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## **From Structural to Symbolic Dimensions of State Autonomy: Brazil's AIDS Treatment Program and Global Power Dynamics**

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## ABSTRACT

Theories of globalization debate the current role of the state in the contemporary world, specifically questioning how much autonomy or policy space the state has to enact policies considered to be in a country's interest. The problem of state autonomy becomes more acute for developing countries attempting to construct or defend rights-based social programs in the face of powerful transnational corporations, foreign diplomatic pressures and new international government organizations such as the World Trade Organization (WTO). A case study of the impact the Agreement on Trade-Related Intellectual Property System (TRIPS) on Brazil's universal AIDS treatment program is employed to assess the various theories of globalization and state autonomy. The study reveals that, although TRIPS represents a qualitative shift in power in favor of transnational companies, centralization of power at the global level can lead to the development of domestic coalitions in defense of national projects. More importantly, when contesting powerful adversaries, state actors may increase their leverage by projecting symbolic power to a global audience. The concept of *reputational dividends* is developed in this paper to emphasize that as nation-states become increasingly integrated into a global social system, the symbolic dimension of power becomes more salient in forging state autonomy.

**KEYWORDS:** Globalization, State Autonomy, Brazil, Intellectual Property Rights, HIV/AIDS

## RESUMEN

En la actualidad, algunas de las teorías de globalización proponen que el rol del estado frente a la creación de algunas políticas es limitado. El problema de la autonomía estatal se agudiza especialmente en países en desarrollo que se encuentran en proceso de construcción y consolidación de programas sociales basados en la defensa de derechos humanos, enfrentándose a grandes corporaciones transnacionales, presiones diplomáticas extranjeras y nuevas organizaciones gubernamentales internacionales como la organización mundial del comercio (OMC). El estudio de caso del análisis del impacto del Acuerdo sobre los Aspectos del Sistema de Propiedad Intelectual (ADPIC) frente al programa universal de tratamiento contra el SIDA en Brasil, se empleó para evaluar las diversas teorías de la globalización y la autonomía del Estado. El presente estudio revela que a pesar que el ADPIC representa un cambio de poder en favor de las empresas transnacionales, la centralización del poder a nivel mundial puede dar lugar a la creación de coaliciones transnacionales en defensa de los proyectos nacionales. Más importante aún, los actores estatales pueden disminuir la influencia de poder de dichas entidades mediante la proyección de poder simbólico a una audiencia más global. El presente documento desarrolla el concepto de *dividendos de reputación* en donde se enfatiza que en la medida en que los estados-nación se integran en un sistema social global, la dimensión simbólica del poder se hace más notable en la creación de la autonomía del Estado.

**PALABRAS-CLAVE:** la globalización, estado de la autonomía, Brasil, los derechos de propiedad intelectual, el VIH / SIDA

On May 7, 2007, Brazil took the audacious step in confronting pressures from the community of powerful transnational drug corporations who had the backing of the United States by issuing a compulsory license for a pharmaceutical product marketed by Merck Sharpe Dohme (MSD). The legal measure, rescinding the company's monopoly pricing power, allowed the Brazilian government to source the medicine from other generic producers. The action forced MSD to take an estimated loss of US \$40 million for the patented drug efavirenz (brand name Stocrin). Based on a strategy of local production of medicines and aggressive price negotiations, Brazil has been able to sustain universal treatment access to around 200,000 people who are infected with the human immunodeficiency virus (HIV) and are at risk of developing the fatal Acquired Immune Deficiency Syndrome (AIDS). Brazil's challenge against the global pharmaceutical industry, despite the country's size and level of development, is no small feat for a developing country facing rising social demands and few available resources.

The Brazilian case provides a number of interesting questions about globalization and state autonomy. What is the impact of global power on programs based on social democratic principles? Inherent in the notion of globalization is the promise of economic opportunity and access to latest technologies to improve the human condition in developing countries; this is only possible if social programs based on principles of universality and inclusiveness address persistent social inequalities. Studies of globalization in developing countries produce mixed results with some arguing that economic globalization negatively affects welfare regimes (Kim and Zurlo 2009; Rudra 2007, 2002), while others argue that the impact has been more positive or negligible (Koster 2009; Avelino, Brown, and Hunter 2005).

Large country comparative studies of globalization often base their conclusions upon quantitative measures of economic openness and social spending. Despite providing useful overviews of general trends, these studies rarely capture how actors are affected by new structural constraints and opportunities of the global economy. Increasing global integration has reconfigured power at the global and national levels and, consequently, our conception of autonomy of the sovereign state. When considering the ability of states to establish and maintain universalistic social programs, we must ask: how much policy space do state actors retain in the face of powerful transnational corporations and new inter-governmental trade bodies? Brazil, as an example, demonstrates that there are exceptions to global hegemonic forces that large-N studies do not specify and that theories of globalization predicated on notions of convergence do not take into account. Thus a case study of Brazil's actions will provide answers to a third important question: What are the social conditions that allow state actors to pursue alternative development trajectories in an increasingly globalized world?

In this paper, I will address the conceptual limitations of theories of globalization and state autonomy by using findings from a case study of Brazil's successful AIDS treatment program. Using the Brazilian example will allow me to develop the concept of *reputational dividends* that emphasizes the symbolic dimension of state autonomy in a globalizing world. This idea highlights aspects of power based on good deeds and moral leadership. By presenting positive images of its programs and policies, state actors can enhance their leverage against more

powerful contenders. The central theoretical argument is that a structuralist approach requires a corollary that focuses on the meanings, legitimations, and framings of state power. As nation-states become increasingly integrated into a global social system, the symbolic dimension of power becomes more salient in forging state autonomy.

The outline of this paper is the following. First, I argue that the Agreement on the Trade-Related Aspects of Intellectual Property System (TRIPS), one of the pillars of the WTO, represents a clear example of the impact of global power on state institutions that even skeptics of globalization cannot deny. Using the case of Brazil, I highlight the important legal changes that increase the structural power of global capital which places new constraints on the policy space of sovereign states. Second, I review sociological theories of globalization and demonstrate their strengths and weaknesses. One of the main problems with current theories of globalization is attempting to explain alternatives to models premised on convergence. Third, I investigate the structural biases of concepts of state autonomy and develop my concept of *reputational dividends* in order to argue that a more nuanced dimension of state power is needed to understand varied possibilities of state autonomy in a globalizing world. Lastly, I apply the theoretical framework to the case of Brazil to demonstrate how the country forged symbolic power based around its AIDS program. My central argument is the ideological framework of human rights defined and legitimated state actions, provided a common backdrop for coalition building, and became the standard bearer for contesting powerful external forces.

This paper is part of a larger research project on Brazilian pharmaceutical governance, the country's AIDS program, and impact of intellectual property rights on treatment programs. The case study is based on more than 50 key informant interviews with Brazilian policy makers and public health advocates concerning the country's industrial, social and foreign policies. Most of the interviews were carried out in 2007 and 2008 with some follow-up interviews in subsequent years. Triangulation of reported perceptions was achieved through a literature review of primary and secondary sources including government reports and Web sites, industry documents, news reports, and reports by nongovernmental organizations.

### ***TRIPS Represents a Global Shift in Power***

Studying the impact of the Agreement on the Trade-Related Aspects of Intellectual Property System (TRIPS) accord provides an excellent natural experiment for evaluating debates about globalization and the state. The international treaty, as a pillar of the WTO, has a direct impact on member countries' industrial and social policies that even skeptics of globalization<sup>1</sup> cannot deny. These scholars, especially from the varieties of capitalism or state-centric schools of thought, argue that national governments continue to be the key drivers in regulating economies, establishing trade pacts, and maintaining borders (Hirst and Thompson 1996; Boyer 1996; Campbell 2004). Their reasoning is that while economic flows have increased in recent

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<sup>1</sup> The term skeptics is taken from Held (1999) and his colleagues who classify debates of globalization into three schools of thought that also include hyperglobalizers and transformationalists.

decades they have merely become more geographically regionalized and concentrated. State-centric scholars argue that national states remain the pre-eminent institutions in shaping global integration, understood as proceeding in a negative sense, or without new global regulative frameworks (Fligstein 2005; Ó Riain 2000). Where global forces become salient, they are less of a factor in determining outcomes than national institutional legacies.

The TRIPS, nonetheless, represents a qualitatively distinct change in international relations which affects all 153 member countries of the WTO regardless of their level of development or regional economic activity. WTO members are required to establish minimum standards of intellectual property protection for patents, copyrights, and trademarks. In the case of patents, the agreement stipulates that the holder is guaranteed exclusive rights for the exploitation of a product, process, or use for minimum of 20 years and no discrimination against the patent rights of foreigners. States still retain a degree of maneuverability in terms of compliance and determining the criteria for adjudicating patentability. There are no global patents, so applicants must apply to each country's patent and trademark office individually. In terms of transition periods, high-income countries had until 1996 to change their laws; middle-income countries, 2005; and least developed, 2016. The more time developing countries have to adjust their intellectual property laws in accordance to TRIPS, the more their firms can use technologies patented elsewhere without the patent owners' consent. For example, the generic pharmaceutical industry in developing countries could legally reverse-engineer medicines patented elsewhere without having to pay royalties or wait until the patent expires. India and China's drug makers benefitted by those countries' decision to wait until 2005 to change their intellectual property laws, while Brazil, in contrast, became TRIPS compliant in 1996.

National intellectual property laws may go beyond TRIPS minimum requirements as long as such laws are consistent with the international agreement. Indeed, many countries have embraced numerous TRIPS-plus measures; that is, they include additional intellectual property protections that go beyond the baseline set by the WTO. For example, countries can link drug registrations to patent status, which provides the patent holder additional monopoly power until other generic producers receive registration approval from the health regulatory agency. New market entrants will still need to fulfill all the testing and regulatory requirements, which can take up to a few years. Many countries include more restrictive patent regimes than outlined by TRIPS as a result of bilateral or regional trade agreements that demand more restrictive intellectual property regulations (Smith, Correa, and Oh 2009). States determine which government organizations can grant patents and whether other public or private organizations can participate in the analysis of patent applications. Lastly, states also define patentability narrow versus broad definitions of patentability. For instance, patent offices may take into account public health concerns when evaluating patent applications and thus restrict approvals of weak patents that could later burden the health sector. In contrast, reviewers may allow for broad interpretations for what account for novelty and inventiveness criteria, which would translate into a higher likelihood of an approval.

Besides a number of restrictions and minimum obligations, TRIPS also specifies a number of humanitarian safeguards that allow states to take action to protect the public interest. Article 8 states that countries may adopt “measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development” as well as take additional action “to prevent the abuse of intellectual property rights by right holders” (WTO 1994). After a number of high-profile conflicts between developing countries and transnational drug firms, a coalition of countries at the WTO partnered up with advocacy movements to pass the Doha Declaration of 2001 which reaffirmed the rights of WTO member states to circumvent patents in order to uphold public health obligations. The declaration reinforces the sovereignty of states in determining the grounds for removing patent restrictions instead of providing this power to the patent holder or an international government organization (Hoen 2009). The main legal instrument for correcting abuses by patent holders is the compulsory license, which allows for the exploitation of a patent by third-parties without the consent of the patent holder. TRIPS authorizes the use of compulsory licenses in three main instances: national emergency, cases of anti-trust, and for public, non-commercial use. Before issuing a compulsory license, a government must first attempt to reach a negotiated settlement with the patent holder, who, in the case of the compulsory license, still has the right to receive royalties. Only in cases of national emergency and public, non-commercial use can governments dispense with prior negotiations (Correa 2000). Use of humanitarian safeguards to protect the public interest, however, has been rare due to the politics and powerful forces involved.

Who has benefitted as a result of the TRIPS accord? Since little time has passed since the passage of TRIPS, it is difficult to adequately assess the agreement’s impact. Some studies raise concerns about IPRs on developing countries, but remain sanguine about the potential that intellectual property has on growth, trade, and market development which, presumably, would translate into overall welfare gains (Maskus 2008). However, Odagiri et al. (Odagiri 2010: 26), who focus on intellectual property regimes in developing countries, conclude that “IPR does not affect catch-up but the effects are multi-dimensional” and it is difficult to generalize their impact, except for pharmaceuticals in which patents clearly matter. One large-N study concluded that there is no association between pharmaceutical patent protection and domestic innovation or foreign direct investment, and positive spillover effects only occur in countries with high levels of education, development, and economic freedom (Quian 2009). In-depth case studies of the domestic pharmaceutical firms from developing countries suggest their interest in patent protection and increasing investments in new drugs results from their desire to enter the US market, irrespective of TRIPS (Chaudhuri 2009; Shadlen 2009). Reviews of patent applications and approvals before and after TRIPS show that foreign firms tend to out-strip domestic applicants up to a factor of five (Laforgia, Montobbio, and Orsenigo 2009). Lastly, the six most developed countries of the world accounted for up to 84% all patent applications (Shadlen 2011).

The TRIPS agreement undoubtedly increases the structural power of capital by establishing an overarching international legal code and juridical structure that favors the

interests of transnational firms with large intellectual property portfolios (Sell 2003; May 2000; Hoen 2009). The question for social scientists is whether a neo-realist perspective of the international system of sovereign states competing against each other is sufficient for analyzing the situation or if new conceptual frameworks could better capture the qualitative changes in the relationships between nation-states, global capitalism, and international governance structures. Scholars espousing the state-centric position, for example, see TRIPS as a continued form of power politics; that is, globalization results from an alliance between the largest firms (mainly in the US) and powerful liberal states (namely the US) (Ó Riain 2000). Similarly, world system theorists (Arrighi and Silver 1999; Wallerstein 1996) would interpret the WTO as a tool of US geo-economic interests designed to maintain its hegemonic position in the world.

On the surface, the TRIPS accord replicates enduring inequalities in the world system with the advanced industrial economies (US, leading European countries, and Japan) imposing their interests to the whole world. Indeed, TRIPS institutionalizes power differentials between wealthy and poor countries, whereby the former with developed intellectual property infrastructures and cultures have a clear advantage over the latter (Carolan 2009). Before TRIPS, the development model employed by most developing countries (and even developed countries in the past) dispensed with patent protections for their economies since their development model was based on copying and adopting existing technologies (Chang 2002; Wade 2003). Additionally, even while respecting patents in other industries, most countries did not provide patents for pharmaceuticals since they were considered a strategic input for health systems.

The global governance structure embodied in TRIPS represents more than just powerful states coercing weaker states that have been so common in the past. In fact, during the previous phase of globalization during the end of the 19<sup>th</sup> century, countries established the Paris Convention for the Protection of Industrial Property in 1883. The current structure of global governance is qualitatively different; the WTO represents the institutionalization of the neoliberal model to the global trade regime. Chorev (2005) calls the process the “structural internationalization of the state” due to the judicialization of international law and re-scaling of political authority to the global level. Increasing centralization of power involves both formal and informal dimensions. For example, although developing countries have the legal mandate to use humanitarian safeguards to protect public health objectives, they must follow guidelines established by the WTO. The process of developing patented medicines and using compulsory licenses has been embroiled in court injunctions, WTO panels, and threats from drug firms and diplomats. With new intellectual property legislation, developing countries must engage in difficult price negotiations and follow a bureaucratic and politicized process when issuing a compulsory license. In sum, the TRIPS accord and establishment of the WTO represent qualitative changes in the global political economy that has a direct impact on the health systems of member states. Not surprisingly, many theorists of globalization predict increasing convergence across national states as a result of stronger centralizing forces like the WTO.

### ***Theories of Globalization and the Problem of Convergence***



So far, I have explained the TRIPS agreement and argued that it represents a qualitative change in global social relations that goes beyond state-centric approaches to understand social change. Theories of globalization attempt to understand macro-sociological changes in the world by moving beyond the nation-state as the primary unit of analysis. Taken to its extreme, this analysis predicts the eventual transcendence of states as important actors in a borderless world economy (Ohmae 1990). Most theories, however, still accord sovereign states an important place in the global system, but argue that their functional role has changed and that external forces take precedence. The two paradigms I consider include the theory of global capitalism and the theory of world society. Both schools of thought provide useful insight into processes of globalization, but both are premised on notions of institutional convergence.

Sociologists of global capitalism argue that that a transnational capitalist class directing powerful transnational corporations shape national institutions to benefit global accumulation (Sklair 2002, 2001, 1995; Sassen 2006). The global capitalist economy is governed by an emerging “transnational state” (Robinson 2004) as powerful capitalist class forces retool national states and establish transnational structures to oversee global markets. The revenues of top global corporations outstrip the gross domestic products of most countries of the world, thus demonstrating their economic might and ability to put downward pressure on fiscal and social standards. However, some skeptics argue that firm size is less important than monopoly position in terms of understanding the balance of power between capital and states (Held 2004). Regardless, the present case study of the global pharmaceutical industry fulfills both criteria given its market characteristics as an oligopoly. Understanding TRIPS from this perspective therefore is useful since the pharmaceutical industry is one of the most internationalized industries in the world. In the final analysis, decisions made by corporate drug executives have substantial economic and life-and-death implications for people throughout the world.

Theorists of global capitalism also argue that domestic development alliances based on tight networks between state, local capital, and TNCs have dissolved as a result of neoliberal reforms and retrenchment of the state’s directing role in the economy (McMichael 2007). With increasing mergers and acquisitions, a firm’s identity is no longer rooted in its country of origin; rather, brand names, advertisement, and marketing strategies adapt to local market conditions throughout the world. Consequently, the social ties binding the state to society have become global in nature, and these networks are stronger between policy makers and executives of transnational corporations than between state elites and their constituents (Sklair 2001; Robinson 2004). Indeed, one of the strategies of the transnational drug industry when entering large emerging markets is to acquire domestic firms with an important market position. Conversely, capitalist forces in developing countries are forging their own transnational corporations in order to engage in global accumulation as opposed to focusing on the development of domestic markets (Sklair and Robbins 2002; Flynn 2007).

The theory of global capitalism pushes our conceptions of state, society and economy in new directions, but there are a number of issues not adequately addressed in the theory. First, any

theoretical framework based on powerful capitalist forces leading to institutional and social convergence discounts the histories and varied institutional capacities of nation-states. While there are similar global trends such as the neo-liberal revolution of the 1980s and 1990s, class struggles are neither homogenous nor are legacies of governments similar enough to warrant the conclusion that outcomes will be the same. One important institution embodying state power not under the control of a transnational class or state is the military (Stokes 2005). The U.S.'s invasion of Iraq is a case in point. Despite some of the claims made by theoreticians of global capitalism, the invasion exposed deep rifts in the allegedly increasingly coherent TCC.<sup>2</sup>

Secondly, theoreticians of global capitalism stress that transnational groups coalesce around issues of political economy, but this formulation, rooted as it is in historical materialism, de-emphasizes other sources of cross-border group formation including common identities, lifestyles and ideological beliefs. Transnational social movements are not automatic or necessarily result from a Polanyian double-movement. Put differently, the origins, evolutions, and successes of collective action by weak actors do not follow uniform processes but involve diverse political structures, social organizations, and cultural understandings (Katznelson 2003). The development of stronger connections between global business elites and national state elites, moreover, is not a foregone conclusion. Instead, strong ties may develop between civil servants and local grassroots organizations and/or transnational advocacy networks depending on local circumstances, shared ideologies, and broader institutional forces.

World society theorists, though from different theoretical and epistemological roots than Marxian-inspired political economy, also argue that globalization is leading to increasing organizational convergence across states. Acknowledging the important changes in the global economy, including new technologies leading to “space-time” compression and increasing global inter-connectedness, these scholars argue that we no longer live in a state-centric world as governments adopt similar institutional forms or “best practices.” Current processes of globalization, based on science and rationalization, increase the dissemination and emulation of organizational scripts and models that lead to more efficient and streamlined states (Meyer, Boli, and Thomas 1997; Drori, Meyer, and Hwang 2006). While globalization has resulted in a state that is stronger organizationally, increasing professionalization leads to more disciplined and tame state organizations. The state's infrastructural capacity to act has increased, but global norms and pressures also inhibit independent action (Meyer et al. 1997).

The theoretical framework of world society is informative in explaining common standardized forms adopted by states. All states, regardless of their previous institutional path, adopt policies regarding individual rights, economic development, mass schooling, standardized record and data systems, shared definitions of health and disease along with many other common scripts (Meyer et al. 1997). Since many of these models are highly rationalized, they tend to be difficult to implement in practice—the more so depending on the degree of idealism inherent in

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<sup>2</sup> U.S. actions in Iraq are hotly debated within Marxist circles and among other social scientists. One common mistake is to reduce the invasion of Iraq to being a functional necessity for the reproduction of the global capitalist system.

the models (Scott 1998). The concept of decoupling, according to these theorists, draws attention to the fact that there are many variants of externally available scripts that are difficult to import wholesale and, often times, contrast with current domestic practices (Meyer et al. 1997). TRIPS accord, according to the world society paradigm, merely represents the best model to induce innovative practices necessary for economic growth and development. Although the patent-based model will unlikely achieve desired results when applied to diverse countries as a result of divergent practices, norms, and cultural understanding of intellectual property, scholars from this school will no less highlight the increasing dissemination of this model as evidence of over-arching world culture based on rationalized knowledge.

World society theory has some important limitations. Even if we assume that local governments and citizens are just enactors of externally produced scripts, world society theorists fail to highlight that scripts and models from the “rationalized world institutional and cultural order” can be in direct contradiction with one another. It is this tension that can lead to divergence. Access to lifesaving medicines as a human right and the need for intellectual property rights to encourage technological development, for example, illustrates this conflict. While the world society perspective draws attention to this dilemma, the theory fails to explain outcomes because it does not include a dimension of power. In order to avoid circular thinking, this approach must recognize that some social groups have greater power to impose their institutional models as opposed to others.

The experience of developing countries’ efforts to scale-up treatment as well as adopting patent protections that lead to high medicines prices reveals that the creation, dissemination, diffusion, and coercion inherent in various rationalized models and scripts are not only contradictory but also highly politicized. Institutional isomorphism may lead to more efficient forms of government, which, combined with competitive world economic pressures, will likely result in a “leaner, meaner” state (Evans 1997). Nonetheless, old state patterns persist and national governments retain considerable power (Held et al. 1999; Giddens 2000). Consequently, different institutional models persist including liberal, social rights-based, developmental, and socialist states (Ó Riain 2000). Social groups succeed in following one of these models at the expense of others not as a result of idealized forms of scientific deliberation, but due to social conflict that reveals competing interests between, and shared value orientations amongst, social groups capable of pushing certain scripts versus others.

To understand the Brazilian case, we need to move beyond structuralist accounts of state-society relations as well as the view that rationalized scripts based on common understanding of scientific progress. Instead, we must incorporate the symbolic dimension of state autonomy that I attempt to advance through the concept of *reputational dividends*.

### ***From Structural to Symbolic forms of State Autonomy***

The concept of state autonomy is tied to the Weberian perspective of the modern bureaucratic state. Not necessarily reducible either to class or pluralistic analysis, the state is a

potentially autonomous actor in society based on its central rule-making ability over a geographically defined area. Once created, bureaucratic states develop their own rationality, which tends to be more instrumental and universal than the varied rationalities and interests found in society (Weber 1946). Working within a Weberian perspective, Mann (1986) argues the state is ultimately an “arena” and it is from this fact that it derives its autonomy. The elements of state power include a set of differentiated institutions whose power emanates from its centrality over a territorially demarcated area. The monopoly of “authoritative binding rule-making” is backed by its monopoly on the legitimate use of force. Given the space it occupies in modern society and the multiplicity of functions that affect different interest groups, states can gain autonomy by practicing a “divide and rule” strategy (Mann 1986). The state’s power, nonetheless, remains tied to its interplay with other social forces in society and, in Mann’s view, is largely derived from its war-making abilities.

While war-making is closely tied to the development of state institutions (Tilly 1997), the evolution of state capabilities is closely connected to the wider economic system. Consequently, the economy is embedded in state institutions just as uneven development conditions the growth of the state (Polanyi 1944; Block and Evans 2005). Not surprisingly, the concept of state autonomy has played an important role in the study of socio-economic development. The assumption of comparative institutional analysis is that, since state structures develop variably through time and differently across countries, we can expect to observe different social and economic outcomes. In studies of developing countries, especially those seeking to understand the economic development of Japan and other fast-growing East Asian countries, scholars argue that an autonomous developmental state transcends particularistic interests and effectively governs the market (Wade 1990; Amsden 2001).

The concept of embedded autonomy, developed by Evans (1995), seeks to understand the varied institutionalized channels of state and societal relations by uncovering the social bases of successful developmental states. Along these lines, state autonomy is based on the internal organization of state agencies and the forms of social ties between civil servants and civil society actors. Where bureaucrats have clear career paths and strong forms of solidarity, states have the potential for becoming autonomous and work towards a self-defined national interest. But just as important, Evans (1995) asserts, are the formal and informal institutionalized channels between bureaucrats and society in order to exchange information about the others’ capabilities. While previous work on state autonomy has provided interesting conceptual tools for comparing institutional structures across countries and demonstrating their importance to economic growth (Evans and Rauch 1999), the model has some important shortcomings.

First, current formulations of state autonomy tend to discount the impact of globalization. Indeed, Block and Evans (2005), echoing the work of global capitalist theorists, agree that transnational structures curtail the ability of institutional innovations required for successful social development. However, we should not assume that new transnational structures imply the demise of domestic alliances or divergent outcomes. If the state occupies a unique institutional “arena” in modern society, globalization opens new spaces for state action at the same time as it

restricts others. The “arena” grows as new actors’ voice claims, thereby allowing state autonomy to be renewed – following Mann’s logic of divide and rule – by the ability to play different societal forces against one another and make alliances with certain groups at the expense of others. Contemporary global processes can result in contradictory outcomes on state autonomy, both constraining and enabling. On the one hand, neoliberal economic reforms in recent decades have reduced state interference in the economy and society. But on the other, recent democratic reforms in developing countries over the past twenty years represent the entrance of new actors with demands on states (Dagnino 2004; Foweraker 2005).

A second problem with traditional conceptions of state autonomy is its emphasis on structural analysis. A structural perspective highlights the relationships between groups and organization in society at the expense of meanings, identities, and values. Consequently, state autonomy becomes achievable when the correct formula for the internal organization of the state is adopted and correct external links with civil society have developed. While the notion of state autonomy remains an ideal type, not necessarily applicable to all circumstances, it remains understood structurally; that is, based on a relational model of internal coherency and external divide and rule strategy. The inclusion of symbolic dimension of human interaction reflecting shared cultural values and meanings are only mentioned in reference to *esprit de corps*, or internal group cohesion, of some public servants. While a certain degree of managerial professionalism is necessary to achieve effective state autonomy, a structural view speaks less to the meanings, ideologies, and purposes that permeates the actions of public servants and their relationships with wider society. To avoid a deterministic account, I argue that scholars must take into consideration the value orientations that shape the actions of state actors and provides the common framework for their interactions with the rest of society. Carpenter (2001), for example, argues that bureaucratic autonomy is not necessarily based on good governance alone, but also requires the “successful practice of politics of legitimacy.” By constructing multiple networks of support, agency leaders are capable of imposing political costs to those opposing the agencies’ wishes (Carpenter 2001). Needless to say, networks of support that cross the state-society divide are not based on material interests alone but can develop as a result of shared value orientations.

In a globalized world, the “politics of legitimacy” and state-society ties are not restricted to domestic audiences alone. This is the lynchpin to understanding how state autonomy is forged amidst powerful external pressures. According to Weber (1946), state power does not rest on brute force alone but also requires legitimacy or active consent of the ruled. While modern political institutions derive their power from rational-legal grounds, ideological battles over the legitimacy or normative dimension of state actions continue. Here, we must extend Mann’s conception of the state as an “arena” to include not only players but also spectators. The state is capable of autonomous action not only through its internal organization (i.e. increasing managerial professionalism) or by successful divide-and-conquer strategies, as structuralists maintain, but also through appeals to and support from interested audiences. With globalization, these audiences are not only domestic, but also global.

Integration in the global system not only has repercussions in terms of state actions internally, but expands the spectator base of moral support and righteous condemnation externally. Consequently, insofar as national states establish more international economic, political, and cultural ties, state actors must defend the legitimacy of their actions to larger audiences. Countries that have few connections to the rest of the global system (i.e. North Korea, Myanmar, etc.) or predatory states that are capable of monopolizing rents due to their control over natural resources (i.e. oil rich countries) have less need to legitimate their actions to wider audiences. But given the degree of global integration, most countries must justify the normative dimension of their actions. Hierarchies in the international system still persist. But even large, powerful countries end up marketing their actions to a global community. For example, the US' "War on Terror", despite its many outspoken opponents, is based on its reputation of being the West's leader in national security.

My concept of the world audience is not consensus-based as formulated by world society theorists, but understands globalization as inherently conflictual. Different audiences whether due to their material interests or value orientations back different rationalized scripts or normative actions. States, like any other collective actor, can appeal to specific audiences to win support for their actions. Microsociologically speaking, the idea of "impression management" calls attention to the way individuals consciously or unconsciously present themselves in order to compel others to react to them in certain ways (Goffman 1973). For nation-states, impression management is employed more instrumentally than unconsciously as is the case in micro-level interactions between individuals. Nonetheless, the objective of self-presentation by state actors in a contentious global arena is to prevail over challengers by invoking norms, values, and symbols that resonate with interested spectators and that frame opponents' actions as illegitimate. Needless to say, this strategy is often employed by weaker actors against powerful contenders. In other words, states with comparatively fewer material resources tend to draw upon symbolic resources that are more diffuse in nature when challenging more powerful countries that are able to marshal more material resources.

The symbolic dimension of state autonomy is more effective in contesting hegemonic norms and pressures when actors successfully market their leadership in addressing a social problem. The concept of *reputational dividends* highlights this dimension of social power. Just as Carpenter's bureaucracy can obtain more autonomy throughout government based on developing its moral leadership, so too can states improve their standing in the global community by demonstrating their ability to deal with a social problem. *Reputation* thus represents moral leadership, while *dividends* refer to successful marketing and engagement with global audience to enhance symbolic power. This approach, emphasizing the symbolic dimension of the state power, shares with the constructivist school in international relations theory the importance of ideas, norms and values in shaping social interactions (cf. Wendt 1999). International theorists in this tradition speak of the "reputational costs" that weak actors can impose on strong actors (Greenhill and Busby 2008). But equally important are the symbolic gains actors can obtain. Whereas costs can be imposed on the misdeeds, hypocrisy, and violations (i.e. negative

behavior) of states, *dividends* can be reaped by exploiting achievements, moral appeal, and good deeds (i.e., positive behavior).

Those countries best posed to develop *reputational dividends* are middle income countries. Low-income countries typically do not have the resources either to carry out a successful program comparable to that of middle-income countries nor the requisite skills to trump up their case on the international scene. Rich countries tend to have the most to lose in zero-sum game situations, as in the case of intellectual property rights. Despite comparatively limited resources, the position of middle-income countries in the world system and their sufficient institutional capacity allow them to craft moral claims, which make them ideal candidates to develop *reputational dividends*. Transnational advocacy networks when partnered with these states are able to distribute these *dividends* to other countries, audiences and actors, as well as apply constant pressure on state actors of the moral leader to assure that their practices match their image.

The case of AIDS may be a unique social problem, but one that allows me to flesh out the *reputational dividends*. First, there is a clear global audience who share common definitions that the disease must be fought, although strategy and frames to achieve this goal may differ. Second, governments play a key role in fighting the pandemic. Where the disease is left unchecked, it devastates governments not only materially in loss of life and economic hardship, but also symbolically for failure to act. Those countries that successfully confront the pandemic, however, become empowered. Seen as “winners” in the fight against the pandemic, policy experts, activists, and even private companies rally to the cause. Third, a powerful ideological frame has developed to address the disease that is capable of mobilizing diverse groups - human rights. Rights-based claims is an example of a mobilizing factor for networking with various groups, including gay activists, the access to medicines movement, and human rights defenders across the world. As mentioned before, coalitions are more empowered when they have a concrete program to defend and not an abstract ideal. In a globalized world, social movements could not achieve success without state partners, and state actors cannot contest global power without outside help. As a close study of the success of social democracy in the global periphery argues, “both state capacity and grassroots pressures become essential for preserving social conquests: the former as the locus of strategic innovation and planning, and the latter as a constant political counterbalance to the pressures of globalization” (Sandbrook 2007:226).

### ***Brazil’s Construction of Reputational Dividends in Defense of its AIDS Treatment Program***

Brazil provides an interesting case study for understanding the salience of symbolic power for state autonomy. Over the past twenty years, the Brazilian economy has integrated more fully into the world economy, established numerous trade agreements, and joined several international government organizations. Globalization has presented new risks and opportunities. In terms of its pharmaceutical sector, historical economic and technological dependency has increased. While its pharmaceutical market ranked ninth in the world with sales of \$12.2 billion

in 2007, foreign-based firms control between 70-80% of the market (IMS Health 2008; Grupemef/Febrafarma 2007). When drawing up legislation regarding intellectual property, Brazilian policy makers did not wait until the 2005 deadline set for middle-income countries to adhere to the TRIPS accord. US trade pressures and ideological beliefs by Brazilian economic policymakers contributed to the early adoption of intellectual property rights for pharmaceuticals, which had been not patentable since 1971 (Nunn 2008; Tarchinardi 1993). Six years after the 1996 Industry Property Act, Brazilian firms accounted for only 3.1% of the industry's total 6934 patent claims. The vast majority have come from countries that are home to the world's leading pharmaceutical companies (Bermudez and Oliveira 2004). Despite the weakening of Brazil's pharmaceutical industry as a result of neoliberal reforms, the country still retained a number of capable Brazilian private-sector drug companies and public-sector (government-controlled) labs.

The irony of Brazil's case is that in 1996, the same year the country changed its patent laws for pharmaceuticals, legislation was approved mandating free and universal access to AIDS medicines. Providing universal and free access to AIDS medicines resulted from many years of domestic social struggles bolstered by alliances between AIDS activists lobbying, protesting and using the court system and activist health workers transforming Brazil's health system from within government (Biehl 2007; Nunn 2008). While the country's 1988 Constitution codified the right to health as guaranteed by the state and local AIDS policies developed in contact with UN agencies (Bastos 1999), as world society theorists would predict, the country did not always follow best practices disseminated by the experts in rationalized science. When AIDS treatments became available, experts and health professionals recommended that developing countries like Brazil concentrate their resources in prevention programs since providing treatment was not considered "cost-effective." However, AIDS activists inside and outside of the Brazilian government resisted this advice and instead began rolling out treatment as soon as it became available. Even before Brazil confronted external pressures regarding patents protections on AIDS medicines, informal channels of information and a revolving door between National AIDS Program and non-governmental groups had developed.

Brazilian AIDS activists and health reformers, who were slowly enacting changes in the health care system to make it more inclusive, universal, and participatory, both shared a common belief that fighting the disease required a human rights approach. After struggling to enact laws to guarantee access to treatment and fighting for sufficient fiscal resources to fund the program, they turned their attention to external threats to the program. Although Brazil's intellectual property laws were changed in 1996, it was not until 2000 that new AIDS medicines arrived on the market that were protected by patent. Before then, Brazilian firms could legally reverse engineer AIDS medicines and sidestep the monopoly transnational drug companies had on the new class of drugs. Due to these efforts, the cost of triple therapy in Brazil fell to US\$2,767 per patient/year by 2000 compared lowest price of US\$10,439 offered by originator companies (MSF 2005). Brazil's success at lowering the price of AIDS drugs and at providing treatment



demonstrated to the world that the disease does not need to be a death sentence for those living in the developing world.

The next challenge was to remain abreast of technological innovation in medicines. Once a patient begins treatment, they must take the prescribed drugs daily for the rest of their lives. When viral mutation develops or adverse reactions occur, patients need to migrate to newer and more expensive treatments. With the inclusion of second generation AIDS medicines in treatment protocols, Brazilian authorities were forced to negotiate directly with the originator companies who now held twenty-year patent protection. To address the problem of higher costs and rising number of patients, Brazilian officials chose a strategy based on aggressive price negotiations with the patent holder by employing the threat of a compulsory license.

The first round of tense price negotiations between Brazilian negotiators and foreign-based drug companies came to a head when the US requested a WTO Dispute Settlement Body in February 2001 and accused Brazil of not abiding by the TRIPS accord. While US pressures on Brazil to change certain aspects of its patent laws may have occurred in spite of the tense price talks, the WTO panel created a political opportunity for Brazilian officials to enlist the support of civil society for the country's defense. The timing and place could not have been more fortuitous for the Brazilians. The US Trade Representative (USTR) began bilateral consultations concerning the dispute in June 8, 2000, a month before the bi-annual International AIDS conference that took place in Durban, South Africa. At the event, Brazilian officials presented data on falling mortality rates and reduced hospitalizations of people with HIV/AIDS due to its treatment program. Between 1997 and 2000, it is estimated that 234,000 hospital admissions were avoided, representing savings of \$677 million (Bermudez and Oliveira 2004). Brazil's success demonstrated that developing countries can provide First World levels of care and galvanized efforts to replicate the "Brazilian model". Concerns about inadequate health infrastructures, lack of treatment adherence, and the development of an uncontrollable strain of HIV subsided as Brazilian and other treatment efforts became known. The stage was set for the use of *reputational dividends* in the face of WTO and corporate pressures, especially after the New York Times published an article describing the country's successes (Rosenberg 2001).

Brazilian health officials were cognizant of the challenges after witnessing South Africa's 1998 experience confronting foreign drug companies and pressures from the US after passing new legislation aimed at lowering drug prices by allowing for parallel imports of generics and compulsory licensing (Bond 1999; Klug 2008). Unlike South Africa, which failed to take advantage of the conflict to establish stronger network of international supporters through its denial of the link between HIV and AIDS, Brazilian health officials cultivated these relationships. Paulo Teixeira, the director of Brazil's National AIDS Program, explained the country's strategy at the WTO.

*National production started to be the reference for the world. The Brazilian Example! We got together with the Itamaraty [Ministry of Foreign Affairs] and came to a conclusion. The National AIDS Program could be Brazil's defense... We made an agreement with the*

*local NGOs to back up our strategy against the panel and the price negotiations. We also articulated with international NGOs like CP Tech, MSF, Oxfam and ACT-UP. We were the ones that sought them out. They always did not trust government much, but we were able to get their trust. (Teixeira 2008)*

AIDS officials coordinated with prominent domestic NGOs when confronting the US. Although there were close alliances between the state body and civil society organizations during the 1990s, the WTO dispute brought the issue of patents and the price of medicines to the foreground. Now local civil society organizations began to mobilize over the issue of patents.<sup>3</sup> Pro-active civil servants and patient advocacy groups combined forces under a common frame that AIDS represented an important health crisis and that access to medicines was a human right.

Additionally, Brazil's AIDS officials began to extend its activities internationally by reaching out to foreign-based advocacy groups. Unlike the "boomerang" model of Keck and Sikkink (1998), whereby activists in developing countries seek support of transnational networks to put pressure on their own countries, this analysis of Brazil reveals coalitions from middle income countries reaching out to transnational networks to mobilize support against corporate-led globalization. The "human rights frame" provided the backdrop for several diverse groups and actors, such as gay rights groups, the access to medicines movement, and consumer advocacy groups, to coalesce into a large movement to defend social rights states and blame corporate-led globalization for social injustice. The frame is even more empowering since it was backed by the visible success of Brazil's social program.

Brazil's strategy of trumpeting the successes of its AIDS program and exploiting the perceived threats to its program are remarkable given the fact that had the US' case at the WTO been successful there would have been a negligible impact on its treatment program. The USTR (2001a) argued that the WTO panel would not affect the country's "widely praised anti-AIDS program" and did not affect the use of compulsory licenses in cases of public interest or national emergency.<sup>4</sup> This characterization from US officials, while technically correct, circumvents the high level of politicization of the negotiating process. Nonetheless, Brazil's strategy of mobilizing support from local and foreign civil society succeeded. The US withdrew the WTO

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<sup>3</sup> The Working Group on Intellectual Property from the Brazilian Network of Peoples Integration (Grupo de Trabalho em Propriedade Intelectual da Rede Brasileira pela Integração dos Povos—GTPI /Rebrip) was established in 2001 after the WTO panel. The group is comprised of local NGO groups ABIA, CONECTAS, GAPA – SP, GAPA – RS, Gestos, GIV – Grupo de Incentivo a Vida, INESC, INTERVOZES, and Pela Vida, as well as international groups MSF and OXFAM.

<sup>4</sup> "On February 1, 2001, a WTO panel was established. Since the establishment of this panel, however, Brazil has asserted that the US case will threaten Brazil's widely-praised anti-AIDS program, and will prevent Brazil from addressing its national health crisis. Nothing could be further from the truth. For example, should Brazil choose to compulsory license anti-retroviral AIDS drugs, it could do so under Article 71 of its patent law, which authorizes compulsory licensing to address a national health emergency, consistent with TRIPS, and which the United States is not challenging. In contrast, Article 68 -- the provision under dispute -- may require the compulsory licensing of any patented product, from bicycles to automobile components to golf clubs. Article 68 is unrelated to health or access to drugs, but instead is discriminating against all imported products in favor of locally produced products. In short, Article 68 is a protectionist measure intended to create jobs for Brazilian nationals" (USTR 2001a: 10).

panel on June 25, 2001, alleging that Brazil had not actually used a compulsory license based on Article 68 of its patent law (USTR 2001b).

The Brazilian government and allied NGO groups not only joined forces against the US pressures at the WTO, but also coordinated efforts in other international government bodies and venues including the United Nations Commission on Human Rights, the World Health Assembly and the UN General Assembly Special Session on HIV/AIDS (UNGASS). Transnational advocacy networks needed a leading country to change treatment paradigms at the international level just as much as Brazil needed their support to push its agenda. The coalition between Brazil and international civil society was also instrumental in affecting the Doha round of trade negotiations. Because of the growing awareness of the AIDS crisis, the need to provide inexpensive medicines for treatment, and problems Brazil and South Africa had experienced with foreign drug companies, developing countries were able to place the issue on the trade negotiation agenda. The goal was to clarify the use of compulsory licenses outlined in TRIPS in terms of public emergency. The term “public emergency” remained vague and subject to broad interpretation. Brazilian negotiators insisted the goal was not to abrogate the TRIPS accord; instead, it was to rebalance the rights and privileges between private and public interests inherent in the right to intellectual property. Even though it initially resisted the Declaration, the US eventually capitulated in order to avoid blames of hypocrisy. The US Department of Health and Human Services had threatened to use a compulsory license to purchase ciproflaxin when the anthrax scares struck Washington, DC, in the aftermath of the September 11<sup>th</sup> attacks. Activists and others asked why the US and not developing countries? The Doha Declaration on TRIPS and Public Health, signed a month later in November 2001, reaffirmed that each member of the WTO had the right to determine the grounds for using a compulsory license and to define what constitutes a national emergency (WTO 2001).

On the domestic front, the symbolic power of Brazil’s successful treatment program forced concessions from transnational drug firms in 2001. After threatening to sue the government by alleging patent infringement when the government lab acquired raw material to produce a generic version of efavirenz, Merck agreed to a price cut of 59 percent that allowed the government to save \$39 million. Negotiations with Roche dragged on further, but also resulted in a price discount of 40% for the patented drug nelfinavir. The reaction by foreign pharmaceutical companies to Brazil’s aggressive approach of copying drugs in public labs and threatening to use compulsory licenses varied. On one extreme, executives were upset that their products were being “pirated” and demanded action from the US government to protect their interests, but executives remained attracted to Brazil’s large pharmaceutical market. Although not directly involved in the negotiations at the time, Roche’s head of government affairs, João Carlos Ferreira (2008), related the drama: “We were always under a lot of pressure during the talks. At the time, it was more a public relations issue than having to do with the compulsory license.” The conflict involved strategic “impression management” of both states and corporations who had to navigate competing and contradictory moral frames—the right to access to medicine versus the right to intellectual property.

Despite the passage of the Doha Declaration which sidelined the WTO as a forum to pressure countries to uphold the corporate view of intellectual property and restrict the use of compulsory licenses, confrontations between Brazil's health ministry and patent owners continued. The year 2005 proved a pivotal one in Brazil's AIDS treatment program. Drug costs had jumped to \$500 million, and 165,000 Brazilians were in treatment. Health Minister Humberto Costa demanded discounts and/or voluntary licenses from Merck for efavirenz, from Abbott for Kaletra (ritonavir/lopinavir), and from Gilead for tenofovir. Abbott was the most intransigent during the negotiations, and on June 24, 2005, Costa threatened the use of a compulsory license for its AIDS drug. From 2002 to 2005, the number of patients using Kaletra jumped sevenfold to 23,400 and the annual expenditures reached \$91.6 million. Health officials forecast that the number of patients would increase to 60,000 over the next four years. Negotiations with Abbott began in March with Brazilians demanding a price discount from \$1.17/pill to \$0.68/pill—the cost that state labs could allegedly produce the medicine. The talks with Abbott were complicated by the fact that Costa left office after supposedly reaching an agreement and resumed under the new Minister Saraiva Felipe.

The Kaletra negotiations of 2005 illuminate the framing of interests, coalition formations, and potential impacts that different groups have on the state as a result of globalization. Corporate defenders of strong intellectual property rights quickly began to lobby the USTR to apply pressure on Brazil soon after Humberto Costa had placed the compulsory option on the table in March 2005. They couched their arguments in terms of stealing property and US national interests. "This theft has gone on at the expense of the American people and the US economy," claimed Nancie Marzulla, president of Defenders of Property Rights (2005). According to this view, the victim is the US people who witness their intellectual creations suffer from Brazilian piracy. This frame captured the attention of members of the US Congress who lobbied the USTR to fight Brazilian "theft" and "piracy" of US intellectual property as well as questioned Brazil's "emergency use" justification since its successful AIDS program kept prevalence rates comparable to those in the US (Wilson 2005). US legislators expressed concerns of national competitiveness being threatened by another rising economic power (Palmedo 2005):

*Brazil, with an economic output comparable to Germany, appears to be seeking a way to develop its generic manufacturing capacity through confiscating our pharmaceutical technology... Currently, Brazil is incapable of mass producing these medicines but could quickly become a generic provider by gaining American technology.*

The concern was that Brazil would begin competing against US companies for export markets such as Africa. Indeed, Brazil had already begun to donate AIDS medicines and offer its pharmaceutical technology to other countries suffering AIDS epidemics.

US authorities, however, retained other instruments of pressure. The USTR produces the annual "Special 301" Report that identifies countries who fail to improve intellectual property

protection.<sup>5</sup> If a USTR investigation discovers that a country is at fault, then trading privileges under the General System of Preferences (GSP) could be withdrawn.<sup>6</sup> In 2001, the agency placed Brazil on its Watch List and then in 2003 on the Priority Watch List. During the Kaletra confrontation in 2005, members of the US Congress urged the USTR to withdraw Brazil's trade privileges provided under the GSP. Estimates of Brazilian exports affected by the possible trade retaliation range from \$48 million (Boletín Farmacos 2005) to \$3.6 billion (Kogan 2006).

US Department of State diplomatic cables from 2004 to 2006, accessed under the Freedom of Information Act (FOIA), provide insight into the interactions between US and Brazilian officials concerning the use of compulsory licenses.<sup>7</sup> The cables reveal the depth of US involvement in monitoring price negotiations, the politics of patents, and defense of US companies involved in the negotiations. A cable dated June 3 from the American Embassy Brasilia (2005) with the subject heading "Ambassador Meets with US Pharmaceutical Firms Threatened with Licensing" makes the conclusion: "We continues (sic) to believe that to resonate with the [Government of Brazil], the arguments will need to provide a sound analysis as to why compulsory licensing would be damaging to Brazil's economic and public health interests." In subsequent cables, US diplomats warned Brazilian officials that a compulsory license could harm the country's interests in attracting foreign investment and dissuade foreign drug companies to introduce new medicines into the market. US diplomats did not adopt the language of "piracy" or "theft" in their discussions that the defenders of strong IP protection employed.

Transnational advocacy groups defending Brazil framed the issue not along nationalist lines, i.e. US versus Brazil, but in terms of greedy corporations and symbolic role that Brazil plays in fighting AIDS. These activists claimed to push for the interests of people across the world (Health GAP 2005):

*Brazil has let itself be bullied by big drug companies long enough. It's time for Brazil to stand up to them and show the world the kind of global leadership this issue so desperately needs—Dr. Paul Zeitz, Executive Director of Global AIDS Alliance.*

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<sup>5</sup> The Special 301 provision is found in Section 182 of the Trade Act of 1974 and strengthened by Section 1303 of the Omnibus Trade and Competitiveness Act of 1998. Mandatory actions must be taken by the USTR according to a non-compliant country's classification. A "Priority Foreign Country" indication means that a country's policies or practices have the most adverse impact on US products; a "Priority Watch List" designation implies that a country has some but not all of the criteria for a "Priority Foreign Country"; and a "Watch List" classification mean that a country has some problematic IP-related issues (Sell 2003).

<sup>6</sup> Sell (2003) has detailed PhRMA's influence on the USTR's decision-making process. Based solely on information provided by the lobbying group, USTR withdrew trade preferences worth US\$260 million from Argentina in 1997 (Sell 2003:136). In the case of Brazil, PhRMA requested the USTR to include it on the Special 301 for lack of IP protection.

<sup>7</sup> US-based consumer activist organization Knowledge Ecology International (KEI) published the cables on their website (2007).

*The success of the Brazilian AIDS treatment program has been made possible by the local production of generic medicines. This policy has brought down the price of raw materials for antiretroviral medications internationally. The Health Ministry must stand up to pharmaceutical companies—not only for the Brazilian people, but for people living with AIDS around the world—Sean Barry of Health GAP.*

The targets of malfeasance in this view are large corporations whose excessive prices keep access to drugs out of the hands of those who need them. Brazil's model AIDS program based on local production had become a symbol for the rest of the global South. The Working Group on Intellectual Property, part of the Brazilian Network for the Integration of People [*Grupo de Trabalho sobre Propriedade Intelectual – GTPI – da Rede Brasileira pela Integração dos Povos – Rebrip*], organized worldwide petition drives through the internet, arguing that Brazilian officials were not assuming their leadership position at the WTO and other international bodies. By refusing to issue a compulsory license, they argued, Brazil was behaving like a “tiger without teeth.” Activist efforts were capable of gaining the support of influential media such as the New York Times (2005) that defended “Brazil's Right to Save Lives” in an editorial, but their efforts failed to win over US diplomats. After portraying itself as the leader in the global fight against AIDS, the Brazilian state came under pressure to fulfill its role and issue compulsory licenses for AIDS medicines. On the domestic front, pressure to follow through with compulsory license threats gained momentum. But in the end, Minister Saraiva Felipe backed down after obtaining some limited price discounts.

Restrictions on obtaining patented raw materials for developing the latest therapies had weakened local production capabilities and consequently Brazil's bargaining position. Despite the downgraded capabilities, Brazilian civil society groups, unsatisfied with the terms of the contract with Abbott which locked in prices over several years and did not include any technological transfer clauses, went on the offensive. On December 1<sup>st</sup>, World AIDS Day, activists filed a civil lawsuit requesting an injunction against the contract signed between Abbott and the Ministry of Health and demanded the immediate compulsory license for the drug. Health officials from Brazil's AIDS program, going around their superiors, provided all the necessary information to NGOs to carry out legal actions. The courts, however, rejected the request and argued that the action would harm the country's economic interest and, more significantly questioned whether there was technical proof of the country's domestic capabilities to produce the medicine. Indeed, health officials claimed that the product was not readily available in the Brazilian market, and Indian producers of the drug still had to undertake quality control tests. Despite the disappointment in Brazil's political leaders not taking the aggressive step towards breaking patents, health officials and AIDS activists sought out Brazil's domestic, private-sector drug-making industry to include in the political coalition supporting the treatment program.

The last period in Brazil's conflictual relationship with foreign drug companies reveals the institutionalization of domestic alliances for national development. After several episodes of contentious price negotiations and threats over the use of compulsory licenses, relationships

between government, private national industry and civil society had coalesced into a formidable political block. By the time Brazil finally issued a compulsory license in 2007 for Merck's efavirenz, the coalition had consolidated and concrete roles played out by domestic private industry and advocacy groups had been established. Brazilian health officials began to mobilize in January of 2007 after it appeared that Merck would not budge in its negotiating position. Between the start of the year and May 2007 when efavirenz was declared in the public interest, the National AIDS Program mobilized support from civil society. Passerelli<sup>8</sup> (2007) explains the interlocation: "We knew we could count on their support, but other sectors of the government didn't know what type of political support could be obtained." NGO groups remained cautious in giving support. Protests, mobilizations and even lawsuits failed to force the government to issue a compulsory license for Kaletra in 2005. Gabriela Chaves (2008), a pharmacist who works at ABIA and the GTPI explains the situation and the role carried out by her organization:

*Within the movement there was discussion on how to support it. We had to support the measure but not completely. We were already disappointed in the case of Kaletra. But we were there when [President] Lula signed and it was extremely emotional. And then the pressure from the media and industry began. Industry ended up attacking the measure with all sorts of arguments. ABIA mapped out all the arguments that industry did in the media against the compulsory license... we said this is an important step for the country. In that way, we supported the government's measure and did them a favor. We did that pamphlet in two weeks. We tried to get a space in the public opinion and we achieved it...*

NGOs thus played an important role not only lobbying for an aggressive position by the government, voicing their political support to the government, but also, and perhaps more importantly, explaining the implications of the compulsory license for the lives of patients. In the face of allegations concerning the quality of generic alternatives, legal issues related to employing the use of compulsory licenses, threats to continued supplies and future innovation, the assurances by activists helped to allay public doubt and concern.

After nine rounds of negotiations and stocks of the medicine decreasing, Brazil's government declared efavirenz in the public interest, and on May 5, 2007, President Luiz Inacio 'Lula' da Silva announced the compulsory license. It appears ironic that Brazil's president transformed the occasion into a media event in which Minister Temporão could have done behind closed doors. For Brazil, the *reputational dividends* of its AIDS program reaches up to the highest office. As a result of the compulsory license for efavirenz, Brazil estimated savings of US\$30 million in 2007 and a total of \$236.8 million by the time the patent expires in 2012 (Ministry of Health 2007). A total of 75,000 of the more than 180,000 patients in Brazil's treatment program were using the ARV in 2007. The compulsory license had important knock-

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<sup>8</sup> Passerelli, who used to work for civil society advocacy groups on intellectual property issues, was contracted by the National AIDS Program on international issues and cooperation.

off effects in other negotiations, too. Brazil obtained price discounts it sought in subsequent negotiations with Abbott for Kaletra (lopinavir/ritonavir) and Gilead Sciences for tenofovir.

The Brazilian case represents three important findings. First, global power has become increasingly centralized with the establishment of governance structures embodied by the WTO that bolster the position of global corporations. The international intellectual property regime had a direct impact on Brazil's ability to produce medicines locally and/or source them from other countries. The incorporation of patent protections reduced the ability of Brazil's state-owned labs to quickly reverse-engineer and produce AIDS medicines for its treatment program. In the first confrontation with Roche in 2001, the federal lab Farmanguinhos produced actual samples of the AIDS drug nelfinavir which forced the company to accept Brazil's price demands. In subsequent price disputes, however, Brazil's state-owned labs, which specialize in end-stage formulation of medicines and are not vertically integrated, had difficulty accessing patent-protected active pharmaceutical ingredients. Moreover, foreign drug firms have profited handsomely from Brazil's universal AIDS program. Between 1996 and 2007, the Brazilian government spent a total of \$2.71 billion on antiretroviral treatments. Of this amount, foreign firms received \$1.85 billion, or 68% of the total.<sup>9</sup>

In the case of Brazil, the power of TRIPS is ultimately expressed by the fact that the country never became an export platform in AIDS medicines despite being one of the first countries outside of the Europe and the United States to start producing them. Instead of emphasizing these external factors, Salama and Benoliel (2010) blame Brazil's domestic institutions and overall weak state autonomy for failing to develop its pharmaceutical industry. In their view, the "political framework in Brazil undermines long-term policies and favors shortsighted ones vis-à-vis R & D investments in the pharmaceutical industry...regardless of the strictness of Brazil's patent regime" (Salama and Benoliel 2010: 682). While this may be the case for the drug industry overall, the more focused category of AIDS medicines suggests that patent monopolies have restricted the local production of second- and third-generation ARVs. Moreover, Salama and Benoliel tend to have a structuralist clientelism affecting state autonomy that does not take into consideration reputational strength of some state agencies like Brazil's AIDS program.

Second, contrary to model of global capitalism that predicts growing transnational ties between elites, the Brazil case demonstrates the growth of local alliances to support its AIDS treatment program. The unforeseen consequence of a neoliberal reforms and formalized institution like the TRIPS accord is the weakening of the transnational alliance and strengthening of domestic coalitions. Neoliberal reforms in developing countries may represent an agenda of global accumulation, but a minimalist state also precludes strong alliances between the state and TNCs embodied in previous conceptions of development alliances (Evans 1979; McMichael 2007). With trade liberalization and intellectual property protection, global tech firms no longer

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<sup>9</sup> Authors calculations based on information provided by Brazil's National AIDS Program, which later became the Secretariat for Sexually Transmitted Diseases and the Acquired Immunodeficiency Syndrome, part of the Ministry of Health.



have to negotiate with states to gain access to markets in exchange for transferring technology and investing capital. States, however, remain interested in ascending technological ladders and creating high income jobs. The local bourgeoisie in developing countries still requires state support to promote local skills, rebalance national markets, and assist in global insertion. Evans' (1979) triple alliance pushing for industrialization consisting of state managers, TNCs, and domestic bourgeoisie has shifted—TNCs have exited as social movements have entered.

Brazil's domestic alliance did not form automatically in response to increasing global centralization of power. Initially, there were only close ties between health reformers from within the state and AIDS activists on the outside to defend the social project. The established alliance between state actors and civil society partners expanded to local industrialists only after Brazil's ability to produce medicines locally declined. This domestic coalition did not form automatically with each group seeking their self-interest. Instead, undergirding the social bloc were shared beliefs in human rights and the importance of ensuring the sustainability of the country's AIDS treatment program. AIDS activists believed in upholding a collective right to access medicines. Through their court actions and protests during times of fiscal austerity, they were capable of ensuring that AIDS remained a political issue. The country's scientists also heeded the call to produce the necessary medicines. While many leading pharmaceutical chemists worked for the private sector, even industry associations representing private, local drug makers defended the country's national interest, now defined as sustaining a universal treatment program. Needless to say, AIDS activists remain suspicious of profiteering even by nationally owned drug companies.

The third key finding from the Brazil case is that with increasing integration in the global system the symbolic dimension of state autonomy becomes more salient when contesting global norms and pressures. During confrontations with the US and foreign firms, Brazilian state actors drew upon world-society legitimations as John Meyer and his colleagues (Meyer et al. 1997) suggest. However, the process diverged from hegemonic scripts. On every occasion that Brazil threatened to use, or in the one instance used, a compulsory license, health officials and activists referred to human rights accords and obligations. First and foremost was the country's Constitution that defined the state's obligation to guarantee access to health care. But equally important, public officials referenced international treaties and accords upholding the view that access to life-saving medicines is a fundamental human right and the Doha Declaration stating that countries remain sovereign in determining the circumstances when issuing compulsory licenses to defend public health. Brazil's consistent message of human rights contrasts with opponents who attempted to invoke frames that ranged from piracy and theft of intellectual property to the charges that compulsory licenses would threaten future innovation and the country's technological and economic development. In the end, guaranteeing the long-term sustainability of universal treatment program based on local production and use of compulsory licenses mobilized a larger and wider array of groups, both domestic and foreign, than the threats and fears promulgated by corporate executives and foreign diplomats. Global attention on the

success of Brazil's AIDS program even led corporate executives, in the end, to frame themselves as partners and not obstacles to Brazil's on-going achievements.

## **Conclusion**

Globalization provides new constraints but also new opportunities on state actors. The Agreement on Trade-Related Aspects of Intellectual Property System (TRIPS) adjudicated by the World Trade Organization, a governing body capable of awarding punitive sanctions on member countries, represents a qualitative shift in the structure of global power. Transnational drug corporations have been able to implement a specific normative approach to intellectual property on a worldwide basis that benefits their monopoly pricing power. Even when countries decided to use the exceptions outlined by TRIPS, such as compulsory licenses, they faced considerable pressure from United States and foreign investors. The power of the global pharmaceutical industry is not absolute. Increasing centralization of economic power in transnational corporations and political power in organizations like the WTO does not result in institutional convergence across states as some theories of globalization suggest. The unforeseen consequence of these centripetal forces is the reinvigoration of coalitions in defense of national projects and sovereignty. Furthermore, these new relationships between state and society include local social movements and transnational advocacy movements.

Divergence from global hegemonic structures is neither necessary nor automatic. To understand the process, we need to re-conceptualize ideas of state autonomy beyond structuralist versions of "divide and conquer" within territorial boundaries to incorporate normative and ideational conflicts occurring in the global arena. State actors are not complacent in the face of powerful global pressures and instead are capable of projecting symbols, moral leadership, and justifications that appeal to global audiences. As the world becomes increasingly integrated economically, politically and culturally, this symbolic dimension of power will become more important for developing state autonomy. The idea of *reputational dividends* seeks to extend this conceptual framework in order to understand how states can pursue alternative development trajectories and contest the interests of powerful adversaries. By employing the human rights framework, state actors can legitimate their actions and construct powerful coalitions within and beyond their borders.

The case of Brazil's fight against AIDS highlights some of the mechanisms states can employ to pursue alternatives. Indeed, other state efforts to contest powerful external pressures may fail due to lack of interested global audiences. Although additional studies are needed to assess the usefulness of the conceptual framework presented above, this crucial case study highlights important limitations of current theories of globalization and pushes our sociological imagination of state autonomy in new directions.

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