



**University of
Zurich**^{UZH}

**Zurich Open Repository and
Archive**

University of Zurich
University Library
Strickhofstrasse 39
CH-8057 Zurich
www.zora.uzh.ch

Year: 2024

Reconfiguring essential and discretionary public goods

Bieber, Friedemann ; de Jongh, Maurits

DOI: <https://doi.org/10.1017/S0266267123000329>

Posted at the Zurich Open Repository and Archive, University of Zurich

ZORA URL: <https://doi.org/10.5167/uzh-236201>

Journal Article

Accepted Version



The following work is licensed under a Creative Commons: Attribution 4.0 International (CC BY 4.0) License.

Originally published at:

Bieber, Friedemann; de Jongh, Maurits (2024). Reconfiguring essential and discretionary public goods. *Economics and Philosophy*, 40(3):535-556.

DOI: <https://doi.org/10.1017/S0266267123000329>



ARTICLE

Reconfiguring essential and discretionary public goods

Friedemann Bieber¹  and Maurits de Jongh² 

¹Universität Zürich, Department of Philosophy, Zollikerstrasse 117, CH-8008 Zürich, Switzerland and
²Universiteit Utrecht, Department of Philosophy & Religious Studies, Janskerkhof 13, 3512 BL Utrecht, Netherlands

Corresponding authors: Friedemann Bieber. Email: friedemann.bieber@philos.uzh.ch; Maurits de Jongh. Email: m.j.dejongh@uu.nl

(Received 07 February 2023; revised 16 June 2023; accepted 26 June 2023)

Abstract

When is state coercion for the provision of public goods justified? And how should the social surplus of public goods be distributed? Philosophers approach these questions by distinguishing between essential and discretionary public goods. This article explains the intractability of this distinction, and presents two upshots. First, if governments provide configurations of public goods that simultaneously serve essential and discretionary purposes, the scope for justifiable complaints by honest holdouts is narrower than commonly assumed. Second, however, claims to distributive fairness in the provision of public goods also turn out to be more complex to assess.

Keywords: Public goods; essential vs. discretionary public goods; honest holdout; distributive justice; economic efficiency

1. Introduction

After the outbreak of the COVID-19 pandemic, public goods became subject to newfound appreciation. If in normal times public health, education, emergency care and city parks are easily taken for granted, the pandemic reminded us of the critical importance of these public goods to our lives. Take the example of city parks. If access to city parks was not itself restricted as part of lockdown policies, people often used them to retain their physical and mental well-being. Especially in densely populated urban areas, parks allowed for walks, workouts, conversations, or play with children – activities, in short, without which life under lockdown would have been even harder to bear. Yet city parks also exemplify how the pandemic exacerbated pre-existing inequalities. Given the proximity between affluent neighbourhoods and city parks, opportunities for poorer people to enjoy them are more restricted; and so were the possibilities for

© The Author(s), 2023. Published by Cambridge University Press. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

the less wealthy to seek relief from lockdown in urban green spaces during the pandemic.¹

While the politics of public goods such as city parks thus raises urgent stakes of social justice, the philosophy of public goods has so far struggled to address them. The philosophical debate builds on the foundations laid by the well-known economic theory of public goods. Welfare economics suggests that private markets will often fail to provide public goods efficiently. This is because public goods are, according to the economic definition, non-excludable (or at least imperfectly excludable) and non-rivalrous (or imperfectly rivalrous). These two features render an efficient market provision of public goods difficult. If we cannot – or cannot easily – exclude persons from enjoying the benefits of a good, there is a problem of free-riding (some people may want the good but avoid paying, instead relying on the contributions of others) and a related problem of assurance (some people may want the good and be willing to pay for it but refrain because they fear others will free-ride). In addition, where marginal costs of consumption are close to zero, even if exclusion were possible, perfect price discrimination would be required to ensure an efficient supply of public goods. Now, in specific contexts, these problems may be overcome. In particular, assurance contracts, whereby individuals commit to contributing to a public good if others do so as well, provide a theoretical framework for a potentially efficient market provision of public goods (see Schmidtz 1987, 1991; Anomaly 2015: 119–120).² Yet, assurance contracts face limitations in more complex interaction situations, and public goods frequently do give rise to market failure that only the state could overcome by coercing everyone to contribute to their provision (Samuelson 1954; Musgrave 1959; Olson 1965).

Importantly, however, the existence of a market failure does not imply that the state should get involved. This is for two reasons. The first reason relates to efficiency, and is made forcefully by Varian (1993: 546), who maintains that '[c]onventional economic theory is mute on the question of whether there is any other mechanism that will improve upon the market'. State provision, too, may involve inefficiencies – both in the provision of goods and the taxation required to finance them. The second, related reason points to the problem of honest holdouts. Even where the state *could* ensure a less inefficient provision of public goods compared with voluntary mechanisms such as the market, it does not follow that the state *should* do so. For the state does not merely, and legitimately, coerce free-riders to contribute to public goods; it also coerces honest holdouts (Schmidtz 1991: 84) to bear costs for securing public goods, where honest holdouts are those who genuinely oppose the provision of a public good because they derive zero or even negative utility from it (Anomaly 2015: 112, 2023).³ Honest holdouts thus bring into sharp relief that securing public goods through state coercion can generate a 'forced riders' problem

¹For empirical research on how park usage has been affected by the COVID-19 pandemic, see e.g. Larson *et al.* (2021), Volenec *et al.* (2021) and Hazlehurst *et al.* (2022). For a pre-pandemic analysis of how the distribution of green spaces disproportionately benefits white and affluent neighbourhoods and are thus said to constitute an 'environmental injustice', see Wolch *et al.* (2014).

²For empirical evidence on human behaviour in the context of assurance markets, see e.g. Isaac *et al.* (1989) and Fehr and Gächter (2000).

³Expressions like 'public bad' or 'public evil' suggest themselves. We limit our analysis to public goods that exhibit the structural characteristics of imperfect excludability and imperfect rivalry, even if those characteristics do not imply that they are desired by everyone and hence beyond contestation (see Anomaly 2023: 50). Ferdman (2018: 662) introduces the notion of 'non-universal public goods' to refer to goods that

(see Cowen 2008) as some are forced to support goods they might not prefer. Coercive contributions to public goods may therefore not amount to a Pareto improvement, and more generally any surplus of their supply can be distributed in various ways, prompting the question what makes such distributions fair or not.

So far, the philosophical debate has sought to contain the problem of the honest holdout, and to address the question of distributive justice, by postulating a distinction between *essential* and *discretionary* public goods; while essential public goods must be secured by government as a necessary requirement to meet the demands of justice, the supply of discretionary public goods is optional. Importantly, at this point, the claim is not that the government needs to provide a good directly: rather, if the provision of a public good is required by justice, then the state needs to ensure its provision, where this provision may take different forms – ranging from (i) a spontaneous state-independent provision, e.g. through charity or assurance contracts, via (ii) a state-induced, yet independent provision, e.g. through regulation or a voucher system (see Claassen 2017), to (iii) direct state provision of the public good. What matters is not the mode of provision, but that the state *in some way* secures the provision of public goods that are required by justice (and it is in this broad sense that we speak of provision below, as synonymous with securing their existence).⁴ That states have a variety of ways of securing the provision of public goods is also noted by Baltzly (2021) and Anomaly (2023) in their argument that governments can create so-called ‘publicized goods’ by guaranteeing the state provision of what were previously private goods.⁵ Honest

are not desired by everyone; analogously, one could speak of ‘contested public goods’ if goods are actively liked by some, yet disliked by others.

⁴We are grateful to an anonymous reviewer for highlighting this distinction between outcome and mode of provision. For an argument concerning the critical importance of direct government provision, see Cordelli (2021). Cordelli objects to what she sees as a widespread ‘interchangeability assumption’ of the means by which actual provision takes shape – be it public, private, or some combination thereof. On Kantian and neorepublican grounds, she worries that the privatization of what she terms ‘public functions’ in fact subjects free and equal citizens to unilateral domination by third parties. For a pluralist account of different modes of provision, see de Jongh (2021).

⁵Writing that ‘*any good* can be publicised’ (Baltzly 2021: 387, italics in original) and that ‘virtually any private good can be converted into a public good by government fiat’ (Anomaly 2023: 43), Baltzly and Anomaly argue that government can turn virtually any private good into a public good (in the publicised sense) by simply issuing a state guarantee of its provision. The idea is that the publicization of goods – that is, governments *securing* these goods – creates ulterior non-rival and non-excludable effects which, without such publicization, would not exist. For instance, Anomaly notes that refraining from smoking, doing physical exercise, and maintaining a healthy diet all have non-excludable and non-rival benefits for all the members of a health insurance pool (decreasing pressure on premium levels), but only if membership of that pool is made compulsory by government fiat (2023: 44). In our view, the concept of publicized goods is helpful to explain why the economic definition of public goods as non-rival and non-excludable is more inclusive than commonly assumed. Unlike these authors, however, we leave it open whether this ‘promiscuity’ (Baltzly) of the economic definition is a potential defect. Insofar as it helps to address requirements of social justice, it may instead be deemed a virtue. While a comprehensive assessment of the concept of publicized goods is beyond the scope of this paper, we think it makes sense to draw a distinction between goods that are essentially rivalrous but provided by the state (think of food stamps) and goods that are at least imperfectly rivalrous and provided by the state (think of libraries) – and to here restrict our analysis to this latter set of public goods, since imperfect rivalry generates the possibility of a distinct market failure. See Bieber (2023) for a further distinction between public goods that are essentially non-exclusionary and those that could alternatively have been provided in exclusionary form, as club goods.

holdouts, it appears, have legitimate complaints against a state's active involvement in securing public goods *at most* in the case of discretionary public goods, because securing essential ones is a necessary requirement of justice.⁶ But while existing principles for ensuring initial conditions of justice are then meant to determine the allocation of the cost of securing essential public goods, we confront an additional concern, if discretionary public goods are in fact supplied: we need an additional principle that determines how the social surplus is distributed. In this way, the distinction between essential and discretionary public goods underpins, and indeed structures, the philosophical debate surrounding public goods.

However, this strategy to contain the honest holdout problem and to assess distributive justice has so far implicitly assumed that individual public goods can be *exclusively* categorized as *either* essential *or* discretionary. So, individual public goods such as basic healthcare or national defence are often labelled as essential, while other public goods, such as city parks, are categorized as optional (Anomaly 2015: 112; Kohn 2020: 1105). City parks, on this view, are not taken to satisfy a basic need like security or health, but to advance discretionary interests in recreation which are not shared by all members of the public – including the honest holdouts, who therefore have legitimate complaints against their provision (be it direct or indirect) by government.

But the assumption that we can categorize individual public goods as exclusively essential or discretionary is not self-evident. City parks, the recent pandemic has reminded us, often fulfil not only recreational, but also basic needs, such as those for physical and mental well-being; and whether they are required to satisfy these basic needs may also depend on which other goods are secured through coercive contributions. One way to respond to this conundrum is to claim that the case of city parks – or any other example for that matter – has been *misclassified* as either essential or discretionary. Instead, we defend the stronger claim that the attempt at classifying individual public goods is itself often misguided.

Specifically, we present three challenges to the distinction between essential and discretionary public goods that explain why it is much less tractable and stable in practice than is commonly supposed in the philosophical literature. The first challenge, which we call the *problem of background conditions*, argues that whether a public good qualifies as essential depends on factors such as the state of social development, as well as the existence of material and non-material inequalities. The second challenge, which we call *the problem of configurations*, explains that the designation of an individual public good as necessary or discretionary relies on the broader configuration or set of public goods that the government secures. Finally, the third challenge, which we call the *problem of specification*, argues that the essential or discretionary status of a public good is rarely independent of how its provision by government is specified in political and administrative practice – considering the form, extent and level of risk at which it is supplied. Together, these findings show that many public goods are neither just essential, nor simply discretionary, but can take both forms, and often simultaneously combine elements of both.

⁶Note that this strategy of containing the honest holdout problem must assume a non-utilitarian or preference-independent conception of justice and its necessary requirements, including the provision of essential public goods. We discuss complications with this strategy in section 6 below.

There are two upshots of this. First, the honest holdout problem is easier to contain than philosophers have previously assumed. If we accept that, to fulfil essential requirements of justice, government typically upholds configurations of multiple public goods that simultaneously also serve discretionary ends, then the legitimate complaints of the honest holdout turn out to be less pressing. For instance, if a city park does not satisfy the merely recreational preferences of park-lovers, but also fulfils basic needs of personal and public health, then one cannot object to coercive contributions *tout court*.⁷ Second, in discussing demands of distributive justice in securing public goods, we cannot simply proceed in two steps, complementing existing theories with a principle for the just distribution of net benefits of discretionary public goods. Instead, if many public goods simultaneously serve essential and discretionary requirements of justice, then we need to keep these two purposes apart and seek, within the limits of practical possibility, to apply our distributive principles accordingly.

In making this argument, the article proceeds as follows. Section 2 starts out by offering an account of the distinction between essential and discretionary public goods as it pervades the literature. Section 3 then puts forward the first challenge to this distinction, the argument from background conditions, which shows that we may at best hope to evaluate a public good as essential for a given society at some moment in time. Section 4 develops the second challenge, the problem of configurations, which shows that whether a given public good qualifies as essential depends critically on which other public goods are provided. Section 5 sets out the third challenge, the problem of specification, explaining why the essential-discretionary distinction is destabilized in practice by the form, extent and level of risk at which a public good is secured. Section 6 discusses the implications of our findings, clarifying in what sense the essential-discretionary divide retains value for the philosophical debate as well as the practical politics of public goods.

2. Essential and Discretionary Public Goods

The distinction between essential and discretionary public goods structures the philosophical debate about distributive justice in coercive contributions to public goods. This debate takes the economist's framework as its point of departure, in which public goods are identified as central sources of market failure: their non-excludable and non-rival nature invites strategic free riders to withhold from contributing, thereby undermining the market mechanism. But while philosophers agree with welfare economists that non-excludability and non-rivalry imply that some public goods can potentially be more efficiently secured through state coercion than through voluntary market exchange,⁸ they claim that superior efficiency does

⁷Our (admittedly imperfect and simplified) conceptualization of the distinction between essential and discretionary public goods entails that the former satisfy basic needs whereas the latter fulfil discretionary interests, preferences or desires. For public goods as need-regarding, see Anderson (1990); for pushback against the association between government provision and basic needs, see Heath (2011).

⁸As noted above, one cannot assume that government provision will always be more efficient – it may not, both due to potential inefficiencies in how the good is provided (e.g. provision may be overly costly) and due to potential inefficiencies in how the good is financed (e.g. it may be financed through distortive taxes). However, in so far as there is a market inefficiency, there is at least the theoretical possibility of more efficient provision, and it appears plausible that state coercion could *often* increase efficiency (if well targeted).

not generally suffice to vindicate such coercion. This point has arguably been made most forcefully by Nozick (1974: 90–95), who argues that the fact that one benefits from a public good such as a broadcasting service does not render it legitimate for others to demand a contribution unless one has voluntarily consented to it.

The problem is that state coercion does not only solve the problem of strategic free-riders, who are insincere in their preference revelation for public goods. It also coerces citizens whom Schmidtz labels *honest holdouts* (1991: 84; see also Mack 1986: 513–514). In contrast to strategic free-riders, honest holdouts sincerely claim not to derive benefits from the public good, or even dismiss a public good as a public bad.⁹ Rawls (1971: 283) captures the unease of resorting to state coercion for public goods when he claims that ‘there is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses’. While it may in practice be difficult to ascertain who is an honest holdout and who is a strategic free-rider, the mere existence of honest holdouts reveals important shortcomings of the efficiency rationale for public goods. It prompts us to consider for which public goods citizens have legitimate standing to withhold their consent to mandatory contributions. The economic framework, with its emphasis on superior efficiency of state coercion compared with voluntary market exchange, is too indiscriminate in this regard. As Cordelli argues, the framework overreaches the scope for legitimate state coercion, failing to discriminate, for instance, between national defence and fireworks (which both exhibit non-rivalry and non-excludability): ‘a government lacks the legitimate authority to force people into forms of cooperation, including producing discretionary goods like fireworks, just because those forms will benefit other people, by satisfying preferences that would otherwise remain unmet’ (Cordelli 2021: 27). The problem of the honest holdout underscores that public goods can generate unwarranted asymmetries in benefits and burdens (resulting in distributive unfairness). This motivates a distinction among two types of public goods: goods for which coercive contributions are justified because they are a necessary requirement of justice, and goods that are more optional and against which the honest holdout can thus legitimately object.

The distinction between these two types indeed underpins the debate about distributive justice and public goods, where each type has been given a specific label.¹⁰ *essential public goods* are defined as ‘those required by justice’, whereas

⁹For instance, the enjoyment of city parks, whether under conditions of lockdown or not, is not part of the preference ordering of a hermit. But even more troublesome, honest holdouts can derive disutility from its provision, as when the trees of a city park provoke allergic reactions (Anomaly 2015: 112).

¹⁰In response to Schmidtz’s introduction of the honest holdout problem, Klosko (1990) introduces a closely resembling distinction, namely between ‘presumptively beneficial’ and ‘discretionary’ public goods. He defines the former as public goods which we can presume everyone to want since they are necessary to live ‘a minimally decent life’, while discretionary ones refer to all other public goods which are not necessary in this sense. Holdouts to presumptively beneficial public goods so defined may therefore be judged as dishonest (or, perhaps, they are irrational and ill-informed), so that coercive contributions from holdouts are justified (see Taylor 2021: 568). Since essential and presumptively beneficial public goods are almost ‘co-extensive’ categories (see Taylor 2021: 565), we employ a single distinction between essential and discretionary public goods in this article. This is especially appropriate given our conceptualisation of essential public goods in terms of meeting basic needs (see footnote 7 above), which is almost identical to Klosko’s definition of presumptively beneficial public goods in terms of their indispensability for a

discretionary public goods are those whose supply is optional, since they are ‘not required by justice’ (Miller and Taylor 2018: 562).¹¹ For a good to be required by justice, according to Miller and Taylor, means that it is ‘required for social cooperation to take place at all’ (2018: 562) (their example is law and order), that it is ‘needed to ensure that the value of fair shares is not undermined’ (2018: 562) (their example are zoning restrictions, which specify for which purposes land can be used and thus which externalities others may impose) or that it is needed to ‘meet (at least some of) the basic needs of fellow citizens’ (their example is access to drinking water) (2018: 564).

According to the accepted view (see e.g. Klosko 1990; Murphy and Nagel 2001; Miller 2004; Claassen 2013; Miller and Taylor 2018), essential public goods do not give rise to distinct questions of distributive justice: they are required for justice, but for this reason, how to divide the costs of their supply is immediately determined by whatever theory of justice one commits to.¹² Discretionary public goods, by contrast, are seen to give rise to an independent question of justice: because the benefits and costs obtained through coercive contributions can be distributed in a variety of ways, and ‘efficiency alone will not dictate a choice among them’ (Murphy and Nagel 2001: 61), we must ask what justice requires. In response to this question, authors have proposed several principles. On the one hand, some authors have proposed *purely procedural principles*, such as the unanimity requirement (Rawls 1971; see also Wicksell 1958; and Buchanan 1969) or a decision by majority vote (Rawls 2001). Others have insisted that we confront a substantive question of justice (see e.g. Miller 2004: 133–134) and have proposed *substantive principles* that prescribe a particular distribution of net benefits, like a *proportional benefit principle* that requires net benefits to be proportional to contributions (Murphy and Nagel 2001: 62) or an *equal benefit principle* that requires net benefits to be equalized (Miller 2004: 142–143). Yet others have advocated for a combination of procedural

‘minimally decent life’. However, usage of the essential-discretionary distinction in the literature takes for granted that coercive contributions from holdouts are justified, so as to proceed directly to the problem of distributive fairness in the supply of discretionary public goods. By contrast, we argue in section 6 that justifiable coercion cannot be so easily taken for granted and must instead be analysed in conjunction with the problem of distributive fairness in the supply of both essential and discretionary public goods. We thank an anonymous reviewer for pushing us to clarify the overlap and difference between these two pairs of distinctions.

¹¹In an earlier paper, Miller (2004: 136–143) distinguishes three types of public goods, A, B and C. While type A and type C goods respectively correspond to essential and discretionary public goods, type B goods are ‘goods that can be given a public justification within the relevant community, but not one that makes direct appeal to the value of justice’ (2004: 137). The underlying idea is that certain goods, while not required by justice, are vital to sustaining a community, and can be justified on this ground. This tripartite division of public goods has not, however, caught on, and Miller and Taylor (2018) restrict themselves to a distinction between essential and discretionary public goods. Moreover, note that while Murphy and Nagel (2001) do not draw this distinction explicitly, it also underpins their argument. Stating that ‘we cannot implement a just system of distribution without some public expenditures’ (2001: 56), they highlight that some public goods, such as maintenance of a legal system and provision of security, are required for it to even make sense to speak of justice in the distribution of private goods. But their primary concern is with public goods, whose provision is not in this way required but could potentially make everyone better off (2001: 58–63).

¹²The one question that Miller and Taylor (2018: 573) raise concerning essential public goods is whether a good should qualify as essential ‘when it provides the only feasible way of meeting individuals’ basic needs, or when it is the most efficient way’. We return to this question in section 3.

and substantive criteria to ensure justice in securing discretionary public goods: Claassen (2013: 281–285) proposes to rely on a simple majority vote while at the same time restricting the choice to options that fall in-between ensuring equal benefits and equal overall welfare.¹³

As this brief overview reveals, the presumption that we can draw a clear-cut distinction between essential and discretionary public goods structures the philosophical debate about public goods. It narrows down the challenge of the honest holdout, who is taken to enjoy adequate standing to object only to coercive contributions to public goods that are not independently justified as necessarily required by justice. And it motivates the two-stage approach in assessing the distributive justice of the supply of public goods: at a first stage, we identify the set of essential public goods and ensure government secures them in accordance with our preferred theory of justice; at a second stage, and assuming an otherwise just society, we then apply a supplementary principle that governs the distributive outcomes of the supply of discretionary public goods.¹⁴

3. The Dependence on Background Conditions

This section puts forward our first challenge, the *argument from background conditions*. This argument shows that we can at best hope to classify a good as essential or discretionary relative to some background conditions. To put it differently, contrary to what the literature suggests, we cannot compile a list of public goods and then simply divide them into two columns, essential and discretionary. Instead, whether a good qualifies as essential will typically depend on (i) the social background conditions, and in particular the state of social development, and on (ii) the current existence of injustices, including non-material ones. While this finding is relevant, it leaves open the possibility of distinguishing between essential and discretionary public goods *in a given context* and is thus one that proponents of the distinction could in principle accept.

According to the accepted definition, public goods qualify as essential if their provision is required by justice. As Miller and Taylor (2018: 564) note, ‘many theories of justice . . . hold that there should be a social minimum that no individuals should fall below’ where this ‘minimum is usually cashed out in terms of basic needs that must be met for an individual to live a minimally decent life (in their society)’. It is for this reason that they hold that public goods may be required by justice, and may thus qualify as essential, even if they are not needed to secure the basic conditions for social cooperation, nor for the protection of private resource claims. Yet, it is hard to deny that what is required for a person to live a minimally decent life depends, at least partly, on what is required for participation in society and therefore on the state of social development. Consider, for example, access to the internet: while access to the internet can hardly be said to have been a basic need

¹³Claassen adds a note of caution, however, stating that while the majority procedure is ‘unavoidable’, it ‘will work only if [no one attempts to] get the maximum out of a majority position’ (Claassen 2013: 284).

¹⁴Note that, as a corollary of this framing of the question of justice in the provision of public goods, discretionary public goods also attain the appearance of being secondary: their provision is to be justified against the background of an already existing private property regime.

in the early 1990s, when such access was rather exceptional even in wealthy countries, it arguably qualifies as a basic need in the early 2020s. The reason for this is that access to the internet has become a prerequisite for fully participating in most societies today.¹⁵ If this is true, then it shows that whether universal access to the internet qualifies as an essential public good depends on the state of social development.¹⁶ But even if one disputes the claim, in this specific instance, the case nonetheless points to the possibility that whether a specific public good qualifies as essential depends on the state of social development. This shows that we cannot simply compile a list of public goods to then divide them into essential and discretionary ones. Instead, whether a public good qualifies as essential needs to be evaluated by reference to a given society.¹⁷

Next, consider the relevance of (ii) injustices that exist prior to the supply of public goods. Discretionary public goods are typically examined under the assumption that an initial state of justice has already been achieved: all public goods required for justice have been secured and the distribution of privately owned resources is just (see e.g. Murphy and Nagel 2001: 57; Miller 2004: 113, note 4).¹⁸ Yet, where these conditions fail to hold, the existence of injustices may affect which public goods are required by justice. In particular, or so we think, there can be public goods whose supply becomes a requirement of justice only because there are existing injustices. Suppose that access to critical healthcare is considered a basic need. Suppose, moreover, that we have a society where everyone initially has the means to secure adequate access to critical healthcare in a market, be it directly or through insurance. In this case, there is no problem: the basic need is met. Now, suppose that as material inequalities grow, some individuals no longer manage to secure access to critical healthcare through the market. In this case, it would seem, securing healthcare as a public good becomes a requirement of justice.¹⁹ But it is important to be careful here: after all, it is conceivable that there are other ways of ensuring universal access without resorting to provision by government, such as via redistribution of private resources. So, one may ask: does a public good qualify as essential if there are alternative means of meeting a certain basic need?

¹⁵See Reglitz (2020) for an argument of unmonitored and uncensored access to the internet as a human right.

¹⁶The claim here is distinct from that, made for instance by Mazzucato (2018), that many technological innovations like the internet would not have emerged without public investment. Whether or not the internet would have emerged in absence of state investments, the point is that once it has become sufficiently widespread and important, access to it becomes a basic human need.

¹⁷This ties in with a different, if in some way related argument, put forward by Anomaly (2023) and Baltzly (2021). As noted above, both Anomaly and Baltzly claim that states can choose to publicise goods, thereby turning private goods into public goods. In this way, they effectively argue that whether something counts as a public good often is at the government's discretion. This renders the question whether a good is a public one context-sensitive too – though in a different sense: whereas for the notion of essential goods, what matters is the wider social context (such as society's advancement), for that of publicised goods, what matters is the governance context (such as the state's decision to provide specific goods to everyone).

¹⁸This does not imply that there are no inequalities in privately owned resources (and it may, in fact, even imply inequalities, namely if equality would be unjust), but implies that these inequalities do not amount to injustices.

¹⁹This idea is also explored by O'Neill (2020: 76–78), who argues that the impact of a nationalization of healthcare critically depends on the specific form the initial market solution takes.

This concern echoes an issue noted by Miller and Taylor, who ask whether a good should qualify as essential ‘when it provides the only feasible way of meeting individuals’ basic needs, or when it is the most efficient way’ (2018: 573)? While this is an important question, we need not take a definitive stand on it here. For making our case, it suffices to show that *sometimes* the provision of a public good (which would otherwise have been optional) may be the only feasible or most efficient way of addressing an injustice, in which case whether this public good qualifies as essential depends on whether an injustice exists.²⁰

Consider, for example, a society in which some groups are excluded from access to certain market club goods based on their gender or race, as has historically been true of country clubs (Lenkiewicz 2011).²¹ At first sight, redistribution of private resources, alongside the design and enforcement of anti-discrimination laws to ensure equal access, seem more straightforward ways of addressing the injustice.²² However, these measures may not offer a feasible, let alone the most efficient, way of addressing the injustice. Anti-discrimination laws, for one, need to be balanced against rights to freedom of association (in exclusive clubs), and the costs of enforcing such laws may be high. And redistribution of private resources to create additional market club goods for those subject to exclusion need not be the most efficient solution to address the injustice. After all, the imperfect rivalry of these goods remains a potential source of market inefficiency. Therefore, if unequal access persists as an injustice despite redistributive and regulatory measures, the *additional* provision of goods such as country club facilities, public beaches, and parks in non-exclusionary form may *sometimes* be an essential requirement of justice for which coercive contributions are warranted on grounds of feasibility and efficiency.²³

To summarize: the argument from background conditions shows that the armchair is not a position from which we can determine, for every public good, whether it qualifies as essential. This is relevant because it implies that we can at best hope to compile a list of essential goods relative to some specific society. But the argument explicitly leaves open the possibility of drawing this distinction for a *given society*, and at a *given moment in time* – taking account of the needs that qualify as basic and of any injustices that exist in this society.

²⁰Note that our argument that such provision may be the *only* feasible way to address an injustice need not assume that private alternatives are impermissible, or infeasible to meet the needs of those who are not subject to injustice. Rather, we claim the public good should be provided in *addition* to alternatives on the market, where these alternatives appear infeasible to address the injustice in question.

²¹While it is true that such lack of access correlates with a lack in access to resources, this is true primarily at the collective rather than the individual level. For instance, while the fact that country clubs were typically run by men reflects the fact that they had control over a (much) greater share of resources, the highly wealthy woman is excluded from joining the club not for lack of money, but for lack of being a man.

²²We are grateful to an anonymous reviewer for pressing this point.

²³Public swimming pools in the United States are an interesting case in point. Under segregation, many city pools were publicly subsidized yet provided as exclusionary club goods to which racial minorities were denied access. Instead of enforcing desegregation, many of these publicly subsidized pools ceased to exist (see e.g. Honig 2017: 24). Here, liberal theories of justice must balance freedom of association (in exclusive clubs) with relational equality: even where it is regrettable – from the perspective of the egalitarian – that people form exclusive clubs, they may have rights to do so. That said, this trade-off does not imply that the state should not *sometimes* secure competing or *additional* public goods to address unjust cases of unequal access to such goods. For further discussion of the example of public swimming pools, see section 6.

4. From Individual Public Goods to Configurations of Multiple Public Goods

This section puts forward our second challenge: the argument from competing configurations of public goods. So far, our arguments have shown that we need to be cautious in drawing a distinction between essential and discretionary public goods because we cannot categorize a public good without taking account of the social context. Our second argument is more fundamental: contrary to what is commonly assumed, it claims, the distinction between essential and discretionary public goods cannot meaningfully be applied to public goods that are considered in isolation.

To motivate this idea, note first that whether a given public goods qualifies as essential typically depends on which other public goods are provided. This is evident from Miller and Taylor's (2018) discussion of access to fresh drinking water as a basic need. Miller and Taylor (2018: 565) discuss whether the creation of a national company that delivers drinking water would be required by justice only if it is the only feasible way of meeting the basic need, or also if it is merely the most efficient way of doing so.²⁴ In their scenario, the national water company is a public good or, more accurately, provides the public good of universal access to drinking water. What they overlook, however, is that the supply of other public goods can affect whether the basic need of access to drinking water can be satisfied, at all or more efficiently, in the absence of the creation of the public water company.²⁵ The alternative mode of provision they consider is the digging of private wells. But other public goods might affect whether this is a feasible and an efficient mode of provision. It might, for instance, make a difference if the state subsidizes free wells digging courses or a costless water quality check service, which similarly qualify as public goods.²⁶ This shows that, even if we concede that an unregulated market will *on its own* fail to satisfy a basic need, we cannot infer that the public water company qualifies as an essential public good. On the one hand, if the supply of other public goods could, perhaps in combination with a market, also satisfy everyone's basic need of access to water, then the creation of the public water company would turn out to not be the only feasible way of achieving justice. On the other hand, if the availability of other public goods, such as courses or water quality checks, affects the efficiency of other solutions, then whether the creation of the public water company is the most efficient way of meeting the basic need may also depend on which other public goods are provided. We cannot, then, determine whether the public water company is an essential public good, unless we know which other public goods are available – goods for which it may in turn likewise be impossible to ascertain, when considered in isolation, whether they are essential.

²⁴They do not take a stand on this issue, instead writing that it warrants further research (Miller and Taylor 2018: 573).

²⁵Note that this claim is distinct from Joseph Heath's (2011: 29) argument that if one claims that water services need to remain in public hands because access to water is an essential human need, then one has to equally claim that water bottling plants need to be in public hands.

²⁶The case of well-digging has famously been employed by George Klosko (1987: 242–244) as the paradigm of an excludable good. On the account considered here, wells would be private and exclusionary as well. But the fact that the government provides various forms of assistance to ensure that everyone can in fact secure access to such a well would imply that there is no need for providing a public water system.

Admittedly, the case of access to drinking water may appear to be rather specific and the market solution of digging private wells somewhat artificial. But the point generalizes: for the satisfaction of most basic needs, we can choose not just among a market and a public goods solution, but among several public goods solutions, including combinations of various modes of provision. For another example, consider access to nature for the purpose of physical and mental well-being, which arguably qualifies, at least in some limited form, as a basic need. When several countries prohibited people from going outside at the outset of the recent pandemic, essentially blocking parks, meadows and beaches, the effect on people's well-being was quite severe.²⁷ Now, freely accessible nature parks, beaches, forests and city gardens are all public goods that can arguably satisfy this basic need for access to green space in nature. But if various public goods could satisfy this basic need, then none qualifies as essential or as discretionary per se. Instead, whether a particular good qualifies as essential may depend on which other public goods are already secured or which other, discretionary public goods will be available. If, for instance, a lot of public beaches and nature parks already exist, then public city gardens qualify as discretionary public goods because the basic need is already met; if, by contrast, no public beaches and nature parks exist, they may qualify as essential. But which public good is most efficient at satisfying our basic needs may in turn depend on the provision of what under any plausible description qualify as optional goods: if, for instance, the state arranges good signposting and free maps in a nature park, or takes care of picnic spots and rubbish collection, or installs a shuttle service from the city, then this may render such parks more efficient at satisfying the basic need of access to green space than they would be without provision of these services. It appears clear that none of these additional public goods would be required by justice, but whether they would be provided might nonetheless affect which other public goods (beaches, nature parks, city gardens etc.) qualify as essential. This shows that we cannot in general categorize specific public goods as essential or discretionary in isolation but must take account of the entire set of public goods that the government secures. The finding that, for any individual public good, whether it qualifies as essential depends on which other public goods are secured, is significant. It shows that, even if we take account of social background conditions, we are not able to meaningfully assess, for any specific public good, considered in isolation, whether it qualifies as essential. Because the supply of many different configurations of public goods could in principle achieve the satisfaction of our basic needs, no specific public good would come out as essential on its own: what is required is not that any specific public good is made available, but that some set of public goods, or a bundle, is available that is able to jointly satisfy people's basic needs. This does not imply that the distinction between essential and discretionary public goods is ill-conceived; but it highlights that this distinction should be applied from a holistic instead of an isolated perspective. Taking account of all the goods secured, we can identify those public goods that – given current configurations – are indeed necessary to satisfy basic needs, and thus qualify as serving essential requirements of justice. We cannot, however, make this determination when we look at certain

²⁷The reader who disagrees may substitute any other basic need and explore whether a variety of public goods could be employed to provide it.

public goods in isolation. This implies that any characterization of a public good as, in part, essential will typically be contingent on the presence or absence of other public goods.²⁸

5. The Problem of Specification

This section puts forward our third challenge, the *argument from specification*: even if we consider public goods in a particular society at a specific moment in time conditional on the other public goods that are secured, we confront a difficulty of specifying the *form* and *extent* of their required supply. The abstract classification of public goods as essential or discretionary masks the need to determine how, more concretely, a good is actually supplied. But once we look at the concrete shape that provision can take, the distinction between essential and discretionary goods quickly becomes fuzzy.

To see how this specification problem destabilizes the conceptual distinction, consider the allegedly essential public good of national defence. National defence serves as a textbook example of an essential public good (Sekera 2019; Reiss 2021). It meets the economist's criteria of non-excludability and non-rivalry in consumption, and its provision by government is not only warranted on grounds of efficiency: it instead seems a hard requirement of justice, since foreign invaders typically breach many individual rights and liberties, and countries afflicted by war are rarely places where one can lead a minimally decent life. In abstract terms, it therefore seems relatively uncontroversial to categorize national defence as essential, and to argue that justice is enhanced when its supply is regulated by core principles of justice. Informed by these principles, we could for instance fund national defence budgets through progressive taxation and dismiss the claim of holdouts who oppose coercive contributions as such.

Yet as soon as we try to specify the form and extent of supplying this public good, problems emerge. Consider first the *form* or shape that national defence can take. Is this good primarily secured by maintaining high-quality armed forces and joining, say, a defensive alliance such as NATO? There is ample scope for reasonable disagreement here. One might argue that national security should not (or not only) be pursued by military but rather by diplomatic means, or that a policy of demilitarization or armed neutrality is preferable. It is thus far from self-evident that the maintenance of armed forces is a necessary public good while, say, a diplomatic service that spends a large chunk of its resources on promoting intercultural ties and dialogue is merely optional for a just society.²⁹ This problem is brought into sharper relief if we also consider the *extent* of securing defence. One might argue that governments fulfil their obligation to secure the essential public good of national

²⁸This holds at least unless we specify public goods in extremely abstract terms, e.g. by speaking of the public good of universal access to drinking water, without saying how this good is to be provided more concretely. For a discussion of the different levels of abstraction at which public goods could be specified, and an argument for the claim that this high level of abstraction is not informative, see section 6.

²⁹Our claim is not that under any circumstances there could be such reasonable disagreement, but that under a fairly broad set of circumstances there can. Take, for instance, the heated debate over Germany's foreign policy under the circumstances of the latest Russian invasion of Ukraine, exemplified by Habermas (2022) and Snyder (2022).

defence when they subscribe, say, to NATO's norm of spending at least 2% of GDP on one's armed forces. But just as arbitrary as this threshold itself appears, it similarly seems arbitrary to imply that any expenditure exceeding this norm is merely optional under otherwise peaceful international conditions. And it also seems difficult to regulate essential military expenditures up to NATO's 2% norm by core principles of justice, while letting an auxiliary distributive principle govern any additional expenditures. Intuitively, it might seem fair to send fellow citizens who derive disproportionate benefit from non-essential military expenditures an additional tax bill – for instance, because they visit annual military parades or rejoice at the sight of officers wearing the latest military gadgets. But those citizens might object that a discretionary military parade also serves essential training purposes, and that high-tech gadgets are not merely nice to have but critical to effectively defending a country.

A further way of articulating the specification problem is to point out that the availability of public goods may be subject to various levels of risk. Choices about the form and extent of supplying a public good will impact the likelihood that the public can adequately enjoy it. Arguably, public goods such as healthcare and public health turned out to be subject to high levels of risk during the COVID-19 pandemic, as shortages of ICU beds and personal protective equipment inhibited both the effective supply and enjoyment of these goods. Countries with stronger reserve capacities were more resilient in securing them. Similar questions arise as to how much and what type of ammunition armed forces should hold in stock. Insofar as a public good is deemed essential for a just and orderly society, the intuitive answer appears to be that any significant level of risk is problematic. Yet, it also seems impossible, or prohibitively costly, to reduce the level of risk that a public good will turn out to be unavailable to zero. So, we confront the question of how much risk is acceptable when a public good serves a basic need: e.g. how many weeks or months of reserve supplies of ammunition or medicine or emergency food rations are required, and when do further reserves become discretionary?³⁰ Here again we find that the essential-discretionary distinction becomes blurry once we try to specify *how* government should ensure the good in question, since various levels of risk at which a good is made available convey how essential it really is for a just society.

Thus, even if there are plausible ways of designating *which* public goods count as essential or discretionary in abstract terms, the distinction becomes much less clear-cut once we consider *how* government should secure them in practice.³¹ Indeed, it

³⁰In this regard Machiavelli (2008: 205) argued that the reason why 'the cities of Germany enjoy great freedom' is that 'they are so well fortified in such a way that everyone thinks that capturing them must be a protracted and difficult task: they all possess suitable moats and walls and adequate artillery, and always reserve a year's supply of drink, food, and fuel in their public storehouses'. But not everyone shares Machiavelli's risk assessment.

³¹Here again we should be cautious not to infer the necessity of direct government provision from the likelihood of market failure. In many countries around the world, state capacity is weak and levels of government corruption high, casting doubt on the desirability and feasibility of government provision. In these contexts, alternative (combinations of) modes of provision may be preferable, involving for instance NGOs, local communities and market actors. At the same time, some effective state capacity also seems necessary for the viability of alternative modes of provision, because even the free market relies on the state to provide a legal framework and secure the enforcement of contracts (see Satz 2010), and state capacity is

may not only turn out that upon further specification an essential public good appears discretionary (or vice versa), so that its supply should not enhance but rather preserve a just pattern of distribution (or vice versa). It is also to be expected that, for numerous citizens, certain specifications of the form and extent of their availability would pervert the public good into a public bad, prompting them to take the stand of an honest holdout. For instance, a reasonable citizen who adheres to a pacifist or ecologist conception of the good will object that the maintenance of armed forces with nuclear capabilities is neither justice-enhancing (essential), nor justice-preserving (discretionary), but instead *justice-impeding*. She might consider such maintenance a public bad that not only achieves the opposite of national or global interests in security but also unduly forces her to fund this bad through coercive taxation. And the specification problem manifests itself not only in reasonable expressions of moral and political disagreement over the form and extent supply can take. It also has a clear epistemic and practical dimension: if we are not in the epistemic position to draw a clear distinction between essential and discretionary uses, then we will have a hard time applying this distinction in practice. In the case of military expenditures, as for public expenditures more generally, it oftentimes appears impossible to forecast in advance, or determine in retrospect, if they are spent on essential or discretionary public goods and how their social surplus is distributed over the population. This opens up the possibility of legitimate complaints by honest holdouts and we cannot be sure whether core or auxiliary distributive principles should be at work in arranging coercive contributions.

The specification problem shows that even if we deem a particular public good essential at a high level of abstraction, this may be of little guidance in assessing whether concrete supplies – their form and extent – are really required by justice. The argument thus puts stress on the categorical distinction presupposed in the debate surrounding the honest holdout and the related question of distributive justice in the supply of public goods. Note, moreover, that this concern cannot be alleviated by drawing a distinction between a services-conception of public goods – which defines them by reference to their specific mode of supply, such as a lighthouse – and a benefits-conception of public goods – which defines them abstractly by reference to a benefit they bring about, such as orientation. While the philosophical literature tends to conflate these two conceptions, they could in principle be kept apart, and one might argue that only the benefit-conception is adequate: for the good that is non-rivalrous and non-excludable really is the benefit, like orientation, not the entity that ensures it, like a lighthouse, which could be operated in a variety of ways (see Coase 1974). But on the benefits-conception, one might then note, we can keep essential and discretionary public goods apart: some benefits are fundamental enough to be required by justice whereas others are not (in given circumstances).³²

found to be an important determinant of long-run economic performance (see e.g. Dincecco and Katz 2016). We are grateful to an anonymous reviewer for raising this point.

³²We are grateful to an anonymous reviewer for noting this potential objection and outlining a response to it.

This line of reasoning has some appeal, and indeed raises an important question about whether philosophers should restrict themselves to a benefits-conception of public goods only; regardless of the view one takes on this question, however, it does not offer a solution to the issue at hand. This is for two reasons. First, note that the benefits-conception allows us to identify particular goods as essential only at the cost of rendering them highly abstract. At a practical level, though, once we decide to secure orientation, we must choose a concrete means – be it lighthouses, a GPS-system or fog horns. And if any of these goods also serve certain discretionary needs, then we cannot infer that the distribution of costs should be treated according to the rules for essential public goods. So, even if restricting the notion of public goods to the benefits-conception would yield a number of essential public goods, this would only kick the problem of specification down the road: this problem would not go away, and neither would the question of how to justly allocate costs and benefits incurred in securing essential public goods. Second, even if one were to reject this argument, another problem would remain: on the benefits-conception of public goods, we still confront the question to what extent, and subject to what level of risk, specific benefits are to be secured.

We thus take our third objection to show that we indeed cannot clearly distinguish between essential and discretionary public goods – even relative to a particular society and conditional on which other public goods are secured. This does not imply that the distinction is meaningless: we may still seek to distinguish aspects of supply that meet a basic need and thus qualify as essential from aspects that do not – and we may seek to put to work the different distributive principles for dealing with both aspects. What it shows, however, is that rather than conceiving of public goods as exclusively essential or discretionary, it will often be more accurate to speak of them as partly essential and partly discretionary – or, even more accurately, as partly serving essential and partly serving discretionary needs – and to thereby acknowledge that the distinct principles apply, within practical limits, to both essential and discretionary uses of the same goods.

6. Implications: Reconfiguring Essential and Discretionary Public Goods

The arguments put forward in this paper show that the distinction between essential and discretionary public goods is not as straightforward as is generally assumed in the philosophical debate. We cannot simply proceed by compiling two lists of goods, one of essential public goods, and the other of discretionary public goods. This is for several reasons. First, social background conditions generally affect whether the supply of a given public good is required to achieve initial conditions of justice, so these must be considered. Second, basic needs can typically be satisfied by different sets of public goods; so, we cannot meaningfully proclaim a public good to be essential while considering it in isolation. Third, the actual delivery of public goods can take a variety of forms, and as we move from the level of abstract designation to that of concrete means, the line between essential and discretionary goods becomes increasingly blurry: because most public goods end up serving more fundamental as well as more elective needs, they qualify partly as essential and partly as discretionary.

These arguments are of immediate relevance to the debate surrounding public goods. Concerning the honest holdout problem, they show that, at first sight, this problem might be more contained than is often assumed. More specifically, they show that the set of public goods for which the honest holdout has the required standing to object is smaller than is often assumed. This is not only because the supply of many public goods may be justified to address existing injustices; it is also because many public goods serve fundamental needs alongside discretionary ones. This entanglement of essential aspects of public goods with discretionary purposes means that even the honest holdout is confronted with a non-refutable reason in favour of coercive contributions to public goods. For instance, holdouts will have to accept that some coercive contributions to the maintenance of city parks, from which they may honestly derive zero or even negative utility, are nevertheless justifiable, since those goods are needed by others to meet basic needs of mental and physical health and not for mere discretionary recreational purposes.

At the same time, our findings also show that those who employ the essential-discretionary distinction cannot take the justifiability of coercing holdouts for granted while directly proceeding to the analysis of distributive fairness in the supply of discretionary public goods. Note that even if one adopts a preference-independent theory of justice, these problems – of justification and distribution – remain linked. The grounds upon which holdouts object to coercive contributions need not be dishonest, irrational or ill-informed. Holdouts who are honest, rational and well-informed do exist.³³ They can have legitimate complaints against coercive contributions, not least *because* these contributions can translate into unjust distributive outcomes.

Consider again the case of citizens who on pacifist grounds object to coercive contributions to the public good of security by military means. Pacifism may be an integral part of these citizens' conception of the good. If one adheres to a preference-independent theory of justice, one cannot therefore safely ignore their pacifism as a *mere* preference, let alone dismiss it as an ill-informed, irrational or dishonest one. But while pacifist beliefs may be central to their conception of the good, these beliefs *also* translate into preference orderings and utility levels. When pacifists are coerced to contribute to the purportedly essential public good of an army, not to mention allegedly discretionary expenditures such as ceremonial military parades, they can legitimately object on the ground that they are subject to distributive unfairness. To be sure, even if a pacifist were to receive a tax deduction for unwanted military expenditures or an exemption from conscription, so that distributive unfairness would be avoided or at least reduced, they may still object to government supplying security by military means on their behalf as well. But when exemptions and deductions like these are neither desirable nor feasible (for instance, because of the difficulty of distinguishing honest holdouts from insincere free-riders), pacifist holdouts *do become* subject to distributive unfairness.³⁴ In fact, the ensuing distributive unfairness may itself be a central reason for justifiable complaints

³³For a discussion of the moral significance of preferences for discretionary public goods, see Taylor (2021: 568).

³⁴Moreover, even where such exemptions are feasible, pacifists may still bear significant psychological costs from the prospect of armed conflict.

against coercive contributions.³⁵ So, the concerns of distributive fairness and of justifying coercive contributions are ultimately linked.

Yet, while our discussion explains why, if one prioritizes justice over efficiency (as most theories of justice do), the honest holdout problem is less severe, it also shows that public goods pose a more complex challenge to theories of distributive justice than previously realized. The existing debate treats discretionary public goods as a blind spot of theories of justice: while essential public goods are required by justice, and thus covered by existing principles, discretionary public goods are not so covered, and prompt the need for a complementary principle that governs the distribution of any surplus. But if we in fact cannot draw a clear divide between essential and discretionary public goods, then this two-step approach becomes infeasible. That various sets of public goods can satisfy fundamental needs shows that we often have a choice concerning which of different sets of public goods satisfies them most efficiently; and that even where they serve fundamental needs, public goods typically also satisfy additional, discretionary needs. The two sets of principles – those governing essential and those governing discretionary public goods – are not easily kept apart.

Bicycle lanes illustrate this point. Moral disagreement may arise as to whether bicycle lanes count as essential. Cyclists may use them to bike to their job and, absent access to public transport or more expensive means of transportation, they may require bicycle lanes to enjoy fair equality of opportunity.³⁶ Yet bicycle lanes are also intensely used for purposes of recreation and leisure, and hence may be qualified as discretionary public goods, since a just society is not required to satisfy the recreational preferences of its members through coercive contributions. Now suppose we come to agree, morally, that they are essential public goods for workers yet discretionary ones for recreationists. In that case we still face a substantial epistemic burden of tracing essential and discretionary uses by bikers, but we can seek to proportionately assign costs for the construction and maintenance of bicycle lanes according to both core and auxiliary principles of distributive justice.³⁷

The distinction between essential and discretionary public goods is not, then, as innocuous as is assumed within the philosophical debate that relies on it, but this does not show it to be ill-conceived, let alone meaningless. On the one hand, the distinction can still be applied at the margins: fireworks, for example, plausibly qualify as a discretionary public good as they serve no fundamental interests (bar in extraordinary circumstances). On the other hand, the attempt to distinguish public goods that are required as a matter of justice from those that are not has a compelling motivation: it appears plausible that different distributive principles are applicable in each instance. But even where we cannot draw a clear line between

³⁵In addition, the honest holdout certainly has a rightful claim to object to the choice of an unnecessarily expensive bundle of public goods to satisfy some basic need.

³⁶Often bicycle lanes are the least costly means of mobility and hence particularly valuable to the least advantaged (Pucher and Buehler 2012; PeopleForBikes 2015).

³⁷Technological solutions could alleviate this problem to some extent. At present, both employers and fiscal authorities often already demand registration of work-related as opposed to private uses of cars to calculate various costs and benefits. These policies could be extended but come at a notable administrative cost; and while technology may reduce costs and enhance epistemic accuracy, it also raises further questions of privacy.

essential and discretionary public goods, distributive fairness still requires that we at least try to apply core and auxiliary principles of distribution in a manner that tracks their dual purpose. We might, for instance, insist that to the extent to which a public good serves only discretionary needs, the costs of access should be proportionately borne by the beneficiaries. And this happens: in the context of school swimming lessons, children typically access public swimming pools for free (enabling the teaching of vital skills, they function as an essential public good), but in the context of birthday parties, access to a public swimming pool will come at a cost (here, the pool serves as a discretionary public good, facilitating recreation). In this respect, our analysis gives reason to endorse Taylor's (2021: 572–573) recent call to seek approximations of distributive fairness in the costs and benefits of public goods. However, since our findings show that the essential-discretionary divide is often intractable, there is also reason to be more sceptical about the likelihood that government officials can actually succeed in this task.³⁸ Still, practical and epistemic challenges provide no reason to not at least try to approximate distributive fairness, regulated by context-sensitive applications of both core and supplementary principles.

Our analysis shows that no neat and final resolution of claims to justice in accordance with either core or supplementary principles can be expected at the level of ideal theory. This is not only because basic needs are subject to change, and depend on which other goods are available, but because public goods can be provided in a variety of forms, with greater or smaller resilience, and there is consequently space for reasonable disagreement over which of the benefits they generate qualify as essential, and which as discretionary. Yet, the distinction nevertheless aids in diagnosing social *injustice* and distributive *unfairness* in the current configuration of public goods that rest on coercive contributions – from policing hooligans in the billion-dollar industry of football to the distance between poor neighbourhoods and high-quality city parks. More generally, the distinction retains important value as a heuristic, and perhaps even as a regulative ideal, in addressing stakes of social justice in actual policymaking under non-ideal circumstances: politics involves, and should involve, the ongoing reconfiguration of which public goods count as essential and which ones as discretionary.

Acknowledgements. This article has benefitted from conversations with many people, including (but by no means limited to) Uğur Aytac, Ralf Bader, Andreas Cassee, Francis Cheneval, Serena Olsaretti, Adam Swift and Emma Tieffenhach. For excellent discussion of an earlier draft, we thank the participants of the workshop 'Public Goods, Property Rights, and the Markets', held at the University of Zurich in September 2022. We are especially grateful to Rutger Claassen, whose excellent set of comments provided at this occasion proved highly productive to the development of the article. Finally, we are indebted to two anonymous reviewers for this journal, whose constructive feedback has helped substantially clarify the argument. Friedemann Bieber's work on this article has been supported by an Early Postdoc Mobility Fellowship of the Swiss National Science Foundation (SNSF) (Grant: 199654) and the University of Zurich's Research Priority Program 'URPP Equality of Opportunity'.

³⁸Taylor, to his credit, recognizes that policies to promote distributive fairness in the supply of discretionary public goods are 'somewhat blunt' (2021: 573). Yet our analysis gives reason to be even more cautious about the action-guiding force of the essential-discretionary distinction and the regulatory power of core and auxiliary principles of distribution.

References

- Anderson E.** 1990. The ethical limitations of the market. *Economics and Philosophy* 6, 179–205. <https://doi.org/10.1017/S0266267100001218>.
- Anomaly J.** 2015. Public goods and government action. *Politics, Philosophy and Economics* 14, 109–128. <https://doi.org/10.1177/1470594X13505414>.
- Anomaly J.** 2023. What is public health? Public goods, publicized goods, and the conversion problem. *Public Choice* 195, 43–53. <https://doi.org/10.1007/s11127-021-00908-8>.
- Baltzly V.B.** 2021. Concerning publicized goods (or, the promiscuity of the public goods argument). *Economics and Philosophy* 37, 376–194. <https://doi.org/10.1017/S0266267120000395>.
- Bieber F.** 2023. The importance of contingently public goods. *Journal of Social Philosophy*. Online First. <https://doi.org/10.1111/josp.12516>.
- Buchanan J.M.** 1969. *The Demand and Supply of Public Goods*. Chicago, IL: Rand McNally.
- Claassen R.** 2013. Public goods, mutual benefits, and majority rule. *Journal of Social Philosophy* 44, 270–290. <https://doi.org/10.1111/josp.12031>.
- Claassen R.** 2017. Markets as mere means. *British Journal of Political Science* 47, 263–281. <https://doi.org/10.1017/S0007123415000113>.
- Coase R.H.** 1974. The lighthouse in economics. *Journal of Law and Economics* 17, 357–376. <https://doi.org/10.1086/466796>.
- Cordelli C.** 2021. *The Privatized State*. Princeton, NJ: Princeton University Press. <https://doi.org/10.1515/97806912111732>.
- Cowen T.** 2008. Public goods. *Econlib CEE Basic Concepts, Economic Regulation, Government Policy* (blog). 2008. <https://www.econlib.org/library/Enc/PublicGoods.html>.
- Dincecco M. and G. Katz** 2016. State capacity and long-run economic performance. *The Economic Journal* 126, 189–218.
- Fehr E. and S. Gächter** 2000. Cooperation and punishment in public goods experiments. *American Economic Review* 90, 980–94. <https://doi.org/10.1257/aer.90.4.980>.
- Ferdman A.** 2018. Why the intrinsic value of public goods matters. *Critical Review of International Social and Political Philosophy* 21, 661–76. <https://doi.org/10.1080/13698230.2017.1398869>.
- Habermas J.** 2022. Krieg und Empörung. *Süddeutsche Zeitung*, 28 April 2022. <https://www.sueddeutsche.de/projekte/artikel/kultur/das-dilemma-des-westens-juergen-habermas-zum-krieg-in-der-ukraine-e068321?reduced=true>.
- Hazlehurst M., S. Muqueeth, K. Wolf, C. Simmons, E. Kroshus and P. Tandon** 2022. Park access and mental health among parents and children during the COVID-19 pandemic. *BMC Public Health* 22. <https://doi.org/10.1186/s12889-022-13148-2>.
- Heath J.** 2011. Three normative models of the welfare state. *Public Reason* 3, 13–43.
- Honig B.** 2017. *Public Things: Democracy in Disrepair*. New York, NY: Fordham University Press.
- Isaac R., D. Schmitz and J. Walker** 1989. The assurance problem in a laboratory market. *Public Choice* 62, 217–236.
- Jongh M. de** 2021. Public goods and the commons: opposites or complements? *Political Theory* 49, 774–800.
- Klosko G.** 1987. Presumptive benefit, fairness, and political obligation. *Philosophy & Public Affairs* 16, 241–259.
- Klosko G.** 1990. The obligation to contribute to discretionary public goods. *Political Studies* 38, 196–214. <https://doi.org/10.1111/j.1467-9248.1990.tb01488.x>.
- Kohn M.** 2020. Public goods and social justice. *Perspectives on Politics* 18, 1104–1117. <https://doi.org/10.1017/S1537592719004614>.
- Larson L., Z. Zhang, J. In Oh, W. Beam, S. Ogletree, J. Bocarro and K. Jerry Lee** 2021. Urban park use during the COVID-19 pandemic: are socially vulnerable communities disproportionately impacted? *Frontiers in Sustainable Cities* 3. <https://www.frontiersin.org/articles/10.3389/frsc.2021.710243>.
- Lenkiewicz T.** 2011. Green jackets in men’s sizes only: gender discrimination at private country clubs note. *Vanderbilt Journal of Transnational Law* 44, 777–818.
- Machiavelli N.** 2008. *The Prince*. Cambridge, MA: Hackett Publishing Company.

- Mack E.** 1986. The ethics of taxation: rights versus public goods? In *Taxation and the Deficit Economy*, ed. D. Lee, 487–514. San Francisco, CA: Pacific Research Institute.
- Mazzucato M.** 2018. *The Entrepreneurial State: Debunking Public vs. Private Sector Myths*. New York, NY: PublicAffairs.
- Miller D.** 2004. Justice, democracy and public goods. In *Justice and Democracy*, eds. K. Dowding, R. Goodin and C. Pateman, 127–49. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511490217.008>.
- Miller D. and I. Taylor** 2018. Public goods. In *The Oxford Handbook of Distributive Justice*, ed. S. Olsaretti. Oxford: Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199645121.013.22>.
- Murphy L. and T. Nagel** 2001. Taxes, redistribution, and public provision. *Philosophy & Public Affairs* **30**, 53–71. <https://doi.org/10.1111/j.1088-4963.2001.00053.x>.
- Musgrave R.** 1959. *The Theory of Public Finance*. New York, NY: McGraw-Hill.
- Nozick R.** 1974. *Anarchy, State, and Utopia*. New York, NY: Basic Books.
- O’Neill M.** 2020. Power, predistribution, and social justice. *Philosophy* **95**, 63–91. <https://doi.org/10.1017/S0031819119000482>.
- Olson M.** 1965. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press.
- PeopleForBikes** 2015. *Building Equity. Race, Ethnicity, Class, and Protected Bike Lanes: An Idea Book for Fairer Cities*. https://nacto.org/wp-content/uploads/2015/07/2015_PeopleForBikes-and-Alliance-for-Walking-Biking_Building-Equity.pdf.
- Pucher J. and R. Buehler** 2012. *City Cycling*. Cambridge, MA: MIT Press.
- Rawls J.** 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Rawls J.** 2001. *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press.
- Reglitz M.** 2020. The human right to free internet access. *Journal of Applied Philosophy* **37**, 314–331. <https://doi.org/10.1111/japp.12395>.
- Reiss J.** 2021. Public goods. In *The Stanford Encyclopedia of Philosophy (Fall 2021 Edition)*, ed. E.N. Zalta. <https://plato.stanford.edu/entries/public-goods/>.
- Samuelson P.** 1954. The pure theory of public expenditure. *Review of Economics and Statistics* **36**, 387–389. <https://doi.org/10.2307/1925895>.
- Satz D.** 2010. *Why Some Things Should Not Be for Sale: The Moral Limits of Markets*. New York, NY: Oxford University Press.
- Schmidtz D.** 1987. Contracts and public goods. *Harvard Journal of Law and Public Policy* **10**, 475–503.
- Schmidtz D.** 1991. *The Limits of Government: An Essay on the Public Goods Argument*. Boulder, CO: Westview Press.
- Sekera J.** 2019. Public goods in everyday life. In *GDAE Teaching Modules on Social and Environmental Issues in Economics*. Medford, MA: Global Development and Environment Institute.
- Snyder T.** 2022. Germans have been involved in the war, chiefly on the wrong side. *Frankfurter Allgemeine Zeitung*, 27 June 2022. <https://www.faz.net/aktuell/politik/ausland/juergen-habermas-and-ukraine-germans-have-been-involved-in-the-war-18131718.html>.
- Taylor I.** 2021. Political obligations and public goods. *Res Publica* **27**, 559–575. <https://doi.org/10.1007/s11158-020-09496-8>.
- Varian H.** 1993. Markets for public goods? *Critical Review* **7**, 539–557. <https://doi.org/10.1080/08913819308443317>.
- Volenc Z., J. Abraham, A. Becker and A. Dobson** 2021. Public parks and the pandemic: how park usage has been affected by COVID-19 policies. *PLoS ONE* **16**, e0251799. <https://doi.org/10.1371/journal.pone.0251799>.
- Wicksell K.** 1958. A new principle of just taxation. In *Classics in the Theory of Public Finance*, eds. R. Musgrave and A. Peacock, 72–118. London: Palgrave Macmillan. https://doi.org/10.1007/978-1-349-23426-4_6.
- Wolch J., J. Byrne and P. Newell** 2014. Urban green space, public health, and environmental justice: the challenge of making cities “just green enough”. *Landscape and Urban Planning* **125**, 234–244. <https://doi.org/10.1016/j.landurbplan.2014.01.017>.

Friedemann Bieber is a postdoctoral researcher at the University of Zurich, where his position is embedded in the University Research Priority Program (URPP) 'Equality of Opportunity'. After obtaining his PhD in 2021, he was a visiting researcher at Utrecht University and at University College London. His work has previously appeared in *Journal of Political Philosophy*, *Journal of Applied Philosophy*, *Journal of Social Philosophy*, *Synthese* and *Pacific Philosophical Quarterly*. His current research focuses on public goods and the political philosophy of work. URL: https://www.philosophie.uzh.ch/en/seminar/people/research/politics_cheneval/bieber.html.

Maurits de Jongh is an Assistant Professor in the Ethics Institute/Department of Philosophy and Religious Studies at Utrecht University. His work has appeared in journals such as *Political Theory*, *European Journal of Political Theory* and *Revue Française de Science Politique*. His research interests are in the philosophy of public goods and the ethics of public administration. URL: <https://www.uu.nl/medewerkers/MJdeJongh>.

Cite this article: Bieber F and de Jongh M. Reconfiguring essential and discretionary public goods. *Economics and Philosophy*. <https://doi.org/10.1017/S0266267123000329>