of meta-rules that specify the scope and nature of its flexibility. Fourthly, even if UBI is accepted as the common basis for permanent crisis management, scholars, politicians, and ordinary citizens will have to decide which *particular* UBI model, or quasi-UBI model, strikes the best compromise between various policy aims. Finally, the current climate may not be hospitable to a full-blown UBI. Governments seem eager to adopt *some* features of the UBI, such as its simplicity and minimal bureaucratic oversight, while rejecting other aspects of it, such as its "excessively" rigid reliance on rules, unconditionality, and generosity towards the poor. It may be a long while before people find the political will, and the moral discipline, to bind themselves to a set of rules that deprives them of the illusion that they have effective control over a complex system whose creative springs they are.

NOTES

1 This *rules vs. discretion* debate in fiscal policy has interesting parallels to the *rules vs. discretion* debate in monetary policy (Salter 2017). Indeed, the issues at stake are rather similar, and it is hardly coincidental that one of the major theorists of rule-based decision-making in monetary policy, Milton Friedman (1968), is also one of the major theorists of rule-based decision-making in fiscal policy through his NIT model (Friedman 1962).

2 Polanyi's early definition of a polycentric order, with its emphasis on the rule of law, shares many similarities with, but also differs slightly from, the later Ostromian definition of the polycentric order "where citizens are able to organize not just one but multiple governing authorities at differing scales and [e]ach unit exercises considerable independence to make and enforce rules within a circumscribed domain of authority for a specified geographical area" (Ostrom 2005, p. 283). Aligica & Tarko (2012) provide a helpful overview of the continuities between the early Polanyian approach and the later Ostromian approach.

3 For Hayek, tolerable government actions may include at least the following: 1) the acquisition of reliable knowledge; 2) the provision of the monetary system; 3) the setting of standards of weights and measurements; 4) gathering information from surveying, land registration, statistics, etc.; 5) financing (and perhaps organizing) some kind of education; 6) sanitary and health services; 7) the construction and maintenance of roads; 8) municipal amenities; 9) public works; 10) secret military preparations; and 11) the advancement of knowledge. For more, see Lehto (2015, pp. 64-71). Even more examples can be found throughout the Constitution of Liberty; see Hayek (1960, pp. 340, 374-375, 381, and 406).

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