SOME QUESTIONS ABOUT THE MORAL RESPONSIBILITIES OF DRUG COMPANIES IN DEVELOPING COUNTRIES

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David Resnik begins his paper with the claim that ‘Providing people with affordable prescription drugs is probably the most important health care issue for the developing world as we begin the 21st century.’1 I believe he is correct. He goes on to argue that drug companies have social responsibilities, including moral obligations based in beneficence and justice, to help meet this need by such practices as drug giveaways, discount pricing, and special licensing arrangements. However, this responsibility is contingent, he believes, in part on developing countries establishing a business climate in which drug companies can expect to make reasonable profits, which includes in particular respecting the product patents of drug companies.

While I am in full sympathy with Resnik’s desire to increase the availability of prescription drugs in developing countries, I want to raise two concerns about his argument in the paper. The first concern is the nature of drug companies’ moral obligations to develop affordable drugs for the developing world and to make these drugs accessible. The second concern is whether drug companies fulfilling this social responsibility would be at all adequate to meet the developing world’s needs, and what implications this has for the responsibilities Resnik argues developing countries have to establish a profitable business climate.

First, some worries about his argument for the social responsibilities of drug companies. Resnik offers two reasons

why drug companies have social responsibilities. The first is that if they ignore these responsibilities they may face the public’s wrath, but this is no reason why they have any moral responsibilities in the first place; and it can only show at most that it is in their self-interest, not a moral obligation, to carry out some social responsibilities. The second reason is that corporations are like individual moral agents and as such have moral obligations of beneficence – ‘to promote the greatest balance of benefits/harms for society’ – and justice – ‘to distribute benefits and burdens equitably.’ There are two sorts of problems here that need more argument than Resnik provides. The first is that while corporations are like individual moral agents in some respects, they are unlike them in many other respects, as he himself notes. In particular, we have a variety of social institutions that are established for specific purposes and functions, which make them unlike persons and affect their responsibilities; many of course believe that corporations’ responsibilities are to their shareholders and that they do not have moral responsibilities of beneficence and justice comparable to those of individuals. Resnik too quickly assumes that corporations have the moral obligations of individuals.

The second worry concerns his account of the moral obligations of beneficence and justice of individuals. Few people believe and few moral theories hold that individuals have a moral obligation to promote the greatest balance of benefits/harms for society. Individuals may have some obligation to benefit others, although even that is controversial as a moral requirement, but it is widely held that our moral obligations to benefit others in the absence of any special relations are sharply limited. Moreover, as Resnik acknowledges, these are understood to be imperfect obligations, meaning individuals have substantial discretion in deciding whom to help, opening the possibility of drug companies restricting their beneficence to the developed world. However, he argues that this duty is owed ‘to all people’ – it requires companies to ‘promote the welfare of humankind’ – and so drug companies are morally required to do business in the developing world, not to restrict their activities to the more profitable developed world, and to carry out their duties of beneficence and justice in the developed world. But even if we do have obligations of beneficence ‘to all people’ or to ‘humankind’ generally, since we cannot in fact help all, it is generally accepted that we have discretion about whom among the needy to help. More argument is needed to establish a moral obligation to do business in, and exercise social responsibilities in, the developing world.
Similar worries concern Resnik’s claims about justice. It is not clear to me what it means to claim that individuals have an obligation to distribute benefits and burdens equitably. What benefits and burdens must I distribute equitably – my time, efforts, assets, etc. – and what is an equitable distribution of them? Setting these questions aside, principles of justice at the most fundamental level apply not to the actions of individuals, but rather to the design of basic social institutions. Individuals, as Rawls has argued, have obligations to help establish and to support just institutions, but it is quite another thing to claim they have moral obligations to ‘distribute benefits and burdens equitably.’ Meeting other basic needs such as for food and shelter is commonly taken to be, even among those who regard them as human rights, a governmental responsibility, not a special responsibility of the food or real estate industries. Securing coverage of prescription drugs for the elderly is a major political issue in the United States today, but no side in the controversy argues that it is the drug companies’ social responsibility of beneficence and justice to meet the need.

To establish the social responsibility of drug companies that Resnik supports then, we need a more detailed analysis of how corporations both differ from as well as resemble individual moral agents, a more developed account of obligations of beneficence and justice of corporations that better reflects these similarities and differences, and finally an integration of these analyses of the social responsibilities of corporations into a broader account of the obligations of national and multinational institutions to establish social justice.

Set aside these worries and suppose that Resnik is correct that drug companies do have social responsibilities based in moral obligations of beneficence and justice to develop affordable drugs needed in developing countries and to make those drugs accessible. How adequate would carrying out that responsibility be in meeting the needs of the developing world for prescription drugs? This is of course extremely difficult to know with any precision. The answer depends both on an estimate of the resources that the drug companies are morally obligated to expend to meet their social responsibilities, which would of course be extremely controversial, and on an estimate of the pharmaceutical needs of citizens of developing countries and the costs of meeting them; the marginal costs of producing the additional drugs would be much less than the developed world price of those drugs. But let me just use a figure that Resnik cites to illustrate the scale of the problem. He notes that worldwide
there are 36 million people infected with the HIV/AIDS virus and that 90% of them, or over 32 million, live in developing countries. Suppose that the costs of pharmaceuticals for each person infected with the virus would be $500 per year – of course in the developed world the costs are many times this, although that is on the basis of arguably inflated charges for these drugs in the developed world. That means the costs of supplying these drugs to HIV+ persons in the developing world would be over $16 billion per year, a substantial portion of the net earnings of the pharmaceutical industry in 1999. AIDS is of course only one of many diseases generating pharmaceutical needs in the developing world, although a relatively expensive one.

Resnik grants that pharmaceutical companies’ principal responsibility is to earn profits for their stockholders and so I believe it is clear that no reasonable account of their social responsibility to make drugs accessible in the developing world would come anywhere near meeting the needs for pharmaceuticals there, quite apart from the pragmatic likelihood of the companies meeting that responsibility. In these circumstances is it morally wrong for countries to reject the cooperative strategy that Resnik supports, which involves respecting product patents, and instead to ignore patents in order to produce or purchase drugs necessary to save lives at a small fraction of their patent protected costs? Resnik suggests that even in terms of self interest not respecting product patents may purchase short term benefits at the cost of greater long term losses because pharmaceutical companies are unlikely to work cooperatively with countries that do so. But this prudential judgment is certainly arguable, so is there sufficient moral reason not to ignore patents if countries judge that doing so is necessary to save the lives and health of their citizens?

Certainly, some patent system is important to enabling companies to earn back the large development costs of new drugs, though as Resnik notes the current patent system has made the pharmaceutical industry the most profitable major industrial sector in the world for many years. But the vast majority of pharmaceutical industry profits are derived from the developed world in which product patents are respected, and so whether or not developing countries respect product patents will not significantly restrict research and new product development, though it will encourage continuing to focus those efforts on developed world health needs. It can quite plausibly be argued that in not respecting patents developing countries are free riding on the research and development efforts of drug
companies that are supported by the prices of drugs in countries in which patents are respected. But that free riding and resulting unfairness may not be enough to make it, all things considered, morally wrong for developing countries not to respect product patents.

The enormous income inequalities between developed and poorer developing countries, which make it impossible for the latter to afford the prices of patent protected pharmaceuticals, are in my view, though there is not space to argue it here, one of the most serious injustices in the world today. If that is correct, then pharmaceuticals are unaffordable in the developing world largely because of unjust global inequalities in income and wealth. When developing countries choose not to respect product patents as their only effective means of making available pharmaceuticals necessary to save lives and protect the health of their citizens, doing so is arguably a step towards greater justice between the developed and developing world; this may be a case where two wrongs do make a right, that is where existing global injustices make not respecting product patents, which in the absence of those injustices would be wrong, all things considered, morally justified. This may have a greater impact in making pharmaceuticals accessible in the developing world than voluntary efforts from the pharmaceutical firms, and the threat of ignoring product patents may have a greater effect on the ‘voluntary’ efforts of pharmaceutical companies than arguments about their social responsibility.

I want to make clear that I am in full agreement with Resnik that it would be a significant step in the direction of justice for pharmaceutical companies to accept a social responsibility to do substantially more to make drugs accessible in the developing world, and I would welcome their doing so, but I believe an adequate and convincing case delineating the moral obligations of pharmaceutical companies in this regard has to be more carefully made than he has done. Nevertheless, his paper is to be welcomed in helping give these issues the attention they deserve.

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