

EXPLORING NATIONAL CULTURES OF RISK GOVERNANCE

Henry Rothstein invites us to think critically about international differences in how risk is governed and about national styles of governance more generally.

Last year, six Italian seismologists were found guilty of manslaughter for failing to warn the population in L'Aquila of a disastrous earthquake. Just 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 and uncertainty. More generally, both cases were a reminder of the varied ways in which different governance cultures can respond to adverse events, and were further grist to the mill for a long-standing governance "movement" whose mission is to make governance more rational by making it "risk-based".

The central idea of risk-based governance is that we cannot, and should not want to live in a risk-free world. The movement asserts that pursuing freedom from risk is disproportionately difficult or costly to achieve, distracts attention from the most serious problems and deters entrepreneurialism. Instead, in an adaption of Paracelsus' maxim – the *likely* dose makes the poison – risk-based governance advocates argue that it is better to consider the *probability* as well as the *impact* of potential adverse outcomes to focus efforts on governing those risks deemed unacceptable. As such, risk-based approaches promise more efficient, rational and universally applicable means of organising and accounting for governance activities.

What is at stake here is a move away from using the term "risk" to denote "bads", towards a more normative idea of risk as a tool through which States negotiate their mandate. From this perspective, governance is less about ensuring "safety" or "security" from "bads", than about seeking "optimal" levels of risk. The use of probability-impact frameworks for structuring governance problems has gained wide currency, especially in Anglo-Saxon countries where these frameworks have colonised decision-making across many policy domains. Likewise, international organisations, such as the OECD and WTO have also advocated and mandated risk-based approaches as global instruments of better regulation and free trade.

The UK has been one of the foremost proselytisers of risk-based approaches to governance. A key driver

has been the way in which heightened accountability demands in the form of good governance doctrines, New Public Management reforms, as well as the unforgiving 24/7 media cycle have increasingly put governance actors under pressure to account for outcomes. From occupational health and safety to financial regulation, risk has emerged in the UK as an important means by which decision-makers have sought to lessen the blame that gets laid at their doorstep for the limits of what governance can actually achieve. The reason is that the language of risk makes it possible to conceive of 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 tone and purpose of governance in the UK. Take the Department for Environment, Food and Rural Affairs' (DEFRA) policy catch-phrase, "making space for water". It captures a conceptual shift from traditional ideas of engineered "flood defence" to those of "flood risk management", in which government has explicitly sought to define the limits of its flood 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 end of policy implementation, probation officers have notably defended their actions in terms of "managing risk" rather than "securing public safety" when violent criminals have committed offences upon release from prison.

The risk-based governance movement claims that other countries could accrue tremendous benefits if they too used probability-impact frameworks in governing problems. The initial findings from a new international research project (HowSAFE: How States Account for Failure in Europe), however, suggests that risk ideas may have only limited 'fit' across country contexts (Rothstein et al. 2012). These findings suggest that risk-based approaches can conflict with embedded traditions and norms of governance



in different national polities because risk embodies particular understandings about how the State should define and account for adverse outcomes.

Our examination of France and Germany, for example, suggests that risk ideas have had difficulty in penetrating their governance systems, despite those countries being subject to similar fiscal and efficiency pressures that are found in the UK. In France, one might expect its "technocratic" culture to be sympathetic to risk ideas. Nevertheless, the idea of tolerating risk is constrained in France by a set of deeply entrenched cultural and constitutional concerns. For example, the culturally established expectation that the French state will provide "security" for its citizens is antithetical to the idea of "managed risk". Likewise, its Republican constitutional guarantee of equality works against the implicit expectation of risk-based approaches that some people may have to suffer for the collective good.

One incident that illustrates this point occurred during the 2009 H1N1-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 anti-terrorist activities 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.

What is an acceptable risk other than a euphemistic boundary between an acceptable adverse outcome and an unacceptable failure?

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 Huber (2009), the problem is historical: 19th-century liberal conceptions of the Prussian state regarded the protection of people from "dangers" 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 spread mirrors 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 blind 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, ex ante 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 ex post 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 intractable 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 Rechtsstaat. Indeed, the emergence of the Precautionary Principle or *Vorsorgeprinzip* as a central idea of German environmental policy in the 1970s, may have been less of a response to scientific uncertainty as is commonly understood, than a response to fundamental legal uncertainty over how much harm is needed to pose a proverbial "clear and present danger".

Such fundamental constraints on the application of risk ideas suggest that risk is not an independent variable on 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 drive and constrain the emergence of risk-based governance practices has the potential to reveal important differences in the way different States think about their role and purpose in preventing adverse governance outcomes. This research also offers a new direction 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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