

Precaution, or Prudence for Sustainability? Re-assessing the Jurisprudential Foundation of the Precautionary Principle

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The precautionary principle was the answer proposed by policy and law makers to the perceived environmental risks posed by the modern technological world we live in. Since the early 1980s, it has gained in popularity, and has been enshrined in countless environmental declarations, conventions, legislations, judicial decisions, and other types of legal and policy documents. In the year 2013, there is still much debate about its status in international environmental law, but it is generally accepted that it is at least a very influential principle of environmental governance, if not law.

Yet, in this background of near unanimous agreement about the importance of the role of the precautionary principle, one dissonant voice was heard in December 2011. Cardinal George Pell (Cardinal of Sydney, Australia) declared: "There is no precautionary principle, only the criteria for assessing what actions are prudent." There seems to be an apparent contradiction in Cardinal Pell's statement: often the precautionary principle is described inclusively of the principle of prudence, not in opposition to it. For example the UN Millennium Declaration states that "prudence must be shown in the management of living species and natural resources, in accordance with the precepts of sustainable development". At first sight, a precautionary attitude in environmental protection appears based on prudence, if not synonymous with it. Both prudence and precaution are principles that are meant to shape human action, and both are generally understood to guide us to achieve sustainable development, and to avoid environmental degradation.

A few scholars have already identified the links between prudence and precaution, particularly in the light of Jonas' principle of responsibility. Marcos has argued that Jonas provided an update of Aristotle's virtue of prudence, which was necessary in the technological age. Nascimento also identifies the similarities as highly relevant in an age of globalised environmental problems. Whiteside has written extensively on this theme too. However what is argued here is that the real link between precaution and prudence is quite different from what these scholars have explained.

"Why shouldn't we quarrel about a word? What is the good of words if they aren't important enough to quarrel over?". This famous quote by Chesterton prompted the investigation leading to this paper. Short of quarrelling, at least clarifying seems necessary. Let us then examine closely the jurisprudential justification for the precautionary principle, and the meaning of the old Aristotelian virtue of prudence to

determine whether prudence and the precautionary principle are not in fact two very different principles.

To help this enquiry, two references are used. On the one hand, Hans Jonas' *The Imperative of Responsibility* describes a new philosophy of human action for the modern technological age. Published in German in 1979, this book was translated into English in 1983. Jonas indicates that the finished product, the book, is the result of two decades of refinement of his theory (he presented these theories as he was devising them in the form of lectures since 1959). Jonas perceived that 20th century technological possibilities were immense but also dangerous with unpredictable consequences. He attempted to devise a way of controlling human action when this action carries, he argues, unforeseeable consequences. There is strong support to take Jonas' theory as the rationale for the precautionary principle, as it will be explained in this paper.

The second reference that will be used is Marcel De Corte's *De La Prudence, La Plus Humaine des Vertus*. This book is a classical account of the virtue of prudence according to Aristotle and St Thomas Aquinas. It does not propose a new theory, or even claim to be applicable to the area of environmental protection. However, it constitutes a reliable explanation of what prudence is about in philosophical terms. Like Jonas, De Corte explains that the hallmark of our modern society is the realm of technology. Both Jonas and De Corte identify the loss of belief in universal values as the root cause of the impossibility that man has in controlling this technology. But De Corte explains more precisely that in philosophical terms, man has lost the true meaning of the word prudence as the basis for politics to direct the organisation and life of society (*polis*). Jonas' precaution and Aristotle's prudence therefore have the same object: to order human actions in a context of technological advancement in society. The purpose of this paper is to describe precisely the contours of both principles and to understand their differences. Jonas, and after him the proponents of the precautionary principle, explicitly directed their attention to environmental protection. Aristotle and Aquinas did not, but they envisaged the principle of prudence as capable of ordering every human particular and global action. In this sense, prudence is relevant to environmental law, to underpin the regulation of all aspects of the organisation of men and women in society, including the relationship between man and the natural environment.

Whether quarrel or clarification, this paper is about the words "precaution" and "prudence". It re-assesses their philosophical foundations in a bid to strengthen the jurisprudential foundations of the precautionary principle.