Ethical Consumerism, Human Rights, and *Global Health Impact*

Brian Berkey

Abstract

In this paper, I raise some doubts about Nicole Hassoun's account of the obligations of states, pharmaceutical firms, and consumers with regard to global health, presented in *Global Health Impact*. I argue that it is not necessarily the case, as Hassoun claims, that if states are just, and therefore satisfy all of their obligations, then consumers will not have strong moral reasons, and perhaps obligations, to make consumption choices that are informed by principles and requirements of justice. This is because there may be justice-based limits on what states can permissibly and feasibly do both to promote access to existing drugs for all of those who need them, and to promote research and development for new drugs that could treat diseases that primarily affect the global poor. One important upshot of my argument is that there can be reasons for organizations like the Global Health Impact Organization to exist, and to do the kind of work that Hassoun argues is potentially valuable in our deeply unjust world, even in much less unjust worlds in which states and firms largely, or even entirely, comply with their obligations.

KEYWORDS

ethical consumerism, global health, human rights, institutionalism, Nicole Hassoun

1 INTRODUCTION

Global health is a domain in which there continues to be widespread unjust deprivation. Deaths from readily preventable causes remain common in many parts of the world, as does avoidable suffering from readily treatable conditions. Addressing the lack of access to essential drugs, and to basic medical care more broadly, faced by so many of the world's poor, along with the lack of significant investment by pharmaceutical firms in research and development for new drugs that could treat diseases that primarily affect the poor, is among the most urgent matters of justice that we face globally, and should be among our top moral priorities.

There is a great deal that various agents, including all of us as individuals, can do to help remedy this injustice. Indeed, so much good can be done at low or modest cost that GiveWell, which evaluates charitable organizations on the basis of how much good they achieve per dollar spent, now exclusively recommends organizations that focus on particular global health issues that primarily affect poor people in developing countries.[1] Contributions to these organizations can help to mitigate some of the health-related injustices that the global poor face. There is, however, much more that needs to be done as well.

In *Global Health Impact*, Nicole Hassoun describes and defends a novel approach to increasing access to essential drugs for the global poor, and to incentivizing the development of new drugs for conditions that primarily affect the poor.[2] This approach involves rating pharmaceutical firms on the basis of the impact of their products on global health, and permitting the top-rated firms to include a label on many of their products that indicates their status as a leader when it comes to addressing important global health needs. The hope is that consumers will be motivated to purchase products from the firms that earn the right to use the "Global Health Impact" label, and that this will in turn incentivize all pharmaceutical firms to invest significantly more in efforts to ensure access to needed drugs for the global poor, and in research and development for new drugs for conditions that primarily affect the poor.

The effort that Hassoun defends is being actively pursued by the Global Health Impact Organization.[3] This project, in my view, constitutes a potentially promising contribution to the goal of improving access to essential drugs for those who currently lack it. My aim in this paper,

[1] GiveWell had previously included GiveDirectly, which provides direct cash transfers to people living in poverty, among its most highly recommended charitable organizations. The global health-focused organizations that GiveWell recommends fund malaria prevention efforts, vitamin A supplementation, and incentives for childhood vaccinations (see https://www.givewell.org/charities/top-charities).
[2] Hassoun, N. (2020). *Global health impact: Extending access to essential medicines*. Oxford University Press.
[3] See https://www.global-health-impact.org/.

then, is not to critique or raise doubts about the Global Health Impact Initiative that Hassoun advocates. Instead, I will focus on some philosophical issues raised by her account of the obligations of states, pharmaceutical firms, and consumers with regard to global health. In particular, I will argue that it is not necessarily the case, as Hassoun claims, that if states are just, and therefore satisfy all of their obligations, then consumers will not have strong moral reasons, and perhaps obligations,[4] to make consumption choices that are informed by principles and requirements of justice, including those related to the provision of essential drugs to those who might otherwise lack access to them. This is because, I will claim, there may be justice-based limits on what states can permissibly and feasibly do both to promote access to existing drugs for all of those who need them, and to promote research and development for new drugs that could treat diseases that primarily affect the global poor. In particular, the behavior of pharmaceutical firms could, at least in principle, result in some among the poor continuing to lack access to essential drugs, even if states are doing all that they permissibly and feasibly can to promote access. In addition, pharmaceutical firms might adopt policies and make choices that, in the aggregate, result in an insufficient amount of research and development being done for drugs that could benefit the global poor, even if states are doing all that they permissibly and feasibly can to promote it.

In many of the possible conditions in which insufficient access to essential drugs is provided, and/or in which insufficient research and development for new drugs is conducted, despite states doing all that they permissibly and feasibly can to ensure that the relevant requirements are met, the explanation for the failure to meet the requirements will be that

[4] If one has an obligation to do something, then it is wrong not to do it. There can, however, be moral reasons for a person to do something – that is, there can be morally important considerations that count in favor of doing it – even if she is not obligated to do it.

pharmaceutical firms have failed to satisfy their obligations to contribute to their satisfaction.[5] In those cases, consumers will, I suggest, have reasons, and potentially obligations, to make purchasing decisions that might contribute to improving the satisfaction of the requirements that are grounded roughly as Hassoun suggests they are within unjust institutions. Specifically, the failure of firms to do what they are obligated to do generates reasons, and perhaps obligations, for consumers to make purchasing decisions that might lead those firms to do more to satisfy their obligations going forward.[6] But I will also argue that there can, at least in principle, be cases in which consumers have reasons to make purchasing decisions that might lead firms to increase the extent to which they provide access to essential drugs to those in need, or to increase investment in research and development for drugs that could benefit the global poor, despite the fact that the firms' existing practices and behavior are not impermissible. If I am right, then consumers can have reasons, and potentially obligations, to make purchasing decisions on justice-based grounds in a wider range of cases than Hassoun suggests. One important upshot of my argument is that there can be reasons for organizations like the Global Health Impact Organization to exist, and to do the kind of work that Hassoun argues is potentially valuable in our deeply unjust world, even in much less unjust worlds in which states and firms largely, or even entirely, comply with their obligations.

I will proceed in the remainder of the paper as follows. First, in section 2, I will briefly describe Hassoun's case for the human right to health and to access to essential drugs. I will then

[5] Hassoun suggests that firms' obligations to contribute to ensuring access to essential drugs are at least largely explained by states' failures to ensure access (Hassoun, op. cit., note 2, pp. 107, 114-115, 119-120) – they are "secondary duties" (Ibid: 107, 114, 119), or "backup duties" (Ibid: 120) that firms have in virtue of states' failures. On my view, however, even if it is often the case that states are obligated to do more, and that firms' obligations are at least partially explained by states' failures, there can nonetheless be cases in which firms have obligations to contribute to ensuring access to essential drugs, despite the fact that states have done all that they permissibly and feasibly can to ensure access. In these cases, firms' obligations are not explained by states' failures.
[6] Ibid: 9, 106, 121-122.

describe the central features of the Global Health Impact Initiative, and note how the Initiative can, on Hassoun's view, contribute to increasing access to essential drugs, and thereby to the satisfaction of the human right to health. In section 3, I will describe Hassoun's "positive change" account of ethical consumption,[7] and argue that this account's limitation of consumer reasons and obligations to make purchasing decisions on justice-based grounds to cases in which state institutions are unjust cannot be defended, given the content of the human right to health that Hassoun advocates (and that, in my view, we should accept, if we accept that there is a human right to health at all).[8] I will conclude, in section 4, by briefly noting a central implication of my argument with respect to the relationship between state policy, the right to health, and ethical consumption.

2 THE HUMAN RIGHT TO HEALTH AND THE GLOBAL HEALTH IMPACT INITIATIVE

Hassoun claims that everyone ought to have an internationally recognized legal right to health, and that this right, in turn, should be understood as entailing a right to access essential drugs.[9] We should endorse the right to health, on her view, because it would protect individuals' ability to live at least minimally good lives.[10] This is because when individuals face threats to their health that could undermine their ability to live minimally good lives, the right would ensure that they are entitled to access available means to avoid or mitigate the threat, such as drugs that can treat their conditions. And since a range of conditions that primarily affect the global poor, such

[7] Ibid: 10, 141-142.
[8] I am not entirely convinced that we should accept that there is a human right to health, though I will not discuss the reasons why we might be at least a bit skeptical in this paper.
[9] Hassoun, op. cit., note 2, pp. 2, 7, 13, 18, 32.
[10] Ibid: 2, 14-15, 18-19, 32-33, 193.

as malaria, tuberculosis, and HIV/AIDS clearly threaten the ability of those affected to live minimally good lives,[11] the right to health, as Hassoun conceives of it, clearly entails a right to access available drugs that can treat those conditions. It also entails a right to access available treatments for significant pain, since the absence of such pain is necessary to live a minimally good life.[12]

It should, I think, be uncontroversial that we should recognize legal rights that will help to ensure that people can live minimally good lives. And Hassoun's claim that the right to health would in fact contribute to people being able to live such lives seems at least quite plausible.[13] So, in my view, the case for recognizing the right is fairly compelling, and I will assume for the sake of the remainder of my discussion that we ought to endorse the right, as Hassoun understands it.

Hassoun acknowledges that the right "may require vast resources to fulfill,"[14] but claims that we should accept this implication. Those agents that have obligations to ensure that the right is fulfilled, on her view, should provide the resources necessary to fulfill it "whenever doing so does not require sacrificing anything as important."[15]

Because many individuals are unable to live minimally good lives not because they lack access to existing treatments for their conditions, but because no sufficiently effective treatments exist, the right to health seems to also entail obligations to promote research and development for new drugs that could treat conditions that threaten the ability of people to live minimally good

[11] Ibid: 26-27.
[12] Ibid: 30-31.
[13] There are, of course, a number of difficult issues that arise here, such as whether, given the current state of international law, an internationally recognized legal right to health would in fact do much to aid badly-off people's efforts to claim the resources that are necessary in order to live minimally good lives. I leave these issues to the side in this paper.
[14] Ibid: 28.
[15] Ibid: 29. On her view states are the primary obligation bearers (Ibid: 18, 119), but other agents such as firms have obligations as well (Ibid: 14, 16).

lives. And because there is currently relatively little investment in research and development for drugs for diseases that primarily affect the global poor,[16] ensuring that the right is satisfied requires finding ways to significantly increase such investment. This is another reason to think that fulfilling the right would require extremely extensive resources.

In part because of the challenges presented by the fact that we face resource limitations, Hassoun argues that recognizing the human right to health should lead us to cultivate and exercise what she calls "creative resolve."[17] Creative resolve "disposes people to think creatively about how to overcome obstacles to fulfilling significant moral requirements and to attempt to fulfill them where possible and permissible."[18] Hassoun acknowledges that resource limitations may sometimes make it the case that not everyone can be provided with everything that they need to live a minimally good life, and that when this is the case rationing can be necessary.[19] But she claims that creative resolve can, at least in some cases, lead us to recognize that the appearance that rationing is necessary is misleading, because there are creative ways of ensuring that sufficient resources are provided to everyone.[20] In addition, creative resolve can, she claims, help us to develop innovative ways to encourage increased investment in research and development for drugs for conditions that primarily affect the poor.[21]

The ideas behind the Global Health Impact Initiative represent an exercise of the creative resolve that Hassoun advocates. The central goal of the Initiative is to contribute to the satisfaction of the right to health – that is, to increase people's access to resources such as essential drugs that are necessary for them to be able to live minimally good lives. It aims to do

[16] Ibid: 1, 73.
[17] Ibid: 8, 35-37, 42-43, 49, 51, 55-56.
[18] Ibid: 39.
[19] Ibid: 49-50.
[20] Ibid: 46-47, 49.
[21] Ibid: 48-49.

this by providing incentives for pharmaceutical firms to adopt policies and practices that will increase access to essential drugs for those who currently lack it.[22] The mechanism that is supposed to provide these incentives is a labeling system that is based on rating firms' overall impact on global health. Importantly, the rating system is designed to measure the actual impact of firms' products on global health – that is, on the lives of those who use the products.[23] This ensures that the incentives that the system provides are incentives to actually improve global health, and in particular to increase the satisfaction of the right to health.

The way that the labeling system is envisioned to work is as follows. Once the Initiative has gathered data on the impact on global health of all relevant drugs, it ranks pharmaceutical firms on the basis of their drugs' overall positive impact on global health. On the basis of those rankings, the top firms are granted the right to use the Global Health Impact label on at least most of their products – everything from over-the-counter pain medicine to cold remedies to sunscreens.[24] The rankings, and therefore which firms are entitled to use the label, are to be updated regularly, in light of ongoing assessments of the impact of firms' products on global health. If, for example, a firm that was not previously among those that ranked highly enough to be entitled to use the label develops a new drug that effectively treats malaria, and makes it widely available in parts of the world where malaria is common and effective treatments are not currently accessible to many, then that firm may move up the rankings enough in the next assessment to qualify to use the label going forward. All firms, then, would be constantly competing to be among the Initiative's top-rated firms.

[22] Ibid: 5, 8-9, 69-70, 74, 84, 94-95, 125.
[23] Ibid: 83, 88, 99, 102. Hassoun contrasts this feature of the Global Health Impact rating system with alternatives that incentivize the adoption of certain policies or making certain investments, which may or may not lead to actual improvements in global health (Ibid: 81-83).
[24] Ibid: 85-89.

Firms would have economic incentives to compete for the right to use the label to the extent that other agents can be expected to make decisions that affect their profitability on the basis of whether they qualify. Hassoun notes that investors could take a firm's Global Health Impact rating into account in deciding how to invest funds,[25] insurance companies could choose to prioritize covering drugs produced by firms ranked highly,[26] and universities could adopt a policy of licensing technologies that they produce only to such firms.[27] Perhaps most importantly, consumers could choose to buy products with the Global Health Impact label rather than otherwise similar products produced by firms that do not qualify to use it. Hassoun notes that, given the size of the market for consumer healthcare products, if the label were to generate a one percent increase in sales for products on which it appears, this would create more than $2 billion in incentives for firms to invest in competing for the right to use the label.[28] And she suggests that there is reason to believe that this would be sufficient to motivate firms to invest substantial resources in competing for the right to use the label, which would, in effect, mean investing in efforts to improve global health as much as possible.[29]

[25] Ibid: 74.
[26] Ibid.
[27] Ibid: 74, 92-94.
[28] Ibid: 88. She also notes that if we add generic drug sales to consumer healthcare product sales, a one percent increase attributable to the Global Health Impact label would provide nearly $3 billion in incentives (Ibid: 89, 105).
[29] She points out that firms can improve their Global Health Impact rating in a number of different ways, and therefore will have incentives to pursue all of them and to prioritize those that are the most promising in terms of expected impact per dollar invested. Firms can, for example, increase access to essential drugs that they already produce, invest in research and development for new drugs (Ibid: 94-95, 100), or even improve access to clean water in places where doing that would increase the beneficial effects for local populations of drugs that they produce (Ibid: 101).

3 ETHICAL CONSUMERISM, JUST INSTITUTIONS, AND THE SATISFACTION OF HUMAN RIGHTS

The success of the Global Health Impact Initiative's labeling scheme would depend, to a significant extent, on the behavior of consumers. Hassoun argues that if the scheme were fully in place in an unjust world like ours, consumers would have reasons, and potentially obligations, grounded in considerations of beneficence, to purchase products from firms that qualify for the right to use the Global Health Impact label.[30] On her view, consumers would have whatever obligations they do largely due to the failure of firms to satisfy their obligations to contribute to the satisfaction of the human right to health.[31] Firms' failures, on this view, can make it the case that consumers (and perhaps other agents, such as universities) are obligated to step in and contribute to efforts to incentivize firms to do more. Similarly, she claims that firms' obligations are at least largely explained by states' failure to fulfill the human right to health for all people.[32] On this account, while states are the primary bearers of obligations to fulfill the right to health, when they fail to do so, other agents, such as firms, are obligated to step in. More generally, whenever a particular agent or set of agents fails to satisfy its obligations, other agents can be obligated to step in when doing so can contribute to increasing the satisfaction of human rights such as the right to health.

This account of the structure and conditions of different agents' obligations reflects Hassoun's acceptance of what she calls the "institutionalist thesis."[33] According to this thesis, when just institutions are in place, it is generally permissible for individuals acting within those

[30] Ibid: 106.
[31] Ibid: 9, 106, 121-122.
[32] Ibid: 107, 114-115, 119-120. She claims that firms' obligations are also grounded in the fact that they violate rights (Ibid: 106-115), causally contribute to the non-satisfaction of the right to health more generally, benefit from the lack of satisfaction of the right (Ibid: 119), and are particularly well placed to contribute to the satisfaction of the right (Ibid: 119-121).
[33] Ibid: 141, 146-147,

institutions to do whatever they like, so long as they follow the rules imposed by the institutions.[34] On this view, "under just institutions, consumption is essentially private,"[35] and therefore individuals are not obligated to make purchasing decisions that are informed by principles and requirements of justice, including the human right to health.

The institutionalist thesis informs Hassoun's "positive change account" of ethical consumption.[36] According to the positive change account, "people may consume what they want under just institutions as long as they respect the institutions' rules,"[37] but when institutions are unjust, there are moral reasons, and perhaps obligations,[38] to pursue positive change through ethical consumption.[39] On this view, when states are unjust, and in particular when they fail to ensure that the human right to health is fulfilled for all people, consumers can have obligations to step in and contribute to the satisfaction of that right, including by purchasing products produced by firms that qualify to use the Global Health Impact label.

[34] Ibid: 121, 141, 146-148, 153-154.
[35] Ibid: 147.
[36] Ibid: 10, 141-142, 146-148, 158-159, 186.
[37] Ibid: 158.
[38] Ibid: 141, 159.
[39] Hassoun contrasts her positive change account with competing accounts according to which individuals engaging in ethical consumption must, whenever possible, seek to bring about the change at which they are aiming via democratic processes, and focuses in particular on the account defended by Waheed Hussain (Hussain, W. 2012. Is ethical consumerism an impermissible form of vigilantism? *Philosophy & Public Affairs, 40*(2), 111-143). She claims that while there are reasons to promote democracy and pursue positive change via democratic processes, these reasons can sometimes be outweighed by the value of positive change that can be promoted in other ways (Hassoun, op. cit., note 2, pp. 10, 142, 146, 148-149, 154, 159, 186). I find her claim that other values can sometimes outweigh the value of pursuing change democratically compelling, and I am persuaded by her arguments against several of the conditions for the permissibility of ethical consumption aimed at social change endorsed by Hussain (Ibid: 154-158). I am not entirely persuaded, however, by her argument against Hussain's claim that organized efforts to bring about social change via ethical consumption ought, in some important sense, be representative and deliberative (Ibid: 155-156). This is because it is not clear to me either that Hussain is committed, as Hassoun suggests, to a requirement that ethical consumers include targeted firms or their representatives in the relevant deliberative processes, or, more importantly, that such a requirement is entailed by any commitment to pursuing social change in appropriately representative and deliberative ways (see Berkey, B. (2021). Ethical consumerism, democratic values, and justice. *Philosophy & Public Affairs, 49*(3), 237-274). For further discussion of these issues, see Albertsen, A. (2022). Democratic ethical consumption and social justice. *Public Health Ethics, 15*(2), 130-137. For Hassoun's response, see Hassoun, N. (2022). Enhancing global health impact – Beyond the basic minimum, metrics and ethical consumption. *Public Health Ethics, 15*(2), 138-146, pp. 143-144.

Hassoun notes the important distinction between the institutionalist thesis, which she claims informs her view, and what she calls "institutionalism."[40] Institutionalism has its roots in John Rawls's claim that the principles of justice apply to the institutions of the "basic structure of society," but do not apply directly to the conduct of individuals within that structure.[41] What distinguishes institutionalism from the institutionalist thesis is that the former holds that fundamentally different principles apply to institutions and individuals, and therefore implies that when institutions fail to adequately secure justice, individuals are not obligated, as a matter of justice, to step in and promote it directly.[42] Hassoun, as I have noted, rejects this view, and holds that when institutions are unjust, other agents, including individuals, can be obligated to step in and aim to promote justice directly.[43] In particular they are obligated to step in and aim to contribute to the fulfillment of the human right to health.

Unlike institutionalism, the institutionalist thesis is, in principle, compatible with conceiving of requirements of distributive justice, including those entailed by the right to health, in outcome-based terms[44] – that is, as requirements that everyone is in fact provided with the

[40] Hassoun, op. cit., note 2, p. 147.
[41] See Rawls, J. (1999). *A theory of justice, revised edition* (pp. 6-9, 47). Harvard University Press; Rawls, J. (1993). *Political liberalism* (Lecture VII). Columbia University Press.
[42] Instead, institutionalists typically follow Rawls and hold that individuals are obligated to contribute to efforts to make institutions just, or at least less unjust, so long as doing so is not especially costly (Rawls, op. cit., note 39 (1999), pp. 99, 293-294).
[43] I have argued against institutionalism in a number of places. See, for example, Berkey, B. (2015). Double counting, moral rigorism, and Cohen's critique of Rawls: A response to Alan Thomas. *Mind*, *124*(495), 849-874; Berkey, B. (2016). Against Rawlsian institutionalism about justice. *Social Theory and Practice*, *42*(4), 706-732; Berkey, B. (2021). Rawlsian institutionalism and business ethics: Does it matter whether corporations are part of the basic structure of society? *Business Ethics Quarterly*, *31*(2), 179-209.
[44] An anonymous reviewer suggests that, at least in principle, accepting both that there are outcome-based requirements of justice and institutionalism is not inconsistent. The reviewer notes that one implication of accepting both of these claims would be that when individuals act in ways that make the outcomes that obtain closer to the outcomes required by justice, the result is not a less unjust outcome, but rather an outcome that is more similar to the just outcome, despite being no less unjust than the previous state of affairs. Even if a view of this kind can be made consistent, however, it is quite implausible. One reason why it is implausible is that it is inconsistent with the view, which I note later in this paragraph, that outcome-based requirements of justice are grounded in individuals' interests, such as, for example, their interest in living at least minimally good lives. I argue in detail that outcome-based requirements of justice are incompatible with institutionalism in Berkey, B. (2018). Obligations of productive justice: Individual or institutional? *Critical Review of International Social and Political Philosophy*, *21*(6), 726-753.

resources that they need to live at least a minimally good life. And this is clearly how Hassoun conceives of the requirements entailed by the right to health – this is why agents stepping in when other agents fail to satisfy their obligations can make it the case that the requirements are better satisfied. In addition, this seems to be the proper way to conceive of the requirements, since ultimately it is people's morally important interest in living at least minimally good lives that grounds the right to health and the requirements entailed by it.

But once we recognize that Hassoun (rightly, in my view) conceives of the requirements of the right to health in outcome-based terms, we can also see that any case for the institutionalist thesis must depend on the empirical claim that just institutions would necessarily ensure that the required outcomes obtain – that is, on the claim that, for example, just institutions are a sufficient condition for everyone having all of the resources necessary to live a minimally good life.[45] There are, however, reasons to doubt that this claim is true.

What institutions can achieve, compatibly with justice-based restrictions on the exercise of the coercive power of the state,[46] depends on how agents such as firms and individuals would

[45] An anonymous reviewer suggests that there could be reasons that some would accept for endorsing the institutionalist thesis even if the empirical claim on which I claim it depends were known to be false, such as that obligations to promote just outcomes within just institutions would be objectionably demanding. The institutionalist thesis, however, implies that individuals are not obligated, as a matter of justice, to promote just outcomes within just institutions even if doing so would be only minimally costly. The reviewer's suggestion, then, does not support the claim that the institutionalist thesis can plausibly be defended in a way that does not rely on the empirical claim. Relatedly, one of the central reasons that Hassoun gives for endorsing the institutionalist thesis is that it better reflects the liberal commitment to individual freedom under just institutions than views on which individuals have obligations to directly promote justice, even within fully just institutions (Hassoun, op. cit., note 2, pp. 147-147, 149, 154). This, however, strikes me as a mistake, since there are powerful reasons to think that moral obligations do not limit freedom in a way that is morally troubling (see Cohen, G.A. (2008). *Recuing Justice and Equality* (Chapter 5). Harvard University Press). Only their coercive enforcement, or other forms of interference by other agents, would limit freedom in a way that would at least sometimes be objectionable. For competing views, however, see Lang, G. (2016). Rawlsian incentives and the freedom objection. *Journal of Social Philosophy*, *47*(2), 231-249; Mackay, D. (2016). Incentive inequalities and freedom of occupational choice. *Economics and Philosophy*, *32*(1), 21-49; Casal, P. (2017). Mill, Rawls, and Cohen on incentives and occupational freedom. *Utilitas*, *29*(4), 375-397.

[46] Examples of plausible justice-based restrictions on the exercise of state power include a restriction prohibiting the state from mandating labor contributions that might nonetheless be necessary in order for just outcomes to be achieved, and a restriction prohibiting the state from conscripting individuals into educational programs completion of which is a necessary precondition of being qualified to perform labor that is necessary for just outcomes to be achieved. For discussion, see Berkey op. cit. note 44.

behave within the rules that would be imposed by different institutional arrangements and policies. Because of this, which institutional arrangements and policies are called for as a matter of justice will depend on how agents can be expected to act under the different possible alternatives. For example, if a policy that required pharmaceutical firms to spend 20% of their yearly revenue on research and development for drugs for conditions that primarily affect the global poor would increase the amount of research that occurs, and thereby lead to more drugs that can treat such conditions being developed, then justice might plausibly require adopting the policy. But if the result of adopting the policy would be that much less investment is made in pharmaceutical firms because investors come to expect larger profits from investing elsewhere, and as a result existing firms have smaller budgets and fewer new firms are formed, the policy might be counterproductive from the perspective of justice – and in particular with respect to fulfilling the right to health – in virtue of the expected behavior of firms and individuals if it were to be adopted. If we assume that the state ought not, as a matter of justice, force investors to invest in pharmaceutical firms, or force people to contribute to forming such firms, then we must accept that the state may not be able, through policy alone, to ensure that sufficient research and development is done to adequately promote the fulfillment of the right to health. Institutions may be as just as they can be, without the right to health being fulfilled.

In some cases of this kind, the most plausible explanation of the failure to fulfill the right to health will be that firms have failed to satisfy their obligations to contribute to its fulfillment. Perhaps even with somewhat fewer investment dollars coming in, existing firms ought to be investing significantly more in research and development for drugs for conditions that primarily affect the poor. In these cases, consumers' reasons, and perhaps obligations, to purchase products from firms that qualify to use the Global Health Impact label can be understood as obligations to

step in given firms' failures. But neither consumers' nor firms' obligations are, in cases of the kind that I have described, explained by the failure of the state, since the state is doing all that it permissibly and feasibly can to satisfy the right to health, given how agents such as firms and individuals can be expected to behave under the available permissible policies. Consumers, in this kind of case, are in a position to increase the extent to which the human right to health is fulfilled, despite the fact that state institutions are just.

It might be claimed that this theoretical possibility does not really undermine the institutionalist thesis, because in the actual world states becoming fully just[47] would ensure that the right to health is fulfilled for everyone. First, it is not entirely obvious to me that this is true. Consider, for example, the fact, which Hassoun herself acknowledges, that fulfilling the human right to health might require vast resources.[48] Just institutions must both determine how their limited resources ought to be allocated, as a matter of justice, and determine which permissible policies will avoid causing available resources to be more limited than they could otherwise be. Since the right to health requires both ensuring that existing drugs are made available to people who need them in order to live a minimally good life and ensuring that substantial resources are directed to research and development for new drugs, it does not seem obvious that even the best available policies would guarantee that sufficient resources are deployed, while at the same time avoiding unjust coercion and directing adequate resources to other equally urgent matters of justice.[49]

There are, it seems to me, also reasons to think that it is at least in principle possible that both states and pharmaceutical firms could be satisfying all of their obligations, while the human

[47] A state counts as fully just if it does everything it permissibly can to promote the realization of justice.
[48] Hassoun, op. cit., note 2, pp. 28-29.
[49] For further discussion of how and why fully just institutions might plausibly fail to ensure that just outcomes are achieved, see Berkey op. cit. note 44.

right to health remains less than fully fulfilled for everyone. This could be the case if, for example, the ways that individuals can be expected to behave in response to different possible firm policies and practices within just institutions would put many firms at serious risk of insolvency if they were to invest heavily in research and development for conditions that primarily affect the world's worst off people.[50] In a case of this kind, changes in consumer behavior, such as a significant increase in consumers' commitment to purchasing products from firms that qualify to use the Global Health Impact label, could make it possible (and thereby perhaps obligatory) for firms to invest much more in research and development that could increase the fulfillment of the right to health.

4 CONCLUSION

If my argument is correct, then there is no guarantee that state policy alone can ensure the fulfillment of rights such as the right to health, as Hassoun understands it. The fulfillment of this right, and potentially others as well, may depend to a significant extent on the choices made within even just institutional arrangements by agents such as firms and consumers.

Importantly, one implication of my argument is that there can be an important role for efforts like that of the Global Health Impact Initiative not only in deeply unjust worlds like ours, but in worlds with institutions that are much less unjust, and even in principle when institutions are fully just. The rejection of the institutionalist thesis, and the potentially expanded view about consumers' obligations with respect to the fulfillment of human rights that it implies, then, gives us additional reasons to endorse Hassoun's call to support the Initiative.

[50] Under fully just institutions, these people would, of course, not be nearly as badly off as the worst off are in our current world. But, importantly, they may still face shortfalls with respect to the right to health due to being vulnerable to conditions for which there are not (but could be with sufficient investment) treatment options available that would allow them to live minimally good lives.