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ARTICLES

THE UNIVERSAL DESTINATION OF PHARMACEUTICAL PATENTS: REFLECTING ON TRIPS THROUGH THE LENS OF AQUINAS

SAM CASTREE, III[†]

INTRODUCTION

Pharmaceutical patents are big money these days. This is good for pharmaceutical companies, because the process of creating a new drug also *costs* big money. The process of research, development, and clinical testing can take years and may cost a company hundreds of millions of dollars.¹ Add in the cost of drugs that never make it to market, and the cost rises into the billions.² In order to see a profit from new pharmaceuticals, companies seek patent protection.

A patent grants the holder the right to prevent others from making, using, offering for sale, selling, or importing the invention in the country where the patent was issued.³ In order to better protect patents and other intellectual property, the World Trade Organization (“WTO”) requires that its members adhere to the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). The TRIPS Agreement

[†] J.D., 2013, Chicago-Kent College of Law. My sincere thanks go to Professor Luis Madrid for planting the seeds that sprouted into this Article, and to Professor Robert Araujo, S.J., for helping grow them to fruition.

¹ CONG. BUDGET OFFICE, RESEARCH AND DEVELOPMENT IN THE PHARMACEUTICAL INDUSTRY 1–2 (2006), *available at* <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/76xx/doc7615/10-02-drug-r-d.pdf>.

² Matthew Herper, *The Truly Staggering Cost of Inventing New Drugs*, FORBES (Feb. 10, 2012, 7:41 AM), <http://www.forbes.com/sites/matthewherper/2012/02/10/the-truly-staggering-cost-of-inventing-new-drugs>.

³ *See, e.g.*, 35 U.S.C.A. § 154(a)(1) (West 2014); 35 U.S.C. § 271(a) (2012); CODE DE LA PROPRIÉTÉ INTELLECTUELLE [C.P.I.] art. L613-3 (Fr.).

mandates, among other things, that signatories provide patent protection for pharmaceuticals,⁴ which must last for at least twenty years.⁵

It stands to reason that, without these patents, far fewer useful drugs would be produced because companies would be unable to recoup the massive investments required to bring a drug to market.⁶ At the same time, the lengthy and exclusive monopoly granted by the patent system can have catastrophic consequences on the world's "least-developed countries."⁷ However, TRIPS also allows for compulsory licenses in times of "national emergency or other circumstances of extreme urgency or in cases of public non-commercial use."⁸ The important question is: Are these provisions working properly, such that least-developed countries can meet the basic needs of their own people? Ultimately, are the TRIPS Agreement and its adherents complying with the dictates of justice and charity?

Enter St. Thomas Aquinas, the great scholastic philosopher.⁹ Aquinas was a great proponent of the natural law—those fundamental, universal truths that mankind can comprehend purely through the use of right reason.¹⁰ In his seminal work, the *Summa Theologiae*,¹¹ Aquinas discusses many matters of

⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 27.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 401 [hereinafter TRIPS Agreement], available at http://www.wto.org/english/docs_e/legal_e/27-trips.pdf; *TRIPS and Pharmaceutical Patents*, WORLD TRADE ORG. 2 (Sept. 2006), http://www.wto.org/english/tratop_e/trips_e/tripsfactsheet_pharma_2006_e.pdf.

⁵ TRIPS Agreement art. 33; cf. 35 U.S.C.A. § 154(a)(2); Convention on the Grant of European Patents art. 63(1), Oct. 5, 1973, 13 I.L.M. 270.

⁶ This is not necessarily the case, of course. For example, governments could make the public at large subsidize the costs of developing new drugs through taxation. However, it is beyond the scope of this Article to comment on the feasibility or wisdom of such ideas.

⁷ The World Trade Organization acknowledges as "least-developed countries" those countries designated as such by the United Nations. *Cancún Briefing Notes: Least-Developed Countries*, WORLD TRADE ORG. 54 (Sept. 9, 2003), http://www.wto.org/english/thewto_e/minist_e/min03_e/brief_e/cancun_presspack_e.pdf.

⁸ TRIPS Agreement art. 31(b).

⁹ See Daniel Kennedy, *St. Thomas Aquinas*, in 14 THE CATHOLIC ENCYCLOPEDIA 663 (1912), available at <http://www.newadvent.org/cathen/14663b.htm>.

¹⁰ ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. I-II, Q. 94, art. 4 (2d rev. ed. 1920) (1266-1273) [hereinafter *SUMMA THEOLOGIAE*], available at <http://www.newadvent.org/summa/2094.htm>.

¹¹ Sometimes called the *Summa Theologica*.

philosophy and natural law, including notions of justice, property, and the concept of “the universal destination of goods.” Through proper application of these principles, one can shed light on the state of the TRIPS Agreement and its conformity—or lack thereof—with the dictates of objective morality.

Part I of this Article describes the natural law, especially as it relates to property and the concept of the universal destination of goods. Part II discusses the history and contents of the TRIPS Agreement regarding patent law. Finally, Part III offers suggestions as to how both rich and poor countries can better conform to the moral imperatives of the natural law in applying TRIPS.

I. AQUINAS AND THE NATURAL LAW

The natural law “is nothing else than the rational creature’s participation of the eternal law.”¹² It “has its source in the essence of the just,”¹³ that “inborn notion of right and wrong” that resides in human nature.¹⁴ The natural law is therefore unalterable and applies everywhere and at all times.¹⁵ Moreover, it is a higher law than the man-made law enacted at any given time. Indeed, Aquinas says that a law that contradicts reason, and thus the natural law, is no law at all; it is rather an act of violence.¹⁶ Ultimately, every law and every legal system ought to conform to the natural law.¹⁷

A. *Right to Private Property*

The natural law fully supports the private ownership of property. Aquinas says that “man has a natural dominion over external things, because, by his reason and will, he is able to use

¹² *SUMMA THEOLOGIAE*, *supra* note 10, pt. I-II, Q. 91, art. 2; *cf.* *Romans* 2:14 (Knox).

¹³ HEINRICH A. ROMMEN, *THE NATURAL LAW* 15 (Thomas R. Hanley trans., Liberty Fund 1998) (1936).

¹⁴ *Id.* at 34.

¹⁵ *Cf.* CATECHISM OF THE CATHOLIC CHURCH ¶ 1958 (2d ed. 2003), *available at* http://www.vatican.va/archive/ENG0015/_P6U.HTM.

¹⁶ *SUMMA THEOLOGIAE*, *supra* note 10, pt. I-II, Q. 93, art. 3, *quoted in* JOHN XXIII, *ENCYCLICAL LETTER PACEM IN TERRIS* ¶ 51 (1963) [hereinafter *PACEM IN TERRIS*]; *cf.* LEO XIII, *ENCYCLICAL LETTER RERUM NOVARUM* ¶ 52 (1891) [hereinafter *RERUM NOVARUM*].

¹⁷ Russell Hittinger, *Introduction* to ROMMEN, *supra* note 13, at xxvii.

them for his own profit, as they were made on his account."¹⁸ By investing one's time and labor into a thing, a person obtains a right of ownership over it.¹⁹ Mankind has understood this precept even without, and prior to, a government or a body of property law. Mankind precedes the formation of the State, and each person has "the right of providing for the substance of his body" apart from the State.²⁰ Ownership is further inherent "in the norm, 'Thou shalt not steal' "²¹ and "the expression[s] 'mine' and 'thine' [which] occur in every language to indicate ownership."²² Moreover, ownership of property "is founded in man's natural impulse to extend his own personality."²³

Furthermore, practical experience confirms the utility of private property. A person is much more likely to take care, or to take better care, of what belongs to himself alone, rather than what belongs to the community at large.²⁴ Private ownership also creates order; each person has his own particular things to take care of, "whereas there would be confusion if everyone had to look after any one thing indeterminately."²⁵ Conversely, Aquinas observes "that quarrels arise more frequently where there is no division" of ownership.²⁶ And a complete abolition of private property "would rob the lawful possessor, distort the functions of the State, and create utter confusion in the community."²⁷

While the modern patent system did not exist in the days of Aquinas,²⁸ arguments in favor of physical property also hold true for intellectual property. By investing time and labor to create a

¹⁸ *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 1; see *Genesis* 1:28-30 (Knox).

¹⁹ See *RERUM NOVARUM*, *supra* note 16, ¶ 5.

²⁰ *Id.* ¶ 7.

²¹ ROMMEN, *supra* note 13, at 199.

²² *Id.* at 206 (quoting 1 HEINRICH VON TREITSCHKE, *POLITICS* 390 (Blanche Dugdale & Torben de Bille trans., 1916)).

²³ *Id.* (quoting VON TREITSCHKE, *supra* note 22, at 391).

²⁴ This is the well-known idea of "the tragedy of the commons." Cf. *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *RERUM NOVARUM*, *supra* note 16, ¶ 4. Here, Pope Leo XIII predicted the effects of the burgeoning Communist movement of his day. See *id.*

²⁸ However, it seems that patents did exist in some form. For example, in A.D. 1236, a cloth-maker named Bonafusus received a fifteen-year monopoly to weave cloth in a certain way within the city of Bordeaux. F. D. Prager, *The Early Growth and Influence of Intellectual Property*, 34 J. PAT. OFF. SOC'Y 106, 122 (1952).

new invention, the inventor exercises dominion over nature in some form. He thereby gains a kind of ownership, a real personal interest, over the subject of the invention. Intellectual property protection incentivizes and helps to spur innovation, which ultimately adds to the body of public knowledge. The U.S. Constitution, for example, recognizes that the purpose of the limited monopoly conferred by a patent is “[t]o promote the Progress of Science and useful Arts.”²⁹ An orderly system of intellectual property also helps to stave off quarrels³⁰ and the feelings of injustice that result when one person performs all of the work, only to have another swoop in and copy the invention, reaping profit without suffering any of the costs. In the modern economy, “the possession of know-how, technology and skill” is just as important as land and natural resources, and perhaps more so.³¹ Indeed, “[t]he wealth of the industrialized nations is based much more on this kind of ownership than on natural resources.”³²

However, as important as property is, the right to property—whether physical or intellectual—is not absolute. All rights necessarily imply corresponding duties, and “the right to own private property entails a social obligation as well.”³³ Even Anglo-American common law recognizes this basic principle in

²⁹ U.S. CONST. art. I, § 8, cl. 8; see also *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 480 (1974) (noting that patent laws foster “a positive effect on society through the introduction of new products and processes of manufacture into the economy, and the emanations by way of increased employment and better lives for our citizens”).

³⁰ Admittedly, the growth of patent trolls may render this particular argument less than ironclad.

³¹ JOHN PAUL II, *ENCYCLICAL LETTER CENTESIMUS ANNUS* ¶ 32 (1991) [hereinafter *CENTESIMUS ANNUS*] (emphasis omitted). The Vatican has been a proponent of the validity and importance of intellectual property for many years. Archbishop Silvano Tomasi, the Holy See’s Permanent Observer to the WTO, acknowledged that “there is a need to protect intellectual property rights as an incentive for innovation and technology creation.” Archbishop Silvano Tomasi, Head of Holy See’s Observation Delegation, Address at the Plenary Session of the Fourth Ministerial Conference of the World Trade Organization (Dec. 2005), available at <http://www.zenit.org/en/articles/holy-see-at-world-trade-organization-conference>; see also Monsignor Franck J. Dewane, Under-Sec’y, Pontifical Council for Justice & Peace, Statement by the Delegation of the Holy See at the Fifth Ministerial Conference of the World Trade Organization (Sept. 13, 2003), in WT/MIN(03)/ST/147 (2003) (“[T]he Holy See wishes to note that the protection of private property, including intellectual property, is important and must be respected.”).

³² *CENTESIMUS ANNUS*, *supra* note 31, ¶ 32.

³³ *PACEM IN TERRIS*, *supra* note 16, ¶ 22.

multiple ways. For example, the law of nuisance operates on the maxim "*sic utere tuo ut alienum non laedas*"—that is, use your own so as not to injure another's.³⁴ The common law also forbids the use of lethal force merely for the defense of property, recognizing that life is more valuable than any piece of property.³⁵

However, private ownership entails not just negative obligations, but positive duties as well. According to Aquinas, "[M]an ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in their need."³⁶ Here, Aquinas is not condemning private property, which he soundly defended just a moment ago. Rather, he is denouncing the rapacious way in which some people treat their property. Thus, one does not act wrongly if he takes possession of something that was originally common property, and then gives others a share, "but he sins if he excludes others indiscriminately from using it."³⁷ Clearly, then, the right to private property "must be exercised not only for one's own personal benefit but *also* for the benefit of others."³⁸

B. *Universal Destination of Goods*

It is self-evident that lesser values must serve, and be subordinate to, higher values.³⁹ This notion is recognized by jurists the world over. For example, the Fifth Amendment to the U.S. Constitution allows that private property may sometimes be taken for public use, as long as the government provides "just compensation."⁴⁰ Both the Canadian Charter of Rights and Freedoms and the South African Constitution, among others, contain a general limitations clause.⁴¹ Moreover, it is equally

³⁴ See, e.g., *Camfield v. United States*, 167 U.S. 518, 522–23 (1897).

³⁵ See, e.g., *Katko v. Briney*, 183 N.W.2d 657, 659–60 (Iowa 1971) (spring-gun trap used to defend unoccupied farm house).

³⁶ *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 2.

³⁷ *Id.*

³⁸ JOHN XXIII, *ENCYCLICAL LETTER MATER ET MAGISTRA* ¶ 19 (1961) (emphasis added).

³⁹ Cf. *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 1 ("[F]or the imperfect is always for the sake of the perfect . . .").

⁴⁰ U.S. CONST. amend. V.

⁴¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c. 1 (U.K.) ("The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free

self-evident that life is the most basic and fundamental value upon which the enjoyment of all other rights and values is based.⁴² For no one can enjoy property, free speech, or anything else unless he be allowed to live. Moreover, what person would deem his continued ownership of mere property as more important than his very life? Such a decision is manifestly irrational; the dead cannot use or enjoy property. Therefore, one can see that the value of life is superior to the value of property. It follows, then, that one's property must be subordinate in value, not only to one's own life, but also to the life of *another*.

As shown above, those who own property must use what is theirs to help those in need. However, what if a person of means refuses to acknowledge or act on this duty? The poor man must not steal from the rich, because theft is immoral.⁴³ Moreover, "evil must not be done that good may come"⁴⁴; put more colloquially, the ends never justify the means. Because the natural law is unchanging and universally applicable, its tenets do not depend on the subjective whims or desires of a particular person. Moreover, because no one knows the future for certain, even if one has the best of intentions, the good that he seeks may never come to fruition. He would thus be left only with evil acts and bad results. What, then, are the needy to do?

As Aquinas explains, in times of dire need, it is not wrong for a person to take from another's excess that which one needs to survive:

[I]f the need be so manifest and urgent, that it is evident that the present need must be remedied by whatever means be at hand (for instance when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to succor his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery.⁴⁵

and democratic society."); S. AFR. CONST., 1996, § 36(1) ("The rights in the Bill of Rights may be limited only . . . to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom . . .").

⁴² See JOHN PAUL II, POST-SYNODAL APOSTOLIC EXHORTATION *CHRISTIFIDELES LAICI* ¶ 38 (1988).

⁴³ *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 5.

⁴⁴ *Id.* pt. II-II, Q. 64, art. 5 (quoting *Romans* 3:8).

⁴⁵ *Id.* pt. II-II, Q. 66, art. 7.

For example, a starving man may take a bit of food to ward off starvation. Similarly, a poor man in winter may appropriate to himself another's coat to keep from freezing to death. And one who is deathly ill may take the medicine that he needs to heal himself. Such acts are not stealing—and not immoral—Aquinas says, “because that which he takes for the support of his life becomes his own property by reason of that need.”⁴⁶ This flows from what is called “the universal destination of goods”: “[A]ccording to the natural order . . . inferior things are ordained for the purpose of succoring man's needs by their means.”⁴⁷ For example, food exists for the purpose of providing sustenance, medicine exists to cure the sick, and so on. Moreover, “[t]he goods of creation are destined for the whole human race.”⁴⁸ They are ordered towards satisfying the needs of *all* individuals, not to remain hidden away by some while others remain in need.

Furthermore, “a man may also take . . . another's property in order to succor his neighbor in need.”⁴⁹ A man does no wrong by delivering to his neighbor a coat that actually belongs to that neighbor. Thus, if urgent need makes a coat into the property of that neighbor, there is likewise no wrong in fetching that coat for that neighbor—because it is now properly the neighbor's own. Of course, certain caveats arise. First, it bears repeating that only “manifest and urgent” need turns another's goods into common property.⁵⁰ A man's life may trump another's right to property, but mere comfort or a lack of annoyance do not. Second, the one in need must only take what another can legitimately spare. A starving man who takes the last morsel of food from an even hungrier man clearly wrongs the latter. Thirdly, one ought use one's own possessions to succor one's neighbor before resorting to taking from a third person. Only when a person does not have enough to give to the needy neighbor should he resort to appropriating the property of another. Finally, even though taking another's property in time of need is entirely legitimate, the one who takes must try to restore that property at a later date—whether by return of the item itself or a replacement

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ CATECHISM OF THE CATHOLIC CHURCH ¶ 2402 (2d ed. 2003), available at http://www.vatican.va/archive/ENG0015/ccc_css/archive/catechism/p3s2c2a7.htm.

⁴⁹ See *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 7.

⁵⁰ *Id.*

therefor.⁵¹ However, such restoration applies only insofar as is possible. If the needy man's fortunes never turn around, he will remain in no position to restore what he took.

Even as the principle of the universal destination of goods holds true for traditional physical goods, it resonates even stronger in the realm of intellectual property. In taking another's coat, that other person is fully deprived of the use of the coat. However, the unlicensed production of a patented drug does not prevent anyone's access to that drug; no pills are being diverted from shelves in the United States to mouths in Africa.

Finally, although some balk at the very existence of the WTO and the TRIPS Agreement, international laws on intellectual property—or indeed any subject—can be good and proper things. Law “regards first and foremost the order to the common good,”⁵² and to the extent that laws have the common good as their end, they are proper things. Indeed, through the use of bilateral and multilateral agreements, “ties of dependence and feelings of jealousy—holdovers from the era of colonialism” may “give way to friendly relationships of true solidarity that are based on juridical and political equality.”⁵³ Thus, if properly formed and administered, agreements like TRIPS can be a source of unity and prosperity for rich and poor nations alike. But only if properly formed and administered.

This Article now turns to the TRIPS Agreement, to see how well it stands upon this moral and philosophical foundation. Aquinas wrote that “to suitably introduce justice into business transactions and personal relations is more laborious and difficult to understand than the remedies in which consists the whole art of medicine.”⁵⁴ The question is, how well does the

⁵¹ Cf. *Vincent v. Lake Erie Transp. Co.*, 124 N.W. 221, 222 (Minn. 1910) (boat tied to a dock during a sudden storm damaged that dock). In its opinion, the *Vincent* court commented, “Theologians hold that a starving man may, without moral guilt, take what is necessary to sustain life; but it could hardly be said that the obligation would not be upon such person to pay the value of the property so taken when he became able to do so.” *Id.*

⁵² *SUMMA THEOLOGIAE*, *supra* note 10, pt. I-II, Q. 90, art. 3.

⁵³ PAUL VI, *ENCYCLICAL LETTER POPULORUM PROGRESSIO* ¶ 52 (1967) [hereinafter *POPULORUM PROGRESSIO*].

⁵⁴ St. Thomas Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, BOOK V, available at <http://oll.libertyfund.org/titles/676> (quoted in ROMMEN, *supra* note 13, at 223–24).

TRIPS Agreement handle the weighty task of introducing justice into business transactions and international relations *regarding* medicine?

II. THE TRIPS AGREEMENT

A. *History*

The TRIPS Agreement grew out of the frustrations of many developed countries at the paucity of protection and enforcement of intellectual property rights on an international scale.⁵⁵ Discussions came to a head at the Uruguay Round of the General Agreement on Tariffs and Trade (“GATT”) and ultimately paved the way for both the TRIPS Agreement and the WTO, which oversees TRIPS. TRIPS provides for certain minimum protections for patents and other intellectual property. Adherents to TRIPS must make patents “available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.”⁵⁶ If a country violates its obligations under TRIPS, an aggrieved country may subject the violating country to trade sanctions, subject to WTO approval.⁵⁷

The stated objective of the TRIPS Agreement is that

[t]he protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.⁵⁸

To that end, TRIPS has several provisions aimed at advancing the common good—that is, at working toward “the good of each and, simultaneously, the good of all.”⁵⁹ TRIPS requires that patents “disclose the invention in a manner

⁵⁵ See Rachel Brewster, *The Surprising Benefits to Developing Countries of Linking International Trade and Intellectual Property*, 12 CHI. J. INT’L L. 1, 3 (2011).

⁵⁶ TRIPS Agreement art. 27(1).

⁵⁷ *Understanding the WTO: Settling Disputes*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm (last visited Jan. 8, 2015).

⁵⁸ TRIPS Agreement art. 7.

⁵⁹ Robert John Araujo, S.J., *John Courtney Murray, S.J.: The Meaning of Social Justice in Catholic Thought*, 44 LOY. U. CHI. L.J. 331, 334 (2012).

sufficiently clear and complete for the invention to be carried out . . . and may require the applicant to indicate the best mode for carrying out the invention known to the inventor” at the time that a patent application is filed.⁶⁰ Such disclosure is a standard requirement for receiving a patent⁶¹ and ensures that the invention can be practiced by the public after the patent expires.

More importantly, TRIPS also allows for compulsory licensing—that is, a license to practice the patented invention without the permission of the patent holder.⁶² However, such licenses come with certain restrictions. A country first must try to negotiate a license from the patent holder “on reasonable commercial terms” and over a “reasonable period of time.”⁶³ However, the country may forego the negotiation requirement “in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.”⁶⁴ Regardless, the license must be limited in “scope and duration . . . to the purpose for which it was authorized.”⁶⁵ The country must also pay the patent holder “adequate remuneration in the circumstances of each case.”⁶⁶

Here, one can see the clear influences of the natural law. The intellectual property right is respected as a general matter, but with a view of that right’s proper limits in favor of the common good. The patent holder loses a piece of its monopoly rights when it unreasonably withholds permission, or when consent can be presumed—as in times of emergency. However, the licensing country does not get a free ride; its right to practice the patent is limited to specific circumstances. It also has to offer “adequate” compensation for the use of the invention.

However, TRIPS initially restricted production of the patented goods to being “predominantly for the supply of the domestic market of the Member [country] authorizing such use.”⁶⁷ This provision rendered the compulsory license of little benefit to least-developed countries, as these countries so often lack the means to produce within their own borders the

⁶⁰ TRIPS Agreement art. 29(1).

⁶¹ *See, e.g.*, 35 U.S.C. § 112(a) (2012).

⁶² *See* TRIPS Agreement art. 31.

⁶³ *Id.* art. 31(b).

⁶⁴ *Id.*

⁶⁵ *Id.* art. 31(c).

⁶⁶ *Id.* art. 31(h).

⁶⁷ *Id.* art. 31(f).

medicines that their people need.⁶⁸ Moreover, a third-party country that attempted to produce the patented drugs and sell them to its poor neighbors at reduced prices risked trade sanctions because the drugs thus manufactured would not have been for “domestic” use.

The resulting concerns over public health came to the fore in 2001 at the WTO’s Fourth Ministerial Conference in Doha, Qatar. The resulting Declaration on the TRIPS Agreement and Public Health (the “Doha Declaration”) specifically recognizes these issues and sets out a proper interpretation of TRIPS to address them. Each country “has the right to determine what constitutes a national emergency” for purposes of the Article 31 compulsory license, as well as “the freedom to determine the grounds upon which such licences are granted.”⁶⁹ The Doha Declaration specifically identifies public health crises involving AIDS, tuberculosis, and malaria as potential national emergencies.⁷⁰ Additionally, least-developed countries need not offer patent protection for pharmaceuticals until 2016.⁷¹ By declining to issue pharmaceutical patents, those least-developed countries with the means to do so may freely produce the drugs that they need, with no need to obtain a license from anyone.

The Doha Declaration also acknowledges the plight of those countries *without* the means of production.⁷² The WTO implemented reforms in 2003 that allow wealthier countries to issue compulsory licenses to supply the needs of countries with insufficient manufacturing capacity.⁷³ However, an exporting country may produce “only the amount necessary to meet the needs of the eligible importing Member(s)”; must specifically label the drugs; and must, insofar as is feasible, “distinguish such products through special packaging and/or special

⁶⁸ See World Trade Organization, Ministerial Declaration on the TRIPS Agreement and Public Health, ¶ 6, WT/MIN(01)/DEC/2 (2001) [hereinafter Doha Declaration], available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm.

⁶⁹ *Id.* ¶ 5(b)–(c).

⁷⁰ *Id.* ¶ 1.

⁷¹ *Id.* ¶ 7.

⁷² See *id.* ¶ 6.

⁷³ General Council Decision, *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, ¶ 2(a), WT/L/540 and Corr.1 (Sept. 1, 2003), available at http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm.

colouring/shaping of the products themselves.”⁷⁴ Countries may also authorize “parallel importation”—that is, when “a product sold by the patent owner more cheaply in one country is imported into another without the patent holder’s permission.”⁷⁵ These changes became a permanent part of the TRIPS Agreement in December 2005, as Article 31bis and an annex to the Agreement.⁷⁶

With the implementation of the Doha Declaration, the TRIPS Agreement seems to align admirably with the natural law and the universal destination of goods. While recognizing intellectual property rights and regarding them as important, TRIPS prioritizes public health over property and allows nations with great resources to come to the aid of poor nations in times of great need. On paper, TRIPS looks very good.⁷⁷ However, while such legislation may be necessary, it might not be “sufficient for setting up true relationships of justice and equity.”⁷⁸ Theory and practice often diverge, sometimes quite sharply.

B. Implementation

First the good news. In February 2005, Canadian pharmaceutical company Apotex agreed to supply Médecins Sans Frontières⁷⁹ with the antiretroviral medicine TriAvir—used to treat HIV—under Canada’s “Paragraph 6”⁸⁰ mechanism: Canada’s Access to Medicines Regime (“CAMR”).⁸¹ Ultimately, Apotex shipped 15.6 million pills to Rwanda—enough to treat

⁷⁴ *Id.* ¶ 2(b).

⁷⁵ *TRIPS and Public Health: The Situation in Late 2005*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/trips_e/health_background_e.htm (last updated Nov. 21, 2005).

⁷⁶ Holger P. Hestermeyer, *Canadian-Made Drugs for Rwanda: The First Application of the WTO Waiver on Patents and Medicines*, AM. SOC’Y INT’L L. INSIGHTS (Dec. 10, 2007), <http://www.asil.org/insights/volume/11/issue/28/canadian-made-drugs-rwanda-first-application-wto-waiver-patents-and>.

⁷⁷ The Holy See’s delegation to the WTO even referred to the implementation of paragraph six of the Doha Declaration as “a positive step in carrying out the Doha commitments.” Dewane, *supra* note 31.

⁷⁸ PAUL VI, ENCYCLICAL LETTER *OCTOGESIMA ADVENIENS* ¶ 23 (1971) (emphasis added).

⁷⁹ Also known as Doctors without Borders.

⁸⁰ So named because the issue is addressed in paragraph six of the Doha Declaration.

⁸¹ Canadian HIV/AIDS Legal Network, *History of CAMR Reform*, MEDICINESFORALL.CA, <http://www.medicinesforall.ca/history.php> (last visited Jan. 8, 2015).

about 21,000 AIDS victims for a year.⁸² However, these shipments came in September of 2008 and 2009.⁸³ Much of the several-year delay came from Canada's need to amend its laws multiple times to properly implement the Paragraph 6 system.⁸⁴ Now that the Canadian government has laid the groundwork, others will hopefully utilize CAMR. Unfortunately, this seems doubtful. Apotex has stated that it is unlikely to use the law again in its current form, citing frustrations with the limited length of the license and the overall complexity of the process.⁸⁵ Moreover, the Canadian government has thus far resisted efforts to change CAMR, either to cut down on bureaucratic red tape or to otherwise incentivize manufacturers of generic drugs to participate.⁸⁶ Even more regrettably, few other countries have even passed legislation to implement the Paragraph 6 process.⁸⁷ Of those, only two countries—Kenya and South Africa—have even tried to utilize their legislation, and both times, the drug manufacturers ran into internal bureaucratic and political roadblocks.⁸⁸

One other reason for Apotex's delay was difficulty in finding a ready recipient. Médecins Sans Frontières could not find a country willing to import Apotex's TriAvir until Rwanda came forward in May 2007.⁸⁹ Other developing and least-developed countries were hesitant for fear of fall-out from wealthy nations. Many of these poorer countries rely on donor funding to purchase important pharmaceuticals, including certain antiretroviral and anti-malaria medications.⁹⁰ These funds often come with the condition that the recipients use them to purchase only patented

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Apotex Inc., Submission to the Standing Committee on Industry, Science and Technology (Oct. 26, 2010), available at http://www.apotex.com/global/docs/submission_order_en.pdf.

⁸⁶ Canadian HIV/AIDS Legal Network, *supra* note 81.

⁸⁷ Laura Chung, *Use of Paragraph 6 System for Access to Medicine*, 36 N.C. J. INT'L L. & COM. REG. 137, 169 (2010).

⁸⁸ Stacey Lee, *Access Denied*, ONE MAG. (2013), <http://carey.jhu.edu/one/2013/spring/access-denied>.

⁸⁹ Hestermeyer, *supra* note 76.

⁹⁰ Brook K. Baker, *Arthritic Flexibilities for Accessing Medicines: Analysis of WTO Action Regarding Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, 14 IND. INT'L & COMP. L. REV. 613, 688 (2004).

drugs.⁹¹ Recipient countries are understandably hesitant to risk losing free money and goodwill for the mere possibility of getting a better price elsewhere.

Even worse are situations in which pharmaceutical companies and governments in the developed world retaliate against countries for issuing compulsory licenses. In 2006, the government of Thailand issued a compulsory license for the antiretroviral Efavirenz needed to treat the growing number of Thai residents infected with HIV.⁹² The Thai government limited the license to a five-year term, for the care of no more than 200,000 patients per year, and provided to the patent holder a royalty of 0.5% of the total sale value—whether imported or locally produced.⁹³ The government issued two more compulsory licenses in 2007, one for the blood-thinner Plavix—used to treat heart disease—and the other for Kaletra—another antiretroviral—citing the “public health crisis” that constituted a “national emergency.”⁹⁴

Although the compulsory licenses were issued in accordance with TRIPS, large pharmaceutical companies condemned the decisions. Bristol-Meyer Squibb stated that the licensing was “a matter of serious concern.”⁹⁵ Abbott Laboratories went so far as to keep seven new medicines out of Thailand altogether.⁹⁶ The U.S. government, although admitting that the compulsory licenses accorded with TRIPS, placed Thailand on its “priority watch list” as a risk for intellectual property rights violations.⁹⁷

Additionally, the major industrialized countries—like the United States and Canada—have often sought to limit the effects of the Doha Declaration with multilateral trade agreements that go beyond what is required by TRIPS—so-called “TRIPS-plus”

⁹¹ See Christina Cotter, *The Implications of Rwanda's Paragraph 6 Agreement with Canada for Other Developing Countries*, 5 LOY. U. CHI. INT'L L. REV. 177, 178 (2008).

⁹² Mingchanok Tejavaniya, Note, *A New Kind of Drug War: Thailand's Taking on the Pharmaceutical Industry To Improve Access to HIV/AIDS Drugs Through the Use of Compulsory Licensing*, 28 ARIZ. J. INT'L & COMP. L. 659, 665, 668 (2011).

⁹³ Thai. Dep't of Disease Control, Ministry of Pub. Health, *Announcement on the Public Use of Patent for Pharmaceutical Products*, CPTECH.ORG (Nov. 29, 2006), <http://www.cptech.org/ip/health/c/thailand/thaic14efavirenz.html>.

⁹⁴ Tejavaniya, *supra* note 92, at 673–74.

⁹⁵ *Id.* at 671 (internal quotation marks omitted).

⁹⁶ *Id.* at 674.

⁹⁷ *Id.* (internal quotation marks omitted).

agreements.⁹⁸ Among other conditions, these agreements often require developing and least-developed countries to limit compulsory licenses; to limit parallel imports; to protect clinical data, so that manufacturers of generic drugs would have to conduct their own lengthy clinical trials before bringing their drugs to market; and to extend the duration of patents under certain circumstances, such as delays in patent examinations by local patent offices.⁹⁹ Typically, these agreements are the result of severe disparities in bargaining power, such that the poorer countries "have little ability to negotiate or resist."¹⁰⁰

However, wealthy and powerful countries are not the only ones trying to abuse the system. Developing and least-developed countries are not wholly innocent either. Before issuing its compulsory licenses, Thailand did not, at any time, attempt to negotiate with the patent holders.¹⁰¹ Moreover, it is not immediately clear that heart disease amounts to the same kind of immediate threat posed by diseases like AIDS, such that Thailand could legitimately declare a state of "national emergency" for blood thinner. As another example, Brazil has met with criticism for wielding the possibility of declaring a national emergency as a weapon, thereby forcing patent holders to acquiesce to lower pharmaceutical prices rather than risk compulsory licenses with even worse terms.¹⁰² India and Malaysia have threatened to do the same.¹⁰³

⁹⁸ Cynthia M. Ho, *A New World Order for Addressing Patent Rights and Public Health*, 82 CHI.-KENT L. REV. 1469, 1495 (2007).

⁹⁹ *Id.* at 1497–98.

¹⁰⁰ OXFAM INT'L, OXFAM BRIEFING NOTE: UNDERMINING ACCESS TO MEDICINES: COMPARISON OF FIVE US FTA'S 2 (2004), available at http://www.twn.my/title2/FTAs/Intellectual_Property/IP_and_Access_to_Medicines/UnderminingAccessToMedicines.pdf; cf. *POPULORUM PROGRESSIO*, *supra* note 53, ¶ 58 ("It is evident that the principle of free trade, by itself, is no longer adequate for regulating international agreements. It certainly can work when both parties are about equal economically But the case is quite different when the nations involved are far from equal.")

¹⁰¹ Tejavaniya, *supra* note 92, at 684.

¹⁰² See, e.g., Caroline Manne, Note, *Pharmaceutical Patent Protection and TRIPS: The Countries That Cried Wolf and Why Defining "National Emergency" Will Save Them from Themselves*, 42 GEO. WASH. INT'L L. REV. 349, 362–63 (2010); Ubirajara Regis Quintanilha Marques et al., *Brazil's AIDS Controversy: Antiretroviral Drugs, Breaking Patents, and Compulsory Licensing*, 60 FOOD & DRUG L.J. 471, 474 (2005).

¹⁰³ Tejavaniya, *supra* note 92, at 686.

III. COMING TOGETHER FOR THE COMMON GOOD

From the foregoing discussion, it is clear that all parties involved in TRIPS do not always act in conformity with justice or charity. On all sides, “[t]he pursuit of one’s own interest seems to be the rule for international relations, without the common good of humanity being taken into consideration.”¹⁰⁴

All parties to TRIPS must keep in mind the proper value of life and property. For their part, developing and least-developed countries must respect intellectual property rights, including pharmaceutical patents. Pharmaceutical companies invest great amounts of time, labor, and money into creating new medicines; the companies must pay, not only for research materials and lab equipment, but also the wages of their employees—from the research chemist to the janitor. To entirely ignore the rights of patent holders wrongfully deprives those patentees of the income that would otherwise be theirs as remuneration for the hard work already expended in bringing the drug to market. Only about 1 in 50,000 chemical compounds identified will ever make enough money to meet or exceed the costs invested in research and development. Of those that make it to market as actual prescription medications, only about 30% will ever break even or better.¹⁰⁵ Moreover, that return on the investment comes over the full twenty-year life of the patent.¹⁰⁶ Without these profits, new drugs will be fewer in number and frequency.¹⁰⁷ Therefore, beyond moral obligations, countries have practical reasons to pay what they can for the drugs that they use.

These poorer countries must remember that the universal destination of goods means that the needy may take what they need to survive when their need is “manifest and urgent” and when there is “no other possible remedy.”¹⁰⁸ To be sure, impoverished nations like Rwanda cannot afford on-patent prices and likely have little bargaining power in dealing with pharmaceutical companies. On the other hand, Brazil is “an

¹⁰⁴ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on Christian Freedom and Liberation* ¶ 16 (1986).

¹⁰⁵ Tejavaniya, *supra* note 92, at 672–73; Manne, *supra* note 102, at 353.

¹⁰⁶ Tejavaniya, *supra* note 92, at 673.

¹⁰⁷ *Id.*

¹⁰⁸ *See supra* Part I.

upper-middle-income country” under World Bank standards,¹⁰⁹ with a gross domestic product of approximately US\$2.5 billion.¹¹⁰ Brazil is in a much better position to afford, and to negotiate for, the medicines that its people need. It therefore has an obligation to seek other means of acquiring those medicines before resorting to compulsory licenses, which should be seen as the option of last resort. Compulsory licenses are certainly legitimate under the proper circumstances, but no country ought to use them as a threat to extort lower prices from patent holders. All countries have a legitimate interest in keeping healthcare costs down, but pharmaceutical companies must be paid a fair price for the drugs that they produce. Developing and least-developed countries must seriously consider how much they can afford to pay. In some cases, this amount will be zero, or very close to it. However, in many other cases, it will be substantially higher.

These countries must also be willing to negotiate and accept just restrictions that are in the interest of their people. In 2005, the United States offered Brazil over \$40 million to help in the fight against AIDS.¹¹¹ Brazil, however, turned down the money, in part because the funds came with requirements that included denouncing commercial sex work.¹¹² In the end, this refusal doubly harms the people of Brazil. First, the people are unable to benefit from the sizable grant. Second, by continuing to support risky and immoral sexual behavior, the government puts more people at risk for HIV infection. Moreover, such actions harm Brazil’s legitimacy when issuing compulsory licenses. One must wonder whether the government is more concerned with the welfare of its citizens or its money.

Countries also must ensure that drugs produced under their compulsory licenses actually make it to the sick. Some of these drugs may find their way into unscrupulous hands, who will turn around and sell the drugs on the black market at a substantial

¹⁰⁹ Zita Lazzarini, Essay, *Making Access to Pharmaceuticals a Reality: Legal Options Under TRIPS and the Case of Brazil*, 6 YALE HUM. RTS. & DEV. L.J. 103, 130 (2003).

¹¹⁰ *World Economic Outlook Database, October 2012: Brazil*, INT’L MONETARY FUND (Oct. 2012), http://www.imf.org/external/pubs/ft/weo/2012/02/weodata/weorept.aspx?sy=2010&ey=2017&scsm=1&ssd=1&sort=country&ds=.&br=1&c=223&s=NGDP_RPCH%2CNGDPD%2CLUR%2CGGXWDG_NGDP&grp=0&a=&pr.x=79&pr.y=4.

¹¹¹ Marques et al., *supra* note 102, at 473.

¹¹² *Id.*

profit.¹¹³ Countries have a duty to ensure that pharmaceuticals are going to the sick people who need them. Additionally, the patent owners often lose money on sales that they would otherwise be making in wealthy countries—where people can better afford the higher prices of on-patent drugs—when reduced-price drugs make their way across the border.¹¹⁴ To help remedy this problem, TRIPS requires that drugs produced under compulsory licenses be specifically labeled and bear distinguishing markings, and that these markings be posted to a particular website before shipment.¹¹⁵ These measures are simple ways that countries can help to ensure that medicines reach their proper destination, but more vigilance may be required. Ultimately, when least-developed countries receive low-priced drugs, they have a duty to ensure that the drugs reach those people within their own borders who have dire need, rather than ending up in the hands of mere profiteers.

However, patent owners and wealthy nations are not blameless either. They must remember that the purpose of medicine is to heal the sick, not to make a profit. Profit is good and necessary to a business, to be sure, and there is nothing innately wrong with making money. However, “profitability is not the only indicator of a firm’s condition. . . . [O]ther human and moral factors must also be considered.”¹¹⁶ Companies must not permit “economics to be separated from human realities,” especially the reality of the suffering poor.¹¹⁷

Pharmaceutical companies also must remember that the purpose of patents is to benefit “social and economic welfare.”¹¹⁸ The duties of property ownership require that patent holders treat their inventions “not as [their] own, but as common,” always “ready to communicate them to others in their need.”¹¹⁹ To be sure, pharmaceutical companies sometimes do just that.

¹¹³ Richard A. Epstein & F. Scott Kieff, *Questioning the Frequency and Wisdom of Compulsory Licensing for Pharmaceutical Patents*, 78 U. CHI. L. REV. 71, 81–82 (2011).

¹¹⁴ See *id.* at 81.

¹¹⁵ World Trade Organization General Council, *Amendment of the TRIPS Agreement*, Annex, ¶ 2(b)(ii)–(iii), WT/L/641 (Dec. 6, 2005).

¹¹⁶ *CENTESIMUS ANNUS*, *supra* note 31, ¶ 35 (emphasis omitted).

¹¹⁷ *POPULORUM PROGRESSIO*, *supra* note 53, ¶ 14 (citing L. J. Lebreton, O.P., *Dynamique concrète du développement* Paris: Economie et Humanisme, Les éditions ouvrières (1961), 28).

¹¹⁸ TRIPS Agreement art. 7.

¹¹⁹ *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 2.

For example, in 2012, several companies teamed up and pledged to give away over 14 billion doses of medication to treat “neglected tropical diseases” like sleeping sickness and leprosy.¹²⁰ Certainly, these efforts are to be lauded.

Nevertheless, unless and until the existence of a pharmaceutical company is endangered, neither that company nor its home government may morally prevent those in need from receiving life-saving medicines, no matter what the disease.¹²¹ No amount of profit can ever outweigh the inestimable value of a human life, and the mere quest for profit can never take precedence over a human life. Furthermore, it is questionable that large pharmaceutical companies are especially harmed by compulsory licenses and parallel imports. At least as of 2007, the United States, Canada, Europe, and Japan collectively made up nearly 89% of global pharmaceutical sales by dollar volume, while all of Africa and Asia—minus Japan—amounted to a mere 5.1%.¹²² In many cases, compulsory licenses do not cost pharmaceutical companies anything at all because the countries issuing the licenses would not otherwise be purchasing the drugs in question.¹²³

Even if they are harmed, pharmaceutical companies will likely survive the blow. For example, in 2013, Pfizer reported a net income of over \$22 billion—a 51% increase over 2012.¹²⁴ During the same period, Novartis reported over \$9.2 billion in

¹²⁰ Kate Kelland, *Big Pharma Donates Drugs for Neglected Diseases*, REUTERS (Jan. 30, 2012, 6:00 AM), <http://www.reuters.com/article/2012/01/30/diseases-neglected-pharma-idUSL5E8CU17B20120130>.

¹²¹ As for the proper course of action when a pharmaceutical manufacturer is threatened with bankruptcy due to unlicensed drug production, this author notes only that the matter is one on which reasonable people may disagree. However, this author is inclined to think that the company could justifiably defend its own existence, both for the sake of its employees—to prevent unemployment, homelessness, and the like—and to help ensure the research and development of new medicines. Again, however, these justifications only go so far.

¹²² Brook K. Baker, *The Eight Deadly Lies of Big Pharma*, NATION (THAI.) (Apr. 23, 2007), http://www.nationmultimedia.com/2007/04/21/opinion/opinion_30032324.php.

¹²³ Many people use a similar argument to spuriously justify copyright infringement for things like illegal music downloads. One key difference lies in the nature of the goods in question. Medicine is necessary to preserve the life of a sick person. One strains to conceive of a scenario in which someone could make a similar claim for a song or movie.

¹²⁴ PFIZER, PFIZER REPORTS FOURTH-QUARTER AND FULL-YEAR 2013 RESULTS; PROVIDES 2014 FINANCIAL GUIDANCE (2014), available at http://www.pfizer.com/system/files/presentation/Q4_2013_Earnings_jhasfdJLKfdfsfljkDFSLJ.pdf.

net profits—admittedly, a very minor 1% drop from 2012.¹²⁵ Bayer Group reported gross profits¹²⁶ of over €20.8 billion—or \$28.6 billion—across itself and all of its subsidiaries in 2013,¹²⁷ which is slightly up from almost €20.7 billion in profits in 2012.¹²⁸ Clearly, big pharmaceutical companies are not presently in danger of being driven out of business, even by robust compulsory licenses and parallel imports.

Finally, countries in the developed world have obligations, as well. These countries would do well to remember that the poor are not a burden, that they are not “irksome intruders trying to consume what others have produced.”¹²⁹ Rather, the poor are fellow human beings, possessed of the same inviolable dignity as the wealthiest person in the developed world. Wealthy countries ought to encourage the use of parallel imports and should amend their laws so that the process both exists and allows for a streamlined, efficient process so that the medicines produced will reach their destinations as quickly as possible. Moreover, obviously, neither governments nor pharmaceutical companies should attempt to punish countries for obtaining necessary compulsory licenses or parallel imports. Rather, developed countries would do well to heed the warning of Pope Paul VI: “If prosperous nations continue to be jealous of their own advantage alone, they will jeopardize their highest values, sacrificing the pursuit of excellence to the acquisition of possessions.”¹³⁰

CONCLUSION

As Aquinas says, “[W]hatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor.”¹³¹ Ultimately, more frequent and expanded use of the TRIPS compulsory license is to be encouraged, so long

¹²⁵ *Pharma Giant Novartis Reports Profits Dip*, NEWS.COM.AU (Jan. 29, 2014, 8:47 PM), <https://web.archive.org/web/20140131111831/http://www.news.com.au/finance/business/novartis-q4-net-profit-rises-to-us2b/story-e6frfkur-1226813289371>.

¹²⁶ Of course, net profits is a better indicator of corporate health, but that figure was not available in the financial data at the time of this writing. Apologizes to the fiscally-minded reader. See generally BAYER, ANNUAL REPORT 2013 (2014), available at <http://www.annualreport2013.bayer.com/en/bayer-annual-report-augmented-version-2013.pdf>.

¹²⁷ *Id.* at 176.

¹²⁸ *Id.*

¹²⁹ *CENTESIMUS ANNUS*, *supra* note 31, ¶ 28.

¹³⁰ *POPULORUM PROGRESSIO*, *supra* note 53, ¶ 49.

¹³¹ *SUMMA THEOLOGIAE*, *supra* note 10, pt. II-II, Q. 66, art. 7.

as these licenses are issued justly. Neither pharmaceutical companies nor wealthy governments ought to prevent the poor and needy from accessing what is theirs by natural right.