
Viewpoint: Kant with the COVID pass

Viewpoint

2225

By the point of view of philosophy of law and arguing according to Kant viewpoint, we may tell that every single individual cannot be reduced to a mere mean, not even with the aim to reach a beneficial scope as health protection. The “categorical imperative” does not leave any question on this.

In this respect, indeed, the right to impose a general forced vaccination, i.e. to say without the free and informed consent of the interested parties, is not legitimate, but there is one exception, which Kant himself would subscribe. If the danger of contagion were in fact so great to be a real danger for the same existence of an entire community, then, in this specific case, the “state of necessity” would justify mandatory vaccination and even the use of force to impose it. But is this the current situation? In short, is the mandatory vaccination we are talking about today proportionate to the real danger?

Despite the deaths that have occurred, this does not seem to be the case. And therefore, the Kantian “categorical imperative” should apply.

An objection could be raised with regard to certain professions, like sanitary jobs, for which a mandatory vaccination should not in principle be excluded. The doctor’s mission is to cure and, if possible, to heal, not to risk spreading diseases. Indeed, it is the sanitary professional who should be prepared to take the risks himself in the exercise of his profession. No one is obliged to be a doctor but if he does he has a professional ethics that he must respect. These plausible *prima facie* considerations, however, can be exposed to a *diriment* critic concerning the safety of the vaccine, because if you even want to impose it, you have to be sure about its effectiveness and the fact that it does not have dangerous contraindications.

But right here, is the crux of the matter. Which type of safety and scientific evidence may these vaccine approved in such a hurry have? Let’s admit that this happened to try to counterattack the spread of the virus as quickly as possible, but it is hard to dispute that they have been developed in record time and that not all the due steps of trialing have been respected. The reality is that Germany has already been working for long time to develop a polymer molecule, a nucleic acid, and that it was thought to use it for production of a vaccine. I refer to messenger RNA vaccines, developed by BionTech Pfizer and Moderna, which operate with innovative biotechnologies that were never used before. Of course, the very freedom of scientific research implies that we should not limit the possibility to look for new drugs, to try new ways as happened in the case of these vaccines which originate not from the inactivated virus but from a ribonucleic acid that should induce the production of antibodies by our immune system.

These new vaccines could be very promising and transform vaccinology as known to date. For now, however, they have only managed to modify the definition of vaccine, because these new products did not fit fully into it. Moreover, it cannot be denied that the same scientific research is characterized by uncertainty, so much so that the same manufacturers of these mRNA vaccines declare, for example, that it is not possible to predict long-distance damages and do not exclude that vaccinations will have to be repeated several times because these vaccines may lose effectiveness after a certain time. It may be true that in the “long distance” we are all dead, but can we reasonably exclude that some vaccines can, at least for some categories of people, be actually harmful for health?

Here a serious problem opens up. One thing is the testing of the vaccine and another account is the mass vaccination. The trials of any drug – and, therefore, also of vaccines – require an informed and free consent when it is applied to human subjects; this means the



Kybernetes
Vol. 52 No. 7, 2023
pp. 2225-2229
© Emerald Publishing Limited
0368-492X
DOI 10.1108/K-07-2023-037

individuals know they are taking a risk for unknown adverse effects. Based on these trials the medical product is approved. But in the case of the actual coronavirus disease 2019 (COVID-19) vaccines, they are just “conditional authorized” by the competent authorities and several doubts have been raised about the results of the clinical trials. For instance, Luc Montagnier, won Nobel Prize for medicine in 2008, considers that this new type of vaccines may have unforeseeable adverse effects on future generations. Similar doubt has been expressed in Italy by Giulio Tarro and in Germany by Sucharit Bhakdi. I am not saying that Montagnier, Tarro or Sucharit (and other important names could be added) are right, but I am saying that there are authoritative scholars, in favor of vaccines in principle, who raise doubts and perplexities about these vaccines, which at least means that this is controversial in the scientific community.

In short, we have given the management of the pandemic in the hands of virologists, and it does not seem that things have gone very well. We have seen impromptu lockdowns, curfews, openings and closing in fits and starts, continuous disputes among experts on every aspect of the pandemic – from the mandatory masks to the opening of schools. Now, however, we blindly trust of some vaccines that are experimented for the first time on humans, which ultimately – as maybe would have told Kant – are de facto used as guinea pigs, because the “real” experimental trial for these vaccines is the mass vaccination which is now underway. This is one more reason to not impose mandatory vaccination. A medical treatment could be imposed, at most, only if it is shown that it does not impact negatively on the state of health of the person who receives against his will. But this is not the case, unlike for other vaccines, considering the manifold adverse and sometimes also lethal reactions happening with these vaccines.

But there is a basic question (Grundfrage as Kant would say) that none wants to ask: have we relied on vaccines because of the achieved scientific evidences? Is it proven that they are effective and they do not cause any damage to health? Or we got into this mass vaccination campaign only because there is such a strong desire to get out of this nightmare that we are willing to believe in whatever comes our way as a possible solution? In short, do we believe in vaccine because it is safe and effective or because we want that it is safe and effective just because we believe in it, because we need to believe in it, under the illusion to quickly get out from this nightmare?

The narrative today is that vaccine – and only the vaccine – will set us free by the evil. This will not be once and for all, because we will need to repeat it over time, but at least it will warrant us the survival to which we sacrificed everything. One little puncture or two, or three or who knows how many over time to return to life, and always with the consent. The vaccination obligation is formally avoided but those who are not vaccinated are compelled to stay locked at home, as if they were under house arrest without having committed any crime. Only who is vaccinated may think (or at least deceive themselves) to come back to a “normal life”.

And so here is the “green pass”, the vaccination passport that serves perfectly to distinguish the non-vaccinated from the vaccinated and to discriminate the former. The non-vaccinated belongs to an inferior race and is dangerous for the superior race. But of course we do not want to come up with the concentration camps for non-vaccinated, the hypocrisy of our times found the solution: you can take your damn freedom, you may not take the little jabs as the others, but we will make your life so hard that, you will see, at the end you will pricked too, or you will have no other chance than to die in the ghetto of your home. The “new barbarism” to quote the book by Bernard-Henry Levy, but even he is silent today about the green pass.

At the very moment when we would need liberalism, the “liberals” remain silent. They were hidden behind face masks, but about the COVID-19 pass they revealed their real face. After all, as recently pointed out by Wilkinson, liberalism can be more authoritarian than it looks.

Exaggerations? By now, the attack against those who have expressed their doubts and their critics about the so-called “green pass” has become more violent than ever. Now it is not only the “no-vax”, but whoever protests against the vaccination “safe-conduct” to be considered as a “conspiracy theorist”, “negationist”: someone whose opinions are not worth to be taken into account or listened and is immediately tagged as “wrong”, “obscurantist”, “delirious”, “dangerous”. The attack is on several fronts. Everyone is united against the “no-vax”, kicking up a fuss against who even dares to compare the green pass to the “green card” of fascism or to the yellow star which the Jews were obliged to wear and that would now allow identifying the non-vaccinated.

Even the constitutional scholars – whose task would be to shelter the individual liberties against any abuse of authority and power – are (almost) all in favor of the “green pass”. And someone of them even allows himself to make sarcasm; there are those who, for instance, have enjoyed saying that those who criticize the pass to enter public places use the same logic as those who tell that wearing a helmet to ride a motorcycle is a “conspiracy” against the freedom to have the wind in their hair. In short, no-pass = no-helmet.

Now, it is interesting to consider the idea behind this argument, because it is the common way of reasoning of those who attack the so-called “no-vax”. The idea is this: the green pass certainly limits my individual freedoms (freedom to travel, to go to the cinema, to the restaurant, etc.), but this limitation is justified by the need to protect the freedom and rights of others – in particular, their right to health. It would seem in fact the old “liberal” adage: “my freedom ends where yours begins”. For this reason, according to what is claimed, the green pass would not be different to the prohibition of smoking at the restaurant, at the theater or at school as in other public places. This is the same stance of the former Italian Minister Sirchia, who introduced the prohibition to smoke in public places: *“you should be free to not vaccinate yourself, but I must be free to prevent you to damage me, hence to take precautionary measures against you.”* It is the same stance of the Editor of the magazine *MicroMega*, according to whom those who say that the green pass is “discriminatory,” then should say that the smoking ban is also discriminatory, which has “discriminated” against smokers “by ghettoizing them on the sidewalks and in many countries finally driving them out of open places”.

I believe that these arguments are totally fallacious. Let’s start with the comparison with the prohibition to smoke, even if the argument could be extended to other examples. Certainly the prohibition to smoke discriminates, nonetheless, only to the effect that it limits the freedom to smoke in certain places. I am less free if I cannot smoke wherever I want, but it is a limitation that is justified by the fact that the right to health prevails on the right to have a certain habit. The point is that what is forbidden is a certain habit, an action. That is the prohibition is not about “the smoker” as such, but about some specific behavior as to smoke in public places. The green pass does not follow the same logic. Indeed, only a completely “formalistic” approach, in fact, could interpret it as a series of provisions that prohibit certain actions – such as going to the restaurant, cinema or disco. Precisely because these “actions” are, in principle, indeterminate, and can come to concern, in fact, the entire social life of the individual, these prohibitions end up addressing the “unvaccinated” as such, to establish, that is, a separation, a discrimination related to people, and not to their behavior.

There is discrimination between those who are vaccinated and those who are not vaccinated. While, then, the ban on smoking discriminates – namely: provides for different procedure – in relation to allowed and prohibited behaviors, the green pass treats differently not the actions that people can or cannot perform, but the people themselves, excluding some of them from social life. Let’s also tell that we do not want to know now whether this discrimination is “justified” or not. But it is obvious that it is completely different in nature than the prohibition of smoking or the obligation to wear a helmet on a motorcycle. The vaccination passport discriminates, in fact, not between actions but between categories of human beings. The sanction is not linked to an illegal action, but to a characteristic that an

individual must possess in order to be an integral part of society. The contemptuous criticisms and the sarcasm that we have mentioned, then, appear completely out of place. Moreover, it is an exceptionally worrying fact for a democracy that lawyers do not take seriously a law that – justified or not – introduces discrimination between “classes” of people, which are supposed to be citizens.

We come to the second topic, which of “freedom”, to what has now become nothing more than a “slogan”: “my freedom ends where yours begins”. But what does it mean?

We must distinguish. In the reasoning of those who attack the “no vax”, the limitation to my freedom is justified essentially on the basis of the general interest, of the interest of the community: my freedom not to vaccinate, my right to go – as an unvaccinated – to the restaurant or cinema, can be legitimately limited as it risks undermine the “common” interest, the interest of all, to undermine the collective “health”. It is this interest “of all”, health as a collective interest. Attention: here it is not at all, as is often said, a “balance” between my right to movement and your right to health, between two rights. Here there is not, compared to me, another individual but the collective. And the community has no “rights” but interests. The same art 32 of the Constitution must recognize it: “The Republic protects health as a fundamental right of the individual and interest of the community”. Now, when it is said that the green pass makes the protection of health prevail over individual freedoms, “health”, here, is the good understood as the interest of the community, and not as the right of the individual. This is to clarify that the issue in question is that of the relationship between individual rights and collective interest.

Now, this logic is not at all “liberal” or rather it is not that of the line of classical political liberalism, which begins with Locke. It is rather logic typical of “totalitarian democracies” like Rousseau. Because, for Locke – as Rawls recalls – the limitation of freedom is justified only when it is necessary for freedom itself, i.e. to prevent a violation of freedom that would be even worse. The discourse changes and the logic is different: because, to limit my freedom, an – indeterminate – “general interest” is not enough, but it must be shown that if it were not limited, the conditions necessary for freedom itself would be lost. Freedom can only be limited in the name of freedom itself. Concretely, to limit my freedom to go – as an unvaccinated – to the restaurant, it should be shown that, in the absence of this limitation, those who are vaccinated would no longer be free to go to the restaurant – let’s say also because they would risk getting sick.

We are thus in a new area: no longer freedom versus interest, but individual freedom versus individual freedom and sacrifice of one to guarantee the other. For this reason a “liberal might tell that the right of non-vaccinated persons to be protected corresponds to the right of vaccinated persons which must be protected as well. I, as vaccinated, do not have the right to know if the doctor who treats me or my teacher is vaccinated or not? And, if he is not vaccinated, I do not have the right to refuse to get treatment from that doctor or not go to class held by that teacher? In order to answer, however, we must begin by asking: why do the vaccinated not accept the unvaccinated? Why should his reasoning be worth and not then the reasoning of the White who says I do not want Black doctors and teachers? In the second case, we would all be prepared to admit that this is racism. What changes, then? On what is the reasoning of the vaccinated based? His is certainly not racial discrimination. Yet, we must ask ourselves why does he not want contact with the unvaccinated?

According to our “liberals” the no-vax should be segregated, because they, the liberals, fear to be infected and this fear is their right. It is forbidden to hate but fear should be a constitutionally guaranteed right. We might reply that if a person is vaccinated, this fear is absolutely irrational. Once again, the false comparison with the smoking ban is instructive: if, indeed, it is proven that to my smoking in a closed room damages the health of my non-smoking neighbor, it is not proven at all that my going to the restaurant as an unvaccinated person damages or risks to significantly damaging the health of my neighbor.

And in fact, (a) if my neighbor is vaccinated, his risk of getting sick should be almost non-existent, at least according to the dominant thought today that considers vaccines super safe; (b) if he is not vaccinated, it means that, just like me, he accepts the risks arising from his own behavior.

Of course it could be argued that the risk of contagion is the same. To reply to this is easy: it is unreasonable and absurd to limit my freedom to avoid “contagion” by itself not linking it to the capability of the virus to develop the disease, i.e. to cause serious illness (why then not ban restaurants to those who have a strong cold or a flu?). On the substance, then, we must say: would not this be unreasonable and unjustified, where there are provisions – like the obligation to wear face masks in closed places – which already guarantee, as it has been told for months, the drastic reduction of the virus transmission risks? Or should we conclude that the face mask was useless?

The vaccinated “liberal” might reply that he is still afraid: he is even willing to admit that it is an irrational feeling, but fear is fear. Amen. But then, is there a right to fear? In short, does my freedom end where your paranoia begins?

And is this “liberal” right to paranoia so strong as to force non-vaccinated people to be sanctioned, segregated and suspended from work?

We have come to the essential point and to the fundamental contradiction. Despite the fact that medicine, on the one hand, affirms that, with the vaccine, the “risks” for health are in fact so reduced to the point of making the infected vaccinated risk a cold or a flu, it, at the same time, accepts to meet the “fears”, now irrational and unjustified, of the vaccinated, who want at all costs to keep away, keep at a distance those who have chosen not to make the vaccine. But if the risk is that all a vaccinated person can be afraid of is getting the flu, how can this risk justify the loss of work, and the exclusion from social life of those who are vaccinated? We should therefore also exclude from social life anyone who has a cold or cough, anyone who has a seasonal flu other than COVID-19. In short, those who are free to circulate should only be “healthy” subjects, keeping in mind that they are all at risk of being sick. Is this the “new world” we are heading towards? Toward a generalized bio-security, in which the obligation to be healthy will become permanent and capillary, so as to prevent anyone with a cold from entering a restaurant?

Fear has become a right – in the end, this is the other face of the fact that health has become an obligation. Today, it no longer serves only to create alarmism about the virus but even to force the unvaccinated into a ghetto.

On the basis of what medicine today tells us about the virus, its transmission and vaccines, I do not believe that there are arguments to justify the introduction of a mandatory green pass for all. Also, because our “liberals” should not forget that these vaccines are “imperfect”, not only are they not able to prevent the infection, but the side effects are such that sometimes they can even cause the death of the vaccinated.

Today, we no longer die only of COVID-19 but also of the vaccine that should prevent this disease.

Paolo Becchi

Department of Law, University of Genoa, Genoa, Italy