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Department
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Course of Comparative Public Law

The conflict between public health guarantees and individual human rights in the policymaking process.

Its implications in the Italian and French contexts with regard to mandatory vaccinations.

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"La verità è che nella vita puoi scegliere di essere triste e sentirti triste o di essere felice ed esserlo davvero, sta a te decidere. Ogni giorno."

La fortuna non esiste – M. Calabresi

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Introduction

The recently enhanced tendency to call into question the role of the state in the field of public health management has represented a challenge for central governments to efficiently provide medical services and assistance to the population. The persistent contrast is generated by, on one side the individuals' claims to freely exercise their personal rights while, on the other, the claim to have access to certain levels and mechanisms of assistance provided by the public authority to the community as a whole. Given these circumstances, it is common for every society to register a consistently difficult relationship between the interests of individuals and the interests of the whole community. In supporting both spheres of influence at the same time, the central government may have to deal with clashes due to an imbalanced relationship between them. In point of fact, the delicate domain of public health is frequently considered as characterised by a real or perceived divergence between individual and community benefits. Particularly, in implementing certain measures that require universal compliance to be successful, the controversy arises. The conflict is frequently connected to the concept of what an individual wants to obtain, the ways in which they achieve their goals and the welfare objectives of the national government. As a result, the public authority manages to equilibrate its position of intermediary, and, simultaneously, is considered the guarantor of individual and collective rights. This duplicity may generate inconsistencies in the practices to safeguard personal rights, especially on occasion in which the community's safety is put at risk, and a decision has to be taken. Moreover, this contrast is particularly visible in the process of policy making, when a variety of interests comes to the surface, and it is then required to prioritize them to obtain a win-win solution for all parties involved.

The contradiction introduced above is noticeable regarding the right to health and its protection by the national states, and it will be discussed in the following pages through an examination of the Italian and French legal frameworks concerning the right to health. Furthermore, after having exposed the interpretations of the concept of health, an investigation will be carried out with respect to the public measures that have been put into practice to minimize the incidence of the outbreak of measles in 2017-2018, and how that

fuelled the political debate. In relation to public initiatives, the spread of the contagion favoured the adoption of a pervasive approach in both countries consisting in the imposition of mandatory vaccinations aimed at re-establishing the threshold of universal coverage, the so-called herd immunity. In both nations, the state action plan incurred a strong opposition by the population and, in particular at the political level the energetic attitude of the public authority fuelled the debate regarding the renewed central role of the state in people's lives.

In general, over the years Italy and France's central authorities have progressively delegated their administrative powers to regions and local districts, avoiding exceeding in influencing individuals' lives and their decisions. However, in respect to health their approach changed when the designated national and European authorities registered a relevant decrease in the rates of immunisation for highly contagious diseases, possibly caused by a change in public vaccine confidence. To make clear, the dualism of the notion of health affected State's power of policy initiative, thus, in the two countries under study, reopening the debate about authorities' respect of fundamental rights, and therefore demanding new examinations of the constitutional formulations of the right to health.

What transpired is that the Italian and French legal systems share some commonalities, such as the interpretation of the good health and the admissibility of State intervention in case of emergency. However, the Italian constitutional text explicitly identifies in the art. 32 what is the individual right to health and who is the guarantor of its protection. The state authority is depicted as a key player in the processes of safeguarding the individual and community's mental and physical balance and yet, each individual is entitled to enjoy the right freely, with just few exceptions involving dangerous circumstances for the whole community. In parallel, the French legal framework devotes a part of the constitutional charter to the definition of what is considered as health by the national legislator. As in the Italian formulation, health is interpreted as a state prerogative with a privileged status and with a dual dimensionality of body and mind. Nevertheless, the French charter does not include a direct reference to the individual right to health, but its pre-eminence is derivable from an interpretative effort made by the legislator, on a case-by-case basis. Yet, in accordance with Serges (2018) the concept of individual health is not specifically mentioned in the constitution but it can be extracted

from the reference to other listed rights such as the right to medical care, the entitlement to receive social assistance and health insurance benefits. Moving beyond the diversity between the two contexts, both Italian and French legislators highlighted the need of equilibrium in the individual-community relationship, in terms of a balance of their respective spheres of rights. Consequently, the attention given to the well-being of the community stands out, and it is remarked in the two texts that in specific circumstances the collective interests prevail over the ones of the single, without resulting in a breach of fundamental rights. Nonetheless, the introduction of mandatory measures as the Decree-Law no 73 in 2017 and the Law no 2017-1836, respectively in Italy and France, had generated waves of protests because of the perceived excessive intervention of the authority to favour the common welfare. The controversy triggered clashes at the political level which have been bolstered by the propagation of anti-vaccinations' theories and fake news on the subject.

The following research will analyse this debate and will be structured in five chapters, moving from a more systematic and general analysis of the background of reference and the methods implemented in the experimental work, and continuing with the very discussion on the mentioned controversy. In the first chapter, it is proposed the scrutiny of the concept of state in past scholarships, starting from the classical viewpoint proposed by realist scholars that would help explaining the pre-eminent stance taken by Italian and French public authorities with their move. Moving from that point, elitism, liberalism, pluralism and utilitarianism have been taken into consideration to have different point of views regarding the conceptualisations of the role of the state and its relationship with the population. The examination of this literature is useful to have a better comprehension of the evolution of the role of the state, and therefore finding a common ground of reference for the subsequent analysis of the Italian and French governments' behaviours. Moreover, since the focus of the work is connected to the public decision-making processes, a paragraph will be devoted to a reflection on the challenges and specificities of it, considering the need to balance the conflicting interests. Then, after having explicated the features of the current operative context and the observed gap in the matter under study, a chapter will be dedicated to the research methods that have been selected to perform the investigation. The applied methodology considers the cases of Italy and France, with a special focus on the measures

that have been implemented to overcome the massive diffusion of measles in the two countries in 2017-2018. The two-case inquiry will refer to data collected through discourse analysis and interviews since these approaches have proved to be the most adequate to examine the topic of public health policies and their impact on the personal sphere of each individual.

Afterwards, the second part of the work presented in chapters three, four and five will be go deep into the comparative aspects of the research. It will be, actually, devoted to the case analysis, trying to comprehend Italy and France's formulations of the right to health, using as reference their respective legal frameworks. The chapter three will address the notion of health in relation to the Italian, French and European legal framework, aimed at recognizing the peculiarities of the operative backgrounds, both national and supranational, that guide public authority's action. After having designed a search regarding the valid interpretations and formulations of the right to health, the controversy generated by mandatory vaccinations in Italy and France will be examined observing the different measures that have been taken before to cope with the peak of the measles' outbreak. Lastly, chapter five will move the discussion on the contrast raised by the introduction of the compulsory procedures and, consequently attempting to explicate the active political debate that followed. In point of fact, both national realities have demonstrated a strong opposition to the enacted public plan visible in political announcements and claims of a perceived violation of human rights and freedoms. The examination of this phenomenon will be carried out through the exposition of the results of the interviews organised with selected representatives of the epistemic community, in an effort to have first-hand experiences regarding the polemic under study.

Along these lines, the idea is to understand how the role of the State changed while opposing the diffusion of measles, assuming a stronger attitude, and why the public health domain admits a tough public intervention. In addition, on one hand it is intriguing to observe how the two legal frameworks differently conceptualise the right to health and to health protection. On the other, it is interesting to notice how the state acts when it is carrying out its duties, through the intervention in people's intimate sphere of rights and the imposition of operative criteria while protecting the common good. This work may contribute to giving a clarification of the variation in perceiving the role of the State in relation to the development

of specific external circumstances, thus eventually proposing as the outcome a general direction to effectively handle the debate regarding the contrast of individual rights and collective guarantees in other fields of study.

1. State of the art

1.1 The notion of State

The concept of "state" is included among the most ambiguous terms in political science and its definition assumed different specificities in accordance with the period and the authors who were discussing it. The Baron of Montesquieu is attributed with the first conceptualization of state[1], identifying it as a union of the legislative, the judiciary and the executive powers. However, the definition of State given by Weber still remains the most shared by the experts in political science. It represented the state as an actor who is exercising a form of monopolistic power over a defined geographic area (Neep, 2014). Besides the definition of what a public authority is, later political theories searched mostly on the position that the State should have had within the society, by way of an explanation of what should be the characteristics of the relationship between the public authority and the other entities.

The most widely shared approaches entail the figure of a central public authority that through its intervention is securing the population welfare. Political realism has been the dominant school in political science and, according to it the interpretation of reality occurs through a rational investigation of it, trying to explain the political environment objectively. According to realist theorists, the State is central, as it is the main player in the political arena, both in national and international terms. It safeguards the public security; the national interest and it is the sole actor with the capabilities to enforce laws, thus preventing the degeneration into a condition of anarchy. In this conception, public authority has a central relevance and a pre-eminence in respect to the individuals and the community. In other words, the works by Weber about the interpretation of the figure of the state have been significant to further the development of realist approaches (Biersteker, 2002). This school of thought recalls Hobbes and his position, according to which to limit the natural contrasts between human beings within the society it is necessary to have a strong government to remedy to this instability.

[1] The definition of the division of powers has been proposed in his work "L'Esprit des lois" published in 1748 in Geneva

Besides the high popularity of this state-centric vision, this school of thought saw a steep decline in the 1960s and 1970s after having witnessed, amongst other effects, the growth of the globalisation phenomenon with the connected effects. Additionally, the rise of the presence on this stage of non-state actors and transnational players marked the point of decline of this paradigm, progressively reducing the State-centric approach typical of this branch (Elman & Jensen, 2014). Jointly to the idea of the central relevance of the state, theories about the elite turned out to be the most adequate to represent this phenomenon of overemphasis of the public figure. The modern conceptualisation of an elite identifies it as an exclusive group of actors which possesses key resources, occupies pivotal positions and whose networks of communication is largely expanded (Yamokoski & Dubrow, 2008). The elitist theory reconnects to the concept of possession of power as stated by Weber - put differently - the degree of it would have determined the condition of superiority of the group, mostly considered of small dimensions in terms of membership. The condition of diffused power fragmentation in both countries under study, and the fact that elite theories *per se* do not pose limits with regards to the origination of new elites from anywhere, represent a challenge to the traditional conceptualisation of elite group. By way of explanation, the public authority may not be the only source generating elites, but new players would be taken into account as legitimate elites as well such as non-governmental organisations, transnational corporates and other non-governmental institutions (López, 2013). However, similarly to the fate of realist theories, the elitist paradigms have been later confronted with the increasing phenomenon of distributed leadership and the growing influence of other actors who entered the national legislative processes of policymaking. As a consequence, the institutional elite struggled to adapt to its recent characterisation and evolved partially, decentralizing some of its duties. Nevertheless, at the same time there are still domains of public policies in which the roles of the institutional elites and of the epistemic communities prevail over the large majority of the population, thus still validating the elitist dichotomy between large majority and small ruling class.

Moreover, a different mindset reached the surface and liberal ideas started to emerge in contrast to the realists' perspectives. One of the main characteristics of liberal thinkers is the traditional scepticism about any exercise of how coercive the State's power is over the

individual (Carolan, 2009). Secondly, discussing the liberal paradigm means shifting the understanding towards the individuals, and by way of explanation, liberal theories refer to a vision that put at the centre of the political discussion the individuals and their needs, leaving the public entity detached. The idea is that every human being is endowed with so-called natural rights and the state entity is a figure which has to be granted a legitimate status by individuals (Carolan, 2009). Additionally, modern liberals attributed the authority to the position of patron of the community. In other words, the central authority became an instrument to promote an improved life for the national population, aimed at either limiting or eliminating externalities that could affect people's way of living such as poverty and disease, through its activities of promulgation and implementation of public policies (Gaus, et al., 2018). As a matter of fact, to the government is granted the role of guarantor of the living conditions of the individuals, but there is still the possibility of an excess of interference of the former actor in the lives of the latter. That is to say that the focus is put on the degree of intervention of the public body with respect to the personal sphere of the individual to accomplish its responsibilities. Having said this, it is to be clear that there is an open debate among liberals about it and the conceptualization of the effective powers that the public entity acquires in dealing with certain circumstances, such as the spread of a contagious disease. Nevertheless, the main opinion according to which the state's level of interference should be reduced to its minimum in order to allow the free enjoyment of peoples' natural rights remain strong.

The third most common theory helpful to advance the debate is pluralism and it emerged challenging the dominant paradigms. Its innovative aspect was the shift of the spotlight on the analysis of a new kind of governance in which power is shared by different players and the process of decision-making also includes the networking with other non-governmental actors. The progressive fragmentation of the system of politics and the levels of control consequently modified the system of power distribution and obliged the Italian and French governments to adapt to the new allocation of responsibilities. The most adept example of the fragmentation of the leading powers is the European Union system with which states agreed to add a new layer of complexity to their governmental practices and, concurrently, to leave behind a percentage of autonomy and power over their own territories (Bellamy, 1999). Such a

condition deviates the focal point of the theory on what the other actors are involved in during the institutional path and it also entails the existence of other categories of actors and experts that influence the policy making procedures, and who could thus compete to fulfil their own political preferences (Kozhikode & Jiatao, 2012).

Moreover, particularly in the aftermath of the Second World War, the debate about rights progressively made its way onto the international stage and has therefore been influenced by new philosophical theories related to the concept of utilitarianism amongst others. This paradigm is prevalent in the works of J. Bentham and in his formulation of the concept of "negative freedom" according to which every limitation of individual liberty is considered a damage and that laws themselves are a genre of restriction. Nevertheless, Bentham had already underlined the peculiar relationship between laws and public entities, stating the important role of the constructed legal framework in the active protection of individuals' rights and thus recalling the existence of a sort of social contract. This viewpoint was in contrast with the perception of individuals endowed with natural rights, so freeing them from any kind of limitation, but the role of enforcing laws by the State was fundamental to avoid the degeneration into a situation of anarchy (Driver, 2014). The relationship between individuals and the public authority may become problematic on certain occasions in terms of the balance between individuals' freedoms and community guarantees. In case of the occurrence of uncontrollable externalities that are threatening the life of the whole population, the central authority is the figure that possesses the powers to mitigate the circumstances and it also has the responsibility to intervene.

Finally, all the perspectives described above can be explicative, and adopted to understand the process of development of the state's role in the protection for the individual's and the community's well-being. The pre-eminence of the central authority, as explained by realist and elitist theories, has been confronted with the increasing influence of non-state actors, such as NGOs, and of the civil society, in this way upgrading the complexity of the public dialogue. The progressive variation of the degree of state intervention has affected the practices of policymaking, and it also emerged in the investigation of the measures adopted by Italy and France to effectively cope with the emergency outbreaks of measles in their

respective territories. In the 1960s-1970s, both countries' central authorities indeed displayed a tendency to delegate their responsibilities to third-party or regional authorities, and this appeared evident in the reforms undergone by the two national health care systems and the related legislation, respectively in 2001[2] and in 2004[3]. However, as a consequence of the measles outbreaks, Italian and French central governments have shown a shared inverse attitude through a practice of recentralization of the responsibilities previously delegated. It is quite interesting to analyse the consequences of this change of direction on the relationship between individual and community rights, and why the state re-assumed the leading role in such a sensitive domain as health on that specific occasion.

1.2 The challenges of policymaking

Particularly in the phase of policymaking, the central authority historically has had a central role in accordance with the realist concept of the role of the state machine. However, even in this specific operative domain the focus progressively moved towards the individuals and their welfare and endorsed a more liberal perspective of the state intervention. As a consequence, the literature emphasised the importance of human rights and their need of primary protection, whilst simultaneously identifying the boundaries of state intervention (UN General Assembly, 1948) (World Health Organization, 2008) (Adhanom, 2017).

In addition, the public policymaking process itself has been interpreted by various experts, with the purpose of understanding the role played by the central governmental bodies. As a matter of fact, according to Mény and Thoenig (1989) public policies were "the product of the activity of an authority invested with public power and governmental legitimacy", and therefore can be seen as respecting the classical conceptualisation of them as decisions made by the governments (Dye, 1987). However, it is noticeable how the previous character of the centrality of the state has been also altered in this domain. Knoepfel et al. (2001), in fact, introduced the possibility that the private actors can also affect public policy mechanisms and,

[2] Constitutional law of October 18, 2001. Reform of the Title V of the Italian Constitution.
[3] Law n. 2004-806, 9 August 2004 related to the policies in the field of public health.

eventually they can direct their contribution towards finding a solution to a problem that is primarily considered as collective. As a matter of fact, in this sense the ideal outcome in the activity of a policymaker is to identify instruments to efficiently reach the set goals, and to satisfy the expectations of the community to which those measures apply. Nevertheless, this phenomenon known as "dispersed leadership", and consisting in a progressive delegation of authority to third actors, significantly affected public policies' practices. Due to this circumstance, the latter became more complicated as a result of the gradual fragmentation of the institutional space and of the management (Dente, 2014). Furthermore, as described by B. Dente (2014) in general, the process of policymaking can be considered not only as a confrontation between different actors and a variety of conflicting interests, but also as a bargain practice according to which the final aim is to reach a wealthier status for both players, in other words, a "win-win" situation. In particular, the variables involved in a negotiation are numerous, and there are frequently competing priorities. Considering these circumstances, with regards to sensitive debate topics as health and health protection, doubts about imbalanced conditions between individual and collective rights frequently rise, and therefore may spark a discussion about a potential excess of state intrusion. In view of this fact, public health policymaking procedures tended to be under the spotlight and the balance between individual and state's powers has been extensively discussed by a variety of experts, trying to understand how they affect each other (Camargo Jr. & Grant, 2014); (Kass, 2011); (Bayer, 2007); (Meier & Onzivu, 2014); (Wilson , 2016); (Phua, 2013); (Annas & Mariner, 2016); (Soini, 2011). It is observable how different stakeholders, both directly and indirectly involved in the decisional processes, have made efforts in trying to maintain an equilibrium, especially while adopting measures that can be considered delicate (Faden & Shebaya, 2016). However, an extensive and major contribution has been given by L. Gostin (2007), who has highlighted some of the general constraints to which public authorities are subject to in dealing with their duty of protecting the community and policymaking.

Foremost, the concept of legitimacy is fundamental, and is strictly related to the source from which the public authority derives its capabilities. Particularly, when considering the Italian and French cases of measles outbreak, the process of dealing with health emergencies is identifiable in both constitutional texts. The Italian government derives its operative

legitimacy directly from the Constitutional text. Article 32[4] explicitly identifies the State as the guarantor of health protection of the community, addressing to it the powers to intervene according to the legislation in cases of necessity. While in the French case, health protection is stated in the constitutional bloc, *Bloc de Constitutionnalité*, together with the Declaration of the Man and of the Citizen of 1789. In parallel, another derivation of a legitimate and active power of the central authority is provided by the European Convention of Human Rights (ECHR), in respect to which Italy and France has to maintain a compliant conduct. As stated in this document, forms of public intervention are admitted only in certain cases under specific conditions such as national security and public health, and limitations[5] (Council of Europe, 1950).

Furthermore, another typifying criterion is necessity, and it has been adequately defined by Childress et. al (2002) as the factor that must be considered in cases of public health intervention before actually intervening with whichever measure. The notion *per se* refers to a required deep verification of the reasoning behind the adoption of a certain policy, because the core idea is that the manoeuvre has to be consistent and fundamental to the achievement of a public goal, in this case a public health target. The feature of necessity entails that, before applying a measure that can lead to the eventual infringement of the rights of the individuals, the public entity has a duty to find and try all the alternative ways to tackle the circumstances. As specifically related to the field of health protection, the World Health Organisation has conditioned the concept of necessity to a proven justification by the government of an existing threat to health (2007).

Finally, the last notion is proportionality and it can be adequately represented by the words of Lord Diplock "You must not use a steam hammer to crack a nut, if a nutcracker would do"[6]. Namely, the selected measures to achieve a final aim have to be proportionate to reach a

[4] "The Republic shall safeguard health as a fundamental right of the individual and as a collective interest and shall ensure free medical care to the indigent. No-one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person."
[5] Articles 8 and 9
[6] R v Goldstein [1983] 1 WLR 151.

specific end. In the context of policymaking, this is often referred to the boundaries imposed by laws to the activity of the public entity, in terms of the employment of its executive and legislative powers in performing its assignments (Nicotra, 2017). Additionally, this principle is frequently connected to a sort of cost-benefit analysis, and this mechanism of reasoning is visible in the domain of public policy. It actually appears to be a process of balancing the principles at stake and the desired future achievements, avoiding continuously to exceed the maximum degree of accepted interference by the individuals (Alexy, 2014).

From this perspective, it is evident how important is the dialogical relationship between the state authorities and the numerous stakeholders while discussing the implementation of a public policy. Especially, emerged the significance of acting in accordance with proportional means, in a legitimate context and only in case of necessity, therefore making more complex the public bargaining practice. The latter is subjected to a strict ethical checklist but, in the case of health protection and public welfare, it might arise the need to assign a greater weight to a dimension over another, and that is the case of mandatory vaccinations.

1.3 The current situation

Through the clarification of the factors affecting the policymaking process, a few aspects emerged that characterise the complexity of the governance of the public health system. The health management system has been indeed influenced by a shift in the understanding of the position of the central authority in the management of community welfare. Additionally, it is observable how the progressive growth of the influence of the civil society in the practices of public dialogue can be connected to an extra normative activism, aiming at identifying the operative boundaries to state's action. In this regard, one of the consequences of globalisation has been the progressive transformation of state boundaries with the intensification of transnational relationships and trades. Jointly, the emergence of supra-national organisations (namely the European Union) and trans governmental networks promoted a steady erosion of states' boundaries and frontiers. In response to the fast evolution of this phenomenon, the state had to reform itself to understand how to cope with the novelty of those effects and, in

particular how theories of "strong" globalisation challenged the welfare state structure. This circumstance of international integration has been indicated amongst the reasons behind the "meltdown" of the state's practices of assistance (Beck, 2000). In point of fact, states, after such alteration of the circumstances, are reduced to playing a limited role in comparison with the arising private sector (Yeates, 2002). The current situation recalls the definition of the functioning of the public machine proposed by J. Dewey (1927), which excluded the feature of centrality among the proper characteristics of a state entity, and the formulation of common theories in regard to the attempts to the creation of the "true" state to reach the point of political perfection. He was the first expert that attempted an amplification of the network of states' relationships, emphasizing the connections between authority and civil society, and between the former and the surrounding evolving environment (Novak, 2015). What is more, the new position acquired by the central state towards its loss of pre-eminence in different domains consequently to the expansion of non-governmental and non-political actors led to the reappearance of the Foucault's conceptualisation of "governmentality". Novak insisted on the interpretation given by Foucault, deviating from the state-centric paradigms and defending the composite reality of the State, underlining the fundamental feature of its plurality (Tierney, 2008). Amongst the consequences of it, the greater decentralisation process to which the state is subjected and the blurring of the boundaries between the public and the private spheres has determined a progressive delegation of responsibilities to private players. Furthermore, the current trends towards state privatisation are strongly challenging the historical paradigms that were putting the state as the head of the *imperium*, in other words describing it as the vessel of central power (Carolan, 2009). Alongside with the variations of the technical powers generally addressed to the state, the novelty brought by the expansion of the effects of globalisation is also an alternative to the traditional style of governance by which the government has lost its position as direct sovereign. The evolution of this phenomenon allowed the conceptualisation of a new method of coordinated administration, whereby the public policy decisional process turned its characteristic of linearity into a dialogical mechanism between various actors and where each of them join it according to its internal selection terms (Carolan, 2009).

Both Italy and France have featured this behaviour, converging on an increased willingness to cooperate with third-party entities and to engage the civil society in the policymaking practices. However, the specific selection as the topic of the comparative analysis with regards to the measles outbreaks experienced by the two countries allows understanding how the measures adopted by the central authorities went against the trend of the conceptualisation of the role of the state. The necessity to deal with the outbreaks of measles brought back to the foreground a pre-eminent position of the state authority, as it was theorised by the classical literature. In parallel, the reaffirmed state activism resumed the issue regarding the essential need to balance individual and community rights. Furthermore, members of the civil society, analysed in the fifth chapter, stressed the necessity to double check the strategy of the state, in order to verify its accordance with ethical guidelines. The growth of the influence of "other" actors, frequently not connected to the public sphere, challenged the state's capabilities in dealing with a circumstance of medical urgency. Beyond the compliance with guiding conditions, entailing not only the aforementioned three principles but also no-harm and precautionary principles (El-Amin, et al., 2012), represented a challenge for the state authority to minimize conflicts between the individual and public domains.

1.4 The gap

It is noteworthy how the doctrine about rights and their relationship with the governmental elites has been widely analysed. Nonetheless, the circumstance of variability of civil freedoms' interpretation due to a situation of emergency has not obtained relevant visibility. It has been, in fact, mostly given for granted the prevalence of the public entity over the individuals in connection with critical happenings. However, especially with reference to the cases of Italy and France, the respective contexts are still evolving and yet, the contrast is still generating peculiarities and new doubts by interest groups and civil society associations about the effectiveness of the State's activity and its real necessity.

The enquiry tries to reduce the distance between two fields of study, medicine and political science, through focusing on the process of policymaking in relation to two circumstantial situations in which there has been a perceived infringement of civil freedoms in the context of

the development of a public health threat. The founded gap is related to the fact that most studies elaborate the aspects of tension between individual freedoms and collective rights from a governmental point of view. While on the other side, the emergency situation in regard to a sanitary condition has been researched deeply from a medical perspective, frequently without analysing the political consequences of the phenomena. The idea is to understand how has been considered the relationship of rights and duties by the Government and the respective balance. Additionally, the motive is to comprehend if the governments have influenced the policymaking procedures to the extent of enhancing the pre-eminence of the communitarian interests over the ones of the individuals. The investigation's purpose is also to comprehend the variation of the role of the modern state, from a state-centric viewpoint, to a more decentralised method of public administration and back again to a centralized handling of the issue. It is interesting how both national experiences have been characterised by this prolonged tension between the individual and the public domain, underlying the central weight of categories of stakeholders that had influenced the decision-making process.

2. Research design

This project can be considered a semi-experimental comparative research. It is built around two controversial cases that have fuelled the political debate in Europe and internationally in recent years, and they still are evolving, namely in regard to the outbreak of measles contagions in Italy and in France. The focus on these two sanitary critical conditions is due to the willingness to analyse the consequent measures adopted by the relative national governments to deal with the subsequent public emergencies which generated a fragmentation of the public opinion in both nations. The idea is to study under which conditions the elaboration of public policies occurred, to understand their effects on the relationship between individual freedoms and public duties, keeping in mind the criteria which regulate the policymaking mechanisms in the public sector.

Analytical setting

Firstly, the research framework is identified by an analysis of the evolution in the interpretation of the figure of the state *per se* and of its role, through a deep comprehension of the conceptualisations of the most famous schools of thought in a comparative way. Additionally, the study of the central controversy will be carried out understanding which are the key epistemic communities in the countries under investigation and what role they have in affecting the institutional policymaking mechanisms. Furthermore, the analysis will bear in mind also the supra-national operative framework connected with the protection and respect of human rights, since the studied national contexts are subjected not only to national legal compliance, but also their condition entail the respect of international acceptability's principles. The comparative method, as identified by Lijphart (Collier, 1993) has resulted here in the most adequate to give valid bases to the efficient argumentation of the hypotheses, thus emphasizing also the interpretative understanding process typical of this method. In addition to this, the project will be carried out employing qualitative rigorous comparisons between France and Italy, carefully focusing of matched cases and variables.

Therefore, new challenges for public health protection have called into question a revision of the constitutional bases, according to which a balance between individual and collective rights is secured. Chapter three will be devoted to a deep understanding of the sources from which the public entity derives its powers, which is the role assigned to the State and what are the boundaries to which it is submitted during the completion of its responsibilities and its functions regarding public health management. This construction will give a conceptual foundation to help to understand the space of manoeuvre which characterises the activities of the public body and how it is indeed limited during the operative phases of its policymaking practices. The adoption of a prescriptive approach when assessing the right to health appeared the most adequate to subsequently develop an instructed perspective on the issue of mandatory policies and their implications in the legislative field. As a matter of fact, the normative introduction concerning the right to health, the concept of health and its protection allows an enhanced understanding of the grounds on which the state action has been accomplished, thus obtaining a wider angle through which comparing the Italian and French experiences.

Moreover, the examination is based on the research question: how does public intervention influence the balance between individual rights and collective guarantees, while contrasting the diffusion of an infectious disease? Then, the discussion will evolve discussing two hypotheses that will be verified through the cases' analysis. On the one hand, the first one implies the occurrence of a condition of high seriousness endangering the community's safeguard. By way of explanation, the hypothesis that will be tested tries to interpret a condition in which the higher the significance of the outbreak of the epidemic, then more likely the principle of proportionality will be shaped in favour of the achievement of an effective strategy of public policy intervention. While on the other hand, the enquiry will try to test a situation according to which the adoption of certain public policies, in specific circumstances such as the ones represented by the two cases under investigation, may change the balance between individual and collective rights. In other words, the question is what if the occurrence of a critical sanitary emergency shifts the current equilibrium that characterises the relationship between the public actor and the individuals and, if there is such a deviation how it occurs.

In this enquiry, the population selected to be examined is a small N, meaning that at the centre of the study two cases will be taken into consideration, in such manner typifying the study with a medium level of abstraction of analysis. Furthermore, the temporal dimension that has been taken into consideration during the scrutiny of the events allows to characterise the study's approach like a cross-sectional since the study refer to several cases at one point in time. In actual fact, they have been examined accordingly to their respective periods of outbreak, in 2016-2017 for the measles' outbreak in Italy, while 2017-2018 for the occurrence on the French territory, therefore assuming a comprehensive timeframe between 2016 and 2018. The selection of these two specific examples is justified by the fact that in both circumstances individual rights have been stressed to favour the achievement of a public health target, and the two governments adopted a quasi-identical approach to deal with the outbreaks represented by the imposition of the vaccines. In both countries, the characteristics of the external situation impacted the unrestricted enjoyment of civil freedoms with the final aim of promoting the entire safety of the community through the implementation of certain health care manoeuvres.

In regard to the actors involved, the level of the study refers to a medium degree of analytical depth. It is for this reason that the approach envisages the consideration of players who had a role in the two cases as grouped in categories such as associations of interest, experts in regard to the topic and exponents of the institutional class of the moment. The logic of this decision is the willingness to analyse from different viewpoints the impact that the adopted policies have had on the conceptualizations of liberties and duties in two specific occasions that had a highly public resonance. Expressly, how has it been perceived the implementation of certain policies in terms of degree of affection of individual freedoms? Which have been the public resonance of the phenomenon?

Data collection

Additionally, in regard to the selection of the research methods, the decision moved primarily towards the adoption of a discourse analysis method since it resulted the most suitable approach to deal with the issue currently under study. In particular, the collection of

data has been based on a combination of primary and secondary sources such as, respectively, official statements issued by institutions and organisations working in that domain, institutional speeches in relation to the topic, and scientific reports published by both national and international entities. Then, with the visible connection of the topic with the field of public policies, the sources have been selected to contribute with a deep textual examination of the subjects. The purpose behind the implementation of these methods was to discover if in the analysed resources there has been a proof of a sort of excessive influence of the State over the individuals' eagerness to favourably support the implementation of the new measures. The second approach to the methodology that has been implemented includes interviews, whose transcription is inserted in appendix A, to obtain supplementary and possibly alternative perspectives on the issue here discussed and on the argumentation of the hypotheses. Interviews were conducted with 4 individuals who can be representative of the epistemic communities of reference, and they were conducted between the 21st of August 2019 and 18 September 2019. The first group of knowledge-based experts is composed by Dr. Vittorio Demicheli and Dr. Giovanna Ruberto, considering them as representatives of the group of medical specialists. Besides their common medical training, the former is the head of the technical nucleus on vaccinations, set up in 2018 by the Italian Minister of Health of the time, and he is the currently pursuing a more managerial career as chief executive of the regional health protection agency in Milan (Italy). Whereas, Dr. Ruberto gained far-reaching expertise in the field of molecular immunology and bioethics, both at Italian and International levels. She is an international visiting professor and she is a member of a wide variety of professional medical societies, the European Society for Philosophy of Medicine and Health Care and American Association for Bioethics and Humanities amongst other. Additionally, they both have extensive experience in researching, monitoring and signalling with regards to the epidemiological and immunological domains. Finally, their interviews allowed to obtain a comprehensive knowledge regarding the subject of the undergoing research, moving from a deep insight of the pure medical dimension of the epidemic that hit the two countries in 2017-2018, ending to a commentary of the adequacy of the implemented state measure from the perspective of a public health's specialist. Secondly, a deep comprehension was required of the legal framework of both countries with respect to the right to health, the right to health protection and how State authorities comply with them during the exercising of their duties.

Therefore, the interview with Professor Cristina Fasone, who is full professor at the LUISS Guido Carli University in Rome of Comparative Public Law, provided an extended degree of knowledge in that regard. The usefulness of her interview has been motivated by her comprehensive expertise concerning constitutional law, on a comparative basis, consequently matching thoroughly with the comparative structure of the entire research work. The third category is represented by a journalist who, because of her specific working experiences on the field, enriched particularly the sections of the work connected with the analysis of the political groups, the communities of interests and the general framework. Manuela Lucchini is the head of the television column dedicated to medical issues of Italy's national state broadcaster Rai 1. Her selection to be a subject of the interviewing process is due to her knowledge both of the political and medical aspects of the issues and the extensive expertise she acquired because of her lasting careers within the state radio and television network.

The average duration of the interview sessions was 30 min (with extremes of 15 and 60 min). Interviews were conducted, recorded, transcribed and analysed by the author, and most of the interviewees signed a formal confidentiality form, and some of them gave oral permission to be quoted before interviews were conducted. Interviews were semi-structured and focused on the actors' knowledge with regards to the topic of the investigation. In accordance with the different fields of expertise, the questions were moderately adjusted in order to benefit the maximum from their interventions (DiCicco-Bloom & Crabtree, 2006, p. 315). However, the interview guide was centred on how the introduction of mandatory vaccinations impacted on the individuals' sphere of rights and eventual biases of the decisional making process, and it was organised around ten main questions: 1) was there a pressing social need to justify the implementation of such measures, 2) were there alternatives equally effective, 3) was the compulsory policy proportional to a legitimate aim, 4) would there be a significant public health risk if the measures would not have been adopted, and 5) was the authority independent of any type of political bias or any other type of biases, 6) were there parallelisms between the Italian and French legislative and legal frameworks, 7) how do the authority find an equilibrium between individual sphere and public health, 8) which was the position of the main political parties regarding the topic, 9) there had been a manipulation

by the ruling parties to favour the implementation of that public measure, 10) were there distinguishing features with regards to no-vax associations.

Data analysis and emerging challenges

The measurement of the collected data has been done accordingly to the identification as independent variables of the research framework the epidemic and the public health policies, in this way satisfying the connected process of operationalization. The latter has taken in consideration the data of the epidemic, meaning its rates in the two countries and the degree of diffusion of it on the national territories. The rationale behind the selection of the latter method is that the objective is to firstly understand the scientific context of reference, and consequently acknowledge if there was a connection between the high incidence of the disease and the adoption of the compulsory public measure. Additionally, to deepen the analysis with regards to the public policies official documents and statements have been taken into consideration, carrying out a discourse analysis to have a better comprehension of the facets emphasised by the public authority. In parallel, data derives mostly from the interviews carried out, which allowed to develop a deeper comprehension of the contexts of reference, both with reference to the legal aspects and the influence exercised by the public stakeholders and ending, therefore, to enhance the qualitative character of the investigation overall.

Having said that, the evolution of this research has presented various obstacles, in particular for what concern the methods of data collection, the interviewing process has been problematic. Firstly, the selected members of the French epistemic community had not replied to the interview requests, even though the numerous attempts. This significant feature is reflected on the absence of related interview materials in the appendix A. On the other hand, the results coming from the field work are in Italian, presumably also because of the easiness to communicate directly in both ways. Nonetheless, the absence of the French interviewees has been balanced by selecting Italian interviewees with a broad expertise both with reference to the Italian and French reality, therefore being able to express their positions referring to both cases in general terms. Hence, with respect to the category of political figures, notwithstanding the numerous approaches no connection has been established, for both the

national realities. This occurrence determined the utilisation of solely secondary sources, coming from reliable national newspapers, websites of national broadcasters and peer-reviewed documents. Moving beyond this dimension, a shared bias emerged with reference to the attempts to contact the associations. As a matter of fact, since the high degree of sensitivity of the topic, and the mediatic attention devoted to the debate, all the contacted organisations (LNPV[7], Unacs[8], Info Vaccins France, Institut Pasteur, Corvelva[9], Comilva[10], Vaccini libera scelta, Cnesps[11], European Union Commission) either had not replied to the request to establish a dialogue, or they refused to set it up. In relation to the ones that replied to the interview requests, the explanatory statements had in common the unwillingness to fuel the mediatic and political debate on the topic of vaccines and mandatory vaccinations. In light of this obstacle, once again, the analysis has been carried out referring to secondary sources, mostly found on their official websites and official newspaper webpages.

Finally, the context of investigation increased the complexities. As a consequence of the high actuality of the topic under analysis and the persistence of the disease not only in the two countries under examination, both at the national and at the international levels, new studies and reports are abundant about the examination of the contagion and the development of new approaches and methodologies to effectively respond to them. What is more is that the context of analysis is strictly related to public health policies, thus creating uncertainties in proposing general resolutions potentially applicable to other similar circumstances with the generation of incongruities. Nonetheless, the general analysis of the tensions between individual and collective dimension in the public decision-making practice can still be adapted to various domains of public life, such as the debate regarding religious fashion in security terms, therefore leaving room to numerous considerations.

[7] Ligue Nationale pour la Liberté des Vaccinations
[8] Union Nationale des Associations Citoyennes de Santé
[9] Coordinamento Regionale Veneto per la Libertà delle Vaccinazioni
[10] Coordinamento del Movimento Italiano per la Libertà delle Vaccinazioni
[11] Centro Nazionale di Epidemiologia, Sorveglianza e Promozione della Salute

3. The right to health

This examination aims at connecting two spheres, often in contrast, that entail public policies and public health. On the one hand, the first term addresses the processes of decision-making mostly carried out by functionaries of national institutions with the final purpose of confronting public issues, from the technical management of the territory, to the preservation of a safe communitarian context from any kind of threat, including the outbreak of a contagious disease. On the other hand, recalling the framework proposed by Childress et al. (2002), the public health system is entitled to provide all means required to create a condition of a total community immunisation. Nevertheless, as came forward from a review of the literature regarding the domain of the public policies and the functional role played by the state authority, in reaction to specific stimuli, the State can behave pushing forward its pre-eminence over individuals.

In the light of the focus of the work that are the newly introduced compulsory immunisation requirements in Italy and France, it is necessary to define the context of reference, in accordance to which the public action has been implemented, departing from an examination of the two countries' judicial frameworks with regards to the right to health and health protection. Firstly, this work attempts at exploring the interpretations of the concept of health protection and health as such, particularly with reference to the two nations' constitutional texts. Then, narrowing the scope of the analysis, the focus will be on the case of mandatory treatments, and how their implementation is regulated in accordance with the respective legal basis. As a result, this prescriptive approach would enable a deep understanding of the structure of the constitutional perspective concerning the right to health in both jurisdictions, but also keeping in mind the measures enforced by the authority to guarantee its free enjoyment. Finally, modern public health practice is continuously challenged by the growing awareness of individuals' rights and the numerous stakeholders. This phenomenon, particularly as a consequence of the curtailment of the individual freedoms for the collective good while coping with measles outbreaks, encouraged the reopening of the discussion on what health means and what is asserted by the nations' fundamental laws, with a view to offer an adequate understanding of the changing conditions.

3.1 Italy

The Italian constitutional text devotes a specific disposition to the protection of health, and it corresponds to the article 32 where health protection is interpreted as being a fundamental right of every individual and a condition that must be guaranteed to the national community. It has a distinctive nature because it reunites the call for achieving a complete physic, psychic and social condition of wellbeing, together with an emphasis on the right to self-determination, in particular regarding the medical treatments (Serra, 2016, p. 2). The intervention of the state is addressed to fulfil individuals' needs and it is subjected to different constraints, but on several occasions is associated with the protection of the collective benefit, where the right to health turns into an obligation for the individuals (Nicolao, 2017, p. 2). The comprehensive interpretation of the mentioned right is a recent approach to the subject, and there is a visible shift of the mentality of the legislator from the 1960s onwards. The concept of health has started to be considered in a wider way, including not only physical health but adding the psychic aspects of the human's mental condition. The renovated research for a status of equilibrium between body and mind recalls the adopted general viewpoint of interpretation of the matter, moving beyond the dimension of human's physicality *stricto sensu* (Posteraro, 2015, p. 394). The newly accepted key to comprehend the right to health is the adoption of a holistic approach that takes into consideration the numerous variables associated to the human reality, thus also including the surrounding environment in which people are immersed and can eventually affect their intimate sphere. By way of explanation, the increased degree of complexity in examining the cited right is due to a dynamic evolution of the concept of health, going from a static meaning in terms of the absence of physical diseases, to the inclusion of a condition of mental wellness among the dimensions that must be protected by the text (Posteraro, 2015, p. 395). Therefore, the progressive transformation of the perception of the right protected by the art. 32, in combination with the endorsement of a more individualistic perspective instead of a functionalist position in understanding it, has enriched it. This enlargement of the scope turned health into an essential variable that must be taken into account when talking about public policies and welfare state, due to its paramount relevance in numerous fields that affect people's lives.

As proof of this fact, the peculiarity of the formulation of the text appears visible from an initial reading of the article during which the three-dimensional nature of the right to health emerges. In other words, it is clear from the first analysis a factual protection of the asset "health" *per se*, and secondly there is also a component related to the subjective right, therefore meaning that there is a legally recognised claim by a legal subject towards a certain legal object, on this occasion regarding health. Finally, there are the interests of the community that may be affected by any alteration of their condition (Morana, 2018, p. 1). This interpretation discloses potentially arising contrasts between the aforementioned aspects of the text, given their superimposable nature. Hence, in the Italian case a duality of the conceptualization of the right to health comes to light. On one side, the right is interpreted as a form of freedom from any infringement of the sphere of intimacy stemming from the species of the right. On the other, health is considered as a claim of the person to have access to health care services in case of need (Tripodina, 2019). By way of explanation, the formulation of the text implies two profiles of analysis, one that is mainly directed towards the individual, whereas the second one is dedicated to the medical performances which underlines the programmatic dimension of the right. In regard to the latter aspect, the programmatic nature emerges when the right to have the access to medical treatments which is identifiable in the article already mentioned, starts to be considered as a means to allow the implementation by the state authority of the same health right (Morana, 2018, p. 27).

Furthermore, according to the interpretation proposed by Lai (2017) the right to health can be grouped together with the so-called personal rights, since it is proper to each human being and therefore not transferable, so adding another layer of complexity to its interpretation. In addition to it, the same term to identify protection may be dependent on a large variety of meanings. In this regard, it has to be highlighted the duty of the community is to a minimal affection of the others' sphere of the right to health, therefore underlining its character of reciprocity and a condition of indirect protection of the external context. In this respect, the issue of the preservation of the existing external *status quo* emerged only after a sentence of the Italian Court of Cassation in 1973, in which it was explicitly recognised how the conditions for the safeguard of the right were universally operative, thus also admitting the

effectiveness between each individual[12]. The sentence represented a cornerstone in the approaches adopted to recognise the extended range of individual rights. By way of explanation, the initial interpretations of article 32 described it as a prescription addressed solely to the relationship between the public entity and the individuals, where the former player had the duty to preserve the good "health". It sustained the line of thought according to which social rights, like health, aimed at the fulfilment of public interests and, only by extension, the individuals would have benefited (Cavasino, 2012, p. 1). Then, the individual dimension was not included in the analysis regarding the protection of the right under study, but the focus was rather onto the State and how it can effectively act to assure the continuity of a "society of the healthy" (Morana, 2018, p. 5). Furthermore, since this reasoning takes into account just the functional facet of the freedom to health therefore, as reinforced by the argumentations by Morana (2018, p. 40), this would downgrade the value of the same right here described, allowing to interpret it just as a mere instrumental formula to achieve the wellness of the individual and thus of the community. Nonetheless, the concept of protection of the right by the public actor is strictly connected to the health autonomy. In other words, the former notion has to be balanced with people's willingness to enjoy and defend their psychophysical integrity, allowing to explicit their position (Posteraro, 2015, pp. 400-401).

Hence, the section of the article's text connected to public interest is not formulated in contradiction with the individualist feature of the right, instead it is displayed as an external constraint to the practices put in place by the individual to enjoy at its best of their freedom to health. Again, on this occasion it is the good "health" *per se*, not the individual health, that is safeguarded as collective interest than highlighting the institutional duty of the Italian Republic to safeguard the unrestricted enjoyment of it (Morana, 2018, p. 39). This commitment can be seen as a rejection of the widest responsibility to guarantee and protect everyone's fundamental rights, as it is specified in the second article of the constitutional text. Subsequently, the concept of health protection is declined as a fulfilment of the collective interest and it can be translated into the activities put in place by the public authority to preserve the common good and population's welfare (Morana, 2018, p. 3). This clarification

[12] Sentence of the Italian Court of Cassation, 21 March 1973, n. 796

displayed an omni-comprehensive essence of the right most likely due to the multitude of variables that depend on its exercise.

However, the paternalistic perception of the relationship between the population and the state, and between the doctor and the patient evolved progressively as well, granting the individual the power to autonomously decide regarding a wide range of procedures to achieve a satisfactory degree of personal wellness (Nicolao, 2017, p. 4). This point of view recalls the very conceptualization of the freedom of health, portrayed as a shift of the responsibility with regard to the personal state of health in head to the individuals, allowing an ampler degree of flexibility in the decisions related to the enjoyment of the privilege (Morana, 2018, p. 35). As a consequence, the scope of subjectivity got gradually wider and started to be considered concerning the right to health because of the possibly different perceptions of people regarding the quality of life, and therefore affecting their decisional behaviours in regard to the adoptable medical strategies proposed by the state. Nonetheless the great scope of freedom, the constitutional text considers also the possibility for the individual to be susceptible to compulsory treatments, yet any incoming influence of the personal sphere of rights must be justified accordingly to the Constitution, thus still constraining the state power. This peculiarity reflects the individualistic status of the right to health and it implies that each individual possesses the mentioned right just because it is embedded to the human nature and from which it is possible to benefit. In other words, every state action is limited by the human personal sphere of indivisible rights (Bonomi, 2014, p. 2). The occurrence of this situation depicts a potentially conflicting reality, entailing a negative responsibility of state's non-intervention accompanied to a positive duty to preserve the health of the community through the adoption of the adequate measures of public intervention, therefore evolving into a dichotomy between rights and duties.

Firstly, this linear connection appears between art. 32 and art. 2 when mentioning in the latter a form of social solidarity which can be conveniently referred to the preservation of health in pursuing the interest of the community. Notwithstanding, the tie between the two over mentioned rights might bring about a misconception about the interpretation of the concept of social solidarity. As a matter of fact, art. 2 prescribes how the Italian Republic

recognises natural rights to everyone, jointly with a solidarity principle that implies that every individual should be helpful towards the whole community. Hence, this perspective reinforces the dimension related to everyone's duties and its linkages with potential constraints in the process of fulfilling them. Therefore, the stronger focus on the concept of social solidarity as it is evidenced in art. 2 is discarded because it tends to devalue the freedoms depicted in art. 32 (Morana, 2018, p. 40). For that reason, any possible affection of the right to health must be a derivation of an interpretation of the indications solely illustrated in the art. 32, so as to avoid other influences. On this subject, the text of article 32 admits forms of limitation of the individual's freedoms but invariably emphasizing the reference to a legal source.

A relevant example of these constraints are the medical compulsory treatments which can be configured as limitations of people's right to self-determine the best therapy for themselves, and according to which the right to health assumes the characteristics of a duty (Nicolao, 2017, p. 2). Here, the state initiative is configured as a sort of last-resort solution to protect the well-being of the entire community, but because of the high degree of relevance of the affected right the same public authority is subjected to counter-limits in order to minimize any potential side effect. In the first place, it is noticeable the referral to the respect of the human being when delivering a compulsory medical treatment. In particular, this involves the doctor-patient relationship, but it is also related to the purpose of delivery of a specific mandatory treatment. In other words, it has to be verified that the administration of a certain measure on the human being is required and essential to achieve a legitimate sanitary goal. In regard to that, the Constitutional Court has been extremely explicit in indicating that the imposition of a compulsory medical treatment is not violating the right to health if its application is duly substantiated by favouring the protection of the community's welfare[13] (Posteraro, 2015, p. 407).

The terminology proposed by Morana (2018, p. 50) makes the idea. She defines these constraints as "limits to limits", since the right to health is being restrained by the imposition of the already-mentioned measures, and the latter have in turn boundaries of application

[13] Sentence of the Italian Constitutional Court, n. 307/1990

which are defined by the national legal framework. In the Italian scenario, the legal confine is given by the statutory laws (*riserva di legge*) and they belong to the group of primary sources of the Italian legal system. Only these legislative instruments, interpreted in an absolute perspective, can affect the intimate sphere of the rights of the individual in regard to sanitary questions, therefore according a stricter guarantee of safeguard in term of protection of the person's right (Morana, 2018, pp. 46-47). Having said that, the adoption of coercive measures not only demands a valid legal basis, but the background of the compulsory procedure must also be the attainment of a condition of collective benefit. Because of this, the emerging perspective is that the general principle is the protection of the individuals' right to health and to self-determination, whereas the safeguard of the collective wellbeing is interpreted as a justified exception (Posteraro, 2015, p. 409).

Nonetheless moving beyond the individualist perspective of the right to health, the legal doctrine about the interpretation of the relationship between the individuals and the community's rights still rejects a completely functionalist approach to the notions found in art. 32. Thereby, these compulsory practices carried out by the state authority can contrast the right to non-health of the individuals (Nicolao, 2017). In particular, the decision to avoid receiving a certain treatment may be provoked by personal, political or religious beliefs, and this phenomenon of refraining is significantly present in the debate regarding mandatory vaccinations. The Constitutional Court had already illustrated how the individual's freedom of choice is not entirely absolute, therefore acknowledging a required reconciliation with the other interests that are safeguarded by the Constitution (Siclari, 2012, p. 85). Hence, given the composite architecture of the Italian legislative framework together with an accelerated diffusion of pluralistic theories, the call emerged for the law-enforcement personnel to profoundly analyse each individuals' demand for protection of their right to evaluate if they were indeed worthy of preservation, thus paving the way to questions about actual extension of the right to health (Tomasi, 2017, p. 481). However, the duality of the wording of the right entails an effort from the side of the public authority as well. It must take into account the person's freedom to self-determination during the process of policy making in that regard. It is, in fact, highlighted in the second paragraph of art. 32 how the person's freedom of choice to dispose of its own body is preserved and that it is intended as an insuperable threshold

(Posteraro, 2015, p. 399). Even though an individualist perspective tends to prevail in the Italian legal framework, in relation to the normative group concerning mental illnesses and vaccinations, the mandatory treatments are still considered admissible. Especially for what concerns the latter group of compulsory measures, the focus of the legislator has progressively shifted towards a more emphasized centrality of the importance of consensus given by the individual. The implementation of these practices clearly impacts the right to self-determination and because of this reason the State decided to develop a relationship closer to the population following the idea of raising awareness on the beneficial aspects of the treatments. When discussing the possibility of introducing mandatory vaccinations the reasoning process has to entail a reflection on the facet of the right to health involving the provision of medical treatments and everything that comes along with it (Morana, 2017), and therefore, the sensitivity of the topic emerges.

At the end, in the process of the analysis of the right to health, the range of ambiguity regarding the interpretation provided by the Italian legislator is distinguishable. Notwithstanding the various developments in the process of its conceptualization, the emerging duality between individual freedom and collective guarantees tends to affect the relationship between the public entity and the population. The flexibility of the formulation of the right led to an activism by the state to identify the methodologies to simultaneously provide instruments to guarantee the wellbeing of the whole community and to safeguard the rightfully free enjoyment of the freedom to health of each individual. The correlation between right and duty is displayed not only by the formulation of the art. 32, but it is a constant component represented in various articles of the Italian Constitution and it is explicitly safeguarded by the legislator. The caution given by the legislator to the individual right to health is counterbalanced by the attention to safeguard a collective condition of wellness, always bearing in mind the legal, moral and financial constraints to which the public authority's activity is subjected under the Italian legislation.

3.2 France

In the French legislative system, the concept of health has a long history that can be traced back to the period of the *Ancien Régime* during which the provision of medical assistance was already considered as a duty of the state. Certainly, the formulation of a scheme of public protection was still at an embryonic level but, relevant progress was made after the French Revolution. In France, among the consequences of the occurrence of the latter event was a renewed interest in giving a voice to the social and political rights coming to the surface (Byk, 2001, p. 335). Therefore, the inclusion of the concept of public assistance to safeguard individual health is distinguishable in the Declaration of the Rights of Man and of the Citizen of 1789, and in the many versions of the French constitutional texts that followed. In order to see an explicit reminder to the right to health it is necessary to acquire a certain level of maturity with regard to the national political debate and to wait until the adoption of the constitutional text in October 1946 in which the protection of health becomes explicitly a state prerogative. In the preamble of it, in particular the paragraph 11[14], the term health (*santé*) makes its first appearance, and the State is represented as the actor who safeguards the health of every human being regardless of their economic, mental or personal condition. By way of explanation, the focus is unequivocally posed on the public authority's duties in its activity of protecting health and not on the rights of the individual *per se*. Nonetheless, the emerging characterization of the right to health protection does not explicitly identify either a collective or an individual right, but, as Girer (2016, p. 148) has noticed, it is clear in its social dimensionality that in consequence defines the operative framework. Finally, to have a formal recognition of the significance of the preamble with regards to human rights protection, it is required to wait until July 1971 when the *Conseil constitutionnel* has integrated it within the *bloc de constitutionnalité*, alongside the Declaration (Byk, 2001, p. 339).

[14] Paragraph 11 : « Elle garantit à tous, notamment à l'enfant, à la mère et aux vieux travailleurs, la protection de la santé, la sécurité matérielle, le repos et les loisirs. Tout être humain qui, en raison de son âge, de son état physique ou mental, de la situation économique, se trouve dans l'incapacité de travailler a le droit d'obtenir de la collectivité des moyens convenables d'existence. »
https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/preambule-de-la-constitution-du-27-octobre-1946

Having seen the ambiguousness of the wording of the good health, the discussion about the adequate interpretation of the right to health in France still fluctuates between the conceptualization of a *droit à la santé* and a *droit de la santé*. On one hand, the former term identifies a subjective right, in the sense that it depicts the prerogative of every individual to benefit from the free enjoyment of it. Whereas from the second formulation emerges the objective nature of the right to health, therefore connecting it to the collective facet of the protection of health related to the safeguard of the community's wellbeing (Kitaeff, 2006, p. 62). Examining the right to health from the perspective of good health *per se* would not be fully exhaustive as, in fact, the linear connection with other rights increases the dimensionality of the interpretation and makes it subjected to various approaches while reaching a common understanding. This is an example of how the vision of this term is still paradoxical and leaves space for different interpretations, especially in considering a continuous evolution of the context of reference. As in the Italian formulation of the right, the French interpretation of the protection of the right to health is diversified. On one side is the individualist facet of the right to health, while on the other the right to have access to medical facilities, treatments, and the collective protection of health. For what concerns the latter aspect, the right is observed according to a more defensive view that entails a direct form of state interference and interaction with the individuals, in order to provide them a comprehensive health care system. Additionally, another layer of complexity and ambiguity is given by the fact that the word right is not mentioned in the formulation of the text, thus technically implying that the circumstances at the core of the right to health protection are an artificial deduction made by the judges and the other interpreters of the legislative texts (Gründler, 2010, p. 836). The generic articulation of the text depicts, again, a situation of potential uncertainty of meaning between the safeguard of the individual and the State's obligation of carrying out its function as guarantor of the protection of the community. The contrast results in a trade-off that could lead to a selection between the effective beneficiaries of the authority's guarantees. In accordance to the discussion carried out by Gründler (2010, p. 836), the French jurisprudence admits the effective existence of a condition of duality, but the efficacy of the right on the individuals is filtered by the interpretative activity of the legislator, who has to take into account the numerous dimensions of the mentioned right.

Though, the right to health assumes the characteristic of a constitutional obligation, this means that it is recognised as an *objectif de valeur constitutionnelle* within the French legislative framework. However, according to the explanation proposed by C. Severino in Serges (2018, p. 7), the aforementioned right is not interpreted as an absolute right even if, the French legislative authority attributes to it a privileged status, in comparison with the other recognised rights. Furthermore, the reading of the right to health given within the French legislative framework is of a negative freedom, and thus encompassing a limited interference of the lawmaker in the sphere of intimate rights of the individuals. As a matter of fact, in support of the definition of the positioning of the right to health in the legislative configuration of France, the Public Health Code - *Code de la santé publique (CSP)* - delineates the pre-eminence of it within the national legislative framework and associates it to the principle of equality (Serges, 2018, p. 8). In particular, it is in the article L. 1110-1[15] that defined this peculiar status as fundamental right and where its universal scope emerges. However, two incongruities come forth. Firstly, it is noticeable that the focus of the disposition is on the protection of health, thus once again not specifically referring to health as such. Secondly, it should be underlined the fact that this article has been inserted in the Code only after 2002[16], therefore characterizing a previous legislative gap that has been solved only in recent years. Finally, in agreement with the interpretation offered by Serges (2018, p. 9), due to a poor explication of the right in terms of constitutional protection, a process of clarification of the aforementioned right has been initiated by the French legislator himself. It is not identifiable as an evident distinction between the individual and the collective right to health, and in contrast with the Italian legislation the discrimination is made by the legislative activity of the constitutional council.

As a consequence, Blachèr (2016, p. 137) recognised how the French legislative framework lacks an explicitly identifiable instrument to protect the health of each individual. In other words, this activity is carried out by the Constitutional Council by adopting an

[15] "Le droit fondamental à la protection de la santé doit être mis en œuvre par tous moyens disponibles au bénéfice de toute personne. Les professionnels, les établissements et réseaux de santé, les organismes d'assurance maladie ou tous autres organismes participant à la prévention et aux soins, et les autorités sanitaires contribuent, avec les usagers, à développer la prévention, garantir l'égal accès de chaque personne aux soins nécessités par son état de santé et assurer la continuité des soins et la meilleure sécurité sanitaire possible."
[16] Law n° 2002-303, March 4th 2002

indirect methodology and applying connected rules in the sense that the safeguard takes place through the consideration of "filters". These so-called filters are other rights, which are evidently quoted among the ones protected by the public authority such as the protection of human dignity and the guarantee of security amongst others. In point of fact, the constitutional authority elaborated the right to health protection and not the right to health, therefore implying two separate fields of study. The *Conseil d'État*[17] accentuated three essential elements of the protection to health that are the access to the medical treatments, the availability and consequential access to mechanisms of prevention and the protection of life (Girer, 2016, p. 148). Having said that, it is noticeable how questionable the national legislative framework is in regard to the right to health, considering the lack of a proper definition of it, but only a general structure of reference. Moreover, the very role of the public authorities, both ordinary and constitutional ones, is ambivalent because dependent on them is the analysis of the protection of the circumstances and the possibility of granting a privileged pre-eminence to the right to health.

In particular, the role of the *Conseil Constitutionnel* remains ambiguous in that regard because this actor *de facto* refused to take a stand in relation to the decisions taken by the ordinary legislator concerning health issues and, by doing so it waves its prerogative of reviewing the constitutionality of the law[18]. In the French case, indeed, the complexity of the circumstances is inherent to an unusual relation between the ordinary and the constitutional legislator. In this situation, the second actor does not dispute the legislative manoeuvre proposed by the ordinary lawmaker for its lack of knowledge concerning health care policies (Blachèr , 2016, p. 138). Beside this, only in 2008 the preliminary ruling of constitutionality, the *Question Prioritaire de Constitutionnalité* (QPC), has been introduced in France, hence giving the possibility to everyone to raise an issue of constitutionality and obliging the legislator to assume a more active role in protecting the right to health of individuals. This mechanism introduced an additional level of interpretation, giving the judge the responsibility

[17] Ordinance of the 8th September 2005

[18] Considérant n. 10 " il n'appartient pas au Conseil constitutionnel, qui ne dispose pas d'un pouvoir général d'appréciation et de décision de même nature que celui du Parlement, de remettre en cause, au regard de l'état des connaissances scientifiques, les dispositions prises par le législateur ni de rechercher si l'objectif de protection de la santé que s'est assigné le législateur aurait pu être atteint par d'autres voies, dès lors que les modalités retenues par la loi ne sont pas manifestement inappropriées à l'objectif visé "

to rule with reference to the unconstitutionality of the disposition under discussion, and amplifying the power of interpreting the item as a right guaranteed and safeguarded by the national Constitution (Vauchez, 2016, p. 9). On that account, the introduction of the QPC boosted a practice of re-categorization of human rights and freedoms and, in this sense, it encouraged the revaluation of the State laws and their degree of compliance with the constitutional standards of human rights protection. From this perspective, the constitutional council started to be considered the guardian of fundamental rights and freedoms, instead of being solely *"chien de garde de l'exécutif"*, as depicted by M. Debré (Serrand, 2014, p. 165). In this way, the legislator extended his competencies in relation to different public policy domains, including public health, interposing himself in the practice of interpreting the principles that protect fundamental human rights. However, as argued by Serges (2018) and Blachèr (2016), the opinions regarding the real utility of the employment of this mechanism in the field of health protection are divergent. The utilization of the QPC as an instrument to appeal has been very limited since its implementation, with only seven cases registered in five years, therefore calling into question its usefulness and requiring further examinations.

Ultimately, from this analysis emerges how ambiguous is the formulation of the right to health in the French legal framework, and this characteristic firstly originates from the very absence of it in the constitutional text. As a consequence of it, the judges acquire a central relevance in the process of interpretation of the circumstances since they are endowed with a certain degree of discretion while discussing with regards to legal disposition on public health. Furthermore, because of the absence of a specific definition of the right to health the explanatory procedure is performed employing other rights as filters and through which is created the legal framework of reference. Secondly, the newly introduced instrument of the *Question Prioritaire de Constitutionnalité* has not yet generated advantages, thus enhancing its vague nature and questioning its affection to the approach adopted by the constitutional council with regards to public health issues. On one side, it ensured a visible extension of the competencies of the legislator in the domain of human rights. Whereas on the other, the scarce number of cases brought before, and a cultural perseverance in limiting the public authority's intrusion in such a sensitive sphere of rights, may represent a reason for its noticed inactivity. Once again, the policymaking process is subjected to a certain degree of

equivocation, thus highlighting the complexity of the practice and obliging the public authority to falter carefully every decision.

3.3 The European Union

Likewise, the two national legal systems under study and the respective public authorities are subjected to the constraints of the European regulations regarding the protection of human health and human dignity. Even though the origins of the communitarian treaties can be traced back mainly to economic interests of the member states, there has been a progressive integration of elements connected to the dominion of health and public health in recent years (Kitaeff, 2006, p. 70). In particular, as enhanced by Liliana L. Pavel (2015, p. 271), the implementation of the first public health policies in the European Union has been an incremental process from 2002 onwards, starting with the conceptualization of the program "Europe of Health". Although, it should be pointed out that the EU has a limited power of intervention for what concerns public health, since it remains a prerogative and, consequently, a responsibility proper to each Member State. The European regulatory competences are circumscribed to specific situations, and they are employed in concert with national policies, in accordance with the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)[19] (Greer & Sokol, 2014, p. 71). Having said that, nonetheless the existing constraints connected to the very activism of the EU in the public health field we assisted to a gradual definition of the guidelines and, subsequently, the cornerstones of European health protection discipline. They are portrayed by the European Social Charter (ESC) and the European Convention on Human Rights (ECHR), with the latter complementary towards what concerns economic and social rights, and they reconfirm the eagerness of the Union to propose to member states a comprehensive strategy to handle harmoniously the sensitive matter of public health. By going into the specifics with regard to

[19] Mainly article 4, art. 6, art. 168 (7) and art. 168 (4) of the TFEU.

the social Charter, the art. 11[20] addresses the topic of health stating everyone's right to benefit from the "highest possible standard of health attainable" (Council of Europe, 1996) therefore, from the wording emerges that the good health is considered from the perspective of a positive obligation. Furthermore, art. 11 is usually associated to the art. 2 and art. 3 of the Convention, with which they create a legal background of reference whose purpose is to allow the unrestricted exercise of the right (Secretariat of the ESC, 2009). Additionally, art. 35 of the Charter of Fundamental Rights (CFR) of the European Union highlights the rights of access to preventive health care and to benefit from medical treatments, and the wording entails a duality between the individual entitlement and the dimension of the State obligation to act. This dichotomy between positive and negative freedom is also shared with the Italian and French formulations for the protection of the right. However, it is noticeable that in contrast to what has been said about the reference to health, the mentioned documents do not include a "right to health" as such. The specific term health, in fact, is not inserted, and yet those entitlements referred earlier acquire the status of pre-conditions to fully enjoy the good health, and they have to be considered in combination with other provisions of the CFR such as human dignity (art. 1) and the integrity of the person (art. 3) (Hervey & Kenner, 2003, p. 202).

Subsequently, with the reference to the domain of public intervention, the articles 8[21] and 9[22] of the ECHR identify the scope of action and the benchmarks according to which state involvement is accepted. In particular, they state respectively the right to respect private and family life and freedom of thought, conscience and religion. In particular, in the second

[20] "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable"

[21] "1) Everyone has the right to respect for his private and family life, his home and his correspondence. 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[22] "1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

paragraph of both articles it is enhanced the degree of interference allowed in respect to the personal sphere, justifying it only under certain conditions. From a first analysis, this kind of intrusion is consented literally only "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". This is the formula adopted to underline the conditions. The obligations listed in the charter are expressed under the form of positive and negative freedoms addressed to individuals. The way in which the responsibilities are identified determines how freedoms have been conceptualised. On the one hand, having positive liberties entails that each human being has the capabilities to act in order to realize ones' goals in life and to act within a certain range of autonomy to reach them. While on the other hand, negative liberties have been depicted as the absence of limitations or interference to one's activities and behaviours (Carter, 2018). This being said, the particular conception of the status of Europe as a supranational Organisation confuses the perspectives when discussing the initiation of *ad hoc* health programs and practices safeguarding the right to health. Under the circumstances, the EU legal framework becomes a set of guidelines that define the criteria to correctly operate.

Finally, the emerging layered structure of the system of governance is partly responsible for creating more difficulties and delaying the process of harmonization of the approaches adopted by the Member States, in the field of public health. By way of explanation, in accordance to Marochini's perspective (2013, pp. 730-731), the protection of health as such cannot strictly depend upon the relationship between the state and the individual, but rather it has to be broadened. A multilateral attitude of examination is indispensable to take into account the multiplicity of variables that affect the practices of health safeguard carried out by national authorities, therefore it becomes essential to implement an integrated approach putting strong emphasis on different social determinants of public health.

In considering the Italian and French legal frameworks, the formulation of the right to health appears different in the two contexts, therefore admitting a certain degree of discretion in their interpretation. The comparison is motivated by the fact that the two national authorities decided to implement similar compulsory measures, nonetheless the legal basis of reference

differently conceptualises the right. On one side, the Italian constitutional doctrine is more explicit in identifying the concept of health, the methods to safeguard it, and the role of the state in this process. Art. 32 is specially devoted to this subject, and it recalls the boundaries of the powers and the duties both of the authority and of the individuals, individually and as a community. On the other side, the French wording of the right to health is indirectly assumed from a textual elaboration and combination of the art. 11 of the preamble of the Constitution of 1946, with the text of the Declaration of the Rights of Man and of the Citizen of 1789. Nonetheless, the absence of a clear definition of the concept of health leaves consequently a discrete margin of ambiguity to the legislator, and to the ruling practice on the subject in general. Finally, the European legislative framework must be taken into account as a set of guidelines to which European member states have to comply with. This further stratification increases the complexity of the policy-making mechanisms, thereby requiring an adaptation of state strategies to avoid the rise of controversies in every direction. In particular, the occurrence of the revitalisation of previously eradicated disease on the national territories represents a stressor for the state activity and the welfare of the communities. The described conjunction has affected Italy and France between 2017 and 2018, and, subsequently, there has been the reopening of the debate concerning the vaccines, their efficacy and their utility to address the emergence of a new contagion.

4. Measles emergency and mandatory vaccinations

Italy and France have recently experienced an important resurgence of vaccine-preventable diseases, particularly measles which is a highly infectious illness that still nowadays is considered one of the most frequent causes of childhood deaths around the world. The most rated method adopted by public health authorities to confront this issue has been through the implementation of a program of national vaccinations, and through attempts to increase the awareness of the community about the subject. Prevention still remains the favoured approach to cope with epidemics, and it basically consists of a practice of cyclic vaccinations, starting at an early age. The purpose of these treatments is to guarantee a prolonged protection against the disease and to avoid its possibly fatal implications. In particular, as a consequence of the threatening nature of measles, it is a condition to ensure high immunisation percentages among the population. Then, as a matter of fact, with regards to the required rates in 2017, the World Health Organisation (WHO) carried out an advocacy campaign in which was promoted and recommended the achievement of a coverage rate of at least 95%, a value recognised as necessary to guarantee a universal health coverage for the community (World Health Organization Regional Office for Europe, 2017). In other words, reaching that threshold would have ensured the so-called herd immunity or community immunity, which consists into a condition according to which there is a portion of people in a group that are covered by the vaccinations in order to secure the protection of those vulnerable categories of the population which, for various reasons do not have the possibility to be vaccinated (University of Oxford, 2018). In general terms, for this concept to perform effectively a large proportion of any local population need to be vaccinated. That being said, measles is a highly contagious disease and, as a consequence, the required percentage of coverage must correspond to at least over 95% of the whole population (Sadarangani, 2016). In accordance with epidemiologists, when this rate is achieved the probabilities of getting the illness are reduced to its minimum, whereas when the rate of coverage falls below the aforementioned value, it is more likely to have a relapse of the disease.

Nevertheless, measles contagion is a problem that occurs indistinctly in developed and developing countries, but the underlying reason is profoundly different. In the second group of nations, there is frequently a structural problem of proper access to an adequate and

effective program of vaccinations on a full-scale. As a matter of fact, in many cases the available supplies of vaccines are not sufficient, numerically speaking, to contrast the spread of the contagion, consequently hampering their accessibility to proper preventive treatments. Likewise, many European countries have been touched by this phenomenon, and the ways to address the outbreak of measles have been significantly different among member states. Many of them, like Poland, Bulgaria and Romania, manifested a strong public intervention in the implementation of vaccination policies thereby confirming the paternalistic role of the respective state authorities (Tomasi, 2017). On the contrary, other nations like Germany and Spain have decided to follow a moderate strategy, avoiding straight impositions but promoting *ad hoc* vaccination programs and activities to encourage prevention, without infringing upon their sphere of individual freedoms. This policy approach is mainly based on the voluntary decisions of the individual, in this way letting them exercise their right to self-determination. However, the downside of these circumstances has been a sharp decrease in the vaccination rates for various diseases, including measles.

Furthermore, the fast and wide diffusion of measles in the European region must be added to a progressive increase in vaccine hesitancy, therefore affecting the levels of vaccine confidence. The World Health Organisation Strategic Advisory Group of Experts (SAGE) on Immunisation (2014) depicts vaccine hesitancy as a circumstance in which the behaviour is "influenced by a number of factors including issues of confidence, complacency, and convenience". In other words, people's confidence with regards to vaccinations firstly depends on the level of trust in the vaccine as such or in the provider, like the pharmaceutical company. Secondly, it still challenges the essential character of the vaccine as a prevention instrument, thus not valuing the vaccine as such, and discrediting vaccination plans in their entirety. Finally, there is also an operational issue that could be raised as a variable which impacts the access to vaccinations. With the aim of dealing with this growing problem and reducing to the minimum the hesitancy, different prevention programs have been put in place. At the beginning, general programs that follow the principle "one size fits all" have been proposed, but they resulted as an inadequate answer to all instances. Then, understanding the numerous peculiarities of the public health sector and the sensitivity of the issue, most of the regulatory bodies, the World Health Organisation amongst others, shifted to a more multilateral operative path. The idea was to launch more tailored programs to deal with the

matter of vaccine confidence and to increase the general awareness, with the aim of approaching it on different sides and with a clearer strategy (World Health Organisation, 2018). Hence, the decision of implementing specific programs implied the availability of economic resources to mobilise professionals and material supplies. Nevertheless, here in this analysis it is not taken into account the financial variable and, therefore it is assumed that the national governments here studied have full capabilities to perform their duties, including the implementation of manoeuvres to prevent the diffusion of a contagion within the national boundaries, without incurring in extraordinary economic constraints.

Moreover, in line with what has been said, vaccine hesitancy has generated enormous consequences in European countries. In point of fact, in 2017 unexpectedly high peaks of measles diffusion have been registered, especially in France, Greece, Romania and Italy. In that interval, these countries had to face a proper sanitary emergency, accumulating a total of 11.347 cases of measles from May 2017 to April 2018. France and Italy, in particular, registered during that year an incidence of 2.436 and 4.032 cases respectively (European Centre for Disease Prevention and Control, 2018). In accordance with the European Centre for Disease Prevention and Control (ECDC), this outcome was most likely due to a drop in the rate of the national coverage in regard to the first two doses of measles-containing vaccines. The extent of this phenomenon is visible in Figure 1, where it is manifest that Italy and France had registered the lowest vaccination coverage rates connected to the second dose of the inoculation. In actual fact, it turned out that only 5 countries of the EU/EEA area were able to secure the achievement of the recommended threshold of 95% of population coverage for both cases (European Centre for Disease Prevention and Control, 2018). Furthermore, the reported evidence has also been influenced by the false theorisation proposed by A. Wakefield in 1998 of a connection between the anti-measles vaccinations and autism. As a matter of fact, the substantial attention devoted to it caused a backlash contributing, in a certain way, to the deterioration of the immunisation levels in different countries in the following years (Chang, 2018). The work carried out by B. Duffy (2018), in fact, has measured the levels of misperception connected to the danger of vaccines on healthy children. Then, from it emerged how in 2017 in Italy and in France the respondents still consider the possibility of an existent connection between vaccines and autism phenomena in healthy children. The values evidenced, indeed, that both countries have among the highest

percentages of vaccines misperception, respectively 52% for Italy and 65% for France, corresponding to a ”true”, or ”not sure” about a causal connection between vaccines and long-lasting diseases.

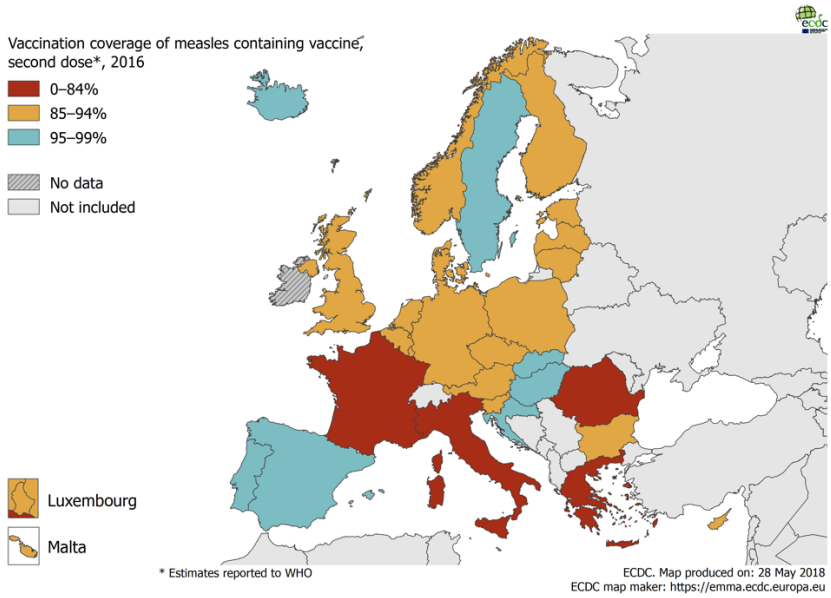


Figure 1. Vaccination coverage for the second dose of measles-containing vaccine by country, EU/EEA, 2016 (Source ECDC).

Particularly in the Italian case, the National Health Institute (Istituto Superiore di Sanità – ISS) has been extremely attentive in registering and reporting the escalation of measles cases to the European surveillance systems for infectious diseases. An example of this high consideration is the fact that, from March to December 2017, the Ministry of Health and the INHI had launched a project of weekly communication of the information with regards to the distribution of measles cases in the country, with the aim of signalling the evolution of the outbreak. Following this path, data showed that in January 2017 an exceptional growth had already been detected in the incidence rates of measles in the Italian peninsula, peaking in March 2017 with the report of 900 cases (Filia , et al., 2017). More particularly, from January to the beginning of December 2017, the NHI had notified 4.885 cases, and the 88% of the cases have been registered in Piedmont, Lazio, Lombardy, Tuscany, Abruzzo, Veneto and Sicily (Istituto Superiore della Sanità, 2017). The pieces of evidence were remarkably unmistakable, and in 2017, Italy ended up *de facto* in the world top 10 for the number of reported cases of measles, together with countries mostly located in Asia, among which India, China and Thailand (World Health Organization, 2017).

With regards to the French experience, the first evidence of a large measles outbreak has been registered in October 2017 in the Nouvelle-Aquitaine region, in the South-West of the country. As reported by the French national agency for public health - Santé Publique France - 913 cases have been reported in the period from November 2017 to March 2018. In particular, the outbreaks have been signalled in mostly in the regions of Lorraine, Nouvelle-Aquitaine and Occitania. The highlighted cause for this continuous diffusion of the contagion was still the low level of national coverage of the vaccine, and accordingly around 9 cases of measles out of 10 are due to no vaccination (Sciences et Avenir avec AFP, 2018). As a matter of fact, the collected data estimated that the immunisation rate in France was 79%, therefore well below 95%, the recommended value to assure an adequate herd immunity against the disease (Santé Publique France, 2018).

In parallel, at the international level the World Health Organisation kept encouraging states to comply with the defined benchmarks and sanitary standards, to completely eradicate measles from the region. Vaccinations are still indicated as the most efficient mechanism able to ensure an adequate community coverage (WHO Regional Office for Europe, 2019). However, the impact of this sanitary emergency on the society was immense and it reawakened silent contrasts between the civil society and the public authorities, who then tried to implement programs to cope with the endemic feature of measles.

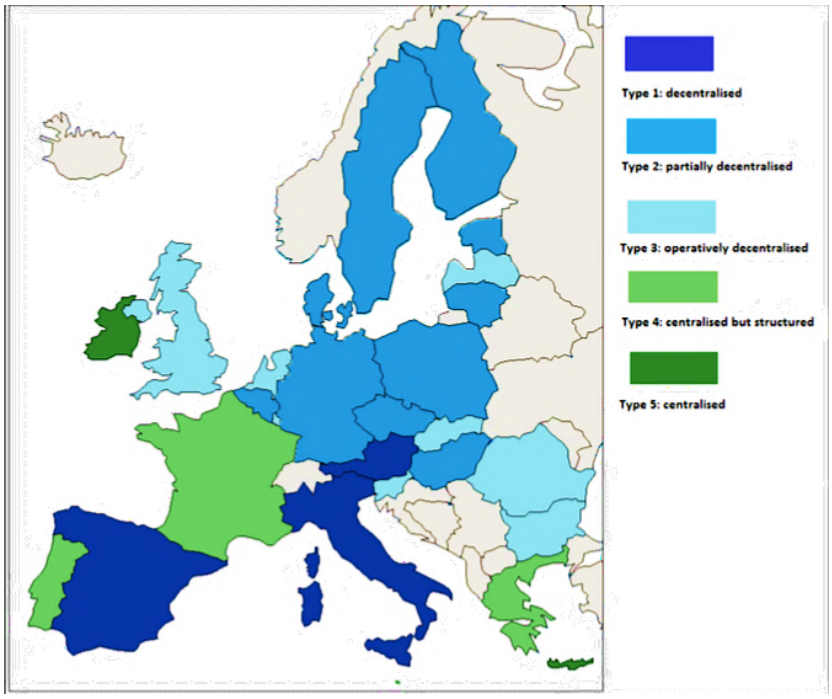
The two investigated countries have displayed different degrees of resistance, while enforcing control measures to cope with the increasing incidence of the epidemic. As a matter of fact, the Italian and French national authorities reacted to the fast outbreak with the extension of the number of mandatory vaccinations included in their national programs of prevention. This modification has raised doubts with regards to a greater interference of the State in individuals' decisional sphere, additionally supported by civil rights organisations and parental organisations amongst others. The doubts associated to the actions taken by the public authorities concerned the potential risks of the expanded lists of vaccinations on human's health. Alongside the increasing tendency of vaccine refusal in both countries, larger portions of the community gradually started questioning vaccines' safety, strengthening national waves of scepticism. Why should a healthy child be vaccinated against a disease when the inoculation itself can have negative consequences? Are there not too many

vaccines? Are we sure that they are effective and useful? These were the most frequently asked questions, and they are explanatory of the diffused feeling that characterised the months after the adoption of the action plan in the two countries. Furthermore, the dominion of the state-centric paradigm has been, indeed, challenged by the increasing involvement of non-state actors in the institutional working machine. Though, this process has been facilitated by the practice of gradually delegating state powers that, thereafter, favoured the confrontation with the civil society and transformed the latter into a strong social force. Notwithstanding the sensitive nature of public health realm, there has been a strong contamination caused by the aforementioned phenomenon, which gradually has also impacted the perception of the role of the State in the society (Biersteker, 2002). Finally, with the occurrence of a situation of emergency such as the measles outbreaks, the divergence between the pursued goals stressed the legitimacy of the State and of the related institutions, thus stimulating the debate in Italy and France with regards to the implemented measures. In order to have a better understanding of the evolving circumstances, a digression on the functioning of the Italian and French health care systems and the two national prevention methods turns out to be relevant, and it will be proposed in the following paragraph.

4.1 Health care and prevention strategy

Italy and France have two different approaches to health care and medical assistance in general, especially in regard to the system of governance. Even though both of the nations have a pyramidal distribution of competencies, they significantly vary in various ways. As a matter of fact, the Italian reality is extremely decentralized and, as a consequence, regional and local entities directly participate in the provision of the medical assistance to the community. By way of explanation, they have the responsibility to financially sustain the medical programs and they are given the power of legislative initiative in relations to health matters. Whereas, the French system instead relies on a mixed structure of governance with a noticeable strong role of the central authority and a regionally designed distribution of entities to ensure an adequate implementation of the medical programs. Nevertheless, the state plays a pivotal role in the administration of health and the delegation of the competencies of the

Ministry of Health to subordinate institutions has been frequently motivated by political means (Progress Consulting S.r.l. & Prospects Ltd., 2012, pp. 107-108). This different allocation of competencies influences the relationship between health care institutions and their level of involvement in the national policymaking process with regards that domain. As a result, even though in different ways, in both countries the state authority is responsible for the definition of the guidelines to ensure a universal provision of medical assistance as it is indicated in their respective constitutional texts (AIOP Giovani - LUISS Business School, 2016, pp. 33-36).



Map 1. Different types of health management in the EU (Source: Progress Consulting S.r.l.)

Italy

As emerges from the Map 1, Italian national health care system (NHS) is characterised by a highly decentralized governance that provides a universal and comprehensive coverage for the whole community. The NHS is primarily funded by the central government but, as a

consequence of the process of renovation started in the 1990s[23], regional authorities administer the health care services and the related expenditures (Bonomi, 2014, p. 5). Particularly, with regards to the enhanced role of regions, the government retained the political power, and this is reflected in the responsibility to communicate the guidelines to the regions and the local health care institutions to perform their duties (Progress Consulting S.r.l. & Prospects Ltd., 2012). As a consequence, this genre of public administration affects equally the procedures of implementation of health care policies, given the high degree of autonomy left to regional authorities. However, as remarked by the art. 32 of the Italian Constitution, the central authority embodied by the Ministry of Health has the responsibility to promote the right to health and an equal access to health care treatments and facilities to every Italian citizen. The modernisation of the health care system supported the development of hybrid features of the Italian medical assistance, especially concerning mandatory and voluntary vaccinations. Admittedly, vaccinations were historically dependent on a system of penalties, either directly under the form of a pecuniary fee or indirectly considering the vaccination a requirement to have access to public schools. Then, there has been a gradual process of deregulation, shifting the spotlight on the importance of prevention instead of penalization. This operation most likely started in 1981[24] with a practice of decriminalisation of the vaccination requirements, according to which the non-compliance sanction was reduced to the payment of monetary sanctions, in this way being a less repressive method of public policies (Magnani, 2018, p. 3).

However, the most shared explanation of the recent outbreak is the steady decrease of the rates of vaccinations coverage and an increase of vaccine hesitancy throughout the Italian peninsula. Additionally, the actual high incidence of the disease was most likely a consequence of uncovered portions of population, as a result of an ineffective prevention policies in the past. As a matter of fact, in the 1970s there has been the introduction of the first measles vaccine, nonetheless it has registered a low degree of compliance, similarly to the following prevention programs implemented after the 2000s. The percentages obtained were not corresponding to the expected outcome in terms of the creation of a homogeneous

[23] In particular the legislative decrees 502/92, 517/93
[24] Law n. 689 of 1981, published in the Official Gazette N.329 the 30/11/1981

coverage for the national community. Because of this persistent condition, we assisted to a progressive decrease of the national immunisation rates as well as an increase in the probabilities of a new outbreak of measles in the country (Filia , et al., 2017). Once again, at the beginning of 2017, has been agreed on the new National Plan of Vaccination Prevention 2017-2019 (Piano Nazionale Prevenzione Vaccinale – PNPV[25]), whose validity was both at national and at regional level. Here, the attempt was the promotion of common best practices, aimed at reducing regional disparities and finally reaching the threshold on community immunity recommended by the WHO. This State manoeuvre highlighted the essential nature of vaccinations in general and, with particular reference to the measles outbreak, the eagerness of the central authority to achieve the measles-free-country goal. Notwithstanding the efforts, Italy had undergone an accumulation of measles-susceptible population that increasingly worsened at the beginning of 2017.

France

Similarly, the French health care system attempts to guarantee universal assistance through a mixed approach, which also includes a regime of public insurance in accordance with identified categories of the working population. This method of assistance already depicts a condition in which the intervention of the State is voluntarily limited, therefore shifting various responsibilities to third-party institutions. As a matter of fact, regional authorities and local institutions acquired a certain degree of autonomy over the years, especially in regard to the process of implementation of the national prevention programs amongst others (Progress Consulting S.r.l. & Prospects Ltd., 2012, p. 33). However, French reality still appears more centralized than the Italian one, thus leaving few opportunities to other bodies to deviate and identifying the country's approach as prescriptive (Tomasi, 2017). In the specific case of prevention plans, French central authority, alongside Italy, has a tendency to favour the adoption of constraining measures, in order to guarantee a comprehensive protection to the entire community. However, in contrast with this inclination, the national public health code highlights few circumstances[26] in which the individuals' self-determination assumes a

[25] http://www.salute.gov.it/imgs/C_17_pubblicazioni_2571_allegato.pdf
[26] Articles L. 3111-1, L. 3111-2, L. 3111-3 of the Public Health code

predominant role. This is the case of the vaccinations and their mandatory characterisation, which, can be challenged in accordance with the evolution and the spread of the correlated disease (Tomasi, 2017, p. 468). By way of explanation, the formulation of the text admits conditional criteria that affect the legitimate character of the mandatory vaccines, therefore potentially generating issues for the enforceability of the manoeuvre. This discrepancy, in fact, can be traced back to 2015 when the constitutional council (*Conseil Constitutionnel*) had to debate on an aroused the *question prioritaire de constitutionnalité*. Here the purpose of the investigation was the potential incompatibility concerning the articles L. 3111-1, L. 3111-2, L. 3111-3, L. 3116-2 of the Code of Public Health (*Code de la Santé Publique*) and the art. 227-17 of the French penal code in regard to the Constitution itself and to its preamble. The evidenced gap, together with the ambiguous wording of the very constitutional text regarding the right to health may influence the implementation of health public policies.

Furthermore, with regards to vaccinations, France boosted national campaigns to eradicate various diseases already in the 1950s (Paul & Loer, 2019, p. 173) and particularly, anti-measles vaccination has been introduced in the French prevention programs in the 1980s (Bonmarin & Levy-Bruhl, 2002, p. 55). However, it is evident there is a parallelism with the Italian experience regarding measles diffusion, considering that both countries have encountered difficulties in reaching the value 95% of national coverage as recommended by the World Health Organisation, mostly due to the significant immunisation gaps between generations. Hence, following the measles outbreak registered in 2008-2011, the French health ministry at the time Marisol Touraine endorsed the enactment of a strategic plan to improve vaccine protection in the country in the period 2012-2017. The target of this was reflected in an attempt by the authority to encourage the rapprochement with the established vaccination programs, through the issuing of clearer and simpler instructions and the offering of more information regarding their efficacy in the prevention of potential outbreaks of new contagions (Ministère des Affaires Sociales et de la Santé, 2010). During the 5-years initiative, the civil society actively engaged the discussion joining occasions of dialogue[27] organised *ad hoc* by the minister of health of the time M. Touraine, with the aim of

[27] In January 2016 has been opened the "Concertation citoyenne pour la vaccination"

understanding what the degree of acceptance was of the new compulsory measure (Ligue Nationale pour la Liberté des Vaccinations, 2018). Regrettably, given the heterogeneity in the application of the mentioned strategic plan among regions and by the different local authorities, a new program has been proposed in 2016 to reinforce the national immunisation policy (Cour de Comptes , 2018). However, regardless of the progress made in increasing the discussion regarding the utility of the vaccines in the practice of preventing contagious diseases, France has faced a steady spread of the phenomenon of vaccine hesitancy and incurred another measles outbreak in late 2017.

With regards to the latter happenings, the following two paragraphs will report the public manoeuvres carried out by the Italian and French state authorities in an effort to eradicate the contagion, in particular taking into consideration the focal point of vaccinations.

4.2 Italian response to the outbreak

From January 2017 onwards, Italy experienced a measles epidemic, registering almost 1.500 cases over four months (The Guardian, 2017). As a consequence of the fast escalation of the recent events, the Italian coalition government guided by the Prime Minister Paolo Gentiloni - Democratic party - agreed to urgently intervene to avoid a wider spread of the contagion. As early as January 2017, the central authority stepped in the duties of the regions given the increased number of new cases of measles detected on the national territory and two alerting circulars have been issued by the Ministry of Health, led at the time by Beatrice Lorenzin. The first document particularly was particularly reminding of the character of the utility of the national prevention plan already in force (Piano Nazionale Prevenzione Vaccinale) with regards to the process of eliminating contagious diseases, including measles, on a wide scale. In parallel with the identification of the actors involved in the operative procedures, it also emerged that among the documented cases of illness, 88% of them were affected because they were not vaccinated (Italian Ministry of Health (MoH)). This data typified the critical conditions of the national immunisation levels, being far below the

recommended threshold of 95%, and they anticipated a worsening of the events with a peak of the outbreak coming in March 2017.

Therefore, in accordance with the Health Minister B. Lorenzin, the Prime Minister P. Gentiloni endorsed a strategy that entailed a broadening of the compulsory vaccinations, aimed at reducing the incidence of contagious diseases. As a consequence of the circumstances, the Italian Parliament approved the decree-law n. 73, with 296 votes in favour, 92 against and 15 abstained (Fondazione Openpolis, 2017). Then, the document became a part of the corpus of the Italian laws after its publication in the official government gazette (*Gazzetta Ufficiale – G.U.*) with the number 119 on the 31st of July 2017[28]. This move entailed the inclusion of four new compulsory vaccinations to the list, including the measles-vaccine, addressed to children aged between 0 and 16 years. Moreover, the measure introduced the provision of a certificate of vaccination as an additional requirement to access kindergartens and other forms of preschool. Additionally, in case of no compliance, forms of penalisations such as financial and legal sanctions have been resumed (2017).

4.3 French response to the outbreak

In parallel, the epidemic of measles hit France from 2016, and in 2017 grew in intensity, registering 519 cases on the national territory from January to December. Even if the reported data was not comparable to the Italian documented evidence, the government guided by Édouard Philippe – Republican party – anticipated in July 2017 that there would have been the possibility of extending the list of mandatory vaccinations, to finally focus all the efforts in reducing the risks for future outbreaks of the contagion (Renault, 2017). The declaration of the Prime Minister has been translated into deeds when the draft legislation was approved at first reading by the National Assembly – *Assemblée Nationale* – in October 2017, with 63

[28] Decree-Law No. 73 of June 7, 2017, "Disposizioni urgenti in materia di prevenzione vaccinale", http://www.gazzettaufficiale.it/eli/id/2017/08/5/17G00132/sg

votes in favour and 3 against (Le Figaro, 2017). Then, on the 30th December 2017, it became law, and with it, the list of mandatory vaccines has been extended.

As a matter of fact, the law n. 2017-1836 identified in its article 49 the valid vaccinations for all the new-borns from January 2018, turning 8 recommended vaccinations into mandatory ones, therefore increasing the number of them from 3 to 11 (Ministère des Solidarités et de la Sante , 2018). Subsequently, the decree-law n. 42 approved in January 2018 has identified the operative framework of reference to assist to the practical implementation of the law. The realization of this actionable plan was motivated by the registration of insufficient coverage rates for certain diseases, including measles, thus outlining a dangerous context that could have potentially determined the revival of previously eradicated illnesses.

In conclusion, French and Italian approaches to health care and health protection have certain points in common, such as the universalist scope and the tendency to delegate responsibilities and some powers to regional and third-party institutions. The mitigation of the state pre-eminence in favour of other bodies favoured a progressive engagement of the civil society in the processes of policymaking in the field of health care protection and medical services. As a consequence, this phenomenon increased their awareness with regards to various topics, and their participation also affected the policymaking practices themselves. In considering the emergency circumstances resulting from the measles outbreak in Italy and France, the respective state authorities reaffirmed their primary duty of protecting the community wellbeing. Therefore, both countries adopted a strategy of mandatory measures, endorsing the rationale according to which vaccinations are the most efficient method to eradicate vaccine-preventable diseases and aimed at increasing the national immunisation rates. However, this renewed behaviour was soon put under the spotlight because of the perceived propensity of its interference with the individual's right to self-determination, in terms of the selection of the most appropriate strategy to protect personal and family members' health.

The next passage is devoted to the discussion around the two hypotheses proposed in relation to the specific cases of the recent outbreaks of measles that touched Italy and France. To evoke them, the first one will test the idea that the higher the significance of the outbreak of the epidemic, the more likely the principle of proportionality will be shaped in favour of the achievement of an effective strategy of public policy intervention. However, the second one refers to the eventual effects that the adoption of certain public policies, under severe conditions, may generate and the potential changes in regard to the equilibrium between individual and collective rights. The selection of these two critical case studies enable the undertaking of a comparative analysis, with both in regards to the legislative background of reference for the two national authorities, and in terms of the public measures implemented. In each episode, the intervention of the public entity interrupted the free enjoyment of civil liberties forcefully imposing new legislative measures to cope with the external situation of emergency. The central idea of this work concerns the understanding of the existence of a possibly manipulated predominance of the public entity over individuals' rights, through the adoption of certain legislative dispositions and through flawed policymaking procedures.

5. The contrast

As a result of the implementation of mandatory measures by the Italian and French governments, both countries experienced a growing resistance to vaccinations by portions of the population that fuelled a national debate and opened a variety of new lines of research. In particular, following the peak times of the outbreaks, there has been evidence of a tendency of the opposition political parties to call into question the legitimacy of the state intervention, supported by the stances of associations against vaccines and few members of the scientific community. Firstly, in addition to the conflicting various circumstances, a consistent growth in vaccine hesitancy rates has been registered in the European region, with the two countries under consideration, in particular, not excluded from the count. The inclination to call into question the state's manoeuvres is not a novelty, although given the increased importance of the subject of vaccinations through an instrumentalisation by political parties, associations, experts and non-experts, it called back past creeds and false suggestions. The most famous ghost from the past is represented by the false assumptions made by Dr. Andrew Wakefield and his study in 1998, which affected the development of a conventional knowledge with reference to vaccinations and contributed to strengthening the hysteria of the public. In the latter, the author supported the thesis according to which the measles-mumps-rubella (MMR) vaccine was more likely causing the autistic syndrome, as a result leading to a massive drop in the immunisation rates internationally. Again, a third form of scepticism manifested in accordance with the arising doubts envisaging the real existence of emergency circumstances for the safety of the community welfare. The necessity to have a scientifically proven critical condition is considered a requirement to justifiably implement a compulsory public policy (Harmsen, et al., 2013). In effect, the introduction of the new law triggered doubts with respects to a manipulation of the national legislative framework aiming at favouring other interests but the individual and the collective ones, and thereupon complicating the practices to administer the vaccinations. Afterwards, the contrast between individual and collective rights returned under the spotlight again, therefore affecting the tendencies of public compliance to the norm and highlighting heterogeneous behaviours with reference to that. In particular, the non-acceptance of the terms introduced by the new state laws characterised not only a fraction of the community, but also regional and local institutions. As a consequence,

those who criticised the implementation of this measure interpreted it as a breach of the principle of proportionality, then resulting into an interference in individuals' sphere of intimate freedoms (Magnani, 2018, p. 4). In parallel, the supporters of that public health practice tended to stress the no-harm principle, thus resulting in a justification to favour the overall benefit of the community. In other words, the rationale behind those stances entailed a fair distribution of public health burdens among all members of the society, in line with a communitarian behaviour of shared costs and benefits (Faden & Shebaya, 2016). However, the supposed existence of an imbalanced condition affected different dimensions simultaneously, and thereby the political sphere, and so the community and the experts have reacted in alternative ways. Finally, taking into account the significant resonance of the controversy in the two countries, a final chapter will be devoted to a brief analysis of the legal aspects connected to the compulsory vaccinations to understand if and how their resolutions shaped the discipline as a whole.

5.1 Political mobilisation

In the wake of the measles outbreaks, and after the subsequent implementation of the new public health laws, Italy and France have experienced phenomena of political turmoil that have amplified the discussion related to the mandatory character of the vaccine, resulting in a nationwide and European debate. Italy, at the time, was guided by a coalition government composed by the Democratic Party (PD), Popular Alliance party (AP) and Centrist for Europe (CpE) and headed by Paolo Gentiloni (PD). On the other side of the political spectrum, the main opponents were the anti-establishment parties, such as the 5-stars Movement (M5S) and the Northern League (LN) (Panorama, 2016). Similarly, the French cabinet was guided by Edouard Philippe, member of the Republican party, and assisted by a coalition composed of political parties as La Republique en Marche! (REM), the Democratic Movement (MoDem) and Radical Movement (MR). Whereas, the main opposition was represented by Marine Le Pen and the National Rally (RN) party, formerly Front National. Furthermore, the level of scepticism about vaccinations was relatively high in the two countries, and this interventionist

approach gave the opportunity to political oppositions to take advantage of the circumstances to campaign in favour of a more liberal attitude of the government.

In Italy, as a matter of fact, following the initial news regarding the decision of the health minister B. Lorenzin to upgrade the legislative corpus about health, the Italian Five Star Movement leader Beppe Grillo made different public statements highlighting the potential risks connected to vaccines (NYT Editorial Board, 2017). Grillo deliberately backed the most common theory of no-vaccines associations that entails a linkage with autistic syndrome, and a strong economic influence coming from big pharmaceutical companies on politics (Siani, 2019). The Five Star Movement, collaboratively with the Northern League, contrasted the strategy of the governing coalition and, in different occasions, they tended to support uninformed and anti-scientific theories (Squires, 2018). Nevertheless, the stance on the usefulness of the vaccine was not shared by all members of the Movement, thus presenting a heterogeneous background and contributing to the creation of tensions within it (Giuffrida, 2017). In parallel, with regards to France, most of the doubts surrounding vaccinations were inserted in a wider debate about the side effects of medications. In 2017, especially, two health scandals have been brought back to the foreground undermining the credibility of the health care sector overall. The notoriety of the Dépakine[29] and Mediator[30] cases have indeed affected population's attitude towards the health care sector, in this way facilitating Le Pen's political party in riding the wave of general uncertainty (Parant, 2017). Given this context, the reopening of the discussion about the number of mandatory vaccinations by the health minister of the time M. Touraine in 2015, and then continued by her successor A. Buzyn, helped to inflame the debate.

In effect, from a political perspective, both Italy and France have shown common behaviours and approaches to mandatory vaccinations, materialized in the tendency of both opposition parties to call into question the effective necessity of the mandatory measure. Nonetheless, despite the analogies, one can observe the peculiar attitude of the French government in attempting to actively engage the community in the policymaking process

[29] https://www.lexpress.fr/actualite/societe/sante/la-depakine-un-antiepileptique-sur-la-sellette_1820025.html
[30] https://www.lemonde.fr/securite-sanitaire/article/2017/09/05/scandale-du-mediator-les-laboratoires-servier-renvoyes-en-correctionnelle_5181403_1655380.html

while dealing with the large-scale vaccine mobilisation. An example of this effort can be seen through the public consultation organised in 2015 to collect different perspectives connected to vaccines with the final purpose of issuing a report[31] to offer a comprehensive point of view on the topic (Yang & Rubinstein Reiss, 2018). The implementation of this practice was considered as a key step towards increasing the degree of trustworthiness of health care institutions, and in the public authorities themselves. Although the manifest intention from the public entity to better interact with the civil society, the criticisms soon arrived because of a falsely claimed fraud in the composition of the set-up committee and its recommendations (Ward, et al., 2018). Besides the attempts to strengthen the state-community bond, the strategy of the authority was already biased and unable to successfully gain the public and political classes' trust.

Nevertheless, the political stance against mandatory vaccinations is connected to the growing scepticism on the European continent, and, how that had a role in contributing to the rise of populist parties in both countries under study. As a result of the perceived increases in tension between the individual and public spheres, often caused by factors different from health security, the performances of the Italian and French populist parties have been extremely positive, therefore contributing to an expansion of the community's consensus in their favour. As a matter of fact, it is observable how the steady rise of anti-elite and anti-establishment feelings among the population jeopardised first the reliability of the ruling class, and second the wave reached the epistemic community of experts, including the scientific ones (Kennedy, 2019).

5.2 "Anti-vaxxers" phenomenon?

In parallel to the political tensions, there has been a strong mobilisation of the civil society in response to the legislative move of introducing mandatory measures in the health domain. Both countries have experienced a renewed interest of the community in the public health

[31] http://concertation-vaccination.fr/la-restitution/

sector and the related activities. As a matter of fact, the significant activism is proven by the fuelled debates in support and against the manoeuvre by organisations[32], through protests and public expressions of disagreement on online platforms, including Facebook and online blogs. Nevertheless, the tone adopted by the controversy was more individualist, and free-vax associations presented the cases often taking advantage of the emotional dimension of personal stories (Bricker & Justice, 2019, p. 177). However, when discussing about associations in favour or against vaccinations a further distinction becomes essential. As a matter of fact, alongside the so-called no-vax organisations, whose activism's focus is against vaccines *per se*, other groups have to be taken into account. Actually, some organisations reflected the interests of that portion of the community who does not deny the importance of vaccines in preventing infectious diseases. However, they opposed the mandatory attitude of the manoeuvre, and therefore, they advocate to promote an approach to the subject entailing a more comprehensive safeguard of individuals' freedom of choice (Demicheli, 2019). In sum, accordingly to what emerged from the interview with Dr. Demicheli (2019), who is a member of the technical committee of the Italian government to give advice regarding vaccinations set up in 2018 by the Health Minister of the time, the segment of the population that is identifiable as "ideologically against" vaccinations is very low. In particular, with reference to the Italian reality, the interviewee evidenced how the percentage is about 0.7%, as reported by the statistics of the National Institute of Health (ISS) and for this reason, that value is not considerably disturbing, in absolute terms.

Conversely, the propensity to accept the state action plan for a large part of the population depends on a variety of factors that cannot be easily identified. Phenomena of vaccine hesitancy and widespread anxiety about the risky side effects of the vaccines have, indeed, repercussions on the individual decisional processes. Concurrently, the absence of trust in the information circulated by experts affects heavily the relationship between the public entity and the community. At the same time, from an analysis of the websites of the major anti vaccinations' organisations respectively for Italy and for France, Comilva[33] and Ligue

[32] Few examples. In Italy: Comilva, Lov, Snop, Siti. While in France: LNPLV, Info Vaccines France.
[33] https://www.comilva.org/il-manifesto-del-comilva/

National pour la Liberté de Vaccinations[34], emerged an inclination to adopt an individualist point of view, strengthening the importance of people's freedom of choice to take decisions in sensitive domains. The collective benefits of immunisations have been set aside to favour a more personalistic path and progressively putting the right to self-determination in the centre of the dispute on the topic. Additionally, following the interpretation proposed by S. Blume (2006, p. 630) with regard to anti-vaccination movements' attitude, there comes forth a tendency to re-frame the social problems, aimed at obtaining a certain degree of public recognition for them. In accordance to their views, the equilibrium between individual and collective rights and, in particular, the boundaries that define the personal and public spheres have been exceeded, consequently reviving the opposition. The most popular terms used by the aforementioned organisations in discussing the controversy were "freedom", "dictatorship" and "hands-off from my child" and, as a result, the mediatic wave grew in parallel with the definition of the operative strategy by the central authority. The narrative embraced by vaccination sceptics has leveraged mostly on the emotional side of hesitant parents and it is frequently lacking a reliable scientific basis. In addition, this rhetoric enhances the inherent connection between the members of the scientific community and the pharmaceutic companies, underlying and occasionally misrepresenting the actual features of that relationship. On the other hand, these organisations have accentuated certain blind spots of the state public policy practice, emphasizing the inadequacy of the implemented strategy over the creation of a virtuous relationship with the national community. As a matter of fact, the following section will examine the weaknesses of the mentioned gap between state and society, with a focus on its effects on the members of the scientific community with regards to the introduction of the compulsory measure.

5.3 The position of the specialists

The progressive expansion of this phenomenon impacted, not only the civil society overall, but also the scientific community and sectoral experts. The promptness of the state manoeuvre and the characteristics of the sanitary conditions, together with general high levels of vaccine

[34] http://www.infovaccin.fr/presentation-de-la-ligue.html

hesitancy in the two countries, also affected the scientific community. In point of fact, a spirit of uncertainty hit not only the family networks but let figures emerge such as Dr. Henri Joyeux and Dr. Roberto Gava, respectively in France and in Italy. As a result of the continuous growth of the debate, without sparing doctors and specialists, the doubt related to the real need to implement the specific universal measure easily spread and boosted by the creation of factions. The significant activism attempted to highlight the greater incidence of the public authority, in particular undermining the right to self-determination. With reference to the latter point, two circulating petitions supported by generalist doctors in France in 2017 are explicative of the cited disagreeing tendency within that working category. As a matter of fact, one was trying to underline the intrusive character of the state intervention, through the incrementation of the list of compulsory vaccines (Boy-Landry, 2017). Whereas, the other petition defended the manoeuvre proposed by the Health Minister, Ms. Buzyn, highlighting the characteristic of solidarity for vaccinations in determined circumstances, thus increasingly stressing the communitarian dimension of the issue, rather than the individualistic one (Jublin, 2017). The aforementioned occurrences perfectly illustrate an example of the division within the same professional category, and lead to a confused or potentially biased specialistic approach in reporting the necessity of the mandatory public policy to families on the national territories.

In parallel to the fragmented support to the measure, in Italy and France emerged a disunion within the very same category of health professionals with reference to the compliance to the vaccinations plans for that working category. Even though the role of the specialists is undoubtedly fundamental to set a standard for the implementation of the measure by the community, both countries registered low vaccination rates for health workers as a constant feature with regards to different species of diseases. For example, for what concerns the influenza vaccine, the percentages of vaccinated specialists do not exceed 25%, in particular the Italian rates range between 10%-15% (Tirelli, 2018), while French ones score a higher 25% (Allodocteurs.fr, 2017). This data reflects a reality in which even the professionals are not entirely compliant with the national legislation on the subject, thus allowing the development of a certain degree of scepticism by non-professional figures. In consequence, the fact that even members of this specific order of professionals have

manifested doubts with regards to vaccinations highlighted the profound ambiguity generated by the debated topic, and the credibility gap that followed.

Furthermore, the intervention of the central authority was interpreted as a supportive approach to favour the common welfare, stressing indeed the solidarity principle depicted in both Italian and French constitutional texts. As a matter of fact, this standard has been used as a moral compass to guide the processes of implementation of the public measures. However, the critique concerned also the absence of an actual practice to favour the civil engagement, in order to be able to increase the population's knowledge with reference to the sanitary circumstances through an informed decision-making process (Demicheli, 2019).

5.4 Legal implications of the controversy

The inadequate parent-centred attitude of the state's action plan, and the gradual evolution of the rumours regarding vaccines' negative complications from a niche issue, to a "structured movement with political implications", as it has been described by Dr. M. Craiu during his interview with Vaccines Today (Editorial Team, 2018), escalated up to create significant controversies, including in legal terms.

From a juridical perspective, the two countries have manifested cases of appeal to the national authority devoted to the control of the constitutionality of laws, respectively the *Corte Costituzionale* and the *Conseil Constitutionnel*. The underlined contrast by the involved parties was mostly referred to the individuals and the community's right to health, and between the right to health and the right to education. As a result of the introduction of mandatory vaccinations and of new requirements to access schools, especially in the Italian reality, the scientific debate easily devolved into a national and international dispute, therefore challenging the position of the central authority. An evident example of this phenomenon is represented by the action taken by the Veneto region (Italy), which in 2017 temporarily saw the suspension of the obligation for the mandatory vaccinations by asking the state Council for an evaluation of it (la Repubblica, 2017). The move was motivated by the alleged

unconstitutionality of the law n. 119, in particular it did not contest the utility of the vaccinations *per se*, but their mandatory character. As highlighted by the regional Governor L. Zaia, before the adoption of the national practice of vaccinations, Veneto was one of the most advanced regions in term of monitoring system of immunisation levels, and with a preferred attitude centred on an extensive dialogue with the community and the families. However, after the rejection of the appeal by the state Council, in the written opinion[35] was stressed the necessity to balance the two dimensions of the right to health with a view to safeguard the solidarity feature of the right to health, and concurrently it was remarked that the legislative power in the health domain is a state authority's prerogative, and not that of its regional counterpart (Pini, 2017). Hence, the constitutional authority also aligned its judgment[36] supporting the perspective according to which vaccinations are considered the most efficient modern practice to safeguard the well-being of the community, and the frame of reference conformed to the urgency of handling the spread of measles (Magnani, 2018, p. 5) On the other hand, despite the authoritative character of the French public health system, it had already been clarified that the mandatory character of the vaccinations was not going against the individuals' constitutional rights even before the implementation of the measure in 2018. In that regard, early as 2015, the *Conseil constitutionnel* was consulted in a case of non-compliance with the mandatory vaccinations by a couple who insinuated the unacceptable toxicity of the vaccine's ingredients (Bienvault, 2017). Therefore, the sentence n. 458[37] of 2015 defines a valid background of reference to interpret the phenomena of opposition to compulsory vaccinations in France. In this respect, the text recognised a larger margin of discretion to the legislator in the field of public health protection, but besides that, the implementation of a coercive measure is recognised as constitutionally admissible if it can be inserted in a national strategy to reach a desired public health goal (Floret, 2018).

However, as highlighted during the interview with Professor C. Fasone (2019), in theory there is not a hierarchical order between rights, meaning that it would not be possible to rightfully justify the prevalence of one right over the other. In reality, a balancing process is

[35] https://www.camera.it/temiap/2017/09/28/OCD177-3067.pdf
[36] The sentence n. 5 of 2018 which legitimized the conversion law n.119 of 2017
[37] Conseil Constitutionnel, Decision n° 2015-458 QPC, 20 March 2015

carried out by the national constitutional authorities to avoid unnecessary asymmetries yet admitting exceptions when imposing obligations. Hence, both the Italian and French constitutions do not consider admissible the complete sacrifice of the individual wellbeing to favour the community. Nevertheless, it is acknowledged the legitimacy of the restriction of the self-determination principle in certain occasions, thus combining it with mechanisms of reparations and case-by-case analyses of the situations (Tomasi, 2017). The idea at the basis is that the public actor has a responsibility that entails the adoption of the most righteous action plan whilst also taking into consideration the principles of legitimacy, necessity, and proportionality, which already define a limited space for state manoeuvre. In particular, the measures put in place by the governmental actor have to satisfy a precise public objective, such as the limitation of the spread of a contagious disease, but contemporarily they have to guarantee the least sacrifice for the addressees.

Lastly, the focus on few selected categories of the population generally involved in the decision-making practice as regard to the public sector allowed to understand how complicated the balancing process is when the surrounding circumstances are critical. Firstly, the political classes of both countries displayed a similar behaviour with reference to the contrast between the ruling parties and the opposition parties about the topic of mandatory vaccinations. On one hand the Democratic Party (PD) versus the Five-stars Movement and the Northern League, while on the other the Republican Party versus Marine Le Pen's Front National (now National Rally). From the analysis emerged how the increasing prominence of anti-establishment parties goes hand in hand with a growing scepticism of the population in the duties and the role played by the state authority, thus jeopardizing its credibility and central function when dealing with public health matters. Besides the political class, which because of its nature is characterised by controversy, it is interesting to evidence the expansion of the incidence of civil society's demands and its greater activism concerning the measures implemented by the state. As a matter of fact, the public debate about vaccinations and vaccines as such has been fuelled by significant campaigning activities, especially in relation to the obligation *per se* and not against the vaccination practices as a preventive strategy. However, no-vax or free-vax associations tended to exploit the emotional facet of

the problematic, contrasting the state move describing tragic personal experiences, often without supporting their stances with scientific data, and relying on non-verified pseudo-scientific researches. This behaviour heavily biased the decision-making capacity of numerous undecided families, therefore not helping to reduce the vaccine hesitancy's national rates. Furthermore, the doubt also hit medical workers and, as a result, further the fragmentation of the public opinion with reference to the usefulness of vaccinations and their proven security. The diffusion of this kind of non-compliant attitude summed up to a registered inability of the public authority to effectively engage the community while introducing the mandatory policies weakened the preeminent position of the State as guarantor of a safe and healthy environment for the population. The deterioration of the relationship between individuals and the public entity is visible by the attempts of the former actors to appeal before the dedicated legal bodies because of a perceived violation of personal rights caused by the application of the new laws. Finally, these examples evidenced how complex is the policy-making process especially concerning the delicate domain of public health. The balancing between individual and collective sphere requires all involved parties to make an effort to finally reach a compromise. On one hand the state has to act in accordance with certain legal principles, without exceeding legitimate boundaries. On the other hand, the individual has to be willing to maintain a supportive attitude while enjoying its rights, thus eventually implying to waver its autonomy to favour the collective wellbeing.

Conclusions

Vaccinations are still recognised as the best prevention method in the medical history to contrast the diffusion of contagious diseases and their success has grown in the years also as a consequence of the scientific development and the extensive research in that domain. In particular, with reference to measles the vaccination practice remains the most favoured method to prevent further diffusion of illnesses in general. In this regard, the World Health Organisation (WHO) recommends reaching a 95% threshold to guarantee the immunity of the entire community, also called herd immunity (Sadarangani, 2016). Therefore, to achieve the mentioned immunisation goal, individuals have to comply with the related national regulations, with a view to favour the common welfare. However, in developed countries has been registered a growing tendency to call into question the state actions and its strategies as regard to the management of public health. With reference to this phenomenon, Italy and France are not escaping this wave of scepticism and on the contrary they are among the European countries with the highest levels of mistrust in the state bodies, thus additionally affecting the population's perception with respect to the public management in general. In parallel, referring in particular to the public health domain and vaccinations as such, emerges how there is a persistent confusion connected to the effective utility of vaccines as preventive technique to reduce to the minimum the incidence of outbreaks. As a matter of fact, one of the former biased information on the subject can be traced back to the research carried out in the 1990s by A. Wakefield, in which he alleged a causal association between vaccinations and autism. Even though the falsehood of the results, the suspicion started to spread rapidly and, as a result, its effects are still visible nowadays.

Concurrently, the progressive growth of the role of influence of third-party actors in the process of public decision-making has complicated it. In general, Italy and France's central authorities have progressively delegated their duties to other actors, not only regional or local public bodies, but also private agencies. Furthermore, the stratified legislative and operative structure given by the Europeanisation of different domains previously state-managed required the adoption of a more comprehensive approach with reference to the policymaking processes and public dialogue. In both countries, civil society and non-governmental

stakeholders assumed a central position in the political and social debate in relation to public sector's issues, thus obliging the state to eventually deal with numerous actors and intermediaries to find a solution. In particular, with reference to the implementation of public policies which stress the balance between the individual and collective sphere and assume a universalistic scope, civil society's activism required the central authority to start a dialogical relationship to finally reach a shared resolution for the purpose of achieving a win-win settlement. In other words, it is common to every society to encounter challenges while balancing the individual sphere with the collective one, especially as regard to delicate disciplines of the public sector. Nevertheless, the state derives its authority mostly from the constitutional text, in which is highlighted the role the state should assume in the practice of carrying out its duties, thus justifying its legitimate function.

Having said that, it is still unclear how the public intervention influences the equilibria between individuals and public community. As a matter of fact, this gap has been the main guideline of the work, especially with reference to the efforts made by the public entities to preserve the balance between the individual and communitarian spheres of intervention and, parallelly, contrasting the diffusion of an infectious disease. Alongside this research question, the analyses of the Italian and French legal backgrounds presented in chapter 3 have allowed a deeper understanding of the different conceptualisations of health as such. Even though there are similarities between the two regulations, the Italian one appears more explicit and directed to a clearer identification of the concept of health, the boundaries of state's action and the duties of the actors connected to this specific field. On the contrary, the uncertainties arising from the French contextualisation of that specific right contributed to the development of a certain degree of discretion in the legislative action. In tandem, the analysis in chapter 4 of the external context from a medical and scientific point of view enabled to point out the circumstances under which the Italian and French governments took the decision to implement a program of compulsory vaccinations. Subsequently, the two hypotheses are tested in the final chapter as a result of the previous analytical examinations of the framework of reference and of the contributions given by the interviewed members of the selected community of experts. To recall the two theorised scenarios at the basis of this investigation, the former tries to interpret a circumstance in which the higher is the gravity of the outbreak, then more likely the principle of proportionality will be influenced to favour the achievement

of public goals. Whereas, the second one tries to test if, as a consequence of a national public health emergency, there is a shift in the equilibrium between individual and collective rights, and if yes how that modification occurs.

With regard to the first assumption, the proportionality principle has not been unrightfully influenced by the state authorities to favour the wellbeing of the community as a whole. There has been, indeed, a pre-eminence of the collective sphere over the individual one but, the restriction of individuals' freedoms has been justified by the urgency of the external framework of reference. The increasing number of measles cases, the constantly low immunisation rates and the raising vaccine hesitancy required a strong intervention from the public authority. The proportionality rule has been respected since the introduction of the compulsory measures has been justified by the real existence of an emergency situation, as of both national health agencies and European bodies reported a critical spread of the cases of measles thus requiring an immediate and severe approach. In parallel, considering the universal scope of the laws, both legislators recognised different mechanisms of exemption for certain categories of the population, then resulting into a case-by-case decision process. The aim of this attitude was to avoid the effect of adopting a one-size-fits-all law but admitting peculiarities and derogations to each circumstance.

Hence, with respect to the second hypothesis the analysis shows how the assumption of a suspected imbalance between individual and collective dimension is confirmed. It has been recognised a tendency of the authority to act in favour of the population as a whole, moving away from a strict individualist attitude. The state authority reassumed the strong central role as envisaged by realist theorists directly intervening in the most delicate sphere of human self-determination as regard to the domain of health. Additionally, the disequilibrium is not a derivation of the significant involvement of the state in itself, but it can be interpreted as a consequence of an inability to efficiently tackle the diffusion of the contagion. By way of explanation, as a result of the increasing numbers of measles outbreaks in Italy and France, the respective governmental authorities made the decision of acting in a certain way. Accordingly, the legitimate implementation of a quasi-universal legislation allowed the two countries to gradually reduce the cases of measles infection in their territories. On one side, Italy reported a progressive decline counting 236 cases in May, 215 in June, and finally 152

cases in July 2019. Whereas France has experienced a substantial incidence of measles with 550 cases accounted in May 2019, but as far as July 2019 the extent of the contagion turned down to 305 cases (European Centre for Disease Prevention and Control, 2019).

However, the persistence of false allegiances, fake news and incorrect creeds as regard to the public health domain significantly affected the relationship between the individuals and the state authority. Hence, having seen that the context in which public health policies are debated is progressively becoming more complex and multidimensional, the implementation of compulsory measures in themselves is not enough. The issues of vaccinations, vaccine hesitancy and immunisation rates have to be addressed through a multiple strategy, paying more attention to the solicitations coming from the different actors of the society. Then, the application of a strategy entailing a greater level of public engagement and acknowledgement of the community with reference to specific and sensible issues would more likely benefit the entire population and the individuals' kinship with the central authority. In closing, the general contrast between individual rights and public guarantees may be highlighted in other public fields not necessarily related to the health domain, consequently leaving room for further debates and, eventually, giving prominence to more efficient resolutions.

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Appendix A

Interview with Dr. Vittorio Demicheli, President of the technical nucleus on vaccinations, set up in 2018 by the Italian Minister of Health, G. Grillo. 21-August-2019, 60 minutes.

[…]

A.Z.: […] lei ha citato le vaccinazioni, volevo specificare che il periodo di mio interesse è il 2017 quindi il contesto in cui sono state attuate le misure obbligatorie legate ai vaccini. Volevo anche sapere se effettivamente questa manovra pubblica è stata giustificata, nel senso che si era manifestata una situazione di emergenza. In particolare, è di mio interesse l'epidemia di morbillo. Insomma, lei ritiene che l'adozione di questa misura da parte del governo sia stata giustificata, oppure il rischio per la salute non era tale?

V.D.: All'epoca ero stato consultato dalla commissione del senato che si occupava di convertire in legge questo decreto e avevo sostenuto la mia posizione, ovvero che i cosiddetti 2 requisiti di necessità e urgenza, che sono quelli in base ai quali un governo prende una decisione che poi deve essere trasformata in legge, non esistessero in generale. È vero che c'era un calo delle coperture, ma questo, almeno per quanto riguardava i grandi obiettivi di politica vaccinale internazionali, non raggiungeva la soglia di pericolo. C'era una distinzione da fare che, a mio giudizio, non è stata fatta, tra la soglia di attenzione, quando la copertura vaccinale dei nuovi nati scende al di sotto del 95%, e quindi bisogna fare attenzione e prendere delle contromisure, e questo oggettivamente era successo in tutto il paese. Mentre per quanto riguarda la soglia di eliminazione, che identifica la soglia dell'immunità di gregge che in realtà non era mai scesa ed era al di sotto dei livelli di pericolo. Da un punto di vista generale, quello che posso dire è che l'ISS aveva dichiarato che la situazione del calo delle coperture era pericoloso, quindi il legislatore aveva una motivazione ufficiale in questo senso. […] Per quanto riguarda il morbillo, la situazione è leggermente diversa, in Italia la soglia di eliminazione per i nuovi nati non è mai stata raggiunta. In Italia si è cominciato a vaccinare contro il morbillo nella seconda metà degli anni 80, e soprattutto all'inizio non siamo stati in grado di offrire una copertura a una grande porzione della popolazione. Si stima che in questo momento nel nostro paese ci siano circa 2 milioni di persone suscettibili, nati dal 1975 in poi, quindi in realtà per poter eliminare il morbillo l'obbligo dell'aumento di copertura per i nuovi nati, di per sé, non è sufficiente. Certo, è una condizione necessaria che i nuovi nati siano protetti contro il morbillo. Ma finché ci saranno altri 2 milioni circa di persone, in gran parte giovani adulti, il serbatoio che consente al virus di circolare è così ampio che in sé arginare la situazione considerando i nuovi nati non è sufficiente. Quindi ricollegandosi alla domanda, se fosse giustificata l'introduzione, è chiaro che per il morbillo è giustificato qualunque tentativo di migliorare le coperture. Però, in quell'occasione la manovra sembrava strumentale, perché comunque abbiamo sempre riscontrato bassi livelli di copertura (intorno all'80%); quindi in realtà il carattere di urgenza non c'era. Poi tenendo presente il contesto storico nel 2015 quando l'Italia aveva strutturato il Piano Nazionale Vaccini, era stato ancora ribadito il percorso (in linea con le indicazioni dell'OMS) che va verso il superamento graduale dell'obbligo, questo veniva considerato uno strumento cui la sanità pubblica ricorre solo quando è necessario. In generale, come sanitario pubblico, non sono contrario

all'obbligatorietà, veda l'obbligo di fumare nei locali pubblici che ha apportato grandi benefici, oppure l'uso delle cinture di sicurezza che risulta un'altra costrizione ha contribuito a ridurre la mortalità per incidenti stradali. […] però io sostenevo, e continuo a sostenere, che quella situazione vaccinale non giustificasse una decisione così drastica perché i numeri, a mio giudizio, non erano tali da definire il pericolo e temevo, quello che poi è successo, che dando visibilità ai gruppi che si oppongono alle vaccinazioni ottenesse addirittura degli effetti paradossali […] Perché noi abbiamo avuto episodi significativi, manifestazioni, c'è stato un momento che forse a causa di questa ultimissima diffusione dei social media ha dato molto spazio a notizie false. In realtà, tutti i movimenti che si oppongono alle vaccinazioni hanno vissuto, secondo me, un momento di ribalta straordinario e difatti, adesso a 2 anni di distanza constatiamo che ancora molte regioni italiane non hanno ancora raggiunto il 95% richiesto, che a questo punto diventa una domanda inquietante. Nel senso che, se avendo imposto l'obbligo non si è riuscito a raggiungere quel valore, cosa si fa ora?

A.Z.: Sarebbe da chiedersi allora qual è la misura alternativa, cioè se l'obbligo non ha funzionato allora quale misura potrebbe?

V.D.: Io continuo a credere che la strada dell'adesione consapevole sia l'unica praticabile, è una strada più faticosa ma l'unica possibile. E le regioni che nel nostro paese hanno abbandonato l'obbligo come il Veneto, sono le regioni che hanno preso le distanze da interventi coercitivi e hanno investito molto sulla qualità dei servizi di vaccinazione sono quelle che hanno ottenuto i risultati migliori. Quindi secondo me la strada è solo una, cioè avere una rete di servizi che si occupano di vaccinazioni di buona qualità, fatta di operatori motivati che sappiano parlare con le persone cogliendo le diffidenze e le paure, perché è questo il punto delicato. L'ultimo studio ufficiale stimava il rifiuto ideologico, cioè quello incoercibile, quello che non è piegabile con la razionalità, inferiore all'1% (0,7%) secondo l'ISS. Se i contrari ideologici sono lo 0,7% e invece le vaccinazioni non raggiungono il 95% vuol dire che c'è il 5%-6% della popolazione che non è pregiudizialmente contraria ma sono persone che per qualche motivo o non vengono raggiunte dall'offerta vaccinale, o diffidano. Quindi la strada alternativa è lavorare su questo, noi sappiamo che i contrari veri sono l'1% e quindi bisogna raggiungere e portare ad aderire in maniera consapevole tutti gli altri. E secondo me è la strada. L'esasperazione della discussione che c'è stata in Italia, anche l'assimilazione del rifiuto vaccinale senza descriverlo come un fenomeno complesso. […] Secondo me tutto questo non ha aiutato, perché in questo gruppo c'è probabilmente un 1% di totalmente contrari, con cui non si può discutere, ma c'è anche un 5%-6% di persone con cui un dialogo va tentato. E adesso dopo 2 anni, mi trovo a dire che ci troviamo esattamente nella stessa situazione. L'alternativa è quella di avere una rete di offerta robusta e capillare. Il nuovo Piano Nazionale Vaccini ha introdotto un numero straordinariamente grande di vaccinazioni, per capirci la spesa per l'acquisto dei prodotti vaccinali in Italia nel 2014 era un po' meno 300 milioni, l'anno scorso è arrivata quasi a 600 milioni. Quindi la decisione del ministro Lorenzin di inserire nel calendario così tante nuove vaccinazioni ha, dal punto di vista organizzativo, colpito profondamente ai servizi perché questi si sono trovati a dover far fronte ad un aumento incredibile di sedute vaccinali. Quindi, non voglio dire che il calo di copertura sia una conseguenza di quello, ma la responsabilità degli altri vaccinatori che si trova in un paio d'anni con il numero di sedute vaccinali raddoppiato, però un po' di concorso

di colpa glielo riconoscerei. Questa situazione è stata devastante dal punto di vista della capillarità e soprattutto della possibilità di occuparsi di counseling. Quindi io direi che questa grandissima accelerazione che è estata impressa nel 2015 alle politiche vaccinali in Italia, la scrivo tra i fenomeni che poi spiegano le difficoltà del 2017.

A.Z.: Ora un'altra questione riguardante la questione dei gruppi no-vax e dei gruppi somiglianti, perché ovviamente dopo l'adozione della misura c'è stato un grande dibattito, sia a livello politico e sia a livello di gruppi di associazioni. Da un lato c'erano gruppi che si opponevano ai vaccini totalmente, quindi parliamo di quell'1% della popolazione; ma c'erano anche gruppi che si schieravano a favore dei vaccini ma non a favore dell'obbligatorietà della misura. Lei si è trovato a gestire queste associazioni e questa situazione? È venuto in contatto con loro? Le loro preoccupazioni erano effettivamente giustificate, nel senso a livello di possibili rischi reali legati all'assunzioni dei vaccini?

V.D.: Allora, io mi occupo di vaccini e da un punto di vista scientifico in questo momento i vaccini sono considerati dei prodotti assolutamente controllati, con un rapporto rischio beneficio ridondante a favore del beneficio. Quindi la risposta scientifica è che le preoccupazioni non sono giustificate, però il sanitario pubblico si deve ricordare che se io ho la soluzione di un problema, ad esempio i vaccini, e le persone non aderiscono a questa offerta di soluzione, mi devo porre il problema io. […] C'è una grande letteratura, c'è anche un gruppo di lavoro appositamente costituito presso la OMS che si è occupato di quella che è chiamata *vaccine hesitancy*, che ha fornito studi e valutazioni. In sintesi, si dice che il fenomeno della diffidenza vaccinale è complesso, e andrebbe analizzato per poter prendere delle contromisure specifiche e qui, ribadisco, secondo me la scorciatoia italiana dicendo rendiamolo obbligatorio e risolviamo tutti i problemi, è stata veramente un salto concettuale importante. […] Invece si è pensato che fosse una panacea. […] Comunque rimaniamo sui gruppi, quello che andava fatto era cercare di capire e approfondire. Tutta quella porzione della popolazione che diffida, ma comunque aperta mentalmente a ricevere delle informazioni, è probabilmente avvicinabile se uno adotta un approccio che non implica un giudizio. La persona deve ricevere gli argomenti che servono a rassicurare, e da questo punto di vista nel nostro paese, per esempio il sistema di sorveglianza degli effetti secondari da vaccino, è un sistema largamente migliorabile ma uno dei migliori al mondo. […] È successo che si sono saldate delle istanze di opposizione ideologica, quelli che credono appunto nelle cose più strane, con il filone libertario e le relative istanze, che esistono nella nostra società moderna. Appunto, il fatto che il Parlamento decidesse di una manovra così drastica ha fatto crescere questa opposizione. […] Gli studi dell'OMS che le dicevo ci restituiscono delle immagini importanti su cui bisognerebbe riflettere, non è solo la paura degli effetti collaterali, ma questa cosa si collega a convinzioni religiose. Il consenso vaccinale ha in qualche modo a che fare con le convinzioni più profonde dell'uomo. […] Inoltre, una cosa di cui sono abbastanza convinto è che c'è stata anche una mescolanza di interessi politici, nel senso che in quel momento si stava affermando nel nostro paese il movimento 5 stelle che aveva al proprio interno delle componenti simpatizzanti con i movimenti contrari alle vaccinazioni. Lo stesso Grillo, all'inizio della sua carriera si era lanciato contro i vaccini, e quindi secondo me, questa assimilazione che in quel momento si faceva del movimento 5 stelle come un movimento

contrario alle vaccinazioni, è stato preso in prestito, soprattutto dal PD che ha pensato che su quel terreno lì avrebbe contrastato efficacemente la crescita del movimento 5 stelle. Renzi al governo ha concesso, in qualche modo, questa misura sostenuto anche dal supporto della comunità scientifica. Però secondo me, lì c'è stato anche un'intuizione sbagliata che era quella che se il governo di allora esasperava i toni e metteva l'obbligo, poi in qualche modo il Movimento 5 stelle sarebbe andato in difficoltà. In realtà, il movimento 5 stelle è andato in difficoltà per altre motivazioni. […] Poi comunque quando la cosa si è esasperata, non è che la manovra abbia prodotto del danno. Però secondo me un po' di strumentalità politica c'è sempre stata, infatti poi anche nelle varie discussioni che sono state innescate quando parlava la Grillo, o c'è stato qualche passaggio parlamentare, c'è sempre stato il gioco di urlare a difesa dell'obbligo. È sempre stato, più o meno, la forza politica che si è contraddistinta è sempre stato il PD (commento). Tutto questo comunque ha fatto del danno, i vaccini hanno avuto una rivalsa negativa e da questa situazione non si uscirà tanto facilmente visto che i servizi che bisognerebbe migliorare e potenziare, sono stati influenzati dall'introduzione delle nuove misure, creando un ingorgo e rallentamenti organizzativi. Poi c'è quest'altro paradosso istituzionale che la legge ha previsto l'allontanamento scolastico, ma possiamo vedere ancora oggi, come una parte significativa del paese non l'ha applicata, e le multe, credo che quasi nessuna regione abbia cominciato a fare multe, perché hanno tutti paura che poi soprattutto i movimenti anti-vaccinali usino la contravvenzione per fare ricorsi. Quindi in realtà, la questione dell'obbligo ha fatto più danni che benefici. Sì, c'è stato un leggero aumento nelle nuove generazioni, c'è stato un recupero molto modesto nei bambini più grandi e, per quanto riguarda il morbillo, addirittura non è stato aggiornato il piano di eliminazione del morbillo del 2015. Sul morbillo si è puntato tutto sull'obbligo, che è appunto una condizione non sufficiente e si è trascurata la cosa che era la stimolazione dell'offerta. Bisogna dire che però per eradicare il morbillo in circa 2 anni bisognerebbe vaccinare circa 2 milioni di persone, difficilmente raggiungibili e sarebbero necessarie risorse straordinarie.

A.Z.: Da quello che ho letto nella letteratura, ho notato che c'è stata un'esasperazione dovuta alla continua evoluzione dei piani vaccinali, l'introduzione della legge, poi nel 2018 un potenziale cambio di rotta riguardo la manovra da parte del nuovo governo con l'introduzione dell'obbligo flessibile. Insomma, c'è stata confusione.

V.D.: L'obbligo flessibile è stata un'idea che giace in una visione di legge. Però concordo assolutamente sulla questione della confusione, una confusione comunicativa enorme per cui effettivamente, per cui hanno sofferto anche chi vaccinava i figli. Infatti, questi movimenti anti-vaccino spesso sono solamente delle minoranze, quindi nell'affrontare il fenomeno della diffidenza attenzione a non perdere di vista la maggioranza delle persone che vaccina. Nel contrastare i resistenti, attenzione a non danneggiare i resilienti. Io credo che la confusione a cui si faceva accenno abbia fatto qualche vittima tra chi sosteneva i vaccini.

A.Z.: C'è una peculiarità nel caso italiano?

V.D.: Quello che vorrei sottolineare è la nostra tradizione costituzionale che dice che quando 2 diritti, in questo caso quello alla salute e all'istruzione entrano in conflitto, la nostra Corte

Costituzionale in più occasioni, quando si è pronunciata, si è sempre interrogata sulle conseguenze immediate della negazione di un diritto. […] Per questo motivo, è stato introdotto l'obbligo ma limitando l'esclusione scolastica alle scuole non obbligatorie. Quindi si evidenzia come da noi ci sia stata una debolezza strutturale, perché in realtà si è detto che noi mettiamo l'obbligo e lo leghiamo alla frequenza scolastica; ma poi in realtà la frequenza scolastica realmente legabile era solo quella dei primi anni di vita, e infatti in vede un maggiore effetto deterrente. Da noi, si diceva, l'obbligo funziona se legato alla scuola. […]

A.Z.: E quindi lei, dal punto di vista costituzionale, il diritto della comunità di beneficiare a una condizione di benessere generale, a fronte del diritto del singolo che, magari anche contro il proprio interesse si sottopone alla vaccinazione, e nel considerare il caso specifico del morbillo, ritiene sia stato giustificato oppure no? In altri termini, questa preminenza.

V.D.: Io non credo ci fossero condizioni di salute pubblica così urgenti da giustificare una limitazione della libertà individuale. Questa era la mia opinione e resta anche oggi, sia per il fatto in sé, cioè che non esistevano queste condizioni di pericolo, sia poi per l'efficacia dello strumento che è stato utilizzato. Nel senso che poi, alla fine, l'obbligo abbiamo visto che non ha portato i risultati attesi. […] Ma così come è stato introdotto, in realtà si è rivelato uno strumento abbastanza debole.

A.Z.: Invece, parlando in termini di futuro, quali sono le prospettive sia in termini di copertura raggiunta, se questa è migliorata.

V.D.: Sul sito del Ministero ci sono dati aggiornati alla fine dell'anno scorso e si vedono gli aumenti, ma si vedono anche, nel commento, che ci sono alcune regioni italiane che non hanno raggiunto il fatidico 95%, nonostante l'obbligo. Quindi il miglioramento c'è stato, io le dico quello che ho cominciato, poi non so se ci consentono di finirlo o no, l'aggiornamento del Piano Nazionale di Prevenzione Vaccinale, su cui dovrebbe lavorare il nucleo di cui sono Presidente, quest'anno punta su due cose: la qualità dei servizi, il documento introdurrà una serie di requisiti, e cercherà poi di tradurre il piano in un impegno delle regioni a rispettare questi standard di qualità, in maniera che la legge dei servizi venga potenziata, e la vaccinazione degli operatori sanitari, che è un'altra debolezza che ha il nostro sistema. La cosa a cui mi piace pensare è quella di rendere conveniente la vaccinazione, invece che cogente. Non sottolineando l'aspetto delle sanzioni, quanto i vantaggi ad essere protetti. Per il futuro, quindi, mi auguro che si parli di vaccini il meno possibile perché l'argomento non è un argomento da ribalta, e gli unici che ne beneficiano sono quelli che sono contrari. […] Spero che si recuperi la parte di potenziamento dei servizi che è quella senza la quale non si fanno grandi progressi. In questo momento abbiamo nel calendario tutti i vaccini che esistono per cui non ci sono urgenze particolari, c'è sempre una pressione commerciale per introdurre nuovi vaccini, ma io in questo momento sarei più orientato a colmare questi ritardi che ci sono, che sono l'organizzazione dei servizi, la vaccinazione degli operatori sanitari e poi sarebbe desiderabile, ma fatto con un po' di approfondimento, studiare bene la comunicazione; cioè fare un ragionamento per rendere efficace la comunicazione in questo

ambito. Però, per ora è prioritario che si parli d'altro e non di vaccini, perché ogni volta che si parla di vaccini riparte la polemica, senza portare benefici a nessuno.

A.Z.: Riguardo al Decreto Lorenzin, questo è comunque ancora in vigore, ma lei pensa che verrà modificato?

V.D.: Qui ci vorrebbe la sfera di cristallo, nel senso che in Senato stanno discutendo un disegno di legge che è quello che dovrebbe riportarci una legge quadro un po' più articolata, però quando si discute si parla solo di obbligo, ma il vero nodo è quello di avere strumenti efficaci per indurre quelle regioni, che sono in forte difficoltà, a fare il loro dovere. […] Allora, la legge che è in discussione contiene anche questi aspetti, poi contiene anche la questione dell'obbligo flessibile che ho l'idea che, qualora appunto fosse inserita in discussione di nuovo aprirebbe un'altra polemica. Alla base di questa cosa c'è un'idea, che io condivido, che l'obbligo bisognerebbe che scattasse solo quando ci sono delle buone ragioni, quindi penso che alla base dell'obbligo flessibile non c'è quello di renderla obbligatoria in una regione, ma non in un'altra. Ma c'è quella di lasciare l'obbligatorietà per il morbillo finché c'è l'epidemia, questa è l'idea della flessibilità. Però comunque dubito che la flessibilità porti dei progressi.

Interview with Dr. Giovanna Ruberto, Associate Professor of Bioethics at the Università degli Studi di Pavia (Pavia, Italy). 16-September-2019, 21 minutes.

[…]

A.Z.: Ho considerato la categoria politica, le associazioni di interesse per comprendere questa tematica che vede lo stato influire maggiormente, a seconda delle circostanze del contesto esterno, per vedere come è stata recepita questa manovra. In altre parole, perché è stata recepita in modo così negativo?

G.R.: il problema è molto semplice in realtà, non sono molte le associazioni che sono strettamente no-vax, e spesso sono legate al circuito vegano, salutista. Fanno parte di una strategia culturale, che è anche molto commerciale. […] Si vede chiaramente che le persone non cambiano idea, nonostante l'evidenza dei dati scientifici e l'unica cosa che si può fare è applicare leggi che siano imperative. Si tratta di credenze a cui di fatto le persone si appoggiano, c'è però anche un problema di controllo della salute pubblica perché io mi aspetto dallo stato che protegga la mia salute […] il punto è che c'è un dovere da parte dello stato, ma anche un diritto di intervenire a favore dell'individuo, e questo è un principio che nelle società occidentali ormai è esteso.[…] Se in un paese la sanità è considerata di dominio puramente individuale, in cui lo stato non deve fare nulla o non può fare nulla rispetto all'individuo, ormai ci sono stati in cui si stanno applicando politiche con una finalità più comunitaria. Quelli che si arrabbiano quando si discutono queste cose è perché non riconoscono l'obiettività della scienza.

[…]

A.Z.: Quindi, la pericolosità dei vaccini è solitamente associata ad altre credenze? Perché il dubbio sorge quando l'adozione di una politica pubblica tale, ovvero che ha avuto questo grande impatto, anche mediatico, è motivata da un obiettivo legittimo? Si era verificata effettivamente questa epidemia di morbillo? Perché i dati riportano una effettiva crescita dell'incidenza.

G.Z.: Certo. Però diciamo che le politiche impositive sui vaccini non sono una novità, ma risalgono agli anni della creazione del sistema sanitario nazionale in tutta Europa. Quindi non si tratta di politiche riproposte adesso, ci sono sempre state soltanto che è cresciuta l'obiezione. Ci sono dati già dal secondo dopoguerra, quando erano state adottate le prime misure impositive e semplicemente adesso è cresciuto il fenomeno dell'obiezione. Il discorso, quindi, è diverso. Non sono state affrontate oggi politiche impositive, ma ci sono sempre state ma semplicemente c'è stata una maggiore obiezione perché il genitore non porta il bambino a fare le vaccinazioni. Inoltre, sono accadute due cose in questi anni: sono scomparse alcune malattie infettive […], infatti alcune malattie sono sparite, però il contesto sociale non è completamente bonificato. Questo è il primo punto che ha permesso di dire a ciarlatani e a gente di scarsissimo livello intellettivo, che non c'era bisogno di fare le vaccinazioni. La seconda questione, che è ancora più imperativa oggi, è che c'è una maggiore sopravvivenza delle malattie croniche […], e le persone che ne sono affette sono soggette a un rischio ancora più elevato e per cui non si può giocare. Queste persone hanno bisogno che anche gli altri non si ammalino, cioè per avere la copertura devi arrivare a un livello di circa 90%-95% per ridurre al minimo la possibilità di una recrudescenza […].
Più che altro non è che c'è stata una mancanza di controllo, ma c'è stato un tentativo di fare politiche impositive, visti gli scarsi risultati con adozione di un approccio basato maggiormente sul dialogo e la volontarietà.

[…]

A.Z.: si può dire quindi che è stato un complesso di circostanze che ha portato a questa nuova recrudescenza. Allora, andando avanti, quindi l'obbligo non è nulla di nuovo.

G.R.: esatto, già in passato questo tipo di misure erano state attuate. La particolarità, questa volta, è stata l'associazione dell'obbligo con la possibilità di accesso ai complessi scolastici. Prima non era necessario presentare la certificazione, però l'autorità sanitaria locale poteva segnalare alle forze dell'ordine l'eventuale mancanza. Il tentativo di avviare un dialogo non serve perché oramai è diventato di natura ideologica e politica, quindi diventa difficile o quasi impossibile instaurare una relazione costruttiva.

Interview with Dr. Cristina Fasone, Full professor of Comparative Public Law at LUISS Guido Carli University (Rome, Italy). 3-September-2019, 15 minutes.

[…]

A.Z.: Ci sono dei parallelismi tra il sistema giuridico italiano e francese, in particolare riguardo alla tutela dei diritti dell'individuo?

C.F.: Allora, su questo punto mi sentirei di dire che il grado di protezione accordato ai diritti individuali, e poi anche ai diritti sociali in generale, è abbastanza comparabile; anche se, guardando alle due costituzioni in vigore, mentre la costituzione italiana prevede espressamente nel suo testo un articolo sia dedicato alla libertà personale, sia un altro dedicato proprio alla tutela della salute (costituzione del 1948). In quella francese della quinta Repubblica è un rinvio implicito, in quanto nel testo della costituzione del 1958 non compare, ma invece dobbiamo fare riferimento al comma 11, del preambolo della costituzione del 1946, quindi quella della precedente Repubblica, in base al quale si dice che lo stato deve garantire a tutti in particolare ai bambini, alle madri e ai lavoratori la protezione della salute. Perché, nel caso della costituzione francese, questa è molto improntata sulla protezione delle prerogative del governo nei confronti del Parlamento e non dice nulla, di per sé, sui diritti. Quindi è stata un'elaborazione del *Conseil Constitutionnel*, della corte costituzionale francese del '71, con cui si è aperta la possibilità di includere nella protezione costituzionale anche i diritti, facendo rinvio alla costituzione precedente, ma anche alla Dichiarazione dei diritti dell'uomo e del cittadino del 1789. […] dalla prospettiva che interessa a lei indagare ovvero quella del bilanciamento tra dimensione individuale e dimensione collettiva, l'articolo 32 della costituzione italiana è sicuramente più interessante di quello francese, perché si dice che la Repubblica tuteli la salute, sia come diritto dell'individuo, sia come interesse della collettività. Per cui, qualsiasi operatore del diritto in Italia deve trovare un bilanciamento tra queste due esigenze e, per quanto riguarda le vaccinazioni, devo anche dire che l'Italia ha sviluppato un filone dottrinale che indaga la prospettiva degli obblighi vaccinali come problematici dal punto di vista delle libertà individuali, quindi facendo riferimento a un altro articolo della costituzione che è il numero 13. Questo è l'articolo sulla libertà personale che è inviolabile, il diritto di *habeas corpus*, che viene in rilievo poiché quando c'è un obbligo di subire vaccini, naturalmente c'è una costrizione della libertà personale. Però, il quadro normativo, andando al di là del mero riconoscimento delle garanzie della tutela della salute, sulle questioni sui vaccini è abbastanza in linea; soprattutto da quando in Italia, nel 2017, abbiamo avuto l'introduzione di obblighi vaccinali specifici […]. Un approccio simile era già stato servito dalla Francia, credo solo un paio di anni prima, e quindi entrambi gli ordinamenti, secondo alcune elaborazioni dottrinali, vengono descritti come ordinamenti a tendenza impositiva, per quanto riguarda gli obblighi vaccinali. Ci sono quelli, tipo la Germania o il Regno Unito, che cercano di *promuovere* il ricorso ai vaccini, mentre l'Italia e la Francia sostanzialmente lo impongono, collegandolo anche ad alcune sanzioni amministrative o penali che siano.

A.Z.: Andando avanti, visto che parliamo di confronto tra diritti individuali e garanzie collettive, come avviene il bilanciamento tra queste due dimensioni. Nel senso, nell'esempio italiano, è specificato il bilanciamento tra questi due diritti; però effettivamente, se ci sono due diritti a confronto, come quello alla salute e quello all'istruzione, c'è una prevalenza di uno dei due? Oppure bisogna evitare che uno prevalga sull'altro, attraverso un bilanciamento indiretto?

C.F.: Allora, in astratto non c'è una gerarchia che vede il diritto alla tutela della salute rispetto a quello all'istruzione. È un bilanciamento fatto soprattutto dalle corti costituzionali e fanno caso per caso, tenendo conto però anche di alcune evidenze scientifiche. Quello che è emerso in entrambi gli ordinamenti è che le corti lasciano una grande discrezionalità ai parlamenti, nell'operare in prima battuta questo bilanciamento, per esempio c'è la corte costituzionale italiana che ha deciso un importante caso del 2018, la Sentenza 5 del 2018, ed evidenzia che non spetta a loro corti effettuare *in primis* questo bilanciamento. Però, le corti possono controllare che una serie di accortezze o di tutele siano state prese in considerazione. Innanzitutto, ci deve essere un fondamento scientifico su cui la decisione del legislatore si deve basare, cioè ci devono essere delle evidenze che garantiscono che l'obbligo vaccinale serve a garantire una certa copertura vaccinale alla popolazione, in termini anche di immunità di gregge, che sia effettiva, che ci siano delle evidenze che l'obbligo vaccinale poi determina questa maggiore garanzia della tutela della salute. Perché, se non ci fossero miglioramenti, allora perché imporre questo tipo di limitazione alla libertà personale se non ci sono evidenze? Quindi questa è una prima questione che i legislatori devono evidenziare nei loro interventi.
La seconda questione, è che ci possono essere delle deroghe quindi non è un obbligo assoluto. Questo l'ha detto anche il *Conseil constitutionnel* nella sua decisione del 2015, in cui dice che delle deroghe devono essere ammesse su base individuale, perché ci sono delle ragioni legate alla salute dell'individuo per cui il vaccino può essere dannoso per la salute di quella persona. Queste, però, sono circostanze da valutare caso per caso, quindi non esiste un bilanciamento in assoluto, ma è più specifico e a seconda delle circostanze.

Interview with Dr. Manuela Lucchini, Director of the television column about Health ("Medicina") on the Italian national broadcaster, Rai. 18-September-2019, 25 minutes.

A.Z.: […] Secondo lei quindi lo stato ha sottolineato questa prevalenza dell'ambito collettivo su quello individuale, in senso stretto?

M.L.: Diciamo di si, ma non è una critica. […] spesso non essendoci la memoria degli effetti devastanti delle malattie infettive, i giovani non pensano che è grazie ai vaccini che queste malattie sono state eradicate. Alcune persone non hanno idea che il morbillo può portare alla demenza, all'encefalite e anche alla morte. […] È vero che poi la libertà è la libertà, ma perché tu genitore libero di non vaccinare tuo figlio, metti a rischio la vita di un altro bambino che per altri motivi non può essere vaccinato? È una faccenda un po' delicata, però si lede la libertà degli altri. Infatti, ci sono stati bambini che non sono potuti andare a scuola perché c'erano bambini non vaccinati.

A.Z.: Secondo lei, anche il fenomeno dei no-vax è recente, oppure è stato il risultato di una riscoperta recente della tematica?

M.L.: Quando 50 anni fa si andava a scuola, c'era la circolare che intimava alla vaccinazione e questo a aiutato a debellare diverse malattie contagiose, come il vaiolo. Nessuno, ai tempi, si sognava di andare contro la scienza, ma ora c'è una mentalità tale, grazie anche a internet e ai social network, per cui tutto quello che è scientifico è visto come interesse delle case farmaceutiche e connivenza della categoria dei medici con le case farmaceutiche. Tutto questo porta in avanti l'anti-scienza. Anche a livello politico, parlano politici che non hanno una minima competenza in materia.

A.Z.: Quindi anche questi ultimi, spesso, incrementano lo sviluppo di un circolo vizioso?

M.L.: Certamente, quando le trasmissioni televisive fanno parlare di vaccini spesso la conseguenza è l'insorgere della categoria dei medici. Mettono sotto i riflettori persone che non hanno una conoscenza scientifica riguardo al tema. Allora il problema che ci si pone è come bilanciare la libertà individuale con la salute pubblica, però, in questo senso, la persona che vuole essere libera deve anche essere a conoscenza dei rischi per gli altri. Ovvero, si rischia di confondere la libertà individuale con il danno per gli altri.

A.Z.: In altre parole, a svantaggio degli altri una persona agisce per favorire i suoi diritti personali

M.L.: […] in tanti settori ci si professa a favore della libertà individuale, però poi non si permette alla persona che la pensa diversamente di parlare. Così reagiscono le mamme no-vax, che dicono di non voler vaccinare però, il bambino che non può essere vaccinato che non può andare a scuola? Si trova a non avere libertà di scelta. Purtroppo, non so se c'è una soluzione per bilanciare in modo equo la sfera individuale con la salute pubblica.

A.Z.: quindi in relazione all'obbligo, le tematiche riguardanti i diritti dell'individuo e la salute pubblica sono complesse

M.L.: Si, la persona è libera di non vaccinare, con tutte le possibili conseguenze che ne derivano però, allo stesso tempo, la mia libertà non deve ledere quella degli altri.

A.Z.: Secondo lei, anche la continua pressione mediatica ha avuto degli effetti sul dibattito in relazione a questo tema?

M.L.: Sicuramente si, tutti i giornali seri però si sono battuti in favore dei vaccini. Le fake news sono un vero problema. In ogni caso, libertà è di lasciare libertà anche alla persona a sé contraria, quindi questa è la prima cosa. Mentre spesso, la persona che dice di voler essere libera va oltre i confini della sua libertà, finendo per ledere quella degli altri.

[…]

A.Z.: Qual è stato il ruolo dello Stato quindi?

M.L.: Lo Stato si è trovato costretto a fare questo, erano stati registrati livelli di sicurezza allarmanti, per il morbillo in particolare, e questi valori hanno comportato anche diversi richiami da parte dell'Organizzazione Mondiale della Sanità (OMS) per il fatto dei vaccini. Non essendoci più la sicurezza, viene sollevata anche la problematica secondo cui dove è effettivamente la libertà? La libertà di lasciare circolare una malattia contagiosa e potenzialmente letale, o la libertà di stare bene senza che l'altra persona non venga infettata.

[…]

A.Z.: Secondo lei quindi c'è stata anche una strumentalizzazione politica del tema, per guadagnarsi sostegno elettorale e voti? Si è visto come molti partiti politici hanno cavalcato l'onda delle posizioni no-vax, che poi hanno in qualche modo ritrattato le loro posizioni.

M.L.: Da un giorno all'altro, i medici che discutevano in favore delle vaccinazioni non sono più apparsi in televisione, i servizi in merito sono stati ridotti, se non spariti. […]

A.Z.: Qual era la situazione con il governo guidato dalla coalizione politica di Movimento Cinque Stelle e Lega?

M.L.: Il Ministro Grillo, all'inizio, aveva mantenuto un atteggiamento flessibile riguardo l'obbligo vaccinale. Poi, dopo l'insorgere degli specialisti medici, ha ritrattato la sua posizione. […]

A.Z.: Anche in questo senso, oltre ad esserci dei dati scientifici che provavano la gravità della situazione dell'epidemia, è possibile che ci fosse una pressione politica dietro all'adozione di questa misura obbligatoria?

M.L.: In astratto, sarebbe più giusto convincere le famiglie a vaccinare, però allora bisognerebbe eliminare tutte le informazioni non corrette che influenzano la popolazione.
[…]
A.Z.: Sembra quasi che le esperienze negative con i vaccini vengano sottolineate più di quelle che hanno portato risultati positivi.

M.L.: Certo, la dimensione emotiva è quella che prevale in queste discussioni, anche data la sensibilità del tema. Ovviamente, è ammesso che ci possa essere un caso in cui la vaccinazione dia effetti collaterali negati, ma rientra nei normali valori statistici.
In ogni caso, l'ideale sarebbe avere il tempo per convincere le persone a vaccinarsi, però comunque ci sono persone che non sono disponibili a comprendere.

Table of Contents

The aim of this investigation is to analyse the relationship between the individual and public spheres with reference to the decision-making process in the public sector and, in particular, focusing on the Italian and French realities characterised by the introduction of mandatory vaccinations to contrast the growing rates of measles in their territories. The selection of the topic is justified by the fact that these compulsory public health measures still fuel the political and social debates in the two countries, thus still making room to further analyses. Moreover, the discussion may possibly be extended to other domains of common interest in which there has been registered a controversial imbalance between the individual and communitarian's spheres. In point of fact, other public sectors, such as national security, have experienced this genre of disequilibrium, therefore making the examination and the connected findings expandable to other domains. The main subject is the controversy between the aforementioned types of rights, and it is analysed with reference to the research question: how does public intervention influence the balance between individual rights and collective guarantees, while contrasting the diffusion of an infectious disease? Hence, the selected methodology entails a combination of primary and secondary sources with reference to documentary proofs from the dedicated ministries, national health agencies, and organisations engaged in the discussion mostly dated between 2016 and 2018. Alongside, to have an insight view of the topic, interviews have been carried out with four members of the selected epistemic communities that are doctors, legal experts and journalists. The work is structured in five chapters, the first two are the state of the art and the methodology applied to this investigation. In the former, it has been analysed the evolution of the role of the state in accordance with the main schools of thought, the variation of its relationship with the individual, the challenges that characterise the public policymaking process, having also a look to the features of the modern role assumed by the state authority, then ending with the explication of the founded gap in the literature. Then, it is provided an overview of the two nations' legal backgrounds (Chapter 3), doing also a brief examination of the European framework of reference. Chapter 4 analyses the medical side of the research as regards to the outbreaks, the incidence of the disease, offering an examination of the functioning of the Italian and French healthcare systems, and considering the measures implemented by the two governments to cope with the epidemic. Finally, Chapter 5 will examine the discussion around the two hypotheses at the basis of the investigation. First, will be tested the idea that the higher the significance of the outbreak of the epidemic, more likely the principle of proportionality will be shaped to favour a more effective public policy strategy. While the

second hypothesis refers to the eventual effects that the adoption of certain public policies can generate and the potential changes with regards to the equilibrium between individual and collective rights. As a result of the research work, emerged how the state's actions have not exceeded the proportionality principle because the critical circumstances related to the spread of measles were already significantly endangering the wellbeing of the community. Secondly, there has been indeed an evident disequilibrium between individual and collective spheres and the strategy of the state to favour the community. Nevertheless, this peculiarity does not differ from the State's duty to protect and preserve the common welfare as it is stated in the Italian and French constitutions. The public authority, actually, moved away from upholding an individualistic perspective, to favour the safety of the whole community.

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