Exploring National Cultures of Risk Governance

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Last year, six Italian seismologists were found guilty of manslaughter after failing to warn the population in L’Aquila of a disastrous earthquake. A few months later, a French psychologist was found guilty of manslaughter because her patient murdered an elderly man. In each case, the supporters of the convicted expressed outrage with the legal system’s treatment of professionals faced with risk. More generally, both cases were a reminder of the varied ways in which different governance cultures can respond to adverse events, and how differences in how risk is governed and about national styles of governance more generally.

The UK has been one of the foremost proselytisers of risk-based approaches to governance more generally. From occupational health and safety to flood management, risk has emerged in the UK as an important means by which decision-makers have sought to lessen the threat of adverse events through their doorsteps for the limits of what governance can actually achieve. The reason is that the languages of risk-based approaches make it possible to construct adverse events as something other than a failure of governance. After all, what is an acceptable risk other than a euphemistic boundary between an acceptable adverse outcome and an unacceptable failure?

Here are just a few examples that nicely illustrate how risk ideas have changed the terms and purpose of governance in the UK. Take the Department for Environment, Food and Rural Affairs’ (DEFRA) “seeking space for water.” It captures a conceptual shift from traditional ideas of “water detention” to those of “risk management,” in which government has explicitly sought to define the limits of its food management responsibilities. Similarly, as the security services have become increasingly accountable for their actions, so terrorism has increasingly been discussed in terms of risk management rather than national security. Likewise, in what is perhaps the most controversial area of policy implementation, probation officers have been explicitly directing their actions in terms of managing criminal risk rather than “securing public safety” when violent criminals are released from prison.

One incident that illustrates this point occurred during the 2003 HHS flu pandemic, when the French Minister of Health decided to vaccinate everyone rather than the third of the population needed to provide herd immunity. The reason for this apparently non-risk-based approach was that she had no legal grounds to select which third should get preferential treatment. Likewise, risk-based targeting of terrorist activity on groups in society deemed to be the most vulnerable to extremist ideas, cannot be operationalised easily in France since the State formally refuses to differentiate between its citizens.

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Risk-based approaches face altogether different constraints in Germany. What matters here is Germany’s legalistic policy culture, which struggles with risk concepts. According to Habor (2009), the problem is historical. 19th-century liberal conceptions of the Prussian state regarded the protection of people from “danger” to life, freedom and property as one of the few legitimate grounds for State interference in the lives of individuals. Over the past few decades, this doctrine of Schutzpflicht, the duty of the State to protect the public from dangers, has come to form the constitutional basis for legislation across policy domains, from nuclear safety to rented accommodation. While Schutzpflicht’s spectre remains the way in which risk has colonised Anglo-Saxon governance discourse, the key difference is that the German doctrine is a binary concept – if there is no danger then there are no grounds for state action. While the courts tolerate very small “residual” risks, they have no mechanism for making more nuanced trade-offs between risk, cost and benefit.

A couple of examples illustrate the German situation. When the anti-nuclear movement challenged the authorities over the safety of nuclear reactors throughout the 1970s–80s, the German courts found it impossible to agree to a definition of acceptable risk and consequently issued a series of inconsistent judgments. That is not to say that acceptable probabilities are never set in Germany. In flood protection, the State is committed to providing protection against all floods that occur once or more in 100 years, either by engineering defences or by prohibiting building in flood plains. As Krieger (2013) points out, however, the State’s “duty to protect” all citizens makes policy bind to impacts such as demanding that sparsely populated rural areas will be protected to the same level as densely populated urban areas.

Of course, France and Germany still face the problem of how to manage the inevitable trade-offs between risk, cost and benefit. But initial research from the HowSAFE project suggests that they deal with those trade-offs in different ways. In France, existing discussion of such questions is obscured by a traditionally secretive style of governance that is centrally concerned with upholding the authority and reputation of the Republic. One consequence is an explicit emphasis on reacting to weak signals of impending crises by setting up early warning systems, contingency plans and dedicated crisis units across Ministries that are intended to catch and respond to the first sign of State failure.

In Germany, by contrast, where the courts must openly adjudicate infranchisable conflicts between constitutionally enshrined rights to economic activity and health protection, solutions have been sought through more opaque corporatist and expert arrangements that effectively side step the demands of Germany’s Reichstacht. Indeed, the emergence of the Precautionary Principle or von Misesprinzip (as a central idea of German environmental policy in the 1970s), may have been less of a response to the scientific uncertainty as is commonly understood, than a response to fundamental legal uncertainty over how much harm is needed to pose a procedural “clear and present danger”.

Such fundamental constraints on the application of risk ideas suggest that risk is not an independent variable upon which the accountability and rationality of governance depends. Rather, the emergence of risk-based logics appears to be dependent on the norms and accountability structures of governance across different national polities. Indeed, study of the factors that delay and constrain the emergence of risk-based governance practices has the potential to reveal important differences in the way different States think about their risk and purpose in preventing adverse governance outcomes. Such insights could be fruitfully used for thinking critically not just about the relationship between risk and governance, but also about the factors that shape national governance styles.

References


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