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Precautionary Principle and the Problem of Counterproductivity

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In their target article, Kramer and colleagues (2017) discuss the application of the precautionary principle in context of blood safety policymaking. Their main claim is that applying the precautionary principle to blood safety justifiably allows for some transfusion risk tolerance by virtue of having high opportunity costs. They support their claim by tracing three general constraints (or meta-principles) that any version, interpretation, or application of the precautionary principle should observe. According to the authors, maintaining these constraints, namely, consistency, counterproductivity, and proportionality, places reasonable limits on precautionary action taken, and thereby determines when and which risks should be tolerated.

While we agree with most of the claims and arguments put forward by the authors, in this commentary, we aim to shed light on the potential shortcomings of their account. Specifically, we focus on the authors' treatment of the second constraint, that is, "avoiding counterproductivity," which they describe as "rejecting precautions that cause more harm than they prevent" (32). We argue that their detailed treatment of this constraint fails to acknowledge the important distinction between counterproductivity of the application of the precautionary principle and counterproductivity of the principle itself. In what follows, we discuss how the authors have neglected this distinction.

The inclusion of the precautionary principle in blood safety policymaking is not without controversy for several reasons. Some claim that certain versions of the principle tend to be unrealistically intolerant of risks, resulting in making unreasonable sacrifices such as lifetime MSM (male donors who have had sex with other men) deferrals, in the name of safety. Others claim that the principle is too ill-defined to be of any use in policy-making, and therefore, should be discarded. In light of these concerns, the authors begin with the premise that a realistic approach for applying the precautionary principle is to allow multiple or varying formulations of the principle across different contexts or even within single context. In the case of blood safety policymaking, this would mean adopting a customized version of the principle that is sensitive to the characteristics and magnitude of risks involved. This way, the principle can recommend particular precautionary measures in response to risks as long as the principle

respects the constraints of consistency, counterproductivity, and proportionality. These constraints forbid the precautionary principle from prescribing precautions that are (i) sufficiently hazardous to be forbidden by the principle itself; (ii) no more harmful than the hazards averted; or (iii) no more harmful than alternative adequate precautions, respectively.

Let us see how the second constraint (ii) is explained by the authors. In their discussion, the authors address the constraint of counterproductivity as an objection against the precautionary principle, which goes as follows: "the precautionary principle is *counterproductive*, i.e. that *following* it is more harmful than not following it" (37, our emphasis). This objection is supposedly aimed as a moral charge against the principle by pointing out to the "undesirable consequences of applying the precautionary principle" (37). This leads the authors to question "how can following the precautionary principle create more harm that it prevents?" (37). Is this supposed sense in which following the precautionary principle is counterproductive because of undesirable consequences similar to the sense in which the principle must observe the constraint of "avoiding counterproductivity" by "recommending safety measures that are no more harmful than the hazards they avert" (33)? Or can a case be made for a philosophically significant distinction between the two?

For the sake of the argument, let us accept the objection against the precautionary principle that following it has, or can sometimes have, harmful consequences that make the principle counterproductive. Our contention is that given how the constraint of counterproductivity is formulated by the authors, it is possible to conceive of cases where the constraint applies not only because the principle "recommends safety measures that are more harmful than the hazards they avert" (33). That is, the constraint also applies when the precautionary principle is inherently inconsistent in its recommendations and consequently prescribes contradictory safety measures. As this may lead to decisional paralysis in some cases, following the precautionary principle then has undesirable consequences, and thereby, it is counterproductive. To illustrate this using one of the examples mentioned by the authors, consider the case of applying the precautionary principle for prescribing a ban on DDT because of its environmental

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impacts and health hazards, while simultaneously encouraging the use of DDT because of its benefit of reducing incidences of millions of deaths associated with malaria. Because of its failure to give consistent recommendation and arriving at a decisional paralysis that can lead to undesirable consequences (such as not reaching a definite decision in time, which may result in more risks), following the precautionary principle is counterproductive; in contrast, adopting some other decision-making approach such as cost-benefit analysis in this particular example, as proposed by Sunstein (2005), may have better consequences that do not lead to counterproductive outcomes. Therefore, in this case, observing the constraint of “avoiding counterproductivity” requires tackling the problem of inconsistency (such as by taking different measures as suggested by the authors). This seems different from the authors’ formulation of a general constraint that avoiding counterproductivity “requires rejecting precautions that cause more harm than they prevent” (32).

Along similar lines, another example in which the precautionary principle can be deemed counterproductive might be in the case of health care decision making where physicians and other clinicians are required to act under the obligation of certain moral principles. For example, in a medical situation, application of some version of precautionary principle could result in a decision of not to act, such as recommending clinicians not to administer chemotherapy for terminal cancer patients as this treatment might lead to more harm, such as loss in quality of life or serious toxic side effects. As typically, any application of the principle has the tendency to neglect the implication of other basic medical principles and duties, such as physicians’ duty to act, respect for autonomy, and just distribution of scarce resources (ter Meulen 2005), following the precautionary principle can be more harmful than not following it (and thereby, counterproductive). This is especially true for cases when other ethical principles have some moral significance in either directly or indirectly influencing practical decisions (Espinoza and Peterson 2012). In this case, observing the constraint of avoiding counterproductivity requires tackling the problem of balancing conflicting recommendations yielded by different principles. Therefore, yet again, this seems different from the authors’ formulation of a general constraint of avoiding counterproductivity.

As the word limit prevents us from explicating our point through more examples, we simply point out that since there can be several other reasons for showing that “precautionary principle is counterproductive, that is,

following it is more harmful that not *following* it,” it seems better to think about the constraint of counterproductivity applied in these cases in what might be called the “broad” sense. The constraint of counterproductivity in this “broad” sense can be met when *following* the principle leads to inconsistent and/or disproportionate safety precautions, or when it compromises consideration of other moral principles and so on, thereby leading to undesirable consequences. On the other hand, the precautionary principle is counterproductive, we might also say, in a “narrow” sense, only when “the precautionary measures it prescribes would lead to more risk-taking rather than less” (Sandin 2007). This narrow sense is what we refer to the counterproductivity of the principle *itself*.

The result of our discussion on enforcing such a distinction is only meant to be suggested as a positive reform for the discussion on the problem of counterproductivity in the context of the precautionary principle. In accordance with this distinction, we allow for the authors’ formulation of the general constraint of “avoiding counterproductivity” (which we have labeled as “narrow”) to be included in our understanding of “broad” sense of counterproductivity of following the principle. As we have explained it, the constraint of counterproductivity can be used as a heuristic for justifying precautionary action, given any version of the precautionary principle. It allows practitioners to identify reasonable limits of precaution in light of counterproductive outcomes due to inconsistency, disproportionality, conflicting moral principles, and so on. Moreover, counterproductivity can then hopefully successfully be avoided or tackled by improvising the strategies as suggested by the authors. ■

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