

The “foreign” virus? COVID and (open) borders: The (sad) case of Norway

I. Introduction

Unsurprisingly, given its overwhelming effects, significant amount of philosophical corpus has already been produced on COVID-19¹ (henceforth: COVID) and its effects.² This is one reason why we were surprised when, preparing to write this paper, we have, as always, searched for relevant literature, and found little philosophical material on the role and justification of border policy in the present pandemic. In particular, we have found only one article – Owen (2020) – in the philosophy literature that specifically connects the pandemic to the question of borders.³ This is particularly intriguing since the closing of borders not only radically impacts the life of many (although, importantly, not the majority), but is also an unusual move in the history of pandemics.⁴ To mention one thing, the present WHO advice is not in favour of border closures, and many other international health regulations are specifically against it (Saxena et al 2021, 4-5). Nonetheless, in the present pandemic, border closures or at least very restrictive border controls, partial or entire, became the norm.⁵ It is thus natural to ask: why?

Of course, questions like this can be answered in two ways. One can try to *explain* why certain policies were adopted and not others. These explanations can be multifaceted starting at the surface of political machinations and then traveling further and further down to society’s value system, psyche, what have you. This way of approaching the question interests us only indirectly: it can provide us with material for looking at the problem from a normative angle. As philosophers this is what interests us: what morally *justifies*, if anything, border closures in the present circumstances? It is important to emphasize the qualifier: we are interested in the ethics of border closures in the pandemic; their morality and not their legality or economic and political expediency, is what interests us. These other aspects won’t be our concern unless they prove to have relevance for moral justification.

At the same time, our focus on the ethics of border policy in the case the COVID pandemic is not intended as an explicit foray into the ongoing and widespread debate on the moral justification of open borders.⁶ That is, we don’t want to use the pandemic to argue for or against open borders from a moral point of view. Our paper has a more limited focus: *given the special circumstances of the pandemic*, could a moral case be made for border closures? Still, focusing on this question does not rule out accepting that the pandemic has implications for the general issue of open borders and some of the findings of this paper might then be used in that general debate. For example, we do reject the idea that the pandemic leaves the issue of open borders untouched because the circumstances are special: that in emergency – in ‘war’ – many things

¹ For a proper characterization of COVID, see Schwartz (2020).

² A cursory search for COVID and related keywords on PhilPapers shows this.

³ But even Owen (2020) does not address the question whether border closures are justified. The aim of his article is to consider the implications of COVID for the general debate on open borders.

⁴ At the same time, this of course also explains lack of attention: since closed borders were not an issue in previous pandemics, discussion was also not prompted by connected practical concerns.

⁵ Just a cursory look on IATA travel site shows this: <https://www.iatatravelcentre.com/international-travel-document-news/1580226297.htm> In the present pandemic, so far, there have been two distinct phases of border policy directions in the European Union so far – one in March 2020 when most European nations have introduced national lockdowns and then the Autumn/Winter of 2020/2021 when again lockdowns were reintroduced. In the first phase, over 160 countries in the world closed their borders partially or fully (UNHCR 2020).

⁶ For a good overview, see Wellman (2020) and Song (2018).

are allowed that in normal circumstances would not be permitted. Thus, once the pandemic passes, borders will reopen, and everything will be back to normal. We think, instead, that while more radical measures might indeed be justified, border closures are not obviously among them and their choice do have implications for future border policy and beyond. Nor do we go along with the opposite idea that the pandemic shows that borders must always stay open because this is the only way to solve global problems. Again, this may be so, but arguments have to be provided to this effect and in such justification special circumstances are likely to play a role. In short, ours is not intended as a contribution to the debate on open borders but it might have relevance for it.

Furthermore, to focus attention, in this paper we will take Norway as our investigative case. This is so for several reasons. The perhaps most obvious is that we both live in Norway and hence have access to the relevant – often journalistic – material. But more importantly for philosophical analysis, Norway is a better illustration than most other countries because it unites two important features. It is a self-confessed liberal democracy where restrictions on freedoms or disrespect for minority interests are not taken lightly and provoke significant public discussion (which we can use as material). At the same time, Norway, along with Hungary, has been the only countries in Europe that have decided to almost entirely close their borders, not just introduce restrictions, controls (such as quarantine and testing), and occasional partial closures.⁷ Still, most of what we will say below on the level of theory, is meant to apply across the board regarding border closures: Norway will just be used as a case to illustrate our points.

This is how we will proceed. We shall start with the exact Norwegian regulations and we should also provide some context from countries with similar policies such as Hungary, Australia, and New Zealand (section II). Our focus will not be on quarantine and testing requirements, which we generally consider justified, but on border closure specifically. Since the latter comes in degrees depending on how comprehensive the scope of access restrictions is, the details of the policy in question matter. The rest of the paper has two parts. In the negative part of the paper (section III), we will discuss possible justifications for these restrictions, some endorsed by the Norwegian government explicitly, some (most) may not be. Our aim in this part will be to refute these arguments. In particular, we will consider three approaches that each comprise a bundle of arguments: the ‘imported infection’ argument, the pragmatic argument, and the sovereignty argument. After this, in the positive part of the paper (section IV), we will put forward arguments against border closure. Again, three strands of argumentation stand out: the consequentialist argument, the argument from freedom, and the justice argument. At the end of the paper (section V), we sum up our position and conclude.

II. Norway, borders and COVID-19

On 27 January 2021, the Norwegian government introduced the strictest entry rules since March 2020 - which were the strictest since World War II. Persons who do not have Norwegian citizenship or are resident in Norway will no longer have access to the country, with a few

⁷ A caveat applies: the entire EEA (European Economic Area comprising the European Union and Norway, Iceland and Lichtenstein) closed its borders to non-EEA countries in 2020 (with varying exceptions regarding certain countries and regions that mostly depended on the infection situation). There have also been other EU/EEA countries that notified border closures but none of them are as radical as Hungary and Norway. See [file:///Users/ata037/Dropbox/Research%20\(present\)/COVID/Literature/Border%20situations/Temporary%20Reintroduction%20of%20Border%20Control.html#close](file:///Users/ata037/Dropbox/Research%20(present)/COVID/Literature/Border%20situations/Temporary%20Reintroduction%20of%20Border%20Control.html#close)

exceptions.⁸ The vast majority cannot enter the country. These include the following groups: parents of children over 18, grandparents, adult children, girlfriends, siblings, seasonal workers, guest researchers (generally, anyone who only has a work visa to enter the country), students and others without Norwegian citizenship do not have access. The exceptions comprise mainly access prompted by family reunification purposes (where family or close relatives is defined to include spouses, (step)children under 18, (step)parents of children under 18, and certain, narrowly defined partners), certain cross-border commuters (this was only recently added after several scandals regarding especially children who were not allowed to attend school), asylum seekers and refugees, some occupational groups (journalists, diplomats, for example) and further minor clusters of foreigners.

Three further details make these restrictions even more severe. One, unlike pretty much all its European counterparts with whom it forms the European Economic Area (EEA), Norway makes no exception in the case of EEA citizens. While other EEA member countries allow the entry of EEA citizens with testing and sometimes quarantine requirements, Norway makes no such allowances.⁹ Two, the above residence requirement is fairly restrictive. Instead of using the requirement – customary in the European Union – of ‘center of life’ criteria for residence, Norway requires persons to be enrolled in the Norwegian national registry. This might look like mere bureaucracy, but it is not: many of those who have settled in Norway, i.e., people living and working in the country often do not have what is called a ‘personal number’ (*personnummer*) but only the temporary version of it, a so-called D-number.¹⁰ However, foreign citizens with only a D-number are not allowed to enroll in the National registry. Hence, they are also not allowed to enter the country after, for example, travel to abroad for emergency reasons (such as the death of a loved one).¹¹ In addition, three, most of Norway’s physical borders are closed making entry also physically very difficult (by train or by car, for example). And of course, although international airports are open, given the severe restrictions, flights are hard to come by. This then leads to the situation that although one might enter and leave the country, one, in effect, cannot. This is also a form of border closure in all but name.

In short, while Norway is not strictly speaking sealed from any foreign contact, it certainly comes fairly near to it. In Europe, only one country parallels this attitude toward foreign citizens: Hungary. But Hungary is run by an authoritarian government that in large part built its legitimacy on anti-migrant and anti-immigrant campaigns over the years. Moreover, even Hungary allows the entry of non-Hungarian nationals based on bilateral agreements mostly centering on the availability of so-called immunity passports.¹² (Although, of course, Norway might also introduce such passes in due course (Denmark whose example Norway often

⁸ Details can be found here <https://www.udi.no/en/about-the-corona-situation/entry-to-norway-for-all-citizens/#link-19310>

⁹ Finland, Iceland and Denmark have similar restrictions, but they are not as far-reaching as Norway’s (Finland comes closest to Norway in this regard).

¹⁰ Moreover, for this very reason legal experts think that Norway might be acting illegally here because the country violates the terms of the EEA treaty (<https://rett24.no/articles/mener-norge-bryter-eos-avtalen-med-korona-bortvisninger>) In fact, there is now a large lawsuit planned, by 73000 guest workers, against the Norwegian state in the European Court of Justice (<https://www.aftenposten.no/norge/i/7KzO6w/opp-mot-73000-europeiske-arbeidere-i-norge-fikk-innreisenekt-naa-vil>)

¹¹ Many such cases have been reported on in the Norwegian media. See <https://www.vg.no/nyheter/innenriks/i/39GeBA/firebarnsmoren-katja-vil-hjelpe-kosta-18-helt-urimelig> and <https://www.nrk.no/vestland/innreisereglar-for-eos-borgarar-skapar-full-forvirring--hundrevis-skal-ha-blitt-bortvist-1.15462117>

¹² For details see <http://www.police.hu/en/content/information-on-general-rules-of-border-crossing>

follows, has been actively using such documents at least inside the country). The debate on this matter is ongoing but an EU/EEA wide system should be in operation by June.)

There are other countries in the world that could be compared to Norway. Some have even more restrictive border policies: Algeria, Myanmar, Libya, Azerbaijan, The People's Republic of Korea (North Korea), Kazakhstan are those listed as 'totally restrictive' on the IATA Travel Center site. But these countries have their own peculiar reasons to restrict entry, reasons that Norway does not share and that have often little to do with the pandemic: their political system is much more restrictive and generally prefers isolation (they are authoritarian, often dictatorial systems); their health care system is severely underdeveloped; culturally or for other reasons they have never been an 'open' country; and so on.

From among those countries that can be said to belong in Norway's 'peer class' (roughly: developed, 'Western', democracies, the so-called Global North), the two that can be mentioned here are Australia and New Zealand. The former has made headlines recently by not allowing even its own citizens to enter if they were coming back from India (because of the ongoing severe second wave of the pandemic in the country).¹³ However, once again, these countries are relevantly different owing to their geographical positions and their infection-control policy built on them. Namely, both countries are isolated thanks to their geographical locations (one is a continent, the other is an island and both are far away from major centers of population) and for this reason they have pursued what is often called a suppression policy: they did not merely aim to control the already circulating infections in their country (to 'flatten the curve', as it is often called) but have tried to avoid infection to enter in the first place: to make sure no surge of infections ever takes place on their territory. However, such a policy objective – whatever its merits and some of what we say later might have relevance also in their case – has never been in sight for Norway, a country that might be, geographically, on the fringes of Europe but is still in all sorts of ways, including physical ways, deeply connected to the rest of the European continent.¹⁴

In short, we think Norway is a good case for investigation. It does seem reasonable to ask, generally as well but in Norway's case even more so, what justifies border closures in the present pandemic. Border closures, along with their domestic counterparts, lockdowns are among the most restrictive and hence most damaging ways to deal with the pandemic situation. Still, while many questions have been asked about the legitimacy of lockdowns¹⁵, almost none have been posed about border closures. Why?

III. Attempts to justify border closures in the ongoing pandemic

Several strands of argumentation can be distinguished. These are mostly based on Norwegian public discussion that take place in Norwegian, so where we need to, we provide translations. Of course, ultimately, many of these matters connect to standard academic discussions in ethics and political philosophy. Or so we shall argue.

¹³ For example, see <https://www.theguardian.com/world/2021/may/01/australias-ban-on-travellers-returning-from-india-due-to-covid-crisis-may-be-unlawful>

¹⁴ It might be claimed that in the first wave of the pandemic in March 2020 the national lockdown was introduced in Norway as part of a suppression policy. Be that as it may, this was certainly not the case in the second wave of the pandemic in January 2021 of which the border closures we are discussing form a part.

¹⁵ For a recent discussion, see Kraaijeveld (2020). We will in what follows sometimes draw upon the points made concerning the morality of lockdowns (but this does not mean that we would be lockdown sceptics – border policy is different in important respects from domestic lockdowns).

Here are the different arguments, which we will consider one after the other: the ‘imported infection’ argument (*aka* the argument from health); the pragmatic argument (that comprises the argument from epistemic ignorance); and the sovereignty argument (that comprises the democratic argument). We don’t think any of these arguments work and we will now show why.

The ‘imported infection’ argument

Let us begin with a recent (27.02.2021) article from NRK.no (the public broadcaster in Norway, i.e., the Norwegian BBC) with the title: “Slik har 5600 smittede kommet til Norge på et år.”¹⁶ The title says it all: “This is how 5600 infected came to Norway in one year.” The basic – perhaps the only – premise of the reporting in the article is that infections came to Norway from abroad and that this necessitated the closing of borders (and many other measures such as partial or full lockdowns).¹⁷ A month later (26.03.2021) the same claim, in perhaps an even harsher way, was made by the mayor of Oslo, Raymond Johansen, in an Avisa Oslo article with another telling title: “Importsmitte har tatt over Oslo, men derfor stenges ikke grensene: - Et paradoks” (“Imported infections have taken over Oslo, but therefore [*sic*] the borders are not closed: - A paradox”) Johansen’s claim is simple: Oslo had to lock down not because of the behaviour of its inhabitants but because of infections imported from abroad.¹⁸ In sum, the spread of COVID-19 in Norway is largely down to imported infections and therefore the borders must be closed so that these infections can no longer reach the country.

It is clear that in these articles the public authority side does not merely want to explain but also justify the closing of Norwegian borders. However, what is the explanation-cum-justification we are given? As far as we can tell, the only reason given is that people coming from abroad have brought in the virus. Some criticism of this approach is reported in both articles - in particular, with regard to economic consequences and to the rather indiscriminate manner of border closure (in particular, the plight of migrant workers and cross-country commuters from Sweden is highlighted) - but the basic question is not asked: *Why* is this trivial fact – the fact that someone coming from abroad might bring in the virus - enough to justify not merely increased border controls but also the *closing* of borders?

If it is not clear why this trivial fact is not enough to justify such a radical policy choice, considering the following four points. One, the fact appealed to – ‘importing’ infection from abroad – can be cited by *every* government around the world. After all, outside Wuhan, China where the virus originated (according to our present knowledge), all the rest of the world imported the virus (either from China or from somewhere else). Should they follow Norway’s logic, no one from Norway would be able to travel anywhere in the world and no one would be able to travel to Norway. Is this an outcome the Norwegian state would like to see?

¹⁶ You can find the article here: <https://www.nrk.no/osloogviken/slik-har-5600-smittede-kommet-til-norge-pa-et-ar-1.15391483>

¹⁷ “Dette viser hvorfor det var helt riktig å stenge grensene for arbeidsreiser generelt, men med noen uttak, sier arbeids- og sosialminister Torbjørn Røe Isaksen.” This shows why it was fully right to close the borders in the case of work trips in general, with some exceptions, says Torbjørn Røe Isaksen, the work and social affairs minister.

¹⁸ “Jeg har jo hele veien tatt til orde for strenge tiltak mot importsmitte. Det er fordi vi merker konsekvensene av ikke å ha kontroll på grensene her i Oslo. Vi har ikke hatt sosial nedstenging her i fire måneder fordi Oslo-folk ikke har vært flinke, det har de, men fordi det hele tiden har kommet inn ny smitte og nye virusvarianter, skriver han i en e-post til Avisa Oslo.” (“I have all the way called for strict measures against import infection. This is because we notice the consequences of not having control of the borders here in Oslo. We have not had social lockdown here for four months because the people of Oslo have not behaved well, they have, but because new infections and new virus variants have constantly come in, he writes in an e-mail to Avisa Oslo.”)

Two, the WHO's recommendation on international traffic¹⁹ is that "Travel measures that significantly interfere with international traffic may only be justified at the beginning of an outbreak". The fact that most countries disregard this recommendation does not make it bad advice. For, its logic is clear: once a virus as infectious as COVID (especially its recent mutant variants) is spreading within a country, the surge in cases will be due to domestic spread and not to import from abroad. At the same time, undue focus on travel and border restrictions and closures will hinder effective infection control (Devi 2020).

Three, in the above NRK article the figure is given that in the entire period since the pandemic has begun only 11% of infections in Norway have had a foreign source (this was in February, but it is unlikely that this figure has increased since then [check!]). In the Avisa Oslo article, this is, contrary to the general tone of what the Oslo major says, is put into even starker contrast: only 0,8% of those arriving to Oslo Gardermoen (Norway's by far largest international airport) had tested positive, while in the same March period, the domestic spread of the virus was at its height often approaching 2%.²⁰ In other words, the overwhelming majority of infections in Norway is and has been due to the domestic spread of the virus.

Four, the list of the source countries for the altogether 5600 infections, is also telling: Poland leads the way with 1449 infections, followed by Austria (735) and Spain (448). The message is clear: the vast majority of infections came in via guest workers (Poland, and other Eastern European countries on the list) and via the return of holidaying Norwegians (Austria and other Southern European countries on the list). That is, those responsible for most of 'imported' infections are two groups of people whose entrance to as well as departure from Norway and what they do in the country should be possible to control without border closures.

Still, one could try to question these points. We don't see what could be done against the first point: would Norway embrace a view of the world where the solution to any threat from the outside is total closing down? That will hardly solve those problems. It is fairly clear that the only way to solve global problems is via international cooperation and the present pandemic is no exception. While, as noted, we don't think pandemic circumstances should leave border policy untouched, we also cannot understand how the mere fact that infection reaches a country from abroad is sufficient, in itself, to justify closure. In any case, no perfect closure is possible in our world; even countries as isolated geographically as New Zealand, haven't managed to keep the virus entirely out (as evidenced by repeated local lockdowns). This much also Norwegian authorities admit. But then it is natural to ask why close borders at all instead of controlling and restricting – via quarantine, testing, isolation – flow through them?

Perhaps the WHO recommendation should be handled with more caution, though. One could try to argue that Norway is in some sense in the beginner phase of the pandemic *compared to other countries* since the infection level is very low. But this won't do. Norway, as is crystal clear just from the most recent numbers (since the closure of borders), experiences significant domestic spread of the virus as we are writing these words (from the peak period in February and March, Norway is now down to an average 0,4-0,6% daily increase) - and this is happening while the borders are closed. In short, a New Zealand-type of solution is not available in Norway.

¹⁹ As available here (dating to 20.02.2021): <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>

²⁰ See the Feb 15-March 28 period here ('registrert smitte' – registered infections): <https://www.vg.no/spesial/corona/>

We also don't see how the last two points could be seriously questioned. As for the third, the numbers speak for themselves. This is so, although more statistics would be useful at this point, even if those who were infected by the 'imported' virus within Norway don't count as 'foreign' infections. The fourth point is perhaps even more difficult to doubt. Most of the virus infections that have been brought into Norway have come via guest workers. But surely, the movement and stay of these workers in Norway can easily be controlled (we are *not* saying that they should be locked out of the country). This really is just a matter of efficient organization. Holidaying Norwegians are even easier to control; simply don't allow them to travel on such grounds, if the situation is serious. Surely, one can ask for purpose of travel before leaving the country and also require proof. But even if the government doesn't want such restrictions, the return of people from abroad can be controlled at the borders: tests can be administered, quarantine can be required and so on. In fact, all these measures – even as restrictive as quarantine hotels – were already in place well before the borders were closed (and since then have been extended). If they didn't work well, that's because they were not done properly; not because they are unsuitable for infection control. (This is clear from the practice of many countries in Europe where borders remained open and only a tiny percentage of infections came from abroad. Italy is a good example.²¹)

To sum up. We don't think border *restrictions* are an ineffective tool in controlling pandemics. This is certainly not the case and research support this well (Geyrhofer et al 2020). But the question is why border restrictions must take the form of partial or entire border *closures*. Already the former but certainly the latter are extremely intrusive measures, both economically as well as socially (we write more on this in the next point). Thus, very strong justification should be given for their introduction – and we have found no such justification that would concern merely epidemiological matters (i.e., infection control). In special circumstances, perhaps as in the case of New Zealand and Australia, a suppression strategy that employs border closure can be warranted. Perhaps it does, *ceteris paribus* – what we say later might well count against it, from an overall point of view that takes all relevant considerations into account. But Norway has not been, certainly not in 2021, in an even remotely similar situation. Given all the other available forms of border restrictions – testing, home quarantine, hotel quarantine, home or hotel isolation, travel restrictions from certain countries (e.g., closing borders only to certain group of people who come from one particular country such as India these days) – unilateral border closures seem to be unjustified ways of controlling the spread of the virus. We have seen very little evidence-based - we are talking about epidemiology, after all – grounding for this.

The pragmatic argument

So, why close borders? One would think that with Norwegian borders shut to almost everyone, the very fact that nonetheless the country is experiencing a new wave of infections is enough to question the practice. Still, the idea persists, more or less unquestioned. Why? One natural idea is that – health considerations aside now – it is in the interest of the country to do so. What could be those interests?

A possible reason behind present Norwegian border policy could be *political*. Unsurprisingly perhaps with a right-wing government whose majority is provided from outside government by the FrP (Fremskrittspartiet – The Progress Party), the most openly nationalistic mainstream

²¹ According to this, <https://lab.gedidigital.it/gedi-visual/2020/coronavirus-i-contagi-in-italia/> (look for “Distribuzione dell'origine dei casi Covid-19 diagnosticati in Italia”, 0.3% of infections have a foreign source in Italy.

party in Norway, there may well be strong temptation to handle foreigners with a heavy-hand.²² This is evident from the fact of how the policing of the outside border (i.e. toward other countries) is strictly differentiated from policing domestic ‘borders’ (e.g. regional borders) also during pandemic times. Norway, certainly for its population size, is a large country where people often move significant distances. Still, no serious restrictions were placed on domestic travel, although it is clear, and is evident from the practice and experience from most European countries, that such movement is the obvious way the virus spreads within a country.²³ Consistency, if this is really just about health policy, would have required certain restrictions at least at certain points in the past one year (we don’t consider it a ‘restriction’ when people are merely *recommended* not to travel). In a similar fashion, after the closing of the borders in January 2021 and with later even further tightening restrictions – such as the introduction of compulsory quarantine hotels for all nonessential travel – it became important what kind of travel qualifies as essential (in which case one can quarantine in one’s home). However, interestingly, the government has been more willing to consider journeys within Norway for the purposes of family visits as “essential”,²⁴ while such journeys crossing international borders have more often been deemed “nonessential”.²⁵

Furthermore, this political case can be supported by an *economic* one that helps the government’s heavy-handed approach. Most European countries, especially those in the south of Europe but many also in the north, perhaps wouldn’t close the borders even if it was clear that this was the best way to control the spread of infection. This is because the economic consequences are way too dire in terms of tourism (especially in the south of Europe) and/or in terms of trade (many northern countries are heavily reliant on cross-border traffic²⁶). Norway also suffers economically from border closures but unlike almost all European countries, it has a comfortable cushion to deal with the shock: its petroleum fund (oljefondet). Since its setting up in 2001, subsequent Norwegian governments have kept the rule that only a small percentage of the proceeds from the fund can be used for budgetary purposes: originally, this was 4%, now it is 3%.²⁷ However, to finance the generous economic support measures, Erna Solberg’s government has used significantly more than this amount both in the 2020 and in the 2021

²² In fact, on 13.01.2021 the FrP has demanded the physical closing of borders:

<https://www.dagsavisen.no/nyheter/innenriks/frp-krever-fysisk-stengte-grenser-1.1822008>. And just two weeks later (27.01.2021), their wishes were fulfilled: <https://www.klartale.no/norge/norge-stenger-grensene-1.1826839>

²³ There was one exception. For a short period during the nationwide lockdown in March 2020 the North (Troms and Finnmark) has put in place quarantine for the South (the so-called ‘søringkarantene’). This caused a huge uproar in the country (especially, of course, in the South). See e.g. <https://ranano.no/vil-foreleng-soringkarantena-med-ei-uke/28.04-05:01>

²⁴ See for example the Minister of Justice defending her trip “home”: <https://www.dagbladet.no/nyheter/a-reise-hjem-er-ikke-unodvendig-fritidsreise/72351392>

²⁵ Specified “essential” trips abroad for Norwegian residents as of May 2021 include only such trips as those to the birth of one’s child or seeing seriously ill or dying relatives. <https://www.regjeringen.no/no/aktuelt/flere-ma-pa-karantenehotell-og-innreiserestriksjonene-forlenges/id2838529/>

²⁶ See the most recent tensions caused by Germany’s decision to introduce strict border controls (but no closure) on its border with Tyrol (Austria) and Chechia. There is one clear exception to this claim that however in other ways offers interesting parallels with Norway: Hungary. Hungary has closed its borders already in September despite the economic consequences. The border closure hardly helped though: since then the country has suffered a massive second wave and is not entering an even more dangerous third wave. The only reason, as far as we can tell, to close Hungarian borders, has been one of populist nationalism that is openly advocated by Viktor Orban’s ‘illiberal democracy’. For the EU’s reaction, see <https://www.rt.com/news/516368-eu-commission-covid-border-restrictions/>

²⁷ See <https://no.wikipedia.org/wiki/Handlingsregelen> All Norwegian political parties accept this rule (handlingsregelen) except the FrP.

budget.²⁸ In short, Norway can afford the economic consequences of the closing of borders (and generally, of the pandemic).

We are reluctant to take these political and economic considerations as good arguments for border closure. It is hardly relevant, for the rightness and wrongness of such policy, what promotes the electoral chances and popularity of the government (governing parties). This might well *explain* why they did what they did, but it most certainly doesn't morally *justify* it. As for the economic matters, when separated from their political significance, they are hardly decisive. Just because a country can afford doing something, it doesn't follow that it should do it. And again, nothing in the above provides such justification.²⁹

Still, it can be admitted that these considerations might *become* relevant. But this happens only if proper justification is provided on some other ground. Then feasibility becomes important: it becomes important that the government has the political base and power to carry out the relevant policy and that it can also afford it. Furthermore, in the case of political expediency, the government's political support, given that Norway is a democracy, derives largely from the support of voters. In other words, the majority of the population might want the government to close borders. This is, of course, highly relevant and can provide the requisite justification – but it is not a justification that is pragmatic in nature: it has to do with the idea of democratic legitimacy and self-government. In short, it comes under the heading of the sovereignty argument that we discuss below.

What else can be used as a pragmatic argument? We see one candidate that has to be taken seriously: the *epistemic ignorance* argument. In a recent article Scheall et al (forthcoming) argue that their previous work on how policy makers' ignorance – having to do with their epistemic burdens - influences their choice of policy, can also be applied to COVID-19 measures. "The fundamental problem of politics", they write, "is that *even if policymakers' motivations align with their constituents' interests, policymakers may not possess the knowledge necessary to deliberately realize relevant policy objectives.*" (Ib., Authors' italics) This, they argue, applies to policy choice in the circumstances of the pandemic. In particular, they argue that "rather than adopting a focused-protection policy that would have required the identification and isolation of uniquely vulnerable patient populations, policymakers have adopted to try to minimize physical suffering due to the virus via the blunt and comparatively simplistic tool of economic and societal lockdown." (Ib.) One could - it certainly appears tempting - to see border closures in the same light: they are also "blunt and comparatively" simplistic ways of dealing with imported infections.

However, what is important once again is the difference between explanation and justification. Scheall et al openly acknowledge that their proposal is only meant to accomplish the former task: "Our interest is to explain why certain kinds of policies were chosen and why other kinds of policies were mostly ignored, not to defend any of these policies as either uniquely appropriate to relevant circumstances or morally defensible." (Ib., fn. 6) And indeed, there are some questions to ask were someone to use this proposal for the moral justification of border closure. One avenue of inquiry particularly stands out. Perhaps border closures could be not

²⁸ For the budget, see <https://www.regjeringen.no/no/tema/okonomi-og-budsjett/statsbudsjett/id1437/> For the financing from the oil fund, see <https://www.nettavisen.no/okonomi/sjefokonom-advarer-na-ma-renten-okes-tidligere/s/12-95-3424126028>

²⁹ And of course, when we say Norway can afford this, we have not taken into account the effects on future generations, which is what the petroleum fund is supposed to primarily further. We should not forget the official name of the oil fund: Norway's Government Pension Fund Global.

only explained but also be justified along the more detailed lines Scheall et al offer in their article in the first, initial phase of the pandemic in the Spring of 2020.³⁰ But they too admit that the same line is more difficult to apply in later phases of the pandemic, in particular, after the Autumn of 2020: by then we have amassed significant pool of knowledge about both the pandemic and about relevant counter-pandemic policies. In short, policymakers by then should have learnt which policies are more efficient and which are not in terms of their *overall* effects (that is, not merely their direct health effects, but also their indirect, social effects). There is, in other words, a difference between ignorance and ignorance. Some ignorance is justified and perhaps this was true of our ignorance at the start of the pandemic (although lack of preparation can still be criticized³¹). Perhaps policymakers couldn't help but be epistemically impoverished in the face of a pandemic as COVID turned out to be and if so, to err on the safe side, to be conservative, blunt and comparatively simplistic in one's policy choice was rational. And if it was rational, perhaps it was also moral (no obvious move, though). But the ignorance of the later stages doesn't appear to be of an excusable kind that could warrant blunt measures like border closure. So, there is a clear problem here when one tries to move from explanation to justification of policy based on ignorance.

Scheall et al, though, do provide some further explanation as to why politicians seemingly haven't learned much from their past mistakes and used their amassed experience. One idea they float concerns the 'pretence of knowledge': policymakers perhaps were ignorant of their own relevant ignorance, which has incentivized them to continue pursuing policies that were not nearly as effective as they have claimed them to be, a fact they would have realized have they acknowledged their earlier ignorance of the matter. A second, according to the authors more relevant proposal is the following (Ib.): "Past policy decisions affect present and future epistemic burdens. In particular, unless policymakers *know* how to both alter the chosen policy course and avoid the consequences of acknowledging its ineffectiveness, the alternative of doubling-down on the existing policy is comparatively attractive." This is basically *status quo* bias: it is cheaper and easier to continue with present policy, despite evidence to its ineffectiveness, than to change course with all its costs and uncertainties. The political price might be way too much to pay.

This is all fine; no doubt, these are interesting hypotheses that are worth further elaboration and probing. What is difficult to see is how they could morally *justify* policy choice. The ignorance we are here now dealing with is clearly a form of *wilful* ignorance: policymakers, driven by their own selfish interests, in both scenarios chose not to do something despite available evidence. This kind of ignorance is hardly justifiable from a moral point of view.

The sovereignty argument

We have stated at the start that we will not use this paper to take a side in the debate on open borders. The pandemic poses special challenges and comes with special circumstances. Even if it has relevance for the debate, it does not seem to us to be an essential part of the discussion. However, there does seem to be one clear spill-over from the general discussion that we should consider: *collective self-determination*. It comes in two forms. One, territorial states have the right to decide what happens on their territory including border policy during the pandemic. Two, if they are also democracies, government policy should follow the majority view, which

³⁰ Scheall et al argue that policymakers' ignorance was the result of their lack of meta-theoretical knowledge as to which epidemiological model (direct health consequences) and social model (indirect, long-term consequences) to apply, what data to plug into the models, and finally, how to apply the models in real-life circumstances.

³¹ See the rather damning report of the Independent Panel for Pandemic Preparedness Response in Johnson Sirleaf and Clark (2021).

supports border closures during the present pandemic. Since both arguments rely on some idea of popular sovereignty – understood as the claim that the people are the ultimate source of political authority - we call this the *sovereignty argument*. We think, however, that serious questions can be asked about the scope and validity of both arguments.

Start with the first. Song (2018, 395), writing generally about immigration and borders, points out that even if collective self-determination does not require a democratic regime, it does require

“at least the following kinds of institutional mechanisms. First, there must be protections for basic rights and liberties, including the right to bodily integrity, subsistence, and freedom of speech and association. Second, there must be institutional mechanisms of accountability, including the right to dissent from and appeal collective decisions. Third, government must provide public rationales for its decisions in terms of a conception of the common good of the society.”

It is not clear to us that these mechanisms are properly in play in Norway’s border regime. As for the first, several freedoms are violated by closed borders: freedom of movement (for obvious reasons), freedom to choose and pursue an occupation (even setting immigration aside, Norway’s border regime seriously disadvantages guest workers, commuters and working members of transnational families³²), freedom to marry and found a family (again, cross-border and transnational families can be mentioned, but also all those intimate relationships are effected that cannot come under one of the exemptions to the general closure system). And these are probably not the only freedoms that can be mentioned: basic liberties and rights, albeit standardly listed under general headings – freedom of the mind, freedom of the person etc. – come really in families of rights.³³ Of course, no freedoms are meant to be unlimited, and one can meaningfully discuss where the limits lie in which circumstances. We shall do this, in some detail, later: but, to foretell, we don’t think that, especially given existing alternatives (border restrictions as opposed to border closure), the presently imposed constraints on these freedoms are justified.

The other two requirements Song mentions lead to the same conclusion. As for the second mechanism, it is worth differentiating between those who have voting rights and those who don’t. Norwegian citizens who comprise the former group fare much better in that they have direct ways of influencing government policy via periodical national elections. So, at least for them, some level of accountability is established. This is particularly relevant in the concrete context since Norway has national elections in September this year. The latter group is very diverse ranging from guest workers to permanent residents but none of them possess the right to vote in national elections. Regarding accountability it is also important to mention that the government – as many, if not most governments in Europe (and the world) – have acquired special powers.³⁴ This significantly reduces accountability. It appears, in fact, that at the moment only certain lawsuits are possible that mainly aim at receiving compensation for the results of border policies. Lastly, the two groups also differ in terms of the forms of dissent that are available to them. Norwegian citizens face mainly fines, whereas those who belong to the other group face, potentially, deportation from the country. This difference of bearing burdens resulting from border closure will play a role in our later positive arguments as well.

³² For a definition and ongoing research of the effects of COVID on transnational families in Norway, see Bell, Staver & Tolgensbakk (forthcoming).

³³ For a more comprehensive list, based on the work of Rawls, see Nickel (1994, 773-4).

³⁴ For details, see <https://www.aftenposten.no/norge/politikk/i/kJjRRL/historisk-koronalov-vedtatt-av-stortinget>.

The presence of the third mechanism in the COVID pandemic in Norway is also suspect. Of course, the government is closing borders as part of their effort to stop the spread of the virus. This, no doubt, serves the common good. However, this is so only when looking at the measure in isolation instead of, as one should, while comparing it to other possible measures – in our case, border restrictions consisting in, among others, testing, quarantine, isolation and targeted closures (*vis à vis* particular countries and regions with significant outbreaks). As we have argued above, it is far from obvious that border closure is the superior solution and, in this sense, serve the common the good. We should also mention that this requirement connects to another relevant matter. Just like all other rights, collective self-determination is not an unlimited right. As Song (Ib.) puts it in the case of an attempt to justify the state’s right to control immigration, “it must explain why the state’s interest in controlling immigration outweighs the claims of prospective migrants such that it can be said to have a general right to control immigration.”³⁵ This may or may not work – but in our context the primary group to compare are not immigrants but Norwegian citizens and residents whose interests are still severely harmed even if they themselves can cross borders. Given all that we have said and what we will say about alternative border measures and the consequences of border closure, it is far from clear to us that this requirement is fulfilled in the COVID pandemic in Norway.

Collective self-determination can but need not take a democratic form. However, it does so in the case of Norway. So, assuming the majority of the Norwegian public supports border closure, isn’t that just enough to make the day? However, the above considerations apply also to democratic regimes: they are intended to be minimal requirements that hold for all systems. In fact, in the case of democracies further, more stringent conditions can be appealed to. Although we cannot make the normative case for them³⁶, liberal (or constitutional) democracies combine the idea of popular sovereignty – that is taken here to entail the sort of simplified majority rule we just appealed to – with restrictions on the power of the people (taking diverse forms such as checks and balances, separation of powers, bill of rights, judicial review and so on). Clearly, border closure, as applied in Norway, tramples over rights and other entitlements as well as privileges (freedom of movement, EEA contract) of many Norwegian citizens and residents: they may be the minority, but in a liberal democracy, such as Norway is, they deserve protection. If, as we have argued and will argue further, the above, less demanding conditions are not met, then it is even less likely that these more demanding conditions would be met. In any case, some special justification would be needed, which is not provided.

But one could try a final defence. One could say that all of the above discussion presupposes one crucial thing: that the collective in question – the Norwegian collective – in fact includes those whose rights are not respected, for whom proper dissent is not available, to whom the decision-makers are properly accountable and so on. But does it? Here it becomes important that we are not dealing with the vexed issue of immigration, migrant workers and open borders. There is a connection since, arguably, some of those we designate as the ‘minority’ above are or would be immigrants, migrants and guest workers. But then many, we dare say, the majority aren’t. Many are Norwegian citizens, and the imaginary objector wouldn’t doubt, we take it, that they are part of the relevant collective. Then there are those who are residents but not citizens; this is probably the largest group: EU/EEA citizens, permanent residents and relevant

³⁵This brings in territorial rights, which are also not unlimited. Cf. Angell (2019) for a through discussion. As Angell points out, the standard limitation on territorial rights is respect for the basic human rights of refugees and asylum seekers. As is evident from the text, we think that limitations go beyond this. In any case, not even this most vulnerable group has been ‘spared’ from border controls and other mistreatment in the present pandemic. See Doliwa-Klepcka & Zdanowicz (2020) for a detailed analysis of the situation in the EU.

³⁶ For a comprehensive well-argued attempt, see Kis (2003).

visa holders. What about them? Here it becomes important exactly how one understands the ‘people’ in question. This is yet another vexed issue. If one goes for a nationalist and/or some other kind of culture-based approach, most of those who are ‘only’ residents in the country won’t belong to the collective. But this is not the only way to conceive of ‘peoplehood’. Song (Ib., 396) herself, for example, prefers an account on which “a people comes into being by participating together in ways that express an aspiration to be authors, not merely subjects, of the rules governing collective life.” And the people so construed, on her account, gets connected to particular territory in virtue of its members having a preinstitutional right to occupancy on the given territory. This, in turn, claims Song, is grounded in peoples’ stable residency for the pursuit of life projects. We don’t have to pursue this further here. Our point is simple, there are ways of constituting the people and connecting it to a territory that does not rule out those with stable residence – those whose centre of life is in the given place – to be part of the collective, i.e., the people.

IV. Why not to close borders in the pandemic: some positive considerations

If we are right so far, then there aren’t strong and convincing arguments to the effect that border closures must be in place in the present pandemic. But can we also provide positive arguments to this conclusion, i.e., arguments that do not merely refute certain positions? We think so.

These arguments also come in bundles. We can distinguish the following: the consequentialist argument (comprising the argument from the negative effects of nationalism and the social cohesion argument); the freedom argument; and the justice argument. We will proceed in order.

The consequentialist argument: exclusionary nationalism

It is not unusual to approach the ethics of public health – both domestic and global – from a consequentialist point of view. Nor is this surprising since consequentialism is one of the dominant ethical theories and has a particularly strong influence in public health ethics (and medical ethics generally). The COVID pandemic is no exception.³⁷

However, while there is significant attention paid to the consequences of lockdowns, border closures have not been similarly evaluated. Very little is said about the future consequences of Norway’s present border policies. More precisely, as is often the case nowadays, the economic and health consequences are often – and exclusively - pondered. No doubt, they are important. But equally important are the broader cultural - for want of a better term - consequences. We would like to focus on two: increased exclusionary nationalism and reduced social cohesion.

Already now there is significant evidence that COVID, in part via pandemic policies, negatively effects refugees, asylum seekers, migrant workers, transnational families and so on. Some of these consequences are unavoidable, others are grounds for more concern. Among these, stigmatization, xenophobia, racism are perhaps the most dangerous. We can see how a certain kind of nationalism surges in many countries, including Norway. We mean nationalism not in the good, patriotic sense of merely loving your country (national community) but in the sense that there is something problematic with foreigners: namely, they are *foreign*; they are the *Other* (cf. Elias, Ben, Mansouri & Paradies 2021). This is often called exclusionary nationalism. On this view, it makes all the difference where virus infections come from: domestic infection is unwelcome but unavoidable; ‘foreign’ infection is *bad* and should not

³⁷ For an explicitly consequentialist analysis, see Savulescu, Persson & Wilkinson (2020). For detailed treatments of issues relating to COVID that has significant consequentialist elements, see Bramble (2020), esp. Chapter 1. Several contributions in Schwarz (2020) can also be mentioned here.

happen, *period*. This explanation is backed by just a glance of the narratives surrounding the pandemic in Norway: just think of all the talk of ‘importsmitte’, ‘migrant virus’ and so on.³⁸ These terms stigmatize and in at least some contexts they are *meant* to stigmatize and alienate.³⁹ Of course, people, naturally, respond to their own fear of the virus by looking for those they can blame. But the point of government policy should be to control this natural instinct and not strengthen it.

Of course, this is a normative position. We don’t think that exclusionary nationalism is a good thing (and when it is accompanied by outright racism and xenophobia perhaps everyone would agree with us that this should be avoided). It might be morally problematic in itself but here we treat it merely as a bad consequence. This is not the place to take up the complicated debate on nationalism and populism, so we just declare that we find this ‘vision’ of Norway unacceptable. Norway has always been an open country and it should stay open. Whatever proponents of this ‘new’ nationalism say, openness is still not compatible with exclusion and closure. (Before anyone jumps the gun: openness *is* compatible with border control in the form of the oft-mentioned border restrictions; we are not advocating for a libertarian kind of open border policy here and now.)

What is more, increased exclusionary nationalism, embodied in and/or caused by border policies as well as in other ways, can impact a country’s own domestic population. There is an interesting parallel here with Michael Blake’s (2002, 2013) well-known argument about discriminatory immigration policies. Blake is a ‘statist’ who defends closed borders.⁴⁰ However, he does argue against racial selection in immigration policies. His main point is that enacting such restrictions on immigration also impacts the state’s domestic population: “The state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well.” (Blake 2002, 284) This impact, Blake further argues, is negative because it affects people’s self-worth, and thereby restricts their ability to exercise their agency as citizens in modern democracies.⁴¹

We think that Blake’s argument can be extended to the present case, similarly to the way Egan (2020) extends it to the case of skills-based immigration policies. In particular, the way now, through the various elements of its border closure policy, the Norwegian state treats the non-Norwegian (i.e., citizen or resident) elements of transnational families or, more generally, everyone with transnational connections, does not bode well for the domestic population – presumably, pretty much everyone – who stand in similar intimate, close, important relations to significant others. The message of pandemic border policies is that these relations don’t

³⁸ In Tromsø, it was - still is - standard to read headlines in the regional newspaper *Nordlys* announcing the arrival of flights from Poland and counting the number of infected on them. For a most recent example, see <https://www.nordlys.no/pa-disse-flyene-har-det-vart-koronasmitte/s/5-34-1424544?&session=30b895fc-8108-43dd-8a3a-34dd8f8744b1> This article is also worth looking at <https://www.nordlys.no/ber-tromso-og-media-om-a-tenke-seg-om-vi-kjenner-pa-hets-og-ubehag/s/5-34-1427034?&session=d36669f9-3a9e-4eee-b224-a38a078c2d2e>

³⁹ It is hard to interpret certain political claims in any other way. Take, for example, the speech Sylvi Listhaug gave when she became the new leader of FrP. In the speech, among other things (drawing a connection between communism and climate policy, e.g.) she blamed the outbreak of infections in Oslo on certain immigrant communities. See <https://www.nrk.no/norge/frp-leder-sylvi-listhaug-taler-til-landsmotet-1.15488792> This is not the case. See <https://www.utrop.no/plenum/ytringer/247195/>

⁴⁰ Statists, unlike globalists or internationalists, argue that the relevant grounds for distributive justice-governed relations do not exist on the global level. Our duties of distributive justice stop at state borders, in other words. . See Risse (2012) for a good overview and discussion.

⁴¹ Blake gives another reason as well: selecting immigrants in this way amounts to a certain kind of gerrymandering of the population, which then distorts the working of democracies.

matter if they come in the way of the state's will and purpose. Even if most Norwegians don't look at the situations through these lens, a moment's reflection shows that something is amiss with such an attitude.

The consequentialist argument: social cohesion

Let us now turn to the second long-term consequence. Change perspective for the moment: focus on the way many Norwegian residents with significant cross-border connections see what is happening in the country. The picture, we think, is dire. We already spoke of the evident stigmatization ('importsmitte' and its likes), but the trouble goes further (and deeper). It is standard to look at the citizen's/resident's relation to the state as one of social contract: the state offers services (security etc) in return for the citizen's willing obedience (to its laws, in particular). But in the present situation, this compact, in the case of many residents, is under severe strain: Many people travel because they have loved ones abroad and because their work necessarily involves traveling. Should we say that these people cannot do any of these things just to avoid an increase in the level of virus infections in the country?⁴² The compact requires that some good reason is offered to these people, but such effort is curiously missing from the Norwegian public debate, let alone from the government's communication to Norwegian residents. Who represents these people, who apologizes to them, who compensates them, or just simply, who talks to them about their difficulties? Furlough schemes ('permittering') and compensation directives ('kompensasjonsordning') doesn't help people who cannot see their children, their partners, their parents due to border closures. In fact, the assumption in Norway appears to be that one crosses borders only in order to shop ('harryhandel', 'svenskehandel'), to go on holiday ('sydentur'), or because one is a guest worker with a home elsewhere (not that in this case nothing further should be said). Peculiar assumptions, indeed.

How will these people look at the Norwegian state after the pandemic is over and normality returns? And how will they be looked at by the rest of the population: how will they relate to foreigners? Such treatment of residents who might also be Norwegian citizens, who live in the country, pay their taxes and obey Norwegian laws and/or contribute in other ways to the development of the country (as, for example, guest workers clearly do), does not bode well for the future. It sets a bad example, to say the least. It shows a sort of arrogance of the state, as recently Cabrera (2020) has called it. At its base, the Norwegian state does not take these residents to be qualified and/or authorized to give input or make a challenge: they are simply shut out of the Norwegian body politic (while, as we've argued above, there is some reason to hold that they are part of the people, that they are part of the relevant decision-making collective). This is an inappropriate rejection of their standing; it is an arrogant state policy.

Add to this the evident contrast with how within the country the population holds up itself. We already mentioned that there is very little to no restriction on their movement but there are further matters. The strategy of which the 2020 March nation-wide lockdown formed a part was that after strict lockdown, we will track and trace the virus.⁴³ The idea behind this latter phase was that while the rise in infections is unavoidable once the lockdown is lifted, we can control this rise (this idea, we submit, became part of the social compact as far as residents with cross-border connections are concerned). Now, a major part of control is that people keep clear and relatively strict rules of conduct. However, what is happening now in Norway is that the

⁴² We are aware that the country is not hermetically sealed. Still, when borders are closed as they are now and given further restrictions (prior testing, quarantine etc), the *means* of transport are often not available and/or not reliable. In short, while foreign might be theoretically possible, it is not realistic in practice.

⁴³ The catching title for this strategy was "hammer and dance". See

<https://tomaspueyo.medium.com/coronavirus-the-hammer-and-the-dance-be9337092b56>

rules are not kept - people often don't keep distance, they gather in large numbers, and many now are even stopping to wash their hands – and then we haven't mentioned mask wearing - but instead demand that the government restrict foreign travel. The message is that 'we' should be allowed to live as if there was no pandemic (washing your hands and keeping one-meter distance are not exactly extreme measures of emergency) and everyone should accept that therefore we should restrict (or even stop) foreign travel. The attitude is like of those who lock themselves in a shelter to go on partying while the world outside is burning. Now, this might work if that world is somehow *the Other*, radically different, not to be cared for. But this is the path to exclusionary nationalism (once again) and, more pertinently, it is the path to a divided society, where some parts, possibly the majority, feels respected and listened to, whereas a significant minority feels, rightly, to be excluded.⁴⁴ John Rawls (1993) has famously argued that in the circumstances of what he called 'reasonable pluralism', achieving stability becomes the most important task of liberal states. Norway's present border policies are not contributing to this aim, we submit.

The freedom argument

We have discussed two problems so far. We have put both in consequentialist terms, but they could also be interpreted in a non-consequentialist way. Let us now turn to two explicitly non-consequentialist considerations.

We have touched upon the idea of freedom already. It is clear that closing borders violates several freedoms; hence a natural way to argue against border closures can be done in the name of protecting our freedoms. However, this is too simple. For, it is also a well-known dictum that no freedoms are unlimited; in particular, freedoms can clash with each other and in the process of adjudication some are bound to come out as restricted. This is no place to write about the theoretical intricacies of this adjudication process. We accept that also in Norway certain freedoms can be restricted and this is especially in the special circumstances of a global pandemic. There are two ways to go from here.

One approach is Rawlsian in nature. The starting point for this kind of thinking is that not all freedoms are created equal. In the liberal tradition, certain freedoms are considered 'fundamental' or 'basic'. These freedoms, moreover, can only be restricted in order to promote the balance between all fundamental freedoms combined. The ultimate aim, as is embodied in Rawls's famous first principle of justice, is to provide everyone with "a fully adequate scheme of equal basic liberties" (Rawls 2001, 42-3). We have already mentioned that border closure negatively effects many freedoms that are normally considered basic liberties: freedom of movement, freedom to choose and pursue an occupation, freedom to marry and found a family, and there are probably others. So, taking a Rawlsian approach, it must now be shown that less of these liberties will help us enjoy *other* basic freedoms *more*. Is this really the case? Only if one takes the right to health to be a basic right *and* assumes that its promotion furthers the overall balance of freedoms for individuals.⁴⁵

⁴⁴ Using stronger language – understandably since he is writing about even more vulnerable groups – Ossei-Owusu (2020) calls this the 'politics of disposability'.

⁴⁵ One could try to argue that the right to health has absolute, ungraded significance in case of a pandemic: any decrease of infections is then enough to justify restricting other freedoms. But this is absurd, surely. It should also be noted that it might not be health that we have a right to – Do we have a right not to die due to natural ageing? Do we have a right to immortality? – but only the part of health that is socially determined. Or perhaps we only really have a right to health *care*. We don't need to take up these issues here, though. For discussion see Bognar & Hirose (2014).

We can accept that the right to health is a basic right. Rawls himself doesn't mention it, but, as we already noted, basic rights and liberties come under general headings that comprise a family of more specific rights and liberties (and then even these rights and liberties can be further specified, as we shall note below). And, for example, Nickel (1994, 769) argues that "the avoidance of the destruction of one's health and normal physical and mental abilities" should be acknowledged a 'security right'. So far so good. What remains then to be seen is the point about promotion. Things get tricky here. Originally, Rawls (1971, 302) had a maximizing view of the basic liberties: his liberty principle required everyone "to have an equal right to the most extensive total system of equal basic liberties". On this maximizing conception, it is very hard to see how one could argue that promotion of the right to health would be a justified move given how many other basic rights and liberties are negatively affected.

However, in response to criticism (in particular, of Hart 1973), Rawls gave up this conception and switched to the idea of a 'fully adequate scheme', as quoted above. It is an intricate matter exactly how this clause is to be understood but the notion that plays a central role is that of "the central range of applications" of basic liberties. On Rawls's view, if a liberty is basic then, within its "central range of application", only restrictions upon it that promote the overall balance of basic liberties within a scheme of liberty can be justified. This is how we get a fully adequate scheme of basic liberties: by, via our institutions, securing the basic liberties in their central range of application and if this is not possible, by showing that restriction within this central range promotes the overall balance of basic liberties. (Rawls 1971: 244; 2001: 111; 2005: 295; Freeman 2007: 65–72, 81–82). Do the liberties violated by border closure belong to the central range of application of more general basic liberties?

We think so, although we admit that we cannot argue for this here in sufficient detail. The general framework to use is given by another Rawlsian idea. Rawls (2005: 290) writes that there are two phases involved in providing a defensible system of basic liberties. The first involves specifying a list of basic liberties under general headings. The second involves further specification of this list by determining the significance of different particular liberties that come under the same general heading and adjudicating over conflicts between them. For example, while in the first phase freedom of movement is recognized as a basic liberty coming under the even more general category of the liberties of the person, in the second phase it is recognized that certain particular liberties of movement (e.g., going on vacation) are much less important than others (e.g., attending a political rally). Border closures, it seems to us, clearly touch upon forms of freedom of movement that are very important and that belong to the central range of application of freedom of movement. We think, moreover, that the same is true of the other affected basic liberties. Even setting immigration aside, Norway's border regime seriously disadvantages guest workers, commuters and working members of transnational families, but also all those intimate relationships are affected that cannot come under one of the exemptions to the general closure system. This means that to maintain a fully adequate system of basic liberties, it would have to be shown how these restrictions sufficiently promote other basic liberties. As before, we think that merely promoting security rights is not enough to show this.

This is particularly so for two further reasons that are also relevant for the other way of approaching the present problematic: the harm principle. One is that we should not forget that, as we've been emphasizing throughout this paper, border closures are not the only ways of dealing with imported infections. Border restrictions of different forms and seriousness can also be used instead. These restrictions would arguably be (much) less 'demanding' on our basic liberties than border closures are. So, even if we are wrong about promoting the balance

of basic liberties above, border restrictions are likely to promote the same balance better. Another important point to consider is that there is a major discrepancy between Norway's domestic and international border policy. Namely, despite the domestic spread of the virus there have never been similar restrictions in place on domestic travel (unlike in most other European countries). This is relevant since one could argue that the balance of basic liberties is thus promoted because all these domestic liberties have remained in place. However, it is at least questionable how much – if at all – the domestic has to be pitched against the international in this way. Some of our concerns regarding the importance of imported infections is relevant here: how significant is the connection between border *closures* and relative domestic freedom and security? Moreover, one could also question the legitimacy of distinguishing freedoms in this way: what places domestic freedom of movement, family life, work relationships and so on above their international counterparts from a moral point of view?⁴⁶

Much of the above can also be translated into the language of John Stuart Mill's famous harm principle. As Mill (1859/2003, 80) originally formulated it, the principle says that

“the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

Thus, one could try to say that the harm principle supports border closure despite its negative effects on basic liberties since in this way harm is prevented: the spreading of the virus is contained or at least restricted. But this would be too quick.

Closing the border also causes harm – just see our discussion above (effects on intimate relationships, family life, work and so on). In short, what we end up with is a scheme of calculating the *overall* harm caused (let us not forget that Mill was a consequentialist). Given what we have said so far, and also taking into account our previous consequentialist arguments, the harm prevented by border closure might not be enough to tilt the balance of preventing harm in its favour. What is more, the fact that there are alternatives to border closure, makes the comparison even less convincing since our relevant base of comparison is no longer inaction at the border. In fact, in the literature, the harm principle is typically interpreted to require proportionality (i.e., one shouldn't just *anything* to prevent harm) and the taking of the least restrictive means (Byskov 2019; Giubilini & Savulescu 2020). We don't think, given all that we have said so far, that even in the circumstances of a pandemic, these conditions are in an obvious way fulfilled.

The justice argument

Our final argument concerns how burdens distributed and relationships are respected in Norway's border closure system. Distributive justice is theorized along different lines and the relevant literature is enormous. Here we would like to make two points only.

First, there is reason to doubt whether the distribution of burdens resulting from border closure in Norwegian society is just. There is no question that the distribution of burdens is unequal.

⁴⁶ There is a parallel here with another well-known argument from the global justice literature: Joseph Carens's cantilever argument that argues for a close analogy or even logical connection between the right to domestic freedom of movement and international freedom of movement. See Carens (2013, 238). What is relevant to emphasize in our case, though, is that we are primarily discussing the right of Norwegian citizens and residents to move abroad as well as domestically, and not the right of foreign citizens and residents to move to Norway.

What we have said so far illustrates this. We are speaking here of transnational families, other groups with immigrant backgrounds, migrant workers, students, to mention some. These people are not able to do what other members of their society have no problem doing: traveling, meeting their loved ones, spending time with their children, doing their jobs, and so on. These are, moreover, important, identity-constituting, basic relationships, features and abilities. We are not talking about people's inability to go on holiday in the Balearic Islands. At least in the case of Norway, there is a further, geographic dimension to this. Large part of the country, namely the Northern part, has seen very low infections rate and for example in the EU travel system should be able to travel relatively freely. Still, closed borders are closed borders also for them: this is a blunt measure that allows for no such regional exceptions.⁴⁷

Now, an easy-looking retort is available. These are no doubt extra demands creating inequality – but are they also *unjust* demands?⁴⁸ For a start, when one part of the population has to satisfy demands that the other part of society doesn't, we have at least a *prima facie* case for injustice. To avoid such a verdict, special justification has to be given. For, although Norway's government and even the majority of Norwegians might think that these people have to make a sacrifice for the country, such appeal to 'sacrifice' can be read in two ways. One, it can be understood as an act of charity, or something that goes beyond the call of duty (what philosophers call 'supererogatory'). In this case, these people are due gratitude in one form or another. This is clearly not how the Norwegian border policy is understood presently, though. This suggests that the common perception is that the sacrifice called for is something due; it is morally justified. But what would that justification be? We have already been through the attempts we could conceive of (in section III) and have found them wanting.

Moreover, and this is our second point, we are not merely dealing with possible injustice regarding the distribution of burdens in Norwegian society. We are also handling a case in which certain relationships become negatively affected; in particular, they become unjust themselves. One reason for this could be the same as above: the unequal distribution of burdens. Just think of marriages in which only women are required to do certain things (household chores, child rearing) and men are not. Similarly, if, as a result of border closure, the distribution of burdens becomes unequal in the way described above, the relationship between citizens and residents with and those without significant cross-border relations becomes unequal and, potentially, unjust as well.

Add to this that not only their share of burdens matters here. Relationships are often unjust due to inequalities of power and status. Unequal burdens can again be responsible for this, but also other aspects of a relationship can be relevant. For example, our discussion of the sovereignty argument raised issues that can be used here: the power of these groups to hold the government accountable differ, sometimes radically; their rights to dissent are also not the same. Or just think of the considerations cited to support the loss of social cohesion. We have pointed out that the Norwegian state is in a relevant sense arrogant: it does not give one group of the population voice, it does not take members of this group to be authorized or competent to make

⁴⁷ Kraaijeveld (2020) makes a similar point about domestic lockdowns.

⁴⁸ In a different context, Lovett & Sharp (forthcoming) apply argumentation with a similar structure. Of course, one could just say that special burdens are problematic simply because they are extra demanding. However, understanding demandingness as a side-constraint – as something that can decide whether a requirement is right or wrong – is controversial. See Goodin (2009) for discussion. Besides, it is not clear that these special burdens are not merely demanding but also *excessively* demanding (i.e., they are *too* demanding), which is what would be needed to be the case.

their voices heard. So, in addition to unjust burdens, there is also unjust relationships created in the wake of border closures.

V. Summary and concluding remarks

The choice to close the borders is a value choice; it is, furthermore, a moral choice. It certainly must be if it is to be justified in any way: merely pragmatic, political or even economic considerations, in themselves, will not do. But what are these values and why are we not discussing them openly and sincerely in public? What justifies the choice that avoiding any (or almost any) increase in infections trumps all other values, such as freedom of movement? In order to travel freely domestically, foreign travel is to be radically restricted. What justifies this choice? It is these – and many other – questions that we have been discussing in this paper. So far, we have found no good way to support the closing of borders in the way it has been done in Norway during the COVID pandemic. In fact, we have seen that arguments can be given that go against this policy. Of course, the ultimate verdict about border closures in Norway or elsewhere, has to take an overall, all-things-considered form: everything we have said provide only a *pro tanto* reason to open borders. We do take our paper to show that the balance of these reasons ultimately come down on this side. But just as the reasons themselves, this final conclusion too can be questioned. If this engages the public and policymakers to debate the matter, we have already achieved something important.

Pandemics often usher in radical changes in society. It is too early to tell whether this will happen now – but our relation to borders and foreigners, both inside and outside the country, might well change and not to the better. Norway should decide whether it wants to remain an open country, at least as far as this is possible in the given circumstances. Or, instead, it wants to be a closed country that declares itself a virus-free zone, cost what it may. We, personally, consider the second choice worse. The first choice, on the other hand, is manageable – at least up to a point and we certainly haven't reached that point yet.

Acknowledgments. [...]

References

- Angell, K. (2019), 'Property and Territorial Rights in Political Philosophy', *Oxford Research Encyclopedia, Politics*, Oxford: Oxford University Press.
- Bell, J., Staver, A. B., and Tolgensbakk, I. (ms), 'Citizenship and Mobile Family Life During the Pandemic'
- Blake, M. (2002), 'Discretionary Immigration', *Philosophical Topics* 30(2): 273-289.
- Blake, M. (2013), 'Immigration, Jurisdiction, and Exclusion', *Philosophy and Public Affairs* 41(2): 103-130.
- Bognar, G., Hirose, I. (2014), *The Ethics of Health Care Rationing*, London: Routledge.
- Bramble, B. (2020), *Pandemic Ethics: 8 Big Questions of COVID-19*, Bartleby Books.
- Byskov, M. F. (2019), 'Qualitative and Quantitative Interpretations of the Least Restrictive Means', *Bioethics* 33: 511-521.
- Cabrera, L. (2020), 'On Cosmopolitan Humility and the Arrogance of States', *Critical Review of International Social and Political Philosophy* 23(2): 163-187.
- Carens, J. H. (2013), *The Ethics of Immigration*, New York: Oxford University Press.
- Devi, S. (2020), 'Travel Restrictions Hampering COVID-19 Response', *Lancet* 395(10233): 1331-2.

- Doliwa-Klepacka, A., Zdanowicz, M. (2020), 'The European Union Current Asylum Policy: Selected Problems in the Shadow of COVID-19', *International Journal for the Semiotics of Law*
- Egan, M. S. (2020), 'Statements on Race and Class: The Fairness of Skills-based Immigration Criteria', *Ethics & Global Politics* 13 (2): 108-122.
- Elias, E., Ben, J., Mansouri, F., and Paradies, Y. (2021), 'Racism and Nationalism During and Beyond the COVID-19 Pandemic', *Ethnic and Racial Studies*, 44(5): 783-793.
- Freeman, Samuel R. (2007). *Rawls*. Routledge.
- Goodin, R. (2009), 'Demandingness as Virtue', *Journal of Ethics* 13: 1-13
- Guibilini, A. and Savulescu, J. (2020), 'COVID-19: Ethical Guidelines for the Exit Strategy', *Oxford Uehiro Centre for Practical Ethics*, 1 October 2020. <http://blog.practicaethics.ox.ac.uk/2020/10/covid-19-ethical-guidelines-for-the-exit-strategy/> Accessed 25.05.2021
- Haug, N., Geyrhofer, L., Londei, A., (2020), 'Ranking the Effectiveness of Worldwide COVID-19 Government Interventions', *Nature Human Behavior* 4(12): 1303-1312.
- Hart, Herbert L.A. (1973). Rawls on Liberty and its Priority. *University of Chicago Law Review*, 40(3), 534–555.
- Johnson Sirlead, E., Clark, H. (2021), 'Report of the Independent for Pandemic Preparedness and Response: making COVID-19 the last pandemic', *The Lancet*
- Kis, J. (2003), *Constitutional Democracy*, Budapest: CEU Press.
- Kraaijeveld, S. R. (2021), 'COVID-19: Against a Lockdown Approach', *Asian Bioethics Review* 13: 195-212.
- Lovett, A. and Sharp, D. (forthcoming), 'What Immigrants Owe', forthcoming in *Ergo*
- Mill, J.S. (1859/2003), *On Liberty*, ed. David Bromwich and George Kateb, New Haven, CT: Yale University Press.
- Nickel, James (1994). Rethinking Rawls's Theory of Liberty and Rights. *Chicago-Kent Law Review*, 69(3), 763–785.
- Ossei-Owisu, (2020), 'The Politics of Disposability', in. Schwartz (2020), pp.
- Owen, D. (2020), 'Open Borders and the COVID-19 Pandemic', *Democratic Theory* 7(2): 152-159
- Rawls, J. (1971), *A Theory of Justice*, Cambridge, MA: Harvard University Press.
- Rawls, J. (1993/2005), *Political Liberalism*, New York: Columbia University Press. Originally published in 1993.
- Rawls, John (2001). *Justice as Fairness: A Restatement*, ed. by Erin Kelly. Harvard University Press.
- Risse, M. (2012), *On Global Justice*. Princeton: Princeton University Press.
- Savulescu, J., Persson, I., and Wilkinson, D. (2020), 'Utilitarianism and the Pandemic', *Bioethics* 34: 620-632.
- Saxena, A., Bouvier, P.A., Shamsi-Gooshki, E., Köhler, J., and Schwartz, L.J. (2021), 'WHO Guidance on Ethics in Outbreaks and the COVID-19 Pandemic: A Critical Appraisal', *Journal of Medical Ethics*
- Scheall, S., Crutchfield, P. (forthcoming), 'A Case Study in the Problem of Policymaker Ignorance: Political Responses to COVID-19', forthcoming in *Cosmos + Taxis*
- Schwartz, M. C. (2020), ed. *The Ethics of Pandemics*, Broadview Press
- Song, S. (2018), 'Political Theories of Migration', *Annual Review of Political Science* 21: 385-402.
- Wellman, H. (2020), 'Immigration', *Stanford Encyclopedia Of Philosophy*