

The Clash between Global Justice and Pharmaceutical Patents: A Critical Analysis¹

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Abstract. In the following paper we will talk about the issue of the access of the poor countries of the world to pharmaceuticals and it could be solved just by wholly renouncing the current Intellectual Property regime. The first section of the paper will be concerned with an outline of the problem at hand, namely how the TRIPS agreement was detrimental to the medical conditions of the impoverished from less-developed country. The second section of the paper will outline Thomas Pogge's and Aidan Hollis' solution to this global justice problem: The Health Impact Fund. We will also sketch some criticisms of this proposed solution from a libertarian perspective. The final section of the paper, and the largest, will summarize what we think is the better solution for this conundrum, one that involves dropping patents because, as we will try to show, intellectual monopoly is not a necessary way to incentivize creativity and innovation in the pharmaceutical industry.

Key words: intellectual property rights, pharmaceutical industry, patents, Global Justice, Health Impact Fund.

I. AN ETHICAL ISSUE: THE PATENT SYSTEM AND ITS IMPACT ON PHARMACEUTICALS

Since the introduction of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement, for short) in 1994, the poor of the less developed countries of the world have had huge problems in getting their medical needs properly cared for.

The situation before the TRIPS Agreement, while far from being ideal, was better because there was no interference with national regulations regarding patents. This meant that in third world countries, for example, where there was little to none patent legislation, those in need of what would be expensive medical goods in the west, could, at least in theory, have access to either those meds sold at competitive market prices or generic drugs. What TRIPS did, in short, was to force the globalization of Western patent laws. Thus, membership in the World Trade Organization was conditioned by signing of the TRIPS Agreement. Now, because the poor countries needed the advantages that joining the WTO brings (trade liberalization), they were forced to accept the rules of intellectual property much more suited to richer nations.

Thomas Pogge has a very good analysis (2010, 139-40) of the problems that are generated by the current patents system in regard of the access to medical services in developing states around the world.

1] We would like to thank our colleagues Emanuel Socaciu and Constantin Vica for the useful comments and suggestions they kindly provided at different stages of this research in the workshops within the framework of the NORMEV research project, CNCSIS code TE_61, no. 22/2010.

Firstly, one of the problems associated with the pharmaceutical industry and patent legislation, comes from the expensive nature of the research and development of new medication. The process being extremely costly, it motivates patent holders to sell their product at a price determined by the market demand from richer countries, at the expense of poor people everywhere. Secondly, development of new drugs will be mostly concentrated on diseases and other medical conditions that affect the wealthy, rather than the poor. This happens mainly because of two things: If a company would develop a drug for a third-world affliction, the final product's price will have to be in line with the manufacture and distribution price, generating quite a small mark-up. There is also the risk that pharmaceutical companies will be required to make their drug available for free or for dumping prices, making recouping development costs impossible. Thirdly, the existing patent regime encourages the production of maintenance drugs (those drugs that improve the condition of the patient without removing the disease), because they guarantee a steady stream of income all along the patent's legal lifespan. In the fourth place, filing patents and monitoring their possible infringement across tens of national jurisdictions is a very expensive process. This incentivizes high drug prices and doing whatever the company can do to extend the expiration dates of the patents. Fifthly, the lack of legal options someone may have to acquire a certain drugs will encourage that person the appeal to the black market, where she might get hold of dangerous counterfeited versions of the medicine, that may not be effective or, worse, that may hurt her health. In the sixth place, the current intellectual property rights system causes pharmaceutical companies to invest large amounts of funds into marketing, be it scaring customers that they may need a drug that they do not actually need or providing doctors with certain advantages if they prescribe their version of the drugs. This vast marketing budget will be reflected in the product's final market pricing. Last, but certainly not least, we have the infamous last-mile problem involving the distribution and proper use drugs. The current patent legislation offers no incentives for pharmaceutical companies to ensure that their products are getting to their customers or that they are competently administered. Moreover, it makes curing a disease bad of business.

These seven issues must always be accounted for by a solution that could ease the access of the poor to the medicines that they so desperately need. In Pogge's view, one must take into account the counter-productive effects that a proposal could have (2010, 142). Thus, something like compulsory licensing could very well lead to abandonment of the markets of less-developed nations, in favor of those that allow a pharmaceutical company to fully recoup its R&D investments. Also, whatever solution to this pressing global ethical and practical problem one might find, it is imperative that innovation and creativity are not stifled. For all its woes, the current patent system encourages the development of new drugs and treatments, by effectively enforcing the creator's monopoly on the use and distribution of her idea. What we need to do is to find some way to incentivize medical R&D, while at the same time making sure that a large number of people, regardless of their financial status, get to profit from those new innovations.

II. THOMAS POGGE'S SOLUTION: THE HEALTH IMPACT FUND

Thomas Pogge with Aidan Hollis came up with a proposal (Pogge 2010, 148) in this general direction: the Health Impact Fund (HIF), a global agency that could reward pharmaceutical companies that make their drugs available to those in need. This kind of reform would exclude the poor from the patents system. This Health Impact Fund does not mean that we should renounce the current patent system, it just provides a complementary way in which pharmaceutical companies could make money from the drugs they produce without hurting the poor.

How would the whole thing work? "First," Pogge writes, "just as the patent regime provides a general innovation incentive, so its complement encourages pharmaceutical innovation through an incentive that is specified in general terms: as a promise to reward any successful new medicine in proportion to its success." (2010, 148-49) Being successful doesn't mean being profitable, like in the patent system; it means reducing premature mortality and other health concerns on a large scale, regardless of the financial status of the patients.

The ideal scenario for the Health Impact Fund would look as follows: In the first place, as many countries as possible must cooperate on a long term basis and contribute to the fund. Afterwards, various pharmaceutical companies start developing drugs with the highest potential in reaching as many people as possible so that, in the end, the companies whose medicines have been most effective get rewarded. The research and development of a drug takes quite a long while, thus the need for the stability of the HIF and the need to guarantee funding even in fifteen years in the future, so that pharmaceutical companies can be sure that if their medicines have a high and positive impact on worldwide health, they will get to recoup their investment. Also, in Pogge's view, there would be need of a rule that divided the cost of the Health Impact Fund between the contributing members taking into account their gross national incomes. In terms of the reward, the discussion seems to be still open whether to allocate funds in a proportional manner to registered drugs or whether to promise a fixed monetary account per unit of health impact.

Now let's see how the Health Impact Fund would solve at once all of the seven issues stated above (Pogge 2010, 151-52): Medicines registered to the HIF would not have high prices, as investors would not risk limiting the access to the drug, because that would lower the health impact, thus lowering the funding. Furthermore, diseases concentrated among the poor would a prime target for medicine companies, as it would surely increase the health impact of their product. Defining success in terms of human health also makes away with the bias towards maintenance drugs, mainly because companies would get funded if they manufacture drugs that reduce mortality, no matter how they do it, through cure, symptom relief or prevention. In regard to wastefulness, with no need to enforce patents around the world, this issue would disappear as well. Also, the counterfeiting of HIF-registered drugs would not be profitable, as they would be sold at the lowest possible price anyway. Moreover, the HIF takes away the incentives that other pharmaceutical

companies would have to develop similar drugs, thus making the need for excessive marketing unnecessary. The last-mile problems would be a non-issue as well, as the drug companies would have to ensure that their products gets into as many hands as possible and that those patients use the medicine competently so as to increase its health impact.

Critiques of the Health Impact Fund

There have been objections both from a theoretical and a practical point of view with regard to the Health Impact Fund. The theoretical issues raised range from Pogge's conceding of the fact that "companies need better economic incentives to solve the healthcare problems of the poor" (Liddell 2010, 159) to the more libertarian critiques that we will sketch in the following paragraphs. Also, on the practical side of things there have been proposed alternative eligibility criteria for drugs, it has been questioned how the HIF would handle dispute resolution between competing pharmaceutical companies or how does one exactly calculate a medicine's health impact (Liddell 2010, 162, 170, 173).

For the remainder of the chapter we will constrain ourselves to more classical approach in critiquing the Health Impact Fund. We will assume a type of libertarian perspective that is closer to Robert Nozick's views and ask whether it is justified to gather the money of the Health Impact Fund from the tax-payers of the world. While the goal of the HIF is admirable, we do not think that forcing the citizens of some state to finance medicines for anyone other than themselves is wrong, as it infringes on those individuals' property rights:

Taxation of earnings from labor is on a par with forced labor. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. (Nozick 2001, 169)

There is also an open discussion whether a moral issue should become a legal issue. The way the funding of the HIF is structured forces, in the end, well-developed nations to pay for the healthcare of less-developed countries. This happens because each state's contribution is proportional to its gross domestic income, while the most rational action a pharmaceutical company could make is develop drugs for poor nations, curing diseases that may not even affect the people who are contributing with most of the funds. This actually makes the HIF become an endeavor that rests on forced philanthropy. From a Nozickian point of view, there is no good reason for a person to pay for the healthcare of another person, in this case, someone from the other side of the world, unless she wants to do so. While it is a kind of behavior that is ethically desirable, this does not seem like a good reason for the state to infringe on their property rights. You don't go around solving a type of global injustice by committing another type of global injustice.

Furthermore, the Health Impact Fund solution does not seek to do away with the whole of the patents system – the main reason why there is limited access to life-preserving drugs.

III. A PHILOSOPHICAL AND EMPIRICAL ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS AND PATENTS

The purpose of this section is that of exploring the philosophical foundations and limits of intellectual property rights in general and pharmaceutical patents in particular. The path we follow from this point could be broken down into a series of steps which will be structured starting from the following issues. First of all, we wish to explore the nature of intellectual property rights and pharma patents. We then set forth to present the paradigmatic justification arguments in favor of protecting and granting property to researchers who “produce” valuable ideas in the field of pharmaceuticals, namely the natural rights and utilitarian perspectives. Afterwards, we proceed to formulate a critique of the arguments previously analyzed. In other words, we wish to show that ideas cannot be appropriated because there is a fundamental ontological difference between ideal objects such as the concept for a new drug on the one hand and material objects like an actual pill. We proceed then to ask ourselves whether pharma patents are a necessary strategy to spur and protect innovation in order to produce necessary medical products or if they represent a state granted monopoly for rent seeking pharmaceutical companies. Our option will be for the latter alternative, so we also wish to explore the social cost of the current monopolized pharmaceuticals market, highlighting the situation of third world countries. Last but not least, we will sketch the coordinates of a possible solution: would abolishing the current patent system all together help people who live in developing countries gain access to much needed drugs? Or would a milder patent system aimed at reducing the IP protection for drugs be a better alternative?

Intellectual Property Rights and Patents. Towards a Minimal Definition

One of the main assumption of a classical liberal is that material objects could be legitimately appropriated by individuals. However, as Tom Palmer reveals in his article *Are Patents and Copyright morally justified? The Philosophy of Property Rights and Ideal Objects*, “intellectual property rights are rights in ideal objects, which are distinguished from the material substrata in which they are instantiated” (1990, 818). Another starting point in our analysis of IPR is the assumption that the concept of intellectual property is quite wide, circumscribing a whole area of recognized rights in relation with a certain type of intellectual production. For example, in our current legal system, whether national or international, we distinguish between copyright, patents, trademarks and industrial secrets. In this context, Stephen Kinsella suggests that patents represent a property right regarding an invention, a machinery or a certain type of process which has a useful function. A patent grants a researcher a limited monopoly regarding her invention because she has the right of excluding others from benefiting or utilizing without her permission the results of her work with a certain type of intellectual production. For example, in our current legal system, whether national or international, we distinguish between copyright, patents, trademarks, and industrial secrets. In this context, Stephen Kinsella suggests that

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How to Justify Intellectual Property Rights and Patents. Between Natural Rights and Utilitarian Arguments

In his article *Against Intellectual Property*, Stephen Kinsella distinguishes between two strategies of arguing in favor of the existence of a property right in ideas and intellectual 'products'. The first one dwells on the theory of Natural Rights. Kinsella sums up this position as follows: ideas should be protected because they are created. Tom Palmer also notes that

[M]any defenses of intellectual property rights are grounded in the natural law right to the fruit of one's own labor. Just as one has a right to the crops one plants, so one has a right to the idea one generates and the art one produces" (1990, 819).

Both Kinsella and Palmer discuss the example of Ayn Rand as a paradigmatic one for this approach. They show that for Rand the existence of intellectual property rights is a necessary condition for the protection of intellectual 'products,' protection which stems from the fact that they are the result of the intellectual labor of a person. As a consequence,

[T]he theory depends on the notion that one owns one's body and labor and, therefore, its fruits, including intellectual "creations". An individual creates a sonnet, a song, a sculpture by employing his own labor one has a right to the idea one generates and the art one produces. He is thus entitled to "own" these creations because they result from other things he "owns." (Kinsella 2001, 10).

To sum up, we can easily observe that the natural rights strategy for justifying the protection of ideas dwells in a Lockean framework, with its emphasis on self-ownership as a precondition for property rights³. As a consequence, the existence of pharmaceutical patents is natural consequence of the existence of a researcher who invents for example a new chemical structure for a future drug as a result of his own labour.

On the other hand, utilitarian arguments tend to focus, as we should expect they would do, on the effects of the existence of a legal system which protects scientific

2] According to the U.S. Supreme Court, not all inventions or results of a research are patentable. For example, the American legislation prohibits the patenting of laws of nature, natural phenomena or abstract ideas. For more details see Kinsella 2001, 5.

3] In John Locke's own words: "Though the Earth and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State of Nature hath provided, and left it in, he hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state of Nature placed in it, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer [...]" (Locke 1988[1689], 287-88)

innovation. The implicit assumption of this strategy is that, in the absence of the protection guaranteed by patents, researchers or developers of new drugs would lack the incentive to proceed with their activities because there would constantly be other researchers or companies who would “pirate” their discoveries and use them to make profit even though they had nothing to do with the intellectual development of that particular product. So, due to the fact for a utilitarian the goal of a legal system is that of maximizing the overall welfare which exists in society and taking into consideration the fact that drugs and other pharmaceutical products contribute to the well-being of individuals, we need a legal system which recognizes the intellectual property of researchers and companies, protecting their work with the use of patents.

So far we have presented a sketch of the trademark defenses of intellectual property in general and of pharma patents in particular. However, we consider that the above discussed arguments present a series of fundamental flaws. Therefore, our purpose in the next section will be to provide a critical analysis of both the natural rights and utilitarian strategies.

Two Ways of Failing to Justify Intellectual Property Rights and Patents. A Critique of Natural Rights and Utilitarian Arguments

Our goal in this section of the paper is that of exploring the limits of the above cited ethical strategies in favor of the existence of patents.

First of all, let's take the case of the natural rights strategy. Even the philosophers who argue in this tradition admit that not all ideas should be granted the right for a patent. For example, even Ayn Rand admits this inherent limit when she distinguishes between philosophical or scientific discoveries which identify laws of nature or events and certain practical invention with a social utility. In her perspective, the first ones are not patentable, because they are not the creation of a researcher but merely a discovery of a certain phenomena from the objective world. On the other hand, the latter type of intellectual ‘products’ are patentable. But, as Kinsella suggests, this distinction is quite fuzzy and not at all clear as Rand might have thought. According to his opinion, if we accept that distinction as being philosophically warranted, no one creates anything. What we are forced to admit is that, if we are referring to a researcher trying to invent a new drug, he is merely rearranging “matter into new arrangements and patterns” (Kinsella 2001, 16). To paraphrase Kinsella's, the researcher doesn't invent the matter out of which the drug is made, but neither laws of nature or facts which have to be exploited in order for that drug to be created and to have a specific effect. We could sum up our first objection against the natural rights approach as residing in the arbitrariness of granting or not granting a patent.

Leaving aside the problem which we analysed before, we consider that another difficulty of this strategy has to do with the emphasis on creation as a way of appropriating something. Kinsella explores this limit when he advances the example of forging a sword (2001, 27). Let us consider the following two scenarios. In the first one, I own a piece

of raw metal which I mined from the ground and I wish to forge a sword. After I finish with the process, the resulting sword will be mine because I've manufactured it using my property, namely that raw material. In the second scenario though, let's assume that I still have my wish to forge a sword but I do not own any type of raw metal. As a consequence, I steal some metal from someone else and I forge the sword. Would anyone consider, like in the first case, that the resulting object is mine? The most probable answer would be no, because in the first case the sword is mine because the raw material is mine, not because of the simple act of creation. This because more evident in the second scenario. The act of creation does not make the sword which I manufactured using someone else's material mine.

In effect, the natural rights approach has its inherent limits. First of all, the granting of patents in this perspective has to be arbitrary. Secondly, creation appears to be neither a necessary nor a sufficient argument for justifying the appropriation of some object, be it material or immaterial.

What about the utilitarian perspective though? Surely the argument which focuses on the absence of incentives for researchers in the absence of patents has at least an intuitive plausibility. Even though we admit this point as a warranted philosophical argument, the path we should follow has to be structured with a focus on an empirical analysis of the particular way in which the pharmaceutical industry works. In this context, a starting point of our critique is the absence of clear correlations between patents and the number of useful inventions. Moreover, the current global patent system, in which TRIPS plays a fundamental role, presupposes some inherent costs which a company that engages in research has to incur, costs which determine the high price of products such as drugs or other medical products. It also appears legitimate to ask ourselves whether, in the absence of patents, companies wouldn't be more incentivized to be creative and innovate more. We shall return to this critique of the utilitarian approach after we discuss our main objection towards namely the ontological difference between ideas and material objects and their relation with property.

The Ontology of Immaterial Objects or Why Ideas Can't be Appropriated

An essential distinction which we made earlier was that between material and immaterial objects, namely that between a chair, a DVD or a laptop and ideas or mathematical formulas. Our hypothesis is that we can speak about property only in relation about the former. Why? Well, to put it simple, property is essentially linked with scarcity. In a world of overabundance, the institution of property would be useless. In Kinsella's words,

[A] little reflection will show us that it is these goods' *scarcity* - the fact that there can be *conflict* over this goods by multiple human actors. The very possibility of conflict over a resource renders it scarce, giving rise to the need for ethical rules to govern its use. (2001, 19)

To make this point clearer, we regard property as an ethical institution which emerged in the context of reiterated conflict between agents for tangible goods. A useful analogy would be, for example, the particular way in which David Hume discusses the emergence of justice in the context of scarcity in which agents pursue their own interests⁴. As a result, the purpose of property rights would be that of avoiding or minimizing the possibility of conflict and that of increasing the costs of free-riding or trespassing. Let's take the following example which will illustrate better our point. Assume that X is a philosophy student and has a copy of Immanuel Kant's *Groundwork of the Metaphysics of Morals*. Y is a college of him but he does not have the book. They both have to write an essay on Kant's categorical imperative. Because Y does not have the book, let's assume that he decides, whether by the use of coercion or fraud to take his book. As a result, the theft leaves X without his property because tangible goods are rivalrous in consumption. Both student can't, at the same time but in a different place read about Kant's categorical imperative from the same copy. Now a different example: suppose X invents a new way of harvesting corn and Y harvests his corn accordingly. This situation is quite different in comparison to the case we presented earlier, because Y does not leaves X without either his new harvesting mechanisms which he created but neither without the idea behind the mechanism. It would be hard to say that Y stole something from X because the consumption of intangible goods such as ideas does not have the same rivalrous property as a copy of a book written by Kant. Actually, the existence of the patent system fosters the scarcity of ideas. In this context patents represent unjustified state-granted monopolies. Moreover, intellectual property rights has another profound immoral consequence: it limits the use of tangible objects which we acquired fully in line with market rules.

Are Pharma Patents Necessary for Useful Innovation on the Drugs Market?

The previous section could be summed up as an a priori argument against the existence of patents. From this point onward we will focus, drawing on David Levine and Michele Boldrin work, on an empirical analysis of the implications of the existence of pharma patents. Do they increase innovation? Is there a connection between patents and useful drugs?

In *Against Intellectual Property*, Boldrin and Levine advance the hypothesis that the existence of patents is not a necessary condition for scientific research, even in the case of the industry which is considered the "poster child" of the proponents of IPR, namely the pharmaceutical industry. The pharma industry is a paradigmatic example because it has a specific industrial typology: high fixed costs (Levine and Boldrin estimate 800 million \$ for the development of a drug), small marginal cost, innovation is the main method of entering in competition with other companies and also the market is concentrated mainly in rich countries. Dwelling on these particularities, some argue that patents represent

4] See Hume 1978[1739], 481- 84. For an interesting reconstruction of Hume's account of the emergence of justice see Socaciu 2009, 265-66.

the only solution for maintaining a high level of innovations and useful inventions. Historically speaking though, the situation is a little different. First of all, the statute of patents varied dramatically according to periods of time or geographical regions. Interestingly enough though the first countries to introduce such a legal system like the United States of America or Great Britain were, according to Boldrin and Levine, the least productive and competitive on the drug market, in comparison to Switzerland, France or Germany, countries in which such regulations were either absent or much lighter. Another interesting fact is that some important countries on the pharmaceutical market such as Italy implemented a patenting system only after foreign countries exercised an important pressure, in 1978. Nevertheless, patenting did not brought the Italian pharmaceutical market closer to success. For example, the number of active chemical compounds invented did not explode in Italy. According to Boldrin and Levine, in the period 1961 - 1980 there were discovered 1282 active chemical compounds in the world, with 119 (9,28%) coming from Italy. After the implementation of patent system similar to the one from the US or UK, the number did not increase accordingly to what some people might have thought as warranted predictions. From 1980 to 1983, out of 108 active chemical compounds discovered in the world, only 8 (7,5%) were from Italy. As a consequence, we could quantify the existence of patents in Italy as the 1,78% difference in the innovation.

The example of Italy is clear evidence that the existence of pharma patents does not necessarily lead to a more competitive and innovative drug market. On the contrary, it seems that they actually tend to inhibit innovation. In defense of their hypothesis, Boldrin and Levine also cite a series of relevant studies. For example, they discuss the results of a study prepared by the FDA (Food and Drugs Administration) on the US drug market (Boldrin and Levine 2008, 206). According to the FDA, only 25-30% of new drug approvals represent an improvement of former treatments, while the rest have a different use. They also discuss the findings of another report compiled by the *British Medical Journal* regarding drugs which they consider truly useful but also their source. The list is summed up by Boldrin and Levine as follows: "penicillin, X-rays, tissue culture, ether (anesthetic), chlorpromazine, public sanitation, germ theory, evidence-based medicine, vaccines, the Pill, computers, oral rehydration therapy, DNA structure, monoclonal antibody technology, smoking health risks" (Boldrin and Levine 2008, 229). Out of all these, only two of them were the result of a previous patenting, namely chlorpromazine and the Pill. They discuss a similar study by *Chemical and Engineering News* magazine (Boldrin and Levine 2008, 229), which focuses on the 46 most sold pharmaceutical products. According to the study, 20 products have no link with the patent system, including products such as aspirin, ether, insulin, penicillin, Ritalin or morphine. The remaining 26, Boldrin and Levine emphasize, owe their existence more or less to patents. For example, four were discovered by chance and patented afterwards (Librium, Thorazin, Taxol, and cisplatin), two were discovered in University labs (cisplatin and Taxol) and a few of them were simultaneously discovered by more companies or researchers.

In addition to this, even though the pharmaceutical industry argues that developing a new drug is costly, we might argue otherwise. First of all, the large fixed costs for developing a new drug are not just costs of R&D. Actually, a company invests a lot of its time, money and effort in the marketing of a new drug (such as contracts with doctors, advertisements) but also in lawyers specialised in the field of Intellectual Property. In addition to this, it also appears that, at least in the US, Big Pharma companies invest less in R&D in comparison to public funded universities and laboratories. A report cited by Boldrin and Levine (2008, 227) drafted by two researchers from the University of Chicago, K. Murphy and R. Topel argues that, if the private pharmaceutical industry invested 10 billion \$ in research, the federal US government made available to university labs 25 billion \$.

The empirical analysis which we provided here, dwelling on Boldrin and Levine's analysis, reveals that patents are not necessary for the development of medical drugs. Moreover, even though developing a new drug is quite expensive, not all costs are circumscribed within the framework of research. Due to the typology of the market, pharmaceutical companies have important incentives to invest in protecting their own work, in lawsuits or in marketing techniques.

Towards a Solution: Between Abolishing or Reducing the Duration of Patent Protection for Pharmaceutical Products

In the light of the ideas which we presented earlier, we consider that two options would be ethically superior, namely either the complete abolishment or a reduction of the duration of patent protection for pharmaceutical products. Due to the existence of an international patent system following TRIPS, the access of inhabitants of third world countries to essential drugs for fighting diseases like AIDS has become an ever increasing problem. We discussed a possible solution in the beginning of our paper, while analysing Thomas Pogge's approach. In contrast to his approach, what we wish to achieve is actually a similar result but using only a free market philosophy. Up to this point, our arguments focused on the fact that, in the current system, pharmaceutical companies, far from being necessarily the forces of Evil on Earth, act accordingly to the existing market incentives. As a consequence, they tend to be more involved in rent seeking activities rather than full-fledged investments in new and useful drugs.

Surely, we do not know exactly how a world without pharmaceutical patents would look like if we would abolish them now. In a way, a full cost-benefit analysis of this situation would be too difficult to make in the present paper. We should however note that, at least if we take a closer look at some examples from the recent history, there are a lot of cases in which, in the absence of state granted monopolies, countries such as Italy or Germany were able to produce new and useful drugs even if companies did not benefit from the same type of protection in comparison to pharmaceutical companies from the US or Great Britain. Moreover, the absence of patents means that the industry did not

take the current form of monopoly or oligopoly. As a result, the price of drugs was lower in comparison to monopolised markets.

Taking this historical lesson into consideration, we would like to restate our option in favor of either abolishing the patent system all together or, more pragmatically, at least a significant reduction of the state granted monopoly which would allow companies in the developing world to produce generic drugs for their local market. Of course, as someone might point out, our so called solution would only address half of the problem. Namely, even though a freer market might determine a lower price of drugs, people in third world countries would still have difficulties in acquiring drugs for the treatment of health issues such as malaria. We do admit that this would be a warranted objection. But, to conclude, we wish to emphasize the fact that, on the long run, freer markets, whether we are referring to pharmaceuticals or chairs, pave the way to individual fulfillment and prosperity.

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