
*Of Medicines and Markets* is a passionate analysis of Central American countries and their access to medicines. The book argues that human rights and free trade come into contradiction on matters of intellectual property. The debates around these issues represent “a struggle for hegemony between two competing discourses, two sets of rules by which globalization is to be conducted.”

Intellectual property has a long history. International rules governing its principal areas emerged in the late 19th century. It is remarkable to recall that El Salvador and Guatemala were among the few signatories of the first international convention on patents and trademarks—the Paris Convention of 1883. At that time, the two countries together with Brazil and Ecuador were the four Latin American original signatories of the treaty. The two Central American countries withdrew later and re-entered the Convention in the 1990s with the adoption of the TRIPS Agreement, which for the first time established that all technological fields, including pharmaceuticals, should be protected by patents. This trend has been reinforced by new trade agreements negotiated in recent decades. The strengthening of pharmaceutical protection has been an important feature of these agreements.

The author draws on the experience of Costa Rica, El Salvador and Guatemala with respect to the negotiations and consequent implementation of the free trade agreement between the United States and Central American countries: the CAFTA Agreement. Human rights advocates contested CAFTA and its implementation on its effects on access to medicines.

Acknowledging that there are numerous points of friction between human rights and international economic law, intellectual property represents for the author a paradigmatic case on a host of “contemporary struggles over rights, justice, and the role of the market in social life.” Snodgrass emphasizes that her work is a reflection of the politics of human rights in trade, “of transnational coalitions for alternative globalization, and of markets and medicines in the world today.”

The book is the result of field work carried out through several years interviewing a canvass of stakeholders including negotiators of trade agreements, public health advocates, medical practitioners and patients, legislators, human rights lawyers, judges, officials of state health
institutions, private sector actors namely from the local generic producing industry, as well as international civil society groups concerned with access to public health.

One important message I take from her work is the critical vision of the traditional argument advanced in the advocacy for access to medicines, namely a “neoliberal claim” based on the assertion that intellectual property is bad because it stifles competition and impacts prices. Her hypothesis is that the argument is flawed in the case of small markets such as those of Central America because the market has failed as “an adjudicator of health rights.” Snodgrass is also sceptical about the use of labels and binary approaches such as North/South that obscure, in her view, the vast diversity within each particular category of country. The experience of countries such as Brazil and India influenced policy proposals advanced by “transnational” activists in battles over CAFTA. The author makes a strong case against one-size-fits-all strategies, underlining the big differences that separate cities in Brazil or India from those in Central America.

As argued in the book, Central America is a place of contradictions. Health indicators across the region—with some notable exceptions—testify to high levels of deaths from preventable illness or from causes such as malnutrition and serious shortcomings in the provision of public health services. Despite this bad record, Central American societies have been leaders in defining health as a human right. However, as reported in the book, patients deeply mistrust public institutions and local pharmaceutical producers.

To substantiate her main ideas she provides interesting examples of patients receiving support from public health organizations via less expensive generic drugs and subsequently resorting to the judiciary claiming access to more expensive drugs protected by intellectual property. The courts upheld the claims of patients in an important number of cases. But, in the name of human rights courts preserved the exclusivity of drug innovators at the expense of generic drugs. The author sees this as a contradiction in the preservation of market instruments in the case of human rights.

The situation of Guatemala comes out strongly in the book both in the number of policy changes introduced in less than a decade and in the number of cases before the judiciary. For example, the largest category of complaints was brought by patients seeking access to a specific drug under intellectual property protection that was not included in the official list of approved medicaments. In a large majority of cases the judiciary upheld the patients’ right to access the medication sought. The author provides the example of a Guatemalan patient leader who claimed that under some circumstances, she would be willing to accept generic drugs from Northern firms but not from Central America and certainly not from India.
In her passionate assessment of the situation and its contradictions, the book illustrates the case of El Salvador where progressive health activists and generic producers were on opposite sides in the country’s armed conflict (1980-1992). The author reports that the personal stories of health activists was very much linked with the history of the conflict identifying for example the generics industry as part of the oligarchy who opposed them throughout the war. If generic producers were part of the solution, their representatives—cognisant of the disadvantages of CAFTA—were reluctant to oppose the agreement publicly in order to avoid being perceived as allied with former enemies.

The book is an important source of information and is rich in evidence of the complexities of relationships between market instruments such as patents and the preservation of human rights including access to medicines. It makes excellent reading combining personal experiences with complex technical issues.

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