

Vaccine-damage damage

A scheme to compensate for vaccine-damage in the United States must be delayed no further.

WHEN and how should individuals be compensated for injuries they suffer in the interests of the public good? This is the question underlying the thoughtful report last week from the Institute of Medicine in the United States, grappling yet again with the question of how the occasional injuries caused by vaccination should be dealt with (see p.476). The rationale of mass vaccination programmes is that the treatment of individuals will not merely protect them against an infection but also help break the chain of infection in the population at large. There are by now many spectacular illustrations of the success of vaccination, the chief agent in the eradication of smallpox and the reduction of the incidence of the damaging paediatric infections, at least in the industrialized countries of the world.

But vaccines are not free from risk. Even when properly manufactured, they may damage those who look to them for protection. The Sanford committee catalogues the social and legal anomalies occasioned by this ironical contradiction, advocating a statutory compensation scheme for those affected. In doing so it follows a long line of private organizations that have urged the need of similar arrangements (already in place, on a modest scale, in California). For at least the past three years, the US Congress has been grappling in a desultory fashion with legislation designed to give effect to such a proposal; in the Senate, the chief sponsor has been Senator Paula Hawkins, in the House of Representatives, Mr Henry Waxman and Mr Edward R. Madigan have taken the lead. The sponsorship is far from negligible; why has nothing happened?

The difficulty seems to be that all the participants in the administration of vaccination programmes and their consequences are ambivalent. Manufacturers of vaccines seek above all to escape from the present uncertainty, in which they (and their insurers) cannot guess in advance the monetary scale on which they might be liable if a vaccine should provoke a rash of lawsuits, but would not wish to go so far as to become subcontractors for some agency of the US government, which might then become the sole source of vaccines and the one responsible for compensation. The federal government, although anxious that vaccination programmes should not be hamstrung as at present, is similarly concerned about the cost (witness its experience with the epidemic of swine influenza that never came, in 1976) and the implication that this small corner of medicine might be "socialized". Physicians who administer vaccines, solicitous for their patients, have an interest in seeing that manufacturers and not themselves are usually held responsible for accidents. Can practising, as distinct from academic, lawyers have an interest that the present jungle of the courts should be perpetuated?

The resolution of these conflicting interests should be much easier than the Institute of Medicine allows. What seems to frighten everybody is the high cost of settling damage suits in the US courts (or in the corridors around them) and the difficulty apparently often equated with constitutional impropriety, of interfering with the law of tort which allows an injured person to sue whoever may be responsible. But it is now made clear that in the settlement of vaccine damage suits, the amount of compensation paid to those who are tragically injured, or to their relatives, will often include a large element intended to compensate for "pain and suffering" occasioned by the accident. It is right and proper that manufacturers distributing defective vaccines should be sued for whatever the courts will award, but otherwise, given that the risks of vaccination are in any case not negligible, but that those consenting to vaccination do so in the expectation of personal immunity from some infection, it would be more equitable than the present system that the right to sue should be replaced by the right to administrative compensation, provided that the system offered as an alternative is both speedy and sufficient to cover money losses, medical expenses and support for dependants, for example. The Sanford committee

might usefully have grasped this nettle. It should also have pointed out that its useful compilation of vaccine-damage schemes in place elsewhere than the United States is not as valuable a guide as it may seem; the British scheme, for example, which limits administrative compensation to £10,000 but which does not extinguish the right to sue the manufacturer of a vaccine, is more generous than it may seem because of the free care provided by the National Health Service for those who may be damaged.

So why shrink from meddling with the law of tort in the United States? Vested interests (those of the lawyers and of the litigious) apart, one of the chief inhibitions seems to be the knowledge that the whole apparatus of case-law on product liability built up by the US courts would be undermined by the acknowledgement that a person's right to compensation would be mitigated by the expectation that the purchase of a disputed product would ordinarily be beneficial. Provided that the purchaser knows that there are also risks, the doctrine is equitable; but plainly it also applies to products other than vaccines, pharmaceuticals for example. And when there is public as well as private benefit involved, it is not merely necessary but desirable that the state, or the federal government in the United States, should be directly involved in holding the ring between public and private needs. The Sanford committee rightly draws attention to the analogy between vaccine programmes and the arrangement for the insurance of nuclear power stations by the Price-Anderson Act, where the same principles are (or were once thought to be) at stake. The need now is that the US Congress should buckle down to the legislation it must know it cannot put off much longer. □

Growing charitable

Charitable foundations in the United States and Europe are learning how to flex their muscles.

EARLIER this year, the Howard Hughes Foundation leapfrogged its way to the top of the donors' league in the United States by divesting itself of TWA, the airline that was its founder's chief legacy. In due course, the result will no doubt make the foundation a force to be reckoned with in biomedical research. Although the charity's annual income will be less by more than an order of magnitude than that of the US National Institutes of Health (NIH), it will have the advantage of being uncommitted to the standing army of in-house researchers that NIH maintain and free from obligations wished on it by the US Congress. And now, independently and more cautiously, the Wellcome Trust in Britain proposes to take a leaf out of the Howard Hughes book. The two charities resemble each other in that their chief asset has from the beginning been the sole ownership of a commercial company, in Wellcome's case the drug house called confusingly the Wellcome Foundation. Next year, the trust plans to sell a fifth of its shareholding in the company, calculating that it will as a consequence be able to increase its spending on biomedical research by something like a factor of two. Already, the trust's grant-making, planned at £30 million during the year ahead, exceeds what the British Medical Research Council can afford by way of research grants.

But why stop at the disposal of a mere fifth of the shareholding? Why not sell the lot, as the Howard Hughes Foundation sold the whole of the airline that was its birthright? The reason why it is financially advantageous for foundations to dispose of assets that consist of single companies is that, even when the companies are successful, they will sacrifice income (and their charitable objectives) for the chance of capital growth. But on the principle that there is no such thing as a free lunch, capital growth is not cast-iron. Even successful companies risk falling on hard times, as the Nuffield Foundation, once Britain's biggest, learned to its cost when, having sold a third of its shares in the British Motor Corporation, it found the rest bought by the British government at a knockdown price. Wellcome should sell more soon. □