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Friedemann Bieber

University of Zurich

friedemann.bieber@philos.uzh.ch

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URPP Equality of Opportunity, University of Zurich, Schoenberggasse 1, 8001 Zurich, Switzerland
info@equality.uzh.ch, www.urpp-equality.uzh.ch

ORIGINAL ARTICLE

The importance of contingently public goods

Friedemann Bieber 

Department of Philosophy, University of Zurich, Zürich, Switzerland

Correspondence

Friedemann Bieber, Department of Philosophy, University of Zurich, Zollikerstrasse 117, Zürich CH-8008, Switzerland.

Email: friedemann.bieber@philos.uzh.ch**Funding information**

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1 | INTRODUCTION

Public goods have recently received increasing attention by philosophers. In addition to work on the historical origins of the notion of public goods (Desmarais-Tremblay, 2017), their relevance to the thinking of particular political theorists (de Jongh, 2022) and the justifiability of particular public goods, such as the arts (Kessler, 2018), there have been a number of systematic attempts to develop a normative theory of public goods (see e.g., Kallhoff, 2011; Miller, 2004). Asking which public goods the state ought to provide, and how the benefits and burdens of their provision ought to be distributed, these contributions can roughly be divided into two camps. One group of authors has addressed these questions within political liberalism, remaining committed to the principle of state neutrality. By taking individual preferences as given, they note that many public goods promise net efficiency gains and ask according to what principles these benefits ought to be distributed (see e.g., Claassen, 2013; Cullity, 2008; Murphy & Nagel, 2001). In so doing, they see themselves as complementing existing theories of justice, which remain mostly silent on the allocation of costs and benefits of public goods (Miller & Taylor, 2018, p. 556). Another group of authors has moved beyond the principle of state neutrality, putting forward arguments in favor of the state provision of public goods that are at least in part independent of individual preferences, such as their potential to foster solidarity and to connect people (see e.g., Ferdman, 2018; Kallhoff, 2014; Kohn, 2020). These authors contend that the social value of public goods remains underappreciated, and that the state may be justified in providing them even if doing so does not result in efficiency gains and reject the view that efficiency is the central criterion by which to judge whether the provision of

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a public good can be justified. This philosophical interest has coincided with a broader sense of neglect of public goods, which has been voiced by journalists and public intellectuals, in particular in Britain and the United States (Irvin, 2012; Judt, 2010; Lehrer, 2020). Yet, despite the recent surge in attention, the philosophical and, more generally, the “scholarly literature on public goods is relatively thin” (Kohn, 2020, p. 2).¹

This article aims to contribute to the philosophical thinking about public goods in three ways. First, highlighting an ambiguity in how the term “public good” is used, Section 2 proposes to distinguish between *inherently public goods*, which cohere to the economist's definition of a good that is non-rivalrous and non-excludable, and *contingently public goods*, which are non-rivalrous and, though in principle excludable, provided in a non-exclusionary form. Section 3 then draws on the notion of contingently public goods to develop two novel objections to a variety of benefit principles that have been proposed to govern the allocation of burdens and benefits in the provision of public goods. These principles are generally offered as complements to theories of distributive justice and aim to take care of an alleged blind spot resulting from the possibility of welfare gains from the provision of public good that are not required for initial conditions of justice. In engaging with these principles, the article operates at the level of ideal theory. It argues that because contingently public goods could also have been provided as club goods, the benefit principles, unless further qualified, demand unacceptable transfers to the wealthy as well as to people who object to their inclusive mode of provision. Section 4 then draws on the notion of contingently public goods to explore the potential of public goods in addressing existing social injustices. This section thus operates at the level of nonideal theory. It argues that providing public goods can be an alternative to transfer payments, or a universal basic income, in addressing injustices that are a result of economic inequality and that we have good reason to think that it can, at least at times, be more effective as well as politically more feasible. While this is true of public goods in general, several features set contingently public goods apart: they may at times be provided at little to no cost, their provision may require only more limited market interference (or even none), it can more powerfully express a commitment to status equality, and it may be particularly effective where injustices stem from unequal access to club goods.

2 | DISTINGUISHING BETWEEN INHERENTLY AND CONTINGENTLY PUBLIC GOODS

This section argues that there is an important, though frequently overlooked ambiguity in how the term “public good” is used in philosophical discourse. While some authors require a good to be *in principle non-excludable* in order to qualify, others merely require it to be provided *in a non-exclusionary form*. While there are benefits to each terminological choice, the section argues, it is important to keep them apart. Accordingly, it proposes to distinguish between *inherently public goods* and *contingently public goods*. The later sections draw on the notion of a contingently public good, attempting to show how it can advance philosophical thinking about public goods in the context of ideal as well as nonideal theory.

Many philosophers have remained somewhat vague about how they understand the notion of public goods. For instance, Avigail Ferdman refers to what she calls the “standard economic understanding” according to which “public goods [...] are material goods that the private market cannot provide efficiently” (2018, p. 662). Although she insists that there can also be non-material public goods (2018, pp. 662–63), she otherwise relies on this characterization.



Accordingly, public goods on her account constitute a market failure; but a market may fail to efficiently provide goods for various reasons and Ferdman does not specify which of these are defining of public goods. Even where explicit definitions have been put forward, however, they tend to be mutually inconsistent. The central rift is exemplified by the definitions proposed by Jonathan Anomaly (2015) and David Miller (2004).² Anomaly writes that “[g]oods are public if they exhibit *nonrivalry* and *nonexcludability*” (2015, p. 109, italics original), invoking the standard definition of economic theory, where a good is said to be *non-rivalrous* if its consumption by one person does not diminish its availability to others, and *non-excludable* if it is infeasible to exclude some people from consumption. By contrast, Miller writes that by public goods, “I shall mean goods that are made available to everyone without charge, and that each person can enjoy without diminishing the opportunity of others to enjoy the same good” (2004, pp. 127–28). Miller’s notion of a public good encompasses Anomaly’s but is broader: Miller’s criterion that a goods is provided to everyone without charge may be fulfilled because of the good’s inherent non-excludability (think of the view of the starry sky) or because of a deliberate choice to provide it for free (think of museums in England). As a result, they will not only classify certain goods differently, but will find different questions pertinent, and even sensible: while both may ask whether the state should provide *certain public goods*, only Miller can sensibly ask whether it should provide certain goods *as public goods*.

It is evident, then, that Anomaly and Miller are at risk of talking past each other, but less obvious which definition to prefer. Anomaly’s definition fits with the classificatory scheme employed by economists, where public goods are contrasted with *private goods* (rivalrous, excludable; e.g., apples), *club goods* (non-rivalrous, excludable; e.g., pay-tv) and *common-pool goods* (rivalrous, non-excludable; e.g., fishing stocks). It also captures the market-failure aspect that Ferdman alludes to: since, by definition, no one can be excluded from the use of public goods, everyone has an incentive to contribute as little as possible. Due to this so-called *free-rider problem*, markets will not provide public goods at efficient levels.³ In conflating what economists call “club goods” and “public goods,” Miller appears to give up a valuable distinction. For him, a library qualifies as a public good so long as access is *in fact* offered to everyone free of charge. But as private collections like the London Library prove, markets can provide libraries as club goods. Even club goods typically involve a market failure: unless perfect price-discrimination is feasible, markets will not provide club goods at efficient levels. But this market failure is more limited—because people can be excluded, a market can at least in principle provide these goods. At the same time, Miller’s account better captures the ordinary use of the term “public good”. It seems neither uncommon, nor unreasonable to speak of parks as public goods—but while they are often freely accessible to everyone, it is, as London’s Belgrave Square Garden demonstrates, possible to restrict access to those willing (and able) to purchase a key.

Because the definitions of a public good advanced by Miller and Anomaly each pick out important aspects, we have reason to preserve them both. But in order to avoid misunderstandings, we need to keep them distinct. To achieve this, I propose to distinguish between *inherently public goods* and *contingently public goods*.⁴ More specifically, I propose to define an *inherently public good* (along Anomaly’s lines) as a good that is (i) non-rivalrous and (ii) non-excludable and a *contingently public good* (in Millerian spirit) as a good that is (i) non-rivalrous and (ii) *as a matter of choice*, provided in a non-exclusionary form. The qualifier “as a matter of choice” is important because in so far as inherently public goods are non-excludable, they are necessarily provided in non-exclusionary form, so the mere condition that certain goods are provided to everyone for free fails to mark the distinction. As Miller does not add this qualification, his notion encompasses both types of public goods. Moreover, I understand the term “non-



exclusionary form” broadly: while a good can be provided in a non-exclusionary form by making it accessible to everyone free of charge, it can also be so provided if there is a token charge, yet one that every person can easily afford.⁵

The distinction between inherently and contingently public goods is important because it allows us to keep two things apart: the deliberate choice about the *mode of provision* of goods and the *market failure* resulting from the inability to exclude others. The distinction is close in spirit to, but not identical with, one that Vaughn Bryan Baltzly (2021) and Anomaly (2021) have recently drawn between *public goods* and *publicized goods*. For Baltzly, publicized goods are goods “whose ‘public’ character results only from a policy decision to make some (otherwise private) good freely and universally available” (2021, p. 376). Anomaly, discussing public health measures, characterizes as publicized “goods that are made public through the incentives created by government mandates” (2021, p. 2), where a good being public primarily means that its consumption imposes externalities on others (2021, p. 6). The notion of publicized goods, like that of contingently public goods, picks up on the fact that society can frequently decide whether to offer universal, free access to a specific good. Yet, unlike the notion of contingently public goods, it imposes no restriction on the extent to which a good is rivalrous. It is, for this reason, much broader: if a state provides apples for free, they become a publicized good, but not a contingently public good. As comes out in the discussion below, having the narrower, more precise term “contingently public goods” is valuable because it allows us to pick out those goods whose public provision promises efficiency gains.

The remainder of the article is an attempt to show that the distinction between inherently and contingently public goods is valuable and that the importance of contingently public goods has been underappreciated. Three points should be noted at the outset though. First, the distinction is arguably better conceived of as demarcating a spectrum than a categorical divide: few goods are inherently non-excludable; instead, exclusion may be more or less costly. Second, whether some good is non-excludable, and for this reason inherently public, depends on the state of technology and may change⁶: if, in some dystopian future, people need to pay for access to biodomes, then clean air will have turned into a contingently public good. Finally, just as few goods are entirely non-rivalrous, few are non-excludable: the fact that I go for a run in the park does not diminish its availability, but if a crowd of people clogs pathways and occupies all picnic spots, this does diminish the park’s availability (or value) to others—at the limit, the park becomes a rivalrous good. So, the criterion of non-rivalry should not be interpreted too strictly; instead, we may distinguish between public goods that are more pure or impure depending on their degree of rivalry—at a given level of consumption, or across a range of levels.

Note, moreover, that the distinction between inherently and contingently public goods is orthogonal to several other distinctions that have been drawn within the debate on public goods. For example, Ferdman (2018) distinguishes between universal and nonuniversal public goods, where the former are valued by all whereas the latter are only valued by some. Even more prominently, some authors (see e.g., Claassen, 2013; Miller & Taylor, 2018) have drawn a distinction between essential (or necessary) and discretionary public goods, where the provision of the former, but not the latter, is required by justice.⁷ But the fact that some good is an inherently public good (or a contingently public one) neither affects whether it is universal, nor whether it is essential.⁸ This is explained by the fact that the classification of a good as inherently or contingently public is based merely on its structural properties, namely on whether it is excludable in principle or merely provided in a non-exclusionary form; but these structural properties evidently determine neither whether a good is valued by everyone, nor whether it is critical for justice.⁹ So, the terminological distinction advocated here is new and independent of



the existing ones. At the same time, the different specifications can of course be combined; we can, for example, have a contingently public goods that is essential and universal.

3 | DISTRIBUTIVE JUSTICE AND THE PROVISION OF CONTINGENTLY PUBLIC GOODS

An important strand of the recent philosophical debate of public goods has operated at the level of ideal theory and has focused on the question of justice: according to which criteria should burdens and benefits of the provision of public goods be distributed to preserve conditions of justice (see e.g., Claassen, 2013; Miller, 2004; Murphy & Nagel, 2001)? This section puts forward two novel objections against the various benefit principles that have been proposed in response to this question. The *objection from unequal access to club goods* asserts that these benefit principles mandate unacceptable transfer payments to the privately wealthy. The *objection from the intrinsic disvaluation of public goods* asserts that the benefit principles, unless qualified, mandate unacceptable transfer payments to people who disvalue their inclusive mode of provision. Both these objections draw on the case of contingently public goods: in each case, it is the possibility of providing the respective public goods as club goods that generates a problem. More specifically, these objections draw on a specific subset of contingently public goods: those whose provision is not directly required by justice (and which are therefore also discretionary in the sense further explored below).

The discussion of the demands of justice in the provision of public goods is motivated by two observations (see Miller & Taylor, 2018, esp. 562–64). On the one hand, there are some public goods that are required for justice. Consider the rule of law. Broadly understood as the effective restraint on arbitrary use of power through enforcement of legal rules and procedures, it qualifies as an (immaterial) public good. Moreover, it is presupposed by virtually all theories of justice: for what would be the point of allocating resources, if individuals were subject to the arbitrary exercise of power by others who could take them away (or impose physical harm)? On the other hand, there are goods whose provision is not required by justice, but generates a concern of justice: assuming an initially just society, how should the benefits and costs of their provision be allocated?¹⁰ Goods of the former type, “whose provision is itself a matter of justice”, are typically called “essential public goods” (Miller & Taylor, 2018, p. 564) or “necessary public goods” (Claassen, 2013, p. 273). Goods of the latter type, whose provision is not required by justice, are labeled “discretionary public goods” (Claassen, 2013, p. 273; Miller & Taylor, 2018, p. 564).¹¹

Proponents of social theories of justice have not given much thought to discretionary public goods, and where they have considered them at all, they have typically endorsed procedural criteria.¹² John Rawls, for instance, initially stipulated that the state may provide (discretionary) public goods only “when they satisfy Wicksell's unanimity criterion” (1999, p. 248), which makes their legitimate provision dependent on everyone's consent to a proposal specifying (i) the good to be provided and (ii) the tax schedule to pay for it (Wicksell, 1958). In his later work (Rawls, 2001), Rawls came to relax the unanimity condition, proposing instead a simple majority vote.¹³ As noted by Miller (2004), the problem with procedural approaches is that even if one thinks that they provide an account of *legitimacy*, they are silent on the question of *distributive justice*. But the surplus from the provision of discretionary public goods can be distributed in various ways—and not all appear (equally) just.

In light of the weaknesses of procedural accounts, some authors have advocated substantive criteria (Miller, 2004; Murphy & Nagel, 2001). They propose to address the question of justice in



the provision of public goods in two steps. First, we identify the set of essential public goods, whose provision is required by justice; for these goods, the distribution of costs is determined by our theory of justice. In a second step, we consider discretionary public goods, and it is at this stage that we need an additional principle to determine the distribution of costs and benefits. The most basic such principle is the *benefit principle*, which requires the provision of discretionary public goods to benefit everyone. But this principle is highly permissive; assuming self-interested voting, even the unanimity condition implies that the benefit principle is met. Two more restrictive principles have been advanced. Murphy and Nagel (2001) propose¹⁴ that every person should contribute to the cost of providing discretionary public goods *in proportion* to the benefits she receives; call this the *proportional benefit principle*. Miller (2004) proposes that discretionary public goods should be provided so as to *equalize the net benefits* individuals receive; call this the *equal benefit principle*.

These principles have prompted objections. For example, Miller has criticized the proportional benefit principle as treating the state like an enterprise: insisting on contributions in proportion to benefits, he claims, contradicts the idea of a political community “whose foundational principle is that each member holds an equal stake” (2004, 144). Yet, Miller’s equal benefit principle appears vulnerable to a related objection. In insisting on strictly equal benefits, one seems to adopt toward society the perspective of a jealous child. Among siblings, the equal benefit principle might have some bite: if one child does not like chocolate, but her brother does, she might insist that, if chocolates are the only sweets available, then, for reasons of justice, neither of them should get any. But at the level of society, insisting on a principle that prohibits the provision of public goods in circumstances where it would harm no one and benefit many seems to reveal a pathological insistence on an “equal share,” exposing a lack of generosity that can be expected toward fellow citizens. In addition, Miller and Taylor (2018, 568) have argued that the proportional benefit principle is incomplete. If two distinct sets of discretionary public goods satisfy the proportionality requirement, the principle does not tell us which one to choose.¹⁵ Assuming that we aim to maximize benefits, the equal benefit principle avoids this problem. But it is highly restrictive in other regards: unless benefits can be equalized, a good cannot be provided, even if everyone were to benefit from it. As Miller and Taylor note (2018, 569), this appears to render the equal benefit principle vulnerable to a leveling-down objection (though transfer schemes might help address this problem).¹⁶

Contingently public goods motivate two additional, and more fundamental objections, which apply to the various benefit principles simultaneously. First, there is the *objection from unequal access to club goods*: because contingently public goods are in principle exclusionary, they could be provided as club goods, but an unequal initial distribution of private resources implies unequal access to such club goods, which affects the distribution of benefits from their provision as public goods; as a result, the benefit principles mandate implausible transfers to the individually wealthy. This objection can be illustrated by reference to the case of a public swimming pool. A swimming pool that is accessible to everyone free of charge, or for a token fee, is an (impure) public good. We may initially think that all swimmers benefit from it. But suppose an individually wealthy swimmer argues that she does not benefit: because she is a member to a fitness club that offers pool access, she claims to gain nothing from a public pool. The proportional benefit principle, she holds, implies that she must contribute nothing, whereas the benefit principle and the equal benefit principle imply that she is even owed compensation.

Of course, how the public pool affects the wealthy swimmer depends on the exact specification of the case. If her sole motivation for purchasing membership to the club was to gain pool access, she can cancel her membership once the public pool has been built and her benefit is



captured by the money saved on the club membership. As a result, she benefits from the public pool and has to contribute to its costs of provision. Even in this case, however, part of her benefit may escape accounting. For if she had been willing to pay more for the club membership than was required, she was able to secure a *surplus benefit* privately, and this surplus benefit does not count toward her benefit from access to the public pool. By contrast, the entire benefit from pool access is taken into account for those who initially lacked all pool access. But, one might argue, if the initial distribution was just, then this is fine: while part of the benefit the wealthy gain from public goods escapes accounting, it is the part they had already obtained from access to the club good—so, the provision of a public pool maintains but does not increase their advantage.

Next, however, consider a variation of the case. Suppose that the well-off swimmer decides not to use the public pool, but to keep her club membership. As she does not derive any benefit from the public pool, the equal benefit principle mandates a compensatory payment to the wealthy swimmer, provided there is a surplus benefit to building the public pool.¹⁷ The proportional benefit principle similarly justifies compensation if the public pool disbenefits the wealthy swimmer. Suppose that, once the public pool is built, some club members leave the fitness club, prompting a fee hike. If a wealthy swimmer decides to maintain her club membership, for example because she sufficiently values the other benefits of membership, then the provision of the public pool generates a *disbenefit* to her. Even according to the proportional benefit principle, she should thus make a negative contribution to the costs of providing the public pool, that is, she is owed compensation.

These implications of the benefit principles appear puzzling. If an initial distribution of private goods is just, one might grant the well-off any benefit they obtain from purchasing club goods that are unaffordable to others. One might perhaps even accept that, if they prefer their respective club goods, they do not need to contribute to the costs of providing public goods. But it does not seem plausible to assign them claims to compensation. If a group of people is willing to carry *all costs* of making some good freely available to *everyone*, can they really be required to fund transfer payments to wealthy people who prefer to consume an equivalent club good, yet are not made any worse off? Now, it is important to be cautious here. If we make a judgment on whether some person can reasonably claim compensation in a particular case, this judgment will ultimately rest in part on our intuitions about this case (as well as our intuitions about relevant other cases, to which the systematic account that underpins our judgment extends). Since the argument here proceeds at the level of ideal theory, we need to ensure that we are not led astray by intuitions about nonideal cases. Perhaps, one might worry, we deem the claim to compensation unreasonable simply because, in the world we inhabit, it would be absurd to compensate those who are wealthy and already have access to club goods. But assuming an initially just allocation of private goods, might it not simply be correct that we need to compensate those who receive less benefit, or even a disbenefit, because they already had access to the relevant goods in the form of club goods?

In my view, even under ideal circumstances, the demand for compensation is not plausible. The difference between cases where some are exempt from contributing and cases where they deserve compensation can be drawn by reference to the market as an alternative mode of provision. If those who favor a given public good could secure it by coordinating in a market, then they could provide it privately—in this case, the person with access to a corresponding club good would make no contribution, but they would also not be compensated. So, the outcome of the first type of case—no contribution by those with access to club goods—aligns with the market outcome, whereas the outcome of the second type of case—compensation to those with



existing access to club goods—diverges from the market outcome. Of course, the mere fact that the hypothetical market outcome would involve no compensation does not imply that this is the correct view in a case where the state provides a good: the demands on the state differ from those on private market participants. But the divergence to the market-based outcome indicates that compensation is harder to justify than non-contribution, and especially where it is owed for a relative lack of benefit rather than for an indirect harm (due to costlier club goods). Note, moreover, that the state's involvement in the provision of the respective public goods may here be quite minimal—the state may simply provide an enforcement mechanism that allows those individuals who consent to chip in to collectively provide a public good that is then available to everyone. At least in such a case, even under initial conditions of justice, admitting the demand for compensation would effectively allow the better off to leverage their initial advantage to secure settlements from the worse off even though they already shoulder the entire cost of the state's provision of goods that are valuable and accessible to everyone. But this does not appear just—and even if the initial advantage attained through greater access to club goods was just.

But suppose one were to reject this argument and insist that, because the state always must treat everyone equally, as soon as it gets involved in the provision of discretionary public goods, compensation is indeed owed. In this case, the argument from unequal access to club goods points to a more fundamental concern: relative to which baseline is equal treatment to be ensured? In addressing this concern, it is helpful to first summarize an insight by Claassen (2013). Claassen argues that Miller's equal benefit principle disadvantages people whose conception of the good life relies heavily on the consumption of public goods relative to market goods (2013, pp. 278–81). In a pure market economy, he notes, those who favor public goods find themselves at a disadvantage relative to those who favor market goods—few public goods are provided. But this disadvantage is preserved, if we introduce public goods, yet require that everyone benefits equally from their provision: for while everyone will now be better off, everyone will be *equally* better off, so relative positions remain unchanged. This casts doubt on the justifiability of the benchmark of a pure market economy. The objection from unequal access to club goods casts further doubt on this benchmark, but on different grounds. For it shows that, with a pure market economy as our starting point, part of the benefit that wealthier people obtain from the provision of contingently public goods escapes accounting—namely the part they had managed to already secure in a private market for club goods that serve as substitutes. The benchmark used by the benefit principles thus not only disadvantages those who prefer public goods, but also the less wealthy.

The argument from unequal access to club goods reveals that regardless of people's conceptions of the good life (and whether preferences for public goods qualify as constitutive of such conceptions), the extent to which one stands to reap net benefits from access to contingently public goods will, *ceteris paribus*, correlate negatively with one's initial wealth. This reveals the benefit principles to be implausible, as it shows that they demand highly regressive compensation in the context of public good provision. This line of argument aligns with Claassen's in casting doubt on the starting point endorsed by the benefit principles, but is distinct in three ways. First, whereas Claassen focuses on preferences for public versus market goods, the concern here are wealth inequalities: my argument contends that the starting point of a pure market society disadvantages some people regardless of their preferences, simply because the less wealthy stand to gain more from the provision of contingently public goods relative to a pure market economy, and the assumption of such an economy as our reference point therefore relatively disadvantages these people. Second, the argument put forward here draws explicitly on the distinction between inherently and contingently public goods: contingently public goods are



those that could alternatively have been provided in a more exclusionary form as club goods, and it is the unequal initial access to such club goods that generates the implausibly regressive distributive demands of the benefit principles. Finally, Claassen draws a more modest conclusion: instead of rejecting the benefit principles, he only maintains that one could reasonably take a different view, advocating for what one could call a position of “meta-neutrality”: he proposes to remain neutral as to whether one should remain neutral toward individuals’ preferences (and distribute resources across all market and public goods to equalize welfare levels) or whether one should remain neutral toward individuals’ preferences against the backdrop of a pure market society (and thus endorse the equal benefit principle).¹⁸ By contrast, my claim is stronger: it is that, at least given their benchmark of a pure market economy, the proposed benefit principles are implausible because they demand highly regressive compensation payments for the provision of contingently public goods.

In addition, there is an *objection from the intrinsic disvaluation of public goods*: the benefit principles, implausibly, mandate compensation to people who disvalue the provision of contingently public goods merely because they disvalue their inclusive *mode of provision*. As Claassen’s argument summarized above reveals, the assumption of neutrality toward individual preferences concerning the provision of discretionary public goods is not as innocent as is generally presumed. But while Claassen presents the question about the preference for market versus public goods as being primarily about *which goods* are provided, in the case of contingently public goods, we need to distinguish between the specific *good provided* (e.g., a park) and its *mode of provision* (as a public good or a club good). We need to draw this distinction because a market could provide such goods as club goods; and the distinction matters because people can value a good itself as well as its mode of provision. Ferdman (2018, pp. 666–67) notes this possibility of *intrinsically valuing* public goods: a person may value a good, like a public park, for its universal accessibility. The person who intrinsically values public parks would, *ceteris paribus*, prefer a public park to a private park to which she, but not everyone else, had access.¹⁹ But there is also the corresponding possibility of *intrinsically disvaluing* public goods: just as one can value public goods because of their mode of provision, so one can disvalue them due to their inclusive mode of provision. And this attitude is not just a theoretical possibility: in racist societies, people have historically objected to the provision of public goods, like beaches, public transportation, and libraries, on the ground that such goods should not be equally available to everyone.

The possibility of intrinsically disvaluing public goods gives rise to a challenge to the benefit principles, but its precise form depends on one’s interpretation of the principle of neutrality that underpins them. The benefit principles are embedded in a liberal framework, which demands neutrality toward the preferences of citizens. The proponents of the benefit principles do not qualify, nor further discuss, the underlying notion of neutrality. According to a literal interpretation, (i) neutrality demands that one be neutral toward all preferences unless explicitly specified otherwise. On this interpretation, the possibility of an intrinsic disvaluation of public goods generates an objection. Consider person *A*, living in a class-based society, who deems herself a member of the upper class, and objects to the provision of public parks on the sole ground that their universal accessibility fails to respect a status distinction among members of different classes. Moreover, suppose that *A* is an indoors person, who enters neither public, nor private parks, and would never have learned of the public parks had she not read about it in her upper-class gazette. In this case, *A*’s preference against public provision contradicts the spirit of the political community, negating a basic understanding of others *as equals*. It is for this reason that I believe it would not warrant consideration: *A* could not reasonably demand compensation for



the disbenefit the provision of public parks imposes on her. But this shows that the benefit principles must be qualified: their statement needs to expressly exclude some instances of intrinsic disvaluation of public goods.

However, at this point, one might interject that the principle of neutrality could also be interpreted differently. Indeed, its literal, unqualified interpretation may be deemed naïve: it requires remaining neutral regarding all preferences, including immoral ones. Although this is not explicitly stated, one might therefore insist, proponents of the benefit principles implicitly assume that at least some immoral preferences be excluded from consideration. But if one adopts this view, then one might respond that the above example is moralized and therefore needs to be rejected: *A*'s preference not to have parks as public goods is immoral because it is based on immoral classist preferences; therefore, the principle of neutrality does not apply here, so *A*'s preference does not warrant compensation, and no problem arises for the benefit principles. This response prompts the question: can we find a non-moralized example, which is not excluded by the principle of neutrality, but where a person's intrinsic disvaluation of a public good does not warrant compensation?

In addressing this question, note first that while the claim that the principle of neutrality should not include immoral preferences rules out its literal interpretation (i), it does not entail a specific alternative. Instead, it is consistent with at least three different interpretations of the principle: (ii) it demands neutrality toward all preferences except for a set implicitly put aside as immoral; (iii) it demands neutrality toward all preferences bar those that are in fact immoral; (iv) it stipulates that a preference is immoral if and only we need not remain neutral toward it. Now, on interpretation (iv), a non-moralized example is ruled out by definition. This is because (iv) stipulates that, whenever we should not remain neutral toward a preference, then this preference is to count as immoral. It follows, by definition, that when we should not compensate a person for intrinsically disvaluing a public good (i.e., should not be neutral), then this preference is immoral—so, there can be no non-moralized example. In this way, interpretation (iv) rules out any objection from the intrinsic disvaluation of public goods. But this comes at a high cost. If interpreted in this way, the principle of neutrality makes a conceptual, rather than a substantial claim. This not only renders it uninformative: nothing is said about how extensive the set of immoral preferences is, nor why we should not be neutral toward them. More importantly, it turns the order of explanation upside down: the claim no longer is that we should not remain neutral toward a preference because it is immoral, but instead that a preference qualifies as immoral because we should not remain neutral toward it. In my view, this implication renders implausible the interpretation of the principle of neutrality as making a conceptual claim. But note that, even if one were to insist on interpretation (iv), the above argument about *A*'s intrinsic disvaluation of public parks would be of some value: it would identify a specific type of preference with regard to which we should not remain neutral and provide reasons as why.

By contrast, interpretations (ii) and (iii), which make a substantial claim, allow for the possibility of a non-moralized example. I believe that such an example can be given. Consider *B*, who lives in an egalitarian republic. *B*, too, is an indoors person, who never uses parks. Still, she dislikes parks being provided as public goods because she dislikes universal accessibility. This is not due to classist or racist views; it just so happens that *B* prefers for goods to be privately rather than publicly available. *B*'s case thus differs from *A*'s: *B*'s intrinsic disvaluation of public parks is not based on any other morally tainted preferences or beliefs. *B* does not object to the public provision because it would fail to respect a status difference; she simply has a preference for private goods. This preference on its own, I contend, is too innocent to qualify as



immoral; it is a preference that does not express any disrespect toward, or repugnant views about, other people. But at the same time, and like in the case of *A*, *B*'s intrinsic disvaluation of the public goods it is not a preference that warrants consideration when assessing the benefits and damages from the provision of public parks. This is because *B*'s preference not to have parks as public goods is not well-motivated: by assumption, *B* does not intend to use the parks, so whether they are publicly accessible is of no relevance to *B*'s ability to enjoy them (or any other goods), and *B* therefore suffers no meaningful harm from their provision as public goods. In assessing benefits, we need to take into consideration that, as an indoors person, *B* fails to benefit from the provision of public parks, but not that *B* disvalues their mode of provision.

If this line of argument is correct, then *B*'s case qualifies as a non-moralized example, which shows that, according to the qualified interpretations (ii) and (iii) of the principle of neutrality, the benefit principles must be restricted: at least sometimes, disbenefits that result from the intrinsic disvaluation of public goods should be disregarded. Yet, even if one were to dispute this by insisting that *B*'s preference is immoral or that *B* has a claim to compensation, my argument would still highlight the need for proponents of benefit principles to address the following question: under which conditions is an intrinsic disvaluation of public goods an immoral preference that may thus be ignored, and why? This is a serious question, because the intrinsic disvaluation of public goods does not always appear to be immoral: vulnerable groups and minorities for instance arguably have good reason to demand spaces which are not accessible to everyone. It is less evident whether an intrinsic disvaluation of public goods could be justified if one never intends to use the respective good, however, or would not notice its use by others: may a religious group justifiably object to some mountain's universal accessibility because they consider it sacred, even if they would never notice if anyone else were to go there?

If sound, then the two objections put forward in this section have two implications. At the substantial level, they show that the existing benefit principles, which have been proposed to complement existing theories of justice to account for discretionary public goods, are deficient in ways that have so far escaped notice. At the theoretical level, they reveal the importance of taking account of contingently public goods in examining the demands of justice in the provision of discretionary public goods. This is because neither of the objections put forward in this section could have been raised with equal effect by reference to inherently public goods. Inherently public goods could not alternatively have been provided as club goods (though imperfect substitutes might), so concerns about unequal access to these goods in a market do not arise in their case (or, at least, not in exactly the same way). And because these goods are, by definition, non-excludable, it would be incoherent to welcome the good itself, yet object to its inclusive mode of provision.

But the two objections also indicate a more constructive task, namely, to specify the benefit principle one should adopt instead.²⁰ While the arguments put forward imply two conditions that an alternative benefit principle would have to meet, they do not yield comprehensive specification of such a principle. The two conditions they imply are as follows: first, the principle must be "club-good sensitive," that is, it needs to specify under which conditions those who already had access to a club good that is then provided as a public good lack a claim to compensation; second, it must qualify the demand for neutrality, or more specifically, it needs to specify under which conditions preferences against public goods may or must be disregarded. But these two conditions can evidently be satisfied in numerous ways, and the above arguments do not yield any specific principle. Regarding club goods, for example, I have argued that those who had access to a club good cannot plausibly demand compensation for the provision of corresponding public good, if this provision does not make them worse off; but this leaves undetermined whether they can



claim compensation if the provision in fact does make them worse off, and how much they must contribute if they benefit, but less so than everyone else. Meanwhile, regarding the intrinsic disvaluation of public goods, I have only argued that it *sometimes* cannot ground a claim to compensation, while admitting that it may in certain other contexts.

There are three reasons for which I refrain from attempting to defend any alternative principle here. First, I believe that good reasons can be put forward in favor of the equal as well as the proportional benefit principle (and perhaps also in favor of intermediary ones), so it is not evident which baseline to choose. But defending a specific view within this debate would divert from the article's argumentative trajectory. Second, I believe that one can reasonably disagree on how exactly the two conditions identified above should be met. In particular, as noted above, it does not appear obvious under exactly which conditions one may be justified in objecting to the inclusive mode of provision of contingently public goods. Finally, while relevant, the task of specifying an alternative is not critical to the aim of this article: it is not needed to show that contingently public goods are a neglected subset of public goods that is of relevance to the philosophical debate.

4 | THE POTENTIAL OF CONTINGENTLY PUBLIC GOODS FOR RECTIFYING INJUSTICES

The preceding section has operated at the level of ideal theory, raising objections to principles that have been proposed to govern the provision of public goods in the context of an initially just society. In the actual world, circumstances are less favorable: we confront the provision of public goods against a background of numerous social injustices. In addition to injustices in the distribution of private resources, there are other types of social injustices, like unwarranted inequalities in opportunity and status. This section therefore moves on to discuss the provision of public goods under initially unjust or imperfectly just conditions. In so doing, part of its argument applies to public goods in general, while part of it applies specifically to contingently public goods. The central claim about public goods in general is that their provision holds the potential to render economic inequalities less relevant and to reduce inequalities in opportunity by reducing the importance of access to private resources, and that this can at times be an attractive alternative to other, transfer-based policies. Evidently, the provision of public goods will not always have this effect: it could instead even exacerbate existing injustices, as would happen, for instance, in an unjustly inegalitarian society where expensive, tax-funded public goods cater exclusively to the interests of the rich.²¹ With regard to contingently public goods more specifically, the section claims that they hold a distinctive, fourfold potential which arises from the fact that they in principle allow exclusion and could have been provided in the form of club goods. First, because it can be possible to provide a contingently public good simply by removing restrictions on access to an existing club good, it can be especially efficient at addressing injustices. Moreover, and relatedly, because their provision can at times be costless, contingently public goods can, at least under certain conditions, avoid the standard objection of involving a market interference. Third, because contingently public goods could have been provided as exclusionary club goods, their public mode of provision can be an especially powerful expression of a commitment to inclusiveness, which is critical where status inequalities are of concern. Finally, the provision of contingently public goods has a special potential to undermine the relevance of club goods, and to thereby remove a critical barrier to equality of opportunity.



In making the case that public goods have the potential to rectify injustices, I begin by considering injustices that are the result of economic inequality. Of course, not all economic inequalities are injustices; some reflect inequalities in desert or are otherwise justified (in fact, economic equality could reflect an injustice). The following arguments therefore apply only to inequalities that in fact amount to injustices. Economic inequality is typically measured by the inequality in personal income, or earning power, and wealth. Prominent measures, like the Gini coefficient, illustrate this. The Gini coefficient is an aggregate measure of the extent of economic inequality, and it is typically computed for the distribution of wealth and for the distribution of income. It can also be used to assess the extent to which redistributive measures like taxation and social subsidies affect income inequality. While important, measures like the Gini coefficient are in an important sense incomplete. They fail to capture how important ownership of private material resources is in the first place. But the importance of ownership of private resources may vary significantly. In a society where all lakeshores are privatized, individuals need private resources that enable them to purchase access if they want to swim in a lake. In a society where lakes are publicly accessible, private resources are not required for this purpose. This point generalizes: societies can be set up in ways that render the possession of private material resources more important or less. One critical factor determining the importance of ownership of private resources is the extent to which a society provides public goods. While there appears to be no straightforward way of quantifying, for a given society, the importance of ownership of private resources or the extent of the provision of public goods, both are significant concerns. Conceiving of economic inequality exclusively in terms of the distribution of private resources therefore ignores the extent to which ownership of such resources is necessary for access to valuable goods. But it appears sensible to be concerned with economic inequality not simply in the sense of being concerned about the distribution of income and wealth, but rather in the sense of being concerned about differences in what people are able to do, given the current distribution of income and wealth.

These considerations reveal that the provision of public goods can be a means to indirectly address inequalities in income and wealth—by reducing their relevance. But not merely can they be a means to do so: it appears plausible that their outright provision is, at least sometimes, more efficient, and politically more feasible, than the redistribution of private resources. There is an economic rationale for why it may be more efficient. In so far as public goods are non-rivalrous (or imperfectly rivalrous), their consumption by some does not (or does not significantly) diminish their availability for consumption by others. This means that providing a good as a contingently public good rather than as a club good typically comes with efficiency gains—it increases accessibility at no additional cost. If we are, concerned with economic inequality because of the resulting differences in what people can do given the economic resources they have, then the provision of public goods may thus be more effective: it may be possible to achieve greater progress toward economic equality for any given level of taxation. In addition, and relatedly, there is a political rationale for why addressing economic inequalities by providing public goods may be practically more feasible. In so far as the public good is available to all, and therefore potentially benefits everyone, the wealthy may be more willing to pay taxes for its direct provision than to finance targeted transfer payments to the less well-off. As Kohn notes, “[u]niversal benefits tend to have higher levels of political support than means-tested programs” (2020, p. 9).

While this argument holds for public goods quite generally, contingently public goods promise to be particularly efficient at achieving this. For because corresponding club goods may already exist, it may be possible to turn a club good into a contingently public good at effectively



no cost, thereby increasing access without making anyone worse off. For the purpose of illustration, consider a company operating a pay-tv channel in a society experiencing high levels of economic inequality. Suppose that this company cannot use price discrimination, so it attempts to set its universal subscription rate at the profit-maximizing price. As a result, there will be some people who would value access to the channel, but do not subscribe, either because they do not value it sufficiently or because they simply lack the means to pay for the subscription.²² If the channel could be made accessible to everyone at no additional cost, then transforming it into a contingently public good promises efficiency gains. Moreover, if those willing to subscribe can be taxed at the current subscription rate, then doing so would not make anyone worse off. Now picture a society where economic inequality is of concern primarily because it results in unequal access to pay-tv. In this case, the best way for the state to address economic inequality may be to pay a lump sum subsidy to the tv-channel if it makes the program available to everyone. This ensures universal access and it may do so in a more efficient way than redistributive transfer payments could. Moreover, it may be more feasible as even existing subscribers may not object to being taxed at the current subscription rate to pay for universal access.

Of course, this scenario is schematic and avoids important complications. In all likelihood, it will not be possible to tax exactly those who would otherwise subscribe to a channel, so using general tax revenue may force some to contribute to goods they would prefer not to be provided. Moreover, subsidies eliminate the need for tv-channels to convince customers to subscribe by providing desired content. This highlights that, once we consider specific contingently public goods, we must weigh the benefits and disbenefits of providing these goods *as public goods*. The public provision of goods will be justifiable, on the basis of concerns about economic equality, only where access is sufficiently central to our concerns about economic inequality. In this regard, public libraries are arguably a more compelling case because economic inequalities are of greater concern if they limit access to education than if they limit access to pay-tv.²³ At the same time, building libraries that offer free and universal access instead of relying on transfer payments to ensure that everyone is in a position to become a patron at a private library may well be the more economically efficient and the more feasible choice politically. But regardless of one's view about specific cases, the general point holds: sometimes, the provision of contingently public goods can help address economic inequalities in an effective and targeted (if perhaps partial) way.

Moreover, and this is a second feature that sets contingently public goods apart, they can at times escape the standard objection that the provision of public goods always needs justification because it requires taxation. Advocates and opponents of public goods alike typically suggest that unless we are in the fortunate position where their provision can be secured through assurance contracts or is financed by charities, it requires a state to tax firms or individuals to then use these funds to provide the goods (see e.g., Ferdman, 2018; Schmitz, 1991). It is for this reason that it is typically the provision of public goods that is taken to require justification. Even those (see e.g., Ferdman, 2018; Kallhoff, 2014) who argue in favor of the provision of an extensive set of public goods implicitly accept that it is the provision of public goods that needs to be justified and offer such justifications. But there are at least two alternative ways in which a state can secure the provision of contingently public goods. First, where a non-rivalrous good already exists in the form of a club good, but some are excluded based on noneconomic criteria like gender, the state can issue regulations that prohibit such grounds of exclusion, thereby enlarging access and turning the good into a public good. Consider a privately run swimming pool, which is the only one far and near. If this pool excludes a specific group based on noneconomic



criteria (e.g., men or persons of Asian descent), then we have a club good. Now, suppose the state introduces regulation prohibiting exclusion on such grounds and that the fee charged by the pool is small enough to effectively ensure universal access. In this case, the swimming pool (or, more precisely, pool access), has turned from a club good into a public good. Such a solution will not be available for all contingently public goods. Yet, it shows that at least sometimes, the state can ensure the provision of a public good without directly providing it, namely by prohibiting certain grounds of exclusion. Doing so does not require any state expenditure and consequently no taxation, though one might insist that issuing such regulation still amounts to a form of market interference.

In addition, whether certain contingently public goods are provided may directly depend on the initial allocation and specification of property rights. Public lands, such as woods, lakes, and plains, have a public good character: being accessible to everyone, they offer opportunities for recreation. But the decision to assign private property rights in these lands precedes the existence of a market, so it does not constitute a market interference. Moreover, a public good character can be preserved even for private goods if property rights are restricted in ways that grant everyone access. In the Nordic countries, the “right to roam” has existed for centuries, whereas private landowners in England and the United States have enjoyed much greater discretion in excluding others. Contingently public goods thus indicate that not all decisions on the provision of public goods amount to a market interference—some simply concern the market’s set-up. Of course, this point holds most immediately at a rather abstract level: in the world we live in, property rights in most assets (though not in all, note for instance the oceans and outer space) have already been assigned, so any change to these property rights amounts to a form of market interference. Still, the fact that the initial decision to assign a particular set of property rights to specific assets affected the availability of contingently public goods provides at least a principled justification for such an interference: because the initial decision, which did not precede the market’s existence, simultaneously determined the availability of public goods, amending existing property right claims is easier to justify (provided adequate compensation is offered where applicable).

While economic inequalities can constitute one sort of social injustice, social injustices can take other forms as well. In fact, the proposal to address economic inequalities through the provision of public goods presupposes that these inequalities are a concern primarily because they result in inequalities of opportunity and access: the provision of contingently public goods may leave existing inequalities in the ownership of private resources unchanged yet ensure greater equality of opportunity and access by offering an alternative to market consumption. And while inequalities in opportunity, access, and status may arise from economic ones, they need not. The case of a private country club illustrates this. Typically, such clubs charge hefty membership fees, which effectively exclude those who are not wealthy. But there can also be other grounds for exclusion. Historically, membership to country clubs has frequently been restricted on the basis of gender and race. Such restrictions are in one sense correlated with access money: if those excluded had the means to establish their own clubs, their lack of access could be alleviated. But at least from the perspective of the individual, it may well be the case that their exclusion is due to their gender or race rather than due to a lack of personal wealth.

This points to two additional ways in which contingently public goods hold a distinctive potential for addressing injustices. Where some members of society are deprived of access and thereby of opportunity and status on nonmaterial grounds, public goods can offer respite in two ways. First, in so far as public goods are freely available to all, they directly provide a shared realm of experience and social interaction and thereby constitute what Kallhoff calls



“connectivity goods” (2014, pp. 642–44)—goods that not only enlarge access, but constitute a point of interaction and symbolize the commitment to shared space and equality. This is true not only, but especially of contingently public ones: because contingently public goods could have been provided in an exclusionary form, their public provision is a more decisive expression of this commitment to equality. In a society where status inequalities are a concern—think, for example, of a state with a strong divide among castes or ethnicities or religious groups—the provision of a contingently public good can be of great symbolic significance: due to the deliberate mode of its universally accessible mode of provision, it can be a powerful expression of a commitment to the equality of all citizens (and in a way not quite achievable with an inherently public good, which could not have been provided in a more exclusive form).

Second, and more indirectly, the provision of public goods tends to undermine the market’s more exclusive modes of provision, and thereby the relevance of club goods in particular. Again, this is true of all public goods, but in particular of contingently public goods, because their provision can more directly diminish the attractiveness of the club goods to which they correspond. Our earlier example of the swimming pool illustrates this: once a public pool exists, people have less incentive to pay for access to private pools. In this sense, contingently public goods have the tendency to crowd out the corresponding club goods. This point is rarely highlighted, but important: the most promising long-term strategy for addressing inequalities of access that are the result of powerful structures of private clubs may consist in the provision of corresponding public goods that serve as substitutes. In this way, contingently public goods can gradually break the appeal and thereby the power of the more exclusive, private institutions, thereby reducing the inequality in access, and thus the inequalities in opportunity and perceived status it gives rise to.

If this examination is sound, then public goods—and contingently public goods in particular—constitute a natural, but underappreciated focal point for effectively rectifying existing injustices. Specifically, it appears plausible that the provision of contingently public good is a superior alternative to the introduction of a universal basic income (UBI) in at least certain contexts. Although a UBI has been advocated on various grounds, ranging from the justified claims of individuals to their share of the fruits of natural and social resources (see e.g., Van Parijs 1991, pp. 130–31) to its ability to address existing gender and racial injustices (see Bidadanure, 2019, pp. 492–95), it always aims to redistribute *private resources* relative to the status quo. There are, as indicated above, good reasons to believe that the provision of public goods can be the economically more efficient and politically more feasible policy. This will be the case, for instance, when non-rivalrous goods already exist in form of club goods and access can be universalized at little additional cost. It might also be the case where we can slightly amend private property rights, for instance in land, to ensure that some public good is provided. Moreover, where we confront injustices that are not due to inequalities in material resources, but rules and norms that exclude individuals from participating on equal terms, only the provision of contingently public goods, but not that of a UBI, may be able to rectify them—by effectively enlarging access and by creating a shared realm of interaction.²⁴

This leaves us with a question: under what circumstances ought the state address injustices by providing public goods and when should it resort to other, redistributive measures? Or, more generally, which principles determine what sorts of public goods the state ought to provide? This article does not aim to provide any comprehensive answer to these questions, and for two reasons. On the one hand, the normative question whether a state ought to provide a particular public good must always be evaluated against the current social background conditions. For instance, whether a state ought to provide free sports grounds or ought to take redistributive



measures to address an inequality in access to recreational facilities will depend on numerous factors, such as the costs of provision, the availability of information on individual preferences regarding types of sports grounds and the availability of alternative means of provision. So, in any particular case, a specific argument needs to be put forward in favor of the provision of contingently public goods. On the other hand, the account leaves open how different considerations are to be weighed: it remains silent, for instance, on how important economic efficiency is compared to equal access, and on how much weight attaches to the value of solidarity. Instead of providing a normative theory of public goods, this section primarily aims to highlight the potential of public goods to rectify existing injustices—and that this potential is especially pronounced in the case of contingently public goods. The account is thus open-ended, allowing proponents of specific views of the value of public goods and the criteria for injustice to draw on it in evaluating whether, according to them, a given public good ought to be provided.

The potential to rectify existing injustices provides at least a *pro tanto* justification for the provision of some contingently public goods—and it does so even if this provision is not currently favored by everyone or is not favored by the sum of individual preferences (regardless of how they are to be aggregated). This injustice-based justification of contingently public goods is distinct from the perfectionist justifications that have been advocated elsewhere. It has for instance been argued (compellingly in my view) that public goods can help create conditions of a good life by curbing harmful competition for scarce resources (Ferdman, 2018, p. 670; see also Hussain, 2018) and that they can contribute to a shared feeling of purpose, thereby strengthening “a sense of solidarity” (Kallhoff, 2014, p. 641), and that these benefits support an argument against state-neutrality and can justify the state provision of public goods. The argument put forward here is more modest: it claims that the provision of public goods may be justified by their ability to address existing social injustices, rather than by some independently valuable objective. This is not to say that there is no link: it seems reasonable, for example, to believe that a greater sense of solidarity will prevent certain social injustices from arising in the first place. But the focus differs: the *pro tanto* justification for public goods that has been proposed here appeals directly to their ability to rectify existing injustices. This, it seems reasonable to think, should make the argument less controversial because the existence of injustices provides a stronger case for action than more perfectionist proposals.

5 | CONCLUSION

This article falls in line with several recent attempts (de Jongh, 2022; Ferdman & Kohn 2018; Judt, 2010; Kallhoff, 2014; Kohn, 2020) to reassess the role of public goods for a well-ordered society and to elevate them to a more prominent place in political thinking. In response to an ambiguity in how philosophers use the term “public good,” this article has proposed, in Section 2, to draw a distinction between inherently public goods, which are non-rivalrous and non-excludable, and contingently public goods, which are non-rivalrous and, as a matter of choice, provided in a non-exclusionary form. Sections 3 and 4 drew on this distinction to show how the category of contingently public goods is fruitful to philosophical debate. As Section 3 argued, contingently public goods pose a challenge to the various benefit principles that have been proposed to govern the distribution of costs and benefits in the provision of public goods. Because these goods could alternatively be provided in the form of exclusionary club goods, the proposed benefit principles mandate unreasonable transfer payments to the individually wealthy as well as to those who disvalue the public goods' inclusive mode of provision. As



Section 4 argued, contingently public goods at the same time provide a natural, yet underappreciated focal point for addressing unwarranted economic inequalities, as well as inequalities in opportunity, access, and status, and thus for rectifying social injustices. Because public goods are equally accessible to everyone, they render the ownership of private resources less important, thereby diminishing the relevance of inequalities in income and wealth and broadening opportunity and access. Contingently public goods are special in four regards: their provision may be costless; it may not require any market interference; it holds the potential to be a particularly powerful expression of everyone's equal status; and it holds a particular potential to undermine the relevance of exclusionary club goods.

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ORCID

Friedemann Bieber  <https://orcid.org/0000-0002-4889-3018>

ENDNOTES

- ¹ This is true especially of the more recent philosophical literature. By contrast, there is a lively debate around public goods within economics (see e.g., Bergstrom et al., 1986; Elliott & Golub, 2019; Fehr & Gächter, 2000) as well as among political scientists (see e.g., Baldwin & Huber, 2010; Kaul, 2016; Ostrom, 2015). Public goods have also occupied an important place in early justifications of the state. Though Adam Smith (1976 [1776]) did not use the term "public good" (which is often credited to Paul A. Samuelson, who drew on work by Richard A. Musgrave (see Desmarais-Tremblay, 2017)), he famously argued that the state's legitimacy is grounded in its ability to supply non-excludable and non-rivalrous goods. Others, like Thomas Hobbes (1991 [1651]) can arguably be read in a similar vein: in so far as peace is non-rivalrous and non-exclusionary, the state's unique ability to secure a public good grounds its legitimacy.
- ² I focus on Anomaly and Miller as they most clearly represent the two dominating camps. For proposals similar to Anomaly's, see Murphy and Nagel (2001) and Claassen (2013); for accounts close to Miller's, see Rawls (1999) and Miller and Taylor (2018). For a non-standard approach, see Cullity (2008, p. 9) who defines public goods by reference to jointness in supply and consumption.
- ³ One way around this (apart from philanthropy) are assurance contracts through which individuals commit to paying for a public good on the condition that others do so as well (Schmidtz, 1991, 1993). But there are limits on their practical feasibility in the context of large-scale projects (Miller, 1993).
- ⁴ Where I use "public goods" without qualification, I understand it broadly as encompassing both types.
- ⁵ Miller (2004, 128, n2) also notes that public goods may involve a token charge, as in the case of subsidized public museums that charge a small entry fee. He proposes to call them "impure public goods." In my view, and this will become clearer in Section 4, the key question is not whether there is a charge, but whether it



effectively excludes some people. By this measure, a moderate entrance fee to a museum may be evaluated differently in an unequal as opposed to a more egalitarian society.

- ⁶ The observation that excludability from access to specific goods may depend on the state of technology, and may thus be subject to change, is also made, for example, by Anomaly (2021) and Baltzly (2021).
- ⁷ For further discussion of this distinction, see also the next section.
- ⁸ I would like to thank an anonymous reviewer for pressing me to clarify this.
- ⁹ This distinction also points to an underexplored difference between private and public goods. If there is a private good that I do not desire, but others desire, I may still have an interest in obtaining it as I can then trade it against private goods that I do desire. By contrast, since I cannot trade public goods, I have no personal interest at all in the provision of a public good that I do not desire.
- ¹⁰ For a more nuanced distinction, see Miller (2004) who carves out conceptual space for an additional category of public goods “that can be given a public justification within the relevant political community, but not one that makes direct appeal to the value of justice itself” (2004, p. 137). Neither essential, nor discretionary, such goods are required to maintain the fabric of a society and can therefore be given a public justification within a community.
- ¹¹ It is of course possible for theories of justice to disagree on whether a given public good qualifies as essential or discretionary. Yet, reasonable disagreement appears limited: some public goods, like the rule of law, appear clearly necessary; others, like swimming pools, clearly discretionary.
- ¹² See Miller & Taylor (2018, pp. 558–60) for a comprehensive overview.
- ¹³ Relatedly, Ronald Dworkin (2002, chs. 1, 2) proposes that, for at least some public goods, like the protection of the snail darter, a procedural decision like a majority vote should be taken if there are conflicting preferences. Michael Walzer (1983 ch. 3), who addresses public goods under the heading of communal provision (i.e. the pooling of private resources to cater to collective needs), advocates a procedural solution for taking justice-preserving decisions, though he does not commit to any specific procedure. An analogous objection can therefore be leveled against their accounts.
- ¹⁴ Murphy and Nagel do not quite commit to this principle. They call it “a plausible standard,” but “only one possibility” (2001, p. 62). In fact, they elsewhere make a claim that commits them to the weaker benefit principle. Writing that public goods should be provided to the extent where the marginal utility of consumption of private goods equals the marginal utility of consumption of public goods for everyone (2001, 60), they are committed to the view that public goods should be provided at a socially efficient level and in such a way that everyone benefits. But once we require that public goods are provided until marginal utilities of public and private consumption are equal for all individuals, this criterion alone determines to whom to assign the costs. Murphy and Nagel later focus on a case where we reach a satiation point and a greater amount of the good is not valued by anyone. It is in such contexts, but not generally, that their account leaves room for making contributions proportional to benefits. Murphy and Nagel seem unaware of this tension.
- ¹⁵ Even if one assumes, as an efficiency rationale, that public goods should not be provided if their costs exceed their benefits, we might confront instances where adding a public good to existing sets changes the distribution, but not the sum of net benefits.
- ¹⁶ If benefits are measured in terms of welfare gains, Miller also acknowledges a looming expensive tastes problem. In response, he counts on the communitarian spirit of people to “make an effort to demand less expensive rather than more expensive goods” (2004, p. 145). He moreover notes that we allow for variation in the expensiveness of tastes: libraries do not charge users depending on the price of the books they borrow (Miller & Taylor, 2018, p. 570).
- ¹⁷ Note that this problem persists even if we consider a larger set of public goods. If a person, given her access to club goods, gains no benefit from the provision of discretionary public goods at all, then these goods may not be provided unless net benefits can be equalized.
- ¹⁸ This is based on his view that “it seems equally reasonable to consider preferences for discretionary public goods as part of conceptions of the good life (which deserve some respect from the larger political community), and as simple preferences (for which individuals remain fully responsible)” (2013, p. 280)—in the latter case, the benefit principle is fine, in the former, it needs to be rejected according to Claassen.



- ¹⁹ Ferdman (2018, pp. 670–71) argues that we have good reasons to value public goods intrinsically, for instance because they contribute to human flourishing and a shared sense of heritage.
- ²⁰ I am grateful to an anonymous reviewer for pressing me on this point.
- ²¹ I thank an anonymous reviewer for pressing me on this possibility.
- ²² While video-on-demand services like Netflix attempt to price-discriminate by offering a variety of subscription tiers, their ability to price-discriminate is limited and their case resembles the scenario.
- ²³ In the case of television, one might think that a compelling argument can be made in favor of the public provision of a set of essential channels that offer news coverage, but not in favor of the public provision of channels that provide costly in-depth coverage of sporting events.
- ²⁴ Of course, the provision of public goods and the introduction of a UBI are not mutually exclusive alternatives, but may go hand-in-hand.

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AUTHOR BIOGRAPHY

Friedemann Bieber holds a postdoctoral position at the University of Zurich, which 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*, *Synthese*, *Ethical Perspectives*, and *Pacific Philosophical Quarterly*.

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