

# Vaccine Equity in the Triage State: From Access to Allocation\*

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Abstract:

*The COVID-19 pandemic has unmistakably been marked by inequity. Drawing from the 1987 Philippine Constitution's tenet that those less privileged should gain greater legal protection, there emerges a distinct Philippine interpretation of legal equality - one that is shaped not despite, but due to, the nation's idiosyncrasies. However, this theoretical commitment to social justice faces a tangible challenge when confronting the practicalities of vaccine distribution. The broader principle of equity remains nebulous, posing a quintessential dilemma: what constitutes fairness in allocation? This paper submits that the variance in "priority" reflects a nation's moral stance, making the pandemic an illuminating lens through which the ethical inclinations of various societies can be juxtaposed. The paper, thus, examines Southeast Asian vaccination strategies, gleaning insights into the moral choices implicit within them. It aims to uncover the primary ethical frameworks guiding regional choices, attempting to discern the balance of individualistic versus communal tendencies.*

*What each person gets, he gets from others [.]  
- Robert Nozick<sup>1</sup>*

## 1. Introduction

Those who have less in life should have more in law.<sup>2</sup> Such is the principle of social justice nestled within the provisions of the 1987 Constitution.<sup>3</sup> Promising *de jure* and *de facto* protections alike, the dictates

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<sup>1</sup> Robert Nozick, *Anarchy State and Utopia* (Blackwell, 1999) 149

<sup>2</sup> *Philippine Ports Authority Employees Hired after July 1, 1989 v. Commission on Audit* [2005] G.R. No. 160396.

<sup>3</sup> "The equal protection clause can no longer be interpreted as only a guarantee of formal equality<sup>4</sup> but of substantive equality. "It ought to be construed," said the Chief Justice, "in consonance with social justice as 'the heart' particularly of the 1987 Constitution — a transformative covenant in which the Filipino people agreed to enshrine asymmetrical equality to uplift disadvantaged groups and build a genuinely egalitarian democracy."

of Philippine legal order demands law's aegis both equally and equitably. In so doing, it reaches beyond the traditional and conservative, and imposes a broader understanding of "equality of law" not in spite of our differences but in light them.<sup>4</sup>

Nuance is drawn precisely because situational differences make substantive distinctions. This rings all the truer at a time where COVID-19, though sensed globally, is suffered in varying degree. In its *Statement on the Coronavirus Disease*, the Committee of Economic Social, and Cultural Rights highlighted how the devastation "wrought by COVID-19 has not been equally distributed amongst all people."<sup>5</sup>

Inequity is indeed the hallmark of the pandemic.<sup>6</sup> In principle, the matter is clear: Equity dictates that those who suffer more be given more—it is but just! But amidst bleaker realities, giving more to some means giving less (or none) to others.<sup>7</sup> Our nuanced conception of equality would thus demand an equally nuanced conception of equity. The question thus arises:

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1987 Const., Art. XIII *cf. Garcia v. Drilon* (Abad. J, concurring) [2013] G.R. No. 179267.

<sup>4</sup> "Equal protection of the law demands that we treat alike, alike and the unalikes, unlike." *Aguilar v. Court of Appeals*, [1995] G.R. No. 114282.

<sup>5</sup> International Commission of Jurists, 'Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses' (2020) 6 *citing* 'UN Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights,' U.N.Doc.E/C.12/2020/1(2020) available at :

<https://undocs.org/E/C.12/2020/1>. 'Disadvantaged and marginalized groups are severely affected by the current crisis. Older persons, persons with pre-existing health conditions and those with compromised immune systems are particularly vulnerable to serious health consequences if infected by COVID-19. Other groups are at great risk of contagion, such as those in residential care facilities or communal living arrangements, prisoners and persons in detention facilities, and residents of informal settlements or other areas where adequate access to water, soap or sanitizer is lacking. Certain categories of workers, such as delivery workers, garbage collection workers, manual labourers and workers in the agricultural sector, are exposed to heightened risks of being infected, as the nature of their work does not allow them to take advantage of dispensations to work from home using digital technology. Many health-care workers, who are performing heroic work on the front lines, responding to the pandemic, are being infected as a result of inadequacies in or shortages of personal protective equipment and clothing. Several groups are severely disadvantaged by the economic consequences of measures adopted in a number of countries to contain the spread of COVID-19. These include precarious workers in the "gig economy" or the informal sector, along with other groups of workers who face retrenchments or loss of wages and social benefits, including domestic workers in many countries. Informal traders and a number of small businesses can no longer ply their trade or conduct business, resulting in profound economic insecurity for themselves and their dependants.'

<sup>6</sup> National Academies of Sciences, 'Framework for Equitable Allocation of COVID-19 Vaccine' (*The National Academies Press*, 2 October 2020) <<https://doi.org/10.17226/25917>> accessed 22 September 2023.

<sup>7</sup> Robert Nozick, *Anarchy State and Utopia* (Blackwell, 1999) 149.