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Access to AIDS medicine: ethical considerations

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The concept of *property* is usually understood as a moral and legal right to exercise exclusive influence and control over a material object (1). A person who owns something, such as a patent or medicine, can dispose of (or control access to) it without regard for others. Like and including patents, most property in a modern capitalist economy is intangible (2). For example, pharmaceutical companies do not merely own the medicine they produce, but (in many cases) 'own' the intangible molecular–biological formulation of the medicine. They own the medicine's 'blueprint' and thus can prevent others from producing the same or similar medicine.

Despite this conceptualisation of property, ideas easily can be considered a 'public good' in the sense that to share an idea is relatively costless and can be as easy as exchanging a sheet of paper. Ideas do not easily exhaust themselves with use; more is always better. Rather than having one drug company in Switzerland or in the United States producing AIDS medication, as we do under our contemporary property model, we could have factories throughout the world producing medicines that are patented by companies in the wealthy industrialised nations. Such regional manufacturing would be particularly effective in places such as Africa, Asia and India, which are hardest hit by AIDS and where locally produced medicines could be distributed easily to the people who need it, particularly to those who live in tribal or village communities that ordinarily lack access to western-produced goods. If 50 or 100 factories throughout the world were to produce the medicine, as opposed to two, the nature and effectiveness of the medicine would remain unaltered.

What would change, however, is profitability. As private social goods become public, the ability of individuals to gorge themselves on public misfortune (or collective inaction) is lessened. Medicine does not have value outside its use—the existence of medicine implies its utilisation. In other words, medicine is the antithesis of symbolic exchange. To commodify medicine as capital—to exchange it in the open market—is to invalidate its function as medicine at the expense of its human ends and the good of the community. Society ceases to function ethically when life-saving medicine is withheld from afflicted people to benefit the minority over the majority.

Practically speaking, to suggest public access to AIDS medicine goes against important individual rights that are privileged within the private property regime. Given this tension, the private property regime can reasonably be made to yield, and we may come to consider it a crime against humanity to sacrifice the common good to protect an individual's wealth. Those who possess wealth should be considered obligated to hold that wealth in trust for humanity.

Simply, morality now must be considered part of the cost of doing business. After the collapse of Enron and other major US corporations in 2001–02, this argument is becoming much more culturally salient. But even before recent events returned the issue of corporate responsibility to the forefront of the world's consciousness, commentators supported this idea. As articulated by John J Maresca (3,4):

> *[T]oday a business can no longer be seen as a creator of wealth solely for its owners. The role of business as a creator of wealth is broader than that. Business is the principle engine for generating wealth for society as a whole. And business is the producer of new and beneficial products, which increasingly must be safe, environmentally harmless, and give long term benefits.*

In other words, the world of business must increasingly be viewed as a world where human creative energy produces the conditions of life in new and creative ways. As such, business has an important public role to play in the development of society—it must serve to the best of its ability; this and not profit *per se* is the reason for its existence.

Related to exclusivity is the notion that owners have the power to alienate their rights and control over a resource on whatever terms they alone consider appropriate. For example, a property owner is free to trade on terms that are most favourable to the owner, without regard to non-market possible implications of the owner's actions, relative to health, peace or world stability. Exclusivity and alienation mean that property must be free to shift from what law and economics theorists consider to be 'less productive to more productive use through a voluntary exchange' (5). The assumption is that the person who most highly values a good is willing to pay the most money for it. Yet this assumes, quite erroneously, that the value of money is constant, that a hundred dollars to someone who is poor is the same as to someone who is rich. In reality, the value of money often relates to the amount of wealth one possesses.

Similarly, there are many situations in which people value something highly, such as their health, but cannot pay the 'premium' that is expected for it by market logic. More specifically, some objects exist that cannot be reconciled easily with the notion that goods should be sold to the person who is willing to pay the highest price—there are values that society recognises as important that the market does not easily reflect. These things we either take out of the market entirely or make an exception to asserted principles of so called 'economic effectiveness'. AIDS medicine (and ultimately, other types of medicine) should fall into this category.

The idea that certain objects are unfit for market exchange is known as 'market inalienability'. As Margaret Jane Radin explains, 'Society values certain things that cannot or should not be sold for a price. People, body parts, sex, and children are typical examples. While many people feel very uncomfortable (or should feel uncomfortable) selling people, body parts, sex, or children, society does not have any issue with giving away these things for free under certain circumstances.' The point of market inalienability is that, as a society, we value the non-commodification of some items, rendering those things non-saleable. Rather, we perceive the item as a personal human good or resource to which a monetary value cannot be assigned. To identify something as invaluable is to say that it should not be corrupted by market processes. When we talk about market inalienability, then we often justify our departure from market norms by using the term *integrity*. Some things, such as those stated above, that otherwise we could commodify and sell in an impersonal market to the highest bidder, have a normative value that supersedes the normal rationales of the market. To place them in the market is considered repulsive and prohibited in civilised society.

In highlighting the term *integrity*, we try to affirm ourselves as people with identities and authentic needs. In doing so, we reject our false identities as faceless consumers whose only worth to the producer is the power of our pocketbook. When we consider the concept of integrity, we acknowledge that normal market practice can be dehumanising and oppressive, particularly for lower income people. We also realise that normal market practice is positively unconscionable when the people objectified as consumers are those AIDS victims who cannot pay for a life-extending, suffering-reducing medicine.

Market inalienability recognises that some people do not have deep pocketbooks; thus, they do not have a market personality. Still, poor people remain human beings and we protect them by prohibiting them from selling their bodies, organs, or children. In much of the developing world, however, extreme poverty forces many people to do just this (6). As Ulla Fasting, Jan Christensen, and Susanne Glending note, 'It is well known and widely publicised that many poor people living in India have sold one of their kidneys, or one of their eyes, for a sum of money that would enable them to cover the basic needs of their family for a period of time . . . This was going on in an open market, also refereed to as "India's kidney bazaar" (7).'

Few people disagree with the paternalistic protection of prohibiting people from selling their body parts. Some things must be given away. To repress knowledge of medicine that can reduce the spread of AIDS (as in the simple and inexpensive procedure that protects children from inheriting AIDS from their mothers during childbirth) or to fail to reduce the suffering of people afflicted with AIDS on the grounds that one person 'owns' the medicine and another has no right to it without payment of a premium is so completely reprehensible that it should be beyond acceptance and legal protection in civilised society. The fact that many in the international community tolerate this system is a sign that we have much moral growth to accomplish as a global community.

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