

# Health Pass in France – The Ethics of Conviction and the Ethics of Responsibility

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*The arrival of COVID-19 marks the return of the state. In this pandemic anomie, institutions are facing challenges to which they are struggling to find adequate answers. How to juggle between the need for general protection imposed by the health crisis and the individual rights so dear to democracies? How to strike a balance between protection and deprivation, between coercion and conviction of the correctness of decisions? In search of the best solutions, the state wanders, often adopting an overly paternalistic attitude, which irritates the population. But indecision in management, especially in times of crisis, can do even more damage.*

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## Introduction

We have never heard so much about dictatorship in France than during this covid 19 crisis and especially about the health pass: “health dictatorship,” “vaccine dictatorship,” “violation of freedoms,” “presidential authoritarianism.” The government was not left out of authoritarian concepts: “war,” “state of emergency,” “mobilization,” “curfew” (...) and did not skimp on the prohibitions appearing quite arbitrary (Fregosi, 2021).

There is nothing democratic about a pandemic. In the spirit of Durkheim, this period could be called “the period of acute anomie.” In crisis management, there were no major differences in solutions between authoritarian and democratic regimes. To understand the restrictive

government measures supposed to fight the COVID-19 pandemic, we can turn to Max Weber and his two ethics: the ethics of conviction and the ethics of responsibility. On the one hand, the ethics of conviction is based on the Kantian principle of duty: one must act according to higher principles in which one believes.

Responsibility ethics means acting based on concrete effects that can reasonably be expected. Absolute moral systems are concerned with premises, while political ethics are concerned with consequences. One who is driven by the ethics of conviction will put his principles before results, and as Weber says, he will attribute his failure to other men, to society, or to God. Whoever acts according to the ethics of responsibility will take the world and people as they are and hold themselves accountable for the results of their actions, whatever constraints they encounter (Weber, 1959). The politician is responsible for the results, whatever the strength of those who can compromise them: the politician's ethics is that of danger and risk, of the awareness of the possibility of error.

### **Health pass in France**

Health pass came into effect on June 9 in France for events that brought together more than 1,000 people. However, faced with the increase in COVID-19 cases due to the spread of the Delta variant and vaccination that was too early to contain it, it was made compulsory from August 9, 2021, for adults 18 years and plus, and from September 30, 2021, for 12-18 year-olds, for anyone wishing to access many places of life, such as cafes, bars, restaurants (terraces and rooms), cultural and leisure venues, hospitals (non-urgent care), retirement homes, fairs, seminars, and trade shows, without any notion of gauge. By prefectural decision, it may be compulsory to access shopping centres of more than 20,000 sq.m in certain departments. Finally, long-distance transport (trains, coaches and planes) is also affected by the measure (Tobelem, 2021; Service, 2021).

France is far from having been the first to make this choice on the Old Continent. It is not the last either. The EU's digital Covid certificate regulation entered into force on July 1, 2021. The device is now widely used in Europe, although its terms differ significantly from state to state. All health passes are intended to be maintained on a temporary basis, while national epidemics are brought under control, even if some fear their sustainability in one form or another. It has thus happened that countries have reduced them considerably or even eliminated them (Commission, 2021).

In France, to obtain a health pass, you must meet one of these criteria (Gouvernement, 2021):

1. Vaccination, provided that people have a complete vaccination schedule and the necessary time after the final injection, either:

- 7 days after the 2nd injection for double injection vaccines (Pfizer, Moderna, AstraZeneca);
- 28 days after injection for vaccines with a single injection (Johnson & Johnson);
- 7 days after the injection of vaccines for people who have had a history of COVID (single injection).

2. Proof of a negative test of fewer than 72 hours.

3. The result of a positive RT-PCR or antigen test attesting to recovery from COVID-19, dating at least 11 days and less than six months.

The extension of the health pass and compulsory vaccination for certain professions triggered demonstrations in France, called the “anti-pass” or “anti-vax” in the media, and often compared with the movement of yellow vests which, three years ago after its appearance and two years without significant activity, does not cease to haunt the authorities and remains very present in the minds of the population.

### **Sanitary passes versus “Yellow Vests”**

The movement against the health pass expresses “a breach of confidence, not so much on the measures that are taken, but on the way, they have been taken,” declared Antoine Bristielle, director of the Observatory of the opinion of the Jean Jaurès Foundation (Bristielle, 2021). According to him, the demonstrators are far from all anti-vaccine. There are people who are anti-vaccine, but also others who demonstrate more clearly against the health pass or for freedoms or against the fact that it is something that is imposed from above by the government. Opponents of the health pass “are rather people who are relatively young, there is an over-representation of 25 to 34-year-olds who consider themselves to be the most affected by the health pass. Antoine Bristielle believes that we can make the link with the movement of Yellow vests because the anti-health pass movement once again reflects a feeling of the illegitimacy of institutions and the way in which decisions are taken, which had already been denounced by the yellow vests advocating the citizens’ initiative referendum. Historian Sylvain Boulouque also thinks that the anti-health pass movement is quite similar to that of the Yellow vests (Desarbres, 2021). On the one hand, there is a part of the extreme left, and on the other part of the extreme right. People on the left are rather in favour of the vaccine, some would even be in favour of a compulsory vaccine, but they are opposed to the health pass and the constraint on freedoms that it produces. The second part of the demonstrators who are rather on the right are anti-vaccines: in the name of individual freedom, I do what I want.

For Jean Petaux (Collet, 2021), political scientist, the demonstrators share certain struggles: the fact of being anti-elite, anti-system. In both movements, we also observe the same lack of organization and defined structure, as well as the same use of social networks and instant messaging. The anti-pass movement is broader, bringing together mainly an urban population, while the yellow vests came from a certain peripheral France. There are people from all walks of life, executives, and even people who have been vaccinated. However, if the yellow vests enjoyed very broad support, 49% of the French population are strongly opposed to the anti-health pass movement.

Also, the government’s behaviour is firmer against anti-pass than at the time of the Yellow vests because defending the legitimacy of a 90-95% vaccine coverage is easier than defending the legitimacy of a carbon tax, as was the case in 2018. The government, on the strength of polls among the French who, nearly 70%, believe that the pass is legitimate, is more able to show its muscles. The health pass requirement is difficult to refuse, even for those with social difficulties, because there are no associated costs.

According to the psycho-sociologist Pascal Marchand (Marchand, 2021), it is important not to confuse the movement of Yellow vests and the movement of anti-health passes. The yellow vest movement from protest to protest was building a representation of alternative politics and a political agenda. On the contrary, the only thing the manifests have in common concerning the anti-health-passes movement is the perception of being deprived of a certain freedom. Certainly, there is also among them, as among the Yellow vests, a rejection of institutions and

the first of them is the public health institution. The recent history of the country has shown that pharmaceutical industries and others were able to diffuse products that caused toxic damage to the population. There is also hostility towards the media, seen as the prolonged hand of power. A loss of credibility of traditional media has led to recourse to alternative media – to more conspiratorial social networks.

### **Compulsory vaccination for certain professions**

From September 15, health personnel and all people working in health establishments as well as firefighters, ambulance workers, or even home helpers, gendarmes and soldiers, must have received at least one dose of vaccine. Or they will need to have a certificate of recovery if they have already contracted COVID-19 or a certificate of contraindication. After September 15, those who are not in good standing (by this date, they must have made at least one injection, then have a complete vaccination schedule by October 15) will be suspended until they become compliant, and for this time, they will no longer receive their salary (Chéreau, 2021).

The issue of compulsory vaccination was particularly discussed in relation to medical personnel. There are those, rare, who have chosen to hang up the blouse. The fact that some people are resigned to giving up this profession for which they had a real vocation, often nurtured in childhood to escape vaccination, is appealing (Haroche, 2021). Professor Karine Lacombe analyzed “In care, the interest is collective. When we engage in care, we think of others. And thinking about others means making sure you are vaccinated, protected so as not to infect yourself and not to infect others either. It is an approach that is altruistic. We do not want to be vaccinated, we change jobs, we make ourselves available” (Haroche, 2021).

Behind this type of observation is the idea that these people had no place in the medical profession. Thus, a caregiver who rejects vaccination would necessarily be a bad caregiver. Dr. Gérald Kierzeck, for his part is irritated by the “stigmatization” of unvaccinated staff: these same caregivers who were applauded in the spring of 2020. We can truly speak of institutional mistreatment and harassment, leading to a vicious circle of resignations, departures, and lack of staff (Haroche, 2021). According to Frédéric Pierru (CNRS), a specialist in the medical field cited by *Liberation* (Favereau, 2015), the bourgeois recruitment of the medical profession leads to a social hierarchy: the well-to-do classes who give orders to the middle and popular classes. However, regarding the refusal of vaccination, the further down the scale, the greater the reluctance. There may be a message: we, the orderlies and nurses, are not under the orders of the doctors.

What about the sacrificial meaning of the vocation of a caregiver? Putting on the gown is the pragmatic choice for some caregivers that offers the greatest certainty of finding a job. Caring can be seen as a professional activity like any other, which one accepts to do, but without however giving up on one’s own convictions. In any case, we can note how much the health crisis has led to a crystallization of the splits that have always existed, exacerbated by political considerations and by social networks.

### **What consequences for democracy can the introduction of the health pass have?**

The professor of medical ethics, Emmanuel Hirsch, emphasizes that, paradoxically, because in France people have the privilege of having vaccines against COVID-19, the question of individual freedom and the choice to be vaccinated or not is aroused. What about

fundamental freedoms if this remedy has not been offered, as is the case in low- and middle-income countries (Hirsch, 2021)?

Does the law relating to the management of the health crisis mark an inflection that is detrimental to democratic values and principles (Loi, 2021)? How do we think about our responsibilities in an emergency and in both (political and ethical) challenges?

In an opinion of July 16, the COVID-19 Scientific Council “notes that certain provisions provided for in this new law can generate limitations on individual freedoms but can also make it possible to maintain greater freedom for the wider world” (Avis, 2021). The Universal Declaration of Human Rights (art. 29-1) (La Déclaration, 1948) maintains that “the individual has duties towards the community in which only the free and full development of his personality is possible.” Tested by an interdependence whose imperatives and rules we have understood, is self-determination affirmed as an act of freedom, even of resistance, a position that is democratically acceptable? Individualism comes up against the limits of its legitimation when it does not allow intervention in a pandemic phenomenon that we can only manage to control through collective action. The idea of individual freedom must be examined considering the circumstances of a pandemic.

If article 16-3 of the Civil Code invoked to oppose vaccination affirms that “the integrity of the human body can only be harmed in the event of therapeutic necessity for the person” (Code Civil, 2004). Would it not be appropriate to admit that in a pandemic individual integrity is reciprocally conditioned by the respect accorded to collective integrity? Believing that refusing vaccination preserves one’s integrity should not be unfavorable to that of others. Therefore, the vaccine strategy now has an ethical and political scope beyond a health imperative.

However, according to the philosopher and writer Gaspard Koenig, not being able to move around in public space without showing your identity is serious. Morally, it is a barrier to be crossed, open a bit anyhow, without debate (Koenig, 2021).

The vaccine today in France is free and available to everyone. The choice is individual: those who want to protect themselves can do so. However, even vaccinated, we can be contagious. Authorities are touting the Covid-19 vaccination and health pass as a shield against transmission, while studies are only emerging. Koenig believes that once the vaccination is available to everyone – it is a matter of individual responsibility. According to him, the health pass creates very strong damage: the end of anonymity, as well as the transformation of civil society into controllers for the state. As not everyone is going to do it, it will produce lawless areas. There is also a kind of class contempt in it since the two camps are opposing each other without speaking to each other. Koenig even thinks that compulsory vaccination for all would be more justifiable and pose fewer problems than the health pass since it would be a universal measure that does not induce public space control. The state did what it needed to do: it allowed the entire population to be vaccinated, and from that point on, any restriction policy became illegitimate.

It’s very difficult once you put in place control measures to remove them. A whole ecosystem is being created. We bequeath to future generations a world where there is no longer an anonymous public space, where we can no longer move freely, where we must constantly justify ourselves. “I don’t want to live in a world of constant control,” says Koenig (Koenig, 2021).

Critics of the health pass unanimously denounce an authoritarian danger. The National Commission for Informatics and Freedoms (CNIL) presents this danger as “the risk of habituation and trivialization of such devices that threaten privacy and slippage, in the future, and potentially for other considerations, towards a society where such controls would become the norm and not the exception (Délibération, 2021). The health pass is nothing new as a mode

of regulation. This is how the French state treats foreign people. After checking whether their situation complies with criteria set by the state, it issues them a permit: visa, residence permit, etc. Until recently, however, this type of repression had important practical limitations: titles could only be issued with a certain delay, and at a certain cost, many police officers had to be deployed to verify them, and some police officers had even to be specifically trained to verify its authenticity. These limitations undoubtedly explain in part why this type of repression has so far focused on specific cases (such as the control of foreigners) without being systematically deployed to manage any other situation that the state wishes to regulate.

New technical developments could remove these old limits and allow this form of repression to apply to the entire population for a very wide variety of places and activities. Over the past decade, most of the French population has acquired a smartphone equipped with a camera and capable of reading 2D barcodes. At the same time, the administration has largely adopted the tools of 2D barcode and cryptography to secure the documents it issues. This makes things possible today that were unthinkable even a few years ago. This allows tens of thousands of untrained and unpaid by the state (but simply equipped with a smartphone) to be entrusted with the task of controlling the entire population at the entrance to countless public places and this at an extremely low cost for the state since most of the infrastructure (telephones) has already been privately financed by those in charge of control. Now, and suddenly, the state has the material to regulate public space in almost total proportions (La quadrature, 2021).

The massive adoption of the health pass would have the effect of accustoming the population to submit to this mass control. However, paradoxically, the health pass does not appear to be a very effective regulatory tool in its current format. It seems difficult to prevent doctors from providing passes to people who shouldn't. And, "good people" can easily share them with "bad people." Of course, the police intend to carry out identity checks to combat such exchanges, but while the effectiveness of the system ultimately relies on random police checks, there was no need to deploy mass surveillance mechanisms. Meanwhile, cases of fraudulent vaccination certificates are on the increase (Dupré, 2021). The traffic in false certificates has given justice a lot of work. At the Ministry of Solidarity and Health, they advocate severity, while readily recalling Article 441-1 of the Penal Code: "Forgery and the use of forgery are punishable by three years' imprisonment and 45,000 Euros fine" (Dupré, 2021), in a spirit of paternalistic rigour.

## Conclusion

The politician has, by definition, no excuse: it is the counterpart of the exercise of sovereignty. The good ruler decides without always knowing perfectly because one is perpetually confronted with the urgency of action. He should not dwell too much on his own doubts, even if it is healthy for him to have them. In the best of all possible worlds, conviction and responsibility are not mutually exclusive. But when it comes to acting in a marked world, this opposition arises when the action must be decided (Tenzer, 2007). On the other hand, the state in a democracy is obligated to prove that a measure causing risks to fundamental freedoms is necessary before it is deployed.

In France, the government imposed the health pass without demonstrating its effectiveness. It did not deploy or test alternative measures that would pose no risk to freedoms (such as benevolent, transparent, and non-paternalistic communication campaigns of vaccination) or additional ambitious measures (such as the release of funding to allow the doubling of classrooms and their ventilation, for example).

The effectiveness of the pass in terms of health remains to be demonstrated. There are still many uncertainties: transmission rate even once vaccinated, the effectiveness on new variants, the validity period to remember... Despite everything, the executive can be happy: in December 2020, only 42% of French people were favorable to vaccination. At the start of October 2021, 75.2% of French people had received at least one dose of vaccine, 72.8% had received all the required doses (COVIDTracker, 2021). Another reason for government satisfaction is the acceptance of the health pass by 70% of the population (Timsit, 2021), which confirms the adherence of the French to the government's anti-COVID policy, even if it has brought essential importance restrictions.

However, the rulers and the population must remain vigilant: if today, these injunctions are only concerning the health sphere, we must fear that this kind of tool, once trivialized, could be put at the service of injunctions going well beyond this framework. And that a few more steps towards Technopolis could crush democratic freedoms for good. As Renée Fregosi said: "Spoiled children of democracy, Westerners have become lazy to defend democratic gains through constant vigilance and renewed inventiveness to adapt to new challenges" (Fregosi, 2021).

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