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**Mapping Policy Containment  
Measures to Sars-Cov-2  
Pandemics: At what Conditions  
Paternalism is Justified**

I. INTRODUCTION

The purpose of this contribution is to reflect on the relationship between surveillance and individual rights during the Sars-Cov-2 pandemic. The question that we are going to address is whether and to what extent the various forms of social and institutional control are legitimate, in spite of clearly representing an intrusion into private lives and the restriction of some fundamental rights (amongst which the right to freedom of movement and association). Specifically, we refer here to the containment measures adopted, often on the basis of experts' opinions, in various countries, including Italy, one of the most affected nations during the waves of the pandemic.

Drawing from a discussion of the afore mentioned containment strategies, we will argue that some forms of 'paternalism', whose specific denotation will be provided herein, are justified when effective strategies to protect the health of all, especially the most vulnerable individuals in societies, are missing. This position will be justified on the basis of some considerations and arguments that have been articulated in the public as well as expert opinion in the months of what we will refer here as to 'first wave lockdown', which configured as a total lockdown. This expression refers to the period between February and Spring 2020, where some very stringent containment measures were put in place, amongst which the closure of all activities, except for the so-called 'essential' ones, and the suspension of individuals' freedom of movement. In the very last part of this contribution, we will then move to what we will refer to as 'second wave lockdown', which configured as a more

differential lockdown, put in place starting from Autumn 2020, in order to briefly explore whether the same reasonings that justified the containment measures adopted during the first wave may be considered legitimate also in the second and the current third wave.

This contribution is structured as follows. First, we briefly recall the different connotations and meanings of paternalism. Second, we present in detail the main ethical issues raised by the pandemic, with a specific focus on the relationship between individual freedoms on the one hand, and surveillance/control measures on the other hand. We then focus on the description and analysis of main containment measures set forth in Italy during the first pandemic wave. Their legitimacy as a specific form of paternalism – that we will refer to as ‘impure paternalism’ – will be supported, provided that some specific conditions are fulfilled. Finally, these conditions will be presented and briefly discussed, so as to see whether provisions that governments are putting in place during this second pandemic wave may still fall under the – already justified account – of paternalism or whether, due to the fact that some of these conditions do no longer apply, we should not consider these containment measures as still legitimate.

## 2. PATERNALISM: ORIGIN, DEFINITIONS AND ACCOUNTS

Paternalism represents a core issue in reflections over medical ethics and ethical decision-making in medicine. Hippocratic paternalism indicates the prerogative of the doctor to make decisions ‘for the good of the patient’ (Thomasma, Pellegrino 1988). Within this account, the patient-physician relationship is defined as paternalistic when the physician becomes the main decisional actor according to the first principle of traditional medical ethics, namely beneficence (Beauchamp, Childress 2019).

Traditionally, a paternalistic decision is justified on the basis of the duty to procure the greatest possible benefit to the patient, or at least to avoid causing the patient some harm, even in controversial cases where the patient is unaware of this (‘weak paternalism’) or even when the paternalistic decision is against the patient’s will (‘strong paternalism’).

The just mentioned distinction recalls the traditional one firstly introduced by John Stuart Mill (1859) and then thematized, among others, by Gerald

Dworkin (1988). Very briefly, Mill expresses himself in favour of an idea of freedom purposed to the individual and society fulfilment, which safeguards first of all the protection of individual choices from any unjustified interference; where, by the latter, Mill refers to those interferences that are not primarily aimed at protecting others from potential harm related to that choices.

In any case, Mill considers as legitimate to interfere also in the actions performed by the individual that do not harm others, if the agent, in performing this action, is somehow harming himself/herself, without being aware of it. Mill presents, as an example, the case of a person who is about to cross a bridge without knowing that this it is unstable. Interfering in the choice of this person is legitimate, because, by interfering with it, we are preventing something bad from happening without such person being aware of it, and, therefore, we are enabling the individual to make other (free) choices in the future (Mill 1991, 110).<sup>1</sup>

Restrictions to individual freedom are justified for as long as it takes for the individual to become aware of the possible consequences of the actions he/she is going to take, assessing impending dangers or potential risks correlated. The general idea is therefore that, once the individual becomes aware of the consequences of his/her actions (and of the dangers and risks correlated), the same is left free to act according to his/her will. By setting the condition that time be allowed for individuals to becoming aware of the situation they are facing, Mill is arguing in favour of an exception to the duty to grant individuals with total freedom. This, as already stated, would happen in those cases in which individuals would find themselves not fully aware of what is happening, therefore lacking the basis for taking a fully autonomous choice (Mill 1991, 30).<sup>2</sup>

The main theoretical issue discussed here regards the question over the legitimacy of the restriction to individual freedom – namely, whether the

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<sup>1</sup> The aim here is not to discuss whether this is a form of hard or soft paternalism. In any case, while by hard paternalism we refer to those cases in which we interfere with the individual's decision even if he/she is aware of the consequences of his actions, by soft paternalism we refer to those cases in which we interfere with the individual's decision because he/she was not aware of the consequences of his actions, and we assume that, if this were the case, he/she would decide in the same manner as our ends overlap. To understand this difference, see the seminal example of the unstable bridge, used by John Stuart Mill (1991).

<sup>2</sup> A brief overview of the Millian principle of liberty may be found Riva 2020. For an extensive discussion of the principle of liberty in the healthcare context see Borsellino 1999.

interference, by the side of a public authority, in the private sphere of the individuals, is legitimate under certain conditions, and, in case of positive answer, what these conditions are. This also correlates with another more fundamental question, that is, what are the choices we may refer to as actually private and those that, despite being originally private, present also some implications for the community itself. Drawing from the already mentioned exceptions, presented by Mill, to individual liberty in relation to the principle of harm, we argue here that some forms of paternalism may be considered as justified – those that we refer to here as ‘impure paternalism’ – since they are intended to serve the purpose of intervening with coercive strategies for the benefit of both the single individual and the community in its entirety.

Even this very brief summary, may help us in understanding the case of the authority of the governmental decisions set forth in the field of individual and collective health. During the period of total lockdown, we observed these actors navigating the public and political scene, each with different interests, duties and rights: political authority; experts; citizens as individuals and as groups. The political authorities have been accused of having acted in a paternalistic manner, especially for having interfered, with only few exceptions, with the citizens’ freedom of movement. Critiques pointed to the illegitimacy of these provisions, considered as forms of *strong* paternalism.

Those who supported the containment measures considering them as legitimate, grounded their legitimacy in the belief that politics had a duty to take the place of individuals in the decision-making process for two reasons: a) because political authority is expected to restrict the freedom of an individual in the cases in which such freedom should infringe other peoples’ freedom, according to the harm principle; behaving so, political authority intervenes to protect all people’s freedom not to be infected by other fellows who vindicate their inalienable right of movement and aggregation with others; b) because political authority is expected to interfere with the freedom of an individual when she shows to be unaware of the risks related to her actions; such intervention is controversial, insofar as it is paternalistic. However, such form of paternalism is a *soft* one, and it can be justified because the interfered person is not totally aware of her current situation, i.e. at risk of being infected and even a cause of other people’s infection. We mentioned soft paternalism; it can be labelled also as *weak* paternalism since we interfere in an individual action on the basis that we are assuming that who acts is

using the wrong means for achieving a purpose that he/she intends to pursue (Dworkin 2020). Conceived as *weak*, the paternalistic connotation of such measures has been justified on the basis of the duty, by the side of the political authority, to remedy the unawareness of individuals regarding the means to protect themselves from infection, which may be considered as a widely-shared desirable purpose.

For those willing to consider restrictive policies as legitimate, even if paternalistic (whether soft or weak), there is a value at stake that is greater than freedom of movement, at least in the circumstances of Covid-19, that is, the maintenance of health, and, in some cases, even of survival of the general population. In taking seriously these potential health consequences of Covid-19 pandemics on general population, we refer here to another form of paternalism, the so-called ‘impure paternalism’.<sup>3</sup> This form of paternalism appears justified by those who not only consider it necessary for the authorities to intervene in order to fill in citizens’ knowledge gaps, but also maintain the idea that the authority has a duty to intervene in any individual behaviour that may present the risk of harming third parties. In the latter scenario, it is not only the good of the single individual that justifies the interference in his/her private (decisional) sphere, but also the good of others, who may be exposed to (and run the risk of) being infected, as a consequence of wrong individual behaviours.

The lack of awareness regarding such potential danger is in turn based on the conviction that individuals may be sometimes incapable of looking after their own protection. This consideration appears to motivate the State’s action and qualifies it as paternalistic, albeit of an impure kind.

By interfering with the freedom of an individual X, the State is fulfilling its duty to make decisions on behalf of X and of those with whom X, in the absence of restrictions, comes into contact, in the interests of the individual X and of other individuals, assuming that both the individual X and the other individuals are in a condition of not being fully aware of the present danger to which they are exposed, both in potentially infecting and in being infected by others.

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<sup>3</sup> Several authors speak of ‘impure paternalism’, especially Dworkin (2020). On the debate about the relationship between impure paternalism and mandatory vaccines, see Gibilini 2020. A similar position is endorsed by Coggon and Viens (2020). On a broader discussion on paternalism see Coggon 2012.

The idea is therefore to consider the field of health as a particular field in which the consequences of decisions about collective health also affect the lives of those to whom the decision is not primarily directed. Therefore, focusing too much on and emphasising the unconditional validity of policies inspired only by inviolable principles such as freedom, may run the risk of properly addressing the pandemic emergency, insofar as satisfying the individuals demands for freedom seems to worsen the damages affecting the community in its entirety. In other words, there are contexts, such as pandemics, where, paradoxically, we should be open, as individuals, to potentially cope with frustrations derived to restrictions to individual liberty, if this means protecting the most vulnerable categories of the society itself.

In the next section some of the main arguments raised during the ‘total lockdown’ in favour of and against to the already mentioned restrictive measures will be discussed, some of which reiterate certain principles, while others attempt to apply them to the concrete situation. From this overview it will hopefully also emerge how complex is the process of collective decision-making, as well as the reasonings and reflections behind it.

### 3. FREEDOM, RIGHTS, HEALTH, SECURITY: A COMPLEX AND DIFFICULT BALANCING

In what follows, we will present the main reasons in favour of and against to the restriction policies adopted during what we have defined as ‘total lockdown’ in order to differentiate it from the restrictions introduced in the second wave. The reasons against the restrictions are supported by those who considered these restrictions as a threat to democracy and, therefore, illegitimate.

Those who declared in favour of such restrictions, or who found them acceptable, did not accept them unconditionally. In other words, even supporters of such policies accepted them on the basis of some specific conditions.

The polarization of opinions in favour of and against to such governmental policies did not allow to find an effective solution to the disagreement, with an impact on the difficulty of tailoring a common answer to the pandemics. Such disagreement – exacerbated by web technologies – may be also referred back to the uncertainty spreading among the general population, but also among politicians and even experts, involved in various ways in the decision-making process.

### *3.1. Arguments against restrictions adopted during the first wave of Sars-Cov-2 pandemic*

#### 3.1.1. Argument 1. From the ‘state of emergency’ to the ‘state of exception’

First of all, the legitimacy of the restrictions on freedoms has been contested, since considered a violation of individual rights. Restricting or even impeding the exercise of fundamental freedoms such as movement or association has been interpreted by critical thinkers as an attack to the democratic institution. This critique may be considered as part of the broader critique raised towards contemporary democracies, accused of having endorsed an authoritarian drift, plunging politics into a ‘state of exception’. By ‘state of exception’ we refer to any state in which the political authority acts outside the fence of the Constitution, interrupting the laws governing relations between citizens. These rules are pursued to standardise individual conducts, in order to make the latter compliant with a pattern of *mutual and stable expectations* over time, which in turn represents a fundamental framework for rights’ assurance (Sala 2019).

Those who have seen in the anti-Covid directives the attempt of imposing a ‘state of exception’ accuse the democratic government of abusing of its own power. The critique argues that, by means of decrees, the government would actually impose restrictions on individual freedoms.

Insofar as the decisions were taken, by means of a decree, by the President of the Council of Ministers without passing the scrutiny of the two Houses, the Italian Government would have hence acted following a grey regulatory area, without referring to the Parliament, which resulted in the end *de facto* deprived of its functions. Therefore, notwithstanding the original appeal to a ‘state of emergency’, this has been progressively turned into a ‘state of exception’, trampling on the Constitution in order to establish autocratic power (Manzotti 2020).

#### 3.1.2. Argument 2. The instrumental use of fear against political dissent

A second line of critiques argues that Governments instrumentally appealed to the fear of infection in order to establish the already mentioned state of exception. Playing on fear, Governments imposed isolation, limited or even prohibited access to public spaces. The fear for the virus rapidly evolved in the fear everyone as potentially affected by and carrier of the virus, thus also undermining reciprocal trust.

The military language and the continuous call for social cohesion to stem the virus advance – considered, within this narrative, as the first enemy – would have generated the desired effect of an almost dictatorial regime to repress dissent.

To facilitate this rhetoric, a central role was also played by the lack of proper spaces – due to lockdown policies – necessary to facilitate public debate on these issues.

Citizens have been reduced to spectators of decisions taken by ‘lone men at the helm’, in a ‘new Leviathan’ perspective, in which a genuine interest in politics has been replaced by the attention to fear. In this view, the community becomes the aggregate of separate individuals, coercively relegated in their private sphere, unable to react in a responsive and responsible manner to the directives of an authority, only interested in power (Moroni 2020).

### 3.1.3. Argument 3. Surveillance technologies

Another critique comes from the side of those who have strong perplexities about the use of technology to track people’s movements: there is a danger of abuse, of pervasive control of individual behaviour aimed at guaranteeing the respect for the rules imposed.

In addition to the control, by the local police, of passers-by, more controversial appears as the control through the use of drones, immediately suspended because excessively intrusive in the lives of individuals.

Despite raising different issues, still controversial is the control that can be obtained through the use of apps to be downloaded on personal smartphones, the so called ‘contact-tracing’ or (more correctly) ‘exposure-notification’ apps. Although these apps have been made available to citizens on a voluntary basis, they elicited concerns – in policy as well as the public discourse – because of the possible misuses of data collected and the heightened risk of ‘function creep’, i.e. the extended re-use of data beyond the purpose for which they had been originally collected. For some scholars as well as lay publics, largely following a consequentialist line of reasoning, these apps entail a trade-off between individual privacy and public health utility; for others, mostly taking cue from a deontological perspective, they are bound to threaten rights perceived as inalienable (e.g. individual autonomy and freedom), irrespective of whether or not a specific practice is likely to cause actual harm (Lucivero *et al.* 2021, forthcoming).



Once collected, the step from mere collection of big-data to their abuse is a short one: with the information obtained the authorities could illegitimately impose lifestyles to the detriment of everyone's freedom (Palano 2020). The risk to observe a degeneration from a model of soft or even weak paternalism into some imposition of one morality as superior to the others, a sort of legal moralism (Dworkin 2020).

Even if we did not reach the condition in which by acquiring *data* we would be eventually able to control the population (Sanchini, Marelli 2019), 'data breaches' represent nowadays a reality: an epidemiological control activity may easily become, if not correctly applied granting anonymity, a real instrument of mass control (Epifani 2020). This is what already happen with commercial platform which ground their business model on the collection of vast troves of personal (health) data, and the possibility to combine them in myriad and often ethically sub-optimal ways (Pasquale 2015; Sharon 2016; Marelli *et al.* 2020a; Marelli *et al.* 2020b).

By explicitly referring to Zuboff (2019), we may claim that we have entered the 'surveillance capitalism' era, in which the power accrued by Big Tech platforms is built upon the knowledge of citizens' preferences. Possessing this knowledge means, in turn, to have the capacity of impacting on citizens' choices, without the latter being aware of being manipulated.

In relation to the risks related to the abuse of tracing technology, less critical thinkers have spoken of a 'weak state exception' (Castellani 2020) by referring to the political power exercised in the pandemic era: governments have endowed themselves with powers exceeding those foreseen by the Constitution, masking it through the appeal to safeguard citizens' health, with only the very necessary restrictions to their liberties.

The main risk of this state of exception, even if weak, is that governments powers acquired during the emergency period will end up being less provisional than what initially planned, thus becoming the ordinary new rule (French *et al.* 2020; Lucivero *et al.* 2021, forthcoming).

### *3.2. Arguments in favour of restrictions adopted during the first wave of Sars-Cov-2 pandemic*

In the next sections we will report and discuss the arguments in favour of or at least indulgent with the liberties' restrictions adopted by governments during the first pandemic wave.

In this case, too many reasonings draw from the exceptionality of the situation and in order to argue that, initially, governments were not intended to declare the ‘state of exception’. These were only driven by the attempt to respond to the duty to decide in an emergency context, taking exceptional – but not unconstitutional – decisions. It would have been the condition of urgency which has prompted exceptional decisions to be taken without guaranteeing wider deliberation, while respecting democratic procedures.

Saying this means, however, committing oneself to understand with what democratic legitimacy those decisions have been taken, namely, what the Constitution allows and what, on the contrary, would represent a violation of its principles. In this specific context, this means also providing an evaluation of tracing technologies in terms of their impact on individual freedoms.

### 3.2.1. Argument 1. Although the condition is exceptional, we are not in presence of a ‘state of exception’

The Italian Constitution does not foresee the ‘state of exception’. In every situation, even in exceptional ones, the fundamental principles on which the Republic is grounded – rights and various freedoms – continue to apply, which would not be the case if the ‘state of exception’ were envisaged.

Marta Cartabia, Past President of the Constitutional Court, in April 2020, argued that stating the validity of constitutional principles in all circumstances did not mean denying the need to take into serious account the circumstances of their application (Cartabia 2020). Constitutional principles may be differently translated according to the different contexts, and it is the Constitution itself that should clarify under what conditions restrictions of rights can be tolerated: circumstances of necessity must be present, the criteria of proportionality, reasonableness, balance and provisionality must be respected. In that sense, it is the same Constitution which envisages these conditions determining something like an ‘ad hoc’ applicability, thus excluding this operation being labelled as ‘state of exception’.

### 3.2.2. Argument 2. The right to health comes first

Previous reasonings supported the idea that the restrictive measures implemented did not violate the Constitution but were purposed to address the exceptional circumstances in which its application had to be guaranteed. The

core idea was that, in addition to the relevance of the right to freedom, other fundamental rights should be respected, first and foremost the right to health conceived as both an individual right and the interest of the community, as also recognised by Art. 32 of the Italian Constitution. The fact that such situation is defined as ‘exceptional’ grounds, in our view, is in the fact that governments had to provide immediate responses to potentially lethal virus, especially with respect to vulnerable individuals. However, such responses were not intended as *definitive*.

Policy enacted have been formulated taking into account the speed and dynamics of the infection, as well as the coordination needed to slow the spreading of the virus (Pellegrino 2020a). Therefore, the exceptional circumstances, the urgency as a key factor for accelerating institutional decisions, and the uncertainty regarding future prospects and available solutions, have led to opt for some rights as a priority over others, even if relevant.<sup>4</sup> In the circumstances of urgency, governments decided to give a *provisional* priority to health at over freedom. Such ‘provisionality’, as we will explain below, is fundamental condition for the legitimacy of such decision. By doing this, the government asks citizens to tolerate a harm (suspension of certain freedoms) to prevent the occurrence of a more serious harm, namely, health reduction as a consequence of contagion. Following this reasoning, it seems justifiable asking citizens to tolerate the lesser evil, even in the case this damages some layers of citizens’ life.

Said that, we can also admit there is no conflict among different rights which authority should decide upon, but there is a room for a collective decision backed by the harm principle. The authority is an arbitrator called to defuse an apparent conflict among rights, the one on the side of people behaving risky and on the other on the side of the vulnerable to be protected by the consequences of such a behaviour.

The situation is made more complex by an additional (already mentioned) element: in specific circumstances, such as during a pandemic, we may ob-

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<sup>4</sup> Within this interpretation, the authority had to choose to which right giving the priority: the choice between rights may be tragic, but it can also be supported by reasons, such as the choice of temporarily suspending certain rights in favour of others with the aim of re-establishing equality in the enjoyment of fundamental rights or, at least, with the aim of guaranteeing to all the conditions of possibility for the exercise of the fundamental right to life (or to the greatest possible protection of this right).

serve an overlap between the protection of individual health and the protection of public/collective health. Individual health is not only, in this case, part of the personal basket of goods, since, in the case of uncontrolled interactions, may affect public/collective health (Boniolo 2020).

Using a traditional expression, in the pandemic context, the individual choice is not only *self-regarding*. Leaving such an important choice in terms of the health of the community to individuals who are poorly informed or uninformed, is a decision that a liberal state finds difficult to justify, as long as the state must stand as a guarantor of the right of everyone, especially the most vulnerable, not to have their health damaged by others. The State, in this guarantee function, cannot tolerate attitudes that are harmful or likely to be harmful, where what is at stake is not personal beliefs or individual wishes but, again, the value of public health (Brennan 2018).<sup>5</sup>

To summarise, in the comparison ‘freedom *versus* life’ the first gives – temporarily – way to the second, which may be considered to prevail under certain conditions: presence of individuals with higher degrees of vulnerability, therefore more exposed than others to the pandemic; absence of effective therapies; scarcity of the necessary resources to adequately cope with the health emergency, for some caused, for others aggravated, by the lack of ‘preparedness’ towards emergency situations such as the one here considered (CNB 2020; Battisti *et al.* 2021, forthcoming).<sup>6</sup>

According to this reasoning, temporary limitations to personal freedom would be legitimate, if this responds to the primary need to try to protect the right to health (and, in this context, often also to mere survival) of each citizen, especially the most vulnerable ones (Parker *et al.* 2020).

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<sup>5</sup> Brennan speak of “clean hands principle” the principle for which the State has a duty to prevent anyone from participating in collectively harmful activities, but also to prevent some from participating in the collective imposition of unacceptable risks on others.

<sup>6</sup> This position criticizes the narrative that foresees an alternative between the right to individual freedom and the right to health, since it argues that at least one of the reasons why we are forced to balance between these two instances, derives from a series of wrong political choices characterised by social and political inequality. This objection shifts the focus from a moral/political problem to an economic/healthcare management issue, according to which the burden of the choice should fall on the one or those who have made it possible to arrive at that alternative. The problem is very complex, and its analysis exceeds the scope of the present contribution.

In this perspective, authority decisions were purposed to strengthen the enjoyment of certain fundamental rights by limiting others, although fundamental, with the aim of guaranteeing everyone the same conditions for the greater enjoyment in the immediate and future of various fundamental goods, including freedom itself (Savulescu, Persson, Wilkinson 2020). In such a view, authority's decisions are also justified on the basis of the harm principle: the conflicts of rights – in the circumstances of sanitary emergence – can be rephrased as a situation in which one, behaving freely, is likely to harm the others and the latter others are likely to be harmed by the former.

### 3.2.3. Argument 3. Uncertainty

Another important factor concerns the issue of uncertainty. Uncertainty is not only the result of past or present negligence, and therefore the expression of the incompetence of decision-makers. Uncertainty has to be understood as an intrinsic element of scientific development. Considering this aspect my help taking more effective decisions.

In the initial period of the pandemic there was no certainty about what would have happened. Such an uncertainty was further exacerbated by the declarations of the expert who, by showing disagreement, reinforced uncertainty and fear (see also: Sanchini 2015). Disagreement, however, is intrinsic to science; in fact, it is the scientific community itself as a place of constant confrontation, where the right to speak and the rejection of any principle of authority is in force (Jasanoff 2009).

If this is the case, it would perhaps have been appropriate to stress the potential provisional nature of scientific available data, in order to avoid the spreading of (false) certainties while, at the same time, fostering an attitude of trust towards science and its practices (Pollo 2020; see also: Tallacchini 2019). It is on the basis of a renewed awareness in the very nature of scientific development, its merits as well as its limits, that the public can be involved in collective decisions. In the face of uncertainty, it is first of all on the provision of valid information and citizens training that the government should have invested. This in order to make citizens expert enough to understand the reasoning underlying the enacted policy and perhaps even contribute to their definition.

The hope is that the pandemic may be an opportunity for a rethinking of active citizenship: we should 'rethink the meaning of individual autonomy in order

to consider it as the ability to act in a relational way, abandoning the idea that individuals only have accidental connections with those around them, developing the awareness that health implies shared responsibility' (Tallacchini 2020, 2).

To conclude, in order to address uncertainty, politics should not only rely on experts with the risk of a technocratic turn, but it should promote a 'democratic knowledge society' (Liberatore, Funtowicz 2003) where there are guarantees of transparency, accessibility and validation of publicly relevant information. Such a society must be based on a renewed trust between citizens and institutions: without being open to the acceptance of sharing a common destiny, restrictions on individual freedom may not be as fruitful as expected, thus only exacerbating further distrust towards institutions, while inhibiting practices of spontaneous solidarity (Shachar, Rubinstein Reiss 2020).

#### 3.2.4. Argument 4. Solidarity

Drawing from what has been shown in the previous sections, it should appear evident that any coercive measure is not *per se* sufficient to ensure desirable behaviours by citizens, such as those requiring some limitation by the side of citizens for the benefit of others. Differently, a sense of 'collective belonging' and solidarity may ensure proper outcomes. If social coordination without solidarity is made possible - at least in the first place - by regulatory constraints, by the system of rules that governments put in place to ensure the proper institutional functioning, if not supported also by people convictions, no law works over time. Solidarity may, in this context, represent the necessary drive for one to make sacrifices on behalf of the other, while being able to recognize in it a demand for justice. Without such drive, impositions may appear unbearable in the long run, and their collective effectiveness is compromised (Gostin, Friedman, Wetter 2020).

Very briefly, the idea of a bond of justice and solidarity grounds in a communitarian perspective characterised by civic friendship. The feeling of belonging to a common political reality should foster the creation of links between people who share a common experience as well as the interest in the good functioning of the community as a whole (see: Shachar, Rubinstein Reiss 2020). Solidarity would thus become the justificatory element for political actions considered necessary in emergency situations, also in accordance to what the Constitution requires.

It is precisely in this pandemic emergency that the idea, set out in Art. 2 of the Constitution, of a reciprocity between people's rights and duties, i.e. that the responsibility that everyone has towards the community, has strong-

ly emerged (Reichlin 2020). The emergency situation has made it clear that only in a system that makes everyone's health a community interest can the right to adequate health care be guaranteed.

Reasons of solidarity intertwined with justice considerations towards the most vulnerable, is also advanced in support of the use of the technology, whose risks have already been mentioned. Assuming that tracking is effective in its purposes, which has been already criticised by many (see, amongst the other: Sharon 2020), and that the anonymity of the data collected and its destruction after the pandemic is guaranteed, the question is what has to be done once tracking is complete, whether restrictions should be imposed on the citizenry in its entirety or only to some of its members. In other words, the government should also decide whether to impose limitations to personal freedom to those who are traced, perhaps individuals who may result positive to the testing though not presenting any symptom (Pellegrino 2020b), thus appealing to a 'duty to solidarity'; or, conversely, to impose such limitations only to the most vulnerable subjects, in their own interest (Parker *et al.* 2020).

#### 4. IS IMPURE PATERNALISM IN EMERGENCY CONTEXTS JUSTIFIED? THE ITALIAN CASE

At the end of this review, the restrictive measures implemented by the Italian Government both in the first and second pandemic waves will be discussed in detail, in order to support the legitimacy of an impure paternalism in this context, provided that some fundamental conditions, that we are going to present below, are respected.

##### *4.1. Brief overview of the restrictions adopted by the Italian Government during the first wave of Sars-Cov-2 pandemic<sup>7</sup>*

Italy was the first country in Europe that faced a Covid-19 outbreak through ineffective measures, as the closure of airports for flights from China prompt-

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<sup>7</sup>The brief reconstruction of the Italian condition here provided reports the main pillars of the policy measures put in place during the emergency phase of the first wave (February-May 2020), as well as some measurements enacted in the second pandemic wave (because of editorial reasons, we will present measures enacted till the end of November 2020). In order to have an always updated picture of the whole Italian situation, see the following link: <http://www.governo.it/it/coronavirus-misure-del-governo>.

ly after the announcement of Wuhan's lockdown. Subsequently, as the infection was spreading, especially in the North of Italy (first and foremost Lombardy), strict containment measures nationwide were introduced gradually through successive stages of varying intensity.

As far as the first wave is concerned, since 23 February 2020 the Government has banned the entry and exit from the municipalities where there were outbreaks, starting to restrict that freedom of movement and circulation that we have already mentioned. These restrictions have been further extended and broadened, ending up covering the entire national territory, starting from 22 March 2020. Since this date, it has been forbidden for everyone to move or move from the municipality in which they were located, except for reasons related to work needs, (documented) emergencies, or health reasons, always wearing a mask, which has been then regulated on a regional basis. Non-essential or non-strategic production activities have also been suspended: grocery shops and basic necessities, pharmacies and so-called 'essential services' have remained open.<sup>8</sup>

This phase later renamed 'phase one', was also the most contested, particularly within the most affected regions, where the approval of further measures, more radical and coercive than the national ones, required great commitment and patience by the side of the citizens. The case of Lombardy is well known in this regard, where a ban on moving more than 200 metres from home was established, except for the needs – health or work – mentioned above.

The 'phase one' was also characterised by the suspension of religious celebrations – a measure which, was interpreted by many as a much more radical restriction than freedom of worship, since it also prevented already affected families from living a very significant moment, even on a symbolic level, such as the funeral rite.

Since the 26<sup>th</sup> of April 2020, the Government declared the beginning of the 'phase two', to which corresponded the loosening of some measures, in particular regarding travelling within but also between regions, always under

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<sup>8</sup> Strongly contested by some, in this context, was the suspension of face-to-face activities, at all levels (from nursery to universities), which, although motivated by safety reasons – the famous right to health mentioned above, which for us appears as a priority – nevertheless had a negative impact in terms of development learning abilities and social interaction, with a higher impact for the (already mentioned) vulnerable populations.



certain conditions. Since the 3<sup>rd</sup> of June 2020, an important change occurred, in that interregional travel has been allowed without the need for self-certification. It has also become possible for tourists coming from the Schengen area to enter or return to Italy without submitting to the quarantine period. On the 14<sup>th</sup> of July 2020, the Prime Minister, Giuseppe Conte, signed a Decree that extended the measures of the previous Decree (11 June 2020) to the end of July 2020.

As for the second wave, the most relevant dates and its main elements are herein reported. On the 13<sup>th</sup> October 2020, the Prime Minister reintroduced, among others, the obligation to wear the mask in all public places indoors and outdoors, with the exclusion of certain classes of people, including children under the age of 6, those who are conducting a sport activity, those who are unable to wear it for health reasons; as well as the obligation to maintain a safety distance of at least one metre. Five days later, a new Decree was signed to supplement the previous decree of 13 October with further measures of a more restrictive nature, such as, for example, the modification of opening and closing times for bar and restaurant services. On the 24<sup>th</sup> of October, a new Decree was issued, which stated, among others: the *recommendation* not to travel, by public or private means of transport, except for work, study, health reasons, situations of need, or to carry out activities or use services not suspended. This decree also suspended the activities of gyms, swimming pools, wellness centres, and others. Moreover, it required secondary school institutions to adopt flexible forms in the organisation of teaching activities, increasing the use of integrated digital teaching for at least 75% of their activities. A key date is the 3<sup>rd</sup> of November 2020, when a new Decree containing new measures to deal with the Covid-19 epidemiological emergency, in force from 6 November to 3 December 2020, was signed. This Decree identified three areas – yellow, orange and red – corresponding to the different levels of criticality in the country's regions and for which specific and differential measures are envisaged according to the severity of the epidemic's spread in the various regions.

A complementary reasoning concerns the technological means used during the first wave of pandemic. A first technology initially used but immediately abandoned was the drone: in March 2020, for a few days, this instrument was introduced to monitor the population, with the explicit aim of identifying group assemblage. Surveillance by drones immediately seemed very questionable. This and other criticalities – such as, last but not least, that

relating to its potential interference with airplane circulation – led to the suspension of this instrument by the Department of Public Safety within a few days. Moreover, since 15 June 2020, in Italy as in other countries, the ‘Im-muni’ *app* for contact tracing has been active, to be downloaded voluntarily and free of charge. With this *app* it is possible to establish whether there has been contact with positive people, but without being able to know who they are or where the contact took place. The technology is the same as in other countries, based on Bluetooth and decentralised data collection. Although this *app* is for voluntary use only, and, as said, it does not track movements but only contacts, several critiques have accompanied this tool, both in terms of its real utility, and in terms of potential privacy violation.

#### *4.2. Evaluation of the containment measures enacted by the Italian Government during the two pandemic waves: are these equally legitimate?*

What discussed in section 3 was purposed to provide a comprehensive – though not systematic – overview of the main arguments in favour of and against to the containment measures enacted by (national and international) governments to address the first and the second pandemic wave. As explained, at least some of these measures – e.g., restrictions to freedom of movement – have been highly criticized insofar as considered as expressions of illegitimate paternalism.

Drawing upon such previous review, we will herein discuss some of the measures just described enacted by the Italian Government in order to explore whether they may be evaluated in a similar manner (or if they deserve a different evaluation), and what are the reactions these raised.

##### 4.2.1. First pandemic wave

In this section, we will try to defend some of the containment strategies enacted by the Italian Government in the first pandemic wave. Such a defence, as it will be properly explained, is bound to the occurrence of some fundamental conditions, which will be presented and justified. In particular, we will argue that the imposition of proportionate means to achieve what we may assume as collectively desirable ends – be they a sort of soft, weak or impure paternalism, according to the different arguments put forward above – can be considered acceptable insofar as the following five conditions are all simultaneously respected: *i*) there is *urgency* with respect to the policy

decision to be taken; *ii*) there is *epistemic uncertainty* (directly related to the health emergency crisis) on how the situation will develop as well on the consequences of different courses of actions (Tallacchini 2020); *iii*) a *principle of proportionality* with respect to the means adopted to contain the health emergency crisis, is respected; *iv*) a *principle of provisionality*, which requires that policy measures are interpreted as harm-containing measures and therefore are revised in light of new information/changing of the events, is applied; *v*) *compensation measures* are promptly introduced to allow individuals not only to survive but to conduct a decent life in the period in which the containment measures are in place (e.g. forms of assistance and social security, financial support, etc.).

These five conditions are, in our view, grounded on two main assumptions: *first*, that collective health is a public good and that there is agreement on this conviction; *second*, that as a consequence of epistemic uncertainty, public authority needs to ensure the stability over (even short) time of prudential conducts, which allows citizens to benefit from a coordination of their respective instances and expectations (Sala 2019). The latter means that, in order to have a real benefit for the community, compliance with the rules must apply universally. However, as the public authority cannot assume that this scenario naturally realises, an impure or even a collateral paternalism is, under the conditions reported above, allowed.

Assuming that the five conditions reported upon are all simultaneously respected, which, for us, represents the fundamental basis for the consideration of one of the above sorts of paternalism as legitimate, let us explain what are the reasonings supporting our view.

The urgency of the situation we had to – and we are unfortunately still – addressing has called for a balance between rights considered equally fundamental. Such a balance – we argue – may even translate into a temporarily suspension of some of these rights, provided that this suspension presents the traits of *provisionality* and *proportionality*.

Respecting a principle of provisionality means, in this context, that the restrictive measures must remain in place only for the period that is strictly necessary to contain the epidemic and that alternative strategies, less controversial, are developed (e.g. increased availability of beds within the Intensive Care Units; distribution of vaccine, if available). This emphasis on the feature of provisionality is sensible also with reference to the conditions that should be met to legitimate both a soft and a weak paternalism: at the beginning of

the pandemics people were not completely aware of the risk they were running and of the risk they were likely to cause other people run; it takes time to make people aware of these risks. And it takes time to educate them on the effective means to live freely but compatibly with the same right to freedom of others. Further, respecting a principle of proportionality means also that limitations to individual freedoms should be proportional to the pandemic's conditions and the desired ends. To make a concrete example, we may argue that shooting anyone who violates the quarantine as happened in the Philippines is clearly not proportional to the end of promoting and maintaining the fundamental right to health itself.

In addition to provisionality and proportionality, urgency, uncertainty and the presence of compensatory measures should apply. This means that most of the measures adopted during the first pandemic wave may be considered as legitimate only in presence of genuinely *emergency* conditions, which are themselves characterized by present and future *uncertainty*. Moreover, since it cannot be legitimately requested to citizens to comply with containment measures enacted when these explicitly prevent them from conducting their life sustaining activities, in these latter the presence of the compensatory measures should be put in place as soon as such measures are enacted.

Therefore, in our opinion, the containment strategies enacted, at least in the early stage of the pandemic, can be interpreted as forms of paternalism and not as the implementation of a state of exception. Their undisputable exceptional trait is justified, for us, by the exceptionality of the situation itself, which required, in most of the cases, not the violation of constitutional principles but their adaptation to the emergency situation<sup>9</sup>.

#### 4.2.2. Second pandemic wave

However, justifying forms of paternalism as said above does not mean legitimising any decision that a government may take (and has taken from the beginning of the pandemic). In particular, the second wave of pandemic – i.e. late Fall and the approaching Winter 2020 – as well as the upcoming potential third pandemic wave, dominated by the threats of Covid-19 variants,

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<sup>9</sup> We are aware that ours is a 'benevolent' reading of what happened. However, more critical interpretations are reasonable, for the reasons we have reported.

prompted us to add some reflections, aimed to investigate whether the justificatory reasons for the first wave apply to the second and third waves as well.

With regard to Italy, some doubts have emerged (and still persists) over the legitimacy of the choice of defining some services as essential, therefore allowing them to remain open, and to define similar services as non-essential, therefore forcing them to close.<sup>10</sup> The differentiation between essential and non-essential services remained controversial in the second pandemic wave. It is hardly justifiable to distinguish some activities as dangerous while others, apparently similar, as non-dangerous. It is worth mentioning, for instance, the different classification of hairdressers on the one side and of beauticians on the other side. Such a different treatment is hardly tenable, since the short distance between the professional and the client is common to both.

The question is that, while considering as legitimate at least some decisions enacted by the Italian government, their bindingness should be strictly limited, according to us, to the emergency situation and its related conditions (urgency, uncertainty, scarcity of resources, compensatory measures, etc.). Although the second pandemic wave may still be considered as an emergency condition, doubts exist over the application of the afore legitimizing conditions. Let us better explain this point. The conditions of emergency and urgency reoccurred in September 2020 and are still ongoing. The contact tracing failed, and the contagion is still not under control. However, there are some differences between the original condition and the one we are in now, amongst which time prevails. Some months passed between the first and the second wave. However, apparently no effective measure to contain the pandemic was developed in this non-emergency period. In other words, the common perception is that politics did not use in an effective manner time

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<sup>10</sup> To mention one example among many others: newsstands were considered essential services, whereas stationers were not. Although one might advance some reasons for this choice – newsstands, by selling newspapers, ensure that citizens receive the main means of information, which is not the case with stationers – given the emergency situation, and since newspapers are also sold by some supermarkets, one might have opted for this different decision. An alternative narrative interprets such choice on the basis of the fact that the opening of newsstands is functional to avoid a (even more marked) decline in sales by the main information bodies (paper and digital) and therefore, implicitly, as a functional compromise to ensure more favourable information coverage of the Government's measures, seems more plausible.

at its disposal, therefore raising some doubts over its legitimacy: the current delays in the vaccination programme due to too optimistic predictions, as well as to organisational deficiencies ascribable to some members of our ruling class are just some examples of it.

In what follows, we will briefly go through the conditions that we presented in support of the legitimacy of restrictions in the first pandemic wave, to explore whether they equally apply in the second pandemic wave.

Since people are still dying because of the pandemic, health workers are less than needed, hospitals' emergency units are still overcrowded, we may argue that *urgency (i)* still applies. However, healthcare organization has not really improved, doctors and nurses were not recruited in an adequate number, and the reasoning lying behind drugs and devices distribution does not seem transparent enough.

*Epistemic uncertainty (ii)* still remains a fundamental characteristic of science. However, some knowledge has been reached about the Sars-Cov-2 virus. Despite being not perhaps sufficient to face it properly, such knowledge proved sufficient to understand some key aspects of personal and other protection. To make some examples, it has been proved that wearing sanitary masks is efficacious to reduce contagion, as reported by international health agency as WHO (2020). The same applies to other devices and 'behavioral strategies' against the spread of the virus. Therefore, epistemic uncertainty may not play the same justificatory role that it played during the first pandemic wave.

The condition of *proportionality (ii)* still applies, and it is indeed the very reason for which restrictions to freedom must be accepted nowadays. The balance between an actual risk of dying for a large number of people and the temporary loss of freedom of movement and aggregation results in giving priority to the first: in the very situation in which one should choose between the two sets of rights, no one would renounce saving a life although at the high costs of the infringement of other rights, be they right to liberty and right to life.

The real critical condition is represented by *provisionality (iv)*. The perdurance of restrictions over time is hardly tolerable, especially for the reasons listed above. That is, during the months passing between the first and the second wave, a lot of things would have been organized and put in place: effective containment measures of the contagion, feasible solutions about the access of public places and commercial activities in general. The odd case of wheeled desks for school is paradigmatic: part of the Summer 2020 has been

spent in discussing about wheeled desks as the fundamental strategy to fight against the contagion, where public funds may have been devoted to very different – and more effective – tools.

Finally, about the *compensation measures* (*v*), it is clear how much they are disputable insofar as they are reduced to small amount of money to all, without any distinction about different losses and needs. No strategy of compensation seems satisfactory or adequate to ‘restore’ the losses of gains.<sup>11</sup>

In addition to the difficulty of justifying the containment measures in this second ongoing wave for the reasons just reported, the second wave has been also accompanied by *feelings of intolerance* towards the government and the enacted restrictions. Indeed, while in the first wave, citizens were more willing to comply with the lockdown measures, even if more radical, precisely because of the afore conditions, now some of its main conditions have changed. In this second pandemic wave, the question is no more focused on the value of life, as the attention has shifted to the consideration that, although months have passed, we are still facing emergency conditions. Meanwhile, other problems emerged and are still emerging: collateral damage caused by even partial lockdowns and other measures; undiagnosed or untreated other diseases; widespread mental health problems; the health and well-being costs of unemployment and poverty; increased domestic abuse; disruption of education<sup>12</sup>.

Some of these issues may have surely benefited from occasions of public debate, which could have helped to address and even disentangle some of these issues: for instance, how great a risk the disease poses, compared to other risks that are routinely accepted.

Over the past months, we have heard a great deal about the policies used to address the virus, but very little about the ‘ethics’ – broadly understood – underpinning them. Since we are subjected to policies that have been imposed to us, we may legitimately wonder which the ethical frame-

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<sup>11</sup> Details at: <https://www.agenziaentrateriscossione.gov.it/it/cittadini/Compensazioni/>; <https://www.agenziaentrate.gov.it/portale/-/comunicato-stampa-del-20-novembre-2020-decreti-ristori>. The web sites of the Ministry of Finance and the Income Tax Office are not simple to a common citizen perusal.

<sup>12</sup> About this point, online learning does not clearly properly replace in-person teaching. For normal development, children have a strong need to socialize with other children, to make friends, and to play with one another – which is all absent with online learning.

work was – if any – or, at least, the ethical reasoning, that the government followed to find a balance between conflicting values and interests. If, as it has been repeatedly said by the government, even ‘differential lockdown’ is a measure of last resort, we are fully entitled to ask why this measure was adopted for a second time. Are there some ethically legitimate alternatives to find a balance between individual rights and collective interest? Is this very balance the right way to interpret the situation? Overcoming the alternative between individual rights and collective interests is the ambitious goal of a society in which individuals contribute to a responsible citizenship. Within such a society, the importance of belonging to the political community is tantamount to a duty of fairness and to the recognition that there are some limits of one’s own judgement about what is useful or right to do or not to do in a context of mutual relations. Recognizing that one’s own interests are not necessarily immediately considered as ‘rights’ leads to the importance of an idea of individual freedom though subjected to the constraint of reciprocity. No one has unlimited freedom in a collective and plural context; everyone has freedom within the limits set by the principle of not harming others. If the answer is positive, policies have been enacted without an adequate ethical scrutiny.<sup>13</sup> Since with this pandemic not only scientific but also moral choices were made – e.g. whose lives are to be saved first, what socially valued goods need to be protected – justice-based reasons demands that such decisions are subjected to public scrutiny through public deliberations or at least that the citizenry is involved in debates around these decisions.

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<sup>13</sup> Some authors maintain that a selective lockdown could be the best solution to reduce the contagion. Namely, they propose to shield the elderly as they are the most vulnerable members of society (Savulescu, Cameron 2020). We know that the virus is far more likely to hospitalize the elderly and those with certain pre-existing health conditions. Shielding is a form of selective lockdown that involves minimizing the interactions these people have with other members of society in order to contain infections among them. We do not see this as the best solution, as it is a policy that results in a discriminatory treatment of groups of people. The idea of forcing some citizens not to exercise rights that are granted to others and to inflict the damage of quarantine on them seems indefensible, even if it were temporary. It is not a question of limiting the rights of everyone to allow for equality in the enjoyment of the right to health. It is about asking some for a sacrifice, for the benefit of others. Finally, also voluntary lockdowns seem odd: the idea is the lockdown should be an individual choice. If so, lockdown should be renamed as self-isolation or prudential quarantine (see Snowdon 2020).



This does not mean that there are no objective scientific grounds on which to formulate the containment measures, but that policy-makers have the duty to explain why isolating or quarantining individuals is a proportionate intervention that significantly reduces the harm or threat of contagion to others, and why this is the solution which maximizes the overall benefit of the majority of the population, even the most (physically but also mentally) vulnerable subjects. In short, we think that public health measures need to be evidence-based and proportionate; but the purpose of any intervention as well as the factors that are mostly valued while formulating these policy decisions should be transparent, communicated to the public, and, if possible, also somehow the result of an exchange between the public and the institutions. Coercion and intrusion into people's lives should be the minimum possible consistent with achieving the aim sought.<sup>14</sup>

The lack of a proper public discourse as well as lack of transparency and consistency over different policy enacted, created an increased intolerance towards restrictions. The so-called 'negationists' apart,<sup>15</sup> such intolerance was probably also the result of a growing distrust towards institutions.

Therefore, although we may share the *ratio* of restrictions enacted by a democratic government as driven by the necessity of the situation, we may question that it was strictly necessary to proceed in this manner. New outbreaks of pandemic seem to be bound to the fact that institutions did not enact proportionate and valid measures. Moreover, the trade-off between individual rights and collective interests could have been interpreted in a different manner, or even rebalanced in light of knowledge acquired and time gained in between the two waves.

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<sup>14</sup> This consideration is partially taken from an official document of the Nuffield Council of Bioethics, UK, Ethical Considerations in responding to the Covid-19 pandemic 17 March 2020 (<https://www.nuffieldbioethics.org/assets/pdfs/Ethical-considerations-in-responding-to-the-COVID-19-pandemic.pdf>).

<sup>15</sup> We are not interested in discussing this position, since we only discuss what may be considered as a reasonable disagreement. Denying the existence of the pandemic and thousands of deaths from the pandemic is not properly reasonable. See among others: Boettcher 2004.

## 5. CONCLUSIONS. LESSONS FROM THE SECOND PANDEMIC WAVE

It is difficult now to put an end to ongoing reasoning, which is constantly developing, as it stems from an unstable terrain of generalized uncertainty: about our life, health, wealth, work, and freedom. Pandemic is still here, and probably it will be here for long. Perhaps and somehow even paradoxically, it is time for practices that may help people to recover that trust towards the political institution that seems now missing. This ‘renewed trust’ seems to require at least three elements: transparency, consistency and engagement.

*Transparency* requires that people obliged to comply with (mandatory) policies are properly informed about them, as well as about the grounding inspiring values underlying them.

*Consistency* demands that there is a homogeneity between families of allowed and non-allowed practices. This does not mean that if conditions are different across regions these differences should not be considered, but that within a single region, practices presenting similar conditions and similar risks should be treated equally.

*Engagement* is interpreted here in a twofold sense. Ideally, being Italy a formally democratic country, when value choices are in place, strategies to promote an active engagement of the public should be put in place in the decisional process. However, less radical forms of public engagement may be also foreseen if conditions of emergency prevent such process to occur (Migone 2020).

In addition to the three elements presented above, maintenance of trust requires also that an efficacy of enacted policies is observed: this is possible if the proper choices are made, and proper compensatory measures are in place to support the population in its entirety.

In our country but also in other democracies, the institutional trust, that should be made up of shared values and respect of rules, seems to be compromised in a large part of the population. The months of disputable restrictions, institutional disinformation, and conflicting information also from so-called experts no doubt have left their mark on public trust.<sup>16</sup>

Indeed, transparency, consistency and engagement should underpin citizens’ compliance with institutions: nowadays, even when people are com-

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<sup>16</sup> An interesting reflection about (mis)information: Challenger 2020.

pliant with the rules, their compliance seems far from being wholehearted. Rather, it seems a sort of ‘intolerant compliance’, to say oddly, as it seems compelled by a still current emergency situation which could have been and should have been avoided.

To conclude: when a government is facing situations or planning the enactment of measures that will affect people profoundly, then trust is going to be vital. And that trust will only be afforded to a government that is engaging with listening, explaining, responding openly and transparently. Governments cannot just ask for people to trust them; they have to earn trust and to do so in the right ways. They should not just be trusted but also be trustworthy. It is a matter of fundamental democratic accountability.

## REFERENCES

- Battisti D., Marelli L., Picozzi M., Reichlin M., Sanchini V. (2021), “L’allocazione delle risorse sanitarie durante la pandemia da COVID-19: un’analisi comparativa dei documenti della SIAARTI e del CNB”, *Notizie di Politeia*, forthcoming.
- Beauchamp T.L., Childress J.F. (2019), *Principles of Biomedical Ethics*, Oxford University Press, Oxford (8<sup>a</sup> ed.).
- Boettcher J.W. (2004), “What is Reasonableness?”, *Philosophy & Social Criticism*, vol. 30, n. 5-6, pp. 597-621.
- Boniolo G. (2020), “Covid-19. Da una falsa etica dei diritti all’etica dei doveri”, *Scienza in rete*, <https://www.scienzainrete.it/articolo/covid-19-da-falsa-etica-dei-diritti-alletica-dei-doveri/giovanni-boniolo/2020-03-16>.
- Borsellino P. (1999), *Bioetica tra autonomia e diritto*, Milano, Zadig Editore.
- Brennan J. (2018), “A Libertarian Case for Mandatory Vaccination”, *Journal of Medical Ethics*, vol. 44, pp. 37-43.
- Cartabia M. (2020), “Nella Costituzione le vie per uscire dalla crisi”, *Corriere della Sera*, 20 aprile, [www.corriere.it/esteri/20\\_aprile\\_29/coronavirus-intervista-marta-cartabia-nella-costituzione-vie-uscire-crisi-c1893622-8982-11ea-8073-abb99eae2ee6.shtml#](http://www.corriere.it/esteri/20_aprile_29/coronavirus-intervista-marta-cartabia-nella-costituzione-vie-uscire-crisi-c1893622-8982-11ea-8073-abb99eae2ee6.shtml#).
- Castellani L. (2020), “Tra stato d’eccezione ed espansione tecnocratica: la crisi del Covid-19 e i possibili scenari”, in A. Campi (ed.), *Dopo: Come la pandemia può cambiare la politica, l’economia, la comunicazione e le relazioni internazionali*, Soveria Mannelli, Rubbettino, pp. 71-79.
- Challanger M. (2020), *Viral Information Overload: Persuading People to Act During a Pandemic Requires a Better Understanding of Human Motivations*, [www.nuffieldbioethics.org/blog/viral-information-overload-persuading-people-to-act-during-a-pandemic-requires-a-better-understanding-of-human-motivations](http://www.nuffieldbioethics.org/blog/viral-information-overload-persuading-people-to-act-during-a-pandemic-requires-a-better-understanding-of-human-motivations).

- CNB (Comitato Nazionale per la Bioetica) (2020), *Covid-19: la decisione clinica in condizioni di carenza di risorse e il criterio del “triage in emergenza pandemica”*, [http://bioetica.governo.it/media/3997/p136\\_2020\\_COVID-19-la-decisione-clinica-in-condizioni-di-carenza-di-risorse-e-il-criterio-del-triage-in-emergenza-pandemica.pdf](http://bioetica.governo.it/media/3997/p136_2020_COVID-19-la-decisione-clinica-in-condizioni-di-carenza-di-risorse-e-il-criterio-del-triage-in-emergenza-pandemica.pdf).
- Coggon J. (2012), *What Makes Health Public? A Critical Evaluation of Moral, Legal, and Political Claims in Public Health*, Cambridge, Cambridge University Press.
- Coggon J., Viens A. (2020). “Collateral Paternalism and Liberal Critiques of Public Health Policy: Diminishing Theoretical Demandingness and Accommodating the Devil in the Detail”, *Health Care Analysis*, vol. 28, pp. 372-381.
- Dworkin G. (1988), *The Theory and Practice of Autonomy*, Cambridge, Cambridge University Press.
- (2020), “Paternalism”, in E.N. Zalta (ed.) (2020), *The Stanford Encyclopaedia of Philosophy*, <https://plato.stanford.edu/archives/sum2020/entries/paternalism/>.
- Epifani S. (2020), “Pedinamento digitale e democrazia della sorveglianza”, in A. Campi (ed.), *Dopo: Come la pandemia può cambiare la politica, l'economia, la comunicazione e le relazioni internazionali*, Soveria Mannelli, Rubbettino, pp. 59-69.
- French M., Guta A., Gagnon M., Mykhalovskiy E., Roberts S.L., Goh S., McClelland A., McKelvey F. (2020), “Corporate Contact Tracing as a Pandemic Response”, *Critical Public Health*, Doi: 10.1080/09581596.2020.1829549.
- Giubilini A. (2020). “An Argument for Compulsory Vaccination: The Taxation Analogy”, *Journal of Applied Philosophy*, vol. 37, n. 3, pp. 446-466.
- Gostin L.O., Friedman E.A., Wetter S.A. (2020), “Responding to Covid-19: How to Navigate a Public Health Emergency Legally and Ethically”, *Hastings Center Report*, vol. 50, n. 2, pp. 8-12.
- Governo italiano (2020), *Coronavirus Misure del Governo*, [www.governo.it/it/coronavirus-misure-del-governo](http://www.governo.it/it/coronavirus-misure-del-governo).
- Jasanoff S. (2009), “The Essential Parallel between Science and Democracy”, *Seed Magazine*, <https://classes.matthewjbrown.net/teaching-files/svd-phd/4-democracy/Jasanoff%20-%20The%20Essential%20Parallel%20Between%20Science%20and%20Democracy%20-%20SEEDMAGAZINE.COM.pdf>.
- Liberatore A., Funtowicz S. (eds) (2003), “‘Democratising’ Expertise, ‘Expertising’ Democracy”, *Science and Public Policy*, vol. 30, n. 3, pp. 146-232.
- Lucivero F, Marelli L. *et al.* (2021), “Normative Positions towards Contact Tracing Apps: Findings from a Large-scale Qualitative Study in Nine European Countries”, *Critical Public Health*, forthcoming.
- Marelli L., Lievrouw E., Van Hoyweghen I. (2020a), “Fit for Purpose? The GDPR and the Governance of European Digital Health”, *Policy studies*, vol. 41, n. 5, pp. 447-467.
- Marelli L., Testa G., Van Hoyweghen I. (2020b), *Big Tech Platforms in Health Research: Re-purposing Big Data Governance in Light of the GDPR’s Research Exemption*, SSRN 3712168, 2020.

- Manzotti R. (2020), “#iostoacasa: come la paura e la mancanza di ragione uccidono la libertà e la democrazia”, *LeoniBlog*, <https://www.leoniblog.it/2020/04/08/iostoacasa-come-la-paura-e-la-mancanza-di-ragione-uccidono-la-liberta-e-la-democrazia/>.
- Migone A.R. (2020), “The Influence of National Policy Characteristics on Covid-19 Containment Policies: A Comparative Analysis”, *Policy Design and Practice*, vol. 3, n. 3, pp. 259-276.
- Mill J.S. (1991), *On Liberty* [1859], ed. J. Gray, G. Smith, London, Routledge.
- Moroni C. (2020), “Opinione pubblica e pandemia: cosa resterà delle distorsioni causate dal Covid-19”, in A. Campi (ed.), *Dopo: Come la pandemia può cambiare la politica, l'economia, la comunicazione e le relazioni internazionali*, Soveria Mannelli, Rubbettino, pp. 167-175.
- Nuffield Council of Bioethics (2020), *Ethical Considerations in Responding to the Covid-19 Pandemic*, <https://www.nuffieldbioethics.org/assets/pdfs/Ethical-considerations-in-responding-to-the-COVID-19-pandemic.pdf>.
- Palano D. (2020), “La democrazia e il contagio globale”, in A. Campi (ed.), *Dopo: Come la pandemia può cambiare la politica, l'economia, la comunicazione e le relazioni internazionali*, Soveria Mannelli, Rubbettino, pp. 25-35.
- Parker M.J. et al. (2020), “Ethics of Instantaneous Contact Tracing Using Mobile Phone Apps in the Control of the Covid-19 Pandemic”, *Journal of Medical Ethics*, vol. 46, n. 7, pp. 427-431.
- Pasquale F. (2015), *The Black Box Society*, Cambridge, Harvard University Press.
- Pellegrino G. (2020a), “Lo stato di emergenza e lo stato di eccezione: una teoria liberale”, *LUISS Open*, <https://open.luiss.it/2020/04/11/lo-stato-di-emergenza-e-lo-stato-di-eccezione-una-teoria-liberale/>.
- (2020b), “Tracciamento e discriminazione”, *il Mulino*, [https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS\\_ITEM:5162](https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS_ITEM:5162).
- Pollo S. (2020), “Parlare del virus in democrazia”, *il Mulino*, [https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS\\_ITEM:5046](https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS_ITEM:5046).
- Reichlin M. (2020), “Post-colonial Studies. Il diritto alle cure a la responsabilità per la salute”, *Labontblog*, <https://labontblog.com/2020/07/08/post-colonial-studies-il-diritto-alle-cure-a-la-responsabilita-per-la-salute/>.
- Riva N. (2020), “Introduzione”, in N. Riva (ed.), *L'antipaternalismo liberale e la sfida della vulnerabilità*, Roma, Carocci, pp. 9-11.
- Sala R. (2019), “Modus Vivendi and the Motivations for Compliance”, in J. Horton, M. Westphal, U. Willems (eds), *The Political Theory of Modus Vivendi*, Heidelberg, Springer International Publishing, pp. 67-82.
- (2020), “Post-colonial Studies. Politiche di restrizione: un attacco alla democrazia?”, *Labontblog*, <https://labontblog.com/2020/07/02/post-colonial-studies-politiche-di-restrizione-un-attacco-alla-democrazia/>.

- Sanchini V. (2015), "Bioethical Expertise: Mapping the Field", *Biblioteca della libertà*, vol. 50, n. 213, pp. 43-61.
- Sanchini V., Marelli L. (2019), "Data Protection and Ethical Issues in European P5 eHealth", in G. Pravettoni and S.M. Triberti (eds), *P5 eHealth: An Agenda for the Health Technologies of the Future*, Springer International, pp. 173 ss.
- Savulescu J., Cameron J. (2020), "Why Lockdown of the Elderly is not Ageist and Why Levelling Down Equality is Wrong", *Journal of Medical Ethics*, vol. 46, pp. 717-721.
- Savulescu J., Persson I., Wilkinson D. (2020), "Utilitarianism and the Pandemic", *Bioethics*, vol. 34, n. 6, pp. 620-632.
- Shachar C., Rubinstein Reiss D. (2020), "When Are Vaccine Mandates Appropriate?", *AMA Journal of Ethics*, vol. 22, n. 1, pp. E36-42.
- Sharon T. (2016), "The Googlization of Health Research: From Disruptive Innovation to Disruptive Ethics", *Personalized Medicine*, vol. 13, n. 6, pp. 563-574.
- (2020), "Blind-sided by Privacy? Digital Contact Tracing, the Apple/Google API and Big Tech's Newfound Role as Global Health Policy Makers", *Ethics and Information Technology* (online first), <https://doi.org/10.1007/s10676-020-09547-x>.
- Snowdon C. (2020), "The Risk in a Second Lockdown is Clear", *The Critic*, September 22<sup>nd</sup>, <https://thecritic.co.uk/the-risk-of-a-second-lockdown-is-clear/>.
- Tallacchini M.C. (2019), "Vaccini, scienza, democrazia", *Epidemiologia & Prevenzione*, vol. 43, n. 1, pp. 11-13.
- (2020), "'Preparedness' e coinvolgimento dei cittadini ai tempi dell'emergenza: Per un diritto collaborativo alla salute", *Epidemiologia & Prevenzione*, vol. 44, n. 2-3, pp. 114-119.
- Thomasma D.C., Pellegrino E.D. (1988), *For the Patient's Good: The Restoration of Beneficence in Health Care*, Oxford, Oxford University Press.
- World Health Organization (WHO) (2020), *Coronavirus Disease (Covid-19) Advice for the Public: When and how to Use Masks*, [www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks](http://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks).
- Zuboff S. (2019), *The Age for Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, London, Profile Books.