

Published: December 31, 2023

Citation: Cárdenas Krenz R., 2023. Health Policies & Nudges: Reflections Before the Next Pandemic. Medical Research Archives, [online] 11(12). <https://doi.org/10.18103/mra.v11i12.4839>

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DOI: <https://doi.org/10.18103/mra.v11i12.4839>

ISSN: 2375-1924

RESEARCH ARTICLE

Health Policies & Nudges: Reflections Before the Next Pandemic

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ABSTRACT

What has been experienced during the COVID-19 pandemic, especially in the most vulnerable populations, has revealed the need for a new health model, much more fair, efficient and inclusive; However, defining and applying it is particularly a complex task.

When the pandemic arrived, health systems in different parts of the world revealed their precariousness and inequality, exacerbating the vulnerability of some groups. To make matters worse, the international response once the crisis arrived revealed limited solidarity in the most difficult moments of the crisis.

Although the arrival of vaccines months later offered hope, demonstrating the importance of collective work and not the fate of nations, many people, for reasons of the most diverse nature, were reluctant to get vaccinated. So, governments, faced with the urgency of confronting the virus in the most massive and rapid way, dictated different measures, sometimes correct, sometimes controversial, with the purpose of promoting vaccination.

This intervention, beyond its results, should raise questions about the scope and limits of state intervention in health, what are the terms that the relationship between the individual and the State should have, the need for subtle measures to motivate vaccination and the possibility of applying nudges as a strategy for the effect.

The experience of the pandemic, with its millions of victims, raises the need for a global and autonomous model, taking advantage of globalization to access knowledge, produce medicines and vaccines, as well as distribute them in the most efficient way.

In this purpose, science plays a crucial role, even when its postulates are provisional. States must rebuild lost trust in their governments, and know how to balance health and the economy. The pandemic has highlighted the importance of global public goods and the need to reconcile personal and collective interests instead of opposing them.

Lessons include the need for universal health systems, balanced measures by the State and the promotion of both a culture of responsibility and an ethic of care, with persuasion preferable to imposition.

This article certainly does not seek to propose what this system should be, which requires deeper and more interdisciplinary work, but it does seek to propose some guidelines that serve as guidance in this task, based on reflection on the experiences lived in the fateful days of the pandemic.

Introduction

The COVID-19 pandemic and the macro crisis that came with it, has undoubtedly marked a before and after in the context of individual and collective relationships⁽¹⁾ making it essential to take advantage of the lessons that can be learned from it.

One of the lessons that the pandemic has taught us is the need for a new model of health, especially in the most vulnerable populations, not only because of the certain possibility of new pandemics, but also for reasons of social justice, inclusion and equity. That being clear, the question is to determine which model we should aspire to, how to implement it, what its challenges are and what are the foundations on which it should be built.

Despite its many difficulties and edges, the truth is that it is a task of necessary undertaking, even more so since we are exposed to new evils, randomly or not, within which can include the appearance of unknown pathogens. It is important to say that, according to the World Health Organization (WHO), in the last fifty years, scientists have been able to identify more than 1,500⁽²⁾.

In a globalized and interconnected world, mobility is dynamic, constant, complex and unstoppable. While it is true that no matter how many precautions and precautions we had taken, the virus would still have reached anywhere, it is also true that, if we had been more diligent, far-sighted and aware, it would have taken longer to reach us and its effects would undoubtedly have been less intense.

While globalization can be blamed for the faster spread of viruses around the world, the truth is that we also owe it the possibility of

the earliest production and distribution of vaccines, which ended up saving millions of lives, as we well know. The problem, therefore, is not globalization itself, but how we can make it more useful, functional and inclusive.

It has been said that "global crises accelerate without finding an answer",⁽³⁾ what is necessary, consequently, is to start looking for such answers.

A consideration to keep in mind is that any model that is adopted requires the handling of two dimensions simultaneously: one globalized (or heteronomous) and the other rather local (or autonomous). In other words, this new health model must know how to insert itself into the international environment, but, at the same time, it must have sufficient autonomy to avoid external dependence.

And it is precisely in the most stormy moments of the pandemic, when countries urgently required masks, medicines and other types of health or logistical support, that it was not solidarity that prevailed in the world; for instead of the solidarity and joint response that was desirable and demanded by the times, Each country – practically left to its own devices – had to fend for itself⁽⁴⁾.

In this way, the COVID-19 crisis, in a disconcerting way, highlighted the slight threads with which international solidarity is woven, as well as the lyricism of international declarations.

The WHO, unfortunately, has shown that it does not have the power of the International Monetary Fund or the World Trade Organization.

It was only in the distribution of the vaccines that the action became more coordinated at the international level, achieving the successes that are known, containing the pandemic.

At the country level, the pandemic put our public health policies to the test. After the exam, it can be said with regret that we failed the vast majority.

Methodology

To prepare this article, we have started from the social study of the COVID-19 pandemic between the years 2020 and 2023, with special but not only reference to Latin America, resorting to various bibliographic sources of different countries, taking into account a perspective from the application of nudges and human rights.

An unexpected visit

On March 11, 2020, the WHO declared COVID-19 a pandemic. By that date, they had already registered 118,000 cases with more than 4,000 deaths in 114 countries.

What follows is a well-known story: uncertainty, desperate buying of products, misgivings, sanitary measures, travel restrictions, confinement, fear, masks, virtual classes, social distancing, remote work, overwhelmed hospitals, infodemic, *fake news*, and a long etcetera.

If at first it was the indifference, then it was the denialism in various forms⁽⁵⁾, the minimization of the crisis and overconfidence on the part of citizens and States.

Looking at things in perspective, it is surprising that, knowing the news coming from China, the rest of the world, did not know how to react properly; the problem of the virus was perceived as something distant and even exotic. Even though we could see the future that awaited us in Italy, we did not take advantage of such an advantage to properly

anticipate the facts and take measures to mitigate the effects of the pandemic.

There is no doubt that the health crisis hit us all, both physically and emotionally, individually and collectively, even impacting our mental health, with effects that would end affecting all social groups, but especially on the youngest.

With the development of the crisis, the pandemic suddenly meant the restriction of the exercise of personal autonomy in the interest of the general interests of public health and the common good⁽⁶⁾, and then we found ourselves in the need to resolve several dilemmas: "Take care of health or protect the economy? Privilege freedom or defend security?" How to distribute hospital beds in the face of a shortage of beds? What is the role of the state? What is the responsibility of citizens? What is the responsibility of the individual himself?

Beyond responsibilities, the truth is that, as Boyer says, the pandemic aggravated inequalities and, in addition, created new ones, including the problem of access to health services⁽⁴⁾. It is also relevant that, in the economic sphere, the problem of the impact was not so much the duration of the pandemic, but its intensity⁽⁵⁾.

There is no doubt that the pandemic affected us all, but, in reality, not everyone equally. How can you ask a person, who lives from day to day, to stay at home and not go out to work because there is a quarantine? How can we ask those who don't even have water to wash their hands continuously?

A "differential vulnerability" then appeared⁽⁷⁾, making it clear that, although we were all sailing in the same stormy sea, we could not

all face the disease in the same way; and we were not all in the same boat.

That vulnerability was worse in regions such as Latin America with its problems of inequality, structural deficiencies, corruption, governance and state management.

As a result, the pandemic not only highlighted the precariousness of our health systems, but also the differences between some classes and others, as well as – as Boyer⁽⁴⁾ says – blurring the boundaries between work, family life and leisure time.

Faced with the State's bewilderment because the rapid and devastating advance of the virus, governments took various measures, not always coherently, by the way, so they would be oscillating and variable. Legally, factually and without further debate, it seemed to be assumed that the rules are valid only when the circumstances are normal, and the law was - in different areas - set aside.

In the absence of norms for such an unusual situation, the States, seeking to give a greater legal clothing to their decisions, resorted to general clauses of necessity⁽⁸⁾. In the name of order and in the face of the urgency of immediate and drastic measures, the power of the State was strengthened; in the name of security, freedom was restricted; in the name of care, willingly and unwillingly, xenophobia and nationalism were encouraged.

When the pandemic arrived, States had to meet demands from all fronts, all of them accompanied by intense campaigns on social networks for their better articulation.

Technology has enhanced communication, making it more immediate and inviting, encouraging various social groups or collectives

to find new spaces to meet and manifest themselves. This possibility of integration, in turn, has led to the strengthening and emergence of new identities, now emerging demands for justice of a global nature, generating new and more difficult problems of governance, as well as the satisfaction of expectations or justice, impossible to address under outdated schemes, as Valdés Ugalde says⁽⁹⁾.

And so, just as the economic system is questioned, the political system is also questioned, including the very idea of democracy, making new populisms gain ground, leading to an aggravation of the institutional deterioration that is already quite serious in some countries, especially from Latin America.

Beyond the good intentions of various governments, the health crisis served to strengthen some non-democratic governments; and so, in the name of the protective role of the borders, nationalism and xenophobia were promoted; in the name of security, sensitive citizens' information was accessed and freedoms were restricted.

On the other hand, in the cultural and educational field, we had to face the relentless bombardment of *fake news* and countless conspiracy theories of the most outlandish kind. In this area, with little or no capacity to respond, States lost numerous battles.

Misinformation, if not desperation, caused people to adhere to misconceptions, such as that chlorine dioxide or the consumption of llama meat could work against the coronavirus. All this in a context of oscillating health measures, with marches and counter-marches, which, at one time, social distancing was two

meters, then one; medicines that were good for today were no longer good for tomorrow; one day they said you had to wear gloves, the next they said you didn't need to, and so on.

Vaccines to the rescue

The appearance of vaccines in December 2020 generated enormous hopes worldwide for the solution of the health problema. However, governments soon realized that many people were refusing to be vaccinated, arguing the most diverse explanations: distrust of the rapid speed with which vaccines had been produced, concern about the side effects of the vaccine that could not yet be foreseen, general distrust of the government, distrust of pharmaceutical companies, or the idea that everything was just a pretext to introduce a chip into our bodies for the purpose of to dominate us, among other theories.

Although the Constitutional Courts of various countries of the European Union have validated the constitutionality of mandatory vaccination, legitimizing the restriction of individual rights, this obligation never meant coercion to forcefully vaccinate people (10).

Given the ineffectiveness of rational arguments for many people to be encouraged to get vaccinated, so that we can all be more protected and return to normality as soon as possible, the States decided to take various measures, some more effective than others, including some of fragile legality or of questionable convenience.

This leads us to think about the extent to which a State can guide or induce our behavior as citizens, specifically in terms of health, without violating our rights; specify the ethical and legal limits of the "architecture of decisions" of

which Thaler and Sunstein speak; as far as can we accept these measures without descending into a kind of state paternalism?

As part of the measures to fight COVID-19, governments resorted to citizen understanding or a sense of responsibility, but, as these efforts were insufficient for greater coverage, they appealed to other types of indirect incentives, such as resorting to campaigns with public figures to motivate people to get vaccinated, or giving a festive environment to some vaccination clinics including music, shows and people in costumes.

But there was another emerging and uncontrollable social issue: the long weeks of confinement fueled contempt and social indiscipline, to which would also be added the vaccine apathy.

Then, other types of motivating measures emerged from the States:

- In the United States, hamburgers, donuts, beers, etc., were given away, and even scholarships and a million dollars were raffled.
- In Moscow, discount cards were given as gifts.
- In Israel, pizzas, dessert and coffee were given away free of charge.
- In China, the incentives were eggs, as well as discounts in establishments.
- Hong Kong, on the other hand, offered nothing less than gold bars.

However, apart from recreational or festive measures, there were also coercive measures, such as bans on entry to cinemas, stadiums, public transport, air travel, shopping centres and others through measures of questionable legality.

Decisions in public administration, says Kosciuczyk, are often based on a classical view that omits sociological, psychological and anthropological factors, which can lead to undesirable results⁽¹¹⁾. Therefore, any health model must take these factors into account.

It is this limited perspective that may suddenly be the explanation for the infectivity of confinement, resistance to vaccines and the reluctance to wear masks by many citizens.

Faced with the lack or insufficiency of results, the State had to resort to more subtle measures and that is when the *Nudges* appeared, with the purpose of inducing people to carry out positive behaviors for their own benefit, through a "decision architecture" oriented to it.

Something fundamental mentioned by Thaler and Sunstein is that an essential requirement for its application is that, for the sake of transparency and publicity, any *nudge* must be known in advance by its recipients.

It should also be borne in mind that such measures should not be confused with other types of very different incentives, such as blackmail or fines.

Of course, care must be taken that the intervention of the State to correct behaviour paradoxically ends up accentuating it. It is not wrong to induce (always within the law, by the way), but this should not mean renouncing people's awareness as part of any public policy that is sustainable in space and time in a democratic society.

On the other hand, it should be considered that *nudges* are not alien to ethical discussion. In Greensboro, North Carolina, to prevent teenage mothers from getting pregnant again, they are given one dollar a day for each day they

do not get pregnant again; Although, it does not seem that the incentive is the most appropriate to avoid new pregnancies, it is worth saying that the results would be promising⁽¹²⁾.

A Few Considerations

We live in a society full of perplexities and bewilderments, with increasingly complex, dense and intense interactions (13).

The times demand new forms of relationship between governments and their citizens. In this context, rather than trying to solve the uncertainties of our existence, which may be impossible, the important thing is to know how to manage them and know how to live with them.

In this context, science, with the contribution of its rationality, can be of great help, without forgetting the provisional nature of its postulates, as one of the lessons of the pandemic. Only through science can we get closer to the truth, but always bearing in mind that scientific truths are always provisional, tentative, open to questioning. The richness of science is not in the truths it discovers but in the falsifiability of what we take for knowledge.

From the perspective of government action, States should prefer less on interventionist or invasive measures in favor of more subtle and creative actions, with fewer prohibitions or restrictions⁽¹⁴⁾. It is also important to be attentive to the manifestations of imperativeness that may underlie the conditioning of activities.⁽¹⁵⁾

One of the essential challenges of the State in many countries, without a doubt, is to recover lost trust.

It is interesting to note that during the pandemic, health has been privileged over

the economy, in an impressive reversal of values⁽⁴⁾. Although at first the dichotomy seemed to be having to choose between one concept and the other, with the passage of time it became clear that too long a quarantine would affect production and that this, precisely, would affect the values that the sanitary measures wanted to preserve. Finally, vaccines, positive for both variables, would appear to put an end to the false dilemma, as Sebastián notes.

It is also worth highlighting the contribution and value of the pandemic for the recognition of the existence of global public goods and the reinforcement of the idea of a global bioethics as a requirement of our times, in the context of an ethics of responsibility, taking into account that "Whatever may be the immediate result of human conduct in the individual and social order, no one who calls himself a man can excuse himself from existing from a deep unappealable relationality." that makes him responsible for others and with others, in addition to being responsible for himself," as Padrón says⁽¹⁶⁾.

Autonomy implies limits, since it is not absolute, as well as responsibility for the exercise of that power⁽¹⁷⁾.

In this search for the good, for a good life reconciling individual interest with social interest, it is worth noting that we are living not only in a time of change, but also in a change of era. In this context, according to Sandel, a just society is not reached through the maximization of utility or the mere guarantee of the freedom to choose, but rather "we must reason together about the meaning of the good life and create a public culture that welcomes discrepancies"⁽¹⁸⁾ that makes us capable of reconciling personal interest with social interest.

On this path, perhaps we can see in Thaler and Sunstein's idea of *nudge*, a third way seeking to reconcile state intervention to protect individual health and freedom.

It is up to the State to avoid conduct that may harm others, such as ourselves, in the pursuit of the satisfaction of our desires and interests⁽¹⁹⁾. However, since it is functional to resort to *nudges*, they should not replace other public policy tools; in that sense, more than a replacement, they are a complement and should be temporary. As Cuello says, its use during a pandemic can be positive if used intelligently and moderately, applied specifically where practical evidence demonstrates its greatest effectiveness. "In those cases, it could serve as a relief for citizens in some areas, so that they do not feel the weight of constant prohibitions and enjoy flexibility and freedom for as long as possible, even in times of global pandemic"⁽²⁰⁾.

In the search for a new model of health, there can be no talk of promoting and defending it without citizen participation⁽²¹⁾, which must play an active and informed role. As Cierco Siera says "in the face of clearly coercive measures, informative and incentive measures should be promoted as a priority"⁽²²⁾.

In addition, for better decision-making, it is essential to improve information systems⁽²³⁾ at all levels. Adequate information transparency policies are required. A study published in *Nature* revealed that if China had taken non-pharmaceutical intervention measures one, two or three weeks earlier, there would have been a reduction in the multiplication of contagion that would amount to 66%, 86% and even 95%⁽²⁴⁾.

A health system cannot be discriminatory. Given the cases of discrimination based on

age when assigning ICU beds seen during the pandemic in various countries, we must learn as a lesson that each case must be assessed with clinical criteria and not from generic restrictions referring to a certain condition such as age, or disability, as pointed out by the Ombudsman's Office in Spain⁽²⁵⁾; The life of an older adult is not worth less than that of a young person just for the fact of being an older adult⁽²⁶⁾.

We need to have adequate universal and accessible health systems, which especially protect the most vulnerable, based on an ethic of care. The future that awaits us will be global, and therefore, it demands a global bioethics ready to meet global demands, without losing the minimum autonomy necessary to sustain countries in times of international crisis.

The pandemic should serve to make us more aware of our interdependence, since personal autonomy is a relational notion⁽⁷⁾; understanding that there is an inseparable relationship between our lives and the lives of others, between individual health and public health. All this in addition to the fact that "the autonomous subject wants to be registered by others in their same autonomy; but, paradoxically, to be carried out as an autonomous practice, it needs the other."⁽²⁷⁾.

Conclusions

- 1) A pandemic can justify confinement – and, therefore, the restriction of freedoms – but it is a measure that must have a limited, rational, prudent and balanced extension, avoiding the impact on other fundamental rights.
- 2) We must assume the need for a culture of responsibility, both on the part of the

state, companies and citizens, bearing in mind that "there is no individual way out of a pandemic"⁽²³⁾, we must always have the other into account. To promote good health behaviors, the State's strategy should be to persuade rather than impose; to convince and not manipulate; without resorting to punishment as a tool and considering that criminalizing behaviors does not seem to be an efficient measure⁽²⁸⁾. The application of *nudges* can be an interesting alternative, as a measure to channel behaviors until a sustainable culture is reached over time.

Conflict of Interest Statement:

None

Funding Statement:

None

Acknowledgement Statement:

None

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