

Morality and Access to Essential Medicines: Pairing the Theoretical and Practical

Editorial for special issue

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Access to essential medicines is uneven within and across states. Many persons do not have secure access to medicines necessary to live even less demanding conceptions of the good life, however defined. Questions concerning access to essential medicines implicate fundamental health justice concerns central to the branch of contemporary bioethics concerned with the field's relationship to political philosophy. A striking part of this inequality is its global dimension. Access to essential medicines is particularly restricted for those who live in less affluent countries. These concerns are acute in the context of 'developing world' bioethics given that issues in relevant states cluster with other disadvantages and state capacities that are limited in other aspects.

This situation raises two questions in particular: (1) What makes inequalities in access to essential medicines wrongful? and (2) What can and should be done about it (and by whom)? It is tempting to sever these questions and understandable to do so given their magnitude and scope. Important work treats each independently and thereby provides valuable insights. The first question pertains to core theoretical issues regarding value and justice. Such conceptual concerns can be fruitfully addressed without in-depth analysis of practical details. Indeed, details of real-world cases can skew intuitions about concepts. The second question then appears explicitly practical. One may worry that focusing on 'philosophical' questions can stop one from taking necessary action. If, as it would seem, a lack of access to essential medicines is a

problem on (almost) any moral view, one may be better served by addressing the problem head-on rather than worrying about the precise nature of the wrong to be addressed.

However, as readers of this journal are aware, different moral problems can call for different practical responses, and many practical interventions need a clear sense of the problem at hand to properly solve it. Bioethics is partly characterized by its attention to interactions between theoretical and practical questions. Therefore, treating the two questions in tandem can be helpful even if one emphasizes one more than the other. This allows for perspectives where our answers to one inform those given to another.

The works in this special issue demonstrate how answers to each question implicate answers to the other and the value of treating them in tandem instead of in isolation. Nicole Hassoun's *Global Health Impact: Extending Access to Essential Medicines* (2020) provides proof of concept for this dual analysis and is a touchstone for each article. Existing data on absolute and relative access to essential medicines highlights global, regional, national, and even sub-national inequalities that naturally raise questions regarding who (if anyone) is responsible for assisting those who are worse off. In relation to health, these questions also pertain to whether responsibilities for global inequities are located with affluent countries, pharmaceutical companies, or well-off individuals. Hassoun provides a distinct response to these and related queries.

Global Health Impact provides an interest-based argument for a right to the essential medicines necessary for a minimally good life and legal recognition and enforcement of such a right. It then defends an approach to realizing that right and thereby addressing problems with access to essential medicines, particularly given state failures to fulfill the right Hassoun defends. Hassoun suggests a legal right will foster the "creative resolve" necessary to address access issues and offers the Global Health Impact Project as an example of a possible creative solution. That project would permit pharmaceutical companies that developed affordable goods that demonstrably address the global burden of disease to label all their products as being from an impactful company. Hassoun argues that if consumers recognize their duty to consume ethically, they will let this inform their purchasing decisions across competing labels. This, in turn, would incentivize the development of affordable and effective pharmaceuticals, helping fulfill the right to essential medicines and addressing related wrongs.

Hassoun's intricate arguments can be reframed as related answers to the two questions discussed above. On this view, Hassoun is characterized as answering as follows: (1) Lack of access to essential medicines is wrongful when and because it hinders persons' ability to live a minimally good life and such wrongs violate rights and (2) The international community should recognize a legal right to those goods, states should recognize corresponding domestic legal rights, and pharmaceutical companies and consumers should fill gaps in state fulfillment of those rights, with the Global Health Impact Project offering a fruitful potential means for doing so.

The authors in this special issue each address major components of Hassoun's approach. They thereby demonstrate the value of treating theoretical and practical questions together and the generative nature of Hassoun's particular response. Their contributions go beyond commenting on Hassoun's work because the questions they raise could and should be considered by any response to (1) and (2). Their approaches should help further analyses of the persistent problems raised by unequal access to essential medicines even as they leave ample space for further reflection.

The articles by Hausman (2022) and Hirose (2023) each question whether the problems related to access to essential medicine are best posed in terms of rights, as Hassoun does. Hausman argues that Hassoun's right to the health needed to enjoy a minimally good life is difficult to specify and perhaps cannot support her proposed policies. Hirose, in turn, argues that Hassoun's account of a minimally good life is inconsistent with the conception of a right to health that Hassoun seeks to ground in an interest in such a life. Hirose, however, contends that this is not an issue if one does not take a right-based approach. Moreover, Hassoun's concern with ensuring "increased access to essential medicines in poorer countries with a lower life expectancy" is not best understood in terms of or realized through recognition of a right to health. Non-rights-based axiological considerations provide better grounding for Hassoun's policy goals.

This aspect of the debate between Hassoun and her interlocutors does not strictly follow classic utilitarian and deontological debates but instead highlights related distinctions between welfarist and interest-based or rights-based accounts of health justice. These distinctions more generally affect the nature of any claims that those who lack access may have, as well as the duties or obligations that may be owed to them. The welfarist challenge presents rights-based accounts with an explanatory burden:

Advocates must explain the nature of the wrong and why the wrong provides particular claimants to a particular form of standing to demand provision by specific persons.

Other challenges concern how to characterize the wrong and measure the wrong. Such challenges are put forth by Hirose (2023) and Herlitz (2023). They are applicable to welfarist and interest- or rights-based views. First, one must identify the moral good underlying the claim, whether it be a minimally good life, basic health, dignity, or some other standard. Next, one must identify the essential medicine conducive to it. Then, one must decide how to weigh competing claims across different localities and time and explore their implications for which goods to prioritize where tradeoffs are necessary. Hirose, as noted, examines how we are to understand access to a minimally good life over time. He argues that if we adopt the lifetime view of a minimally good life, we could justify increased access to essential medicines for many poor individuals with intuitively strong claims without any need to appeal to a human right to health. Herlitz surveys time-related and other important aspects of what it means to be worse off than others.

Other challenges relate to the familiar difficulties of specifying the scope and content of any right to healthcare (also discussed in earlier Hassoun (2015, 2019) and in both substantive works like Powers 2015 and survey pieces like Rumbold 2017). But the underlying problems likely generalize. For instance, while Hausman and Hirose offer scope and content-related arguments as a challenge to a rights-based account, Hassoun argues that similar challenges apply to welfarist views. This exchange and the arguments provided therein are relevant beyond debates on the merits of Hassoun's proposal.

Each work in this special issue demonstrates that there are practical implications of seemingly theoretical discussions about how to characterize the underlying problem. Some implications are of particular interest to scholars in developing world bioethics. It is, for instance, notable that some characterizations of the underlying wrong would prioritize practical solutions aimed at persons in developing countries. Others would not. Theoretical choices can, accordingly, have implications for whether global health practices should focus on the developing world and where the duty to rectify global inequality is most plausibly placed. Even views that characterize the problem in terms that require priority for claims within the developing world may require different responses. For instance, opinions on which the wrong concerns comparative lack of access across states or general lack of access to a set of essential medicines could have

distinct implications regarding where the responsibility to remedy is located. Some are more well-suited in terms of resources or in other terms to address a particular problem.

However, accepting a particular conception of the underlying problem does not limit one to a single practical response. Assuming so would portray an oversimplified relation between (1) and (2). Other papers in this volume examine practical questions of how to respond if one accepts Hassoun's general approach to the problem regarding inadequate access to the essential medicines necessary to live a minimally good life. Da Silva (2023) grants the existence of a moral right for argument's sake but questions whether domestic legal rights are desirable means of fulfilling them. On the contrary, Berkey (2023) grants a legal right for the sake of argument but questions the existence of the moral right identified by Hassoun. Furthermore, Berkey contends that the obligations of pharmaceutical companies and consumers in this domain are not secondary to the state's duties. Where no state could fulfill the right in a world like ours, they are only one of the multiple candidate duty-bearers. This would, Berkey contends, also be true in a situation where states are and do comply with their obligations – even then, consumers and companies may have a role to play and corresponding duties.

These articles raise challenges for any rights-based solution. It would also be important to properly specify the scope and content of any rights and duties. Any practical solution should be designed in ways likely to further the substantive moral ends. Difficult questions then arise as to which form of state action will likely achieve those ends – and whether states are even the proper agents for necessary change.

Such challenges can also be especially pertinent in developing world bioethics. Legal rights to healthcare are more common in the developing world (as Da Silva notes (but see, e.g., Rosevear et al. 2019 for more empirical detail)). Developing states should be attentive to ongoing controversies about whether and when legal rights to care are likely to have their intended ends and alternative or complementary means of fulfilling them. The international community and global health scholars should likewise compare the merits of state-based options and alternative or complementary global or market interventions.

No single volume is likely to address all distinctions in this area or positions thereon. Rather than aiming for comprehension, this volume seeks to demonstrate the importance and interrelation of theoretical and practical work on the problem of access

to essential medicines. We hope this volume and Hassoun's reply will help move the debate forward and spark well-deserved interest in Hassoun's work.

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