



THE PUBLIC TRUST

By Carolyn Raffensperger

Many Definitions, But One Principle

In my inaugural column on the PUBLIC TRUST beat, I described three of the four facets of a truly intelligent environmental policy. Stated briefly, these elements are treating the commons as the basis of the economy; governing as the guardian of the public trust; and acknowledging the responsibility of our generation to future generations. This column takes up the fourth facet, using the precautionary principle in decisionmaking. It will also address precaution's main criticism: that it has so many definitions no lawyer could meaningfully apply it.

The precautionary principle has three common definitions. The most widespread is Principle 15 of the 1992 Rio Declaration: "In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." This definition has been incorporated into the body of two international treaties, the Stockholm Convention on Persistent Organic Pollutants and the Biodiversity Convention.

Compare that with the Wingspread definition, named for the 1998 conference at which it was promulgated: "When an activity raises threats of harm to human health or the environ-

ment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically." This definition, part of a larger statement on the precautionary principle, has driven a great deal of environmental policy, particularly in the United States.

Finally, the 2003 San Francisco ordinance requiring precautionary decision-making defines the principle as "where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the city to postpone cost effective measures to prevent the degradation of the environment or protect the health of its citizens."

The question raised by critics is whether these definitions are so different that the principle is too ambiguous to develop as law. The answer is no.

First, every definition of the precautionary principle, without exception, contains the same three elements: uncertainty, possibility of damage, and precautionary action or measures to prevent harm. The idea embodied by all definitions is that we don't have to wait for absolute certainty before we prevent harm. We can use foresight and take action rather than watch helplessly as preventable disease and environmental degradation increase while we measure and manage risk. It is true that definitions can be stated passively or actively, negatively or positively. Rio is relatively passive and negative whereas Wingspread is active and positive. Adjectives like "serious," "irreversible," and "cost-effective" can refine the kind of harm or action specified, but this doesn't change the definition.

The second common feature is that

they don't tell you what action to take. For this reason the precautionary principle is not self-implementing. But that doesn't mean that the definition isn't prima facie clear. It just means that additional steps must be taken to implement the principle. In response, San Francisco created an overarching environmental ordinance that articulates the vision, philosophy, and definition of the precautionary principle and enacted additional ordinances to spell out what actions city managers will take to fulfill it.

There are five key steps in implementing the precautionary principle: heed early warnings, set goals, assess and choose the best alternative, reverse

the burden of proof (give the benefit of the doubt to public health and the environment), and involve stakeholders in decisionmaking. Global warming, land use, whale survival, and breast cancer can all be addressed using the principle, but there is no rigid formula that will be applicable in all situations.

Critics have also argued that the precautionary principle and the precautionary approach are different. This is also false. They are the same thing, and the terms are used interchangeably.

Every definition of the precautionary principle or the precautionary approach tells us to take action to prevent harm in the face of uncertainty. This simple, clear idea challenges the old notion that the Earth and our bodies can assimilate ever more harm. It also is the most powerful tool we have to care for the environment and leave a healthier planet to future generations. ❧

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