

Dando 'Sentido' a la igualdad en el acceso a los medicamentos: una aproximación ética

Making 'sense' of equality in access to medicines: an ethical approach

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**MAKING 'SENSE' OF EQUALITY IN ACCESS TO
MEDICINES: AN ETHICAL APPROACH***

**DANDO 'SENTIDO' A LA IGUALDAD EN EL ACCESO
A LOS MEDICAMENTOS: UNA APROXIMACIÓN
ÉTICA**

**DANDO "SENTIDO" À IGUALDADE NO ACESSO
AOS MEDICAMENTOS: UMA ABORDAGEM ÉTICA**

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ABSTRACT

This theoretical review outlines certain elements for discussion on the role society should play towards global and equal access to medicines. For this purpose, mention is made of the most significant theories proposed on poverty and ethics. In order to consolidate the bases for further studies on this issue, attention is paid to the reflections and contributions of the authors mentioned in this article to discuss access to medicines as a priority public policy for the bridging of a significant poverty gap, and to rethink the ethical role of scientific progress in pharmaceutical field.

KEY WORDS

Equity in access, health inequalities, health public policy, universal access to medicines, poverty.

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RESUMEN

En esta revisión teórica se esbozan algunos elementos para una discusión sobre el rol que debe tener la sociedad en relación a un acceso global y equitativo a los medicamentos. Para ello, se traen a colación algunas de las más destacables teorías que se han planteado sobre la pobreza y la ética. Con el objetivo de dejar sentadas bases para que en posteriores estudios sobre esta problemática, se toman en consideración las reflexiones y aportaciones de los autores acá propuestos, con la finalidad de concebir el acceso a los medicamentos como una política pública prioritaria para erradicar una importante brecha de pobreza, y para dar una nueva dimensión al rol del progreso científico en el ámbito farmacéutico.

PALABRAS CLAVE

Acceso a medicamentos, desigualdades en la salud, equidad en el acceso, políticas públicas de salud, pobreza.

RESUMO

Esta revisão teórica visa a discutir alguns elementos sobre o papel que a sociedade deve desempenhar em relação ao acesso global e equitativo a medicamentos. Para tanto, foram levantadas algumas das teorias mais proeminentes referentes à pobreza e à ética. Com o objetivo de se estabelecer um embasamento para estudos posteriores sobre este tema, são consideradas as reflexões e contribuições dos autores aqui propostos, a fim de se conceber o acesso a medicamentos como uma política pública prioritária para erradicar uma lacuna significativa na pobreza, e para dar nova dimensão ao papel do progresso científico na área farmacêutica.

PALAVRAS-CHAVE

Acesso a medicamentos, desigualdades em saúde, equidade no acesso, políticas públicas de saúde, pobreza.

INTRODUCTION

As suggested by Sen¹, the progress of a nation is better measured through the reduction of its hardships than by the thriving and growth of its wealth, since it is impossible to build plans for the

future on solid foundations without first designing strategies to narrow the gap between its citizens. With regard to welfare and basic living standards, poverty is the main issue in our society, although it is not only a strictly economic breach.

There are actually several types of poverty such as lack of freedom, corruption, illiteracy and, in general terms, any source of inequality. Inaccessibility to medicines is also a type of poverty that affects millions of people around the world, access to them becoming a privilege for those with resources or living in cities where conditions are favorable for obtaining them, so that they might continue and complete the treatments or cures prescribed for their conditions.

This picture is even more worrying in developing and poverty-stricken countries. Not only is there no hope for their inhabitants to be able to complete their treatment, but in most cases they cannot even access it. Likewise, if an analysis of the situation in developed or developing countries where the State does not assume the cost of medicines were to be carried out, the results would be quite similar.

In the light of the above, a first approach could be to point out that access to medicines is not necessarily a problem that affects poverty-stricken countries or poor patients only. There are many circumstances that may deprive individuals of their right to access medicines on a regular basis to treat and cure their conditions, meaning that they are unable to fully enjoy the right to health and, therefore, life.

Attention should be drawn to the fact that when discussing access to medicines as associated to the term "regular", it refers to geographical, economic, time-based, adequate, constant or quality accessibility. Consequently, it would be reasonable to move away from the idea of mere or essential access, since, although it could also be considered a type of poverty, it is usually mitigated by governments and international organizations, which, in a praiseworthy though infrequent practice, carry out campaigns for the immediate supply of medicines to extremely impoverished

1. Sen A. *Las distintas caras de la pobreza*. Rev. Unión. 2000 Dic;197:40-45

populations that are exposed to serious diseases such as tuberculosis, malaria or HIV.

METHODOLOGY

The main objective of this paper is to identify the theoretical framework of global access to medicines, and its intrinsic relationship with the pharmaceutical industry, its strengths and fundamental problems. To describe the general characteristics of such a framework, we analyzed from the bioethical standpoint, the general ideological tendencies, strengths and weaknesses from the perspective of its structure and internal consistency.

Based on the versatility that allows the analysis of the authors studied, an analytical reading of his contributions was made. As follows: 1) study of theoretical discourse of the pharmaceutical industry; 2) study of the social impact on access to medicines. In both cases thought a textual analysis of their positions.

1. Redrawing the meaning of access to medicines

On the issue of the Association for Molecular Pathology, et al. v. Myriad Genetics, Inc. case, Stiglitz, recipient of the Nobel Prize in Economic Sciences in 2001, points out that the USA, and in turn, large corporations have attempted to impose their own regime of intellectual property at the international level, initially through the World Trade Organization, passing through bilateral and multilateral trade regimes and, more recently, with the Trans-Pacific Partnership or TPP².

Secondly, he observes that, although these types of agreement should aim towards better integration as a diplomacy instrument, they have been used to persuade other countries to advocate higher corporate profits instead of saving human lives². Based on these two approaches, it is possible to infer that economic power seems to be above moral values, thus generating inequality at the expense of intellectual property.

In fact, currently millions of patients from poor countries die for the lack of medicines to treat or cure their conditions, medicines that in other countries are accessible to those with enough

economic resources³. Nevertheless, on the other side of the coin, those who strongly believe that investment materialized in innovation should be protected at all costs, because it will lead to saving more lives in the future are also right⁴.

The latter argument is raised as a representation of commitment, mistaken in any case since, among other issues, it would be a source of major inequality for making the right to life dependent on paying capacity. Likewise, it also suggests a scenario where there is manipulation by large industries to implement their own social conditions and policies, thus obtaining a greater piece of the "economic pie"², rather than just contributing to its enlargement.

Notwithstanding the above, attention should be paid to patents' standing as a constructive mechanism in a constantly changing world⁶. In fact, legal systems for the protection of inventions under this figure not only encourage innovation, but are in themselves a vehicle for channeling foreign investment and an instrument to strengthen trade relations among several countries, as well as their industrialization processes.

The starting point of the relationship between poverty and access to medicines,

2. Stiglitz J. *How Intellectual Property Reinforces Inequality*. NY Times. 2013-07-14

3. Pogge T. *The Health Impact Fund*. In Pogge T, Rimmer M, Rubenstein K. *Incentives for Global Public Health*. Cambridge: Cambridge University Press; 2010. / Shadlen K. *Intellectual Property, Pharmaceuticals and Public Health: Access to Drugs in Developing Countries*. Northampton: Edward Elgar Publishing; 2011. / Kuanpoth J. *Patent Rights in Pharmaceuticals in Developing Countries: Major Challenges for the Future*. Northampton: Edward Elgar Publishing; 2010.

4. Pfizer. *Intellectual property protection for pharmaceuticals*. The Pfizer Journal. 2000 Jun;1(2):5-25. / Llobregat-Hurtado ML. *Temas de Propiedad Industrial*. Madrid: La Ley; 2007.

5. Stiglitz J. *How*. Op. Cit.

6. Addison Posey D, Dutfield G. *Más allá de la propiedad intelectual: los derechos de las comunidades indígenas y locales a los recursos tradicionales*. Montevideo: Nordan, IDRC y WWF; 1999. / Correa C. *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options*. London: Zed Books; 2000. / Cabrera Medaglia JA. *Bioderecho: propiedad intelectual, comercio y ambiente: posibilidades y opciones para establecer sinergias entre los sistemas de propiedad intelectual y los tratados ambientales*. San José de Costa Rica: EUNED; 2011.

is that the impossibility to access medicines is in itself and above all a question of access to justice, understood as equality, and that it consequently deserves to be in the spotlight like any other global issue⁷. As proof of this, the proportion of patented medicines on the World Health Organization's list of essential medicines, 306 in total, is extremely low, since in industrialized countries only 10 of them are covered by patents⁸, the figure being even lower in developing countries.

It should also be recalled that the concept of equality in its broadest sense does not demand, in the interest of the equitable distribution of opportunities, that all individuals be the same, but rather that the opportunities be the same for those with similar skills, so that equality may precisely materialize by levelling the least and the most advantaged⁹.

In other words, the *raison d'être* of this concept lies in the compensation of those that need it, standardizing access to medicines in favor of those for whom this opportunity, to survive, which is so far reserved for wealthy countries, is limited.

2. A matter of equality and justice

It is not surprising that the profits reported by pharmaceutical industries usually depend on certain medicines, most of them intended for treatment of conditions that are typical of developed or northern countries¹⁰.

Meanwhile, the inhabitants of developing or poverty-stricken countries face the problems related to the availability or high cost of medicines on a daily

basis, which leads to situations such as the dramatic increase in the morbidity and mortality rates in several population groups¹¹, especially in Sub-Saharan Africa, Asia and Latin America caused by HIV. This highlights the remarkable inequality as far as quality of life and health standards are concerned.

Although there are certain countries -with solid market economies- where health systems have the essential treatments, this disease is often a "death sentence" in extremely poor countries, since their patients are either inadequately treated or not treated at all for lack of the required doses.

This inequality thus reflects an imbalance between economic development and healthcare, at the expense of human rights. Therefore, individuals are the victims of an ill that afflicts the notion of a fair society according to the term used by Sandel, who also suggests that the scope of justice, rather than following the Roman idea of giving individuals what they are entitled to¹², should be based on the correct distribution of what there is to share.

Nonetheless, the distribution is clearly not adequate when decisions are taken at the expense of public health and social security, an example being low investment in healthcare in comparison with military expenditure, which is the case of South Africa¹³.

A valid path to approach justice and equal access to medicines could be traced from the notion of ethics suggested by Amartya Sen¹⁴, and the reconnaissance policy proposed by Taylor¹⁵, which is, in turn, based on Pogge's humanitarianism¹⁶. There are three well-defined

7. Moynihan R, Heath I, Henry D. Selling sickness: the pharmaceutical industry and disease mongering. *BMJ*. 2002 Apr;324(7342):886-891. /

8. Esteve E. Propiedad intelectual, patentes y acceso a los medicamentos en los países en desarrollo. *Gac Sanit*. 2001 Nov;15(6):546-549. / Gibson J. *Intellectual property, medicine and health: current debates*. Farnham: Ashgate Publishing; 2009.

9. Daniels N. *Just health: meeting health needs fairly*. Cambridge: Cambridge University Press; 2008.

10. Barrutia X, Zabalo P. Sector farmacéutico, patentes y acceso a medicamentos en el sur. *Rev Cidob d'Afers Internacionals*. 2004 Dic;64:175-191.

11. Esteve E. Propiedad intelectual, patentes y acceso a los medicamentos en los países en desarrollo. *Gac Sanit*. 2001 Nov;15(6):546-549

12. García D. *Recensión: Sandel, Michael, Justicia. ¿Hacemos lo que debemos?* *Rev. Eunomia*. 2012 Sep;3:282-287. / Nelson E. *The Greek Tradition in Republican Thought*. Cambridge: Cambridge University Press; 2004.

13. Esteve E. *Op. cit.*

14. Sen A. *Sobre ética y economía*. Ciudad de México: Alianza Editorial; 1989. / Sen A, Nussbaum M. *La calidad de vida*. Ciudad de México: Fondo de Cultura Económica; 1998.

15. Taylor C. *The Politics of Recognition*. In Gutmann A. *Multiculturalism and the Politics of Recognition*. Princeton: Princeton University Press; 1992

16. Pogge T. *Op. cit.*

structures to reconsider socioeconomic schemes¹⁷ and help towards the building of a solid basis for in-depth discussion following clarification of the complexity involved in simultaneously approaching reconnaissance policies and access to medicines.

The theory suggested by Taylor¹⁸ applies better to multicultural issues where there are ethnic¹⁹, religious²⁰ or even political²¹ conflicts, rather than to socioeconomic contexts²². Even so, according to the author, reconnaissance policy rests on multicultural scenarios and the different meanings attached to the concept of reconnaissance in identity contexts.

In practice, this policy can be applied to approach and solve disputes. Despite the fact that there is a political background related to its "different" nature²³ and the relationship among several communities, it reaches its end in such scenarios, where there are usually tensions connected to issues related to provenance, race, language or standing, among others, and the concept of identity of one community against another is given priority. This shows that reconnaissance policy is designed to analyze the different interpretations of this notion among communities, focusing its aims on mutual recognition.

17. Roque S. *La teoría de la justicia de Amartya Sen*. In Gutiérrez Junquera P, Iglesias Fernández J. *Actas de las VIII Jornadas de economía crítica sobre la globalización, regulación pública y desigualdades*. Valladolid: Universidad de Valladolid; 2002.

18. Taylor C. *Identidad y Reconocimiento*. RIFP;1996;7:10-19.

19. Sierra L. *Globalización, Multiculturalismo y Comunicación: Paradojas y debates*. *Diálogos de la Comunicación*. 2003 Oct;66:69-80.

20. Honneth A. *Reconocimiento y obligaciones morales*. RIFP. 1996;8(1):9-29

21. Donoso C. *Charles Taylor: una crítica comunitaria al liberalismo político*. *Polis*. *Rev. Latinoamericana*. 2003 Sep;6(1):1-31. / Amorós C. *Política del reconocimiento y colectivos bivalentes*. *Logos*. 1998;1:39-56. / Enguita J. *Política del reconocimiento y tipos de ciudadanía*. *Logos*. 2007;40:259-280.

22. Fraser N. *La justicia social en la era de la política de identidad: redistribución, reconocimiento y participación*. *Rev. de Trabajo*. 2008 Ago;4(6):83-99.

23. Fraser N. *Op. Cit./ Díaz J. El ciudadano frente a la identidad*. *Cuadernos de Pensamiento Político*. 2006 Ene;9:77-92. / Pérez G. Velázquez, C. *La construcción de las identidades políticas en un mundo globalizado*. *Argumentos*. 2009 Sep;22(61):67-92 / Cincunegui J. *Charles Taylor y Alasdair MacIntyre: sobre la identidad natural*. *Lletres de Filosofia i Humanitats*. 2009 Ene;1:25-67.

It should also be noted that access to healthcare services is in itself an asset²⁴ that contributes towards effective equality of opportunities and a scenario of global justice where States and international bodies are to work hard to ensure its observance. This is achieved through their duty to provide medical services for national and foreign individuals based on their needs, rather on their payment capacity²⁵.

3. Ethical implications of scientific progress in pharmaceutical field

Much has been written over recent decades on scientific progress and its ethical implications. In fact, disciplines such as bioethics or philosophy of science constantly raise new topics for discussion; however, as individuals of this society, we are not yet aware of the gradual change of mind that leads us to make erroneous decisions.

It is also true that life expectancy has significantly increased, largely because of the cures and treatments that have eradicated many diseases, so that society is now presented with a human being that is no longer concerned with survival, but rather with living as long as possible.

It is, however, difficult to understand why the search for means to reach this goal is a source of both groundless fear, and denial of the individual's human nature. In the context of public health, the main consequence of this phenomenon of denial is probably an unexpected increase in risk²⁶ for those who have their own resources or can rely on the health systems of their States.

24. Echeverri M. *Derecho a la salud, Estado y globalización*. *Rev. Fac. Nac. Salud Pública*. 2006 Mar;24:81-96

25. Daniels N., et al. *Op. Cit./ Daniels N., et al. Criterios de equidad para la reforma de la atención sanitaria: un instrumento para el análisis de políticas en los países en desarrollo*. *Bulletin of the World Health Organization*. 2000;78(6):740-750. / Rubio-Mendoza M. *Equity in gaining access to health services and equity in funding being attended by them in Bogota*. *Rev Salud Pública*. 2008 Dic;10(S1):29-43.

26. García, M. *Factores de riesgo: una nada inocente ambigüedad en el corazón de la medicina actual*. *Atención Primaria*. 1998 Nov;22(9):585-595. / Gervas, J., Pérez-Fernández, M. *Uso y abuso del poder médico para definir enfermedad y factor de riesgo, en relación con la prevención cuaternaria*. *Gac Sanit*. 2006;20(S3):66-71.

In fact, those who cannot access the means to lengthen their lives will continue as members of a forgotten world that is only mentioned in a few statistics. Actually, its inhabitants can only rely on luck to survive diseases such as malaria, which could have been eradicated years ago²⁷ if only it had been profitable for the pharmaceutical industry²⁸.

This unexpected increase in risk goes hand in hand with an emerging power that is self-attributed to modern medicine and draws an imaginary line between disease and so-called health. A recently coined concept focused on factors, such as the search for perfect and lifelong health, the irruption of the concept of risk factor, the belief in zero risk, compulsory healthcare, and the diagnostic and therapeutic cascades they unleash²⁹.

Thus, while at one point pregnancy symptoms throughout the world were treated with Thalidomide, resulting in tens of thousands of children born with malformities³⁰, physicians currently use testosterone to treat impotence with equal diligence, in spite of the high risk of myocardial infarction it entails³¹.

In both cases, regardless of the fact that pregnancy symptoms and sexual impotence are processes that are an inherent part of human nature, related to hormonal changes and ageing

rather than to diseases, the pharmaceutical industry would benefit from their being the latter.

Whereas, on the one hand, this industry neglects the hundreds of millions of human beings that it finds unprofitable³², with the approval of certain governments that are interested in promoting trade agreements that are overprotective of intellectual property rights, on the other hand, profitable patients suffer countless side effects caused by poorly designed medicines. This is a result of the eagerness to increase profits in face of competitors, its consequences being clinical studies conducted without sufficient care, time or thoroughness.

CONCLUSION

As a final conclusion, this ideal would be comparable to the provision of essential medicines, making it clear that individuals should be equally responsible for turning to healthcare services to meet their demands³³ on fair terms, because to fulfil the purposes attached to equality of access would involve certain injustices when meeting, for instance, extravagant preferences³⁴. This is certainly antithetical to global justice and, therefore, should not be a State obligation.

27. Gonorazky, S. *La injerencia de la industria farmacéutica en las actividades científicas*. *Neurol Arg*. 2013 Nov;5:141-148. Pérez, J., et al. *Approaches to the management of HIV/AIDS in Cuba. Case study*. Genève: WHO; 2004. / Sachs J. *Macroeconomics and health: investing in health for economic development*. *Rev Panam Salud Publica*. 2002 Aug;12(2):143-144. / Pérez, J., et al. *Approaches to the management of HIV/AIDS in Cuba. Case study*. Genève: WHO; 2004.

28. Foladori, G. *La privatización de la salud. El caso de la industria farmacéutica*. *Rev Int de Sociología*. 2003 Ene;61(34):33-64.

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