

Opinion

Humanity as an end in itself, pharmaceutical companies and the pricing of antiretroviral drugs (ARVs) in Africa

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Introduction

Twenty-five million people to date have died from AIDS. An estimated thirty-nine million people worldwide were living with HIV at the end of 2005. Twenty-five million of these live in Sub-Saharan Africa. Inhabited by just over twelve percent of the world's population, Africa is estimated to have more than sixty four percent of the AIDS-infected population¹. Of these twenty-five million people infected with the HIV, only one million have access to antiretroviral drugs (ARVs). Unlike in the West where many people can afford to buy these life-saving drugs, many Africans find ARVs too expensive to buy. The challenge then is to make these drugs accessible to those that desperately need them as their current exorbitant prices condemn many living with the virus to premature deaths. The question that can be asked is: who is responsible to make the prices of these ARVs affordable to those living with HIV/AIDS in Africa? This paper argues that the pharmaceutical companies, presumably as moral agents, are largely responsible to make the prices of these ARVs affordable to those infected. Pharmaceutical companies have a moral duty not to use humans as a means to their ends. Immanuel Kant in his espousal of his moral theory asserts that in whatever we do we must always treat humanity as an end in itself. Treating humanity in persons has both positive as well as negative senses. It may be argued, therefore, that by pricing the ARVs highly to generate huge profits, the pharmaceutical companies are treating humanity as a means to their goal of profit maximization. Unless the pharmaceutical companies treat humanity as an end in itself, many lives will be condemned to premature deaths and the battle against AIDS will never be won in Africa.

HIV/AIDS treatment and pricing of ARVs

HIV stands for human immunodeficiency virus. This is the virus that causes a disease called AIDS. The term AIDS means acquired immunodeficiency syndrome and is a collection of symptoms and resulting infections resulting from the specific damage to the immune system caused by HIV. It is the most advanced stage of the HIV infection. It is transmitted through direct contact with a bodily fluid containing HIV. At the moment there is no cure or vaccine for AIDS. People can know if they have HIV and AIDS only when they have their blood tested. However, a positive HIV result does not mean that a person has AIDS. Actually it may take years for full blown AIDS to manifest.

According to UNAIDS/WHO 2006 Report on the global AIDS epidemic, Sub-Saharan Africa is the worst-affected by HIV and AIDS than any other region of the world. An estimated 24.5 million people were living with HIV at the end of 2005 and approximately 2.7 million additional people were infected with HIV during that year. In 2005 the AIDS pandemic claimed an estimated 2 million people in the Sub-Saharan Africa. More than twelve million children have been orphaned by AIDS. According to the same report, the figures of people living with HIV in the world's regions as of December 2005 were as follows: Middle East and North Africa 460,000; South and South-East Asia 7.8 million; East Asia 750,000; Oceania 81,000; Latin America 1.7 million; Caribbean 250,000; Eastern Europe and Central Asia 1.7 million; Western and Central Europe 740,000; and North America 1.4 million.

The introduction of antiretroviral drugs has dramatically reduced mortality from AIDS in wealthy countries, but has not significantly altered the course of the disease in Africa. Currently for most of those with AIDS in Africa ARVs are still unaffordable. Of the twenty-five million people infected with the HIV in Africa only one million have access to antiretroviral therapy. However, this was far below the target set by WHO and UNAIDS whereby three million people were to have access to HIV treatment by the year 2005 through an initiative dubbed '3 x 5' programme. The barriers are partly social and logistical, but the overwhelming barrier is cost². This agrees with what Carmen Pérez-Casas observes in the *Bulletin of Experimental Treatment for AIDS* (2001) that many factors affect access to these medicines, but the most significant barrier to access is the price of the drugs. However, access to the life prolonging drugs is being recognised as a key factor to improving the quality of life of those infected. The

key factor in the expense of ARVs is their patent status, which allows drug companies to recoup research costs and turn a profit, enabling the development of new drugs. In view of this, some international aid organisations such as VSO, Oxfam and Médecines Sans Frontières have questioned whether the revenues generated by ARVs really tally with research costs. In contrast, in some African countries, ARVs are available for under US\$140 per person per year. These are supplied by drug manufacturers in Brazil, India, Thailand, and China who have manufactured generic copies of patented ARV drugs produced in Western countries. However, the prices for these ARVs are still unaffordable to many Africans who live on less than a dollar a day. This is one of the major reasons cited for treatment interruptions. Chinua Akukwe³ argues that more than 40% of Africans live on 65 cents a day and that they cannot afford the high cost of ARVs. It is therefore unlikely that African governments can ever afford the expensive drugs.

ARVs are expensive. Of course, most people in Western countries due to their sound economies can afford to buy these drugs. In Western countries, ARV treatment costs between US \$10,000 and US \$15,000 per year per person. Generally, pharmaceuticals find Africa to be unprofitable market for the ARVs. It can, therefore, be argued that most drug companies are not making huge profits out of the antiretroviral drugs in Africa. In trying to answer the question: ‘What is the best negotiable price for the ARVs and how will this change over time?’ Stephen S. Forsythe argues that there are two major reasons why pharmaceutical companies are afraid to lower down the prices of the ARVs⁴. First, while they recognise that the retail price for ARVs is expensive in developed countries (between US\$ 10,000 and \$15,000 per person per year), they are also concerned that offering ARVs for a discount in developing countries could create arbitrage opportunities that could significantly reduce their profit levels (purchasing ARVs at a lower price in developing countries and reselling them in developed countries). Second, they are also concerned that eventually there will be demands by health insurance providers and activists in developed countries to reduce their prices to levels in developing countries. As can be noted, pharmaceutical companies would want to make as much profits out of the ARVs at the expense of the many millions living with AIDS. However, little information is available from the pharmaceutical companies on how much it costs them to produce the ARVs.

Humanity as an end in itself and the pricing of ARVs

Immanuel Kant (1724-1804) made important contributions to all the major fields of philosophy and is considered one of the most influential philosophers in history. He wrote three important books in moral philosophy: *Groundwork of the Metaphysics of Morals* (1785), *Critique of Practical Reason* (1788), and *The Metaphysics of Morals* (1797). Kant's moral theory attempts to make sense of the ordinary, commonsense idea of duty⁵. At the heart of Kant's moral philosophy is this supreme principle of morality that he calls the categorical imperative. The categorical imperative has three formulations. The most famous two are 1) *Act only according to that maxim whereby you can at the same time will that it should become a universal law*; and 2) *treat humanity in oneself and others always as an end and never merely as a means*. According to Kant, the various formulations of the categorical imperative are all different ways of expressing the very same principle, which is deeply rooted in the connection between reason, the moral law and human freedom. In this essay I am articulating that Kant's second formulation condemns the approach taken by pharmaceutical companies to charge ARVs exorbitantly to make profits at the expense of human lives in Africa. Thus, pharmaceutical companies are being unethical and exploitative in their ARV business in Africa because they are using man as a means to their ends.

In his second formulation of the categorical imperative, Kant asserts that we treat humanity in oneself and others always as an end and never merely as a means. Thus, Kant argues,

“humanity as an objective end is one such that in its place one can put no other end to which (it) should serve simply as a means...”⁶

One interpretation of the above is that a person can, and too often does, treat humanity in his own person merely as a means; for this means, among other things, being willing to trade or sacrifice his rational capacities for something of value merely because he happens to want it.⁷ Thus Kant's second formulation condemns sacrifice of life for what has mere price, i.e, fame or money (profits).

Kant argues that humanity in persons has an unconditional and incompatible worth. Humanity has dignity and this dignity has intrinsic value. Human dignity is an “incomparable” worth, “exalted above all price,” and “admits of no equivalents.”⁸ This dignity is what we all need to respect whenever we act because it has precedence over relative and arbitrary ends.

From the categorical imperative we can derive all other duties and these can be organized into a system. In light of this, the two most general duties that we have are (1) the duty of self-perfection and (2) the duty to promote the happiness of others.⁹ From these general duties we can derive further, more specific duties. For instance, in promoting the happiness of others we are required to develop attitudes of beneficence, gratitude, sympathy and respect for others as ends in themselves. Thus ‘respect’ in a Kantian sense would imply both negative and positive duties since passive avoidance of evil and the active pursuit of good are simply two sides of the same moral coin. Respect for the humanity of others implies a positive duty since one has to take account of the ends of others in one’s own plans. Kant’s moral theory prevents moral agents from using man as a means to any particular end.

Pharmaceutical companies as moral agents have moral responsibilities. A question that should be answered then is: what moral responsibilities do pharmaceutical companies have? Kant would argue that companies, besides profit-making, must see to it that the welfare and dignity of persons is respected. In other words, companies must see the necessity of equal balance among the following business considerations: profit, consumer satisfaction, and societal well-being. There are certain expectations that must be met specifically by pharmaceutical companies. Thus Kant would insist that respect for the intrinsic worth of other people must take precedence in business. This may mean that drug companies need to make the drugs affordable to those that need them. Societies expect drug companies to function ethically through acts of beneficence, benevolence, sympathy, and respect for others. This is a requirement in Kant’s moral theory.

Many millions of Africans are dying because they cannot afford to buy ARVs. This is happening when the drug companies are busy accumulating huge profits. Carmen Pérez-Casas writes:

Whatever the true investment of the pharmaceutical industry in researching and developing antiretrovirals, these drugs have earned the companies consistent revenue. Between 1997 and 1999, Glaxo Wellcome's sales for AZT, 3TC, and Combivir totalled more than \$3.8 billion. Bristol-Myers Squibb sold more than \$2 billion worth of d4T and ddI over the same period.¹⁰

Looking at the revenues above, it can be argued that drug companies are the most profitable industry in the world. But these companies have the power to save lives

by making the life-saving drugs affordable. Kant would argue that they are using man as means to their ends—merely generating more profits. Exploitation can be defined as occurring when one person gains by using a character of another person to his/her own advantage.¹¹ Exploitation, then, would include pharmaceutical companies raising a huge profit out of the AIDS pandemic, taking advantage of people's ill health, by overpricing the ARVs. In this the patients (consumers) are harmed and taken advantage of, and the drug companies are profiting off the desperation of the patients. In other words, the companies' gain is disproportionate when compared with the exploited.

Pharmaceutical companies have a duty to save lives because they have the capacity to do so, and can do so with little effort. David Resnik argues that pharmaceutical companies have the moral obligation to manufacture affordable drugs for developing countries and to make these accessible to promote the welfare of humankind.¹² Others have also argued that pharmaceutical companies have special obligations to the suffering in developing countries because of their nature. They have the expertise that others lack, and because they make their living or profit from health-related activities, this gives them much more obligation than other companies.¹³ The argument here is that pharmaceutical companies can save lives of those suffering with little effort. It is clear then that the obligations that drug companies have to the people relate to eradicating suffering and improving the quality of lives of the sick and not using them as a means.

Recent studies have shown that in countries which had an HIV epidemic where the prices of ARVs were reduced as a result of efforts by the national governments to give these drugs at affordable prices, mortality and morbidity rates have tremendously been reduced. A case in point is Brazil. William Flanagan and Gail Whiteman in their paper "AIDS is Not a Business," write:

"At the end of the 1990s, Brazil was faced with a potentially explosive HIV/AIDS epidemic. Through an innovative and multifaceted campaign, and despite initial resistance from multinational pharmaceutical companies, the government of Brazil was able to negotiate price reductions for HIV medications and develop local production capacity, thereby averting a public disaster."¹⁴

This simply supports the point that reducing the AIDS drugs is the surest way of dealing with the HIV and AIDS scourge in Africa and requires concerted efforts from all parties involved in the fight against HIV and AIDS.

Corporate social responsibility and pharmaceutical companies

The concept of corporate social responsibility (CSR) has generated a lot of debate in business ethics in recent years. There are varied definitions for the concept of corporate social responsibility. Archie B. Carroll defines CSR by saying that:

The social responsibility of business encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time.¹⁵

In other words, a socially responsible corporation should strive to make profits, obey the law, be ethical and be a good corporate citizen. This is in sharp contrast to Milton Friedman's arguments that corporations have no social responsibility but to maximize profits.¹⁶ This then means that profitability and responsibility go hand in hand. In globalised economy, the interests of stakeholders of corporations need to be taken seriously. In this way the concept of corporate social responsibility supports Kant's moral theory. Pharmaceutical companies need to help to reduce the suffering and improve the health and quality of life of people around the world. HIV and AIDS being a socio-economic problem needs urgent attention of the pharmaceutical companies. They can deal with it either by donating ARVs or making them affordable. The latter seems practical than the former since pharmaceuticals need to recoup production costs of the ARVs. It is morally problematic to price ARVs highly to a huge population that is dying of HIV and AIDS when something can be done to arrest the situation. Pharmaceutical companies have a special moral duty in this case to save lives of those impoverished and living with the virus in developing world because they produce the life-saving drugs.

Who's in the business of saving lives?

So far I have consistently argued that pharmaceutical companies have special moral obligations towards society. These obligations are based on Kant's moral theory and the notion of corporate social responsibility (CSR). However, others have argued to the contrary. Some take an extreme position to deny that corporations in general and pharmaceuticals in particular are moral agents and

that it is unreasonable to argue that they have moral responsibility to the society. Still others insist that pharmaceutical companies do not have any special moral obligations to the society but that their social responsibility is the same as that of any other corporations. Pepe Lee Chang in his paper, “Who’s in the Business of Saving Lives?” thinks all companies have same obligations and he argues:

“...there is no distinction with respect to responsibilities, between pharmaceutical companies that produce life-saving drugs and companies that produce other products.”¹⁷

Lee observes that the duty bestowed on a company to save lives derived from the ability to do so, and to do so with little effort is misplaced. This means that to hold pharmaceutical companies especially responsible for saving lives in third world countries is unjustified. This is so because drugs are not the only things that save lives. Money can also be used to save lives. Money can be used to purchase needed supplies, drugs, provide doctors, etc. And this can be done by all corporations that are allowed to reach and maintain a reasonable profit margin and they can do that with little effort.

An extension of Lee’s argument would be what Thomas W. Pogge echoes in his paper titled “Human Rights and Global Health: A Research Program.” Pogge offers a plausible explanation when he argues that reducing the prices for drugs in Africa is a responsibility not only of drug companies but also of other parties like African governments, affluent citizens and governments, international organizations, such as the World Trade Organization and the World Health Organization, academics, and non-governmental organizations. He observes that pharmaceuticals spend huge sums of money to produce and market the life-saving medications, and that to demand a reduction in the prices of these drugs is asking too much from them. Companies need profits for their sustainability. The one important way to lower the prices of drugs in poor countries is by rewarding pharmaceuticals on the basis of the impact that their new drugs have on the global disease burden. This can be achieved through what he calls “public-good strategy”. This strategy can be implemented by; a) allowing all pharmaceutical companies to have access to discoveries of new essential drugs free of charge, and b) allowing all inventor firms to be entitled to take a multiyear patent on any essential medicines they invent and that during the life of the patent they should be rewarded, out of public funds, in proportion to the impact of their invention on

the global disease burden.¹⁸ This means that once the drug companies agree to these global institutional reforms then they would have the incentives to work together to bring drug prices down worldwide close to their marginal cost of production and the drugs would be accessible and affordable even to the poor countries. These initiatives will also make inventor firms to encourage and support efforts by cheap generic producers to copy their drugs. This would certainly promote the interests of inventor firms, patients and those of generic drug producers. Eventually the drugs would be cheaper to patients but at the same time drug companies will sustain their businesses. Inevitably most premature deaths will be avoided. This can only be achieved if all parties play their roles to bring the prices of ARVs down. This should be a shared responsibility. After all, responsibilities of human persons are quite different from those of corporations. Corporations are considered as ‘artificial persons’. Responsibilities of human persons go beyond those of ‘artificial persons’, i.e, pharmaceuticals. Expanding access to antiretroviral treatment is a global endeavour. However, the challenge for pharmaceuticals is to take a lead in this project. As to how pharmaceuticals and other parties can work out this and implement it is beyond the scope of this essay and there is need for further research in that area. Making ARVs affordable would be considering humanity as an end in itself and not a means.

Conclusion

AIDS pandemic in Africa needs urgent attention. With twenty-five million people living with HIV in Africa, ARVs must be made available at affordable prices. Many Africans cannot afford the patented as well as the generic ARVs. The current prices are exorbitant and condemn many poor people to premature deaths. There are many factors affecting inaccessibility to these essential life-saving drugs, but the most significant barrier to access is the price of the drugs. Pricing the life-saving drugs highly to people who are too poor to afford them is morally problematic. Pharmaceutical companies being manufactures and marketers of these life-saving drugs have a major role to play in making the prices of these drugs affordable. They have special obligations which when performed will save the lives of the many impoverished AIDS patients. Drug companies hold the key to the reduction in prices of these ARVs. Of course, they cannot do it alone. Along with other parties like WTO, WHO, UNAIDS, national governments, and NGOs modalities can be worked out on how the ARVs can be made available to the poor at affordable prices. This would be what Kant means by respecting humanity and

taking humanity as an end in itself. This is the major social responsibility that pharmaceuticals have in the 21st Century.

Notes

1. http://en.wikipedia.org/wiki/AIDS_in_Africa. Accessed on 22 October 2008.
2. Donald Berwick, “We all have AIDS” in *BMJ* 2002 January 26; 324 (7331): 214-218.
3. Chinua Akukwe is Adjunct Professor of Public Health, George Washington University, Washington, DC. He currently serves on the Board of the Constituency for Africa (CFA), Washington, DC. His article is available at: <http://www.addistribune.com/Archives/2001/04/13-04-01/HIV.htm>
4. Stephen S. Forsythe, “The Affordability of Antiretroviral Therapy in Developing Countries: What Policymakers Need To Know” pp12-13. Available at: <http://www.worldbank.org/aidsecon/arv/background/arvconc.pdf>. Accessed on 23 October 2007.
5. Mark Timmons, *Moral Theory: An Introduction*, New York: Rowman and Littlefield Publishers Inc., 2002. p151
6. Immanuel Kant, *Groundwork of the Metaphysics of Morals* [1785]. Trans. Mary Gregor. Cambridge: CUP, 1997. p 96
7. Thomas E. Hill, Jr. “Humanity as an End in Itself” in *Ethics*, 91, 1, (Oct. 1980)pp84-99.
8. Kant, p 102
9. Timmons, p158
10. Carmen Pérez-Casas, “HIV/AIDS Medicines Pricing Report-Setting Objective: Is There a Political Will” in *Bulletin of Experimental Treatments for AIDS* (2001). Available at: <http://www.accessmed.msf.org>
11. David Orentlicher, “Universality and its Limits: When Research Ethics Can Reflect Local Circumstances,” in *Journal of Law, Medicine & Ethics*, 30(2002), 403-410.

12. D. B. Resnik's argument quoted from Pepe Lee Chang's paper "Who's in the Business of Saving Lives?" in *Journal of Medicine and Philosophy* 31, 5, (2006), 466.
13. Pepe Lee Chang, "Who's in the Business of Saving Lives?" in *Journal of Medicine and Philosophy* Vol. 31, Issue 5, October 2006, 466.
14. William Flanagan and Gail Whiteman, "AIDS is Not a Business" in *Journal of Business Ethics* (2007) 73. p65
15. Archie B. Carroll and Ann K. Buchholtz, *Business and Society: Ethics and Stakeholder Management*, 6th Edition, Georgia: Thomson Learning, 2006. P34
16. Milton Friedman in his article "The Social Responsibility of Business is to increase its profits" published in *The New York Times* (September 1962), 126, argues that business corporations have only one responsibility and that is to increase their profits. Quoted from George Chrystides and John Kaler's book *An Introduction to Business Ethics*, Georgia: Thomson Learning 1993. p230
17. Pepe Lee Chang, p 466
18. Thomas W. Pogge, "Human Rights and Global Health: A Research Program," in *Metaphilosophy* 36, 1 and 2, 2005. 188-189.

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