



The Politics of Precaution

Regulating Health, Safety,
and Environmental Risks
in **Europe** and the United **States**

David Vogel

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REGULATING HEALTH, SAFETY,
AND ENVIRONMENTAL RISKS
IN EUROPE AND THE UNITED STATES

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PRINCETON UNIVERSITY PRESS
PRINCETON AND OXFORD

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Published by Princeton University Press, 41 William Street, Princeton, New Jersey 08540

In the United Kingdom: Princeton University Press, 6 Oxford Street, Woodstock, Oxfordshire OX20 1TW

press.princeton.edu

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ISBN 978-0-691-12416-2

Library of Congress Cataloging-in-Publication Data

Vogel, David, 1947–

The politics of precaution : regulating health, safety, and environmental risks in Europe and the United States / David Vogel.

p. cm.

Includes bibliographical references and index. ISBN 978-0-691-12416-2 (hardcover : alk. paper)

1. Consumer protection—Europe. 2. Consumer protection—United States. 3. Safety regulations—Europe. 4. Safety regulations—United States. 5. Public health laws—Europe. 6. Public health laws—United States. 7. Environmental policy—Europe. 8. Environmental policy—United States. I. Title.

HC110.C63V616 2012

363.10094—dc23

2011031843

British Library Cataloging-in-Publication Data is available

This book has been composed in Sabon

Printed on acid-free paper. ∞

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

The Politics of Precaution

WILEY-BLACKWELL

To
Maximilien and Alexandre Girerd,
the future of transatlantic relations

Preface

THE IDEA BEHIND THIS book originated during the 2000–2001 academic year, which I spent on sabbatical in France. The almost daily media accounts of new food safety scares and the haste with which French politicians were competing with one another to propose ever more risk-averse regulations to address them made me feel as if I was in a time warp. I felt I was back in the United States during 1970, when President Richard Nixon and Democratic presidential aspirant Senator Edward Muskie of Maine had competed with each other over who was a stronger supporter of stringent emissions standards for motor vehicles. Living in Europe for a year made me more aware of the extent to which the salience of health, safety, and environmental risks had declined in the United States during the previous decade. This was in marked contrast to France, where Parisians, faced with renewed outbreaks of mad-cow and foot and mouth disease, were now asking each other, “what did your dinner have for dinner?” rather than asking, “what did you have for dinner?”

In 2003, I published an article in the *British Journal of Political Science* and a lengthier essay in the *Yearbook of European Environmental Law* that described how and explained why the politics of consumer and environmental risk regulation had changed on both sides of the Atlantic.¹ In the fall of 2004, Chuck Myers, the political science editor at Princeton University Press, invited me to expand these essays into a book. Its completion has been considerably delayed by three other projects: a book and several essays and articles on corporate social responsibility, a co-edited volume on food safety regulation in Europe, and a co-edited volume on transatlantic regulatory cooperation. But this delay has proved fortuitous. It has enabled me to draw on a considerable body of research published in the interval as well as more recent political and policy developments.

¹“The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe,” *British Journal of Political Science* 33, part 4 (October 2003): 557–80. Reprinted in *Environmental Risk*, vol. 2, ed. John Applegate (Burlington, VT: Ashgate, 2004) 481–504; Andrew Jordan, ed., *Environmental Policy in the European Union*, 2d ed. (London and Sterling, VA: Earthscan, 2005), 225–52; Cary Coglianese and Robert Kagan, eds., *Regulation and Regulatory Processes* (Burlington, VT: Ashgate, 2007), 101–26; Martin Levin and Martin Shapiro, eds., *Transatlantic Policymaking in an Age of Austerity* (Washington, DC: Georgetown University Press, 2004), 177–20. “Risk Regulation in Europe and the US,” in *The Yearbook of European Environmental Law*, vol. 3, ed. H. Somsen (Oxford: Oxford University Press, 2003), 1–42.

The subject of risk regulation is highly contentious. Reasonable people can and do disagree about which health, safety, and environmental risks are credible and which risks governments should try to prevent or ameliorate. But this book is a work of analysis, not advocacy. Like any informed citizen, I have my own views, but this book does not attempt to argue or demonstrate which or whose risk regulations are “better” or “ill-informed.” More stringent regulations may or may not be welfare-enhancing, and governments can err by regulating too little as well as too much. I have tried to describe and explain each of the risk regulations adopted—or not adopted—on either side of the Atlantic as fairly and objectively as possible. I leave it up to the reader to decide which particular risk regulations he or she considers salutary or unwarranted.

I am pleased to acknowledge a debt to several colleagues and friends, both at Berkeley and elsewhere, who took the time to read all or significant portions of various drafts of this manuscript and offer me the benefits of their comments and criticisms. The suggestions of Bob Kagan, Graham Wilson, Dan Kelemen, Tim Bütte, Sean Gilmard, Robert Falkner, Brendon Swedlow, Jonathan Wiener, Robert Van Houweling, Mark Pollack, Paul Pierson, Henrik Selin, Albert Alemanno, and Jonathan Zeitlin, along with the anonymous reviewers for Princeton University Press, and my editor at Princeton University Press, Chuck Myers, have made this a much better book than I could have written without their assistance. Needless to say, none of these individuals bears any responsibility for the final product.

Sections of this book draw on my previous research on consumer and environmental regulation, including *National Styles of Regulation: Environmental Policy in Great Britain and the United States*; *Fluctuating Fortunes: The Political Power of Business in America*; *Trading Up: Consumer and Environmental Regulation in A Global Economy*; “The Globalization of Pharmaceutical Regulation”; and “Trade and Environment in the Global Economy: Contrasting European and American Perspectives.”² I also have used material from essays and articles I co-authored with Dan Kelemen, Michael Toffel, Diahanna Post, Nazli Uldere Aargon, Jabil

²*National Styles of Regulation: Environmental Policy in Great Britain and the United States* (Ithaca, NY: Cornell University Press, 1986); *Fluctuating Fortunes: The Political Power of Business in America* (New York: Basic Books, 1989); *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Cambridge, MA: Harvard University Press, 1995); “The Globalization of Pharmaceutical Regulation,” *Governance* 11, 1 (January 1998): 1–22; *Barriers or Benefits? Regulation in Transatlantic Trade* (Washington, DC: Brookings Institution Press, 1997); “Trade and Environment in the Global Economy: Contrasting European and American Perspectives,” in *Green Giants? Environmental Policy of the United States and the European Union*, ed. Norman Vig and Michael Faue (Cambridge, MA: MIT Press, 2004), 231–52.

Bensedrine, Ragner Lofstedt, and Olivier Cadot, as well as from two books I co-edited: *What's The Beef? The Contested Governance of Food Safety*, with Chris Ansell, and *Transatlantic Regulatory Cooperation: The Shifting Roles of the EU, the US, and California*, with Johan Swinnen.³

I benefited from the opportunity to present my analysis to seminars at the Haas School of Business and the Department of Political Science at the University of California, Berkeley, Boston University, the London School of Economics, the University of Michigan, Duke University, and Kings College, London.

In discussing the findings of this book to students and policy makers on both sides of the Atlantic, I was often struck by how many were unaware that during the three decades prior to around 1990, it was the United States that was more likely to adopt more stringent, innovative, and comprehensive regulations for addressing a wide range of national and global health, safety, and environmental risks than were most European governments and the European Community. I hope that this book contributes to a more informed understanding of regulatory policymaking on both sides of the Atlantic during the previous five decades.

Financial support for this project was generously provided by the Solomon P. Lee Chair at the Haas School of Business and the Committee on Research of the University of California, Berkeley. I have been privileged to spend my career at a university that has been so supportive of my research.

This book could not have been completed without the extraordinary research assistance of Victoria Kinsley. In addition to helping me collect research materials and put my references in order, she edited several drafts of each chapter. Karin Edwards prepared a number of research memos at the inception of this project, and Sanaz Mobasseri provided important research assistance. Peter Ryan ably assisted me in editing, and

³“Trading Places: The Role of the US and the EU in International Environmental Treaties” (with R. Dan Keleman), *Comparative Political Studies* 43, 4 (April 2010): 427–56; “Environmental Federalism in the European Union and the United States” (with Michael Toffel, Diahanna Post, and Naxli Z. Uludere Aragon), *A Handbook of Globalization and Environmental Policy: National Government Interventions in a Global Arena*, ed. Frank Wiken, Kees Zoeteman, and Joan Peters (Cheltenham, UK: Edward Elgar, 2011); “Comparing Risk Regulation in the United States and France: Asbestos, AIDS and Genetically Modified Agriculture” (with Jabril Bensedrine), *French Politics, Culture & Society* 20 (Spring 2002): 13–32; “The Changing Character of Regulation: A Comparison of Europe and the United States” (with Ragnar Lofstedt), *Risk Analysis* 21, no. 3 (2001): 399–416; “France, the United States, and the Biotechnology Dispute” (with Olivier Cadot), *Foreign Policy Studies*, Brookings Institution (January 2001); *What's the Beef? The Contested Governance of European Food Safety* (co-editor Chris Ansell) (Cambridge, MA: MIT Press, 2006); and *Transatlantic Regulatory Cooperation: The Shifting Roles of the EU, the US and California* (co-editor Johan Swinnen) (Cheltenham, UK: Edward Elgar, 2011).

substantially improving, the manuscript, and Karen Verde did an outstanding job editing the final draft.

As always, my greatest debt is to my wife Virginia, whose patience and encouragement provided me with the time and emotional support that made the writing of this book possible. Both of us are relieved by its completion.

I am delighted to dedicate this book to my twin grandsons, Max and Alex Girerd, who, because they were smart enough to be born to an American mother and a French father, enjoy citizenship on both sides of the Atlantic. One of my goals was to finish this book before they were able to read it, an objective which I have achieved. But I suspect it will be several years before they find it of interest, because, like Grandpa's other books, it has no pictures of trucks or animals—though it does discuss regulations that affect both.

In closing, my most heartfelt thoughts and deepest appreciation are for the tireless support and encouragement of my beloved son, Philip. I miss him more than words can ever say.

Berkeley, California

June 2011

The Politics of Precaution

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The Transatlantic Shift in Regulatory Stringency

IN 1962, THE UNITED STATES¹ enacted regulations for the approval of drugs that were more stringent than those of Great Britain and Germany.

In 1969, the United States banned the artificial sweetener cyclamate, which remains permitted in each member state of the European Union.²

In 1975, catalytic converters were required for all new cars sold in the United States; they were required for all new cars sold in the EU beginning in 1992.

In 1979, the plant-growth regulator Alar was banned in the United States; all but one European country as well as the EU permits its use.

In 1985, the EU prohibited the administration of growth hormones to beef cattle; the United States allows them.

In 1989, the United States eliminated the use of lead in gasoline/petrol. The EU ended its use of this fuel additive in 2005.

Since 1992, the United States has approved more than one hundred genetically modified (GM) varieties for planting, feed, or food; the EU has approved twenty-eight, most of which are not in commercial use. Virtually all processed food in the United States contains GM ingredients, while virtually none sold in the EU does.

In 1997, the EU ratified the Kyoto Protocol, which committed its member states to reduce their emissions of six greenhouse gases (GHG); the United States has not done so.

In 1999, the EU banned the use of six phthalates in children's products; the United States adopted a similar restriction in 2008.

In 2003, the EU banned the use of six hazardous materials in electrical and electronic products beginning in 2006; the United States still permits their use.

¹Unless otherwise noted, the "United States" or the "U.S." refers to the American federal government.

²The term "European Union" did not formally come into use until 1993, when it was adopted as part of the Treaty on European Union or "Maastricht" Treaty signed in 1992; prior to that date, the EU was called the European Economic Community or EEC. However, for purposes of clarity, I have chosen to use the current name throughout the text, though some quotations refer to the "Community" or the "European Community."

In 2006, the EU significantly strengthened and broadened its health and environmental regulations for chemicals; the last comprehensive statutory reform of American chemical regulation took place in 1976.

These and other comparisons among health, safety, and environmental regulations in the United States and Europe are the subject of this book. It describes and explains why, during the last half century, citizens in Europe and the United States have frequently perceived, and policy makers have often responded differently to, many similar consumer and environmental risks—in some cases temporarily and in other cases over an extended period of time.

Within political systems, there are important linkages among many health, safety, and environmental risk regulations. Their public issue life cycles overlap and they often follow parallel or convergent political trajectories.³ This means that if a government is adopting more stringent regulations toward some consumer or environmental risks caused by business, then it is also more likely to address other risks with similarly strong measures. Alternatively, if it is not stringently regulating a specific health, safety, or environmental risk, then it is also less likely to adopt more risk-averse regulations for others. In short, risk regulations are both interdependent and shaped by similar political developments. These can be stable for long periods of time, but the policy equilibriums that underlie them can also change significantly.

A noteworthy discontinuity in the politics of regulatory stringency took place on both sides of the Atlantic in about 1990. If a new risk regulation was enacted on either side of the Atlantic during the three decades prior to 1990, then it is *more likely* that the American standard was initially, and in some cases has remained, more risk averse. However, if it was adopted on either side of the Atlantic after 1990, then it is *more likely* that the regulation adopted by the European Union was initially, and has often remained, more risk averse.

Why, then, since 1990, has the EU more stringently regulated a number of health, safety, and environmental risks caused by business than the United States, including in several areas that were previously regulated more stringently by the United States? What affects changes in the public's demand for protective regulations and the willingness of policy makers to respond to them? What happened to disrupt the previous pattern of policymaking on both sides of the Atlantic? These important shifts in the stringency of new risk regulations in both the United States and the EU raise a broader question: what explains significant shifts in policy-linked issue life cycles?

³For an influential case study of a public issue life cycle in the United States, see Christopher Bosso, *Pesticides & Politics: The Life Cycle of a Public Issue* (Pittsburgh: University of Pittsburgh Press, 1987).

These are important and challenging questions. Each regulatory decision or non-decision has distinctive and multiple causes, and no parsimonious explanation or single theory can adequately account for all the policy outcomes that have taken place in both Europe and the United States since 1960. I have developed a “big picture” explanatory framework that focuses on the role and interaction of three factors: the extent and intensity of public pressures for more stringent or protective regulations, the policy preferences of influential government officials, and the criteria by which policy makers assess and manage risks. Since around 1990, each has changed significantly in both the United States and the EU.

Prolonged periods of relative regulatory stringency, such as that which occurred in the United States between roughly 1960 and 1990 and in Europe beginning around 1990, are typically characterized by strong public demands for more stringent regulations, by the influence of policy makers who are more supportive of stringent regulatory controls over business, and by decision-making criteria that promote or permit the adoption of highly risk-averse regulations. Alternatively, prolonged periods when relatively few stringent regulations are adopted, such as has occurred in the United States since around 1990, are typically characterized by weaker public demands for more stringent risk regulations, by the increased influence of policy makers opposed to expanding the scope or stringency of health, safety, and environmental risk regulation, and by decision-making criteria that make it more difficult for highly risk-averse regulations to be adopted.

THE TRANSATLANTIC SHIFT IN REGULATORY STRINGENCY

The Regulatory Leadership of the United States

For approximately three decades, the United States was typically one of the first countries to identify new health, safety, and environmental risks and to enact a wide range of stringent and often precautionary standards to prevent or ameliorate them. Several important American consumer safety and environmental regulations, including rules for the approval of new drugs; many pesticide, food safety, and chemical standards; controls on automobile emissions, including lead in gasoline/petrol; and restrictions on ozone-depleting chemicals, were among the most risk-averse in the world. “The United States was the clear global leader in environmental policy in this era, and many other countries copied its policy initiatives.”⁴

⁴John Dryzek et al., *Green States and Social Movements: Environmentalism in the United States, United Kingdom, Germany, and Norway* (Oxford: Oxford University Press, 2003), 160.

The Policy Shift

Around 1990, the locus of transatlantic regulatory policy innovation and global regulatory leadership began to shift. While American policy makers previously had been “quicker to respond to new risks, more aggressive in pursuing old ones,” more recently it is European policy makers who have been more likely to identify new risks and been more active in attempting to ameliorate existing ones.⁵ Europe has not simply “caught up” to the United States; rather, many of the risk regulations adopted by the EU since 1990 are now more stringent and comprehensive than those of the American federal government. In “many policy areas [the EU] has taken over the role of world leader,”⁶ a role formerly played by the United States.

The rate at which the federal government has adopted new stringent and comprehensive regulatory statutes and rules markedly declined after 1990. “Further building of the green state—at least at the national level—essentially stopped around 1990.”⁷ By contrast, “[the] EU surged forward,” issuing a steady stream of “higher and tougher standards.”⁸ To borrow Lennart Lundqvist’s influential formulation, which he used to contrast American and Swedish air pollution control standards during the 1970s, since around 1990 the American federal regulatory policy “hare” has been moving like a “tortoise,” while the pace of the European “tortoise” resembles a “hare.”⁹ “It has become almost a constant trend to see more and more legislation being planned or adopted in Europe that sets higher standards to protect health or the environment than in the United States.”¹⁰

Not all American risk regulations enacted between around 1960 and 1990 were more stringent than those adopted by any European country or the EU. For example, the EU’s ban on beef hormones was adopted

⁵Sheila Jasanoff, “American Exceptionalism and the Political Acknowledgement of Risk,” in *Risk*, ed. Edward Burger (Ann Arbor: University of Michigan Press, 1993), 63.

⁶Quoted in Jonathan Wiener, “Whose Precaution After All? A Comment on the Comparison and Evolution of Risk Regulatory Systems,” *Journal of Comparative and International Law* 13 (2007): 214.

⁷Christopher Klyza and David Sousa, *American Environmental Policy, 1990–2006: Beyond Gridlock* (Cambridge, MA: MIT Press, 2008), 43.

⁸Quoted in Robert Donkers, “US Changed Course, and the EU Surged Forward,” *Environmental Forum* (March/April 2006): 49. The second quotation is from Alasdair Young and Helen Wallace, *Regulatory Politics in the Enlarging European Union: Weighing Civic and Producer Interests* (Manchester and New York: Manchester University Press, 2000), 9.

⁹Lennart Lundqvist, *The Hare and the Tortoise: Clean Air Policies in the United States and Sweden* (Ann Arbor: University of Michigan Press, 1980).

¹⁰Theofanis Christoforou, “The Precautionary Principle, Risk Assessment, and the Comparative Role of Science in the European Community and the US Legal System,” in *Green Giants? Environmental Policies of the United States and the European Union*, ed. Norman Vig and Michael Faure (Cambridge: MIT Press, 2004), 25.

in 1985, while during the 1970s and 1980s some European countries adopted restrictions on chemicals that were either comparable to or more risk-averse than those of the United States. Nor has every consumer safety or environmental regulation enacted by the EU or any of its member states since 1990 been more stringent than those adopted by the United States during the last two decades. For example, American mobile source or vehicular emission standards for health-related (criteria) pollutants have been steadily strengthened and remain stricter than those of the EU.

There has also been increased transatlantic convergence in some policy fields. Following changes in the regulatory policies of the Food and Drug Administration (FDA) that began in the late 1980s, but accelerated during the early 1990s, and the centralization of drug approval policies by the EU during the first half of the 1990s, the “drug lag” has disappeared: a new drug is now as likely to be first approved for use in the United States as in the EU. Both the EU and the United States have now imposed similar bans on lead and phthalates in children’s products, with the United States acting a few months earlier in the former case and the EU nine years earlier with respect to the latter.

Some differences in European and American risk perceptions and regulations are long-standing. For example, the health risks of traditional or natural food preparations have been accepted in Europe since medieval times. In 1949, the American FDA banned the sale of any milk product unless all of its dairy ingredients had been pasteurized, while the production and sale of cheeses made from unpasteurized milk is permitted in the European Union.¹¹

While not *every* European and American consumer or environmental risk regulation is consistent with a transatlantic shift in regulatory stringency since 1990, a *disproportionate number* of the consumer and environmental regulations adopted, or not adopted, on either side of the Atlantic during the last five decades do fit this pattern. For roughly three decades, *relatively few important* risk regulations adopted by either individual European countries or the EU were more stringent than those of the American federal government. But since 1990, a *significant number of important* risk regulations adopted by the EU fall into this category.

In some cases, such as chemical regulation and restrictions on ozone-depleting substances, there has been a literal “flip flop,” with the United States and the EU switching places with respect to the adoption of more stringent and comprehensive regulations. But more commonly, the more

¹¹Marsha Echols, “Food Safety Regulation in the European Union and the United States: Different Culture, Different Laws,” *Columbia Journal of International Law* 4 (Summer 1998): 525–43.

stringent regulations adopted by the EU since around 1990 address risks that were not previously regulated on either side of the Atlantic. Recent European regulations are likely to be more stringent and often more precautionary than those of the United States for those health, safety, and environmental risks that have emerged or become more salient since around 1990, such as global climate change, genetically modified food and agriculture, antibiotics in animal feed, hazardous materials in e-waste, and chemicals in cosmetics.

INTERNATIONAL ENVIRONMENTAL AGREEMENTS

The transatlantic shift in regulatory stringency and global leadership is reflected in changes in the pattern of support for international environmental treaties.¹² Beginning in the 1970s, the United States and the member states of the EU closely cooperated in the establishment of numerous environmental agreements, with the United States often playing a leadership role. At the 1972 Stockholm United Nations international conference on the environment, the United States was “a strong proponent of international action to protect the environment.”¹³ The United States played a critical role in the negotiations that led to the adoption of the London Convention on Dumping at Sea (1972), the Convention on International Trade in Endangered Species and Fauna (1973), the decision of the International Whaling Commission to ban commercial whaling (1984), and the Montreal Protocol on Ozone Depleting Chemicals (1987).

The 1992 Rio “Earth Summit” marks a shift in global regulatory leadership from the United States to the EU. While every major environmental agreement supported by the United States has been ratified by the member states of the EU and/or the EU itself, since the early 1990s the United States has not ratified twelve important international environmental agreements ratified by the EU and/or its member states.¹⁴ These include the 1992 Convention on Biological Diversity, the 1997 Kyoto Protocol on climate change, the 2000 Cartagena Protocol on Biosafety, and the 2001 Stockholm Convention on Persistent Organic Pollutants.¹⁵

¹²For a complete list of international environmental agreements since 1959 and their legal status in both the United States and Europe, see Miranda Schreurs, Henrik Selin, and Stacy VanDeveer, “Expanding Transatlantic Relations: Implications for Policy and Energy Policies,” in *Transatlantic Environment and Energy Politics: Comparative and International Perspective*, ed. Schreurs, Selin, and VanDeveer (Burlington, VT: Ashgate, 2009), 8–9.

¹³Donkers, “US Changed Course, and the EU Surged Forward,” 49.

¹⁴Schreurs, Selin, and VanDeveer, “Expanding Transatlantic Relations,” 8, 9.

¹⁵Robert Falkner, “American Hegemony and the Global Environment,” *International Studies Review* 7 (2005): 585.