

Trading in Public Hope

By
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The article distinguishes three categories of hope: private, collective, and public. Public hope is hope that is invoked by political actors in relation to a societal goal of some kind. The article argues that public hope is the most dangerous kind of hope. The argument is developed using the recent history of trade negotiations between the United States and developing countries concerning intellectual property rights as they relate to life-saving medicines for AIDS. Public hope may allow political actors to harness emotionally collectivities to economic and social agendas that are poorly understood by those collectivities and that are ultimately destructive of the social institutions upon which actual private and collective hopes depend. Or public hope may be secret hope that drives policies that escape public notice until it is too late. The final section of the article identifies four principles that help to make public hope a contingent force for the good.

Keywords: intellectual property; collective hope; public hope; TRIPS; medicines; trade negotiations

Merchants of Hope

Monsanto sells herbicide-tolerant and insect-protected crops and agricultural herbicides. It also offers hope as part of its package of systems. “Food, Health, Hope” is one of its key slogans. There are, as World Bank statistics make clear, many sick, poor, and starving people in the world (World Bank 2002). Monsanto’s basic message, which is to be found on its many Web sites and publications, is that biotechnology product lines are the best bet when it comes to meeting the needs and hopes of the world’s poor. Monsanto is in a sense a merchant of hope. In fact, most multinationals operating in high-technology sectors invoke hope as part of the solutions package they offer their customers and the broader world. The words of a senior executive of the

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world's largest pharmaceutical company, Pfizer, ask us to "imagine a childhood free of ear infections, fending off AIDS with a nose spray, reining in cancer with an injection, or developing vaccines for everything from diabetes to asthma."¹

There are three things to note about the corporate merchandising of hope. First, hope, which on the face of it might seem to be an individual and unilateral act, enters the bilateral context of the market. Companies that span the globe and command much of the world's technological resources offer hope at the same time as they offer solutions. The levels of poverty, sickness, and starvation in the world mean that a strong demand for hope exists in the world. Moreover, if we take on board the sociological insight that deprivation is relative to one's peer group, it follows that the demand for hope even in rich capitalist societies is massive. Hair, fitness, and weight-loss clinics are all in the hope business and so are, as Valerie Braithwaite's article in this volume suggests, tax consultants. Second, hope is a psychological event or process that is distinct from the services and products to which it may be linked. Companies charge for their services and products. They do not charge for hope. Instead, hope functions as something of a loss leader. Even if the supply of hope is free, the many services and products that promise to fulfill it are not. Companies expend resources in creating hope in others because hope is a powerful psychological hook. Hope is constituted of imagining and believing in the possibility that some state of affairs in the future will come to pass. Once an individual is in the grip of hope, it becomes rational for an individual to reason in the following instrumental way: "Since I hope for X, I should do Y," where doing Y may consist of purchasing the company's products or services and perhaps staying loyal to the company. Hope, perhaps more than other emotions, is closer to the border that separates the passions from reason. Those who write about marketing point out that understanding the emotions of consumers is fundamental to the sale of products (Massey 2002; O'Shaughnessy and O'Shaughnessy 2002). Companies know that by creating links between their products and individual hopes, they potentially gain the benefit of a powerful driver of human behavior.

The third and last thing to note about hope in its commercial context is that corporate messages about hope are aimed at multiple audiences. Multinationals like Monsanto and Pfizer operate in complex global and national regulatory environments. Messages of corporate hope are also aimed at regulators, policy makers, and politicians. A new drug or a genetically modified good cannot simply be dumped on the market but typically has to go through a process of regulatory approval. A regulator who has to decide whether to approve the release of, for example, a genetically modified corn knows that one spin that Monsanto might put on the decision not to approve release is that the agency in question now blocks the path to hope. Policy makers and politicians are also in the market for hope. Politicians like to invoke hope because of its motivational and emotional effects. Bill Clinton's "I believe in a place called hope" is a classic of the genre because when uttered by a charismatic figure, it beckons its listeners to follow a leader who by implication can lead them to this place. In political contexts of popularity and reelection, the rhetoric of hope has to appear credible and has to be made true by being linked to policies and programs. The language of hope takes on a signaling function in politics.

When political leaders identify a global challenge such as the eradication of poverty or hunger and promise hope, they also signal that they are in the market for ideas and programs that will go some way to fulfilling that hope. The suppliers of models of hope signal back with their own messages of hope. In the case of hunger, Monsanto's message of "Food, Health, Hope" is attached to a commercial and regulatory agenda based on biotechnology, genetically engineered foods, globally protected intellectual property rights, and agricultural markets that do not discriminate between genetically engineered and nongenetically engineered products. Hope, when offered by corporate merchandisers, always comes as part of a carefully thought out package backed by technical analysis. Analyzing hope in this political context reveals how the fulfillment of individual hope is crucially dependent upon wider circles of action by others (something that John Cartwright's article in this volume also draws to our attention).

To sum up, the private hopes of individuals living in a society have complicated public dimensions. Commercial actors understand that if they can link their products to the private hopes of individuals, they will sell more of those products and gain customer loyalty. They strive, therefore, to find ways to link consumption to the private hopes of their customers. Politicians know that if they can find ways to turn these private hopes into big public hopes for their political programs and policies, electoral rewards will, for a time at least, come their way. When politicians signal that they are in the market for models of hope, corporate planners using the language of hope offer to supply those models. Politicians and other political actors are traders in hope. They see hope as part of an exchange relationship in which it is traded for votes, favors, privileges, or money.

The focus of this article is on public hope in the context of the political institutions of a society. Public hope is different from both private hope and collective hope. Private hope simply refers to the hopes that an individual holds. Some hopes that an individual holds may be held in common with others, and under certain conditions, these common hopes can be said to be the collective hopes of a society. Daniel Bar-Tal (2001) identifies seven conditions of collective hope including the necessity that emotion be widely experienced in a society, that the beliefs that trigger the emotion be widely shared, that the cultural products of the society express the emotion and the beliefs to which it is connected, and that the emotion and beliefs are part of collective memory. Public hope is hope that is articulated or held by actors acting politically in relation to societal goals. Public hope need not be collective hope, and in fact, only a few may be aware that it is operating. Officials may make policy decisions based on hope without the public's ever being aware of it. Hope can still be public hope if only a few individuals acting in their official capacity as members of a society's political institutions express, invoke, or act on the basis of hope in relation to a societal goal. Trades involving public hope can take place without the public's being aware of it. A hope can be simultaneously private, public, and collective. Individuals in a society may hope for peace. This may also be a collective hope and a public hope that helps to bring about a peace negotiation. Collective hope, however, may not be public hope if it does not have political representation. Our purpose behind distinguishing these three types of hope is to try to

isolate the way in which hope functions in political contexts. The argument of the article is that public hope functions in ways that are different and far more dangerous to a society than does private hope for an individual. Public hope may turn out to be destructive of social institutions, thereby disappointing both individual and collective hopes. The dangers of public hope need to be checked by “cold analysis” (Braithwaite 2002, ix). The final section of the article identifies four principles that if used, make it more probable that public hope will be checked by cold analysis. The argument is developed using the recent history of trade negotiations between the United States and developing countries concerning intellectual property rights as they relate to life-saving medicines for AIDS.

The remainder of the article is divided into three parts. To sharpen the contrast between public and private hope, a brief account of private hope is developed in the next section. This account presents hope as an energizing and sustaining force, something that is valuable to individuals in dealing with the future. The following section presents the history of the negotiations, showing the role that public hope played in those negotiations. Public hope worked out, as we shall see, rather badly for developing countries. In the final section, the article outlines the dangers of public hope and suggests some principles for checking public hope to prevent it from becoming a disabling or destructive force in a society.

Private Hope

Hope is generally said to be one of the emotions (Elster 1989). Individuals through introspection can report on whether they feel hope and its intensity. Psychologists have devised the Hope Index that they use to measure changes in individual hope. So, for example, data measuring hope, which was gathered from students at a Midwestern university and their parents during the weekend of the invasion of Iraq in 1991, showed that hopes for peace rose compared with data gathered in 1988 (Staats and Partlo 1993). Increased hopes for economic productivity were also reported during the recession in 1992 in the United States. Outside threats affected the needs for peace and security, thereby triggering increased levels of hope.

Why it is that increased levels of hope as opposed to wishing were triggered is less clear, but it does suggest that hope is the more important psychological mechanism in times of serious threat or adversity. Wishing is the simpler mechanism, involving a desire for *X* to happen. Hoping involves an additional mental act, namely, that of an expectation or anticipation that *X* will happen. It is this additional mental act, in some ways not quite understood, that makes hoping, at least in many cases, a more important psychological resource for individuals than simply wishing. Hoping is a forward-looking emotion in a way that wishing is not. One can wish that World War II had never happened but not hope for that, since it is an event that has already occurred. It is this mental act of creating a sense of expectation or anticipation about the future that seems to make hope an important psychological resource for dealing with a future made uncertain by a threat of some kind. The

expectation that the individual forms is something that is presently accessible on a day-to-day basis. In many cases, it becomes the subject of daily processes of introspection. Individuals can possess and access the expectation, even if the event to which the expectation relates is highly uncertain. This may in fact be the only certainty in times when the threat is very great. Alternatively, the certainty that hope generates may help to combat what seems, at least inductively, a certain and depressing fate. A number of years ago, when I was a member of a law faculty, we were visited by a group of judges from Czechoslovakia. After the official talk and over lunch, conversation turned to the period of the Russian occupation. It turned

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out that one of the members of the delegation, the Chief Justice of the Constitutional Court, had, like many other critics of the Soviet-controlled regime, been imprisoned for a number of years. He had been sent to work in a uranium mine. The authorities did not give protective clothing to the prisoners working in these mines and so many died. “Surely,” I asked, “you must have given up hope.” “No,” replied the judge, “we never gave up hope. We always knew we would win.”

On inductive grounds, the rationality of the judge’s hope seems irrational. Yet at least some of the prisoners in these mines felt themselves to be in possession of an emotionally known truth that ultimately enabled them to see off the Soviet tanks that had so crushingly ground their way through the streets of Prague in earlier years.

Václav Havel (1990), who spent time in prison because of his participation in the Czech human rights movement, describes in a prison letter to his wife the primary importance of individual hope:

The more I think about it, the more I incline to the opinion that the most important thing of all is not to lose hope and faith in life itself. Anyone who does so is lost, regardless of what good fortune may befall him. On the other hand, those who do not lose it can never come to a bad end. This doesn’t mean closing one’s eyes to the horrors of the world—quite the contrary, in fact: only those who have not lost faith and hope can see the horrors of the world with genuine clarity. Which may sound like a paradox and probably requires explanation, but that would mean writing a new letter, so for the time being you’ll have to accept it as an axiom or an invitation to further thought. (p. 141)

The expectation about the future that forms the basis of hope carries the individual forward to the time of the hoped-for outcomes. The expectation forms an internal resource for an individual that can be drawn upon at any time to help deal with an unknown future or a seemingly known but bad future. Linked to this expectation is an instrumental rationality. Hope triggers pathway thinking (Snyder 2000). Individuals begin to plan ways and means for achieving the hoped-for goal. Planning and hope, in Moltmann's (1971) words, "live with each other and for each other" (p. 178). Planning produces action, the outcomes of which feed back into planning and expectation. New, greater hopes may be formed or hopes may be adjusted to more realistic levels. The process of hope leads into a cycle of expectation, planning, and action that sees the agent explore the power of her agency.

So far, the positive case being developed for the individual act of hoping is of an instrumental kind. It can, for example, help cancer patients to deal with their disease as well as to give individuals the inner strength to survive the apparently impossible odds of a slave labor camp. Hope in these kinds of cases turns out to be causally efficacious. The individual, by placing himself in a state of hope, begins a process that brings to realization a desired state of the world. This "enabling function of hope" is key to the success of many individual projects and can be key to the survival of the individual (Bovens 1999, 670). Mounting evidence shows that individuals high in hope gain psychological, physiological, cognitive, and behavioral advantages in comparison with those who hope less.² Hope may also have, as Luc Bovens argues, intrinsic value because the process of understanding and changing our hopes leads to better self-understanding.

The section that follows this one presents in summary form an account of several decades of international negotiations between developed and developing countries concerning intellectual property rights. The focus of this account is on the way in which the emerging global regime of intellectual property has directly affected the access of citizens to affordable medicines. At the end of this section, I shall suggest that public hope on the part of the developing countries played an important role in these negotiations. My reasons for making this claim are mainly based on the fieldwork that John Braithwaite and I undertook in our study of global business regulation (Braithwaite and Drahos 2000; Drahos and Braithwaite 2002). Even in the absence of our fieldwork, it would nevertheless be plausible to assume that public hope played a vital role in the outcome of these negotiations. The role that hope plays in international negotiations between weak and strong actors is generally neglected, largely because the study of international relations proceeds on the assumption of states as rational rather than emotional actors. The assumption of rationality has led to the dominance of calculative approaches in international relations, with game theory providing the dominant structure of calculation that is used to study decision making. Yet the assumption that states in certain circumstances are emotional actors is no less plausible than the rationality assumption. In fact, it may be more plausible. Massey (2002), in a recent review of the evolutionary evidence, points out that emotionality preceded rationality in evolutionary time and that it remains a dominant force in human behavior. Given the centuries of empirical evidence of different kinds of hatreds keeping conflicts

alive among states, the use of emotions such as fear, greed, and hope to understand state behavior is comparatively undeveloped.

Public Hope: The Case of Intellectual Property Rights and Access to Medicine

Following the end of World War II, many developing countries shed their colonial status and became sovereign states. Most faced serious problems of poverty, illiteracy, ill health, and unemployment. India, Pakistan, and Indonesia, for example, entered independence with less than one-fifth of their populations being literate (Myrdal 1968, 1693). As colonies, they had for the most part functioned as sources of raw materials. Economic development was, therefore, high on their agendas.

One area in which developing countries desperately needed technology was pharmaceuticals. Developing countries had no research and development capability in the pharmaceutical sector. They either imported drugs or left their citizens to rely on varieties of traditional medicine. The problem in importing drugs lay with their expense. In the 1960s, India, for example, had one of the poorest populations in the world yet also had some of the highest drug prices. A number of reasons are responsible for this, including the fact that Western pharmaceutical companies formed cartels that affected drug prices in developing countries (Braithwaite 1984). Another problem was that pharmaceutical manufacturers in the West were not doing research into the tropical diseases that affected poor people in developing countries, because those people would not be able to pay for the products that came out of the research. Faced by continued high drug prices, developing countries like India embarked on a reform of the patent rules they had inherited from their colonizers. (India acquired its patent law in 1856 while under British colonial rule.) In India, two parliamentary inquiries were set up to investigate the effects of the patent system. They concluded that the system had failed “to stimulate inventions among Indians and to encourage the development and exploitation of new inventions” (Vedaraman 1972, 43).

The response of Indian policy makers was to draft another patent law. Passed in 1970, the new law followed the German system of allowing the patenting of methods or processes that led to drugs but not allowing the patenting of the drugs themselves (Vedaraman 1972). Patent protection for pharmaceuticals was granted for only seven years as compared to fourteen years for other inventions. This law opened the path to a highly successful Indian generics industry that began to produce essential drugs at a fraction of their prices in Western markets (Kettler and Modi 2001). During the 1970s, other developing countries such as Argentina and Brazil also made changes to their patent laws, giving limited or no protection to the pharmaceutical products. As these policies began to bite, global pharmaceutical companies like Pfizer were faced with unprofitable operations in these countries. In the words of Edmund Pratt, the CEO of Pfizer from 1972 to 1991, “We were

beginning to notice that we were losing market share dramatically [in developing countries] because our intellectual property rights were not being respected in these countries” (Santoro 1992, 6). Essentially, developing countries were adjusting the rules of the patent game to serve their local industries in exactly the same way that Western states had done.

Pfizer and other large pharmaceutical companies reacted to these developing country initiatives by forming a strategy that would ultimately see all developing countries adopt patent laws that matched U.S. patent law. The core idea behind this strategy was to develop a code on intellectual property protection that required, among other things, protection of pharmaceutical patents and then to make this code an obligatory part of the world’s trade regime (at that time the General Agreement on Tariffs and Trade [GATT] and now the World Trade Organization [WTO]). Because most developing countries were members of or wanted to join the trade regime, it would mean that they would have to bring their patent laws on pharmaceuticals in line with U.S. law.

In 1981, Edmund Pratt became Chairman of the Advisory Committee on Trade Negotiations (ACTN). ACTN was an influential committee that provided trade policy advice to the U.S. government from a private sector perspective. Under Pratt’s leadership, ACTN produced a series of papers urging the U.S. government to obtain a negotiating mandate on intellectual property in the forthcoming Uruguay Round of trade negotiations. Predictably, developing country leaders resisted U.S. proposals because they saw that it would have serious implications for their pharmaceutical sectors. However, the United States placed trade pressure on these countries by threatening to suspend the duty-free trading privileges many developing countries had in the U.S. market under a preferential trading scheme known as the Generalized System of Preferences (GSP). In 1986, at a Ministerial Meeting at Punta del Este, the members of the GATT agreed to a negotiating mandate that included the negotiation of an agreement on the trade-related aspects of intellectual property rights. When the Uruguay Round was concluded in 1993, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was one of the key agreements of the new WTO regime. Under its terms, all members of the WTO have to recognize patents on pharmaceutical products and processes. Compliance with TRIPS can be enforced under the WTO’s dispute resolution mechanism.

During the course of the Uruguay Round negotiations (1986-1993), TRIPS received very little publicity in the mainstream media. The spotlight remained largely on agriculture. The intellectual property issues were technical and portrayed largely as an attempt to deal with the problem of piracy and counterfeits. There was little discussion of the impact of stronger patents rights on the public health systems of developing countries. In many developing countries, there was no discussion of TRIPS. This is especially true in Africa, the continent now most severely affected by the AIDS pandemic. African trade negotiators were not part of the key negotiating groups that decided the final shape of TRIPS (Drahos and Braithwaite 2002). Intellectual property was simply seen as not relevant to commodity-based economies. In countries like India, there was a debate, sparked

largely by the Indian pharmaceutical industry, but it was a debate that gathered intensity far too late into the negotiations. By the end of 1991, a draft of TRIPS had been all but finalized.

The comparative anonymity of TRIPS began to disappear as the AIDS crisis in Africa and other developing countries began to grow to a scale no one could really comprehend or ignore. In the West, hope in the case of a treatment for HIV/AIDS arrived at the end of the 1980s in the form of antiretroviral therapy. At first, the treatments involved the daily administration of a combination of drugs involving sometimes twenty tablets to be taken at specific times of the day. During the 1990s, the treatment progressively improved. Current antiretroviral therapy can take the form of a triple drug combination taken as one tablet a couple of times a day. The shift to a one-tablet-a-day treatment is not far off. Antiretroviral therapy is aimed at halting the replication of the HIV in the individual and allowing the immune system to recover. The treatments have proven to be highly effective. They do not remove HIV infection, but with proper management, they may allow a person to achieve a normal life span.

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When patented antiretroviral therapies first appeared, they were expensive (in the range of US\$10,000 to \$15,000 per person per year). For people in developing countries living on one or two dollars a day, the price of antiretroviral therapies represented a king's ransom. The only possibility for poor people in developing countries was that developing-country manufacturers of generic drugs would make those drugs at a fraction of the price that U.S. and EU pharmaceutical companies were charging, and then, ways would be found to meet that cost. As AIDS activists and health nongovernmental organizations (NGOs) began to study the issue of access to medicine (and AIDS drugs in particular), they began to better understand the impact of intellectual property rights, especially TRIPS, on access to medicine. They found that if a developing country included patents on pharmaceutical products in its domestic law and if large overseas pharmaceutical companies took out patents on pharmaceutical products in that country, the local generic industry could no longer copy the drugs. All things being equal, the price of drugs would go up because the overseas company would follow a strategy of monopoly

pricing, that being the whole point of the patent system. Developing countries were given a transitional period in which to apply the provisions of TRIPS, but another disturbing fact came to light: the United States was exerting pressure at the bilateral level on those developing countries, such as Brazil and Argentina, that had local pharmaceutical industries to apply the provisions of TRIPS before they were required to do so. Moreover, the United States was applying trade pressure on countries to move to higher standards than those contained in TRIPS (Drahos 2001).

In 1997, the South African government, which has the largest HIV-infected population in Africa, introduced a bill that gave the health minister some discretion in setting conditions to ensure the supply of affordable medicine. The bill was signed by President Mandela on December 12, 1997. It specifically allowed the importation into South Africa of patented medicines that had been put onto another market with the consent of the patent owner. The response of U.S. officials was to turn the passage of the South African bill into a trade matter. Agencies of the U.S. government such as the Office of the United States Trade Representative (USTR), the Department of Commerce, and the State Department, with the assistance of officials from the European Commission, began to pressure South Africa to change the bill. In 1998, the pressure on South Africa intensified. The USTR listed South Africa under its trade law for possible trade sanctions if it did not comply with the demands of the U.S. pharmaceutical industry. In February 1998, forty-one pharmaceutical companies began proceedings in South African courts against the South African government, naming Nelson Mandela as first defendant. The trade dispute continued to climb up the totem pole of political importance. Senior officials from the United States and the European Union continued to draw attention to South Africa's obligations under TRIPS. Sir Leon Brittan, the then-vice president of the European Commission, wrote Thabo Mbeki, at that time the deputy president of South Africa, drawing his attention to South Africa's obligations under TRIPS.³ U.S. Vice President Al Gore also became involved in communicating the concerns of the U.S. government about South Africa's attempts to secure access to cheaper medicines for its HIV/AIDS population.⁴

In March 2001, thirty-nine pharmaceutical companies came to the Pretoria High Court armed with most of South Africa's intellectual property barristers and a barrage of arguments against the Medicines Act. In April 2001, the pharmaceutical companies withdrew from the litigation and the case settled. What had happened? The answer lies in the power of publicity. For almost a decade, a few activists, the most prominent of whom was James Love, had been doing work on the links between intellectual property rights and the price of pharmaceutical drugs. Out of a meeting in 1996 in Bielefeld, Germany, organized by Health Action International (a network of public health workers, with members in more than seventy countries), grew a coalition of health activists and organizations who began to mount a global campaign against the impact of patents and trade rules on access to medicines. The campaign grew and was joined by other prominent NGOs like Médecins Sans Frontières and Oxfam. The publicity this coalition of NGOs gave to the plight of South Africa was also accompanied by good public policy analysis that at its core

raised a fundamental issue—could the world community continue to rely on a patent-based research and design system that contributes heavily to a situation in which only 10 percent of global health research investigates the causes of 90 percent of the world's disease burden?⁵ For the first time, mass publics in the West learned that their governments had in the 1980s participated in trade negotiations that globally strengthened patent monopolies, obliged developing countries to recognize product patents on pharmaceuticals, and reduced these developing countries' sovereignty over health regulation. In the face of growing international moral outrage, trade ministers and officials in the United States and European Commission and the large pharmaceutical companies began to recalculate. The companies withdrew from the litigation. The real worry for the large pharmaceuticals was no longer the South African law but that the access to medicines campaign had triggered a much broader discussion about the links between patents, the price of drugs, the price of research, and the risks that the companies took. People were beginning to question the claims the industry made about the cost of researching and developing a new drug. Questions were being asked about just how much actual risk the companies took when so much drug research was in fact done in the public sector.⁶ Activists like James Love had been raising these issues for a long time, but now others were raising them and worse still (for the pharmaceutical companies) expressing skepticism about the industry's claims. The large pharmaceutical companies wanted to prevent the debate over the price of patented drugs for the poor in developing countries from spilling over into the price of patented drugs in the United States. If the price of prescription drugs in the United States had tripled in the last decade, might they not triple again in the next? How many more U.S. citizens would be unable to afford what the patent system was offering them? The bureaucrats who had been supporting the pharmaceutical establishment went into damage-control mode. The European Commission began to talk about the differential pricing of drugs for poor countries.⁷ At a special meeting of the TRIPS Council in June 2001, developing states pushed for the recognition of a reading of TRIPS that permitted them to deal with health crises. Ultimately, this produced the Declaration on TRIPS and Public Health at a WTO Ministerial in November 2001.

The campaign was instrumental in bringing down further the price of antiretroviral treatments. It provided support for generic manufacturers in two key developing countries, Brazil and India, to make offers to other developing countries looking for antiretroviral drugs their populations could afford. In most cases, these drugs were not under patent protection in Brazil or India, this having much to do with the fact that prior to TRIPS, these countries did not recognize patents on pharmaceutical products. Brazil especially was a key player in showing the world what a government could do if it was serious about combating HIV. Despite enormous trade and political pressure from the United States and the large pharmaceutical companies, Brazil had delayed introducing changes to its patent law on pharmaceutical products until 1996. With the encouragement of civil society, Brazil chose to provide free antiretroviral therapy. In those cases where the drugs it needed were under patent, it threatened the use of compulsory licensing to bring

the price down. The antiretroviral Nevirapine, for example, which is of great importance in the prevention of mother-to-child transmission of HIV, is available from the Brazilian generic manufacturer FarManguinhos at US\$0.59 cents per day. The results speak for themselves. Brazil does not face the HIV/AIDS crisis that African countries do.

The Indian generic firm Cipla was also important in triggering price reductions for antiretroviral drugs for the poor. At an international meeting in Brussels in September 2000, the CEO of Cipla, Yusuf Hamied, publicly stated the prices at which he could provide antiretrovirals to developing countries, prices that at that time worked out at around a couple of dollars a day. The pharmaceutical executives of major companies “listened agog to Hamied’s matter-of-fact price list for chemical equivalents of Glaxo’s Epivir, Boehringer’s nevirapine and Bristol-Myers’s Zerit.”⁸ Crucial, though, was the very public nature of the offer—at an international meeting with the media in attendance. The large pharmaceutical companies had also been making offers to developing countries, but only to some countries on some drugs and in secret with lots of conditions attached. Once the generics went public with their prices, developing countries knew whether the secret price discounts that they were being offered by the large pharmaceutical companies were good deals. (The secret price discounts are a good example of how public hope can be quietly traded under the public’s nose.) Today, the price of antiretroviral therapy that generic companies are able to offer comes in at well under a dollar a day.

Hope was a constant presence during the TRIPS negotiations and in the decade that followed. Developing country dissatisfaction with the developed world’s trade rules in the form of the GATT had led to formation of the UN Conference on Trade and Development in 1964 (UNCTAD). UNCTAD itself was responsible for a number of important trade initiatives, including the design of a system of preferential trade rules favoring developing countries known as the Generalized System of Preferences (GSP). The UNCTAD architects of the system were “hopeful that the system would some day amount to something worthwhile” (Murray 1977, xi). The GSP was introduced in a number of developed countries including the United States in 1971. In an evaluation of it published in 1977, Murray concluded that even with the “most charitable evaluation criteria,” the GSP was “insignificant as a new trade policy” to benefit the 150 developing countries that were in receipt of GSP benefits (p. 149). Even worse for developing countries, in the 1980s, the United States used its beneficiary status under the U.S. GSP program to threaten them with loss of GSP privileges if they did not enact standards of intellectual property that were adequate and effective (Sell 1995). In some cases, developing countries did suffer GSP penalties, and in other cases, even where they complied with U.S. wishes, they ended up losing their GSP status. Here, we have a good example of where public hope kept developing countries engaged in a global institution that on cold analysis, they should have renegotiated or perhaps left.

During the TRIPS negotiations, India and Brazil led the opposition to the U.S. agenda for a code on intellectual property. Indian opposition to the U.S. agenda,

however, faded at crucial moments, leading to a vigorous internal debate in India about the failure of Indian leadership. One critic, Chakravarthi Raghavan (1989), has suggested that Indian officials “showed a pathetic faith in Dunkel and his Indian aides” (p. 20) at a time when a more cold-blooded reading of the situation showed that there were genuine opportunities to form a strong coalition of developing countries that would have made it difficult for the United States “to ride rough-shod over them” (p. 23). Elsewhere, John Braithwaite and I have argued, based on our fieldwork, that many delegations, including Australia, were driven by the delusional belief that in signing TRIPS, they eventually would become net intellectual property exporters and therefore winners from the agreement (Draho and Braithwaite 2002). Countries signed TRIPS, in other words, hoping that things would work out in their favor. Yet cold analysis in Australia before TRIPS suggested precisely the opposite. A number of government committees, which had examined

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the role of intellectual property rights in the Australian economy, had concluded that Australia, as a net importer of such rights, had little to gain from increased international protection for intellectual property.⁹ Moreover, analysis since TRIPS shows massive wealth transfers taking place from many developed and developing countries to the United States (Maskus 2000).

Public hope has continued to play a totemic role after TRIPS. The International Federation of Pharmaceutical Manufacturers Associations (1998) has continued to argue that strong patent protection offers any society the best chance of medical progress and industrial development. Large individual pharmaceutical companies have also made it clear that patents and the TRIPS framework offer all countries the best hope of medical discovery. “Eliminate patent protection,” reads a Pfizer press release of July 19, 2001, “and the discovery of new medicines for Alzheimer’s, cancer, diabetes, malaria, heart disease slows to a trickle.” The corporate merchandising of this public hope is bundled together with analysis that claims to show that patents are not, for example, the reason behind the crisis in the United States over the price of prescription drugs or that patents are not a factor in inhibiting access to medicines by poor people. Pfizer, for example, sponsors a series called *Economic Realities in Health Care Policy* in which it publishes analyses of this kind.

Public Hope

The Dangers of Public Hope

In the second section of the article, we saw that a strong case can be made in favor of a personal process of hoping. Hope can trigger in individuals an instrumental rationality that leads them to a desired goal. It helps individuals to solve problems and, at times, to overcome the seemingly impossible odds dealt by the forces of nature or by the forces of men. But hope has its hazards. Intense hope carries with it the danger of intense disappointment. The imagining that accompanies individual hoping, if unchecked by reason and evidence, can lead the individual into fantasy thinking, irrational action, and finally, failure rather than success. Avoiding these dangers of personal hope depends in large measure on an individual's ability to create an inner dialectic in which reason checks and assesses the possibilities for the future that the individual through hoping begins to imagine as concrete possibilities.

The private hopes of an individual can be facilitated by the institutions of which the individual is a part. Social institutions are important influences on individuals when it comes to private hope. Private hope is based on the capacity to imagine the fulfillment of a future goal for oneself or for others. If, for example, an individual who has been diagnosed with cancer lives in a society where the health system has a very good track record in the treatment of cancer, that will very likely have a positive impact on that individual's hopes for recovery. The medical profession, by communicating improvements in survival rates and treatment advances, is very likely to raise individual hopes for recovery. But as Sasha Courville and Nicola Piper show in their article in this volume, if social institutions such as health, education, employment, and financial security have broken down, then those institutions slowly cease to be seen as sources of hope. People will no longer plan their futures based on, for example, a banking system that is unable to maintain the value of their savings. Individuals disengage from such institutions, and their hopes turn elsewhere or despair replaces hope. In the words of a poor person from Armenia, "People place their hopes in God, since the government is no longer involved in such matters" (Narayan 2000, 79). The instrumental reasoning with which hope is linked sees individuals turn to other sources of help (see Courville and Piper this volume) or organize in different ways (organized crime being one example). As the private hopes of a majority of individuals within a society become less and less linked with state institutions, the prospects of a society maintaining or achieving well-functioning institutions become slimmer and slimmer. One reason for this is that institutions become cut off from the individual initiatives that characterize hopeful thinking, thus their capacity to adapt to changing circumstances is reduced.

When social institutions remain open to private hopes, they also allow for the possibility of a bottom-up process in which they help to fulfill the goals and plans of individuals. Political theories that see virtue in maximizing individual liberty ought

also to see virtue in private hope. Private hope depends on basic freedoms to be meaningful (e.g., career hopes depend on freedoms such as the freedom of employment, freedom of communication, freedom of movement, freedom from discrimination), and at the same time, it encourages the use of those basic freedoms. One may push this line of argument further and conclude that when hope and social institutions are fully integrated, the possibility of tyranny is largely removed (Dauenhauer 1984).

Does what we have said about links between private hope and social institutions apply to public hope? Private hopes may, as we suggested in the beginning of this article, become public hopes. Individual hopes for peace when shared by many become the basis of mass movements and social politics that may eventually become represented as public hopes within the political system. But as our case study shows, public hope may exist and exert an influence on policy without the public's being aware of it. Raghavan's (1989) observation that Indian officials, at crucial stages in the TRIPS negotiations, simply hoped that things would work out for the best when instead they should have been organizing developing national resistance to the U.S. and EC TRIPS agenda shows how public hope and private hope can be very different. Most Indian citizens would not have been aware that these public hopes were exerting an influence on Indian strategic thinking. In fact, most citizens in all countries were in a state of ignorance about the TRIPS negotiations and their far-reaching effects on the cost of pharmaceutical products. This was certainly true in the case of African states. The public hopes of officials in India, and very probably in other countries concerning the outcomes of the negotiations in TRIPS, would not have been widely known by the publics that the officials in these countries were meant to be representing. Yet these hopeful public actors steered their populations toward an agreement that will see the supply of generic drugs to developing country populations progressively reduced as the deadlines for the implementation of patent protection for pharmaceuticals begin to bite.

Public hope that is kept private by officials and therefore not exposed to scrutiny can contingently lead to bad outcomes. The same is also true of public hope that is articulated. Public hope can be invoked by political actors without those actors' necessarily personally feeling the hope they describe or even believing that the program of action to which the hope relates will produce a better future. Pharmaceutical companies spend millions of dollars every year on lobbying activities in an effort to persuade politicians and officials of the virtues of strengthening the patent system. Even if individual politicians who publicly argue that the patent system offers a society the best hope for the future are privately skeptical about this claim, it does not follow that public hope is not at work. Irrespective of their private beliefs and motivations when political actors invoke hope, they are engaging in speech acts. Sentences, pointed out the philosopher J. L. Austin (1962), do not simply convey meaning. When uttered, they may also have effects and perform actions, such as the action of marrying somebody or warning them of some danger. When political figures invoke hope in some public context, they are engaging in an action. They are not simply describing hope but rather trying to give hope. In Austin's terms, they are using the language of hope with illocutionary force, a force that

is intended to produce emotional effects in their audience and place them in a state of hope. The likelihood of success of this action in the case of public hope generally depends on the hope's being linked to a plan. The plan must offer an indication of the pathway to the hoped-for goal. This need not always be the case. Political leaders may tie the hope to a religious metaphysic intending that the audience's beliefs about supernatural agency make the feelings of hope robust. Within secular political contexts, however, hope is almost always bundled with a policy agenda that is the means to the achievement of the invoked public hope. When public hope is used with illocutionary force, its effects may be contingently good or bad. Basically, this will be determined by the outcomes of the policies that the language of public hope is used to promote.

Another important feature about public hope makes it a more ambiguous servant of the good. Private hope, as discussed earlier, encourages an individual to action. In the case of public hope, however, agency responsibility for hope typically does not lie with the many citizens that have been persuaded by the illocutionary language of public hope to accept a set of policies, but rather by the executive arm of government. The risk of hoping, but not being the agent bearing responsibility for the fulfillment of that hope, is that it is difficult to evaluate progress toward the hoped-for goal or indeed whether it remains a realistic goal. The feedback present in the case of individual action toward the hoped-for goal is delayed in the case of public hope, and its extent is determined by social mechanisms of transparency, monitoring, and reporting. The language of public hope may sometimes simply be a way of obtaining emotional assent to a set of policies that then run unchallenged.

Both the public hope that affects a few key decision makers (the case of the Indian officials hoping for a good outcome) and the public hope that is openly invoked to affect a public (the use of hope by large pharmaceutical companies to prop up support for the patent system) can lead to adverse outcomes for a society (reduced access to drugs, higher cost of drugs). A more general conclusion of this article is that a danger of public hope is that it becomes a tool of manipulation, an emotional opiate that political actors use to dull critical treatments of decisions and policies that serve private rather than social interests. It is not a conclusion of this article that public hope should be banished from political life. When the private hopes of a Nelson Mandela or a Václav Havel become public hopes and then the collective hopes of a people, they can lead to the hope-emancipation dynamic described by John Braithwaite in this volume. How then should we deal with the dangers of public hope?

Principles for Checking Public Hope

Our case study suggests some principles for checking on public hope. One clear lesson from our case study is that a strong connection must be made between public hope and the available evidence that relates to the probability of the hoped-for goal. In the case of the GSP, there was evidence that developing countries were not gaining from its implementation. They stuck with the system, and it was used to cajole some of them into accepting intellectual property standards that were

unsuitable for their stage of economic development. Similarly, the use of hope by the large research and development pharmaceutical companies to support policy initiatives for strengthening and globalizing the patent system is an example of public hope that looks increasingly irrational in light of evidence that the patent system does not deliver what it promised in terms of pharmaceutical innovation for developing countries. A recent U.K. government commission that looked at the question of the role that intellectual property plays in stimulating research and development on developing country diseases concluded that “all the evidence we have examined suggests that it hardly plays any role at all, except for those diseases where there is a large market in the developed world” (U.K. Commission on Intellectual Property Rights 2002, 33). This, however, is hardly news, for Edith Penrose (1951), in her much earlier analysis of patents for developing countries, had come to the same conclusion. In the case of the patent system, public hope and justificatory evidence for that hope parted company a long time ago.

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So our first design principle for checking public hope is that when public hope is used to orient citizens toward a particular goal, the public beliefs about the probability of the hoped-for event must be checked against the evidence. Stating the principle more abstractly, public hope must be judged by truth. This design principle suggests another. If public hope is to be checked by probabilistic judgments based on evidence, it follows that that evidence has to be gathered. By implication, another design principle to check public hope is that the social processes of evidence gathering and knowledge acquisition should be guided by public hope. All things being equal, a society should devote its scarce resources to the pursuit of knowledge that is relevant to its hoped-for goals. In more abstract terms, public hope should guide the search for truth. The principle seems obvious enough, and yet it was not followed in the case of TRIPS. Before and during the negotiations, no commissions like the U.K. commission reported on the implications of TRIPS for poor people, for health, for agriculture, and so on. It is only since TRIPS has come into operation that empirical work on the actual effects of intellectual property has gathered apace.

A third principle may be derived from the case study concerning public hope. The evidence of the problems that TRIPS was causing and continues to cause in the area of access to medicine did not come from governments or industry but rather from activists and NGOs like Médecins Sans Frontières who, while working in developing countries, saw the problems that the strengthening and globalization of intellectual property rights brought (Sell 2002). The first response of governments to the access-to-medicine crisis was, as we saw, to support the pharmaceutical industry when it sued the South African government for passing legislation aimed at obtaining cheaper medicine for its citizens. Without the intervention of civil society actors, it is certain that the public hopes that were being expressed in favor of stronger intellectual property protection would never have been the subject of testing in the way that they are now being tested. As our case study shows, NGOs combined cold analysis with a global campaign strategy that eventually saw the price of antiretroviral drugs fall sharply. This suggests that social arrangements that maximize the opportunity for different groups to test public hope are more likely to arrive at the truth about public hope. One reason for believing this to be the case is that the process of evidence gathering will be carried out by groups that do not have a direct interest in the outcome. Large pharmaceutical companies, for example, have a very direct interest in the conclusion that global patents do not cause a problem of access to medicine. Interests can affect the collection of evidence in relation to a hypothesis. It follows that if we rely on the efforts of pharmaceutical companies alone to arrive at the truth about the patent system and access to medicine, we may well have a less reliable guide to the truth than if we rely on evidence from a range of groups. As the case study illustrates, it is precisely because civil society groups came forward with the evidence about the problem of TRIPS and access to medicine that a rethinking of TRIPS principles as they relate to medicine is taking place. In the abstract, if truth is to judge hope, we need social arrangements that maximize the opportunity for bearers of truth about public hope to come forward. Public hope needs to be the subject of processes of societal cross-examination.

Correlative to this third design principle is a fourth: those who are capable of giving private hope to those in need must be encouraged and provided with resources to turn that hope into public hope. The response of the global pharmaceutical industry to the NGO campaign on patents and the price of drugs was to argue that price was not the issue but rather that the real problem lay in the lack of infrastructure in developing countries and the possibility of poor people's following treatment regimes. Individual doctors, who managed to obtain expensive antiretroviral drugs through donation, showed that poor people could be treated in community-based health clinics in the rural areas of deep poverty. These individual success stories made it very difficult for the large pharmaceutical industry to continue to claim that there was no hope of treating AIDS in resource-poor settings. The industry's story of a lack of hope in being able to tackle the AIDS crisis lost some of its power. Stories of hope of treating AIDS patients in resource-poor settings began to circulate. One such initiative led by a couple of doctors in the squat-

ter settlement of Cange in rural Haiti led to the direct involvement of Haiti's first lady in the campaign to obtain cheap drugs and treatment for Haitians. In 2002, Haiti was successful in obtaining money from the UN Global Fund to treat thousands of patients rather than the hundred or so the Clinique Bon Sauveur in Cange had managed. A micro story of private hope had become transformed into public policy and public hope. In the abstract, public hope takes its lead from those who genuinely inspire widespread private hope.

Conclusion

This article has argued that in addition to individual and collective hope, we need to recognize a third category of hope: public hope. Public hope is hope that is articulated by political actors in the context of exchange relationships of various kinds. All three types of hope have dangers, but public hope is potentially the most dangerous because it allows political actors to emotionally harness collectivities to economic and social agendas that are poorly understood by those collectivities and that are ultimately destructive of the social institutions upon which actual private and collective hopes depend. Or public hope may be secret hope that drives policies that escape public notice until it is too late. Intellectual property rights and the access to medicine issue are full of examples of the manipulative aspects of public hope. African countries had no real idea about the consequences for their populations of signing onto TRIPS. The promised technology transfer benefits of TRIPS have not materialized, but the problems of access to medicines have. Indian negotiators hoped that things would work out when they eventually agreed to TRIPS. Almost a decade later, the Indian pharmaceutical industry faces a watershed as Indian generic manufacturers must decide whether to target the more profitable markets of Europe and the United States. Public hope in the hands of a Nelson Mandela, as the article by Clifford Shearing and Michael Kempa shows, can lead to collective hope and emancipation. But perhaps more often than we would like to admit, it is the wellspring of betrayal of private and collective hope. People do not, as Valerie Braithwaite shows in her article, stop hoping as a result. Their hope finds expression outside of traditional arrangements in subcultures, countercultures, and subversive cultures.

Public hope is likely to be a contingent force for the good when it is checked by the four principles proposed in the last section of the article. Such an outcome has its best chance when public hope is judged by the truth, is the subject of cold analysis, is underpinned by social arrangements that maximize the opportunity for bearers of truth about public hope to come forward, and is developed and led by those who inspire private hope. For that to be a real rather than just a symbolic possibility, however, some serious attention will have to be paid to reforming the way that current institutions work, as Valerie Braithwaite points out. Democracies that purport to take the hopes of their citizens seriously will have to find more direct and less manipulative forms of communication and dialogue.

Notes

1. Dr. David McGibney, Senior Vice President, Medicinal R&D, Pfizer, Europe, from a talk delivered to the Royal Society of Arts, Manufactures & Commerce (RSA), February 2, 1999. Available from <http://www.pfizer.com/pfizerinc/policy>.
2. See the essays in Part II of Gillham (2000).
3. See Oxfam Background Briefing, "South Africa vs. the Drug Giants: A Challenge to Affordable Medicines," available from http://www.oxfam.org.uk/what_we_do/issues/health/drugcomp_sa.htm.
4. The details of this international effort are described in "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 1965," U.S. Department of State, Washington, DC 20520, February 5, 1999.
5. See Médecins Sans Frontières Access to Essential Medicines Campaign and the Drugs for Neglected Diseases Working Group (2001, 10).
6. On the importance of public sector funding to drug discovery, see Maxwell and Eckhardt (1990).
7. See, for example, Communication from the Commission to the Council and the European Parliament: Programme for Action (2001).
8. For a report of the meeting, see Barton Gellman (2000).
9. Interestingly, this conclusion is still relevant. See Intellectual Property and Competition Review Committee (2000, 83).

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