

DISTRIBUTIVE JUSTICE IN CRISIS

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Abstract

The paper tries to examine the effects of economic crisis on philosophical considerations of distributive justice. It tackles the problem of a radical increase in scarcity as a condition of justice. Instead of assuming a relatively fixed ("moderate") level of scarcity as a background against which justice in distribution obtains, the paper examines what happens when this level risks falling below and how does that change our views of distributive justice. It takes upon the recent events in the United States to construe a specific philosophical model and ask how crisis distribution, where that favors wealthier actors, can be justified. By analyzing the crisis distribution principle, it ultimately aims to suggest that moderate scarcity should not be seen as a mere condition, but an important and vital object of justice. As such it falls within, not beyond legitimate obligations of democratic governance.

Keywords: distribution, circumstances of justice, crisis, natural rights.

1. Introduction¹

In *A Theory of Justice*, John Rawls identified two constitutive elements of conditions under which justice applies to people: objective and subjective. The objective ones pertain to the "moderate scarcity" of natural resources under which schemes of cooperation become necessary for a viable distribution. The subjective conditions relate to individual differences in conceptions of the good, interests and life-plans, which cause

1 I would like to thank Louis Enrique Camacho, Pavol Hardos, and two anonymous reviewers of the journal for their useful comments on earlier versions of the paper.

conflicts in the face of various distributive schemes of scarce resources. They exist "whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity. Unless these circumstances existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage."²

According to Rawls, moderate scarcity and conflict of individual interests are considered to be normal conditions of justice. They are at the same time necessary for justice to exist; otherwise there seems to be no need, and hence no obligation, to pursue justice. Were natural resources unlimited, each person would have had as much as she desires, and no distribution problems would arise. Similarly, were there no different individual interests, there would be no competition for limited resources.

In this article I focus on the objective circumstances of justice, for two reasons. First, in the context of distributive justice, the subjective principles seem parasitic upon the objective ones: if the scarcity does not exist, the conflict of interest is not sufficient to trigger considerations of justice. In situations of resource abundance all interests would be individually satisfied and no conflict would arise. However, the situation in which the conflict of interest does not exist and scarcity does is hardly even conceivable: when resources are scarce, the very fact of the biological existence of different individuals and their desire to live and survive can trigger conflicts and thus considerations of justice. Secondly, if understood in a dynamic rather than static fashion, the objective circumstances of justice raise interesting and important questions for a changing world. If scarcity is not fixed at a "moderate" level, but can deteriorate due to different reasons (rise of population, depletion of resources, economic crises), how does that reflect to distribution and the duties of justice?

2 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 110.

The latter question has been implicitly raised in the wake of the recent economic crisis, when acts by different governments to prevent a total economic crash spurred controversies and debates about the justifiability of crisis-induced distributions. This was especially the case with the US government bailout of big banks and corporations that was very often intuitively considered as unjust, given its distributive preference of those who are already well-off ("Wall Street") against the majority of population and those worse-off ("Main Street"), as well as considerations that the bailout violated the principles of merit and responsibility, rewarding instead of punishing those who were deemed responsible for the crisis itself.

Though the US government bailout has many faces and deserves analysis from many different perspectives, I invoke it here as a rather simple case that helps us describe and examine two correlated philosophical questions: a) How does the increase in the scarcity of resources, triggered by sudden financial ruptures and an economic crisis influence considerations of distributive justice? b) What should be the distinct distributive role of government in conditions of resource crisis?

I try to tackle these questions in the following way. First, I outline some basic parameters of the discussion by simplifying the US bailout example into an ideal case. Second, I ask what different theoretical perspectives say about its justifiability and critically examine their different arguments. Finally, I offer my own interpretation on the case and conclude with a theoretical consideration about distributive justice in crisis and the role of democratic government in it, and argue for a dynamic understanding of scarcity as a condition of justice. Ultimately, I wish to argue that crises induce special considerations of distributive justice, under which objective circumstances are not only preconditions for justice to exist, but which are themselves essential objects of just concerns. By focusing on objective circumstances in considerations of distributive justice, the paper aims to counter assumptions about the merely background relevance of conditions of justice for considerations on different distributive schemes that seem prevalent in some of the recent

philosophical literature. It highlights the importance of bringing any discussion back to the fundamentals of the distributive problematic: resources and their changing nature.

2. The Crisis Distribution Principle

As outlined earlier, the case of the US government bailout as a response to the economic crisis will be treated superficially, as an exemplar of a more substantial principle and an ideal type that can link this discussion to real world problems. The argument will follow the basic relation of several structural elements in the ideal case, without any empirical considerations that might be suitable for analysis in analytic accounts. Following a narrow understanding of the bailout example, the structure of the case will consist of the following elements: the government with legitimate distributive authority, the resources as the object of distribution, and the corporations and citizens as both producers and receivers of the resources. By resources I mean natural and social valuables expressed in terms of public funds and substantial social services.³

Thus, the minimum of empirical information needed for the analysis of the US bailout as the ideal case rests on the following facts: after the collapse of the housing market, the US economy spiraled downwards, causing wide financial losses in both private and public sector, rise of unemployment and a recess in production. Fuelled by the fear of economic and social depression, the US government stepped in and saved a number of banks, insurance companies and corporations from collapse through a financial assistance program, drawn from public pool of resources. Assuming they are correct, the facts determine an

3 Here I rely on a semi-Dworkinian interpretation, by which I assume the "independent material resources" as the "metric" or "currency" of justice. Given the nature of the case, money here represents the embodiment of all material resources; its unmediated 'translation' into social services is implied. See Ronald Dworkin, 'Equality of Resources' in *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), 80; also G. A. Cohen, 'On the Currency of Egalitarian Justice' in *Ethics*, No. 99 (1989), 906-944.

additional assumption from which the main normative principle is derived. This assumption implies that strategic public funds were used to salvage private corporations under the pretext of their essential value for the entire economic system. The assumption reveals a distinct normative principle, prescribing a particular pattern of distribution in the context of economic crisis. This pattern can be more succinctly expressed in terms of the following normative precept:

The Crisis Distribution Principle (CDP): In conditions of crisis, the distribution of resources should prioritize actors that are essential for the recovery of the economic system.

The principle operates under several additional assumptions. First, the particular pattern of crisis distribution is understood as a matter of an absolute necessity, the alternative to which is not less than an overall dissolution of the entire socio-economic system. Without some government redistributive action, the system would collapse. Second, the CDP disturbs the 'normal' distributive pattern, predominant in regular, non-crisis times. Whatever that pattern is, the CDP replaces it with new forms of distribution. In that sense, the CDP is a *redistributive* principle. Third, it assumes that there is a bundle of strategic public resources available for distribution when the crisis strikes. This may sound controversial, since the crisis itself implies a sudden and radical loss of the resources and their value, but does not necessarily need to be. Borrowing from the future by raising national indebtedness is a way of acquiring new resources for distribution without their actual physical creation. However, this does not make the issue a mere problem of justice between generations, because the distribution will significantly affect the current generation and reshuffle principles of justice applying to it, which makes it suitable for an intra-generational consideration of justice.⁴

4 I subscribe here to a view similar to the one expressed by Joseph Mazer in 'Liberal Justice, Future People and Natural Resource Conservation' *Philosophy and Public Affairs*, Vol. 38, No. 4 (2010), 380-408. Mazer argued that the obligation to preserve natural resources for the future people is based on what the *present* people owe to each other. For the purposes of my argument, it

Fourth, it assumes that the actors that are essential for the recovery of the entire economic system are usually the richer parts of the population. The crisis distribution in case of the US bailout favored mainly big banks and corporate players who were well-off anyway. Given the nature of the capitalist economy, their position within the system is in direct relation to the system's stability and viability. Fifth, the resources distributed to these actors could otherwise have been invested in various other social services, such as health or education. Since the crisis hit not only the financial players but also the society in general, many such services were cancelled or reduced, causing additional disadvantage of the poorer segments of population. This assumption makes the bailout case one that is a problem of distinct distributive justice rather than just a purely economic issue. Saving the plunging economy from the depression through public financial support of private corporations competes with investments into different social sectors and disturbs the balance established by the distributive patterns in normal times of "moderate scarcity".

The CDP will be critically examined in the sections to follow. But, before that, it is important to emphasize that this paper is not inquiring into the causes of the financial crisis, nor aims at making any normative assumptions in this regard. Establishing the true causes of the economic crisis, upon which new assessments of the distributive schemes can be made is not a task of political philosophy and, accordingly, will not be pursued here. Instead, I will advance the following claim: whatever the causes of the economic crisis are, the same considerations of distributive justice obtain by the fact that the society in question, due to the emergence of the crisis, operates with a reduced amount of distributive resources and the necessity to stop further collapse. The CDP is in that sense *prima facie* ahistorical, insofar

is sufficient to assume that various financial devices through which resources are 'borrowed' from the future generations through national debt do not dismiss considerations of justice based on the *intragenerational* rather than *intergenerational* distribution.

as it operates as an emergency distribution principle and doesn't ask about the causes of the situation.

In devising the CDP, the priorities of economic stability seemed to have served as an immediate justification of the redistribution skewed in the interests of the big financial players, the well-off members of the society. Given the dependence of the US economy on the viability of the financial market, the *prima facie* priorities have dictated the CDP and perhaps determined its justifiability. Yet are these conditions sufficient to justify such a distribution? If not, what other considerations can render the US government bailout, as a form of crisis-induced distribution, just?

3. Utility, Equality or Priority? Justice and the Bailout

I choose to tackle the question from two different perspectives and three different approaches in order to examine what strands of contemporary philosophical literature could provide the background for answers. I then position these approaches and perspectives against an alternative explanation and examine the arguments for it. The perspectives are teleological and deontological, each focusing on a different set of assessment values. The teleological one focuses on the outcomes and judges the justifiability question against the final products of the distribution, disregarding the particular procedure that has been applied. On the other hand, the deontological is more concerned with the character and the effects of the procedure, regardless of the outcomes produced. The approaches I consider are utilitarian, egalitarian and prioritarian. They may offer different but sometimes overlapping answers to the distribution question, though cross-cuttingly relate to the two perspectives. In this section, I examine these approaches and assess justification they might offer. My aim is to show that a sufficient justification must go beyond these particular approaches and perspectives and anchor itself in a narrower and simpler fundamental principle. But, before I offer such a justification, I find appropriate to consider each of the approaches more closely and see what would be their responses to the question. Given the variety of ways to talk about the crisis distribution and the contemporary debates in

the mainstream media about the justifiability of government behavior in times of crisis, it is important to examine some of the arguments used and the principles that underlie them.

In short, all things considered, the utilitarian approach would justify the CDP, while the egalitarianism and the prioritarianism would not. Surprisingly, the otherwise competing and opposing approaches that are egalitarianism and prioritarianism share the response to the justifiability question of the CDP, though for different reasons.

3.1. Utility

The justification of the CDP under the utilitarian framework may follow the main argument of the overall indiscriminate benefit of the entire social and economic system. A subscriber to such a view would argue that the bailout distribution increased the aggregate likelihood for stabilization and economic recovery. It would not discriminate against different elements of the distributive scheme beyond the precepts of their economic functionality, nor seek relations of accountability as justification providing reasons. It would only care about the net benefit of the overall distribution and aim at the largest sum. It would be exclusively teleological since no procedural considerations would matter. The necessity to raise the net benefit of the outcomes, given its strategic relation to the stability of the system, overrides any concerns over procedural justice.

The logic behind the CDP itself seems to follow utilitarian norms and purely economic reasoning. The largest net benefits, not only in terms of stabilization of economic circumstances, but also in terms of securing future growth and development, could only be accomplished through assistance to those agents capable of generating new resources rather than to those not considered sufficiently productive. Therefore, in utilitarian understanding, the distribution in times of crisis needs to be based on prioritizing the most productive actors in society, because it is only through their assistance that the entire system can expect to recover from the economic downturn. The most productive actors in a capitalist

market-based society such as United States are usually those who are best-off anyway, including bankers, investors and corporate owners, so the crisis distribution is expected to keep the existing inequalities or even worsen them.

The utilitarian may, however, offer a more nuanced and gentle justification to the CDP that need not be based on brute notions of the greatest net benefit. He might say that the wellbeing of all members of the society, including those on the bottom of the social ladder, depends on the abilities of the best-off to (re)generate growth using funds distributed to them from the public resource pool. Echoing the arguments based on an 'incentives for growth' directed effort, this reasoning would assume that only when given special provisions, the most productive parts of the population will work harder and salvage everyone from economic disaster and even deeper inequalities.⁵ It could even extend the claim that the net benefit is to be aimed for because it is the only way to benefit the worst-off, which would otherwise fall into a more grave situation. However, as persuasively shown by G. A. Cohen, one cannot plausibly hold both that worst-off members of society deserve special concern and that the best-off need incentives to keep further inequalities at bay.⁶

Furthermore, though it may resonate as reasonable given the way that a modern capitalist economy functions, the utilitarian approach to distribution in crisis is unsatisfactory because of its distinctively inegalitarian features. The utilitarian perspective looks at situations of crisis in purely functionalist terms, disregarding effects of public policies on different parts of the population and additionally, avoids raising questions of accountability and responsibility for the emergence of crisis so no policies for prevention of future collapses can be devised. It

5 Gerald A. Cohen, 'Incentives, Inequality and Community' in S. Darwal (ed.) *Equal Freedom. Selected Tanner Lectures on Human Values*, (Ann Arbor: University of Michigan Press, 1995), 331-397.

6 Ibid.

seems to perceive the crisis as a matter of brute luck for which the entire society needs to bear the consequences. Thus, it fails to successfully respond to the entitlement objection, since the CDP does not ask whether the actors essential to the economic recovery are entitled to the resources they receive.⁷ Even if it asked, the most likely response from a utilitarian would be that they are not entitled, given the shared societal effort at their (re)creation and the fact that such distribution leaves the worst-off with insufficient resources for their wellbeing. Therefore, the utilitarian approach merely touches upon the surface of CDP justification and provides no substantial principle potent enough to ensure wider social and political legitimacy.

3.2. Equality

Another approach to justification of the CDP is the egalitarian. Unlike utilitarian, it would negatively respond to the question of justification and argue that such a principle is utterly unjust given the fact that it reproduces inequalities on both ends of the process. There are two different ways egalitarian objection to the CDP can be explicated. The first one is predominantly deontological and determines most of the egalitarian thrust in considerations of distribution in crisis, while the other one is teleological and pertains only to a minor consideration.

The deontological egalitarian would argue that the CDP is unjustified because it fails to treat all social actors suffering in the crisis equally. It would object to the preferential treatment of the most profitable actors on the basis of its inherent inequality and ask for additional justification, beyond mere principles of urgency and economic reasoning. This justification could be provided via reference to the assumption that, had the distribution not targeted the actors able to recover the entire economic system, the inequalities between the rich and the poor would even increase and lead to further deterioration of the living conditions for those who are now the least advantaged. However, the

7

See Robert Nozick, *Anarchy State, Utopia* (Oxford: Blackwell, 1974), 149-232.

deontological egalitarian would not be persuaded by such justification because the main concern would not be with counterfactual expectations in terms of outcomes, but with the procedural failure to justify the unequal treatment of different social actors.⁸ The fact that some actors are more essentially related to the stability of the economic system for them is an arbitrary fact that doesn't by itself yield any distributive justification, but needs to be supplied with additional arguments.

On the other hand, the teleological egalitarian would aim for the equality of the outcome and object the CDP not only for failing to produce such an equal result but, more importantly, for reverse consequences of the distributive pattern it promotes. In this view, the ultimate aim of distributive justice is to produce equality of outcomes, whatever the currency of distribution is, *a priori*, understood to be. In the case where distribution operates with resources, the aim is to equalize the resources across different social actors. The CDP, in teleological egalitarian view does the opposite: it distributes resources in a way that not only reproduces, but even deepens the existing inequalities between different actors.

Both egalitarian objections to the CDP would build on the assumption that the crisis has a differentiated effect on various social groups and any distribution that does not aim at redressing such an effect is inherently unjust. The deontological egalitarian would have a somewhat weaker objection since it would not aim at equalizing the outcomes after the distribution but only to prevent the unjustifiably differential treatment of presumably essential and non-essential (more and less productive) social actors in the distributive exercise solely on the basis of their different features in relation to the economic system. The teleological egalitarian would have a much stronger objection and would consider the CDP unjust in both procedural and substantial senses.

8 Derek Parfit, 'Equality or Priority' in Mathew Clayton and Andrew Williams (eds.) *The Ideal of Equality*, (New York: Palgrave, 2000), 84.

3.3. Priority

The strongest objection to the CDP would come from the approach associated with the prioritarian camp of political philosophy. The objection is based on an underlying normative validity of the “difference principle”, originally proposed by John Rawls and further developed by other political philosophers. The principle maintains that social inequalities are justified only if they advantage the worst-off parts of the population.

There can be two different versions of the priority principle applied in this case. The first one maintains that priority-based approach needs to exist because it will reduce or prevent deepening the existing social inequalities. This would be the teleological version of the priority view. The second one believes priority needs to obtain not because it will reduce inequalities, but because it is a self-standing normative value that needs no egalitarian justification.⁹ This would be the deontological version of this view.¹⁰ While both of these will strongly reject the *prima facie* justification of the CDP, only the second one will sustain its objections under the all-things-considered examination.

Namely, the teleological rendering of the priority approach objects to the CDP on the ground that it allows inequalities that do not benefit and even worsen the condition of the worst-off members of society.¹¹ When the exigency of economic stability overrides the alternative social services extendible to the worst-off, the inequality of the distribution is unjustified because it deepens the existing social inequalities and does not benefit the worst-off. A response to such an objection could be that the inequality of distribution can still be justified because,

9 Parfit, p. 103.

10 Ibid, p. 105.

11 Strangely, the CDP itself sustains a certain prioritarian view that could be termed the “inverse difference principle” insofar as it favors the well-off, though not on the basis of their relative position on the socio-economic scale but on the basis of their essential importance for the stability and recovery of the overall economic system.

counterfactually, without such distributions which aim at the ultimate recovery of the economic system, the position of the worst-off would deteriorate even more, given the tendency of the crisis to devalue all social resources and affect absolute levels of welfare in society. Under such considerations, the difference principle would even *command* the CDP, since the position of the worst-off would ultimately depend on the possibility of the system recovering. Without the recovery of the economy, the relative inequalities would rise even more, since the worst-off do not possess enough absolute resources to cope with the increased scarcity induced by the crisis.

A far stronger, deontological version of prioritarianism would remain unconvinced by the counterclaims in favor of CDP because it would hold that no matter the counterfactuals, the CDP is unjust because it doesn't assign more absolute value to the claims and positions of the worst-off members of society. In such a view, it is not the prospect of reducing inequality in the future that matters, but the fundamental *prima facie* value of benefiting the worst-off.

4. Natural Rights, Crisis and Distribution

However successful in justifying or objecting to the CDP, I suggest that none of these three approaches alone offers a fully satisfactory account. All seem to fail in the face of the character and profound social effects of the problem of crisis and the consequent increase of resource scarcity. Utilitarianism fails for it is unable to reckon with the responsibility issue and treats the problem in overly technical terms, being purely a matter of economic efficiency instead of social distribution. It seems fixated on the view that the distributive pattern of the crisis does not matter as long as the government response increases the net benefit, which sustains stability and enables future growth.

Under utilitarian justifications, no long-term solutions could be possible since failure to address the responsibility problem would impair reforms of the relations of production and seek only a temporal redress of the crisis critical effects. Also, utilitarians

could not propose development of a distributive pattern applicable in future crisis cases, since the justification it offers is very unlikely to generate long-term legitimacy given its essential ideological preference for the minority (well-off) position. Unlike utilitarian, the egalitarian justification could perhaps generate a wider legitimacy for their preferred distributive patterns, but the patterns themselves would not be suitable for a volatile economy and would threaten to disintegrate in the long run. Even if the deontological egalitarian objection to the CDP on the grounds of unequal treatment of individuals through distributive procedures could be acceptable and yield both legitimate and justified procedural proposals, the teleological emphasis on the equality of outcomes seems not only implausible but also problematic for the values of equal liberty and autonomy. The reasons for preferring equality in conditions of crisis that the teleological egalitarians put forward are unpersuasive given their conceptual dependence on the indiscriminate efforts to neutralize luck, both brute and optional.¹² However, even if *prima facie* acceptable, the deontological egalitarianism would depend on the externally justified theory of political participation and could not operate as a self-standing principle.

The prioritarian approach to justification, in its teleological version, though strong in objecting to the CDP, dissolves when confronted with arguments based on the reinterpretation of utilitarianism to suit the least advantaged. Namely, the argument that the increase in the indiscriminate sum of resources benefits the worst-off by preventing the already increasing disadvantage caused by the crisis, disarms the teleological version of prioritarianism and brings it under the utilitarian umbrella. The deontological version, however resistant to similar rejoinders, still seems implausible given the short-term nature of the policy proposals it would suggest and their chronic instability in the face of a dynamic and changing world of capitalist economy.

12 On the problems of egalitarian efforts to neutralize luck, see Susan Hurley, 'Why the Aim to Neutralize Luck Cannot Provide a Basis for Egalitarianism' in *Justice, Luck and Knowledge*, (Cambridge, MA: Harvard University Press, 2003), 146-180.

Moreover, none of the approaches seem able to provide a plausible account that can persuasively respond to already notorious criticism that, faced with the increase of scarcity and the resulting legitimacy crisis, liberal democracy will turn into a form of paternalism, even authoritarianism.¹³ The criticism noted imply that an increase of scarcity tends to create greater inequalities, intensify conflict and promote more closed, centralized and authoritarian political institutions that come to operate without the popular consensus. Utilitarianism would not be able to answer such criticism on all three grounds, given its distinct inegalitarian thrust, as well as an uncritical willingness to surrender to state-centered decision making during crisis. Egalitarianism would account for the inequalities but would surrender to centralism even more than utilitarianism, given its emphasis (especially in teleological version) to produce equality of outcomes through institutional distribution. Similarly, priority approaches would fail to reckon with the overemphasized role of coercive distributions based on the patterned view of justice. The three approaches seem unable to offer a justification that could be based on a principled consensus and a policy derived from it.

However, the CDP can and needs to be justified, but the reasoning for such justification falls outside of the utilitarian, egalitarian and prioritarian perspectives. Alternatively, I suggest that the CDP can be considered just under the framework of natural rights and the liberal-democratic government's duties to protect them. In cases of economic crisis that threatens to destabilize the entire economic system and disturb the fundamentals of the basic schemes of cooperation, the government has a natural duty to prevent such outcomes and preserve the basic socio-economic structure intact so that justice can exist.

13 See Bruce Jennings, 'Liberal Democracy and the Problem of Scarcity', *International Political Science Review*, Vol. 4, No. 3, (1983), 375-383; also Ted R. Gurr, 'On the Political Consequences of Scarcity and the Economic Decline' *International Studies Quarterly*, Vol. 29, No. 1, (1985), 51-75.

I argue for this reasoning on the basis of two strands of philosophical tradition. The first one is direct and pertains to the protection of individual property. It relies on a Lockean understanding of natural and property rights and their relation to the civil government and its protective duty. Within this understanding, human natural rights assume the “state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit” and the duty of the government, since men and women consented to its sovereignty over their individual selves, is to provide protection of these rights.¹⁴

The foundation of sovereignty, and thus the sovereign decision to redistribute resources in times of crisis rests on this assumption. In that context, the state is obliged to protect citizens’ property, including labor as the “foundation of property”¹⁵, as well as prevent its arbitrary devaluation. Such behavior by the government is the precondition of people’s subjection to the sovereign rule, and thus its first duty in relation to individual property. The crisis threatens property by diminishing and destroying its value and the state has a natural duty to respond in a way that can prevent occurrence and development of crises. But, when crises occur due to uncontrollable facts, the state must act to stop it and revert its consequences. Government agency in times of crisis is thus inextricably linked to its sovereign rule and the individual consensual subjection to it.

In Locke’s words,

upon this ground a man’s having his stores filled in times of scarcity, having money in his pocket, being in a vessel at sea, being able to swim & c. may as well be the foundation of rule and dominion, as being possessor of all the land in the world: any of these being sufficient to enable me to save a man’s life, who would perish, if such assistance were denied him; and any thing, by his rule, that may be an

14 John Locke, *Two Treatises on Government*, (New Haven: Yale University Press, 2003), 101.

15 Ibid, 102.

occasion of working upon another's necessity to save his life, or any thing dear to him, at the rate of his freedom, may be made a foundation of sovereignty, as well as property¹⁶.

Therefore, acceptance of this liberal reasoning needs to go beyond the ordinary justification of state sovereignty and extend to special duties of the government in times of crisis. When faced with a critical situation, the government has to protect individual natural rights to property using all available means even if it includes those falling outside usual policies. This comes with a proviso, as will be discussed below, but also is to be supplemented with another, broader liberal notion of the commonwealth.

This, second notion from the philosophical tradition is more indirect and deeper than the first and pertains to what can be termed the government duty to sustain necessary circumstances so justice can exist, rather than protect people's property through direct actions. This one is related to the Hobbesian assumptions about the law of nature as "the fountain and the original of justice"¹⁷. In Hobbes's understanding, justice can exist only when there is a covenant made, for

where no covenant hath preceded, there hath no right been transferred and every man has right to everything, and consequently no action can be unjust". In other words, it is the covenant, the basic contract between members of society that makes acts of distribution just or unjust. Without it, social conditions plunge into the state of nature in which "every man has right to everything.

One can plausibly say that Rawls, when describing the objective and subjective conditions as circumstances of justice had a similar structure of basic relations in mind. Instead of Hobbesian "coercive power" as the umpire of distribution and guarantor of the covenant, in a Rawlsian contractarian framework "moderate

16 Ibid, 47.

17 Thomas Hobbes, *Leviathan*, (1651), 88.

scarcity” and the basic schemes of cooperation come in to play the basic role against which practices and considerations of justice are made. A “moderate” level of resource scarcity ensures that, conditioned by right social organization and the drive to cooperate, individuals will be able to produce, exchange and generate enough resources for a sustainable and peaceful life.

The basic scheme of cooperation, as the main precondition of justice, thus assumes that there must be no less than “moderate” scarcity, which conditions individuals to cooperation, mutual respect, and procedural equality as basic forms of social organization. Anything less than “moderate” threatens to dissolve the schemes of cooperation and cause individuals to refrain from obligations based on covenants and fight against all for bare survival. This not only leads to dissolution of societies and communities but also threatens the security of individuals, exposing them to uncontrolled violence and leaving them with no social protection of their property and life.

In this context, Rawls’ and Hobbes’ ideas come close to one another: there is a crucial condition that has to be sustained if justice is to exist. The contract between the subject and the sovereign for Hobbes can have a structural parallel in the moderate scarcity in Rawls. In the absence of either, basic schemes of social cooperation can dissolve and justice may be obsolete: radical scarcity equals a Hobbesian state of nature, where no justice is possible. So, just as it is important to sustain the contractual relation between the subject and the sovereign, it is equally important to sustain a relatively constant level of resource scarcity so basic schemes of social cooperation that enable establishment of justice remain possible. However, the solution to the contemporary economic crisis and the role of governments in it needs to be much more relaxed and liberal than envisaged by Hobbes. Consensual acceptance of citizens of an active role for the state in times of crisis is crucial for a liberal, yet strong and action-driven behavior of state institutions.

Therefore, given the possibility that an economic crisis, by increasing the level of scarcity from moderate to extreme,

endangers the basic cooperative scheme, there exists an obligation for democratic government to take care not only of different distributive schemes against given conditions of justice, but also of the conditions themselves, so schemes of justice in distribution can exist. This could be understood as a certain meta-obligation of the state to sustain the objective conditions of justice and prevent their dissolution so justice can exist in a concrete distributive form. In that sense, I would say the most appropriate justification of the CDP could come from the consideration that the state has an obligation to preserve the objective conditions of justice, so justice could obtain to protect the basic rights of individuals to their property and lives unrestrained by fluctuation in resource scarcity. The government is justified in prioritizing actors that are essential for the recovery of the economic system solely on the basis of this obligation and nothing else.

It is important, however, to note that this serves as a basic justificatory principle, upon which other considerations can be made. In my rendering, it comes with several conditions that broaden the scope of justification to include some of the alternative views discussed in earlier sections. The conditions can be outlined through what may be called a general legitimacy proviso: only if conditioned by considerations of responsibility, regulation and isolation, the justification based on Lockean natural rights and Hobbesian importance of commonwealth will be able to contribute to preservation of circumstances of justice and generate political legitimacy for the crisis distributive pattern. I briefly explain what I mean by this.

The legitimacy proviso, with a set of conditions, provides a positive ground for this otherwise negatively oriented justification that aims at securing wider social legitimacy. It means that, if aimed at protecting natural rights of individuals on the long run, a democratic government needs to adopt a set of positively oriented principles that provide long-term legitimacy for crisis-time distributions. Only if these principles are adopted, disturbing the regular pattern of distribution to preserve stability of the commonwealth can gain legitimacy and consensual support.

First, the justification need not be understood as temporally limited to the moment of the crisis, but stretches across time. In terms of past events, it commands examinations of responsibility and reassessments of relations of production insofar as they are related to issues of responsibility. This would imply that the natural rights justification directly provides an obligation to determine if there is any responsibility relationship between different actors, modes of production and the crisis. In terms of the future, it commands reciprocity-based redress of the crisis distribution. This would mean that, once the economy is stabilized, the actors that have received resources under the pretext of their essential importance for stabilization have an obligation to redress the inequality of crisis distribution through priority measures aimed at the least advantaged members of society who would, had the crisis not occurred, have received more resources in absolute terms, or alternatively, aimed at bringing the crisis-deepened inequalities at the pre-crisis levels. In that way, the responsibility condition of the natural rights justification would be broad enough to include both egalitarian and prioritarian approaches to distributive justice, and as such applicable in various local contexts with different notions of justice. The issue of responsibility would thus go both ways, looking backward as well as forward. An equal concern for natural rights of all members of society would oblige government to undertake measures that will prevent further dangers to the stability of the socio-economic system.

The reasoning behind this rests on both the Hobbesian and Lockean parts of the justification argument. In terms of responsibility, the government's duty to look at the actors and structures responsible for the occurrence of the crisis springs from its underlying duty to prevent any further occurrence of similar crises and in such a way sustain the stability of the commonwealth. In terms of redress, if one understands the social provisions individuals are entitled to as a form of common property shared by groups of individuals on different social bases, then reductions or cancellations of such provisions can be understood as violation of rights to property and thus redressed

once the crisis is tamed and conditions brought back to the normal (pre-crisis) level.

The second condition draws on the responsibility argument and the priorities of commonwealth stability. It assumes that unlike the pre-crisis period, private corporations receiving public money for the sake of the system's survival need to become publicly accountable for their economic policies, since the crisis has made explicit that priorities of the commonwealth have priority over particular (corporate) actors. Crisis distribution would thus induce a process of broadening the relations of accountability on egalitarian bases: all receivers of public funds, including private corporate actors, have an equality-based requirement to be held accountable for the effects of their policies on the system as a whole.

Two things could be induced from such a condition: a broader scope of democratic participation, since the accountability of private economic actors who received public money would imply a civic overview of their practices and thus increase level of citizen participation in public policy scrutiny. Given the potential of private economic actors to influence and endanger individual property rights, such public oversight comes as an appropriate device for controlling forces capable of destabilization of basic schemes of social cooperation. But, more importantly, this condition also indicates a need for more, rather than less, political regulation of the economic sphere and its relation with the basic resource structure. It comes with an assumption that there are many potential violators of natural rights, and that the state, given the potential to control its institutions under democratic frameworks, is the least likely to commit such violations. Therefore, it is the most appropriate agent for controlling those actors that are potentially harmful and that seldom come under democratic scrutiny. The natural rights approach seems most capable for providing the basic arguments with which such policies could be advocated and put into practice.

The natural rights approach to the justification of the CDP is more successful than other particular accounts, discussed in the
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previous section. There are several additional reasons this might be the case. First, the natural rights approach takes the problem of scarcity more seriously than other accounts. Although it may be based upon an ideal and value of natural rights, it is still firmly anchored in the contingency of the changing world and the dynamic nature of scarcity, being thus more responsive to the practical problems of distribution.

Second, it is at the same time narrower (being more precise) and wider in range, which makes it more acceptable to actors from different ideological positions along the liberal aisle. Arguably, subscribers of all three alternative approaches could endorse the value of basic natural rights and its overriding validity in face of different political dilemmas. Thirdly, it is not based on a particular distributive pattern, but allows for different distributive practices, which could satisfy a set of basic requirements. Finally, it is more flexible and open to a posteriori assessments of the resource production relations and the character of the economic system as a whole.

5. Conclusion: Justice and Dynamic Scarcity

In this article I examined the problem of scarcity as a condition of justice. Instead of assuming a relatively fixed ("moderate") level of scarcity as a background against which justice in distribution obtains, I have tried to examine what happens when this level falls below or comes close to a collapse. In this concluding section, I wish to outline several structural remarks that can be derived from the previous discussion. The most important notion I wish to put forward is that moderate scarcity is not a mere condition, but an important and vital object of justice. As such it falls within, not beyond, legitimate obligations of democratic governance.

Under normal conditions of scarcity, which imply a limited yet relatively fixed amount of resources, the government devises a particular distributive scheme that reflects three structural facts: the amount of resources, relations of (resource) production and the dominant views of distributive justice. The legitimacy of the

governmental scheme of distributions depends on the stability of the relations between these elements. Once at least one of these elements experiences change, the entire scheme can undergo a transformation.

There are several reasons some of these elements may change. Resources can be based on exhaustible natural sources (such as oil or gas) and the cause for reconstruction of distributive schemes will spring from purely natural facts, once the natural resource pools are drained. Natural reasons do not exclusively derive from the exhaustion of natural resources but can also pertain to the rise of population and the unpredictable nature of the world economy, which by itself can cause limitations of the absolute level of resources distributed between individuals. Reasons can be social in character and pertain to changes in the relations of production, which can also initiate the need to rethink the existing distributive schemes. Finally, a conceptual change in views of distributive justice may also cause the change in dominant practices of distribution.

All three reasons may cause different types of social and economic crises. The latter one usually occurs during large social upheavals and revolutions, when entire societies undergo a fundamental transformation, changing patterns of distribution together with other forms of social organization. Its distinctive feature is the fact that the change in the distributive scheme follows a rationally devised and forward-looking plan, usually backed by the majority of population, if successful. The second reason is less a result of planned efforts but rather an unintended consequence of the rationally established relations of production. The first one, however, may not be based on any rational planning but instead occur as a natural fact, gradually or suddenly affecting the amount of resources and the scheme upon which their distribution is based.

All three reasons indicate the need to understand the moderate scarcity of resources as a dynamic phenomenon, influenced by a variety of both natural and social facts. Once scarcity as a circumstance of justice is understood in this way it is much easier

to understand the legitimacy crises that may accompany alterations in distributive schemes caused by changes in one of its constitutive elements. The nature of the change will, however, also indicate the character of the justifiability and legitimacy challenge to the distributive alteration. However, both in cases when the nature and causes of the change are known and attributable to human influence, as well as in those when they are not, a particular redistribution must take place to prevent the overall collapse of the system and the resulting deconstruction of the basic circumstances necessary for justice to obtain.

Different justifications to such distributions can be made. Some of them will support it while others will not. The prevailing approaches to justification of the crisis distribution, couched in terms of utilitarian, egalitarian and prioritarian arguments seem to depend on a fixed, rather than a dynamic view of the resource scarcity. The claims made on their behalf suggest that legitimacy to such justification could be obtained only if one agreed to deal with a stable amount of distributive resources: in the face of radical resource instability, all three approaches collapse either because they are unable to generate long-term legitimacy for redistributive decisions (utilitarian) or because they are too implausible to stand as self-sufficient and independent justificatory frameworks (egalitarian and prioritarian). Unlike these, the natural rights approach, conditioned by specific legitimacy providers, will be broad enough to include the resource scarcity issue into the purview of its justification and treat it not only as a background circumstance, but an important object of the concerns of justice.

The natural rights justification of the CDP indicates the final answer to the questions posed at the beginning of this paper: because it is inherently dynamic, moderate scarcity cannot be a mere condition but also an object of justice. The change in the levels of scarcity, empirically confirmed by recent economic downturn, thus significantly affects our understandings of justice. It forces us to rethink justifications to different distributive schemes against a new reality. In such a reality a particular cooperative structure is no longer a given and fixated

circumstance but a dynamic object that needs to be accounted for. The role of democratic government in such contexts is not limited to the provision of distributive schemes *against* the given socio-economic circumstances but broadened to an active concern for sustaining the circumstances at the levels necessary for justice to exist.

If at particular points in time the levels of scarcity radically decrease the government is obliged to act in such a way that will stop the further deterioration of resources and bring them to a more acceptable level. When doing so, the government is justified in violating the principles of 'normal' (pre-crisis) distribution by relying on equal concern and protection of individuals' natural rights. Only by responding to the changes in the dynamism of resource scarcity will a democratic government be able to generate legitimacy for its distributive schemes and ensure that, no matter what, the natural rights of individuals remain protected and isolated from the effects of the changing world as long as possible.

On a more empirical note, the case of the US government bailout must not be seen as an event specific to a single case, limited by the economic, cultural and political reality of the United States of America. The structure of the problem indicated by this example is of a much wider relevance and its importance for the world as a whole and will be more visible in times to come. Governments throughout the world will be increasingly challenged by future economic crises and fluctuations in the available resources, which will force them to rethink existing distributive strategies and come up with new answers and policy solutions for new social and economic problems caused by the crisis. The task of political philosophy is to think ahead of these developments and work out plausible and sustainable normative frameworks and suggestions.

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