

# Living with Others in Pandemics

## The State's Duty to Protect, Individual Responsibility and Solidarity\*

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### 1. Experiments and experiences with the pandemic

The SARS-CoV-2 pandemic forced us to change our ways in many respects. Compared to the lethal bubonic plague pandemic ('Black Death') which occurred in Asia, North Africa and Europe from 1347 to 1351, twenty-first century societies have the knowledge and the tools to protect themselves and hopefully to win the war against the spreading of the virus. But there is a price (including some extra problems for liberal democracies). Lockdowns and related restrictions put a strain on private, family and professional life, minimized social events, public gatherings and transactions, limited expression, interaction and communication to narrow channels, digital and other. In a sense, humanity experienced a severe dislocation of normal, civilized life rhythms, a state of affairs that one could perhaps plausibly compare to a state of war. Empty streets and people barricaded behind windows in the safety of their homes strongly suggested this picture, at least during the first lockdowns of spring 2020. This state of affairs, as occasioned by the pandemic, we could never have simulated intentionally, at least not under a liberal democratic regime.

The situation resembled in one sense the *state of nature* fiction that helps us envisage virtual 'what if'-situations, to better understand and explain the reasons that should make us opt for a politically organized social life or life under coercive laws. Even if the pandemic was not a state of nature situation, not even remotely (there was certainly no collapse of civil order), it was a unique opportunity to see important parameters of our life that we normally overlook, with sometimes exceptional clarity. On the one hand, it revealed the importance of relations, goods and values we usually take for granted, such as the availability of friends, the importance of social and cultural life, and last but not least, the excitement city centres offer as places buzzing with human energy, be it for purposes of commerce, education or entertainment. During lockdowns such activities were suspended. On the other hand, it taught us ways to compensate for their absence by, say, spending more time with ourselves, family and pets but also using the internet as a surrogate of communication and source of knowledge (and misinformation). Despite all sorts of strains, we did learn (most of us at least) to cope with isolation and soli-

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tude,<sup>1</sup> and thanks to many important technological advances we did not go without life's necessities.<sup>2</sup>

The sudden shrinking of social activity and the various restrictions enforced also had serious psychological, social, economic and political repercussions. The restrictions did not necessarily have the same consequences on everybody (e.g., a lockdown is experienced differently if you live in a spacious house with a garden compared to being crammed with other family members in a small flat in a high-rise building, and people living in the country are in this respect privileged compared to those living in the cities), nor were they perceived in the same way, nor was everyone willing to see the limitation of our freedoms to move and assemble, to meet and interact as an interesting experiment, worthy of philosophical reflection.<sup>3</sup> People had to seek compensation for lost income and governments had to find ways and resources to keep their societies and economies functioning. But not all citizens, not even all governments, were of one mind as to what measures were the right ones and a vociferous minority in many countries would have preferred no measures at all or only minimal ones.

These minorities actually challenged the right of governments to enforce temporary restrictions on citizens' freedoms and in many ways resisted government policies. Their dissenting views did not necessarily have one unified source. Some were related to religious creeds and practices. For instance, some Greek Orthodox priests believed in all earnest that the virus could not be transmitted during holy communion, not even during mass in a crowded church. Conspiracy theorists held that the virus was a pretext for carrying out a secret plan to control and dominate the world. Generally speaking, this kind of approach was common among many who take an anti-status quo stance and feel a fatal attraction to populist politicians.

- 1 For personal life, confinement marks a freedom of 'solitude', the opportunity to look into ourselves and explore the 'plurality' within, as implied by Montaigne, who defends precisely this 'retreat' as a non-egoistical choice. We are taking one step back only to look at ourselves as reflective beings. In his essay *On Solitude* (1572-1574) he advises us to reconsider our natural desire to associate with others and pursue public ventures, at least for those who have already given to the world their most creative years: 'We have a soul that can be turned upon itself; it can keep itself company; it has the means to attack and the means to defend, the means to receive and the means to give: let us not then fear that in this solitude we shall stagnate in tedious idleness. In solitude, be thyself a throng. Tibullus.' [Michel de Montaigne, *The Complete Works*, trans. Donald M. Frame, with an introduction by Stuart Hampshire (New York/London/Toronto: Everyman's Library 2003), 215.]
- 2 As Yuval Noah Harari ('Lessons from a year with Covid', *Financial Times*, 26 February 2021, <https://www.ft.com/content/f1b30f2c-84aa-4595-84f2-7816796d6841>) has pointed out, advanced digital technology, automation and the Internet made not only extended lockdowns viable but also upheld farming, the production of goods and global trade, at least for the so-called developed world.
- 3 According to many studies age was one important parameter in the differentiation of attitudes. Younger individuals experienced the restrictions as far more repressive than older ones. Other divides are more geographically prompted by historical and political differences. See Ivan Krastef and Mark Leonard, 'Europe's invisible divides: How covid-19 is polarising European politics', *European Council of Foreign Relations*, Policy Brief 1 September 2021, <https://ecfr.eu/publication/europes-invisible-divides-how-covid-19-is-polarising-european-politics/>.

Related to this stance is also a deep mistrust of scientific knowledge and truth.<sup>4</sup> Some questioned the policy of absolute protection of human life, considering the reaction of governments exaggerated. They believed it was imposed by the power of mainstream media, since the scale of human loss due to COVID-19 was supposedly disproportionately lower than that of other pandemics that afflicted humanity in the twentieth century. Others simply resisted lockdowns with an (only apparently) more plausible rationale. Halting economic activity would be ultimately far more pernicious for the survival of society. They were therefore willing to accept the necessary sacrifice of weaker or unlucky citizens for the greater (economic) good.

## 2. The state's basic duty to protect

I would like to discuss here a range of important normative questions raised by anti-COVID-19 measures and policies in view of the reactions they triggered. Do governments actually have the right to impose such severe restrictions on individual freedom (especially, one might add, when a substantial number of citizens oppose them), and, furthermore, do citizens have obligations *vis-à-vis* the state, others and themselves to accept such restrictions? I will argue that a democratic state may legitimately enforce laws and policies in order to protect its citizens from risks to life and limb, their basic rights and ultimately their freedom. Even so, there is a natural limit, both factual and normative, to what the state or a government can do in this respect. In that case its policies need to be supported by citizens, at least indirectly. Otherwise government policies will be inchoate and ineffective. But then we also need to ask what moral obligations citizens have towards each other and to what extent these obligations can be legally enforced. Citizens certainly have a moral and a legal duty not to harm others and in some cases at least they have a duty to protect others. How can we extend these ideas in the context of government measures concerning the pandemic? For instance, vaccination has been opposed for various reasons (fear, mistrust, misinformation, etc.) by citizens who consider it their right to reject it as a mandatory measure. They view endorsement of SARS-CoV-2 restrictions or other mandatory measures to be a matter of personal preference touching upon their individual freedom to decide autono-

4 For some interesting insights in another context (global warming) see Philip Kitcher and Evelyn Fox Keller, *The Seasons Alter, How to Save the Planet in Six Acts* (New York/London: Liveright Publishing, 2018). The authors discuss the common phenomenon of resistance and distrust towards those scientific findings in particular that can be perceived as threatening. '[W]hen a scientific finding would have enormous impact on the ways people live, on human wants and aspirations, resistance is natural. Indeed it is perfectly reasonable' (Kitcher and Fox Keller, *The Seasons Alter, How to Save the Planet in Six Acts*, 22). However, this natural distrust becomes problematic when amplified by the dissemination of fake news and distortion of scientific information. Democracies are particularly exposed to this danger and its social and political consequences.

mously on what is ‘their own’.<sup>5</sup> This attitude also rhymes perfectly with an entrenched, pro-choice anti-paternalism.<sup>6</sup> The problem is that even if this attitude is, in matters that belong to the sovereignty of individuals, in principle correct, it obscures the fact that in some cases the right thing to do relates not to oneself but to others.

We have reason to live with others in organized political societies and submit ourselves as citizens to the authority of a democratic state because we can thus live in freedom with secured rights. For social contract theorists in general, but most eminently Kant,<sup>7</sup> this is not simply the rational thing to do but actually a moral imperative. Our rights can never be secure in a state of nature, even if conceived and overwhelmingly acknowledged, because no authority will be available to recognize and enforce them. And nobody can hope to live an undominated life without secured rights. We therefore need the state, a democratic state, to render our rights secure and, if so, we also have a duty to cooperate and contract with others to create the public institution that has the legitimacy to protect us. In fact, if such a state already exists, if we are born in its jurisdiction, it is not up to us to agree or disagree with its authority in protecting its citizens’ rights. No such consent is needed, because the necessity and efficacy of such a protective institution cannot hinge on individual taste and availability. Its authority is not *à la carte*. We are thus obliged to abide by a democratic state’s authority and the laws we are subject to, even if we occasionally disagree with and disapprove of some of these laws. This obligation is concomitant with our right to participate and control the process of democratic will formation and question the justice of our political societies’ laws by appealing to properly established courts.

What is the upshot from the above for the issue that interests us? We cooperate with others in order to (create and) uphold a state because this is a public institution that is necessary for the protection of our basic rights, ultimately our freedom,

- 5 I believe that freedom and autonomy, even if narrowly construed, do not license or otherwise support such a view. Even a libertarian approach to freedom as ‘individuality made normative’ (Charles Fried) will have to protect basic individual rights against not only the state but also third persons who endanger rights of others by reckless or otherwise irresponsible behaviour. Law and the state are necessary also for libertarians. Super-individualistic libertarians need the state to support their libertarian understanding of freedom and rights, even if they do not need to entertain an attitude of fraternity or solidarity towards other citizens. The question is whether such a view stripped of the necessary ‘solidarity’ of the libertarian bent can successfully defend even a narrow list of rights. For an elegant and subtle defence see Charles Fried, *Modern Liberty and the Limits of Government* (London: W.W. Norton & Co., 2007).
- 6 See Richard H. Thaler and Cass R. Sunstein, *Nudge, Improving Decisions About health, wealth and happiness* (London: Penguin Books, 2000), 10.
- 7 Immanuel Kant, *Metaphysics of Morals*, trans. and ed. Anne Gregor (Cambridge: Cambridge University Press, 1996), 117 [6:264], 170–171 [6: 312]. For an excellent reconstruction of Kant’s argument and a convincing solution to the so-called ‘particularity objection’ see Anna Stilz, *Liberal Loyalty, Freedom, Obligation and the State* (Princeton/Oxford: Princeton University Press, 2009), 195–204. Stilz, following Kant and Rawls, acknowledges a ‘natural duty’, in other words an unconditional duty, to participate in a just state. According to this reading (which I follow in the text) our membership as citizens of a particular state and the basic duties such a citizenship entails are not necessarily voluntary.

however construed. As mentioned above, undominated life and secured rights vis-à-vis others and the state, would be unthinkable without law. In fact, we are morally and legally obliged to do everything possible to uphold this institution. Because nobody else has the power and, most of all, the authority to protect us. This not only explains but also justifies a democratic government's right to pass and enforce laws aiming to create an effectively protective framework for its citizens' rights. As I indicated earlier, this particular authority will have to be democratically controlled as to its aptitude and effectiveness and questioned as to its constitutionality, but insofar as its judgements are found and declared valid (conversely until they are found by the courts to be null and void), they apply. Abiding by democratic laws is not at anybody's discretion. Governments, as it seems, have the authority to pass laws and take temporary measures against the spreading of the coronavirus which poses a major threat to life and limb, but also to a civilized society's proper functioning in the domains of politics, economy, health, education and culture. In fact, the development of the pandemic has proven wrong the governments that initially opted for a more lax approach hoping to achieve a so-called 'herd immunity'.

One could (and in fact does) counter: 'Isn't this too sweeping a view? I can understand the necessity of the state and the citizens' obligation to respect its laws. I can also follow the state's obligations to protect us from crime and foreign aggression. Citizens, however, also have constitutional rights, freedom and dignity, and certainly no measure for the protection of public health may reach so far as to violate our constitutional rights. Lockdowns have suppressed freedom of movement, curtailed freedom of assembly, our freedom to be socially and economically active, and most of all our autonomy, our right to decide for ourselves if and whether preventive measures, like vaccinations, can be applied to our own bodies.' In many countries, lockdowns and social distancing rules have been resisted by groups eager to invoke their right to assemble and protest peacefully. Many people disagreed with the enforcement of such measures and protested in public, occasionally exploiting symbols and evoking improper associations with totalitarian systems.<sup>8</sup> Some of these protests were organized by political parties with an apparently plausible political agenda (say, demanding more intensive care units, more funding for public health, hiring more doctors and nurses or allowing food and drink businesses to operate as in the times before the advent of SARS-CoV-2) but others were triggered rather spontaneously by social groups reacting against social isolation and economic hardship and expressing a deeper disaffection with the political system.

Some of these complaints may have been partially legitimate, but involving as they did the risk of further spreading the pandemic, they were clearly addressed in the wrong way and were, at least partly, misconceived. The suspension of some freedoms could be (and in fact in many countries was) compensated by government subsidies and similar measures to counter the adverse side effects. But it was unreasonable to act as if the reason for the restrictions did not exist. For instance,

8 David M. Perry, 'Covid protesters must stop exploiting symbols of the Holocaust', *CNN Opinion*, 27 April 2021, <https://edition.cnn.com/2021/04/27/opinions/covid-anti-vaccine-protesters-yellow-stars-holocaust-perry/index.html>.

even if suspension of basic freedoms like the freedom to assemble peacefully was a serious limitation, it was imposed for a present and compelling reason and it was meant to last only as long as it was necessary. The claim of an orchestrated state of permanent exception does not withstand scrutiny.<sup>9</sup> What was most questionable was a kind of unholy alliance between people disadvantaged and in need of support (e.g., owners of small businesses severely hit by restrictions) and an obscure, manipulative, ideologically fixated and ultimately irrational anti-science and anti-government sentiment – usually disseminated through social media. At the end of the day it appears that the complaint voiced was not ‘you violate my rights’ but rather ‘I don’t care because I don’t trust you, whatever you might be saying or doing’.

### 3. Our duties to others

In 2021 the protest shifted from the issue of lockdowns (which in the meantime receded as a measure to combat the SARS-CoV-2 pandemic) and focused more on vaccinations. In some countries resistance to voluntary vaccination is particularly critical, since in order to build up an effective defence against SARS-CoV-2 it is necessary to have a very high percentage (over 80%) of the population vaccinated. In many countries barely more than 50% of the population have been vaccinated,<sup>10</sup> and the recent appearance of the highly contagious Delta variant made things even

9 Some authoritarian democracies may well have exploited the opportunity to tighten their grip on minorities and further undermine liberal institutions. But these democracies are stigmatized for their serious defects. Democracies, however, are *per se* imperfect regimes, also because they manifest the ‘imperfections’ of popular will. The question is whether they are, institutionally speaking, sufficiently immune to ‘sinister interests’ so as to be able to vet popular will according to fair principles of an equal and free polity. If democracies have done their best in this respect (have they?) and most of all if they have managed to develop institutions that cater to the citizens’ needs and freedoms and insulate the influence of partial interests in the public domain, then they have a strong case to claim allegiance. Philip Pettit’s remarks on the ‘tough luck test’ are pertinent here. If democratic governments did everything necessary to protect citizens’ health and freedom under institutions guaranteeing popular control, then even those who are for whatever reason disaffected with a certain policy (or government) have no legitimate complaint. As Pettit puts it, ‘[t]he idea behind the test is that the control achieved under the democratic institutions envisaged will be enough to guard against government domination if it enables people to think that when public structures and policies and decisions frustrate their personal preferences, that is just tough luck. By local standards of when loopholes are tolerable and trust appropriate, there is no reason for people to take such unwelcome constraints as the work of a malign will that imposes itself on them or their kind – or, indeed, on ordinary citizens as a whole. Suppose that the policies implemented under a well-functioning system are to a particular subgroup’s disadvantage. If the system is operating properly, then members of that subgroup will be able to test the decision-making at one or another contestatory site: via judicial challenge, for example, complaint to an ombudsman, or public protest. And they should be assured thereby – by local standards of assurance – that the process employed and the policy implemented in the decision were both compatible with accepted norms: that is, compatible with the community-wide standards that all accept. Thus they ought to be able to regard the upshot as a matter of bad fortune’. See Philip Pettit, *Just Freedom, A Moral Compass for a Complex World* (New York/London: Norton, 2014), 112.

10 In some countries, even in the European Economic Area (EEA), the percentage is much lower. On 19 September 2021 the rate of fully vaccinated adults was 22% in Bulgaria and 33.1% in Romania. On the other hand, Iceland, Ireland and Malta have reached 90%. See <https://www.statista.com/statistics/1218676/full-covid-19-vaccination-uptake-in-europe>.



worse, since it can also be transferred to individuals who are already fully vaccinated (let alone the most recently discovered Omicron variant). Those who vehemently resist vaccination usually argue on the basis of the value of individual autonomy and their right of consent to a medical treatment or a medicine administered, even if medically indicated. What is being overlooked, however, is that the vaccination is not administered only for the receiver's own good. A fully vaccinated individual acquires a sufficient degree of protection for herself (a) but indirectly protects all those who will eventually come in close contact with her (b) while further increasing the collective immunity level additionally contributes to the creation of an overall societal defence against the spreading of the virus (c). This is extremely important in preventing the development of further dangerous variants.<sup>11</sup> It seems then that the movement against vaccination is not willing to acknowledge the importance of the social consequences of its stance, relying rather on a misconceived notion of individual freedom and independence from rules. Rights, however, cannot be acknowledged selectively, they apply to all, they are universal and they are certainly accompanied by respective duties. These obvious truths seem to escape those who support anti-vaccination and reject other protective measures on the basis of some ill-conceived notion of individual freedom. In fact many citizens resisted initial lockdowns and other restrictions of movement by building their claims upon a decontextualized notion of 'natural' freedom.

Still, one might ask: 'Why risk my own health for others?' (assuming that the vaccine carries demonstrably a very small percentage of risk). First of all, the vaccinated person protects primarily her own self against a substantial risk of being infected. The risk of a serious side effect from the vaccination is minimal compared to the risk to her own health by being exposed to the virus. Ultimately, it is of course up to her to decide for herself. The idea is not to protect others from harm to self.<sup>12</sup> But no one is entitled to decide over the real risk posed to others. If one lives in society with others and has regular contacts with other people, that is, if one does not live in absolute seclusion, then remaining unvaccinated means a heightened risk for others of becoming infected by the virus (b and c). But again one might ask: 'Why do I have to protect others? Why not care only for myself?'

11 Preventing the development of further variants depends, however, on global immunization. See also section 6 below.

12 For the classical statement in the context of criminalisation, see Joel Feinberg, *Harm to Self* (NY/Oxford: OUP, 1986). For an alternative reading of reasons for and against paternalism, see Konstantinos A. Papageorgiou, *Schaden und Strafe, Auf dem Weg zu einer Theorie der strafrechtlichen Moralität* (Baden-Baden: Nomos Verlagsgesellschaft, 1994), 215-243. Some COVID-19 patients resist treatment and intubation. These cases are particularly difficult to solve. Do they have the right to resist and die? Can doctors abide by their will and let them die, even if the lethal consequences of such a decision are evident? The question is whether one should respect their autonomy, their right to decide for themselves, when it is evident that their will has been hijacked by a climate of paranoia. I believe it is more reasonable to let doctors do what they have to do and take the necessary measures to support life, in view of the fact that what moves patients in such cases is not a decision to terminate their lives or not wanting to live but rather an attitude of defiance and mistrust.

There is a simple and a more complicated answer here. Risking harm to others by increasing the risk of becoming a carrier of a dangerous virus is something everybody has a moral and a civic duty to avoid. That is why, if one is infected by the virus, one should also confine oneself in quarantine. But there is, perhaps, a further aggravating aspect, a special disvalue, in refusing vaccination, which is captured by case (c) above. It is not just about risking harm to specific others with whom one comes into contact. By not vaccinating oneself, one fails to support a mechanism that requires (nearly) everybody's cooperation in order to protect society from the adverse consequences of COVID-19: death, illness, long hospitalization and the rest of the serious adverse side effects of the pandemic on individual and collective life. It is a mechanism that demands (nearly) everybody's cooperation in order to succeed. In a sense, it is like a rescue operation, like saving children threatened by drowning or fire, that similarly requires the concerted action of all present in order to succeed. Imagine a person confronted with such an imminent tragedy – who can help with no substantial risk to herself – refusing to give a hand with the trifling excuse that she will be late to a party! Such a response would not only be shockingly egoistic and callous but would go against a long established tradition in moral thought from Cicero<sup>13</sup> through Matthew to Kant,<sup>14</sup> a tradition that supports a very basic but also foundational moral imperative, the Samaritan duty to rescue.<sup>15</sup> However, exemplifying such callous indifference to the lives of others where one can effectively help is not simply individually immoral, it also defies and fails to respect our 'natural' duties towards other humans and in particular humans we live with, our co-citizens. It is an immoral and unjust behaviour that also carries an immense political, social and legal disvalue. It is in other words not only about 'us' or 'me' and the responsibility towards ourselves or myself, but also about how we stand *vis-à-vis* all others with whom we are committed to live. To disrespect this implicit commitment in its essentials is therefore not only immoral, it is a question of responsibility not only to ourselves but also to others; it is objectively unjust.<sup>16</sup>

13 See Cicero, *De Officiis* 1.23–24 and the following quote in particular [Cicero, *On Obligations* (Oxford: OUP, 2001), 10]: 'So far as injustice goes there are two kinds: the injustice of those who inflict it and that done by those who do not protect victims from injury when they have the power to.' For a fair but nevertheless critical appreciation of Cicero's views, see Martha Nussbaum, 'Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy, in *The Cosmopolitan Tradition*', Martha Nussbaum (Cambridge Mass./London: The Belknap Press, 2019), 18–63. See also Steven J. Heyman, 'Foundations of the Duty to Rescue', *Vanderbilt Law Review* 47 (1994): 674–755.

14 Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. Mary Gregor, rev. Jens Timmerman (Cambridge: Cambridge University Press, 1996), 73–4 [4:423].

15 In fact, the implications of such a duty are far-reaching. We have to accept the establishment and the existence of an institution that rescues our basic rights and freedoms.

16 Actually, a nearly universal vaccination, say up to 90%, seems to be necessary in order to build up herd immunity. What about those who belong to the unvaccinated 10% enjoying the protection of the rest? Is the behaviour of 'free riders' (not all are necessarily free riders, at least not subjectively, because some may refuse vaccination for independent reasons) in this case wrong? I believe it is, because they violate a principle of mutual support and obligation that keeps us together in one political society. Disrespect of these very basic civic duties is a kind of unfairness to begin with. It is not necessary to have contributed in a demonstrable way to a collective harm.



#### 4. The puzzle of the moral immunity of anti-vaxxers

In view of such risks to others and of the blatant disrespect to co-citizens and other humans manifested in this behaviour, it defies understanding why the 'right' to refuse vaccination is still considered sacrosanct. There are of course many reasons that drive otherwise mature people to adopt an attitude of general denial.<sup>17</sup> Sometimes it is due to sheer confusion and fear (heightened by misinformation and misrepresentation of facts) but sometimes it seems to be suggested by already entrenched feelings of frustration, anger, and sometimes even hate against authority and rule-governed life. Many different social and individual experiences play into this attitude. Whatever the reason that drives anti-vaxxers to recalcitrance, they seem to believe that they have some kind of 'right' to decide independently on this issue, as they certainly have the right to decide whether they should take some prescribed medicine or undergo an operation. But there is no such à la carte right of independence from the authority of democratic laws publicly discussed, properly enacted, and constitutionally tested according to democratic and judicial procedures. Acknowledging such a strong normative standing would render this particular group of deniers unfairly special compared to all the rest.

One might be tempted to read this behaviour and its supporting rhetoric as a mere expression of rational disagreement on a divisive policy issue. It might turn out that it is not our 'autonomy' and our rights to our bodies that provide the decisive argument but freedom of conscience and freedom of religious practice. Maybe those who deny the very existence or the harmfulness of the virus or those who perceive vaccination campaigns as the real threat to society are some kind of conscientious objectors, harbingers of a new era of peace without violence, drugs and evil powers. Needless to say that a belief system that is ultimately based on denial, preposterous as it may seem in some of its versions, encompasses long-suppressed and fragmented memories of terrible events concerning, say, government policies and practices of pharmaceutical companies. Absolute power terrifies absolutely. We need to keep that in mind in order to better understand and explain the impasse in today's democratic societies and respond fairly and adequately. However, whatever the excuses on behalf of deniers, governments need to be sincere in speaking out about what is right, even if their message is unattractive or displeasing. It is important in this respect to define risky or harmful behaviour as socially and morally questionable. Governments should not shirk from their responsibility to protect their citizens, while at the same time they should take extra care not to belittle or stigmatize those who express dissent, even if their judgement is compromised by completely irrational premises. It is a delicate but important balance. The

17 Some people avoid vaccination for none of the above reasons. They do not see themselves as free riders either. They are simply sceptical about vaccines and display a 'wait and see' attitude which implies that, if they are finally convinced, they might take the jab. The arguments above do not apply to them.

state itself should set an example by exerting authority with a soft hand and sincere respect for everybody.<sup>18</sup>

In order to live together we need to learn to respect each other and this can only be learnt by practicing the respective ethos of a fairly shared life among free and equal people. But this attitude cannot be heteronomously enforced, it needs to form and develop spontaneously. A long and interesting discussion in the history of criminal law ideas has proven how senseless and ultimately illegitimate a project of enforcing morals would be. Morality can only result from uncoerced reflection within society. In this vein, Antony Duff carefully distinguishes civic virtue as an aspirational value from civic duty. For instance, citizens with a sense of fellowship to co-citizens should not harbour feelings of hatred, because hatred expresses a desire to exclude others from equal standing of citizenship, but nothing will happen as long as they keep it to themselves. 'To hate another citizen is thus already to lack civic virtue – even if I recognize I should not hate, and behave as I should. If I enact my conduct towards the other person, I violate my civic duty to her. For the enactment of this exclusionary and alienating attitude must involve conduct that is itself exclusionary and alienating. If that conduct is verbal, its meaning is explicit. It says to the other person that she does not belong to the polity.'<sup>19</sup>

Still, why does this happen, why do some people have such enormous difficulty in understanding vaccination as something they owe first of all to themselves, and why do they fail to see that what they decide also concerns others, and why do governments appear to condone such behaviour? If someone presents a threat to others, no one would have qualms about averting the threat. If someone, otherwise completely sane and rational, tends on some rare occasions to have sudden and unpredictable outbursts of violence connected to some neurological disorder, would this person not have a reason to reconsider the threat he poses to himself and others? So how do we account for obstinate denial? Maybe it comes as an echo from an originally correct normative intuition. But in this second coming there is only verisimilitude and not truth. People from the anti-vaccination movement have adopted a misguided view (maybe we should call it an ideology) of 'bodily sovereignty'. No question, our body belongs to us – although I would hesitate to endorse the view that 'we own our body'. The fact that it is *our* body does not imply that for some mysterious, inscrutable reason it lies beyond society's and morality's

18 Even if making universal vaccination compulsory may have the air of a totalitarian dystopia, democratic governments indirectly do force people who work in domains critical for the spread of the particularly contagious Delta variant to take the vaccine or quit their job. A growing number of countries require a shot or a negative test for dining out and participating in other activities. See <https://www.reuters.com/world/countries-make-covid-19-vaccines-mandatory-2021-07-13/>. For a version of the practice in China: <https://edition.cnn.com/2021/07/15/china/vaccine-china-restrictions-zhejiang-jiangxi-intl-hnk/index.html>.

19 R.A. Duff, *The Realm of Criminal Law* (Oxford: OUP, 2018), 200–201. Hating others is a problematic attitude not only because it signals disrespect by exclusion but also because it creates permanent dysfunction in human relations. In that sense it differs from anger. Maybe it is humanly unavoidable as an emotion, especially in personal relations. Whatever the case, hate should be controlled and contained when it acquires a political relevance.

realm.<sup>20</sup> That would be as absurd as claiming that a human body is not subject to the law of gravity. A body can literally become a weapon and a body infected can be a lethal weapon for other people, especially those who for constitutional reasons cannot defend themselves, because of some illness or age or both. A comparison with the threat emanating from a person carrying explosives is not unfounded. A body is not an independent and sovereign state (even contemporary notions of sovereignty are shifting!). So this is an utterly wrong and misguided view which has nevertheless survived as a *mere echo* from social and professional practices in situations where respect for the individual body and individual autonomy is, with good reason, acknowledged. The fact that the privacy of one's home is sanctified, and rightly so, the fact that no one is allowed to enter without a warrant, cannot mean that there are no exceptions, if there is an emergency or if the sanctum of a home is the source of a threat to the lives of others.

## 5. Whose responsibility?

The duty of the state to protect its citizens obviously does not absolve the citizens themselves from their own (moral and civic) responsibility. Still, some people who are attached to an extreme version of statism seem to believe that the state should exclusively carry the entire burden of protecting its citizens from the virus (maybe this is the other extreme compared to those who believe that the state has no right to take measures to protect its citizens). It is unreasonable to demand full and exclusive protection from the state, not only because of the economic cost but also, and perhaps preponderantly, because of the normative cost. *First of all*, there are questions of limits of available resources. How many beds and intensive care units should be available for those who fall ill? How many doctors and nurses should be hired to treat them? It would be patently irrational (and ultimately unfair) to expect unlimited resources to be committed to the treatment of COVID-19 patients who otherwise take no precautions, disregard rules and refuse to be vaccinated. It would be irrational because it would establish a moral hazard, an incentive not to be vaccinated. Further, it would be unfair to other non-corona patients in need of

20 Some philosophers invoke an argument from 'intimacy', comparing vaccination with the intimate acts of sex and gestation. According to Travis N. Rieder some acts are too intimate to entitle anybody else to perform them other than the agent herself. So a reason for vaccination never acquires the standing of a duty to be vaccinated. He writes: 'Is getting vaccinated intimate? While it may not appear so at first blush, it involves having a substance injected into your body, which is a form of bodily intimacy. It requires allowing another to puncture the barrier between your body and the world. In fact, most medical procedures are the sort of thing that it seems inappropriate to demand of someone, as individuals have unilateral moral authority over what happens to their bodies.' (Travis N. Rieder, 'There are plenty of moral reasons to be vaccinated – but that doesn't mean it's your ethical duty', *The Conversation*, 20 April 2021, <https://theconversation.com/there-are-plenty-of-moral-reasons-to-be-vaccinated-but-that-doesnt-mean-its-your-ethical-duty-158687>). I think that intimacy is not so strong a value as to have normative clout when the rights of others and public health are at stake. In social life we have to give up some part of our 'intimacy' without losing our dignity, if we want to interact and meet with others. Nobody carries his home with him upon leaving his house every morning, taking a bus or the metro, working with others at the office or sharing a table at coffee shops.

treatment who would have to wait longer periods or postpone important medical procedures. It would also be unfair to those citizens who could otherwise profit from resources that could be dedicated to other domains (e.g., public investments in education and culture, economic stimuli to combat unemployment, etc.). *Secondly*, some measures, like digital contact tracing (DCT) would be, if applied in a legally unqualified way, too intrusive in terms of privacy and data protection. It should not come as a surprise that in some Asian countries the mandatory use of DCT has proven successful in preventing the dissemination of the virus – but at a normative cost.<sup>21</sup> One can of course imagine infinite other, grotesquely totalitarian, ways to control the pandemic, from close monitoring of private activity to fully suspending human freedom and reducing fundamental needs of expression and interaction to the minimum. But this is not a viable road for democracies. After all, we live in organized political communities under democratic laws in order to enjoy the protections of our basic rights and liberties, in essence our freedom.

This makes it imperative that citizens assume their part of responsibility for themselves but *also* for their co-citizens and their community. In the context of the pandemic this means that individuals are morally obliged to observe the relevant rules concerning lockdowns, wearing masks, social distancing, avoiding large social gatherings, self-isolation (e.g., if they test positive) and last but not least vaccination – even if the state for whatever reason fails to be present. Actually they will have to take all possible precautions not to spread the virus and not to fall ill themselves. Again, one might ask: ΔΙΠΛΑ ‘I understand that I have to care for myself (or: in fact, I am too young to be worried since the consequences of an infection will not be severe in my case). But why should I assume responsibility for others? Why should I be doing a job entrusted to the state? Furthermore, why should I suffer all the restrictions related to a pandemic which primarily concerns older age groups? Why should I sequester myself or take the jab, when the threat to my own health is minimal, so that others, mostly older people, can move safely around? Why do they not rather stay home, so that I can move freely?’

Preposterous as this objection may sound, it does resonate with some citizens. It reflects the view that governments abdicated in the case of the pandemic (by failing for instance to convince enough citizens to vaccinate voluntarily) and saddled citizens with their own responsibilities. This view betrays a misunderstanding of the role of the state. The state has the power and the legitimacy to structure social relations and set the relevant rules in order to protect citizens’ rights and liberties, but the state cannot and may not take citizens by the hand in order to fulfil its protective role. As mentioned earlier, this would surpass its capacities and the state would overstep its mandate. The state should take care that roads are safe and rules

21 As the authors of a recent study have found: ‘Despite the promising potential of DCT, its introduction gave rise to intense debate over ethical, legal, and societal implications (ELSI). In particular, some characteristics of the Asian approach (mandatory use, centralized protocols, GPS- or cell tower-based geo-location) are seen by many as incompatible with European legal provisions and ethical views about the value of individual privacy.’ See Alessandro Blasimme, Agata Ferretti and Effy Vayena, ‘Digital Contact Tracing Against COVID-19 in Europe: Current Features and Ongoing Developments’, *Front. Digit. Health*, 17 June 2021 | <https://doi.org/10.3389/fdgth.2021.660823>.

of traffic observed by all drivers but the state cannot sit next to each driver. The responsibility to navigate in social life is ours.<sup>22</sup> It is ours individually and collectively. The expectation that a ‘paternal’ government will take care of us from the cradle to the grave is based on a dangerous misconception. The responsibility to ‘conceive’ and lead a successful life is ours only. But it is a responsibility based on a conception of common life with others.<sup>23</sup> The state – following a telling conceptualization by Philip Pettit<sup>24</sup> – can create the necessary infrastructure and institutions of insurance and insulation that enable and guarantee undominated life, but we are and remain the pilots of our lives, not the state.

There is, however, a further disquieting claim included in the objection we encountered above. It is the claim that besides mandatory rules enforced by the state, which we are held to respect, we owe no further allegiance, attention and care *vis-à-vis* all others, even if we share a life with them. In fact, the view that younger individuals who are less prone to fall ill – but equally liable to carry and transfer the dangerous virus – are exempt from special duties of care *vis-à-vis* others appears to be an offshoot of this particular attitude. This is not only an egoistic view but also in some sense extremely naïve (as if the quality of being young will last for ever). Still, can we say that those people who are relatively immune because of their age have no duties of care towards older, more endangered generations? If one were to balance advantages and disadvantages one has to admit that younger people were far more burdened by anti-coronavirus measures and restrictions than older ones. This special psychological and material burden should perhaps be somehow factored in and independently compensated. However, even if restrictions like lockdowns and social distancing weigh heavier for younger individuals, it remains a fact that there can be no exception in their case because they can contract the virus and become carriers, even if with mild or no symptoms. Even if one is not seriously threatened, one can thus be a threat to others. After all, life and limb are protected *vis-à-vis* everyone, even those who are too strong and powerful to be beaten up by others (but who can beat up others).

## 6. Solidarity

I mentioned earlier that the duty to rescue human life (next to the natural duty not to harm others) is a fundamental moral rule of universal recognition. Kant among others has given it powerful philosophical support as a moral duty. The rule seems to originate from particularly tough circumstances of life where help from unknown others is vital for survival. However, it is not only as humans, as moral persons, that we owe this particular duty to others. We also owe it preponderantly

22 This maybe the ultimate reason why even the most humanist libertarian view, such as Charles Fried’s, will ultimately hinge on a society’s disposition to develop an ethos of basic solidarity with other humans and co-citizens. We cannot live only in bubbles, wonderfully comforting and stimulating as they might be. But a libertarian view can only rely on the spontaneous birth of such attitudes in society. It does not inspire it.

23 See. Duff, *The Realm of Criminal Law*, 192–201 for a sketch of liberal republic.

24 Pettit, *Just Freedom, A Moral Compass for a Complex World*, ch. 4.

to people with whom we regularly connect as citizens and with whom we share a common social and political fate. We have a duty to rescue others from the prospect of lawlessness and what this condition implies for their freedom and rights. This is one (maybe the simplest and most basic) way to explain why we have to uphold the democratic state and abide by its laws. We also have to take it upon ourselves when we live and interact with others. The responsibility of each one of us *vis-à-vis* others thus complements the state's obligations towards its citizens but it also corroborates the citizens' sense that they form part of a distinct political society of individuals with permanent bonds and a common perception of what they seek. A political society that fails to develop this basic sense of unity of purpose and instil an awareness of fundamental civic duties in its citizens cannot hope to survive for long – not as a society of free people. Individual freedom and well-being cannot exist without an inspiring, even if minimal, sense of a shared collective purpose.

If we live permanently with others, we depend on them for our private aspirations to succeed. We rely on their cooperation individually wherever needed but we also rely on the availability of an institutional backing. As mentioned earlier, this institutional backing is necessary and to a certain extent non-negotiable privately. But no society can survive and reproduce itself if its members care only for their own narrow good and the institutional backing exists only as a support available at discretion for individual endeavours, just a tool box for everybody's use. As many ancient and modern political thinkers have noticed, something more is needed for a society to be a real union, not only among contemporaries but also between generations. The idea of solidarity (which has an interesting genealogy in Christian, socialist and liberal nationalist theory and practice)<sup>25</sup> expresses the need for a basic identification and mutual support primarily among citizens and compatriots but ultimately also among humans. Even if we owe special duties of allegiance to co-citizens with whom we share the liberties and responsibilities of a democratic polity, we have no reason to be partial as to our humanity. Every human is our equal in dignity and worthy of respect. In fact, we also have a special kind of duty and a special political responsibility, different from our duties of allegiance to compatriots, towards citizens of other countries, unable to enjoy the liberties and responsibilities of a democratic polity.<sup>26</sup> We recognize solidarity as a matter of fact when feelings, attitudes and awareness of a common fate dispose a group of people with this particular mindset to act in a united and concerted manner in order to confront an adversity.

But where lies the normative source of solidarity? Although solidarity necessarily presupposes a deeper and permanent bond and not a circumstantial alliance of interest, the value of solidarity is not sufficiently captured by the mere fact that

25 See Andrea Sangiovanni, 'Solidarity as Joint Action', *Journal of Applied Philosophy* 32 (2015): 340–359. Sangiovanni draws on elements from all three traditions in order to construct a plausible view of solidarity based on citizens' joint action as authors of public institutions.

26 See Konstantinos A. Papageorgiou, 'The refugees and our duties', paper presented at the plenary session of the 2017 World Conference of IVR in Lisbon. The session's proceedings will soon be published in English by Steiner Verlag.



such a bond exists among, say, people of the same class, nation or confession. Something more is needed and it is provided by the authority emanating from legitimate political institutions. Thus, the reason why citizens eligible to be soldiers should defend their country against an act of aggression is not because of some emotional stir (more or less easily manipulable) that brings them coincidentally close as co-nationals but rather because of their awareness of what it means for them to live as consciously engaged free and equal citizens in a democratic country under laws of freedom. To be a citizen of a free political society with rights and entitlements entails among other things that one stands exactly in such a relation of obligation to others and towards one's state. That is why abandoning one's compatriots and turning one's back on the democratic state in a situation of emergency, in a moment of crisis and danger, demands at least some kind of explanation and justification.

As we saw, immunizing our societies against the terrible threat from the SARS-CoV-2 pandemic is a complex and difficult process that presupposes everybody's cooperation, including those who doubt the scientific evidence and the efficacy of the vaccines, and those who combine denial with a general attitude of social and political dissent and mistrust of the democratic state, and see the pandemic as an opportunity for governments to expand their power and control. It is unreasonable to doubt the pandemic and the need to combat it, as it is unreasonable and pernicious, not only self-harming, to refuse to comply with measures and restrictions necessary to contain it. After all, now we know that many anti-vaxxers have paid for their absurd stance with their lives. This attitude is so unreasonable and anti-social that there is no reason to condone it. The people who do not take the vaccine (with no special medical indication to the contrary) should not be celebrated as heroes of resistance against evil powers, nor should they be treated as conscientious objectors. Even if they do not care about themselves, they have a duty of solidarity towards other humans and co-citizens to comply with the measures and take the vaccine. Actually, despite appearances, the spirit of denial of anti-vaxxers has no firm grounding in 'autonomy' or an alleged right to decide over their own health. They are morally (and should be also legally) obliged to take the vaccine and protect others, particularly if their profession involves taking care of high-risk people, like patients or the elderly.<sup>27</sup>

I would like to conclude with an aspect of the duty of solidarity I have not mentioned so far. We read that in June 2021 only 0,9 % of people in poor countries had

27 The fact that governments hesitate to enforce this duty universally is understandable in view of the vociferous opposition in some countries. If so, the state's duty to protect can be discharged in an indirect way by focusing on special groups and making vaccination mandatory for those who are professionally engaged with substantial numbers and in particular with high-risk people. Vaccination should be mandatory for doctors, nurses, caregivers, teachers, bus drivers and others, on pain of exclusion and disqualification for those who refuse to comply.

received at least one dose of a vaccine.<sup>28</sup> It is a sad fact that combating the SARS-CoV-2 pandemic proved to be more of a 'national' than an international issue. To a certain degree it bespeaks of the duty of the shepherd to first look after his own flock in times of danger. Free, democratic, welfare states, however, have duties not only *vis-à-vis* their own citizens but also towards those less privileged and fortunate who live in states that for whatever reason fail to take care of them and to discharge their duties. The legitimacy of democratic states is ultimately founded on the acknowledgment of the right of other people to strive for a common undominated life with secured basic rights and freedom.<sup>29</sup> This particular responsibility of democratic states is not exhausted in some kind of formal recognition. It also demands taking steps of material and symbolic support when needed. Actually, this duty towards other people comes as an extension of the duty to rescue in the largest sense and it can and should be discharged in cooperation with other democratic states that, through institutions of global governance, can offer concerted action and help those in need of survival and stability in their own political habitat. This way democratic welfare states not only contribute to much needed international stability but also protect themselves.

28 Maria De Jesus, 'Global herd immunity remains out of reach because of inequitable vaccine distribution – 99% of people in poor countries are unvaccinated', *The Conversation*, 22 June 2021, <https://theconversation.com/global-herd-immunity-remains-out-of-reach-because-of-inequitable-vaccine-distribution-99-of-people-in-poor-countries-are-unvaccinated-162040>.

29 Papageorgiou, 'The refugees and our duties'.