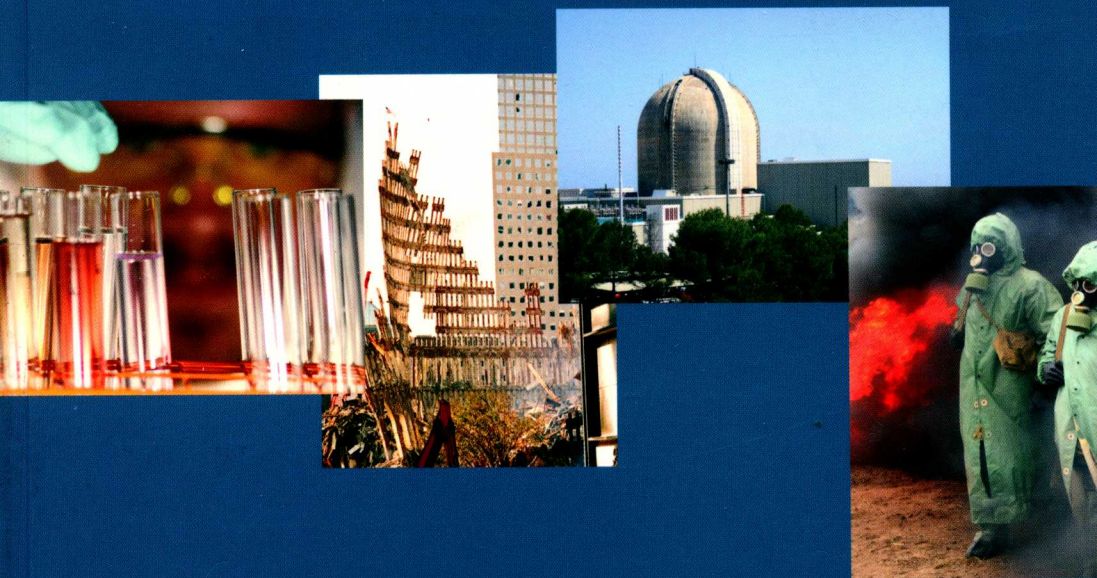




# THE REALITY OF PRECAUTION

*Comparing Risk Regulation  
in the United States and Europe*



*Edited by*

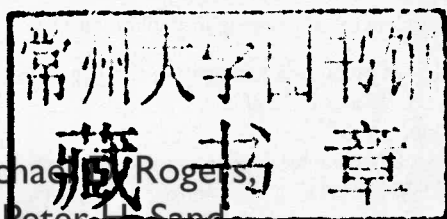
Jonathan B. Wiener, Michael D. Rogers,  
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## Comparing Risk Regulation in the United States and Europe

EDITED BY

Jonathan B. Wiener, Michael S. Rogers,  
James K. Hammitt, and Peter H. Sand



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*"The Reality of Precaution* provides a nuanced, fact-based account of the various meanings and applications of the Precautionary Principle in Europe and United States. Rejecting the heated rhetoric that so often accompanies discussion of risk regulation, the editors have put together a balanced volume that ought to be essential reading for both policy analysts and policymakers on both sides of the Atlantic."

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"Going beyond the slogans of the precautionary principle, the authors bring together all sides of the debate in the US and Europe and provide in-depth and insightful analysis of the issues. Anyone who cares about environmental policy must read this book."

**Richard D. Morgenstern, Senior Fellow, Resources for the Future; former Director of the Office of Policy Analysis, U.S. Environmental Protection Agency; and co-editor, *Choosing Environmental Policy: Comparing Instruments and Outcomes in the United States and Europe***

# *The Reality of Precaution*

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# Preface

*T*his book began as an extended conversation with Michael Rogers—then at the Group of Policy Advisers of the European Commission in Brussels—when, to my great good fortune, he spent a year as a visiting fellow at Duke University. Michael and I were inspired to test the increasingly popular claim that Europe, having formally adopted the “precautionary principle,” had now become “more precautionary” than the United States in the regulation of a host of important risks to health, safety, environment, and security. Michael and I then invited Jim Hammitt of the Harvard School of Public Health and Peter Sand of the University of Munich Faculty of Law to join us in organizing and editing this project. We consciously assembled an editorial team of two Europeans and two Americans, including a scientist and a legal scholar from each side of the Atlantic. We then sought contributions from top experts on key topics in both Europe and America, and we have been privileged to collaborate in this effort with more than 20 esteemed colleagues.

With support from numerous quarters, our initial conversation grew into a multiyear study project. The project featured a series of four conferences: the “Transatlantic Dialogues on Precaution,” held in Bruges, Belgium, not far from Brussels (January 2002); at Airlie House in Warrenton, Virginia, not far from Washington, DC (June 2002); in Berlin, Germany (June 2003); and at Duke University in Durham, North Carolina (September 2004). We then undertook significant additional research, writing, discussion, presentations at conferences, and sabbatical visits. (In the Acknowledgments section at the end of this book, we express in detail our deep gratitude to those who supported the Dialogues and the book project, the numerous institutions that hosted conferences and presentations on the project, and the many colleagues who commented on earlier versions of the text.)

Compiling this volume took longer than we initially foresaw. In part, the duration was the normal result of holding several conferences and then organizing a large number of papers by different authors into one volume. In addition, it took several years to compile our dataset of thousands of risks and our quantitative measure of relative precaution over time. Moreover, we understood from the outset that this book

needed to be a collaborative venture of both Americans and Europeans. And we each felt the obligation to spend some time viewing the world from the other side of the Atlantic—to gain a firsthand understanding of the risks, policies, institutions, politics, and cultures about which we would be writing. Goethe advised that one can never truly understand one's own language until one learns another; this insight applies as well to regulatory systems. So, after Michael Rogers's year visiting at Duke in 1999–2000, and the four Transatlantic Dialogues on Precaution that we held from 2002 to 2004, Jim Hammitt and I then both spent the year 2005–2006 on sabbatical in France—he in Toulouse and I in Paris. Meanwhile, Peter Sand visited at Duke and other U.S. universities, after an earlier post at the World Bank in Washington. In 2008 and 2010, I returned to teach in Paris, and in 2010, Jim returned to Toulouse. Each of us has made several return visits to these and other parts of America and Europe, speaking and learning about regulatory policies.

Our multinational project team and our several exchanges and sabbaticals have enabled us to gain, we hope, a more textured understanding of the reality of precaution and of evolving transatlantic relations. As Montaigne observed centuries ago, “Il se tire une merveilleuse clarté, pour le jugement humain, de la fréquentation du monde.”<sup>1</sup> We hope our judgment has drawn clarity from seeing more of the world, its people, and its regulatory systems.

There also are benefits to a lengthy gestation. A good history can gain from some distance from its subject. Our perspective has ripened with time. And policies in Europe and America have unfolded, giving us new grist for insight and commentary. After the European Union's adoption of the “precautionary principle” in the 1990s, further events have set the stage for a new look at U.S.-European regulatory cooperation, notably new regulatory policies on both sides of the Atlantic, the development of Europe's “Better Regulation” initiative since 2001, and the inauguration of the new U.S. administration of Barack Obama in 2009. Now is thus a particularly apt time to synthesize and present our findings.

At the same time, we recognize that even this substantial volume is incomplete. Further research is needed on case studies of other risks we have not yet addressed; on policies within the Member States of the EU and the states of the U.S.; on policies in other countries around the world beyond the United States and Europe; on a longer historical timeline; on the causal factors accounting for the complex observed pattern of risk regulation; and on the consequences of precautionary policies. We look forward to this journey.

*Jonathan B. Wiener, for the Editors*  
*Durham, North Carolina, USA, and Paris, France*

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<sup>1</sup> In essence, “One gleans a marvelous clarity for human judgment by getting to know the world.” Michel de Montaigne (1580), *Essays*, I 26 F 140; VS 157a, quoted in the Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/montaigne/>, at n. 19, or directly at <http://plato.stanford.edu/entries/montaigne/notes.html#19>.



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INTRODUCTION