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Precaution, proportionality and proper commitments

Commentary on [Birch](#) on *Precautionary Principle*

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Abstract: Birch's extension of the precautionary principle (PP) is plausible but raises issues about how proportionality ought to be incorporated into law. Following Steel (2013), I suggest that the PP is best considered as a meta-norm, and as such any resulting laws are likely to lack the fineness of grain that we would hope to achieve. To fill the gap, I suggest a parallel with the ethics of studying looted artifacts.

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1. Precaution and Proportion. The precautionary principle (PP) is most plausible when the harms contemplated involve irreversible damage. Nuclear war, catastrophic climate change, or species extinction are not merely very bad things: they can't be wound back even at great cost. That's why it seems right to forgo goods, even widely acknowledged goods, in order to avoid a reasonable chance that they occur.

Birch's (2017) extension of the precautionary principle to sentience strikes me as eminently reasonable. Yet it falls into a more ambiguous set of applications of PP which don't involve a single set of irreversible harms. On one side, there is harm to sentient animals via fishing, scientific research, and so on. On the other side, there are harms to another set of sentient animals: the humans who might die from cancer or be denied delicious canned tuna.

Unlike cases where some fungible goods trade off against irreversible harms, PP doesn't give a clear answer to these dilemmas. Insofar as there are irreversible harms, they are particularized and present on both sides. There is a chance that decapods are sentient (A good chance, in my opinion. See Elwood 2012; Barron and Klein 2016, Klein and Barron 2016). The PP says: avoid using them for research. Yet perhaps decapod research could help cure cancer, and thereby prevent untold harm to sentient humans. (A weak *could* is all that the PP demands.) The PP says full steam ahead.

If the PP is to get purchase for tradeoffs like these, it requires some reformulation in terms of *proportionality* (Steel 2013). Cancer research seems like it is worth it. Maybe cosmetics testing isn't. Indeed, Birch's formulation is (sensibly) sensitive to this tradeoff, allowing considerations of cost-effectiveness. Yet how should proportionality enter into legislation shaped by the PP?

2. Precaution and Legal Grain. Following Steel (2013), I'll assume that PP is best understood as a meta-rule that guides policymaking, rather than a principle directly enshrined into law. On this reading, PP demands laws that reflect tradeoffs we could endorse as broadly proportionate. That is, we ought to make proportionate legislation, rather than trying to legislate proportionality. That's good, because the latter is a tall order. So perhaps we might decide that scientific research with fish is OK (and even preferable to using primates) while ruling out bottom-trawling.

That is fine as far as it goes. I still worry. Legislation lacks a certain fineness of grain. On the one hand, it seems inadvisable to have legislators start picking and choosing the type of scientific research that they would like to promote. On the other hand, broad legislation is not a cure-all. Individual scientific judgment about proportionality often can't be trusted. Terrible *and* worthless research has been done in the name of science, even on humans (Beecher 1966). Hence the need for legislation. Assuming that PP demands that we not rule out potentially valuable research, we're likely to let in a lot of bad as well.

If PP is a meta-rule, however, then legislation need not be the only way to attain proportionality. Individuals can also adopt more flexible rules within a broader legislative framework. With that in mind, I offer a deliberately strong, but, I hope, thought-provoking, parallel:

3. Scholarly Ethics. There is a longstanding ethical debate about the study of looted artifacts (Goldin 2013; Brodie 2016). Looting often shunts artifacts to the private market. Even when looted artifacts become available for study, the loss of context seriously hampers scholarship. Worse, scholarly work on looted artifacts often greatly increases their value, both by making them more widely known and by attempting to reestablish the pedigree that looting destroys.

One response has been that scholars have an *ethical* duty to avoid engaging with looted artifacts. (This commitment is variable: as I understand it; it is more popular among Egyptologists than sinologists.) The idea that scholars should deliberately avoid studying looted artifacts, or avoid citing work that does, is often resisted. Why give up on useful information, no matter its source, especially when good information is scarce? Yet as a *policy* it arguably makes for a better scholarly environment in the long run.

Suppose we encouraged a similar attitude when it comes to experimentation on sentient animals: adopting a policy whereby work that we thought was disproportionately harmful, or otherwise ethically problematic, was simply *ignored*: that is, it wasn't cited or otherwise used as the basis of inference. (Other engagement, including speaking out against disproportionate research, would be fine of course.)

Individual scientists, as we've noted, vary in their judgment about proportionality. But on the aggregate, there would be strong incentive towards proportionality — which would in turn satisfy PP.

There are disanalogies between animals and artifacts, but fewer than you'd think. Industry provides a private market for much research; and scientific engagement increases the chance of uptake by industry. As the primary currency of science is citation and prestige rather than money *per se*, withholding citation is an effective sanction. Finally, very unethical research often falls in the category of ecologically invalid research, which is itself problematic.

This is all very quick, of course. There is obviously a much deeper issue to be sorted out about whether and when ethical values ought to override scientific ones. Yet a commitment to

the precautionary principle need not be implemented only, or even primarily, in legislative action. It may oblige individual commitments as well.

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ANIMAL CONSCIOUSNESS

On **November 17-18, 2017**, the NYU Center for Mind, Brain and Consciousness, the [NYU Center for Bioethics](#), and NYU Animal Studies will host a conference on [Animal Consciousness](#).

This conference will bring together philosophers and scientists to discuss questions such as: *Are invertebrates conscious? Do fish feel pain? Are non-human mammals self-conscious? How did consciousness evolve? How does research on animal consciousness affect the ethical treatment of animals? What is the impact of issues about animal consciousness on theories of consciousness and vice versa? What are the best methods for assessing consciousness in non-human animals?*

Speakers and panelists include:

[Colin Allen](#) (University of Pittsburgh, Department of History & Philosophy of Science), [Andrew Barron](#) (Macquarie, Cognitive Neuroethology), [Victoria Braithwaite](#) (Penn State, Biology), [Peter Carruthers](#) (Maryland, Philosophy), [Marian Dawkins](#) (Oxford, Zoology), [Dan Dennett](#) (Tufts, Philosophy), [David Edelman](#) (San Diego, Neuroscience), [Todd Feinberg](#) (Mt. Sinai, Neurology), [Peter Godfrey-Smith](#) (Sydney, Philosophy), [Lori Gruen](#) (Wesleyan, Philosophy), [Brian Hare](#) (Duke, Evolutionary Anthropology), [Stevan Harnad](#) (Montreal, Cognitive Science), [Eva Jablonka](#) (Tel Aviv, Cohn Institute), [Björn Merker](#) (Neuroscience), [Diana Reiss](#) (Hunter, Psychology), [Peter Singer](#) (Princeton, Philosophy), [Michael Tye](#) (Texas, Philosophy)



Organizers: Ned Block, David Chalmers, Dale Jamieson, S. Matthew Liao.

The conference will run from 9am on Friday November 17 to 6pm on Saturday November 18 at the NYU Cantor Film Center (36 E 8th St).

Friday sessions will include “Invertebrates and the evolution of consciousness”, “Do fish feel pain?”, and “Animal consciousness and ethics”.

Saturday sessions will include “Animal self-consciousness”, “Animal consciousness and theories of consciousness”, and a panel discussion.

A detailed schedule will be circulated closer to the conference date.

Registration is free but required.

Register [here](#).

See also [the conference website](#).