Affirmative Case: Liberty

By Josiah Hemp

Resolved: In the context of innovation, the proactionary principle ought to be valued above the precautionary principle.

This case is centered around arguing that the precautionary principle unreasonably and unjustly infringes on liberty, and the proactionary principle rights that wrong.

Central to the argument in this case is the claim that the precautionary principle not only limits liberty, it does so unjustly. Everyone’s liberty is limited to a certain extent—that is the only way society could work. The question is how much can that liberty be limited. One common answer is that your liberty can only be limited when your liberty causes harm to others. The question is whether that also extends to when your liberty causes a *risk* of harm to others. The argument in this case is that the answer is no.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”—

Thomas Jefferson, “The Declaration of Independence” accessed at “Declaration of Independence: A Transcription” The National Archives. July 4, 1776. Accessed July 26, 2021. <https://www.archives.gov/founding-docs/declaration-transcript>

Our nation was founded on the principle of respect for basic human rights. Unless your actions are harmful, you have a right to make your own decisions.

At least that’s how it used to be. Today, we live in an era of big government. Many are advocating that if you want to innovate, if you want to take action, you, the innovator, must prove with *certainty* that your actions are *not* harmful *before* taking action. Behind this violation of our liberties is the precautionary principle. Because we must protect freedom, in the context of innovation, the proactionary principle ought to be valued above the precautionary principle.

Definitions

Precautionary Principle

Collins English Dictionary, “Precautionary Principle.” Copyright © HarperCollins Publishers <https://www.collinsdictionary.com/us/dictionary/english/precautionary-principle>. Accessed July 21, 2021.

“the precept that an action should not be taken if the consequences are uncertain and potentially dangerous”

Essentially, the precautionary principle requires that we be **certain** that about the consequences of taking an action and make sure that there is no **potential** for danger before acting.

Proactionary Principle

More, Max. (2013). The Proactionary Principle. https://doi.org/10.1002/9781118555927.ch26.

Proactionary Principle is motivated by the need to make wise decisions about the development and deployment of new technologies and by the crucial need to protect technological experimentation and progress. It applies to all complex decisions involving technology, not just those with obvious relevance to transhumanist concerns. In this chapter, the Principle is offered as a guide to address problems effectively and wisely, considering concerns, answering objections, and developing solutions and strategies – for both personal and group decisions. This Principle emerged out of a critical discussion of the well-known precautionary principle, which does not embody structural wisdom guiding decision-making by the smartest possible methods. The chapter discusses the failure of the precautionary principle. Next, it presents five component principles or Pro-Actions that comprise the Proactionary Principle. They are be objective and comprehensive, prioritize natural and human risks, embrace diverse input, make response and restitution proportionate, and revisit and revise.”

Resolutional Analysis

Government Actor

The resolution does not explicitly state who is the actor in today’s resolution. However, a closer look at the term “precautionary principle” in the resolution shows that the government is the one who is doing a significant part of the acting. The precautionary principle is not just a philosophy—it is a legal principle supported by and enforced by governments. The European Union from its inception with the 1992 Maastricht Treaty has used the precautionary principle. Further, several European nations and Australia have incorporated the precautionary principle into their national policy.

Didier Bourguignon “The Precautionary Principle: Definitions, Applications and Governance” European Parliamentary Research Service. December 2015. Translated from French, February 2016. Accessed July 26, 2021. doi:10.2861/821468, ISBN 978-92-823-8480-0. <https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/573876/EPRS_IDA(2015)573876_EN.pdf>

“At the European level, the precautionary principle was enshrined in the Maastricht Treaty in 1992. It is now included in Article 191 of the Treaty on the Functioning of the European Union among the principles underpinning EU environmental policy. Like the other principles, it is not defined in the treaty.”

“At national level, several Member States, besides Germany, have incorporated the precautionary principle in their national legislation. France incorporated the precautionary principle in its Constitution in 2005. Sweden has made it a guiding principle of its environmental and public health policies, including it in the Swedish Environment Code in 1999. In some EU countries such as Belgium or the Netherlands, the courts recognise the precautionary principle provided that it has been included in a specific law. In other EU countries such as Spain and the United Kingdom, the courts base their decisions on the precautionary principle only if the provisions under consideration derive from European legislation. Outside the EU, Australia incorporated the precautionary principle in its environmental policy in 1992.”

According to a Duke Law study in 2002, the US is very similar to the EU in using the precautionary principle.

Jonathan B. Wiener & Michael D. Rogers, Comparing Precaution in the United States and Europe, 5 Journal of Risk Research 317-349 (2002) <https://scholarship.law.duke.edu/faculty_scholarship/1191/>

“The regulation of health and environmental risks has generated transatlantic controversy concerning precaution and the precautionary principle (PP). Conventional wisdom sees the European Union endorsing the PP and proactively regulating uncertain risks, while the United States opposes the PP and waits for evidence of harm before regulating. Without favouring either approach, this paper critically analyses the conventional depiction of transatlantic divergence. First, it reviews several different versions of the PP and their different implications. Second, it broadens the transatlantic comparison of precaution beyond the typical focus on single-risk examples, such as genetically modified foods. Through case studies, including hormones in beef and milk production and mad cow disease in beef and in blood donations, as well as reference to a wider array of risks, the paper demonstrates that relative precaution varies enormously. Sometimes the EU is more precautionary than the US (such as regarding hormones in beef), while sometimes the US is more precautionary than the EU (such as regarding mad cow disease in blood). Thus, neither the EU nor the US can claim to be categorically 'more precautionary' than the other. The real pattern is complex and risk-specifc. Third, the paper seeks explanations for this complex pattern in five sets of hypotheses: optimal tailoring on the merits, political systems, risk perceptions, trade protectionism, and legal systems. None of these hypotheses fully explains the observed complex pattern of relative transatlantic precaution. The paper concludes that differences in relative precaution depend more on the context of the particular risk than on broad differences in national regulatory regimes.”

Thus the precautionary principle is a rule imposed on private citizens by the government in the current system. This is critical to understand as we turn to our…

Value: Liberty

A. Liberty is a basic human right

Liberty is fundamental to what it means to be human. Liberty means that each individual has the right to, in the words of

Noah Webster’s 1828 Dictionary American Dictionary of the English Language (the first American dictionary) “Liberty.” First published 1828. Accessed online July 26, 2021. <http://webstersdictionary1828.com/Dictionary/liberty>

“Natural liberty consists in the power of acting as one thinks fit, without any restraint or control, except from the laws of nature. It is a state of exemption from the control of others, and from positive laws and the institutions of social life.

[**Unquote. However, we do not have unlimited liberty in society. Webster continues, quote]** This liberty is abridged by the establishment of government.”

How is it abridged? How far can and should liberty be limited? That brings us to…

B. The proper limit on liberty

When is it permissible to limit liberty? An old saying illuminates this question: “my right to swing my fist ends where your nose begins.” In other words, it is legitimate to limit liberty if a person’s actions will harm others.

CONTENTION 1: The Precautionary Principle Violates the Freedom of Innovators

An “amendment” to traditional liberty

Karsten Klint Jensen (Centre for Bioethics and Risk Assessment, University of Copenhagen, Department of Education, Philosophy and Rhetoric)“The Moral Foundation of the Precautionary Principle.” Journal of Agricultural and Environmental Ethics, 15, 39– 55 (2002). Accessed July 26, 2021 <https://doi.org/10.1023/A:1013818230213>

“The Precautionary Principle is shown to have the ethical status of an amendment to a liberal principle to the effect that a state only may restrict a person's actions in order to prevent unacceptable harm to others. The amendment allows for restrictions being justified even in cases where there is no conclusive scientific evidence for the risk of harmful effects.”

Essentially, the precautionary principle “amends” the traditional principle of liberty that only actions that cause harm can be limited by saying that we can prohibit actions even if we don’t have evidence of risk of harm. But this is more than just an “amendment”—this is a violation of liberty.

The precautionary principle violates liberty

We need to look back once again to the definition of the precautionary principle

Collins English Dictionary, “Precautionary Principle.” Copyright © HarperCollins Publishers <https://www.collinsdictionary.com/us/dictionary/english/precautionary-principle>. Accessed July 21, 2021.

“the precept that an action should not be taken if the consequences are uncertain and potentially dangerous”

Reasonable limits on liberty are both necessary and justified. But the limits placed by the precautionary principle are unreasonable, unjustified, and violate liberty. The precautionary principle would prohibit nearly all innovation by requiring certainty of all the consequences of your actions. This is unjust.

CONTENTION 2: The Proactionary Principle restores freedom

Creator of the proactionary principle Max More wrote that the very first principle in the proactionary system is, quote

Max More, (philosopher, creator of the proactionary principle.) quoted by Judith Curry, “Proactionary Principle” Climate Etc. (Judith Curry’s personal blog). August 19, 2013. Accessed July 28, 2021 <https://judithcurry.com/2013/08/19/proactionary-principle/>

Freedom to innovate: Our freedom to innovate technologically is valuable to humanity. The burden of proof therefore belongs to those who propose restrictive measures. All proposed measures should be closely scrutinized.

The proactionary principle upholds our freedom by definition. It puts the burden back on government, requiring that the government prove that regulation is necessary and beneficial in order to put regulations in place, rather than requiring the innovator to have total certainty. It returns to the proper standard for when liberty can be limited—does the action actually cause harm to others?

How To Respond

The following is advice on how to respond to the case. Don’t think that these are the only possible responses (or even the best responses—these are just a few ideas to help you get started in responding to the case.

What makes a limit on liberty unjust?

Key to responding to this case is the issue of what is justified in terms of limits on liberty. While the affirmative’s arguments are certainly arguments that are being made and are arguable, many courts and experts are against these arguments. For a long time, courts have issued injunctions against governments, individuals, and corporations when the plaintiff can show that harm is likely or probable. Extending the reasoning of these courts, it could be argued that the proactionary principle would actually take away justice by pre-empting such injunctions which (some would argue) have saved the environment, protected people from harm, etc. There is a lot of support for the claim that the precautionary principle is a valid “amendment” not a violation.

Examples

This AFF case is a very philosophy/ideas oriented case. This could work in your favor as the negative if you have an evidence heavy case. You could push the affirmative to give examples and evidence showing that the precautionary principle actually does harm liberty in the real world. This could work especially well if used along with the criticism of the definition of the precautionary principle (below).

Of course, some LD judges prefer to hear more about the ideas/philosophies and less about the examples—if that is the case then disregard this section (one of many good reasons to pay attention during judges judging philosophies!).

Definitions

The definitions are also an important point to attack on this case. [The following is similar to the notes on how to respond to AFF: Moral Duty, so if you have already read that, you don’t necessarily need to read this.] The definition of the precautionary principle in this case is what is called the “hard” version of the precautionary principle. This is a strict version that requires absolute certainty. Critics this definition point out that while it may be used in dictionaries, it is not used in actual practice. In actual practice a “soft” version is used. See *Dr. Sven O. Hansson (Holds a PhD in theoretical philosophy and a second PhD in practical philosophy. Division of Philosophy, Royal Institute of Technology (KTH), Teknikringen Stockholm, Sweden) “How Extreme Is the Precautionary Principle?” Nanoethics 14, 245–257 (2020). https://doi.org/10.1007/s11569-020-00373-5 for more on this.*

The proactionary principle definition used in this case comes from Max More, who is a prominent transhumanist. That opens up this case to a wide range of attacks relating to the ties between transhumanism and the proactionary principle. See NEG: Human Dignity and NEG: Reason (both by myself) that either will be or have been published by Monument for two different approaches to making this argument.