

*The OFFICE of the Sovereign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Sovereign Power; namely the procuration of the Safety Of The People*

– Thomas Hobbes, *Leviathan* (1651)

## 1 Thou Shalt Protect?

The state protects citizens from many different harms. This protective role can be traced back before the origins of the modern state, but it has changed dramatically over the past half century, becoming more extensive, elaborate, and politically contested. “People depend on government regulation,” writes the legal scholar Jack Beermann, “to ensure the safety of virtually every human activity” (2015, 303). In addition to traditional areas of protection (crime, disease, and military security), the protective state now protects wives from husbands and children from parents. It protects investors, consumers, data, and endangered species, and we hope it protects us from suicide bombers, carcinogens, and cyberbullies.

This protective role is at the heart of an implicit social contract between state and society. Citizens expect protection. As a British citizen complained after the 2007 floods: “I started to feel quite angry . . . because I think their job is to protect citizens and I just feel they didn’t do that.”<sup>1</sup> Woe be to the public official who ignores this social contract, as Korean President Park Geun-hye learned when the Korean legislature sought to impeach her for failing “to protect citizens’ lives” (Sang-Hun 2016). The protective state even extends to international politics where an international doctrine known as “responsibility to protect” requires states to proactively intervene to protect citizens of other states from genocide or humanitarian disaster (Bellamy 2010).

According to the *Oxford English Dictionary*, “protect” means “to defend or guard from danger or injury.” Yet the state’s protective role is not limited to protecting people from physical harm. The state protects property and property rights, a role expanded in recent years to encompass minority shareholders (Guillén and Capron 2016), critical infrastructures (Aradau 2010), and data (Bennett 1988). States also extend protection to animals and the environment (Nash 1989; Otto 2005). Understanding the scope and character of protections afforded by the state provides an important insight into the state itself and the process of state building.

Extensive scholarship exists about the welfare state, the regulatory state, the developmental state, the security state, and even the green state, but the protective state is scarcely recognized as a distinctive idea (cf. Béland 2005).

<sup>1</sup> Quoted in Butler and Pidgeon 2011, 543.

Specialized literatures exist on crime control, terrorism, crisis management, natural hazards, humanitarian emergencies, social protection, environmental protection, and consumer protection – each observing the protective state in one of its many guises. But this specialization makes it easy to miss the wider dynamics of the protective state. Even in the face of pressures to retrench welfare states and deregulate the economy, democratic states have often expanded or elaborated their protective role.

While the “welfare state” and the “protective state” are overlapping concepts, they also diverge in important respects. The welfare state provides “social protection” to individuals and families in the face of the vagaries of the labor market. It relies extensively, though not exclusively, on redistribution to provide well-being or security to broad categories of citizens – an ambit running from “means-tested” to “universal” provision of services. The protective state seeks to protect against *discrete harms, accidents, hazards, threats, and risks* – a job-related accident, a terrorist attack, a disease outbreak, a case of consumer fraud, or a devastating flood (Sparrow 2008).<sup>2</sup> These potential harms are often understood to be exceptional in nature, produced by breakdowns of the normal social order, institutional failures, market externalities, or unintended consequences. Responses range from “reactive” to “preventive,” and the policy instruments of choice are often regulatory and coercive.

Demands for state protection cross partisan lines. While the left tends to be more concerned about protecting citizens from the market and corporate power, the right prioritizes harms that threaten or result from social disorder and national security. Still, as the protective state has become more elaborate and extensive, its protective role has become more politically contested. In the United States, for example, consumer and environmental mobilization in the 1960s and 1970s was met by a corporate backlash against consumer and environmental protection in the 1980s and 1990s (Switzer and Vaughn 1997; Hilton 2009, 154–184). Although expectations of state protection often cross partisan lines, many policy sectors associated with protection have become politicized – from occupational safety (Dingwall and Frost 2017) to food safety (Nestle 2013) to flood control (Tarlock 2012).

The state’s protective role is often fraught with moral ambiguity. As political theorist Wendy Brown writes, “Whether one is dealing with the state, the Mafia, parents, pimps, police, or husbands, the heavy price of institutionalized protection is always a measure of dependence and agreement to abide by the protector’s rule” (Brown 1995, 169). To protect citizens from terrorism, the protective

<sup>2</sup> For a discussion of the meaning of “protection” in the context of refugee protection, see Storey (2016).

state may normalize emergency powers that infringe on civil liberties (Agamben 2005; Tsoukala 2006). To protect children from abuse, the state must intrude into the private lives of families (Donzelot 1977). Anti-vaccine activists and climate-change deniers reject the need for state protection and the “nanny state” epithet is frequently brandished (Moore, Yeatman, and Davey 2015). Others express outrage when the state fails to protect. After a series of devastating wildfires in his state, Washington Governor Jay Inslee skewered the Trump administration for its failure to take climate change seriously: “There is anger in my state about the administration’s failure to protect us,” he said, “When you taste it on your tongue, it’s a reality” (Inslee quoted in Eilperin, Dennis, and Mooney 2018).

Why a focus on the *state* when other scholars speak of “risk society,” “risk regulation,” or “societal security”? The reason is not that society or non-state institutions are unimportant. On the contrary, the changing protective role of the state is a barometer of public demand for protection and for whom it holds responsible to provide it. The term “state” is used here to signify all the democratic and authoritative institutions of modern government, including legislative, executive, and judicial branches. The term “protective state” signals that the political dynamics of protection are not limited to any single branch of government or to any particular mode of governing like regulation, social services, or security.

As an analytical concept, the protective state is meant to illuminate how protection serves as a basic source of political legitimation. It also draws attention to the increasing salience of protection as a logic of governing, capturing what criminologist David Garland describes as “a new and urgent emphasis upon the need for security, the containment of danger, the identification and management of any kind of risk” (2001, 12). It also offers a lens for understanding a range of trends and developments that fall between or cut across traditional analytical categories like social welfare, public health, consumer protection, criminal justice, or international security. The point of this Element is neither to suggest that the state coddles its citizens nor to decry its failures to provide adequate protection. Instead, the mission is to explore the political and institutional dynamics that arise around the state’s protective role. Three broad features of protective state politics are noted at the outset – its debates about prevention, its focus on risk, and its tendency to securitize issues.

### 1.1 Prevention versus Reaction

While scholars judge the welfare state in terms of how “universal” (or decommodified) versus “residual” (e.g., means tested) it is, the protective state is judged by how preventive versus reactive it is. Although the public may only expect compensation and relief after an injurious event has occurred (Friedman

and Thompson 2003), it often expects the state to *prevent* accidents and disasters from happening in the first place. In part, this shift toward prevention represents changing perceptions about the causes of harm. For example, the meaning of “accident” has changed over time from an event that is unavoidable to something that can be prevented (Green 1997). Some scholars argue that the concept of “protection” entails prevention (Parton 2008, 174; Peeters 2015; Pratt and Anderson 2015).

This preventive focus also partly reflects expectations about the capacity to control harms. From a modernist perspective, the sociologist Raymond Lau observes, “all mishaps are seen as preventable” (2009, 668). Indeed, science provides a powerful resource for advocacy groups to demand more preventive policy. For example, the late-twentieth-century preventive approaches to alcoholism and smoking were influenced both by new modes of political mobilization (via groups like MADD or GASP, respectively) and new science about fetal alcohol syndrome and secondhand smoke (Brown and Fee 2014).

The public health community has traditionally argued for prevention strategies (Atwood, Colditz, and Kawachi 1997). However, a distinctive feature of the protective state is that this preventive approach is extended to policy domains like criminal justice that have traditionally been more reactive (Garland 2001; Harris 2005; Janus 2006; Welsh, Braga, and Sullivan 2014). In the Netherlands, for instance, a turn to preventive crime policy occurred in the mid-1980s (Peeters 2015). Prevention has also been linked to the expansion of surveillance as a mode of governance (Balkin 2008; Parton 2008, 2010) and to the contemporary desire to enhance resilience (O’Malley 2010).

The politics of the protective state tend to become structured along a reactive-preventive dimension. The limits of a reactive approach often become the basis for arguing for more preventive action. The legal scholar David Friedman, for example, criticizes US protection of consumers against fraud as “a sprawling, reactive consumer protection regime that fails to fully address this important social and economic problem” (2007, 46). To protect consumers, he argues, the United States needs to move to a deterrence strategy.

Tragedies and disasters are often framed as failures of the state to take adequate precautions or to act in a timely fashion. After several high-profile tragedies, for example, the UK’s 1989 Child Protection Act placed a strong emphasis on prevention, creating what the social welfare scholar Nigel Parton has called the “preventive-surveillance state” (Parton 2008; see also France and Utting 2005). Even after a policy regime has moved toward prevention, subsequent failure can reinforce demands for preventive action. As a study of crime prevention succinctly puts it: “In reaction to failed prevention, more prevention is proposed” (Peeters 2013, 21).

## 1.2 Risk

A second prominent feature of the protective state is its expanding focus on risk and increasing contestation about how to respond to it (Moss 2004; Aradau, Lobo-Guerrero, and Van Munster 2008; Ewald 2014). Regulation scholar David Moss has written that “[r]isk management policies have now proliferated to such an extent that is hard to think of any greater governmental responsibility” (2004, 2). By the 1980s, risk assessment had come to play a powerful but disputed role in regulatory decision making and in criminal justice (Feeley and Simon 1992; Simon 2005; Lofstedt 2011; Nash 2017).

The protective state does not simply protect against risk. It also uses risk as a governing technique. One view of the rise of risk management is that it helps to rationalize demands upon the state and limit the fallout from failures to protect (Rothstein, Huber, and Gaskell 2006). For instance, the Japanese have adopted a risk-based system to move away from the perception that food safety can be “zero risk” (Yamaguchi 2014). Risk-based regulation has also developed in Europe and North America, though it has been taken up somewhat more readily in the UK and the United States than in Germany, France, or Denmark (Lodge and Wegrich 2011; Krieger 2013; Rothstein, Borraz, and Huber 2013; Almond and Esbester 2018).

While risk assessment and management have expanded, so have criticisms of their ability to address uncertainty (Klinke and Renn 2002; O’Malley 2004; Loftsted 2011; Vogel 2012; Hardy and Maguire 2016). One argument is that greater public and scientific concern about uncertainty and the irreversibility of consequences has reinforced a precautionary approach to risk (Ewald 1999; Hebenton and Seddon 2009; Boschen et al. 2010). A criticism of the precautionary approach is that it leads to “worst case” or “possibilistic” thinking that can in turn lead to the overestimation of threats (Sunstein 2005; Clarke 2006; Furedi 2009; Amooore 2013). While critics of market and technological externalities are often favorable toward a precautionary approach, it is important to point out that the appeal of precaution cuts across left-right divisions. Just as the left advances precaution against biotechnology, President Trump seeks a ban on Muslim immigration in the name of precaution. A precautionary logic can be used to prevent exposure to toxic chemicals (Vogel 2012) or to exert preventive control over those who have already served time for a sexual crime (Hebenton and Seddon 2009).

A central theme of the protective state is “who bears the risk?” – a theme often linked to debates about whether risk is an individual or a collective responsibility (Mascini, Achterberg, and Houtman 2013). The consumer

movements of the 1960s and 1970s, for example, sought to shift risk from consumers to producers (Trumbull 2006). A prominent theme in the recent literature on risk is that neoliberalism has sought to shift risk back onto citizens through its emphasis on “responsibilization” and “resilience” (Gray 2009; Joseph 2013; Hutter, Leibenath, and Mattissek 2014; cf. Lau 2009; Collier 2014; Demeritt et al. 2015).

### 1.3 Security and Securitization

Broadly speaking, we can understand security as a response to an existential threat – traditionally, a military threat (Balzacq 2008). However, if “threat” is understood broadly as a *potential but intentional harm*, we then come to appreciate that security is not limited to military threats and may be more generic. The international relations literature refers to the process of extending the logic of security to issues beyond military security as “securitization” (Wæver 1995).

The politics of the protective state tend to widen the scope of securitization, raising questions about which problems and risks will be brought under the security umbrella. Will risks like climate change, drugs, infectious diseases, or food-borne pathogens be conceived as security threats to a state or nation? The answer to this question has important consequences because securitization is often understood to bestow an exceptional quality on the state’s response and to focus attention on prevention of the threat. For example, after the September 11 attacks, the idea of airline “safety” was trumped by the concept of airline “security” (Cobb and Primo 2003). In other words, preventing terrorist threats to airlines was given priority over the conventional concern with the safety of airline technology and operations.

Infectious disease response is a prominent example of the expanding scope of securitization, particularly at the global level (Abraham 2011; Elbe 2012; Kamradt-Scott 2012; Hanrieder and Kreuder-Sonnen 2014). Abraham (2011) describes a securitization of disease that begins with AIDS but is pushed along by the anthrax attacks and the SARS epidemic and fears about the weaponization of smallpox. Elbe (2012) argues that the securitization of disease depends on a shift in focus from protecting the territory of the state to protecting the welfare of the population.

Elements of securitization can also be seen as operating in domestic disasters like flooding (Wood 2016) and in ideas like “homeland security” or “societal security” that cut across a range of hazards (hence, the concept “all hazards”), blurring distinctions between safety and security (Collier and Lakoff 2008; Lango, Rykkja, and Lægreid 2011). Some scholars have pointed to the outlines of a “security state” that blur the lines between crime control and warfare

(Andreas and Price 2001; Hallsworth and Lea 2011) and between internal and external security (Bigo 2006). Others point to the expansion of surveillance as an indicator of the wider securitization of the state (Balkin 2008; cf. Kerr 2009).

### 1.4 The Scope of the Element

The goal of this Element is to bring many strands of argument together in a synthetic fashion to illuminate a many-sided phenomenon – the protective state. To do so, the Element draws synthetically from a diverse range of protective issues – child protection, flooding, violence against women, human trafficking, workplace safety, toxic chemicals, infectious disease, food safety, sex offenses, and terrorism, among others. To keep the task manageable, the scope of the investigation is limited in a number of important ways. No attempt is made to judge whether the state’s protective role is good or bad or to evaluate how well or how equitably we are ultimately protected. The scope of the argument is also limited to democratic nations with highly developed economies. Authoritarian states and less-developed nations may also protect their citizens, but the social and political dynamics may be quite different. The international dimension of the protective state is also a topic primarily left for future research.

The next four sections of the Element elaborate this argument about the protective state. Section 2 puts the development of the protective state in a state-building perspective, focusing on the major developments that have molded the contemporary transformation of the protective state. Section 3 explores the political dynamics of the protective state, examining some of the characteristic ways that demands for protection get mobilized and organized. Section 4 adopts a comparative perspective to illuminate national differences in protection. Finally, Section 5 explores the “political theory” of the protective state, investigating some of the normative issues that arise in justifying and appraising the state’s protective role.

## 2 The Rise of the Protective State

The state’s protective role is as old – indeed older – than modern nation-states. The first English King Henry ruled in the twelfth century that masters were responsible for the workplace injuries of their apprentices (Leka et al. 2017). Holland built defenses against floods as early as the thirteenth century, and Venice introduced quarantines to protect the city from the plague early in the fifteenth century. States have protected their “citizens” from foreign invaders or from their neighbors since well before the consolidation of the modern state system (Tilly 1985). Indeed, the developmental path of the protective state



basically follows the trajectory of state building. As states extended their geographical reach and control, as they developed a regularized administrative machinery to deliver services, as the sense of the state as a nation was consolidated, and as democratic modes of political contestation were institutionalized, so too was the protective role of the state elaborated, expanded, and constrained.

The first modern wave of protective state building occurred in the last third of the nineteenth century and the first decade of the twentieth century – broadly speaking, the Progressive Era in the United States, the Third Republic in France, Wilhelmine Germany, Victorian Britain, and so on. Before this period, the state's protective role was primarily focused on preventing foreign invasion, maintaining public order, and to some extent safeguarding public health. These traditional protective functions were consolidated and expanded at the end of the nineteenth century: militaries expanded and professionalized (Skowronek 1982), police forces expanded and began to specialize in crime control (Monkkonen 1992), and a “sanitation revolution” led the state to expand its role in disease prevention (Duffy 1992; Porter 1999).

The late-nineteenth-century state also expanded into new areas of protection – notably, into “protective” legislation regulating the conditions of labor, often with a special focus on protecting women and children (Urofsky 1985; Feuer 1988; Jenson 1989; Skocpol 1992; Wikander, Kessler-Harris, and Lewis 1995; Woloch 2015). Protection of consumers – qua consumers – also began to expand in the late nineteenth century (Hilton 2009) and early attempts to protect children and animals from abuse were developed (Pfohl 1977; Kete 2002; Myers 2008). The mobilization of women, consumers, public health, and labor acted in various ways to support this expansion.

A second wave of organizing occurred in the 1930s and 1940s, consolidating and extending the incipient protections developed at the turn of the century. For example, in the United States, the New Deal expanded the state's role in protecting women workers (Novkov 2001), strengthened the state's role in food safety (Thomas 2014) and aviation safety (O'Neil and Krane 2012), and took new steps to protect consumers (Glickman 2001). In a speech in 1937, a prominent proponent of the New Deal administrative state, Securities and Exchange Commission Chairman David Landis, described how regulatory institutions ensured “the security of our bank deposits, the safety of our life insurance, our protection against fraud and chicanery in the sale of securities, our necessity for having light and power at reasonable rates, our protection against discrimination in railroad tariffs, or as workmen, our protection against unfair discrimination in employment or our right to compensation for industrial accident” (Landis quoted in Wang 2005, 273–4). The New Deal also sought to



greatly expand the state's role in security by creating the now mostly forgotten Federal Security Agency (FSA) (Cuéllar 2009). Not to be confused with the National Security Agency (NSA), the FSA broadened the state's security umbrella to a range of domestic issues. World War II also expanded the state's domestic emergency response capacity (Roberts 2013; Curley 2015).

A third wave of protective state building began in the 1960s and 1970s. Although welfare state expansion occurred throughout the postwar period, a wave of legislative developments in the 1960s and 1970s expanded and consolidated consumer and environmental protection (Keiser 1980; Sunstein 2002b; Vogel 2003; Trumbull 2006). New developments occurred in occupational safety (Kelman 1981; Wilson 1985), automotive safety (Lee 1998), child protection (Myers 2008; Dekker 2010), teenage pregnancy (Linders and Bogard 2014), domestic violence (Elman 1996; Sack 2004), workplace discrimination (Pedriana 2006), sexual harassment (Saguy 2000), aviation security (more in Europe; Hainmüller and Lemnitzer 2003), and data protection (Bennett 1988). Writing of the United States, Bardach and Kagan observe, "In the 1960s and 1970s, a quantum leap seems to have been taken in legislator's eagerness to provide this kind of extra protection" (2002, 11; see also Shapiro and Glicksman 2003).

Although it is hard to distinguish the most recent wave of protective state developments from the third wave, a series of events beginning in the mid-1980s – the AIDS crisis, "mad cow" disease, the SARS epidemic, Hurricane Katrina, and the September 11 terrorist attacks – arguably triggered the most recent set of developments in the protective state. In the United States, welfare state retrenchment and deregulatory pressures beginning in the 1980s placed significant constraints on the further development of the protective state, even as a European Union regulatory state responsible for a wide range of protections began to develop rapidly at the end of the 1990s (Majone 1994, 1997; Vogel 2003, 2012). Still, even in the United States, concerns related to infectious diseases, food safety, natural hazards, human trafficking, public safety, and terrorism were highly prominent. Examples of new or extended realms of protection on both sides of the Atlantic include critical infrastructure protection (Aradau 2010; Collier and Lakoff 2015), patient safety (Small and Barach 2002), aviation security (more in the United States; Hainmüller and Lemnitzer 2003), disability rights (Heyer 2002), elder abuse and neglect (Penhale 2007), human trafficking (Friesendorf 2007; Weitzer 2007), "dangerous dogs" (Lodge and Hood 2002), dietary supplements (Dickens 2014; Binns, Lee, and Lee 2018), and sexual predators (Janus 2006).

The point of describing these waves of protective state expansion and elaboration is not to argue that each wave was independent. To some extent,

each wave built on political and institutional developments in prior waves. In many cases, new developments responded to perceived gaps or failures of protective legislation or programs developed in prior waves. For example, in US drug safety, the 1938 Food, Drug and Cosmetics Act expanded the scope and powers of the federal government set out in the Pure Food and Drugs Act of 1906 (Daemmrich 2004; Carpenter and Sin 2007). The Kefauver-Harris Amendments of 1962 then expanded the scope of regulatory powers established by the 1938 act (Temin 1985; Daemmrich 2004). A wave metaphor does have a tendency, however, to gloss over incremental legal and programmatic changes and to underestimate the counter-mobilization that pushes back against expanded protections.

The advantage of the wave metaphor is that it helps us perceive cross-sectoral dynamics. As these four waves suggest, the expansion of the protective state often cuts across different policy sectors. Although state protections are typically instantiated in particular sectoral policies or programs (food safety, human trafficking, etc.), state protection often expands in a more *general* fashion, affecting several sectors at once.

## 2.1 The Contemporary Transformation of the Protective State

In the mid-1980s, the sociologist Ulrich Beck (1992) made the provocative argument that a “risk society” was replacing “industrial society.” In this new society, concerns about the consequences of risk were magnified and fell on rich and poor alike. In Beck’s memorable phrase, “poverty is hierarchic, smog is democratic” (1992, 36). People were now bound together by a “commonality of anxiety” rather than a “commonality of need” (1992, 49). As a result, the ethical rationale of society shifted from equality to safety, and the risk society became oriented toward the future and the potential for harms. As Anthony Giddens later wrote of the risk society, “it is a society increasingly preoccupied with the future (and also with safety), which generates the notion of risk” (1999, 3).

Despite Beck’s prescience, his argument is too sweeping to capture the many interacting factors that have transformed the protective state. The remainder of this section examines these interacting factors in greater detail.

## 2.2 Rising Expectations and Loss of Control

The contemporary protective state is born of the paradoxical tensions between rising expectations about being protected and the fear, anxiety, and distrust that comes with personal loss of control over protection. On the one hand, the postwar period was a time of rising affluence and educational expansion,