

## Basis of ethical obligation? Covid-19 vaccines

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Abstract.

On the basis of the problem of the possible compulsory nature of vaccines against Covid-19, this paper considers the sources that allow us to justify the imposition of collective measures. The social contract theory provides a rational basis for the universality of ethical and natural law obligations, including conditional respect for a protected domain of individual physical and moral integrity. However, the practical application of the covenant is subject to the uncertainty of what effective consequences the policies have. Ethical principles show the problem of application in the environment of epistemological uncertainty. Only in a free society, with free scrutiny and deliberation, can justified knowledge be achieved that allows social measures to be agreed upon. The characteristics of the case that is the subject of this article lead to the conclusion that Covid-19 vaccines are not ethically obligatory, universally, but they can generate reasoned health measures, promotion, and limitations, based on proven positive effects, as a technical matter.

Keywords: obligation, social contract, Covid-19, uncertainty, free deliberation.

What are the bases of social obligation? Under what conditions can conduct be imposed on the constituent individuals of a society? Around the current problem of Covid-19 vaccines, an analysis of the ethical and epistemological problems involved is proposed. The modern theory of the social contract makes it possible to trace the ethical and natural law obligations, but its practical application requires an agreement on what is the justified knowledge for society as a whole (science). However, it is not possible to answer that question if it is not answered by a free society: where information and debate cannot be effectively controlled by any power or minority.

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The conclusion is the following. These Covid-19 vaccines are not ethically binding. They have no basis in natural law. But measures can be imposed by sanitary prudence. This is reached on the basis of the theory of the original pact of a society, where rights would be established and the conditions for imposing socially beneficial obligations would be determined. With a reinforced core of freedoms, conditions would be imposed and, in this case, they are not fulfilled. All this according to the criteria of justified knowledge (science), in a society formed by free and rational individuals that maintain a democratic deliberation in the sense of Habermas: free, equal individuals, with mutual recognition and that wish to reach an agreement. There remains, then, the possibility of imposing restrictions strictly based on health justifications: basically the possibility of contagion, as a technique with necessarily scientific justification, with political decision, subjected to public debate and to the control of the division of powers. What follows is an explanation of this thesis.

The first thing is to avoid the search for foundations by examples, which is clearly incorrect as Kant demonstrated. The example, in order to be an example, is an example of a previously established norm. It can show what is being defended, make us understand its consequences, but not support it. And also to flee from a kind of strange reasoning, which is found even in expert opinions: supporting that the obligatory nature or not would not be raised as long as people do not raise a relevant opposition against the injection of the vaccine. Then, any behaviour to which citizens oppose should become compulsory. It does not make sense.

To impose the ethical obligatory nature of the vaccine? Those who answer yes can rely on three sources, with more or less interpretations. Utilitarianism, civic virtue, instrumental rationalism. I review them.

The utilitarian school, which in many aspects is the basis of our societies, strongly proposes it: as a society we fight for the welfare of the majority, the maximum happiness of the greatest number (Sandel brilliantly explains the basics of this school and other options), and before this principle we must all oblige ourselves, as morality of the common welfare. Not to do so exposes others to risk. Consequently, there should be a social obligation, imposed *de iure* and *de facto*, administered by the State, that is, by the monopolistic organism of the legitimated power with which we have endowed ourselves. To question it is to deny science and let the contagions continue. To oppose it is to place oneself on the margins of the community.

Aristotle defended the concept of justice as giving what is deserved. Personal virtue, in society, is to comply with this rule of justice. Education: training in virtue. Vaccination? Yes, as long as it is socially beneficial. And to reward it as long as it is virtuous. Of course, punish if it is not carried out.

The argumentation of both positions coincides in a nucleus: directing politics towards individual preference, considering the different conceptions of happiness and the importance of collectivity. They differ in unanimity or diversity, in the normative burden. As if Aristotle established a universal nature, while Bentham simply counted majorities. In short, being virtuous and measuring the world by the amount of preference achieved would coincide. As a kind of joint, tentative journey towards a social future. Saving means to give priority to the ends of maximum happiness, in Bentham's way: an accounting of happiness and suffering. At the base of utilitarianism beats Schumpeter's concept of democracy, developed as in a market where votes choose the political offer (of politicians), in the same way that the sale and purchase is carried out when the demand accepts a price and quantity of offer.

This conception is not, however, strictly sustainable. It is not only that voters could choose any political offer, even if it were against human rights; but it is not possible for us to build and base today's society on the basis of subjective preferences, aggregate or not. As Schumpeter recognizes when speaking of opposing interests that do not seek compromise, we would be in the middle of the permanent debate, of the struggle of interests of minorities and majorities, where there is no collective consensus and we make the difference of opinions the basis.

Elster claims that rationality yields indeterminate results. Isaiah Berlin emphasizes the idea that, in the face of multiple, competing human ends, there is often no common measure. Indeed, uncertainty is present in individual and social life so that we cannot reach a definitive solution in the face of the available options. If we have happiness as a criterion of equity, given the insurmountable differences between people, then the fact of power would be justified. Whoever wins, would have his conditions legitimised. The law of numbers would be imposed, including the capacity of the media to form majorities. Everything would be possible, but always against the weak. What prevents deciding against those who cannot oppose effectively? A vaccinated majority would be enough to force an obligatory nature. What's more, how can fundamental rights be founded on the basis that they are useful? It is contradictory.

So, can enforceability be based on instrumental reason? Or can we base it on the public interest embodied in the State? In the world of technology in which we live, the possibility of realization seems to be enough to do so. Wouldn't we be in a triumph of instrumental reason? Like the myth posed in the Enlightenment. A Ulysses chained to the mast that abandons everything that is not an instrument or a benefit (reread, of course, Adorno and Horkheimer). A machinery that mutilates men, we are told, and that puts an end to free reflection. Where everything is technique and the reason of taking means disposes of everything and everyone, where values are absorbed as products of applied science (Marcuse). In this idea, the proposal of vaccines by science would be enough to produce its obligatory nature.

Now, whether one agrees or not, whether one answers yes or no, it can never be done as the domain of technology: the means must not be the end, man must freely establish his objectives. Industry cannot decide ethics, but must be under it, because man is a individual endowed with dignity, in the Kantian sense: that which cannot be exchanged for anything. In other words, vaccines are a response to nature's need, saving lives, but they are still an instrument subject to modern critical rationality.

It is also possible, finally, simply to have confidence in the state. In the world that is the product of the Hegelian rational principle in which reason, State and freedom would be equivalent. In human progress, reason ends up being found in justified power, and policies are positive by the fact of their proposal. Beneath the surface of what we recognize, *de facto*, this element of trust is very strong.

In the face of technology, or against a state of reason, it is becoming strange to affirm principles that can be opposed *erga omnes*, to reaffirm the rights of the individual, who constructs and proposes, that questions and doubts, that has a real and concrete life. I believe that it is the task of today's philosophy to return to modernity in the sense of vindicating the constituent individual. In short, to reject the minority of age, or state described by Kant, in which we do not want to think for ourselves, we are afraid of freedom. Cartesian doubt admits rational uncertainty which, despite the initial appearance of attacking any rigorist approach, reaffirms the position of dignity of the individual.

There is a certain hopelessness in the opposition to the technocratic criterion because there is a feeling of swimming against the current. A certain desolation in the critical position on principle of power. But it's about not forgetting Benjamin when he

teaches us that exceptionality, theoretical rights in the face of non-compliance, becomes the rule. I imagine that philosophy must always be radical, as a movement of freedom.

Then, the fact is not admissible as a right, modernity tells us. We cannot, we must not, fall into the contradiction of following instrumental reason objectified in technique, as Marcuse warned. It is necessary to understand rationally.

What freedom?

It forms us to be individuals of rights and freedoms, and to affirm that inextinguishable freedom, which forms the essence of life (Grossman). Yes, first and foremost the freedom to work, to love, to have a coffee, to plant, to live.

On the one hand, the modern world has tried to conquer external and internal reality by advancing rationally towards universal principles. Cartesian reason wants and demands to uphold rules of validity for every possible society and every imaginable circumstance. Therefore, ethics leaves interests behind and risks creating the unhappiness that Kant predicted for those who sustain ethical behavior. It admits the existence of preferences and satisfactions and historical and social peculiarities, but it does not construct the content of rights on the basis of what interests whom, how each one understands his happiness and utility. It is not about *Fiat iustitia et pereat mundus*, which only Kant could hold without blinking an eye. If the world ends, justice is not an option, because that justice is, of course, unjust. We cannot look the other way on issues such as a pandemic by clinging to a theoretical abstract ethic.

On the other hand, doubt, uncertainty, awareness of error, are all part of a free life. We can be scrupulous about truth and yet be certain of nothing, as Russell pointed out in his Decalogue. No wonder we are faced with so many unresolved questions about this epidemic. The lack of unshakable certainties is part of human reality. For better and for worse.

So, basing social reality on universal rules while acknowledging doubt and uncertainty? Fighting a pandemic by general proposals while respecting the private realm of existence? Difficult, but that's how it is. Human reality, as symbolic (Cassirer), is complex and full of possibilities.

Solution to the initial question? The answer lies in the framework of universal rules for the rational and free individual, who must be for society an end in himself (Kant).

Once defined, it is a matter of giving them an effective content, of making them applicable to the real problems of the individual and social world. Even before the same products of science and work. Then the composition is the pact and the application is given in the world under the conditions of human cognizability.

The theory of the social pact of Locke, Hobbes, Rousseau, Rawls, others (there is a historical complexity that gives rise to the theory, see Campos, 2019): it is the modern proposal to find the principles of justice. The imaginary situation in which men would contract rights and duties to form a society, based on principles that would determine what mutual cessions would be made. Fleeing from the state of nature prior to the contract, where everyone can do everything so that everyone is insecure, men agree to form a final and legitimate authority, the State. Its aim: to provide security and promote collective goods. As rational beings they would arrive at social norms valid for all hypothetical rational beings.

Then, we would give up a part of the rights so that the whole, and especially the fundamental ones, would be guaranteed. But no one would voluntarily enter into a pact that did not guarantee physical and moral integrity. Any signature in any other sense, or acquiescence, would be a dead letter. Thus, Locke raises the right to change the ruler who fails to comply with the fundamental core of freedoms and even Hobbes admits that there is this area of preservation that no one yields to the State. Rousseau speaks to us, finally, of the duty of freedom as consubstantial to being a man.

Therefore, the fair general rule is that the State is entitled to impose collective measures that are in the common interest, but only if and only if they do not fall within the fundamental core of rights: physical and moral integrity, which implies the right to decide how to maintain them. Moral too, because physical integrity is as important for a symbolic being as the dignity consubstantial to a conscious and rational being. Which implies freedom, and freedom specifically to define oneself and set one's values. So vaccines cannot be compulsory if that imposition contravenes integrity, and they can be compulsory if they do not do the above and, in addition, they represent a justified defence of the collective welfare. It is never a question of the physical imposition of the vaccine, which is morally harmful (in the case of a minor this requires analysis), but of the rational limits to the behaviour of the person who has decided not to undergo the treatment. That is to say, partial isolation, a mask, impossibility of certain jobs: whatever is strictly necessary for the collective interest, according to rational proof. Nor can a personal

conviction prevent the collective obligation, for then there would be none. But no act of the State can go against conviction as such.

This is the ethical answer. However, it is not yet possible to answer the question about the obligatory nature of vaccines against Covid-19. Within the framework of the realization of freedoms, decisions, individual and social, are taken in an environment of uncertainty. Affirming a norm is not equivalent to agreeing on its application: what is harmful or beneficial belongs to the human realm of knowledge. Therefore, of social discussion, which should be a rational debate with the characteristics assigned to it by Habermas. But does it tend not to be? Has the world of internet, networks and media increased the cacophony?

It is true that knowing the facts can be enough in some cases, when the force of the data speaks for itself (Arendt). But technical transformation and the construction of laws are not facts, but are or proceed from symbolic constructions. A vaccine, any medical treatment, depends on a set of scientific laws that explain and predict, and for which there is always an expectation of truth, but not absolute certainty. We often think that science gives exact solutions, but we forget that science has its history and this is the history of error. This does not detract from its merit, but on the contrary: as a human attempt to make progress in a well-founded way.

Therefore, it is impossible to universally decide the problem posed, like any other relevant question of individual and collective obligations, without agreeing on the obligatory nature of accepting what we socially and historically share as justified knowledge. It is not possible to conclude outside the framework of accepted human knowledge. We are children of our time.

From modernity onwards, we must stick to science, understanding that science is a perpetual debate in which reasonable truths are established, but not absolutely certain. Science is the attempt of a limited being to reach the truth that is always far away. But, as Popper affirmed, it is the only thing that allows us to correct errors, to move away from simple self-interested conjectures.

So, isn't the central core of freedoms emptied by means of cognitively constructed facts? That is to say, by deciding on the obligation of a common epistemological criterion we could be depriving the set of rights and freedoms of any basis. Does socially affirming and believing in a given standard of knowledge allow us to force its realization? But, if

we discard justified knowledge as a reference and enter into what we think subjectively, is it possible that the obligations that form us as a political society and originate the State are not skipped by each and everyone on the basis of their beliefs? The social contract implies, then, an agreement on the knowledge that we consider the basis of the social world. Then, personal beliefs and values that do not fit into this standard remain in the private sphere, accepting them only with personal validity, but not social insofar as they prevent the development of the collective good and the preservation of rights and liberties.

However, what is science? To say that it is the corpus established by the community of researchers, that which is recognized by the established scientific literature, implies taking us back to a social criterion of conformity. To a possible situation of power. For example, access to publications and media depends on people who decide. Are we suddenly in the problem of the Platonic philosopher-ruler? Knowing the truth, he was in power by the fact of contemplating it, but no one could decide if it was true because it was a contradiction in terms. Let us imagine a fervent believer in Orwellian neo-language at the helm of science. Yes, it's a gross exaggeration, but it gives away the potential problem.

There cannot be effectiveness in universal ethical norms, a real guarantee of rights and freedoms, without an agreement in free society with open debate on justified knowledge. Justified seems to be a value that, in the social world, refers to the truth that we understand as public reason: intersubjective.

This shows that the corpus of knowledge that we must accept, beyond our most private convictions, is a social product and that the pact establishes freedom of thought and expression and a prohibition of the domination of social discourse by anyone, much less the State. Only under these conditions, in an open and rational debate, can the original social contract survive. As soon as someone controls in an interested way, whether we recognize it or not, what we think, it will be impossible to guarantee that rights and freedoms are preserved, as well as that social measures respond to the collective welfare. Science is the daughter of freedom and it is it that, in fact, allows us to build a society of universal norms based on the guarantee of fundamental rights. Ethics sets the universal norm, science or intersubjectively controllable knowledge determines the effective and real content of the norm.



So? The Covid vaccines have been licensed in a shorter time than usual. They have been subjected to inductive tests and have confirmed their relatively high efficacy and low risk in limited time. From the point of view of scientific confirmation and falsifiability, not enough time has passed for observation of a sufficiently large sample (vaccines would take about ten years). This does not imply anything negative considering the circumstances, but it does imply that the prescription is scientifically provisional until then. It can be dismissed as unreasonable to reject the vaccine on the basis of possible, but so far not real or apparent, long-term negative effects, but it cannot be refuted. Emphasis can be placed on its tangible benefits in the face of a dangerous and contagious disease, in the face of perceived possible, but not substantiated future effects. Yes, but this is not decisive. We can appeal to the idea of collective responsibility and not putting others at risk (referring to scientific studies of contagion), but each person retains the right to decide.

Refusing to take these vaccines is not equivalent to a statement like "the Earth is flat". Again: the statements "smallpox vaccine may be unsafe" and "Covid-19 vaccine may be unsafe" do not have the same truth value. So the term denialist is absurd, as such. We must remember that practical reasonableness depends on the rational decision criterion we adopt.

What does this mean in terms of the obligatory nature of these preventive treatments? Simply that their social usefulness is limited by the scope of integrity, with each person being free to decide. Their use, therefore, is technical-sanitary and is conditioned to strict necessity, given the circumstances. Does this reduce the scope of their obligatory nature? Yes. Vaccines are not universally enforceable as a matter of principle because they do not meet the standard of final scientific compliance. They are recommended, advisable, even including possible consequences of authorisation and prohibition in real, everyday life. Differences in contagion or hospital care pressure may justify, with reasoned justification, the imposition of limitation measures.

Isn't the key to this the official authorization, emergency or not? No, because then, we make social obligations and rights depend on an instance that depends directly on the State. We would be in a pre-Hobbesian state. Power cannot enter into the core of fundamental rights, because people have not ceded them. It cannot be the origin of the norms and the judge of their validity. Who signs the pact: the individual. Who is the main origin and destination of the validity of the norm: the individual.

In short, there is no universal ethical obligation to impose vaccination because it does not exceed the conditions of the original pact, given the justified scientific knowledge we have, which we reached through an open debate and a consensual methodology. Therefore, it becomes a question of scientific technique its recommendation and the strict limitations that may generate not to give it.

In general, we are in the permanent debate, where we as a society shape our reality. We need to give global and effective answers to health problems of the utmost importance. We start from dignity in order to approach what is good for society, precisely within the framework of freedom of thought and expression. Only in this society of free and equal individuals, who agree and wish to reach mutually advantageous agreements, is it possible to outline a fair and effective sphere of collective obligations and policies. There is a certain gratification in that we accompany each other and discuss, exchange (Arendt) in order, perhaps, to arrive at the hope in history of which Benjamin spoke to us. A global pandemic, with the terrible consequences of disease and death, tests what we as a society are and intend to develop.

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