

The Precautionary Principle and the Ethics of Corporate Decision Making

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Is the Precautionary Principle (PP) a suitable principle to guide corporate decision-making? Many philosophers take universalizability to be the very hallmark of moral rules. And given the impact of corporate decisions on our lives, it is generally desirable for corporate values to converge with public values. We want corporations to value the same things we do—health, safety, *et cetera*—and to act accordingly. We want corporations to adopt principles that we, the public, would adopt. Is the PP—a principle receiving much attention in public policy circles—a principle that should be adopted by corporate decision-makers?

There is, of course, more than one “Precautionary Principle.” The Principle has in fact been defined many different ways. Here are key extracts from four of the most-cited versions:

1982 World Charter for Nature (UN General Assembly):

- “...where potential adverse effects are not fully understood, the activities should not proceed”

1990 Third International Conference on the Protection of the North Sea:

- “...[action should be taken even if there is] no scientific evidence to prove a causal link between emission (of wastes) and effects”

1992 Rio Declaration, principle 15:

- “...where there are threats of damage, lack of full scientific certainty shall not be used to postpone cost-effective preventive measures”

2000 Communication from the European Commission about guidelines for EU research activities:

- “...the Precautionary Principle forms part of a structured approach to the analysis of risk, as well as being relevant to risk management. It covers cases where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern...”

Summarizing the shared intent of these different versions is tricky. But perhaps we can fairly summarize this way: the PP enjoins decision-makers to exercise caution—perhaps extreme caution—in the face of uncertainty, even where perceived risks are themselves not well substantiated by evidence.

Various versions of the Principle have faced a range of criticisms. Whether these criticisms are fatal, or whether they are based on some sort of misinterpretation of the PP, is the subject of considerable debate. For the purposes of this work, I will grant, for the sake of argument, that *some* version of the PP is plausible as a principle for public policy-making. What about corporate decision-making?

Corporations regularly make decisions with implications for human well-being. They make decisions affecting product safety, about where to site factories in relation to communities, and about workplace health and safety. On what basis do corporations make such decisions? Very roughly, we could sketch the basis of corporate decision-making as involving these four bases:

1. Legal constraints;
2. Cost-benefit analysis;
3. Strategic imperatives, implemented through calculated risk-taking;
4. Shareholder primacy (i.e., the idea that maximizing shareholder value is a corporate manager's primary obligation).

Is the PP a plausible addition to this list? Kofi Annan assumed so when he asked world businesses, in 1999, to support a precautionary approach to environmental challenges. Has the corporate world taken up the challenge? Examples are few, and not entirely convincing. AstraZeneca, for example, claims that it is "committed to the application of the Precautionary Principle as defined at the UN Conference on Sustainable Development (Rio, 1992)."¹ What does that commitment amount to? AstraZeneca says it involves "minimizing the use of hazardous chemicals where this can be achieved without compromising" their ability to deliver products to market. That, of course, is a promise that any company would be happy to make, and is entirely compatible with an utter rejection of the PP.

A search of other corporate websites fails to turn up any significant mention of the PP. It seems clear that business in general does not currently employ anything like the PP in its decision-making. With regard to their *products*, corporations tend to be guided by regulation, industry standards, strategic considerations, and cost-benefit analysis. Nor does the PP seem to play a role in business strategy more generally, where a willingness to move boldly and take risks is regarded as a virtue. But is there any reason why corporations *couldn't* adopt a precautionary approach?

I see two reasons why adoption of the PP by particular corporations is unlikely. First, the *constraint* implied by the PP is problematic in competitive domains. Precaution implies foregoing opportunities. In a competitive market, a company unwilling (for precautionary reasons) to develop or market a given technology may find itself at a disadvantage, which may make such an option at least *seem* impossible to take.

Secondly, the adoption of the PP seems to imply a commitment to putting shareholders *second*, in violation of fiduciary duties. It is generally recognized that corporate managers have very strong obligations to shareholders. It is important to note that this commitment to shareholder primacy is consistent with a commitment to strong, even precautionary, regulation. But a commitment to shareholder primacy does seem inconsistent with a commitment to the kind of precaution typically advocated by fans of the PP.

¹ <http://www.astrazeneca.com/article/511629.aspx>

Together, these two reasons cast serious doubt on the applicability of the PP to corporate decision-making. Certainly, this is not a welcome conclusion for proponents of the PP, who would likely want the Principle to be adopted as broadly as possible. But is this a problem, either practically or philosophically?

While generalizability is indeed an important quality of ethical principles, we are also familiar with the notion that some *practical* principles must be role-specific. For example, in most countries police officers may arrest a suspect if they have “probable cause” to think that he has committed a crime, but judges and juries decide court cases, regarding those accused, according to a standard of “guilt beyond a reasonable doubt.”

From a practical point of view, the apparent non-applicability of the PP to corporate decisions simply suggests that the precautionary role ought to be accorded to someone other than corporations – for example, to government. Governments, after all, have the mandate to safeguard the public good, and the “bird’s-eye-view” required to see the long-term and aggregate effects that might warrant precautionary steps. Further, government exercise of the precautionary role means that all companies face a ‘level playing field.’

The implication, then, is that governments *qua* regulators are best suited to exercising precaution, and that the PP is ill-suited to application to corporate decision-making. But this conclusion is too quick, as it assumes a neat division between regulation, on the one hand, and industry, on the other. What we instead find in the real world is a blurring of this distinction. All corporations self-regulate in at least some regards, either because laws have not been passed regarding some particular issue, or because enforcement is lax. Further, some corporate self-regulation happens at the industry level: sometimes industry groups are tasked with devising standards and monitoring the behaviour of their members. Self-regulation of both kinds is unavoidable: governments cannot be everywhere (because they lack resources, and often expertise), and if they could we wouldn’t want them to be (because of obvious risks to liberty).

But the result is that corporate and public policy *cannot* be treated as separate worlds, committed to separate principles. We cannot resign ourselves to the idea that a principle deemed appropriate for *public* policy-making (such as the PP) might be inappropriate for *corporate* policy-making. In many cases, corporations are left to self-regulate, which means that they set what is, in practice, public policy.

We find ourselves, then, with a problem. For now, I will simply note three possible solutions, without suggesting which is the best.

1. Find a version of the PP that maintains the intent of the Principle but that is a plausible principle for corporate decision-making, given the above-noted constraints on decision-making in that domain.
2. Remove corporations from the role of *de facto* public policy-makers, by replacing all instances of corporate self-regulation with regulation by government.
3. Abandon the PP as a regulatory concept.

I suspect that each of these ‘solutions’ will be found problematic by at least some concerned parties. An alternative to these three—or perhaps a reframing of the entire problem—is thus urgently needed.