THE "FOREIGN" VIRUS? - Justifying Norway's Border Closure

Abstract

In response to the Covid pandemic the Norwegian government put in place the strictest border closures in Norwegian modern history, restricting entry to most foreign nationals. The Prime Minister, Erna Solberg, justified these restrictions with reference to the rise of new Covid variants, and the need to limit visitors to Norway as much as possible. In this paper we critically examine both the justification given for the border closure, and explore the possible adverse effects this closure might bring about. We argue that the recent closures are not morally justified, that they place an unjust burden on transnational citizens and Norwegians with close relations abroad, and that such border closures can have severe impacts for many individuals, on Norway's international standing and on social cohesion.

Keywords

Covid-19; justice; sovereignty; nationalism; immigration; freedom; ignorance

Introduction

On 29 January 2021, the Norwegian government introduced the strictest entry rules since March 2020 - which were the strictest since World War II. Those who did not have Norwegian citizenship or were resident in Norway would no longer have access to the country, with a few exceptions. Most foreigners were denied entry. These, among others, included the following groups: parents of children over 18, grandparents, adult children, partners, siblings, seasonal workers, guest researchers, students. This placed a heavy burden on transnational citizens[1], international migrants who have attachments and connections in other countries, and Norwegian residents who have attachments abroad. Many were unable to see their family or start new jobs, and as the border closure was open-ended, with no end in sight, they often found themselves in an existential limbo, unable to plan.

The Norwegian Prime Minister Erna Solberg justified the restrictions with reference to the increased spread of Covid-19 (hereafter: Covid)[2] variants, and the need to limit the numbers of visitors (Office of the Prime Minister 27.01.2021). On June 18th this year, the Norwegian

Government announced a partial relaxation of some these measures, to begin from July 5th (Ministry of Foreign Affairs 2021). At the same time the government announced it was moving to step 3 in its reopening plan, with people being able to have more guests at home, and more people being able to attend public events (Office of the Prime Minister(b) 2021). However, for many the borders would stay closed, as Prime Minister Solberg put it:

> "We must continue to take care. The infection situation is still unpredictable in many places around the world, and there is uncertainty associated with the mutations. This is why we need to maintain a high level of preparedness and restrict entry into Norway. The reopening of Norway is contingent upon us being able to hold back on opening our borders." (Office of the Prime Minister(b), 2021)

In other words, Solberg argued that in order to have quite limited measures in place in Norway, the borders must stay closed. It is this decision to close the border to most foreigners, and its justification that is the topic of this article. Does the justification the Norwegian Government gave stand up to moral scrutiny? And what can we learn from a moral reconstruction of the justification of border closure? Unsurprisingly, given its overwhelming effects, significant amount of philosophical corpus has already been produced on Covid and its effects. Yet, there is little philosophical debate on the matter of border closures. By contrast the present WHO advice is not in favour of border closures, and many other international health regulations are specifically against it (Saxena and others 2021: 4-5). Moreover, border closures, in addition to lockdowns, are among the most restrictive and hence most potentially damaging ways to deal with the pandemic situation. Still, while many questions have been asked about the legitimacy of lockdowns[3], almost none have yet to be posed about border closures.[4] Many transnational individuals, whose lives occur in more than one country, have seen their lives severely impacted than others over this last year. They do not only have to comply with domestic restrictions, but in many cases, have not been able to see their loved ones for well over a year. It is therefore of particular importance for the state to offer these individuals good justifications.

Thus, it seems reasonable to ask, generally, and more concretely in Norway's case, what justifies border closures in the present pandemic. This is not likely to be the last pandemic we experience in our lifetimes, and as new variants spread more countries might seek to employ border closures. With this in mind it is pressing that we investigate the justifications of many of the new policies that have been employed in the last two years, and whether they can stand up to moral scrutiny.

One caveat before we move on to our argument. It is important to note that we are not questioning the justifiability of border *restrictions*, such as requiring quarantine, vaccine certificates and testing on arrival. Such measures can be seen as directly aimed at controlling the spread of the Covid pandemic, and while there might be issues of proportionality and who should cover their costs, we do not consider these in this paper. We think having requirements for testing and quarantine are reasonable if there is a danger of spreading new variants across borders and given that the level of infections is higher in some countries than others. It is the closing of borders we will consider in more detail.

This is how we will proceed: In section 2, we will discuss possible justifications for these restrictions, some explicitly endorsed by the Norwegian government, and some not. Our aim in this part is to morally reconstruct, discuss and refute these arguments. In particular, we consider three approaches that each comprise a bundle of arguments: the 'imported infection' argument, the pragmatic argument, and the sovereignty argument. Shortly put, they argue that border closures are needed in order to limit imported infections, that they are pragmatically justifiable both politically and given limited knowledge about potential effects of policies, and that the state has the sovereign right to control who enters their territory. Subsequently in section 3, 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. In short, these point to the potential bad effects of border closures on social cohesion and rising nationalism; claim that they unjustly limit the freedoms of many individuals, both Norwegians and foreigners; and that they place not only an unequal, but also unjust burden on some people.

Attempts to justify border closures in the ongoing pandemic

As just noted, we will present three arguments in this section. We will argue that none of these arguments justify Norway's recent border regime, before in the next section moving on to consider the positive case against the measure.

The 'imported infection' argument

In the Government's press release from 27.01.2021, Prime Minister Erna Solberg justified the closing of the border in the following manner:

> "We have continually tightened, and eased restrictions as warranted by the changing infection situation. With the more contagious variant of the coronavirus now spreading, we find it necessary to introduce the most severe entry restrictions we have had since March of last year. We must limit the number of visitors to Norway as much as possible for a limited period. I understand that the consequences will be significant for many people but curtailing the risk of importing the infection makes this action necessary" (Office of the Prime Minister(a) 2021).

This echoes concerns such as those raised in an article from NRK (the Norwegian Broadcasting Corporation) on the 27.02.2021 with the title: "This is how 5600 infected came to Norway in one year" (Fange 2021). The basic premise in the article is that infections came to Norway from abroad and that this necessitated the closing of borders, as well as other measures such as partial or full lockdowns. In the governmental press release, and other news articles[5], some central claims are repeated: the spread of Covid 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.

In these articles the politicians do not merely want to explain, but also to justify the closing of Norwegian borders. However, what is the justification we are given? As far as we can tell, the reason given for closing borders is that people coming from abroad have brought in the virus. The most common concerns raised against this closure have been the economic consequences and the rather indiscriminate manner of border closure. In particular, the plight of migrant workers and cross-country commuters from Sweden is highlighted. Yet, the basic question is not asked: *Why* is this fact – that someone coming from abroad might bring in the virus or new variants of the virus - enough to justify not merely increased border controls, such as more testing, vaccine requirements and quarantine, but also the *closing* of borders?

Consider the following three 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, all the rest of the world imported the virus. If everyone followed 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. Two, the WHO's recommendation on international traffic is that "Travel measures that significantly interfere with international traffic may only be justified at the *beginning* of an outbreak" (World Health Organization 2020 [our italics]). The fact that many countries disregard this recommendation does not make it bad advice. Indeed, 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 due to international travel. At the same time, there is a danger that undue focus on travel and border restrictions and closures will hinder effective infection control (Devi 2020). Three, the overwhelming majority of infections in Norway, and the spread of new variants, has been due to the domestic spread of the virus, certainly in 2021.[6]

It therefore does not seem clear why the mere fact that infection reaches a country from abroad is sufficient, in itself, to justify closing the border to large groups of people. In any case, no perfect closure is possible in our world; even countries as isolated geographically as New Zealand and Australia, have not managed to keep the virus entirely out (as evidenced by repeated local lockdowns). So, it is natural to ask why closing the borders is preferred to controlling and restricting – via quarantine, testing, isolation – the flow of people through them?

Perhaps the WHO recommendation should be handled with more caution, though. One could argue that Norway is in the beginner phase of the pandemic *compared to other countries* since the infection level is low, and during the Spring there was a low percentage of the new variants. Yet, based on the publicly available figures it seems clear that Norway experienced both a significant domestic spread of the virus, as well as a significant domestic spread of new variants. In fact, a New Zealand or Australia-type solution whereby their own citizens are also denied entry, has never been proposed in Norway. Moreover, most of the virus infections that have been brought into Norway over the last year have come via guest workers and holidaying Norwegians. In order to reduce the spread due to these groups arriving, the government put in place testing and quarantine requirements. And if these measures did not work well enough, that is perhaps due to them not being enforced strongly; not because they are unsuitable for infection control.[7] 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.[8]

To sum up. We do not think that border *restrictions* are an ineffective tool in controlling pandemics. This is certainly not the case and research support this well (Haug, Geyrhofer & Londei 2020; Voigt and others forthcoming). But the question is why border restrictions must take the form of partial or entire border *closures*. Indeed, such restrictions can be intrusive, but border closures are even more severe measures, both economically as well as socially. Thus, a very strong justification should be given for their introduction – and we have found no such public epidemiological justification. In particular, there has been little justification and debate, grounded on epidemiological projections, as to why border closures, as opposed to increased testing and quarantine, were needed and an evaluation of what the impact the various policy

choices might be. 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 is, *ceteris paribus* – though what we say later might well count against it. 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 particular countries) – unilateral border closures for foreigners seem to be an unwarranted way of controlling the spread of the virus. At least the Government has not provided an epidemiological justification for why such closures were needed.

The pragmatic argument

One possible reason behind present Norwegian border policy could be political. The parliamentary support for the current right-wing government is secured by FrP (The Progress Party), the most nationalistic and anti-immigration mainstream party in Norway. There might therefore be temptation to be seen to be strict on immigration, particularly as 2021 is an election year.[9] This is evident from the fact of how the policing of the external border is very different from policing domestic 'borders' (e.g., regional borders) during the pandemic. Norway covers a large area and has a low population density, so people often travel long distances. Yet no strict restrictions have been placed on domestic travel, although it is clear from the practice and experience from most European countries, that such movement is the way the virus spreads within a country.[10] If the goal of the government was to limit the spread of the virus also within Norway, one might have expected enforced restrictions also on domestic travel at least at certain times over the past year. Indeed, there have been *recommendations* to avoid unnecessary domestic travel, but no *restriction*s have been placed on domestic travel. Furthermore, there is an interesting difference as to what has been considered necessary, domestically and internationally. For whereas the government has been more willing to consider journeys within Norway for the purposes of family visits as "essential",[11] such journeys crossing international borders have more often been deemed "nonessential".[12]

It should also be noted that most European countries, especially those in the south of Europe but many also in the north, perhaps would not 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 would be 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 traffic). Norway also suffers economically from border closures but unlike almost all European countries, it has

a fiscal cushion to deal with the economic impact: The Government Pension Fund, or petroleum fund, as it is often called. To finance the generous economic support measures, Erna Solberg's government has used significant funds both in the 2020 and in the 2021 budget. In short, Norway can afford the economic consequences of closing of borders, as well as the pandemic restrictions in general.

However, 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 a policy whether it promotes the electoral chances and popularity of the government. This might well *explain* the policy, but it most certainly does not 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 does not follow that it should do it. And again, nothing in the above provides an adequate moral justification for the recent border closures.[13]

There is, though, another candidate for the pragmatic justification of border closures. In a recent article, Scheall & Crutchfield (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 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*." (Scheall & Crutchfield forthcoming) 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." (Scheall & Crutchfield Forthcoming) One could - it certainly appears tempting - see border closures in the same light: they are also "blunt and comparatively" simplistic ways of dealing with imported infections.

However, what is important to note is once again the difference between explanation and justification. Scheall & Crutchfield (forthcoming) 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." (Scheall & Crutchfield forthcoming, fn. 6) This, as they themselves admit, is a particularly salient point in later phases of the pandemic, in particular after the Autumn of 2020, as we by then have amassed significant pool of knowledge about both the pandemic and about relevant

counter-pandemic policies. In short, policymakers 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 ignorance at the start of the pandemic (although lack of preparation can still be criticized[14]). Perhaps policymakers could not help but be epistemically impoverished in the initial phase of the Covid pandemic, and therefore to err on the safe side, be blunt and comparatively simplistic in their policy choices. But the ignorance of the later stages does not appear to be of an excusable kind that could warrant blunt measures like border closures. It would therefore seem to be less legitimate currently to move from explanation to justification of policy based on epistemic ignorance.

Scheall & Crutchfield (forthcoming), though, do provide some further explanations as to why politicians seemingly have not learned much from their past mistakes and used their amassed experience. One idea concerns the 'pretence of knowledge': policymakers were perhaps 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: "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" (Scheall & Crutchfield Forthcoming). 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.

These are no doubt interesting hypotheses that are worth further elaboration and probing. What is difficult to see is how this might morally *justify* policy choice. The ignorance we are here dealing with is perhaps rather a form of *wilful* ignorance: policymakers, driven by their own interests, in both scenarios chose not to do something despite available evidence. And this latter kind of ignorance is hardly justifiable from a moral point of view.

The sovereignty argument

Within the philosophy of migration there are some debates that are relevant for the topic under consideration, in particular when it comes to various theories of what justifies a state's control over borders. The arguments that rely on *collective self-determination* are particularly pertinent

in our case. These arguments build on the idea that states need to control their borders in order to allow for collective self-determination. They rely on two assumptions: Firstly, territorial states have the right to decide what happens on their territory, including border policy. Secondly, if they are also democracies, government policy should follow the majority view, which could support 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 both the scope and validity of the arguments building on self-determination, and whether they in this case would require border closures.

In her review of theories of migration, Sarah Song 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. (2018: 395)

Song argues that on the basis of such mechanisms a state's control over immigration can be justified. However, it seems apparent that several of these are not in place in relation to Norway's recent border closure. Firstly, a series of freedoms are violated by closed borders: freedom of movement, freedom to choose and pursue an occupation - even setting immigrants aside, Norway's border regime seriously disadvantages guest workers, commuters and working members of transnational families.[15] Furthermore, the closures impacted the freedom to marry and start a family, not only for cross-border and transnational families, but also for all those whose intimate relationships were not covered by one of the exemptions. Of course, no freedoms are meant to be unlimited, and one can meaningfully discuss where the limits lie in which circumstances, and which should be given priority. We do this, in some detail, below. Shortly put we do not believe that, especially given existing alternatives, i.e., border restrictions as opposed to border closure, the imposed constraints on these freedoms are justified.

As for the second mechanism Song mentions, it is worth differentiating between those who have voting rights and those who do not. Norwegian citizens 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. Those who cannot vote are a diverse group ranging from guest workers to permanent residents. 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.[16] This significantly reduces accountability. Lastly, the two groups also differ in terms of the forms of dissent that is available to them. If they break the rules, Norwegian citizens face mainly fines, whereas those who belong to the other group face, potentially, deportation from the country. This difference of burdens resulting from border closure will play a role in our later positive arguments in section 3, as it relates to the positive case we make against border closures.

The presence of the third mechanism, regarding public rationale, in the Covid pandemic in Norway is also questionable. Of course, the government is closing borders as part of its effort to stop the spread of the virus. This, no doubt, serves the common good. However, this is only the case when considering the measure in isolation, rather than comparing it to other possible measures – in this case border restrictions consisting of, among others, testing, quarantine, isolation, and targeted closures (towards particular countries and regions with significant outbreaks). And as we have argued above, it is far from obvious that border closure is the superior solution and, that it therefore, *on the whole*, serves the common good. At a minimum, the government would need to provide a public rationale that includes evidence for why border closures, as opposed to border restrictions, are preferable and necessary.

Collective self-determination can but need not take a democratic form, though it does in Norway. So, assuming the majority of the Norwegian public supports border closure, is not that just enough to justify the policy? We think that it does not. In addition to the above minimal requirements, in the case of democracies further, more stringent conditions can be appealed to. Although we cannot here make the normative case for them, liberal democracies combine the idea of popular sovereignty – that is taken here to entail some kind of simplified majority rule– 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 it has been applied in Norway, infringes on rights, entitlements, and privileges, such as freedom of movement, of many Norwegian citizens and foreign residents. The people affected may be the minority, but in a liberal democracy, such as Norway is, they deserve protection. In any case, some special justification would be needed, which has not been provided.

One could still say that all of the above discussion presupposes one crucial thing: that the political collective in question – the Norwegian political community – in fact includes those

whose rights are not respected, for whom proper dissent is not available, to whom the decision-makers are not properly accountable and so on. In other words, one could argue that the Norwegian government does not owe anything to those people whose rights are here being impinged. But is this the case? Here it is important to point out that we are not trying to broaden the scope of who should be protected or for a more liberal immigration policy. Many of the people severely impacted by the recent closures are Norwegian citizens, and the imaginary objector would not 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 visa holders. What about them?

Here it becomes important exactly how one understands the 'people' in question. This is another vexed issue. If one subscribes to a nationalist and/or some kind of culture-based approach, many of those who are 'only' residents in the country may not belong to the collective. But this is not the only way to conceive of 'peoplehood'. Song (2018: 396) herself 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 by virtue of its members having a pre-institutional 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 do 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.

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

Based on the above discussion, we would argue that the recent Norwegian border closures are unjustified. Are there also other positive arguments as to why Norway should try to avoid such policies in the future? In the following we discuss three such arguments: the consequentialist argument, which points to the negative effects of border closure; the freedom argument, which considers how we should balance various limits on freedoms; and the justice argument, wherein we consider the distribution of burdens.

The consequentialist argument: exclusionary nationalism and social cohesion

It is not unusual to approach the ethics of public health – both domestically and globally – from a consequentialist point of view. However, while there is significant attention paid to the

negative consequences of lockdowns, border closures have not been similarly evaluated. As we saw above, when considering the imported infection argument, the public debate referred to both health and economic consequences. However, other kinds of effects seem to have been ignored. We would like to focus on two here: increased exclusionary nationalism and reduced social cohesion.

There is already significant evidence that Covid, in part through specific pandemic policies, negatively effects refugees, asylum seekers, migrant workers, transnational families and so on. Among these, stigmatization, xenophobia, racism are, perhaps, the most dangerous. The last decades have seen a resurgence of nationalism in many countries, including Norway. Here we do not mean nationalism in the patriotic sense of loving your country (political community), but in the sense that there is something problematic with foreigners: namely, they are *foreign;* they are the *Other* (cf. Elias and others 2021). This is often called exclusionary nationalism. According to this latter view, it makes a lot of difference where infections come from: domestic spread is unwelcome but unavoidable; 'foreign' infections are bad and should not take place. These kinds of views can be seen in the public narratives surrounding the pandemic in Norway: particularly in the discussion of 'importsmitte', 'migrant virus' and so on.[17] These terms stigmatize, and, in some contexts, they are *meant* to stigmatize and alienate.[18]

We think that exclusionary nationalism is a bad thing, and when it is accompanied by outright racism and xenophobia perhaps most would agree with us that it should be avoided. Whatever proponents of this type of nationalism say, we would argue that openness is not compatible with exclusion and closure. Once again it is important to note that openness *is* compatible with border control in the form of border restrictions; we are not advocating an open borders policy, but rather emphasize the more limited point that exclusion also has an impact on how societies view the excluded.

What is more, increased exclusionary nationalism, embodied in and/or caused by border policies and stigmatisation, can impact a country's own domestic population. There is an interesting parallel here with Michael Blake's (2002) argument about discriminatory immigration policies. Blake defends the right of states to control their borders and questions the degree of responsibility states have for prospective migrants. However, he argues 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 the self-worth of people who are parts of the same group, and thereby restricts their ability to exercise their agency as citizens in modern democracies.

We think that Blake's argument can be extended to the present case for Norwegian border closures, similarly to the way Egan (2020) extends it to the case of skills-based immigration policies. In particular, the way the Norwegian state by closing borders treats foreigners, migrants, individuals who are parts of transnational families and, more generally, everyone with transnational connections, can also impact the domestic population. Not only can it impact those who identify with or have close contact with foreigners, but potentially also those who have close, important relations to significant others. The message of pandemic border closure, and their lack of justification, is that these relations do not matter if they come into conflict with the state's will and purpose. And while it would be difficult to empirically test such a hypothesis, it seems clear that unwillingness of the Norwegian government to try to accommodate intimate relationships says something about how important it thinks such relationships are.

Let us now turn to the second long-term consequence: the potential impact on social cohesion. We already considered the evident stigmatization embodied by terms such as 'importsmitte', and the direct impact this can have on some citizens and migrants, but the potential for long-term impact also needs to be considered. It is usual to look at the citizen's or resident's relation to the state as one of a social contract. The state offers services, such as security, in return for the citizen's willing obedience to its laws. 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. Is it fair that these people cannot do any of these things merely so that Norway avoids a possible increase in the level of virus infections in the country? The compact requires at a minimum that some good reason is offered to these people, but such an effort is curiously missing from the Norwegian public debate, let alone from the government's communication to Norwegian residents. Though many measures have been put in place to support businesses and people who have lost work, this does not help those who cannot see their children, their partners, their parents due to border closures. In fact, most of the public debate on the border closure in Norway has related to its impact on business, people travelling to cabins in Sweden, as well as Norwegians going on holiday to "Syden".

What will the people whose lives have had to be put on hold due to the border closure think of 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? This lack of

concern for residents, who might also be Norwegian citizens, who live in the country, pay their taxes, obey Norwegian laws and contribute in other ways to the development of the country, might have a severe impact on their trust and respect for the Norwegian state. And while they might not all be citizens, as we have argued above, there is good reason to hold that they are part of the people, and that they should be part of the relevant decision-making collective. This is an inappropriate rejection of their standing; it is an arrogant state policy (cf. Cabrera 2020).

Add to this the evident contrast between the strict border closure and the relaxed rules domestically. We already mentioned that there have been very few restrictions on domestic travel. Furthermore, the strategy of which the 2020 March nation-wide lockdown formed a part was that after strict lockdown, one would use the TISK strategy: to test, isolate, track and quarantine the virus. The idea behind this latter phase was that while a spread of infections is unavoidable once the lockdown is lifted, we can control it. An important aspect of reducing Covid transmission is that people follow clear and relatively strict rules of conduct, such as handwashing, mask wearing and keeping distance. Now, one can question how strict the domestic rules have been: we reckon that Norway's rules have been a lot less strict than many other comparable countries, and there also seems to have been a drop off in how well people follow the rules. Yet, due to the efficient use of the TISK strategy, the restrictions and rules in Norway have been relatively relaxed compared to many other countries. With one glaring exception: the border closure. The message seems to be that 'we' should be allowed to live as if there was no pandemic, and everyone should accept that therefore we should restrict foreign travel. Now, this might work if that world is somehow *the Other*, radically different, not to be cared for, and with whom one does not need to interact. But this is more in line with exclusionary nationalism and, more pertinently, it can lead to a divided society, where some parts, possibly the majority, feels respected and listened to, whereas a significant minority feels, rightly, to be excluded.

The freedom argument

We have discussed two problems so far, both in consequentialist terms. Let us now turn to two explicitly non-consequentialist considerations, beginning with freedom. 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 simplistic. 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 must therefore be restricted. We accept that also in Norway certain freedoms can be restricted and this is especially so in the special

circumstances of a global pandemic. We will consider an approach to this question using a broadly Rawlsian framework.

The starting point is that not all freedoms are created equal. In the liberal tradition, certain freedoms are considered '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 John Rawls's (2001: 42-3) famous first principle of justice, is to provide everyone with "a fully adequate scheme of equal basic liberties". 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 start a family. So, following a Rawlsian approach, it must now be shown that fewer of these liberties will help us enjoy *other* basic freedoms *more*. Is this really the case? This seems to be 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.

We can accept that the right to health is a basic right. Rawls himself does not 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, 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'. What remains now is the issue of promotion, and here things get more complicated. 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 justified given how many other basic rights and liberties are negatively affected.

However, in response to criticism, 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 using our institutions to secure 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). The question that then needs to be asked is whether the liberties violated by border closure belong to the central range of application of more general basic liberties.

We believe it does, although we admit that we cannot argue for this here in sufficient detail. The general framework 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 types of 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 impinge 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 members of transnational families, but also all those intimate relationships that are affected and are not covered by 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 argued in section II, we do not think that merely promoting security rights, such as the right to health, is enough to show this.

There are two additional reasons for this. Firstly, we should not forget that, as we have emphasized throughout this paper, border closures are not the only ways of dealing with imported infections. Border restrictions of different forms and strictness can 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. Secondly, it is important to consider 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. 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 – domestic restrictions have to be balanced against international measures in this way. Some of our arguments concerning the importance of imported infections are 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?[19]

The justice argument

Our final argument against current border closures builds on theories of distributive justice and relate to how burdens are distributed, and relationships respected. Firstly, 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. What we have said so far illustrates this. We are speaking here of transnational families, other groups with immigrant backgrounds, migrant workers, foreign students, and so on. These people are not able to do what other members of their society can: travel, meet their loved ones, spend time with their children, do their jobs. These activities are, moreover, important as they are identity-constituting, and foster basic relationships, features and abilities.

Furthermore, the borders have only been closed for a particular group, whereas many Norwegians have been able to continue to travel, subject to border restrictions. Arguably it is the former group who bear heavier burden of restrictions on their movement, as they are most likely to suffer a severe impact on their close relationships due to such restrictions. If we were really attempting to distribute burdens more equally, it would be more reasonable to put in place a policy that limited the travel of Norwegian citizens, rather than foreigners, as the former group is likely to suffer less. Not that we are advocating such a policy, but this illustrates the inequality in burden sharing.

Now, an easy-looking retort is available. These are no doubt extra and unequal demands – but are they also *unjust* demands? For a start, when one part of the population has to satisfy demands that the other part of society does not, we have at least a *prima facie* case for injustice. To avoid such a verdict, special justification has to be given. And 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. First, it can be understood as an act of charity, or something that goes beyond the call of duty. 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 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 discussing a case in which certain relationships become negatively affected; in particular, they become unjust in 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 is relevant here: the power of these groups to hold the government accountable differ, sometimes radically; their rights to dissent are also not the same. Just think of the considerations cited to support the loss of social cohesion. So, in addition to unjust burdens, there are also unjust relationships created in the wake of border closures.

Summary and concluding remarks

The choice to close or keep the borders open is a question of values; it is a moral choice. In order for it to be justified, it must not merely be explained pragmatically, politically, or economically. But what are these values that merit this policy choice, and why have they not been the subject of vigorous public debate? Even if border closures as opposed to rigorous border restrictions limit the spread of the virus, what justifies the choice that avoiding any increase in infections trumps all other values, such as freedom of movement? Furthermore, why should foreign travel be radically restricted in order to travel freely domestically and have less strict pandemic measures? What justifies *this* choice? So far, we have found no satisfactory moral justification for the closing of borders in the way it has been done in Norway during the Covid pandemic. In fact, we cannot see that any attempt has been made to justify this policy choice of border closures for certain groups, as opposed to border restrictions, beyond the vague assumption that it limits infections. 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. However, pending further argumentation

to the contrary, we believe our paper shows that the balance of these reasons favour restricted but not closed borders.

Pandemics often usher in radical changes in society. It is too early to tell whether this will happen now – but our relations 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. Whether it wants to aspire to be one when the next pandemic comes around. Or, instead, whether it wants to be a closed country that declares itself a virus-free zone, whatever the cost. If the latter is the case, the state at a very minimum needs to justify this choice and explain it to those affected. In Norway, any such narrative is still missing from public debates.

Acknowledgments. […]

Endnotes

[1] For a definition, see Horst & Olsen (2021).
[2] For a proper characterization of Covid, see Schwartz (2020).
[3] For a recent discussion, see Kraaijeveld (2020).
[4] Owen (2020) is an exception.
[5] See, for example: Cogorno (2021).
[6] Look for 'registrert smitte' on VG's online database (VG 2021).
[7] Compare the UK practice, for example Adams (2021).
[8] Italy is a good example. See Gedi Visual (2020) under the heading "Distribuzione dell'origine dei casi Covid-19 diagnosticati in Italia".
[9] In fact, on 13.01.2021, the FrP has demanded the physical closing of borders (NTB 2021). And just two weeks later (27.01.2021), their wishes were fulfilled (Huse 2021).
[10] 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 Marthinsen (2020).
[11] Consider for example the Minister of Justice defending her trip "home" as necessary (Janssen 2020).
[12] 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. (Ministry of Justice and Public Security 2021)
[13] 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.
[14] See the rather damning report of the Independent Panel for Pandemic Preparedness Response in Johnson Sirleaf and Clark (2021).

[15] For ongoing research of the effects of Covid on transnational families in Norway, see Bell, Staver & Tolgensbakk (ms).
[16] For details, see Ekroll & Ask (2020).
[17] See for example Helland (2021) or Sæbbe (2021).
[18] Consider for example the speech Sylvi Listhaug gave when she became the new leader of FrP (Heiervang & Krekling 2021) and contrast her claims with the available data (Herbjørnsrud 2021).
[19] There is a parallel here with another well-known argument from the global justice literature: Joseph Carens's (2013, 238) 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.

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