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Do universities have moral duties with regard to a human right to health? In defense of some proposals by UAEM (Universities Allied for Essential Medicines)¹

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ABSTRACT

This article argues that universities have duties to negotiate contracts with the pharmaceutical industry that are favourable to the world's poor, and to do more research into diseases which disproportionately strike the global poor. It is argued that these duties are related to human rights (in particular to a human right to health) and that they are therefore very weighty. Furthermore, these duties are in line with some of the most important things that Universities Allied for Essential Medicines (UAEM), a worldwide group of students and academics, wants universities to do. A number of objections are discussed, among other things to do with safeguarding pharmaceutical innovation, and it is argued that the aforementioned duties should, as UAEM also advocates, often be combined with efforts on the part of universities to work towards more long-term, large-scale institutional arrangements to ensure access to and availability of essential medicines for the global poor.

Keywords: moral duties of universities, essential medicines, human rights, human right to health, ethics/moral philosophy

RESUME

Cet article soutient que les universités ont le devoir de négocier des contrats avec l'industrie pharmaceutique qui sont favorables aux pauvres dans le monde et de faire plus de recherches sur les maladies qui touchent de manière disproportionnée les pauvres dans le monde. On soutient que ces devoirs sont liés aux Droits de l'homme (en particulier à un droit humain à la santé) et qu'ils sont donc très importants. En outre, ces fonctions correspondent à certaines des choses les plus importantes que les *universités alliées pour les médicaments essentiels* (UAEM), un groupe mondial d'étudiants et d'universitaires, souhaitent que les universités fassent. Un certain nombre d'objections sont discutées, entre autres pour protéger l'innovation pharmaceutique, et il est soutenu que les fonctions susmentionnées devraient souvent, comme le préconise l'UAEM, être combinées avec les efforts des universités pour travailler à plus long terme, à des arrangements institutionnels à grande échelle pour assurer l'accès et la disponibilité des médicaments essentiels pour les pauvres dans le monde.

Mots clés : devoirs moraux des universités ; médicaments essentiels ; Droits de l'homme ; droit de l'homme à la santé ; éthique ; philosophie morale

JEL Classification: I18

¹ Many thanks to Dzintars Gotham, Martijn van Rijswijk, Stein Schalkwijk and Daan Steijger, as well as some others, for valuable comments and criticisms. The responsibility for the text remains entirely my own. Some of the first thoughts leading up to the present article were first presented at the UAEM-Utrecht launching event in the Fall of 2013, where conversation with Hans Hogerzeil, in particular, was very helpful.

1. INTRODUCTION

Universities Allied for Essential Medicines (UAEM), a worldwide initiative by university students and staff, wants universities to, among other things, conclude contracts with the pharmaceutical industry that are more favourable to the world's poor. It also wants them to do more research into relatively neglected diseases that disproportionately strike the global poor, such as tropical diseases. Do universities have moral duties to do these things? To be more precise, do they have duties here which are related to human rights, more particularly to a human right to health? This will be the central question of the present article. Thus its aim will not be to investigate *all* the duties that universities have in relation to a human right to health, but rather ask whether they have duties to do certain important things that UAEM wants them to do, and whether *these* are duties connected to human rights and a human right to health.

Under the current arrangements patent holders often have monopolistic price setting powers across the globe, and this may and frequently does result in very high prices as the industry can set prices so as to maximize its profits (cf. Mannan and Story 2006). In the face of this, UAEM has, among other things, been pressing for arrangements where monopoly rights are limited to rich markets (cf. Stevens and Effort 2008). UAEM states, as an introduction to its licensing framework, that '[e]very university-developed technology with potential for further development into a drug, vaccine, or medical diagnostic should be licensed with a concrete and transparent strategy to make affordable versions available in resource-limited countries for medical care.'² One such strategy is global access licensing, where contracts have a clause to ensure the possibility of generic production if this is needed to benefit people in low- and middle-income countries.³

UAEM is mainly focused on *universities*, but not exclusively so: its mission is that 'medicines and health technologies, *particularly those developed at universities or with public funding*, are made *accessible and affordable* to people in resource-limited settings through open access and open source IP [intellectual property] mechanisms...'⁴ and to 'dramatically increase *publicly funded biomedical R&D for the global health needs of neglected populations*, especially through the use of sustainable funding mechanisms, and innovative open-knowledge approaches to research.'⁵ UAEM has also thrown its weight behind an international, WHO-sponsored initiative to arrive at a global research- and development agreement which seeks 'a binding commitment of WHO Member States to ensure sustainable funding for R&D based on global health needs.'⁶ UAEM has a petition

² <http://uaem.org/our-work/global-access-licensing-framework/> (accessed 2 April 2017).

³ As Rachel Kiddell-Monroe explains at <http://uaem.org/who-we-are/history/> (accessed 2 April 2017).

⁴ <http://uaem.org/our-work/> (accessed 2 April 2017), emphasis mine.

⁵ *ibid.*, emphasis mine. I will not go into empowerment, which UAEM mentions, in addition to access and innovation, as the third pillar of its work: 'UAEM students are empowered to stand at the vanguard of leadership in global health access and innovation...' (*ibid.*)

⁶ See <http://uaem.org/our-work/campaigns/the-alternative-biomedical-rd-system-campaign/> (accessed 2 April 2017); <https://uaem.wufoo.com/forms/make-medicines-for-people-not-for-profit/> (accessed 2

available for academics to sign on to this initiative, but the initiative itself is primarily directed at WHO member states, and UAEM engages directly with politicians and delegates as well. Through supporting this initiative, and urging universities to support it, UAEM seeks to achieve wide-ranging structural changes – something to which I will come back at the end of the article; but my main focus in the article will be on UAEM's initiatives urging universities to conclude contracts with the pharmaceutical industry which are more favourable to the world's poor, and to do more research into neglected diseases that disproportionately strike the global poor.

These UAEM initiatives are still ongoing, and UAEM has over 46 local branches (or, as it calls them, 'chambers') worldwide now.⁷ Thus it is not merely of academic interest to investigate whether what UAEM wants universities to do is in line with the human-rights duties of universities. On the contrary, this would also be practically important.

By universities will be meant institutions whose mission it is to do research, and often also to provide education – later on I will further explain this mission, and the place of universities in society. Their research focus may be very broad (covering all major fields of knowledge) or relatively narrow. Their funding can be public but I also want to consider universities that are (partly) privately funded; it will be investigated later on whether this makes a difference for the arguments that this article will advance. In addition, the duties of diverse agents within the university will be considered, such as university boards and university presidents, students and researchers.

The article will argue that universities, and more specifically certain agents within them, have human-rights related (moral) duties⁸ to improve the access to and availability of essential medicines for the world's poor, as UAEM wants them to, in particular to conclude contracts with the pharmaceutical industry that include arrangements such as global access licensing and to do more research into neglected diseases such as tropical diseases – which currently only receive a tiny percentage of research funding.⁹

By essential medicines I mean medicines on the WHO 'Model List of Essential Medicines.'¹⁰ These are medicines 'that satisfy the priority health care needs of the population... [They] are selected with due regard to disease prevalence and public health relevance, evidence of clinical efficacy and safety, and comparative costs and cost-effectiveness.'¹¹ With regard to cost-effectiveness, it is important that the WHO adds:¹²

April 2017). This is one initiative, then, that envisages *delinking* pharmaceutical innovation from the price of medicine.

⁷ <http://uaem.org/who-we-are/history/> (accessed 2 April 2017).

⁸ By a (moral) duty, I mean a decisive moral reason to do something (Kagan 1989, 65). In daily usage, many people prefer to speak of a '(moral) responsibility' (a term which may have a more palatable ring to it) to refer to such a decisive moral reason. It is a moot point whether it is appropriate to use the two terms interchangeably (cf. Goodin 1986). I will stick to the term '(moral) duty' throughout. I will not be concerned with legal duties (cf. the elucidation of the concept of a human right, in Section 2.1 below).

⁹ See e.g. Musselwhite e.a. 2012.

¹⁰ see http://www.who.int/medicines/services/essmedicines_def/en (accessed 2 April 2017)

¹¹ *ibid.*

‘(1) the absolute cost of a medicine will not be a reason to exclude it from the Model List if it meets the stated selection criteria, and (2) cost-effectiveness comparisons be made among alternative medicines within the same therapeutic group (e.g., identifying the most cost-effective drug treatment to prevent mother-to-child transmission of HIV).’¹³

The relation of the UAEM-proposals with essential medicines can now be specified as follows. UAEM's access initiatives, urging universities to conclude contracts with the pharmaceutical industry that are more favourable for the global poor, will likely have the effect that more medicines currently on the list will actually become affordable in low- and middle income countries. In addition, by changing relative cost-effectiveness these access initiatives can have the result that certain medicines make it to the list (sometimes but not always instead of others). So will UAEM's initiatives to stimulate R&D with regard to neglected diseases.¹⁴

There have to my knowledge been no previous attempts to investigate whether universities have moral duties, and more particularly duties related to human rights, to do the things that UAEM wants them to do.¹⁵ This is where the scientific contribution lies that the present article aims to make. There *has* been research with somewhat related aims which is of relevance for the present investigation. For instance, it has been pointed out that universities are *in a good position* to do the things that UAEM urges them to do, given the motivation of their staff and given their negotiation room vis-à-vis the pharmaceutical industry (Kapczynski et al. 2005; Hassoun 2010), and also that a lot can be done within the existing juridical frameworks (ibid.). In addition, there have been discussions about the moral duties of universities in the face of commercialization more generally (e.g. Olivieri 2003; Mintz, Savage and Carter 2010) and of the moral duties, also human-rights related ones, of other

¹² At the same time, there remains concern among critics that, inasmuch as 95% of the list are off-patent, cost does play a role after all. See e.g. Selgelid and Sepers 2006; cf. also <http://www.ipwatchdog.com/2016/09/12/essential-medicines-off-patent/id=72542/> (accessed 2 April 2017).

¹³ http://apps.who.int/gb/archive/pdf_files/EB109/eeb1098.pdf?ua=1

¹⁴ This of course requires elaborate empirical underpinning, but to provide that in detail is beyond the present scope. It should be remarked that talk of ‘effective contributions’ of universities (i.e. effective contributions while taking a lot of the present, highly non-ideal world as given) commonly presupposes that other agents will take up, much in the way they are currently doing even in our highly non-ideal world, the accomplishments of universities: for example, that NGOs will use newly developed medicines against tropical diseases in their emergency hospitals, and that a number of governments will avail themselves of possibilities for generic production. In other words, common talk of ‘effective contributions’ does not presuppose that universities achieve everything by themselves, without others being involved. (Also, commonly talk of ‘effective contributions’ does not deal very much in abstract counterfactuals of the kind ‘if universities had not done it someone else might have come along’. Such a thought is important if there are concrete reasons to think that something else –and possibly better– would have happened if universities had not done certain things. But otherwise such a thought should play no role in thinking of ‘effective contributions’.) In this article I will in the regards just mentioned stick to the common talk about effective contributions.

¹⁵ Some first elements of a moral argument might, very briefly and often implicitly, be found at <http://uaem.org/who-we-are/history/> (accessed 2 April 2017).

agents such as businesses and governments in making essential medicines accessible and available for the world's poor (e.g. Cohen, Illingworth and Schuklenk 2006; Pogge 2008; Forman and Kohler 2012). But there have not, as far as I can see, been discussions focusing explicitly on the question of what are the moral duties of universities to do the things that UAEM urges them to do. Yet this is obviously an important question.¹⁶ Furthermore, if it could be shown that the moral duties that universities have here are duties of human rights – more particularly related to a human right to health – this would show these duties to be particularly weighty. Not living up to these duties would be an especially serious failure.

The article will be structured as follows. First, I will provide the necessary conceptual clarification: I will briefly explain what shall be understood by human rights and by a human right to health (Section 2.1). I will then go into the question of how to determine who bears duties in relation to human rights (Section 2.2). Subsequently, it will be argued that the poor indeed have human rights to improved access to and availability of essential medicines (Section 3.1). And I will argue that, as UAEM contends, universities indeed have duties in relation to these human rights (Section 3.2).¹⁷ A number of important objections to the claim that universities have such duties will also be discussed and answered (Section 3.3). Section 4 concludes.

2. HUMAN RIGHTS, A HUMAN RIGHT TO HEALTH, AND HOW TO DETERMINE WHO BEARS DUTIES

2.1. Conceptual clarification: Human rights and a human right to health

What are human rights? I will regard human rights as the minimum requirements of global justice. Human rights, in the words of Charles Beitz, are 'requirements whose object is to protect urgent individual interests against certain predictable dangers' (Beitz 2009, 109).¹⁸ It should be stressed that this understanding of human rights is not meant as an *interpretation* of how they are understood in the post-World War II practice of human rights – that is to say, in the practice where the Universal Declaration of Human Rights and a number of treaties and institutions are central.¹⁹ Rather, it should be regarded as proposal for what one

¹⁶ In addressing it, this article also aims to contribute to the philosophical literature on human rights (some central references are Gewirth 1978, 2007; Shue 1996; Rawls 1999b; Donnelly 2006; Nickel 2007; Pogge 2008; Griffin 2008; Beitz 2009; Buchanan 2013, and for the human right to health Daniels 2008, Wolff 2012; Schmitz 2012; Hassoun 2015).

¹⁷ When considering the question of who bears duties in relation to human rights, and why universities bear certain duties, I will generally be employing a reflective equilibrium method (see Rawls 1971). Broadly put, the endeavour will be to systematize and (through considering coherence, implications etc.) critically hone initial intuitions. Thus an account will emerge that can be accepted 'on reflection' (cf. Rawls 1971, 587).

¹⁸ This formulation owes much to Shue 1996 (13ff.). Although I adopt Beitz's formulation here, my conception of human rights differs in many ways from his, as will become clear shortly. The aim of the present section will only be to make clear what my conception of human rights is, not to defend this conception against alternatives.

¹⁹ Such as the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), the UN High Commissioner for Human Rights, and the European American and African regional human rights regimes with their treaties and courts.

may take the normative point of this practice to be. As such, it may possibly be revisionary vis-à-vis the understandings in the practice, but it also strives to be to a considerable extent continuous with them, so as not to change the subject (Griffin 2008, 3). My conception, then, conceives of human rights as the minimum requirements of global justice –it is thus, emphatically, a moral conception and not a juridical one– and does so in a way that is considerably continuous with the international practice, and that can therefore orient the development of the practice.²⁰

Which protections of important interests ought in the end to be provided as a matter of human rights plausibly depends on several factors, such as: the importance of the interest in question, the degree to which it is threatened, the possibility of providing effective protection, the availability of suitable duty bearers, and also seemingly more utilitarian considerations such as the number of people who are threatened and the opportunity cost of providing the protection.²¹ At the same time, the selection of protections should be guided by the idea that all human beings are fundamentally equal (cf. Buchanan 2013).

Health is an interest which is so important that it will likely always require some important protections. This means, following the notion of human rights that was proposed above, that there will be a human right to health: health will have to be protected against ‘certain predictable dangers’ (see e.g. Beitz 2009, 109).²² At a relatively general level, one may think of a human right to health as an entitlement to certain health care facilities and medicines as well as certain public health measures and ways to ensure a healthy environment, etc.²³ Hence this human right does not immediately require the particular protections of health that UAEM advocates; whether it does so remains to be seen.

It may be thought that whether there is a human right to health will also depend on the notion of health one employs. However, I think that there will be such a human right as long as the notion of health employed is remotely plausible. The most plausible one may, rather than a very broad or highly normative notion, be a biological notion, referring to the normal state of an organism (cf. Daniels 1985; 2008, Ch. 2). To this notion some statistical additions may have to be made to accommodate, for example, the rising life expectancy. However, I lack the space to discuss this here. For the present purposes it is important, firstly, that the notion

²⁰ Cf. [Philips 2015]. Importantly, the conception is not dependent on highly controversial metaphysical or religious assumptions. Although I do not claim that all theorists of human rights could subscribe to this conception, I do think that theorists of various persuasions could converge on it: more ‘practical’ and more ‘orthodox’ authors (see Beitz 2009), interest- and will-theorists (cf. Wenar 2015), those who want philosophically to theorise human rights in terms of moral rights and those who do not (see Buchanan 2013).

²¹ That there are human rights at all, also plausibly draws on the importance of certain interests and on some agents being suitable candidates for protecting those. Cf. Nickel 2007, Ch. 4; Griffin 2008; and for a different account see Gewirth 2007. For the apparently more utilitarian considerations, cf. Nickel 2007, Ch. 4; Goldschmidt 2012; [Philips 2016].

²² Thus a human right to health is not a right to be/remain healthy no matter what (this understanding would make nonsense of the entire notion). For a survey of how a human right to health is understood in the literature see Schmitz 2012; Hassoun 2015. Of course, protecting health is also instrumental for the protection of a number of other important interests, which is particularly important because the global poor face multiple disadvantages with regard to the protection of their important interests.

²³ cf. UDHR, Art 25(1), ICESCR, Art. 12.2.

of health employed is not too broad, so as to avoid that it covers nearly everything, as is the case with for example the much disputed WHO-definition, where health is regarded as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'²⁴ Secondly, a notion of health is needed, for the present purposes, where it does not follow by definition that there is a human right to health: this should be established by argument not stipulation.

2.2. How to determine who bears duties in relation to human rights

Several considerations have to be taken into account, I said, to decide whether a certain protection should in the end be provided as a matter of human rights. Among these is the importance of the interest in question; and it must also be considered what other important interests call for protection. Another important consideration, which I now want to discuss further, is whether there are good candidates for providing the protection – in other words, whether there are suitable duty bearers. Where there are not, there will not in the end be a human right.²⁵

Generally speaking, three considerations plausibly guide the allocation of duties (cf. Shue 1996; Miller 2005), always assuming that we are dealing with very important interests. First, the *causal contribution* that an agent has made to a protection's being necessary in the first place, for example: the causal contribution the agent made to some people's health being particularly at risk, due to environmental hazards etc. Second, the *capacity* of an agent to provide a certain protection. Third, that the allocation of duties must not be manifestly unfair, for example because by the first two criteria a far more suitable duty bearer is clearly available.

These conditions are in some form widely accepted. Let me elaborate on causal involvement and capacity as reasons for holding that an agent has a duty. Someone makes a *causal contribution* to a human rights problem if they actively bring about such a problem (cf. Scheffler 2001). The clearest cases are those where an agent poses an active threat to a very important interest of others (e.g. they make them severely ill by releasing a chemical substance).²⁶ As for *capacity*, this reason for attributing duties cannot plausibly take the form of saying that whenever one is capable of doing great good, or providing important protections of important interests, one must do so – simply because one is able to. This is too short a route to duties. It is more plausible to say that if one can provide an important protection of an important interest at *little cost* to oneself, one must do so. This is best understood as a sufficient rather than necessary condition: one must in any case take action if one can do so at little cost. To illustrate, if someone is confronted with a person in great need, and she can help this person at a cost which is small, she ought to do so (cf. Singer 1972). This is not necessarily monetary cost but should be taken more broadly. For example,

²⁴ Preamble to the Constitution of WHO as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of WHO, no. 2, p. 100) and entered into force on 7 April 1948.

²⁵ Here I follow what James Nickel (2007) has called an 'entitlement conception' of human rights: only if there is clarity about the duty bearers can we speak of a human right.

²⁶ In addition, there may be cases where an agent should clearly, as a matter of human rights, provide a certain protection but fails to do. But in such cases, the causal involvement is so to say 'parasitic' on other reasons for attributing duties.

expending certain amounts of effort or time would generally also count as small cost. I will consider in a moment what could plausibly count as little cost for universities.

Furthermore, if it *is* costly to take action, one may sometimes nonetheless have to do so. For instance, when one is causally involved in a problem, having helped to bring it about or helping it persist, one may sometimes have to take action if the cost to oneself is not small.²⁷

It might be objected that it is at odds with the deontological nature of rights to appeal to an agent's capacity, or to what she can do at little cost, as a ground for her duties. In particular, one plausible human right may be a human right to property and intellectual property. Now if an agent has such a human right,²⁸ does this not imply that she has a moral permission to use her (intellectual) property as she sees fit? If so, she cannot have a moral duty to use it to protect certain interests of others if she has the capacity to do so, or to do so at little cost. In reply, I do not believe that a human right to (intellectual) property plausibly implies this. It does plausibly imply that certain protections should be in place of one's ability to enjoy an object (a house, a vehicle etc.) or the fruits of a scientific or artistic creation, without others interfering with this enjoyment. However, it is compatible with this that one could have a moral duty to use the object or the creation in question to provide, of one's own accord, certain protections of important interest of others. For example, it may be that a sum of money is mine, and that others ought morally to refrain from taking it from me and that someone who does take it from me should face effective sanctions. But I can still have a moral duty to give my money away. One ground for such a moral duty could also be –this is, as just argued, not incompatible with what having a right implies– that one *can* help people in need out at little cost to oneself. Thus accepting a human right to (intellectual) property does not imply the absence of a moral duty to use one's property in certain ways.²⁹

3. HUMAN RIGHTS TO IMPROVED ACCESS TO AND AVAILABILITY OF ESSENTIAL MEDICINES FOR THE GLOBAL POOR, AND THE DUTIES OF UNIVERSITIES

3.1. Is improved access to and availability of essential medicines for the global poor required by human rights?

Let us return to UAEM, now that it has been clarified, to the degree necessary for our purposes, what human rights and a human right to health are, and how to determine who bears duties with regard to them. As explained, UAEM wants universities to conclude contracts with the pharmaceutical industry that make essential medicines affordable for people in low- and middle-income countries, and it urges universities to do more research aimed at developing new medicines for neglected diseases. But is making essential medicines more accessible and available for the world's poor a matter of human rights, and

²⁷ Certain philosophers would argue that for agents to have duties across borders, extra arguments are needed. I tend to disagree: once an agent can do something at little cost, or was involved in bringing about a problem, and it is not grossly unfair to ask them to act, this is enough for regarding them as duty bearers (cf. Resnik 2006). It is true that there remain further questions to do with a moral division of labour in institutional arrangements etc. I will come back to this below.

²⁸ See e.g. UDHR Art. 17; Art. 27(2), albeit, as said, the conception of human rights used in this article is not intended as an interpretation of the practice where, *inter alia*, the UDHR is central.

²⁹ For a line of thought that is in some respects similar, see Illingworth 2012; cf. also Baker 2006.

more particularly of a human right to health, at all? In accordance with the account of human rights proposed above, the answer seems to be 'yes' if, most importantly, the protections and interests in question are important enough and if there are suitable duty bearers. More precisely, (1) these medicines should be of great help with (2) prevalent severe illnesses, and (3) there should be agents who are capable of improving access and availability. These agents will then in any case be appropriate duty bearers if they can act at little cost to themselves, and can do so effectively enough as to not to make it much better for them to direct their energies elsewhere instead. Let me discuss these conditions in turn. The first two are quite straightforward. Improving access to and availability of medicines will not be a requirement of human rights if doing so makes no great difference to at least a number of people's very important interests. Then other causes will outweigh it and, at the concrete level at which we are now speaking, they will demand the limited resources (such as wealth and capacities) that can be devoted to human rights; one ought then to run schools and improve food security etc. instead of providing greater access to medicines. However, the essential medicines that UAEM is typically concerned with are effective against serious conditions, and usually widely prevalent ones.³⁰ Nonetheless, providing access to such medicines may still not, in the end, be a matter of human rights. For suppose, and here we come to condition (3), that hardly anyone is capable of improving such access, or that it can only be done with a very great expenditure of resources (wealth, technological capacities etc.). Then it may be called for to spend the resources in such a way that more can be achieved. If so, improving access to (admittedly important) medicines will in the end fail to qualify as a matter of human rights, and other causes will carry the day. This may also be the case if, although there are agents who would be capable of carrying out the task, it would be an extremely heavy burden on them, which it may be unreasonable to ask them to bear – although, as said, it will not always be unreasonable. It may, for example, not be unreasonable when they have made certain causal contributions to a problem existing in the first place.

However, arguably there *are* agents around that can do a lot to improve access to essential medicines for the world's poor, and for whom doing so in a number of cases also comes at little cost. I want to focus on universities in particular (other duty bearers will then, to an extent, automatically come into the picture).

3.2. The human rights duties of universities to help improve access to and availability of essential medicines.

I have argued that one plausible reason for attributing a duty to protect important interests is that some agent can do so at little cost to herself.

Now universities *can* do a lot to protect the health of the global poor by improving the access to and availability of essential medicines. The pharmaceutical industry is in many contexts dependent on their expertise, and as a consequence universities frequently have a large

³⁰ Not all medicines on the WHO list are concerned with serious conditions but a great many are, and those are particularly important for UAEM. Moreover, I will only be talking about medicines that are of help to a fairly large number of people. Orphan drugs and the like raise special issues, spanning from the effective and efficient use of resources to equal treatment under human rights. Discussion of such issues must await a future occasion.

negotiation room with regard to the terms of the contracts they conclude. Kapczynski et al. state that 'universities play an important role in the biomedical R&D system... This gives them the power to improve the lives of patients and also to collectively persuade private sector partners of the need for an open licensing approach.' (2005, 1078)³¹ Hassoun observes that 'on a conservative estimate, about a third of R&D is done by universities in high income countries' and that 'there is reason to believe pharmaceutical companies are coming to rely more and more on universities. Recently in-house pharmaceutical research has not been very productive... In light of its dry pipeline, the pharmaceutical industry is "searching ever more desperately for drugs to license from small biotechnology companies and universities" (Angell, 2004, 236).' (2010, 11–12) But just what can universities do at little cost? Concluding contracts with the pharmaceutical industry that are more favourable to the world's poor and doing more research into neglected diseases is quite general. Is it possible to be more precise about what constitutes 'little cost' for universities?

What is little cost for universities?

As said, I use the expression 'little cost' more widely than financial cost – although financial cost will often be an aspect. I want to propose that a university faces little cost if it can in broad outline continue with its research and education as before – in this case, before concluding contracts including appropriate provisions for making essential medicines accessible to the global poor, and before doing more research into neglected diseases.

Let me try to make this idea of little cost for a university more concrete – little cost as a university's being able 'in broad outline to continue' to carry out its research and education as before. (I will have to say more below about the conception of the mission of universities that is associated with this idea, and also about the difference between little cost for, on the one hand, universities as a whole and, on the other hand, one particular university.) The expression 'in broad outline' is meant to convey that universities could give up minor aspects of what they are doing but not major aspects. Substantive judgement is required to determine what is minor/major. I believe that the following are plausibly some central elements:³² a particular university may often still in broad outline carry out its research and education as before if it loses one particular research project, but not if it loses a whole research line or even a main subject area; then its fields of research would not nearly be equally well covered any more. It may lose a small percentage of its budget, but not a large part. It may lose a small percentage of its staff and still in broad outline carry on as before but not a larger percentage.³³

In saying this, I assume that a university's mission is to do research and often also to provide (tertiary) education.³⁴ Of course one may conceive of the mission of a university in different ways as well; one such alternative way would be to say that universities also have a direct social mission to alleviate such ills as those associated with global poverty. But this way of

³¹ The authors are talking specifically about the USA. (An 'open licensing approach' is their specific proposal for changing a regime with monopolistic price-setting powers. It is beyond the present scope to discuss that proposal.)

³² The background methodology I use in making these assessments is reflective equilibrium. See footnote 16 above.

³³ For clarity I will work with just two categories: small and large cost.

³⁴ I will not be talking about universities which are exclusively devoted to education.

conceiving of the mission of universities risks begging the question in that it has duties towards the global poor largely follow by stipulation instead of argument.³⁵ Moreover, to focus on doing research and providing (tertiary) education is one common way of conceiving of the mission of universities (see e.g., also for discussion, Jones et al. 2005; Calhoun 2009).³⁶ I will go with this conception here. Some universities, it should be added, have a specific area or focus of research while some cover a wide array of fields and specialisations.

Of course I do not want to imply that in every specific case it is clear whether one is talking about small or large cost for a university; and it needs explanation (which will be given in a moment) why it should be morally relevant at all for a university to be able to carry on 'as before'. Also, emphatically, it is not always the case that it comes at a price for a university to do more research into neglected (e.g. tropical) diseases and to conclude contracts with the pharmaceutical industry which ensure much better access to essential medicines in low- and middle-income countries than patent-based monopoly pricing does. Doing these things may, for example in financial respects, not cost universities anything but rather be advantageous to them. Kapczynski et al. state that 'there is no significant economic risk associated with the shift [to an open licensing approach] – to the contrary, it has the potential to increase the resources available to universities' (2005, 1078). However, this will not be the case for every university and in all instances, so it remains important to get clear about the cost to itself that a university may be morally required to take on.

Little cost for universities: its moral relevance

In short, I have argued that universities should in any case do what they can do at little cost to themselves, and that when they incur great cost to themselves things will be less clear. Sometimes, for example when they have been involved in causing the plight of people in need, they will still have moral duties to help them out; but it will be less clear whether as a general rule they must always, even when the cost to themselves is great, still help out people in great need. Now someone may say: why so – why shouldn't universities always clearly do more than what they can do at little cost? To make this doubt clearer, let me compare individual persons and universities. In the case of individual persons, one may say that they too, as long as they can do so at small cost, are in any case morally obliged to help out others in dire need. If the cost to individual persons is large, views will diverge: some will say that they must still help others as long as these are worse off than themselves, while others will say that persons may to a certain extent be partial towards themselves. The theoretical underpinnings of such a position in favour of partiality may be many: one can refer, for example, to rule consequentialist (e.g. Hooker 2000), contractualist (e.g. Scanlon 1998), or hybrid (e.g. Scheffler 1994) moral theories. What is often involved in such arguments is that persons have a life of their own to live. But universities do not have lives

³⁵ Similar risks could be run by different conceptions of the mission of universities which included social responsibilities more directly than via doing research and providing education.

³⁶ Cf. also http://www.iau-aiu.net/sites/all/files/IAU_nutshell_Septembre_2015.pdf. For patents of any kind (also university-owned) in relation to the university's mission, cf. Van Overwalle 2006. This article's conception of that mission implies a degree of openness of dissemination of research results, but much more detailed discussion would be needed to see exactly how much, and how patents of different kinds (product, process etc.) relate to this. I will not pursue this track in exploring whether universities are required to engage in open licensing etc.

of their own to live, so why could there be a moral reason (at least a not easily overridden pro-tanto moral reason) that *they* might be allowed to avoid great cost to themselves?

Let me first consider universities in general rather than one particular university.³⁷ My assumption is, as said, that the mission of universities is to do research in a wide variety of fields and to provide tertiary education. Now these are important goals – important for meeting the needs of the population and for maintaining a stable and minimally just society. As long as these goals are not jeopardized, universities must in any case do what they can to help people in dire straits out. By contrast, if they *are* jeopardized, again a variety of moral views (such as forms of rule consequentialism or contractualism³⁸) may argue that they do not have to do so anymore, because there are important goods at stake. The opportunity for persons to live a life of their own could figure here too, but indirectly. It could help explain why, on a variety of moral views, rules are unacceptable which would allow or require certain goods, safeguarded by universities, to be compromised.

So in the end, things do seem similar for universities and individual persons: universities, too, should at least do what they can at little cost – and when the cost is not small, matters are less clear and there will be different views.³⁹

However, just when are the goals of doing research in a wide variety of fields and providing tertiary education no longer carried out well enough? In particular, is there any ground for thinking that this, as was implied above, is no longer the case if universities cannot carry on doing research and providing education broadly *as they were doing before*? Why the relevance of the temporal comparison (*'before concluding more favourable contracts/doing more research into neglected diseases'*)? To answer: a crucial observation here is, I think, that it is hard to say what exactly is needed for fulfilling the goals of universities sufficiently well: could we do with fewer universities, universities with fewer departments, universities with less funding? However, one *can* say, assuming at least that these goals are currently served sufficiently well by a university system at a given place, that they will in any case continue to be served sufficiently well if things at universities can in broad outline carry on as before – that is to say, more particularly, with more or less the same funding, number and

³⁷ Little cost for a particular university will be dealt with under the complication 'fairness between universities', below.

³⁸ Although other views, such as act consequentialism, will say that universities do have to do more. I have in mind varieties of all these theories which are applicable to our present world, where a lot of background conditions have, at least provisionally, to be taken as givens.

³⁹ There will, on many views, always be certain side constraints that universities have to observe even at large cost: furthering the goals that universities serve may not come at the price of violating these side constraints. For example, universities may not kill people and must, if necessary, bear great costs to themselves to avoid doing this. This raises the question whether they ought not at all costs to avoid concluding patent-based contracts with the pharmaceutical industry. For such contracts, will – e.g. compared with alternatives including a clause which allows for generic licensing – foreseeably leave people to die. Still, I believe that concluding patent-based contracts and expecting these to be maintained and enforced, is not the same as actively killing people. It is rather somewhere between 'doing' an 'letting happen' (pace Pogge 2004, 2005). Thus from a prohibition to kill people it cannot be immediately concluded that universities should always insist on contracts such as those allowing for generic production even if it comes at great cost to them.

size of departments, etc. It is therefore safe to say that universities ought at least to do for people in need what they can do up to that point.⁴⁰

Five complications of the argument

Let us consider five *complications* of the argument (which could also give rise to objections): 1) how does the position that has been proposed deal with fairness between universities; 2) the position proposed concerns what universities should do for people in need – but why exactly should they do this by supporting the specific UAEM-proposals rather than by doing something else; 3) which agents within universities are envisaged by the argument that has been outlined; 4) shouldn't one, at least for public universities, employ a conception of the mission of universities that directly refers to social responsibilities after all; and 5) does the position that has been outlined also apply to universities which are (partly) privately funded?

1) Can one university have a moral duty to take action if others do not cooperate?⁴¹ This is a hard question. It is certainly unfair to that university, but it would be even more unfair to the world's poor if that university did not take action. Consequently a particular university should, I believe, do what it can do at small cost to itself even if other universities do not cooperate. If, by contrast, a particular university were to sacrifice, for example, a major research line or subject area that it covers, this will have great cost for that university and importantly it is (as argued above) also not clear, generally, that this can be done with small cost to the goals of universities generally: the goals of providing scientific research in a wide array of subject areas and providing tertiary education. In general, it is not clear that these goals remain equally well served if the university landscape suffers a setback in terms of research lines, research groups etc.

2) If a university does what it can at little cost to itself, why should it devote its efforts to concluding contracts with the pharmaceutical industry which include clauses to improve access to essential medicines, and to doing more research into neglected diseases? Why should it not rather do something else? The general answer must be that, as a matter of moral division of labour, a university should concentrate its efforts where it can work relatively effectively and efficiently. This is, as indicated before, the case for the UAEM proposals, with regard to which universities seem to have a lot of room to take relatively effective action.⁴² So this is likely to be one of the areas where universities have a moral duty.

3) Obviously, universities can only act through natural persons. Heads of departments, university boards and university deans and presidents, and sometimes professors who have major subject areas under their remit, are the relevant persons to think of. They are in a position to take decisions concerning reallocation of funding and the like compatibly with a

⁴⁰ If universities are, at a given time and place, not able to carry out these goals sufficiently well things will, by definition, at least not become significantly worse if they stay in broad outline the same. It will vary what duties universities have towards the global poor in such a situation.

⁴¹ I assume here that a university can still act effectively, and am not thinking of instances where this is not so (e.g. where effectiveness depends on the collective bargaining power of universities).

⁴² For elaboration (and some qualification), see footnote 13 above.

university being able, in broad outline, to realize its goals as it was doing before.⁴³ Mostly, individual researchers, professors, and students are not in such a position. However, they *are* often in a position (collectively or also individually) to exert some influence to get their university to do at least what it can do at little cost, and they may often have a moral duty to do so.⁴⁴

4) It has been argued above that it is in any case important that the mission of universities is not articulated in such a way as to presuppose that it has duties to advance the lot of the global poor. For then one risks substituting stipulation for argument. It could be objected that there *is* a good reason for including concern for the world's poor in a university's mission, namely, that it receives public funding.⁴⁵ The underlying idea could be that those who fund the university's research should also in some way benefit from it (where I want to leave open whether every funder should benefit equally). But if this were the thought, the global poor often would not come into the picture, and the benefits should go to the citizens of the country with whose public money the university in question is funded.⁴⁶ It is important, then, to note that according to the above argument, the reason why universities must at least do what they can do at little cost to themselves has nothing to do with the source of their funding. That reason is, rather, that their central goals are not jeopardized when they do what they can do at little cost to themselves.

5) However, it might still be that if a university is not publicly but privately funded (or to some degree privately funded), this does play a role in its moral duties towards the global poor. If (or to the extent that) it is privately funded it may, one could think, justifiably cater to (the interests or wishes of) its private funders rather than to certain larger, more public goods or preferences; if a university is privately funded, the funders may organize its research and education as fits them (as long as they observe certain constraints). However, I think that this is mistaken. As I have argued earlier, while the private funders may have certain property- (and similar) rights here, they may still have a moral duty to do certain things for the global poor. One may have a property right, which implies among other things that other people may not do certain things with the money or goods that are one's property, and simultaneously one may have moral duties to use one's property in certain ways. And I

⁴³ Their actions will always affect some specific persons in their university for the worse, but this is so with very many things they do.

⁴⁴ This moral duty may be based on them too, as persons, having to do, morally, at least what they can do at little cost to themselves. Cf. [Philips 2007].

It is beyond the scope of the present paper to consider whether legislators should enforce that universities live up to their moral duties – a subject which involves many complications.

⁴⁵ Rachel Kiddell Monroe explains that a thought of this kind played a role in starting up UAEM: that public universities should not develop medicines which could then, due to their price, be out of reach of the global poor. See <http://uaem.org/who-we-are/history/> (accessed 2 April 2017).

⁴⁶ Of course, more complex arguments, which often involve a lot of elements from the global justice literature, e.g. arguments appealing to a duty of assistance on the part of rich countries (Rawls 1999), could still make a case for duties towards the global poor. I will not further pursue this possibility here.

have argued above that there is in fact a moral duty to do for people in need at least what one can do at little cost to oneself.⁴⁷

In sum, I have argued that universities should at least do what they can do at little cost to improve the access to and availability of essential medicines for the global poor. Let me emphasize again that this is not to suggest that improving such access and availability always comes at a cost to universities. There can be, and often *will* be (Kapczynski et al. 2005), win-win situations where both the global poor and universities benefit. And these should be made use of to the full.

3.3. *Objections: other duty bearers, innovation, structural change.*

Let us now consider some important *objections* that could be made to the above argument, to do with the duties of other parties (the pharmaceutical industry, governments), safeguarding pharmaceutical innovation, and bringing about structural change. First of all, one may say that the pharmaceutical industry should in many contexts of its own accord propose contracts and terms more favourable to the global poor than the present ones, and that it should invest more heavily in medicines for diseases that disproportionately strike the poor. Let us assume that this is so; in any case, it is plausible that the industry has human rights duties to improve the access to and availability of essential medicines for the global poor (see Mills et al. 2006; Baker 2006; Khosla and Hunt 2012; Illingworth 2012) based on, among other things, the consideration it can do a lot of things here at little cost.⁴⁸ To elaborate on the industry being required to do morally at least what it can do at little cost: this is the minimum one must ask of it even if one assumes that it serves goods that ought to be preserved in broad outline, and that so preserving them implies that pharmaceutical companies should in general stay in business and, relatedly, make some profits. Yet if, as is at present often the case (see e.g. Baker 2006; Mannan and Story 2006; Selgelid and Sepers 2006), the industry is not fulfilling its duties, and can at least for now not be brought to fulfill them, shouldn't the slack then be taken up by others? My answer is affirmative: if universities (and others) were not to take up the slack at least to the extent that they can do at little cost to themselves, it is the global poor who pay the price. At the same time, it *is* a plausible part of the duties of universities (and others) to pressure the industry into acting as they should. The aim should be to get the industry to take up their duties as fully and as soon as possible.⁴⁹

A second prominent objection is that arrangements which are favourable to the world's poor, such as those that universities might be able to negotiate, would stifle pharmaceutical innovation. They may do this, it is sometimes said, by compromising the industry's profits. I

⁴⁷ What if a private university has as its mission to, say, help alleviate the plight of the poor as best it can? Then there is at least no conflict with having to do for the poor at least what it can do at little cost. Whether there are other conflicts between such a mission and goods that universities commonly serve, and how to resolve such conflicts, is beyond the present scope.

⁴⁸ Illingworth (2012, 80-81) argues that giving shareholder value its due does not prevent duties from arising for the pharmaceutical industry to improve access to essential medicines. According to her, duties to assist the needy outweigh the various grounds on which duties to maximize shareholder value are typically based (such as the utility of doing so, that agreements should be honoured, and that shareholders ought to be able to freely reap the benefits of their property or investment).

⁴⁹ According to Alkoby (2012) activism that engages in naming and shaming etc. can have great influence to get governments and business companies to perform their plausible human-rights duties.

want to consider various things that this objection may assume or suggest, and investigate whether they are warranted. My aim here is not to add to the literature on empirical aspects of the matter.⁵⁰

First of all, the argument may be read as suggesting that in situations of global monopolistic price setting and the consequent industry profits, all the incentives for innovation are in place that one would want from a justice perspective. The reply can be that this is very unlikely to be true (see Ford 2006; Sterckx 2005). For example, there are obviously very few incentives to develop medicines for diseases that primarily affect the world's poor,⁵¹ and the UAEM-proposals aim to provide just these: legal obligations such as contracts also (through sanctions etc.) provide incentives to behave accordingly.

Still, secondly, some would say that certain incentives for innovation that do currently exist, might disappear if the pharmaceutical industry made no profits. This objection assumes that patents and monopoly pricing are generally important for pharmaceutical innovation in the first place, an assumption which has been criticized by many authors (e.g. Sterckx 2005; Mannan and Story 2006; Radder 2006, Ch. 16; Sterckx 2011).⁵²

And even if one assumes that they do contribute to it, it could be possible to maintain patents and monopoly pricing for some medicines.⁵³ The industry could then make money with these medicines and would have incentives to develop such medicines. Provisions in contracts that allow for generic production of essential medicines etc. if there is a need for this in low- and middle-income countries, need not jeopardize such innovation. And as far as these essential medicines for the global poor are themselves concerned, there are, as said, few incentives to develop them in the first place under patent- and monopoly pricing regimes, so that

⁵⁰ It may be asked: how can the decrease (or lack thereof) of pharmaceutical innovation influence whether there is a human right to access to essential medicines? Or put generally: how is it that contingent economic considerations may impact on the existence of a human right? (Many thanks to [Dzintars Gotham] for raising an objection along those lines.) As I see it, the answer is twofold. First, suppose this human right is fairly abstractly formulated, for example as 'there should be some protections in place of access to essential medicines'. Then there is always something one can make of this formulation, so the right would always exist – even if the access would be severely restricted (e.g. for the sake of safeguarding innovation). Secondly, however, if we are talking about specific protections, whether there is a human right to them *does* potentially depend on the impact of providing these protections on innovation. After all, pharmaceutical innovation increases the possibilities to protect important interests of people alive in the future. If better access to medicines for the current global poor had reduced innovation as its price, the question will be which of the two protections must get precedence (for the global poor now or for people alive in the future; cf. [Philips 2016]).

⁵¹ Or also, for that matter, to develop antibiotics.

⁵² Cf. also http://www.who.int/research-observatory/ro_publwg/en/ (accessed 2 April 2017). Although without some profits, pharmaceutical companies may have little money to spend on innovation or may go out of business altogether, the main engines of innovation often lie elsewhere, outside the industry. Also, even with a lot of profits the industry frequently engages little in innovation. Sometimes, these phenomena go under the heading of 'market failure', a remarkable expression given the great role of monopoly pricing in this field.

⁵³ It could also be possible to make profits by other means than through monopoly pricing (cf. Pogge 2008). However, I will not explore this possibility here.

obviously innovation here is not jeopardized by the UAEM-proposals that universities conclude contracts which increase access to essential medicines for the global poor.⁵⁴

Thirdly, let us for a moment assume that concluding such contracts would have a great and adverse impact on pharmaceutical innovation – although this is, as indicated, a large and dubious assumption. Then in many cases providing access will still have to get precedence from a moral perspective. This is so in cases where the lack of access to essential medicines has *very severe* consequences for *very many* people, as it often will. There is a point where the severity combined with the number of people are such that one can simply not accept to let it happen, even if very many more people in the future may be severely affected by less innovation. What makes the balance clear in such cases is that the present threats are imminent while the future is still comparatively far-off and ways may be found after all to avert the threats to those then alive ([cf. Philips 2016]).

So much for the objection that increasing access would get in the way of pharmaceutical innovation. A third objection is that universities cannot bring about structural change even in the modest sense of providing the global poor with a modicum of *guarantee* – which is what human rights generally envisage – of access to essential medicines.⁵⁵ It is surely true that the pharmaceutical industry, governments, and international organisations also have a role to play: universities cannot provide guaranteed access all by themselves.⁵⁶ But this is true for most (if not all) of these other agents too – even governments cannot go it alone but are dependent for certain things on the industry, and on other agents in civil society. However, this dependence does not prevent governments (including those of developing countries: Ford 2006) and others agents from having duties in realising the protections which are a matter of human rights. It is similar for universities.

Here is a further objection: suppose that there were an institutional arrangement that was clearly superior to the UAEM proposals with regard to increasing access to and availability of essential medicines for the global poor, and that the duties of universities in this arrangement were much smaller than the ones I have suggested (or were even none). I want to say two things about such an arrangement. First, it should become very clear what the arrangement would be: we cannot dismiss duties merely on the basis of some vague hypothetical possibility; that would become a game of hide-and-seek. Second, one should be careful what the arrangement is an arrangement for. One can (as for example Thomas Pogge and others did⁵⁷) devise a rather grand institutional idea for the somewhat longer term and which presupposes that some governments or private investors come forward with a rather large sum of money. Or one can keep closer to taking the present behaviour of governments

⁵⁴ Some medicines would be profitable in rich countries as well as needed for the global poor. There is then a possibility of having a dual system (differential pricing). It is beyond the present scope to discuss the various empirical aspects of this. For relevant sources see uaemevidence.wordpress.com (accessed 29 September 2016).

⁵⁵ If the idea were that guarantees of access can only be provided by law, that seems false. As Henry Shue observes, in some cases ‘well-entrenched customs, backed up by taboos, might serve better than laws...’ (1996, 16). However, the practical importance of this observation in a globalised world may be limited.

⁵⁶ Cf. footnote 13 above.

⁵⁷ Cf. also <http://incentivesforglobalhealth.org/origin/> (accessed on 2 April 2017).

and some other agents, such as the pharmaceutical industry (Pogge 2008, Ch. 9; also Banerjee, Hollis and Pogge 2010⁵⁸) and try to improve the situation from there: try to change that behaviour where called for and, if this is not possible, make the most of it within the constraints set by that behaviour. This is what the UAEM-proposals that this article has focused on, and in which universities have clear roles, try to do. One may endorse these proposals and at the same time advocate, for the longer run, a more fundamental institutional overhaul.⁵⁹ Typically such an overhaul would seek more structural ways to improve access to essential medicines and ways to stimulate R&D concerning neglected medicines, ways not dependent on patents and industry profits. It is beyond the present scope to discuss what such a more structural change (and the incentives associated with it) would look like. However, it is important to mention that, as indicated earlier, UAEM is also currently supporting a WHO-sponsored initiative aimed at more structural and large-scale change: an initiative to reach a global R&D agreement which aims at achieving firstly, sustainable, global health needs-based funding; secondly, that innovation is not dependent on high prices; and thirdly, at more R&D innovation.⁶⁰ Thus UAEM's view is, it seems, that one can both try to achieve better contracts and more R&D from universities *and* more structural and wide-ranging improvement in the access and availability of essential medicines for the global poor.

Still, this gives rise to a last concern. One would usually not want short-term arrangements to get in the way of arguably better or more ambitious long-term solutions. As just indicated, UAEM's own view seems to be that more short-term initiatives and more structural initiatives are compatible. But is this correct? Will the UAEM-proposals that universities negotiate better contracts and do more research into neglected diseases really not get in the way of more structural solutions? It is indeed likely that they will not, if their advocates remain aware – as UAEM clearly does, given, for example its support of the WHO-initiative – of the importance that larger-scale, longer-term solutions also need to be achieved, and if they keep thinking about where there could be possible collisions and how to avoid those. And even if they did get in the way, two things must be noted. First, the direct alleviation of need and suffering also counts for quite something. 'Sacrificing' the health of the current global poor for the sake of attaining a long-term solution – which will perhaps never materialise – is usually hardly defensible. Second, and relatedly, if helping now should make a long-term solution more difficult to achieve, by for example (as will be plausible in certain

⁵⁸ Pogge takes the profit-orientedness of the pharmaceutical industry as a given but still tries to delink pharmaceutical innovation and drug pricing. I actually think his is a very good and interesting proposal, but that it may speak primarily to a somewhat different (namely, more long-term) problem than do the UAEM-proposals that I have mentioned. Interestingly and importantly, Pogge also has attention for the social and logistical aspects of improving access, which are not the focus of the present article.

⁵⁹ Incidentally, that long-term solution is very likely one where agents at different levels have a role to play: international institutions, governments, the pharmaceutical industry, civil society organisations – and among the latter also universities. Good, stable institutional arrangements involve a variety of agents and a variety of institutional levels; some things will have to be done close to home, others further away (cf. Pogge 1992). It is therefore, although it is beyond the present scope to consider exactly the duties of universities in an ideal institutional arrangement, very unlikely that such duties would be none.

⁶⁰ <http://uaem.org/our-work/campaigns/the-alternative-biomedical-rd-system-campaign/> (accessed 2 April 2017)

concrete cases) encouraging governments to shirk their duties, the appropriate answer mostly is not to leave the current poor out in the cold. It is rather to help them now nonetheless, and simultaneously to work very hard to achieve more structural solutions, and to get governments and the industry etc. to fulfill their plausible duties. Universities will also have a duty when such long-term activism is called for – an observation which supports UAEM's call on academics to endorse the WHO initiative.⁶¹ They have this duty for the same reasons – to do with capacities and arguably also causal involvements of certain kinds – that they have duties to carry out the UAEM-proposals to improve access to and availability of essential medicines.

4. CONCLUSION

I have argued that universities have duties in relation to the human right to health. More particularly, these duties are in line with what UAEM wants universities to do: to negotiate contracts with the pharmaceutical industry that provide the global poor with much better access to important medicines, and to do substantially more research into neglected diseases that mainly strike the poor. I then understand human rights as demands that important individual interests are protected against prevalent threats. This is a moral conception of human rights which preserves a substantial connection with the post-WWII practice of human rights. Yet rather than aiming to interpret this practice, it aims to articulate plausible minimum requirements of global justice which can orient the development of this practice. One plausible human right is a human right to health: to protection of health against prevalent threats. I have argued that the minimum duties that come with human rights and a human right to health are based, among other things, on what parties can do at little cost to themselves (and also, for example, on whether they actively helped to cause human rights problems in the past). This is the basis for arguing that universities, understood as organisations whose aim is to do research and provide education, have human right-related duties in line with what UAEM urges them to do. This is so for universities that are publicly funded but also for universities that are (partly) privately funded. I have also considered a number of objections to do, among other things, with the duties of other parties such as governments and the pharmaceutical industry, the need to safeguard pharmaceutical innovation, and the need for more structural solutions.

As for this last point, further research is certainly needed into possible (longer- or shorter-term) institutional arrangements for realising the human right to health and to access to and availability of essential medicines in particular, and into the problems and advantages of these arrangements. For example, UAEM is currently campaigning in favour of one such arrangement, a WHO-sponsored initiative to achieve a global agreement where R&D is sustainably funded and based on global health needs. What are particularly strong and weak points of such an initiative, compared with possible alternatives? And how do short-term initiatives contribute (or not) to achieving more structural and wide-ranging change as it is envisaged by such an initiative? These are some important questions for future research.

⁶¹ This duty involves a duty to work together where this is needed to achieve results. This duty will fall on agents within universities who especially have capacities to initiate or maintain such collaboration.

For now, I have argued that universities have duties when it comes to negotiating contracts with the pharmaceutical industry and with regard to doing research into neglected diseases that disproportionately strike the global poor. Not only that; but these are human rights duties. This means that they are very weighty. If universities do not live up to these duties, that is an especially serious failure. Conversely, if they do live up to them, this will contribute a lot to them being able to look themselves in the eye.

REFERENCES

- Alkoby, A. (2012). Improving Access to Essential Medicines: International Law and Normative Change. In *Access to Medicines as a Human Right: Implications for Pharmaceutical Industry Responsibility*, edited by L. Forman and J. Kohler, 46-74. Toronto: University of Toronto Press.
- Baker, B. (2006). Placing access to essential medicines on the human rights agenda. In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 239–248. London/Ann Arbor: Pluto Press.
- Banerjee, A., A. Hollis, and T. Pogge (2010). The Health Impact Fund: Incentives for Improving Access to Medicines. *The Lancet* 375: 166–169.
- Beitz, C. (2009). *The Idea of Human Rights*. Oxford: Oxford University Press.
- Buchanan, A. (2013). *The Heart of Human Rights*. Oxford: Oxford University Press.
- Calhoun, C. (2009). Free inquiry and public mission in the research university. *Social Research* 76: 901-932.
- Cohen, J., P. Illingworth, and U. Schuklenk, eds. (2006). *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*. London/Ann Arbor: Pluto Press.
- Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press.
- Daniels, N. (2008). *Just Health: Meeting Health Needs Fairly*. Cambridge: Cambridge University Press.
- Donnelly, J. (2006). *International Human Rights*. Boulder: Westview.
- Ford, N. (2006). The enduring crisis in neglected diseases. In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 109–116. London/Ann Arbor: Pluto Press.
- Forman, L. and J. Kohler, eds. (2012). *Access to Medicines as a Human Right: Implications for Pharmaceutical Industry Responsibility*. Toronto: University of Toronto Press
- Gewirth, A. 1978. *Reason and Morality*. Chicago: University of Chicago Press.
- Gewirth, A. (2007). Duties to Fulfill the Human Rights of the Poor. In *Freedom from Poverty as a Human Right*, edited by T. Pogge, 219-236. Oxford: Oxford University Press.
- Goodin, R. (1986). Responsibilities. *Philosophical Quarterly* 36: 50-56.
- Griffin, J. (2008). *On Human Rights*. Oxford: Oxford University Press.

- Hassoun, N. (2010). Global Health Impact: A Basis for Labeling and Licensing Campaigns? *Working paper*, Carnegie Mellon University Research Showcase.
- Hassoun, N. (2015). The Human Right to Health. *Philosophy Compass* 10: 275-283.
- Illingworth, P. (2012). Corporate Social Responsibility and the Right to Essential Medicines. In *Access to Medicines as a Human Right: Implications for Pharmaceutical Industry Responsibility*, edited by L. Forman and J. Kohler, 75-89. Toronto: University of Toronto Press.
- Hooker, B. (2000). *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*. Oxford: Clarendon Press.
- Jones, G., P. McCarney, and M. Skolnik eds. (2005). *Creating Knowledge, Strengthening Nations: The Changing Role of Higher Education*. Toronto: University of Toronto Press.
- Kagan, S. (1989). *The Limits of Morality*. Oxford: Clarendon Press.
- Kapczynski, A., S. Chaifetz, Y. Benkler, and Z. Katz. (2005). Addressing Global Health Inequities: An Open Licensing Approach for University Innovations. *Berkeley Technology Law Journal* 20: 1031-1114.
- Khosla, R. and P. Hunt. (2012). Human Rights Responsibilities of Pharmaceutical Companies in Relation to Access to Medicines. In *Access to Medicines as a Human Right: Implications for Pharmaceutical Industry Responsibility*, edited by L. Forman and J. Kohler, 25–45. Toronto: University of Toronto Press.
- Mannan, A., and A. Story. (2006). Abolishing the Product Patent: A Step Forward for Global Access to Drugs. In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 179–189. London/Ann Arbor: Pluto Press.
- Miller, D. (2005). Distributing Duties. In *Global Duties: Who Must Deliver on Human Rights?* edited by A. Kuper, 95-116. New York–London: Routledge.
- Mills, A., P. Werhane, and M. Gorman. (2006). The Pharmaceutical Industry and Its Obligations in the Developing World.” In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 32–40. London/Ann Arbor: Pluto Press.
- Mintz, S., A. Savage, and R. Carter (2010). Commercialism and Universities: An Ethical Analysis. *Journal of Academic Ethics* 8: 1-19.
- Musselwhite, L., K. Maciag, A. Lankowski, M. Gretes, T. Wellems, G. Tavera, R. Goulding, and E. Guillen (2012). First Universities Allied for Essential Medicines (UAEM) Neglected Diseases and Innovation Symposium.” *The American Journal of Tropical Medicine and Hygiene* 86: 65-74. DOI: <https://doi.org/10.4269/ajtmh.2012.11-0608>
- Nickel, J. (2007). *Making Sense of Human Rights*. Malden MA: Blackwell. (2nd ed.)
- Nussbaum, M. (2000). *Women and Human Development: the Capabilities Approach*. Cambridge: Cambridge University Press.

- Olivieri, N. (2003). Patients' Health or Company Profits? The Commercialisation of Academic Research. *Science and Engineering Ethics* 9: 29-41.
- Philips, J. (2007). *Affluent in the Face of Poverty: On What Rich Individuals Like Us Should Do*. Amsterdam: Amsterdam University Press.
- Philips, J. (2015). Fundamentally Equal but Unequally Protected? Human Rights, Unequal Protection, and States as Duty Bearers. In *Equality and Human Rights: Nothing But Trouble?* edited by M. van den Brink, S. Burri, and J. Goldschmidt, 45-66. Utrecht: Netherlands Institute of Human Rights (SIM).
- Philips, J. (2016). Human Rights and Threats concerning Future People: a Sufficiency Proposal. In *Human Rights and Sustainability: Moral Responsibilities for the Future*, edited by G. Bos and M. Düwell, 82-94. Abingdon etc.: Routledge.
- Pogge, T. (1992). Cosmopolitanism and Sovereignty. *Ethics* 103: 48-75.
- Pogge, T. (2004). 'Assisting' the Global Poor. In *The Ethics of Assistance: Morality and the Distant Needy*, edited by D. Chatterjee, 260-288. Cambridge: Cambridge University Press.
- Pogge, T. (2005). Real-World Justice. *Journal of Ethics* 9: 29-53.
- Pogge, T. (2008). *World Poverty and Human Rights: Cosmopolitan Duties and Reforms*. Cambridge: Polity Press. (orig. ed. 2003).
- Radder, H. (2006). *The World Observed/The World Conceived*. Pittsburgh: University of Pittsburgh Press.
- Rawls, J. (1999a). *A Theory of Justice*. Cambridge MA: Harvard University Press. (orig. ed. 1971).
- Rawls J. (1999b). *The Law of Peoples*. Cambridge MA: Harvard University Press.
- Rawls J. (2007). *Lectures on the History of Political Philosophy*. Cambridge MA: Harvard University Press.
- Resnik, D. (2006). Access to Medications and Global Justice. In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 88-97. London/Ann Arbor: Pluto Press.
- Scanlon, T. (1998). *What We Owe to Each Other*. Cambridge MA: Harvard University Press.
- Scheffler, S. (1994). *The Rejection of Consequentialism*. Oxford: Oxford University Press. (2nd ed.)
- Scheffler, S. (2001). Individual Responsibility in a Global Age. In *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*, 32-47. Oxford: Oxford University Press.
- Schmitz, B. (2012). Subsistenzrechte: Gesundheit. [Subsistence Rights: Health] In *Menschenrechte. Ein interdisziplinäres Handbuch* [Human Rights: an Interdisciplinary Handbook], edited by A. Pollmann and G. Lohmann, 237-238. Stuttgart/Weimar: J.B. Metzler.

- Selgelid, M., and E. Sepers (2006). Patents, Profits and the Price of Pills: Implications for Access and Availability. In *The Power of Pills: Ethical and Legal Issues in Drug Development, Marketing and Pricing*, edited by J. Cohen, P. Illingworth, and U. Schuklenk, 153–163. London/Ann Arbor: Pluto Press.
- Shue, H. (1996). *Basic Rights: Subsistence, Affluence, and US Foreign Policy*. Princeton: Princeton University Press. (orig. ed. 1980).
- Singer P. (1972). Famine, Affluence and Morality. *Philosophy and Public Affairs* 1: 229–243.
- Sterckx, S. (2005). Can Drug Patents Be Morally Justified? *Science & Engineering Ethics* 11: 81–92.
- Sterckx, S. (2011). Patenting and Licensing of University Research: Promoting Innovation or Undermining Academic Values? *Science & Engineering Ethics* 17: 45–64.
- Stevens A. and A. Effort (2008). Using Academic License Agreements to Promote Global Social Responsibility. *Les Nouvelles: Journal of the Licensing Executives Society International* 43: 85-101.
- Van Overwalle, G. (2006). Reconciling Patent Policies with the University Mission. *Ethical Perspectives* 13: 231-247.
- Wenar, L. (2015). Rights. Stanford Encyclopedia of Philosophy. (online)
- Wolff, J. (2012). *The Human Right to Health*. New York: Norton.