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**Patents, Pills, the Press and the Poor:
Discourse and Hegemony in News Coverage of
the Global 'Access to Medicines' Dispute,
1997-2003**

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Thomas Owen

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Abstract

In the mid-1990s a transnational civil society campaign emerged to advocate greater essential medicines access for the majority world. The campaign mobilised on a variety of fronts, but in particular around the argument that intellectual property protection was the central impediment to equitable medicines access. The campaign argued that strong patent protection created artificially high medicine prices, and that, in the case of global HIV/AIDS, such prices prohibited medicines access for the vast majority of those in need of it. The major pharmaceutical companies disagreed, arguing instead that absolute patent protection was essential for new medicine development. When a coalition of pharmaceutical companies sued the South African government over generic medicines access in 1998, the dispute became crystallised into a dramatic mediatised conflict.

This thesis examines press coverage of the medicines access dispute in key United States, British and South African news outlets over the years 1997 to 2003. Adopting Laclau and Mouffe's discourse theory as a macro-theoretical guide, the thesis conceptualises the media space as a field of contestation between opposed political projects seeking to hegemonically articulate their particular discourse. Prior commentary on the medicines access dispute has suggested media coverage was a key driver in publicising the civil society campaign's message. This thesis contributes previously missing empirical data to such claims, addressing the questions: did the news media discourse on HIV/AIDS medicines transform to better reflect the civil society campaign's arguments over those of the major pharmaceutical companies? If so, what were the principal factors influencing this transformation?

Through corpus-assisted discourse analysis of a sample of a 1,113 newspaper articles, and consideration of personal testimonies from key journalists and activists, the thesis argues the media discourse did indeed transform in favour of the civil society campaign. However, while the campaign was successful in promoting a patent-based definition of the crisis, the solution most widely adopted was one that increased aid funding and decreased medicines prices, but which left the intellectual property infrastructure largely intact. In this way, the thesis documents both the successful articulation of a counter-hegemonic discourse within the news media, as well as the process by which this challenge was reabsorbed into pre-existing power structures.

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List of Abbreviations and Acronyms

3TC	lamivudine
ABIA	Associação Brasileira Interdisciplinar de AIDS
ACTPN	United States President's Advisory Committee for Trade Policy and Negotiations
ACT UP	AIDS Coalition to Unleash Power
AGOA	Africa Growth & Opportunity Act
AIDS	Acquired Immune Deficiency Syndrome
ARV	antiretroviral
AZT	zidovudine
CADS	corpus-assisted discourse studies
CBO	United States Congressional Budget Office
CDA	critical discourse analysis
CL	corpus linguistics
CPTech	Consumer Project on Technology
CSO	civil society organisation
d4T	stavudine
Doha Declaration	World Trade Organisation Declaration on TRIPS and Public Health
DTA	discourse theoretical analysis
EDL	Essential Drugs List
FDA	United States Food & Drug Administration
FTA	free trade agreement
EU	European Union
G8	Group of Eight
GAO	United States Government Accountability Office
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GIV	Grupo de Incentivo à Vida
Global Fund	The Global Fund to Fight AIDS, Tuberculosis and Malaria
GSK	GlaxoSmithKline

GSP	Generalised System of Preferences
HAART	highly active antiretroviral treatment
HAI	Health Action International
HIV	human immunodeficiency virus
IFPMA	International Federation of Pharmaceutical Manufacturers & Associations
IIPA	International Intellectual Property Alliance
IMF	International Monetary Fund
IP	intellectual property
IPC	Intellectual Property Committee
IPR	intellectual property right
KEI	Knowledge Ecology International (formerly CPTech)
LDC	Least Developed Country
Medicines Act	Medicines and Related Substances Control Amendment Act of South Africa
MSF	Médecins Sans Frontières
NAFTA	North American Free Trade Agreement
NGO	non-governmental organisation
NIH	United States National Institute of Health
NME	new molecular entity
NWICO	New World Information & Communication Order
PEPFAR	United States President's Emergency Plan for AIDS Relief
PhRMA	Pharmaceutical Research & Manufacturers Association of America
PMA	South African Pharmaceutical Manufacturers Association
QUNO	Quaker United Nations Office
R&D	research and development
REBRIP	Rede Brasileira pela Integração dos Povos
SAPA	South African Press Association
TAC	Treatment Action Campaign
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TWN	Third World Network

UK	United Kingdom
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNICE	European Union of Industrial and Employers’ Confederations
UNICEF	United Nations Children’s Fund
US	United States
USAID	United States Agency for International Development
USD	United States Dollars
USTR	United States Trade Representative
WHA	World Health Assembly
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

1

Introduction

1.1 Introduction

Victory for Activists, People with HIV/AIDS and Poor People Everywhere! Pharmaceutical Companies Beaten! [...] This is a victory by ordinary people against unethical actions by multinational corporations. It has been shown that with a united global effort, concerned citizens can make a difference. (Treatment Action Campaign, 19 April 2001, n.p.)

In the late 1990s, a transnational social movement emerged advocating greater access to essential medicines in the majority world. The so-called 'access to medicines' campaign (Sell, 2001) promoted several initiatives to increase medicines access, but in particular identified intellectual property protection as its major concern. The campaign argued that strong patent protection, recently globally institutionalised through the World Trade Organisation's (WTO) intellectual property rules, kept the price of medicines

artificially high, thus rendering them inaccessible to the global majority. In light of the pandemic global spread of HIV/AIDS (UNAIDS, 2008b), the campaign argued there was a humanitarian ethical imperative to remove the intellectual property impediment to equitable medicines access.

The campaign's argument positioned it directly against the major pharmaceutical industry: so-called 'Big Pharma' (Garnier, 2008; Law, 2006). The industry regarded strong medicine patent protection as essential for its successful business model (Angell, 2004), and had lobbied aggressively since the 1980s for the inclusion of intellectual property protections in US and global trade policy (Drahos & Braithwaite, 2002; Matthews, 2002). The antagonism between Big Pharma and the 'access to medicines' campaign dramatically manifested in 1998, when a coalition of pharmaceutical companies sued the South African government over domestic laws allowing importation for cheaper generic copies of HIV/AIDS medicines (Barnard, 2002). The campaign mobilised in opposition to the lawsuit, using it as an opportunity to bring international attention to the access issue (Olesen, 2006).

In April 2001, the pharmaceutical companies unconditionally cancelled their lawsuit. As the opening quote from the Treatment Action Campaign indicates, the cancellation was celebrated as a "victory" for civil society over big business (Treatment Action Campaign, 19 April 2001 n.p.; see also Weissman, 2005, p. 35). Several commentators noted that media coverage of the dispute played a key role, converting the campaign's argument into an "international uproar" (Faulk & Usunier, 2009, p. 167), resulting in a "public relations disaster" (Faulk & Usunier, 2009, p. 167; Kennedy, Harris, & Lord, 2004, p. 131), "public relations backlash" (Dawkins, 2005, p. 264), and "avalanche of negative publicity" (Barnard, 2002, p. 159) for the pharmaceutical industry. Given the considerable

imbalance in economic and political resources between the two sides, claims of civil society “victory” and Big Pharma “disaster” raise important questions for global media and power.

This thesis examines international news coverage of the medicines access dispute from 1997 to 2003, looking for evidence of counter-hegemonic discourse change. Using Laclau and Mouffe’s (1985) discourse theory as a macro-theoretical guide, the thesis regards the social organisation of HIV/AIDS medicines access as a field of contestation between opposed political projects. Such contestation, however, and its signification in the news media, is regarded as unevenly balanced, influenced by the “relative structuration” (Laclau, 1990, p. 43) of sedimented hegemonic forces. Past media and communication studies suggest the mainstream news media are ‘relatively structured’ by the hegemony of economic and political elites, to the detriment of dissident political projects (see, for example, Gitlin, 1980; Halloran, Elliott, & Murdock, 1970; Herman & Chomsky, 1988). This thesis analyses an historical instance where such hegemony was contested, and, as some have argued (Halbert, 2005), potentially overcome.

The major findings of the thesis are that the ‘access to medicines’ campaign did indeed achieve considerable advances against their Big Pharma opponents in the media coverage. In particular, through media-reflexively conditioned protest acts (Cottle, 2008) the campaign successfully ‘reactivated’ (Laclau & Mouffe, 1985) Big Pharma hegemonic discourse, highlighting the possibility of its transformation. Furthermore, through pro-active media relations and the promotion of the South African lawsuit as a key symbolic event, the campaign ‘dislocated’ (Laclau, 1990) the hegemonic discourse, thus creating space for the articulation of a new definition of the medicines access crisis in the media coverage. In these ways, the campaigners were leading actors in destabilising the hegemony of

strong patent protection, and providing space for a public discussion of alternatives to the dominant intellectual property regime.

However, the thesis also finds that by 2003, the dislocation of hegemonic discourse was sutured in the media coverage by a reconfigured version of the pre-existing intellectual property hegemony. While the civil society campaign was successful in promoting a patent-based definition of the medicines crisis, the solution most widely adopted was one that increased aid funding and decreased medicines prices, but which left the intellectual property infrastructure largely intact. In the wake of the South African trial, considerable amendments to medicine patent protections were made. However, a broad hegemonic project to enhance protections and prohibit the use of generics continued, and persists to the present day. Therefore, while the ‘access to medicines’ campaign may have achieved “victory” in the battle for media counter-hegemony, they ultimately lost the war.

Such findings constitute the end destination of this thesis. The remainder of this introductory chapter describes how the thesis will arrive there. First, the chapter locates the thesis’ argument within research into media, civil society, and counter-hegemony. Next, it outlines the motivation and contribution of the thesis, arguing why the research is important, and identifying the fields of academic scholarship to which it contributes. The chapter then outlines the theoretical and methodological approach of the thesis, introducing Laclau and Mouffe’s (1985) discourse theory, and the multi-perspectival ways in which this thesis operationalises it. Finally, the chapter outlines the structure of the thesis, providing a brief description of each chapter, and the overall argument articulated through them.

1.2 Locating the Argument

Media and communication studies have long recognised that mainstream news media tend to represent protest and civil society campaigns in antagonistic ways (Gitlin, 1980; Halloran, Elliott, & Murdock, 1970). Mainstream news media have also been recognised as structurally integrated into the hegemony of political and economic elites in the global capitalist order (Golding & Murdock, 1997; Herman & Chomsky, 1988; Herman & McChesney, 1997). The medicines access dispute pitted a civil society campaign representing some of the world's poorest and sickest inhabitants against its most profitable industry (Angell, 2004) and most powerful government (Agnew & Corbridge, 1995). In addition, the object of contention was the proprietary ownership of valuable intangible assets: a cornerstone of contemporary global capitalism (Hesmondhalgh, 2008). In such a context, positive media representation of the 'access to medicines' campaign's counter-hegemonic project seems at first glance unlikely.

More recently, however, studies have identified instances where protest and civil society campaigns received sympathetic coverage in mainstream news media (Gaber & Willson, 2005; McAdam, 2000; Milne, 2005; Timms, 2005). For example, studies of the turn-of-the-millennium so-called 'anti-globalisation' protests, to which the 'access to medicines' campaign was historically coterminous, identified unusually attentive coverage of the protesters' arguments (Bennett, 2003a; Craig, 2002; DeLuca & Peeples, 2002; Rojecki, 2002). These studies argued that tenets of the commercialised mainstream news media, such as prioritising the spectacular over the mundane (Kellner, 2003), could be exploited by civil society organisations to articulate their messages in news media coverage. By highlighting

the media awareness of the protests, such studies indicate the increasing sophistication and professionalisation of civil society communications (Cottle & Nolan, 2007; Davis, 2007). Furthermore, they illustrate the increasingly influential role the 'third sector' of civil society plays in contemporary global governance (Castells, 2003; Kaldor, 2003; Salamon, Sokolowski, & Associates, 2004).

The claims of "victory" and "disaster" in the medicines access dispute place the issue at the heart of such enquiries into global governance, global media, and power. Accordingly, prior studies have examined the media coverage. Halbert (2005), for instance, used news media extracts to illustrate her argument that the South African trial marked the point where Big Pharma "lost control" of a discourse they had dominated since the 1980s (p. 97). Similarly, Olesen (2006) cited several media examples while arguing the civil society campaign successfully articulated the dispute as a "transnational problem construction" (p. 5). Both studies, however, examined news coverage only anecdotally in the service of broader analyses of the civil society campaign. Dawkins (2005) applied a more systematic analysis, counting newspaper articles as an indicator of the impact generics manufacturers had on the dispute. However, this measure was only used to briefly sketch points amid a wider analysis of business "pacesetter" functions (Dawkins, 2005, p. 244). Thus, despite the key critical media issues inscribed in the medicines access conflict, the content and overall character of mainstream media coverage have not yet been rigorously assessed.

This thesis addresses this absence by quantitatively and qualitatively examining seven years of international mainstream newspaper representation of the medicines access dispute. It asks the research questions:

- 1) Did the discourse of HIV/AIDS medicines access in majority world countries, as articulated in the mainstream news media press outlets *The New York Times*, *The Washington Post* (US), *The Guardian*, *The Times* (UK), *Business Day* and *The South African Press Association* (South Africa), transform over the period 1997 to 2003 to better reflect the concerns and arguments of the civil society campaign?

- 2) If so, what were the key aspects of this transformation, as suggested by an analysis of the news texts, further commentary, and personal testimonies of actors involved?

Following prior analyses arguing that in the mid-1990s Big Pharma discourse was hegemonic (Drahos & Braithwaite, 2002; Weissman, 1996), but that by 2001 this hegemony was lost (Halbert, 2005), the thesis hypothesises that discourse transformation did occur, and thus should be visible in the media coverage.

1.3 Motivation and Contribution

1.3.1 Importance of the Research

A close examination of news coverage of the medicines access/IPRs dispute has much to contribute to current understandings of media and power. As stated above, if mainstream news media favour the political and economic elite at the expense of voices of dissent, then it is unlikely that the 'access to medicines' campaign would exert much influence upon media discourse at the expense of their powerful opponents. While prior commentary has suggested as much, this has only so far been illustrated through anecdotal and generalised consideration of media coverage.

Therefore, a systematic analysis of the mainstream news media coverage of medicines access has much to contribute to an awareness of hegemony and counter-hegemony in the media. This thesis sheds light on: how civil society campaigns may perform in relation to their corporate and political rivals in the symbolic public space; how mainstream media articulate political conflict; and how mainstream media articulate complex political economic issues such as intellectual property rights. Its findings thus contribute to understandings of how counter-hegemonic projects may engage with the mainstream news media - as well as how the media may engage with counter-hegemonic projects.

The thesis also has practical importance for both civil society campaigners and for sufferers of HIV/AIDS in need of accessible medicines. For campaigners, this thesis outlines the process by which a restrictive hegemony articulated in the news media was opened, providing the opportunity for alternative representations. However, it also outlines the process by which the discourse was closed again, in a manner consistent with pre-existing hegemonic power dynamics. Details of such news media representational processes thus provide important information for civil society campaigners seeking to initiate similar counter-hegemonic projects - identifying what worked, and what could have been done differently.

For HIV/AIDS sufferers in the majority world, the opening of hegemonic discourse was a key moment in the increased provision of affordable generic antiretroviral (ARV) medicines. Prior to the medicines access dispute, Big Pharma was unwilling to negotiate price discounts (Gellman, 28 December 2000); the United Nations (UN) and US government were unwilling to purchase generic ARVs (UNAIDS, 2008b; Holmes, et al. 2010); and the World Trade Organisation (WTO) was unclear regarding the rules for acquiring generic medicines in health crises (Lang, 2004). Through the public

contestation of such issues, each of these factors changed. By 2003, generics were publicly endorsed by the WTO and World Health Organisation (WHO) (Schwartländer, et al., 2006), major funders purchased them (Shadlen, 2007; Holmes et al. 2010), the price of generic and brand-name HIV/AIDS medicines dramatically fell (Médicins Sans Frontières, 2005), and millions more people in the majority world began receiving ARV treatment for the first time (UNAIDS, 2008a).

Such developments led commentators to label 2001-2003 the “golden window” in global HIV/AIDS treatment (McNeil, 10 May 2010, p. 1). However, despite such developments, the structural hegemony of strong medicine patent protection remained intact (Drahos & Braithwaite, 2002; Klug, 2008). Bilateral and regional trade agreements continued to increase patent protections beyond those required by TRIPS (Abbott, 2004; Fink, 2008), countries with the capacity to manufacture generics faced increased pressure to cease doing so (Klug, 2008; Shadlen, 2007), and countries seeking to import generics were dissuaded through threats of disinvestment (Alcom, 15 March 2007). In short, the ‘golden window’ has been closing, with the sustainable global supply of affordable ARVs under continued threat (Klug, 2008; Médicins Sans Frontières, 2011). The lives of millions of people depend on the resolution of these issues. Further research into the processes of hegemonic contestation in the medicines access dispute is an important step towards this.

The thesis also has theoretical importance for the ongoing inquiry into hegemony and social change. For social actors to be subjects of history, and not just its objects, it is important they identify the restrictions of hegemonic forms and devise ways to overcome them. Laclau and Mouffe’s (1985) discourse theory has been influential in emphasising the ever-present condition of potential transformation in social structures. It has also been criticised for over-emphasising

this condition and not adequately perceiving the perseverance and stability of restrictive structures (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). Such debates are critically important for providing the conceptual tools for social change and resistance. They are also largely theoretical debates, lacking in empirical detail. By mapping the performance of hegemony and counter-hegemony in news media coverage of an important social issue, this thesis contributes empirical detail to such concerns.

1.3.2 Contribution to Literature

Scholars have previously examined the intellectual property-based medicines access dispute from the perspectives of:

- Political economy (Drahos & Braithwaite, 2002; Matthews, 2002; Perez Pugatch, 2004; Richards, 2004; Shadlen, 2007)
- International relations (He & Murphy, 2007; Lanoszka, 2003; Sell & Prakash, 2004)
- Development studies ('t Hoen, 1999, 2000; Clift, 2004; Drahos & Mayne, 2002; Flynn, 2008; R. Love, 2007; Shadlen, 2004)
- Legal studies ('t Hoen, 2002; Correa, 2004; Dolmo, 2001; Lang, 2004; Sell, 2001; Weissman, 1996)
- Anthropology (Robins, 2006)
- Sociology (Heimer, 2007; Light, 2007a; Olesen, 2006)
- Business studies (Dawkins, 2005; Faulk & Usunier, 2009; Flanagan & Whiteman, 2007)

- Marketing (Kennedy, et al., 2004)
- Public health (Attaran & Gillespie-White, 2001; Dionisio, Cao, Hongzhou, Kraisintu, & Messeri, 2006; Galvão, 2005; Schwartländer, et al., 2006)

This thesis contributes a specifically media and communication studies approach. Where prior studies have noted the importance of media representation to the campaign (Barnard, 2002; Faulk & Usunier, 2009; Heimer, 2007; Kennedy, et al., 2004), the media content has so far only been summarily addressed (Dawkins, 2005; Halbert, 2005; Olesen, 2006). By analysing the media coverage of HIV/AIDS medicines access in a systematic quantitative and qualitative way, this thesis contributes previously missing empirical detail to analyses of the intellectual property/medicines access dispute.

In addition, the thesis contributes to the field of inquiry into mainstream news media representation of social campaigns, protest, and voices of dissent. As stated above, this field has traditionally observed the media's tendency to marginalise activist campaigns (Gitlin, 1980; Halloran, et al., 1970; Herman & Chomsky, 1988), albeit with more recent studies suggesting new avenues through which campaigns may receive more sympathetic coverage (Bennett, 2003a; Cottle, 2008; Craig, 2002; DeLuca & Peeples, 2002; Gaber & Willson, 2005; McAdam, 2000; Milne, 2005; Rojecki, 2002; Timms, 2005). This thesis provides a fertile case study to comment on such contradictory processes and dynamics.

The thesis also contributes to further inquiry into the general areas of global journalism studies (Berglez, 2008; Cottle, 2009a, 2011) and news media coverage of HIV/AIDS (Jacobs & Johnson, 2007; Tong,

2006; Stein, 2003; Traquina, 2004). In the first case, the international press sample and globalised nature of the medicines access issue provide new empirical detail for how nationally located news outlets articulate fundamentally de-territorialised global phenomena. In the second case, examination of a specific aspect of the HIV/AIDS pandemic, one that particularly illuminates the crisis' global socio-economic inequalities, provides nuanced empirical detail for understanding how the "signal pandemic of the global here and now" (Comaroff, 2007, p. 197) is constituted in international news media.

Finally, the research contributes to the emerging field of studies adopting Laclau and Mouffe's discourse theory as a macro-theoretical guide for the analysis of news media content (Carpentier, 2008; Gies, 2003; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008). While these studies have produced specifically discourse-theoretical insight into media processes, the relationship between discourse theory and media studies is still nascent (Phelan & Dahlberg, 2011), meaning that further empirical applications provide an important addition to the field. This chapter will now summarily outline Laclau and Mouffe's (1985) discourse theory and the way it is methodologically deployed in this thesis.

1.4 Theoretical and Methodological Approach

1.4.1 Discourse Theory

For Laclau and Mouffe's discourse theory (Critchley & Marchart, 2004; Howarth & Torfing, 2005; Laclau, 1990, 2005; Laclau & Mouffe, 1985; Smith, 1998; Tønder & Thomassen, 2005), society is regarded as a "social field criss-crossed by antagonisms, and the presence of contingent elements that can be articulated by opposed political projects striving to hegemonize them" (Howarth, 2000, p. 110). The

'contingent elements' here are the possible interpretations of reality. The 'political projects' are the various claims makers seeking to implement their particular interpretation as the dominant view. Discourse theory thus foregrounds the contingency of hegemonic formations, the ever-present possibility of social change, and the competition between various political projects to influence such change. For these reasons, it has been selected as an appropriate lens for the examination of counter-hegemonic contestation in news media representations of the medicines access dispute.¹

While Laclau and Mouffe (1985) pay curiously little attention to media representation (Phelan & Dahlberg, 2011), their approach has been adopted as a guiding framework in several analyses of media texts (Carpentier, 2008; Gies, 2003; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008). As these studies note, one feature of

¹ The specific categories of discourse theory will be discussed in Chapter 2. However, it is worthwhile at this stage to briefly define this thesis' use of discourse-theoretical conceptions of the key terms: 'discourse' and 'hegemony'. For Laclau and Mouffe (1985, 1990), following Foucault (1981, 1989), discourses are historically specific systems of meaning that make certain statements possible and others not. Such discursive meaning systems structure the identities of subjects and objects, and thus pertain not just to language, but also to the very production of knowledge and being. Departing from Foucault, however, Laclau and Mouffe's (1985, 1990) specific contribution to the field of discourse analysis was to extend the term 'discourse' to apply to all social phenomena. That is, while Laclau and Mouffe (1985, 1990) acknowledge that objects do indeed exist independently of discourse, it is only through discourse that they come to have meaning and can therefore be contemplated. Thus, for all intents and purposes, all objects, identities, institutions and social practices are discursive, and can be analysed using the tools of discourse analysis.

'Hegemony', on the other hand, refers both to the process of discourse formation, and to the relative dominance of one discourse over others within a given historical context. For Gramsci (1971), from whom Laclau and Mouffe (1985) inherit the concept, 'hegemony' referred to the process by which a dominant class organised the interests of other social groups so that such groups consented to their subordinate position. Laclau and Mouffe (1985), however, removed the concept of its central focus on class, and instead broadened it to pertain to the dominant fixing of meaning within a discourse. In discourse theory, discourses cannot fully capture the totality of the objects they purport to represent. Furthermore, there are potentially infinite ways in which any discourse may arrange its meaning system. Hegemony, therefore, refers to the process by which a discourse configures its partial capture, through the temporary fixing of nodal points, construction of antagonistic frontiers and occlusion of unfixed elements (see further discussion of these processes in Chapter 2). While further definitions of 'hegemony' exist within Laclau and Mouffe's work (Howarth, 2004), this thesis adopts the term to describe both the formation of dominant meaning within discourses, as well as the relative dominance of one discourse over others in a particular context.

such analysis is the adoption of discourse theory's post-structuralist ontology. Discourse theory, following insight from Heidegger, Wittgenstein, Derrida, Foucault, Lacan and others, insists on the impossibility of fixing ultimate meanings (Laclau & Mouffe, 1985). In this way, it adopts an "ontology of lack" (Marchart, 2005, p. 17), where all discourses are considered inherently incomplete: ruptured by the presence of un-captured elements existing at the margins. The goal of discourse-theoretical analysis, therefore, is not to simply describe positive ideological forms, but to identify where and how such forms are fundamentally ruptured, and where the realisation of rupture impacts them: in some cases, resulting in transformation; in others, resulting in the concealment of contingency and the re-absorption of the rupture into pre-existing hegemonic forms (Glynos & Howarth, 2007).

Discourse theory has been criticised for over-emphasising social change, and thus under-theorising the perseverance of social structures (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). This thesis, however, understands it as a theory of discursive change in constant tension with discursive stability. Not all political attempts to fix meaning have equal power, as hegemonic interpretations of reality can become sedimented into the structural conditions prevalent at particular historical moments (Laclau & Mouffe, 1985). Therefore, the representational media space in which the opposed forces contest must not be regarded as entirely open, but rather, in the words of Laclau (1990, p. 43), as in "relative structuration" vis-à-vis an evolving architecture of sedimented discourses. In this way, a discourse-theoretical view of news media is akin to the "media contest paradigm" (Cottle, 2006, p. 20). This paradigm, in contrast to the manufacturing consent view (Herman & Chomsky, 1988), regards the media as a site of "powered struggle and unequal contestation, rather than as a foregone ideological conclusion or as a mouthpiece for dominant interests" (Cottle, 2006, p. 20).

In this way, discourse theory does not simply examine discourse change, but rather analyses the relationship between change and stability, as a result of competition over meaning between opposed political projects and historically sedimented hegemonic structures. Furthermore, the incompleteness of all discourse means there is no extra-ideological position from which to assess the accuracy of media articulations in relation to an external 'objective reality' (Phillips & Jørgensen, 2002). Thus, a primary goal of analysis is not to evaluate the accuracy of media discourse (as measured against some empirically verifiable objective reality), but to examine the power dynamics of contestation between opposed hegemonic projects, as articulated in the mainstream news media.

1.4.2 Multi-Perspectival Methodological Approach

The thesis follows prior discourse-theoretical studies' recommendation that researchers become "methodological bricoleurs" (Torfinn, 1999, p. 292), adopting a multi-perspectival approach to analysis (Howarth, 2005; Phillips & Jørgensen, 2002). In this regard, the thesis positions newspaper content as its main object of analysis, examining a sample of 1,113 news articles from the US, UK and South Africa, using a mixed-method Corpus-Assisted Discourse Studies (CADS) approach. In addition, the news analysis is combined with an analysis of personal perspectives from actors involved in the medicines access dispute, as well as two *The New York Times* journalists involved in the production of the media content. The news coverage is further contextualised within an examination of wider historical discourses surrounding the dispute. As discourse theory insists that all social practice is discursive (Laclau & Mouffe, 1985), these various objects of analysis are conceptualised using discourse-theoretical categories, such as hegemony, antagonism,

dislocation, and chains of equivalence (see Chapter 2 for discussion of these categories).

1.4.3 Newspaper Sample

As stated in the research questions, the thesis limits its analysis of news media texts to six press outlets: *The New York Times* and *The Washington Post* (US); *The Times* and *The Guardian* (UK); and *Business Day* and *The South African Press Association* (South Africa). This limit was set for two reasons: newspapers' archival accessibility and textual compatibility with corpus-analysis software; and, more importantly, for the dominant role the press, and, in particular, key 'elite press' outlets, play in the global media ecology (Cottle, 2009a). While minority world newspaper circulation has considerably declined in recent decades (Meyer, 2009), and digital outlets play an increasingly dominant role in determining news practice (Benkler, 2006; Bennett, 2003b; Jenkins, 2006; Matheson, 2004; Merrin, 2009), the global news agenda is still disproportionately structured by content from traditional mainstream news providers (Cottle, 2009a). Studies from the same period under analysis in this thesis indicated the news agenda "spread vertically within the news hierarchy" (Nisbet, Brossard, & Kroepsch, 2003, p. 47), with elite newspapers and newswires providing the dominant influence on the editorial decisions of other news organisations, including new media (Bardoel, 2002; Lee, 2004; Siapera, 2004) and broadcasters (Golan, 2006). The newspapers analysed in this thesis are thus considered an indicative exemplar of mainstream news media discourse.

The US and UK sites of news production were chosen based on their influential position in the global news flow (Kim & Barnett, 1996; Mueller, 1997; Wu, 2003), as well as being identified as key sites of minority world 'access to medicines' campaigning (Mayne, 2002;

Olesen, 2006; Sawyer, 2002). South Africa was chosen for its proximity to the pharmaceutical industry legal challenge and its role as a key site of contention in the global medicines access dispute (Barnard, 2002; Halbert, 2005; Heimer, 2007; Shadlen, 2004). Unlike the US and UK contexts, however, no singular South African titles emerged in the literature as 'elite' or dominant influences. In addition, South African archives are not so readily available in minority world databases, with the Factiva database selected in part for its inclusion of three South African titles. Two of these, *Business Day* and *South African Press Association (SAPA)* were chosen for analysis. Both these outlets' archives, however, were incomplete, beginning in early 2000 and late 1999 respectively. Therefore, further hard-copy archives from South African newspapers *The Sowetan* and *The Star* were gathered from the SA Media database, and have been integrated into the analysis of media content across the 1997-1999 period.

1.4.4 Corpus-Assisted Discourse Studies

For the textual analysis of news content, a Corpus-Assisted Discourse Studies (CADS) approach has been chosen (Baker, et al., 2008; Duguid, 2007; Partington, 2004, 2006). CADS is a mixed-method strategy combining an automated corpus analysis with an interpretative reading of selected textual features identified from the corpus. Past practitioners recommend moving "back and forth" (Duguid, 2007, p. 76) between the quantitative statistics and qualitative reading, using the insights from one to guide where to look, and what to look for, in the other. For the quantitative corpus statistics, this thesis uses *WordSmith* version 4 software (Scott, 2004): a concordance program that isolates key words and word combinations, and displays them within their immediate co-text. For the qualitative reading it draws upon linguistic analysis techniques

from Critical Discourse Analysis (CDA) (Caldas-Coulthard & Coulthard, 1996; Fairclough & Wodak, 1997; Richardson, 2007), identifying, for instance: referential and predicational strategies (Reisigl & Wodak, 2001); transitive choices (Richardson, 2007); and indexical meanings (Blommaert, 2005) within linguistic articulations.

CADS includes both quantitative corpus statistics and qualitative assessments. The former are often employed in positivist linguistic research (for example, Bednarek, 2006), while the latter are a default mode of hermeneutical analysis (Howarth, 2000). For use in a discourse-theoretical analysis, both approaches must be stripped of any presupposition of extra-ideological researcher positions, or references to external objective realities somehow existing outside of discourse. While discourse theory does not reject the existence of objective realities, it considers 'objectivity' itself a hegemonic category, subject to the constitutive influences of power and contestation (Laclau & Mouffe, 1985, 1990). Therefore, where in some research, CADS analysis may be used to analyse media distortions of 'reality' (see examples in Fairclough, Cortese, & Ardizzone, 2007), in this thesis it is used to examine the construction of, and competition between, different hegemonic "reality effects" (Chouliaraki, 2005, p. 275).

1.4.5 Document Analysis and Key Informant Interviews

The thesis situates the CADS analysis of news media texts within a wider reading of the historical processes in which they were produced. This contextual reading constitutes what Hajer (2005) calls the 'desk research' and 'document analysis' phases of discourse analysis - intended to produce a "general survey of the documents and positions in a given field", and to provide initial identifications of key events, discourses and sites of discursive production (p. 306).

Discourse theory, akin to other theoretical approaches such as hermeneutics and phenomenology, places chief importance on context when analysing social phenomena (Hansen & Sørensen, 2005). In this regard, the 'document analysis' approach assumes that in order to identify the circulation of discourses within media coverage, it is first necessary to identify their circulation in wider social spheres.

In addition, the thesis supplements its historical reading and CADS analysis through qualitative interviews with 'key informants' (Holstein & Gubrium, 1995; Spradley, 1979) - in this case, two *The New York Times* journalists who contributed significant coverage of the medicines access dispute: Donald G. McNeil Jr. and Tina Rosenberg. These original interviews are combined with published testimony from 'access to medicines' campaigners, available as published memoirs (Mayne, 2002; Sawyer, 2002), and as interviews reproduced in academic studies (Finlay, 2004; Olesen, 2006; Sell, 2001; Sell & Prakash, 2004). These combined data constitute the 'personal testimonies of actors involved' indicated in the research questions. Consistent with discourse theory arguments outlined above, these testimonies are not regarded as harbingers of truth against which the distortions of document analysis are revealed, nor vice versa. Rather, as with all discourses under consideration, the data collected through qualitative interviews are analysed in terms of their particular hegemonic constructions, and the degree to which contingencies may be concealed (Hansen & Sørensen, 2005; Howarth, 2005).

1.4.6 Contingency of the Research Approach

Before moving on to the chapter outlines, it is worth noting the contingency of the thesis itself. A key tenet of discourse theory is that

the researcher and research process do not exist in an extra-ideological space, but are also constituted and communicated through contestable discourses (Howarth, 2000; Phillips & Jørgensen, 2002). Therefore, this thesis must acknowledge the contingent construction of its own research problems and objects of study. Glynos and Howarth (2007) suggested that in order to conduct problem-driven discourse-theoretical research, a “range of disparate empirical phenomena have to be constituted as a problem, and the problem has to be located at the appropriate level of abstraction and complexity” (Glynos & Howarth, 2007, p. 167, emphasis in original).

This thesis’ object of inquiry can be regarded as constructed in several ways. First, each of the elements presented in the research questions have been purposefully selected from the field of prior analysis of the medicines access/intellectual property rights issue. For instance, the argument that news media coverage provided an influential site in the wider development of this issue can be found in Barnard (2002), Heimer (2007), Mayne (2002), Olesen (2006) and Sell (2001, 2003). Similarly, the identification of the transnational civil society coalition as an influential actor can be found in He and Murphy (2007), Matthews (2006) and Weissman (2005); the acknowledgement of this time period in Olesen (2006) and Richards (2004); and the argument that these factors contributed to a *discursive* change in Halbert (2005), Sell (2003), and Sell and Prakash (2004).

These factors constitute the “range of disparate empirical phenomena” (Glynos & Howarth, 2007, p. 167) assembled here to constitute a problem. However, while these aspects are indeed noted in the cited references, they are not universally recognised within all commentary on the medicines access dispute. Alikhan and Mashelkar (2004), for example, covered recent developments in global intellectual property with no reference to news media or discourse

change, while Light (2007), despite quoting research from ‘access to medicines’ CSOs, made no reference to an organised transnational civil society campaign. Similarly, a four-hour documentary by the US public broadcaster, PBS, on the historic development of HIV/AIDS (Barker & Simone, 2006; Cran & Simone, 2006), made only fleeting reference to patent protection while spending considerable time discussing the funding of HIV/AIDS medicines.

In short, the construction of the problem presented here is *contingent*, not absolute, and could potentially be approached in significantly different ways. The elements constituting the research questions have been purposefully selected from the wide pool of interdisciplinary research examining the dispute, and are here configured in a new and unique way in order to illuminate an aspect of particular relevance to the field of news media studies. In addition, the variety of potential constructions of the medicines access issue cited above indicate that the assumptions of the research questions are by no means universal within the field of commentary. Space remains for new articulations seeking to capture the phenomena under question, to which this thesis provides a novel contribution.

1.5 Thesis Structure

Following this introductory chapter, the thesis is presented in two parts. Part One provides background and context for the study. First, it outlines in more detail Laclau and Mouffe’s discourse theory and its specific methodological application in this thesis. Second, it considers the historical processes constituting the medicines access dispute. Third, it outlines recent academic research on news media, voices of dissent, and the transnational and “interstitial” (Appadurai, 2006, p. xii) nature of much contemporary civil society action. Part Two of the thesis presents the results from empirical investigation of the news

content. This section is divided into three chapters, organised chronologically into three stages from the news sample: 1997-2000; 2000-2001; 2001-2003; and also thematically into three discourse-theoretical conceptual categories: reactivation; dislocation; and myths and imaginaries.

The division into these three conceptual categories emerged during the process of news analysis, when three distinct phases of discursive transformation became apparent in the sample. Thus, 'reactivation' refers to the opening of hegemonic discourse, where the contingency of the dominant framework was initially revealed in mainstream media coverage. 'Dislocation' refers to the ruptured discursive space, where a variety of new discourses were articulated and the 'access to medicines' campaign received its most favourable representation. 'Myths' and 'imaginaries' are used to refer to the subsequent closing of the discursive space, where a new hegemony was settled upon in the medicines access dispute. The three conceptual categories thus illustrate three points in the opening and closing of discursive transformation. Taken together, these three empirical chapters articulate the major argument of this thesis: that the civil society campaign was successful in antagonistically 'opening up' Big Pharma hegemonic discourse, but that such opening was ultimately closed again by a reconfigured version of the pre-existing intellectual property regime.²

To briefly introduce each chapter, **Chapter 2** outlines the thesis' theoretical and methodological approach. It begins with a general discussion of Laclau and Mouffe's discourse theory as a post-structuralist approach to political analysis, and the ontological issues involved when applying this to empirical analysis of news media

² It must be noted that these three categories are not necessarily discrete, self-contained moments of discourse transformation, but rather overlap and interact. They are here deployed as heuristic categories to structure the analysis of discourse change, with the caveat that the overlaps may at times be under-emphasised in the interest of illuminating the overall process.

representations. The chapter then introduces in more detail the specific categories of discourse theory: demonstrating how it has drawn upon Heidegger, Wittgenstein, Foucault, Gramsci, Saussure, Derrida and Lacan, among others, to develop a systematic concept of discourse-as-the-social; and, in particular, its use of the key concepts 'hegemony' and 'social antagonism.' The second part of the chapter outlines in detail the selection of the news sample, and the methodological strategies: CADS; document analysis; and key informant interviews. The chapter discusses and justifies the selection of this approach, and briefly considers further methodological strategies that were not selected.

Chapter 3 provides an overview of the historical and political conditions surrounding the medicines access dispute, providing context for the later identification of discourses within the news texts. In this way, Chapter 3 constitutes the 'document analysis' aspect of the methodology, that, following Hajer's (2005) definition, understands it as the initial surveying of documents for "structuring concepts, ideas and characterisations; employment of story lines, metaphors and so on", in order to ascertain a "basic notion of the processes of events as well as the sites of discursive production" (p. 306). In this regard, the chapter outlines the historic formation of intellectual property regulation, in particular focusing on its contemporary globalised manifestation within the multilateral trade agenda through the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

The chapter also draws upon political economy literature to discuss Big Pharma's role in constructing the contemporary intellectual property regime, and the US government's pressure upon foreign countries to accede to it. By mapping insights from the literature, the chapter argues that the structural conditions in the late-1990s amounted to a multilateral global intellectual property regime with

few avenues to moderate strong patent protection of HIV/AIDS drugs (Correa, 2007; Sell, 2003), combined with a diplomatic infrastructure allowing bilateral and unilateral pressure from the US government to further increase patent protection (Matthews, 2002; Perez Pugatch, 2004; Richards, 2004; Ryan, 1998). This context provided the hegemony to which the 'access to medicines' campaign mounted a counter-hegemonic project.

The chapter also outlines the development of ARV medicines, and the disproportionate spread of HIV/AIDS across the majority world. It describes how a transnational civil society campaign emerged to publicise the role of IPRs in impeding global medicines access, and discusses how the measure of compulsory licensing – the authorisation of a third party to use a patent without prior consent (Correa, 2007) - was advocated by the campaign as a solution to the medicines access crisis. Finally, the chapter outlines the pharmaceutical companies' legal challenge against the South African government over domestic laws allowing importation of cheaper generic copies of HIV/AIDS medicine.

In the final part of the background and context section, **Chapter 4** examines academic literature concerning mainstream news media representation of civil society campaigns and voices of dissent. It outlines how past research has observed a tendency to marginalise counter-hegemonic voices within the mainstream news, also noting how such a tendency has been problematised in more recent research. Through this discussion, the market-driven nature of contemporary news media is discussed, noting how the focus on spectacle, celebrity, conflict and personality can both distort and provide spaces for representation of social campaigns.

Chapter 4 then widens its lens to consider research on global governance and civil society, drawing on interdisciplinary insights to

sharpen the project's media analysis. In this regard, it notes how various theorists have highlighted the fragmentation of governmental space in recent decades, moving power away from the nation-state and towards a network of private corporations, supranational institutions and civil society organisations. The relevance of this 'global governance' dynamic for the 'third sector' of civil society is then discussed, noting how the network of governance has opened up new spaces for transnational civil society service and activism. Finally, the chapter considers how recent research on protest, social campaigns and the news media has responded to the global governance dynamic articulated in the relevant literature. Where Chapter 3 provided context for the discourses under analysis, Chapter 4 provides context for how the discourses may be articulated in the symbolic forum of the mainstream news media.

Chapter 5 is the first of the empirical media analysis chapters, focusing on news coverage from 1997 to 2000, and organising its insights conceptually around the category of reactivation. For Laclau and Mouffe (1985), discourses necessarily exclude certain elements in the process of their formation. Discourses appear objective, or 'sedimented', only when the existence of these excluded factors is successfully concealed. 'Reactivation', therefore, refers to the moment when concealed excluded elements are rendered visible, thus demonstrating the contingency of the supposedly 'objective' discourse, and emphasising the possibility of change. Chapter 5 uses empirical analysis of news coverage to argue that the hegemonic discourse on HIV/AIDS medicines was reactivated through protests against US Vice President, Al Gore, during his 1999 Presidential campaign. A corpus analysis of 1997-2000 coverage shows that while before mid-1999, there was virtually no reference to intellectual property in the sample of HIV/AIDS medicines coverage, post mid-1999, signifiers for intellectual property and generics came to feature prominently.

A qualitative reading of the news texts then demonstrates how it was through coverage of the anti-Gore protests that IPRs, generics, and the medicines access dispute in South Africa received representation. Thus, despite civil society, pharmaceutical industry, US government and WHO activity on patents and medicines over the preceding few years, it was only through a small, focused activist attack on a high-profile US politician that the global intellectual property/HIV/AIDS medicines access dispute entered the mainstream news agenda. In this way, the chapter argues hegemonic discourse was reactivated: its contingency revealed through the articulation of previously marginalised elements. Furthermore, the chapter argues such reactivation was only realised through media-reflexively-conditioned (Cottle, 2008) signifying practices of a small group of 'access to medicines' protesters.

Chapter 6 examines coverage from 2000-2001, using the category of 'dislocation' to structure its analysis. In early 2001, the lawsuit between the Pharmaceutical Manufacturers Association (PMA) and South African government went to court. This chapter uses statistical analysis to show how the court trial dates correspond with the highest coverage levels across the seven-year sample. The chapter then qualitatively assesses articles produced in this period to illustrate how the increased coverage provided space for an increased diversity of discourses. New competing discourse strands appeared, articulating arguments supporting the 'access to medicines' campaign's stance, supporting Big Pharma's, and contextualising the PMA trial, explaining its wider significance for intellectual property rights and globalisation.

Chapter 6 argues that such discursive practice in the news coverage illustrates Laclau's (1990) concept of dislocation: where elements previously un-symbolisable within a discursive order are rendered

visible, thus rupturing the discourse and producing new attempts to make sense of the disruptive presence. Where the 1999 reactivation initially revealed the contingency of hegemonic discourse, the 2001 dislocation provided a relatively open forum where various discourses competed to suture the dislocated space. That is, while reactivation marked the opening of the hegemonic order, dislocation describes what happened once the order was partially open.

Combining discourse-theoretical arguments with media studies insights, Chapter 6 also suggests such discursive practice may be usefully conceptualised as ‘mediatised dislocation.’ It argues that the way the rupture and production of new discourses occurred in the news sample was dependent upon specific logics of mainstream news media representation. In addition, it argues that through especially pro-active media relations, the ‘access to medicines’ campaign was successful: both in promoting the trial as a dislocation; and also in positioning its specific interpretation as a highly visible discursive competitor in the news coverage. Thus while the PMA trial existed independently of the civil society campaign, the campaigners were the leading claims makers in constructing the *meaning* of the trial - defining its moral parameters and material consequences.

The final empirical chapter, **Chapter 7**, examines coverage from mid-2001 to 2003, using the concepts of ‘myths’ and ‘imaginaries’ to examine the competition between different attempts to ‘suture’ the discursive space opened through reactivation and dislocation. For Laclau (1990), myths are examples of the new discourses produced through dislocation, that then seek to close the dislocated space by appropriating the un-symbolisable rupture into a coherent discursive form. Imaginaries are examples of myths that successfully achieve this and then go on to conceal their contingency, becoming sedimented as hegemonic ‘objectivities’.

Through a qualitative analysis of a sub-sample of editorials from *The Washington Post*, analysed in relation to subsequent historical developments, this chapter argues that the most successful myth to suture the PMA trial dislocation was one that combined discounted medicine prices with increased foreign aid funding. With reference to Laclau's (2005) concept of 'floating signifier', the chapter then demonstrates how this myth neutralised the 'access to medicines' campaign's demand for intellectual property reform by conflating it with the demand for medicine price cuts. In this way, the 'discounts + aid' myth satisfied more social demands than its competitors, and marginalised the campaign's counter-hegemonic challenge regarding patent protection.

The chapter also notes that such discursive practice was not universal in the media sample, and that further articulations from *The Guardian* maintained a patent-centric discourse throughout. However, the chapter observes that even in *The Guardian's* pro-generics/anti-Big Pharma discourse, traces of the pre-existing hegemonic formation delegitimising generics still persist. In this way, the chapter argues the transformation of HIV/AIDS medicines discourse in the news sample ultimately closes with a hegemonic formation remarkably similar to the one existing pre-1999. In addition, the chapter argues such a hegemonic formation fulfils the criteria of Laclau's (1990) 'social imaginary,' providing a "horizon of inscription" (p. 64) for wider discursive practice. The chapter argues that such a hegemonic formation encodes an unequal power dynamic between the minority and majority worlds, where majority world sovereignty is subordinated to minority world philanthropy. In this regard, it labels the hegemonic formation a 'charity imaginary,' and argues that it persisted throughout the media sample, ultimately impervious to the destabilising forces of reactivation and dislocation.

Chapter 8 is the conclusion chapter of the thesis. It recaps the thesis'

major findings: that through media-centric protest activities and proactive media relations, the campaign successfully destabilised hegemonic discourse between 1999 and 2001; but that by 2003, clear signs suggested the destabilisation was ultimately resolved through a reconfigured version of the pre-existing hegemonic power structure. The chapter discusses the implications of these findings for future counter-hegemonic civil society campaigns, and for current HIV/AIDS sufferers in need of accessible treatment. It also discusses the theoretical implications of the study for research into news media and voices of dissent, as well as social theory research into hegemony and resistance. The chapter then critically reflects on the research design, and ends by suggesting several avenues for future research stemming from this project.

PART I

Background and Context

2

Theoretical and Methodological Approach: Discourse, Hegemony and Corpus-Assisted News Analysis

Abstract

This chapter discusses the theoretical and methodological approach of the thesis. It outlines Laclau and Mouffe's discourse theory as the macro-theoretical frame, and explains how this is applied to the empirical analysis of print news media. It also introduces the methodological strategies of the thesis - corpus-assisted discourse analysis, document analysis, and qualitative interviews - and explains how these will be rendered commensurate with the ontological assumptions of discourse theory.

2.1 Introduction

The only theory worth having, is that which you have to fight off, not that which you speak with profound fluency.
(Hall, 1992a, p. 280)

Ernesto Laclau and Chantal Mouffe's 'discourse theory' (Laclau, 1990, 1996; Laclau & Mouffe, 1985) is a poststructuralist approach to political analysis foregrounding the contingency of all social relations, and the constant struggle between opposed groups to fix meaning through the articulation of hegemonic projects. Discourse theory has been selected for this thesis in order to illuminate the dynamics of discourse change in the mediatised debate over medicines access and intellectual property rights (IPRs). While discourse theory differs to other social-theoretical approaches to discourse³ for its belief that 'discourse' is fully coterminous with the 'social', it is here appropriated as a framework for what is predominantly a textual analysis of newspaper articles. In this way, the project contributes to the emerging trend in media and communication studies deploying discourse theory as a guiding framework for news media textual analysis (Carpentier, 2008; Carpentier & De Cleen, 2007; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008).

The analysis of news media texts in this project is embedded within a wider examination of the context in which they were produced. This approach deploys various additional methodological strategies, including document analysis (Hajer, 2005; Hansen & Sørensen, 2005) and qualitative interviews (Kvale, 2007). For the news media textual analysis itself, the methodological strategy of Corpus-Assisted Discourse Studies (CADS) has been selected - an approach combining

³ For instance, critical discourse analysis (Fairclough & Wodak, 1997) and discursive psychology (Edwards & Potter, 1992).

automated quantitative statistics with interpretive close reading of linguistic articulations of discourse (Clark, 2007; Duguid, 2007; Partington, 2004, 2006). In this way, the project can be regarded as ‘multi-perspectival’ in its approach.

While multi-perspectivalism is a common feature of many interpretive studies (Howarth, 2005), its dangers have also been noted (Höijer, 2006). For Höijer (2006), the approach requires a broad spectrum of researcher competencies that are too often not met, resulting in a disregard of important ontological incompatibilities. By foregrounding the ontological assumptions guiding the adopted methodological strategies, this chapter demonstrates how diverse strategies may be usefully appropriated into a discourse-theoretical analysis. This chapter is presented in three parts. The first part provides a general overview of the thesis’ discourse theoretical approach to news analysis. The second discusses in more detail Laclau and Mouffe’s specific approach to discourse and politics. The third outlines the methodological strategies and provides detail on the newspaper sample.

2.2 Discourse Theory and Multi-Perspectival Research

Laclau and Mouffe’s discourse theory⁴ was arrived at principally through a deconstruction of the Marxist tradition; in particular through an extension of Gramsci’s reworking of Marxist concepts of ideology and hegemony (Laclau & Mouffe, 1985). In drawing upon a wide array of continental thought, most significantly from Derrida, Foucault, Lacan and Saussure, discourse theory re-articulated ideology, hegemony, and various established theoretical insights, into

⁴ While Laclau and Mouffe do not use the term ‘discourse theory’ as a label for their work, it has been applied consistently by several commentators analysing their approach (see, for example, Carpentier & Spinoy, 2008b; Howarth, Norval, & Stavrakakis, 2000; Howarth & Torfing, 2005), and shall be applied as such throughout this project.

a systematic approach to discourse-as-the-social (Howarth, 2000). In this version, “every object is constituted as an object of discourse, insofar as no object is given outside every discursive condition of emergence” (Laclau & Mouffe, 1985, p. 107). In this configuration, *all* social phenomena, not just text and talk, can be considered an object of ‘discourse analysis’. The categories of discourse theory, therefore - hegemony, antagonism, constitutive outside, dislocation and so on (to be further outlined below) - can then be used in the analysis of all social practice (Phillips & Jørgensen, 2002).

This aspect has clear ramifications for the deployment of discourse theory in the service of empirical discourse analysis. In some cases, scholars have attempted to systematically operationalise discourse theory, such as Carpentier and De Cleen’s (2007) efforts to reify it into a “proper methodological toolkit” (p. 280) in the guise of Discourse Theoretical Analysis (DTA). However, while DTA remained true to discourse theory’s expansive notion of discourse, it also risked sedimenting the approach into a prescriptive set of procedures for ‘correctly’ applying discourse theory (see Phelan & Dahlberg, 2011). Indeed, in subsequent work, Carpentier and Spinoy (2008a) acknowledged that *any* attempt to apply discourse theory would necessarily involve distortion and adaptation, as, following Laclau and Mouffe’s (1985) own definition, ‘articulation’ means “any practice establishing relations among elements such that their identity is modified as a result of the articulatory practice” (p. 105).

In light of this caveat, Carpentier and Spinoy (2008a) argued that “rigid intellectual and theoretical protectionism would [be] detrimental” (p. 4) for the wider application of discourse theory in the social sciences. In a similar vein, Torfing (1999) argued that discourse theory’s “metatheoretical character” makes it difficult to apply “in an unmediated way” to empirical studies (p. 291). He instead recommended that researchers adopting discourse theory

“remain methodological bricoleurs and refrain from developing an all-purpose technique to discourse analysis” (Torfing, 1999, p. 292).

This thesis adopts a discourse theoretical perspective on social phenomena, but operationalises this within an empirical study of news media texts. Two important issues stem from this decision: first, the question of why focus on news media texts when the news media are just one genre in the social articulation of discourse (Mouffe, in Carpentier & Cammaerts, 2006); and second, the question of what further methodological techniques will be adopted in the service of this discourse analysis.

2.2.1 Discourse Theory and News Media

In the first case, this project aligns itself with recent literature acknowledging that although Laclau and Mouffe’s notion of discourse encompasses all social practice, the news media are an especially privileged site in the construction and dissemination of symbolic social phenomena (Carpentier & Spinoy, 2008b; Phelan, 2009; Torfing, 1999). For example, Torfing (1999), in what Carpentier and Spinoy (2008a) identified as a “preliminary version of a research agenda” (p. 17) for applying discourse theory in a media studies context, noted that:

Above all, however, mass media is [sic] a *site* where battles over identity, distribution and societal control are fought out (Kellner, 1995, p. 35). Mass media help to establish and maintain the hegemony of specific political groups by producing and promulgating social myths and imaginaries, but they also provide the means and material for resistance and counter-hegemonic struggles. In sum, mass media culture tends to provide a new articulation of capitalism, media and technology, within what some call an ‘information society’. (Torfing, 1999,

p. 211, emphasis in original)

In this interpretation, the media provide not only key sites for the production and dissemination of meaning, but also for the social contestation over meaning itself. Such a view caters to both liberal-pluralist models of news media, where the news ideally functions as the site of contestation of diverse voices (see Curran, Gurevitch, & Woollacott, 1982), as well as ‘propaganda’-style models, where media is the site for the reproduction of a wider social-political hegemony (for example, Herman & Chomsky, 1988). It also encompasses insights from other social constructivist perspectives that regard media products as dialectically constitutive of the world they purport to reflect (Carpentier & Spinoy, 2008a; Phillips & Jørgensen, 2002).

In Laclau and Mouffe’s writings, the media are not elevated as a specific site for the analysis of hegemony and discourse. Indeed, Mouffe, in an interview with Carpentier and Cammaerts (2006), noted that media are but one of several sites where hegemonic projects are symbolically articulated. A central tenet of discourse theory is that while an objective material reality may exist, it is only through discourse that we may engage with it (Laclau & Mouffe, 1985, 1990). Thus, all social practice is discursive, and therefore, symbolic, and the material/symbolic binary often articulated in media studies and elsewhere, is, for all intents and purposes, dissolved. Furthermore, articulating insights from Heidegger, Wittgenstein, Derrida, Lacan and Foucault, discourse theory contends that all symbolic representations are inevitably distorted and partial (Laclau & Mouffe, 1985). *Any* representation of reality will be incomplete and precarious. In this way, discourse-theoretical analysis moves beyond the reality/representation dichotomy, and instead focuses on how various “reality effects” (Chouliaraki, 2005, p. 275), or ‘regimes of truth’ (Foucault, 1980, 1989), may be constructed within a horizon of representation.

By applying such insights to the empirical analysis of news media texts, recent studies (Carpentier, 2008; Gies, 2003; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008) can, despite discourse theory's departure from linguistically-rooted conceptions of 'discourse', be seen to operate within media and journalism studies' well-established interest in news media language use (Zelizer, 2004). In this way they constitute a 'bridge' between Laclau and Mouffe's expansive political theory and linguistic analyses of journalism practice, in a manner not dissimilar from other attempts to combine social theory and textual analysis, such as that of critical discourse analysis (CDA) (Chouliaraki & Fairclough, 1999; Fairclough, 1992, 1995; Fairclough & Wodak, 1997; Wodak & Chilton, 2005; Wodak & Meyer, 2001).

It must also be noted that despite the relatively recent deployment of discourse theory in a more systematic way in studies of media content, Laclau and Mouffe's ideas have been generally assimilated into the fields of media, communication and cultural studies since the late-1970s (Phelan & Dahlberg, 2011). Stuart Hall, for instance, a key figure in the field, noted the influence of Laclau and Mouffe's versions of discourse, articulation, and the constitution of political subjects on his own work (Grossberg, 1996; Slack, 1996). For Slack (1996), Laclau's (1977) early work on articulation was crucial in Hall's influential conception of the term. Furthermore, on Laclau and Mouffe's expanded notion of 'discourse' as a metaphor for all social practice, Hall himself noted:

That metaphor has been, I think, enormously generative for me and has powerfully penetrated my thinking. If I had to put my finger on the one thing which constitutes the theoretical revolution of our time, I think it lies in that metaphor - it's gone in a thousand different directions, but it has also reorganized

our theoretical universe. (Hall, in Grossberg, 1996, p. 145)

It is in this sense that Nash (2001) noted Laclau and Mouffe's centrality to the 'cultural turn' in social theory, despite their routine omission from popular histories of cultural studies (Slack, 1996).

2.2.2 Discourse Theory and Empirical Research

The second issue deriving from the decision to use discourse theory in the service of news media textual analysis is: what methodological techniques to adopt? As noted above, prior scholarship has recommended discourse theory analysts become "bricoleurs" in their selection of methodological techniques (Torfing, 1999, p. 292). More specifically, Phillips and Jørgensen (2002) advised: "it can be fruitful to supplement [Laclau and Mouffe's] theory with methods from other approaches to discourse analysis" (p. 24). Lams' (2008) use of Hallidayan systemic functional linguistics and Phelan's (2009) use of CDA are examples of such 'bricolage' and supplementation. However, in almost all cases, scholars are quick to note the imperative to render commensurate any methodological tools within the poststructuralist ontology of discourse theory (Glynos & Howarth, 2007).

By this, Glynos and Howarth (2007) concluded: "we can deploy theoretical concepts and empirical generalizations derived from other traditions, so long as their use is accompanied by suitable acts of reactivation, deconstruction, commensuration, and articulation" (p. 188). For discourse theoretical analysis, then, the strategies adopted in a multi-perspectival approach must be weighed up "against each other with respect to philosophical premises, theoretical claims, methodology and method, identifying what kind of contingent knowledge each approach can supply and modifying approaches in the light of these considerations" (Phillips & Jørgensen, 2002, pp. 155-

156). Furthermore, Carpentier and De Cleen (2007) noted that a necessary condition of any strategy's application "remains the acceptance of a poststructuralist body of knowledge, from which [discourse theory] cannot be detached" (p. 278).

The methodological strategies adopted in this thesis are a corpus-assisted discourse analysis of the sample news texts, accompanied by document analysis and qualitative interviews of key informants in order to provide context to the news content. In the first case, the approach of Corpus-Assisted Discourse Studies (CADS) (Partington, 2004, 2006) has been chosen. CADS is a mixed-method strategy combining an automated corpus analysis with an interpretive reading of selected textual features identified from the corpus (Duguid, 2007). That is, it combines two factors:

- 1) ... *corpora* (large bodies of naturally occurring language data stored on computers) and corpus processes (computational procedures which manipulate this data in various ways) in order to uncover linguistic patterns which can enable us to make sense of the ways that language is used in the construction of *discourses*." (Baker, 2006, p. 1 parentheses and emphasis in original)
- 2) ... moving back and forth between the quantitative expressions [...] and more traditional qualitative readings of the contextualised data. (Duguid, 2007, p. 76)

Furthermore, the 'qualitative readings' suggested by Duguid (2007) can consist of techniques borrowed from CDA, for example the linguistic analysis tools suggested by Fairclough (1989, 1992, 1995, 2003) and Wodak (Fairclough & Wodak, 1997; Wodak, 1996; Wodak & Chilton, 2005; Wodak & Meyer, 2001) (see more detailed discussion of these 'tools' below). Past CADS practitioners have

recommended a 'back and forth' approach between the qualitative and quantitative, using the insights of each as a mutual guide for where to apply the other (Bayley, 2007; Duguid, 2007).

A narrow focus on print news texts alone is insufficient for a discourse theoretical analysis that, as with other theoretical approaches such as hermeneutics and phenomenology, places a chief importance on *context* when analysing social phenomena (Hansen & Sørensen, 2005). This project, therefore, brackets its analysis of news media texts within a wider reading of the historical context in which they were produced (see Chapter 3 of this thesis). This contextual reading constitutes what Hajer (2005) called the "desk research" and "document analysis" phases of discourse analysis, intended to produce a "general survey of the documents and positions in a given field", and to provide initial identifications of key events, discourses and sites of discursive production (p. 306).

While document analysis provides a popular approach for discourse analysis, it also faces several limitations (Hansen & Sørensen, 2005). For example, Hansen and Sørensen (2005) argued that: the level of detail in written material is often not very high; documents often represent only "a very schematic description of the discursive framework that is being studied"; they "often have a formalized nature that delimits the informal and more spontaneous expressions of existing discourses"; and they are often ambiguous, being the outcome of "processes of negotiation and compromise that provide little information about existing discursive patterns of conflict" (Hansen & Sørensen, 2005, p. 99). Therefore, Hansen and Sørensen (2005) recommended that discourse analysts seek to combine document analysis with other forms of data.

In light of these observations, this project supplements its historical reading and CADS analysis with qualitative interviews with 'key

informants' (Holstein & Gubrium, 1995; Spradley, 1979) - in this case, two journalists from *The New York Times* who contributed notable coverage on the 'access to medicines' issue. These interviews, along with prior published interviews and memoirs, constitute the 'personal testimonies of actors involved' as indicated in the research questions. However, consistent with Laclau and Mouffe's assumptions that all social practice is discursive, these testimonies are not, as noted earlier, regarded as harbingers of truth against which the distortions of document analysis shall be revealed, nor vice versa. Rather, as with *all* discourses under consideration, including those constituting the research process, the data collected through qualitative interviews are analysed in terms of various constructions of 'truth' and the degree to which contingencies may be concealed (Hansen & Sørensen, 2005; Howarth, 2005).

To conclude this general discussion, the thesis' theoretical and methodological approach is illustrated in Figure 1 (see overleaf). Here, it can be seen that the print news media texts constitute the focal point of an analysis articulated through a discourse theory macro-theoretical prism (Laclau, 1990; Laclau & Mouffe, 1985). Furthermore, the analysis of the news texts through the methodological strategy of CADS (Baker, et al., 2008; Clark, 2007; Duguid, 2007; Partington, 2004, 2006) is in turn circumscribed and influenced by the interpretive assessment of wider commentary on the issue, through document analysis (Hajer, 2005), and qualitative interviews with key informants (Ervin, 2005; Spradley, 1979). In this way, the project seeks to undertake a theoretically informed and methodologically multi-perspectival analysis of the various "reality effects" (Chouliaraki, 2005, p. 275), 'regimes of truth' (Foucault, 1980, 1989), and discursive constructions represented within the selected news media coverage of the 'access to medicines' dispute. This chapter will now move on to a more detailed discussion of Laclau and Mouffe's discourse theory, to be followed by further detail on the

methodological strategies.⁵

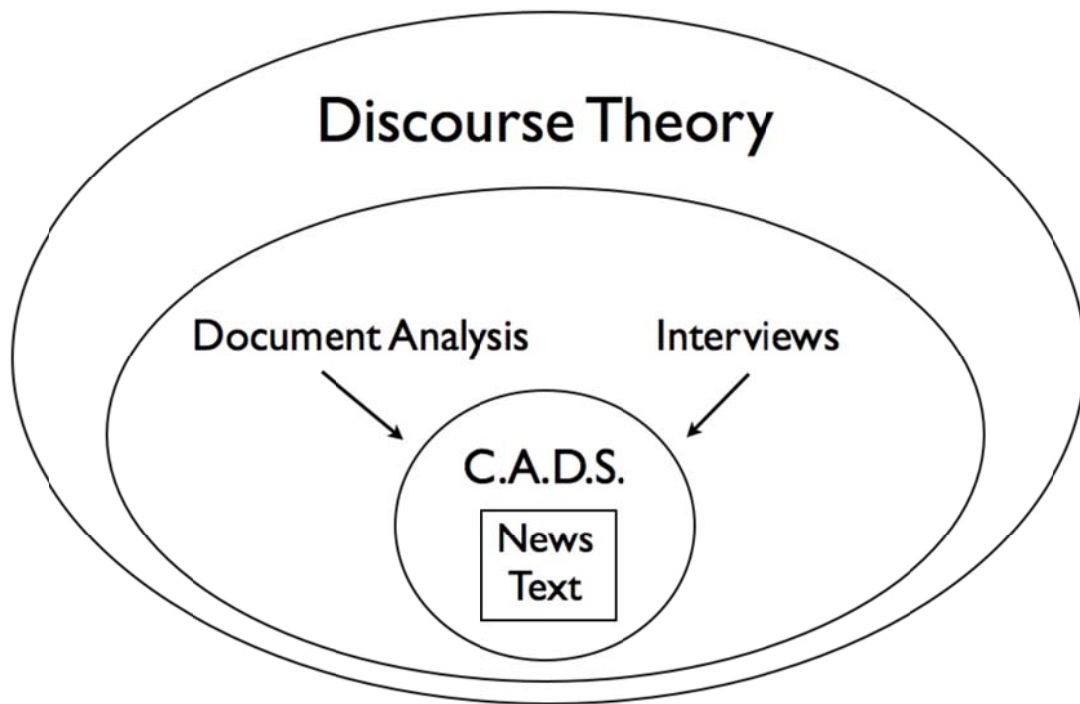


Figure 1:
Theoretical-methodological approach of the study

⁵ The above discussion distinguishes between discourse theory as a ‘macro-theoretical guide’, and CADS, document analysis and key informant interviews as ‘methodological strategies’. However, it should be noted that there is a dialectical relationship between the theoretical and methodological approaches. As Glynos and Howarth (2007) note, social science researchers “need to resist the temptation to divorce the problem of method from deeper issues of ontology, explanation, ethics, and normative evaluation” (p. 209). In this thesis, while methodological strategies have been adopted from other fields, they are here deployed to examine categories identified through discourse-theoretical conceptualisation – reactivation, dislocation, myths, imaginaries, and so on. The strategies are thus embedded within a theoretical-methodological framework guided by the ontological presuppositions of discourse theory. In this sense, Laclau and Mouffe’s discourse theory underpins both the macro-theoretical assumptions *and* concrete methodological strategies guiding the thesis. The distinction here into ‘discourse theory’ on one hand and ‘methodological strategies’ on the other, therefore, is used to distinguish between the basic theoretical approach of the thesis, and the supplementary methodological techniques which have been drawn from other traditions in order to operationalise the discourse-theoretical analysis.

2.3 Laclau and Mouffe's Discourse Theory

2.3.1 The Contested Signifier of 'Discourse'

It is commonplace among the copious literature overviewing the field of discourse analysis to open with the disclaimer that 'discourse' has many different interpretations (see, for example Jaworski & Coupland, 1999; Wodak & Krzyzanowski, 2008). According to Paltridge (2006), the term 'discourse analysis' was first introduced by Harris (1952) as a way of analysing language beyond the level of the sentence and investigating the relationship between linguistic and non-linguistic forms. In the years since, however, the concept of 'discourse' has spread from the linguistic and semiotic disciplines to ever-more diverse areas of the social sciences: "anthropology, history and sociology; psychoanalysis and social psychology; cultural, gender and post-colonial studies; political science, public policy analysis, political theory and international relations, not to mention linguistics and literary theory" (Howarth, 2000, p. 1).

A further common feature in meta-analyses of 'discourse' is to place the different interpretations along a continuum, with "textually-oriented views" at one end and "more socially-oriented views" at the other (Paltridge, 2006, p. 1). In conceptions such as this, the 'textual' end retains a priority on discourse as language (for example, Stubbs, 1983), while at the 'social theory' end it is common to find assertions, such as Fairclough's (1992), that discourse is "more than *just* language use" (p. 28 emphasis in original), and that "discourse *constitutes* the social" (p. 11 emphasis in original). Commentators often point out that the 'textual' and 'social' ends of this spectrum are not mutually exclusive (Widdowson, 2007) and may indeed be usefully synthesised, such as in Fairclough's influential socio-theoretical approach to linguistic analysis (Fairclough, 1992, 1995; Fairclough & Wodak, 1997).

It is less common to find an interrogation of the ontological discrepancies between the different approaches to discourse (Howarth, 2000). Adopted from Heidegger (1962), the categories 'ontological' and 'ontic' are routinely deployed in discourse theory: where the former pertains to the necessary presuppositions of any inquiry into the nature of phenomena, while the latter pertains to the particular objects specified by such presuppositions (Howarth, 2005). In discourse theory, the ontological presuppositions of various discourses, including different scholarly approaches to research, are foregrounded. In this regard, Howarth (2000) identified multiple ontologies at work in the various incarnations of 'discourse' itself, including positivist, realist, Marxist, hermeneutical and poststructuralist frameworks. Howarth (2000) argued: "if one is to provide a proper 'grammar' of the use of the concept, one needs to be sensitive to the various theoretical contexts in which it functions" (p. 3). Given the vast deployment of 'discourse' in the social sciences, such a 'grammar' can be discretely neglected (see, for example Wodak & Krzyzanowski, 2008, as reviewed in Owen, 2009).

In light of such points, this thesis renders explicit its discourse-theoretical understanding of the term. For Laclau and Mouffe (1985), all social phenomena, not just language, are subsumed under the signifier 'discourse'. In this sense, 'discourse' is used to express an extended analogy between linguistic and social systems (Howarth, 2000, 2004) - what Howarth called the "trope of catachresis", or creative misapplication, of the term (p. 116). In this configuration, 'discourse' is elevated to the ontological level, structuring the being of things (Critchley & Marchart, 2004). Following Foucault's influential work (see next sub-heading), discourse theory thus exemplifies the move away from the linguistic roots of discourse analysis and towards more politico-theoretical frameworks. Indeed, to return to the continuum cited above, while some meta-analyses of the field of

discourse analysis position discourse theory at the far end of the 'macro-contextual' social theory scale (Carpentier & De Cleen, 2007; Carpentier & Spinoy, 2008a; Phillips & Jørgensen, 2002), other analyses do not include discourse theory at all within the diverse arena of discourse analysis (Jaworski & Coupland, 1999; Paltridge, 2006; Wetherell, Taylor, & Yates, 2001; Wodak & Krzyzanowski, 2008). By contrast, it is not uncommon to find Laclau and Mouffe's contribution in political theory collections (see, for example, Laclau, 1993).

2.3.2 Discourse and Foucault

When discussing discourse theory, it is worthwhile considering Foucault's understanding of 'discourse' (Foucault, 1981; Rabinow, 1984). Though Foucault famously never provided a consistent definition of discourse in his influential work (Koteyko, 2006), a discourse analysis based upon his views would generally be interested in "the rules (practices, technologies) which make a certain statement possible to occur and others not at particular times, places and institutional locations" (Foucault, 1989, p. 21). Such an interpretation of discourse, from Foucault's 'archaeological' phase, broadened discourse analysis from a narrow linguistic application to an examination of the *production of knowledge* itself (Hall, 1992b, 2001). In such a way, the 'linguistic turn' of the social sciences was facilitated (Jaworski & Coupland, 1999), where the importance of discourse in the creation of knowledge was generalised throughout academia (Howarth, 2000). In this sense, following Foucault, 'discourse' could be understood as the "historically specific systems of meaning which form the identities of subjects and objects" (Howarth, 2000, p. 9).

Laclau and Mouffe's discourse theory adopts Foucault's concept of

discourse, but expands upon it in two key ways (Howarth, 2000). First, as in other social constructionist conceptions, it is acknowledged that there is not necessarily one dominant knowledge regime existing at any given historical period, but that many discourses coexist and compete in the same historical space (Phillips & Jørgensen, 2002). Secondly, the inescapable mediation via discourse between an external objective world and the field of meaning is taken as a rationale to extend the scope of discourse analysis to all social relations, thus removing the discursive/non-discursive distinction that Laclau and Mouffe (1985) claim is still present in Foucault's work. In an explicit critique of Foucault, Laclau and Mouffe argued:

... if the so-called non-discursive complexes - institutions, techniques, productive organization, and so on - are analysed, we will only find more or less complex forms of differential positions among objects, which do not arise from a necessity external to the system structuring them and which can only therefore be conceived as discursive articulations. (Laclau & Mouffe, 1985, p. 107)

This central tenet of discourse theory - the expansion of 'discourse' to cover all social phenomena - has led to considerable criticism. Geras (1987), for example, targeted the "shame-faced idealism" (Geras, in Laclau & Mouffe, 1990, p. 99) of Laclau and Mouffe's (1985) key work, *Hegemony and Socialist Strategy*, and its apparent denial of a horizon of material existence outside discourse. Similarly, Cloud (1994) critiqued Laclau and Mouffe for 'completely collapsing' the distinction between discourse and the real, while Rustin (1988) argued that: "From their point of view, [language] cannot refer, since there is nothing outside discourse to have reference to" (p. 160). Explicitly addressing such criticisms, Laclau and Mouffe (1990) reaffirmed their claim that objects do indeed exist independently of discourse, but that

it is only through discursive constructions that they come to have meaning and can therefore be contemplated. As they argued, building on prior insight from Derrida (1978, 1988) and the 'Sapir-Whorf' hypothesis (Kay & Kempton, 1984), among others:

If I kick a spherical object in the street or if I kick a ball in a football match, the *physical* fact is the same, but its *meaning* is different. The object is a football only to the extent that it establishes a system of relations with other objects, and these relations are not given by the mere referential materiality of the objects, but are, rather, socially constructed. This systematic set of relations is what we call discourse. (Laclau & Mouffe, 1990, p. 100, emphasis in original)

To connect these insights to the major focus of the thesis, in the dispute over medicines access and IPRs, different social actors competed to constitute the being and meaning of medicine patents. That is, social actors constructed different discourses, or systems of differential relations, to make medicine patents *exist* and *mean* in different ways. For example, in Big Pharma discourse, medicine patents were constructed as a necessary element for the existence of life-saving medicines - if there were no patents, there would be no medicines. Alternatively, in the 'access to medicines' campaign discourse, medicine patents were constructed as an impediment to global medicines access - if there were no patents, there would be more medicines. Thus, the 'same' object is constituted in vastly different ways, in effect resulting in two objects - their meaning and existence dependent upon the discourse within which they are articulated.

2.3.3 Poststructuralism and Saussure

Another key influence on discourse theory is Saussurean structuralist

linguistics and the poststructuralist critique of them (Howarth, 2000; Laclau & Mouffe, 1985). For Saussure (1981), language was viewed as a system in which signs can only derive their meaning from their difference to other signs. This structuralist conception became the dominant model when the 'linguistic turn' facilitated the use of linguistics in the service of wider social analysis (Laclau & Mouffe, 1985) - for example in Barthes' (1987) semiological analyses of a variety of media and inanimate objects. For poststructuralists, however, Saussure's version was criticised for over-determining the stability of the structure (Laclau & Mouffe, 1985; Phillips & Jørgensen, 2002). Instead, *post-structuralism* conceived that the systems containing sets of relational differences were themselves unstable and constantly changing. Following these assumptions, 'discourses' then became "ensemble[s] of differential positions [...] which in certain contexts of exteriority can be *signified* as a totality" (Laclau & Mouffe, 1985, p. 106 emphasis in original).

For discourse theory, in a specific articulation of a wider poststructuralist argument, this means that objects are constituted by their difference to things which they are not, and that these positions of difference are unfixed and changeable. They are *contingent*, in the sense of being possible, but not necessary (Phillips & Jørgensen, 2002). Furthermore, for Laclau and Mouffe (1985), this means that there can never be an ultimate fixing of meaning, and that discourses can only ever *partially* capture contingent meaning from the infinitude of possible meaning. It is here that Laclau and Mouffe (1985) acknowledged the similarity of their analysis "with a number of contemporary currents of thought which - from Heidegger to Wittgenstein - have insisted on the impossibility of fixing ultimate meanings" (p. 111).

Laclau and Mouffe's consistent emphasis on contingency and the changeability of discourse has led to criticism that their approach

overdetermines change, and thus cannot adequately theorise the perseverance of social structures. Chouliaraki (2002; Chouliaraki & Fairclough, 1999), for instance, argued that Laclau and Mouffe's refusal to acknowledge the extra-discursive 'multi-materiality' of social practice rendered their theory incapable of analysing where material structural forces inhibited discursive change. In other cases, the emphasis on contingency has been mistaken for an advocacy of a completely unfixed social field in which all discourses are equally fluid, and there is no structural influence at all. For instance, Cloud (1994) argued that discourse theory presented a view of society as no more than a free-floating and malleable flux of reality definitions, unaffected by the circumstances of actors within it. Similarly, Rustin (1988) argued that Laclau and Mouffe's emphasis on contingency amounted to a "wholly voluntarist and ultimately arbitrary moral and aesthetic commitment" (p. 167).

Such critiques, however, over-determine the role of fluidity in Laclau and Mouffe's theory, and conflate the partial fixation of meaning with no fixation at all. Countering such critiques, Smith (1998) argued that while discourses and identities in discourse theory may logically face infinite possibilities for change, their specific possibilities are always constrained by historically located hegemonic power relations. Such power relations thus articulate structural constraints that, while not regarded as 'intransitive' material structures, as in critical realist theory (Bhaskar, 1997, 1998), exert an influence on discursive formation nonetheless. As Laclau (2005) noted in later work, a situation in which all discourses were free-floating would be a "purely psychotic universe" (p. 133). Rather, discourses are formed and contested in a situation of "relative structuration" (Laclau, 1990, p. 43). It is therefore the goal of discourse analysis to map not only where change occurs, but also where it is hindered.

To aid in this analysis, Laclau and Mouffe (1985) adopted the

phenomenologist Husserl's (1970) categories of 'sedimentation' and 'reactivation'. In the first case, while the partial fixation of discourse means a pure objectivity cannot be attained, discourses can be made to appear objective through the *sedimentation* of one historic option, and parallel concealment of others. In the second case, such 'objectivity' can be revealed as contingent through the *reactivation* of the sedimented discourse and the return of excluded alternative options that challenge its claims to objectivity. Thus, while contingency is indeed the ontological bedrock of discourse theory, an examination of the structuring force of sedimented discourses is an important part of Laclau and Mouffe's approach to social and political analysis.⁶

2.3.4 Gramsci and Hegemony

To help understand these points it is worthwhile considering discourse theory's development of the concept of 'hegemony' - what Norval (2005) argued can "safely be suggested [...] the main contribution of Laclau to political thought today" (p. 86). Inheriting the concept from Gramsci, who in turn developed it from Marx, Laclau and Mouffe reinterpreted hegemony in two key ways. Firstly, by drawing upon poststructuralist insights discussed above, they elaborated a systematic definition of how hegemony is constructed through the articulation of signs in relation to differential frontiers (Nash, 2001). Secondly, they removed the "inner essentialist core" that, for Laclau and Mouffe, fastened Gramsci's hegemony to the universal category of 'class' (Laclau & Mouffe, 1985, p. 69).

For Gramsci (1971), 'hegemony' referred to the process by which a dominant class organised the interests of other social groups so that such groups consented to their subordinate position (Forgacs, 1988;

⁶ See chapter 5 for further discussion of 'reactivation' and 'sedimentation'.

Mouffe, 1979). Laclau and Mouffe, however, drew on the insight, implicit in Gramsci, situating hegemony as the struggle to construct “common sense out of an ensemble of interests, beliefs and practices” (Slack, 1996, p. 118). By articulating the dynamics of this struggle in poststructuralist terms, Laclau and Mouffe (1985) developed a new version of hegemony as the *process* by which discourses and identities are formed through the dominant fixing of meaning.

‘Hegemony’, therefore, for Laclau and Mouffe, and for this thesis, refers to the process by which discourses are formed through the articulation of un-fixed elements from the field of discursivity into partially fixed moments within a discourse. It is what configures a coherent differential meaning from the infinitude of possible meanings. In the social field, this configuration is organised around the articulation of *nodal points*, or “privileged condensations of meaning [which] confer partially fixed meaning on a particular set of signifiers” (Howarth, 2000, p. 110). As this statement from Howarth emphasises, hegemony describes the pursuit of an impossible endeavor: the attempt to fix meaning in a context of continual surplus and change.

On the topic of ‘hegemony’, it must be noted that in the wider field of media, communication and cultural studies, the term has frequently been articulated in different ways. Gitlin’s (1980) study of news coverage of protests, for example (see Chapter 4), adopted a Gramscian version of hegemony, as have several more recent studies of media and dominant ideologies (Pickering, 2001; Warf & Grimes, 1997; Warf & Vincent, 2007). Altheide (1984) identified the concept of ‘media hegemony’ as an influential concept in media critique, one whose use and relevance he questioned in regards to understanding television news. Artz (2003), on the other hand, argued that ‘media hegemony’, along with globalisation and social class, provided the necessary framework for understanding contemporary international

communication. In many cases, Gramsci's formation of the concept is critiqued with, as in Laclau and Mouffe (1985), certain Gramscian features retained and others discarded. In some cases 'hegemony' is adopted self-evidently with no reference to a Gramscian tradition (for instance, Warf and Vincent, 2007). Indeed, as Gamson et al. (1992) pointed out, in relation to 'hegemony' in communication studies:

In usage, however, the term has lost its more specific reference to this world of common sense and seems to mean no more in most cases than the dominant message in some domain of discourse - in particular, the message of powerful state and corporate actors. (Gamson, et al., 1992, p. 381).

Much of the material constituting the 'document analysis' of Chapter 3 has come from what may be conceived as 'hegemonic analysis' in a Gramscian sense - analysing the processes by which dominant classes organised the interests of subordinate social groups. Indeed, Chapter 3's 'document analysis' could itself be read as a Gramscian hegemony analysis of the historic power struggles over pharmaceutical intellectual property protection, in a similar way to George's (1997, 1999, 2008) approach to mapping the emergence of neo-liberal networks across several fields. With this caveat in mind, as with the contested signifier 'discourse', different uses of the term in this thesis are made clear, with the most common usage being that of Laclau and Mouffe outlined above. That is, while 'hegemonic discourse' is at times used in the thesis to describe the 'dominant discourse' of a given context, more specifically, it describes the process by which dominance has been achieved through the partial fixing of nodal points, construction of frontiers, and exclusion of antagonistic elements.⁷

⁷ Note also that Howarth (2000, 2004) has observed different definitions of 'hegemony' within Laclau's own work. In broad terms, following Howarth (2004), the three different versions of 'hegemony' found in Laclau are: 1) an Althusserian structuralist approach regarding hegemonic practices as conducted by fundamental social classes (found in Laclau's earliest writings); 2) a post-structuralist approach regarding hegemonic projects as the effort to construct and stabilise

2.3.5 Lack and Lacan

Another important influence on discourse theory's ontology of "radical contingency" and "structured incompleteness" (Glynos & Howarth, 2007, p. 11) is Lacanian psychoanalysis (Laclau & Mouffe, 1985; Marchart, 2005). For Lacanian theory (Lacan, 1978, 1991, 2006), the inability to fully close off any field of meaning is due to the disruptive presence of the 'real': that is, the "non-symbolisable lack operating at the heart of any subject or system of signification" (Tønder & Thomassen, 2005, p. 5); a presence that "marks the impossibility of any putative fullness of being, whether at the level of structures, subjects or discourses" (Glynos & Howarth, 2007, p. 11). In adopting such insights, discourse theory articulates an "ontology of lack" (Marchart, 2005, p.17), or 'negative ontology' (Stavrakakis, 2000), in which interpretations of reality are always-already distorted by the inability of discursive formations to exhaust the possibilities of meaning and capture a fully constituted objective truth (Laclau & Mouffe, 1985). The ramifications for the formation of hegemony are clear: no hegemonic project can ever fully close off the field of meaning, and thus will always be haunted by the external elements that elude it. It is in this sense that hegemonic projects are inevitably contingent, and perpetually open to the possibility of counter-hegemonic challenge.

Laclau and Mouffe were critiqued by Žižek (1990), who claimed their commitment to rupture and contingency did not extend to the realm of identity formation in the way it did to discursive formation. In response, Laclau (1990) introduced the concept of 'dislocation' to

meaning systems through the articulation of nodal points and construction of antagonistic frontiers (found in Laclau & Mouffe, 1985); and 3) the extension of the radical contingency of hegemonic projects to pertain both to subjectivities and to social structures, thus emphasising the fundamental role of dislocation in all hegemonic formation (found in Laclau, 1990).

cater for the disruptive presence blocking the full closure of discourses and subjectivities. As Glynos and Howarth (2007) pointed out, dislocation operates on two levels: the ontological and the ontic. In the first sense, dislocation describes the perpetual failure to fully close-off a discourse or identity. In the second sense, dislocation describes the *moment* of rupture of a system of representation, that is: the “moments in which the subject’s mode of being is disrupted by an *experience* that cannot be symbolised within and by the pre-existing means of discursive representation” (Glynos & Howarth, 2007, p. 14 emphasis in original). Importantly, by disrupting the system, dislocation then stimulates the production of new attempts to ‘suture’ the space opened through dislocation.

As an example of such a process, Glynos and Howarth (2007) suggested a major economic depression that dislocates the routinised practices and beliefs of communities across the globe, but which also produces new discursive attempts to address the rupture from both elite and marginalised actors. As Glynos and Howarth (2007) also cautioned, however, “the way the dislocation is constructed and enacted does not follow from the simple fact of dislocation. It may be gentrified (or absorbed) by an existing social practice or regime, or it may provoke a political practice” (p. 112 parentheses in original). In order to analyse which form a dislocation may take, Laclau (1990) introduced two further concepts - myths and imaginaries - where the former describes the various attempts to suture the dislocation, and the latter describes a particularly successful attempt, in which the myth becomes sedimented as a new structuring force. These concepts will be further explored in chapters 6 and 7. For now, it is sufficient to note how they articulate the continued dual emphasis of discourse theory: an analysis of the impossibility of permanently closing the field of meaning; paired with an analysis of the relative success of attempts to do so anyway.

2.3.6 Social Antagonism

Before moving on to the methodological strategies of the thesis, a final point must be made on the foregrounding of *contestation* and *competition* within discourse theory. For Laclau and Mouffe, though it is impossible to fully close-off any field of meaning, social actors still attempt to do so, resulting in a variety of different interpretations of phenomena being produced. It is these different interpretations that then compete with each other to become the dominant fixation of meaning. To conceptualise such contestation, Laclau and Mouffe (1985) formulated the idea of 'social antagonism'. According to Phillips and Jørgensen (2002), a social antagonism "occurs when different identities mutually exclude each other," that is, the "two identities make contrasting demands in relation to the same actions within a common terrain, and inevitably one blocks the other" (p. 47). However, as Howarth (2000) noted, unlike traditional theories of social conflict where such contrasting demands are made by fully formed identities, "Laclau and Mouffe argue that social antagonisms occur because social agents are *unable* to attain their identities (and therefore their interests), and because they construct an 'enemy' who is deemed responsible for this 'failure'" (p. 105 emphasis in original). Just as discourses can never fully exhaust or fix the field of meaning, neither can the identities of social agents attain completion. There will always be something remaining 'outside', and it is this external presence that defines the limits, and therefore the definition, of the identity.

In Laclau and Mouffe's (1985) terms, this defining external presence is called a *constitutive outside*, that, while blocking the full identity of the 'inside', is also a prerequisite for its constitution (Laclau, 1990). In this sense, the failure to attain full identity is mutually experienced by both the antagoniser and antagonised (Howarth, 2000). It is here

that Laclau and Mouffe exhibit the influence of Lacanian psychoanalysis most clearly, where the antagonism discloses the “*lack* at the heart of all social identity and objectivity” (Howarth & Stavrakakis, 2000, p. 10 emphasis in original). It is in this sense that the antagonism gains its ‘constitutive’ aspect, where, in order to compensate for the impossibility of filling the lack, social actors seek to define their identity *in relation to* the outside negative entity of the antagonist.

This aspect is critical in the application of discourse theory to understanding social conflict, as while social actors can be observed to attempt to destabilise the identity of their antagonistic ‘other’, they also desperately require this other in order to stabilise their own identity (Carpentier, 2008). In this way, it becomes “the task of the discourse analyst to describe the ways in which the identities of agents are blocked, and to chart the different means by which these obstacles are constructed in antagonistic terms by social agents” (Howarth, 2000, p. 105). Indeed, for Laclau and Mouffe themselves, this conception of social antagonism was regarded as the “most central argument” of *Hegemony and Socialist Strategy* (Laclau & Mouffe, 1985, p. xvi) - a contribution equally celebrated by Žižek (1990) as the reinvention of the Lacanian notion of lack as a “tool for social and ideological analysis” (p. 249).

To conclude this section, it is worth briefly noting where the above discourse-theoretical concepts are employed in the empirical analysis. Chapter 5 uses the concept of ‘reactivation’ to illustrate the dynamic between the concealment and revelation of social contingency. Here, analysis of news media content shows how the contingency of Big Pharma discourse was revealed through the signifying practices of US-based AIDS activists. In particular, the activists explicitly articulated elements that had been excluded in the hegemonic formation of Big Pharma discourse, thus publicly

demonstrating that Big Pharma discourse represented only one meaning system amongst others. Chapter 6 uses the concept of 'dislocation' to illustrate that once such contingency was rendered explicit, the news media then became a forum for the articulation of new and diverse discourses. In this way, the haunting 'lack' in the hegemonic discourse was made obvious, thus presenting an unbearable rupture which new discourses then competed to fill. Chapter 7 uses the concepts of 'myth' and 'imaginary' to evaluate the relative success of discourses competing to suture this void. It notes that while discourses are fundamentally incomplete and only partial fixations of meaning, they are also engaged in the on-going attempt to attain completion and express coherence. In this way, a discourse-theoretical emphasis on hegemony, lack, and contingency is used to illuminate the processes of discursive transformation within media representation of the dispute over intellectual property and HIV/AIDS medicines access.

2.4 Methodological Strategies

This chapter will now move on to a more detailed discussion of the methodological strategies adopted for this thesis. The empirical analysis focuses on a corpus of 1,113 newspaper articles from six UK, US and South African outlets over the period 1997-2003. The analysis of the articles is embedded within a broad reading of the historical and political context in which they were produced (see Chapter 3). The texts themselves are analysed using a Corpus-Assisted Discourse Studies (CADS) approach (Clark, 2007; Duguid, 2007; Partington, 2004, 2006). In addition, this analysis is supported with qualitative 'key informant' interviews (Spradley, 1979; Tremblay, 1957; Warren, 2002) with journalists identified through the CADS analysis as significant contributors to the coverage of this issue. It is also supported by consideration of testimony from civil

society actors involved in the ‘access to medicines’ campaign, available as published memoirs (Mayne, 2002; Sawyer, 2002) and as interviews reproduced in academic studies (Finlay, 2004; Olesen, 2006; Sell, 2001; Sell & Prakash, 2004).

In this way, the methodological approach of the thesis is consistent with many interpretive studies integrating document analysis and qualitative interviews into a mutually supportive strategy (Hajer, 2005; Hansen & Sørensen, 2005; Howarth, 2005; Kvale, 1996; Warren, 2002). It is also consistent with recommendations from past discourse theoretical analysis suggesting a “bricoleur” (Torfing, 1999, p. 292) or multi-perspectival (Howarth, 2005) approach to discourse research. It must be noted that a limitation of this study is its predominant focus on news media texts, despite discourse theory’s understanding of the media as but one site in the articulation of discourse and hegemony (see Mouffe, in Carpentier & Cammaerts, 2006). This research therefore aligns itself with Torfing’s (1999) preliminary research agenda, and the several studies since (Carpentier, 2008; Carpentier & De Cleen, 2007; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008), using Laclau and Mouffe’s discourse theory as a macro-theoretical guide for diverse empirical analyses of news media content. The remainder of this chapter will be spent discussing the technical aspects of this study’s method, as well as the reasons why each particular aspect was chosen.

2.4.1 The Newspaper Corpus

The corpus of news articles selected for this thesis consists of 1,113 articles from the outlets *The New York Times*, *Washington Post* (US), *The Guardian*, *The Times* (UK), *Business Day* and the *South African Press Association* (South Africa), taken from the years 1997-2003,

based on a keyword search for “AIDS drugs” in the Factiva database. The first point in defending this corpus as an appropriate measure in which to examine news media discursive practice is to answer the question: ‘why newspapers?’

Despite considerable challenges to their dominance, newspapers, in particular the so-called ‘elite press’, continue to play a leading role setting the global news agenda (Cottle, 2006, 2009a). The global news ecology consists of an intersecting and overlapping mix of mainstream and alternative news outlets, disseminated through a matrix of old and new media technological platforms. Within such ecology, the traditional platform of newspapers has struggled to maintain popularity. Newspaper circulation has been in steady decline since the 1980s (Meyer, 2009), and the genre faces severe threats to its relevance as news communication is increasingly digitised through satellite and Internet technologies (Benkler, 2006; Jenkins, 2006; Merrin, 2009). However, newspapers, in particular the ‘elite press’, are still considered to play a dominant role in the global news flow (Cottle, 2006, 2009a). As the diagram from Cottle (2006), reproduced in Figure 2, illustrates, despite a plethora of new outlets and significant new pathways for counter-hegemonic news flows, traditional mainstream media continue to disproportionately dominate the global news ecology.

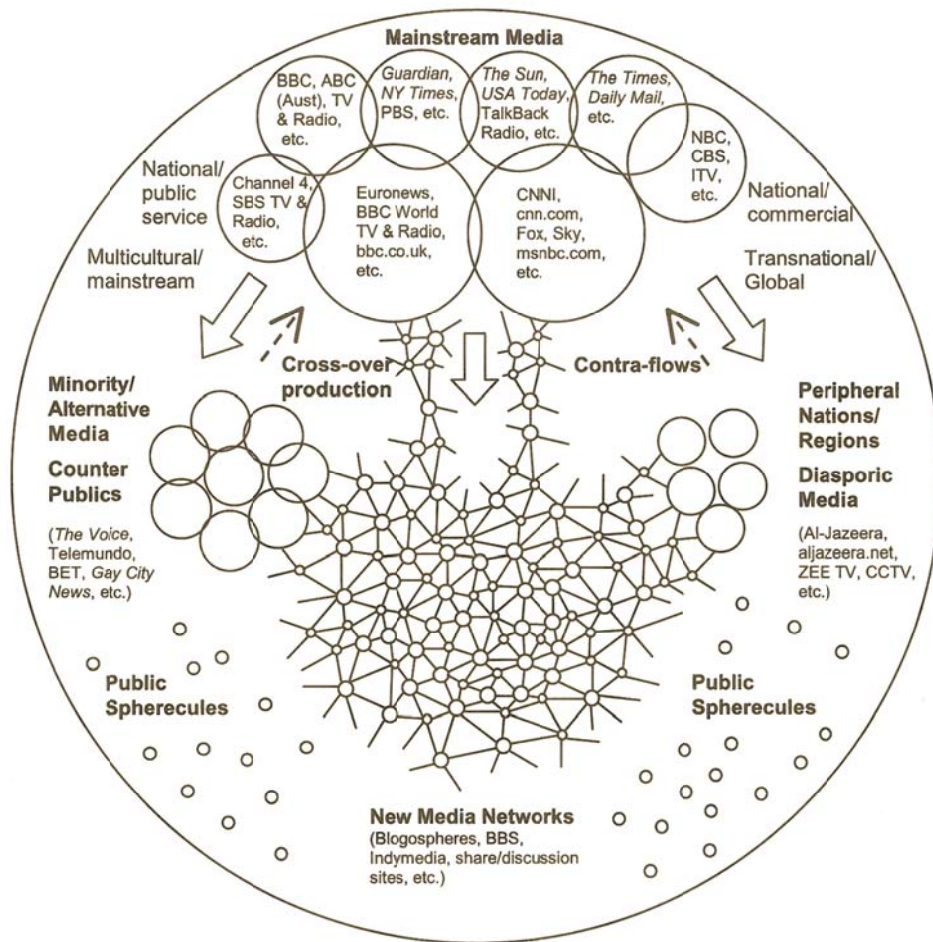


Figure 2:
The global news media ecology (from Cottle, 2006, p. 51)

Indeed, as studies of new media influence upon traditional media conducted around the time of this thesis' sample indicate, the traditional outlets tended to dominate new media content more so than vice versa (Bardoel, 2002; Siapera, 2004). For instance, studies suggested that not only did newspapers exert significant influence upon their online counterparts (Lee, 2004), but also that 'elite' newspapers, such as *The New York Times*, exerted a considerable influence upon the news agenda of mainstream broadcasters (Golan, 2006). As Nisbet et al. (2003) pointed out, news agendas tend to "spread vertically within the news hierarchy" (p. 47) with elite minority world newspapers and newswires providing the dominant influence on the editorial decisions of other news organisations

(Bennett, et al., 2004; Cottle, 2009a). In summary, at the time of this study's news sample, traditional 'elite' *newspapers* continued to provide a commanding influence upon the wider news agenda, and have thus been selected as the news media sample.

A further point to defend here is: why the specific news outlets focused upon in this thesis? As cited above, so-called 'elite' newspapers, also referred to as 'prestige press', are particularly influential in the news hierarchy. This distinction of certain newspapers as 'elite' is often made in studies seeking to distinguish 'quality newspapers' from the popular press (for example, Merrill & Fisher, 1980; Rojecki, 2005; van Dijk, 1988b). As Mueller (1997) noted, 'elite' newspapers are:

defined by their superiority in depth and breadth of news coverage and by the elite status of their readers. Although international media scholars no longer create ranked lists of such newspapers, the distinction is widely recognized, regardless of the researcher's theoretical or ideological orientation (van Dijk, 1988a). (Mueller, 1997, p. 825)

The US' *The New York Times* and *The Washington Post*, and the UK's *The Guardian* and *The Times* are all regarded as 'elite' press (Mueller, 1997). Indeed, *The New York Times*, in particular, is widely regarded as the US' "paper of record" (Winett & Lawrence, 2005, p. 7), and, in the words of Tong (2006), "is a representative elite newspaper in the U.S. with a large circulation (over 1.1 million) and reputation for exemplary international news coverage" (p. 7; see also Peng, 2008). Emphasising the influential role of *The New York Times* as an often chosen source for analysis, Bennett et al. (2004) noted that the "*NYT* is most likely to be read by other journalists and the most dominant influence on the daily editorial decisions of other news organizations" (p. 443 emphasis in original). *The Washington Post*, for its part, is

often used as a counterpoint to *The New York Times* coverage in US media analysis (McCarthy, McPhail, & Smith, 1996; Mueller, 1997). Indeed, Mueller (1997) noted that the *Post* is regarded as a “liberal or left-leaning” alternative to the “centrist” *New York Times*, in the same way that *The Guardian* is to London’s *The Times* (Mueller, 1997).⁸

It must be noted too that US and UK news outlets were chosen based on the recognised centrality of minority world news providers in the global news flow. The significant body of research on international news flow (for example Charles, Shore, & Todd, 1979; Hester, 1971; Kim & Barnett, 1996; Larson, 1979; Weaver & Wilhoit, 1981; Wu, 2003) has observed that the dissemination of information is considerably imbalanced, with minority world news outlets at the centre, and the majority world on the periphery. This means that not only are minority nations less likely to receive news from majority world than vice versa, but also that, given the imbalance in news gathering resources, majority countries in many cases receive news of themselves from minority world outlets (Gaber & Willson, 2005). Accordingly, despite the global relevance of the medicines access dispute, *The New York Times*, *The Washington Post* and *The Guardian* have been previously identified as key sites of journalistic production representing the issue (Bond, 1999; CPTEch, 1999; d’Adesky, Avirgan, & Rossetti, 2005; Halbert, 2005).

This thesis also includes news coverage from the ‘periphery’ country of South Africa in its sample. South Africa provided a major site of visibility in the global medicines access dispute (Barnard, 2002; Halbert, 2005). It was not the only majority world country affected

⁸ However, such claims are contentious and subject to evolving interpretations. *The Guardian* reporters, for example, are cited in Davis (2007) as recognising the historically left paper has recently become more “mainstream” (Brummer, in Davis, 2007, p. 65). Similarly, while *The Washington Post* has been judged the most liberal of major US news organisations (Dispensa & Brulle, 2003), over the period 2001-2003 it was also noted that its editorials outspokenly supported the conservative Bush Administration’s policies in the US war against Iraq (Massing, 2002).

by HIV/AIDS and the influence of IPRs on medicines access, nor was it the only location where dissent was articulated against the intellectual property system, with Brazil (Cohen & Lybecker, 2005; Galvão, 2005) and India (Henderson, 1997; Rangnekar, 2005) constituting important further sites of contestation. However, as shall be indicated in the history and background review of Chapter 3, events in South Africa constituted the most visible, and symbolically powerful (Love, in Swarns, 20 April 2001), majority world site in the minority world academic and civil society commentary on this issue. For this reason, South African press coverage has been included in the news sample of this thesis.

However, the selection of *which* South African outlets to choose was not as straightforward as in the case of the UK and US. As observed in recent research on the South African media sphere (Berger, 2002; Danso & McDonald, 2001; Teer-Tomaselli, Wasserman, & De Beer, 2006; Wasserman & De Beer, 2006), the country's contemporary newspaper scene is characterised by the cultural and linguistic diversity of the nation, the legacy of apartheid, and the processes of globalisation positioning South Africa as both a peripheral nation globally, and a dominant one regionally. "The reality remains that the South African press is still very much divided," claim Wasserman and De Beer (2006), "with, for example, Afrikaans newspapers, such as *Beeld* and *Die Burger*, emphasizing news important to their reader base, and black English-language newspapers such as *Sowetan* and *New Nation*, almost exclusively covering news related to the black community" (p. 72). This situation means that minority world models of news media theory, such as, for example, the concept of an 'elite' press, cannot be transposed easily onto the South African context (Berger, 2002). In addition, as was discovered in the early phases of this project, nor are South African newspapers archives so readily available in minority world databases. Factiva, the database chosen for this thesis, only archived three outlets, one of which, the *Financial*

Mail, was a weekly financial news magazine, making it unsuitable for the purposes of this inquiry. Therefore, the other two outlets, *Business Day* and the *South African Press Association (SAPA)*, were chosen for inclusion in the corpus.

Both of these outlets' archives, however, are problematic. In the first instance, *SAPA* is a news wire service, not a newspaper. In the second, both sets of Factiva archives for these titles were incomplete for the designated time period, with the *Business Day* collection beginning in early 2000, and *SAPA* in late 1999. Nevertheless, the outlets were included for analysis, with due consideration of the limits imposed. In *Business Day's* case, the paper has been cited in research by Finlay (2004) as the third leading English-language daily covering HIV/AIDS in South Africa (the first two were *The Star* and *Sowetan*), and has been included, among other titles, for discourse analysis in prior research focusing on South African newspapers (Thetela, 2001). In *SAPA's* case, the agency was at the start of this project's sample an "autonomous non-profit making news agency owned by four major groups and independent newspapers" (Forbes, Malam, & Boyd-Barrett, 1998, p. 155). *SAPA* is South Africa's oldest domestic news agency, established in 1938 (Storey, 1951). Despite questions over its future in the mid-1990s, after it dissolved its partnership with Reuters (Forbes, et al., 1998), *SAPA* continued to provide news content to a wide variety of South African press outlets. As noted in prior research on HIV/AIDS coverage in the South African press, due to general resource deficiencies, South African newspapers are disproportionately reliant on news wire services to provide content (Finlay, 2004; Stein, 2003).

In order to partially compensate for the absent archives in the early years of the sample, further articles from *Sowetan* and *The Star* (the largest morning and evening dailies, respectively (Danso & McDonald, 2001)) were gathered. These articles, however, were collected

through the SA Media South African archive service, employing slightly different search terms⁹ to identify an HIV/AIDS medicines sample. They were also available only in hard copy form, and were accessed relatively late in the research process, rendering them unavailable for computer-assisted corpus analysis following the CADS approach. As such, *Sowetan* and *The Star* coverage provides merely a supplement to the central corpus, to be consulted throughout the research only where *Business Day* and *SAPA* are unavailable. Statistical insight from these two publications is derived from manual coding, the results scrutinised between two separate coders. These limitations are kept in mind when analysing and presenting the data, and are acknowledged throughout by the researcher.

Once the above print news outlets had been selected, a corpus of articles was established based on the keyword search terms “AIDS drugs” in the Factiva database over the years 1997-2003. The news sample sought to capture a linguistically-defined discourse of the HIV/AIDS medicines access/intellectual property rights dispute. Such a discourse, however, could be variously represented through the articulation of different linguistic signifiers. For instance, “patents”, “IPRs”, “intellectual property”, “medicines”, “drugs”, “pharmaceuticals”, “TRIPS”, and the phrase, “access to medicines”, are all key nodal points of the discourse. A single news article could articulate one, several, or potentially none of these signifiers, and still be considered to cover the HIV/AIDS medicines access/intellectual property rights discourse. Given such floating linguistic boundaries, multiple keyword search terms were trialed, seeking to capture the most relevant news media sample. After trialing terms such as “drug patents”, “access to essential medicines”, “medicines AND intellectual property”, and “pharmaceuticals AND HIV/AIDS AND patent”, the keyword search terms “AIDS drugs” were settled upon. By this stage

⁹ This thesis’ corpus used the search terms “AIDS drugs” in the Factiva database. The SA Media archive providers used various HIV/AIDS and medicines-related keywords to construct their sample of requested “AIDS drugs” news articles.

in the research process, the researcher had already become acquainted with several key articles in the HIV/AIDS medicines access dispute. Through trialing different search terms, it became apparent that “AIDS drugs” was the only one that returned a sample that included all key articles already known to the researcher, along with a larger collection of what appeared to be relevant material. Other search terms either provided too narrow a sample, missing key articles, or else too wide a sample, including too much unrelated material. The “AIDS drugs” sample provided what was determined by the researcher to be a balance between relevance and manageability. The researcher also decided that constructing a news sample at the more general level of “AIDS drugs”, rather than a specific focus on HIV/AIDS drugs *and* patents/IPRs, would facilitate observation of how the patent/IPRs factor was relatively articulated at different times vis-à-vis the medicines signifier.

The dates 1997-2003 were chosen based on assessments from prior research and commentary on the issue identifying significant activity occurring within these parameters (see Chapter 3). The Factiva database was chosen after initial pilot studies experimenting with different terms and databases. From this process, it was decided that only one source should be used after attempts with several different databases - ProQuest, Lexis/Nexis and Factiva - returned widely different hits for the same search terms. Factiva was chosen as it yielded the median return of hits, and for its inclusion of South African news outlets. Following the keyword search for “AIDS drugs” across the six outlets in the Factiva database, 1419 articles were returned. After removing repetitions, corrections, summaries, and unrelated tangential references, this resulted in a corpus of 1,113 articles, or 924,053 words.

2.4.2 Corpus-Assisted Discourse Studies

The strategy of CADS has been chosen for its ability to consider discursive formations and patterns as articulated over a large number of texts. As Clark (2007), following Haarman, Morley and Partington (2002), noted: “CADS is a dual approach, bringing together a quantitative overview and a more detailed qualitative analysis (typical of Discourse Studies) by combining the two research methodologies with the aim of achieving an empirical dimension to introspection” (Clark, 2007, p. 124, parenthesis in original). Researchers using CADS have recommended a ‘back and forth’ approach between the corpus data and the interpretive reading of specific texts (Bayley, 2007; Duguid, 2007; Partington, 2004). In this way, CADS “takes into consideration large numbers of words without necessarily losing sight of the contextual features”, while permitting a “systematic reference to other more detailed, and less immediately obvious, informational levels and aspects of the discourse which may have remained obscured by the large quantity of data” (Clark, 2007, p. 124). Given discourse theory’s concern with the contestation of different hegemonic projects, this approach was selected for its ability to map linguistic trends over time, while not losing sight of the specific ways in which different discourses can be linguistically articulated.

For its corpus analysis this study uses *WordSmith* version 4 software (Scott, 2004): a concordance program that isolates key words and word combinations, and displays them with their immediate co-text. There is no single way of analysing corpus data (Baker, 2006); rather, there are many different categories available to linguistic corpus analysis, and many different approaches to analysing the corpus itself. This project takes a ‘corpus-based’ approach (Tognini-Bonelli, 2001), which, as opposed to a ‘corpus-driven’ approach, uses the linguistic corpus data as a guide for analysing discourse, rather than as the

focus of inquiry in itself (Baker, 2006). In this way, the discourses themselves are positioned as the objects of inquiry, not the mechanics of the linguistic forms communicating them. It is, however, the linguistic patterns revealed through automated corpus analysis that may be used as a guide for where to then apply a closer interpretive reading. In this regard, the corpus analyst may make use of several technical linguistic categories for making sense of discursive patterns: collocations, keywords, frequency lists, clusters, and dispersion plots (Baker, 2006). Each of these may be automatically facilitated through the *WordSmith* program.

While *WordSmith* allows many advantages for automated analysis, it is not entirely automatic. Rather, the statistical data must be combined with an interpretive analysis of the results. For instance, frequency lists of word choice at particular times are a good indicator of discursive patterns (Adel & Reppen, 2008). However, such automated lists do not distinguish between grammatical and lexical words¹⁰, and therefore the grammatical words must be manually removed. Similarly, when the corpus is being used to analyse discourse, it is not necessarily the frequency of a particular word that is important, but the frequency of a particular meaning (Bayley, 2007). The same word may express different meanings, and an ideologically similar meaning may be expressed by different words.

Furthermore, power and hegemony in discourses may not necessarily equate to frequency of appearance, where, for example, a “corpus which contains a single (unrepresentative) speech by the leader of a country or religious group, newspaper editor or CEO may carry more weight discursively than hundreds of similar texts which were

¹⁰ Grammatical words, also known as ‘function’ words, “belong to a closed grammatical class each consisting of a small number of high frequency words (pronouns, determiners, conjunctions, prepositions)” (Baker, 2006, p. 53). Lexical words, on the other hand, are the nouns, verbs, adjectives and lexical adverbs that are more useful in giving an idea of discursive patterns (Baker, 2006).

produced by ‘ordinary people’” (Baker, 2006, p. 19). In addition, when dealing with meaning and discourse, often what is *not said* is more important than what is. As Baker (2006) observed: “hegemonic discourse can be at its most powerful when it does not even have to be invoked, because it is just taken for granted” (p. 19). Or, as Lukes (2005) put it: “power is at its most effective when least observable” (p. 1). Therefore, the automated statistical analysis of linguistic patterns must at all times be accompanied by careful interpretive analysis.

Similarly, in CADS the corpus analysis is just one component in a ‘back and forth’ approach between the corpus and a closer interpretive reading of selected texts (Bayley, 2007; Duguid, 2007; Partington, 2004). For some scholars, this has meant pairing corpus linguistics (CL) with critical discourse analysis (CDA), in a manner where “neither CDA nor CL need be subservient to the other (as the word ‘assisted’ in CADS implies), but that each contributes equally and distinctly to a methodological synergy” (Baker, et al., 2008, p. 274 parentheses in original). Following the above discussion of discourse theory, this thesis has several potential ontological discordances with CDA. However, as prior studies have indicated, this does not automatically prohibit the use of CDA-inspired techniques for the textual analysis exercise of a discourse-theory driven project (Phelan, 2009; Phillips & Jørgensen, 2002). The important point here, however, is that the tools of functional linguistics that CDA employs are not used to reveal a hidden extra-ideological ‘truth’, but, rather, are deployed in order to analyse the various ‘constructions of truth’, or “reality effects” (Chouliaraki, 2005, p. 275), articulated in the text.

CDA is useful here as the vast number of studies adopting a CDA approach have resulted in a large pool of resources for textual discourse analysis. For instance, Reisigl and Wodak (2001) outlined the categories of ‘predicational’ and ‘referential’ strategies deployed

in a given text: where the former pertains to the linguistic choices made to represent a person or group as one thing or another; while the latter focuses on the choice of words used to represent the values and characteristics of social actors. Similarly, an interpretive reading could examine the 'indexical' meaning of words, where word choice indicates the wider social hierarchies in which they are used (Blommaert, 2005). For example, following Blommaert (2005): "the word 'sir' not only refers to a male individual, but it *indexes* a particular social status and the role relationships of deference and politeness entailed by this status" (p. 11, emphasis in original). Furthermore, the category of 'transitivity' has been described as especially useful for an analysis of news media texts (Richardson, 2007), where it points to the 'transitive' choices of how to linguistically represent the relationship between participants and processes.¹¹ Other common linguistic categories of analysis to CDA that inform this study are modality, presupposition, hyperbole, metaphor and neologism (Fairclough, 1995; Fairclough & Wodak, 1997; Reisigl & Wodak, 2001; Richardson, 2007).

As Baker et al. (2008) maintained, however, CDA is not a rigid method, nor are specific methods solely bound to it. Rather, as an interdisciplinary approach it is open to adopting any method, of linguistic analysis or otherwise, that is adequate to realise the aims of the specific research. This study follows the same methodological principle in the service of its concrete linguistic analysis, while maintaining the underlying assumptions on being and knowledge from Laclau and Mouffe's (1985) discourse theory. In short, while the corpus analysis is used to provide statistical overviews of textual features, techniques borrowed from CDA's functional linguistic

¹¹ Not to be confused with a critical realist use of the term 'transitive', discussed in Chapter 7. In critical realism, 'intransitivity' refers to an objective reality beyond our knowledge (see Archer, 1995; Bhaskar, 1997; Cruickshank, 2004; Willmott, 2005). Discourse theory, on the other hand, dismisses the 'intransitivity' of objective reality, arguing that what appears 'intransitive' is in fact 'transitive' – that is, discursive and contingent (see Laclau & Bhaskar, 2002).

analysis are used to examine the contingent truth effects within selected texts.

2.4.3 Key Informant Interviews

Qualitative interviews with key informants are also used in this project in order to supplement and support the background and historical analysis of Chapter 3, as well as the CADS analysis of the news texts. The qualitative interview is a common feature of interpretive approaches to research (Kvale, 2007), often combined with fieldwork and document analysis (Kvale, 1996; Rubin & Rubin, 1995; Warren, 2002), and also often deployed in the service of discourse-theoretical analysis (Hansen & Sørensen, 2005; Howarth, 2005). According to Kvale (2007), the qualitative interview is “a specific form of conversation where knowledge is produced through the interaction between an interviewer and an interviewee” (p. xvii). It is a “professional interaction, which goes beyond the spontaneous exchange of views [...] and becomes a careful questioning and listening approach [...]. The qualitative interview is a construction site for knowledge” (Kvale, 2007, p. 7).

An important decision in qualitative interviews is who, and how many, does one interview? For survey-style research, interviews are conducted with a sample population selected in order to then generalise the findings (Warren, 2002). In qualitative interviews, however, the emphasis is on the importance of personalised subjective experiences in explaining social phenomena, and the contextualised “thick descriptions” of social reality produced through the interview process (Howarth, 2005, p. 338). Respondents are therefore specifically targeted for their connection to the social phenomena under investigation. They may be chosen “based on a priori research design, theoretical sampling, or ‘snowball’ or

convenience design, or particular respondents may be sought out to act as key informants” (Warren, 2002, p. 87).

This project adopts a ‘key informant’ approach (Holstein & Gubrium, 1995; Spradley, 1979). Used often in anthropology and ethnographic research, key informants are defined as “native speakers” (Spradley, 1979, p. 8), in the sense that they are in possession of unique inside knowledge of some social world (Warren, 2002), and are ideally enculturated into the phenomena under investigation, currently involved in it, and non-analytical in their disposition (Spradley, 1979). Spradley’s (1979) criteria for a good key informant, however, have been criticised by Ervin (2005) as too rigid for many circumstances. This thesis, therefore, adopts Ervin’s (2005) definition of a possible key informant as a ‘frontline worker’, and chooses for its candidates journalists who were involved in the production of news media content found in the sample of news archives outlined above.

The ‘front line’ news media workers interviewed for this project are Tina Rosenberg and Donald G. McNeil Jr. of *The New York Times*. They were identified based on findings from the CADS analysis, where a combination of frequency of articles and an interpretive assessment of the relative importance of the individual articles, were used to identify a short-list of ten candidate key informants. These ten individuals were then approached, following the required ethics approval from the researcher’s university. Only two however, Rosenberg and McNeil Jr., accepted the invitation and were successfully interviewed, in both cases via telephone on 5 October 2010 and 4 June 2010 respectively. The recorded interviews were then transcribed, with transcriptions provided to the interviewees for approval. Once approval was attained, the transcribed texts were included in the collection of primary documents under consideration in this research. In the process of interviewing McNeil Jr., the

interviewee also provided comments in an email exchange, as well as an unpublished manuscript outlining his experiences covering the medicines access dispute. Both of these additional sources have been included, with the interviewee's approval, for consideration in this thesis.

To conclude, it is worthwhile to briefly consider the strengths and weaknesses of including interview data in this project. On the positive side, qualitative interviews are widely recognised to provide novel first hand accounts of social phenomena. As Hansen and Sørensen (2005) noted:

... interviews present discursive images of the world that are much less sanctioned, formalized, and rationalized than documents [...] Furthermore, knowledge is obtained about the ways individuals in different positions within a given discursive structure construct meaning and identity - and thus knowledge - about themselves and the other actors. (Hansen & Sørensen, 2005, p. 99)

On the negative, however, the reliance on personal perspectives conjures questions of accuracy, or rather, as Hansen and Sørensen (2005) put it: "how do we know that the informants do not lie in order to please or tease the interviewer?" (Hansen & Sørensen, 2005, p. 99). However, as discourse theorists Hansen and Sørensen (2005) and Howarth (2005) have argued, this aspect, while potentially disruptive for positivist research, is of little concern for discourse theory where the distinction between material truth and symbolic discourse is collapsed. For Laclau and Mouffe (1985), what is 'said' and what is 'done' are both practices of articulation. Any differences between an interviewee's statements and putatively objective accounts are therefore not differences between truth and falsity, but rather differences in discursive contexts where the rules for the

production of statements are most likely distinct (Hansen & Sørensen, 2005). As discussed above, the task of the discourse-theoretical analyst is not to draw out the distinction between distorted false representation of 'reality' and reality itself, but to examine the always-already distorted constructions of reality in specific contexts (Torfing, 2005).

2.4.4 Alternative Strategies

The above outlined approach has been selected for its flexible yet expansive and systematic method for analysing the interplay of various discourses within news media texts. In particular, CADS was selected for its ability to consider a large number of texts, and thus provide insight into the longitudinal performance of linguistic signifiers, while also facilitating a close interpretive reading utilising the subjective perspective and background knowledge of the researcher. Before concluding this chapter, it is worth briefly acknowledging other potential methodological strategies that were not selected. First, frame analysis (Entman, 1993; Iyengar, 1991; Iyengar & Kinder, 1987) was considered an early candidate for this project, especially in light of its frequent deployment in the aid of social movement communication (Cutting & Themba-Nixon, 2006; C. Ryan & Gamson, 2006). However, as Cutting and Themba-Nixon (2006) and C. Ryan and Gamson (2006) argued, research into social movements and communication needs to go beyond frames and news content and to position these within the broader dynamics of power in which frames compete. In light of this critique, a discourse analytical approach specifically attuned to the imbalances of power and discourse was perceived to be a more fertile strategy for the priorities of this particular inquiry.

Second, content analysis was another considered strategy. In this

case, however, while content analysis may be scaled up with the assistance of automated computer tools (Krippendorf, 2004), its typical reliance on predefined classification rendered it problematic for an investigation in which it was not clearly apparent what textual features were to be found, or even those that were initially being looked for. Baring in mind criticisms of content analysis' oversimplification of complex phenomena (Schroder, 2002) and pseudo-scientific "ideology masquerading as objectivity" (Alterman, 2003, p. 15), it was decided that, again, CADS provided a superior option for the conceptual approach and interests of this project.

2.5 Conclusion

Laclau and Mouffe's discourse theory provides an ontological framework specifically attuned to power struggles over the very constitution of social phenomena. With its conceptual categories of hegemony, antagonism, dislocation, and so on, it provides a systematic conceptual grammar for analysing discourse. In articulating this theory for the analysis of news media discourse, this thesis deploys various methodological strategies in a multi-perspectival analysis of news text in context. In particular, it presents a corpus-assisted linguistic analysis of print news media language, in an effort to garner insight into the competition and relative success of hegemonic projects in the medicines access dispute. Consistent with discourse theory's foregrounding of the radical contingency of all social phenomena, this analysis does not seek to uncover the 'universal truth' of the access to medicines conflict. Rather, it seeks to apply systematic theoretical and methodological approaches to a set of empirical data in order to construct a rigorous and compelling analysis. The thesis will now move on to the 'document analysis' section of the methodological strategy, outlining the historical processes constituting the dispute over medicines access and IPRs.

3

Background and History: Intellectual Property Rights, Pharmaceuticals, and the ‘Access to Medicines’ Campaign

Abstract

This chapter presents an overview of the historical and political context to the ‘access to medicines’ dispute. It outlines the development of intellectual property regulation leading up to the 1995 World Trade Organisation’s TRIPS Agreement, and discusses the international disputes over intellectual property protection and public health. It also discusses the formation of the transnational civil society ‘access to medicines’ campaign, and the 1998-2001 conflict between this campaign and Big Pharma over the South African Medicines Act. In this way, this chapter provides the ‘document analysis’ component of the study, thus providing context for the following analysis of discourses within the news media coverage.

3.1 Introduction

Few issues are so ripe for North-South conflict as IPRs in general, or the narrower issue of pharmaceutical patents. (Shadlen, 2004, p. 78)

This chapter discusses some of the history and background to the dispute over intellectual property protection and global HIV/AIDS medicines access. It draws upon published written and audio-visual material from academic, civil society, activist, business, government, and mass media sources. In such a way, it can be considered the 'document analysis' aspect of the methodological strategy (see Chapter 2). Following Hajer's (2005) concept of document analysis, this chapter understands it as the initial surveying of documents for "structuring concepts, ideas and characterisations; employment of story lines, metaphors and so on", in order to ascertain a "basic notion of the processes of events as well as the sites of discursive production" (p. 306).

In this way, the following survey of historic processes provides *context* for the subsequent news media analysis. Similar to other approaches to discourse analysis, a discourse-theoretical analysis places a premium on context for understanding articulations of social phenomena (Hansen & Sørensen, 2005). This project assumes that it is only with an awareness of discourses circulating beyond the news media texts, that one can apply a critical eye to those circulating within them. Finally, the following summary of historic articulations may also be considered a necessary step in 'reactivating' the discourses under analysis (Laclau & Mouffe, 1985), thus revealing their contingent, rather than self-evident, nature.

This chapter begins by discussing intellectual property rights and the evolution of their governance from national to international to global regulatory spheres. It then focuses on the contemporary global phase,

outlining how a transnational private business coalition successfully lobbied for the integration of intellectual property protection within the World Trade Organisation's (WTO) multilateral trading forum. This discussion ends with a profile of the major pharmaceutical industry, or 'Big Pharma', as leading proponents in this process, and examines how the partnership between the industry and the United States (US) government was operationalised in international intellectual property negotiations.

The second half of the chapter outlines the global health and development crisis of HIV/AIDS, then discusses the emergence of a transnational coalition of civil society organisations (CSOs) advocating for greater global access to essential medicines. It outlines how this coalition directly challenged the hegemony of pharmaceutical intellectual property protection by advocating the legitimacy of a global generic medicines market. Finally, the chapter discusses how a legal conflict between the South African government and a coalition of transnational pharmaceutical companies, supported by the US government, became the focal point around which each of the above factors became articulated, publicised, and contested.

3.2 Intellectual Property, the WTO, and Big Pharma

3.2.1 Intellectual Property Rights: "Dancing the Dual Distortion"

Intellectual property is the concept of ownership of abstract objects. In contemporary terms, such ownership is commonly referred to via intellectual property rights (IPRs). IPRs are the legal rights regulating the fruits of human creativity: through patents on invention and discovery; and copyright and trademarks on artistic creation and design (Clift, 2004; Correa & Yusuf, 1998; Drahos, 1996; Maskus, 2000; Perez Pugatch, 2004). Richards (2004) observed that "standard economics justifications for intellectual property rights typically commence by recognising that IPRs entail an inherent contradiction" (p. 7). On the one hand, general economic and

creative productivity benefit from the free availability of information. On the other, in order to encourage productivity, incentives for creation are required.

The contradiction manifests when the incentives themselves effectively restrict availability. For example, as Picciotto (2002) noted, patent protection conferring a limited monopoly to the property holder may artificially create product scarcity by stifling competition. Drahos and Braithwaite (2002) referred to such tension as the balance between the “rules of appropriation and the rules of diffusion” that all IPR regulation needs to negotiate (p. 13). Richards (2004) further noted that positivist economics conceptions of IPRs tend to emphasise that incentives encourage further innovation by rewarding the inventor, “thereby providing for the largest number of people, economically and speedily, the benefit of such activity” (Alikhan & Mashelkar, 2004, p. 4). However, there is little empirical support for this assumption (Richards, 2004), with recent computer modelling research suggesting that patent-based IPR systems actually result in less innovation, productivity and societal utility than their non-patent counterparts (Torrance & Tomlinson, 2009). In summary, such contradictions constitute what Maskus (2000) has characterised as IPRs “dancing the dual distortion” (p. 27).

3.2.2 Governance of IPRs: The National Phase

The history of IPR governance can be broadly conceived in three periods: national, international, and global (Drahos, 1996; Rangnekar, 2005; Sell, 2003). In the national phase, running from the first emergence of patents in Renaissance Europe to the international IPR treaties in the late nineteenth century, patents on invention were generally regarded as privileges to be granted by the monarch (Drahos, 1996; Drahos & Braithwaite, 2002; Machlup & Penrose, 1950; Richards, 2004; Sell, 2003). Such privileges, often conferring exclusive monopoly rights to practice certain trades, proliferated

and became increasingly concentrated into the hands of a few preferred subjects (Fox, 1947).

According to Drahos and Braithwaite (2002), such a situation converted Elizabethan England into a cautionary tale of an over-extended patent regime, where the intrusion of royally-granted privileges hampered the free market to such a degree that a political 'backlash' occurred, with successive anti-monopoly legislation significantly curtailing the patent system (Drahos, 1996; Drahos & Braithwaite, 2002). As Machlup and Penrose (1950) pointed out, this anti-patent movement was led by some of Britain's leading business figures, and contributed to a general view at the time of patents as antithetical to free trade.

In the nineteenth century international marketplace, patents were also deployed selectively to foster domestic industries and protect against foreign competitors (Dutfield & Suthersanen, 2005). Germany's chemical industry, for instance, seeking competitive advantage against its English counterparts, set an 1877 patent law allowing patents on chemical products but not on processes, thus encouraging innovation and efficiency (Dutfield & Suthersanen, 2005). Accordingly, the Swiss chemical industry opposed nineteenth century patent law for fear of vulnerability to their German competitors (Khor, 2002; Penrose, 1951). The US has also been identified for its historically "lax IP policies" (Sell, 2001, p. 521), with US courts traditionally more concerned with abuses of monopoly power than with IPR protection (Sell, 2001). Indeed, as Sell (2001) pointed out, it was only in the mid-1980s that US courts stopped referring to patents as 'monopolies'.

In the field of literary works, the nineteenth century US government angered European publishers by refusing to respect their copyright protection, arguing that it was freely entitled to foreign works in order to further its social and economic development (United States Congress, 1986). As a detailed study by Khan (2004) noted, such policies worked well for the US, with publishers, printers and the reading public all benefiting. In the 1950s,

the US patent system came under scrutiny with a Senate sub-committee examining issues of anti-trust and monopoly in the pharmaceutical industry ('t Hoen, 2009). Their findings led to the US government ordering generic medicines from abroad on a routine basis, regardless of their domestic patent status ('t Hoen, 2009). As Machlup and Penrose (1950) noted of the US public discourse just before the 1950s Senate inquiries:

In recent publications commenting on these discussions it has been suggested that opposition to the patent system is a new development [...] In actual fact, the controversy about the patent of invention is very old, and the chief opponents of the system have been among the chief proponents of free enterprise. (Machlup & Penrose, 1950, p. 1)

3.2.3 Governance of IPRs: The International Phase

By the end of the nineteenth century, a reversal in tone occurred, with patent provisions returned to the forefront of many countries' domestic laws (Machlup & Penrose, 1950). According to Machlup and Penrose (1950), this reversal was due to the efforts of a pro-patent lobby who, between 1867 and 1877, mounted a public information campaign using "techniques of propaganda [...] quite remarkable for the time" (p. 5). These efforts culminated in the signing of two international treaties designed to extend patent protections to the international marketplace: the 1883 Paris Convention for the Protection of Industrial Property; and 1886 Berne Convention for the Protection of Literary and Artistic Works. Thus began IPR governance's international phase.

By the 1960s, the Paris and Bern conventions had been combined and incorporated into the United Nations (UN) as the specialised UN agency, the World Intellectual Property Organisation (WIPO). While WIPO provided a site for IPR negotiations, it could neither create nor impose law, and therefore only reflected legislation already in place, with wide scope for

differentiation in IPR protection (Sell, 2003). Furthermore, unlike the International Monetary Fund (IMF) or World Bank, where decision-making power was largely linked to financial contribution (Richards, 2004), WIPO offered equal influence to minority and majority countries alike.

Given this context, in the 1970s and 1980s several majority world countries used the 'Group of 77' banner at WIPO to argue for increased domestic production, weaker IPR protection and, above all, compulsory licensing¹² of patents and technology (Clift, 2004). Opposing such moves were several wealthy countries, including Germany and the US, who on the back of massive twentieth century industrial development had reversed their historic objections to patent protection (Drahos & Braithwaite, 2002). With around two-thirds of WIPO members majority world countries (Drahos & Braithwaite, 2002), WIPO quickly became an undesirable forum for wealthy nations to secure enhanced protection for their IPR assets (Clift, 2004; Drahos & Braithwaite, 2002). As such, key minority world industry groups began looking for alternative fora to pursue the IPR agenda, and IPR governance's international phase moved steadily towards the global.

3.2.4 The Global Phase of IPRs: TRIPS, the WTO and Big Pharma

By 1995, a new global framework for governing IPRs was in place in the form of the World Trade Organisation's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). While not precisely harmonising IPRs across different countries (Richards, 2004), TRIPS set out the minimum requirements of domestic IPR laws mandatory for all WTO members. In addition, the WTO could enforce failure to comply through its Dispute Settlement Mechanism. TRIPS' requirements called for minimum twenty-year patent protection on products and processes, with limited concessions for compulsory licensing and parallel importation in special

¹² Compulsory licensing (see Chapter 1) is "the use of a patent by the government, or third parties, authorized by the government, without the patentee's consent" (Perez Pugatch, 2004, p. 143).

cases (Correa, 2007). These provisions were significantly contested, and provide the background context to the disputes over medicines access and IPRs discussed later in this chapter.

First, however, it is worth outlining how TRIPS came to be. For many commentators, TRIPS is regarded as the culmination of concerted efforts on behalf of key players in knowledge-intensive industries to generalise their specific concerns on IPRs to the global economy at large (Drahos & Braithwaite, 2002; Matthews, 2002; Richards, 2004; Sell, 2003). Similarly to the nineteenth century pro-patent campaign (Machlup & Penrose, 1950), key industry actors led the initiative, lobbying internationally for regulatory IPR change. As Drahos and Braithwaite (2002) described, the lobbying was successful, with TRIPS marking a “quiet revolution in the way that property rights in information were defined and enforced in an emerging global knowledge economy” (p. 19).

The leading actors in this ‘revolution’ were the major pharmaceutical companies (Drahos & Braithwaite, 2002; Matthews, 2002; Sell, 2003), in particular the US-based company Pfizer (Santoro & Paine, 2003). In 1972, Edmund T. Pratt Jr. became Pfizer’s chairman and instigated a new policy of aggressively defending the company’s IPRs (Santoro & Paine, 2003). At the time, however, IPRs were considered only a niche aspect of international business, and their purview relegated to the appropriate fora at WIPO (Matthews, 2002). According to a Harvard Business School profile (Santoro & Paine, 2003), Pfizer initially adopted a ‘policy of persuasion’ in an attempt to render the overall IPR climate consistent with their views. Given the conditions at WIPO outlined above, however, this policy proved, in the words of Pfizer’s then general counsel, Lou Clemente, a “disaster” (Clemente, in Santoro & Paine, 2003, p. 345).

Pfizer thus adopted a new strategy: integrating IPRs into the trade agenda, thereby generalising their relevance to further business and political interests (Drahos & Braithwaite, 2002; Ryan, 1998; Sell, 2003). With the

multilateral trade forum, the General Agreement on Tariffs and Trade (GATT), about to begin a new round of negotiations - the so-called 'Uruguay Round' - a new platform was available for such a maneuver. Thus, Pfizer instigated what Ryan (1998) referred to as a "GATT strategy" (p. 559), or attempt to forum shift (Drahos & Braithwaite, 2002), into the more amenable climate of multilateral trade negotiations. As Matthews (2002) observed, at the outset of the GATT's Uruguay Round, few trade negotiators knew much about IPRs. By the round's culmination, IPRs formed one of the three legal pillars of the GATT's new incarnation as the WTO.

According to Pfizer chairman, Pratt, what made GATT so attractive was that unlike WIPO, where IPRs were considered on their own merits, in a trade forum, further economic relationships would necessarily be considered when striking IPR deals (see Pratt, in Santoro & Paine, 2003). In this way, the trade-IPR equivalence would offer what Ryan (1998) referred to as "linkage bargain diplomacy" (p. 535), where enhanced IPR protection could be negotiated in exchange for concessions on apparel and agriculture. Given the historic separation between trade and IPR issues, as well as IPR protection's historic anti-free trade connotations (Machlup & Penrose, 1950), to realise this agenda Pfizer first needed to convince others of its merit (Drahos & Braithwaite, 2002). The strategy therefore became to deepen Pfizer's presence in various networks across the world (Santoro & Paine, 2003), and to spread the IPR-trade message: "like the beat of a tom-tom [...] along the business networks to chambers of commerce, business councils, business committees, trade associations and peak business bodies" (Drahos & Braithwaite, 2002, pp. 69-70).

The most effective nodal point in these networks was the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), an industry-based group established to provide private sector advice to the USTR on trade agreements (Drahos & Braithwaite, 2002; Ryan, 1998). In 1981, Edmund Pratt became chair of the ACTPN, and for six years:

... led this committee in pursuing an aggressive trade agenda [...] As head of ACTPN, Pratt was at the forefront of a revolution in thinking about trade and investment. He and others *dissolved the conceptual boundaries that had previously separated these two issue areas* and supported institutional structures to reflect the new insights. (Santoro & Paine, 2003, p. 347 emphasis added)

This quote exhibits the conceptual 'logic of equivalence' (Laclau & Mouffe, 1985) at work behind the "linkage bargain diplomacy" (Ryan, 1998, p. 535), whereby the previously isolated discourses of trade and IPRs were brought together into a common argument. As Sell and Prakash (2004) observed, this process formed a new discourse built around the assumptions "patents = free trade + investments = economic growth" (Sell & Prakash, 2004, p. 145). Importantly, in this discourse the prior historical connotations of protectionism and monopolies were concealed (Sell, 2003; Weissman, 1996), and a new interpretation became sedimented.

This discourse eventually became hegemonic in elite trade spheres and was institutionalised in US trade policy and the TRIPS Agreement (Richards, 2004). Indeed, the integration of IPR protection into the free trade agenda became a cornerstone of globalised neoliberal governance (Harvey, 2005; Hesmondhalgh, 2008). The dominance of the IPR-trade discourse, however, did not self-evidently emerge, but was driven by the construction of further chains of equivalence supporting it. For instance, while in the 1970s, copyright and patent industries had "engaged in parallel but unconnected political action" (Sell & Prakash, 2004, p. 155), in the 1980s, under the shared identity of IPR-strengthening, they began to lobby the US Congress together and on behalf of each other (Ryan, 1998). This collaboration became institutionally established in 1986 with the formation of the Intellectual Property Committee (IPC), set up by the ACTPN under Pfizer's Pratt, and consisting of 13 CEOs from the biggest US companies¹³ (Matthews,

¹³ The 13 companies of the IPC were: Pfizer, IBM, Merck, General Electric, DuPont, Warner Communications, Hewlett-Packard, Bristol-Meyers, FMC Corporation, General Motors, Johnson and Johnson, Monsanto, and Rockwell International (Matthews, 2002; Santoro & Paine, 2003).

2002; Santoro & Paine, 2003; Sell, 2003).

Following advice from the US Trade Representative (USTR) to spread the IPR message amongst their international counterparts, the IPC set about forging an “unusual tripartite coalition” (Santoro & Paine, 2003, p. 339) with the European Union of Industrial and Employers’ Confederations (UNICE), and the Keidanren, a private federation of Japanese business interests (Matthews, 2002; Santoro & Paine, 2003; Sell, 2003; Sell & Prakash, 2004). By the end of 1986, this coalition had produced the ‘Basic Framework’: a document outlining their negotiating agenda to the USTR, which ultimately became the guiding text for the TRIPS Agreement (Drahos & Braithwaite, 2002). As John A. Young, CEO of Hewlett-Packard, remarked: this effort was “unprecedented ... the first time that the international business community has jointly developed a document of this magnitude and such substantive detail for presentation to our government negotiators” (Young, in Santoro & Paine, 2003, p. 350). From a discourse-theoretical perspective, the process illustrates how once a conceptual chain of equivalence linking wider economic concerns around the nodal point of IPRs had been established, further equivalential links could be constructed between diverse social actors mutually aligning their interests along a shared frontier.

3.2.5 ‘Pirates’: The Antagonistic Other

Following discourse theory, however, a chain of equivalence is defined not through its positive commonalities, but through its shared opposition to an antagonistic other - what Laclau and Mouffe (1985) referred to as a ‘constitutive outside’, or external presence that simultaneously threatens and stabilises the identity of the equivalential chain. For the emerging network of IPR advocates, this antagonistic other was fulfilled by the so-called ‘pirates’, or violators of strong IPR protection. In a 1982 guest editorial for *The New York Times*, Pfizer International chair, Barry MacTaggart, identified this ‘other’ as foreign governments with laws

allowing them to infringe upon US IPRs (Drahos & Braithwaite, 2002; MacTaggart, 1982; Santoro & Paine, 2003). Labelling US IPRs “proper” and “honorable”, and designated foreign versions as “theft”, the editorial positioned US enterprise on one side of an antagonistic frontier, with Brazil, Canada, Mexico, India, Taiwan, South Korea, Italy and Spain, as well as the WIPO institution accommodating them, on the other (MacTaggart, 1982).

As the 1980s progressed, the rhetorical technique of labelling foreign IPR laws ‘theft’ evolved into frequent use of the signifier ‘pirate’ (Drahos & Braithwaite, 2002; Weissman, 1996). As Weissman (1996) observed, this construction effectively transformed an abstracted policy debate into a moral one, where “theft is simply wrong [...] there is no room for a policy discussion about the merits of piracy, nor any space to compromise in the direction of pirates” (p. 1088). With such criminality forming the constitutive outside, no consideration of ‘differentiated’ (Dutfield & Suthersanen, 2005) IPR regimes needed to be entertained. In this way, the discourse was constructed in moral terms, with the US unambiguously exalted as “the guiding light to the world” (Halbert, 2005, p. 92).

The MacTaggart editorial also exhibits a further key aspect of the “GATT strategy” (Ryan, 1998, p. 559), where the IPR-intensive industries’ particular concerns were universalised to stand in for general concerns of US economic well-being. In the early 1980s a “policy discourse of a US in decline” (Drahos & Braithwaite, 2002, p. 63) came to prevail in US policy and academic circles (Agnew & Corbridge, 1995). The discourse was not without compelling evidence, with reports showing a 1980 to 1985 trade deficit increase from US\$36.3 to US\$148.5 billion (Hughes, 1991) - building on existing concerns of US “declining hegemony” after the Bretton Woods international monetary system collapsed in 1971-1973 (Agnew & Corbridge, 1995, p. 41).

According to Sell and Prakash (2004), the business coalition seeking to strengthen IPRs exploited this perceived crisis by identifying an ‘enemy other’ in IPR violators that could be held responsible for the lost

competitiveness. This argument was assisted by a widely cited US International Trade Commission study estimating that in 1986 US industry lost between US\$43 and US\$61 billion worldwide due to insufficient IPR protection abroad (United States International Trade Commission, 1988). Playing on growing fears of lost US economic dominance to the emerging 'gang of four', 'Asian tigers', and 'Dragon economies', IPRs could be positioned as a symbolic aspect whose strengthening would protect US jobs and ideas (Drahos & Braithwaite, 2002). In such a way, the previously niche concern of IPRs became universalised to represent the general field of challenge, and therefore solution, to US economic prospects in general.

3.2.6 Big Pharma Profile

In order to understand the motivation of companies such as Pfizer to aggressively pursue the strengthening of IPRs, it is worthwhile to briefly consider the value of IPRs to the major pharmaceutical industry - what has come to be known as 'Big Pharma'. Big Pharma is a loose descriptive term referring collectively, but not always specifically, to the biggest of the transnational pharmaceutical companies (Law, 2006). It is a term used by industry insiders, for instance, GlaxoSmithKline CEO, Jean-Pierre Garnier (2008), and is common in medical journals (Ferner, 2005; Scherer, 2004).

Though sometimes misconstrued as an exclusively US phenomenon, Angell (2004) noted that the biggest ten pharmaceutical companies in 2002 were: the US firms Pfizer, Merck, Johnson & Johnson, Bristol-Myers Squibb, and Wyeth; the UK firms GlaxoSmithKline and Astra Zeneca; the Swiss firms Novartis and Roche; and the French firm Aventis. Angell (2004) also noted, however, that international companies were increasingly moving their research and development (R&D) operations to the US in order to capitalise on the "unparalleled research output of American universities and the NIH" (Angell, 2004, p. xxv). From 1988 to 2004, the size of the biggest pharmaceutical companies dramatically increased following 27 mergers and

acquisitions (Ornaghi, 2009). The major companies are represented in the US by the Pharmaceutical Research and Manufacturers Association of America (PhRMA), and internationally through the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA).

At the turn of the millennium, Big Pharma stood at the head of one the most profitable industries in the world (Angell, 2004). In 2001, the Fortune 500 ranked the pharmaceutical industry as the leader of all industries in terms of profit as percentage of overall sales (18.5%) and profit as percentage of assets (16.3%) (Families USA, 2002). For comparison, the median profit on sales for all other industries was 3.3% (Angell, 2004), during a year that saw the worst overall financial performance then recorded in *Fortune* magazine's 48-year history¹⁴ (Families USA, 2002). In 2002, the top ten Fortune 500 pharmaceutical companies' combined profits were greater than the combined profits of all other 490 companies (US\$35.9 billion and US\$33.7 billion, respectively) (Angell, 2004; Harrington, 2003; Public Citizen, 2003). In addition, while the profits of pharmaceutical companies in the Fortune 500 have consistently risen over the years, those of the other industries combined have remained relatively static (Public Citizen, 2001).

For some commentators, such phenomenal profits of Big Pharma are directly related to the protection of their intellectual property (Angell, 2004; Drahos & Braithwaite, 2004). As Angell (2004) and Law (2006) pointed out, a large proportion of Big Pharma profits typically derived from one or two 'blockbuster' drugs. When the patent-conferred monopoly protecting the profits on such drugs ran out, the drug would enter a competitive market where prices, and profits, tended to dramatically fall (Drahos & Braithwaite, 2004). In addition, in the early 2000s statistics arose indicating that despite increases in R&D spending, the 'pipeline' for new drug discovery was running dry (Cockburn, 2004). In this context, major pharmaceutical companies faced considerable motivation to expend effort lobbying for

¹⁴ With the exception of 1992, when changes to accounting rules affected recorded performance across all industries (Families USA, 2002).

increased IPR protection, as evidenced in the above history of TRIPS.

As former editor of the *New England Journal of Medicine*, Marcia Angell (2004), documented, two sets of US legislation facilitating the extension of pharmaceutical IPR protection were successfully lobbied for by the industry in the 1980s: the Bayh-Dole and Hatch-Waxman Acts¹⁵. It was these changes, argued Angell (2004), that helped transform Big Pharma from a good business into a “stupendous one” (p. 3). As Angell (2004) and other critics have pointed out, such regulatory facilitation can be understood in part due to the pharmaceutical industry’s massive lobbying power - spending more money lobbying in the US than any other industry (Ismael, 2005). According to US NGO, the Center for Public Integrity, the pharmaceutical and health products industry spent US\$612 million on congressional lobbying from 1998 to 2005, using 3000 professional lobbyists to lobby on more than 1,400 congressional bills (Ismael, 2005). The second biggest lobbying industry over the same period was insurance, with US\$543 million spent (Ismael, 2005). It is in this light that Angell (2004) concluded that despite the industry’s professed commitment to trade liberalisation, few industries are so dependent on taxpayer funds and government regulation to sustain their business model.

3.2.7 “Extra-Institutional Pressures” and Breaking Counter-Hegemonic Chains of Equivalence

To conclude this chapter’s first section, it is worth considering some of the pressures faced by countries to accede to the new global IPR regime embodied in the TRIPS Agreement. As the above discussion of the experience at WIPO suggests, many majority world countries opposed incorporating IPRs into the multilateral trading agenda (Matthews, 2002; Ryan, 1998). While the majority world in general was “by no means

¹⁵ Bayh-Dole allowed universities and small businesses to patent discoveries emanating from taxpayer-funded research through the National Institutes of Health (NIH), while Hatch-Waxman allowed for the extension of monopoly rights on brand-name drugs (Angell, 2004).

unanimous in their hostility towards the inclusion of intellectual property in the GATT Round” (Matthews, 2002, p. 17), the ‘Group of Ten’ countries, led by India and Brazil, consistently opposed the “GATT strategy” as the Uruguay Round commenced (Ryan, 1998, p. 559). Indeed, this opposition has been construed as the “main reason” that the Uruguay Round negotiations, begun in 1986, were largely stalled until 1989 (Matthews, 2002, p. 31). As Richards (2004) pointed out, there was little empirical evidence at the time supporting claims that a strengthened IPR regime would benefit the majority world’s interests, and, indeed, some compelling arguments to the contrary. Regardless, by 1995 the TRIPS Agreement was institutionalised within the WTO, with all WTO members necessarily complying with it. The “obvious question”, then, is why would the majority world “accede to an agreement whose evident cost-benefits ratio is so high?” (Richards, 2004, p. 78).

The answer for Richards (2004), and several other commentators (Matthews, 2002; Ryan, 1998; Sell, 2003), is that majority world countries only consented to TRIPS in the face of multiple external pressures placed upon them during the Uruguay Round. In the 1980s, the US pharmaceutical industry joined an initiative, instigated by agricultural chemical companies in the 1970s, to lobby US government for support in pressuring foreign governments’ IPR laws (Sell & Prakash, 2004). Under the lobbying power of the ACTPN, PhRMA (then called the PMA¹⁶), and the International Intellectual Property Alliance (IIPA)¹⁷, among others, the initiative was successful in influencing important changes to US trade law (Sell & Prakash, 2004). In particular, in 1984 the Trade and Tariff Act was amended to include IPR violation criteria within its Section 301 and Generalised System of Preferences (GSP) provisions (Drahos & Braithwaite, 2002; Matthews, 2002; Santoro & Paine, 2003). This meant that not only were IPR issues institutionalised at the forefront of US trade policy (Matthews, 2002; Ryan, 1998; Sell, 1998), but also that the US could wield two new punitive

¹⁶ The Pharmaceutical Manufacturers Association - not to be confused with the South African PMA, to be discussed later in this chapter.

¹⁷ A conglomerate of eight trade associations representing 1,500 copyright-based companies (Sell & Prakash, 2004).

measures against perceived IPR 'enemies'.

In the case of Section 301, this meant the USTR could proactively and without industry-supplied evidence authorise penalties, such as trade sanctions, against foreign countries seen to be failing in their IPR requirements (Bhagwati & Patrick, 1990). Such moves were preceded by the inclusion of foreign countries on a 301 'watch list' (Richards, 2004), dubbed by Palast (2000) as "a kind of Death Row for trading partners" (n.p.), and by Bhagwati (1990) as an example of the new-found "aggressive unilateralism" of the US (p. 1). In the case of GSP, the penalty involved removing a bilateral trade privilege program designed by the UN in the 1960s to foster trade between minority and majority countries (Drahos & Braithwaite, 2002; Santoro & Paine, 2003).

According to Phillip Ellsworth (1993), a corporate leader in the pharmaceutical industry (Klug, 2008), the strategy leveraged upon countries opposing the US position during the Uruguay Round was threefold: multilateral, bilateral, and unilateral. In the first case, the multilateral GATT forum provided the venue. In the second and third, the IPR-adjusted mechanisms of 301 and GSP provided the "weapons" (Richards, 2004, p. 125) through which to exert pressure. Such measures constitute what Shadlen (2004) referred to as "extra-institutional pressures" (p. 80).

Using Laclau and Mouffe's (1985) terminology, the 'Group of Ten' majority world countries can be regarded as a 'chain of equivalence', linked together in a common bond fostered around a shared antagonism to the agenda linking IPRs to trade platforms. The 301 and GSP mechanisms, therefore, can be regarded as hegemonic interventions intended to break the equivalential chain. According to Drahos and Braithwaite (2002), between 1985 and 1994 the USTR brought IPR-related Section 301 actions against Brazil (1985, 1987 and 1993), Korea (1985), Argentina (1988), Thailand (1990 and 1991), India (1991), China (1991 and 1994) and Taiwan (1992). In only one case, however, was the threat of punitive trade measures realised - that of Brazil,

where in 1988-1989 the PMA-initiated 301 action resulted in 100 percent tariffs levied upon US\$39 million worth of Brazilian imports (Matthews, 2002; Santoro & Paine, 2003).

The mere threat of punitive trade sanctions, however, has been acknowledged as crucial “leverage” in international trade-IPR negotiations (Santoro & Paine, 2003, p. 353). In particular, such threats were seen to achieve US-favourable domestic IPR law changes in Thailand, the Philippines and Mexico, in spite of significant domestic criticism (Santoro & Paine, 2003), as well as achieving a US bilateral IPR deal with Korea in 1986 (Richards, 2004; Clemente, in Santoro & Paine, 2003). Similarly, removing GSP privileges was used to punish India in 1992, at an estimated cost to Indian exports of US\$60 million (Henderson, 1997), and Argentina in 1997, with the withdrawal of US\$260 million worth of Argentine exports (Sell, 2001). In the Argentine case, the USTR acknowledged it had enforced such sanctions based entirely on information supplied by PhRMA (Vicente, 1998). As Matthews (2002) argued, while the threat of bilateral trade sanctions weakened organised opposition to TRIPS (see also Blakeney, 1995), it also increased the prospect of completing TRIPS by keeping dissenting countries at the negotiating table. Thus, a “divide-and-conquer strategy” (Richards, 2004, p. 129; see also Ryan, 1998) was effectively mobilised to dissolve collective opposition to the ‘GATT strategy’.

3.3 HIV/AIDS, the ‘Access to Medicines’ Campaign, and the South African Medicines Act

3.3.1 Global HIV/AIDS and Antiretroviral Treatment

In the early 1980s, scientists identified a new disease known as Acquired Immune Deficiency Syndrome (AIDS) (UNAIDS, 2008b). By 1984 the likely cause of AIDS had been identified as the Human Immunodeficiency Virus (HIV), and cases of HIV/AIDS began to be reported in virtually all parts of the

globe (UNAIDS, 2008b). According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), in these early stages of the 1980s, AIDS was characterised as a “silent epidemic” (UNAIDS, 2008b, p. 9), where due to social prejudices and the time lag of the disease itself, the extent and impact of AIDS remained largely hidden. By 1990, around 8 million people worldwide were thought to be living with HIV, with around 5 million of these in sub-Saharan Africa (UNAIDS, 2008a).

By the end of the 1990s, the global figure had increased dramatically to 29 million, with two-thirds of these in sub-Saharan Africa (UNAIDS, 2008a). While in the rest of the world, HIV/AIDS disproportionately affected intravenous drugs user, homosexual men, and prostitutes (UNAIDS, 2008a), in sub-Saharan Africa the disease by and large affected the productive workforce (Freedman & Poku, 2005; Schoofs, 1999). AIDS had become the leading cause of death in Africa, causing 2.2 million deaths in 1998 alone (Warner, in Warner, et al., 2002). In short, global HIV/AIDS in the 1990s “was escalating from being a serious health crisis into a full-blown development crisis” (UNAIDS, 2008b, p. 74). As Comaroff (2007) noted: “It is impossible to contemplate the shape of late modern history - in Africa or elsewhere - without the polymorphous presence of HIV/AIDS, the signal pandemic of the global here and now” (p. 197). She continued:

The pandemic is savagely cosmopolitan, making blatant the existence of dynamic, translocal intimacies across received lines of segregation, difference, and propriety. But it has also revived old specters, marking out pathologized publics and crystallizing latent contradictions and anxieties. And, in so doing, it has exacerbated existing economic and moral divides on an ever more planetary scale. (Comaroff, 2007, p. 198)

Perhaps the most obvious exacerbation of existing inequalities through HIV/AIDS arrived, paradoxically, with the discovery of new treatments for the disease. At the XI International AIDS Conference in Vancouver, Canada in 1996, researchers announced the development of Highly Active

Antiretroviral Therapy (HAART) - a cocktail of antiretroviral drugs that not only reduced the viral load more efficiently than any previous single drug, but also helped prevent the development of drug resistance (Schwartländer, Grubb, & Perriëns, 2006). Soon made available throughout North America and Europe, the effectiveness of HAART changed the perception of AIDS “from a lethal disease to a chronic illness” (’t Hoen, 2009, p. ix). Indeed, as Schwartländer et al. (2006) observed, the rapid uptake of ARV treatment gave rise to the so-called “Lazarus syndrome” (p. 541), appearing to miraculously restore AIDS patients’ health.

At an average cost of up to US\$20,000 per person per year¹⁸ (Schwartländer, et al., 2006), the dramatic effectiveness of HAART also worked to emphasise the stark economic inequality in access to the treatment. As life expectancy studies of people living with HIV/AIDS cited in Faulk and Usunier (2009) revealed, while a twenty-year old with HIV in British Columbia, Canada, with access to HAART may expect to live up to 38 years longer (Lloyd-Smith, et al., 2006), those with HIV and no access to treatment living in Uganda could expect just under ten years, with total incapacitation for their final nine months (Morgan, et al., 2002). This situation led scholars such as Klug (2008) to observe that HIV/AIDS medicines represented a symbolic paradox: “at the same time, a mark of extraordinary scientific progress and a demonstration of an abysmal lack of social solidarity at the beginning of the twenty-first century” (Klug, 2008, p. 208). With the factor of generic versions of HIV/AIDS medicines suggesting new market mechanisms for lowering the price of HAART (see Love, in Warner, et al., 2002), the issue of global medicines access was set to become highly politicised. Thus, as Klug (2008) concluded, “after twenty years and over 20 million deaths, the question of AIDS is no longer purely a problem of medical science, but increasingly a question of social and political struggles” (p. 209).¹⁹

¹⁸ *The New York Times* put this figure at US\$10,000 - US\$15,000 (McNeil, 7 February 2001).

¹⁹ As an aside, it is worth noting the story of AZT, also known as zidovudine, the first HIV/AIDS treatment drug on the market (see Angell, 2004, pp. 24-27). In 1964, the AZT molecule was synthesised by researchers at the Michigan Cancer Foundation as a possible treatment for cancer, and was subsequently studied in many laboratories for this purpose. In 1974, however, a German laboratory found it effective

3.3.2 The 'Access to Medicines' Campaign

In the mid-1990s, a transnational coalition of civil society organisations (CSOs) began to articulate access to HIV/AIDS medicines as a political struggle ('t Hoen, 2002, 2009; Sell, 2003). In particular, the coalition articulated its argument around the key signifier of patent protection, identified as a chief impediment to equitable medicines access in the majority world (Halbert, 2005; Matthews, 2006). The coalition, hereafter referred to as the 'access to medicines' campaign, grew to include not only CSOs from both minority and majority world countries, but also received significant support from generic pharmaceutical companies, university professors, supranational institutions and national governments.

The amorphous and diverse campaign can be observed to have operated in several distinct, but overlapping, broad areas: direct action protest and lobbying of elites (Sawyer, 2002); publicising activities (Mayne, 2002); and providing technical assistance to majority world governments (Matthews, 2006; Shadlen, 2004). The campaign has been celebrated as a successful example of "people vs. corporate power" (Weissman, 2005, p. 35). More

against viral infections in mice, and pharmaceutical company Burroughs Wellcome soon acquired the molecule for possible use against herpes. In 1983, Samuel Broder, head of the US National Cancer Institute, part of the NIH, set up a team to screen antiviral agents from around the world as possible treatments for AIDS. His team, along with colleagues from Duke University, found AZT effective against HIV. Burroughs Wellcome promptly patented the drug to treat AIDS, carried out further trials, received FDA approval, and began to sell the drug for around US\$10,000 per person per year. As Marcia Angell (2004), former editor of the *New England Journal of Medicine*, observed:

This was an extraordinary achievement. It took a mere six years from the first reports of a new disease for the cause to be found and an effective drug brought to market. But except for the speed, the story is not so different from countless other stories of how innovative drugs are discovered. It required bringing together many threads from many government, university, and other nonprofit sources, and only late in the process - in this case, very late - handing the drug off to a private company for further development, manufacture, and distribution. (Angell, 2004, p. 26)

After Burroughs Wellcome president T.E. Haigler Jr. wrote to *The New York Times* celebrating the company's role in developing AZT, Broder, and four colleagues from National Cancer Institute and Duke University, wrote an angry reply to the paper citing all the contributions Burroughs Wellcome did *not* make, in particular, criticising the company for hampering the research by refusing to work with live HIV virus or receive samples from AIDS patients (Mitsuya, Weinhold, Yarchoan, Bolognesi, & Broder, 28 September 1989).

specifically, it has been cited as a key element in the change of US policy towards aggressively pursuing IPRs in public health situations (Sawyer, 2002), in the collapse of private sector lawsuits over IPRs and public health (Heywood, 2001; Mayne, 2002), and in facilitating the Doha Declaration - clarifying the rights to public health over IPRs within the TRIPS Agreement (Sell, 2001). In short, the 'access to medicines' campaign is an example of a civil society initiative that achieved tangible results in its demands against powerful figures of global capital and hegemony.

The 'access to medicines' coalition of CSOs began to formally mobilise in 1996 with two international meetings organised by Health Action International (HAI), a network of public-health advocates represented in more than seventy countries (Mayne, 2002). The meetings brought together the two major legs of the campaign: public health advocates; and IPR-focused consumer groups. In particular, the Consumer Project on Technology (CPTech), founded by US independent Presidential candidate, Ralph Nader, and led by director Jamie Love, brought to the 1996 meetings their experience and expertise on the role of patents in medicines access (Matthews, 2006; Sell, 2001). In 1998, Dr Bernard Pecoul from internationally renowned CSO, Médecins Sans Frontières (MSF), contacted CPTech and HAI, shortly thereafter gathering with the three CSOs in Geneva to "plot out a strategy" (Sell, 2001, p. 505). In 1999, at the suggestion of sources within the US government, CPTech made further contacts with notable US-based AIDS activist group AIDS Coalition to Unleash Power (ACT UP) (Sell, 2001), who thereafter began to focus increasingly on IPR issues (Sawyer, 2002).

With the CSO coalition growing, CPTech, HAI and MSF organised a meeting specifically on compulsory licensing in Geneva, receiving financial support from the Rockefeller Foundation, and attendance from multiple international CSOs as well as representatives from the IMF and the World Bank (Sell, 2001). Later in 1999, a further "big lift" in morale (Sell, 2001, p. 507) for the campaign occurred when MSF launched their own 'campaign for

access to essential medicines' ('t Hoen, 2000) and subsequently won the Nobel Peace Prize for their ongoing humanitarian work (The Norwegian Nobel Committee, 1999). By 2001, the campaign had grown to include Oxfam's 'Cut the Cost' campaign (Mayne, 2002), as well as local mobilisation by several CSOs from majority world countries - including South Africa's Treatment Action Campaign (TAC), Brazil's Grupo de Incentivo à Vida (GIV), Associação Brasileira Interdisciplinar de AIDS (ABIA) and Rede Brasileira pela Integração dos Povos (REBRIP), and India's National Working Group on Patent Law and Lawyer's Collective HIV/AIDS Unit (Matthews, 2006).

The 'access to medicines' campaign identified IPR protection of pharmaceuticals as the chief impediment to equitable global access to essential medicines (see, for example, Love in Warner, et al., 2002). In this discourse, not only treatment, but specifically the political economic factors in providing treatment, became the contested factors. As pointed out by Sell and Prakash (2004), the global HIV/AIDS crisis provided the opportunity through which to articulate the campaign's message, in the same way that the 1980s US economic decline provided the "GATT strategy" (Ryan, 1998, p. 559) an opportunity to promote strengthened IPR protection. However, as Sell and Prakash (2004) also pointed out, where the 'GATT strategy' discourse presented the arguments: "IPRs = competitiveness, free trade, and investment = economic growth", and "patents = profits = research = cure"; the 'access to medicines' campaign advocated: "IPRs = high costs of drugs = needless deaths", and "copy [generics, compulsory licensing] = life" (Sell & Prakash, 2004, p. 153).

In short, for the 'access to medicines' campaign, IPRs were about access not profit, thus emphasising a different interpretation on the IPR balance discussed at the beginning of this chapter. Furthermore, the campaign's argument appealed to a different set of rights than those generally found in the "rights talk" (Weissman, 1996, p. 1086) of the TRIPS negotiations. That is, rights to health were seen to trump rights to ownership of intangible assets (Sell, 2001). In this way, the "moralized discourse" (Halbert, 2005, p.

87) of the PhRMA/USTR's "GATT Strategy" (Ryan, 1998, p. 559) alliance was relativised and positioned more closely with its historical incarnation as a grant or privilege, more so than a right (Sell, 2001; Weissman, 1996). Thus, the 'access to medicines' discourse can be considered as a counter-hegemonic frontier opposing the institutionalisation of the PhRMA/USTR/TRIPS IPR hegemony.

3.3.3 CPTEch and Jamie Love

Sell and Prakash (2004) also identified the specific role of CPTEch's Jamie Love as a "policy entrepreneur" in formulating and disseminating this discursive frame (p. 162). As Love stated:

Is medicine going to be treated like a public health problem or is it going to be treated like a commercial dispute between North and South? We want it to be changed, we want it to be transformed. We want to completely, radically, change the framework to a public health framework. (Love, in d'Adesky, Avirgan, & Rossetti, 2005, 47 min, 22 sec)

Love began investigating public funding of patented pharmaceuticals in the US in 1991 through his work with CPTEch and Nader (Sell, 2001). In the mid-1990s, Love and Nader internationalised their concerns with visits to Argentina, Brazil and India (Matthews, 2006), and began lobbying the USTR with arguments that US trade policy disproportionately protected private US firms at the expense of global public health (Sell, 2001). In addition, they established an internet newsletter, 'Pharm-policy', including on it an anti-patent statement by Noam Chomsky, that in 1996 was recited by the Indian Speaker of Parliament in a major Indian patent meeting to which Nader had been invited (Sell, 2001). Later that year, Love delivered a speech on compulsory licensing at the HAI-organised meeting, and began to disseminate similar position papers throughout the CSO community

surrounding the Free Trade of the Americas negotiations (Sell, 2001).

By the late-1990s, Love was directly providing draft material to country delegates at the World Health Organisation (WHO) (Sell, 2001). According to Sell and Prakash (2004): “This was a good example of how strategic provision of information to a sympathetic actor helped the NGO network to advance its perspective successfully” (Sell & Prakash, 2004, pp. 163-164). The WHO experience was also reportedly a confidence-booster for the CSO campaign, and CPTech “escalated their internet activity” (Sell, 2001, p. 505) with the Internet newsletter now renamed ‘IP-health’ (www.cptech.org/ip/health/).

Love was not the only researcher upon which the ‘access to medicines’ campaign drew. Oxfam’s Ruth Mayne cited pharmaceutical advisor Dr Kumariah Balasubramaniam and renowned intellectual property academic Carlos Correa as key experts utilised in the 1996 HAI conference (Mayne, 2002). Similarly the Quaker United Nations Office (QUNO) briefing papers in preparation for drafting the 2001 Doha Declaration (see Chapter 7) drew on a range of IPR and public health scholars (Abbott, 2001; Correa, 2001; Macdonald, 2001). However, the early work of Love, and in particular the central information point of the Internet newsletter, provided a crucial agenda-setting function for the policy initiatives of the ‘access to medicines’ campaign’ (Sell, 2001; Sell & Prakash, 2004). In a discourse-theoretical analysis of the Green movement, Stavrakakis (2000) argued that the work of particular ideologues is centrally important in articulating the crisis definition and providing a normative framework for others to follow. In the case of the ‘access to medicines’ campaign, the early work constructing the campaign’s hegemonic project can be largely attributed to Love.

In 1998, a meeting of the WHO’s governing body, the World Health Assembly (WHA), provided the ‘access to medicines’ campaign its first major opportunity to “introduce its normative frame to the global audience” (Sell & Prakash, 2004, p. 163). According to interviews with actors from the CSO

coalition in Sell (2001), HAI and CPTech were asked by the Zimbabwean Minister of Health to produce a draft resolution for a WHO Revised Drugs Strategy. Given twelve hours to complete the task, HAI and CPTech drew on arguments formulated the year earlier in opposition to IPR aspects of a US-Latin American free trade agreement, and produced a draft document “advocating compulsory licensing and parallel importing, and stress[ing] the importance of access to medicines and the priority of public health over commercial concerns” (Sell, 2001, p. 504).

The draft resolution led to heated debate, in particular facing US arguments that the WHO had no role to play in trade issues (’t Hoen, 1999). When the South African delegate delivered extensive evidence on compulsory licensing - provided to her by Love - the USTR representative was loudly and publicly booed (Sell & Prakash, 2004). With the US absent from the WHO Executive Board at the time, however, following a formal rotation that sees the US off the board every three years, the resolution was passed (’t Hoen, 1999; Sell, 2001). According to Médecins Sans Frontières’ (MSF) Ellen ’t Hoen (1999), the resolution was important for introducing health concerns to the official IPR and trade discourse. For influential pharmaceutical industry lobbyist PhRMA, the resolution was a step in the wrong direction, as it encouraged the WHO to offer guidance to countries seeking compulsory licenses - the very practice PhRMA sought to dissuade through the USTR (Sell, 2001).

3.3.4 Extended Chain of Equivalence

As discussed in Chapter 2, in Laclau and Mouffe’s (1985) discourse theory, hegemonic formations are configured around frontiers of equivalence and difference. In the ‘access to medicines’ campaign, a chain of equivalence grew around the nodal point of IPRs and public health, linking several diverse groups into a common frontier. This chain was not limited to civil society, with several majority world governments becoming involved, in particular through a technical assistance collaboration with ‘access to

medicines' groups (Matthews, 2006; Shadlen, 2004).

Such collaborations over IPRs and public health policy were active in WHA negotiations in 2000, where groups such as South Centre, Third World Network (TWN), and QUNO provided technical and legal support to various government missions in Geneva (Mayne, 2002). TWN also played a role in the failed WTO negotiations of late 1999, initiating dialogue with the African Group of delegations and encouraging them to pursue co-ordinated action on IPRs and public health with Brazil and India (Matthews, 2006). By the time of the Doha WTO ministerial in 2001, the collaboration between CSOs and majority world governments was consolidated, with much of the technical drafting work for the Doha Declaration on medicines access and IPRs done by the CSOs, with support from the invited IPR and public health scholars (Matthews, 2006). Concluding a study of CSOs involved in IPR issues, Matthews (2006) noted that the "broad unanimity of interests and shared concerns" over HIV/AIDS, "had the effect that developing countries welcomed NGO engagement with intellectual property rights and public health issues much more than in other policy areas" (p. 8).

Strategic links were also forged between the 'access to medicines' CSOs and private industry. In mid-2000, Love and CPTEch colleague, Robert Weissman, met with Dr Yusuf Hamied, CEO of Indian generics pharmaceutical firm Cipla (Sell, 2001). Since Brazil's decision to mass-manufacture generic ARVs and provide them for free to citizens in 1996 (Flynn, 2008), the global price of raw materials had dramatically reduced from around US\$10,000 to around US\$750 a kilo (Love, in Warner, et al., 2002). With the opportunity to make cheap generics now open, Hamied told Love that he could provide MSF with a generic version of the antiretroviral cocktail dt4 for US\$350 a year (Sell, 2001). With brand-name versions of the cocktail typically sold in the West for around US\$10,000 - US\$15,000 a year (McNeil, 7 February 2001), the offer was a significant reduction and saw MSF inundated with requests for the drugs (Sell, 2001).

Further notable additions to the 'access to medicines' chain of equivalence were the supranational institutions, the World Bank, UN and the European Union, who at various times lent vocal support to the IPRs-public health argument. The World Bank, for instance, was reported in *The Washington Post* in December 1999 as a "significant ally" to the CSO campaign (Vick, 4 December 1999, p. A01). In the same article, the World Bank official in charge of health investments in Africa was quoted as being "comfortable" with compulsory licensing and parallel importing of generic medicines (Pannenberg, in Vick, 4 December 1999, p. A01). As Sell and Prakash (2004) noted: "The World Bank's support was crucial because the Bank has impeccable credentials in supporting and promoting the neoliberal economic agenda of which IPR protection is a crucial item" (Sell & Prakash, 2004, p. 162). Furthermore, the *Post* article noted that the World Bank had a strategic motive in supporting compulsory licensing and parallel importation, given that it purchased US\$800 million dollars of pharmaceuticals annually, with such measures able to significantly reduce this budget (Sell & Prakash, 2004; Vick, 4 December 1999).

Also in 1999, the United Nations Development Program (UNDP) entered the IPR debate, criticising TRIPS' impact on public health in their annual Human Development Report (UNDP, 1999). Noting that "the relentless march of intellectual property rights needs to be stopped and questioned" (UNDP, 1999, p. 73), the report suggested the IPRs of TRIPS "need comprehensive review to redress their perverse effects undermining food security, indigenous knowledge, biosafety and access to health care" (p. 10). By 2001, such voices formed part of a "building consensus [...] which included the European Union, that TRIPS should not interfere with the protection of public health" (Sell, 2001, p. 512).

3.3.5 South Africa and the Medicines Act

To conclude, this chapter will now consider the immediate context to the

conflicts and issues represented in the news coverage analysed in Chapters 5, 6 and 7. While disputes over IPRs and medicines access were articulated in many countries both before and after the implementation of TRIPS (Richards, 2004), South Africa became the most visible site of contestation in US and UK news coverage. The focal point of contention was a 1997 South African law allowing for generic medicines importation.

In 1996, Nelson Mandela's newly elected post-apartheid government enshrined healthcare as a constitutional right (Bond, 1999). Fulfilling a campaign promise, the government formed an Essential Drugs List (EDL), consisting of:

... medicines critically required for use in the public sector for the prevention and management of 90-95 percent of the common and important conditions in the country [...] EDL medicines will be available at all district hospitals, public providers and accredited private providers. (Republic of South Africa Department of Health, 1996, p. 35)

By 1999, UNAIDS estimated that 4.2 million of South Africa's 40 million population were HIV positive (UNAIDS, 2000), the fastest growing rate in the world, with the majority black population disproportionately affected (Bond, 1999). In light of the dire situation, and in order to fulfil the promise of increased entitlement and access to healthcare, Health Minister Nkosazana Dlamini-Zuma introduced the *Medicines and Related Substances Control Amendment Act* (Medicines Act) (Republic of South Africa Department of Health, 1997). Relevant to IPRs, clause 15(c) of the Act allowed parallel importing and compulsory licensing of pharmaceutical medicines in cases of national health emergency (Bond, 1999).

The Medicines Act met with immediate condemnation from the US government and the multinational pharmaceutical industry (Bond, 1999; Halbert, 2005; Sell, 2001). According to Sell (2001), "PhRMA was outraged" (p. 501), with PhRMA writing to the USTR and US Commerce Secretary to

denounce the Medicines Act. The issue was raised in a July 1997 meeting of the US-South African Bi-national Commission, jointly led by Vice-Presidents Al Gore and Thabo Mbeki, and a sequence of letters, position papers and further meetings continued between industry representatives and US and South African officials aimed at convincing the South African government to drop the Act (see Jamie Love's meticulous archiving of this period in CPTEch, 1999). While the pharmaceutical companies argued that the Act violated TRIPS regulations and, as such, was tantamount to theft (Bond, 1999), South Africa countered that it was explicitly consistent with TRIPS requirements (Heywood, 2001). The South African government remained steadfast in its position, and in December 1997 President Mandela signed the Medicines Act amendments into law (Bond, 1999).

Despite of the argument over TRIPS, neither PhRMA nor the US government pursued the issue through the WTO's dispute settlement mechanism, despite doing so in similar pharmaceutical-based conflicts with India in 1997 (Rangnekar, 2005) and Brazil in 2001 (Richards, 2004). Instead, opposition to the Medicines Act took the form of a private sector lawsuit and bilateral trade pressure from the US. In February 1998, 39 pharmaceutical companies, represented by the South African Pharmaceutical Manufacturers Association (PMA) filed suit against the South African government in order to prevent implementation of the Medicines Act (Barnard, 2002).²⁰ The lawsuit, case number 4138/98 in the High Court of Pretoria, revolved around "an extraordinary array of claims against the Act's validity" (Klug, 2008, p. 220). In particular, the two central arguments were that the Act was unconstitutional and that it violated South Africa's international obligations.

In the first case, the PMA argued that the Act breached the South African constitution by giving too much power to the executive without clarifying how the Health Minister's powers would be limited (Klug, 2008), that it crossed the PMA's constitutional right not to be arbitrarily deprived of property (Heywood, 2001), and that it "violated the basic values and

²⁰ 40 companies filed suit, but later became 39 as the result of a corporate merger ('t Hoen, 2002).

principles governing public administration” (Klug, 2008, p. 220). In the second case, the PMA argued that Clause 15(c) of the Act was in conflict with TRIPS requirements, with PMA CEO, Mirryena Deeb, noting in her founding affidavit that “Parliament ought not to have made a law which is in conflict with South Africa’s international obligations” (Deeb, in Klug, 2008, p. 220). As Klug (2008) pointed out, this argument “inverted the traditional claim that equal and sovereign states are only bound by their own consent to international obligations and instead argued that the authority of the democratically elected legislature of South Africa is limited by global rules” (Klug, 2008, p. 220). While South Africa maintained throughout that the Act was consistent with TRIPS, critics of the lawsuit claimed the legal action was effectively an attempt to use the constitution to annex additional intellectual property standards that were not part of TRIPS to South African legislation, to clarify some of the ambiguities in TRIPS, and to warn other countries against pursuing a similar path (Heywood, 2001).

The US government, in particular the influential office of the USTR, supported the PMA lawsuit. Two weeks before the lawsuit was filed, 47 members of the US Congress wrote to USTR Charlene Barshefsky urging her to take action on the Medicines Act (CPTech, 1999). In February 1998, the month the PMA lawsuit was launched, PhRMA approached the USTR asking her to designate South Africa a Priority Foreign country under the Special 301 review (Sell, 2001), citing it as a “test case” for those who oppose the government’s long standing commitment to improved protection of US intellectual property (CPTech, 1999, n.p.). On May 1, South Africa was added to the Special 301 Watch list (CPTech, 1999), and, in June 1998, the White House announced that four items for which South Africa had requested reduced tariff treatment under the GSP would be withheld pending adequate progress on patent protection (Bond, 1999). Tom Bombelles of PhRMA welcomed the GSP penalty as “the type of thing we are looking for them to do” (Bombelles, in Bond, 1999:778). In addition, in October 1998, a new Act

was passed in the US Congress²¹ (United States Congress, 1998) containing a provision to cut off aid to South Africa pending a US Department of State report outlining US efforts to negotiate the amendment of the Medicines Act (United States Department of State, 1999). This report was then produced, outlining in detail the above US efforts to rescind the Medicines Act.²²

When AIDS activists in the US discovered the State Department report, they dubbed it the 'smoking gun memo' (Sawyer, 2002), and set out on a cross-US campaign to target the man deemed most responsible for the US actions: then US Vice-President and 2000 Democratic Presidential candidate, Al Gore. Following several protests in the US and abroad, the US government withdrew its official opposition to the Medicines Act (Sawyer, 2002). An alliance of pharmaceutical companies, however, continued their pressure upon South Africa by taking the South African government to court in a highly publicised legal dispute. By the time the legal challenge was cancelled in 2001, the WTO, at the bequest of majority world countries, had begun to revise the TRIPS Agreement, including in it a declaration that IPRs should not stand in the way of public health priorities. Further detail on the 1999

²¹ Act HR 4328, which later became known as the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (United States Congress, 1998).

²² In addition to diplomatic and legal pressure, South Africa also faced direct economic pressure from the locally operating pharmaceutical industry. Merck dropped a US\$10 million investment in South Africa, citing the Medicines Act as the reason (McNeil, 29 March 1998). Bristol-Myers Squibb, Pharmacia & Upjohn and Eli Lilly all closed their South African factories, which, while they did not openly cite the Act, "were partly in response to uncertainty surrounding the legislation", according to PMA CEO Deeb (Deeb, in McNeil, 29 March 1998, p. 1). Advertising campaigns warning against the dangers of generics were also employed by the PMA, with full-page newspaper advertisements showing weeping babies and warning of "unsafe control of medicine" (McNeil, 29 March 1998, p. 1). While Deeb "completely rejects the notion that we [the PMA] use scare tactics" (Deeb, in McNeil, 29 March 1998, p. 1), she claimed to be proud of the advertisements and cited them as a key factor in causing early redrafts of the Medicines Act.

When Deeb suggested in an interview with *The New York Times* that the drug companies she represented would stop selling their new discoveries in South Africa if the Act went ahead, the journalist, Donald McNeil Jr. asked her if she was literally threatening to let people die if the companies did not get their way. In an unpublished memoir of the encounter, McNeil Jr. recalled:

She hemmed a bit, and then answered: "In so many words, yes. It's very clear - when countries start tampering with patent rights, the new innovations aren't released there." Did she really think, I asked, that making threats like that was a smart tactic? "Health is a very emotive topic," she said. "When one party is totally unreasonable, the other becomes totally unreasonable. It becomes tit-for-tat. It's playground tactics, I'm afraid." (McNeil, 2010, unpublished manuscript, reproduced here with consent of the author).

US protest, the South African court trial, and the post-trial aftermath will be discussed in Chapters 5, 6 and 7.

3.4 Conclusion

This chapter has discussed the broad historical development of intellectual property regulation, the political economy of the WTO's TRIPS Agreement, and the turn-of-the-millennium disputes between transnational civil society actors and the major pharmaceutical industry over intellectual property and medicines access. Following Hajer's (2005) concept of 'document analysis', this chapter has surveyed various academic, mass media and civil society publications in order to ascertain the structuring concepts, major actors, important events, and sites of discursive production within the medicines access dispute.

With this context established, this project is now equipped to analyse the performance and contestation of various discourses within the news media coverage. First, however, the thesis will now review academic scholarship on the mainstream news media and representations of voices of dissent. Where this chapter provided context to the production of various discourses, Chapter 4 will now provide context to the specific forum under analysis in the core empirical section of this study. That is, the thesis now turns away from medicines access and intellectual property governance, and towards the representational logics of the mainstream news media.

4

News Media and Voices of Dissent: A Media and Communication Studies Literature Review

Abstract

This chapter provides an overview of scholarly literature examining the representation of protest, social movements, and voices of dissent in the mainstream news media. It outlines how past research has observed a tendency to marginalise counter-hegemonic voices within the mainstream news. It also notes how such a tendency has been problematised in more recent research, with scholars noting the various ways in which protest and civil society campaigns may receive sympathetic coverage. Finally, the chapter integrates such views with recent scholarship on global governance, noting the increasingly multi-faceted role of civil society actors in international politics. In this way, the chapter provides a scholarly framework in preparation for the following chapters' empirical analysis of news media content. Where Chapter 3 provided historical context for the discourses under analysis, this chapter provides theoretical context for how the discourses may be articulated in the symbolic forum of the mainstream news media.

4.1 Introduction

... on today's public screen corporations and states stage spectacles (advertising and photo ops) certifying their status before the public/people *and* activists participate through the performance of image events [...] Critique through spectacle, not critique versus spectacle. (DeLuca & Peeples, 2002, p. 134, emphasis and parenthesis in original)

Media and communication studies have long acknowledged the news is not a neutral or natural reflection of the world around it (Hall, Critcher, Jefferson, Clarke, & Reports, 1978). News is, rather, a socially constructed product, articulating and reproducing various ideological assumptions over how the world is, and should be (Dyer, 1993; O'Shaughnessy & Stadler, 2008). For Laclau and Mouffe's (1985) discourse theory, this point is obvious, as *all* articulations are constructed, and only ever partial, representations of an unattainable 'real' existing beyond them (see Chapter 2). The history of news media analysis, however, has also produced the insight that news representations are typically constructed in particular ways. That is, the representations of the 'real' provided in news media are structured by specific 'logics' of representation that distinguish news media articulations from those of other symbolic spheres.

In particular, for the interests of this thesis, news media scholarship has identified an enduring tendency of the mainstream news to marginalise voices of dissent in favour of an elite agenda (Cottle, 2006; Gitlin, 1980; Halloran, Elliott, & Murdock, 1970; Herman & Chomsky, 1988). Some research has characterised this tendency in terms of the routine practices of news gathering (Fishman, 1980; Gandy, 1982; Hall, Critcher, Jefferson, Clarke, & Reports, 1978; Halloran, et al., 1970), others have looked to the political economy of the news business (Bagdikian, 2004; Curran & Seaton, 2003; Eldridge, 1995; Garnham, 1990; Golding & Murdock, 1997a, 1997b,

2000; Herman & Chomsky, 1988; Herman & McChesney, 1997, 2000; McChesney, 2004; Miller, 1994; Philo, 1995; Schiller, 1989, 1992), while others have focused on ideological bias favouring the social elite, of which the news is a key point of dissemination (Adorno & Horkheimer, 1979; Glasgow Media Group, 1976, 1980, 1985; Marcuse, 1972; Miliband, 1973).

Importantly for this thesis' research questions, recent research has problematised a simple understanding of the marginalising trend by observing instances where the contemporary mainstream news media produce positive representations of counter-hegemonic voices of dissent (Cottle, 2008; G. Craig, 2002; DeLuca & Peeples, 2002; Rojecki, 2002). In this more recent research, protest groups and civil society campaigns manufacture media images in the same way as their elite opponents. They stage "image events" (DeLuca & Peeples, 2002, p. 134), employ professional communications strategists (Cottle & Nolan, 2007; Davis, 2007), and design protest activity with media reception firmly in mind, thus reflexively conditioning (Cottle, 2008) their strategy in relation to media logics of representation. In this way, the media field is not seen as a homogeneous plateau dominated by elite interests, but rather, like Laclau and Mouffe's (1985) conception of society, as a perpetually contested terrain "criss-crossed" by social antagonisms (Howarth, 2000, p. 110).

This thesis positions its enquiry at the heart of such concerns. Therefore, before moving on to the empirical analysis chapters, it is important to first summarise prior insights from the media and communication studies field. In this way, the thesis foregrounds the structuring forces upon news media representation of voices of dissent in general, so as to better position the later analysis of a specific counter-hegemonic campaign. It must be noted first, however, that Laclau and Mouffe (1985) pay curiously little attention to the mass media (Phelan & Dahlberg, 2011). While their discourse theory is centrally concerned with *representation*, the enquiry is primarily addressed at the ontological level with little analysis into the ontic dynamics of representation, such as those of the mainstream media (Phelan & Dahlberg,

2011). This chapter partially addresses this absence by contributing media and communication studies perspectives to a discourse-theoretical analysis. In this way, the thesis aligns itself with recent research applying discourse theory to analyse news media representations (Carpentier, 2008; Carpentier & De Cleen, 2007; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008).

The chapter begins by discussing classic studies into news media representation of protest, and their findings that voices of dissent are systematically marginalised in the mainstream news media (Gitlin, 1980; Halloran, et al., 1970). It then outlines how this marginalising tendency has been observed in research focused on different analytical levels of news media: news as practice; news as business; and news as disseminator of ideology. In the second part of the chapter more recent research on social campaigns and the mainstream news media is considered, demonstrating how the marginalising tendency has been destabilised in the contemporary news environment (Cottle, 2008; Rojecki, 2002). In particular, individual studies are considered, indicating how features emphasised in market-driven journalism, such as a focus on spectacle, conflict and celebrity, may also provide opportunities for publicising contemporary social campaigns (G. Craig, 2002; DeLuca & Peeples, 2002; Gaber & Willson, 2005; Lester, 2006; McAdam, 2000; Milne, 2005).

The chapter ends by considering how contemporary research on global governance and civil society reflects upon the above points, thus drawing on interdisciplinary insights to sharpen the thesis' media analysis. It notes how various theorists have identified the fragmentation of governmental space in recent decades, moving power away from the nation-state and towards a network of private corporations, supranational institutions and civil society organisations (Beck, 2006; Boggs, 1997; Bourdieu, 1999; Castells, 2000, 2003; Giddens, 1985; Held, 1991). The relevance of this global governance dynamic for the 'third sector' of civil society is then discussed, noting how the network of governance has opened up new spaces for transnational civil

society service and activism (Keck & Sikkink, 1998; Salamon, Sokolowski, & Associates, 2004). Finally, the chapter considers how recent research on protest, social campaigns and the news media has responded to the insights from such global governance research.

4.2 Protest and the Mainstream News Media

[Protests are] a means by which citizens can register their collective disagreement and dissent, build public support and legitimacy for their aims, and influence governments, policy formation and even societal change. In democratic societies they are an established mechanism by which citizens can express their civil rights and, in non-democratic societies, they are frequently used as part of the struggle for democracy and the extension of citizenship. (Cottle, 2006, p. 33)

[The mainstream news media] comprise the mass media of television, radio and the press that are corporately owned, controlled or governed (including by public corporations such as the BBC). Alternative media are those media that are produced by activists themselves.²³ (de Jong, Shaw, & Stammers, 2005, p. 6)

Protests, demonstrations, social movements and activism have been widely recognised as playing a key role in the development of democracy (Cottle, 2008; Etzioni, 1970; Norris, 2002; E. P. Thompson, 1991; Tilly, 2005). The mainstream news media have also been widely recognised as a critical engine in the maintenance of democracy (Curran, 2002; Keane, 1991). In the theorisation of the media's role in democratic societies, a set of ideal public communication functions has emerged. Following Davis (2007), these state the media should provide: a source of factual information available to all the

²³ The signifier 'mainstream news media' is emphasised here to clarify that this thesis does *not* examine the impact of new and alternative media upon contemporary social movements. Investigations into civil society and new and alternative media constitute a productive and influential field of recent communication research (see, for example Bennett, 2003b; Kahn & Kellner, 2004). This thesis, however, restricts its focus to the engagement of social campaigns with the traditional mainstream news media, as defined above.

population; a check, or 'watchdog' role, on the activities of those with power; a platform for debate on various issues affecting society; and access for diverse citizens to publicise their ideas (see also Louw, 2005).

In light of these ideals, it may be reasonably expected that a citizen's campaign challenging an aspect of social importance in a democratic society may receive fair and impartial coverage in the mainstream news media. However, past communication research suggests that far from this ideal, protests and demonstrations have been marginalised in mainstream news coverage, stripped of their substantive political arguments, and framed as dissident or illegitimate activities (Gitlin, 1980; Halloran, et al., 1970; Herman & Chomsky, 1988).

In particular, it is worth noting two widely-cited studies from the field of mass communication research: Halloran, Elliott and Murdock's (1970) study of press coverage of a London 1968 demonstration against the Vietnam War; and Gitlin's (1980) analysis of coverage of the US student movement in the 1960s. In the Halloran et al. (1970) study, summarised neatly in Murdock (1981), news coverage is identified as disproportionately attributing violence to the protest event. According to Murdock (1981), by associating the event with other protest representations - such as the earlier Paris 1968 riots - before it had even occurred, the coverage effectively defined the event in terms of violence: thus concentrating attention on "the forms of actions to the neglect of underlying causes" (p. 210). In this way, "the march was emptied of its radical political content" (Murdock, 1981, p. 210).

In a similar vein, Gitlin's (1980) study of representations of the 1960s student movement indicated several recurring deprecatory themes. These included: *trivialisation* of the movement's objectives and delivery; *polarisation*, by emphasising those opposed to the movement; *marginalisation*, by representing demonstrators as deviant; and *disparagement*, by underestimating movement participation and effectiveness. As with the Halloran et al. (1970) study, violence was also

emphasised, leading Gitlin (1980) to conclude that the norms of protest coverage were descended from crime news, with the protesters unequivocally positioned as the criminals. These two studies are regarded as “classics” in the field (Cottle, 2006, p. 38), with their findings repeated in numerous studies since (for example Carragee, 1991; Hallin, 1987; Parenti, 1986; Smith, McCarthy, McPhail, & Augustyn, 2001, see reviews in Cottle, 2006; Waddington, 1992). As this chapter will later demonstrate, such findings have indeed been contested. However they have also been broadly adopted in the canon of accepted wisdom for studies of protest and demonstration (Cottle, 2006).

Building on Halloran et al. (1970) and Gitlin’s (1980) insights, several further studies have sought to identify just *why* and *how* mainstream news media tend to marginalise political dissent. This chapter will now look at three areas identified as proximate causes for the marginalisation: the routine practices of journalism; the business ownership of news media; and the socio-political role of media as ideological apparatuses. These categories are broad and overlapping, and do not exhaust the many explanations offered by media and communication studies for the marginalising trend. Following discourse theory ontology, these categories also collapse into each other - as Laclau and Mouffe would be quick to note the discursive and ideological nature of each of them. Nevertheless, they are used here as heuristic devices to organise a discussion of how various research has conceptualised the news media’s tendency to marginalise protest and voices of dissent. The following summaries thus provide illustrations of the marginalising trend, and useful reference points for the subsequent analysis of news media representation of the ‘access to medicines’ civil society campaign.

4.2.1 Routine Journalistic Practice

The routine practices of newsgathering are one key factor sustaining the marginalisation of protest in news media. For instance, in the interest of

efficiency and credibility, journalists typically gather information from elite sources such as government, police and military (Fishman, 1980; Gandy, 1982; Hall, et al., 1978). Given the socially consensual recognition of the authority of such sources, this reliance also provides prestige and the appearance of objectivity to a news story (McLeod & Hertog, 1992, 1998; Peng, 2008). However, as Hall et al. (1978) noted, the structured reliance on elite sources results in such sources occupying a 'primary definer' status, with the journalist reduced to secondarily reproducing elite interpretations.

Despite further research indicating the fluid and dynamic nature of this primary/secondary definer relationship, elite sources are still seen to dominate the media agenda (Davis, 2002, 2007; Manning, 1998; Miller, 1994; Schlesinger & Tumber, 1994). For some scholars, this relationship means many journalists are effectively 'captured' by their sources, deeply and epistemologically integrated into elite hegemonic discourses (Davis, 2000, 2007; Negrine, 1996; Schlesinger, Miller, & Dinan, 2001). Given that protest activity typically counter-hegemonically opposes elite discourse, such capture provides an obvious impediment to equal representation of diverse voices.

A second factor negatively affecting the positive representation of voices of dissent is the event orientation of the news (Halloran et al., 1970). Journalists tend to report social phenomena that best fit with the frequency of their own news production cycle (Galtung & Ruge, 1965). In a 24-hour production cycle, this means that singular protest events are more likely to be covered than the more complex and ongoing underlying issue (Landsman, 1987; Molotch, 1979; Tuchman, 1978). Civil society campaigns may conform their approach to this factor, engaging in non-routine protest events in order to get issues noticed (Landsman, 1987; Molotch, 1979). However, this then creates the dilemma that it is the protest event that is seen to disrupt the social harmony, rather than the underlying state of affairs that is being protested. A further aspect of the event-orientation is that news media gravitate to pre-scheduled events over spontaneous ones (Hall, et al., 1978),

creating an imbalance in access favouring those with the resources to pre-schedule events and advertise them in advance to the news media (Murdock, in Hall, et al., 1978).

A third routine factor of journalistic practice marginalising representations of protest is the tendency to package social phenomena into predefined storylines (Bennett, 1978, 2001; Gitlin, 1980; Landsman, 1987; Nisbet, Brossard, & Kroepsch, 2003). Journalists need to quickly find ways to make sense of complex social phenomena for their audiences. A common way to do this is to associate events and issues with prior narratives. As the Halloran et al. (1970) study suggested, this works against representations of social campaigns when pre-existing narratives of violence and social disorder may be applied to protests, even before they have occurred. For scholars using the concept of 'framing', such fixed interpretations can be understood as the "mental structures that shape the way we see the world" (Lakoff, 2004, p. xv), and thus define the limits of acceptable debate (Entman, 1993; Jamieson & Waldman, 2003).

In addition, a prevalence for storytelling means that the issues most likely to be covered are those which can be most easily dramatised, thereby emphasising violence, crisis, events, and conflicts between personalities at the expense of complex policy information and in-depth analysis (Bennett, 2001; Nisbet, et al., 2003). This so-called 'drama-philia' of the news (Iyengar, 1991), has been further identified to emphasise the episodic over the thematic (Iyengar, 1991), political strategy over policy context (Cappella & Jamieson, 1997), and individual personalities over collective action (Carragee, 2003). Importantly, each of these factors tends to work against the interests of social campaigns seeking to publicise ongoing social issues, socio-political contexts, alternative interpretations of conventional wisdom, and collective, not individual, action.

4.2.2 News Media Business

Further up the hierarchy of news production, several scholars have identified the ownership structures of news media business as exerting additional marginalising influence on voices of dissent (Bagdikian, 2004; Curran & Seaton, 2003; Eldridge, 1995; Garnham, 1990; Golding & Murdock, 1997a, 1997b, 2000; Herman & Chomsky, 1988; Herman & McChesney, 1997, 2000; McChesney, 2004; Miller, 1994; Philo, 1995; Schiller, 1989, 1992). These studies offer detailed accounts of how ownership structures, whether under state or private control, can influence news content (see reviews in Cottle, 2006; Mosco, 1996). As Davis (2007) noted, this influence may manifest in a mixture of direct means, such as the allocation of resources and editorial staffing, as well as indirect ones sustained through the culture of the workplace. Researchers have also suggested such influences have only increased as global media ownership becomes increasingly concentrated and deregulated (Calabrese, 2004b, 2005; Herman, 2000; Herman & McChesney, 2000; McChesney, 2003; Thusu, 2000).

Many studies investigating news ownership can be located within the political economy approach to media analysis, emphasising the role of 'material' structures over 'ideal' discourses.²⁴ As discussed in Chapter 2, in discourse theory so-called 'material' structures are considered discursive as well, meaning any structuring force is not absolute, but contingent and contestable (Laclau & Mouffe, 1985). Nevertheless, the contribution of political economy studies to understanding news media is significant, and thus a necessary aspect of any summary into the marginalising tendency on voices of dissent. For instance, an exemplary case of media political economic analysis is Herman and Chomsky's (1988) 'propaganda model',

²⁴ There has been an historical rift between political economy and cultural studies approaches to media analysis (Fenton, 2006), with discourse analytical approaches commonly situated in the latter tradition. This thesis sides with Fenton's (2006) conclusion that the divide between the two approaches is largely 'mythic', and may be productively bridged. The history and background summary in Chapter 3, for instance, is an example of how discourse-theoretical and cultural studies insights may be integrated with political economic analyses.

examining “the routes by which money and power are able to filter out the news fit to print, marginalize dissent, and allow for the government and dominant private interests to get their message across to the public” (pp. 1-2). The propaganda model is often cited as the “best-known critical theory of the media” among civil society activists (Hackett, 2006, p. 2), and has provided enduring influence on critical theories of media power (Cottle, 2006).

The propaganda model identifies the advertising-based business model as a key factor in constructing a pro-business bias in news media (Herman & Chomsky, 1988). Several studies have followed this lead, identifying the restrictions the advertising model imposes on anti-business news content (Bagdikian, 2004; Baldasty, 1992; Barnhurst & Nerone, 2001; R. L. Craig, 2004; Curran, 1977; McChesney, 1999). For some, this has resulted in a specific mode of news media as ‘promotional journalism’ (Erjavec, 2004), ‘market journalism’ (McManus, 1994), ‘MBA journalism’ (Underwood, 1993), or ‘new journalism’ (H. Hardt, 1996), where adherence to consumerist priorities trumps the democratic ideals introduced earlier in this chapter. As Erjavec (2004) stated, the ‘advertorial’ style of such journalism effectively “addresses their readers as consumers rather than as participants in society and a source of democratic power” (p. 574). With this relationship able to engender positive media coverage for controversial big business practices (Weis & Burke, 1986), the implications for media coverage of social campaigns targeting such business practices are obvious.

A further critic of the advertising-based business model, McManus (1994), noted that its profit-maximisation agenda introduced two strong motivations to news practice: increase audience; and decrease cost. In the first case, scholars have noted the pursuit of greater audiences to supply the advertising dollar has resulted in a ‘popularisation’ of news content, fostering entertainment-oriented news values (Postman, 1985), and exaggerating the emphasis on drama (Cook, 1998), scandal (Sanders, 2009; J. Thompson, 2000), personality news (Corner & Pels, 2003) and public

relations content (Ewen, 1996; Stauber & Rampton, 1995, 2002). The phenomena has been variously characterised as 'soft news' (Patterson, 2001), 'infotainment' (M. Delli Carpini & Williams, 2001), 'newzak' (Franklin, 1997), and 'McJournalism' (Franklin, 2005). Furthermore, the advertisers' desire to reach large audiences with moderate spending power, or else smaller specialist audiences with high spending power (Curran, 1978; Curran & Seaton, 2003; Davis, 2007; Garnham, 1990), has meant that several radical, working class newspapers have folded despite large circulation, while business and financial news sections "are far larger than their audience figures can justify" (Davis, 2007, p. 40, see also Davis, 2002; Newman, 1984).

Secondly, in the effort to reduce costs, those stories that are expensive, require investigative resources or fail to attract readers, tend to be neglected (Davis, 2007). Declines in foreign news, investigative reporting and current affairs programming have all been identified in this regard (McLachlan & Golding, 2000; Seymour-Ure, 1996; Van Ginniken, 1998). Furthermore, long-term, complex issues have been observed to be sacrificed in favour of more immediate human interest stories, or else ignored until a major crisis provides the dramatic impetus to cover them (Allan, Adam, & Carter, 2000; Cassidy, 2002; Cottle, 1993; Davis, 2007; Gavin, 1998; A. Hansen, 1993; Parsons, 1989; Schlesinger & Tumber, 1994). For social campaigns seeking to publicise complex social phenomena, such resource-deficiency means the underlying issues are likely to be under-reported in favour of the easier focus on isolated protest events.

4.2.3 News Media Ideology

The final marginalising factor identified in wider communication scholarship considered here is ideological bias. While ideological forces are inherent in all of the aforementioned critical views of news media, it is included as a category in this typology to acknowledge the influential contribution of

ideological critique to media and communication studies. This contribution largely began with the Frankfurt school in the 1930s and 1940s (Jay, 1996). Members of the school, such as Adorno and Horkheimer (1979) regarded the 'culture industry' of modern mass society as degenerative and distracting for public minds and Enlightenment ideals. Under the influence of such scholars, the mass media came to be seen as an engine of capitalist culture and site of production and reproduction of false needs (Marcuse, 1972). In such a capacity, the media performed the function of 'ideological state apparatus', 'interpellating' and conditioning subjects into the capitalist doctrine (Althusser, 1971). Furthermore, the wielding of this apparatus by the elite was seen as an effort to maintain the capitalist system while delegitimising voices of dissent (Miliband, 1973). Finally, with the discovery of Gramsci's (1971) earlier writings - particularly his concept of hegemony - a sense of fluidity and change was introduced to the critical evaluation of ideology (Forgacs, 1988), of which Laclau and Mouffe's (1985) contribution was centrally important (Nash, 2001; Žižek, 1990).

These scholars offered conceptual tools with which to analyse mass media products for their ideological content. Many empirical studies, including many of those already cited in this review, provided empirical support for the critical theorists' claims (see, for instance, Glasgow Media Group, 1976, 1980, 1985). More recently, research into news media content from various majority world countries has revealed that in the coverage of demonstrations and protest, ideological bias has a marked geopolitical aspect. For example, Fang's (1994) study of state-controlled Chinese news media showed how voices of dissent were covered differently depending on whether they took place in countries considered hostile or friendly to the People's Republic. Further research (Cottle, 1993, 2006), has argued such tendencies are not restricted to China, with minority world media displaying similar geo-political ideological variations in their coverage of protest. In summary, the above sketch of various media and communication studies suggests an enduring model of the media as structurally favourable to the financial and political elite, and generally dismissive of counter-hegemonic

political projects.

4.3 The Marginalising Tendency Destabilised

Contradicting the marginalising tendency, however, recent studies into news media and contemporary social movements indicate ways that social campaigns may indeed garner positive representation. For Laclau and Mouffe (1985), the end of the Cold War and subsequent fragmentation of global political space resulted in new opportunities for social movements – what Laclau (1994) referred to as “new and more complex hegemonico-political moves” (p. 2, see also Bosi, 2008; Melucci & Diani, 1992). Scholars have argued that the end of the Cold War ideological binary also freed news media to report more openly on the new social movements (Cottle, 2008; Rojecki, 2002). This chapter will now discuss some ways in which recent research has identified positive representations of social campaigns. As with the earlier typology, the discussion is organised around three broad and overlapping categories of news media emphasis: spectacle; conflict; and celebrity. Such factors are here discussed to illustrate how the same structural forces typically marginalising protest representations may in some cases facilitate them.

4.3.1 Spectacle

Spectacle has become an integral feature of contemporary mainstream media’s approach to representing political issues (Kellner, 2001, 2003, 2004). Indeed, spectacle has become a feature of politics itself, as political practice is increasingly ‘mediatised’ by mass media representational logics (Altheide & Snow, 1979; M. X. Delli Carpini & Keeter, 1996; Entman, 1989; Kepplinger, 2002; Mazzoleni & Schulz, 1999; Strömbäck, 2008; Swanson & Manicin, 1996). Accordingly, recent protest forms have also turned to the spectacular as a means of communicating their message (Klein, 2001).

Influenced by Bakhtin's (1984) notions of 'carnival as subversion', such protest forms rejected traditional "socialist patterns of realism" (Subcomandante Marcos, in *Notes from Nowhere*, 2003, p. 176) and instead embraced the playful and spectacular as opportunities to 'embody' the new reality they were demonstrating for (Begg, 2010).

In relation to concepts of dissident voices and marginalisation, the concept of spectacle has often been associated with a Frankfurt School-style critique of the deceptive and distractive powers of mass media in capitalist societies (Boorstin, 1961; Debord, 1983). As G. Craig (2002) observed: "[m]any considerations of contemporary spectacle continue to emphasise it as a communicative form that establishes a relationship of dominance and manipulation between a powerful source and passive populace" (p. 45). Given the recent embracing of spectacle by protest organisers, however, G. Craig (2002) argued for a more nuanced conceptual understanding of spectacle in relation to voices of dissent: one that would liberate spectacle from its role as a force for mystification; and could see it instead deployed as a publicising strategy for social campaigns.

For G. Craig (2002) and other scholars (Bennett, 2003a; DeLuca & Peeples, 2002; Rojecki, 2002), the spectacular approach of 'turn-of-the-millennium' alter-globalisation protests was indeed successful in drawing media attention to the protesters' broader political messages. In his analysis of Australian media coverage of demonstrations against the World Economic Forum in Melbourne 2000, G. Craig (2002) argued that spectacular protest modes (street theatre, carnivalesque performance, provocative acts) acted as a 'focal point' around which wider substantive news media commentary was facilitated. DeLuca and Peeples (2002) observed similar processes in the so-called 'battle of Seattle' demonstrations against the WTO ministerial in Seattle, 1999. Here, the factor of violence, in the form of destruction of private property and aggression between protesters and police, came to the fore in the spectacle.

While an emphasis on violence has often been recognised as a force delegitimising coverage of demonstrations (Gitlin, 1980; Halloran, et al., 1970), DeLuca and Peeples (2002) argued that in Seattle 1999 it acted also as a spectacular focal point around which attention to the wider causes of the demonstration were positioned. Rojecki's (2002) analysis of the 'battle in Seattle' coverage corroborated DeLuca and Peeples' (2002), noting that "an initial focus on surface features - costumes and stunts - quickly deepened to the underlying issues they symbolized" (p. 159). Bennett (2003a) made a similar observation, arguing that Seattle provided a "punctuating moment in the evolution of global activism" (p. 144), and an "interesting exception" to prior modes of mainstream news media protest coverage (p. 162).²⁵

4.3.2 Conflict

Implicit in acts of violence is the concept of conflict - a classic news value (Galtung & Ruge, 1965), and another factor identified as often obfuscating the underlying messages of protest activity (Bennett, 2001; Nisbet, et al., 2003). Recent research, however, similar to DeLuca and Peeples' (2002) findings, has noted cases where an emphasis on conflict has effectively promoted the issues campaign groups sought to promote. As Nisbet et al. (2003) noted in their study of coverage of the US stem-cell debate, the issue received only moderate coverage for years as it passed through policy and administrative circles. Once it became overtly articulated by opposing social forces in civil society and elite political spheres, however, its media coverage considerably increased (Nisbet, et al., 2003).

Furthermore, Milne (2005) noted where media outlets pro-actively promoted protesting groups in order to define issues within a conflict frame.

²⁵ However, as Bennett (2003a) also argued, somewhat contradicting DeLuca and Peeples (2002) and G. Craig (2002), while the protests in Seattle received relatively sympathetic coverage, subsequent representations of demonstrations against the WTO and G8 in cities such as Genoa, Prague and Melbourne reverted to prior stereotypes of protesters as violent and anarchistic with little reference to the underlying issues, thus returning to the marginalising tendency.

In Milne's (2005) case study of fox hunting in the UK, voices of dissent were publicised in what she referred to as the media's 'manufacturing dissent', as opposed to Herman and Chomsky's (1988) influential 'manufacturing consent' model. Finally, in a classic example of twentieth century civil society campaigning, McAdam's (2000) study of the Rev. Martin Luther King Jr.-led US civil rights marches of the 1960s illustrated how civil society campaign strategy actively courted a conflict frame in media coverage. Here, following McAdam's (2000) argument, the civil rights marches pro-actively elicited violent confrontation with specially-selected authorities in a bid to dramatise their cause, thereby constructing a "ritualized confrontation between good and evil [that] proved irresistible to the media and, in turn, to the American public" (p. 127).

4.3.3 Celebrity

Celebrities are one of the most emblematic aspects of media spectacle (Kellner, 2003). For many, celebrities constitute the contemporary icons of media culture (Best & Kellner, 1999; Sanders, 2009), often dissolving the lines between the 'hard news' of politics and the 'soft news' of show business (Street, 2004). According to Turner et al. (2000), celebrities have a symbolic property that can consolidate meaning in a communicative field saturated with diverse messages. Faced with a daunting "information overload", celebrities focus issues for news consumers, acting as "prisms through which social complexity is brought back to the human level" (Turner et al., 2000, p. 166).

For demonstrations and social campaigns, this function can be exploited to promote messages in the media through celebrity endorsement (Gaber & Willson, 2005; Lester, 2006; Timms, 2005). As Timms (2005) pointed out in relation to NGO-organised campaigns: "[t]he chances of success for an NGO media stunt are dramatically increased by the involvement of a celebrity. News agencies are more likely to send a photographer/reporter/camera

crew and the subsequent image is more likely to be used” (pp. 127-128). The celebrity can also act to introduce the substance of a social campaign to a wider audience, of which Diana, Princess of Wales’ visits to HIV/AIDS sufferers is an often-cited example (Timms, 2005).

While celebrity endorsement offers significant benefits, the costs can also be high for resource-strapped social campaigns (Timms, 2005), in particular with the danger of celebrities going ‘off message’ (Davis, 2007; Lester, 2006). In Gaber and Willson’s (2005) analysis of media coverage of the ‘Dying for Diamonds’ campaign against conflict diamonds in the UK, this danger was successfully curtailed through the use of deceased celebrities instead. Here, a Marilyn Monroe impersonator prominently displayed at demonstrations successfully drew media attention to the broader activity and research of the NGO-driven campaign (Gaber & Willson, 2005).

4.3.4 Reflexive Conditioning and the Dangers of Media Co-Option

The above examples suggest the contemporary mainstream news media environment may provide more avenues for social campaigns to receive sympathetic coverage than was previously the case. However, they also demonstrate cases where social campaign strategies conform to news media representational logics. Akin to Street’s (1996) arguments that politicians are now required to ‘package’ themselves in relation to the priorities of mass media and popular culture, scholars have noted activist campaigns’ tendency to do the same (Cottle, 2008; Davis, 2007; Lester, 2006). As DeLuca and Peeples (2002) argued, transforming Habermas’ (1989) ‘public sphere’ into a ‘public screen’: “Critique through spectacle, not critique versus spectacle” (DeLuca & Peeples, 2002, p. 134). In this conception, both institutional and activist politics alike are ‘mediatised’. Furthermore, rather than subordinated a priori as marginalised victims of a structurally repressive media regime, activists are positioned as autonomous players with the ability to engage the mainstream media through the strategic manufacture of

representations.

However, the 'mediatisation' of social campaigns does not offer unrestrained freedom for articulating representations, but rather structures these representations within the hegemonic logics of mainstream media. In a media-saturated environment, social campaigns target their protest strategies for a media, rather than co-public, audience (Cottle, 2008; G. Craig, 2002; DeLuca & Peeples, 2002; Hutchins & Lester, 2006; Koopmans, 2004; Scalmer, 2002, Tilly, 2005). According to Cottle (2008), such an approach sees protest organisers 'reflexively conditioned' by the necessary requirements to achieve their goal of media attention. This positions protest organisers in an "endless game of protester media 'catch-up'" (Cottle, 2006, p. 46) as protest repertoires seek to keep up with the evolving modes of media representation. Within such a relationship, though social campaigns may be successful in achieving media coverage, there is a risk that packaging protests for the media will dilute the protest's intended message. In this regard, scholars have noted an inhibiting effect upon social campaign objectives, described by Davis (2007) as the danger of "media co-option" (p. 143).

This danger was highlighted early on by Gitlin (1980) in his influential study of the 1960s US student movement. According to Gitlin's (1980) study, as media coverage of the campaign increased, its activities became increasingly dependent on the coverage received. Furthermore, as individual leaders began to attain celebrity status as a result of the coverage, internal rifts began to undermine the campaign. "Celebrity as a political resource for the movement", explained Gitlin (1980), "lapsed into a personal resource to be invested, hoarded, and fought over - or abandoned" (p. 146).

Davis (2007) observed similar predicaments in his analysis of the 2005 'Make Poverty History' campaign in the UK, with well-publicised disagreements between some campaigners and the celebrities, such as Bob Geldof and Bono, enlisted to publicise the cause. Even more destabilising for

the campaign, however, according to Davis (2007), was the tension between simplifying the message on poverty in order to spread it widely throughout the media, and retaining a semblance of the complex causes of poverty at the heart of the 'Make Poverty History' agenda (Davis, 2007, see also Cottle & Nolan, 2007; Nash, 2008). Ultimately, according to Davis (2007), the campaign found itself caught between co-option by politicians seeking to share the campaign's earnest public image, co-option by the various agendas of celebrities involved, and co-option by news media simplification of the message.

Outlining a further risk in the 'mediatisation' of protest representations, Lester (2006) observed a situation where a media-centric social campaign became pilloried for the overt cultivation of its own public image. In her analysis of contemporary environmental protests in Tasmania, Lester (2006, see also Hutchins & Lester, 2006; Lester, 2007) identified two associated framings of protesters in the media coverage. On the one hand, protesters were characterised in stereotypical terms as 'ferals' and 'anarchists', while on the other they were portrayed as a "highly-organised, well-oiled, middle-class publicity machine with substantial institutional and political support" (Lester, 2006, p. 914). As the campaign progressed, the media became increasingly antagonistic towards the 'theatre', 'stage-managed', 'media stunt' and manufactured nature of the demonstrations. In this way, argued Lester (2006), "the movement's right to be either a legitimate definer of events or a grass-roots movement affectively committed to its political/environmental cause were both challenged, and control of the news agenda returned to the media and its more powerful sources" (p. 914). Lester (2006) concluded that social campaigns designed with news media in mind cannot be too overt about their media strategy and tactics, lest they risk severe criticism of mendacity and promotion of style over substance.

4.4 Global Governance, Civil Society and News Media

This chapter will now broaden its scope briefly to consider recent research and theory from studies of global governance and civil society. The purpose here is to position the type of protest and social campaign activity cited above within its broader context of networked governance and political contestation. This thesis considers protest and demonstration as just one strategy among many for CSOs seeking social change on medicines access and IPRs (as illustrated in the histories of Chapter 3). Protest acts are, however, key communicative acts, which is why the importance of understanding their mass media representation endures in wider examinations of politics and society. The remainder of this chapter follows the assumption that in order to understand the representations of protest and voices of dissent in mainstream news media, scholars are best served to also inquire into the dynamics of civil society and global governance, and how, in turn, these broader relationships may be represented in news media coverage, thereby contextualising the protest act.

4.4.1 From Government to Governance

Radical transformations of governance institutions have taken place in minority world democracies over the past few decades (Beck, 1997, 2000, 2005, 2006; Bourdieu, 1999; Castells, 2000, 2003; Harvey, 2005; Laclau & Mouffe, 1985). According to Hansen and Sørensen (2005), governance researchers describe such transformations as a change from 'government' to 'governance' (see also Pierre, 2000; Rhodes, 1997; Scharpf, 1997). In this conception, 'government' "points to a situation in which governance is exercised through a vertical chain of command involving legislative, executive, and administrative powers", while 'governance' "refers to a situation in which governance takes place within horizontal networks, involving a multitude of public and private actors" (A. D. Hansen & Sørensen, 2005, p. 94).

An important factor in this transformation is the de-centralising of governance power away from the traditional site of the nation-state (Giddens, 1985; Held, 1991; Keohane, 2002; Ohmae, 1995; Rodrik, 1997; Strange, 1996). Instead, governance power is distributed throughout a multilayered field of social platforms, consisting of supranational institutions, private businesses, and civil society organisations (Boggs, 1997, 2000; Castells, 2000, 2003; Kaldor, 2003; Salamon, Sokolowski, & Associates, 2004). Castells (2000, 2003) conceptualises this new composition of governance as a 'network society', where nation-states, while still potentially influential, are but "*nodes of a broader network of power*" (Castells, 2003, p. 357 emphasis in original). For many scholars, this new composition exemplifies the neoliberal hegemony of contemporary globalisation (Bourdieu, 1999; Harvey, 2005, 2007), where through diminished national government and deregulated restrictions on transnational private enterprise, governmental powers have been transferred from the nation-state to the global corporate sector and supranational institutions.

4.4.2 Civil Society: The 'Third Sector'

Importantly for research on protest and voices of dissent, collective civil society action may be considered not as something external to this network of governance, but rather as a "complimentary mode of political action" (Goldstone, 2004, p. 337) embedded within the broader structures of governmental power (Bosi, 2008). Indeed, many of the governmental spaces left void by diminishing nation-state powers have been filled by private non-profit initiatives (Castells, 2003; Harvey, 2005; Lipschutz, 2005). However, conceptually positioning civil society as such has resulted in several definitional difficulties for the term. As de Jong et al. (2005) observed, 'civil society' has a long history in social and political thought, marked most recently by two trends: one juxtaposing civil society against the state; and another positioning it as a 'third sector' against both the state and the

market.

In the first sense, private businesses are an important part of civil society, while in the latter, civil society is explicitly positioned against the market, and is primarily non-profit. According to de Jong et al. (2005), generally it is only neoliberals and Marxists who currently use 'civil society' in the first sense, while activists and social movement scholars tend to use the second. This thesis aligns itself with the second interpretation. Following Salamon's (2004) definition, it understands civil society to refer to:

... the broad array of organizations that are essentially private, i.e., outside the institutional structures of government; that are not primarily commercial and do not distribute profits to their directors or "owners"; that are self-governing; and that people are free to join or support voluntarily. (Salamon, 2004, pp. xxi-xxii)

Within this definition, however, scholars have raised several questions. For instance, are apolitical organisations such as sports clubs included (as in Boli & Thomas, 1999, 2001)? Furthermore, is the category necessarily morally idealist, thus excluding exploitative, racist or prejudicial organisations - such as hate groups or terrorist organisations - from inclusion as 'civil society' (Calabrese, 2004a, 2005)? Similar ambiguities are also present in the definition of 'social movement', which for some may be applied only to campaigns progressively challenging dominant cultural values (Stammers & Eschle, 2005). However, while 'social movement' may at times be conflated with 'civil society', there is little consensus on what a social movement is, even within the specialist social movement studies field (Stammers & Eschle, 2005).

A further grey area for both 'social movement' and 'civil society' definitions is whether to include informal grassroots activist groups along with institutionalised organisations - a factor that Stammers and Eschle (2005) argue is absent from several influential conceptualisations, such as Diani's

(2000) 'social movement' and Keck and Sikkink's (1998) 'transnational advocacy networks'. A further ambiguity is whether to include news media organisations within civil society (de Jong, et al., 2005). Are they an important part of the sphere of associational life, as argued in Berger (2002), or are they better positioned as private enterprises, or, in some cases (such as the BBC), as part of the state (de Jong, et al., 2005)? Finally, there is the issue of 'global' or 'transnational' civil society. While an important contemporary factor for some scholars (Kaldor, 2003; Salamon, Sokolowski, & Associates, 2004; Taylor, 2002), others position it as an impossibility as there can be no 'global state' to juxtapose against (see Tarrow, 1998; Taylor, 2002). It is not the aim of this project to settle these ambiguities, but rather to acknowledge them and be specific about this project's understandings.²⁶

4.4.3 Non-Governmental Organisations and Neoliberalism

Regardless of the specific interpretation of 'civil society', it is generally accepted in governance and social movement scholarship that some of the most visible, active and politically influential actors within the 'third sector' are the so-called non-governmental organisations (NGOs) (Beck, 2005, 2006; Cottle, 2009a, 2009b; Salamon, Sokolowski, & Associates, 2004). While various figures exist quantifying the rise of NGOs over recent years (for example in Boli & Thomas, 2001), one of the most authoritative sources for the period in question for this project is the *Yearbook of International Organizations* (Union of International Associations & Saur, 2002). This publication indicated a significant increase in international NGOs, or INGOs,

²⁶ For clarity and future reference, this project considers the advocacy of increased global HIV/AIDS medicines access by both institutional non-governmental organisations and grassroots activist groups as part of a loosely associated transnational civil society campaign (see introductory chapter). The term 'campaign' is here adopted following key institutional advocacy group, Médecins sans Frontières', self-description of their own 'campaign for access to essential medicines' (www.msfaaccess.org), but is here expanded to include other civil society medicines access actors as well. Furthermore, this project does not consider the news media outlets under examination to be part of the civil society sector, but rather, following the discussion of market-driven journalism above, as private businesses. The configuration of South African outlet *SAPA* as a non-profit newswire service sponsored by its subscribers is duly noted. However, as the news copy provided by this service is printed elsewhere throughout South African media outlets, this distinction is not regarded as important to this project's understandings of 'civil society'.

over recent years, from around 6,000 in 1990, to 25,540 in 2002 (Union of International Associations & Saur, 2002).

For noted civil society researcher Salamon (1994; Salamon, et al., 2000; Salamon, Sokolowski, & Associates, 2004) this increase exhibited a “dramatic associational revolution”, where a “massive upsurge of organized private, voluntary activity, of nonprofit or civil society organizations” is now “seeking to alleviate want, deliver health care and education, provide social services, and give voice to a multitude of cultural, artistic, religious, ethnic, social, and environmental concerns” (Salamon, 2004, p. xxi). Indeed, some of the leading INGOs are now globally recognisable brands, such as Amnesty International, Greenpeace, Friends of the Earth, and the access to medicine campaign’s Oxfam and Médecins sans Frontières (Taylor, 2002). Such organisations often prove to be better funded, more efficient, and more trusted than comparable government-sponsored initiatives (Castells, 2003).

The rise and activity of NGOs and other civil society organisations (CSOs), however, cannot be properly conceptualised without reference to their context within transforming structures of governance and the global spread of neoliberal hegemony (Hallin, 2008). Against this backdrop, the governance spaces now filled by the large number of NGOs and CSOs can be considered to have been largely rendered available by the vacation of the nation-state from many public services (Castells, 2003; Hallin, 2008; Harvey, 2005). As Harvey (2007) described neoliberalism:

Neoliberalism is a theory of political economic practices proposing that human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, unencumbered markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices [...] *But beyond these tasks the state should not venture.* (Harvey, 2007, pp. 22-23 emphasis added)

In this capacity, the corporatisation, commodification and privatisation of previously government-controlled assets and services, emblematic of the neoliberal project (Harvey, 2005, 2007), can be recognised as a key factor in providing the room and requirement for the rise in CSOs. As Appadurai (2006) noted, these groups operate in the ‘interstitial’ spaces of global governance: that is, “the spaces between traditional spaces and institutions [...] or in the spaces that are at the edge of major official organisations such as the United Nations [...]; or in zones where municipal and state governance meet in a no man’s land” (p. xii). The various roles of ‘access to medicines’ groups outlined in Chapter 3 illustrate such moves: from protest, to direct service provision of healthcare, importing medicines, advising governments, and providing affidavits in court. Indeed, with recent transformations resulting in NGOs now delivering more global humanitarian aid than the UN system (Taylor, 2002), some scholars have described the rise in civil society as a ‘privatisation of humanitarianism’ (Anheier, Glasius, & Kaldor, 2001; Castells, 2003; Falk, 1995; Guehenno, 1993).

It is within these ‘interstitial’ roles that some of the aforementioned tensions in categorising civil society as an independent ‘third sector’ come to the fore. On the one hand, in order to provide their services, many CSOs are sub-contracted by nation-state governments (Salamon, Sokolowski, & Associates, 2004). Indeed, as Salamon et al. (2004) concluded based upon a detailed study of the civil society sector in 36 countries across the 1990s, public sector sources constituted the second biggest source of civil society funding at around 34%. On the other hand, though designated ostensibly as a ‘non-profit’ sector, CSOs must be acknowledged as an economic force unto themselves, with their major funding coming not from philanthropy or donation, but from fees and charges related to services rendered (53% of all income) (Salamon, Sokolowski, & Associates, 2004). Furthermore, Salamon et al. (2004) noted the aggregate expenditure of the civil society sector in their 36-country study was US\$1.3 trillion. This figure not only represented 5.4% of the combined GDP of the countries under analysis, it also meant that if the observed transnational civil society sector were a country, it would

have been the seventh largest economy in the world. In light of such data, the conventional label 'non-profit', while technically accurate, obfuscates the significant economic contribution of the 'non-profit' sector.

It is in this vein that Lipschutz (2005) suggested that contemporary civil society is best understood using Foucault's (1991) concepts of governmentality: that is, that "civil society today is almost fully internalised within the system of governmentality that constitutes and subjectifies it, the very system that many GCS [global civil society] groups and organisations presume to contest, regulate and modify" (Lipschutz, 2005, p. 28). Indeed, in this view, the multiple contributions of CSOs to global governance do little more than stabilise and normalise the threats and disturbances facing humanity, while failing to "*alter the structural conditions responsible for those threats and disturbances*" (Lipschutz, 2005, p. 28, emphasis in original).

Hallin (2008) made a similar point, emphasising that contemporary civil society should not be seen uncritically as a progressive challenge to existing structures, but rather as exemplary of an increasingly individualised culture. For Hallin (2008), where past forms of citizen mobilisation were expressed within the totalising identities of unions and political parties, contemporary social campaigns reflect a fragmented, individualised, pick-and-choose style of politics. Within this framework, he argued, social campaigns have been pervaded by the rhetoric of consumerism, evidence in itself that neoliberalism "has been very effective in creating political ideologies that can co-opt and incorporate rhetorics of empowerment and liberation and popular critiques of authority into legitimations of the market" (Hallin, 2008, p. 52). In this regard, the 'access to medicines' campaign may be conceived as a consumerist campaign, seeking to expand the market for a healthcare commodity to the previously marginalised global poor.

To conclude this section, the last few decades have witnessed significant changes in global governance, which have ushered in an era of decreased nation-state power and increased presence of civil society organisations

providing important advocacy and service for social needs. In addition, the new composition of governance, for some, has meant that the civil society sector's rise in capacity only disguises the fact that it largely reinforces a neoliberal project ultimately favouring the market (Lipschutz, 2005). However, it is important here to note two things. Firstly, the above argument from Lipschutz (2005) also recognised that not all CSOs reinforce the status quo, and that some groups overtly oppose the conditions and structures of neoliberalism. Secondly, the influence of neoliberalism in governance across the globe is recognised by many as a key factor in the increased wealth and power of a global business elite, to the detriment of the world's poor (Castells, 2000, 2003; Harvey, 2005, 2007). As illustrated in Chapter 3, increased corporate power is evidenced many times over in the recent governance of global intellectual property rights and essential medicines access. Such histories must be considered within their global socio-economic context, in which the wealth gap between rich and poor has dramatically widened in recent decades²⁷ (UNDP, 1999, 2005). Each of these factors may be considered important aspects of the social and political context surrounding contemporary articulations of dissent, of which the 'access to medicines' campaign is an exemplar.

4.4.4 Global Governance, Civil Society and News Media

In light of the above arguments on global governance, this chapter now returns to the field of news media and voices of dissent to examine how such notions may be articulated in contemporary research. As apparent in the

²⁷ According to the UN's annual development report in 2005, the world's richest 500 individuals had a combined income greater than the poorest 416 million (UNDP, 2005). This figure is based on the conservative estimate in *Forbes* magazine's top 500 global 'rich list' that assumes such individuals have an income of no more than 5% of their assets (UNDP, 2005). In addition, the wealth of the global elite grew rapidly in the 1990s, with the net worth of the world's richest 200 people doubling between 1994 and 1998 to US\$1 trillion (UNDP, 1999). The 1999 UN report further indicated that 1990s corporate mergers concentrated industrial power into mega-corporations, thereby eroding competition (UNDP, 1999). The UN further pointed out that while in 1990 the average American was 38 times richer than the average Tanzanian, by 2005 they were 61 times richer (UNDP, 2005). Although corporations have been important political entities for a long time, "they are now clearly the dominant political, social, economic and environmental forces on the planet" (DeLuca & Peeples, 2002, p. 126, see also Friedman, 1999; Greider, 1997; M. Hardt & Negri, 2000).

above review, research into media and social campaigns has tended to focus exclusively on acts of protest and demonstration. However, as indicated in the global governance literature discussion, and in the historical background in Chapter 3, the contribution of contemporary social campaigns is much wider than protest alone. Such acts may constitute a key aspect of a campaign, such as ACT UP's protesting of Al Gore, or TAC's demonstrations in South Africa. However, these may be considered the tip of the iceberg of a much wider network of 'interstitial' (Appadurai, 2006) civil society activity.

Furthermore, researchers in global governance have noted that civil society has "long been the lost continent on the social landscape of our world", largely ignored in academic and journalistic discourses focused predominantly on a 'two sector model' (Salamon, Sokolowski, & List, 2004, p. 4). Scholars have also noted a tendency in social movement studies to adopt a nation-centric approach, even in analysis of transnational civil society mobilisation (Schurman, 2004; Taylor, 2002; Van Dyke, Soule, & Taylor, 2004; Walker, Martin, & McCarthy, 2008). This tendency is mirrored in the newsroom, where traditional news production has been organised around a national/international dichotomy that does not adequately cater to the global or transnational (Berglez, 2008). Two questions therefore arise from this literature review. First, how does recent research on social campaigns and media capture the potentially much expanded role of the CSOs involved? Second, given the embedding of much civil society activity, including protest, within transnational networks, how have traditionally nation-based mainstream news media captured such de-territorialised phenomena?

To begin, some recent studies on social campaigns and news media have indeed looked beyond protest to examine the wider engagement CSOs may achieve with the mainstream news media. Aday and Livingston (2009), for example, used Keck and Sikkink's (1998) notion of 'transnational advocacy networks' to examine how CSOs subverted state dominance of the news media agenda by engaging the media directly through the provision of independent research on Iranian nuclear capabilities. Similarly, Gaber and

Willson's (2005) study of the campaign against conflict diamonds, and de Jong's (2005) analysis of Greenpeace's campaign against Shell's dumping of offshore oil platforms, emphasised how CSO-generated research was essential in getting their message communicated in the news media.

For an example from the 'access to medicines' campaign, Mayne's (2002) assessment of Oxfam's efforts revealed how organising demonstrations constituted one strategy amongst a wider mass communication repertoire including press conferences, letter-writing campaigns, research publications, and celebrity travelogues. In a similar vein, several studies of the 'Make Poverty History' campaign indicated the deployment of protest demonstrations within a diverse ensemble of approaches to news media engagement, including, most prominently, the 'Live 8' pop concert (Cottle & Nolan, 2007; Davis, 2007; Nash, 2008).

Such diversity in approaches of CSO engagement may be considered evidence of what several scholars have noted as the increasing 'professionalisation' of CSO communications (Cottle & Nolan, 2007; Cutlip, Center, & Broom, 2004; Davis, 2007; Deacon, 2003). As Cottle and Nolan (2007) pointed out, in the context of aid organisations:

In the increasingly crowded and competitive field of humanitarian agencies, non-governmental organizations (NGOs) now seek to "brand" themselves in the media; they purposefully use celebrities and produce regionalized and personalized "media packages" to court media attention; and they reflexively expend time and resources warding off increased risks of mediated scandals. (Cottle & Nolan, 2007, p. 862)

Following Davis (2007), while in the past CSOs entered the media gaze with organic profiles largely determined by the representations endowed upon them by others, in the current media climate, professionalised campaigns pro-actively deploy multiple strategic options for media engagement. These may include celebrity endorsement, the exploitation of fashionable story

lines, and the packaging of complex issues into a simplified human-interest form (Cottle, 2003; Davis, 2007). However, as Davis (2007) further acknowledged, the most effective activist media relations may not be to enter the activists into the media frame at all, but rather to engage in proxy media access: supplying research and story ideas to journalists; seeding negative stories about opponents; or going through third parties, such as politicians, who already inhabit a media profile.

To return to the conflict diamonds campaign (Gaber & Willson, 2005), it is worth noting that despite significant development of the CSO-generated research, the campaign itself recognised the necessity of a more “populist” strategy to publicise the findings (p. 104). It was in this capacity that the Marilyn Monroe impersonator was deployed in protests outside London jewelers. In this way, while recent studies show how contemporary CSOs engage in various activities and deploy diverse approaches to public communication, the traditional act of protest still occupies a privileged strategic position.

A further point to address here is the tension between representing transnational campaigns in nation-centric mainstream news media (Berglez, 2008; Nash, 2008). As several scholars have noted, ‘Make Poverty History’ is a good example of a contemporary social campaign involving a variety of loosely associated transnationally located CSOs (Cottle & Nolan, 2007; Davis, 2007; Nash, 2008). According to Davis (2007), this was an asset of the campaign, but also an obstacle as different strategic aspirations conflicted. For instance, the campaign’s use of professional or grassroots communication, their deployment of news value-driven ‘sound-bite’ messages or complex policy ones, and their situated position as internal or external to institutional government all caused the campaign to lose support and control of its central messages (Davis, 2007).

Nash (2008), however, made another point on the high profile campaign: that it faced an inherent difficulty in attempting to communicate an issue of

complex global interconnection, that is, global poverty, through mainstream media channels. As Nash (2008) pointed out, following Anderson (1983) and Billig (1995), the mainstream news media constructs and consolidates a nation-based conception of politics. “From banal nationalism to the outright jingoism of the tabloid newspapers, the media themselves are closely - perhaps inextricably? - tied to the imagining of the national political community” (Nash, 2008, p. 172). This factor prevented clear communication of the campaign’s core messages. However, as Nash (2008) argued, it also made media relations an even more prescient goal of the campaign: which sought not only to gain publicity; but also to challenge the very nation-centrism that obfuscated public appreciation of the globally connected nature of the poverty crisis.

4.5 Conclusion

To recap the content of this chapter, while traditional analyses of news media representations of protest suggest a strong tendency towards marginalisation and de-legitimisation, recent research indicates this framework may indeed be subverted. In addition, recent research also suggests that despite the continuing presence of a nation-centric outlook in social movement studies, analyses of contemporary social campaigns may also adopt an extended view of the civil society sector. This view, consistent with wider theories of global governance, sees CSOs as dynamic players deeply integrated within the networked sphere of governance - assisting, competing, and interacting with other sectors of state government, private business, and supranational institutions.

Furthermore, such research also suggests that despite a broad purview of activity, the act of protest remains a key strategy for social campaigns. Importantly for the increasingly professionalised and ‘reflexively conditioned’ communication strategists of contemporary social campaigns, such protest acts are not subject to any one totalising form of media

representation, but may indeed swing, sometimes almost simultaneously, between inclinations of stereotypical marginalisation and inclinations of progressive sympathy. The important point, however, is that while social campaigns may take a measure of control over their 'image events', these events are also subject to the conditioning forces of 'mediatisation', presenting the constant risk of co-option and subversion of the campaign message. These factors constitute the tendencies and limitations that must be borne in mind in any analysis of media coverage of civil society politics. They provide the context for the analysis of the 'access to medicines' campaign in the mainstream news media, to which the following three chapters of this thesis shall now turn.

PART II

Empirical Analysis

5

Al Gore vs. ACT UP 1999: Reactivating Hegemonic Discourse in the News Media

Abstract

In 1999, protests against US Vice-President Al Gore introduced intellectual property rights, generic medicines and trade negotiations to the news media discourse of HIV/AIDS drugs. In the mid-1990s, intellectual property became an issue of increasing concern for stakeholders of HIV/AIDS medicines. Pharmaceutical companies sought higher protection for patents through the World Trade Organisation. Civil society groups mobilised to promote access to generic copies of patented medicines. The World Health Assembly passed resolutions advising how nation-states could access generics. In articles covering HIV/AIDS drugs in US, UK and South African newspapers, however, intellectual property was barely mentioned. This changed in June 1999 when activists from the organisation ACT UP targeted Al Gore for his role in negotiating South African medicines laws. Following this action, intellectual property, generics and trade issues became key tenets of the AIDS drugs coverage. Using Laclau and Mouffe's concept of reactivation, this chapter argues that such a transition marked the return of elements excluded by the dominant discourse. With the subsequent major role played by generics in

HIV/AIDS medicines access, this reactivation constituted an important moment in promoting generics as a viable means to address the global HIV/AIDS crisis.

5.1 Introduction

We went armed with information about the vice president's role in denying AIDS drugs to poor South Africans and signs reading "Gore's Greed Kills - AIDS Drugs for Africa." Leaving ACT UP/NY's media machine behind us to spin the story, a handful of activists hit the road, driving all night to change history.

ACT UP co-founder and protest organiser, Eric Sawyer (2002, p. 99)

In early 1999, US AIDS activists discovered the "smoking gun memo" (Sawyer, 2002, p. 98). This report, from the United States Department of State, outlined recent US government efforts to negotiate the "repeal, termination, or withdrawal" of South African laws allowing access to generic copies of HIV/AIDS medicines (United States Department of State, 1999, n.p.). Al Gore, as co-chair of the US/South African bi-national commission, was identified as a key player. With this information as their justification, members of the AIDS Coalition to Unleash Power (ACT UP) followed Gore throughout his presidential campaign, diverting Gore's media attention to their own cause (Sawyer, 2002).

This chapter examines the first three years of coverage from the "AIDS drugs" sample of articles. It addresses the thesis' research questions regarding transformation of the discourse on HIV/AIDS medicines and IPRs, and observes that prior to June 1999, there was virtually no such discourse, with barely any reference to IPRs in the news sample. Of 100 "AIDS drugs" articles from 1997-1998 in *The New York Times*, *The Washington Post*, *The*

Times and *The Guardian* from the Factiva database, and a further 68 articles from *The Star* and *Sowetan* from SA Media, only seven refer to intellectual property. Three of these appear in US outlets, discussing the influence of patents on pharmaceutical companies' financial fortunes. Four appear in South African outlets, in all cases referring to the controversial drug patented as Virodene P058. None of these references discuss the influence of IPRs on medicines access or prices. From June to December 1999, however, this trend dramatically changes with intellectual property referred to in around half of all "AIDS drugs" articles in each of the cited outlets published in this period. References to generic medicines and trade issues also begin to increase at this time.²⁸

So what happened in June 1999? A closer reading of the articles' content shows that the protests against Al Gore and the US government provided the main "AIDS drugs" story of this period. In reporting on this event, the protests acted as a vehicle to introduce IPRs, generics, and international trade disputes into the "AIDS drugs" discussion. In addition, the content of the State Department report on US pressures against South Africa, including the threat of trade sanctions and aid removal, were discussed. Perhaps most significantly for later chapters of this thesis, the lawsuit between multinational pharmaceutical companies and the South African government was also here mentioned for the first time, in US, UK and South African newspapers, despite being lodged in early 1998.

This chapter argues that the sudden appearance of these factors in the "AIDS drugs" media sample constitutes what Laclau and Mouffe (Laclau, 1990; Laclau & Mouffe, 1985) referred to as 'reactivation' of hegemonic discourse.

²⁸ This thesis' newspaper corpus consists of 1,113 "AIDS drugs" articles collected through the Dow Jones Factiva database from the outlets *The New York Times*, *The Washington Post* (US), *The Guardian*, *The Times* (UK), *South African Press Association (SAPA)* and *Business Day* (South Africa) across the years 1997-2003. However, as the database's archives for *SAPA* and *Business Day* only begin in mid-1999 and mid-2000 respectively, for the purposes of this chapter coverage from the additional South African outlets *The Star* and *Sowetan* have been included. These additional archives were available only in hard copy and were sourced through different search processes from a third party South African archive provider (SA Media). For this reason, they have not been included for statistical corpus analysis, but, where necessary for statistical purposes, have been coded manually, the results then scrutinised between two separate coders.

In Laclau and Mouffe's discourse theory, discourse formation necessarily involves the excluding, or non-capturing, of certain elements. These elements do not disappear but persist at the margins: both stabilising the discourse by representing its limits; and also threatening its stability with the constant possibility of return. Given this, no discourse can fully capture its excluded elements, nor claim to attain a pure objectivity, as certain factors will always exceed the limits of representation. Laclau and Mouffe (1985; Laclau, 1990) used the term 'sedimented' to refer to discourses that conceal this inevitable surplus and thus profess objectivity. 'Reactivation', on the other hand, refers to when traces of the excluded elements are made visible again, thereby revealing the contingency and contestable nature of the discourse.²⁹

In the case of HIV/AIDS medicines and intellectual property, the initial dominant discourse was the one promoted by major pharmaceutical companies during the Uruguay Round, and later articulated in the TRIPS Agreement (Drahos & Braithwaite, 2002; Halbert, 2005; Sell, 2003). In this discourse, generic medicines were the excluded element, constructed as criminal and 'pirate', and antagonistically stripped of any legitimacy in the medicines discourse (Weissman, 1996) (see further discussion of this discourse below). The data considered in this chapter suggest this exclusion was also apparent in news media representation of HIV/AIDS medicines. However, with the insertion of intellectual property and generics concerns into the "AIDS drugs" sample through the anti-Gore protests, the hegemonic discourse excluding generics was *reactivated*.

The ACT UP protests can be considered a successful activist project in several ways. Most obviously, shortly after protests began ACT UP members were invited to the White House to discuss their concerns, and shortly after this, President Clinton announced a reversal in US policy towards South Africa (Gellman, 21 May 2000; Sawyer, 2002). In catalysing reactivation of

²⁹ Laclau and Mouffe (1985) adopt the categories of 'sedimentation' and 'reactivation' from Husserl (1970). 'Sedimentation' has been adopted in similar ways elsewhere (for instance in Jameson, 1981).

excluded discourse, however, the protests can be considered successful in another way. As subsequent events unfolded, through the lawsuit in South Africa in 2001 (see Chapter 6), the Doha Declaration (see Chapter 7) and beyond, the role of generics became increasingly important for global provision of HIV/AIDS medicines. This situation, however, was dependent upon the official legitimacy of generics as a viable option. With the reactivation in news media coverage, generics and intellectual property alternatives could enter the public sphere in an *agonistic*, rather than antagonistic, manner (Mouffe, 2005) as a legitimate competitor to brand-name medicines.³⁰

5.2 Reactivation

To begin, it is worth briefly reiterating the central theoretical concept of this chapter: Laclau and Mouffe's understanding of 'reactivation'. In Laclau and Mouffe's (1985) poststructuralist political theory of discourse, while there is a material reality existing beyond human comprehension, it is only through systems of comprehension that we may engage with it. As Laclau and Mouffe (1990) put it: "I will never encounter the object in its naked existence — such a notion is a mere abstraction; rather that existence will always be given as articulated within discursive totalities" (p. 104).

In this understanding, the frameworks of comprehension can be conceptualised as discourses - "historically specific systems of meaning which form the identities of subjects and objects" (Howarth, 2000, p. 9). However, following insights "from Heidegger to Wittgenstein" (Laclau & Mouffe, 1985, p. 111), discourse theory contends that all discourses are inherently incomplete and precarious systems of meaning. The meanings that are constitutive of our world, therefore, are never absolute, and are constantly open to the possibility of change. There is thus always something remaining 'outside' of the given meaning system - what Derrida (1978)

³⁰ See page 161 for Mouffe's (2005) distinction between agonism and antagonism.

referred to as the “absence of the transcendental signified” (p. 280), and what Lacan (1978, 1991, 2006) called the disruptive presence of the ‘Real’. It is through following this logic that Laclau and Mouffe conclude there can be no objectivity, in the sense of a captured discursive totality fully articulating an objectively given material world.

This does not mean, however, that Laclau and Mouffe have no use for the category of ‘objectivity’. Rather, ‘objectivities’ are regarded as temporarily fixed structures around which further discourses may become articulated. For some commentators, a weakness of discourse theory is that it over-emphasises the fluidity of meaning systems and does not adequately cater to the different degrees of discursive closure, nor how such closure may constrain subsequent articulations (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). Addressing this critique, Laclau (1990) noted that the partial fixation of discourses is not the same as no fixation at all. Rather, Laclau (1990) argued, far from a pure fluidity - where “*everything* becomes possible or that *all* symbolic frameworks disappear” (p. 43 emphasis in original) - discourses, and their dislocations, operate within a “*determinate* situation: that is, one in which there is always a relative structuration” (p. 43, emphasis in original).

It is in this sense that certain discursive formations become stable enough to act as structuring forces, allowing people to act “*as if* a Saussurean structure existed” (Phillips & Jørgensen, 2002, p. 25 emphasis in original). In this way, discourse theory highlights the continual dynamic relation between stability and change. Although all things are ‘always-already’ dislocated, they are also ‘always-already’ embedded within relatively stable systems of meaning. ‘Objectivities’, therefore, refer to discourses whose contingent changeable nature is not absent, but has merely been concealed - though not necessarily in any conscious way.

To help explain this point, Laclau and Mouffe drew upon Foucault’s (2006) notion of the ‘forgetting of origins’ and the phenomenologist Husserl’s

(1970) categories of 'sedimentation' and 'reactivation'.³¹ For Laclau (1990), sedimented discourses are those that conceal their relative and contingent construction:

Insofar as an act of institution has been successful, a 'forgetting of the origins' tends to occur; the system of possible alternatives tends to vanish and the traces of the original contingency to fade. In this way, the instituted tends to assume the form of a mere objective presence. This is the moment of sedimentation. It is important to realize that this fading entails a concealment. If objectivity is based on exclusion, the traces of that exclusion will always be somehow present. What happens is that the sedimentation can be so complete, the influence of one of the dichotomous relationships' poles so strong, that the contingent nature of that influence, its *original* dimension of power, do not [sic] prove immediately visible. Objectivity is thus constituted merely as a presence. (Laclau, 1990, p. 34 emphasis in original)

'Reactivation', on the other hand, is the rediscovery of the contingent nature of the 'objective' discourse through the emergence of new antagonisms. It is the remembrance that other historical possibilities were viable, but were excluded in the formation of the discourse (Laclau, 1990). Therefore, while 'objectivity' appears to pertain to that which appears to be natural, self-given, and not acquiring its meaning through any differential relation with anything else, reactivation reminds us that the structuring effects of differential relations have merely been concealed. For discourse theory, reactivation is a key moment in social change, as it reveals the fundamentally contingent and contestable nature of social orders. As Laclau (1990) noted: "if social relations are contingent, it means they can be radically transformed through struggle, instead of that transformation being conceived as a self-transformation of an objective nature" (pp. 35-36).

³¹ Laclau and Mouffe (1985) also drew on the Derridean notion of 'trace' (Spivak, 1976), though without explicitly citing it.

5.3 The Dominant Discourse: Big Pharma and TRIPS-Plus

Immediately prior to the 1999 anti-Gore protests, the hegemonic discourse on medicines and IPRs was the one advocated by major pharmaceutical companies and the US Trade Representative (USTR) (Halbert, 2005). Several studies have chronicled the process by which key corporate actors in the 1980s and 1990s successfully established their interpretation of IPR protection as the guiding framework for the nascent global trade agenda at the WTO (Drahos & Braithwaite, 2002; Matthews, 2002a; Ryan, 1998; Sell, 2003; Sell & Prakash, 2004; Weissman, 1996). According to this history, US pharmaceutical company Pfizer led the way (Santoro & Paine, 2003), universalising its particular concern for strong IPR protection: first to the business community, and later to the multilateral trade forum of the GATT (later WTO). As is also well documented, the US government, in particular through the office of the USTR, actively pressured foreign countries to accede to the TRIPS agenda (Matthews, 2002a; Richards, 2004; Ryan, 1998; Sell, 2003).

Pressure from the US, however, also continued after the 1995 establishment of the WTO, this time persuading countries to go beyond TRIPS requirements (Drahos & Braithwaite, 2002). These so-called 'TRIPS-Plus' measures, articulated through regional and bilateral trade agreements (Abbott, 2004; Fink, 2008) and unilateral trade sanctions (Richards, 2004; Shadlen, 2004), were in many cases instigated by the USTR at the bequest of the major pharmaceutical industry (Drahos & Braithwaite, 2002; Sell, 2001; Vicente, 1998). In light of these factors, the hegemonic project under consideration did not only seek consent for the TRIPS Agreement, but, through the deployment of "extra-institutional pressures" (Shadlen, 2004, p. 80), sought consent for IPR protection beyond the legal requirements. It is in this sense that the dominant discourse on medicines and IPRs is referred to here interchangeably as 'Big Pharma' or 'TRIPS-Plus' discourse.

In broad terms, the major features of this discourse are: medicine patent

protection leads to new medicine innovation; patent-related profits are essential to pay for expensive research and development; patent protection is a right, not a privilege; and generics are an illegitimate and criminal threat to new medicines' existence. In the first case, press releases from lobby group the Pharmaceutical Research and Manufacturers of America (PhRMA) make their stance clear:

Strong intellectual property protection is critical for the discovery and development of new medicines. (Holmer, in PhRMA, 22 September 1999, n.p.)

Without this foundation provided on a global basis, the industry's ability to generate the next generation of medicines is compromised. (Holmer, in PhRMA, 15 January 1999, n.p.)

For Weissman (1996), following the work of Boyle (1992), such a conception of IPRs articulates an ideal of the 'romantic author': that is, where invention is the result of an individual creative spirit whose work breaks with the traditions of the past (see also Riley, 2000). As William Wordsworth (1966) put it: "Of genius the only proof is, the act of doing well what is worthy to be done, and what was never done before" (p. 184). Whereas previously discourses of invention had emphasised collective accumulative aspects, the romantic ideal isolated individual genius from surrounding context, thus justifying the necessity of protection and reward (Boyle, 1992; Riley, 2000). Despite the postmodern emphasis on collective aspects of invention - that is, the acknowledgment that ideas do not emerge from a vacuum but accumulate (Barthes, 1967, 1987; Coombe, 1998; Hesmondhalgh, 2008) - the presupposition of romantic authorship persists in Big Pharma discourse. As *The New York Times* journalist, Donald G. McNeil Jr., noted when confronted with the discourse, as articulated through the commercial attaché at the US embassy in South Africa:

It was the Thomas Edison view, the one I imbibed as a boy reading biographies of great Americans: that the world has a few brilliant but

struggling inventors, that they are beset by legions of copycats and pirates, and that patents are their only protection. Without patents and their royalties, genius would starve and scientific progress would grind to a halt. (McNeil, 2010 unpublished manuscript - reproduced with author's permission)

The second aspect of Big Pharma/TRIPS-Plus discourse concerns the research and development (R&D) of medicines, in particular promoting the idea that R&D is very expensive and undertaken only by private industry. As a PhRMA press release notes: "Strong intellectual property protection provides the essential incentive for pharmaceutical companies to invest the 12-15 years and \$500 million it takes on average to discover and develop the new drugs that enable patients to lead longer, happier, healthier, and more productive lives" (PhRMA, 30 April 1999, n.p.). While the figure of US\$500 million was criticised as industry-biased and methodologically suspect³², it nevertheless became "ubiquitous and widely cited" (Public Citizen, 2001, p. 2), appearing as fact in US Congressional Budget Office reports (United States Congress, 2006). Importantly, high R&D costs justified both strong patent protection and high medicine prices.

A further aspect of R&D within Big Pharma discourse is that industry bears this cost alone (Halbert, 2005). As Harvey Bale (1999), former head of the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), put it: "little pharmaceutical or vaccine research and practically no drug and vaccine development goes on outside of the laboratories of international companies" (p. 85). As with the US\$500 million figure, this point was widely contested with several studies noting the significant contribution of taxpayer funds towards medicine R&D (Angell, 2004; United States General Accounting Office, 2003; Light & Warburton, 2005b; National Science Foundation, 2003; Public Citizen, 2001; UNDP, 1999). The Big

³² See, in particular, the heated exchange between the authors who originally produced the US\$500 million figure (DiMasi, Hansen, Grabowski, & Lasagna, 1991; Grabowski, Vernon, & DiMasi, 2002) and Light and Warburton in the *Journal of Health Economics* (DiMasi, et al., 2005a; DiMasi, Hansen, & Grabowski, 2005b; Light & Warburton, 2005a, 2005b, 2008), and again in the *Journal of Health Politics, Policy and Law* (DiMasi, Hansen, & Grabowski, 2008; Light, 2007b, 2008).

Pharma discourse, however, refuted such claims (DiMasi, Hansen, & Grabowski, 2005a), emphasising the R&D function with a 1994 rename of the US industry association from the 'Pharmaceutical Manufacturers Association'³³ to the 'Pharmaceutical *Research* and Manufacturers of America' (Weissman, 1996).

Finally, Big Pharma/TRIPS-Plus discourse revolves around a conception of patent protection as a 'right' and not a 'privilege'. This is apparent in the extended title of the TRIPS Agreement itself, that is, trade-related aspects of intellectual property *rights*. However, as several commentators have pointed out (Draho & Braithwaite, 2002; Sell, 2003; Weissman, 1996), this conception conceals the historic understanding of patent protection as "grants of privilege" (Sell, 2003, p. 5; Sell & May, 2001). As the history in Chapter 3 outlines, patent protection traditionally functioned as a grant of privilege conferred upon preferred subjects of the sovereign (Draho & Braithwaite, 2002). In this sense, IPRs were protectionist and a luxury. A 'right', on the other hand, suggests something the sovereign is duty-bound to uphold, thus making a "great deal of difference in terms of what is and is not considered legitimate" (Sell, 2003, pp. 5-6).

In addition, the integration of IPRs within a multilateral forum dedicated to trade liberalisation obfuscates the historic connotations between patent protection and *protectionism*. As Machlup and Penrose (1950) outlined, pro-free-trade advocates attacked the nineteenth century British patent system for its potential to artificially support monopolies. With the contemporary articulation of IPRs in the WTO's TRIPS Agreement, however, this historic connection is concealed. In this sense, the linking of IPR protection within the free-trade platform has been called an "uneasy marriage" (Panagariya, 1999, p. 291), and cited as "one of the great ironies of the recent drive to global free trade" (Weissman, 1996, p. 1069).

³³ Not to be confused with the Pharmaceutical Manufacturers Association of South Africa, later involved in a high profile lawsuit over generic medicines (see Chapter 6) - though the largest multinational pharmaceutical companies were represented in both associations.

These factors constitute the main pillars of Big Pharma discourse, emphasising the industry's social importance as provider of medicines, and the crucial role of patent protection in allowing this social function to exist. In a discourse analysis guided by Laclau and Mouffe's (1985) "ontology of lack" (Marchart, 2005, p. 17), however, it is necessary to move beyond the discourse's positive manifestations and to interrogate those negative aspects that make the discourse 'impossible'. That is, the analysis must enquire as to how the dominant Big Pharma discourse was determined by those elements that it excluded.

5.3.1 Piracy and Theft: The Generic Medicines Antagonist

As outlined above, elements excluded in hegemonic formation both stabilise and threaten a discourse's identity (Laclau & Mouffe, 1985). In the first case, the generic medicines industry's role as an external force stabilising Big Pharma's identity has been well documented (see Drahos & Braithwaite, 2002; Halbert, 2005; Weissman, 1996). Drahos and Braithwaite (2002), for example, noted how major pharmaceutical companies actively constructed generics as a criminal threat in order to gain support for the patent protection agenda during the Uruguay Round of trade negotiations. They pointed to a 1982 *The New York Times* editorial, written by the then President of Pfizer International, as a key moment in this strategy, with its identification of foreign IPR laws allowing generic copying as theft, and elevation of generics as a challenge to US economic dominance in general (see Drahos & Braithwaite, 2002; MacTaggart, 1982).

This 'othering' of generics was popularised by deploying the metaphor of 'piracy' to describe the practice (Drahos & Braithwaite, 2002; Weissman, 1996). As Drahos and Braithwaite (2002) and Weissman (1996) argued, this rhetorical device was particularly effective as it captured the popular imagination with images of outlawry and savagery, while avoiding the difficult issues of national sovereignty and economic development. The

construction is clearly visible in statements from Big Pharma and USTR representatives: for example, Pfizer's Lou Clemente in 1988; and former USTR Clayton Yeutter's testimony before US Congress in 1996, reflecting on the Uruguay Round negotiations:

If we went back to the days when countries engaged in piracy, wouldn't it have been ludicrous to say, 'Well, Brazil owes the United States a great deal of money, so we cannot stop their pirates from boarding our ships because, after all, they obtain a great deal of revenue from this, and gold and silver, et cetera.' Obviously, that's absurd. It's really not too different when we're talking about intellectual property; that kind of stealing is just as bad. (Clemente, 1988, pp. 132-133)

And until the final stages of the negotiations, many of our trading partners wanted weak or non-existent global intellectual property standards, generous exemptions for developing countries, or the indefinite postponement of multilateral rules so that their local pirates could continue copying American pharmaceuticals, films, sound recordings, software, and books. Fortunately, the outcome was a disappointment for the "purveyors of piracy". (Yeutter, in Halbert, 2005, p. 92)

Such a construction of the 'constitutive outside' of IPR violation conforms to the friend/enemy dynamic of Laclau and Mouffe's (1985) concept of antagonism. In her later writings, Mouffe (2005) contrasted the concept of *antagonism* with that of *agonism*, where while the former establishes the 'enemy' as an illegitimate entity that must be excluded, the latter regards them as an adversary, or more specifically as a *competitor* that has a legitimate right to *be* adversarial. In Big Pharma discourse, Weissman (1996) and Halbert (2005) argued that the 'piracy' metaphor transformed IPR debate into an "absolutist moral drama" (Weissman, 1996, p. 1088), effectively excluding generics from legitimate consideration. In this discourse, piracy was theft, and "[t]heft is simply wrong [...] There is no room for policy discussion about the merits of piracy, nor any space for a

compromise in the direction of pirates” (Weissman, 1996, pp. 1088-1089). The absolutist framing (Weissman, 1996), therefore “moralized” the discourse (Halbert, 2005, p. 87), endowing it with an antagonistic exclusionary character. As Mouffe (2005) warned on ‘moralisation’ in general:

When politics is played out in the register of morality, antagonisms cannot take an agonistic form. Indeed, when opponents are defined not in political but in moral terms, they cannot be envisaged as an ‘adversary’ but only as an ‘enemy’. With the ‘evil them’ no agonistic debate is possible, they must be eradicated. Moreover as they are often considered as the expression of some kind of ‘moral disease’, one should not even try to provide an explanation for their emergence and success. This is why, as we have seen in the case of right-wing populism, moral condemnation replaces a proper political analysis and the answer is limited to the building of a ‘cordon sanitaire’ to quarantine the affected sectors. (Mouffe, 2005, p. 76)

In Big Pharma discourse, the ‘cordon sanitaire’ blocked generics from inclusion as a legitimate economic practice. As Tom Bombelles of PhRMA stated: “We need to look for economic answers to economic questions... and not say the answer to this economic question is we’ll just steal” (Bombelles, in Bond, 1999, p. 768).

5.3.2 Compulsory Licensing: The Return of the Excluded

Drawing upon Freudian psychoanalysis, Laclau and Mouffe’s (1985) understanding of ‘constitutive outside’ - similarly to Derrida’s (1981) and Butler’s (1993) - noted that while the excluded elements stabilise the discourse, they also *challenge* it through the constant threat of return. The content of the TRIPS Agreement itself provides a good example of this. Here, despite efforts from business interests to exclude generics from the purview of the agreement (Drahos & Braithwaite, 2002), provisions for their

inclusion were retained (Correa, 2007; Ryan, 1998). In particular, provisions for compulsory licensing, that is, a government's ability to by-pass patent protection and import or produce generic copies of medicines, were allowed under Article 31 of the agreement³⁴ ('t Hoen, 2009; Correa, 2007; Lang, 2004; Perez Pugatch, 2004).

The major pharmaceutical industry objected to compulsory licensing, arguing that it would undermine incentives for undertaking R&D (see, for example, Rozek & Rainey, 2001). As Harvey Bale, director of the International Federation of Pharmaceutical Manufacturers Associations (IFPMA), argued: "if anyone wants to kill incentives for further research into a targeted disease area [...] then one of the quickest ways to do this is to institute a compulsory licensing regime for drugs that treat that disease" (in 't Hoen, 1999, p. 89). Indeed, it was compulsory licensing, along with concessions giving majority world countries an extended timeframe to become TRIPS-compliant, that formed the basis of Big Pharma objection to TRIPS, despite their influential role in its formation (Drahos & Braithwaite, 2002).

Compulsory licensing thus constituted one of the elements that Big Pharma and the USTR continued to challenge through TRIPS-Plus bilateral and regional trade agreements (Abbott, 2004; Fink, 2008), and unilateral punitive measures (Richards, 2004; Shadlen, 2004). Furthermore, it constituted not only discordance between the TRIPS Agreement and Big Pharma discourse, but also an internal contradiction in Big Pharma discourse itself. That is, if generics were allowed in certain circumstances under WTO regulations, then how could they be framed as illegal, let alone immoral? The excluded elements thus persisted at the margins, posing the constant threat of return. Furthermore, Big Pharma and the USTR's

³⁴ While the TRIPS Agreement itself does not use the term 'compulsory license', the provisions in Article 31 on 'Other use without the authorisation of the right holder' detail the conditions and limitations for the granting of such licenses (Correa, 2007). The term 'compulsory license' was added to the Agreement with the 2001 'Doha Declaration', categorically confirming: "Each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted" (see Correa, 2007, p. 315).

continued efforts to exclude generics and compulsory licensing demonstrate unequivocally that their hegemonic project sought to go beyond TRIPS requirements, and was, fundamentally, TRIPS-Plus.

5.4 The South African Medicines Act, Al Gore and ACT UP

Following these illustrations of hegemonic Big Pharma/TRIPS-Plus discourse, it is time to examine the events of the 1999 protests against then-US Vice President and Democratic Presidential candidate, Al Gore. The protests were instigated in June 1999 by US-based AIDS activist organisation, ACT UP (Sawyer, 2002). Formed in the 1980s in response to perceived US government inaction over the AIDS crisis, ACT UP has a well-documented history of vibrant and abrasive activism (Gould, 2009; Halchi, 1999). In particular, its approach was recognised in 1990 by *The New York Times* as “rude, rash [and] effective” in engaging both the news media and the government with its concerns (DeParle, 3 January 1990, n.p.).

In early 1999, ACT UP selected Al Gore as the target for a new wave of protest actions over his involvement in an HIV/AIDS medicines access conflict in South Africa (Sawyer, 2002). Since passing the *Medicines and Related Substances Control Amendment Act* (Medicines Act) in 1997, South Africa’s government had come under increasing pressure from the US government to amend the Act’s provisions for importing generic medicines (CPTech, 1999). As co-chair of the US/South Africa bi-national commission, Gore was targeted for his high-profile role in advocating the US position (Sawyer, 2002).

At the conflict’s centre was Clause 15(c) of the Medicines Act allowing parallel importation and compulsory licensing of medicines in national health emergencies (Barnard, 2002; Bond, 1999). The Act had been introduced to fulfil the newly elected Nelson Mandela-led government’s campaign promise to ensure access to essential medicines as a constitutional

right (Bond, 1999). In light of emerging statistics on the scale of the AIDS crisis in South Africa³⁵, the Act had gained increased pertinence (Bond, 1999). At the insistence of an “outraged” pharmaceutical industry (Sell, 2001, p. 501), however, the USTR condemned the Medicines Act, arguing that it was unconstitutional (Klug, 2008), and that its provisions for generics violated South Africa’s TRIPS obligations (Bond, 1999; CPTech, 1999; Halbert, 2005; Sell, 2001).

While the issue was never taken to the WTO dispute settlement mechanism, despite similar medicines disputes with India in 1997 (Rangnekar, 2005) and Brazil in 2001 (Galvão, 2005) that were, the USTR pursued various “extra-institutional” tactics (Shadlen, 2004, p. 80) to persuade South Africa to amend the Act (Richards, 2004). These involved placing South Africa on the USTR’s 301 watch list (CPTech, 1999; Sell, 2001), withholding tariff-reduction privileges under the Generalised System of Preferences (GSP) program (Bond, 1999), and passing a new act in the US Congress containing provisions to cease aid to South Africa pending a US State Department report outlining US efforts to negotiate the Medicines Act (United States Congress, 1998). 39 multinational pharmaceutical companies also filed a lawsuit against the South African government to prevent the Act (Barnard, 2002) (see Chapter 6), with further economic pressure applied by pharmaceutical companies threatening to cease investment in South Africa (McNeil, 29 March 1998).

Much of the detail of these efforts was outlined in the State Department report referred to above, unambiguously titled “U.S. Government Efforts to Negotiate the Repeal, Termination, or Withdrawal of Article 15(c) of the South African Medicines and Related Substances Act of 1997” (United States Department of State, 1999). For ACT UP, however, the report became known as “the smoking gun” for its detailed listing of US-led pressure, and its identification of Al Gore as a key player in the negotiations (Sawyer, 2002, p.

³⁵ UNAIDS estimates claimed that by 1999, 4.2 million of South Africa’s 40 million population were HIV-positive – the highest per-country HIV-positive population in the world (UNAIDS, 2000).

98). On 16 June 1999, Gore formally announced his campaign for the 2000 US presidency from the steps of the Smith County courthouse in Carthage, Tennessee, to a crowd of around 5,000 supporters (Seelye, 17 June 1999). Also in attendance, however, were a dozen activists from ACT UP and associated group, AIDS Drugs for Africa (Sawyer, 2002). According to protest leader and ACT UP co-founder, Eric Sawyer (2002), the goal was to hijack the media attention on Gore in order to publicise the issue of South African HIV/AIDS medicines access.

The Tennessee action was the first of several similar protests as ACT UP, and increasingly more advocacy groups, followed Gore through his summer campaign appointments (Gellman, 21 May 2000; Sawyer, 2002). By autumn 1999, ACT UP leaders had been invited to the White House to discuss their concerns (Gellman, 21 May 2000; Sawyer, 2002), with President Bill Clinton soon announcing the US “shall not seek, through negotiation or otherwise, the revocation of any intellectual property law or policy of a beneficiary sub-Saharan African country” (Clinton, 2000, p. 30521). While ACT UP claimed responsibility for the policy reversal (Sawyer, 2002), Gore’s National Security Advisor, Leon Fuerth, claimed Gore had been lobbying for the US to withdraw its opposition to the Medicines Act for months, with a deal pledging as much sitting unsigned on the USTR’s desk for two days before the Tennessee protest (Gellman, 21 May 2000). Then-USTR, Charlene Barshefsky, however, noted that it was indeed the protesters, not Gore, who put the issue on her agenda (Gellman, 21 May 2000). Concealing the USTR’s prior mobilisation against the Medicines Act, Barshefsky claimed:

Largely it was the activities of ACT-UP and the AIDS activists that galvanized our attention that there was an absolute crisis. [Until then] I was certainly not aware of this at all ... In years past, this issue was treated purely as a trade issue and an intellectual property rights issue. (Barshefsky, in Gellman, 21 May 2000, p. A01)

PhRMA promptly criticised the US government reversal, labelling it an

“undesirable and inappropriate precedent” (PhRMA, 10 May 2000, n.p.)

5.5 News Media Coverage

According to the Dow Jones Factiva database of international news archives, in the years 1997 and 1998 there were 91 articles featuring the term “AIDS drugs” published in *The New York Times* and *The Washington Post*, with a further nine in the UK papers *The Times* and *The Guardian*. Of these 100 articles, only three refer to patents or intellectual property³⁶: two of these from *The New York Times*’ Business/Financial Desk reporting on pharmaceutical companies’ commercial fortunes vis-à-vis their patent holdings (Bloomberg News, 19 November 1998; Eaton, 17 February 1998); and the third in a lengthy *The Washington Post* May 1997 magazine piece chronicling antiretroviral development history (Fried, 18 May 1997). These brief references to intellectual property protection’s influence on the development and business of HIV/AIDS drugs provide notable exceptions to two years of “AIDS Drugs” coverage otherwise characterised by a focus on domestic concerns, new medical scientific developments, and anecdotal celebrations of the “powerful new” AIDS drugs - a stock adjectival phrase appearing in 20% of “AIDS drugs” articles over these two years (in all instances, in the US papers).

For the South African outlets *The Star* and *Sowetan*, of 68 articles covering HIV/AIDS medicines in 1997 and 1998 (43 and 25 respectively), four refer to intellectual property (Singh, 27 February 1997, 8 December 1997; *The Star*, 4 December 1997 *Sowetan*, 23 January 1997). In each case, IPRs are referred to in relation to Virodene, “patented as Virodene P058” (*Sowetan*, 23 January 1997, p. 12), a drug controversial for its high toxicity and irregularities in funding and promotion. A further *The Star* article in this period refers to generic medicines, questioning the quality of some alleged “illegal cut-price drugs” (*The Star*, 30 September 1997, p. 1). Otherwise, the main topics of

³⁶ This figure is based on a *Wordsmith* (version 4) keyword search for “patent*/intellectual propert*”.

interest in South African coverage are Virodene’s toxicity and government pilot projects offering the drug AZT to pregnant women. None of the references to IPRs draws the connection between patents and medicine prices or access. When high drug prices are mentioned in the sample, they are acknowledged as an impediment to access, but not further questioned (for example, in *The Star*, 2 December 1998)

This pattern changes dramatically in June 1999 when intellectual property concerns come to feature prominently in the “AIDS Drugs” sample of articles. In the seven-month period June to December 1999, the keywords “patent*/intellectual propert*” appear in 20 out of a total of 38 articles across the four US and UK news outlets (constituting 52.5% of all “AIDS Drugs” articles for that period), compared with the aforementioned three articles for the 29 months prior. Figure 3 depicts the numbers of US and UK articles featuring the keywords as a percentage of all “AIDS Drugs” articles published during this period, emphasising their sudden appearance during the anti-Gore protests between June and August 1999. Figures 4 and 5 exhibit similar patterns for the keywords “generic*” and “trade*”.

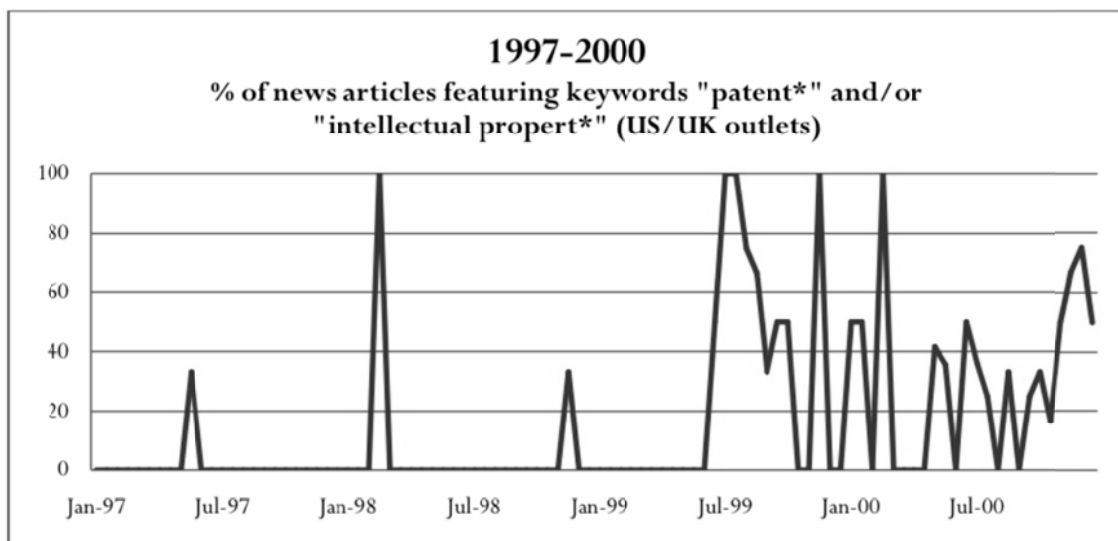


Figure 3:
Percentage of US and UK news articles featuring linguistic signifiers for ‘patent’ and ‘intellectual property’, 1997-2000

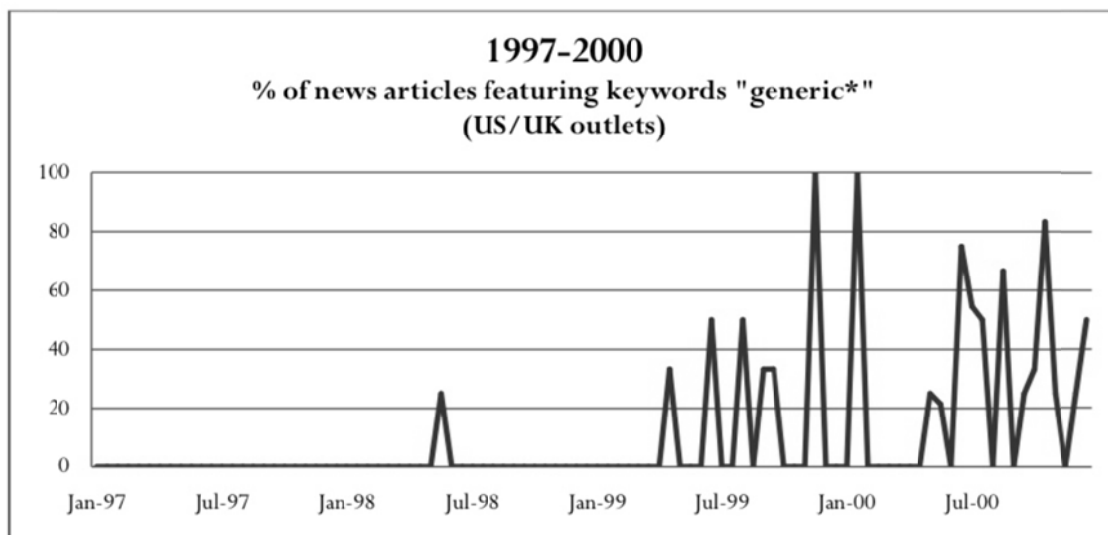


Figure 4:
Percentage of US and UK news articles featuring linguistic signifiers for 'generic', 1997-2000

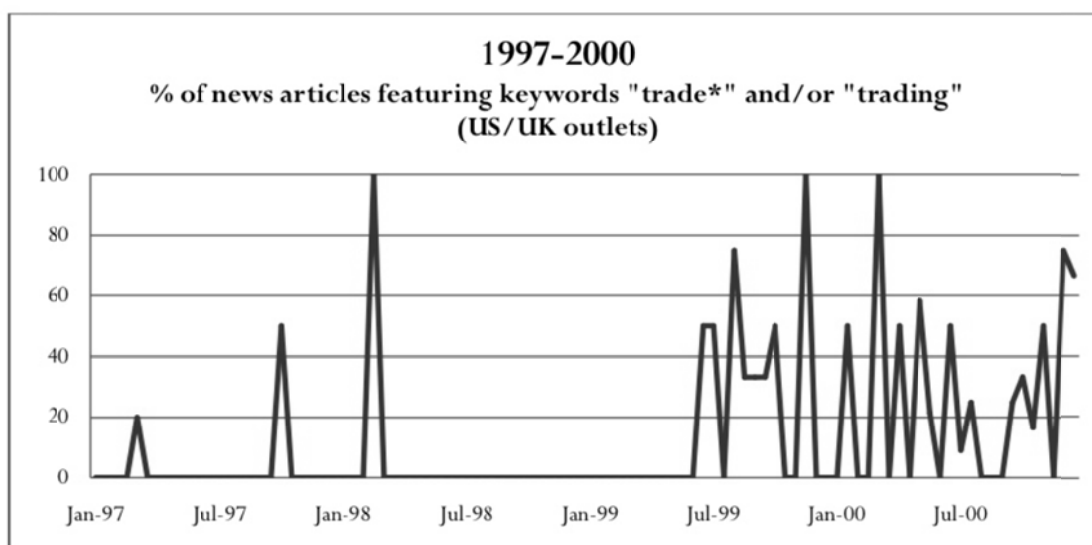


Figure 5:
Percentage of US and UK news articles featuring linguistic signifiers for 'trade', 1997-2000

Figures 3-5 depict the proportionate representation of the keywords in relation to the number of articles published in the specific time period (ordered using 15-day intervals). However, it must be recognised that the

overall quantity of articles for 1997-1999 was relatively low. Figure 6 illustrates the frequency of “AIDS drugs” articles per outlet across the seven-year sample, noting mid-1999 as the point where the quantity of articles began to increase.³⁷

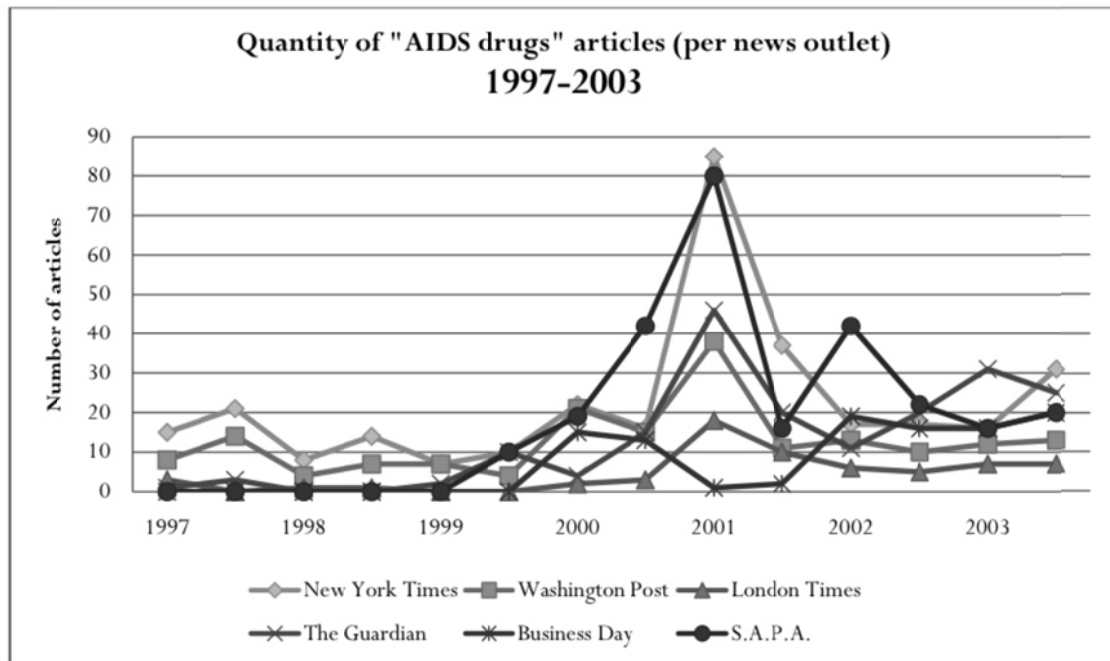


Figure 6:
Quantity of “AIDS drugs” articles per news outlet, 1997-2003

As a comparative measure to show frequency of keywords, Figure 7 displays the simple concordance - that is, the number of times a term is mentioned - of the “patent*/intellectual propert*”, “generic*” and “trade*/trading” across the 1997-2000 period in the US and UK outlets. For *The Star* and *Sowetan*, five of the 80 articles (6%) published over the 29 months January 1997 to May 1999 refer to IPRs and/or generics, while 10 of the 23 articles published June to December 1999 do (43%).

³⁷ These statistics are drawn from the overall “AIDS drugs” sample of 1,113 articles, including articles from South Africa’s *Business Day* and *SAPA*, but not *Sowetan* or *The Star*.

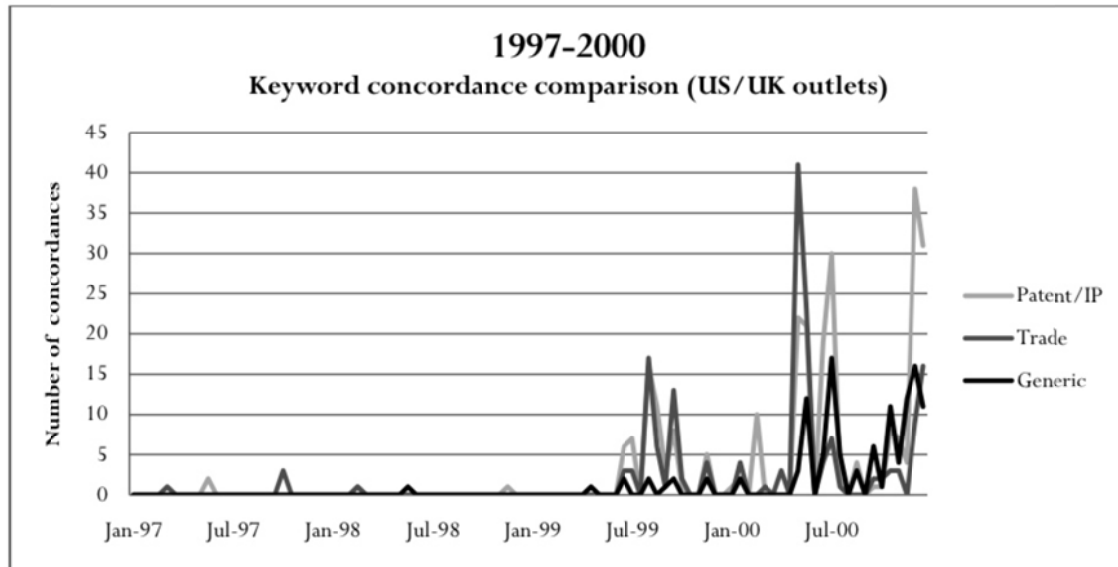


Figure 7:
**Comparative concordance of linguistic signifiers for
 ‘patent/intellectual property’, ‘generic’ and ‘trade’ in US and UK outlets,
 1997-2000**

These statistics suggest that something occurred in late-June 1999 that dramatically introduced previously unrepresented linguistic signifiers to the “AIDS drugs” coverage. Historically, a key event at this time was the protests against Al Gore. The Corpus-Assisted Discourse Studies (CADS) approach adopted for this thesis recommends a ‘back and forth’ movement between software-generated statistics and interpretive reading of the texts (Bayley, 2007; Duguid, 2007; Partington, 2004). Therefore, in light of such statistics and historical overview, it is now necessary to take a closer look at the qualitative content of articles produced in this period, in particular their representation of the protests and medicines access dispute.

5.5.1 News Representation of the Anti-Gore Protests

The first reference to the protests in the sample appears in a June 17 *The New York Times* analysis of Gore’s campaign announcement (Seelye, 17 June 1999). While the article focuses predominantly on Gore’s efforts to emerge

from under President Clinton's shadow, the sixth paragraph notes the "speech [was] marred for several minutes by protesters concerned that Mr. Gore was not doing enough to get AIDS drugs to Africa" (Seelye, 17 June 1999, p. 26). With another protest the next day at Gore's New Hampshire campaign stop, *The Washington Post* picked up the story, this time framing the protest action as the dominant aspect with the headline "AIDS activists dog Gore a 2nd day; Role in drug dispute with S. Africa is hit" (Babcock & Connolly, 18 June 1999, p. A12). By the beginning of July, *The New York Times* too had begun to frame the protests as the newsworthy event, quoting the chants of "Gore's greed kills!" in an article headlined "Gore is followed by AIDS protesters" (Ayers, 2 July 1999, p. 12).

Similarly, in South Africa, the US protests were a newsworthy event, with *The Star* headlines: "Activists blame Gore for costly AIDS drugs in SA" (Mkhondo, 22 June 1999, p. 6); and "Aids smoke screen in anti-Gore protest" (Mkhondo, 5 July 1999, p. 9). The latter article argues against the ACT UP protests - suggesting they are politicking and disguising the real factors in the medicines access issue - but nevertheless reproduces the protesters' arguments in the process. In the UK, though appearing more than a month later, a 10 August *The Guardian* headline noted "Gore accused of working against cheap AIDS drugs" (Borger, 10 August 1999, p. 14). These headlines indicate that while initially the protests were reported as a sideshow to the Gore campaign, they quickly became an important focal event within the campaign.

In addition, the coverage voiced AIDS activists' concerns among its contextualisation and interpretation of the events. For example, from *The Washington Post's* 18 June piece:

At the heart of the dispute is a South African law designed to give AIDS patients access to cheaper drugs. U.S. pharmaceutical companies see the law -- which allows South Africa's health minister to bring in less expensive imported AIDS drugs or locally produced generics -- as an

infringement on their patent protections. They have pushed aggressively for help in Congress and at the White House, even proposing that foreign aid to South Africa be cut off. (Babcock & Connolly, 18 June 1999, p. A12)

In this sense, the protests were a catalyst to introduce new content to the “AIDS drugs” public sphere discussion. While the dispute between the US and South Africa had been progressively building since the Medicines Act was passed in 1997 (CPTech, 1999), it was not mentioned in the sample until the protest coverage. The most overt example of the protests-as-catalyst for discussion of activist concerns comes from South Africa’s *Sowetan*. In South Africa, activist groups led by the Treatment Action Campaign (TAC) capitalised on the heightened attention on US government policy and African medicines access to mount further nationwide protests (Mzolo, 6 July 1999). In response, a *Sowetan* article asks: “What is the background to TAC’s nationwide protests?” (Mzolo, 30 July 1999, p. 17). This rhetorical question is then answered with a 22-paragraph outline of the legal and diplomatic context including the Medicines Act, Al Gore, Special 301, the WTO, generics production in India and Thailand, and South Africa’s argument for the ‘national emergency’ compulsory licensing provision.

Importantly, it is within such coverage that the South African Pharmaceutical Manufacturers Association (PMA) legal action against the South African government is referred to for the first time in the “AIDS drugs” sample. As will be discussed in Chapter 6, this lawsuit would eventually become the single most dominant focusing point in the sample - constituting the increase in “AIDS drugs” coverage visible in 2001 in Figure 6. At this stage, however, despite being lodged in early 1998, it had received no coverage in the “AIDS drugs” sample of US and UK articles, nor in the SA Media sample of South Africa’s *Sowetan* or *The Star*.

In only one outlet, the UK’s *The Guardian*, is the PMA trial referred to before coverage of the anti-Gore protests. However, this only appears on 5 August

1999, over a month after the protests had begun. While it does not include specific reference to the protests, it reproduces the activists' key messages around pharmaceutical industry profits, industry ties with the US administration, South Africa as the "epicenter of the global AIDS quake", as well as quoting directly from the so-called 'smoking gun' US State Department report (*The Guardian*, 5 August 1999, p. 18). For the two South African papers considered for this period, *The Star* follows the trend of referring to the PMA lawsuit in relation to the US activist claims (Mkhondo, 5 July 1999), while in *Sowetan* it is first mentioned in relation to the TAC's protests against the US administration's position - themselves a response to the ACT UP-led protests against Gore (Mzolo, 6 July 1999).

In September 1999 the PMA suspended its lawsuit, leading to further reference to the protests in *The New York Times* with headlines "US industry to drop AIDS drug lawsuit against South Africa" (Lewis, 10 September 1999, p. 3) and "South Africa and US end dispute over drugs" (Myers, 18 September 1999, p. 8). Such reports were premature, with the trial's temporary suspension lasting only until July 2000.³⁸ However, coverage of the lawsuit's suspension emphasised the protests' effect in publicising the issue: "Although the dispute involved arcane, complex trade and patent practices," wrote *The New York Times*, "it generated considerable attention because advocates for AIDS patients have staged noisy protests at several campaign appearances" (Myers, 18 September 1999, p. 8).

The protests were also discussed in three mid-1999 editorials in *The Washington Post* (24 June 1999), *The New York Times* (23 August 1999) and *The Guardian* (Boseley, 11 August 1999). While *The Washington Post* accused the protesters of "manipula[ting] the facts in what is actually a much more complicated and interesting debate", and positioned them as little more than a "campaign season" distraction (24 June 1999, p. A26), *The New*

³⁸ PhRMA claimed the suspension was the result of negotiations with Mandela's government, who had agreed to redraft the Medicines Act (Halbert, 2005). CPTech, however, claimed the only concession made by South Africa was a promise to adhere to the TRIPS Agreement, a position they had maintained throughout (J Love, 1999).

York Times acknowledged the argument's relevance, noting: "The debate is important, and it has revealed the need to broaden the Administration's policy, which has been dominated by trade issues and the desire to protect American pharmaceutical patents" (23 August 1999, p. A14).

Both editorials were followed by letters to the editor, accusing *The Washington Post* of "ignor[ing] fundamental economics" that artificially inflate drug prices through patent protection (Baker, 2 July 1999, p. A26), and agreeing with the *Times* that "there should be more balance between the intellectual property rights [...] and the urgent medical needs of the 35 million Africans infected with HIV" (Di Sorbo, 27 August 1999, p. 22). *The Guardian* editorial took the strongest line in support of the protesters' message, noting that "US attempts to stop developing countries producing cheap AIDS drugs have become a political time bomb", in an editorial headlined "Trade terrorism" (Boseley, 11 August 1999, p. 18).

As discussed above, with the protests as catalyst, the newspapers began to cover the PMA's lawsuit against South Africa, and the multiple issues articulated within it. It must be noted, however, that while the prior absence of reference to the PMA lawsuit is a factor in this study's "AIDS drugs" sample, this does not necessarily mean it was not referred to in other articles not containing the words "AIDS drugs". While an exhaustive search for further references to the PMA lawsuit has not been undertaken, the researcher knows of at least one earlier reference not in the "AIDS drugs" sample. In this case, a "court battle" over the enforcement of the Medicines Act is mentioned in a 1998 *The New York Times* Business/Financial Desk front-page article covering the general dispute over HIV/AIDS medicine patent protection in South Africa (McNeil, 29 March 1998, p. 1).

The author of this piece, and several other articles in the sample, Donald G. McNeil Jr., was interviewed for this thesis. He noted that in this early coverage it was difficult to find interest for the IPR angle on African medicines access: "I was having a hard time convincing anybody that this

intellectual property issue on drugs for a lot of brown people far away from the United States was an important story". However, he recalls that once the ACT UP protests occurred during Gore's campaign season, political reporters obtained the story and it spread quickly through the news ecology. As McNeil Jr. puts it:

... but the minute those guys popped up from under the bandstand with this embarrassing banner and everybody went hah! The political reporters suddenly went, got hold of the story, and you know the political reporters, you know the Washington reporters, the campaign reporters get a hold of the story, they are at the core of what this newspaper does and most of the editors who run this newspaper have at one time or another run the Washington bureau and are deeply interested in politics in general and particularly in presidential campaigns. This paper assigns literally hundreds of reporters to presidential campaigns now. So when they got interested in the issue, suddenly it went to the front burner and there was interest in the paper in general. So those are important turnaround moments, I could be crying out in the wilderness for years without the issue getting much notice. (McNeil, telephone interview 4 June 2010)

McNeil Jr.'s comments, and the extracts from news coverage above, suggest that following the protest actions there effectively became two stories: first, the disruption to Gore's campaign; and second, the South African medicines access dispute. Despite the magnitude of the HIV/AIDS crisis in South Africa, and the impact of the PMA and US pressures upon South African HIV/AIDS medicines access, this story had not registered in the mainstream news agenda on its own merits. Interested journalists, such as McNeil Jr., struggled to convince others that it should. However, once the issues became embedded within the more 'newsworthy', and more US-centric, story of Gore's campaign, the South African dispute began to warrant attention amongst a wider community of journalists and news outlets.

Importantly, for the interests of this research, when the Gore/medicines

access stories entered the mainstream news discussion, they enabled the articulation of IPR, generics, and international trade issues, previously absent from the “AIDS drugs” discourse. In this way, coverage of the protests reactivated the hegemonic Big Pharma discourse. In addition, given the means by which they were introduced, this chapter argues that such a reactivation was only possible through the specific signifying practices of claims makers interacting self-reflexively with the news media. It is to these theoretical points that the remainder of this chapter now turns.

5.6 Reactivation and the Signifying Practices of the News Media

For Laclau and Mouffe (1985), Husserl’s (1970) concept of sedimentation refers to the ‘forgetting of the origins’ of the institution of a discourse. Reactivation, on the other hand, refers to the recovery of the discourse’s constitutive formation. In a retrospective mode, reactivation thus refers to the remembrance of historic options that were discarded in the formation of the discourse, and whose traces have since been concealed. In a forward-looking mode, it refers to the acknowledgement of the contingency of hegemonic discourses, thus disclosing the potential for new and different constructions (Glynos & Howarth, 2007).

Chapter 3’s historic overview suggests that IPRs were centrally important to the business of pharmaceuticals and their accessibility for global public health requirements. IPR alternatives were, however, excluded from Big Pharma discourse (Drahos & Braithwaite, 2002; Halbert, 2005; Weissman, 1996). Indeed, in a positively defined Big Pharma discourse, IPRs’ influence on medicines access was completely denied (see, for example, Attaran & Gillespie-White, 2001; Warner, et al., 2002). As the above analysis illustrates, the absence of IPRs in the medicines access discourse was also reflected in the “AIDS drugs” news media sample. That is, however, until IPRs were forcibly introduced there via the mid-1999 protests. In this way, the protests reintroduced elements excluded from Big Pharma hegemonic

formation, and thus reactivated the discursive struggle in the public sphere.

In this sense, the protests constituted a moment of public realisation of the dominant discourse's contingency. For individual journalists reporting on HIV/AIDS medicines, similar moments of realisation could be experienced as it became apparent that Big Pharma discourse concealed alternative approaches to medicines access. McNeil Jr., for example, recalled that such a personal realisation provided a key motivation for continued investigation of the issue. His recollections, from unpublished memoirs reproduced here with permission from the author, are worth citing at length:

I started out writing about global health because I was embarrassed. In 1998, the commercial attaché of the US embassy in South Africa had fooled me into writing a story about a bill before South Africa's Parliament that would have allowed Nelson Mandela's government to bypass patents on American drugs. As a news story, the idea was legitimate. But he fooled me because the underlying premise of my article - based on my own still inchoate feelings about the issue -- was that cancelling patents was bad, was unthinkable. [...]

I didn't realize until later that what I was really perpetuating was a carefully crafted myth of the American and European pharmaceutical industry.

During my reporting, I had begun to get some inkling that I was being hornswoggled by the outraged attaché.

I wasn't helped in my reporting by the fact that the South African health minister, to judge by her public remarks, didn't understand the issues very well herself. Nor that the local newspapers couldn't figure out the topic either. Nor did it help that the government's English consultant, who was clearly the real author of the bill -- upon whom I was fobbed off when the health ministry staff couldn't answer my questions -- gave me the impression that he was appalled by my ignorance, appalled by my Yankee attitude toward patents and appalled by the very fact that he

had been asked to speak to a journalist.

Nor did it help that, when I had filed the muddled article, it was judged fit for the business pages, not the foreign ones, and the business editor assigned to deal with me was thoroughly in the Thomas-Edison-patents-are-the-only-shield-for-poor-benighted-American-pharmaceutical-companies camp.

Ultimately, almost no one noticed it, at least as far as I could tell from the lack of any reaction to it. [...]

Nonetheless, the way I initially handled that story has rankled me ever since, and the chagrin I felt over it has driven much of the reporting I've done since then.³⁹ (McNeil, 2010 reproduced here with author's permission)

Following his experience outlined above, McNeil Jr. wrote several articles on IPRs and global access to HIV/AIDS medicines, 28 of which appear in the "AIDS drugs" sample. As the above quote indicates, when he first approached the story, McNeil Jr. had "inchoate", or not-yet-formed, ideas on the situation. Nevertheless, he soon began to feel he was being "hornswoggled", or deceived, by the US government and industry official. For a journalist writing for the 'elite press', and who understands his job as to "write the truth" (McNeil, telephone interview 4 June 2010), such deception proved to be a disconcerting but also motivating force to pursue the issue further. McNeil Jr. then came to believe the discourse he was being encouraged to accept was a "carefully crafted myth" of Big Pharma. In addition, he could identify this discourse on IPRs as being sedimented within his own professional environment through the "Thomas Edison" view of the Business desk editor. What is important here is that in acknowledging the discourse as "crafted", McNeil Jr. identifies its constructed, or contingent,

³⁹ It should be noted that in his unpublished manuscript, McNeil Jr. also notes two more reasons for beginning to write on global health: indignation at the high price of medicines desperately needed in the majority world; and further embarrassment "because I knew I'd failed to notice people dying all around me" (McNeil, 2010 unpublished manuscript, reproduced here with author's permission).

nature, thus signalling the discourse's reactivation within his own subjective awareness, and in turn, opening the potential for new and different constructions.

While McNeil Jr.'s personal reactivation came at the realisation some of his sources were concealing excluded alternatives, in the "AIDS drugs" news coverage, this realisation was facilitated by the anti-Gore protests. What is important here is that this moment was constituted by specific *signifying practices* from the both the protesters and the news media. In order to conceptualise the reactivation rendered through the media coverage, therefore, it is necessary to first consider the news media's signifying logics.

In this regard, prior communication studies' research provides many insights. For instance, the concept of 'news values', or criteria making social phenomena more likely to be covered as 'news', are well-established indicators of news representation practices⁴⁰ (Galtung & Ruge, 1965; Harcup & O'Neill, 2001). Also well-established is the news media's preference to represent pre-scheduled events (Bell, 1991), elite public figures as 'primary definers' (Fishman, 1980; Gandy, 1982; Hall, Critcher, Jefferson, Clarke, & Reports, 1978), logistically manageable stories over complex ones (Schlesinger, 1987), and narratives that can be easily dramatised (Bennett, 2001; Iyengar, 1991). In recent years, the increasing 'tabloidisation' of mainstream news (Delli Carpini & Williams, 2001; Franklin, 1997, 2005; Patterson, 2001) has also seen a further emphasis on drama (Cook, 1998), entertainment-oriented news values (Postman, 1985), scandal (Sanders, 2009; Thompson, 2000), public relations content (Davies, 2008), and a dominant focus on celebrity (Corner & Pels, 2003; Sanders, 2009; Street, 2004) and spectacle (Debord, 1983; Kellner, 2003). In addition, the so-called 'drama-philia' of the news (Iyengar, 1991), has been identified as emphasising the episodic over the thematic (Iyengar, 1991), political strategy over policy context (Cappella & Jamieson, 1997), and individual

⁴⁰ Popularised by Galtung and Ruge (1965) these criteria include: frequency; negativity; unexpectedness; unambiguity; personalisation; meaningfulness; reference to elite nations; reference to elite persons; conflict; consonance; and continuity.

personalities over collective action (Carragee, 2003) (see Chapter 4).

With these signifying tendencies in mind, it is clear why the mid-1999 protests provided 'newsworthy' material. In positioning the US Vice-President in a conflicted situation, at the poignant moment of his presidential campaign, and in the dramatic form of a protest spectacle, the protests satisfied news priorities for elite figures, competition, drama, consonance and scandal. Furthermore, the 'celebrity' nature of contemporary politics (Street, 2004), especially heightened during a campaign's 'popularity contest', meant that Gore in mid-1999 provided a target particularly vulnerable to the vagaries of public opinion.

Compounding this aspect is news media's increased tendency for what Thompson (2000) calls 'scandal syndrome', whereby gaffes and scandals become a high priority focus for the media during campaigns otherwise regarded as highly stage-managed (Sabato et al., 2000; Stanyer, 2007). In addition, the preference for elite nations increased the news appeal, where while South Africa was the object of dispute, it was only through events in the US involving US politicians that the dispute made news, in US, UK *and* the South African sample itself. These media-specific features of the signifying practices constituting the coverage suggest an element of 'mediatisation' to the reactivation – a point to be returned to in Chapter 6. For now, this chapter will briefly consider the role of ACT UP in adapting its signifying practices to such media-centric representational tendencies.

5.7 Protest Strategies and Media-Reflexive Conditioning

The role of media-specific representational logics in constituting political contestation was a point consciously recognised by the anti-Gore protest organisers. Published testimony from protest-organiser and ACT UP co-founder, Eric Sawyer (2002), suggests that news media representation was influential in the strategic approach to the action. In the first case, the

event's timing to coincide with Gore's official presidential campaign was chosen to maximise media attention.

According to Sawyer (2002), he was galvanised into action against Gore upon discovering the State Department report outlining US diplomatic efforts to repeal the Medicines Act (United States Department of State, 1999). However, the report was released in February 1999, at which stage ACT UP and several other AIDS advocacy groups were preparing for an April Washington protest march over the Africa Growth and Opportunity Act (AGOA)⁴¹ (Sawyer, 2002). While Sawyer (2002) wanted to "chain myself to the fence in front of the vice-president's residence" during the Washington march (p. 98), the plan was vetoed by his ACT UP colleagues for fear that "such an action would confuse the media and draw attention away from what they saw as the more important fight over the AGOA bill" (p. 98). Thus the importance of unambiguity and an awareness of the story-telling limitations of news content were foregrounded in protest strategy.

In addition, Gore himself was targeted with media priorities in mind. According to Sell (2003; Sell & Prakash, 2004), based on interviews with 'access to medicines' activists, the initial targets were pharmaceutical company executives. An early plan to ambush them, however, "throwing blood on them, like the anti-fur activists" (Sell, 2003, p. 152), was abandoned in light of the more high-profile opportunity of Gore's campaign. Sell (2001) also argued that it was Jamie Love, of US consumer rights group Consumer Project on Technology (CPTech), who convinced ACT UP to target Gore:

⁴¹ The AGOA was a bill seeking duty-free exports from African countries and including plans for a US-Africa free trade zone (Democracy Now!, 1999). As an alternative to the AGOA, Representative Jess Jackson Jr. introduced HR 772, the 'HOPE for Africa' bill, seeking to cut government funding for any department that sought "through negotiation or otherwise, the revocation or revisions of any sub-Saharan intellectual property or competition law or policy that is designed to promote access to pharmaceuticals or other technologies" (CPTech, 1999 n.p.). The HOPE bill further sought African debt cancellation for more than US\$200 billion owed to US private banks, the World Bank, and IMF (Democracy Now!, 1999). Despite several hundred demonstrators marching through Washington DC in support of the HOPE bill, it never passed. However, as Bond (1999) stated: "Without even an outside chance of passage, the HOPE bill at least offered an alternative to the Clinton administration's neoliberal U.S.-Africa free-trade legislation (and in the process divided the Congressional Black Caucus), thus permitting progressive forces in civil society to mobilize without illusions" (Bond, 1999, p. 786 parentheses in original).

Love convinced them [ACT UP] that it was not just executives but that the government, and the Democratic administration, was deeply involved in this. Love emphasised that the U.S. government was the problem, and that the upcoming presidential primaries were a window of opportunity. ACT UP was reluctant at first and feared doing anything that might help the Republicans. (Sell, 2001, pp. 502-503)

Finally, the form of ACT UP protest was designed with media reception in mind. The loud, unpredictable small-team approach of ACT UP towards Gore's campaign follows a strategy referred to by the organisation as a "zap" (ACT UP, 1999, n.p.). According to Sawyer (2002), ACT UP derived this approach after observing the methods that achieved media representation in anti-war and civil rights movements. Concluding that symbolic violence and spectacle gained attention, Sawyer (2002) noted that ACT UP "always tried to include some action in our demonstrations that would get us arrested" (pp. 89-90). Studies of so-called 'anti-globalisation' protests from the same historical period substantiate such an approach, noting that spectacular and even violent events could act as 'news pegs' upon which wider discussion of the substantive issues could be hung (Bennett, 2003; Craig, 2002; DeLuca & Peeples, 2002; Rojecki, 2002).

Protest organiser Sawyer's (2002) comments suggest that an awareness of news media processes influenced ACT UP's mobilisation against Gore. As discussed in Chapter 4, such adaptation to media priorities is a common feature of contemporary protest: what Cottle (2008) referred to as the trend in protests becoming "reflexively conditioned by their pursuit of media attention" (p.853). Where the traditional canon of news media and protest studies suggests news media are typically antagonistic towards voices of dissent (Carragee, 1991; Gitlin, 1980; Hallin, 1987; Halloran, Elliott, & Murdock, 1970; Parenti, 1986; Smith, McCarthy, McPhail, & Augustyn, 2001), recent research has indicated that by conforming to news media signifying practices, protests may achieve more sympathetic coverage (Craig, 2002;

DeLuca & Peeples, 2002; Gaber & Willson, 2005; Milne, 2005; Rojecki, 2002). In the mid-1999 ACT UP protests against Al Gore, media-reflexivity played a key role in constructing the protests as a media-friendly event, and thus achieving representation for the signifying practices that would ultimately reactivate the public sphere discourse.

In this sense, the ACT UP 'zap' was a stage-managed 'image event' (DeLuca & Peeples, 2002) in the same mode as Gore's own appearance on the Smith County courthouse steps. Importantly for the wider civil society campaign for medicines access, it was only with such an 'image event' that a normative frame was introduced to the news media agenda. As outlined in histories of the 'access to medicines' campaign (Matthews, 2006; Mayne, 2002; Munoz Tellez, n.d.; Sawyer, 2002; Sell, 2001), activists had been mobilising on this issue since 1996, including significant engagement with national governments and supranational institutions. However, it was only with a small, loud and reflexively conditioned image event against a US presidential candidate during his campaign that the news media would successfully engage with their concerns on IPRs and medicines access.

5.8 Conclusion

While this thesis does not systematically consider coverage before 1997, it is clear from the analysis above that from 1997 to mid-1999 there was no consideration of the impact of IPRs on HIV/AIDS medicines access within the "AIDS drugs" sample. During this period, the "AIDS drugs" coverage revolved largely around the quality of the "powerful new" drugs, and IPR issues were relegated to financial stories about their role in corporate profits. Following the anti-Gore protests in June 1999, however, a connection was made between IPRs, generics, trade issues and HIV/AIDS medicines, and articles began to explicitly question how these factors might impact majority world medicines access.

As Chapter 3 of this thesis demonstrates, these IPR issues were present in wider HIV/AIDS medicines discourses. The USTR and US government were keenly aware of IPRs' importance to medicines legislation in countries like South Africa (CPTech, 1999; Richards, 2004; Shadlen, 2004). Transnational civil society groups had been collectively mobilising on the issue since at least 1996 (Mayne, 2002; Munoz Tellez, n.d.), and, in 1998, the World Health Assembly (WHA) passed a draft resolution explicitly, and controversially, endorsing compulsory licensing ('t Hoen, 1999; Sell, 2001). None of these moves, however, resulted in articulation of IPR issues in the "AIDS drugs" media sample.

It was only with the targeting of US Vice-President Al Gore by a US-based activist group that the IPR-medicines access connection achieved representation in the public sphere "AIDS drugs" discourse, in the US, UK, *and* South Africa itself. In this way, the excluded factors of generics and compulsory licensing were articulated in the transnational public sphere, thus reactivating the sedimented Big Pharma hegemony. Importantly, the catalyst of this reactivation was a reflexively conditioned image-event, designed to attract mainstream media attention. In this sense, the reactivation was 'mediatised'. The thesis will now continue its investigation into the mediatisation of political conflict through an analysis of 'mediatised dislocation' surrounding the 2001 PMA lawsuit.

6

The PMA vs. South Africa 2001: Medicines Access and Mediatished Dislocation

Abstract

In February 1998, 39 multinational pharmaceutical companies sued the South African government over a law designed to facilitate importation of generic medicines for HIV/AIDS. Postponed until 2001, the lawsuit became a focal point for wider debates over global medicines access and intellectual property rights. In the “AIDS drugs” news sample, the dates of the trial in early 2001 correspond to the highest points of coverage across the seven-year period. The trial dates also provide the points of highest proportionate use of linguistic signifiers for ‘patents’, ‘intellectual property rights’, ‘generics’ and ‘trade’. This chapter combines these statistical insights with a discourse analysis of selected news texts. It argues that coverage of the trial functioned as a forum for articulating wider discourses, and that, following the reactivation outlined in Chapter 5, this articulation of wider discourses evidences the further dislocation of hegemonic discourse. The chapter concludes by suggesting such phenomena can be conceptualised as a ‘mediatished dislocation’. In this way, it fuses a discourse-theory inspired ‘theory of dislocation’ with communication studies’ insights into news-media-specific representational logics.

6.1 Introduction

Can the pharmaceutical industry inflict any more damage upon its ailing public image? Well, how about suing Nelson Mandela?

The Wall Street Journal (Cooper, Zimmerman, & McGinley, 2 March 2001, p. A1)

In 1997, the newly elected democratic government of South Africa passed a Medicines Act allowing for importation of cheaper generic versions of HIV/AIDS medicines. The Act met with immediate condemnation from major pharmaceutical industry groups and the US government. Despite significant diplomatic pressure to rescind the Act's generics provisions, South Africa refused to amend it. In February 1998, 39 multinational pharmaceutical companies, represented by the South African Pharmaceutical Manufacturers' Association (PMA), filed suit against the South African government. The PMA argued the Act was unconstitutional and violated South Africa's intellectual property protection obligations under the World Trade Organisation's (WTO) TRIPS Agreement. The government claimed the provisions for importing generics were specifically allowed under TRIPS.

Postponed until 2001, the PMA lawsuit came under intense criticism from a coalition of international civil society organisations (CSOs). In April 2001, the PMA unconditionally withdrew its lawsuit - a moment celebrated by South African CSOs as a "Victory for Activists, People with HIV/AIDS and Poor People Everywhere!" (Treatment Action Campaign, 19 April 2001, n.p.). For the pharmaceutical companies, the lawsuit's failure was widely perceived as a "public relations disaster" (Faulk & Usunier, 2009, p. 167; Kennedy, Harris, & Lord, 2004, p. 131). According to Halbert (2005), this was the moment when the pharmaceutical industry lost control of a discourse they had dominated since the 1980s.

This chapter examines coverage of the trial in the “AIDS drugs” sample over the years 1999 to 2001. Using a Corpus-Assisted Discourse Studies (CADS) approach (Clark, 2007; Duguid, 2007; Partington, 2004, 2006), the chapter combines statistical linguistic analyses with interpretive readings of the news content. It finds that the dates of the PMA trial correspond to the points of highest coverage throughout the seven-year “AIDS drugs sample”. After re-opening on 5 March 2001, the trial was postponed again until 18 April, from where it was cancelled after only one day in court. In the “AIDS drugs” sample, a quarter of all 1,113 articles were published in the first six months of 2001, the majority of these in early March and late April. In addition, the location of articles produced in this period tended to shift from the National pages to the Foreign, Business, and Editorial sections, suggesting a more diversified inquiry into the issue by the news media.

Through a qualitative reading of articles produced in this period, the chapter finds that amid the heightened coverage, a diversity of new discourse strands were articulated. To demonstrate the new strands, the chapter focuses on two key factors of contention - generics and IPRs - and the respective roles they played in the HIV/AIDS medicines access crisis. In regards to these factors, the chapter shows that coverage at this time is characterised by competition between opposed hegemonic projects seeking to define the crisis. In particular, two projects dominate: the Big Pharma discourse, positioning ‘poverty’ as the key impediment to medicines access; and ‘access to medicines’ discourse, positioning ‘patents’ as the key. Both discourses are widely articulated at this time, suggesting the coverage does not quite constitute an “avalanche of negative publicity” (Barnard, 2002, p. 159) for Big Pharma. However, given the prior concealment of IPRs in hegemonic medicines access discourse (see Chapter 5), their explicit articulation here marks the sustained *politicisation* of the issue, as its central tenets become publicly contested.

The chapter argues that such discursive practice marks the dislocation of

hegemonic discourse. Where Chapter 5 noted the reactivation of hegemonic discourse, revealing its contingency and the possibility of alternative options, this chapter notes its dislocation, where hegemonic discourse was ruptured, and new discourses were thus produced to fill the opened space. Furthermore, this chapter argues for a conception of ‘mediatised dislocation’. That is, through consideration of personal perspectives from CSO actors and journalists covering the dispute, the chapter argues the dislocation was signified and constructed following specific logics of news media representation. In this way, the chapter combines a discourse-theoretical analysis of the rupture and contingency of hegemonic forms, with a media and communication studies analysis of the pervasiveness of media logics in structuring political contestation.⁴²

6.2 Mediatized Dislocation

Laclau (1990) developed an understanding of ‘dislocation’ as the moment of *rupture* experienced by a discourse or identity. His conception operates on two levels: the ontological; and the ontic (Glynos & Howarth, 2007). In the first case, Laclau (1990), adopting a term from Marx, Heidegger and Derrida, claimed that every social identity is ‘always-already’ dislocated. That is, while discourses, as structured totalities, are an effort to close off the field of meaning, this effort will inevitably fail, as there will always be excessive elements remaining outside the professed ‘totality’ (Laclau, 1990, 1996, 2005; Laclau & Mouffe, 1985). At the ontic level, dislocation refers to the “moments in which the subject’s mode of being is disrupted by an *experience* that cannot be symbolised within and by the pre-existing means of discursive representation” (Glynos & Howarth, 2007, p. 14 emphasis in original). That is, dislocations are the moments where the presence of something outside of the structured totality is revealed, thus rupturing and destabilising the totality. In this sense, dislocation performs a similar role to

⁴² The important question of whether the dislocation transcended the media representation and operated in further institutional social spheres is addressed in Chapter 7.

reactivation (see Chapter 5), in that it emphasises the contingency and incompleteness of sedimented forms.⁴³

An important point here is that while dislocations, at the ontic level, present a rupture or subversion of a system of representation, they are also *productive* in that they stimulate new attempts to suture the space opened by the dislocation (Laclau, 1990). As Stavrakakis (2000) explained:

If on the one hand they threaten identities, ideologies and discourses, on the other hand, by creating a certain lack - which is not easy to bear - they generate attempts to rearticulate these dislocated ideologies and discourses. (Stavrakakis, 2000, p. 106)

As an example of dislocation at the ontic level, Glynos and Howarth (2007) suggested a major economic depression that dislocates the routinised practices and beliefs of communities across the globe. In this example, the productive aspect is evident in the various ways subjects may respond to the dislocation. For example, in the face of a depression's impacts on business failure, unemployment, savings loss, and so forth, subjects could mount responses ranging from passive resignation to active resistance. These in turn could facilitate the emergence of new subjectivities and political projects, which could equally incite new strategies by power holders to suppress or reshape grievances into existing ideologies and power structures.

⁴³ 'Dislocation' and 'reactivation' are used in this thesis to mark two distinct stages of discursive transformation. As noted in Chapter 1, however, they are not easily demarcated discrete categories. For instance, both concepts reveal the contingency of sedimented discourse by illuminating the possibility of alternative options. Similarly, the production of new discourses central to the concept of dislocation may also be observed in moments of reactivation - for instance, in *The New York Times'* journalist, McNeil Jr.'s, personal testimony discussed in Chapter 5. However, the categories are used in this thesis as heuristic devices to illuminate two broad processes of discourse change. In this analytical framework, the key difference between the two is that where reactivation reveals contingency by pointing to the historic exclusion of discarded alternatives, dislocation provides a sustained rupture in which entirely new alternatives may be produced. That is, where reactivation illuminates the *possibility* of rupture of the hegemonic discourse, dislocation *fulfils* this possibility, explicitly demonstrating the incoherence of the hegemonic formation, and thus necessitating the production of new hegemonic formations attempting to suture the opened space. Through the production of new discourses which then compete with each other to re-constitute the dislocated space, dislocation thus more overtly foregrounds the underlying principle of antagonism inherent to all social practice.

Similarly, in the ‘access to medicines’ campaign, several civil society initiatives emerged in response to the dislocatory effects of heightened IPR protection on essential medicines access (see Chapter 3). The civil society campaign then lobbied to alter the global IPR framework, to which institutional power holders subsequently responded in various ways: from the prioritising of public health rights over private property rights in the WTO’s Doha Declaration (‘t Hoen, 2009; Lang 2004); to the re-enforcement of strong IPR protection through ‘TRIPS-Plus’ bilateral agreements (Abbott 2004; Fink, 2008) and unilateral “extra-institutional pressures” (Shadlen, 2004, p.80).

Importantly, for such productive effects to ensue, a dislocation requires signification. This point, however, is somewhat paradoxical given the nature of dislocation as something ‘un-symbolisable’. At the ontological level, dislocation refers to the omnipresent disruptive influence of that which eludes representation - in Lacanian terms: the constant ‘haunting of the Real’ (Lacan, 1978, 1991, 2006). At the ontic level, dislocation refers to the moment of awareness of rupture and, more specifically, the moment of awareness of *something* that has caused the rupture. Signification then occurs through the attempts to define what this *thing* is. These are the new discursive projects produced through the dislocation, that, by their nature, attempt to symbolise and make sense of the previously ‘un-symbolisable.’

In this sense, the projects produced through a dislocation *retrospectively* constitute the dislocation through their representation of it. For Glynos and Howarth’s (2007) economic depression example, the social phenomena could only be symbolised as a ‘depression’ once different hegemonic projects articulated it as such. In this way, following Glynos and Howarth (2007) and Laclau (1994), dislocations only become *political* in character through the act of public contestation – something that is necessarily constituted through signifying practices.

This chapter suggests a concept of 'mediatised dislocation' to account for the role of mainstream news media in articulating the signifying practices that represent dislocations and dislocatory effects. While Laclau and Mouffe are fundamentally interested in the ontological conditions of representation, they pay curiously little attention to the ontic representations of the media (Phelan & Dahlberg, 2011). For communication and media studies, however, the media are central to the representation, and thus, constitution, of contemporary politics. For example, as Cottle (2009a, 2009b) noted, 'global crises', such as economic depressions, "are publicly defined, legitimated, and mobilized as "global crises" *within the world's news media*" (Cottle, 2009a, p. 495 emphasis added, see also Beck, 2009; Shaw, 1996). For the disruptions wrought by the 'un-symbolisable' upon systems of representation to register in the public space, claims makers must first articulate them – an act that in the contemporary world occurs predominantly through the mainstream news media.

Media and political communication scholars have developed the term 'mediatisation' to describe the increasing pervasiveness of media logics into wider social realms (Altheide & Snow, 1979; Delli Carpini & Keeter, 1996; Entman, 1989; Kepplinger, 2002; Mazzoleni & Schulz, 1999; Schulz, 2004; Strömbäck, 2008; Swanson & Mancini, 1996). From a discourse-theoretical perspective this term is problematic, risking the implication that mediation is something only occurring through 'the media' rather than all discursive phenomena (Phelan & Dahlberg, 2011). From a media and communication studies perspective, however, 'mediatisation' fundamentally implies representation guided by the specific tropes of mass media representational logics - meaning that media forms and processes warrant special enquiry. Mediatisation scholars have noted that as mass media become increasingly pervasive in the social terrain, previously non-mediatised activity, such as institutional party politics, are colonised by the needs and priorities of the media: such as news values; and increasingly, celebrity and spectacle (Lilleker, 2006; Strömbäck, 2008). As Chapter 5 argued, protest activity has also become deeply influenced by mass media priorities (Cottle, 2008).

Following such insights, in order to conceptualise political contestation in contemporary public spheres, it is also necessary to conceptualise the media-specific logics of representation symbolising and constituting the contestation.⁴⁴

While not necessarily adopting the terminology of 'dislocation' or 'discourse', prior studies have identified instances where news media representational logics have facilitated articulations of the rupture and productive impact of singular events. Bennett and Lawrence's (1995) 'news icon', Alexander and Jacobs' (1998) 'mediatised public crisis', and Cottle's (2009a) 'global-focusing events' all point to the potentially transformative impact of singular events. In their examples - an itinerant garbage barge in the 1980s (Bennett & Lawrence, 1995), the police beating of Los Angeles motorist Rodney King in 1991 (Alexander & Jacobs, 1998), and Hurricane Katrina in New Orleans in 2005 (Cottle, 2009a) - the singular events focused a controversial social disorder, allowing for the articulation of wider alternative discourses normally suppressed by hegemonic practices. In such instances the news media acted as a forum for "cultural transformation" (Bennett & Lawrence, 1995, p. 20), effectively increasing the "distance between the indicative and the subjunctive, thereby giving to civil society its greatest power for social change" (Alexander & Jacobs, 1998, p. 28).

'Mediatised dislocation' differs from these approaches through its deployment of discourse theory's "ontology of lack" (Marchart, 2005, p. 17). Where some approaches to discourse analysis focus on positively describing and criticising ideological forms, a discourse-theoretical analysis focuses on the "element of rupture and crisis threatening and subverting our social - ideological - forms" (Stavrakakis, 2000, p. 100). As with Chapter 5's reactivation, it is only when ideological forms are ruptured that their inherent contingency becomes visible, thus emphasising the fluidity of social constructions and the constant possibility of change. 'Mediatised dislocation' thus examines: where ruptures occur in media representations; how various

⁴⁴ See extended discussion of media-specific representational logics in Chapter 4.

discourses and political contestations then address these ruptures; and finally, how both of these processes are influenced and constituted by the specific media logics of representation.

As Marchart (2011) has recently argued, it is only in moments of dislocation that the media fulfills its promise to provide a public sphere. The media, he stated, “do not generate a public space – except in those instances where they are touched by the mediality of antagonism” (Marchart, 2011, p. 78).⁴⁵ In this approach, it is only in moments of reactivation and dislocation that the media fulfills its democratising potential by emphasising the inherent contingency of political forms, thus igniting the possibility of their contestation and transformation.

6.3 The PMA vs. South Africa

In February 1998, 39 pharmaceutical companies, represented by the South African Pharmaceutical Manufacturers Association (PMA), sued the South African government.⁴⁶ The lawsuit, case number 4138/98 in the High Court of Pretoria, sought to prevent implementation of the *Medicines and Related Substances Control Amendment Act* (Medicines Act) (Barnard, 2002; Klug, 2008), introduced a year earlier, and discussed in Chapter 5 of this thesis. The lawsuit articulated “an extraordinary array of claims against the Act’s validity” (Klug, 2008, p. 220). In particular, the two central arguments were that: 1) the Act was unconstitutional; and 2) it violated South Africa’s international obligations. In the first case, the PMA argued the Act breached South Africa’s constitution by conferring too much power on the Health Minister (Klug, 2008) and by ignoring the PMA’s constitutional right to not

⁴⁵ Marchart (2011) developed Laclau and Mouffe’s (1985) distinction between ‘politics’ and ‘the political’ into a media-specific conception of ‘the media’ and ‘mediality’. For Laclau and Mouffe (1985), ‘politics’ refers to the ontic representation of politics within society, while ‘the political’ refers to the underlying ontological premises of antagonism and dislocation constituting society. Similarly, for Marchart (2011), ‘the media’ describes the practices and apparatuses giving representation to objects, while ‘mediality’ describes the always-already dislocated nature of any possible representation.

⁴⁶ 40 companies filed suit, but later became 39 as the result of a corporate merger (’t Hoen, 2002).

be arbitrarily deprived of property (Heywood, 2001). Secondly, the PMA argued the Act's Clause 15(c) provisions for generic medicines violated TRIPS requirements (Deeb, in Klug, 2008).

The South African government maintained the Act was consistent with TRIPS, and the conflict was never taken to the WTO's dispute settlement mechanism, as similar cases with India were in 1997 (Rangnekar, 2005), and Brazil in 2001 (Galvão, 2005). Critics of the PMA lawsuit claimed it was simply an attempt to use the constitution to increase domestic IPR legal protection beyond that required by TRIPS, and to warn other countries against pursuing a similar path (Heywood, 2001). The pharmaceutical industry accompanied the lawsuit with the removal of millions of dollars in investments in South Africa, and the threat of withholding future medicines if the Act was not amended (McNeil, 29 March 1998).

The dispute attracted international support on both sides. On the PMA side, the US government launched an array of bilateral measures aimed at convincing South Africa to rescind the Act's generics provisions (CPTech, 1999; Richards, 2004; Sell, 2001; United States Department of State, 1999). Following protests against US presidential candidate, Al Gore, in 1999, however, the US officially withdrew its opposition (see Chapter 5). On the South African government's side, a coalition of transnational civil society groups emerged, locating the lawsuit as a key moment in the broader campaign for greater essential medicines access (see Chapter 3) (Mayne, 2002; Olesen, 2006). Involving high-profile civil society organisations (CSOs) such as Oxfam and Médecins Sans Frontières (MSF), the 'access to medicines' campaign used a variety of measures in various countries to publicise the lawsuit, including protests, lobbying, petitions, letters to government and industry, and celebrity endorsements (Mayne, 2002; Sell, 2001).

In South Africa, the coalition was represented by the Treatment Action Campaign (TAC). Formed in 1998, TAC quickly gained international

attention for their efforts publicising the inequality around HIV/AIDS medicines access (Colvin & Robins, 2009; Friedman & Mottiar, 2005; Schoofs, 1999). With the support of the wider transnational 'access to medicines' campaign, TAC became the driving force of numerous protests and direct action initiatives targeting the PMA lawsuit. With the lawsuit reinstated in July 2000, after being suspended by the PMA in September 1999, TAC's activities increased. By this stage, and assisted with international attention on the XIII International AIDS Conference in Durban, South Africa had become "ground zero" in the global debate over medicines access (Schoofs, 1999, p. 23).

In the face of mounting pressure, the PMA lawsuit was postponed again, then rescheduled to open on 5 March 2001. In the interim, TAC officially joined the trial as 'amicus curiae', a position literally meaning 'friend of court' and referring to someone or some group who offers information on a point of law that may assist the court in the matter before it (Barnard, 2002; Friedman & Mottiar, 2005; Heywood, 2001). The affidavits provided by TAC in this position became what Barnard (2002) referred to as the "*coup de grace*" for the PMA lawsuit (p. 166 emphasis in original), undermining PMA arguments by providing details of Big Pharma research and development costs relative to both government investment and industry marketing expenditure.

In addition to financial data, TAC also revived "a tradition exploited by lawyers under apartheid of utilizing affidavits as legally sanctioned instruments to tell stories of lives affected by apartheid" (Heywood, 2001, p. 147; see also Colvin & Robins, 2009). This move, according to Heywood, re-framed the legal debate by debunking the "conglomo-talk" and replacing it with a debate centered on human lives (Heywood, 2001, p. 133). As Oxfam's Ruth Mayne (2002) observed:

In spite of the fact that the Pharmaceutical Manufacturers Association (PMA) of South Africa had hired most of the local legal talent, TAC was able to generate vital legal analysis which seriously challenged the

industry case, and helped underpin media coverage and international campaigning. (Mayne, 2002, p. 249)

After proceeding for one day on 5 March 2001, the PMA then sought a further postponement of the trial until April 18 in order to consider TAC's arguments (Halbert, 2005). The case resumed on the 18th, where, following 24 hours of negotiations between pharmaceutical companies, the PMA announced its clients were unconditionally withdrawing (Barnard, 2002). As eyewitness Heywood (2001) observed: "the packed court erupted into spontaneous applause, again reminiscent of the conclusion of political trials in the 1980s" (p. 156).

Heimer (2007) noted that the lawsuit's failure is usually attributed to three factors: "TAC's threat to undermine claims about the high cost of R&D by revealing data on government support for drug research and pharmaceutical company expenditures on advertising and marketing"; the "overwhelmingly negative reaction in the court of public opinion"; and "U.S. concerns about the adverse publicity just before its 2000 presidential election" (p. 559). Though the mood among activists in South Africa was soon soured by the government's claims that despite the PMA outcome, they would not be seeking to acquire generic antiretrovirals then or in the immediate future (Heywood, 2001), a 19 April press release from TAC captured the celebratory tone of the occasion:

Victory for Activists, People with HIV/AIDS and Poor People Everywhere! Pharmaceutical Companies Beaten! [...] This is a victory by ordinary people against unethical actions by multinational corporations. It has been shown that with a united global effort, concerned citizens can make a difference. (Treatment Action Campaign, 19 April 2001, n.p.)

6.4 News Media Coverage

This chapter now turns its attention to how these events and processes were articulated in the “AIDS drugs” news media sample. Figure 6, introduced in Chapter 5 and reproduced again here, depicts the overall quantity of articles in the sample over the seven-year period under consideration, demonstrating how the first half of 2001 marked a dramatic temporary increase in article frequency. This ‘spike’ is apparent most noticeably in *The New York Times* and *SAPA* coverage, however it is present in all outlets except for one (South Africa’s *Business Day* has only three hits for “AIDS Drugs” articles in all of 2001 in the Factiva database).

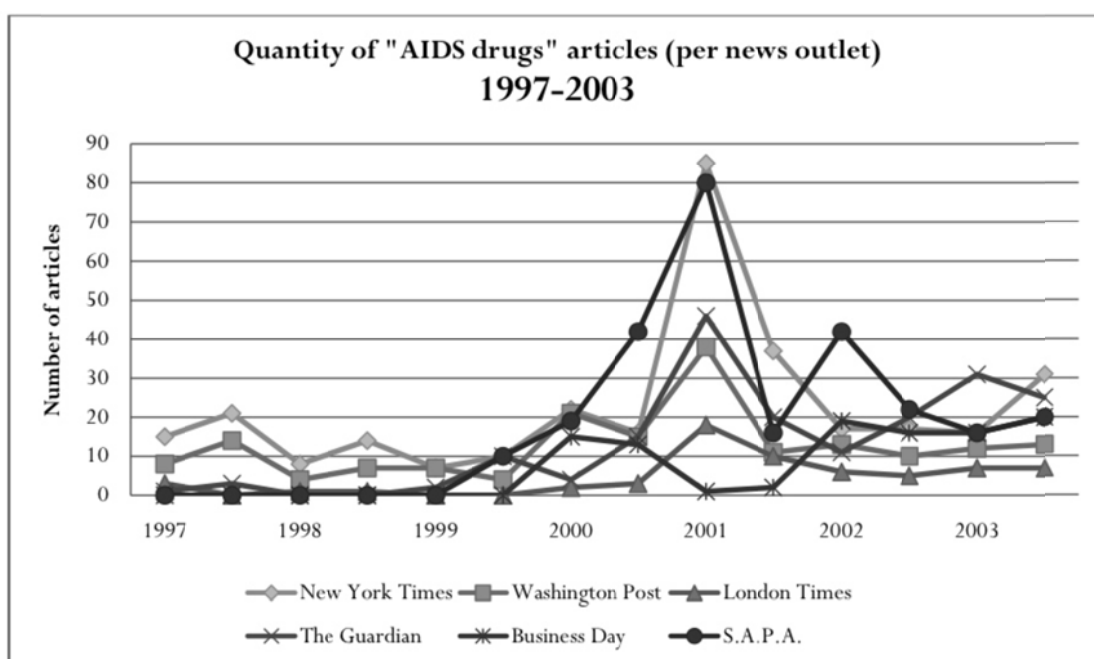


Figure 6:
Quantity of “AIDS drugs” articles per news outlet, 1997-2003
(Reproduced from Chapter 5)

Figure 8 shows the overall quantity of articles for the year 2001, demonstrating how during this key period coverage coalesced largely around two points: early March and late April - the two time periods corresponding to the re-opening and subsequent re-postponement of the trial on the 5th and 6th of March, and the final re-opening and subsequent cancelation of the trial on 18 April.

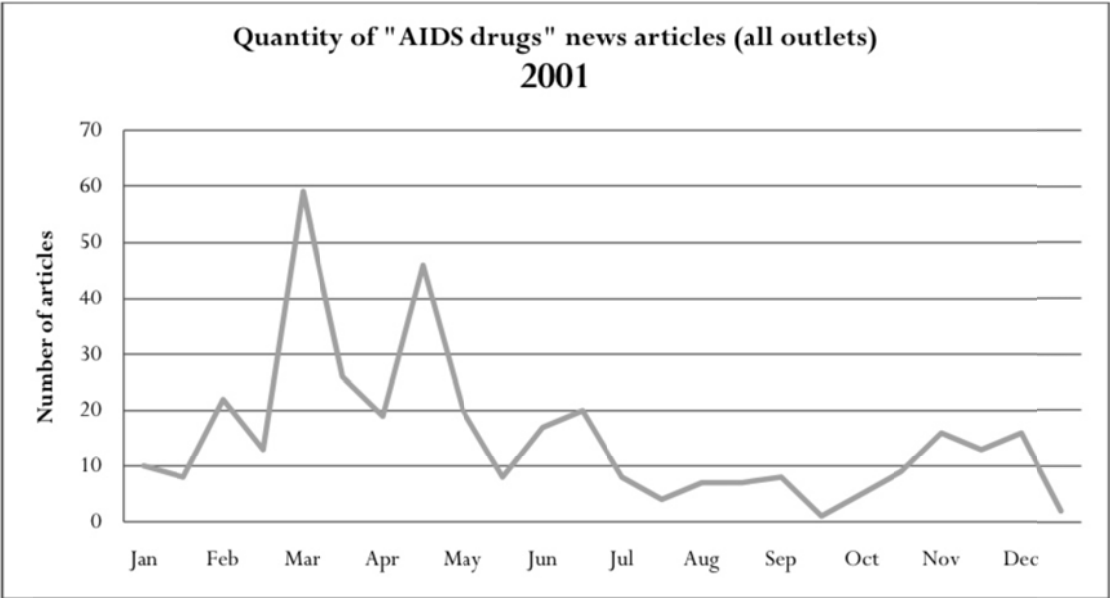


Figure 8:
Quantity of "AIDS drugs" news articles across all news outlets, 2001

Figure 9 exhibits the 2001 frequencies of articles per each individual news outlet. It shows that while the tendency to coalesce around early March and late April was moderately consistent across the six outlets, the March figure is exaggerated by an exceptionally high number of *SAPA* articles. This outlier can be understood considering the news wire nature of *SAPA*'s services, where during the busy activity in early March - which saw not only the opening and re-postponement of the trial, but also the official inclusion of civil society organisation TAC, and the surrounding civil disobedience activities also organised by TAC - *SAPA* published several regular updates providing notification of the latest turns of events. It must be noted, however, that even if the 26 articles from *SAPA* in early March were excluded entirely from this tally, the two spikes in March and April would still constitute the highest peaks in "AIDS Drugs" coverage across the seven-year period.

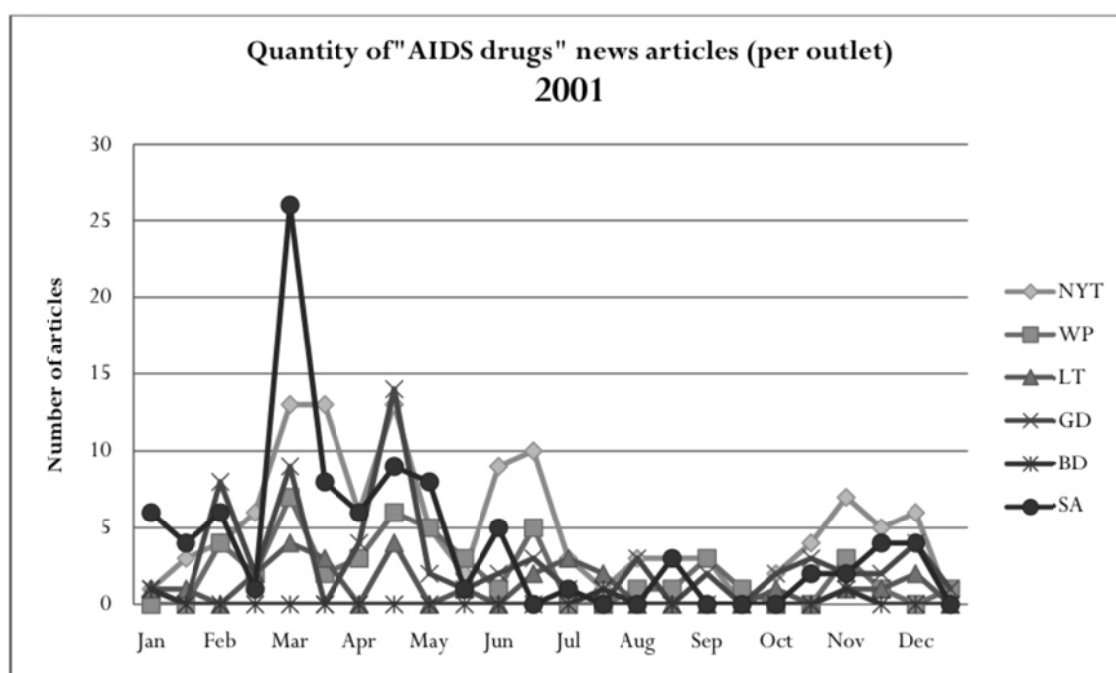


Figure 9:
Quantity of "AIDS drugs" articles per news outlet, 2001

Further statistics (Figures 10 and 11) suggest that “AIDS Drugs” coverage not only increased in quantity around the dates of the PMA trial, but that it also diversified into areas of news production atypical in the seven-year sample. Figure 10, for example, shows how the first half of 2001 marked an observable increase in the appearance of “AIDS Drugs” articles in the Foreign, Editorial and Business pages of *The New York Times*, while remaining relatively constant in the National and Science sections.⁴⁷ Similarly, Figure 11 illustrates how early 2001 also provided the only example of frequent editorialising over “AIDS Drugs” issues in the sample, recorded from the only three outlets (*The New York Times*, *The Washington Post* and *The Guardian*) that explicitly identified their editorials in the Factiva archives. These statistics suggest that not only was the PMA trial and surrounding events an object of increased quantitative coverage, it also warranted a qualitatively different mode of coverage to other stories in the “AIDS drugs” sample.

⁴⁷ Statistics for page section location were only gathered for *The New York Times*, as this was the only outlet whose reproduced articles in the Factiva sample explicitly cited which news desk they have emanated from.

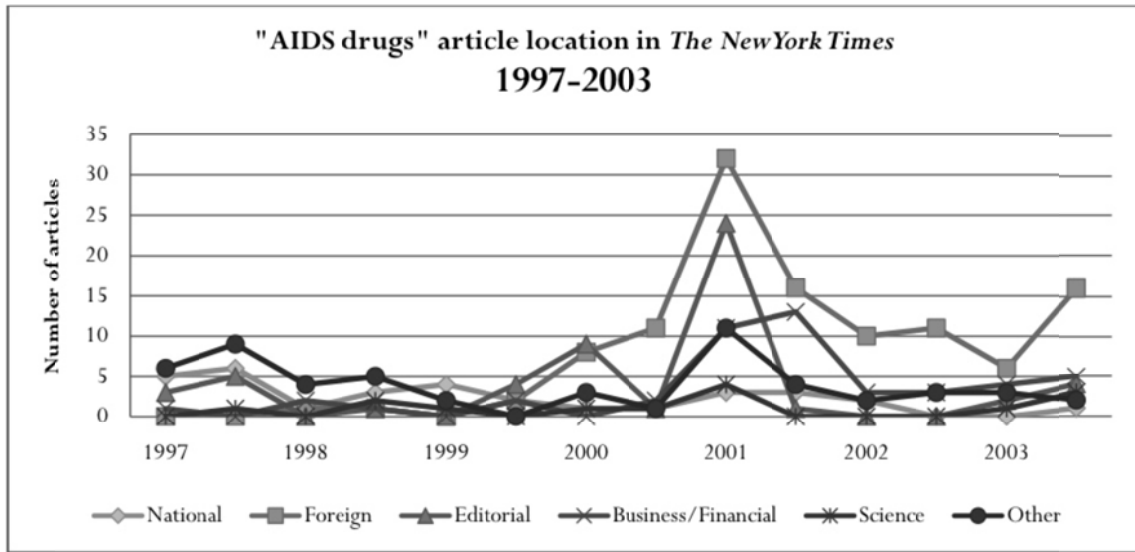


Figure 10:
"AIDS drugs" article location in *The New York Times*, 1997-2003

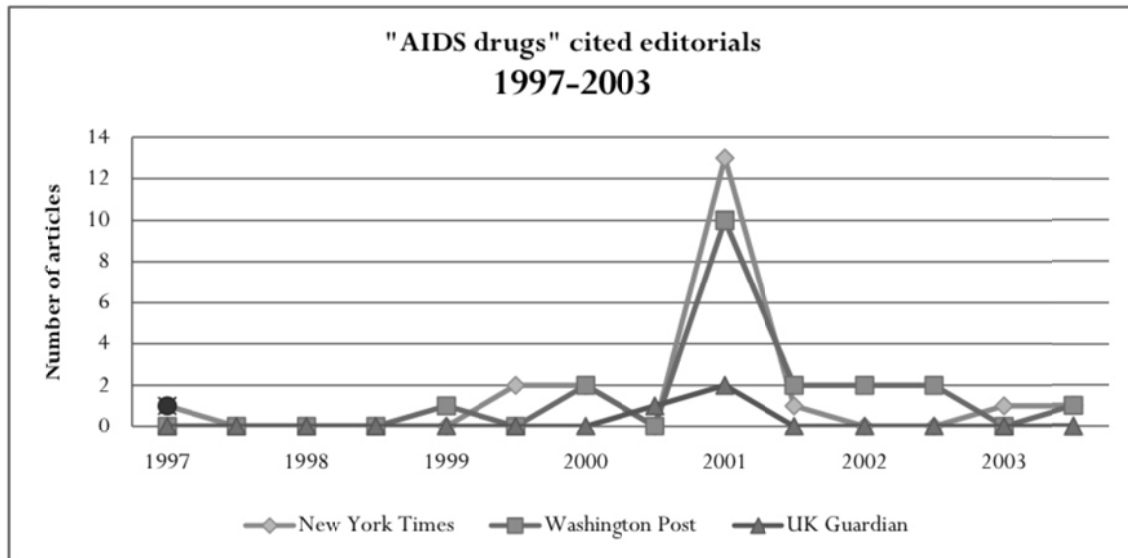


Figure 11:
"AIDS Drugs" editorials in *The New York Times*, *The Washington Post* and *The Guardian*, 1997-2003

In addition, Figures 12 and 13 demonstrate how the signifiers introduced in Chapter 5 - “intellectual property*” and/or “patent*”, “trade/trading” and “generic*” - were disproportionately prevalent in early 2001 coverage, in both the number of articles featuring the terms (Figure 12), and number of times the terms were mentioned (Figure 13). This broad statistical measure suggests the increased coverage to some degree reflected the concerns on intellectual property and trade disputes, introduced to the “AIDS drugs” news agenda through the anti-Gore protests of mid-1999 (see Chapter 5).

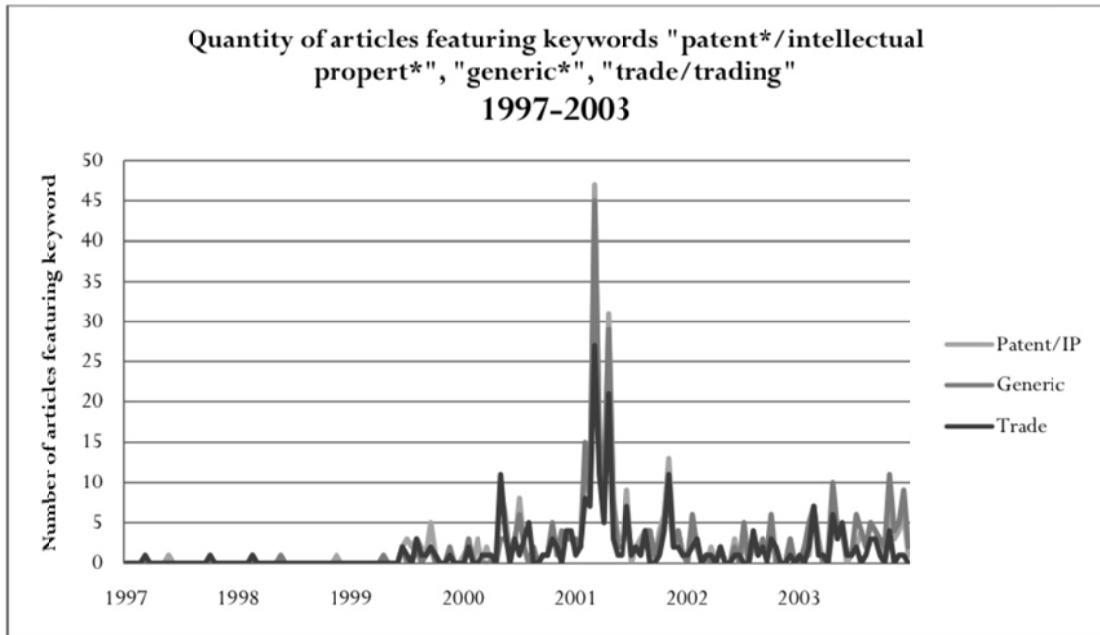


Figure 12:
Quantity of “AIDS drugs” articles across all news outlets featuring linguistic signifiers for ‘patents’, ‘intellectual property’, ‘generics’ and ‘trade’, 1997-2003

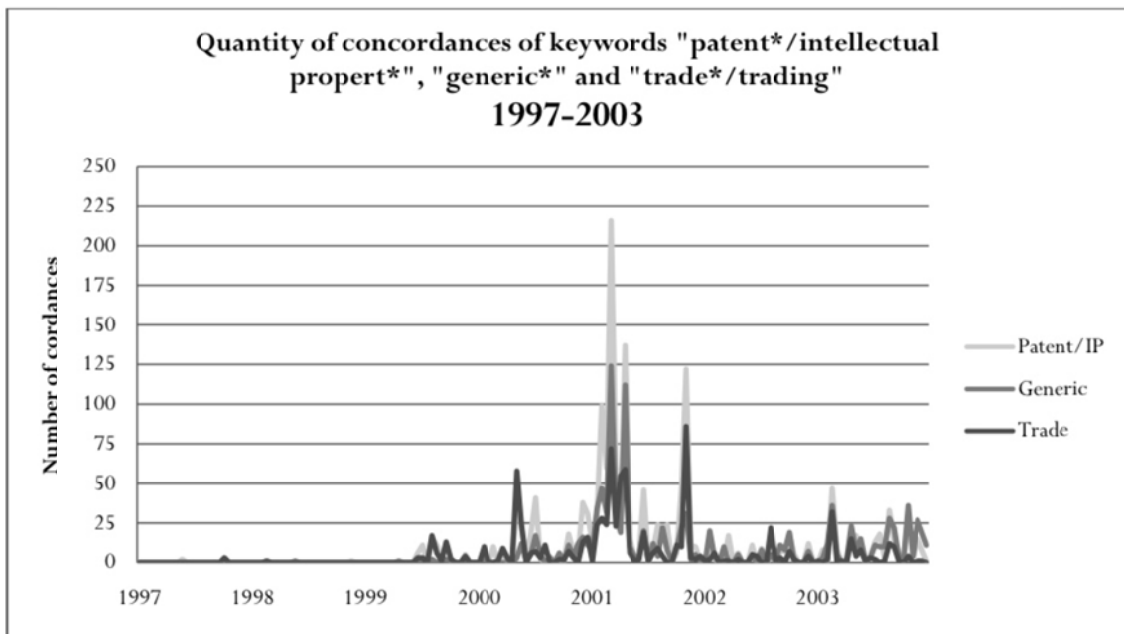


Figure 13:
Quantity of concordances of linguistic signifiers for ‘patents’, ‘intellectual property’, ‘generics’ and ‘trade’ in “AIDS drugs” articles across all news outlets, 1997-2003

Finally, Figure 14 shows how South Africa had become, by a wide margin, the most referred to majority world country in the US and UK outlets' "AIDS drugs" coverage. Indeed, while the US was the most frequently cited nation-state in the US and UK news outlets, references to South Africa surpassed even those for the US in the year June 2000 to June 2001, and again for 2002. In the first half of 2001, 56.7% of all US and UK "AIDS drugs" articles referred to South Africa, while only 55.6% referred to the US. The next most referred to geographical location during early 2001 was India, mentioned in 29.4% of all articles. This measure suggests that despite disputes over medicines access and IPRs occurring in other parts of the world, such as Brazil and India (see Chapter 3), South Africa provided the primary majority world news location for US and UK newspapers in the "AIDS drugs" sample.

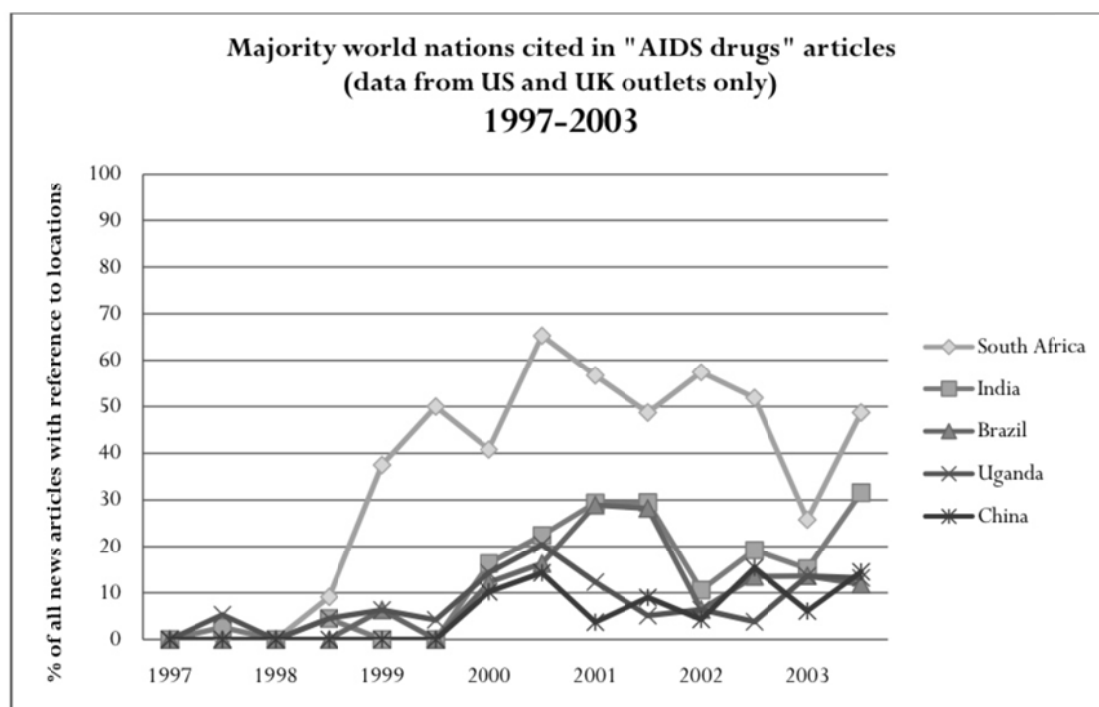


Figure 14:
Percentage of all "AIDS drugs" articles in US and UK news outlets that refer to South Africa, India, Brazil, Uganda and/or China, 1997-2003

6.5 Discourse Strands

These statistics indicate that the important dates of the PMA trial constituted: the highest points of “AIDS drugs” coverage; greatest diversity in location of news production; and greatest presence of key intellectual property signifiers throughout the sample. But does this also constitute a mediatised dislocation? As outlined above, Laclau (1990) conceived of dislocation as both disruptive *and* productive, in that it produces new attempts to suture the discursive space opened by the rupture. Therefore, for the news representation of the PMA trial to conform to a model of ‘mediatised dislocation’, the areas of heightened coverage identified in the above graphs must also exhibit the articulation of new and diverse discourse strands.

A qualitative analysis suggests this is the case. As may be expected, the increased quantity of coverage provided space for increasingly diverse content. New discourse strands emerged, articulating and contextualising the IPR and HIV/AIDS medicines signifiers, and the PMA trial nodal point, in various ways. For example, the significance of the PMA trial for the broader system of neoliberal globalisation was differently positioned in the news coverage: sometimes presented as evidence that the system was not working (as market-driven imperatives had resulted in a public health disaster); at other times presented as evidence that the system was working well (as it could be relied upon to mitigate its own excesses). Similarly, the PMA trial was variously contextualised in relation to global governance dynamics: where some coverage positioned it as a case of one nation-state failing its constituency; while other coverage described the limits of nation-state sovereignty amidst an inescapably globally interconnected web of various multinational corporations, supranational institutions, and transnational civil society organisations. The civil society organisations themselves were also differently represented: at times qualified as ‘Goliaths’ who pretended to

be 'Davids'; at other times described as ineffectual and marginal; and at other times not described at all, and entirely excluded from the HIV/AIDS medicines/IPRs dispute. Accordingly, the roles of various actors in the dispute were also variously positioned: with the PMA trial at times described as an aggressive act by industry against nation-state sovereignty; at other times described as an aggressive act by a nation-state against the liberties of the global free market. These examples demonstrate how the space created by increased coverage surrounding the PMA trial allowed for the articulation of various discourse strands. They illustrate how the trial itself could be appropriated by pre-existing discourses, and variously articulated as evidence for antagonistically opposed hegemonic projects.

The above umbrella areas provide compelling data for analysis. However, in the interests of time and manageability, not all of these areas can be usefully discussed in this chapter. Therefore, the chapter now focuses its analysis upon two specific areas in which new discursive activity was apparent: 1) the business model of generic pharmaceuticals; and 2) the role of IPRs in medicines access. Of all discourse strands represented during the heightened 2001 coverage, these two best demonstrate the contestation over the key aspects of medicines access and IPRs. In the first case, the focus on generics highlights that while the project to exclude generics as a legitimate business practice continued in the coverage, it was also highly contested in news coverage that began to problematise and dispute Big Pharma's 'generics = piracy' construction (see Chapter 5). Secondly, the relevance of IPRs for medicines access was a key determinant in not only defining the global HIV/AIDS medicines access crisis, but also in prescribing possible solutions to it. The positioning of this relevance was therefore highly contested. For the 'access to medicines' campaign, 'patents' were the key determinant of the crisis, and thus, IPR reform to allow greater generics use was the solution. For Big Pharma, 'poverty' was the key determinant, and thus the solution lay beyond IPRs, and into broader socio-political terrain for which the drug industry and their patents played no part, and could exert no influence. These are the two antagonistically opposed hegemonic projects at

the heart of the medicines access dispute. Both were clearly articulated within the extended coverage surrounding the early 2001 PMA trial. Where other umbrella areas of discourse strands provide compelling data for the general construction of this issue, these two areas provide specific illustrations of the central dispute over IPRs and HIV/AIDS medicines access. Their explicit and diverse contestation in the news coverage illustrates the foregrounding of antagonism in the dislocated space, demonstrating where the news media provided a forum for public contestation over key aspects of contemporary global capitalism. They shall now be discussed in further detail.

6.5.1 Generic Pharmaceuticals: Pirates or Heroes?

Generic copies of HIV/AIDS medicines, and the legal mechanisms allowing their manufacture and distribution - such as compulsory licensing - are at the heart of the dispute over medicines access in general, and the PMA lawsuit in particular. In the news media texts, various predicational strategies (Reisigl & Wodak, 2001) (see Chapter 2) were used to portray generics both positively and negatively.

In terms of negative strategies, as discussed in Chapters 3 and 5, the metaphor of 'piracy' was deployed in Big Pharma discourse to antagonistically exclude generics from consideration as a legitimate business practice (Drahos & Braithwaite, 2002; Halbert, 2005; Weissman, 1996). Reflecting this hegemonic construction, 'piracy' metaphors were articulated within early 2001 "AIDS drugs" coverage in quotations from major pharmaceutical company representatives. For instance, *The Guardian* quoted GlaxoSmithKline chairman, Sir Richard Sykes, stating that "the generic companies are 'pirates'" (Harding & Boseley, 14 February 2001, p. 4), while *SAPA* quoted PMA CEO, Mirryena Deeb, arguing that "once off exemption of pirate medicine is not the solution" (Deeb, in *SAPA*, 13 January 2001 n.p.). The 'piracy' metaphor could also be adopted in a self-evident

manner by the news outlet. For instance, in London's *The Times*: "[generic company] Cipla's drugs are pirate copies" (Dynes, 5 March 2001, p. 25); the Medicines Act allows the government "to buy, or manufacture, cheaper generic pirate versions." (R. Kennedy, 6 March 2001, p. 18); and "Cipla [...] has offered to supply the Pretoria Government with pirate copies" (Dynes, 12 March 2001, p. 16).

Providing a counter to such articulations, use of the 'pirate' metaphor to negatively stereotype generics was overtly criticised in the media coverage. In a late-2000 *The New York Times* front page profile of Indian generic maker, Cipla, the term "pirate", or "piracy", is used 11 times, with further references to the metaphor through signifiers "plunder", "treasure hoard", "buccaneer", and "Jolly Roger" (McNeil, 1 December 2000, p. A1). The article then draws on commentary from IPR academics, Frederick M. Scherer and Iain Cockburn, to illustrate the strategic deployment of the term. In the first case, Scherer is quoted positioning the 'pirate' metaphor as a "marvelous piece of P.R.", with the generics companies' behaviour characterised as "perfectly legitimate" (Scherer, in McNeil, 1 December 2000, p. A1). Secondly, Cockburn is paraphrased clarifying the role of generics companies by differentiating between "fly-by-night operations making dangerous counterfeits" and firms such as Cipla, and its rival, Ranbaxy, described as "reputable companies that make much of their money manufacturing ingredients for American and European companies" (McNeil, 1 December 2000, p. A1). Finally, with the metaphor freed from its association with generics, it is then reversed to accuse Big Pharma of illegitimate practice - Cipla CEO, Yusuf Hamied, quoted in relation to a US\$2000 price for a drug in the US, where its Indian generic version costs 5 cents: "Somebody had been pirated [...] And in this case it wasn't by the Indian" (Hamied, in McNeil, 1 December 2000, p. A1). By conspicuously overusing the 'piracy' metaphor, explicitly noting its strategic use to denigrate generics companies, and then reversing its direction to critique Big Pharma practice, this article overtly represents generics in a positive light.

The positive frame established in *The New York Times* article was then repeated in two further Cipla profiles in the “AIDS drugs” sample. With the headline “Crusading Indian firm takes on might of Glaxo SmithKline” (Harding & Boseley, 14 February 2001, p. 4), *The Guardian* published its sympathetic profile as part of a special series titled ‘Dying for Drugs’. Similarly, *The Washington Post* published a front page Cipla profile upon the re-launch of the PMA trial in March 2001, again playing on the ‘piracy’ metaphor with quotes from Hamied: “We are called pirates, but who is being pirated? Patients in countries where there is a monopoly on these drugs” (Hamied, in Constable, 7 March 2001, p. A01).

A further positively connoted mode of representing generics involved articulating their strategic role in national social and economic development. For instance, in *The New York Times* Cipla profile referred to above, India’s generic-friendly IPR system is identified as a catalyst for Indian development:

At the time [before the 1970s patent act], India’s drug prices were among the highest in the world. Now they are among the lowest. Access to drugs is one reason that average life expectancy has risen to 64 today, just as cheap pesticides based on foreign formulas are part of the reason India now feeds itself. (McNeil, 1 December 2000, p. A1 Foreign Desk)

Similarly, another *The New York Times* magazine cover article titled “Look at Brazil” spends almost 8,000 words celebrating the success of Brazil’s use of generics in addressing their national AIDS crisis (Rosenberg, 28 January 2001, p. 26):

Brazil can afford to treat AIDS because it does not pay market prices for antiretroviral drugs - the most controversial aspect of the country’s plan [...]
... [The drug companies’ solution to medicines access] - limited price cuts - is slow, grudging and piecemeal. Brazil, by defying the

pharmaceutical companies and threatening to break patents, among other actions, has made drugs available to everyone who needs them. Its experience shows that doing this requires something radical: an alteration of the basic social contract the pharmaceutical companies have enjoyed until now [...]

There is no legal reason that other countries cannot do the same.
(Rosenberg, 28 January 2001, p. 26)

In emphasising generics' legitimate role within an IPR system, these articles articulate the possibility of a differentiated (Dutfield & Suthersanen, 2005) IPR regime. As Halbert (2005) argued, the major pharmaceutical industry actors were particularly successful in marginalising the argument for differentiated IPR regulation, replacing it with an 'absolutist' IPR discourse in which there were only two positions - strong IPR protection, or no protection at all - a dichotomy leaving no room for generics. Furthermore, in emphasising the strategic role of generics in promoting national public health, *The New York Times* articulations above also challenge the ostensible *raison d'être* of the TRIPS Agreement itself: that is, that strong IPR protection will assist majority world economic and social development (see Richards, 2004). It is in this vein that representations of generics in the "AIDS drugs" sample could challenge the illegitimate frame imposed on them during the Uruguay round. Exhibiting the re-framing's salience, two days after the PMA trial closed generics are referred to in an otherwise unrelated *The New York Times* article as "the new heroes of the AIDS drug pricing controversy" (Zuger, 20 March 2001, p. F7).

6.5.2 The Role of IPRs in Medicines Access: Patents or Poverty?

Another umbrella area enveloping various discourse strands is the issue of how IPRs were positioned within the medicines access debate. This area is connected to the representation of generics, but more broadly articulates ways of situating the IPR debate within the wider crisis of global HIV/AIDS

itself. As outlined in Chapter 3, the ‘access to medicines’ civil society campaign - in particular Jamie Love, the “policy entrepreneur” of CPTech (Sell & Prakash, 2004, p. 162) - constructed a chain of equivalence positioning strong IPR protection as the chief impediment to global HIV/AIDS medicines access (see, for example, Love, 2001a). Big Pharma discourse, on the other hand, positioned majority world poverty as the chief impediment (see, for example, Mallett, in Warner, et al., 2002). Both discourses were represented in the “AIDS drugs” coverage. Before discussing such representation, however, it is worthwhile briefly outlining the respective chains of equivalence.

To begin with ‘access to medicines’ discourse, in an explicit counter-hegemonic challenge to the status quo, the campaign articulated their chain of equivalence as a series of *demands*: for IPR reform; for an end to “extra-institutional pressures” seeking to increase IPR protection (Shadlen, 2004, p. 80); for more government funding of HIV/AIDS medicines; and for fairer medicine prices between the majority and minority worlds. Following Laclau’s (2000, 2005) understanding of chains of equivalence, when united in common cause, a series of demands will link together. While each demand has its own distinct identity, they will split their identity between the particular demand and another privileged demand shared communally. Laclau (2000, 2005) argued that the more extended a chain of equivalence becomes, the more necessary it is to symbolise its commonality through one common signifier, and, as the means of representation for this only exist within the particular demands, this means that *one of the* demands assumes the representation of the chain *as a whole*. For the ‘access to medicines’ campaign, intellectual property reform was the privileged demand, representing the rest of the equivalential chain.

Countering this chain was the discourse of the major pharmaceutical companies, denying that IPRs held such an important role. In Big Pharma discourse, medicines access in the majority world is “absolutely not about the presence of patents. It is about the prevalence of poverty” (Robert L.

Mallett, senior vice-president for corporate affairs, Pfizer Inc., in Warner, et al., 2002, p. 692). Furthermore, in this discourse, under the signifier 'poverty' many factors are cited: "famine, drought, pestilence, corruption [...] lack of clean water [...], poor sanitation systems, insufficient infrastructure of almost every kind imaginable: communications, transportation, education, technology, finance, and of course, health care" (Mallett, in Warner, et al., 2002, p. 692). In this way, the Big Pharma chain privileged the signifier 'poverty', effectively re-articulating a pre-existing poverty-centric discourse in order to defend against the counter-hegemonic 'access to medicines' challenge.

These two different interpretations of the situation exhibit two opposing hegemonic projects. Both agree there is a lack of medicines access in the majority world, but each proposes a different discourse to explain the lack. To illustrate the two projects visually, Figures 15 (opposite page) and 16 (see overleaf) depict the opposing discourses, represented as positively defined chains of equivalence in relation to a shared negative antagonist – that is, the lack of HIV/AIDS medicines access. Figure 15 depicts the 'access to medicines' campaign's explanation for the lack of medicines access, expressed as a series of demands. Here, the demand for intellectual property reform is privileged as the major impediment to medicines access, and is the key signifier in the chain of equivalence built around it.

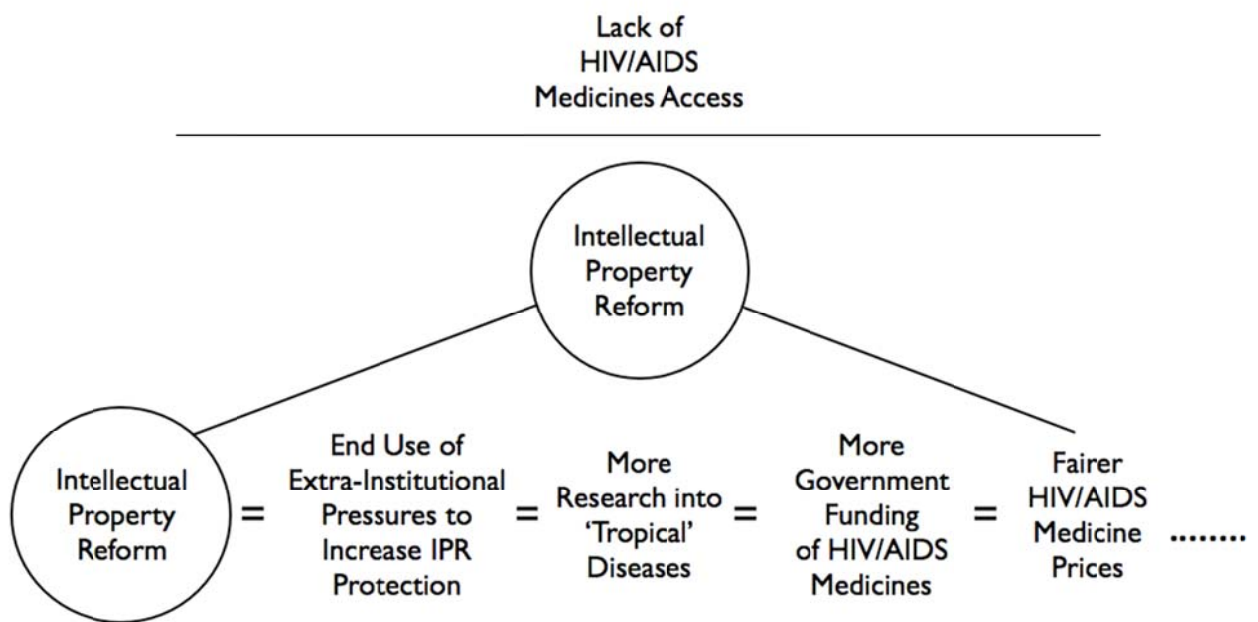


Figure 15:
'Access to Medicines' IPR-centric discourse:
Defining the HIV/AIDS medicines access crisis through a series of
counter-hegemonic demands

Figure 16 depicts Big Pharma discourse’s explanation for the lack of medicines access. Here, poverty is the privileged signifier, providing the universal linking function for the other demands: state corruption; weak public health infrastructure; and so on. Thus, while in ‘access to medicines’ discourse, the impediment to medicines access is something internal to rich world political processes, in Big Pharma discourse the problem is externalised to emanate from poor world issues existing independently of such processes. Or rather, while ‘access to medicines’ discourse occludes the agented role of majority world identities in constituting the crisis, Big Pharma discourse occludes the role of minority world identities, instead blaming African states for the problem.

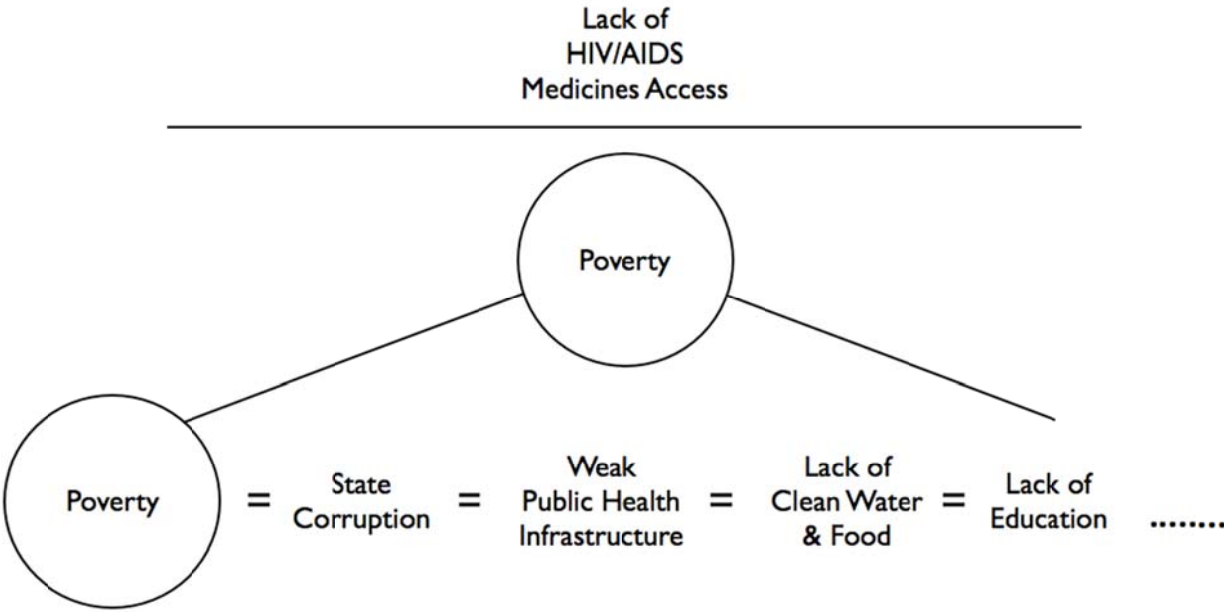


Figure 16:
Big Pharma poverty-centric discourse:
Defining the HIV/AIDS medicines access crisis in response to ‘Access to Medicines’ challenge

In news media coverage surrounding the PMA trial, both hegemonic projects can be identified. To begin with the 'access to medicines' discourse, *The Guardian's* February 2001 special series 'Dying for Drugs' provides the "AIDS drugs" sample's most overt articulation. Launched the same day as Oxfam's 'Cut the Cost' campaign, and eventually going on to win the One World media award (Boseley & Astill, 16 June 2001), the series includes several articles from *The Guardian* reporters, as well as high-profile guest commentators such as author John le Carré. A brief review of the headlines is enough to capture the overall anti-Big Pharma tone of the series: "At the mercy of drug giants" (Boseley, 12 February 2001, p. 1); "A lot of very greedy people" (le Carré, 12 February 2001, p. 19); "The profits that kill" (Bunting, 12 February 2001, p. 19); and "Industry that stalks the US corridors of power" (Borger, 13 February 2001, p. 3). On IPRs' importance to the medicines access debate, the series is unambiguous: "Put baldly, patents are killing people" (Bunting, 12 February 2001, p. 19).

It is worth noting too that within *The Guardian's* 'Dying for Drugs' series, the negative impact of IPRs is extended beyond medicines access to pertain to the unequal state of globalisation in general:

Intellectual property has become a tool to make permanent the growing inequality of the global economy: the rich get richer and the poor get poorer. Drugs are only the most blatant example of how, through TRIPS, the developed countries have stacked the odds in their favour. (Bunting, 12 February 2001, p. 19)

With this extension of 'IPRs-as-impediment' from medicines access to wider areas of social practice, this articulation of the discourse takes the demand for IPR reform from a *radical* demand to a *hegemonic* demand (see Glynos & Howarth, 2007). That is: "A *hegemonic* political demand [...] is a demand - whether radical or not - which comes to represent a challenge to aspects of a *regime* of practices by successfully *generalizing* its relevance to other institutions and practices" (Glynos & Howarth, 2007, p. 116 emphasis in

original). Glynos and Howarth (2007) argued that such demands, both radical and hegemonic, potentially reconfigure existing social practice in the name of a new hegemony.

The centrality of IPRs as an impediment to HIV/AIDS medicines access is also picked up in other articles in the sample. “Protecting its intellectual property rights is a major priority, even if that means preventing poor countries from making cheap copies of the drugs that they urgently need [...] What is clear is that weakening patent protection would lower prices” claims an article in *The Guardian* titled “Patently absurd” (Denny, 9 April 2001, p. 17). *The Washington Post* also published an editorial headlined “Patent wrongs”, claiming that while “patents create a useful incentive for firms to come up with new drugs,” they also “restrict the spread of existing drugs to people who need them” (*The Washington Post*, 25 February 2001, p. B06 emphasis added). Further articles represent a similar argument, but explicitly position it as being made by the ‘access to medicines’ campaigners. For example, in *The New York Times*: “Drug patents are under attack, blamed for high AIDS drug prices that deny life-saving therapy to millions of people in developing countries” (Pollack, 20 April 2001, p. 6).

On the other hand, the Big Pharma construction of the discourse can also be detected in several articles, most obviously as expressed through quotation from pharmaceutical representatives. For example, in London’s *The Times*, GlaxoSmithKline chairman Sir Richard Sykes is reported as saying: “We do not prevent access to medicines. The access issue is about infrastructure, medical infrastructure and political will” (Court, 8 December 2001, p. 54). Similarly in *The Guardian*:

[Sykes] claims the price of medicines is not the only reason why millions of people with HIV/AIDS are dying. The political will to spend money on medicines is something lacking, and developing countries do not have the clinics and doctors that are vital to ensure that AIDS drugs are properly used. (Harding & Boseley, 14 February 2001, p. 4)

In addition to pharmaceutical representatives, the USTR is also represented articulating this discourse – for example in a *The New York Times* piece commenting on a letter that the then-USTR Robert Zoellick⁴⁸ wrote to EU trade officials to dissuade them from implementing a tiered pricing system for poor countries:

Mr. Zoellick wrote that he was troubled by the reasons that [the EU] had offered for tiered pricing, including the argument that cheap drugs were still not available in Africa. Repeating an argument often made by spokesmen for the drug industry, he wrote that it was “more likely the result of the enormous infrastructure problems plaguing this region, rather than drug prices.” (McNeil, 20 July 2001, p. 8)

In some cases, no external source was provided and the ‘poverty-plus-political will’ frame was directly articulated by the journalist. For example, in *The Washington Post*, reporter DeYoung argues that the PMA trial debate has two aspects, neither of which pertains to IPRs:

The first is whether the wealthy have any remaining moral or economic justification for not buying the drugs to treat everyone in the world suffering from a pandemic [...]. Second is the question of how impoverished African countries with virtually no health care infrastructure and largely illiterate populations could safely and effectively administer the complex AIDS treatment regimes. (DeYoung, 5 April 2001, p. A16)

As the IPR dispute gained prominence in the news sample, further political elites staked claims on the issue, in some cases reproducing the Big Pharma discourse. Andrew Natsios, for example, head of the US Agency for International Development (USAID), spoke in an interview with *The Boston Globe*, which was then commented on in *The New York Times*. From *The New York Times* piece:

⁴⁸ Zoellick replaced Charlene Barshefsky (see Chapter 5) as USTR in 2001.

Painting with a very broad brush, Mr. Natsios said attempting to get the drugs to Africans any time soon would not be worth the effort because of the difficulties posed by a lack of roads, shortages of doctors and hospitals, wars and other problems. According to Mr. Natsios, the problems extend to Africans themselves. Many Africans, he told *The Globe*, “don’t know what Western time is. You have to take these (AIDS) drugs a certain number of hours each day, or they don’t work. Many people in Africa have never seen a clock or a watch their entire lives.” (Herbert, 11 June 2001, p. 17)

Similarly, a *The Washington Post* editorial reproduced comments from civil rights activist and Rainbow/PUSH Coalition leader, Jesse Jackson:

Jesse Jackson is frustrated, first of all, at the way the debate over drugs for AIDS-stricken South African is going. “It’s come down to good guys support generic drugs, and bad guys support brand names to protect the patents of the pharmaceutical houses that developed the drugs,” he says. “That’s too simplistic.”

[...]

“If today you landed a 747 full of free AIDS medicine in every sub-Saharan country in Africa, you might get the plane unloaded, but there wouldn’t be sufficient roads and bridges and trucks to get the medicine where it needs to go. And in many places, there wouldn’t be enough doctors and nurses and good water to guarantee its effectiveness [...] I mean, it’s not like taking an aspirin tablet for a headache. AIDS treatment requires 20, 30 or 40 pills a day, and there might not be drinkable water to take them. Some of the drugs are supposed to be taken so long before or after a meal, or with milk. But sometimes there is no milk - and occasionally no meal [...] This crisis is so much bigger than the price of drugs or the rights to intellectual property and all that.” (Raspberry, 26 March 2001, p. A25)

In both of these passages, the speaker emphasises that it is factors related to the poverty of Africa - shortage of roads, public health resources, lack of food

and clean water - that prevent medicines access, not price, and not patent protection. In addition, the argument is extended to include the complexity of an HIV/AIDS drug regime, and, in Natsios' comments, extended to pertain to Africans' inability to tell the time. In Jackson's comments, several reasons substantiating the 'poverty' discourse are juxtaposed against the 'access to medicines' IPR discourse, explicitly targeted as "too simplistic".⁴⁹

Such articulations of Big Pharma discourse, however, are then explicitly refuted in the same *The New York Times* editorial. Here, it notes that Natsios has since admitted the health infrastructures in South Africa and Botswana are "in fact, pretty good" (Natsios, in Herbert, 11 June 2001, p. 17), with further clarification that the vast quantity of pills is a "widely held misconception", with reference to MSF sources claiming a new twice-daily two-pill combo (Herbert, 11 June 2001, p. 17 Editorial Desk). This juxtaposition of opposed hegemonic projects within the same article demonstrates the flux of competing reality definitions that circulated around the PMA trial, as different publics sought to frame its dislocatory significance.

The above illustrations of news coverage demonstrate how the 2001 PMA trial focused attention on the dispute over medicines access and IPRs. Where previously, a hegemonic discourse concealing the role of IPRs had dominated (see Chapter 5), by 2001, the field was open for explicit challenge by counter-hegemonic forces articulating the IPR factor. Chapter 5 argued that in 1999, hegemonic discourse was reactivated, thus revealing its contingency and pointing to the possibility of its contestation. The 2001 dislocation fulfilled this potential, providing an open media arena for explicit competition between opposed political projects. In this arena, no singular discourse dominated. However, as the above illustrations suggest, the mediated discourse was structured largely around an antagonism between

⁴⁹ Jackson's comments here position him in opposition to the 'access to medicines' discourse, whereas in Chapter 5, it was noted that in the 1999 march on Washington in support of Jackson's HOPE for Africa bill, 'access to medicines' groups campaigned alongside him. An earlier *The Washington Post* article noted that in early 2000, "Jackson's Rainbow/PUSH Coalition had received a \$500,000 grant from Bristol-Myers for an AIDS project" (Brubaker, 29 December 2000, p. A1).

two hegemonic projects: Big Pharma poverty-centric discourse; and ‘access to medicines’ patent-centric discourse.

In late 2001, *The New York Times* explicitly addressed this antagonism with the headline: “Patents or poverty? New debate over lack of AIDS care in Africa” (McNeil, 5 November 2001, p. 6). Here, recently published academic research articulating the ‘poverty’ discourse (Attaran & Gillespie-White, 2001) had been publicly refuted by ‘access to medicines’ CSOs (CPTech et al., 2001). McNeil Jr. of *The New York Times* picked up on the dispute, foregrounding the very contestation over reality-definitions of the medicines access crisis as the newsworthy hook. In this way, the fundamentally contingent and contestable nature of social phenomena became the explicit focus of mainstream news content. According to Marchart (2011), such moments are called ‘mediality’, where the normally closed discourse of the media becomes “touched by the mediality of antagonism” (p. 78). To poetically describe such moments, Marchart (2011) quoted Leonard Cohen: “a crack in everything – that’s how the light gets in” (p. 78). Marchart (2011) argued that it is in such moments that media come closest to fulfilling their democratic potential as a site for the contestation of diverse public voices.

6.6 Discussion: Dislocations as Mediatised Processes?

The empirical illustrations above indicate the PMA trial functioned as a focusing point for wider coverage, and also as a forum for articulating previously concealed discourses. In this way, it performed similarly to past studies’ arguments on the transformative power of singular events, variously conceived as: ‘news icons’ (Bennett & Lawrence, 1995); ‘mediatised public crises’ (Alexander and Jacobs, 1998); and ‘global-focusing events’ (Cottle, 2009a). This chapter argues the PMA trial also functioned as a dislocation. That is, following Laclau’s (1990) conception of dislocation at the ontic level (Glynos & Howarth, 2007), the PMA trial marked both a *rupture* in the established system of representation, as well as being *productive* of new

attempts to suture it. As Chapter 5 argued, the established system of representation for HIV/AIDS medicines access concealed the role of IPRs. With the PMA trial's key focus on the implication of IPR regulation for medicines access, this concealment could not be maintained. Hegemonic discourse was thus ruptured, and new discourses, some explicitly articulating counter-hegemonic IPR-centric discourses, became circulated within the space opened by rupture.

This chapter also argues the PMA trial functioned as a 'mediatised dislocation'. That is, specific logics of media representation played a key role in constituting the trial as a dislocation: symbolising both the dislocation; and the new discourses produced in response to it. As noted earlier, this point involves a paradox. Dislocations cause rupture by introducing something un-symbolisable to a field of representation (Laclau, 1990), yet this un-symbolisable thing also requires signification in order to realise its productive influence. Indeed, the discourses produced through dislocation may be considered attempts to signify the rupturing force, thus closing the field of representation once again through a new hegemonic formation. In the contemporary world, attempts to symbolise emergent social phenomena occur predominantly through the media, in particular, the global news media (Beck, 2009; Cottle, 2009a, 2009b; Shaw, 1996). Claims makers, communicating through the media, offer competing definitions of crises and their preferred solutions to them. The constitution of *publicly visible* dislocation is thus dependent on both the signifying practices of claims makers within the media (journalists, editors, etc.), as well as the signifying practices of those political projects engaging with the media (CSOs, multinational companies, governments, and so on).

This chapter will now discuss two aspects of this process. First, how CSO claims makers constructed the PMA trial as a dislocation. Second, how this construction meant other potential factors were not represented – conceptualised here through Laclau's (2005) concept of 'heterogeneity'.

6.6.1 CSO Claims Makers and the Construction of the PMA Dislocation

Through a discourse-theoretical lens, it is immediately apparent that the PMA trial did not *self-evidently* emerge as a dislocation with the capacity to facilitate counter-hegemonic discourse. Rather, it was constructed as such through the contingent articulation of signifying practices from claims makers. Prior academic analyses (Finlay, 2004; Olesen, 2006) and published testimonies from CSO actors (Mayne, 2002; Sawyer, 2002) suggest that ‘access to medicines’ campaigners were especially effective in promoting the PMA trial as an important symbolic moment. In addition, this thesis’ interviews with journalists from *The New York Times* suggest that CSO actors were pro-active in promoting the event, and their interpretation of it, through the news media.

As Olesen (2006) noted, based on interviews with CSO actors, the ‘access to medicines’ campaign sought both to publicise the PMA trial, and to universalise its importance for a geographically distant rich-world audience. Realising the trial’s potential to damage Big Pharma’s image, the campaign advertised it widely, thus forcing the issue into “the court of public opinion” (CSO campaigner, in Olesen, 2006, p. 6). Furthermore, the campaign sought to explicitly link the majority world crisis to minority world issues, such as IPRs - thus articulating a “transnational problem construction” (Olesen, 2006, p. 5), and encouraging minority world public interest. Similarly, Oxfam’s Ruth Mayne (2002) noted the significant efforts of Oxfam and other minority and majority world CSOs to publicise the trial to the world’s media. Such efforts included organising protests and press conferences, publishing research and fact sheets, letter-writing campaigns to governments, and deploying celebrity spokespeople on media junkets (Mayne, 2002).

In South Africa, Finlay (2004) noted that TAC were a leading “information player” promoting the issue, and played “an important conscientizing role in the newsroom” (p. 86). Based on interviews with South African journalists,

Finlay (2004) concluded that TAC's "proactive engagement with the media is in sharp contrast to the government's reactive media relations role", and that its availability to journalists was "more compatible with daily newsroom pressures and deadlines" (p. 86). In addition, Finlay (2004) and Stein (2003) noted that South African newspapers' general resource deficiency made them especially reliant on information subsidies from newswires and other sources. In this context, TAC's role was especially welcomed, helping South African journalists to "understand difficult scientific concepts, orientate them generally in relation to the pandemic, do interviews, and provide other information such as online resources dealing with HIV/AIDS" (Finlay, 2004, p. 86). In a TAC representative's own words:

We try to co-operate with journalists as much as possible. We don't treat them with disrespect (unlike many senior members of government). We make a point of explaining things to them as clearly as possible without spin. We keep our messages clear and we always try to be reasonable. A lot of activist groups make the mistake of coming across so aggressively and antagonistically that they alienate ordinary people. (TAC representative, in Finlay, 2004, p. 86)

This thesis' interviews with *The New York Times* journalists, Donald G. McNeil Jr. and Tina Rosenberg, suggest that US-based 'access to medicines' CSOs took a similar pro-active approach to media relations. As Rosenberg recalled, the CSOs "did a superb job":

First of all they had a very, very strong belief that they were right, and therefore they were completely open [...] They did research for the purpose of sharing it with the media and with other people [...] They just felt like if they put their side of the story out there [...] they would get followers, which is I think what happened. (Rosenberg, interview with the author, 5 October 2010)

Rosenberg further cites Médecins Sans Frontières (MSF) and CP Tech's Jamie Love as producing important quality research: "just compiling lists of prices

was very eye-opening. Just to show that certain medicines cost more in Africa than they do in Scandinavia... The basic facts are pretty eye-opening and they really got them out there". Similarly, McNeil Jr. cites MSF and Jamie Love as key sources for his early research on the issue. Indeed, when McNeil Jr. was preparing for what would become the front-page article expressly redressing the 'piracy' metaphor in relation to Indian generic firm Cipla (McNeil, 1 December 2000), it was 'access to medicines' groups who provided the connection:

I think the most important story I wrote during all that time, I think history suggests that, was to go to India and find Cipla and Yusuf Hamied and write a profile of him. And the question I was doing was to question the conventional wisdom that India was the source of pirate drugs and counterfeit drugs and I asked some of the activists: if I wanted to go to India and meet a company that makes drugs that meet Western standards and can make them more cheaply and is willing to make them more cheaply, then where should I go? And a couple of them said: 'go to Cipla and talk to Yusuf Hamied.' (McNeil, interview with the author 4 June 2010).

While McNeil Jr. maintained that the provision of information to journalists did not guarantee coverage, as he would be inundated with information from many fronts, it was clear that the 'access to medicines' campaigners were more forthright, and eventually more successful, than their pharmaceutical industry competitors in engaging key journalists.

Indeed, both Rosenberg and McNeil note the virtual absence of Big Pharma communications on this issue. "Pharma, I think, was in a defensive crouch most of the time" said Rosenberg:

I mean, there were some companies that would just not speak to me at all. They wouldn't even [...] reply to say, you know, 'we disagree with this conclusion.' They wouldn't even answer the arguments of the other side - they just decided they wouldn't call me back. I think I pursued

Bristol-Myers Squibb for many, many weeks and finally gave up.
(Rosenberg, interview with the author, 5 October 2010)

Similarly for McNeil Jr., the pharmaceutical companies “were very reluctant to talk and very hostile and wary.” For McNeil Jr., this behaviour could be partly understood as a necessary preservation mechanism by the companies, who, in a climate of frequent corporate takeover, were concerned not to do anything that would make them appear weak or unstable. “They were all running scared and they were all reluctant to do anything”, he states. “Until eventually, what Hamied did [in offering cheap generics], was force their hand.”

The above insights suggest that not only were CSOs pro-active in publicising their arguments, they were also pro-active in promoting the PMA trial itself as an important moment. Despite being the original initiators of the PMA lawsuit, the pharmaceutical companies appear less engaged in media relations. Big Pharma was certainly subject to public opinion’s influence: “we don’t exist in a vacuum”, stated GSK CEO, J.P. Garnier, at the close of the trial, “[w]e’re not insensitive to public opinion. That is a major factor in our decision-making” (Garnier, in Swarns, 20 April 2001, p. 1). However, it appears they did not apply the same effort as their civil society opponents to influence public opinion by courting positive media attention. Through their efforts, the ‘access to medicines’ CSOs effectively elevated the PMA trial as a powerfully symbolic moment (Olesen, 2006), and, as this thesis argues, as a ‘mediatised dislocation.’

6.6.2 Heterogeneity and Media Logics

For discourse theory, all discursive constructions are contingent: possible, but not necessary (Phillips & Jørgensen, 2002). To apply this to media representations of the PMA trial, then, is to acknowledge that this construction is itself contingent: there is nothing self-evident or inevitable

about the PMA trial that led to it becoming a privileged moment. As argued above, the PMA did indeed become a privileged moment due to its promotion as such in news media discourse by 'access to medicines' campaigners. The important point here is that this could have happened differently. Other potential historical options could have been pursued, but were not.

To capture this aspect of discursive formation, Laclau (2005) introduced the concept of 'heterogeneity'. For Laclau (2005), the field of discourse can never be saturated, but rather, discourses will only partially capture that which they attempt to represent, leaving further elements excluded from the field of representation. This exclusion is, however, not the same as antagonism. With antagonism, the excluded 'other' still shares the same representative space - indeed, it must do in order to realise its structuring effect on the discourse. Other elements, however, are excluded entirely from this space. They are outside, not in the sense of forcible ejection, but in the sense of being 'left aside' and forgotten. Laclau (2005) referred to such entities as 'heterogeneous' elements.

In the "AIDS drugs" coverage it is not possible to identify those elements excluded from the field of representation, for the very reason that they were, indeed, absent. However, it is possible to identify certain historical factors that were otherwise cited as relevant to the medicines access dispute, but which were not proportionately represented in the press coverage. Brazil, for example, was involved in a similar conflict to South Africa in regards to US government and Big Pharma opposition to domestic laws allowing generics (Galvão, 2005). However, despite significant efforts to publicise the Brazilian situation (see, for example, an 8,000 word *The New York Times* magazine piece by Rosenberg, 28 January 2001), neither the Brazilian HIV/AIDS crisis, the Brazilian government's widely praised domestic production of generic ARVs (Barker & Simone, 2006; Cohen & Lybecker, 2005; d'Adesky, Avirgan, & Rossetti, 2005; Sell, 2003), nor Brazil's conflict with the US through the WTO's dispute settlement mechanism (Galvão,

2005; ICTSD, June 2001) registered in the “AIDS drugs” sample to a comparable degree as the South African situation (see Figure 14).

This could perhaps be understood in relation to South Africa’s dramatic statistics on HIV/AIDS: with UNAIDS estimates putting South Africa’s 2001 HIV prevalence at one in nine of the population, or 4.7 million, compared to 0.66 million in Brazil (UNAIDS, 2008a). However, while South Africa had the highest HIV-positive population of any country in 2001, further sub-Saharan countries Nigeria, Zimbabwe, Mozambique, Uganda and Tanzania all had HIV populations of a million or more (UNAIDS, 2008a), and yet did not receive coverage proportionate to this.⁵⁰ Similarly, India in 2001 had the second highest HIV population in the world at 2.7 million (UNAIDS, 2008a), as well as a further ongoing dispute over IPRs and medicines (Rangnekar, 2005), yet only appeared around half as much as South Africa in the “AIDS drugs” sample (see Figure 14).

Prior academic commentary and this thesis’ interviews suggest the elevation of the PMA trial over alternative options had more to do with *news values* than with statistics. Olesen (2006), for instance, pointed to the “obvious drama of a court case where two opponents meet face to face in a legal boxing ring” (p. 16) as especially attractive to a news media interested in unambiguity and a conflict frame. Similarly, for McNeil Jr., South Africa stood out “because the injustice of it was so blatant”. That is:

The practice in South Africa [...] was: ‘We will save rich people but you poor people can go home and die’. You know, ‘we have the solution, I have the drug, it’s here in my hands, just give me \$15,000 and I’ll hand you these drugs, oh I’m sorry, you’re annual income is only \$150, well, I’m sorry pal, I’m putting my hand back in my pocket and you can go home to your hut and wither away’. *That’s a story*. Arguments between activists and executives and intellectual property lawyers in Uruguay

⁵⁰ Zambia had a greater percentage of urban people infected with HIV than South Africa in 2001-2002 (UNAIDS, 2004), while Botswana, Uganda, Zimbabwe and Zambia all had lower life expectancies than South Africa in 2001 (UNAIDS/WHO, December 2001).

about an incredibly obscure treaty is not a story, not a front page story.
(McNeil, interview with author)

For McNeil Jr., what made the issue a 'story', rather than just an important issue, was the dramatic juxtaposition the South African case made between the haves and the have-nots.

For Rosenberg, despite her belief that Brazil was also a 'big story' in the IPRs/medicines dispute, South Africa provided a "more easily categorisable narrative for people in the US than Brazil." The emphasis here was on the unambiguity and the familiarity between the news media audience and the location of the conflict. "We never quite know what to make of Brazil," continues Rosenberg, "in every way, I'm not just talking about medicine." In this sense, Brazil's story was largely 'left aside' in the US and UK mainstream press field of representation.

What is clear here is that certain priorities of news media storytelling played a role in elevating the PMA trial as a key moment where other potential candidates were not. That is, the well-established 'news values' (Galtung & Ruge, 1965) of threshold, conflict and unambiguity, as well as the 'event-orientation' (Patterson, 1997; Schlesinger, 1977; Schudson, 1986; Tuchman, 1978) and 'drama-philia' (Iyengar, 1991) of the news, and, in the case of Al Gore and Nelson Mandela, the presence of elite personalities, or even 'celebrity politicians' (Street, 2004), ensured that the PMA trial was more likely to be covered than other situations lacking these qualities.

In the case of the location of South Africa, while it shares a similar level of cultural and geographical proximity to the US and UK as India and Brazil do, for some reason, as Rosenberg attests, it proved more "categorisable". Perhaps what is consonant here, then, is the familiar protest and emancipation narrative that post-apartheid South Africa provided, including the figure of Mandela - "as close to a living saint as existed anywhere in the world" (Klein, 2007, p. 197) - and the well-established framework of

victimhood and poverty ascribed to the citizens of the 'dark continent' (Comaroff, 2007; Tong, 2006). It is in considering such discarded alternatives for representation that the contingency of the PMA trial as a privileged event is revealed. It was a possible mediatised dislocation, but not a necessary one, and the fact that it was articulated as a significant event can be understood as the product of signifying practices of political claims makers, combined with the signifying practices of the mainstream news media.

6.7 Conclusion

The early-2001 trial between multinational pharmaceutical companies and the government of South Africa constituted the single most dominant event in the seven-year sample of "AIDS drugs" coverage. It functioned as a 'news peg' for the wider intellectual property/medicines access conflict. The construction of the PMA trial was not self-evident, however, but was promoted and publicised by claims-makers, most effectively from the 'access to medicines' civil society campaign. The public contestation of this campaign was then reproduced in the press sample following the specific signifying practices of the medium. Furthermore, the nature of these practices - focusing on the dramatic singular event, the presence of elite individuals and nations, and the consonant narratives of South Africa's emancipation - all helped to further elevate the PMA trial as a major media event.

In this way, the PMA trial provided a focal point for the circulation of wider discourses, both supportive of the status quo, and critical of it. Indeed, clear evidence of competing hegemonic projects can be detected in the coverage surrounding the trial. The contest between such competing projects was, however, relatively even. While the 'access to medicines' campaign's demands for IPR reform were represented, so too were the claims of 'piracy' from the Big Pharma discourse. In this sense, the coverage analysed here

hardly attests to an “avalanche of negative publicity” (Barnard, 2002, p. 159) befalling the pharmaceutical industry. However, given that the prior discursive situation has been identified as an unchallenged hegemony of the Big Pharma discourse (Drahos & Braithwaite, 2002; Halbert, 2005; Weissman, 1996), the *politicisation* of the status quo marked a victory in itself. In this sense, as far as the news media content is concerned, this chapter agrees with Halbert’s (2005) conclusion that 2001 was the point where Big Pharma lost control of a discourse they had dominated since the 1980s.

This chapter has analysed the dislocation of hegemonic discourse within news media representation. It has not, however, questioned to what extent the mediated dislocation was reflected in wider institutional practices. Chapter 7 will now consider this aspect, examining where the dislocation was sutured in the media coverage, and where these processes of hegemonic rupture and suture were articulated in wider institutional spheres of IPR regulation and HIV/AIDS medicines access.

7

The 'Charity Imaginary': Myths and Imaginaries in the Post-Dislocation News Coverage

Abstract

This chapter examines “AIDS drugs” coverage from mid-2001 to 2003. It uses Laclau’s concepts of ‘myths’ and ‘imaginaries’ to assess the relative success of different discourses attempting to address the dislocation outlined in Chapter 6. Where the past two chapters have identified the opening of HIV/AIDS medicines discourse in the news media sample, this chapter examines its closing. In particular, it notes that following the South African trial, the factor of intellectual property protection was marginalised once again in the HIV/AIDS medicines discourse. It also notes that in some outlets, notably *The Washington Post*, the intellectual property factor was conflated with medicines prices, thus symbolically neutralising the ‘access to medicines’ campaign’s demand for intellectual property reform. The chapter contextualises these insights within an historical overview of global medicines access developments since 2001. Following recent commentary suggesting that contemporary medicines access has reached an ‘unsustainable stalemate’, where reliance on foreign aid and price discounts has foreclosed more lasting intellectual property-based solutions, this chapter argues the intellectual property reform myth was

ultimately less successful than a ‘discounts + aid’ myth in suturing the medicines access dislocation.

7.1 Introduction

Philanthropy is commendable, but it must not cause the philanthropist to overlook the circumstances of economic injustice which make philanthropy necessary.

Martin Luther King Jr. (1929-1968)

In the wake of the 2001 PMA trial, a set of conditions emerged that medicines advocates have since described as a “golden window” for HIV/AIDS treatment (McNeil, 10 May 2010, p. 1). Medicines prices dramatically fell; HIV/AIDS-related foreign aid substantially rose; and the numbers of people receiving antiretroviral (ARV) treatment in majority world countries began to increase (UNAIDS, 2008a). By 2010, however, medicines advocates were reporting that the successful situation was proving unsustainable (Médicins Sans Frontières, July 2010). Global medicines access had become reliant on donations from minority world countries, and amid a global economic crisis, such donations were dwindling (Médicins Sans Frontières, July 2010). In addition, many countries’ ability to produce cheaper generic medicines was hindered as multilateral and bilateral intellectual property restrictions took effect (Dionisio, Cao, Hongzhou, Kraisintu, & Messeri, 2006; Klug, 2008). As Dr. Peter Piot, Executive Director of UNAIDS put it: “[in 2001] we were at a tipping point in the right direction. Now I’m afraid we’re at a tipping point in the wrong direction” (Piot, in McNeil, 10 May 2010, p. 1).

This chapter examines news media coverage from a time when the ‘golden window’ was still opening, and solutions to the medicines access crisis were actively under consideration. Continuing the thesis’ trajectory thus far, this

chapter applies a Corpus-Assisted Discourse Studies (CADS) analysis (Clark, 2007; Duguid, 2007; Partington, 2004, 2006) to “AIDS drugs” coverage from mid-2001 to 2003. Where prior chapters examined where the HIV/AIDS medicines discourse was ‘opened’ in the media sample through reactivation and dislocation, this chapter examines attempts to ‘close’ the space once again and institute a new hegemony. In this regard, the chapter deploys Laclau’s (1990) concepts of ‘myth’ and ‘imaginary’ as conceptual tools through which to assess the relative performance of attempts to ‘suture’ dislocation. In response to criticisms that discourse theory inadequately theorises discursive stability by over-determining fluidity (for instance, Chouliaraki, 2002; Chouliaraki & Fairclough, 1999), this chapter argues that ‘myths’ and ‘imaginaries’ may be usefully deployed to analyse the perseverance of hegemonic forms, as well as their change.

With the benefit of hindsight, writing from 2011, it is now apparent that the myth most successfully adopted by global powers as a solution to the medicines access crisis was one that promoted increased aid and price discounts, but which left the underlying intellectual property regime intact. The ‘golden window’ period 2001-2003 saw considerable developments addressing the medicines access/IPRs crisis: for example, the WTO’s Doha Declaration, clarifying the rights to access generics; and the bulk-funding of HIV/AIDS medicines through private philanthropy, including a large proportion of generics in their purchases. However, simultaneously the ‘TRIPS-Plus’ hegemonic project to increase IPR protection and prohibit generics continued through bilateral and regional trade agreements, ‘ratcheting up’ IPR protection (Abbott, 2004; Fink, 2008; Médecins Sans Frontières, 2011). In particular, India, the leading global producer of generic ARVs, and so-called “pharmacy of the developing world” (Médecins Sans Frontières, 2011, p. 6), faced continued pressure to curb its generics provision (Dionisio, et al., 2006; Klug, 2008; Shadlen, 2007). Thus, while progress was made, the underlying political economic conditions hindering equitable global medicines access continued.

In light of such historical factors, this chapter examines “AIDS drugs” coverage from 2001-2003, further addressing the thesis’ research questions regarding transformation of the HIV/AIDS medicines media discourse. Chapters 5 and 6 argued that through the reactivation and dislocation of hegemonic discourse, the ‘access to medicines’ campaign’s arguments received positive media representation. The historic conditions above, however, suggest that any positive representation of the counter-hegemonic challenge did not necessarily translate into structural transformation of the ‘TRIPS-Plus’ IPR hegemony. This chapter examines the representation of IPRs and generics in the media sample following the PMA trial. It finds that while in early 2001, IPRs and generics constituted a dominant feature of “AIDS drugs” coverage, following this point they were marginalised, and in some cases, excluded, from medicines access discourse once again. In this way, the HIV/AIDS medicines media discourse continued to transform - but in a movement away from, rather than towards, the ‘access to medicines’ campaign’s arguments.

To give an example of this process, this chapter uses a qualitative analysis of a sub-sample of *The Washington Post* editorials to demonstrate how the ‘access to medicines’ campaign’s demand for IPR reform was conflated with the demand for medicine price discounts. In this way, the power of the IPR reform demand was neutralised, and medicine price discounts could be articulated as an overall solution to the medicines access crisis. The chapter uses Laclau’s (2005) concept of ‘floating signifiers’ to show how medicine prices, previously excluded from Big Pharma discourse, became articulated in both ‘access to medicines’ and Big Pharma chains of equivalence. In this way, the same demand could be articulated by opposed hegemonic projects, its meaning indeterminate between them. By articulating ‘medicine prices’ as a solution to the crisis promoted by the ‘access to medicines’ campaign, *The Washington Post* editorials thus neutralised the demand for IPR reform: symbolically suturing the dislocation through a myth of ‘discounts + aid’.

Importantly, however, such discursive practice was not universal in the

media sample, with further articulations - in particular from *The Guardian* - maintaining an IPR-centric representation of the medicines access crisis. Thus, in order to demonstrate further myths in the sample, this chapter also examines a 2003 *The Guardian* special supplement. In this regard, *The Guardian* exhibited dual processes for the suturing of medicines access discourse. On the one hand, *The Guardian* explicitly aligned itself with the 'access to medicines' campaign, promoting a pro-generics/anti-Big Pharma position. On the other, it also articulated presuppositions typical to Big Pharma discourse - in particular reproducing the idea that generics and compulsory licensing only exist *outside* of legitimate IPR rules, and thus may exclusively be deployed in the absence or cessation of IPR regulation. While the pro-generics discourse is consistent with the 'access to medicines' campaign's counter-hegemonic challenge described in Chapter 6; the 'generics-are-outside-the-rules' discourse is a key element of Big Pharma's hegemonic project, constructed during the anti-generics rhetoric of the 1980s Uruguay Round negotiations (Halbert, 2005; Weissman, 1996). The reproduction of this aspect in *The Guardian*, amid an explicitly counter-hegemonic discourse, demonstrates the perseverance of elements from the pre-existing hegemony throughout the 2001 dislocation.

In light of such findings, the chapter uses Laclau's (1990) concept of 'social imaginary' to assess the relative stability of the TRIPS-Plus hegemony. Chapter 6 argued that in 2001 the TRIPS-Plus hegemony was dislocated in the media coverage. This chapter observes how various discourses, or 'myths', then attempted to suture the dislocated space in the coverage. With reference to *The Washington Post* and *The Guardian* illustrations discussed above, this chapter argues that no singular myth clearly 'won' the effort to suture the dislocation. Both 'access to medicines' patent-centric discourse and Big Pharma poverty-centric discourse (see Chapter 6) can be observed up until the end of the news sample in 2003. However, at the same time, this chapter argues that certain key elements of the pre-existing anti-generics discourse remained intact in the news coverage - even in discursive spaces, such as *The Guardian's*, otherwise dedicated to promoting generics as a

solution to the crisis. The perseverance of these elements indicates that the 2001 dislocation did not fully disrupt all preceding hegemonic constructions. The chapter argues that by demonstrating such resilience to dislocation, the 'generics-are-outside-the-rules' construction reveals itself as a 'social imaginary' – a deeply embedded hegemonic formation that may successfully evade the disruptive impact of dislocation, and instead absorb its challengers and provide a horizon of inscription for wider discourses.

With reference to wider historical processes occurring outside the news media sphere, the chapter contextualises the 'generics-are-outside-the-rules' factor as part of a broader 'discounts + aid' discourse. This discourse recommended lowering brand-name drug prices and increasing foreign aid funding, while leaving the existing IPR infrastructure intact. Following wider commentary on the dispute (Drahos & Braithwaite, 2002; Klug, 2008), it appears this discourse had the widest social appeal and influence. In this sense, it was the myth that satisfied the most social demands, and was most successfully adopted as a solution to the crisis. This myth, however, located its solutions within the pre-existing unequal power structures conditioning the initial medicines access crisis – where the problem lay in the majority world, but the means to address it lay with the minority. While structural reform of global IPR practice could have destabilised this power imbalance, a 'discounts + aid' approach only retained it: consolidating the power to address the crisis in the hands of the minority world. The solution was, in short, based upon a philanthropic approach subordinating majority world sovereignty in favour of minority world authority. It is in this respect that this chapter labels the power relation a 'charity imaginary'. Following the opening quote from Rev. Martin Luther King Jr., this chapter argues that while such an imaginary provided certain philanthropic solutions, overall it concealed the circumstances of economic injustice that made such philanthropy necessary.

7.2 Myths, Imaginaries and Morphogenesis

For discourse theory, 'myths' and 'imaginaries' are examples of entities that may be produced through structural dislocation (Howarth & Stavrakakis, 2000; Laclau, 1990). They are responses to the dislocation, and, in the language of Lacanian psychoanalysis, constitute attempts to 'suture' the space opened by the rupture of dislocation. Myths, according to Howarth and Stavrakakis (2000), "construct new spaces of representation that attempt to suture the dislocated space in question," and "function as a surface of inscription for a variety of social demands and dislocations" (p. 15). In this sense, myths are essentially responsive hegemonic projects, in that they seek to form a "new objectivity by means of the rearticulation of the dislocated elements" (Laclau, 1990, p. 61).

For example, Chapter 3 outlined how the perceived decline in US economic competitiveness in the 1970s and 1980s was used as an opportunity to promote IPR violation as a leading threat to US economic strength (see Sell & Prakash, 2004). In this situation, the loss of US competitiveness dislocated routine practice. The argument regarding IPR violation by so-called 'pirate' foreign countries (MacTaggart, 1982) was thus one myth, that competed with other myths, to define and 'make sense of' the dislocation. By rearticulating the dislocated space as the fault of IPR violators, this myth justified increased IPR protection as an appropriate response. As the subsequent formation of TRIPS suggests, this myth was successful. That is, it generalised its importance to a wider set of discourses - successfully functioning as a "surface of inscription for a variety of social demands" (Howarth & Stavrakakis, 2000, p. 15).

Not all myths, however, perform equally, and the term 'imaginary' is what Laclau (1990) used to refer to the results of a myth successfully neutralising dislocation. In this sense, imaginaries sediment a particular myth as the new 'objectivity.' As Laclau (1990) noted: "Any objectivity, then, is merely a crystallized myth. The moment of myth's realization is consequently the

moment of the subject's eclipse and its reabsorption by the structure" (p. 61). It is at this moment of 'crystallisation' that a myth becomes an imaginary - in Laclau's words, when:

... the moment of representation of the very form of fullness dominates to such an extent that it becomes the unlimited horizon of inscription of *any* social demand and *any* possible dislocation. In such an event, myth is transformed into an imaginary. The imaginary is a horizon: it is not one among other objects but an absolute limit which structures the field of intelligibility and is thus the condition of possibility for the emergence of any object. In this sense, the Christian millennium, the Enlightenment and positivism's conception of progress, communist society, are all imaginaries: as modes of representation of the very form of fullness, they are located beyond the precariousness and dislocation typical of the world of objects. (Laclau, 1990, p. 64 emphasis in original)

This does not mean that an imaginary fully closes the dislocated space. In discourse theory the fullness of any meaning system will always be ruptured by the elements excluded in its formation (Laclau & Mouffe, 1985). However, imaginaries at least *appear* to attain fullness by incorporating a great number of social demands into their field of representation (Howarth & Stavrakakis, 2000).

To return to the example above, when the IPR 'pirates' myth was formalised into the multilateral trade apparatus of TRIPS, it became an imaginary. Big Pharma, and other IPR-intensive industry groups, had been successful in generalising the threat of IPR 'piracy' to the economy as a whole (Drahos & Braithwaite, 2002; Matthews, 2002; Sell & Prakash, 2004). The transition of IPR regulation from the UN's WIPO to the GATT/WTO provided the solution to this threat, culminating in the TRIPS Agreement. Where previously countries had the autonomy to determine domestic IPR law, now TRIPS provided a new 'field of intelligibility' structuring possible IPR regulation. For majority world countries with little advantage from increased IPR

protection, the new structuring force consolidated power within the already powerful minority countries dominating world trade (Clift, 2004; Richards, 2004). For Big Pharma, the 'forum shift' of IPR governance from the UN to the WTO was necessary because the UN's democratically governed WIPO had become dominated by majority world countries (Clift, 2004; Drahos & Braithwaite, 2002; Santoro & Paine, 2003). In this sense, certain majority world countries were disturbing Big Pharma's agenda to increase IPR protection. The move to the GATT/WTO, however, neutralised this challenge, sedimenting a new imaginary, or 'horizon of inscription', structuring global IPR discourses. While this imaginary may have been borne out of a specific myth of IPR 'piracy', it must also be recognised as remarkably similar to historic structural power dynamics subordinating majority world sovereignty to a minority world agenda.

Myths and imaginaries thus provide conceptual tools to explore the dynamic between change and stability. In terms of this dynamic, the 'access to medicines' dispute has been previously theoretically conceptualised by Sell (2003), using Archer's (1982, 1995) critical realist 'morphogenetic cycle.' In this approach, 'morphogenesis' refers to structural transformation, regarded as an interaction between structure and agency where the two operate on different time intervals (Archer, 1982, 1995). Sell (2003) identified two morphogenetic cycles for the 'access to medicines' dispute: the first, the move from WIPO to TRIPS outlined above; the second, the transformation from TRIPS to the "partial victory of protesters to ease TRIPS restrictions on medicines" (p. 25). The second of these is reproduced here (Figure 17). In this model, the TRIPS regime begins as the structuring force, is then contested between two opposing sides, and is thereby modified as a result, thus creating a new structure that will condition the next phase of the cycle (Sell, 2003).

Structure/ Intellectual Property Regime
(WTO/TRIPS)

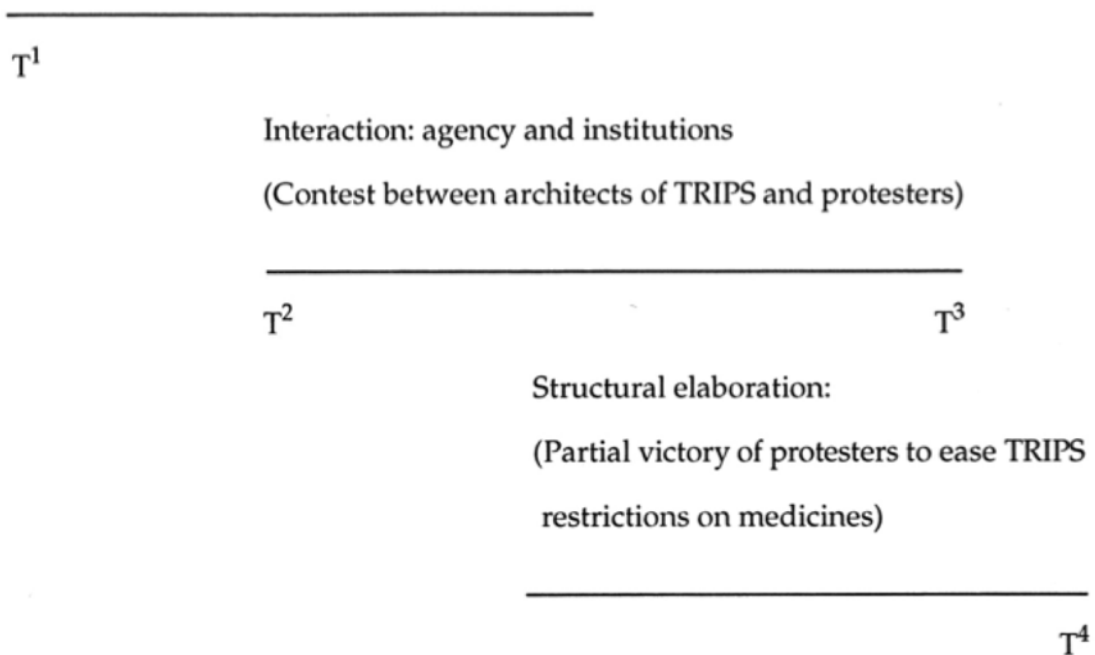


Figure 17:
The 'morphogenetic cycle' of TRIPS' structural elaboration
(from Sell, 2003, p. 25)

Sell's (2003) morphogenetic models are helpful as they illustrate the same historical processes under consideration in this thesis: the WIPO-TRIPS transition discussed in the example above; and, in particular, the PMA trial-era contestation of IPR hegemony, represented in Figure 17. However, while the morphogenetic models illustrate the broad terms of these transitions, they do not provide much detail on *how* the new structural situations were implemented at the expense of competing projects. This is where the categories of myth and imaginary may be of service: deployed to analyse the relative success of new hegemonic projects seeking to satisfy the most demands and become the new sedimented 'objectivity'.

To translate Sell's (2003) diagram above (Figure 17) into the language of discourse theory, the line break at T¹ is the dislocation, with the interaction

at T₂ to T₃ constituting the competition of various discourses produced through the dislocation (a process illustrated in Chapter 6). The structural elaboration at T₄, therefore, indicates the successful implementation of one hegemonic attempt to suture the dislocation, that is, where one myth has successfully neutralised the dislocation to become a new structuring force. This chapter is now going to examine news coverage at a crucial time in this contestation - where solutions to the medicines access crisis were being considered (or rather, where myths were seeking to suture the dislocation). First, however, it is necessary to note this chapter's analysis differs from Sell's (2003) in two key ways.

In the first instance, Sell (2003) defined the structuring force in Figure 17 as the IPR regime of WTO/TRIPS. The structural elaboration she identified was therefore the "partial victory of protesters to ease TRIPS restrictions on medicines" (Sell, 2003, p. 25). This thesis, on the other hand, has argued that the IPR hegemony at work during this period is better defined as a 'TRIPS-Plus' hegemony (see Chapter 3). That is, the structural forces acting upon medicines access were the multilateral TRIPS Agreement, but also various bilateral and unilateral strategies to increase IPR protection beyond that required by TRIPS (Drahos & Braithwaite, 2002; Ellsworth, 1993; Richards, 2004; Shadlen, 2004). The Special 301 watch list, removal of GSP privileges, threatened removal of aid, and the PMA legal action against South Africa are examples of such pressures - what Shadlen (2004) referred to as "extra-institutional pressures" (p. 80). Furthermore, this thesis argues the structural elaboration to "ease TRIPS restrictions" (Sell, 2003, p. 25) did no such thing. Rather, the 'elaborations', such as the Doha Declaration's affirmation of the right to compulsory license (Correa, 2007), were *clarifications* of already existing rules. The only 'easing', therefore, may refer to the dropping of some extra-institutional pressures, such as the cancellation of the PMA trial itself (see Chapter 6). Given that similar pressures have continued to the present day (Klug, 2008), however, it is also unclear the extent to which such 'easing' occurred.

Second, Sell (2003) applied a critical realist approach whereas this thesis applies a discourse theoretical one. The morphogenetic cycle provides an illustrative example of critical realism in that it regards social phenomena and agency as structured by, but also mutually constitutive of, relatively enduring, or 'intransitive', generative mechanisms (see Archer, 1995; Bhaskar, 1997; Willmott, 2005).⁵¹ Discourse theory, on the other hand, dismisses the 'intransitivity' of such structures: "not", claimed Willmott (2005), "because what critical realists characterize as 'intransitive' is unimportant for organizing our practices" (p. 750), but because in discourse theory "the distinction between intransitivity and transitivity is itself transitive" (Laclau & Bhaskar, 2002, p. 93). That is, whereas in critical realism structures are constituted as 'real objectivities', or "intransitive objects of scientific theory" (Bhaskar, 1998, p. 34), for discourse theory, structures, even deeply sedimented imaginaries, are still considered contingent and discursively produced (Laclau & Mouffe, 1985).⁵²

To conclude this section, it is worth noting that such an approach to 'myths' and 'imaginaries' illustrates that discourse theory can theorise both discursive change and the "relative structuration" (Laclau, 1990, p. 43) of discursive perseverance. In this way, this chapter's analysis addresses one of the key criticisms against discourse theory: that its priority on examining contingency and rupture renders it incapable of adequately addressing discursive stability (see, for example, Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). This chapter will now briefly discuss the historical developments in medicines access over 2001-2003, in order to provide context for the subsequent analysis of myths and imaginaries in the news coverage.

⁵¹ 'Intransitivity' here refers to an objective reality beyond our knowledge (Cruickshank, 2004).

⁵² Much has been written on the similarities and differences between critical realism and discourse theory (see, for example, Bhaskar, 1997, 1998; Curry, 2002; Glynos & Howarth, 2007; Laclau & Bhaskar, 1998, 2002; Willmott, 2005).

7.3 Post-PMA Developments

In the months following the 2001 PMA trial (see Chapter 6) several further developments characterised the ongoing issue of global HIV/AIDS medicines access. In general terms, these were: increased global elite engagement in the medicines access crisis; the rise in HIV/AIDS medicines access funding; and the fall in HIV/AIDS medicine prices. Such factors are widely recognised in commentary on the crisis. Less widely accepted is the issue of generic medicines and the role they played in facilitating the above developments. These processes shall now be briefly outlined, with special emphasis placed on the contestation over generics.

In terms of elite acknowledgment of the global medicines access crisis, perhaps the most important development was the WTO's adoption of the 'Doha Declaration' at its November 2001 ministerial ('t Hoen, 2009; Lang, 2004). The Declaration stated the TRIPS Agreement "can and should be interpreted and implemented in a manner supportive of WTO Member's right to protect public health, and, in particular, to promote access to medicines for all" (World Trade Organisation, 2001, n.p.). Importantly, the Declaration clarified the rights of countries to seek generics, adding the term 'compulsory licensing' to the official text (Correa, 2007). The move was both greeted by medicines advocates ('t Hoen, 2009; Mayne, 2002), and criticised as little more than a public relations initiative to gain legitimacy for the beleaguered WTO following Seattle, 1999 (Jawara & Kwa, 2004). In particular, 'access to medicines' groups acknowledged the Declaration neglected the critical issue of how countries without manufacturing capacity could import generic medicines (Love, 2001b; Oxfam, 2006). This issue was later settled on August 30 2003, days before the WTO Ministerial in Cancun, allowing compulsory licensing as long as the exporting country pay a license fee to the patent holder (*The Courier*, 2003). The necessary provisions to effectuate such a license, however, were subsequently criticised as so "cumbersome" (Correa, 2004, p. 92) they were virtually unworkable (Médicins Sans Frontières, 2006).

Parallel to the Declaration, several elite funding initiatives emerged to use minority world money to procure medicines for the majority world. In mid-2001, the UN announced its Global Fund to Fight AIDS, Tuberculosis and Malaria, receiving pledges of hundreds of millions of dollars from national governments and major private funders (UNAIDS, 2008b). In January 2003, US President George W. Bush announced a new President's Emergency Plan for AIDS Relief (PEPFAR), pledging US\$15 billion over five years (Dybul, 2009; UNAIDS, 2008b). Finally, two major US-based private philanthropy foundations, the Clinton Foundation and Bill and Melinda Gates Foundation, began committing billions of dollars to HIV/AIDS relief while negotiating bulk purchases on medicines (Kennedy, Harris, & Lord, 2004).

With an expanding market, ARV prices dramatically fell with the cheapest fixed-dose regime dropping from US\$350 per year in 2001 to US\$168 in 2004 (Schwartländer, Grubb, & Perriëns, 2006). Only a few years earlier, the prices were estimated at US\$15,000 (McNeil, 7 February 2001) to US\$20,000 (Schwartländer, et al., 2006) per patient per year. With cheaper drugs more readily purchased and distributed, the proportion of HIV/AIDS afflicted people in the majority world receiving ARV treatment increased from 5% in 2001 to 20% in 2005 (WHO/UNAIDS, 2006). Figure 18 illustrates the increase in total numbers of patients receiving ARVs (UNAIDS, 2008a). In sum, heightened global attention, increased funding and decreased medicine prices over this period constituted what many doctors referred to as a "golden window" for global HIV/AIDS treatment (McNeil, 10 May 2010, p. 1).

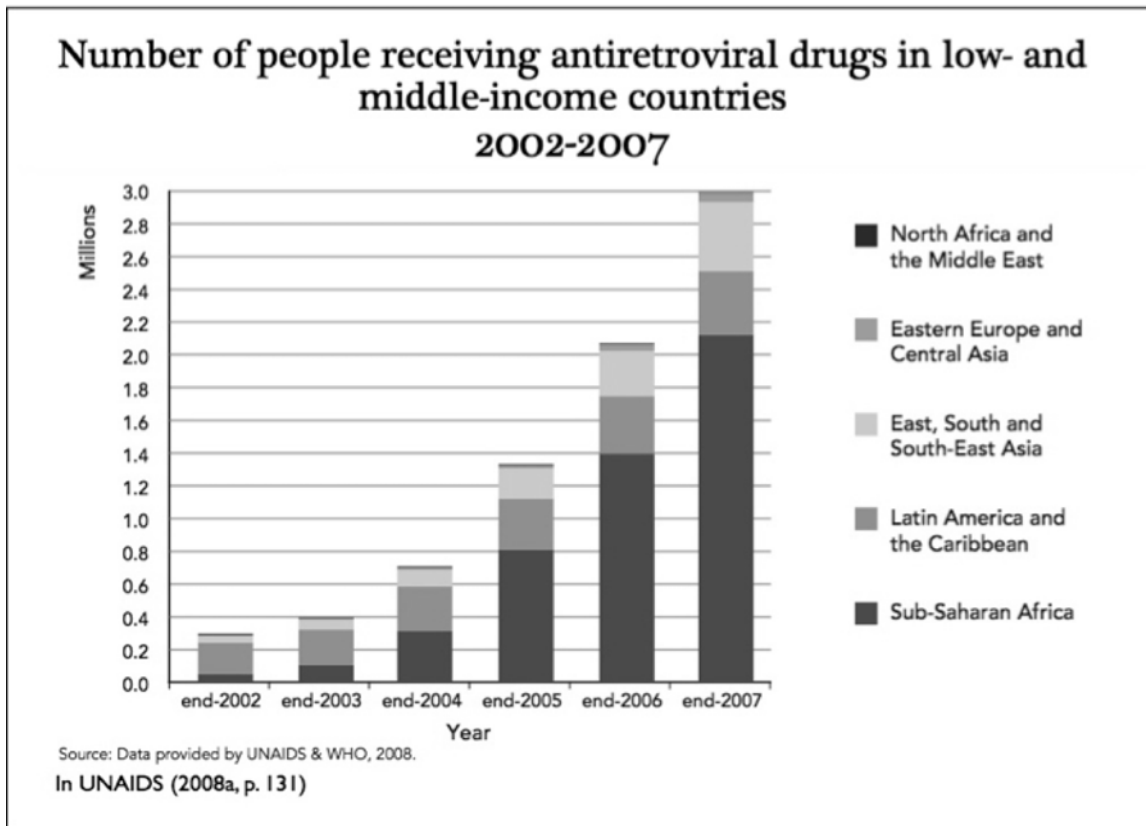


Figure 18:
Number of people receiving antiretroviral drugs in low- and middle-income countries, 2002-2007
(from UNAIDS, 2008a, p. 131)

While the price drops were universally welcomed, the reason for them was highly contested. For some commentators, generic competition in the medicines market was a key catalyst in this reduction (Heimer, 2007; Klug, 2008). CPTech's Jamie Love, for example, argued the Brazilian government's public health use of generics had created a market in raw materials for generics production, thus bringing down global prices (Love, 2001a; Love, in Warner, et al., 2002). Similarly, Médecins Sans Frontières (MSF), who in

2001 began an annual report of ARV global prices, noted generic competition radically dropped the lowest originator price of ARVs between 2000 and 2001, forcing brand-name drug prices down with it (see Figure 19) (Médicins Sans Frontières, 2005). Major pharmaceutical companies, on the other hand, claimed the price cuts were due to improved manufacturing techniques (Court, 28 April 2003) and negotiations on raw materials (Abelson, 28 April 2003), positioning the effect of generics as an unrelated variable. These two opposing articulations represent different myths seeking to suture the dislocation of the medicines access crisis: the former, articulating an IPR-centric ‘access to medicines’ discourse; the latter, a poverty-centric Big Pharma one (see Chapter 6).

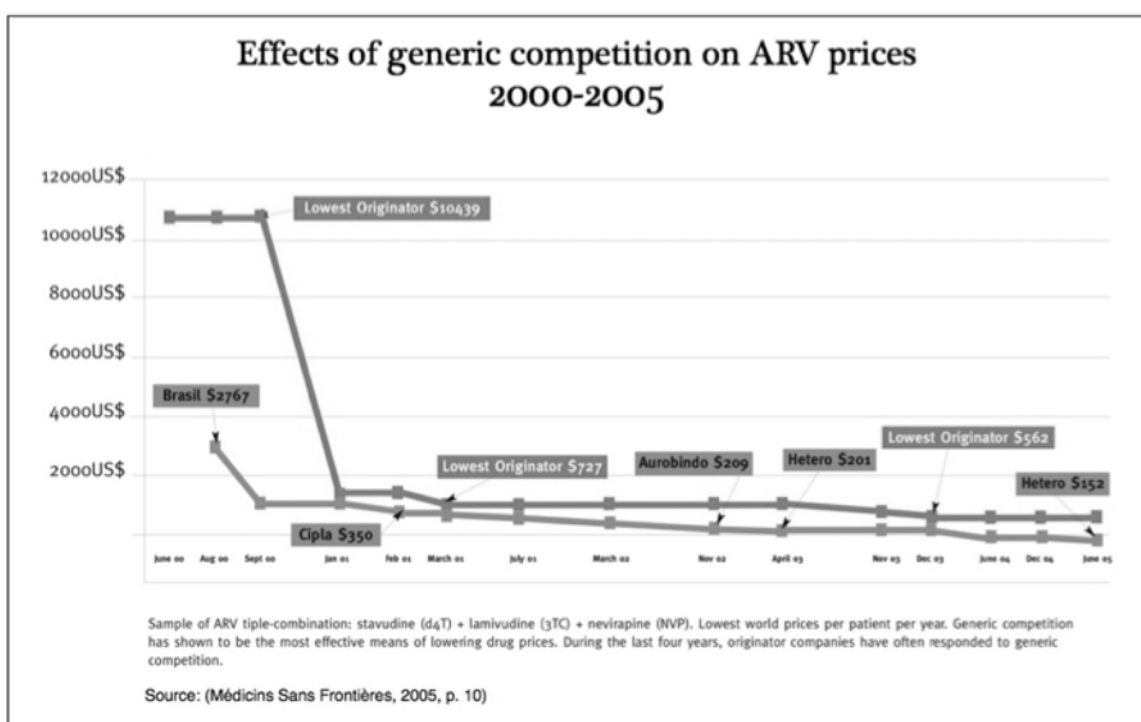


Figure 19:
Effects of generic competition on ARV prices, 2000-2005
(from Médicins Sans Frontières, 2005, p. 10)

Given such contestation over generics’ legitimacy, the major funding organisations were initially hesitant to purchase them (UNAIDS, 2008b). In 2001, however, the WHO introduced a pre-qualification mechanism to

ensure generics' quality (Schwartländer, et al., 2006). For UNAIDS, this move, along with the Doha Declaration's endorsement, provided enough vindication to begin bulk purchasing generic medicines (Shadlen, 2007; UNAIDS, 2008b). Similarly for PEPFAR, despite strong initial resistance to the generics option (Klug, 2008), the 2003 development of a US Government Food and Drug Administration (FDA) pre-qualification mechanism facilitated the purchasing of approved generics (Holmes, et al., 2010). These moves meant that for the Global Fund, by 2004, 60% of ARVs purchased were generics, constituting 47% of their total ARV expenditure (GFATM, 2005; Shadlen, 2007). For PEPFAR, money spent on generics increased from US\$10.6 million in 2005 to US\$154.5 million in 2008, generating an estimated savings of US\$323 million (Holmes, et al., 2010).⁵³

Despite the increased purchasing and distribution of generics, however, trade pressures upon generic-producing countries continued to threaten affordable medicine supply (Klug, 2008). Estimates from Shadlen (2007) and MSF (in Mudur, 2005) indicated that approximately half the people on ARVs in the majority world were treated with Indian generics. India's century-old differentiated IPR system, allowing patents on pharmaceutical processes but not pharmaceuticals themselves, had fostered a thriving generics industry (Rangnekar, 2005). However, in order to become TRIPS-compliant by 2005, India was required to enforce product patents also, leaving room for generic manufacture only in the case of specific permission to reverse-engineer generic versions under compulsory licenses (Klug, 2008; Love, 2007; Shadlen, 2007). For Shadlen (2007), the new situation meant that for many Indian generics manufacturers, the political and economic costs of producing generics for export came to outweigh the benefits (see also Dionisio, et al., 2006).

Compounding this problem, compulsory licensing mechanisms had proven

⁵³ A further influential move enhancing generics' public profile was the US government's consideration to issue a compulsory license for generic versions of the drug Cipro in the wake of the September 2001 anthrax attacks (Kennedy, et al., 2004).

too “burdensome” (Klug, 2008, p. 233) and “prohibitively complex” (Médicins Sans Frontières, 2006, p. 2) to be workable. In addition, countries considering the compulsory licensing option found themselves under pressure from pharmaceutical companies or the USTR to desist (Abbott, 2004). For example, when Thailand sought a compulsory license in 2007, Big Pharma company Abbott withheld new drugs in retaliation (Alcom, 15 March 2007). In sum, recent commentary has criticised the mixture of increased foreign aid with continued pressure on generics as resulting in an “unsustainable stalemate,” where aid and philanthropy are “simultaneously providing increased availability to drugs while precluding a more lasting solution to the crisis” (Klug, 2008, p. 207, see also Médicins Sans Frontières, July 2010, November 2009).

Such issues provide the context for the circulation of various myths seeking to suture the medicines access dislocation opened around the 2001 PMA trial. They suggest that while the mediatised dislocation identified in Chapter 6 may have indeed had wider purchase in further institutional spheres – corresponding to significant elite movement on the HIV/AIDS medicines access issue – overall, the hegemonic regime enforcing strong IPR protection remained largely intact. This chapter will now consider the sample news coverage to examine how these processes were articulated in the public sphere.

7.4 News Media Coverage

The above historic outline indicates that considerable activity on global HIV/AIDS medicines access took place over 2001-2003. The “AIDS drugs” news sample reflects such activity, covering new developments as the HIV/AIDS crisis of further countries, for instance China, became apparent, and new elite public figures, such as Pope John Paul II and Bono, became active on HIV/AIDS issues. As such, the news sample exhibits too many new topics to be adequately discussed here. This section thus focuses only on the

representations of IPR concerns, including generics, during this period.

The analysis is structured around two main points. First, it examines a sub-sample of *The Washington Post* editorials, showing how the IPR factor was re-articulated and ultimately marginalised in representations of the medicines access crisis. In particular, this analysis uses Laclau's (2005) concept of 'floating signifier' to demonstrate how the 'IPR' factor was conflated with the 'price' factor, thus neutralising the demand for IPR reform, and suturing the access dislocation with the myth of price discounts. Second, the analysis looks to *The Guardian's* 2003 special supplement on medicines access, to show how in other spheres the IPR-centric discourse was indeed articulated. This section also shows, however, that while *The Guardian* made an explicit campaign to maintain focus on the IPR factor, it also implicitly reproduced aspects of the anti-generics Big Pharma discourse. In this way, the news media analysis demonstrates dual discursive processes: on the one hand, the continued contestation of the pre-existing hegemony; on the other, the perseverance of this hegemony, where certain aspects proved impervious to the 2001 mediated dislocation.

Before moving to *The Washington Post*, it is worth first noting some broad statistics demonstrating the considerable decrease in "AIDS drugs" coverage following the PMA trial, and the proportionate decrease in reference to IPR issues within the coverage present. As outlined in Chapter 6, early 2001 saw a spike in the quantity of "AIDS drugs" coverage across the six-outlet sample. From mid-2001, however, this spike ended, and the quantity of "AIDS drugs" articles decreased back to pre-2001 levels (see Figure 6, overleaf – reproduced from Chapters 5 and 6).

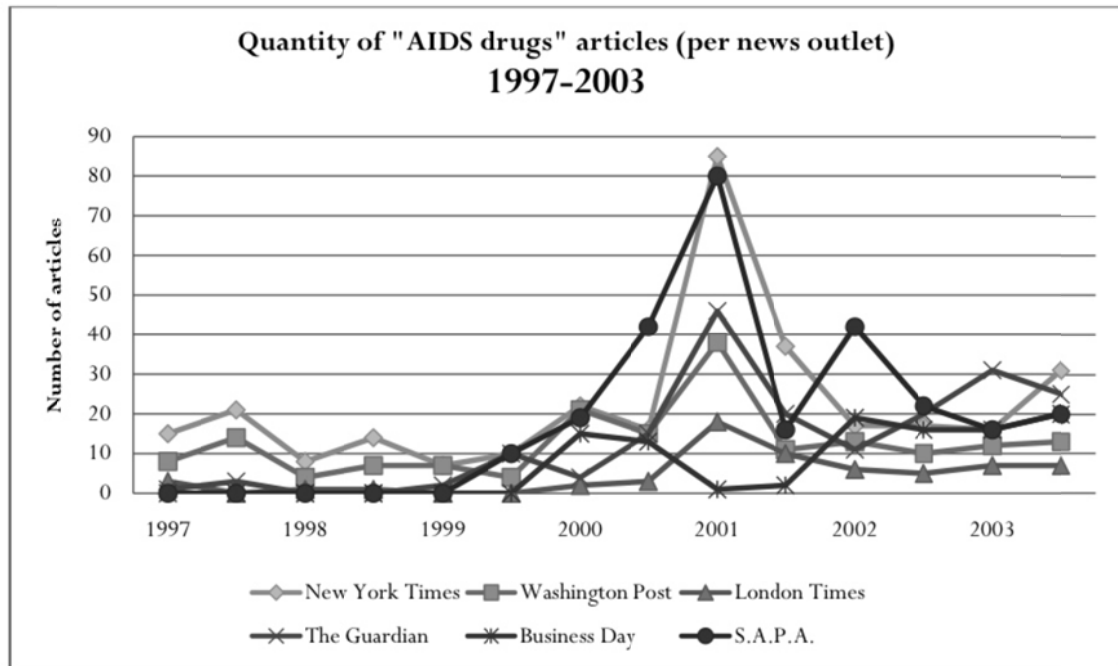


Figure 6:
Quantity of "AIDS Drugs" articles per news outlet, 1997-2003
(reproduced from Chapters 5 and 6)

Chapter 6 also noted the early 2001 heightened coverage was characterised by a dominant focus on the factors of IPRs, generics and trade issues articulated around the South African PMA trial. Within the post-trial decrease in article quantity, the relative appearance of these factors also subsided. Figure 12 (opposite page, reproduced from Chapter 6) illustrates the decrease in frequency of linguistic signifiers representing IPRs, generics and trade back down to pre-2001 levels. Figure 20 (opposite page) illustrates how, as a proportion of all "AIDS drugs" articles published during 15-day intervals, in early-2002 these linguistic signifiers fell back to early-1999 levels - a time before the intervention of the anti-Gore protests introduced the terms to the news media discourse (see Chapter 5). These statistics are a reminder that while IPR issues were foregrounded in the coverage during the PMA dispute, their centrality to the "AIDS drugs" discourse was contingent: possible, but not necessary.

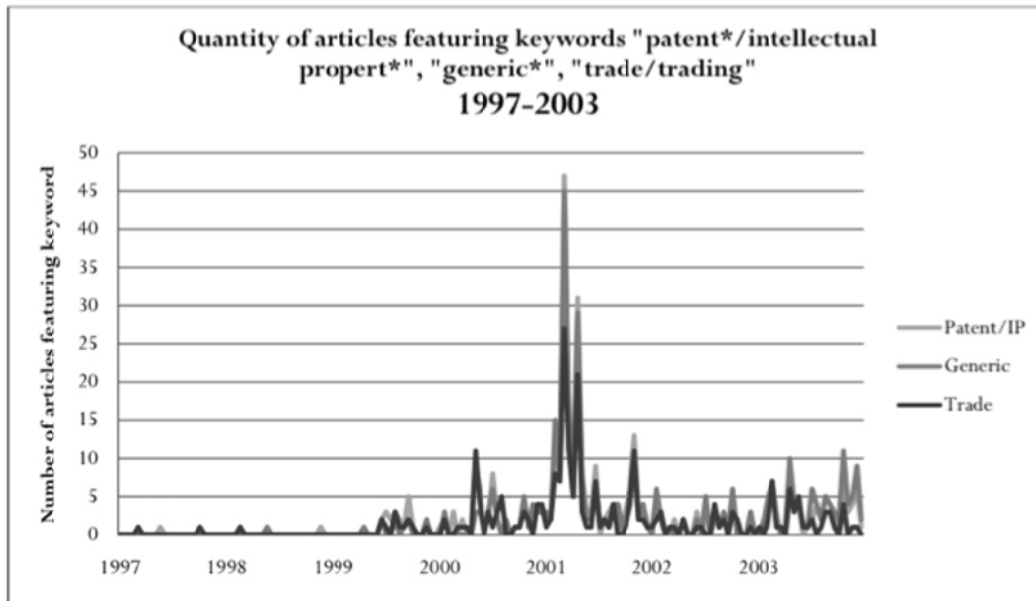


Figure 12:
Quantity of "AIDS drugs" articles across all news outlets featuring linguistic signifiers for 'patents', 'intellectual property', 'generics' and 'trade', 1997-2003

(reproduced from Chapter 6)

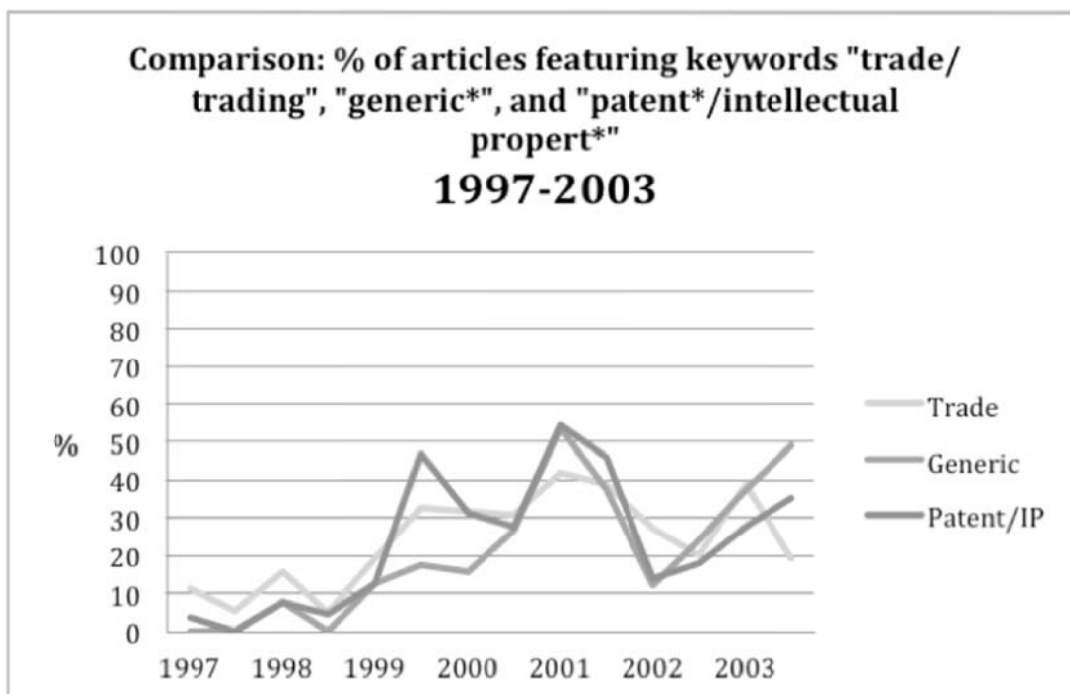


Figure 20:
Comparative percentages of articles featuring linguistic signifiers for 'patents', 'intellectual property', 'generics' and 'trade', 1997-2003

7.4.1 Re-Articulation: From Patents to Price in *The Washington Post* Editorials

Such a decrease in IPR references suggests that while IPRs were a dominant factor surrounding the PMA trial, following the trial, they were relatively marginal. A qualitative analysis of a sub-sample of *The Washington Post* editorials reveals a specific process by which IPRs were marginalised: where the IPR demand articulated by the ‘access to medicines’ campaign was re-articulated as something different. The clearest example of this involves the conflation of IPR disputes with the practice of price discounting. By combining these two disparate but related factors into the same discursive construct, the argument could then be made that price discounts were an effective solution to the problem of IPRs-as-impediment suggested by the campaign discourse. In this way, the IPR factor was subtly concealed once again in HIV/AIDS medicines media discourse.

Prior to the PMA lawsuit, major pharmaceutical companies refused to acknowledge prices were a factor in the medicines access crisis (Gellman, 28 December 2000). The positively asserted ‘access to medicines’ chain of equivalence included ‘medicine prices’, but Big Pharma discourse did not (see Chapter 6). In the wake of the PMA trial, however, Big Pharma discourse appropriated the price factor into its chain. In this way, ‘prices’ became a ‘floating signifier’ (Laclau, 2005) - articulated by opposing political projects with very different meanings. Through such processes of conflation and re-articulation, the dislocation of the medicines access dispute in *The Washington Post* editorials could be partially sutured by the myth of price discounts, and the radical demand for IPR reform effectively neutralised.⁵⁴

⁵⁴ There are twenty editorials from *The Washington Post* featured in the Factiva “AIDS drugs” search from 1997 to 2003. Consistent with trends from the wider “AIDS drugs” sample, half of these were published in the six months around the PMA trial in early 2001, with the first editorial commenting on the mid-1999 anti-Gore protests. To give some indication of *The Washington Post*’s identity, Benson (2006) noted that its readers were at least twice more likely than the average US adult to hold a university degree, earn more than US\$75 000 per year, and hold a managerial position. *The Washington Post* is regarded as “emblematic of elite newspapers in the United States”, with a “reputation for reliable, dispassionate journalism” (Hoffman, Jengelly, Duncan, Buehler, & Rees, 2010, p. 564). While the *Post* had been judged the most liberal of major US news organisations (Dispensa & Brulle, 2003), over the period 2001-2003 it

A process of discursive conflation was already apparent in *The Washington Post* editorial sub-sample before the PMA trial emerged as a newsworthy event. The first editorial ("Mr. Gore and the AIDS drugs" *The Washington Post*, 24 June 1999, p. A26) focuses on the anti-Gore protests discussed in Chapter 5, sympathising with Gore against the attacks of the protesters who have "heckled Mr. Gore at his early appearance," and who "manipulate the facts in what is actually a much more complicated and interesting debate" (*The Washington Post*, 24 June 1999, p. A26). An outline of the "more complicated and interesting debate" is then presented, echoing the Big Pharma discourse discussed in Chapters 5 and 6:

International trade law protects drug company patents, and for good reason. Companies invest large sums in research that often leads nowhere but sometimes produces valuable new medicines. If the industry can't recoup its investment through drug sales, here and overseas, it won't look for new drugs, and everyone will suffer -- Americans and foreigners alike. (*The Washington Post*, 24 June 1999, p. A26)

The editorial then makes its major normative suggestion:

This conflict between the legitimate interests of industry and those of the developing world has no ultimate solution, but avenues of compromise can be found. More foreign aid from wealthy countries could be targeted to health care and specifically to encourage the development of medicines useful to the developing world. Developing countries could devote a larger share of their budgets to primary health care, thereby creating more of a market for useful drugs. Drug companies could more often settle for lower profit margins when selling or licensing products to poor nations, especially when the alternative is no sales at all. (*The Washington Post*, 24 June 1999, p. A26)

was also noted that its editorials outspokenly supported the conservative Bush Administration's policies on Iraq (Massing, 2002).

Thus, while the conflict is presented as revolving around trade law and IPRs, the suggested “compromises” - foreign aid, increased majority world health budgets, drug discounts, and licensing - do not actually modify anything in the IPR/trade status quo. In addition, these suggestions are framed explicitly as compromises, not as solutions. In this articulation, there is no solution possible, implying that the “legitimate interests of industry and those of the developing world,” in this case at least, are fundamentally opposed. In this way, the possibility of differentiated IPR systems (Dutfield & Suthersanen, 2005) seeking more even balance between producer reward and consumer accessibility, are excluded. Instead, a strict binary is stated: for the majority world to win, minority world business must lose (and vice versa). Or rather, following Halbert’s (2005) identification of the ‘absolutist’ Big Pharma discourse, there are only two types of IPR protection possible: strong protection (keeping drugs inaccessible); or no protection at all (destroying any company profit).

Another pre-PMA trial editorial from the sub-sample (“Good Deals for Africa” *The Washington Post*, 6 May 2000, p. A18) articulates the same conflation of IPRs with price:

... the pharmaceutical firms ought to concede that AIDS is an exceptional disease and that this justifies a limited weakening of intellectual property rules that does not compromise the larger framework of regulation. One pharmaceutical firm, Pfizer, has in effect accepted this. After coming under pressure from development groups, it agreed to sell an AIDS drug in South Africa at a price that reflected the cost of production rather than that cost plus the value of its patent. (*The Washington Post*, 6 May 2000, p. A18)

While the suggestion is for a “weakening of intellectual property *rules*”, the example given is simply a price discount. That is, the only ‘weakening’ pertains to the value in dollars the company has set for the product, while the IPR ‘rules’ are left intact. Furthermore, by conjuring “pressure from

development groups” as a catalyst for this discount, the presupposition is that this is what the groups were seeking. In this way the *demand* for IPR-reform from the ‘access to medicines’ campaign is re-articulated as a demand for discounts, thus effectively excluding IPRs from the dispute.

This conflation of IPR issues with discounts continues in further editorials following the PMA trial. For example, an editorial published on the eve of the Doha Ministerial and after the anthrax attacks, argues that: “AIDS activists are still complaining that, in pressuring the maker of anthrax-fighting Cipro *to reduce prices*, the United States is hypocritical” (“An altered AIDS debate” *The Washington Post*, 2 November 2001, p. A28 emphasis added). Here the US government’s consideration of a compulsory license for Cipro is elided with discounting Cipro. Indeed, this statement is supported by a claim made earlier in the editorial that the dispute has been about drug pricing all along:

Provided [USTR statements on TRIPS-compliance] are implemented in good faith, these ought to be enough to silence the *controversy on drug pricing* that has consumed the AIDS debate. (*The Washington Post*, 2 November 2001, p. A28 emphasis added)

Similarly, a 2002 editorial’s retrospective reference to the PMA trial claims that the pharmaceutical industry “has abandoned that litigation and embraced the idea that an extraordinary health crisis requires an extraordinary response. It has begun to discount its drugs for Africa” (“Talking Cadillacs to rickshaw riders” Mallaby, 7 October 2002, p. A19). In this way, discounts are constructed as a novel and extraordinary response to the intellectual property/medicines access dispute.

Finally, a mid-2001 editorial on the UN HIV/AIDS special session notes that while until recently “drugs were prohibitively expensive, and the challenge of administering them seemed too much for the creaky health systems in poor countries”, now: “drug discounts plus promising treatment programs in places such as Brazil have proved that treatment should be part of AIDS-

control programs" ("The AIDS summit" *The Washington Post*, 24 June 2001, p. B06). Here, reasons for the drugs' new-found accessibility are discounts and treatment programs, such as, in the example given, Brazil's. In the context of this chapter's argument, this reference to Brazil's national treatment program is ironic, given that the widely praised initiative (see, for example, Barker & Simone, 2006) foregrounded IPR issues by controversially authorising the manufacture of generics - a policy that was then deployed as a strategic threat to negotiate cheaper brand-name medicine prices (Cohen & Lybecker, 2005; Galvão, 2005). Indeed, for Jamie Love of the 'access to medicines' campaign, Brazil's approach was crucial in building a global generics market as it lowered the price of raw materials through bulk purchases (Love, 2001a; Warner, et al., 2002). In this editorial's articulation, however, IPRs are excluded from this process, rendered invisible and embedded within the factors of drug discounts and treatment.

To reconnect these illustrations to the chapter's main argument, by conflating the demand for IPR reform with the demand for prices, the 'access to medicines' campaign myth was marginalised in favour of the Big Pharma one. That is, the campaign's argument that IPRs were the major impediment to global medicines access was neutralised by conflating it with an argument for price discounts. Once this conflation was achieved, price discounts could then be promoted as the solution to the IPR-related problem. Important here is Laclau's (1990) idea that myths are attempts to suture dislocations, and the most successful myths in this regard will be the ones that can provide the greatest "surface of inscription" for the most social demands (Howarth & Stavrakakis, 2000, p. 15). By re-appropriating the price demand from the 'access to medicines' campaign, Big Pharma discourse expanded its own chain of equivalence, and thus provided a greater surface of inscription.

In this way, 'medicine prices' became a 'floating signifier' (Laclau, 2005), where the same demand becomes articulated by rival hegemonic projects. As Laclau (2005) noted, chains of equivalence are not static. Their demands

may be re-articulated in new ways, and even appropriated by opposed political projects, thus taking on entirely new meanings. The demand for 'fairer medicine prices' was previously part of the 'access to medicines' chain of equivalence, but not part of Big Pharma's (see Chapter 6, Figures 15 and 16). Once Big Pharma discourse began articulating price discounts, however, 'fairer HIV/AIDS medicines prices' became a 'floating signifier', indeterminate between the two projects (see Figure 21). Important here is that when articulated in Big Pharma discourse, the factor of 'medicine prices' could not only be situated as a solution to the medicines access crisis (through price discounts), it could also be used to substitute the 'intellectual property reform' demand in Big Pharma projections of the antagonistic 'access to medicines' discourse. In this way, the 'access to medicines' demand for IPR reform could be concealed, and replaced with the Big Pharma promotion of price discounts.

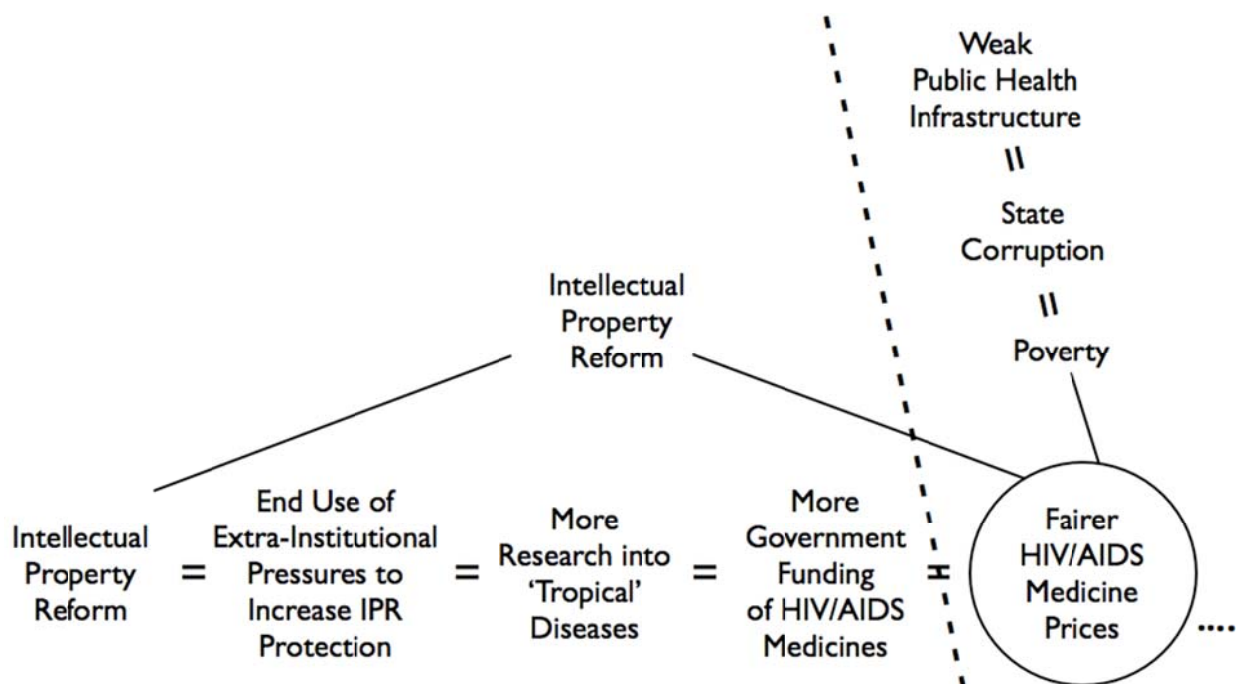


Figure 21:
'Medicine Prices' as a floating signifier between rival 'Access to Medicines' and 'Big Pharma' hegemonic projects

Two points of interest follow from this argument. First, Big Pharma discourse previously resisted the demand for price discounts. Second, their initial attempts to re-articulate the price demand failed. In the first case, in 2000, major pharmaceutical companies gathered with UNAIDS and other supranational institutions to negotiate price discounts (Gellman, 28 December 2000).⁵⁵ Frustrating the negotiations, however, pharmaceutical company lawyers forbade any talk of actual prices (Gellman, 28 December 2000). Pfizer even pulled out of the negotiations, refusing to acknowledge price as an impediment to access (Gellman, 28 December 2000). As one participant observed: “The philosophy here is that the U.S. price of the medicine represents good value, and any discussion of preferential pricing undermines that value in core markets” (in Gellman, 28 December 2000, p. A1). The price factor was, in short, off limits for consideration as an impediment to medicines access, even within negotiations ostensibly aimed at providing price discounts.

In the second case, the 2000 negotiations eventually resulted in price discounts, but the initiative failed to gain much traction in wider HIV/AIDS medicines access discourse. Reportedly, the negotiations were tense and confusing (Gellman, 28 December 2000). The companies refused to discuss actual prices, while the supranational negotiators refused to remove the possibility of including IPR modifications in the plan (Gellman, 28 December 2000). Eventually, a last-minute deal was brokered after companies leaked news of it to the news media - a move some participants regarded as leverage to keep the supranationals at the table, and keep out their IPR suggestions (Gellman, 28 December 2000). When the deal was eventually announced, it was greeted with cynicism by ‘access to medicines’ groups (Médicins Sans Frontières, 11 May 2000). While *The Washington Post* first greeted the discounts as “rock bottom prices [that] may turn out to be an epochal moment in the 20-year-old AIDS pandemic” (Brown, 12 May 2000, p.

⁵⁵ The companies were: Bristol-Myers Squibb; GlaxoSmithKline; Merck; Boehringer; and Roche. The supranational organisations: United Nations Population Fund (UNFPA); United Nations Children’s Fund (UNICEF), the World Health Organisation (WHO), the World Bank; and the Joint United Nations Programme on HIV/AIDS (UNAIDS) (UNAIDS, 11 May 2000).

A01), it later published a front-page feature criticising the move as little more than a Big Pharma public relations exercise (Gellman, 28 December 2000).

In 2000, with the PMA trial still developing, and in the midst of significant international civil society efforts to publicise IPRs as impeding medicines access (Mayne, 2002), the so-called 'Big 5' discounts provided little impact on the HIV/AIDS medicines discourse. By 2002, however, IPRs no longer constituted the "AIDS drugs" discourse's dominant focus (Figures 12 and 20), and their conflation with price discounts could be more successfully realised. As Vice Chairman of major pharmaceutical company Boehringer, Rolf Krebs, commented on the 2000 discounts: "The price issue was always discussed as preventing people from being treated. We took the price away" (Krebs, in Gellman, 28 December 2000, p. A1). While this statement may have been premature in 2000, by 2002 it neatly captured the re-appropriation of price as a floating signifier.

7.4.2 De-Legitimation: Generics and Compulsory Licensing

A further factor in *The Washington Post* editorials is the exclusion of generic medicines as a legitimate solution to the HIV/AIDS medicines crisis. As discussed previously in this thesis, the legitimacy of generics was a key point of contention in the medicines access dispute. Accordingly, compulsory licensing, a means for countries to access generics, was also an object of contention. In this regard, the editorials articulate contradictory points. On the one hand, compulsory licensing is explicitly advocated as a solution to the medicines access crisis. On the other, the practice is consistently represented as existing *outside* of conventional IPR rules. In this construction, when majority world countries sought to enact a compulsory license, the action is framed as an illegitimate manoeuvre, one that could only be allowed in cases of charitable exception. In this way, generics are both endorsed as a solution, and situated as fundamentally illegitimate.

For example, the second editorial in the sample ("Good deals for Africa" *The Washington Post*, 6 May 2000, p. A18) advocates compulsory licensing, criticising the pharmaceutical lobby for blocking it in a US-Africa-Caribbean free trade deal. However, the editorial also describes the practice as a "limited *weakening* of intellectual property rules" (*The Washington Post*, 6 May 2000, p. A18 emphasis added) and as an "erosion" of IPRs, thus situating the practice as a lessening, or degradation, of intellectual property rules. In further editorials the same presupposition is reproduced with claims that in order to access generics, the IPR rules must necessarily be 'diluted' (*The Washington Post*, 25 February 2001, p. B06), 'relaxed', or 'loosened' (Mallaby, 7 October 2002, p. A19). Such articulations imply that international IPR rules, in their natural state, do not include generics, and that it is only through a deviation from the rules that such measures can exist.

To return to the pre-PMA trial editorial cited above, India's experience is then conjured:

[Pharmaceutical firms] are right that in the absence of an intellectual property regime, innovation would dry up and everyone would suffer. Moreover, it is not just rich countries that have a stake in protecting the value of ideas. Developing countries such as India, which has burgeoning software and movie industries, need intellectual property law also. (*The Washington Post*, 6 May 2000, p. A18)

In this articulation, the "absence" of an IPR system is positioned as the only alternative to the strong US-style IPR protection under question. In this way, the 'absolutist' discourse identified by Halbert (2005) is reproduced, where a false dichotomy dominates in which the only possible positions are for or against strong IPR protection. In this regard, India provides an interesting example, for India has had an IPR system for over a century (Rangnekar, 2005), that, from the 1970s until recently, has maintained a differentiated

patent system, allowing for generic pharmaceuticals and fostering great innovation within the domestic pharmaceutical industry (Klug, 2008; Rangnekar, 2005). By implying the absence of an IPR system, and then suggesting the need for one in India's case, the editorial conceals the historic option India has pursued, thus further excluding generics from legitimate IPR practice.

Similarly, another editorial outlines two 'concessions' from the USTR towards majority world countries on the eve of the Doha Declaration: that countries have until 2016 for TRIPS compliance; and proposing a five-year moratorium on WTO dispute settlement mechanism challenges regarding African HIV/AIDS ("An altered AIDS debate", *The Washington Post*, 2 November 2001, p. A28). In the first case, the editorial notes: "This means that for the next 14 years poor countries can buy cheap generic drugs without infringing patent law, since such laws will not exist" (*The Washington Post*, 2 November 2001, p. A28). In the second: "This means that South Africa, a country that already has patent law, will be able to use the flexibility in its own statutes to access cheap drugs without being hauled before the WTO's dispute settlement mechanism" (*The Washington Post*, 2 November 2001, p. A28). While the assumption is again made that majority world countries do not already have IPR laws, the implication is that it is only in such an absence of IPR laws that countries may purchase generics. Furthermore, while it is acknowledged that South Africa does indeed have IPR laws, here the implication is that it is only with a moratorium on WTO disputes that they may access generics. In both cases, the assumption again is that generics are *outside* of legitimate WTO rules, and can only be accessed given the absence, or special removal, of those rules.

Finally, with the Doha Declaration and 'August 30' decisions clarifying the right to compulsory license ('t Hoen, 2009; Correa, 2007; Lang, 2004), the issue of generics vis-à-vis IPR rules was further highlighted in the editorial sub-sample. Here, however, rather than represent the Declaration as a clarification of already existing rules, the editorials represent it as a

rectification of previously “outrageous” rules (Mallaby, 5 August 2002, p. A15). One editorial, for example, refers to the Declaration as “an enlightened health *exception*” to IPR rules, one which fixed “one of the least defensible aspects of the world trading system” (“Trade and trade-offs on tobacco” Mallaby, 14 January 2002, p. A17 emphasis added). A further editorial correctly identifies that the Declaration only ‘reaffirmed’ existing rules (*The Washington Post*, 2 November 2001, p. A28 emphasis added). However, in this case the reaffirmation pertains to “countries’ rights to *circumvent* patent rules” (“An altered AIDS Debate” *The Washington Post*, 2 November 2001, p. A28 emphasis added), thus reproducing the assumption of compulsory licensing as outside the rules.

Furthermore, while the editorials unanimously support the Doha Declaration, this is only based upon the idea that it was “crazy” (*The Washington Post*, 25 February 2001, p. B06), “morally untenable” (*The Washington Post*, 2 November 2001, p. A28) and a “fiction [to expect] that patent rules make sense for poor countries” (Mallaby, 7 October 2002, p. A19). Thus, while the editorials explicitly support the Declaration, it is implicitly understood as an act of charity towards the poor world, necessary because the poor are unable to play by the rich world’s rules. This articulation conceals the fact that the rules were the same for all countries, and that generic access and compulsory licensing were an accepted, and routinely deployed, feature of minority world trade practice (Love, 2007).

7.4.3 *The Guardian’s ‘Saving Grace’*

The discursive practice outlined above from *The Washington Post* was not necessarily universal in the “AIDS drugs” sample. Of particular note, *The Guardian* maintained an IPR-centric argument on global medicines access throughout. Indeed, *The Guardian’s* coverage at times explicitly aligned itself with the ‘access to medicines’ campaign. In 2001 it published a special series titled ‘Dying for Drugs’, produced to coincide with the launch of Oxfam UK’s

'Cut the Cost' campaign (see Chapter 6) (Boseley & Astill, 16 June 2001). In 2003, it published a special supplement titled 'Saving Grace', acknowledging it as the start of *The Guardian's* "campaign" to keep the IPR/medicines access dispute visible (Sulston, 18 February 2003, p. 18).

This section will briefly consider the 'Saving Grace' supplement as an example of wider discursive practice in the media coverage, countering that from *The Washington Post*. Through such illustrations, this section will demonstrate that in 2003 there were still several myths competing to suture the medicines access dislocation. However, this section will also illustrate that certain presuppositions remained intact even in *The Guardian's* coverage. For instance, the assumptions outlined above that generics can only exist *outside* of existing IPR rules, and that they can only be produced in the *absence* of a patent system, are reproduced in *The Guardian* coverage, despite an otherwise unambiguous approval of generics. In this way, even articulations ostensibly supportive of the 'access to medicines' demands are shown to undermine the broader counter-hegemonic argument for the legitimacy of generics.⁵⁶

'Saving Grace' was published 18 February 2003 as a special supplement, based around a profile of Grace Matanga, an HIV-positive Malawian. Matanga's profile is accompanied by seven more profiles of individuals involved in global medicines access: Athenase Kiromera, a doctor in Malawi; Justin Malewezi, Malawi's Vice President; Richard Feachem, the UN Global Fund chief; Yusuf Hamied, CEO of Indian generic firm Cipla; Harvey Bale Jr., head of the International Federation of International Pharmaceutical Manufacturers Associations (IFPMA); Graham Dukes, scientist and HIV/AIDS researcher; and Jean Pierre Garnier, head of GlaxoSmithKline. The

⁵⁶ To give some indication of *The Guardian's* identity, the paper is wholly owned by the Scott Trust, established in 1936 with the mandate to "sustain journalism that is free from commercial or political interference" (Singer & Ashman, 2009, p. 4). The paper's domestic UK readership tend to be from the left of the British political spectrum, with polls indicating that in 2000, 70% of *Guardian* readership supported the British Labour Party (Ipsos MORI, 6 October 2000). *The Guardian* reporters cited in Davis (2007), however, noted the historically left paper has recently become more mainstream. *The Guardian*, along with BBC Online News, *The Times* and *Financial Times*, has become a leading presence in the British, and international, online news sphere (Curran, 2003).

supplement also includes several graphics and statistics on the life expectancy of Europeans versus Africans; the actual costs of drug R&D; the medicines price differential between minority and majority countries; the money spent on Big Pharma lobbying in the US; the salaries of Big Pharma CEOs; and examples of US government pressure on foreign countries at the behest of Big Pharma.

The supplement is also accompanied by two articles in the main body of the paper: an interview with UK chancellor, Gordon Brown, about trade negotiations and IPR rules (Boseley, 18 February 2003); and an opinion piece by Nobel Prize winner, John Sulston, headlined “The rich world’s patents abandon the poor to die” (Sulston, 18 February 2003, p. 18). In short, on 18 February 2003, *The Guardian* made considerable efforts to maintain focus on the IPR aspect of global medicines access, producing material of an overall pro-generics/anti-Big Pharma tone. Of the articles cited above, only the Garnier, Bale and Hamied profiles, the drug pricing statistics, and the Sulston and Brown pieces included the words “AIDS drugs” and thus were included in the media sample. These shall now be briefly examined to demonstrate two discourse strands: one explicitly supportive of generics; another implicitly suggesting generics are illegitimate and outside of existing IPR rules.

The Big Pharma discourse positioning ‘poverty’ as the central impediment to medicines access (see Chapter 6) is reproduced in ‘Saving Grace’ through quotations from Big Pharma representatives. However, such an articulation is countered by the more dominant representation of the IPR-centric discourse of the CSO campaign. For example, Garnier is paraphrased as saying: “if people are still dying of Aids in Africa, it is because their governments are ineffective or do not care. It is not to do with the greed or indifference of the pharmaceutical companies” (*The Guardian*, 18 February 2003b, p. 4). Similarly, Bale is quoted stating: “The biggest problem we have today is state failure, not market failure. I’m sorry, but look at the government in sub-Saharan Africa, which spends four billion Euros on new

submarines and refuses to buy Aids drugs” (*The Guardian*, 18 February 2003a, p. 4). On the other hand, the Bale profile explicitly articulates an ‘access to medicines’ discourse positioning patents as the central impediment: “His [Bale’s] mission today is the defence of drug patents - the 20-year monopoly that a company enjoys on a new medicine. [...] That sort of equation leaves Grace in Malawi with no turning off the road to a lingering death” (*The Guardian*, 18 February 2003a, p. 4). With IPRs squarely positioned as the key impediment, the day’s coverage situates generics as the solution: “Non-branded Aids drugs would save a generation in developing countries” (Sulston, 18 February 2003, p. 18).

Similarly, while the ‘discounts-as-solution’ myth articulated in *The Washington Post* is also reproduced in *The Guardian*, it is rendered subordinate to an ‘IPR reform’ myth. For instance, in reference to Garnier: “His answer is two-fold: order from GSK in bulk, perhaps for the whole of sub-Saharan Africa, and the price will drop” (*The Guardian*, 18 February 2003b, p. 4). Such articulations are then explicitly opposed:

But the reality in distant Africa where people live on less than \$1 a day is that GSK’s drugs are far more expensive than the cheap versions made by generics companies like Cipla. [...] So why, ask campaigning organisations like Medecins sans Frontieres [sic] and Oxfam, should the Global Fund’s hard-won and limited money be spent on Glaxo? [...] These sorts of cuts will not make the patent issue go away. (*The Guardian*, 18 February 2003b, p. 4)

Furthermore, the ‘price discounts’ myth is acknowledged as operating within the pre-existing hegemonic order, without challenging it in any way: “[the discounts are] win-win for Glaxo. It need do nothing that is incompatible with the capitalist ideology of the marketplace or would upset the shareholders” (*The Guardian*, 18 February 2003b, p. 4). The Sulston article goes even further, claiming the capitalist order itself is ultimately responsible for the medicines access crisis: “The heart of the matter is that

our society and our economy increasingly depend upon private finance. [...] We are all locked in - our personal investments and pension plans directly or indirectly share in the profit that come [sic] from pharmaceuticals” (Sulston, 18 February 2003, p. 18). Finally, in light of such articulations, *The Guardian* concludes the IPRs/medicines access is still very much under dispute - “The battle is still raging” (*The Guardian*, 18 February 2003b, p. 4) - a starkly different position from *The Washington Post’s* 2002 claims that the USTR “surf[ed] [the medicines access crisis] so smoothly that you’ve probably forgotten what it was” (Mallaby, 5 August 2002, p. A15). Through such features, *The Guardian’s* ‘Saving Grace’ coverage directly challenges *The Washington Post* editorials’ representation.

However, while superficially the two outlets’ coverage differs greatly, certain implicit assumptions reveal a shared reproduction of the underlying anti-generics logic. Such assumptions manifest in two ways: first, the positioning of generics as outside of the legitimate IPR rules; and second, the ‘absolutist’ dichotomy recognised by Halbert (2005), where moderated IPR systems are represented as no system at all. In the first case, despite its overt endorsement of Cipla and generics as providing a solution to the medicines access crisis, the Hamied profile represents the accessing of generics, through compulsory licensing, as an exception to the rules rather than as a legitimate part of them. Akin to *The Washington Post* editorials, it states: “[campaigners] secured an *exemption clause* to Trips, called the Doha Declaration, which allows developing countries to *ignore patents* and buy generics” (*The Guardian*, 18 February 2003c, p. 4 emphasis added).

In the second case, the Bale profile reproduces the ‘absolutist’ (Halbert, 2005) argument that conceals the viability of moderated IPR systems by denying their existence: “Dr Bale’s *bete noir* is the generics industry - the companies based in India, Thailand, Brazil and other countries *without as yet any patent system* - which makes a living from copying brand-name drugs and selling them at cut prices” (*The Guardian*, 18 February 2003a, p. 4 emphasis added). As in *The Washington Post* editorials, India’s century-old

patent system is concealed in a dichotomy where the only possible positions are TRIPS-style IPR regulation, or no regulation at all. The fantasy spectre of no IPR rules is a common feature of Big Pharma discourse, and mistakenly characterises generic medicines as only possible in the complete absence of IPR rules. For example, Bale is quoted:

There are a couple of pirate companies who want to undermine the patent system and they have found the best horse of Troy [...] to come in against the patent. This is the first time there is a genuine risk that intellectual property would disappear in the developing world. (*The Guardian*, 18 February 2003b, p. 4)

With such articulations, *The Guardian's* 'Saving Grace' supplement, despite mounting an overt campaign to promote generics as a solution, still reproduces assumptions that conceal and discredit the legal legitimacy of generics and compulsory licensing. Such articulations thus indicate the strength and perseverance of the anti-generics discourse, begun in the 1980s through the rhetoric characterisation of generics as 'piracy' (see Chapter 5).

7.5 The Charity Imaginary

The above illustrations indicate that little is neat and tidy in media discourses. As *The New York Times* journalist, Donald G. McNeil Jr., stated at the outset of his interview for this thesis: "We're not monolithic." News media discursive practices are often contradictory and inconsistent: between outlets; within outlets; and sometimes even within the same article. In *The Washington Post* and *The Guardian* articles, compulsory licensing was both explicitly represented as the solution to the medicines access crisis, and implicitly represented as an illegitimate anomaly, sometimes within the same sentence. Alternatively, while *The Washington Post* generally marginalised IPR factors of medicines access, *The Guardian* emphasised them. News articles, like many written manifestations of discourse, are the

result of processes of negotiation and compromise between several actors and agendas (Hansen & Sørensen, 2005). Therefore it is unsurprising that this chapter's analysis of "AIDS drugs" coverage from 2001-2003 has identified diverse mythic processes in the suturing of the 2001 dislocation.

Such processes make it difficult to make general statements on how the 'HIV/AIDS media discourse' performed, and thus, there is the risk that this thesis' research questions offer false promise in their search for generalised discourse transformation. However, while monolithic statements may be foreclosed, it is possible, interesting and important to examine media articulations of political contestation, and to determine some specific insights from them. The specific insights of this thesis so far have been that the 1999 ACT UP protests reactivated hegemonic discourse, and that the 2001 PMA trial provided a dislocated space for counter-hegemonic discourses to achieve representation. In regards to the research questions, the HIV/AIDS medicines media discourse did transform in relation to these phenomena to better reflect the arguments of the 'access to medicines' campaign.

This chapter presents a somewhat more complicated argument. It argues that post PMA-trial IPRs were marginalised once again in the coverage, and that in some spheres this meant the conflation of the IPR reform demand with a demand for price discounts, thus neutralising the 'access to medicines' campaign's radical counter-hegemonic project. It also argues that such processes were not universal, and that in other spheres IPRs were consistently emphasised as a major impediment to equitable global medicines access. As such, there are contradictory processes at work in the media sample. In light of the historic developments that have led to an "unsustainable stalemate" (Klug, 2008, p. 207) in medicines access ten years later, this chapter argues that the dislocations can best be conceptualised as eddies within an overall discursive current moving generally towards the maintenance of the TRIPS-Plus status quo, rather than as sustained counter-currents in their own right. Given this context, *The Washington Post's* re-

articulation and neutralisation of the counter-hegemonic IPR challenge may not be generalisable to the wider media sample, but do appear generalisable to the broader movement of hegemonic HIV/AIDS medicines discourse.

Therefore, in response to the research questions, by the end of the “AIDS drugs” sample, clear signs indicate the HIV/AIDS medicines discourse transformation was ultimately headed for suture by a reinterpreted version of the pre-existing IPR hegemony. Chapter 5 referred to the pre-existing hegemony as a ‘Big Pharma/TRIPS-Plus’ one, in that it was articulated by Big Pharma, and characterised by the effort to increase IPR protection beyond that required by TRIPS. There are two key components to this discourse. First, IPRs are irrelevant to the medicines access crisis, with the negative chain of equivalence interpreting the crisis based around the signifier ‘poverty’, with no room or reason to include IPRs in its chain. Second, generics are illegitimate, ‘pirate’, and provide the discourse’s ‘constitutive outside’.

Such components were maintained in *The Washington Post* editorials, before and after the 2001 PMA trial. In this sense, following the logic of this thesis, the dislocation surrounding the trial had little effect on the integrity of the hegemonic discourse in the editorials. As Glynos and Howarth (2007) pointed out, despite their productive release of alternative discourses, dislocations do not necessarily result in new hegemonic forms. The contingency they reveal may ultimately be concealed once again, ‘gentrified’ or ‘absorbed’ back into the pre-existing ideological edifice (Glynos & Howarth, 2007). In *The Washington Post* editorial sub-sample, the Big Pharma/TRIPS-Plus hegemony proved impervious to the 2001 mediatised dislocation. In *The Guardian*, the dislocation had a clear legacy through the enduring promotion of IPR-centric discourse. However, even here, the covert marginalisation of generics also continued, with clear reproduction of the ‘generics-are-outside-the-rules’ discourse. In this way, the pre-existing hegemony proved itself an enduring “horizon of inscription” (Laclau, 1990, p. 64) structuring other discourses, even those in opposition to it. In this way,

this chapter argues, the hegemonic discourse functioned as what Laclau (1990) refers to as an 'imaginary'.

So what is the nature of this imaginary? This chapter argues it was centrally concerned with global power relations between the minority and majority worlds, in particular a power relations imbalance favouring the minority rich world. The HIV/AIDS medicines access crisis revolved around such a power imbalance from the beginning. The minority world had the treatment; the majority world had the disease, and the behaviour of the minority world towards IPR protection for the majority hindered efforts to bridge this disparity. The most robust legal mechanism retaining power with the minority in this capacity was the TRIPS Agreement. TRIPS had been constructed after prior IPR regulation at the UN threatened to tip the power balance towards increased majority world sovereignty (Clift, 2004; Drahos & Braithwaite, 2002; Santoro & Paine, 2003). But TRIPS alone was insufficient to fully protect minority world IPR interests. It had been penetrated by vestiges of differentiated IPR regimes, in the form of compulsory licensing, thus allowing legal pathways to mitigate patent protections and access generics. Thus a TRIPS-Plus approach of bilateral trade agreements and unilateral "extra-institutional pressures" (Shadlen, 2007, p. 80) was required to ensure majority world countries did not take advantage of such measures.

These were the structural conditions preceding the initial global HIV/AIDS medicines access crisis of the mid-1990s. These were also the structural conditions prevailing throughout *The Washington Post* editorial sub-sample, despite the 2001 dislocation of hegemonic discourse. These are also the structural conditions that continue to prevail, threatening to curtail the successes achieved in global medicines access over the past decade (Klug, 2008; Médecins Sans Frontières, 2011; Shadlen, 2007). In short, an ideological edifice has endured throughout the medicines access crisis that retains power in the minority world, subordinating the sovereignty of the majority. Such hegemonic discourse has long been identified in the social sciences, from Said's (1978) *Orientalism* to Herman and Chomsky's (1988)

Manufacturing Consent. It is a hegemony that retains global decision-making power and enforcement with the minority world. In the case of a humanitarian crisis, rather than cede sovereignty to the majority world to self-govern its way through, the solution is instead provided in the form of philanthropy. The hegemony is, in short, a ‘charity imaginary’.

Supporting such an imaginary is the concept that the majority world cannot govern itself, and thus requires minority world dominance. Articulations supporting such a view can be found throughout the “AIDS drugs” sample. For instance, despite the complex intersection of global governance constituting the medicines access crisis, *The Washington Post* concludes the crisis only highlights the “main problem in the international system, [...] that [majority world] governments lack the drive to grapple with big challenges” (“A Goliath in South Africa” *The Washington Post*, 22 April 2001, p. B06). Similarly, as the above discussion of compulsory licensing in *The Washington Post* and *The Guardian* indicates, majority world governance structures for IPRs, even ones that had existed for a century, were characterised as no structures at all. Such a dismissal of majority world governance capacity runs throughout the medicines access crisis. It constituted the original motivation for Pfizer to seek to abandon the democracy of the UN for the consolidated power of the WTO. It qualified the ‘corruption’ and ‘lack of infrastructure’ elements of Big Pharma’s ‘poverty’ chain of equivalence (see Chapter 6). It is what the majority world governments and ‘access to medicines’ CSOs sought to resist through the drafting of the Doha Declaration and clarification of compulsory licensing as a tool for the empowerment of majority world sovereignty.

To conclude this discussion, Laclau and Mouffe’s discourse theory has been criticised for not adequately theorising the perseverance of dominant social structures (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). This chapter argues that a social imaginary, based around an unequal minority world/majority world power dynamic, endured throughout the medicines access dispute. It argues that while the hegemonic TRIPS-Plus discourse was

reactivated and dislocated, and counter-hegemonic myths were articulated in the media and wider political spheres, the TRIPS-Plus hegemony nevertheless retained its dominant position as the structuring horizon for global medicines access discourses. This argument was arrived at through the deployment of Laclau's (1990) discourse-theoretical concepts of 'myths' and 'imaginaries'. Thus, this chapter argues that such categories indeed provide useful conceptual tools for analysing the dynamic tension between discourse change and discourse stability.

7.6 Conclusion

This chapter examined "AIDS drugs" news coverage from 2001 to 2003. It focused on the representation of discursive attempts to 'close' the space opened through 2001's dislocation. The chapter observed various mythic attempts to close this space, noting representation of both the counter-hegemonic IPR-reform myth, and the poverty-centric anti-generics myth. Importantly, the chapter also observed that even amid the most overtly pro-generics campaign journalism of *The Guardian*, remnants of the Uruguay Round 'generics-are-outside-the-rules' rhetoric were found. Given this, the chapter concludes that despite the disruptive influence of the 2001 dislocation, certain anti-generics discourses remained intact. In this sense, a covert anti-generics discourse may be considered to conform to Laclau's notion of 'social imaginary' – a horizon of inscription for wider discourses, impervious to dislocation. The chapter also positions the 'generics-are-outside-the-rules' factor as an important element of the 'discounts + aid' discourse. With reference to wider historical processes occurring largely outside the media sphere, the chapter concludes that the 2001 dislocation was ultimately sutured by the 'discounts + aid' discourse. That is, the solution to the medicines access crisis satisfying the most social demands was one combining increased minority world foreign aid with Big Pharma price discounts. The IPR regulatory infrastructure, despite considerable clarifications, remained intact. In this way, this chapter concludes the

transformation of HIV/AIDS medicines discourse – in both news media and wider social practices - ultimately did not align itself with the demands of the ‘access to medicines’ campaign. This is the final empirical chapter. The thesis will now close with a final concluding chapter.

8

Conclusion

8.1 Introduction

Behind the success of the access to medicines campaign there remains a structural reality that has everything to do with the redistribution of property rights [...] Nothing to date in the access to medicines campaign has changed this structural reality. (Drahos & Braithwaite, 2002, p. 9)

This thesis examined discourse change in news media coverage of the dispute over HIV/AIDS medicines access and intellectual property rights (IPRs) from 1997 to 2003. It aimed to identify whether HIV/AIDS medicines discourse transformed over this period in the media, and, if so, what were the key aspects of this transformation. The study was conceived in response to prior commentary noting the importance of media coverage to the medicines access dispute (Barnard, 2002; Dawkins, 2005; Faulk & Usunier, 2009; Halbert, 2005; Heimer, 2007; Kennedy, et al., 2004; Olesen, 2006). However, news media coverage of the medicines access dispute had only previously been assessed in anecdotal and methodologically limited ways (Dawkins, 2005; Halbert, 2005; Olesen, 2006). This thesis sought to address this absence by systematically analysing a thousand newspaper articles from

US, UK and South African outlets; published testimonies from civil society and pharmaceutical industry actors; and primary interviews with journalists involved in covering the dispute.

The thesis concludes that the HIV/AIDS medicines discourse did indeed transform over this period. In particular, the factors of IPRs and generic medicines became central concerns in the media coverage, and were articulated as key signifiers in a widespread critique of strong patent protection for essential medicines in majority world countries. While the major pharmaceutical industry sought to marginalise IPR concerns in the public debate, they were actively promoted by the transnational civil society 'access to medicines' campaign. Thus, the thesis concludes that news media HIV/AIDS medicines discourse transformed over 1997-2003 to better reflect the civil society campaign's arguments over those of Big Pharma.

However, the thesis also notes that by 2003, a process of re-articulation was observable in the media sample, whereby demands for IPR reform regarding medicines access were concealed through a dominant focus on medicine prices. In this way, there were clear signs that the civil society campaign's counter-hegemonic challenge achieved only temporary positive representation in the news media, and was ultimately re-absorbed by the pre-existing hegemony favouring strong patent protection and marginalising generics. Thus, to qualify the first finding: the positive discourse transformation for the civil society campaign over 1997-2003 was also ultimately assimilated by a reconfigured articulation of the same hegemonic forces the campaign originally opposed.

These findings have both practical implications for civil society organisations (CSOs) and HIV/AIDS sufferers, as well as theoretical implications for studies of hegemony and news media. For civil society campaigns, the thesis observes processes of interaction between CSO promotional activity and discourse change in the mainstream news media. The study provides examples for how to identify hegemonic discourse in the media, and

demonstrates how hegemonic discourse can be successfully destabilised. The findings also provide warnings for how even positive representation of CSO demands can be re-appropriated and neutralised. For HIV/AIDS sufferers, the thesis shows how the treatment of millions of people with generic antiretrovirals (ARVs) only occurred after a heated public sphere dispute over generics' legitimacy. It also shows that the hegemonic project to de-legitimise generics did not end, and that a sustainable supply of affordable medicines faces continued challenges.

Theoretically, the thesis adopted Laclau and Mouffe's (1985) discourse theory, a post-structuralist approach emphasising the inherently contingent and contestable nature of hegemonic forms. Discourse theory has been criticised, however, for over-emphasising contingency and not adequately conceptualising the continuity and perseverance of restrictive structures (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). This thesis contributes empirical data to such debates. Its findings suggest that in media coverage of the medicine access dispute, the endurance of pre-existing hegemonic power dynamics was the most consistent factor. The thesis argues, however, that such findings are not necessarily inconsistent with discourse theory, but rather illustrate its usefulness in examining the constant tension between discourse change and stability.

In news media studies, similar theoretical issues are articulated in tensions between a 'manufacturing consent' model of the media (Herman & Chomsky, 1988), and a 'media contest' one (Cottle, 2006). In the former, elite interest is the main structuring force, and news media systematically de-legitimise voices of dissent. In the latter, elite agendas are contestable, and news media act as a forum for the articulation of diverse voices. This thesis provides empirical detail suggesting that while contestation did occur, and counter-hegemonic 'victories' were won, the overall development of the dispute turned in favour of the political and economic elite. The thesis argues that such processes do not necessarily indicate that hegemonic structures favouring the elite are permanent or inert. Rather, it argues that while in the

instance under analysis, the hegemonic order was ultimately reconstituted; its demonstrated susceptibility to rupture indicates that it is not objectively given, and thus must be considered open to transformation. This chapter will now conclude the thesis, summarising its main arguments and implications, pointing to potential future research, and self-reflectively assessing the thesis' research design.

8.2 Major Findings

This thesis asked two research questions:

- Did the news media discourse regarding HIV/AIDS medicines access in majority world countries transform over 1997 to 2003 to better reflect the arguments of the civil society campaign?
- If so, what were the key aspects of this transformation, as suggested by an analysis of the news texts, further commentary, and personal testimonies of actors involved?

In broad terms, the major findings of this thesis are: 1) 'yes', the discourse on HIV/AIDS medicines within the news sample did indeed change to better reflect the civil society campaign's arguments; 2) this change was precipitated by promotional activities and pro-active media engagement from civil society actors; and finally, 3) by the end of the news sample, there were clear signs the civil society campaign's arguments were being re-appropriated by the pre-existing Big Pharma hegemony, thus neutralising the political demand for intellectual property reform.

In light of these findings, the first research question has a dual answer. On the one hand, through the processes of reactivation and dislocation identified in Chapters 5 and 6, Big Pharma dominance of the medicines access media discourse was ruptured. The 'access to medicines' political

project benefitted from this rupture, as it provided space in the news coverage for the articulation of their IPR-centric construction of the medicines access crisis. Furthermore, by revealing the contingency of hegemonic discourse, the reactivation and dislocation emphasised the point that a strong IPR hegemony was only one way of regulating medicines. Alternative approaches could then be entertained, which again benefitted the 'access to medicines' campaign by allowing for the articulation of their solution to the crisis: IPR reform, plus the removal of impediments to generic medicines and compulsory licensing. In short, with the hegemonic discourse opened, the CSO campaign benefitted, and Big Pharma suffered.

On the other hand, the solutions promoted by the 'access to medicines' campaign were not the ones to eventually suture the medicines access mediated dislocation. While elite institutional moves ensued, recognising and addressing the IPR impediment to medicines access, the more widely adopted solution was one that combined price discounts with aid funding. In this way, the dislocation was sutured by a 'discounts + aid' discourse, not an 'IPR reform' one. Importantly for the 'access to medicines' counter-hegemonic challenge, the 'discounts + aid' discourse did not alter the TRIPS-Plus IPR hegemony. Thus, the pre-existing hegemony underpinning the initial medicines access crisis remained relatively intact. In light of subsequent historical developments, the ramifications of this are apparent, with a TRIPS-Plus IPR regime still providing challenges to equitable medicines access ten years later.

In the news media coverage, at the end of 2003, hegemonic contestation was still visible, with some articles explicitly articulating the counter-hegemonic 'IPR reform' discourse. However, also apparent in the coverage was the perseverance of a hegemonic construction positioning the mechanisms of IPR moderation, such as generics and compulsory licensing, as outside legitimate practice. Such mechanisms were allowed under TRIPS and were often deployed by minority world governments. However, while they were advocated in much media coverage as a solution to the medicines access

crisis, paradoxically they were consistently characterised as an *aberration to the rules*. In this way, generics were framed as fundamentally illegitimate and allowed only in circumstances of charitable exception, rather than as a normalised part of the rules. Such a characterisation persisted even in news coverage otherwise explicitly challenging the Big Pharma/TRIPS-Plus hegemony. In this way, the fundamental aspect of medicines access discourse regarding the legitimacy of generics remained unchanged. The discourse transformation, therefore, did not ultimately align itself with the CSO campaign's arguments, and an unequal power dynamic subordinating majority world sovereignty to minority world charity prevailed.

8.3 Implications of Findings and Contribution to Research

8.3.1 Implication for Civil Society Campaigns

A primary motivation of this study was to discover whether media representation of the medicines access issue could provide guidance for future civil society campaigns. For the 'access to medicines' campaign itself, it must be noted, this study reveals little that was previously unknown. Campaign actors are likely already aware the 1999-2001 mobilising did not achieve the structural IPR reform it sought. Initial celebration of the PMA trial cancellation and WTO's Doha Declaration soon turned to frustration for access advocates, with technical details of generics importation proving unworkable (Correa, 2004; Médecins Sans Frontières, 2006). Further frustration came as regional and bilateral trade deals ratcheted up IPR protections beyond TRIPS requirements (Abbott, 2004; Fink, 2008).

Perhaps most importantly, India, the leading global generic supplier and so-called "pharmacy of the developing world" (Médecins Sans Frontières, 2011, p. 6), now faces significant challenges to maintain the generic supply (Dionisio, et al., 2006; Klug, 2008). Médecines Sans Frontières are well aware of this, launching their 'Hands Off!' campaign in 2010 to pressure the

European Union (EU) to moderate the IPR restrictions within a pending EU-India free trade agreement (Médicins Sans Frontières, 7 October 2010). The 'access to medicines' campaign, in short, maintains its efforts against the continuing obstacle of patent protection for equitable global medicines access. This thesis, therefore, has not so much discovered *what* happened, but rather *how* these developments happened, as far as news media representation is concerned.

Why is this important? The thesis argues such analysis provides important insight for future and current campaigns regarding the effects of media-processes on the representation and transformation of their discourse, and the discourses they oppose. Consistent with much media and communications research, the thesis assumes that representation in the elite mainstream media has an important influence on policy-making decisions in governance spheres. Given this, the thesis' findings on the transformation of media discourses may be of use to counter-hegemonic strategies seeking to achieve policy change. In particular, the thesis' findings suggest three key points:

- 1) It was only through media-centric direct action protest that the medicines access/IPRs issue entered the news media discourse (see Chapter 5's analysis of the 1999 protests against US Vice-President, Al Gore). The considerable amount of medicines/IPRs activity in four sectors of governance over the mid-1990s had not registered as sufficiently newsworthy. As *The New York Times* journalist, McNeil Jr., noted: "I could be crying out in the wilderness for years without the issue getting much notice" (McNeil, telephone interview 4 June 2010). Therefore, it took a protest strategically timed, targeted, and packaged for maximum media exposure. Importantly, the protest was aimed at an area covered by political campaign reporters, thus ensuring sufficient attention from the wider news apparatus. Once Washington reporters covered it, the story then spread internationally.

- 2) The 'access to medicines' campaign's argument received its maximum media attention through the promotion of the PMA lawsuit as a symbolic conflict for global social justice (see Chapter 6). The 2001 PMA trial was a pre-established event and was not created by the campaign. However, the campaign successfully elevated it as a 'news peg' for their cause: amplifying the newsworthy aspects; and in particular highlighting the wealth imbalance and moral issues. This amplification helped create heightened coverage, thus opening the space for an explicit challenging of existing dominant discourses. The 'access to medicines' campaign then exploited the opportunity, positioning themselves as key information providers on a complex issue by pro-actively providing journalists with quality factual information. Thus, through the amplification and creation of newsworthy events and provision of necessary information, the campaign ensured their messages achieved representation during a key phase of public attention and governmental search for policy solutions.

- 3) Following its successful representation, the campaign's main argument was promptly re-articulated as something else (see Chapter 7). The central demand for intellectual property moderation was substituted in some media discourse for a demand for medicine price discounts alone. The opposed pharmaceutical industry discourse could control this aspect by offering discounts; thus ostensibly providing a solution to the crisis, and neutralising the counter-hegemonic project. Such processes may constitute a warning for future counter-hegemonic campaigns. Key demands may become floating signifiers and receive articulation through opposed projects with very different meanings. Thus the contestation over meaning is ongoing, and must continuously contend and define the parameters of debate in a field of shifting reference points.

8.3.2 Contribution to Research on News Media and Voices of Dissent

The thesis has also contributed to the field of research into news media and voices of dissent. As stated at the outset, recent studies (for example, Bennett, 2003; Craig, 2002; DeLuca & Peeples, 2002) have demonstrated exceptions to mainstream news media's long observed tendency (see Gitlin, 1980; Halloran, Elliott, & Murdock, 1970) to marginalise and distort representations of protest and civil society campaigns. Such studies have observed where campaign strategy has adapted to the mainstream media's representational priorities - for instance, emphasising celebrity, scandal, conflict and spectacle - and have thus received representation of their cause. This thesis has made similar findings regarding the 'access to medicines' campaign. In particular, Chapter 5's analysis of the 1999 anti-Gore protests demonstrated how ACT UP strategically designed their protest specifically for maximum media interest. By considering both news content and personal perspectives from activists and journalists involved, this study has contributed fresh empirical detail to the field of research observing contemporary protest's media-reflexive conditioning (Cottle, 2008).

Perhaps more importantly for this field of research, the thesis also demonstrated that pro-active media relations by civil society campaigns can and do successfully influence mainstream media discourse on key social-political issues. In this way, the thesis' findings appear to support a 'media contest' paradigm (Cottle, 2006) rather than a 'manufacturing consent' one (Herman & Chomsky, 1988), where the media would structurally advocate the interests of the economic and political elite. However, Chapter 7's suggestion that the radical counter-hegemonic demands were also re-appropriated and neutralised in media discourse indicates the parameters of contest may be severely limited. As Glynos and Howarth (2007) have pointed out, dislocations do not necessarily result in political transformation, and may instead be gentrified and absorbed into pre-existing hegemonic forms. Chapter 7 suggested this was indeed the case with media representation of the 'access to medicines' demands articulated around the

PMA trial dislocation. Therefore, while contest exists in the media sphere, and moments of dislocation do occur, the unequal power relations favouring pre-existing hegemonic forms cannot be denied, and may indeed be the most enduring structuring force of mainstream news media space.

8.3.3 Contribution to Theoretical Inquiries into Hegemony and Social Change

Such media-specific issues echo wider social theory debates on the resilience of hegemonic forms. As stated above, where discourse theory emphasises contingency, other theories suggest it over-emphasises it, and thus does not cater to the stability of certain structuring forces (Chouliaraki, 2002; Chouliaraki & Fairclough, 1999). A critical realist approach, for instance, recognises structural change, but still theorises the existence of ‘intransitive’, or objectively given, social structures (Archer, 1995; Bhaskar, 1997; Cruickshank, 2004; Willmott, 2005).

This thesis’ discourse-theoretical analysis of the medicines access dispute demonstrated that even supposedly ‘objective’ structures, such as the TRIPS Agreement (Sell, 2003), are inherently ruptured by the constant haunting of elements excluded in their formation. For instance, for the Big Pharma architects of TRIPS, the project was motivated by the aim to prohibit the compulsory licensing of generics – a mechanism that was gaining favour at the UN’s WIPO (see Chapters 3 and 5). The PMA lawsuit, and indeed the entire medicines access/IPRs dispute, thus revolved around the inclusion/exclusion of compulsory licensing. When the WTO’s Doha Declaration clarified the right to compulsory license, it might have marked the progressive reformation of the IPR hegemony. However, this clarification only highlighted that the structuring force throughout had not simply been TRIPS, but a TRIPS-Plus hegemonic project to extra-legally ratchet-up IPRs and further prohibit generics. The hegemonic force was not objectively given, but contingent and contestable, and rendered impossible

by the return of its excluded elements. Such insights are essential to understanding the medicines access dispute, and are usefully foregrounded through discourse theory's priority on hegemonic rupture.

However, the empirical findings of this thesis' media analysis suggest that while the TRIPS-Plus hegemony was ruptured in media discourse, it was promptly sutured by a reconfigured version articulating the same hegemonic power dynamics. The TRIPS-Plus hegemony structuring the initial medicines access crisis persevered – ultimately impervious to dislocation. In this sense, the thesis would appear to support a theory of hegemonic stability over one of hegemonic contingency. This thesis, however, argues that stability and contingency are not mutually exclusive, but are usefully considered as two opposing forces locked in continual tension. Chapter 7 demonstrates that discourse theory provides useful categories for analysing such tension, and is thus sufficiently capable of theorising hegemonic perseverance and reconfiguration. Other theoretical lenses may interpret the data differently. An implication of this thesis is that regardless of the theoretical assessments made here, the empirical data has been made available for consideration in such debates.

8.3.4 Contribution to Discourse-Theoretical Media Analysis

This thesis has aligned itself with recent research adopting a discourse theoretical approach to media analysis (Carpentier, 2008; Gies, 2003; Lams, 2008; Phelan, 2009; Phelan & Shearer, 2009; Serban, 2008). Such research provides an emergent field with much diversity in the application of discourse theory concepts. This thesis has applied a specific methodology, combining CADS textual analysis with document analysis and key informant interviews. It has also applied discourse theory in a specific way, organising the analysis around three categories - reactivation, dislocation, and myths and imaginaries - to illustrate discursive transformation and the hegemony/counter-hegemony dynamic. Such an approach has not been

taken before in a media studies context, and thus contributes an example for future research to critique and build upon.

In addition, the thesis has also contributed the speculative category of 'mediatised dislocation.' The field of media-related discourse theory research necessarily grapples with the ontological issues of examining media representation through a theory where all social practice is discursive, contingent, and fundamentally dislocated. By prioritising mediated discourse, such research also must grapple with the tensions of how the always-already dislocated condition of social phenomena is ontically manifested in media representation. 'Mediatised dislocation' is an attempt to do this, proposing that the ontic articulation of the ontological condition of dislocation will be largely influenced by media representational logics. It argues that as such representation will be influential in structuring how the rupture is understood and responded to in wider social practice, it is necessary to both: consider the specific media representational logics constituting mediatised dislocation; and to consider how widely the mediatised dislocation may pertain to further social practices and institutions. This argument is embryonic and requires development, but may provide a fertile line of inquiry for future discourse theoretical media analysis.

8.3.5 Contribution to Interdisciplinary Research on Global Medicines Access

The thesis also contributes to academic studies of global medicines access. This is a fundamentally interdisciplinary field that has formerly produced research in political economy, international relations, development studies, legal studies, anthropology, sociology, business studies and public health (see Chapter 1). This thesis has contributed a specifically media and communication studies approach. Where prior studies had noted the importance of media representation to the campaign (Barnard, 2002; Faulk & Usunier, 2009; Heimer, 2007; Kennedy, et al., 2004), the media content

had only been summarily addressed (Dawkins, 2005; Halbert, 2005; Olesen, 2006). By analysing the media coverage of HIV/AIDS medicines access in a systematic quantitative and qualitative way, this thesis has provided missing empirical detail to such claims. Its findings support the general notion that media coverage did positively represent the campaign's cause, insofar as coverage of the events of 1999 and 2001 destabilised representations of Big Pharma discourse and provided space for the counter-hegemonic 'access to medicines' argument.

In addition, global medicines access studies have also argued retrospectively that the 'access to medicines' campaign achieved only a partial victory in their objectives for IPR structural reform (Drahos & Braithwaite, 2002; Sell, 2003; Shadlen, 2007). By mapping discourse change through the media in relation to the opposing CSO campaign and Big Pharma hegemonic projects, this thesis has contributed discourse analytical insight into the relative success of each project. Given current arguments that affordable medicines access has reached an "unsustainable stalemate" (Klug, 2008, p. 207), following the "golden window" (McNeil, 10 May 2010, p. 1) of medicines access in the wake of the South African lawsuit, the findings of this thesis provide insight into the dynamics of the partial victory. That is, by analysing media content with the benefit of knowledge of future developments, the thesis has identified key discursive signals that the pre-existing IPR hegemony could successfully re-invent itself and absorb the counter-hegemonic challenge.

8.3.6 Contribution to Research on News Media and HIV/AIDS

Finally, while the researcher knows of no other studies analysing media coverage of HIV/AIDS medicines access and IPRs, several studies exist examining media coverage of HIV/AIDS in general (for example, Brodie, Hamel, Brady, Kates, & Altman, 2004; Jacobs & Johnson, 2007; Tong, 2006; Stein, 2003; Traquina, 2004). This field of research has noted, among other

things, that the quantity of coverage of HIV/AIDS in US media has been declining since the 1980s (Brodie, et al., 2004), and that international HIV/AIDS coverage tends to hang upon ‘news pegs’ rather than general commentary on the issue (Traquina, 2004). For instance, while Brodie et al. (2004) noted that US coverage has steadily declined, they also noted this trend has been broken by three temporary spikes of interest: in 1991, with the announcement that US basketball player Magic Johnson was HIV-positive; in 1996, with the discovery of antiretrovirals; and in 2001, which Brodie et al. (2004) attributed to the announcement of the Global Fund and “increase in coverage of the global epidemic” (p. 3).

This thesis also identified an increase in HIV/AIDS medicines coverage in 2001. However, as Chapter 6 demonstrated, this increase may not have been due to simply an increase in awareness of global AIDS, but rather to the specific media interest in the medicines access issues, and the PMA trial in particular. In this way, the PMA trial constituted a powerful ‘news peg’ that interrupted the declining media interest in the epidemic. The thesis thereby contributed to a more nuanced understanding of how the global epidemic was constituted in the media, and the key role that the IPRs/medicines access dispute played in this. In addition, by enquiring into the ways the civil society campaign promoted the PMA trial as an important symbolic event, the thesis contributes analysis of how such ‘news pegs’ are largely constructed through the signifying practices of political claims makers.

8.4 Reflections on Research Design

8.4.1 Discourse Theory Ontology

Discourse theory foregrounds the radical contingency of all discourses and all social practice (Laclau & Mouffe, 1985). This means that discourse theory, as a social scientific conceptual approach, is itself contingent. It must be acknowledged then that every deployment of discourse theory as a

macro-theoretical guide will alter it in some way. Indeed, following Laclau and Mouffe's (1985) definition of 'articulation' as "any practice establishing a relation among elements such that their identity is modified as a result" (p. 105), all articulations of discourse theory must be considered to modify it in some way. Furthermore, while the theory itself is both contingent and a tool to reveal contingency, any articulation of it inescapably conceals contingency by sedimenting a particular understanding of the approach that does not exhaust its whole. Thus, this thesis has both deployed discourse theory's insights to reveal contingency, and to some degree concealed the theory's own contingency through such deployment.

In addition, any truth claims produced through the research must be considered contingent. In this regard, the thesis has attempted to follow Connolly's (1995) 'strategy of attachment', where he recommended moving back and forth between the two modes of: 1) acknowledging contingency and; 2) concealing it and making truth-claims. The thesis has thus navigated between the effort to produce research findings, and the awareness that any findings will be partially distorted and incomplete. As stated above, it has produced findings commenting on both hegemonic rupture and hegemonic reconfiguration in medicines access discourse. These findings have been arrived at through adherence to social scientific norms of rigour, reliability and transparency in the research process. However, they must also be necessarily regarded as discursive, contingent, and embedded within a specific set of hegemonic and contestable discourses. Such are the ontological conditions within which this thesis has operated

8.4.2 Methodological Strategies

This thesis' main object of analysis was news media content. Discourse theory, however, contends that all social practice is discursive, and that the media are just one site of hegemonic contestation (Mouffe, in Carpentier & Cammaerts, 2006; Laclau & Mouffe, 1985). This thesis has aligned itself with

the argument that media provide a particularly important site for hegemonic contestation, and thus warrant special analysis (Carpentier & De Cleen, 2007; Carpentier & Spinoy, 2008; Torfing, 1999). This does not, however, escape the fact that media are still only one site of hegemonic contestation. Therefore, a study limiting its analysis to media alone is limited in the scope it may discuss 'the discourse' of a political project. While this thesis considered wider sites of discursive production in the 'document analysis' section in Chapter 3, it prioritised its empirical analysis around news media content. A more comprehensive study would be to equally prioritise further discursive social practices surrounding the medicines access issue.

A further limitation of this thesis is that of all potential news media sources, only newspapers were selected for analysis. Despite the justification that elite newspapers inhabited the central point of influence in the wider news ecology during the period under consideration (see Chapter 2), the decision to limit analysis to newspapers was primarily a practical one. Newspaper archives are more readily accessible than other media forms, and their predominant feature of words on paper allows for a relatively straightforward linguistic textual analysis. These two factors allowed for the consideration of a wider sample of articles - in this case, a corpus of 1,113 articles - and the examination of discourse change over time more readily than would have been the case if audio and visual data were interpreted as well.

Despite these factors, the decision to limit to newspapers does accordingly limit the findings. This thesis operated under the assumption that if discourse change, or lack thereof, were to appear over time in the elite press, then it was highly likely to have also appeared in further media outlets, and by extension, wider social fields. Without any examination of wider media, however, this assumption remains untested. Further limitations included the choice of which newspapers to analyse, and the selection of search terms "AIDS drugs" to collect the sample. In the first case, certain archives were missing for the South African outlets. In the second case, not all articles

relevant to the medicines access discourse contained the terms “AIDS drugs”, meaning that it is possible further news content relevant to this study occurred outside of the study’s media sample. Again, the study acknowledges these limits, and the restrictions they impose on any possible ‘truth claims’ resulting from this research.

Further limitations were also incurred through the methodological strategy corpus-assisted discourse studies (CADS). CADS was chosen for its ability, through the use of corpus software, to examine large amounts of data quickly. This allowed for a degree of freedom in the search terms for linguistic analysis, as new terms could be promptly added and calculated as they arose through qualitative analysis - thus, the “back and forth” CADS approach (Duguid, 2007, p. 76). The time saved by such automated means could then be spent refining search categories and sorting through the statistical outputs for the most revealing trends. The problem was that this study’s research questions were concerned with discourse change over time, but the corpus software used, *WordSmith* version 4 (Scott, 2004), had no longitudinal function to automatically map such changes. Data had to therefore be manually imported into *WordSmith* in small temporally-bound batches in order to isolate findings to specific time periods. Accordingly, manual calculations were then made when analysing the data across selected time intervals. While this achieved the thesis’ aim to examine changes over time in the news coverage, it was time consuming and somewhat diluted the benefits of automatic software-driven calculation.

8.4.3 Thesis Structure

While the division into two parts, and thematic/chronological division of the second, empirical, part, worked well for the coherence of narrative flow, there are a few issues of thesis structure worth briefly mentioning here. The first is that it became clear as research progressed that the analysis relied considerably upon defining ‘access to medicines’ discourse and Big Pharma

discourse as specific regimes of truth, against which the media coverage was then assessed. This insight, however, emerged through the research process, and the character of Big Pharma and 'access to medicines' discourses were analysed in parallel to the media coverage, their findings inserted into the empirical chapters. In hindsight, a better way to have organised this would have been to dedicate a chapter between Chapter 4 and 5 to present a systematic discourse analysis of the 'access to medicines' and Big Pharma discourses, using media releases, publications, and testimony from actors on the opposing sides.

Second, the chronological/thematic organisation of the empirical chapters meant that certain avenues of research conducted did not make the final cut of the thesis, as they interrupted the narrative flow. For instance, the various modes for representing the globalised nature of the medicines access dispute provided some of the most compelling insights from the CADS analysis, but sat uncomfortably within the wider argumentative narrative regarding discourse change and dislocation, and thus were edited out of the final thesis (see future research section below for this research thread).

Similarly, while the thematic division into reactivation, dislocation, and myths and imaginaries allowed for a degree of conceptual clarity, it also involved the occasional arbitrary citation of one concept over another, where several categories would have articulated similar points. For instance, reactivation in Chapter 5 illustrated the opening of hegemonic discourse, while dislocation in Chapter 6 illustrated the opened space, and how it functioned as a forum for new and alternative discourses. Both theoretical categories illustrate the rupture of hegemonic discourse, albeit at different points in the process of rupture. Both categories also foreground the underlying condition of antagonism, albeit to different degrees. Myths and imaginaries in Chapter 7 illustrated how various discourses attempted to suture the rupture and institute a new hegemony, thus noting the end of the process of rupture. Dividing the process of discourse transformation into these three analytical stages worked well from a conceptual point of view.

However, such points of the process are not necessarily so easily demarcated, and the overlap was at times under-emphasised in the interest of communicative clarity of the overall argument.

8.5 Suggestions for Future Research

8.5.1 Extension of Chapter 7

Chapters 5 and 6 of this thesis were spent essentially evaluating claims of ‘victory’ in the public relations contest between the ‘access to medicines’ campaign and Big Pharma. The purpose of this inquiry was to assess claims of media support for the CSO campaign against the empirical news media evidence. Now that a more nuanced picture of media coverage during the time of the PMA trial has been produced, a pertinent research question is: ‘what happened next?’ This is essentially what Chapter 7 attempted to address, however with limited space and scope left remaining in the thesis, it did so only in a preliminary way. In light of the current ‘stalemate’ in sustainable global provision of affordable generic medicines (Klug, 2008; Médecins Sans Frontières, 2010), the ‘what happened next’ question appears ever more pertinent.

For the researcher, Chapter 7 provided some of the most interesting and surprising insights of the thesis, illustrating where counter-hegemonic power was absorbed by a reconfigured hegemonic formation. This thesis recommends that further research would be useful in this regard, further examining how the successes of the brief “golden window” (McNeil, 10 May 2010, p. 1) era of medicines access developments were so rapidly curtailed, and what role the mainstream news media may have played in this.

8.5.2 Global Governance and Global Journalism

A further research project could be to take a 'global journalism' approach and examine how the globally interconnected nature of the medicines access dispute was constituted in international media coverage. Global journalism scholars note the contemporary world is characterised by multiple crises of global scope (Berglez, 2008; Cottle, 2009a, 2011). Such crises are communicated through the world's media, and, indeed, constituted as 'global crises' through their media representation (Cottle, 2009a). However, mainstream news media, with its traditional organisation around a national/international dichotomy, has struggled to conceptualise the interconnected global nature of such crises (Berglez, 2008; Nash, 2008).

The medicines access dispute presented in this thesis provides an exemplary illustration of contemporary global processes. HIV/AIDS, since the 1990s at least, is unmistakably a global pandemic: what Comaroff (2007) called the "signal pandemic of the global here and now" (p. 197). Similarly, intellectual property rights are regarded as a cornerstone of the contemporary neoliberal globalised order (Harvey, 2005; Hesmondhalgh, 2008). Any comprehensive articulation of the medicines access dispute can also not be divorced from the intersecting involvement of four sectors of global governance: nation-state governments; multinational business; supranational institutions; and transnational civil society organisations.

Accordingly, in the process of collecting and analysing data for this thesis, the representation of global processes frequently became of interest. One striking feature, for instance, was the manner in which transnational CSO agency was often marginalised or entirely excluded in the coverage, despite their leading role in shaping the IPRs/medicines access issue. However, this line of enquiry was largely omitted from the final version of this thesis as no place could be found for it within the overall narrative flow and argumentative structure. This angle is thus a fertile avenue for future research, using the medicines access dispute as a case study in how

contemporary journalism articulates the increasingly globalised nature of social phenomena.

8.5.3 Mediatised Dislocation

Chapter 6 introduced 'mediatised dislocation' as a conceptual tool for examining the constitutive role news media plays in the identification and definition of moments of dislocation. The concept argued that while dislocation, by definition, refers to the rupture wrought by un-symbolisable elements, such elements are indeed partially symbolised through the various attempts by competing political projects to 'make sense' of the dislocation, and deploy responses to it. Such attempts to articulate the rupture, and the responses it produces, are largely represented and distributed through the mainstream news media. Therefore, news media-specific logics of representation will likely play a structuring role in how dislocations are defined and responded to.

This concept is embryonic and requires further investigation to establish its usefulness for social and political media analysis. Perhaps most importantly, the concept needs to further consider the relationship between mediatised dislocation and wider social, institutional and subjective practices. Therefore, further research could test the concept by applying it to the media processes surrounding further dislocated social phenomena - for instance, the global financial crisis, the various uprisings across North Africa, Greece, Spain, Chile and elsewhere over 2010-2011, the environmental crisis, the US 'Tea Party' movement, the global 'Occupy Wall Street' movement, and so on. Each of these phenomena are mobilised by dislocating existing social practices and discourses. Each of these phenomena also has important ramifications for wider discourses and hegemonic forms. What is less clear is the role of media practices in defining and constituting the conditions of dislocation in each specific instance. 'Mediatised dislocation,' or a refined concept extending upon its basic premise, could provide a useful lens

through which to examine the media-hegemony dynamic underwriting such phenomena.

8.5.4 The Medicines Access/IPRs Dispute

Finally, there is much research to be done on the medicines access-intellectual property rights issue and its contemporary manifestations. Such research would find useful application in many disciplines, but from a specifically media and communication studies perspective, it appears that while much activity continues on this dispute in nation-state, private business, supranational and civil society spheres, the issue has not captured media attention in any concerted way since the 2001 PMA trial. Therefore, any study of media and medicines access would likely refer to the PMA-era coverage, for which this study has provided empirical detail.

Further studies regarding the contemporary condition could examine several general points of global medicines access. For instance, the multiple forces challenging continued generic HIV/AIDS medicines access, such as the 'ratcheting-up' of IPR protections through bilateral and regional trade agreements (Abbott, 2004; Fink, 2008); or else the forces promoting generics, such as continuing civil society campaigns (see, for example *Médicins Sans Frontières*, 7 October 2010), and the development of a global patent pool to foster a competitive generics market (UNAIDS, 10 June 2010). Further research could also examine specific recent medicines access/IPR disputes: such as the current conflict between India and the European Union over generics and free trade agreements (*Médicins Sans Frontières*, 2 March 2011); or the 2007 conflict between pharmaceutical company Abbott and Thailand over the compulsory licensing of generic ARVs from India (Alcom, 15 March 2007).

Similarly, further research could focus on a singular country and its media sphere, isolating a moment from the global process and examining how a

globalised conflict is interpreted at the local level. This could be applied to the India/EU and Thai examples above, or else to a minority world country - for instance, Aotearoa New Zealand and the Trans-Pacific Partnership free trade agreement (Kelsey, 2010), and the impact of this on domestic medicines access. Further analyses of such instances, in light of this study's findings, would provide compelling insight into the ongoing contest between opposed political projects over key issues of global politics, economy, sovereignty and development, and how the public space of the media symbolises this.

8.6 Conclusion

... discourse-theoretical interpretations can only count as 'candidates for truth or falsity', that is, can be regarded as potentially true, if they first accord with the social ontologies and 'regimes of truth' within which they are generated. In addition, they must also constitute warranted interpretations of the new phenomena they purport to understand and explain, or at least plausibly contest and refute accepted interpretations. They are thus subject to the usual burdens of reliable evidence, objectivity, and internal consistency consonant with the prevalent regimes of truth (although it goes without saying that discourse theorists challenge and in certain respects seek to extend the character and parameters of these regimes). (Howarth, 2005, pp. 328-329, parentheses in original)

This thesis has produced a novel candidate for truth or falsity regarding international newspaper coverage of the dispute over global HIV/AIDS medicines access and pharmaceutical patent protection. It has argued that for a brief period from 1999 to 2001, the mainstream news media HIV/AIDS medicines discourse was dislocated, and a public space was provided for the articulation of alternative interpretations of, and solutions to, the medicines access crisis. In particular, the promotional activities of the transnational civil society 'access to medicines' campaign were successful in facilitating

this dislocation, and in contributing to the opened discursive space a specific counter-hegemonic project positioning patent protection as the leading impediment to equitable medicines access. However, the thesis has also argued that by 2003, there were clear signs in the media sample that the public space was closing, and that the dislocation was being sutured by a reconfigured version of the pre-existing hegemonic discourse favouring strong patent protection, and marginalising generic medicines. In light of subsequent historic developments in IPR regulation and free trade agreements, it appears this hegemonic discourse did indeed remain hegemonic, proving ultimately impervious to the dislocation.

This thesis has come to these conclusions through the systematic application of discourse analytical methodological strategies, conducted in accordance with the prevailing regimes of truth in the social sciences. It has also attempted to apply Laclau and Mouffe's discourse theory in a transparent and self-reflexive manner, positioning the research problem first, and deploying the theoretical and methodological categories only insofar as they served to illuminate the research problem. In conclusion, this thesis acknowledges that in the struggle of 'people versus powerful corporations' for equitable medicines access, certain discursive victories were indeed won, but they are best understood as victorious battles, not a victorious war. The thesis acknowledges that the same may be said of the mainstream news media. While elite configurations of political and economic power may provide the structural conditions shaping the media space, there are moments of dislocation where the contestable nature of social phenomena becomes visible. This thesis concludes that it is in such moments that the mainstream news media fulfils its potential, and becomes a genuinely democratic public space.

Appendix:

“AIDS Drugs” Corpus Newspaper Articles Cited In-Text*

* including *The Star* and *Sowetan* articles used in Chapter 5

The New York Times

- Abelson, R. (28 April 2003). Glaxo will further cut prices of AIDS drugs to poor nations. *The New York Times*, p. 2.
- Ayers, B. D. (2 July 1999). Gore is followed by AIDS protesters. *The New York Times*, p. 12.
- Bloomberg News. (19 November 1998). Sales slide 4% at drug maker. *The New York Times*. P. 6.
- Di Sorbo, P. (27 August 1999). Letters to the editor: AIDS drugs for Africa. *The New York Times*, p. 22.
- Eaton, L. (17 February 1998). No sales, but watch the stock soar. *The New York Times*. P. 5.
- Herbert, B. (11 June 2001). Refusing to save africans. *The New York Times*, p. 17.
- Lewis, N. A. (10 September 1999). U.S. industry to drop AIDS drug lawsuit against South Africa. *The New York Times*, p. 3.
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- McNeil, D. G. (5 November 2001). Patents or poverty? New debate over lack of AIDS care in Africa. *The New York Times*, p. 6.
- McNeil, D. G. (7 February 2001). Indian company offers to supply AIDS drugs at low cost in Africa. *The New York Times*. p. 1.
- McNeil, D. G. (20 July 2001). U.S. at odds with Europe over rules on world drug pricing. *The New York Times*, p. 8.
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- The New York Times*. (23 August 1999). Drugs for AIDS in Africa. *The New York Times*, p. A14.

- Pollack, A. (20 April 2001). Defensive drug industry fueling clash over patents. *The New York Times*, p. 6.
- Rosenberg, T. (28 January 2001). Look at Brazil. *The New York Times*, (magazine), p. 26.
- Seelye, K. Q. (17 June 1999). Embracing Clinton at arm's length, Gore formally begins run for president. *The New York Times*. p. 26.
- Swarns, R. L. (20 April 2001). Drug makers drop South Africa suit over AIDS medicine. *The New York Times*, p. 1.
- Zuger, A. (20 March 2001). A molecular offspring, off to join in the AIDS war. *The New York Times*, p. F7.

The Washington Post

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- Baker, D. (2 July 1999). Letters to the editor: Price of AIDS drugs. *The Washington Post*, p. A26.
- Brown, D. (12 May 2000). AIDS drug discounts offered to 3rd World. *The Washington Post*, p. A01.
- Brubaker, B. (29 December 2000). The limits of \$100 million; Epidemic's complexities curb impact of Bristol-Myers's initiative. *The Washington Post*, p. A1.
- Constable, P. (7 March 2001). Poverty, prejudice hinder India's AIDS fight; Drug maker fears 'another Africa'. *The Washington Post*, p. A01.
- DeYoung, K. (5 April 2001). AIDS care for Africa affordable, study says. *The Washington Post*, p. A16.
- Fried, S. (18 May 1997). Cocktail hour. *The Washington Post*, p. W10.
- Gellman, B. (21 May 2000). A conflict of health and profit; Gore at center of trade policy reversal on AIDS drugs to S. Africa *The Washington Post*, p. A01.
- Gellman, B. (28 December 2000). A turning point that left millions behind; Drug discounts benefit few while protecting pharmaceutical

companies' profits. *The Washington Post*, p. A1.

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Mallaby, S. (7 October 2002). Talking Cadillacs to rickshaw riders. *The Washington Post*, p. A19.

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