

**Tony Blair**

## **Speech on Risk and the State**

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In eight years as Prime Minister, I don't know that you accumulate much wisdom, but you certainly accumulate experience. I want to talk today about a particular problem my experience has led me to identify. It is an issue that seems more of a talking point than an issue of policy; that has many different facets to it; that is little discussed in the way I'm about to discuss it; but which, on the basis of my experience, if it goes wrong, has the capacity to do serious damage to our country.

It is what I call a sensible debate about risk in public policy making. In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to run as a normal part of life. This is putting pressure on policy-making, not just in Government but in regulatory bodies, on local government, public services, in Europe and across parts of the private sector - to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora of rules, guidelines, responses to 'scandals' of one nature or another that ends up having utterly perverse consequences.

First of all, let my argument itself not lose its sense of balance.

Health and safety legislation is necessary to protect people at work. Food standards are necessary to protect people from harm. Protections are necessary for children from the danger of predatory adults. These are things against which, historically, the state has underwritten the risk. The pooling of such risks is still the fundamental basis of our case for publicly funded public services.

Workplace fatalities have fallen by around two-thirds since the 1970s. Higher environmental standards have helped deliver cleaner air and water. Since 1990 sulphur dioxide emissions have fallen by 75% and water pollution fell by 65% in the 5 years to 2001.

And not every new regulation has the detrimental consequences that are claimed for it. The National Minimum Wage did not lead to millions of job losses, as some had predicted but helped over 1 million low paid workers. In fact, Britain compares favourably with its competitors on regulation. As the OECD and the IMF have recently said, the UK is very lightly regulated by international standards.

But something is seriously awry when teachers feel unable to take children on school trips, for fear of being sued; when the Financial Services Authority that was established to provide clear guidelines and rules for the financial services sector and to protect the consumer against the fraudulent, is seen as hugely inhibiting of efficient business by perfectly respectable companies that have never defrauded anyone; when pensions

protection inflates dramatically the cost of selling pensions to middle-income people; where health and safety rules across a range of areas is taken to extremes. Europe has done itself more damage through what is perceived as unnecessary interference than all the pamphlets by Eurosceptics could ever do.

The development of new science adds a different dimension to the problem.

'Science' is often taken to be a synonym for 'certainty'. So, when a scientist admits to uncertainty it can often be taken as an admission that there is probably a problem. In fact, in the scientific world ambiguity, uncertainty, the wisdom that comes with failing and changing your mind, are all essential to progress. Often there is no obvious right or wrong answer. The most likely outcome changes all the time, in response to new evidence.

This is a major challenge both to politicians and the media. The structure of political combat tends to invite certainty, or at least a show of certainty, when that idiom is entirely inappropriate for discussing fine-grained risks and the balance of probability. There are trade-offs, dilemmas, balances between costs and benefits in every decision. Unless we find a viable way of discussing these risks a mature national conversation on important policy questions like GM science will be impossible.

So, for example, one piece of research into a supposed link between autism and the MMR single jab, starts a scare that, despite the vast weight of evidence to the contrary, makes people believe a method of vaccination used the world over, is unsafe. The result is an increase in risk to our children's health under the very guise of limiting that risk.

And before we all just complain about the regulators, the public servants or indeed the Government, let us just pause for a moment in sympathy. A civil servant or regulator who fails to regulate a risk that materialises will be castigated. How many are rewarded when they refuse to regulate and take the risk?

Bodies set up to guard the public interest have one-way pressures. It is in their interest never to be accused of having missed a problem. So, it is a one-sided bet. They will always err on the side of caution.

It seems to be part of the DNA of regulatory bodies that they acquire their own interests and begin to grow. Max Weber famously noted the tendency of bureaucracies to tidiness.

Today, a lot of this is reinforced by what arises from Europe. About 50% of regulations with a significant impact on business now emanate from the EU. And it often seems to want to regulate too heavily without sufficient cause. The EU vitamins directive is a good example. There may be a case for ensuring the public are properly informed and that some rules and order are brought to what is today a major industry. But the way it has been done is wholly out of proportion to the risks run.

Then there are the legal claims. People are entitled to sue. And often the most outlandish cases that are brought are dismissed. But their headlines live on, create a myth and the myth is acted upon.

Here in Britain, whatever the actual state of the so-called compensation culture, the perception of it and the effects of that perception are real. In England in 2003 there were between 7 and 10 million pupil visits on school trips. Sadly, there was one fatality. But only one.

Between 2000 and 2005 the overall number of accident claims fell by 5.3%. Over the same period, accident claims against local authorities, schools, volunteering organisations and other public sector bodies fell by 7.5%. In 2000, the cost of litigation in the UK as a percentage of GDP was less than a third of that in the US. Tort costs in the UK in 2000 were 0.6% of GDP. This is the lowest of any developed nation except Denmark.

But the facts too often do not prevail. You may recall the stories of the girl who sued the Girl Guides Association because she burnt her leg on a sausage or the man who was injured when he failed to apply the brake on a toboggan run in an amusement park.

Neither of these cases produced big compensation awards in the courts. But this is not the impression that is left. The headlines have an after-life. They leave behind the sense that, not only are such cases being brought all the time, but that huge sums of money are being wasted.

This impression, in turn, has genuine effects. Public bodies, in fear of litigation, act in highly risk-averse and peculiar ways. We have had a local authority removing hanging baskets for fear that they might fall on someone's head, even though no such accident had occurred in the 18 years they had been hanging there. A village in the Cotswolds was required to pull up a seesaw because it was judged a danger under an EU Directive on Playground Equipment for Outside Use. This was despite the fact that no accidents had occurred on it.

And in case we think we alone are subject to this, countless examples can be found even in the most 'open market' economies. The response of the US Congress to the Enron and Worldcom scandals shows what governments can do wrong. In 2002 the Sarbanes-Oxley Act was, in the words of *The Economist*, 'designed in a panic and rushed through in a blinding fervour of moral indignation'.

The point about Sarbanes-Oxley was not that the underlying problems it was addressing were not real. It was quite right to put some distance between a company's auditors and its managers, between whom a severe conflict of interest had arisen. The problem was that the Act was not limited to the remedy of that specific defect.

Inspired by the need for Congress to be seen to do something dramatic, Sarbanes-Oxley has imposed the threat of criminal penalties on managers and substantial new costs on American business: an average of \$2.4m extra for auditing for each company. The burden is especially heavy on smaller companies, the real risk-takers in the market. Firms with a revenue of less than \$100m per annum now pay out more than 2.5% of turnover in compliance costs. Cumulatively the costs run into billions of dollars.

There is a delicious irony in this which illustrates the unintended consequences of regulation. Sarbanes-Oxley has provided a bonanza for accountants and auditors, the very professions thought to be at fault in the original scandals.

Behind all of this, the big examples and the small, there is something new here. The pace of change in the world can be bewildering and breeds insecurity. Recent advances in science - from the human genome project to the work on cloning - seem to come along at a rate and on a scale unknown to previous generations. Business is more globally competitive than it has ever been. With these new opportunities come new risks, new dilemmas.

A natural but wrong response is to retreat in the face of this change. To regulate to eliminate risk. To restrict rather than enable. But we pay a price if we react like this. We lose out in business to India and China, who are prepared to accept the risks. We are unable to exploit our scientific discoveries. We seek protection from risks that are exaggerated or even imagined. We allow the conspiracy theorists to dictate the argument without a basis in fact.

Likewise in more mundane areas of public service the idea that it is the job of Government to eliminate risk can lead to the elimination of common sense. In her book *The Moral State We're In*, Julia Neuberger claims that, if an old person falls on the floor, the regulations currently decree that the care worker cannot help them to their feet. They have to go and find some hoists before they can help. No doubt, most care-workers help anyway but if basic human acts of care like this are being prevented by intrusive regulation, it is absurd. We cannot guarantee a risk-free life.

So what to do? First, recognise the problem. Some public discussion of it helps engender a more sensible debate. Instead of the 'something must be done' cry that goes up every time there is a problem or a 'scandal', we make it clear we will reflect first and regulate only after reflection. Second, start to roll back the tide of regulation in specific areas: here, in Europe, in respect of the regulatory bodies themselves. Third, replace the compensation culture with a common sense culture.

Fourth, start a proper, serious debate with the media about how some of these issues are addressed and how the public is better informed.

Here are the practical steps we will take as a Government.

Better regulation will be a central theme of the UK Presidency of the EU later this year. The Commission has produced an action plan on better regulation which includes commitments to impact assessments for all new measures in 2005. These assessments enable us to have a proper debate about the costs and benefits of proposed measures. For example, we have so far reduced the costs of the proposed Chemicals Directive by £6bn and we want to go further. We will also continue to resist attempts to remove the opt-out from the Working Time Directive. We are taking this work forward in the context of the Presidency initiative with Holland, Ireland, Luxembourg, Austria and Finland to deliver better regulation in Europe.

When we assume the Presidency of the EU next month, we want to go further. Our priorities for the Presidency will include:

- Working to ensure that comprehensive impact assessments are undertaken for all new EU legislation

- Further proposals for the simplification of EU regulations
- Improving the consultation process in Europe to ensure there is an effective dialogue with business and other interested parties. This will be the theme of a major conference we are hosting in Edinburgh in September.
- Consulting on applying a risk-based approach to the UK's implementation of the financial services action plan.

Domestically, we are tackling gold-plating and over-zealous enforcement. We recently published revised guidelines for the transposition of European legislation into UK law to ensure that the UK implements EU laws in the clearest and least burdensome way possible. This guidance establishes the principle that transposed UK laws should mirror, as closely as possible, the wording of the original EU directive. It also puts in place more checks and balances against over-implementation.

We are also committed to putting into effect the recent Hampton and Arculus reviews of regulation. As the Chancellor of the Exchequer announced this week, when he launched the Better Regulation Action Plan, risk is the governing concept in all the changes we will introduce to reduce regulatory burdens on business. We will implement the reforms recommended by the Hampton Review, such as fewer regulatory bodies and risk-based enforcement by local authorities.

In July 2005 we will begin consultation on the Better Regulation Bill which will contain statutory requirements for regulators to use a rigorous risk-based approach and powers to reform penalties according to risk-based principles.

We will also implement the recommendations made by the Better Regulation Task Force to reduce administrative burdens and toughen up the scrutiny of new measures by using the principle of "one in-one out". There is a clue in the name - this principle means simply that we need to look for a regulation to be removed when new measures are introduced.

We are also acting to ensure that public sector entrepreneurs are not discouraged by unnecessary interference. Inspection has been an important part of the way we have improved standards in public services but inspection needs to evolve to reflect that success. Crucially, modern inspection, as David Bell of OFSTED has been arguing, needs to be proportionate to the risks faced. We announced in the Budget that we will create four new inspectorates to replace the current eleven. The new inspectorates will be actively charged with ensuring those doing well get a light touch approach.

The new Compensation Bill will do two things. It will limit the work of claims management companies or "claims farmers". Claims farmers capture claims and typically sell them on to solicitors, sometimes having already signed the consumer up for a package of insurance. Many claims farmers indulge in high-pressure selling and aggressive marketing including approaching vulnerable people in public places, such as hospitals. Many consumers have been misled into making claims where their cases are weak.

The Bill will also clarify the existing common law on negligence to make clear that there is no liability in negligence for untoward incidents that could not be avoided by taking reasonable care or exercising reasonable skill. Simple guidelines should be issued. Compliance should avoid legal action. This will send a strong signal and it will also reduce

risk-averse behaviour by providing reassurance to those who may be concerned about possible litigation, such as volunteers, teachers and local authorities.

We can also act to ensure that, when valid cases are brought, they are settled quickly. The big lesson from public consultations is that what the public frequently demand is not direct personal compensation. They want to know that, where something has gone wrong, lessons have been learnt and that the same mistake won't be made in the future to someone else. So, wherever possible, we want claims settled informally and quickly, without going to court.

The NHS Redress Bill will give quicker redress to patients earlier in the process for low monetary value clinical negligence cases. The Bill will allow for compensation but it will offer a real alternative to litigation and avoid the delays and costs that are part of the current system. It will ensure greater consistency in the way claims are dealt with across the NHS.

These are sensible, practical, proposals for specific defects in the system. But we cannot pretend that by itself legislation is the answer.

We also need a far more rational, balanced and intelligent debate as to how 'risk' is debated. Not every 'scandal' requires a regulatory response. Bad people will find a way round the law no matter how good the law is. Spending hundreds of millions of pounds to reduce the risk to zero may be a foolish way of prioritising expenditure.

We struggle with the aftermath of BSE - incidentally spending still hundreds of millions of pounds on the OTMS. We nearly got Sudan B completely out of proportion.

And as science becomes ever more far-reaching, it is time to have a proper dialogue about how science and its risks are evaluated and reported. Bio-technology is probably the coming industry of the world. Britain and Europe should be world leaders. We are in grave danger of blowing our chance. If we do, we will rue it bitterly. We need calm, considered debate about technology, science and risk. Government has a clear responsibility here: to be open, to provide the evidence we have, not to overclaim.

The media have a responsibility. MMR is one example. The present debate on mobile phones is another. We only narrowly avoided massive expenditure on SARS.

We need to involve the media in a better dialogue about risk. To that end, I have asked John Hutton to invite newspaper and broadcast editors to discuss with the Chief Medical Officer and the Government's Chief Scientist the best and most appropriate forum for ensuring that risk is communicated effectively so that the maximum information can be put into the public domain with the minimum of unnecessary alarm.

We need to involve the public more directly. In our manifesto we made a commitment to explore innovative ways of engaging with the public, particularly on matters of scientific uncertainty. There are already some good examples of public consultation which will improve the quality of decision making and increase the public appreciation of the risks involved.

- The National Institute for Clinical Excellence (NICE) has established a Citizens' Council to discuss the value judgements that underlie medical decisions.
- The Environment Agency has on-going public discussions about flood risk and coastal defences
- The new Genetics Knowledge Parks have been charged with engaging the public properly in discussions about the benefits of their research.

We should understand the nature of the decisions we take together, have a mature, reasoned debate between government, experts and people; a conversation between adults taking responsibility for the risks they face.

So: there needs to be a proper and proportionate way of assessing risk and the response to it. Government cannot eliminate all risk. A risk-averse scientific community is no scientific community at all. A risk-averse business culture is no business culture at all. A risk-averse public sector will stifle creativity and deny to many the opportunities to be creative while supplying a few with compensation payments.

There is usually a seductive logic to any new regulation. There is almost always a case that can be made for each specific instrument. The problem is cumulative. All these good intentions can add up to a large expense, with suffocating effects.

Sometimes, we need to pause for a moment and think whether we will not do more damage with a hasty response than was done by the problem itself. We cannot respond to every accident by trying to guarantee ever more tiny margins of safety. We cannot eliminate risk. We have to live with it, manage it.

Sometimes we have to accept: no-one is to blame.

Such an approach is easy to state; hard to do.

But at least if we start to debate the problem, there is a chance we can begin addressing it.