

Editorial

Public obligation and individual freedom: how to fill the gap? The case of vaccinations

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As is known, in Italy some vaccinations are mandatory and some others are recommended. But always more frequently there are parents who, when asked their children participate to the vaccination campaign, answer with: *Sorry, we have decided not to vaccinate our child, we have the right to choose.*

It is not here the right place to investigate the reasons (if any) under this choice, but to understand whether there is a right to the individual's choice or a right to the state's coercion and whether the state could be legitimized to be coercive and by whom.

In order to set correctly the matter, it is worth recalling that the contemporary father of the theory of liberty, that is, John Stuart Mill, in the introduction of his 1859 masterpiece, famously claimed that *The liberty of the individual must be [...] limited: he must not make himself a nuisance to other people.* This statement is better clarified from the following two apparently contradictory sentences: *[...] the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant, and [...] in the part, which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.*¹ That is, one is free to decide everything about his life provided that his actions do not harm others (it is the *harm principle*) even though there are cases in which a state can infringe such a right if the common good is in danger.

Thus, on the one hand there is the individual who can claim that he is free not to vaccinate his child since over his child's body he is the only one who can decide what to do. But on the other hand there is the state that can claim that it has the duty/right to mandatorily vaccinate that child since that action could avoid jeopardizing the health of other children (but also the health of that child) and thus create a collective danger.

Up to now, the state behaviour had been based on a *strong form of paternalism* (the intentional overriding of one individual's known preferences or actions by the state, on the basis of the idea that it knows better what individuals should do in order to avoid harm to themselves and to the collectivity, and thus it arrogates to itself the right to override individual *deviant* choices). Unfortunately, paternalism, in particular state paternalism, is considered unacceptable, especially whenever it is related to health choices: *Why should I accept state paternalism concerning vaccination? Who legitimized it to act in such a way? And why?*

These are the questions at issue. And a right answer might allow a different way of conveying the benefits of a vaccination campaign. Concerning this point we should not forget that citizens are now more (mis)informed than in the past decades and that now they are more willing to be free to decide their own lifestyles without any real or apparent coercion by the state.

Thus, how to do with the gap between the right of the individuals to ask to be free and not to accept state paternalism and the duty/right of

the state to protect all the individuals? Probably a good way out, which might help in rethinking the vaccination campaigns, could come from *libertarian paternalism* and from *deliberation*.

Libertarian paternalism is a decisional approach based on the assumptions that: i) it is false that individuals always (or usually) make choices that are in their best interest; ii) in many situations, some authority (*i.e.* the state) must make a (more or less) mandatory policy that will affect individuals' choices and life styles; iii) not always paternalism involves coercion. Thus, according to libertarian paternalism, an authority should introduce *positive rules* related to proper lifestyles or health choices. Of course, these positive rules should be limited to decisions that are difficult, complex and infrequent, and when individuals have poor feedbacks and few opportunities for knowing and learning. In such cases an authority (the state) has the duty/right to intervene.²⁻⁴

Such libertarian paternalism is a variant of the so-called *weak paternalism* (an authority intervenes on ground of beneficence or non-maleficence only to prevent substantially bad consequences of actions made by individuals without a proper capacity of analysis, without adequate knowledge or information, or under irrational or false motivations). This means that the authority should not brutally force individuals to act in the way it thinks to be the best one, but it should study and provide *nudges* to *encourage* individuals to act in a certain way. Said differently, such an authority should be a sort of *choice architect* who designs apt decisional scenarios, where nudges have a preeminent role, so that individuals choose better.⁵

The libertarian paternalism approach is having a great success, especially in the USA, and it has been the conceptual basis for many institutional campaigns regarding correct lifestyles and the implementation of health policies. For example, concerning tobacco, it has been proposed to sell it only to adults who have purchased an annual personal permit (this is the nudge); concerning salt in food, it has been proposed to produce unsalted foods (this is the nudge) so that consumers must deliberately add salt if they wish; concerning correct nutrition, it has been proposed an agreement with supermarkets for the prominent display of *healthy* foods and visible warnings for those that are potentially harmful, free distribution of fresh fruit in primary schools and the involvement of firms in similar schemes for their employees (these are the nudges).

This idea could be also at the basis of new vaccination campaigns according to which an authority (the state) studies and designs a correct apt scenario with the right nudges so that individuals are *gently induced* to act positively regards both mandatory and recommended vaccinations. Yet, at this point a problem arises: even if it is a weak form of paternalism, libertarian paternalism is always a sort of state paternalism and who has legitimized the state to act in such a way and why? If we were not able to give a plausible solution to this problem, we would be in the same situation as before: the state tells us (more or less gently) what we should do and this could not be accepted by

individuals thinking that their will comes first.

At this point deliberation enters the scene. By *deliberation* is meant any system of political (or ethical) decision based on some tradeoff of consensus decision-making and representative democracy. In contrast to the traditional theory of democracy, which emphasizes voting as the central institution, deliberative democracy theorists argue that legitimate policies can only arise from the public deliberation of the citizenry. Very briefly, deliberation is the procedure through which people, starting from different initial positions, try to reach a shared decision *via* a debate based on rational arguments and counter-arguments.⁶⁻⁸ This deliberative approach has been used many times in the field of political and ethical public decisions concerning health and biomedical research policies. For example, it was used by the Health Services Commission of Oregon to involve citizens to decide which health plan should be adopted,⁹ or by the Human Fertilisation and Embryology Authority of UK to decide whether the research on cybrids (cytoplasmic hybrids) was ethically plausible,¹⁰ and in many other cases.¹¹⁻¹⁵

Summing up, by means of a deliberative process citizens, who have been previously properly informed about the science (medicine) in play and about its ethical and social implications, can propose their view about health policies and in this manner they legitimate the state to act consequently. In such a way, a strong state paternalism is overcome and the citizens concede to the state the right to act for the benefit of many and, thus, to be weak paternalist and to propose nudges to efficaciously implement the health policies, that have been deliberated. Note, and *this is the central point of the question*, one thing is a top-down approach to health policies: the state decides to be (strong or weak) paternalist and mandatorily forces the citizens to adopt a certain health policy (*e.g.* vaccination). Yet a totally different thing is a bottom-up approach that legitimates the top-down: the citizens deliberatively decide to lose a small percentage of their autonomy and to give to the state the permission to be weak paternalist since they accept that in certain cases (*e.g.* vaccination) the state can do better.

If what above sounds, all the vaccination campaigns so far implemented in Italy have been based on a wrong assumption: the state knows better and the citizens have to obey. But on the basis of a libertarian paternalistic approach inside a deliberative context, we could and should rethink the vaccination campaigns so that the citizens, once scientifically, ethically and sociologically informed, have the chance to decide to attribute to the state the task to provide nudges for properly implementing scientifically correct vaccination policies for the benefits of the entire population. Of course, this is an ethically praiseworthy result but even an extremely good public health strategy.

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References

1. Mill JS. On liberty. New York: Dover Publications; 2002.
2. Thaler R, Sunstein C. The Winner's curse: paradoxes and anomalies of economic life. Princeton: Princeton University Press; 1993.
3. Sunstein C, Thaler R. Libertarian Paternalism is not an Oxymoron. *University of Chicago Law Review* 2003;70:1159-62.
4. Thaler R, Sunstein C. Libertarian Paternalism. *Am Econ Rev* 2003;93:175-9.
5. Thaler R, Sunstein C. Nudge: improving decisions about health, wealth, and happiness. New Haven: Yale University Press; 2008.
6. Boniolo G. The Art of Deliberating. Democracy, Deliberation and the Life Sciences Between History and Theory. Heidelberg: Springer; 2012.
7. Boniolo G. Il pulpito e la piazza. Democrazia, deliberazione e scienze della vita. Milano: Raffaello Cortina; 2011.
8. Boniolo G, Schiavone G. Deliberation and Democracy. In: James D. Wright ed. *International Encyclopedia of the Social & Behavioral Sciences*, 2nd ed. Oxford: Elsevier; 2015. pp. 61–67.
9. Bodenheimer T. The Oregon Health Plan. Lessons for the Nation. *New Eng J Med* 1997;337:651-5 and 720-3.
10. Human Fertilisation and Embryology Authority. HFEA statement on its decision regarding hybrid embryos. Available from: www.hfea.gov.uk/455.html.
11. Abelson J, Blacksher E, Boesveld S, et al. Public deliberation in health policy and bioethics: mapping an emerging, interdisciplinary field. *J Public Delib* 2013;9:1.
12. Boniolo G, Rebba V. Cancer, obesity and the legitimation of suggested lifestyles. A libertarian paternalism approach. *Ecancermedicallscience* 2015;9:588.
13. Boniolo G, Schiavone G, Mamei M. Moderate epistocracy for deliberative bioethics. *Camb Q Health Ethics* 2015;24:1-9.
14. Boniolo G, Schiavone G, De Anna G, et al. Libertarian paternalism and health care policy: a deliberative proposal. *Med Health Care Philos* 2014;17:103-13.
15. Boniolo G, Di Fiore PP. Deliberative ethics in a biomedical institution. An example of integration between science and ethics. *J Med Ethics* 2010;36:409-14.