ABSTRACT

Protease inhibitors, the first drugs to bring about real remission in AIDS, were first developed in 1996. Between the time they were proven effective and the time they became accessible to all AIDS patients in France, the available quantity of protease inhibitors was far from sufficient to satisfy the need. In response to this temporary "tragic choice" situation, the Conseil national du sida [National AIDS council] proposed that the drugs be distributed by lots; i.e., through random selection of patients from pre-established lists. The following is a monographie study of the genesis of that situation, the controversy caused by the recommendation to proceed by lot-drawing, and the consequences of that controversy. Its objectives are twofold: 1) to propose a model for analyzing controversies by studying how media coverage interacted with a specific collective action; 2) to show the ongoing relations within the particular network of actors -pharmaceutical companies, clinicians, AIDS patient advocacy groups, and public agencies and authorities- involved in getting anti-Hiv treatments onto the market in France.

The battle for life over death in the treatment of AIDS has come to consist in a hunt for new drugs that will bring about remission. From the time an effective treatment is produced to the time it becomes available to all patients, access to the drug is a life-or-death matter for some. With the appearance of each new drug or set of drugs, the conditions are met for a temporary "tragic choice" situation. Guido Calabresi and Philip Bobbit's term "tragic choice" (1978) describes a situation where the goods necessary for survival, or avoidance of terrible suffering, exist in insufficient quantity for the members of a collectivity that need them. The situation implies not only that efforts are made to increase the available supply of such goods, but also that the mode adopted for allocating them is "tragic" in that it necessarily excludes some of the individuals for whom the good in question is indispensable.

This article presents some of the results of a study on how protease inhibitors were introduced in France. (1) These drugs, combined with two others, were the first to bring about a spectacular decrease in the amount of virus in the organism and number of deaths from the disease. From late January 1996, when the exceptional results of the clinical trials were announced -an announcement eliciting great interest in France- and the time protease inhibitors were expected to become available on the French market, the conditions for tragic choice were met. The Conseil national du sida (CNS), responding to the French health secretary's request for an opinion, recommended that lots be drawn to allocate treatment during the temporary period of scarcity. When that recommendation was made public, a controversy broke out that lasted two days, the
The controversy was speedily brought to a close when the Prime Minister declared lot-drawing an unacceptable solution.

The following monographic study of the controversy pursues two objectives: to shed light on the mechanisms by which therapeutic drugs arrive on the French market, and to propose a model for analyzing controversies. (2)

A crucial moment in an ongoing issue

The controversy around the recommendation that AIDS patients be selected for treatment through lot-drawing deserves attention for at least three reasons. First, as far as we know it is the first controversy in France involving tragic choice in the sphere of health. (3) Second, like every form of conflict, it reflects the main features of the social-institutional milieu in which it occurred; in this case, the milieu that we must look at in order to understand how anti-Hiv drugs arrive in France. This process involves much more than the administration's approving sale of a new drug on the national market (approval given since 1993 by the Agence française du médicament and, for innovative treatments such as protease inhibitors, since 1995 by the European Medicines Evaluation Agency). As demonstrated elsewhere, in order for such drugs to become known, approved, and prescribed in France, some of the clinical trials have to be conducted there (Dalgalarrondo, 2000). In fact, the conditions under which a drug officially arrives on the French market are affected beforehand by a whole chain of actors whose relations are by no means stable. That chain comprises five categories—the national administration (ministerial offices, agencies), political decision-makers (ministers and cabinets), clinicians and hospital services, patient advocacy groups, and pharmaceutical companies— to which, precisely because the situation was a controversy, we must add the media: newspapers, radio, television. Third, the controversy marked a turning point in the role of AIDS patient advocacy groups, at a time when they had attained their highest level yet of recognition and influence. Activism on matters of AIDS treatment was one of their most significant innovations (Epstein, 1996; Barbot, 1998a); that is, pressuring clinicians and pharmaceutical companies in order to obtain promising new drugs as soon as possible, in the framework of what is known as "compassionate use". (4) For the advocacy groups as well as the pharmaceutical companies, the controversy revealed the possibility of a change in their relations. It became clear that the groups' noisy lobbying against the companies' commercial strategies when these went against patient interests could in fact become an excellent marketing tool for the companies—as involuntary as it was efficient.

The present study cannot be grouped with the many important studies of how issues get "put on the agenda" or taken into account at the public policy level. The controversy took place well after AIDS had emerged onto the political and policy field; in France this happened in 1988 (Favre, 1992). And it involved a type of event that had already occurred: the arrival of a new drug. Patient advocacy groups had been extremely active in previous years, and here they mobilized in what could be considered classic fashion, bringing the issue to press attention, demonstrating, interrogating the different government administrations and relevant politicians. Meanwhile, the national administration and political decision-makers were trying, as they do, to anticipate and head off problems. What was new was how high hopes were for the new
treatments, reputed for the first time to make the virus indetectable in the blood and reduce mortality. It was therefore against a background of actions and initiatives that had become, if not routine, at least smooth-running that the unexpected happened: the Conseil national du sida recommended drawing lots. That recommendation, and above all the immediate protest it provoked, gave entirely unexpected visibility to the mobilization (which had not drawn much enduring attention until then); to the upcoming problem of scarcity; and to the problem of how to distribute the available supply of treatments. That visibility and its effects are precisely what interest us here.

A model for analyzing controversies

The study of the controversy surrounding random selection, lot-drawing, to determine which AIDS patients would receive the new treatments touches on an aspect of such situations that is often mentioned but rarely studied: how the handling of a collective problem meshes with the media attention given to debates sparked by that problem. As Bernard Manin has explained (1995, p. 299): "Discussion of specific issues is no longer confined to parliament (as in parliamentarianism) or joint committees where political parties and organized interest groups are represented (as in party democracy). Now, issues are borne before the public. The form of representative government emerging today is characterized by a new public deliberation protagonist - the floating, informed voter - and a new forum for deliberation: the media."

Controversy analysis, common in sociology and history of science as well as in studies of public reaction to new high-risk technologies and ecology mobilizations, is less often encountered in the study of public decision-making and action. (5) And though it is used in sociology of the media, it is often confined to detailed analysis of journalists' coverage of the larger debate (Brugidou, 1993).

Given our focus on the manner in which the controversy affected handling of a collective problem, it was not enough to analyze exclusively either the work of the media or the actions of mobilization participants. Our study thus bears on the interaction between media and collective action. Specialists of protest mobilization have regretted that the media are not adequately taken into account in empirical studies. Those who have tried to respond to this critique have often emphasized the media's selective attention to different types of mobilization and interest groups (McCarty, McPhail, and Smith, 1996; Wisler, 1998). This presupposes examining a set of mobilizations, something a monographie study does not do. But a case study can look at two equally important features: the effect of visibility on mobilization effectiveness and the effect of the media's choosing what aspects of the protest to cover.

With this focus, we have had to adopt a more restrictive conception of "controversy" than is usually applied. The word is generally associated with a prolonged public disagreement in which a series of opposed arguments are exchanged. For our purposes, a controversy will be defined as 1) a debate; that is, a conflictual exchange of opposed arguments that 2) is aimed at reaching a decision on how to proceed (6) and 3) has acquired high public visibility via the media. (7)
This definition requires two sets of distinctions. The first concerns the fact that a controversy unfolds over time. We have adopted the continuity hypothesis, also called the Clausewitzian perspective, an approach readily used in both conflict sociology (Adam and Reynaud, 1978, p. 127) and the sociology of social movements and political crises (Dobry, 1986, pp. 14-15; Chazel, 1992, pp. 290-291). Controversy, then, shall be considered the continuation of mobilization by other means. To grasp the mix of change and continuity involved in the shift from "not controversy" to "controversy", we shall draw a distinction between issues raised during a controversy; that is, articulated in the media, and problems that are important to the actors but not explicitly picked up on or defined by the media. The second set of distinctions concerns degree of visibility. In a single phase of conflictual argument exchange, not all protagonists or everything they say get the same coverage or have the same access to the media. To represent this difference we shall distinguish between controversy and larger debate. The controversy is that part of a public debate, or ordered exchange of arguments and stance declarations, which gains access to the media with the largest audiences. In the descriptive model of the media upon which this distinction is based, media are conceived as "theater stages" where the audiences differ both qualitatively and quantitatively; the audience for one medium may or may not be the same as for another. On these "stages", journalists relate and comment on facts and events, passing the microphone to some -but only some- of the protagonists of those events, protagonists whom they have sought to speak to or who have successfully reached them. The media's work involves gathering and editing information and actors' accounts. It is therefore one of selection, exercised under strict time and format constraints in a situation of competition with other broadcasting enterprises. We need to consider degree of visibility because it affects both the dynamic of argumentative exchanges and, ultimately, public decision, which, by aligning itself with one side of the debate rather than the other, puts an end to the controversy. The more publicity a debate gathers, the stronger the actors' motivation and intention to speak out and get their responses and reactions heard in the wide-audience media. This development is furthered by the fact that the media are competing to cover a debate that has become a public event. These distinctions will become clearer as we apply them.

We shall examine successively 1) the realization that the new drugs would be scarce, realization concomitant with a) mobilization by AIDS patient advocacy groups and b) administration attempts to anticipate and preclude related problems; 2) the competing proposals for resolving the tragic choice situation; 3) the controversy's fixation on a specific, widely shared value judgment -what we will be calling a topos- and 4) the end of the controversy and resolution of the problem that had given rise to it: scarcity.

The conjoined developments of scarcity and mobilization

Usually, the notion of scarcity is not relative. This is obvious for food scarcity, which implies both hunger and knowledge of what is lacking -food. In the case of innovative products -namely, therapeutic drugs- the reverse is true: scarcity is relative to or depends on awareness that a certain product exists. We would not say that a patient failing to respond to therapeutic treatment is suffering from drug scarcity if we do not think treatment exists that could help him or her. (8) In this precise sense, we can say that well before the controversy erupted, mobilization of
the AIDS subsector in France had brought to the fore both the notion and the fear of temporary scarcity for a new type of medicine: protease inhibitors.

**The AIDS subsector in France**

Most sociologists and political analysts agree that in the study of modern societies it is important to distinguish between sectors, sectors that are both closely interrelated and endowed with a certain autonomy. (9) There is, therefore, no need to demonstrate at length that a health sector exists in France. And whereas it is unlikely that this sector can be broken down by major pathologies, the existence of an AIDS subsector does seem certain. At the end of the 1980s specific institutions were created that came to constitute a health subsector particular to this pathology. These were, on the government side, the *Agence nationale de recherches sur le sida* and the *Conseil national du sida* (11); on the medical side, specialized clinicians, researchers, and hospital services and departments; on the side of patients and their families and friends, a series of collective mobilizations and the forming of AIDS patient advocacy associations. The emergence in 1996 of the controversy surrounding the proposal that lot-drawing be used to select those AIDS patients who were to receive the new treatments must therefore be studied in connection with the skills, resources, and particular problems of the actors in this subsector, as well as the relations habitually obtaining between and among them. Given the ins and outs of the controversy, the following clarifications are in order.

It has become standard practice to underline the role played by a cluster of advocacy groups in taking charge of AIDS patients and the psychological, social, political, and therapeutic aspects of this disease. In the restricted framework of an article, we have preferred to leave aside the impact of differences in origin, style, objectives, and resources among these various associations. Such aggregating is justified for the controversy under study in that the most powerful French associations found a means to act together, officially becoming an inter-associative group specialized in "therapeutic lobbying" to ensure France's patients the speediest access possible to new drugs. (U) The cluster of patient associations specialized in treatment was and is fully aware of research schedules; it regularly meets with representatives of the pharmaceutical industry and the *Agence du médicament*, and it attends most AIDS conferences (Barbot, 1998b). Highly informed as it was, it was able to play a major role of "lay expert" during the controversy.

Another distinguishing feature of the AIDS subsector in France is that French clinicians were and are very present in therapeutic research. They participate in the clinical trials of pharmaceutical firms' new drugs and help to determine the best combination of drugs on the basis of patients' clinical profiles. The scientific side of the AIDS subsector, the *ANRS* research agency, its groups of experts in the *Agence du médicament* and in the ministry of Health were and continue to be fully aware of and familiar with all therapeutic innovations. In our case, French clinicians had participated in the trials for developing protease inhibitors. (12)

It should also be remembered that AIDS has been the object of much media attention. The press has played a crucial role (Herzlich and Pierret, 1988), but so have radio and television. Intense media coverage, linked to the history of the disease, its intensity, the public health scandals and problems it has caused in France and elsewhere, has been facilitated by the increase
in and transformation of medical journalism (Champagne and Marchetti, 1994). The various kinds of therapeutic progress announced at AIDS conferences are picked up by specialized and non-specialized journalists working in different media. Occasionally, they over dramatize or deform information in a way that has been deemed dangerous. Generally, the high media visibility of any AIDS-related matter considerably affects the modes of action chosen by protagonists in this subsector.

Finally, whatever the roles of the different actors, they all share what is at least in part a common history. The successive arrivals of new anti-HIV drugs on the market have brought about more or less recurrent problems, stancetaking, and confrontations. What the media quickly began calling the "protease affair" cannot be called a rerun of an already enacted scenario. But the anticipations and reactions of actors used to handling -together and often in conflictual fashion- the arrival of new drugs in France become understandable when we consider that common history; the actors' previous experiences of conflict, cooperation, and mobilization.

**Mobilizing around three problems**

At the convention organized in Washington on January 29 and February 1, 1996, the Merck and Abbott drug firms presented spectacular results of clinical tests obtained by combining their new protease inhibitors with two other drugs already being used. This announcement is a good means of situating the AIDS subsector mobilization in response to the upcoming arrival of these drugs in France. It is, in any case, the moment when everyone -including AIDS patientslearned of the considerable positive effects these drugs could have when taken in combination. For the first time, the mortality rate had gone down (Abbott) and the virus had become indetectable (Merck). The more spectacular result obtained by Abbott's drug, ritonavir, instantly made it the object of everyone's desire. Patient hope accelerated an already existing mobilization; for actors in the AIDS subsector, the Washington conference simply confirmed what they had sensed since November 1995. They had also been informed, by Abbott Labs, that the treatment would only be available in France through a "compassionate access program" and in very small quantities. (13)

Though emphasis varied by collective protagonist, the mobilization concerned three types of problems, which previous arrivals of new drugs had already required each of them to resolve: funding, scarcity, and how to allocate scarce drugs.

**Funding**

As in the case of previous drugs, the arrival of protease inhibitors in France raised the issue of absorbing their cost in state budget allocations to hospitals. The hospitals, relayed by patient advocacy groups, (14) had been quick to question the Health minister and his cabinet -well before the debate erupted about receiving the necessary 1996-97 budget resources. In the context of the "Plan Juppé" and the powerful mobilizations against it, (15) Hervé Gaymard, Secretary of State for Health, was anxious to prove to his interlocutors that the overall spending reduction in that plan would not affect the priority status the government had granted AIDS. Indeed, he made it a priority to inform patient groups (February 14) that the hospitals would soon
be receiving the first installment of a total of 150 million francs to cover the cost of the future combination therapies. The associations took this announcement very positively and considered the matter resolved.

Distribution

Distributing a new drug within the framework of an Autorisation temporaire d'utilisation (ATU) [temporary license] (16) or in the form of "compassionate" therapeutic trials requires defining the profile of patients to be given treatment priority. (17) Two concerns enter into this definition: relevant clinical and biological characteristics, and equal opportunity of access for all patients on French soil presenting those characteristics. These two preoccupations are combined in determining criteria for access to drugs made available either through compassionate use or an ATU. 3TC, the drug that preceded protease inhibitors, had also raised great hopes; it was first distributed through therapeutic trials in 1995. At that time the Agence du médicament deemed that certain hospitals, particularly in Paris, had had unfair access to the drug. To alleviate this inequality, the agency decided to switch from compassionate use to an ATU, (18) but given the limited quantity of the drug available, and to ensure that the number of patients satisfying the criteria did not exceed that quantity, it had had to establish highly restrictive clinical and biological criteria. To ensure allocation fairness, the agency was forced to manage the scarcity itself by means of an ATU. At the time, AIDS patient advocacy groups rejected the limited-stock argument of the laboratory producing 3TC. Forced to set drastic criteria, the agency was then accused by the patient groups of accepting fallacious arguments from the pharmaceutical industry. This time, after Abbott Laboratories announced that France would receive only enough of the new drug to treat 100 patients, the agency joined forces with the Direction générale de la santé to request a judgment from the Comité consultatif national d'éthique (CCNE) [National ethics consulting committee] on the best way to allocate this extremely limited supply. (19) This was in November 1995, more than four months before the debate began. Clearly the Administration had anticipated that temporary scarcity would again be a problem -and did not wish to deal with that problem alone.

Scarcity

The risk of temporary scarcity was first stressed by patient groups and clinicians, then relayed in the press. Given the standard procedure for registering new drugs, the groups' main goal was to shorten waiting time for patients who had "exhausted" existing treatments and were in a state of therapeutic failure. For those patients, access to the new drugs, even before official approval by the European Medicines Evaluation Agency, was obviously a life-or-death matter. From the launching of the first anti-HIV drug, AZT, up through the arrival of protease inhibitors, patient groups had focused their efforts on what is known as "compassionate allocation". Their action was directed first and foremost at the pharmaceutical laboratories, but also at the Agence française du médicament, to persuade it to give temporary licenses.

Repeatedly, the cluster of patient groups had publicly questioned whether the information given by laboratories to justify how few patients could be treated on a "compassionate" basis was accurate. (20) They rejected the argument that the drugs were difficult to produce, accusing the
laboratories of favoring the American market and stocking drugs in anticipation of the upcoming market opening. (21) But it was at the Washington convention that the idea spread that the arrival of these drugs would go hand in hand with scarcity. On its side, the press underlined the "increasing discrepancy between the state of scientific knowledge and the reality of AIDS patient treatment" (22) and published headlines such as "AIDS patients waiting for combination therapies". (23) Clinicians were also sounding the alarm. Dr Katlama, a physician who had been very active in therapeutic trials and an emblematic medical AIDS specialist, spoke of a "health emergency", while Dr Leibowitch exhorted the drug companies to grant a place to the French market. (24) From February 19 to 21, through communiqués and demonstrations, the three largest patient groups -Aides, Arcat-sida, and Act-up-denounced the companies' "cynicism".

Let us briefly review the situation in mid-February 1996. The problem of funding the upcoming treatments had been anticipated by the health administration and hospitals. Their fears, relayed by patient associations, had been allayed by assurances from the health secretary. The problem of distribution had been anticipated by the Agence du médicament and the Direction Générale de la Santé, who were waiting for an answer from the Comité consultatif national d'éthique. And the scarcity problem was out in the public arena, thrust there by patient advocacy groups and clinicians. From November 1995 to February 1996, French clinicians and patient groups' precise and up-to-the-minute knowledge of therapeutic developments, together with their past experience of earlier drug launchings, had brought about the two-fold development of mobilization and fear of scarcity.

Controversy and tragic choice

How did anticipation of scarcity plus mobilization lead to controversy? First, by the actors' anticipating a tragic choice situation; second, by the series of reactions elicited by the proposal to allocate the scarce drugs through lot-drawing. As explained, a tragic choice situation occurs when a good necessary for survival or the avoidance of what is deemed terrible suffering is not available in sufficient quantity to satisfy all members of the collectivity that need it. This situation brings to the fore two types of collective initiatives on the part of that group: 1) what Calabresi and Bobbitt (1978) have called the first-order determination, efforts to produce those goods or make them available; 2) the second-order determination, choosing a mode of allocating the scarce resource to those in need.

In February 1996, the AIDS subsector in France deemed that it was up against just such a situation. The enormous hopes that the new protease inhibitors had raised, combined with the fact that there was only enough of these drugs to treat 100 of 18,000 potential patients, made it clear that during the three to six months before the drugs could arrive in sufficient quantity, many patients would die. (25) In this specific case, the first-order determination -obtaining the greatest quantity of drugs possible in the shortest possible timewas beset by several uncertainties. The first of these was approval for sale. The Us Food and Drug Administration's approval was expected in early March, that of the European Medicine Evaluation Agency in May or June; both were considered probable but not guaranteed. The greater uncertainty concerned the good will of the
pharmaceutical firms: it was up to them how quickly and in what quantity the drugs would be made available, both before and after agency approval.

In this context, on February 8, 1996, the French Health secretary announced two measures aimed to unify positions on the scarcity danger: an immediate meeting of regional coordinators of hospital services handling AIDS patients (Centres d'information et de soins de l'immmunodejIcience humaine, CIsIH); and the submission of the matter to the Conseil national du sida. (26) These measures were a response to several concerns. First, there was the desire to avoid a repetition of the difficulties encountered with the temporary scarcity of 3TC; second, they were meant to show the minister's determination to ensure that the new treatment would be made available. Lastly, there was the will to affirm, in the context of the recent Plan Juppé, that despite the cost of protease inhibitors, known to be much higher than that of previous treatments, no financial limit would keep AIDS patients in France from access to the new drugs. As it turned out, within a week of each other, CIsIH clinicians and the Conseil national du sida recommended two opposed solutions.

**Clinicians' choice versus lot-drawing**

Modes for allocating a scarce good whose absence is tragic for those who need it often involve a combination of procedures and selection criteria. In the case of protease inhibitors, the two recommendations involved three procedures: preliminary distribution of available drug supply to prescribing centers; criteria on which to select patients in those centers to benefit from the treatment; a mode of selection that would bring together patients and treatments within each center. The clinicians and the Conseil national du sida disagreed on two of the three procedures.

The clinicians chose a biological parameter that limited the affected population to the sickest and left it up to center doctors to select patients. At the February 15 meeting, where this option received "general consensus" approval, several participants also openly expressed their hostility to random selection or lot-drawing, arguing that "prescribers have to take medical responsibility". (27)
TABLE I. - Clinician and CNS proposals *

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<th>Proposals</th>
<th>Clinicians: CISH</th>
<th>Conseil national du sida</th>
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<td>Distribution of drugs in prescribing centers</td>
<td>Distribution by region and by treatment center (CISH), based on level of activity</td>
<td>Distribution by region and by treatment center (CISH), based on level of activity</td>
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<td>Criteria for including center patients</td>
<td>- Biological indicator: <strong>less than 20 CD4 cells</strong> (eligible patient population: 9,000) - More than 9 months antiretroviral treatment</td>
<td>- Biological indicator: <strong>less than 100 CD4 cells</strong> (eligible patient population: 18,000) - More than 9 months antiretroviral treatment</td>
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<tr>
<td>Final selection mode</td>
<td><strong>Clinicians' choice</strong>: collegial decision by treatment - center medical corps</td>
<td><strong>Lot-drawing</strong>: computerized lot-drawing of treatment - center patients</td>
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* Divergent proposals in bold.
** CD4 cells: lymphocytes operative in the organism's immunity defense system, main target of Hiv. CD4 level is an indicator of the state of the patient's immune system.

Taking just the opposite position, the Conseil national du sida, meeting in plenary session February 22, chose a biological parameter that encompassed all patients whom clinical trials had shown could benefit from the new treatment, with the possibility of treating patients in critical condition first. Above all, they recommended computerized lot-drawing, defended as follows: "Since patients will be selected randomly by computer, there will be no conscious or unconscious affective preference or pressure. Lot-drawing will relieve doctors of the responsibility of choice when it comes to patients they have not selected and preserve unselected patients' trust in their attending physicians. Lots will be drawn each time supplementary drug doses are made available, with the aim of including all eligible patients. [...] The Conseil national du sida deems lot-drawing within regional organizations and from among a large group defined by firm constraints to be the fairest procedure."

It is important to specify here that lot-drawing was only the Conseil's second recommendation. The first, to which it attached far greater importance - the point was boxed and printed in bold in their report- was that up until such time as the drugs arrived on the French market, the government should buy them directly from the Us as soon as they were for sale there. The CNS was convinced that there would be no real production scarcity, only delays in getting the drugs onto European markets. It was, therefore, in response to one of two questions that the Health secretary had submitted (What should be done in case of scarcity?) that the CNs proposed drawing lots.
Emergence of the controversy

Following these successive, opposed recommendations, the controversy developed through three stages: 1) the Health secretary's attempt to blur the opposition between the two recommendations; 2) the focusing by a small number of journalists on the lot-drawing recommendation; 3) the transforming of this recommendation into a scandal.

When Hervé Gaymard and his cabinet discovered the content of the Conseil's recommendation on Monday morning, February 26, they were not pleased - for two reasons. First, it went against the conclusion reached at the CIsIH meeting in favor of physicians' choice, a conclusion that had already been adopted by his cabinet, for as the Health secretary had specified on February 22, he was awaiting the Conseil's recommendation in order to be certain that medical choice was an ethically acceptable position: "Let me state already that I reject the very idea of drawing lots. In such situations, my first concern is transparency and efficiency." (28) This was as much as to say that he expected the Conseil to do no more than approve the clinicians' recommendations. Events hardly went as he wished. The first reason for ministerial discontent was therefore the breakdown of an expected consensus. The second was that the cabinet learned of the Conseil's recommendation through an information leak to a journalist at Libération; it was the journalist's "scoop" for the next day's paper. Not a good way to get the news, and a bad omen, inasmuch as lot-drawing would get much of the media's attention. Gaymard and his cabinet chose to react by obscuring the disagreement between the clinicians and the Conseil, covering up the fact that this was the first time any such recommendation had been made in France, and blurring the difference between this recommendation and the clinicians' in favor of doctors' choice. With the public announcement of the Conseil's recommendation on the evening of February 26 came a Health ministry cabinet communiqué to the press announcing that 1) consistent with the Conseil's first recommendation, it had obtained a pledge from "the laboratories involved" - in reality, only Abbott Laboratories- that "1,000 treatments would be delivered every month to the hospitals" and 2) that "the drawing of lots recommended by the Conseil will complement the criteria defined by the CIsIH". By announcing supplementary treatments and reconciling the two contradictory recommendations, the ministry was attempting to undercut the Libération article stressing lot-drawing. In vain.

On February 26 two journalists working from information in the communiqué and the Conseil's proposal had already given pride of place to the recommendation for lot-drawing. The article by Eric Favereau of Libération would appear the next day. And the Agence France-Presse (Af’p) journalist who had written his dispatch after receiving the Health minister's communiqué had also been selective. (29) Neither journalist took into account either the minister's emphasis on obtaining enough drugs from the laboratories to treat 1,000 more patients - eleven times what had been promised- or the other component of the Conseil's recommendation: that the drugs be bought directly from the Us as soon as they were available on the market there. (30) The next day, Tuesday, February 27, Le Monde (dated February 28) was the only other paper to mention the Conseil's recommendation. Meanwhile Libération headlined "Lot-drawing for triple-combination therapy? The Conseil's solution for allocating the new drugs." Like the AFP dispatch the day before, these articles neglected to mention two points, points that never came up in either the larger debate or the controversy that followed: 1) lots would be drawn only after the drugs had been distributed to the different regional treatment centers; 2) the minister had adopted
the minimum for inclusion proposed by the clinicians: 20 CD4 cells rather than the 100 proposed by the Conseil (many fewer patients would thus be concerned by any lot-drawing). The articles mentioned lot-drawing alone, disconnected from geographic distribution and inclusion criteria. The Conseil's proposal had already been decontextualized. (31)

Still, neither the AFP dispatch nor the articles in Libération or Le Monde suggested there was anything shocking, objectionable, or already objected to, in the proposal. The lot-drawing recommendation had been identified as important, but it was not yet being criticized or condemned. On the contrary, the article in Libération underlined the Conseil's courage in making such a proposal. It wasn't until the evening of February 27, after patient groups and a number of well-known AIDS clinicians had given their opinions, that the Conseil's recommendation became "the lot-drawing scandal" -and this on television news. Television journalists, not the press, were the first to qualify the recommendation as a scandal. The situation was one of journalists looking to interview those responsible for the scoop in the AFP dispatch and Libération ("lot-drawing recommended for the first time in France") encountering protagonists who had to react immediately, without being able to control which of their statements would be reproduced for public consumption. The next day, February 28, all French national dailies had grabbed hold of the controversial subject. The headlines were as follows: "Patients and the lot tery"; "AIDS: the shock announcement of drawing lots"; "Triple-combination treatment: uproar over lot-drawing"; "Health and the lottery"; "Polemic over future triple-combination AIDS treatments". (32)

The composite power of a common value judgement or topos

The debate lasted no more than 36 hours, from the morning of Tuesday, February 27, when the journalists received the first hostile reactions to the Conseil's proposal, to late afternoon Wednesday, February 28, when Prime Minister Alain Juppé presented a communiqué declaring that lot-drawing was unacceptable and would not be used. In this short stretch of time there had been demonstrations by the association Act-up, a joint press conference by Hervé Gaymard and the president of the Conseil national du sida, a number of press communiqués, and interviews on all the different media with patient advocacy group representatives, clinicians, the Health secretary, and the president of the CNs. In fact, numerous stances on the Conseil's recommendation and the situation motivating it had been defined and stated. But the content of all of the "anti" positions seemed the same. This is first and foremost because all declarations were very brief. But it is also because the debate become fixated on the following widely shared value judgment or topos, the means by which all speakers expressed their indignation: "The use of lot-drawing to determine which AIDS patients will benefit from scarce treatment is unacceptable."

What is the sociological and rhetorical status of this statement? What explains its salience throughout the controversy? These were the guiding questions of our analysis. (Our approach as presented in the introduction should make their relevance clear.) Let us recall the distinction between the larger debate - a set of stated positions that receive media coverage - and what we are calling the "controversy": the most visible part of that debate. The controversy refers not to all media in which opinions were expressed but rather to headlines in newspapers and television
news. The difference in visibility between television news and press articles corresponds to a difference in content. Television news covers the debate in a much simpler and more coherent manner than press articles, even as it mixes several techniques: announcement and commentary, reporting, interviewing, opinion polling. The headlines announced at the beginning of television news programs sharply orient how the subject as a whole will be treated. This often results in coverage focused on a single theme, around which all other information converges. (33) In contrast, press content is often constructed around more than one theme and can sometimes diverge from the headline; it more thoroughly restores or reproduces the varied content of protagonists' stated positions, while interpreting and analyzing that content. But while press articles are more complex, less linear, they are also, perhaps necessarily, more ambiguous. While all the headlines in all the different media spoke of the "the lot-drawing scandal", only televised news programs focused exclusively on this point -for two whole days. But because they have such a large audience -press readership cannot compare- it was in fact the audiovisual media that oriented protagonists' behavior, causing them to anticipate and react. We do not have the space here to present all characteristics of the two corpuses, press articles and television news programs, on which our analysis is based. We shall therefore be focusing on the controversy only, with the debate as a whole mentioned only in counterpoint. (34) Our analysis is based on the following contrast: whereas the larger debate involved several themes, the controversy was polarized on one alone, the "scandal of drawing lots".

Consensus, common value judgment or topos, and enthymeme

What is the status of the judgment constantly put forward during the two days of the controversy that "drawing lots is an unacceptable procedure"? If we consider the entire mobilization around availability of protease inhibitors (of which the debate and controversy, though central, constitute but one episode), the massive rejection of lot-drawing exhibits features of a public opinion phenomenon: the French are not in favor of such a procedure; such a proposal shocks them. It was this opinion that some of the actors had anticipated. Laboratories, government administrations, and politicians reasoned in terms of opinion and national culture: the French oppose lot-drawing. (35) This explains why, foreseeing a temporary gap between drug supply and demand, they had envisaged lot-drawing only as a kind of hypothesis, if all alternative solutions failed, and with the awareness that in the Us the procedure was accepted.

Their assessment was confirmed by the opinion poll presented on a weekly televised news roundup, "7 sur 7", less than four days after the controversy began. (36) 63 % of those questioned deemed this mode of selection unacceptable, while 31 % conceded that some means had to be found for distributing treatments too scarce for all patients to receive them. Since no survey was conducted before this, we cannot evaluate the degree of continuity or change in public opinion on this issue. We therefore cannot determine whether or to what degree these responses reflect attitudes or values that might be anchored in the collective mind or mores of the French people, and whether or to what degree they reflect the influence of the controversy -i.e., media coverage- on public opinion. It seems more reasonable to assume that the survey results reflected the state of audience opinion after the oratorical jousting presented on television, the radio, and in the press. (37)
Even if one rejects the notion of consensus based on national culture, there is reason to acknowledge the efficacy of anticipating such a consensus. That is, such a consensus has social relevance and power precisely because it is assumed to exist, and because actors hypothesize and worry about it. This observation is related to another. While the protagonists were in fact making two different affirmations, it is extremely difficult to discern this difference in journalists' commentary -and even in the protagonists' statements themselves. Did the speakers condemn lot-drawing because they considered it scandalous in itself, or because they thought others considered it so? This ambiguity reflects the interactive dimension of consensus. It is not just a sum of identical judgments; it involves assessing how others judge -a point which has been clearly demonstrated in interactionist analyses of opinion phenomena, particularly consensus. (38)

If we now consider the larger debate, that is the sum of positions taken on all media in our corpus, we can grasp the condemnation of lot-drawing in terms of rhetoric. Here that condemnation has two-fold status: as topos, and as the conclusion drawn from an implicit, truncated line of reasoning. A topos is often defined as a shared affirmation that an orator must use to be heard. This rhetorical notion is perfectly consistent with what we earlier called the interactive dimension of opinion phenomena: the orator doesn't necessarily believe in the topos (s)he uses; rather, it is because (s)he believes that topos is widely shared and accepted by the audience that (s)he hopes to be heard and to persuade that audience. The intrinsic power of a topos is to appear as a shared, obvious truth, without our being able to determine if it is shared because it is obvious or obvious because it is shared. The topos thus understood is a sort of taken-for-granted response to a question, a question that seems not to deserve further attention precisely because it elicits an immediate response. (39)

The idea of scandal also worked to make this topos attractive. We should stress here the contrast implicit in the arguments the press chose to report on: namely, lot-drawing seemed more scandalous than scarcity, whereas scarcity was the real problem that the CNS recommendation sought to address. It was lot-drawing that drew people's attention, made them indignant. Scarcity, on the other hand, seems only to have been the cause of the problem, and thus did not seem worthy of any particular examination. Scarcity was not called into question, either factually -Is there really a scarcity? And if so, why?- or morally: Is it not scandalous that there should be a scarcity of such vital drugs? That the scandal of the lot-drawing procedure took precedence over its cause was explicitly affirmed by some commentators: "Not all those who need these treatments, composed of three drugs including protease inhibitors, are going to get them; worse yet, the Conseil national du sida has proposed drawing lots." (40)

This contrast between the indignation elicited by the procedure and the very slight emotional or moral charge attaching to scarcity suggests that the condemnation of lot-drawing can also be characterized rhetorically as a conclusion reached through implicit reasoning. That condemnation constitutes a topos not only in that it partakes of a sort of mirror game where each person thinks the other condemns the procedure; it is also a topos because behind the sense that it is valid to condemn such a procedure we find a particular type of reasoning. The rejection of lot-drawing is the conclusion of an enthymeme; that is, a truncated line of reasoning. (41) The enthymeme is composed of two premises and a conclusion -in this case as follows:
1) For a mode of allocation to be acceptable it must be justified by reasons;
2) Lot-drawing is an arbitrary mode of allocation;
3) Therefore lot-drawing is not an acceptable procedure.

The first premise has to do with the nature of the distribution procedure: reason-motivated distribution is preferable to distribution on an arbitrary basis. The second premise, however, is ambiguous: lot-drawing does indeed result in arbitrary selection, or rather contingent selection, in the sense of physical contingency; but this does not mean that it is being used arbitrarily. When selection based on good motivations or reasoning is not possible, the use of an arbitrary-in-the-sense-of-contingent procedure may be desirable, precisely to avoid an arbitrary-in-the-sense-of-badly-motivated selection. That indeed was the virtue that the CNs attributed to this procedure from the beginning: it precluded the interference of illegitimate criteria, while guaranteeing an equal chance for all. In the second premise, then, the two meanings of the word arbitrary -1) contingent and 2) not clearly justified- were confused. (42)

The conclusion is therefore the result of erroneous reasoning.

Can we reasonably impute such truncated reasoning to the protagonists in the controversy, when they at no time explicitly formulated it? (43) It does seem that what created the sense of injustice was the idea of arbitrary distribution. This hypothesis is confirmed by the close link between the indignation expressed in the topos "Lot-drawing is scandalous" and the way the CNS's proposal was distorted. Simplifying the Conseil national du sida 's recommendation meant omitting the preamble justifying the use of lot-drawing. (44) This decontextualization made the Civa's recommendation seem unreasonable. And it was this simplification that enabled the enthymeme to function fully, moving people to perceive what is in fact an egalitarian procedure as shocking. Another indication of the salience of the enthymeme is the frequent use in all the media of the term "lottery". In France that term is used exclusively in reference to gaming-gambling. It worked to produce a shocking contrast between the seriousness of the disease and the frivolity of that activity, all the more effectively disqualifying lot-drawing. But the media evocations of a lottery also confirm that the reasoning we have just described was indeed at work, for in gaming situations the use of chance seems legitimate and the distinction between contingency and arbitrariness is not operative.

Audiovisual montage and argumentative strategies

A topos is only a starting point; it can be contested, just as truncated reasoning can be corrected. In fact, throughout the two days of the controversy, and despite the counter arguments made by some, the topos -lot-drawing is a scandalous procedure- was the sole focal point of media attention. If we look at newspaper and television news headlines only, it is clear that from the moment a protagonist's main message differed from the topos they could not get it across. The Conseil national du sida was unable to get any coverage of or debate on its argument justifying lot-drawing. The Health secretary was unable to make that proposal any less alarming. And the AIDS patient advocacy groups, whose opposition to lot-drawing got abundant coverage, were unable to get like attention for their condemnation of the drug companies or their
opposition, *on political rather than ethical grounds*, to the CNs recommendation. Conversely, Prime Minister Alain Juppé, concerned to put an end to the controversy, could find no other solution than to make the topos his own.

How can we explain the power of the topos? Why were the protagonists unable to resist it? That power is *composite*. It is not solely the effect of the rhetorical power described above or the media's power to determine the focal point of the larger debate. The topos' power of attraction was already considerable. It became immovably anchored in the controversy as the combined result of 1) the way the main televised news programs were edited, and 2) the argumentative strategies of the protagonists.

How did television journalists' methods and approaches work to fix and sustain the topos? A television news report is the result of editing that follows a kind of "script". The selecting of interview excerpts, the order in which they are shown, where they are inserted within a set of different types of utterance (announcement, transition, conclusion) simplifies and unifies a controversy. This procedure follows both a thematic and dramatic scheme: thematic because it involves selecting and hierarchically ordering the themes of the larger debate; dramatic because once a certain theme has been given priority, the journalists cast the protagonists in specific roles.

The way the controversy was handled on February 27 in the major news programs airing at 8pm on the private channel *TFI* and the public channel *France 2* clearly shows that there was one predominant interpretation. If we analyze the two reports, we see that they have the same internal structure:

1) Presentation of the CNs lot-drawing proposal and mention that it has been contested;
2) Report showing protests by "patient advocacy groups" (in fact, the images are of a demonstration organized by Act-up, but the group's name is not mentioned);
3) Series of interview excerpts ordered as follows: a) president of the CNs, b) representatives of patient advocacy groups (*Tri* including a statement by a clinician), e) the Health minister;
4) Reminder of scarcity: *TFI* notes that the Health minister has pledged to buy the drugs in the Us; *France 2* airs a report illustrating drug production difficulties, with excerpts of an interview with a representative of *Roche* Laboratories.

These two reports resulted from a two-fold process: an incoming supply of arguments from involved actors, and editing or montage. To have a clear picture of media montage in this case, we need to review the five protagonists' argumentative strategies -those of the CNS, the clinicians, the patient advocacy groups, the government, and the drug companies- and see which of their arguments were picked up and which edited out.

1) The *Conseil national du sida* was represented by its president, Professor Sobel. As indicated, the channels only mentioned one part of the *Conseil's* recommendation -lot-drawing. Above and beyond this first thematic selection, the president's arguments were fairly fully recapitulated, but they had virtually no impact on how journalists presented the debate. Indeed, excerpts of interviews with the president were used only to present the contested proposal: what remained at the center of the
reports was the protest against it. Sobel's statements functioned merely as a starting point. In the thematic-dramatic scheme for news reports on both stations, the proposal was identified as the origin of the debate. But the place attributed to the president's explanations is precisely what made it, ipso facto, the starting point; in reality, those explanations were a response to attacks against the proposal. The Conseil's justification of lot-drawing, though not amputated, was reduced to the status of controversy trigger.

2) Three observations may be made on the clinicians' point of view, which, it should be remembered, was presented by only one clinician and only on TFI. First, we should remember that clinicians in general, and all those who gave a statement to any news medium, were hostile to lot-drawing. (45) They justified their position with two arguments: 1) physicians are used to managing this type of situation; there are always medical criteria for determining which patients are most in need of treatment, and in this sense lot-drawing is "unscientific"; 2) for patients, lot-drawing is "inhumane". Second, it was the latter argument, in which the clinician assumed the patient's point of view, that was presented in the televised report. The physician interviewed on TFJ rejected lot-drawing as "morally unacceptable for the patient". (46) It should be noted that the clinician's argument cannot be situated at the same level as that of the CM president. Whereas the CNs was insisting that lot-drawing was "more just", the clinician evoked the psychological dimension (experience of a patient subjected to the blow of "chance"), a dimension to which no question of justice may be reduced. Finally, the inhumaneness of lot-drawing was also put forward by patient advocacy groups -and given priority in the televised reports. The journalists' "montage" thus suggested that clinicians and patient groups were in strong agreement on the moral question of how to allocate the drugs.

3) It was surely the patient advocacy groups' position that underwent the most distortion -at the very moment the media seemed to be giving a great deal of attention to their protests. Their position was reduced to moral condemnation of lot-drawing as too cruel for patients whose lives were already an ordeal. These groups were opposed to the CNS proposal, but the topos was not their main message. First and foremost, they wanted to attract attention to their conviction that the drug scarcity was artificial. They wanted to raise a different moral issue: the responsibility of the drug companies. Indeed, patient advocacy groups did not so much condemn the lot-drawing option as the fact that, as they saw it, a proposal of an ethical nature had come to mask the reality that drug scarcity, if it existed, was the result of a commercial strategy. In sum, where they really opposed the CNS was not on the moral issue of using chance to decide who received treatment, but the political issue of whether it was opportune to come out with an ethical proposal that took scarcity for granted. (47) These subtleties were quite invisible on television news. (48) How are we to understand the attitude of the patient advocacy groups? Why did they play the "scandal of lot-drawing" card, both in interviews and group communiqué headlines, when in fact some of their members acknowledged the egalitarian virtue attributable to this procedure in a situation of real scarcity? (49) Moreover, the procedure was consistent with their fight against geographical or social discrimination in the allocation of new drugs. As we see it, the position taken by the patient advocacy groups in response to the lot-drawing proposal reflects a two-fold reaction. Early in the morning of February 27, they spontaneously rejected the proposal, primarily because they refused to accept the idea that there was any scarcity; later they adopted a more strategic approach. In effect, it had quickly become clear that condemning lot-drawing was a highly effective means of getting major media visibility -and perhaps a way of getting coverage of the
scarcity issue. The theme favored by the media did not, of course, correspond to their own analysis of the situation, but their main objective was to get a power struggle going with the laboratories. It should be noted that though these groups have since become highly visible, in 1996 they did not have ready access to audiovisual media. This may help us understand their opportunistic approach. Though in the preceding years AIDS had become the "best-covered" disease, patient advocacy groups only got on to the 8 o'clock news in connection with a restricted number of themes -and almost never on the issue of access to new AIDS drugs. (50) We can understand why they seized on the unhoped-for opportunity of the lot-drawing controversy.

4) The declarations of the Health secretary were not distorted by media selection, and he was probably in a better position than any of the other actors to shift the terms of the debate in his favor. We can only observe that his reactions and responses did not change the way the facts were presented in the media. Opposed to the idea of lot-drawing even before the controversy began, precisely because he feared it would not be accepted, Hervé Gaymard consistently minimized the importance of the Civs proposal, stressing its reconcilability with the method recommended by the clinicians and repeating that the government was doing everything in its power to ensure rapid access to the new drugs for all AIDS patients. His efforts were in vain, however, since the focal point remained the scandalousness of lot-drawing. His reaction, and the manner in which that reaction indirectly strengthened the hold of the topos, need to be examined further. Gaymard's attitude needs to be related to the line of conduct he adopted in early February and the information he possessed. Faced with the CNS recommendation, he had two options other than the one he took. First, he could have rejected lot-drawing on February 27, as Prime Minister Alain Juppé would do the next day. We can hypothesize that he did not so because he did not wish to disavow an authority whose opinion he had requested, especially as it wasn't clear, throughout the 27th, just how big the controversy was going to get. The second option was to dispel confusion about the risk of scarcity and its real cause. Like the patient advocacy groups, clinicians, and the Conseil national du sida, the minister and his cabinet had enough information to suspect that the scarcity didn't have to be real, and to believe that the government could, in the worst imaginable situation, buy drugs directly from the US. Still, they could not be certain. Moreover, the Health secretary could hardly put public pressure on the pharmaceutical firms, accuse them of wronging French patients to the advantage of American ones, for this would have shown him to be both powerless and reprehensibly concerned only with fair treatment of French residents.

5) The pharmaceutical companies chose discretion, silence. Both Merck and Abbott Laboratories observed a kind of embargo as they waited for the licence to sell on the American market. We cannot say whether their silence was due mainly to journalists' not approaching them or their own reluctance to say anything, but it is notable that the only firm represented in a televised report was the French company, Roche Laboratories. While fears grew of a scarcity of protease inhibitors, Roche was busy reminding the public that its protease inhibitor, saquinavir, was available in unlimited quantities. The larger debate gave the laboratory the opportunity to relativize the notion of scarcity and, of course, pitch its drug. (51) We readily understand why a member of the lab agreed to be interviewed on France 2. But the report only mentioned what he said about the complexity of producing the drug. It thus reaffirmed the main idea of the piece, that scarcity was due to production difficulties -precisely the thesis put forward by Abbott and Merck. Indirectly, then, the only firm that had an interest in providing information -Roche- was
made to put forward a position that went against the one it sought to publicize and conformed to the message the silent firms wished to communicate. Why did Abbott and Merck keep silent? The only plausible hypothesis is that neither wished to let the other know about its production capacities and thereby about the size of the captive clientele it could speedily acquire in France.

**Distortion of the thematic-dramatic scheme**

A few intermediate conclusions can be drawn from the preceding analysis of the conjoined effects of television editing and protagonist strategies. Our case shows that there is reason to relativize the widely accepted idea in sociology of the media that the relation between the media and social actors is characterized by 1) actors' resources for accessing to the media, and 2) media dependence on sources. (52) By implicitly supposing that access equals ability to transmit the desired message, that analysis does not account for one of the possibilities revealed by our case: namely, that there can be a kind of paradoxical access to the media, in which not only do the actor's words, albeit transmitted, have no effect on how the issue is presented or headlined (the case for the president of the CNs and Hervé Gaymard), but also and above all, that the apparent picking up of certain protagonists' points in journalists' commentaries and headlines goes hand in hand with the total incapacity of those who uttered them to shift the theme of the debate to which the journalists have given priority (this was the case for protests by patient advocacy groups). The moral issue of lot-drawing was simply never superseded by the moral issue of drug company responsibility.

The move from mobilization to controversy by means of larger debate corresponds to a shift in the themes that were of interest to the different groups of actors. In the larger debate raised by the Conseil's recommendation, the three "problems" that had been mobilizing the different protagonists of the AIDS sub-sector for two months -financing, scarcity, and distribution- became three "issues": the moral issue of lot-drawing, the moral issue of the pharmaceutical firms' supposed responsibility for the scarcity, and the political issue of how opportune or not the Conseil's recommendation was. In the controversy, however, only the moral issue of lot-drawing received attention.

What we have called the thematic-dramatic scheme of the controversy is thus a distortion of the scheme of the larger debate and not a mere reduction of it. In the debate, the three themes or questions were organized around three sets of oppositions: the clinicians were opposed to the Conseil on how to resolve the tragic choice problem; the patient advocacy groups were opposed to the Conseil on the question of whether they should have agreed to make an ethical recommendation and to the pharmaceutical firms on the question of the real motives behind scarcity. In the controversy, on the other hand, the thematic selection (the moral issue of using lot-drawing) was accompanied by a distortion in the dramatizing of the situation, since all the different stances of the different actors were compressed, leaving but one of the three oppositions. The Conseil national du sida thus found itself alone, with the opponents of lot-drawing apparently banded together in coalition against it.
The other side of this is that no real attention was paid to the foundation of each of the three questions and therefore none to the real moral issue of lot-drawing. In effect, the question of the validity of lot-drawing set up an opposition between two theses that are difficult to choose between if we do not look closely at how clinicians habitually prescribe for and select patients. Only such an examination would make it possible to compare the respective advantages and disadvantages of 1) the use of chance (equality of all patients, but psychological ordeal connected with lot-drawing and feasibility problems) (53) and 2) the extremely wide margin of discretionary power enjoyed to this day by doctors in France (flexibility, attenuation of the general perception that all is being left to chance, but risk of unfair use of discretionary decision-making power). By collapsing all the arguments – those elicited by the real circumstances, the patient advocacy groups' arguments and some of the clinicians' – down to the idea of the psychological ordeal that random selection might represent for the patient, the controversy pitted the question of fair distribution, which the Conseil national du sida had tried to resolve, against a psychological reaction involving feelings of compassion. In fact, this reaction can only be one component of the response to the problem of justifying a mode of selection in a situation of tragic choice. (54)

**Abandonment and effects of the controversy**

Though apparently resolved by the Prime Minister in favor of doctors' choice over lot-drawing, the controversy was actually dropped, abandoned. The controversial question of how to distribute medicine is no longer of interest when the problem of scarcity disappears and abundance quickly follows on fear of shortage. The most plausible cause of this sudden change was the opening, the earlier-than-expected opening to pharmaceutical companies of the very attractive French market. The controversy and government reactions to it were the basis of this new situation, in which patient advocacy groups discovered they had new powers of influence, but ones that had to be handled carefully.

**Dropping the controversy**

Late in the afternoon of Wednesday, February 28, the Prime Minister declared through a press communiqué that "lot-drawing to enable AIDS patients to benefit from new treatments was not an acceptable method" (55) and that he had asked the different ministers in charge of the matter to "intensify their efforts to make the new combination therapy drugs available to all patients concerned, while stressing that no budgetary consideration should hamper the priority given to the battle against AIDS". The next day, the Health secretary announced that the drugs would be distributed according to the program set out on February 15 by the clinicians.

Alain Juppé thus adopted a clearer position that Hervé Gaymard, who had tried to reconcile CNs and clinician recommendations. He categorically rejected lot-drawing, following what seemed to be the consensus and would unite clinicians, patient advocacy groups, and virtually all commentators on the issue. At the same time, he took up the theme that had been evoked numerous times by his Health secretary: no budgetary considerations would impede access to treatment. This position was eminently political, first given who was taking it, then
through its twofold message: the government refused to accept the "unacceptable"; and it could not be blamed for scarcity. At this point three observations may be made. First, the government's position attests to the proportions the controversy had taken, sufficient to lead the Prime Minister to take matters in hand (what they regularly do, of course). Second, it shows the power of the topos analyzed earlier in that it seems that only by adopting that topos, and putting an end to Hervé Gaymard's attempted waffling, could the protests be stopped. Third, the Prime Minister's decision and declaration show how the controversy had accelerated events. Gaymard had announced his budgeting program on February 8; the clinicians met on February 15; the CNs gave its recommendation on February 26; the controversy began on the morning of the 27th; and 36 hours later the Prime Minister had declared which mode of distribution would be used.

Several studies have worked to categorize the different causes of and ways to end a controversy. (56) The distinctions we have made among the mobilization, the larger debate, and the controversy, between the problems that were taken into account by the first and the issues raised by the other two, make it easier to understand how it all ended. Debate was indeed suspended, in that, after Juppé's declaration, all conflictual exchanges quickly subsided. Still, the controversy was not really brought to closure, precisely because the moral issue of lot-drawing had been "resolved" by prime ministerial decision and declaration. Juppé only really aligned himself with a superficial and fragile consensus, as the clinicians were the only real opponents of lot-drawing. What put an end to the controversy, the real cause, was elsewhere. The problem that had mobilized AIDS subsector actors, especially the patient advocacy groups -namely, fear of temporary scarcity- was resolved as early as the day after the Prime Minister's declaration. In effect, on March 1, the day Abbott was licensed to sell its drug on the American market, the advocacy groups learned through one of their activists present at the Food and Drug Administration meeting and in contact with Abbott representatives, that treatment supplies for 1,500 patients would be made available in France in March and that, in short, there was no longer any issue of scarcity. The Agence du médicament and the Health secretary confirmed this commitment to the advocacy groups on March 7. On its side, Merck gave a written commitment on Monday, March 4, to deliver drugs for 3,000 treatments in April, even though in its previous declarations it had excluded the possibility of its drug being available in France before the summer. Directly after Juppé's declaration, then, patient advocacy groups had information that allayed their fears, and a week later, everyone knew there would not be even temporary scarcity. The controversy was not closed by the Prime Minister's declaration, but rather abandoned.

The secondary nature of the attention given to lot-drawing, purely contingent on the immediate situation, became clear a few days later, on March 7, when -after the conflict- the Conseil consultatif national d'éthique published its recommendation. That recommendation was extremely cautious, even ambiguous. (57) Still, it came out in favor of lot-drawing as a last resort, when all other "rational" criteria had been exhausted. It thus reproduced fairly closely the position of the Conseil national du sida. The recommendation got the headlines of the national press, but led to no real demonstration or hostile declarations. This issue was no longer an issue. Nonetheless, the recommendation reinforced the CNS's position and went counter to the Prime Minister's.

With the problem of scarcity resolved, the patient advocacy groups on one side and Hervé Gaymard's cabinet on the other sought to take credit for the happy ending. In a communiqué
dated March 11, the associations claimed it was their efforts that had led to obtaining greater supplies of drugs, and that this proved they were right about the availability of stocks. On his side, Hervé Gaymard, prisoner to his earlier declarations, had to wait until the March 13 meeting with the laboratories to declare that there would be no scarcity. The government would nonetheless try to reap some symbolic fruits: in the afternoon of the same day, during parliamentary questions-and-answers, the Prime Minister said he could officially declare that "following discussions with the laboratories involved, France today disposes of sufficient quantities of drugs to fill all prescriptions". In this way he let it be understood -misleadingly- that what had precluded the feared scarcity was negotiation between the French government and the two drug companies. But what of the latters' change in attitude?

**The effects of the controversy on drug company strategies**

In the first days of March, fear of scarcity was dispelled; a few weeks later, it became clear that the real situation was one of abundance. Let us recall the series of figures announced between November and March. In the framework of an international compassionate use program announced by Abbott Labs in November and involving the equivalent of 2,000 treatments worldwide, France had at first been attributed 100 such treatments, over and above those patients receiving treatment through clinical trials. This figure went up 11-fold on February 26, when the Health secretary announced he had obtained 1,000 additional treatments for the month of March. The definitive result of the controversy at the end of the first week of March was 4,500 treatments for March- April, with the certainty that more than 15,000 would be made available in July-August by Abbott Labs alone, to which must be added the 3,000 treatments in April and 10,000 in June announced by Merck. In the space of a few weeks France had moved from a situation of expected scarcity (1,000 treatments available) to one of abundance -supply exceeding demand- as shown in the following table:

**TABLE II. Number of protease inhibitor treatments available compared with number of prescriptions in France***

<table>
<thead>
<tr>
<th>Month</th>
<th>No. of prescriptions** (Abbott + Merck)</th>
<th>No. of available treatments (Abbott + Merck)</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>432 + 1,408 = 1,840</td>
<td>4,500 + 3,000 = 7,500</td>
</tr>
<tr>
<td>August</td>
<td>6,917 + 3,879 = 10,796</td>
<td>15,000 + 10,000 = 25,000</td>
</tr>
</tbody>
</table>

* These numbers take into account only Abbott's and Merck's protease inhibitors, as scarcity was defined as the unavailability of these two drugs.
** Figures taken from national hospital management records (*Direction des Hôpitaux*).
How can we explain this sudden turnaround? How was it possible to move so quickly from fear of scarcity to abundance? To answer this question it is necessary to reconstruct the firms' strategy and how it evolved.

Though it is clear that the pharmaceutical industry had no intention of "neglecting" the European market, certain facts show that the strategy of both Abbott and Merck was to conquer the American market first and only then move into the various European Union countries. Indeed, if the two firms had meant to move into the two markets simultaneously, they would have filed a request for sales licensing with both the American Food and Drug Administration and the European Medecines Evaluation Agency. This was not the case. Abbott filed a request with the FDA on January 1; it only did so with the European Agency two months later, on February 26. Merck filed a request with the FDA early February and with the European Agency on March 1. The lag clearly shows that the two laboratories' first intention was to conquer the American market. (58) Moreover, the Us represented a much greater market than the entire Eu (59) and one that could be opened at one go by the FDA, whereas even though the European Agency could give a licence valid for the Eu as a whole, the market itself was "fragmented"; prices and reimbursement rates had to be negotiated with each member state. In addition, moving to market new drugs on two continents at once seems to have been a delicate business: there was the risk of running out, or not getting the drugs to their proper destination. Finally, the priority given to getting onto the one market can be explained by the kind of competition that was operative between the two major firms: at the time, protease inhibitors were understood to be non-interchangeable; patients could not easily switch from one to the other. This meant the companies were competing to have doctors prescribe their new drug to patients from the start; each firm had to concentrate its efforts and ensure that its products were readily available on the market it had given priority to. In this intensely competitive situation, all efforts and stocks were directed to the United States. Europe was not neglected, but the immediate commercial "battle" between the two labs naturally took place on American soil, since both products could soon legally be sold there.

This was why Abbott had initially planned to provide only 2,000 "compassionate use" treatments worldwide, with 100 for France, and why Merck had made it clear it could make no supplies available other than those used in the clinical trials. In fact, patient advocacy groups and the French government had envisaged the scarcity problem on the basis of Abbott's offer. In January, no French observer, clinician, or administration member expected the drugs to arrive before summer's end, after authorization of sale on the European market. Why did the drug companies change strategy?

To answer this question, we need to look at the drug companies' decisionmaking procedures and elucidate the relation between these and the situation created by the controversy. How did the controversy affect the firms' situation, and by what logic or reasoning did they come around to modifying their attitude?

One type of explanation must be ruled out immediately: the idea that the controversy affected or could have affected the firms' image, and that concern for that image would have led them to agree to distribute their drugs outside the Us more quickly than planned. This hypothesis is consistent with the way patient associations mobilized and with one of the protestors' ongoing objectives: to alert the public to their complaints, denunciations, and demands through noisy
protest that would catch media attention, with the idea of winning the public to their side. The primary target in this political model is the politician, assumed to be sensitive to changes in public opinion. That model may be relevant for businesses when protest against them can have a negative effect on the quality or characteristics that clients associate with their products. It is, however, inapplicable in this case. First, for these two American pharmaceutical firms, the French controversy had no measurable or significant impact on international scientific recognition of the value of the protease inhibitors (60) - as soon as the first results of the clinical essays were divulged, these drugs were recognized as a turning point in therapeutic treatment of AIDS. Denouncing the firms' behavior could therefore hardly diminish patient interest in their products. Second, the controversy had highlighted the CNs proposal, not the patient associations' critique of the firms' cynical commercial calculation, as the explanation for temporary scarcity. In fact, the controversy could be said to have increased the "desirability" of protease inhibitors (if this was possible), rather than to have hurt the firms' image, regardless of the media attention paid to the protests. (61)

The firms' sudden change in attitude was thus not motivated by any concern to preserve their "ethical-scientific image". Given the publicly available data, the most plausible explanation of their reaction is as commercial adaptation to an unexpected change in the characteristics of the French market. (62) For logistical reasons, the firms had not expected or sought to make the French market commercially advantageous before summer 1996. The impact of the controversy was not direct - there was, as we have said, no direct threat to the firms' image - but indirect: it made the French market attractive to them earlier than expected.

Indeed, the controversy created the conditions for a promising French market even before the European Medicines Evaluation Agency authorized sale. (63) First, it showed strong and immediate French demand for what the drug firms had to sell. (64) Second, the position of the government, Health minister, and above all Prime Minister, that no budget restrictions would impede treatment availability, assured the pharmaceutical firms that this demand was immediately solvent. This point needs to be clarified. The French government's financial commitment meant that, for the first time in the history of the disease in France, drugs distributed through the temporary licensing setup (A TU) were going to be paid for. Not only was distribution under A TU no longer a costly means for the drug companies to "occupy the territory", providing their drugs free of charge while waiting for European authorization; it had become a paying proposition, and earlier than ever expected. (65) The clinicians' strong mobilization in favor of the new drugs, the patient organizations' lobbying, the government's reaction had suddenly made the French market very attractive, contrary to those of the other European Union countries.

Both French subsidiaries of the two laboratories were able to negotiate with the parent companies the provision of a number of treatments for France; to ensure that "the competitor" would not be in a position to lay hold on a major European market. In fact, the anticipated creation of this market was accelerated by the competition between the two labs: neither could let the other get too much of an advance in France. And that competition was stimulated by the patient advocacy groups, who, during this period, played an intermediary role of "auctioneer", communicating to the less "generous" firm the quantity of drugs its competitor was willing to make available, and thereby upping the ante. Three days after patient groups notified Merck of
the 1,500 treatments "bid" by Abbott for March 1, Merck announced that it would make 3,000 treatments available for April.

Table III shows how at the end of September, six months after the controversy, a much greater quantity of protease inhibitors was being distributed in France that any other European country.

TABLE III. - *Estimated access to protease inhibitors in seven European countries*

<table>
<thead>
<tr>
<th>Country</th>
<th>Estimated persons with Hiv-AIDS in late 1996*</th>
<th>No. of persons with protease inhibitors late September 1996**</th>
<th>Percentage of patients treated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>120,000</td>
<td>1,860</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>France</strong></td>
<td><strong>110,000</strong></td>
<td><strong>17,400</strong></td>
<td><strong>15.8</strong></td>
</tr>
<tr>
<td>Italy</td>
<td>90,000</td>
<td>1,900</td>
<td>2.1</td>
</tr>
<tr>
<td>Germany</td>
<td>35,000</td>
<td>&gt;2,000</td>
<td>5.7</td>
</tr>
<tr>
<td>Portugal</td>
<td>35,000</td>
<td>110</td>
<td>0.3</td>
</tr>
<tr>
<td>Switzerland</td>
<td>12,000</td>
<td>1,700</td>
<td>14.1</td>
</tr>
<tr>
<td>Netherlands</td>
<td>14,000</td>
<td>1,250</td>
<td>8.9</td>
</tr>
<tr>
<td>Belgium</td>
<td>7,500</td>
<td>450</td>
<td>6</td>
</tr>
<tr>
<td>Austria</td>
<td>7,500</td>
<td>200</td>
<td>2.6</td>
</tr>
</tbody>
</table>


*The risk of having influence: being influenced*

Just as the patient advocacy groups were able to intervene in the competition between the two firms, so the firms made use of the groups' mobilization to accelerate distribution of their protease inhibitors in France. The spectre of scarcity had receded; the patient associations knew from mid-March that there would be enough drugs to go around, but those drugs still had to be prescribed. In March and April, therefore, this became their new crusade. (66) Aware of this, the firms let the groups know how drug prescriptions were progressing across the country so they could in turn pressure those hospitals that were being the least "responsive". (67) So it was that after long years spent fighting for free compassionate-use distribution of new drugs and surveying the ethics of clinical trials, the patient associations found themselves in a situation where their interests strongly converged with the firms'. Temporarily, but also possibly for new treatments to come, patient advocacy groups became partners of the drug industry. They could facilitate the opening of markets and help set up the conditions necessary for successful
introduction of a new drug: call for requisite state funding, make prescribers and the government aware of patient needs, and ensure that there was a strong political will. On their side, the patient advocacy groups quickly became aware how great the risk was, in this new role, of not being able to control how firms used them as a marketing agent. (68)

* *

What general lessons can be drawn from this monographie study? The first concerns the impact of the controversy on the handling of a tragic-choice issue; the second underlines how the controversy was a French manifestation of a more general problem; and the last concerns how to analyze controversies.

A problem solved, an issue left untreated

Our story is one of a successful mobilization that made it possible to obtain large quantities of new drugs in a brief time for French patients - to create a situation much better than the one expected, and better than that in most European countries. But this success owes much to the resources obtained for the mobilization through the lot-drawing controversy, which put fear of temporary scarcity on the front page of daily newspapers and the 8 o'clock news. The darker side of this success is that the question of how to allocate drugs in a tragic choice situation was answered by means of a superficial, status quo consensus in favor of clinicians' discretionary power.

We saw how the controversy simplified and blurred the thematic and dramatic structure of the larger debate. By giving priority to the moral question of lot-drawing and the opposition between the Conseil national du sida and the patient advocacy groups, the controversy obliterated the fact that the real divergence on the choice of lot-drawing as a distribution procedure was between the Conseil and the clinicians. Some of the clinicians had rejected the Conseil's recommendation not only for its content but also because it was made by a body not exclusively composed of doctors. (69) The clinicians were thus fighting against both the proposed circumventing of the discretionary (which does not mean arbitrary) decision-making power traditionally granted French hospital doctors, and the existence of a council that was autonomous in relation to the Health minister and the medical community. Patient group protest, the Prime Minister's reaction, and the discrediting of the Conseil worked to bring about the clinicians' victory.

The Conseil national du sida seems the loser in this story. Its lot-drawing recommendation caused this consultative body to lose credibility. For their part, the associations contributed indirectly and involuntarily to maintaining the medical status quo by using their indignation against lot-drawing as a kind of weapon in the battle against scarcity. The government could put up a good show by refusing to accept what everyone seemed to reject; in
doing so it supported what was in fact a fragile consensus because the only firm opinion to guarantee it was that of the clinicians.

The validity of the Conseil's recommendation and the present status quo have not been examined in detail. It is striking how little reaction there was to the opinion of the Conseil consultatif national d'éthique, which essentially confirmed the Conseil's position, though some journalists did try to relaunch the question. In fact, the question of how to distribute fairly new therapeutic drugs or costly treatment may well come up again in France. Examples in the United States show how a scandal can lead to a sudden reversal in practices, from strong doctor discretionary power to the possibly excessive relinquishment of that power. (70)

*The French version of a general problem for nation-states*

The mobilization and controversy make manifest the imbalance between patient advocacy groups' ability to follow therapeutic developments closely and call attention to the gap between needs and availability of existing treatments, and the government's ability to obtain from international pharmaceutical companies what some of their citizens demand. Patient groups' adaptation to the international nature of research and the medical industry and their ability to influence governments brings a network of international relations into the heart of national health policies: competition between firms, relations between American and European agencies and governments, relations between national governments. This is only the manifestation, in the health sphere, of the increasingly transnational character of our societies (Swarm, 1998).

Relations between national subsidiaries of parent drug companies, among clinicians meeting in international conventions, between clinicians and firms, among patient groups across different countries, weave a network of international relations that nation-states neither organize or control.

The controversy brings this general issue to the fore - but a specifically French version of it. This can be perceived in the issue given priority: the choice of mode for distributing temporarily scarce drugs. In the US the battle has more readily focused on drug prices. (71) In France, however, the nearly systematic reimbursement of such treatment transfers the cost problem onto the Sécurité sociale health insurance system and the State (this explains why the financial aspects of the problem were anticipated and treated before the outbreak of the controversy). It was therefore possible for temporary scarcity to become the main focus of the issue at large. Moreover, whereas in the US, a country where there is patently unequal access to medical care - access is based on income and social background- lot-drawing is frequently used to ensure equal access to treatment, the equalizing feature of lot-drawing is much less attractive in France, where there is less inequality of access to medical care and where what inequality there is is less visible. Finally, the controversy made the issue into a wholly French one, whereas the conditions for the emergence of this issue were, as we have seen, external to France.

*Controversy and relative power of the media*
Determining the exact role of the media is always a delicate matter: we risk according them either too much or too little influence. It is striking to see how in studies of controversies and events the justifiable concern not to have a naive image of the media as the "reflection" of social reality often leads sociologists to grant them excessive power in the "construction" of that reality. We cannot agree with Patrick Champagne and Dominique Marchetti (1994) when they write: "It is hardly exaggerated to say that what is 'scandalous' is whatever those in the journalistic field as a whole consider so and manage to impose as such on the audience." Our case of the controversy around lot-drawing seems to demonstrate the opposite. There is no doubt that the AFP and the journalist at Libération selected and gave priority to the lot-drawing feature of the Conseil's recommendation, and that television and radio journalists rushed to harvest patient group and clinician reactions to that recommendation because no such proposal had ever been made before, and that their anticipation of a scandalous component made them hope that 'interesting', attention-getting information and reports would come out of it. Still, the selection and the rush only happened because patient group and clinician reactions conformed, at least in part, to journalists' expectations. The failure to relaunch the controversy after the Comité consultatif national d'éthique had given its recommendation is a good indication of the highly relative power of the media.

We might be less tempted to grant the media the power to define social reality if we take into account the sequential and interactive dimensions of a scandal or controversy as a whole. At one point it may well be that the journalist has the initiative to select a theme. But this theme will never prove influential unless, in the next stage, that selection is confirmed and repeated, not only by other journalists but also by the protagonists. Consequently, the media do not purely and simply construct or impose a controversy or scandal. Moreover, the fact that a debate acquires and keeps high visibility, together with all the inflections and distortions that controversial issues undergo, results in interaction between media selection and protagonists' reactions, against a background of shared expectations and representations. For this reason, controversy must be analyzed both from within (examination of media content and ways of working) and without (examination of argumentative strategies and the mobilization as a whole). It is precisely those sequences and interaction that this article has sought to present and examine.

Sébastien DALGALARRONDO  
Centre d'Étude et de Recherche Technique, Organisation, Pouvoir (CER TOP)  
Université de Toulouse-le-Mirail-CNRS 5, allées Antonio Machado - 31058 Toulouse cedex France

Philippe URFALINO  
Centre de Sociologie des Organisations (CSO,) Fondation Nationale des Sciences Politiques-CNRS 19, rue Amélie - 75007 Paris France

Translation: Amy Jacobs  
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NOTES

(1) The present study was financed by the Agence nationale de recherches sur le sida (ANRS).

(2) The study is based on approximately 40 interviews conducted in June 1996 with 35 interlocutors —journalists, clinicians, members of the national administration, the health secretary's cabinet, patient advocacy groups, pharmaceutical laboratory representatives— and 3 interviews in March 1999. Press coverage in Le Monde [center left], Le Figaro [to the right], and Libération [to the left] was analyzed exhaustively, as were television newscasts on TFJ [privately owned channel], France 2 and France 3 [public stations], M6 and Canal + [private] (corpus of newscasts made available by the Inathèque [Institut national de L'audiovisuel]). Our analysis of radio coverage is limited to broadcasts on France Inter, the only station archived at the Inathèque. We also consulted medical journals, dispatches from the Agence France-Presse (At-t,) and Agence de presse médicale (a subsidiary of Reuters), and all communiqués and documents produced by patient advocacy associations. Finally, we consulted the archives of the Health ministry cabinet and those kept by the joint patient advocacy association TRT-5 (see n. II). We would like to thank all who granted us an interview and the different organizations that facilitated our research —first and foremost the ANRS, the C+s, TRT-5, the Mission des archives nationales du ministère de la Santé, and the Inathèque. Our results were first presented in Jean Leca and Pierre Mullet's graduate seminar at the Institut d'études politiques of Paris —a very useful experience. We would also like to thank Werner Ackerman, Jean-Philippe Antoine, Henri Bergeron, Boris Hauray, and Barbara Jankowski for reading an earlier French version of the text.

(3) A similar issue was raised around kidney transplants at first, but was resolved without controversy (Herpin and Paterson, 1992).

(4) The term "compassionate use" refers to distributing medical drugs that have not yet been certified effective or free of harmful side effects to patients who have no other recourse for survival.

(5) For Jobert (1992), controversies are interesting primarily as a means to analyze the representations operative in public policy-making.

(6) Thus defined, a controversy is a mode of deliberation encompassing all discussion and debate prior to the adoption of a course of action.

(7) Access to the 8 o'clock television news appeared to us a relevant threshold. Obviously this limited definition, which works well for our approach, is in no way opposed to the broader concept usually applied and relevant for other studies. For a study of a subject similar to ours, see Mehl (1998).

(8) There should be no need to specify that a patient's need for therapy is hardly relative.
(9) We have used Dobry's terms here (1986). See also Jobert and Muller (1986). The term "sector" is usefully imprecise: we prefer it to other notions which, by introducing conceptual specifications, presuppose that the processes at work in a given sector are homogeneous.

(10) Institutions created in 1989 in response to Dr Claude Got's "Rapport sur le sida" (1989).

(11) This group, under the name TRT-5 (Traitement et recherche thérapeutique) brought together the following patient associations: Actions traitements, Act-up, Aides, Arcat-sida, Sol en si, Vaincre le sida, and Sida info service. In studying these associations as an aggregate we are not simplifying our account in the interests of clarity; on the contrary, we believe that the mechanics of a controversy require us to consider not the processes by which the internal discourse of the patient groups was shaped but rather the argumentative discourse that, under the signature TRT-5, they finally produced and introduced into the controversy. This does not, however, presuppose a monolithic vision of patient advocacy groups: they often disagreed among themselves, both on objectives and means for achieving them.

(12) More than 300 French patients were included in Abbott Laboratories' French clinical trials of its protease inhibitor.

(13) As early as 1995, Abbott had informed the French authorities and patient associations that in the framework of worldwide "compassionate use" access, France would be allotted 100 treatments.

(14) Hospital services had alerted patient groups that under the proposed 1996 budget they would not be able to pay for any more double-combination therapy -or for the future triple-combination therapies.

(15) The "Plan Juppé" (named after the Prime Minister of the time, Alain Juppé) was designed to balance the accounts of the French universal health insurance program (the Sécurité sociale) by modifying the behavior of health system actors, namely general practitioners and hospitals. The actors affected (as well as a significant number of French citizens) protested against this accounting approach, which, in their opinion, could only degrade the quality of medical care.

(16) An ATU is a setup for limited dispensing of a drug in France before it has been licenced for sale on the market (Autorisation de mise sur le marché : AMM). ATUs are implemented and supervised by the French Agence du médicament.

(17) In certain cases, laboratories prefer to organize "compassionate use" distribution themselves, by way of an open therapeutic trial, rather than request an ATU from the Agence du médicament.

(18) Contrary to therapeutic trials, this setup ensures that all French prescribers have access to a new drug.

(20) In a November 1995 communiqué (before the Washington conference), the TRT-5 declared: "It is perfectly clear that present availability of the product is in no way satisfactory, and we expect firm commitments from Abbott Laboratories on this point." The organization also asked to be informed of the production calendar for protease inhibitors and how the laboratory was planning to allocate its product worldwide, information that the labs never communicated to anyone,

(21) The Food and Drug Administration, the authority that approves market sale of drugs in the United States, requires that a company be able to furnish the quantity necessary to meet nationwide demand as soon as it is licensed to sell its product.

(22) Le Monde, Feb. 1, 1996, in the column entitled "Aujourd'hui".

(23) Libération, Feb. 5, 1996, column entitled "Vous".

(24) Libération, Feb. 5, "Vous", and Feb. 24, 1996. Both these doctors had played an important role in protease inhibitor clinical trials, conducted in part in France.


(26) Presse communiqué from the Secretary of State for Health, February 8, 1996. He also requested that the panel working under Dr.Dormont, regularly commissioned to advise on handling AIDS patients, give an opinion before the end of March on the therapeutic value of protease inhibitors and triple-combination therapy.

(27) See Health ministry office's report on the meeting.

(28) Impact médecin quotidien, Feb. 22, 1996, column entitled "L 'événement" [major events]

(29) A press agency dispatch is constructed like an inverted pyramid. The first sentence contains the major fact; the first paragraph contextualizes that fact (in no more than 30 words); subsections are then included aimed at helping the journalist write his or her article. The idea is to be able to cut the dispatch at any point from the bottom up without missing the main information. The headline of the AEP dispatch reads as follows: "Scarcity in treatment: moving toward temporary lot-drawing to choose patients." And the first paragraph specifies that this solution is being envisaged "for the first time in France". The 1,000 supplementary treatments are not mentioned until the penultimate paragraph.

(30) The journalists could have selected differently. Indeed, a few minutes earlier, the Agence médicale de Presse had chosen to headline the 1,000 supplementary treatments announced by Hervé Gaymard. Here the first paragraphs mentioned the CNS recommendation to buy the drugs in the Us, and only in the last paragraph was mention made of lot-drawing.

(31) Clearly, this was a case of selecting and hierarchically ordering information. But the selection made was not particular to the media. In our opinion, most observers would have agreed that in France at that time, what was most striking was the lot-drawing proposal.
(32) Headlines in, respectively, Le Figaro, Libération, L 'Humanité [French Communist Party paper], and (the last two) Le Monde.

(33) This is obviously linked to the fact that television news cannot transmit as much information as a newspaper article, and that it has to ensure the viewer's immediate understanding, since, unlike a newspaper reader, the television viewer cannot "reread" the news,

(34) Unless otherwise indicated, then, the following discussion concerns audiovisual coverage.

(35) It should be remembered that the French subsidiary of Abbott Labs had ruled out this solution, and that the Administration had anticipated events by submitting the question to the Comité consultatif national d'éthique.

(36) Program aired on TF1 on March 3, 1996. Survey conducted by telephone with 800 subjects over 18.

(37) The survey question and choice of answers read as follows: "The CNS has recommended that patients who are to benefit from a drug that does not exist in sufficient quantity be chosen by lot-drawing. Do you find this proposal 1) unacceptable; 2) some means must be found because there isn't enough of the drug to go around; 3) no opinion" (sic). It should be noted that the question exhibits the same simplification to be found in most of the audiovisual coverage: the CNS proposal was reduced to a moral question with an implicitly self-contained answer.

(38) Interactionist analysis takes into account both the real distribution of opinions on a given issue and perceptions -potentially erroneous ones- of that distribution. See Padioleau (1986, pp. 180-192).

(39) "A topos [lieu commun] is an answer that decides a question; that is, that which makes it possible to choose between two alternatives or an open-ended set of possible solutions." (Meyer, 1993, p. 68).

(40) Television journalist's commentary, heard in conjunction with images of an Act-up demonstration. A comment by Philippe Gildas [renowned talkshow host] of Canal + [pay television station known for its liberal, youth-oriented, and often satirical approach to politics and current events] expressed the same attitude: "It's lot-drawing that's especially shocking.

(41) On enthymemes see, among others, Perelman and Olbrechts-Tyteca (1988).

(42) This confusion is often a source of error -in the social sciences as elsewhere. Wittgenstein noted it in Frazer's Golden Bough. Jacques Bouveresse, in his commentary on the problem (1982, pp. 68-69) underlines that "if by arbitrary we mean that which should, and in other circumstances, could be justified but which, in the present situation, is not", the same term does not have the same meaning when used to qualify what can in no instance require or receive justification.

(43) On the problem of reconstructing actors' implicit arguments, see Bouvier (1997, p. 104).
(44) On the degree to which moral judgments are contextually conditioned, see Boudon (1996; especially p. 437, on lot-drawing).

(45) The only exception was Professor Levy, president of the Association nationale de recherches sur le sida. In an AFP communiqué dated Feb. 27, he expressed his support for the CNS proposal. Television news made no mention of this support, nor of that coming from the Agence française du médicament.

(46) The doctor in question further developed his arguments in an interview given to L'Humanité, Feb. 28. Another physician gave a more fully developed version of the same argument the same evening on M6: "Lot-drawing is ethically inadmissible in both medical and human terms. We cannot say that one of two patients is going to benefit from a new drug while the other one will be left by the roadside. It's inadmissible, and it's not a scientific criterion."

(47) This is clear from communiqués from the two main patient groups, Aides and Act-up, dated Feb. 27. After quickly condemning lot-drawing, the statements immediately denounce the drug companies on moral grounds and the CNS for its indirect, inopportune ethical support of them.

(48) In the Feb. 27 and 28 TV news reports, the only mention of the idea that drug company proceedings could affect the supposed, assumed scarcity was in a journalist's transition sentence, where it was specified that the American laboratories wanted to satisfy demand in America first, before taking account of Europe and Africa. Since that sentence was the link between interviews with patient group representatives condemning lot-drawing on the one hand and a long report on drug production difficulties on the other, it is fair to assume that it went unnoticed.

(49) Indeed, it was precisely because there was disagreement within the TRT-5- whose working rule was unanimity- that that organization issued no statement on the CNS proposal, instead, each group writing its own statement.

(50) Our exhaustive analysis of Atos-related subjects covered on the 8 o'clock news in 1996 enabled us to identify no more than five themes: the organization of "Sidaction" [televised show to raise pledge funds to combat AIDS]; Magic Johnson's being reintegrated into his basketball team; the Pope's comments on condoms; the lot-drawing controversy, and the Washington AIDS conference (data from Inathèque).

(51) Roche's protease inhibitor was considered at the time to be much less effective than Abbott's or Merck's.

(52) For an excellent critique of this simplistic analysis, see Schlesinger (1992).

(53) The president of Aides made clear at least one feasibility problem when he explained that lot-drawing merely shifted the risk of discretionary choice to another level: deciding which patients got put on the list of potential beneficiaries.

(54) This way of reducing a moral question to its psychological or compassion-guided dimension may perhaps be related to the sway in our societies of the idea that morality is a subjective matter.
This is clearly reflected in the Health secretary's statement that he felt appalled "as a human being" by the thought of using lot-drawing. But this point is merely speculative.

(55) In italics in the communiqué.

(56) Engelhardt and Caplan (1987) envisaged five ways of ending a controversy: loss of interest and abandonment, force, consensus, the power of a particular argument, negotiation.

(57) The recommendation was so lot-drawing had the sense that it went their ambiguous that both partisans and opponents of way.

(58) There is nothing exceptional in this strategy: Roche Laboratories only sought to register its saquinavir, first protease inhibitor on the world market, with the European Agency five months after filing with the FDA.

(59) There were an estimated 553,000 adult AIDS cases between the late 1970s and 1996 in North America; 235,000 in Western Europe (Relevé épidémiologique hebdomadaire, Nov. 1996, 48).

(60) American patient advocacy groups did not adopt the demands of their European counterparts; some even expressed amazement at what was happening in France.

(61) Mention has not yet been made of the most spectacular protest action. On Feb. 29, an Abbott Labs plant in France was stormed by Act-up activists. Images of the intrusion and occupation were shown on C in the Us on the morning of March 1.

(62) This explanation is supported by interviews conducted at the two firms' American headquarters in July 1999.

(63) Obviously the market was attractive after licensing, since France, together with Italy and Spain, was one of the European countries the hardest hit by AIDS.

(64) This should not be taken for granted: it was only in France that the firms met with mobilized protest and pressure from patient associations.

(65) The companies did not want to find themselves in the same situation as GlaxoWellcome, producers of 3TC, who, in 1995, had taken on the high costs of free compassionate distribution to several thousand French patients. The cost of that operation was estimated by the firm to have far outweighed the marketing plus of getting the drug out and known before receiving the official sales licence.

(66) See interview with the president of Aides, in Libération, Mar. 27, 1996.

(67) The pressure was sufficiently intense that in early May one high-level hospital administrator expressed concern: "it should be pointed out that the patient associations are getting their data from the drug laboratories. This is why certain regional treatment centers [CISIH5] have been
accused of not prescribing enough. By communicating this kind of data by prescribing center the laboratories are blatantly pressuring certain centers to prescribe their drugs. There are several reasons why it is dangerous to stigmatize certain hospitals: it could threaten prescription freedom and lead to clientele transfers."

(68) Mobilizations in favor of post-protease inhibitor drugs included some discussion among patients associations on what their appropriate targets were and how strong their demands should be, especially given that at the time pharmaceutical industry financial support of the associations was on the rise.

(69) Professor Gentilini, former consulting physician at the I'itié-Salpétrière hospital, declared in the newspaper La Croix of Feb. 29 that "the Conseil national du sida is a recent creation and its validity debatable. It brings together specialists of official ethics, not scientists". Asked on what criteria clinicians would select patients, he specified "Where two cases present similar medical characteristics, we consider, for example, the patient's social condition: does he have major family responsibilities, for example?" In the Quotidien du médecin of Marl, he declared that the CNS should be "eliminated" and that "scientists should be left to judge how to proceed in this crisis rather than asking for a recommendation from a useless whatsit".

(70) Dennis (1992) shows how, following several scandals, American doctors performing transplants lost much of their discretionary power.

(71) For an analysis of "treatment activism", particularly its effect on AIDs drug prices in the Us, see Edgar and Rothman (1990).

REFERENCES


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