

Precautionary Tales – Missing the Problem and its Cause

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Two recently published volumes on the concept of precaution as it is variously understood and applied across the United States and in Europe make for a fascinating comparative analysis. They also respectively offer some undoubted and invaluable insights into the subject. Sadly neither really addresses how precaution came of age or why.

The two tomes – an edited compilation by Duke Law and Public Policy Professor, Jonathan Wiener and others, and a sole-authored text by Berkeley Business and Political Science Professor, David Vogel – posit supposedly opposed views on the matter, although a careful reading shows this to be rather an exaggeration by the authors of the former.

These claim that Vogel postulates what they describe as a ‘flip-flop’ model of policy development, whereby the US led the EU (and the world) in terms of the introduction of precautionary regulations in the 70s and 80s (even if these were not explicitly described as such), whilst the EU then assumed the vanguard in this over the ensuing two decades.

The editors of this volume appear to think this point to be so profound that they ensure it is repeated at the start and in the conclusion of almost all of their 20 chapters. They propose, almost as frequently, that the reality was somewhat more complex, and that the presumption of a risk-averse Europe today is nothing but a crass caricature.

They have a point – up to a point. But Vogel makes no such sweeping claims in his analysis. Rather he clearly delimits his scope to the examination of quite particular areas of public policy – relating to health, safety and the environment. So a simplistic interpretation of these two works could conclude comfortably that both are right – within the terms they set.

But that would be to miss an essential difference – revealed through the respective titles of these works. Wiener et al. opt for ‘The Reality of Precaution’, while

Vogel presents ‘The Politics of Precaution’. In effect, the team effort errs towards a realist interpretation of risk, whilst the single author has adopted an understanding of it in relation to society.

The consequence of this is that the authors of the compilation are correct that trans-Atlantic policy developed unevenly – but their narrowly empirical analysis lacks real bite. Whereas Vogel’s interpretation may erroneously focus on too limited a set of policies – but at least he attempts to explain why these developments occurred.

It is almost as if – in their relentless attempt to demolish what they take to be the Vogel narrative – the editors of ‘The Reality of Precaution’ have failed to see the wood for the trees. To say that neither the EU nor the US were particularly more precautionary than the other at any one time is to miss the rise of precaution itself as a dominant discourse.¹

Fortunately, not all the authors in the edited volume fell for this trap. Chapters by Cantley and Lex, as well as by Majone, and others, point to concerns over the growing use of this framework. But it would appear that Wiener and Rogers in particular were content to fiddle while assuring all around that neither polity burnt with greater regulation than the other.

That is a great shame, for their volume taken as a whole is definitely a significant contribution to the field – as far as it goes. In some ways it reveals the limits of empiricism. For having methodically dismissed culture, political institutions and legal frameworks as adequate explanations for these differences, they also fail to address that which most needs explaining.

Part of this failure, revealed at regular intervals throughout their text, is down to an ahistorical view of ‘precaution’. Wiener points to the use of the term in the literature of the 18th and 19th centuries. But that is equivalent to confusing coins given as tokens in the ancient world with their emergence as the dominant means of exchange over a thousand years later.

In his concluding chapter, Wiener informs the reader that use of the term ‘reality’ in the title of the compilation was to distinguish this from the ‘rhetoric’ that had emerged. Fair enough. But is the sum

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1 Frank Furedi, *Politics of Fear: Beyond Left and Right* (London / New York: Continuum, 2005).

total of insights offered by the distinguished professor and his team the notion that politicians, commentators and advocates can embellish things for effect?

Yes, policy development is a subtle and uneven process. Yes, at certain times one side of the Atlantic could be argued to have been ahead of the other – but only in some aspects. Yes, it is true, from a systems perspective at least, that not noting the multifarious interconnections between these is a failing. But where does this leave us in relation to the rise of risk?

For Wiener in particular, the management of risk has always been a necessity, and he repeats the true – if now tired – cliché he coined with John Graham almost 20 years previously, that reducing risk is a trade-off. But this presents the matter as a zero-sum game. Lost on him are the subtleties of emergence, or the cultural construction of challenges as risks.

This latter may be at its most evident in the chapter he co-authored with terrorism analyst Jessica Stern. There, terrorism is presented as ‘one of the great risk problems of the current era’. Really? It seems that over a decade on from 9/11 many in the US (and elsewhere besides) have yet to get to grips with the actualities and origins of this phenomenon.²

Whilst offering a more limited set of cases, and less empirical rigour, the benefit of Vogel’s volume is that at least he attempts to struggle with the reasons as to why the developments he observes came about. One may take issue with his presentation of political polarization in the US, or of the EU as representing popular sentiment in Europe. But at least he tries.

Vogel rightly notes that the EU has moved into the regulatory vanguard in many areas. But he is wrong to present this as somehow encapsulating the will of the people. Rather, as many others have identified, the rise of the EU has been in inverse proportion to the genuine engagement of the demos in political debate there.

That the electorate appear to echo the concerns of the elites – as Vogel notes from Eurobarometer surveys – precisely points to the demise of mediating institutions between these, which existed in the past. The majority of those who are politically active today

may be very vocal, but they are a minority overall and more readily swayed by elite discourses.

Indeed, it was the erosion of mass political participation on both sides of the Atlantic – replaced in the US by an increasingly shrill ‘culture of smug certainty, partisanship, soundbites, and polarising uberpundits’³, which masquerades as the principled polarisation Vogel points to – that was one of the real drivers of the precautionary outlook.

This may have precluded the possibility of promoting particular agendas in the US, where state institutions still have clout. But in Europe, this potential for stasis was by-passed by the elites through the bulldozing through of their European project. In both cases, popular will was notably absent, as erratic, but broadly declining, electoral turn-outs testify.

This epochal transformation⁴, may have taken different forms in different places at different times – being expressed maybe more by a move from purposeful to purposeless government in the US, as opposed to a shift from an active to a passive citizenry in the EU – but its cumulative effect has been largely the same, as Wiener et al. identify.

José Manuel Barroso is no Richard Nixon, as Vogel unfortunately suggests. Rather, the policies of an assertive US President, in a period still defined by establishment confidence and popular engagement, can readily be mimicked by the actions of a President of the European Commission, in a period marked by elite confusion and a disengaged demos.

Regardless, the impasse created between directionlessness on the one hand and impotence on the other opened the space for a new cohering agenda through which to justify continued social arrangements. Government became governance and the discredited state – particularly in Europe – made way for unaccountable sub- and supra- national institutions.

Without the principled – if flawed – politics of Left and Right to pursue and cohere agendas, so managerial and technical pragmatism, as exemplified through the expansion of risk and precaution, came to form a new basis for legitimacy. Politicians on all sides have made way for the new breed of evidence-touting ‘expert’ – that includes the likes of Wiener.

Others elsewhere have chronicled in far greater detail than either of these tomes can achieve, how this process emerged around a particular issue.⁵ Notably, these shifts facilitated new, and odd, confluences of actors to shape and determine public policy – interest groups, academics, marginal officials and the media – largely divorced from any wider public discourse.

2 Bill Durodié, “Fear and Terror in a Post-Political Age”, 42(3) *Government & Opposition* (2007), pp. 427–450.

3 Greg Lukianoff, *Unlearning Liberty: Campus Censorship and the End of American Debate* (New York: Encounter Books, 2012).

4 Zaki Laïdi, *A World without Meaning: The Crisis of Meaning in International Politics* (London / New York: Routledge, 1998) [translated from the French *Un Monde Privé de Sens* (Paris: Fayard, 1994)].

5 Adam Burgess, *Cellular Phones, Public Fears and a Culture of Precaution* (Cambridge: Cambridge University Press, 2003).

Far from there being a 'Risk Society' as some of the evangelists of the post-Cold War world order announced, it seems to be much more a 'Risk Perception Society', with the old Left focusing somewhat more on issues pertaining to health and the environment, whilst the old Right became fixated on the potential for civil unrest and terrorism.

Vogel mistakenly proposes EU policy as the driver of these changes. This – in its turn – he views as pushed by popular demand. But where were the mass movements demanding the banning of beef or the regulation of chemicals and cell phones that the anonymous and unelected bureaucrats of the new European establishment felt pressured to respond to?

That is to put things completely the wrong way round. Rather, the EU is one of the highest institutional expressions of elites lacking any distinguishing ideology, whilst being afforded the luxury of the absence of any significant interest-based pressure from below. But coincidentally, both confidence and confusion can take on the same authoritarian form.

This is not to dismiss these works entirely. They both contribute valid – though partial – insights. It is just that those looking for an explanation of how a more explicitly precautionary culture emerged on both sides of the Atlantic, as well as any indication of its impact on the potential for growth and social transformation will have to look elsewhere.