Rethinking Global Pharmaceutical Policy

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Preface
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The world currently faces a health crisis. It has two intertwined dimensions: First, a wide variety of diseases (of which COVID-19 is only the most visible) pose increasingly serious threats to humankind. Second, poor countries carry heavier disease burdens – and face more severe threats – than rich countries.

Among the most effective tools we might use to address the crisis are pharmaceutical products – vaccines (to prevent diseases) and therapies (to alleviate or cure them). Unfortunately, we have thus far failed to exploit the full potential of those products. The composition of the set of products that we have developed is not optimal, and too few people have been provided access to them. This book seeks to identify ways in which we could do better.

Many institutions and people deserve shares of the credit for the large benefits we have reaped from drugs in the past: governments, which provide crucial incentives for the invention and testing of new products, oversee the testing of those products, and then help distribute them; nongovernmental organizations, which also engage in some of these functions; universities, where pioneering scientists do much of the basic research essential to the identification of opportunities for pharmaceutical innovation; and commercial firms, which perform much of the applied research that gives rise to new drugs and then tests and distributes them. But those same parties share the blame for the imperfections of the existing system. Our analysis reveals ways in which, separately or collaboratively, they could improve it.

The argument proceeds as follows: Chapter 1 describes the current crisis in detail. Chapter 2 explores the potential power of pharmaceutical products to address the crisis and the impediments that would have to be overcome if we are to realize that potential. Chapter 3 provides background for the ensuing analysis of reform options by discussing the ways in which governments currently manage pharmaceutical products. Chapter 4 addresses moral questions: Which parties have what kinds of obligations to help alleviate the crisis.

The balance of the book then considers six families of practicable reforms. Chapter 5 considers potential improvements in the markets for vaccines and drugs. Chapter 6 explores ways in which pharmaceutical firms might be induced to practice differential pricing in more socially responsible ways. Chapter 7 explores a particular form of voluntary licensing that would enable firms to get their products into the bodies of more of the people who need them. Chapter 8 considers a variety of ways in which the intellectual-property systems of both rich and poor countries might be modified to facilitate mitigation of the crisis. Chapter 9 surveys incentive systems other than intellectual property. Chapter 10 examines several potential ways of using regulations, rather than incentives, to better align the behavior of all players in this system with global social welfare.

This set of reform options is intentionally incomplete in one respect: it does not address possible modifications of our laws or institutions that are highly unlikely to be adopted in the foreseeable future. Each of us has explored such utopian proposals in

previous works,[1] and many other visionary options can be found in the relevant literature. We persist in thinking that some of them would be substantially better than our current regime. We avoid discussing them here only because the probability of securing them soon is low, and task of exploring and integrating practicable reform options is daunting enough.

During the many years in which we have been working on this project, we have accumulated many debts. Among the colleagues who have provided comments on portions of the manuscript are Margo Bagley, Yochai Benkler, Anupam Chander, Amy Kapczynski, Claudio Lilienfeld, Ruth Okediji, Clifford Samuel, Ken Shotts, Abraham Sofaer, Madhavi Sunder, ….

During the long gestation period, one or the other of us presented portions of the evolving argument in academic settings in many countries, including:

- University of Oregon
- University of California, Davis
- University of Texas
- Duke University
- Harvard Law School
- Bocconi University, Milan
- Tel Aviv University
- University of Nairobi
- National Law University of India, Bangalore
- Nanjing University
- Tongji University, Shanghai
- University of the Philippines
- De La Salle University, Manilla

The comments from the audiences in these settings provoked many revisions of the argument.

Finally, for the past three years, one of us has been teaching an online course in collaboration with the World Intellectual Property Organization that covers many of the themes addressed in the book. The questions and contributions of the instructors and the students in that course have led to myriad refinements of our proposals.[2]

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[1] See Fisher & Syed, "A Prize System as a Partial Solution to the Health Crisis in the Developing World," in Thomas Pogge et al., eds., *Incentives for Global Public Health* (Cambridge Univ. Press 2010); Syed, "Pharma's Patent Paradox," Yale Law Journal, forthcoming 2025.

[2] The course is offered twice a year to 500 students selected by WIPO. Typically, the students are drawn from over 100 countries. Information concerning the course is available at https://www.wipo.int/en/web/wipo-academy/w/news/2024/registration-now-open-wipo-harvard-law-school-patentx-course. The current version of the syllabus is available at https://ipxcourses.org/patent-law-and-global-public-health/. Biographies of the instructors are available at https://ipxcourses.org/patentx-faculty/.