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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan

Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

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The Significance of Desert-Based Distributive Justice to People Well-Being

Peter Mahmud Marzuki

peter.machmud@fh.unair.ac.id

Universitas Airlangga, Indonesia

Abstract

The objective of this writing is to identify the philosophical basis for the government to enact law that creates people well-being. The background of this essay is to grasp the philosophical basis for the government to make law that is appropriate to create people well-being. Since this essay is a legal essay, the method used in this essay is legal research that employs historical approach and conceptual approach. Having analyzed the research materials, from this research, it is found that philosophical basis shared by governments of developed countries to enact law that creates people well-being notwithstanding under the guidance of distributive justice is either contemporary libertarian or contemporary egalitarian. It is concluded that the contemporary libertarian philosophy leads to inequity and the contemporary egalitarian brings about equality without considering desert. This essay gives an alternative philosophical basis for governments to impose policy in creating people well-being. This essay recommends that governments of developing countries to adopt desert-based distributive justice philosophy as the basis for enacting law that creates people well-being.

Keywords: Legal Research; Well-Being; Desert; Distributive Justice; Contemporary Libertarian; Contemporary Egalitarian.

Introduction

In his speech on well-being delivered on November 25, 2010, as British Prime Minister, David Cameron quoted Robert Kennedy's speech more than 50 years ago.¹ In fact, in his presidential campaign trail, on March 18, 1968, Robert Fitzgerald Kennedy addressed at the University of Kansas, in which he stated:

¹ Downing Street and The Rt Hon Lord Cameron Cabinet Office, Prime Minister's Office, 'PM Speech on Wellbeing' (*Government UK*, 2010) <<https://www.gov.uk/government/speeches/pm-speech-on-wellbeing>> accessed 15 June 2023.

“Too much and for too long, we seem to have surrendered personal excellence and community values in the mere accumulation of material things. Our Gross National Product, now, is over \$800 billion dollars a year, but that Gross National Product - if we judge the United States of America by that - that Gross National Product² counts air pollution and cigarette advertising, and ambulances to clear our highways of carnage. Yet the gross national product does not allow for the health of our children, the quality of their education or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials... It measures everything in short, except that which makes life worthwhile. And it can tell us everything about America except why we are proud that we are Americans”.

Before serving as British Prime Minister, in his speech to Google Zeitgeist Europe in 2006, David Cameron stated: “It’s time we admitted that there’s more to life than money, and it’s time we focused not just on GDP,³ but on GWB - general well-being”.⁴

Cameron, however, did not mention tacitly about well-being economy. He, however, quoted Robert Kennedy’s statement on lack of GNP (now GDP) to create life worthwhile and stated not to focus just on GDP in his speech to Google Zeitgeist Europe in 2006. Undoubtedly, Cameron’s notion on well-being refers to well-being economy. Currently, the term “well-being” does not refer to economy only. Instead, it refers to all aspects of life. The pandemic Corona-Virus Disease-19 (Covid-19), inevitably, makes the broader sense of well-being. The 2021 The Geneva Charter for Well-being expresses the urgency of creating sustainable well-being societies, committed to achieving equitable health now and for future generations without breaching ecological limits.

Well-being may be defined as a composite experience of good emotional, volitional and intellectual function, along with satisfaction in one’s life, a sense of purpose and meaning, and resilience in the face of adversity. It is the product of one’s thoughts, actions, and experiences, and as such, is something that can be enhanced

² It should be noted that until 1991, the United States did not use the word *Gross Domestic Product* (GDP). The country, instead, used *Gross National Product* to measure economic growth.

³ GDP is abbreviation of Gross Domestic Product.

⁴ Team Dowling, ‘David Cameron’s Speech to Google Zeitgeist Europe 2006’ (*The Guardian*, 2006) <<https://www.theguardian.com/politics/2006may22/conservatives>> accessed 16 June 2023.

consciously.⁵ Creating people well-being, the Charter states that the governments are accountable to their people for managing all society's assets for that purpose.

Similar to what stated in the Charter concerning governments' accountability dealing with creating people well-being, Anna Chrysopoulou accurately states that to resolve the current social, economic, and environmental challenges, the governments and other institutions around the world need to take up readily and actively participate in widespread systems innovation to make real progress toward a healthier, more prosperous world.⁶ Furthermore, she recommends three things the governments do to come to the goal. First, the government shall restore a harmonious relationship between society and nature. As a matter of fact that a healthy and prosperous society begins with nature. Implementing policy to restore society with environment, therefore, is necessary to create good physical and mental health, and the ability to pursue aspirations. Second, the government shall ensure a fair distribution of resources to address economic inequality. There should be political intent to take and policy instruments to impose both through legislation and budgeting to create equal distribution of resources between population groups and those who are living in deprivation. Third, the government shall support healthy and resilient individuals and communities. It is the task of the government to implement policy that supports satisfactory housing conditions, safety, basic human needs, psychological, and spiritual satisfactions.⁷

It is undeniable that the government shall make equitable and fair distribution of resources to its people. To make available resources distributed equitably to people it governs, according to Ronald Dworkin, the government should subscribe two reigning principles.⁸ First, concerning the fate of its citizens, it should create

⁵ Liji Thomas, 'What Is Well-Being Society' (*News-Medical*, 2022) <<https://www.news-medical.net/health/What-is-a-Well-Being-Society.aspx>> accessed 24 June 2023.

⁶ Anna Chrysopoulou, 'The Vision of a Well-Being Economy' (*Stanford Social Innovation Review*, 2020) <https://ssir.org/articles/entry/the_vision_of_a_well_being_economy#> accessed 20 June 2023.

⁷ *ibid.*

⁸ Ronald Dworkin, Frank Henry Sommer and Emeritus, *Justice for Hedgehogs*, vol 90 (2010).[2].

equality. Second, it must respect responsibility and right of each citizen.⁹ He calls the two principles as distributive justice.¹⁰

The term distributive justice is sometimes used interchangeably with social justice. Both philosophically and practically, social justice is different from distributive justice. It was Friedrich Hayek, who is against justice, regards that social justice and distributive justice are synonymous.¹¹ In fact, social justice is different from distributive justice. Social justice assigns an individual what he/she shall do for his/her community. Conversely, distributive justice mandates the community what it shall do for its members.¹² In distributive justice, what community does for its members is based on the position or standing of individuals within the community.¹³ This concept of distributive justice refers to Aristotle's teaching and Thomas Aquinas' idea in Scholastic tradition. Obviously, what Dworkin suggests is that the government in making equitable and fair distribution of resources to its people shall be based on distributive justice as taught by Thomas Aquinas and Aristotle.

This writing begins with the idea of well-being. As a matter of fact the doctrine of *laissez faire* has long dominated social, political and economic life in the past. Consequently, it results in inequity, in which those who are in dominant position abuse their power to get advantage as much as possible at the expense of the weak. The idea of well-being is to encounter the situation. From the historical study, it may be thought the idea of conceptualizing policy concerning people well-being. The second part of this article is to discuss distributive justice. Distributive justice, which was firstly introduced by Aristotle and developed further by Thomas Aquinas, deals with the function of authority in allocating resources to its citizens. It may be a reference for the government to set up policy dealing with people well-

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ Josef Burke, 'Distributive Justice and Subsidiarity: The Firm and the State in Social Order' (2010) 13 *Journal of Markets and Morality*. [297].

¹² *ibid.* [301].

¹³ *ibid.*

being. The last part of this work is about the basis of government to enact law and regulations concerning distribution of resources in creating people well-being.

This research is a legal research. The research materials are treatises, Charter, and authorized documents relevant to the study. In this study, historical approach and conceptual approach are employed. By historical approach, this study refers to the idea of the first time people well-being was proposed and the reason why the idea was launched. From the historical approach, it can be learned the development of the idea of well-being. The treatises, both classical and modern works, are relevant to study to observe the development of the idea of people well-being from the past time through today. While conceptual approach is carried out by studying Charter and authorized documents. From studying Charter and authorized documents, it can be found what law looks like that shall be made to create people well-being.

The first step of this research is to formulate the issue. To address the issue, then, research materials relevant to the issue are collected. Since the objective of this research is to identify the philosophical basis for the government to enact law that creates people well-being, research materials are sorted in that which are relevant to the idea of people well-being and which are concerning the government policy. The research materials are analyzed and from the analysis, it may be found the philosophical basis for governments to enact law that creates people well-being. Based on the finding, there may be recommendation given as necessary.

The Idea of People Well-Being

The idea of creating people well-being is not a new issue. On May 15, 1891, in his Encyclical *Rerum Novarum* on Capital and Labor, Pope Leo XIII criticized the exploitation of working class by hardheartedness of employers. According to him, the ancient workingmen's guilds were abolished but no other protective organization replaced them.¹⁴ In fact, before the Encyclical was pronounced, in

¹⁴ *Rerum Novarum*, 'Encyclical of Pope Leo XIII on Capital and Labor' (*Libreria Editrice Vaticana*, 1981) <https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html> accessed 5 June 2023.

1786 at Philadelphia, the United States, there was the first labor strike who opposed wage reduction and demanded \$ 6 per week in wages. In Britain, there had also been established labor union (in Britain it is called trade union).¹⁵ The labor organization, however, was not in a strong position to bargain with the employers. In addition, it was under the time of *laissez faire*, in which the government refrained from interfering with economic activities. Only a few people who held money and controlled industries dominated economic activities.

It is undeniable that industrial revolution created new dividing classes, employers and workers. In the early time of industries, workers were mostly peasants who had lost their jobs and sought to earn money for a living. The peasants who turned to be workers had new masters who were employers instead of landlords anymore. The social relation has changed. In addition to a relation between landlords and peasants in agrarian society that still existed, there emerged a relation between employers and workers in the beginning of industrial era. Subsequently, the industrial relation between employers and workers became a matter.

Since the industrial revolution, beginning in Great Britain, in the Western World, agricultural economy was not dominant and it was significantly replaced by industrial activity.¹⁶ From 16th century, in European agrarian society, mercantilism was adopted as economic system. In such a system, economic activity was heavily controlled by the government. The change from agrarian society to industrial society made the industrialists invest their money in factories rather than in trade.¹⁷ As they became wealthy, they wanted to get political power to control economic activity.¹⁸ As they gained political power, they urged the government to stop intervening economic activities. Contemporarily, Adam Smith in his book

¹⁵ It is commonly held that labor union is a product of Marxism. The labor strike in Philadelphia and the establishment of trade union in Britain preceded Karl Marx's work *Das Capital*, which was published September 14, 1867.

¹⁶ Douglass C North, *Structure and Change in Economic History* (WW Norton & Company 1981).[158-159].

¹⁷ History and Geography, *Industrial Revolution: Change and Challenges* (Core Knowledge Foundation 2018).

¹⁸ *ibid.*

“An Inquiry into the Nature and Causes of the Wealth of Nation” (1776), popularly known as “The Wealth of Nation”, introduced the idea of “invisible hand”, which in his mind that market forces of supply and demand shall control the economy.¹⁹ Since the idea he put forward was acceptable, in the late eighteenth century, mercantilism began to decline in Britain.²⁰ On the other hand, market economy began emerging.

In fact, the industrial revolution was considered to be a dividing ridge between two classes, the industrialists who are very affluent and the workers who are poor. This is because in such a polarization, the industrialists exploited the workers. Workers deprivation by the industrialists was unavoidable. In this kind of situation, there should be done by the government to address the wide income inequality.

Faced with wide discrepancy of income between the industrialists and the impoverished workers, Jeremy Bentham created utilitarianism philosophy.²¹ According to Bentham, the government should do something to increase utility. Bentham defines utility as something that creates either “benefit, advantage, pleasure, good, or happiness” or avoid “mischief, pain, evil, or unhappiness”.²² In Bentham’s opinion, the happiness of the whole community is nothing but the sum of individual interests.²³ The task of the government, then, is to create the great happiness for the greatest numbers. Consequently, if government policy benefits 90% of the population at the expense of 10% of them, it is an equitable policy.²⁴ Amartya Sen, therefore, aptly states that happiness in utilitarianism is individual

¹⁹ Elias Beck, ‘Laissez-Faire Capitalism’ (*History Crunch* (historycrunch.com), 2022) <<https://www.historycrunch.com/laissez-faire-capitalism.html#/>> accessed 4 August 2023.

²⁰ Wikipedia, ‘Adam Smith’ (*Wikipedia bahasa Indonesia, ensiklopedia bebas* (wikipedia.org), 2018) <https://id.wikipedia.org/wiki/Adam_Smith> accessed 11 August 2023.

²¹ Zachary Allentuck, ‘A Dickensian Unitarianism’ (James Madison University 2016) <<https://commons.lib.jmu.edu/honors201019>>.

²² *ibid.*

²³ Matthew Dayi Ogali, ‘Jeremy Bentham’s Utilitarian Theory, Capitalism, and Global Industrial Pollution’ (2022) 9 *Academic Journal of Current Research*. [29] <<https://www.cirdjournal.com>>.

²⁴ Hyun Hwa Son, *Equity and Well-Being: Measurement and Policy Practice* (Routledge 2011) <[https://www.adb.org/equity and well-being: measurement and policy practice](https://www.adb.org/equity-and-well-being-measurement-and-policy-practice)>.[2].

happiness.²⁵ Then, he states further that the utilitarian tends to disregard the problems of distributional inequality of welfare and utilities among different people.²⁶

The unequal distribution of welfare spurred the emergence of the idea of socialism. The most influential theorist of socialism is Karl Marx. Together with his colleague Friedrich Engels, he wrote *The Communist Manifesto* to describe class struggle between classes, the oppressors and the oppressed. In the book, it is stated the history of dividing classes. In earlier history, there had been two classes that stood in opposition to one another, the oppressor and the oppressed. Freeman and slave, patrician and plebeian in ancient Roman Empire; while, in feudal era the dividing classes were lords and serfs. Since industrial revolution broke out, agrarian society changed into industrial society; the position of landlords, then, were replaced by industrialists who controlled mode of productions, and that of serfs were replaced by workers. Marx and Engels called bourgeois for the industrialist who exploited the workers and proletariat and the workers who were oppressed. They directly face each other.²⁷ In order to change into better condition for the proletariat, there should be class struggle between the proletariat and the bourgeois in which the proletariat shall prevail. The proletariat, as a result, acquired political supremacy.²⁸ As it happened, the dividing classes no longer exist.

The idea of Karl Marx to encourage class struggle seems to be an alternative to improve working class well-being. Egalitarian society was desirable, by which distribution of wealth may be made. This kind of remedy, however, is inappropriate. According to Pope Leo XIII in his Encyclical *Rerum Novarum*, the idea of socialism is based on the poor man's envy of the rich. It, therefore, private property should be abandoned and converted to be common property administered by the State or by municipal body. In the socialist's idea, transferring private property to community

²⁵ Amartya Sen, *The Idea of Justice* (Penguin Books 2009).[277].

²⁶ *ibid.*

²⁷ Karl Marx and Friedrich Engels, *The Communist Manifesto* (The Project Gutenberg E-Book 2005).

²⁸ *ibid.*

property results in every citizen will get his/her fair share.²⁹ Pope Leo XIII asserted this kind of scheme is unjust because this act is to rob the lawful possessor. Undoubtedly, the reason why a person works is to get money and by which he can hold property as his own. Holding the ownership right of the property, he may dispose the property as he likes. If this private property is converted into common property, this will deprive the lawful owner of the property from holding ownership right of it, which has been obtained by earning money as a worker to buy it. This, certainly, would not change the workers fate. Consequently, the socialist society would not give rise to hope of the workers to improve their condition of life.³⁰ The idea of socialism, then, will not bring about people well-being.

The concern about the oppressed working people was restated by Pope Pius XI fifty years after *Rerum Novarum* was delivered by Pope Leo XIII. Furthermore, the Pontiff in his Encyclical of May 15, 1931 *Quadragesimo Anno* stated that the development of industry toward the end of the nineteenth century made human society more and more divided into two classes. One class, who is very small in number enjoyed almost all advantages arising out of modern inventions, while another class consisting of a large number of workers, who were deprived and poor. He, however, reiterated the challenge against the doctrine of socialism.³¹ In the Encyclical, he referred to Pope Leo XIII that socialism is not the solution of the social problem. Moreover, he stated that as a remedy, socialism is far worse than the evil itself and it would have plunged human society into great danger.³² Again, referring to Pope Leo XIII Encyclical, the *Quadragesimo Anno* warned that the government must not only be considered as a guardian of law and good order only, but it is also thought to be an institution that develops both public and individual well-being. The function of authority is to watch over the community

²⁹ *Novarum* (n 14).

³⁰ *ibid.*

³¹ *Quadragesimo Anno*, 'Encyclical of Pope Pius XI, May 15, 1931 on Reconstruction of Social Order' (*Libreria Editrice Vaticana*) <https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html> accessed 4 August 2023.

³² *ibid.*

and its constituents, by which it should heavily consider the weak and the poor in protecting individual rights.³³

When Pope Pius' Encyclical of May 15, 1931 *Quadragesimo Anno* was delivered, however, the authority was dictated by Bentham's utilitarianism philosophy. The philosophy was intentionally founded as to replace religion-based rules with rational, scientific guides to decision making and life. While, both Encyclicals represented Catholicism, the economist who adopted utilitarianism philosophy focused on tangible expression of people's needs and desires. In 1937, when presented report to US Congress, Simon Kuznets invented Gross National Product (GNP) as a means of measuring aggregate demand. Initially, the main purpose of GNP was to make easier for policy maker to manage a national economy through crisis and war without considering utility.³⁴

Notwithstanding Robert F. Kennedy's speech more than 50 years ago criticizing GNP (now GDP) deals only with material things and lack of creating life worthwhile, in which not allowing the health of American children, the quality of their education or the joy of their play, GDP is still adopted as a measurement of economic growth. As a matter of fact that GDP leads to good lives. GDP does not measure health, quality of education, and the beauty of poetry, but with higher GDP society can get better health care, afford better educational system, and enjoy reading poetry. To be sure that GDP does not directly measure those things that make life worthwhile but it enables society to obtain many of the elements into worthwhile life.³⁵ Based on their research, however, Karen Dynan and Louise Sheiner eloquently suggest that GDP is not a comprehensive measure of welfare or even economic well-being.³⁶

It is true as recalled by Joseph E. Stiglitz, who is eager to replace GDP with real metric of well-being and sustainability, that Kuznets warned that GDP is only

³³ *ibid.*

³⁴ Pyden and Rygel, 'Our Perspective on Issues Affecting Global Financial Market' (*Point of View*, 2011) <<https://www.payden.com/library/pov/Q42011>>. [3].

³⁵ N Gregory Mankiw, 'Is GDP a Good Measure of Economic Well-Being?' (*Medium*, 2018) <<https://inflation.medium.com/is-gdp-a-good-measure-of-economic-well-being>>.

³⁶ Karen Dynan and Louise Sheiner, 'GDP as a Measure of Economic Well-Being' (2018). [2].

a measure of market activity and it is not a metric of social or even economic well-being.³⁷ Stiglitz asserts that to attempt to grow GDP is not the same as to create the people well-being.³⁸ Referring to the time of Covid-19 pandemic, he reveals in the race to save lives, Vietnam with a GDP of USD 262 billion prevails over the United States with a GDP of more than USD 20 trillion in 2019. Furthermore, Stiglitz showed that in 2019, death rate in the US was 600.000 people, while in Vietnam, the death toll was less than 500 people to the date.³⁹

Stiglitz explained that in January 2008, France's President Nicolas Sarkozy asked him to chair an international commission on the Measurement of Economic Performance and Social Progress. Learning the painful situation of U.S. banking system occurred in 2007, Sarkozy realized that pushing up GDP and neglecting other indicators of quality of life will risk losing the confidence of the public. A panel of experts was established to improve measurement of life worthwhile. Their first report in 2009 under the title *Mismeasuring Our Lives: Why GDP Doesn't Add Up* that was published right after the global financial crisis indicated the necessity of reviewing the doctrine of economic orthodoxy. It was positive resonance that Organization for Economic Cooperation and Development (OECD) decided to follow up with the expert group.⁴⁰

It is currently acknowledged that GDP is not the only metric for measuring economic performance and societal progress.⁴¹ The GDP as a relevant measure of economic performance and societal progress, however, is not abandoned.⁴² There should be other additional indicators that deal with citizens' well-being. Undoubtedly, carrying out research and other activities, the OECD has played a

³⁷ Joseph E. Stiglitz, 'GDP is the Wrong Tool for Measuring What Matters', (2020) 1 *Scientific American*, <<https://www.scientificamerican.com/article-gdp-is-wrong-tool-for-measuring-whatt-matters>>.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Ana Llana Nozal, Neil Martin and Fabrice Murin, 'The Economy of Well-Being: Creating Opportunities for People's Well-Being and Economic Growth' (2019) <https://www.oecd.org/en/publications/the-economy-of-well-being_498e9bc7-en.html>.[8].

⁴² *ibid.*[17].

prominent role in developing the idea of well-being. The organization has developed the notion of “multi-dimensional well-being”.⁴³ There are two things that should be considered in the framework set by the organization in that it is people-focused rather than economy-focused and it pays attention not only to averages but also to the distribution of outcomes.⁴⁴

Focusing on people rather than on economy, the policy maker should improve the quality of education. The more highly people educated, the more income they get and it may lead to higher economic growth. If the orientation is economic growth, the economy may grow notwithstanding deprivation of labor. In this case, no people well-being will be created. In addition to improving the quality of education, health care should also be taken into account. Improved health care may increase labor market on the one hand and reduce public finance for ill-health. Consequently, it may also increase economic growth.

Instead of paying attention to average of outcomes but concentrating on distribution of outcomes, the policy maker may consider redistribution of income. Redistribution of income may be carried out in two ways, transferring cash directly and increasing opportunity to the poor.⁴⁵ Transferring cash directly to the needy enables them to fulfill their needs other than the essentials. Fulfilling needs other than basic necessities may increase the GDP. If such a policy is exerted appropriately, it may accelerate economic growth as well as create people well-being, in which inequality may be reduced. The second way of redistributing income is increasing opportunity to the poor. In such a policy, the government may give opportunity to the less wealthy people to participate in training for increasing their skill, get micro-credit to do small business. Giving them such opportunities makes them to generate income that it can prevent them from being standstill. In turn, it will create people well-being.

⁴³ *ibid.*

⁴⁴ *ibid.*[15].

⁴⁵ François Bourguignon, ‘Spreading the Wealth’ (2018) <<https://www.imf.org/en/Publications/fandd/issues/2018/03/bourguignon>>.[22-23].

Distributive Justice as the Basis of Policy on People Well-Being

The idea of people well-being may not be separated from the idea of distributive justice. The idea of distributive justice is based on the notion that there are certain goods and resources that are essential for human well-being and that everyone should have access to them. These goods and resources can include things like food, shelter, healthcare, education, and basic human rights.⁴⁶ It is Aristotle who for the first time proposed the idea of distributive justice. Regarding distributive justice, Aristotle stated “it is exhibited in distributions of honor, property, or anything else which is divided among the members of the community. For in such matters men may receive shares that are either equal or unequal to the shares of others”.⁴⁷ According to Aristotle, the basis of distributive justice is desert.⁴⁸ The term “desert”, certainly, refers to two parties who are under an authority. It is, therefore, in Aristotle’s mind, the idea of justice can be applied to political association, which is the most important enterprise for him.⁴⁹ The reason why political association is the most important enterprise for Aristotle is that a political association is established by human beings who share a common life in order to preserve self-sufficiency and obtain a good life.⁵⁰

Political association that Aristotle means is a state.⁵¹ The government of modern state is based on constitution. One of those are specified in the constitution is the purpose of the state. According to N.W. Barber, the ultimate purpose of the state is to advance people’s well-being.⁵² By well-being, Barber means good.⁵³ Creating the people’s well-being, legislature shall enact law that is oriented toward the good of the people the state serves.⁵⁴ Referring to Aristotle’s idea of distributive justice

⁴⁶ Archana Singh, ‘Distributive Justice as A Gateway for Access to Justice’ (2023) 11 International Journal in Engineering and Science.[608].

⁴⁷ David Johnston, *A Brief History of Justice* (John Wiley & Sons 2011).[608].

⁴⁸ *ibid.*[69].

⁴⁹ *ibid.*[70].

⁵⁰ *ibid.*

⁵¹ In ancient Greece, each city was a state, which is called *polis*.

⁵² Timothy Endicott, ‘The Purpose of the State’ (2021) 66 The American Journal of Jurisprudence.[72].

⁵³ *ibid.*

⁵⁴ *ibid.*

relating to political association, it can be inferred that the basis of law concerning people's well-being creation enacted by state legislature is distributive justice.

By the same token, Thomas Aquinas in his *Summa Theologicae, Prima Pars, Quaestio XXI* states:

Alia, quae consistit in distribuendo: et dicitur distributiva iustitia, secundum quam aliquis gubernator vel dispensator dat unicuique secundum suam dignitatem. Sicut igitur ordo congruus familiae, vel cuiuscumque multitudinis gubernatae, demonstrat huiusmodi iustitiam in gubernante; ita ordo universi, qui apparet tam in rebus naturalibus quam in rebus voluntariis, demonstrat Dei iustitiam. Unde dicit Dionysius, 8 cap. De div. nom.: Oportet videre in hoc veram Dei esse iustitiam, quod omnibus tribuit propria, secundum uniuscuiusque existentium dignitatem; et uniuscuiusque naturam in proprio salvat ordine et virtute.⁵⁵

In his other work, *De Regno ad Regem Cypri*, Thomas Aquinas states: “*Natural autem est homini ut sit animal sociale et politicum, in multitudine vivens, magis etiam quam omnia alia animalia quoad quidem naturalis necessitas declarat*”.⁵⁶

Furthermore, Thomas Aquinas states:

Aliis enim animalibus natura praeparavit cibum, tegumenta pilorum, defensionem, ut dentes, cornua, ungues, vel saltem velocitatem ad fugam. Homo autem institutus est nullo horum sibi a natura praeparato, sed loco omnium data est ei ratio, per quam sibi haec omnia officio manuum posset praeparare, ad quae omnia praeparanda unus homo non sufficit. Nam unus homo per se sufficienter vitam transigere non posset. Est igitur homini naturale quod in societate multorum vivat.⁵⁷

⁵⁵ Translation: The other consists in distribution, and is called distributive justice whereby a ruler or a steward gives to each what his rank deserves. As then the proper order displayed in ruling a family or any kind of multitude indicates justice of this kind in the ruler, so the order of the universe, which is seen both in effects of nature, and in effects of will, shows forth the justice of God. Hence Dionysius says (Div. Nom. viii, 4): “We need to see that God is truly just, in seeing how He gives to all existing things what is proper to the condition of each; and preserves the nature of each in the order and with the powers that properly belong to it”.

⁵⁶ Translation: Now, it is natural for human being to be a social and political animal, living in multitudes, even more than other animals, which is indeed a natural necessity.

⁵⁷ Translation: For other animals, nature has prepared food, coverings of hair, defense, such as teeth, horns, claws, or at least speed for flight. But human being was set up with none of these prepared for him by nature, but instead of all of them he was given a reason by which he could prepare for himself all these things by the work of his hands, for which one human being is not sufficient to prepare all. For one human being could not pass his life sufficiently by himself. It is therefore natural for human being to live in the society of many.

From the statement, Thomas Aquinas asserts that differs from animals that are provided by nature to survive, human being cannot survive solitary and therefore should live in society.

If it is natural that human being lives in the form of society, according to John Donne, there must necessarily exist something that makes society organized.⁵⁸ Citing Cicero's work, *De Officiis* Liber 1 [20], Christian Erk states that something that makes social relation governed is justice.⁵⁹ In *De Officiis* Liber 1 [20], Cicero states:

*De tribus autem reliquis latissime patet ea ratio, qua societas hominum inter ipsos et vitae quasi communitas continetur; cuius partes duae: iustitia, in qua virtutis splendor est maximus, ex qua viri boni nominantur, et huic coniuncta beneficentia, quam eandem vel benignitatem vel liberalitatem appellari licet. Sed iustitiae primum munus est, ut ne cui quis noceat, nisi lacessitus iniuria, deinde ut communibus pro communibus utatur, privatis ut suis.*⁶⁰

Understanding Cicero's idea, Christian Erk states that the governor of society is not the ruler but principle of justice.⁶¹ The statement is clearly inspired by both Aristotle and Thomas Aquinas who articulate that justice is not some rule but a virtue.⁶² Dealing with the ordering of society, Christian Erk refers to Thomas Aquinas' distributive justice.⁶³ Then, he also indirectly follows Thomas Aquinas as well as Aristotle's idea that distributive justice is carried out on the basis of desert.⁶⁴

According to Thomas Aquinas, distributive justice is the principle for political ruler to distribute wealth within a community.⁶⁵ This is because the political ruler

⁵⁸ Christian Erk, *Health, Rights and Dignity: Philosophical Reflections on an Alleged Human Right* (De Gruyter 2011).[137].

⁵⁹ *ibid.*

⁶⁰ Translation: But of the three others, the reason by which the society of human being among themselves and as a community of life is contained is very clear; two parts of which: justice, in which the splendor of virtue is greatest, from which good men are named, and beneficence joined to this, which may be called either kindness or liberality. But the first duty of justice is that no one should injure anyone unless he has been wronged, and then that he should use the common for the common, and the private as his own

⁶¹ Erk (n 58).[138].

⁶² *ibid.*

⁶³ *ibid.*[139].

⁶⁴ *ibid.*[141-142].

⁶⁵ Daniel Gutschke, 'The Relationship between Justice and the Common Good According to St. Thomas Aquinas' (The Catholic University of America, Washington, DC 2018).[13].

should take material well-being of his people into account to create virtuous life. Thomas Aquinas stated that God provides goods of the earth to satisfy the needs of all human being. The distribution of goods, however, is not according to natural law. Instead, it is arranged by positive law. As a matter of fact that human beings have reason, by which they are able to distribute the goods and convert them into private property. Thomas Aquinas asserts that the very concrete arrangement of distributing property is rooted in distributive justice.⁶⁶

John Finnis elaborates further Thomas Aquinas' idea on distributive justice. He deals distributive justice with common good.⁶⁷ For Finnis, Working together to enhance well-being of all members of community is called common good.⁶⁸ According to him, distribution is just if there is a reasonable settlement of allocating some subject-matter that is essentially common but that needs to be appropriated to individuals. Common subject-matter may either be provided by nature or created by cooperative works of people. The cooperative works may be in the form of division of labor, such as those whose task is to decide what is to be done and how, those who are in charge of participating in particular aspects of definitely settled projects, and those who are responsible for contributing necessary resources or funds. The cooperative works produce infrastructures and public facilities. Both subject matter that is provided by nature and that is created by cooperative work of people are subject-matters in common. The problem of distributive justice would be the people to whom the subject-matters are allocated and what condition to allocate them appropriately.⁶⁹

Interestingly, John Finnis does not identify justice as equality; instead, he means justice as common good, in which all members of society grow abundantly. It does not mean, however, that people abundance is enhanced by treating everyone identically when distributing roles, opportunities, and resources. This indicates that

⁶⁶ *ibid.*[200-201].

⁶⁷ John Finnis, *Natural Law And Natural Right* (Oxford University Press Inc 2011).[174-175].

⁶⁸ *ibid.*[165].

⁶⁹ *ibid.*[166-167].

John Finnis does not accept the so-called ‘formal’ principle of justice: “Treat like cases alike”.⁷⁰ Based on the idea, he states that the large disparities of wealth in a community is not because of inequality but it is due to inappropriate distribution. Such an inappropriate distribution occurs because the failure of the rich to redistribute that portion of their wealth which could be better used by others for realization of basic values in their own lives.⁷¹ He aptly gives example that it is not justice if redistribution means that more beer consumed by many and less fine wine consumed by few; instead, if at the expense of wine, beer, etc. more people get basic needs, such redistribution is justice.⁷² According to Finnis, the problem of distribution should deal with realization of basic human goods, which are the fundamental component of common good.⁷³

Relying upon Thomas Aquinas’s view, John Finnis states that the duties of distributive justice belong only to the State or the personified whole (community).⁷⁴ This is because according to Thomas Aquinas, goods of the earth are to be exploited and used for all. Consequently, anyone of the community has duties of distributive justice. Based on Aquinas’s opinion, Finnis that it is the State or the community as a whole that is responsible for distributive justice.⁷⁵ Regarding the role of government in distributive justice, John Finnis asserts that the role of authority and law in determining distributive justice is decisive but subsidiary.⁷⁶

Using the term “subsidiary”, John Finnis refers to paragraph 80 of *Quadragesimo Anno*, Encyclical of Pope Pius XI of March 15, 1932, in which the Pontiff basically asserts that the State cooperates with various associations in communities to create the happier and more prosperous the condition of the State.⁷⁷ Just as *Rerum Novarum*, which was delivered to improve working class condition,

⁷⁰ *ibid.*[173-174].

⁷¹ *ibid.*[174].

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*[186].

⁷⁵ *ibid.*

⁷⁶ *ibid.*[188].

⁷⁷ Anno (n 31).

so *Quadragesimo Anno* was written in the framework of creating people well-being. Since according to Thomas Aquinas, distributive justice is the principle for political ruler to distribute wealth within a community,⁷⁸ it can be inferred that distributive justice is the basis for authority to create people well-being.

Desert as the Criterion of Resources Allocation Policy

In the modern state, distributive justice is the legitimate basis for the government to exert its function to advance people well-being. In the 2021 Geneva Charter for Well-being, it is stated that the governments are accountable to their people for managing all society's assets for that purpose. Managing allocation of resources in the state will be accountable if it is based on distributive justice. While, the criterion of distributive justice is desert or merit.

Desert is achieved because of someone's effort and performance. It seems that the idea is in line with liberalism and in contradiction with egalitarian. Neither does it deal with libertarianism nor egalitarianism. Rather, it is about resources allocation for people well-being. Since desert is rewarded because of effort and performance, it is inevitable that there should be equal opportunity for every citizen to develop his/her productivity. It is the job of the government to provide equal opportunity.

Equal opportunity does not refer to libertarianism. It is historical experience that under libertarian *laissez faire*, those who are in dominant position abuse their power to deprive the weak. The contemporary libertarianism presented by Robert Nozick is based on the premise that individuals have rights of freedom from certain things.⁷⁹ The basic idea of Nozick's libertarianism is his Entitlement Theory. In the theory, it is stated that individual is entitled to do what he/she wants to do with his/her property acquired in a just manner. Under libertarianism, the government should refrain from interfering with free market. It is, therefore, whatever an individual does with his/her property so long as it is acquired in a just manner and

⁷⁸ Gutschke (n 65).

⁷⁹ Casey Rentmeester, 'The Need for Basic Rights: A Critique of Nozick Entitlement Theory' (2014) 3 *Socrates*. [26].

what he/she does is not in contradiction with law, the government may not impede it. What about if what the individual does notwithstanding compliance with the law, it may result in other people worse off. Under libertarianism, it is not the function of government to encounter such a situation. The government, according to libertarianism is to protect citizens against unlawful actions.⁸⁰ Suppose, all owners of fertile rice fields in a region in a country sell their lands to a developer who changes the rice fields into a residential area and a supermarket, where the former owners of rice fields may supply items to be sold in the supermarket. Reaping a lot of money, the former owners of the rice fields move to the city to run other business or supply items to the supermarket. Afterwards, they become wealthier. Relying upon the successfulness of the former owners of rice fields who sold their premises to the real estate developer, the owners of rice fields of the adjacent area whose premises are larger than those that have been transformed into residential area accept an offer of another real estate developer to sell their lands with higher price. Actually, they also become wealthier and they also move to the city. In fact, the two areas are granaries that produce abundant rice. They make significant contribution to regional rice supplies in the country. The change of land use from rice fields to residential areas decreases rice supply in the country. In addition, it is also economically detrimental to the rice field laborers,⁸¹ who till the rice fields. They depend on being rice field laborers for their living. The rice fields have gone. It is the freedom of the owners of rice fields to sell their lawfully acquired property notwithstanding decrease in regional rice supply and loss of sharecroppers' job. As a result, such free transactions create inequity. In such a situation, under libertarianism, the government has no obligation to take a step to overcome the inequity. To libertarianism, so long as the procedures of acquiring the properties are met, despite inequity, the outcome of any transaction is just. The

⁸⁰ *ibid.*[19].

⁸¹ In this case, the word "peasant" is avoided because the term refers to an agricultural laborer prior to industrial revolution, who is very poor. For more convenient, the term rice field laborer is more appropriately used in this case.

state that adopts contemporary libertarianism is the United States. The country insists that the government refrain from intervening economic activities. President Joe Biden, however, signed the CHIPS and Science Act on August 9, 2022 and Inflation Reduction Act on August 16, 2022 that provide government investment in certain sectors. Notwithstanding refusal of government intervention in economic activity, it is undeniable that both laws pave the way to government intervention.

The desert-based distributive idea does not rely only upon procedural justice. The idea shall be the ethical consideration for government to regulate resources allocation that may lead to people well-being. It is undeniable that the basic right of citizens of every country is to live decently by getting nutritious food and drink, shelter, adequate health care, and good education.⁸² The primary function of state is to meet its citizens' basic needs. Regarding the function, the state, therefore, shall impose policy that fulfill the needs. Under the policy, the government shall provide equal opportunity to its citizen for acquiring skills to do the job.⁸³ Such a policy shall be laid down into law, which has binding force and that may be actually implemented. The law on equal opportunity enables individuals to develop their skills for productivity.

Under no circumstances, is the law on equal opportunity discriminative. Based on the law, people regardless of their origins and race or social class, with their skill they make effort to produce results that may contribute to economic outcome. Effort is the factor that makes up desert.⁸⁴ The more they make contribution, the more deserts they deserve. The allocation resources, then, shall be based on the desert. Desert is the essence of distributive justice and it comes into existence when there is equal opportunity.⁸⁵ It is equal opportunity that serves the central function in distributive justice.⁸⁶ Equal opportunity, however, should ensure that

⁸² *ibid.*[26].

⁸³ Richard T Longoria, *Chapter 1. What Is Meritocracy?* (Lexington Books 2008).[5].

⁸⁴ Louis Poijman, 'Justice As Desert' (2001) 1 Queensland University of Technology Law & Justice Journal.[107].

⁸⁵ Thomas Mulligan, *Justice and the Meritocratic State* (Routledge 2018) <<https://library.oapen.org>>.[73].

⁸⁶ *ibid.*[72].

no person is disadvantaged by substandard health care, poor education, and the like during his/her childhood.⁸⁷

In fact, a person's prospects are conditioned by various factors. Social circumstances, genetics, and family environment are determinant to form a person's future.⁸⁸ Children who are raised in disadvantaged families may lack skill to make effort that bring about economic outcome. In such situation, the government is justified to interfere with family affairs. The state intervention is made in case of the parents cannot meet the standard of care of their children.⁸⁹ The state, for example, shall provide adequate education and health care for such children. Getting adequate education and health care, the children may develop their skills to compete in job market under the law on equal opportunity. Interfering with disadvantaged families to help their children well raised, the state exerts its function to empower its citizen to enter into competitive market in the framework of equal opportunity. Children from disadvantaged families, then, may fairly fight with those who are not from disadvantaged ones to use their skills to make effort for producing economic outcome. They, certainly, deserve to get desert. The equal opportunity, therefore, leads to people well-being rather than individual well-being developed by the libertarianism. Since there is intervention of government, the idea of equal opportunity, obviously, is different from libertarianism, which whatsoever prevents government from interfering with free exchange among citizens.

Not only is the idea of equal opportunity different from libertarianism, it is also distinguishable from egalitarianism. The egalitarianism is based on the natural philosophy that human beings are born equal. Then, it was adopted by French Revolution whose slogan was *Liberté, Égalité, Fraternité* (Liberty, Equality, Brotherhood). It is true that naturally human beings are born equal. The natural equality doctrine has a long history since Thomas Paine, John Locke, Jean-Jacque Rousseau, etc. The natural equality is the basis of the right of equal protection of law

⁸⁷ *ibid.*[74-75].

⁸⁸ *ibid.*[77].

⁸⁹ *ibid.*[80].

and the right not to be exploited.⁹⁰ It is, therefore, significant to anti-discriminatory treatment based on races or any other factor, such as genetics, social status, etc. Since equal protection by law, people of different skills may develop their effort and performance to produce economic outcome. It is the desert that serves to be the basis of resources allocation instead of natural equality.

Currently, it is developed contemporary egalitarianism. John Rawls who writes *The Theory of Justice* is commonly known as the initiator of contemporary egalitarianism. The basic idea of contemporary egalitarianism is that irrespective of effort and performance made by society, there should be equality in a country. Obviously, the idea neglects desert as the basis of distribution. According to John Rawls, the basic structure is the primary subject of justice.⁹¹ While, basic structure may be defined as the way in which the major institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.⁹² Major institutions what Rawls means are political institution and influential economic and social arrangement.⁹³ Relying upon Rawls' idea, it can be inferred, therefore, that the primary subject of justice is the way in which political institution and principal economic and social arrangement distribute fundamental rights and duties and determine the division of advantages from social cooperation.

Beginning his theory, Rawls departs from a preconceived judgment that the institutions of society give certain starting social positions more favorable than others.⁹⁴ This is because the fact that humans are born into different positions. Rawls, however, perceives that this leads to inequalities. He, then, asserts that the inequalities cannot be justified by an appeal to the notions of merit and desert.⁹⁵ Since the starting social position is relevant to resources distribution, Rawls recommends that the state provide law that eliminates inequalities and mitigates the arbitrariness

⁹⁰ Poijman (n 85).[91].

⁹¹ John Rawls, *A Theory of Justice* (Belknap Press of Harvard University Press 1971).[7].

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ *ibid.*

of natural condition and social fate.⁹⁶ By no means, does Rawls rely upon desert as the basis of resources allocation. Desert, consequently, according to contemporary egalitarianism, is not the basis for allocating resources that leads to people well-being. Today, there are many states that adopt egalitarianism philosophy, especially states that are members of European Union.⁹⁷

Conclusion

It has long been recognized that Gross Domestic Product does not create people life worthwhile. The GDP deals only with money. Today, there is more life than money. The GDP is still used to measure the people wealth in a country. The wealth, however, does not necessarily establish people well-being. Well-being does not refer to economic condition only; rather, it deals with a broader aspects of life.

The idea of creating people well-being has been put forward since the end of nineteenth century. The emergence of the idea was due to deprivation of workers by the employers, who were the industrialists that dominated economic activities. It occurred because under the doctrine of *laissez faire*, the government should refrain from economic activity. As the time goes on, the idea of people well-being is developed under the philosophy of distributive justice. The governments in general rely upon distributive justice in enacting law that creates people well-being. The distributive justice is, in general, based on either entitlement theory, which is derived from libertarianism that leads to inequity or egalitarianism that desires equality without regarding desert. Consequently, individual's achievement is not taken into account. Both contemporary libertarianism and contemporary egalitarianism are adopted mainly developed countries, which are the United States and members of European Union.

This essay recommends that government impose policy to enact law to create people well-being also under the philosophy of distributive justice. Differs form

⁹⁶ *ibid.*[96].

⁹⁷ Siba Harb and Pierre-Étienne Vandamme, 'An Egalitarian Fortress?' (2023) 45 Journal of European Integration.

the basis of distributive justice adopted by many governments today, which are mostly developed countries, this essay proposes that distributive justice adopted by the governments of developing countries be based on desert. The idea of desert-based distributive justice assigns individuals to use their skill for productivity under the law on equal opportunity. In this idea, however, the government is allowed to interfere with transaction if the transaction brings about inequity.

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