 chapters

The evolution of law to respond to a societal need is a recurring theme for scholars and legislators alike. No challenge is too big for the rhetorical strength of the legal system: “Show us a wrong and we’ll create a prohibition or incentive to solve it!”

Infectious disease does not follow that path. It mutates, its diagnosis is muddied, its DNA may adapt, and its host animals or humans will migrate, spreading the illness. Law may be an art form, but the science of pathogenic microbes is definitely more technical and less artistic. So the lawyer must know that the power of persuasive oratory has never moved a single virus.

It is the consequences of infection that law can address: workers’ compensation systems for hospital employees, disability determinations for patients severely impacted by infection, rejection of delivery for commercial shipments of goods that may have been carrying a harmful pathogen, or lawsuits against surgeons who were careless during or after surgical operations.

In both the United States and international systems, regulatory agencies adapt their national systems to the needs of infection-control efforts. Collective protection from illness is the motivating force; compulsion about health protective measures is the means; court deference to the selection of which epidemic to fight with which measure is the norm.

Longer term, the legal remedies for individual proof of causation are going to become more robust with the diminishing cost of DNA analysis. The institution that denies that it could have been the source of this person’s infection will be confronted by experts who hold the sample from the hospital, contrasting its DNA with the DNA of the plaintiff’s serum or blood infection. Compensation that had been denied for lack of causal connection will be available, and the hospital or clinic will be expected to
beg legislators to immunize the clinical sources of infection from paying for the harm they have either caused or “been associated with” in light of the pathology of infection.