

A Double Dose of Failure

By Sebastian Mallaby
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Like Hurricane Katrina, the preparations for avian flu expose the weakness of American government. Pressing dilemmas get passed back and forth between executive and legislature, and between federal government and the states; lobbies get multiple chances to confuse and paralyze policy. Flood walls don't get built. Flu preparations don't get done. Government lets people down, and people don't trust government.

Consider one piece of the avian flu mess: the challenge of stockpiling the potentially lifesaving drug Tamiflu. The challenge presents the standard intellectual-property dilemma: Should we respect the patent rights of Roche, Tamiflu's maker, thereby strengthening incentives for companies to develop tomorrow's cures? Or should we force Roche to surrender its property, thereby allowing the government to stockpile Tamiflu faster and more cheaply?

Some countries have come up with a clear answer. Taiwan says frankly that it will manufacture its own version of Tamiflu, and never mind the patents. Its scientists claim that, after a mere 18 days of lab work, they've figured out how to copy the drug and will attempt to do so on a large scale if necessary. India, Thailand and Argentina have all said they want to make the drug themselves if a pandemic materializes.

Other countries have gone the opposite route, stockpiling Tamiflu by buying from Roche. France has enough of the drug on hand to treat 24 percent of its people. Britain expects to be at a similar level soon. But this policy of buying the drug from the patent holder works only for the countries that get in line early. Already some 40 governments have placed orders. If every country ordered enough Tamiflu to treat a fifth of its people, it might take Roche a full decade to deliver.

The United States has failed to get in line early. It's been weeks since panicky soccer dads began stockpiling Tamiflu. But the government has so far ordered enough of the drug and a similar medicine, Relenza, to cover just 1.5 percent of the population. Last week's avian flu "blueprint" from the Bush administration belatedly proposes to procure treatment courses for 75 million Americans. But Congress has yet to come up with the money, and the plan assumes that state and local governments will contribute \$510 million to the procurement effort. The scope for argument and delay seems endless.

Meanwhile, and indeed for the next several months, the United States will have no significant stockpiles of Tamiflu. If the feds and the states resolve their burden-sharing arguments quickly, the earliest conceivable point at which the nation may have stockpiles equivalent to that of Britain or France appears to be mid-2007. In terms of getting access to Tamiflu, the United States has been a failure.

But the nation isn't a model of respect for intellectual property, either. Panicked by its own lateness, the Bush administration has bullied Roche into opening a new production operation in the United States; if Roche had refused, the administration was ready to break the patent. Sen. Chuck Schumer has gone further, denouncing Roche for elevating profits above health and demanding that the firm license its technology to

other drugmakers or face legislation compelling it to do so. Coming on top of similar bullying four years ago of Bayer, the maker of an anti-anthrax drug, this browbeating sends a clear signal: If you make a drug that turns out to be really important, don't expect patent laws to protect you.

So the United States has the worst of both worlds. It has failed to secure Taiwan-style access to medicines, and it has failed to preserve incentives for new medical discovery. It is getting ready to pay Roche buckets of money for drugs that may arrive too late, because it wants to respect intellectual property. But at the same time it has reminded drug companies that, if they want to be left alone to make money, they had better confine themselves to unpolitical ailments such as cholesterol and asthma.

This is part of a pattern. It reflects the impossibility, in the American system, of deciding one way or the other. The Bush administration wants to stand up for the research-based drug industry, but some members of Congress speak for the generic firms; the result is the kind of regulatory uncertainty that deters long-term investment. Today Schumer might not have the clout to deliver on his threat to break Roche's patent, but tomorrow, who knows? One day the Democrats may regain a majority in Congress. One day Schumer may be secretary for health in a Democratic administration.

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