Precaution in "Old Europe" and New America

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Let me open with a recent quotation from a policy report:

> *The more the Europeans have come to embrace the Precautionary Principle, the more U.S. policy makers have argued that this principle is un-scientific, impossible to implement, a potential drag on technological innovation, and, too often, a suspicious looking means of inhibiting free trade. The Europeans have countered that the Precautionary Principle is not unscientific–indeed, the principle employs science to ascertain the level of uncertainty that determines whether precaution is appropriate. Still, the European ban on the importation of hormone laded beef and the general resistance to genetically modified grains and vegetables has simply added fuel to the hostile sentiments of U.S. policy makers towards the Precautionary Principle and made it a kind of icon of European scientific irrationalities.*

Why has the Precautionary Principle been so well accepted in the European Union and so fiercely opposed in the United States?

It's a simple enough question. I asked a Swedish colleague last week for his explanation. "Well" he said, "You Americans are the descendents of the Europeans who chose to leave Europe, those who took the big risks. We are the descendents of the cautious ones, those who chose to stay. We prize our communities and heritage, you leave yours whenever opportunity knocks."

An easy and a good answer.

There is plenty of literature to support this view. Let's call it a theory of cultural differences.

The basic cultural, religious and legal structures of Europe and the United States arise from common roots and there are many ways that the two regions are alike, although there are also an equal number of ways that they display significant differences.

The United States was established over two centuries ago by people with a great mistrust of the monarchies they left behind and of governments, in general. The U.S. Constitution represents a broad compromise between the need for national integration and a commitment to maintaining decentralized, local control. The federal government is there to guarantee basic national interests, but otherwise, its powers are to be limited. Socially, a high value is placed on individual achievement while concerns over the general welfare are best left to local communities, and charitable and religious institutions. National social or economic government policy is viewed with suspicion and, where it must develop, the process needs to be transparent and open to litigation and judicial review.

The nations of Europe, of course, arise out of long histories of often conflicting, ethnic, religious and cultural heritages. The history of feudalism and the emergence of social democratic traditions have resulted in parliamentary governments that are expected to care for the social and economic welfare of their citizenry. Individual achievement is valued, but balanced against the general welfare of communities, civil society, and social dependents. Long traditions suggest that national social and economic policies should be developed by elites in governments and the professions with periodic accountability to parliamentary review and little participation by the wider public.

The general mistrust of government authorities in the United States has created a defensive and adversarial ethos that is quick to become critical and litigious. Government policies and, in particular, environmental policies that are seen as limiting individual or corporate freedoms are typically challenged in the media and in the courts. Therefore, U.S. environmental statutes and regulations are often long, procedural and dependent on highly rationalized arguments and extensive scientific evidence.

Government policies in European countries are often short; less detailed and based more on qualified professional judgment (parliamentary commissions, professional policy papers, etc.). Indeed, commonly understood and

formally specified "principles" appear in European policies…..such as the Polluter Pays Principle and the Substitution Principle…..in a manner that contrasts markedly with the formalized "rule of law" traditions of U.S. government policy making.

Thus, there is little surprise that a principle like the Precautionary Principle should emerge in Europe. It is short, generic policy that empowers the state to anticipate hazards and to act to protect the public even where the scientific evidence of harm remains limited. In acknowledging the cultural differences it should be expected that there is less interest in precaution in the United States, where government should be restrained, opportunities reward risk takers, and restrictions on the market should be few and based on sound and extensive scientific evidence.

According to our theory, Europeans and Americans respond differently regarding risk and opportunity because they have different histories and cultures. Thus, the differing approach to the Precaution Principle is based on cultural differences.

However, the theory is both convincing and misleading.

Let's take a harder look.

During the first half of the twentieth century, environmental and public health issues in the United States were thought to be best left as state, industry or professional responsibilities. Only in the 1960s and 1970s did the United States begin to establish broad national environmental policies by enacting federal statutes, somewhat earlier than in European countries. Following the cultural traditions in the United States, these laws were quite extensive and stringent.

For example, the public outrage over the damaging effects of thalidomide led Congress during the 1960s to significantly increase the role of the Food and Drug Administration in setting rigorous procedures for approving new drugs. Similarly the 1970 legislative requirement to require catalytic converters on all new cars drove a phase out of leaded gasoline in the United States that was not adopted in Europe until 1989.

The U.S. statutes and the court decisions of the 1960s and 1970s tended towards a risk adverse and precautious approach. For instance, the National

Environmental Protection Act of 1969 required federal agencies to review a broad range of options before proceeding with projects that might create environmental threats. The Clean Air Act of 1970 required "an adequate margin of safety" in setting emission limits.

The Clean Water Act, two years later set a national goal of zero effluents by 1985 and the 1977 Clean Air Act Amendments instructed the Environmental Protection Agency to "assess risk rather than wait for actual harm" before setting emission standards. Indeed, the Occupational Safety and Health Act of 1969 established a "general duty" on each American employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards" even where there is no applicable regulatory safety standard.

However, after 1980, the on-going trends in national environmental and public health policy initiatives in the United States changed, dramatically. Congressional activism in enacting broad national statutes stalled and the federal agencies progressively moved away from stringent regulations and aggressive enforcement towards more cooperative and accommodating approaches. A far reaching ruling in 1980 by the federal Supreme Court on regulatory standards for benzene exposure in the workplace resulted in a significantly tighter set of criteria for assuring that the costs of corporate compliance be considered in promulgating public health and environmental regulations. Indeed, the Pollution Prevention Act of 1990, a throwback to the "states-first" approach of the 1940s and 1950s, offered promotion and support, but no mandates on industry to reduce or prevent pollution or waste.

So the evidence suggests that the early U.S. government approach to occupational and environmental hazards was precautious. However, sometime after 1980, something changed.

How can we explain this?

It actually is pretty easy. What changed in 1980 was the ideology of the government in power. The political revolution that brought Ronald Reagan to the presidency was a well-organized right leaning movement that had a distinctly different approach to risk and opportunity. This was a solidly conservative movement with an ideology based on individual liberty and hostility to big government. The leaders of the conservative right were committed to creating a business friendly society with limited regulations on

the market and corporate behavior and to making America competitive by driving down social expenditures. The government was not only to pull back from regulatory policies, but it was to become a sponsor and enabler of corporate interests.

Environmental and occupational health regulations were viewed as fetters on pure market behavior and burdensome to corporate strategies. This perspective could hardly find a more menacing concept than the Precautionary Principle. As enshrined in European water law and the Rio Declaration and framed into an American initiative by the Wingspread Statement of 1998 the Precautionary Principle clearly means to shift the burden of scientific proof of safety onto corporate purveyors of hazardous technologies.

To the conservative right, such a burden placed all of technological development in jeopardy, or as one member of the conservative Competitive Enterprise Institute concluded; "Even the most well-intentioned precautionary measure can have terrible results. The precautionary principle's threat to technological progress is itself a threat to public health and environmental protection. The world would be safer without it."

Indeed, these conservative right leaders have used their base in the federal government to try to change European policy making, as well. The U.S. Trade Representative, the Department of Commerce and the Department of State on behalf of the American Electronics Association, the U.S. Chamber of Commerce and the American Chemistry Council have provided a frequent and vocal lobbying force against passage of the European Union Directive on Waste Electrical and Electronic Equipment and the proposed new comprehensive chemical policy called REACH, Registration, Evaluation, and Authorization of Chemicals.

History takes note of the social and cultural differences between the American and European cultures, but the direct evidence suggests that the hardball politics of the conservative right is the primary cause of opposition to the Precautionary Principle. Americans are no less interested in protecting the health of their families or the quality of their environment than Europeans. They poll equally on concern for the environment and willingness to see government as an instrument of environmental protection.

All cultures must balance the risks of daily life against the need for safety, security and sustainability. The Europeans seek to moderate technological risks; the American government seeks to ignore them. Thus, it is not the American people who oppose a precautionary approach; rather, it is the leadership of the current U.S. government.

For some of us, it is distressing to see the powerful role the conservative right has in shaping the political course of environmental protection in the United States. However, there is also something reassuring here…. Culture is slow to change, but politics can change rapidly and dramatically. Finding that the opposition to precaution lies in politics rather than culture suggests not only the speed with which this opposition could evaporate, but also the means of assuring that it does.

There is a thriving political opposition emerging to the U.S. government intransigence on hazards and risks. This conference displays it very well, as does the scores of precautionary initiatives at the state and local level. The San Francisco ordinance, the state chemicals laws regulating mercury, brominated flame retardants, and hazardous packaging, the market move towards organic produce and safer cosmetics, the drive towards green architecture, the emergence of green chemistry, the "Louisville Charter", and, even, the activism among leading companies to phase out hazardous chemicals reveals a turbulent and eager search for safer technologies.

We do not have to change the culture of the American people to achieve a more cautious and sustainable society, but we do have to change the government. Changing this government will not be easy or immediate, but it is possible, and, for us, I might say, it is necessary.

We could not be gathering at a better time. Let's get on with the task.