

# The “Foreign” Virus? – Justifying Norway’s Border Closure

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*In response to the COVID pandemic, the Norwegian government implemented the strictest border controls in modern Norwegian history, barring entry to most foreign nationals. The Prime Minister, Erna Solberg, justified these policies with reference to the rise of new COVID variants and the need to limit visitors to Norway as much as possible. As this approach has severe adverse effects on many people, there is a need to critically examine the justification given for closing the border. In this paper, we argue that while many border restrictions are legitimate, (1) the arguments given for the recent banning of entry for groups of people are not convincing, and (2) that the ban unduly limits personal freedoms and places an unjust burden on transnational citizens and Norwegians with close relations abroad.*

**Keywords:** COVID-19, Border Closure, Border Restrictions, 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. People who did not have Norwegian citizenship or reside in Norway would no longer have access to the country, with a few exceptions. Most foreign citizens were denied entry. These included the following groups: parents of children over 18, grandparents, adult children, partners, siblings, seasonal workers, guest researchers and students. This placed a heavy burden on transnational citizens,<sup>1</sup> international migrants who have attachments and connections in other countries, and Norwegian residents who have attachments abroad. Many were unable to see their families 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 for the future.

The Norwegian Prime Minister Erna Solberg justified the restrictions with reference to the increased spread of COVID-19 (hereafter: COVID)<sup>2</sup> variants, and the need to limit the numbers of visitors (Office of the Prime Minister 27.01.2021). On 18 June 2021, the Norwegian Government announced a partial relaxation of some these measures, to begin from July 5<sup>th</sup> (Ministry of Foreign Affairs 2021). At

the same time, the government announced it was moving to Step 3 in its reopening plan, enabling people 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. This decision to close the border to most foreigners, and its justification, are the topic of this article. Does the justification by the Norwegian Government stand up to moral scrutiny? And what can we learn from a moral reconstruction of the justification of border closure?

The answers to these questions are not trivial and a lot is at stake. While many questions have been asked about the legitimacy of lockdowns,<sup>3</sup> fewer questions have been posed about border closures as a pandemic response.<sup>4</sup> And though the security of citizens and the protection of basic human rights are often invoked as reasons for states' right to control borders (Blake 2013, Wellmann 2020), these concerns have to be balanced against the prospective immigrants' interest in being admitted.<sup>5</sup> Many transnational individuals, whose lives occur in more than one country, have seen their lives more severely impacted than others' over this last year. They 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 solid justification.

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 lifetime, and more countries might seek to employ border closures as new variants spread. With this in mind, it is pressing that we investigate the justification 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 control policies *as such* as a response to the COVID pandemic. Indeed, requiring quarantine, vaccine certificates and testing on arrival 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 is reasonable if there is a danger of spreading new variants across borders, or if the level of infections is significantly higher in some countries than others. However, we will consider in more detail the most drastic border control policy, that of partially or fully *closing the border*.<sup>6</sup> To avoid confusion when considering other border control policies, we will refer to them as "border restrictions" in what follows, unless the context explains otherwise.

This is how we will proceed: In the next section, we will discuss possible justifications for border closure, some explicitly endorsed by the Norwegian government and some not. Our aim in this section 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. In brief, they argue that border closures are needed in order to limit imported infections, that they are pragmatically justifiable both politically and due to limited knowledge, and that the state has the sovereign right to control who enters its territory. Subsequently, in the third section of the paper, we will put forward arguments against border closure. Here, two strands of argumentation stand out: the argument rooted in freedom, and the justice argument. In short, we argue that the recent measures unjustly limited the freedoms of many individuals, both Norwegians and foreigners, and that they placed not only an unequal, but also an unjust burden on some people.

One final admission: We are aware that each of the arguments we discuss could be expanded into a paper in its own right. However, our choice in this paper has been to consider the major arguments one can reconstruct from the public debate and give all of them some consideration. That is, in the paper we are primarily interested in considering and criticizing the various arguments that might support border closures, and we are well aware that much more can be said about many of the issues we discuss. We are willing to sacrifice some depth for the sake achieving more breadth in the argumentation. This does not mean, we hope, that our arguments have no depth, but it does mean that we focus on addressing each of the relevant arguments for border closure and leave a more detailed, thorough discussion of some of the arguments to other papers.

### **Attempts to justify border closures in the ongoing pandemic**

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

#### ***The ‘imported infection’ argument***

The most commonly cited reason for closing the border for groups of people is to limit the risk of importing infections. Indeed, as mentioned above, one of the most common grounds for justifying immigration control is a government’s need to protect the rights and security of its own citizens (Blake 2013, Wellmann 2020). We will get back to how one might weigh such a right to limit immigration against the rights to free movement towards the end of the article, but first we must assess whether there are good grounds in the case of the pandemic for this commonly cited justification.

In governmental press release and other news articles,<sup>7</sup> some central claims are repeated: the spread of COVID in Norway is largely due to imported infections, and therefore the borders must be closed so that these infections can no longer enter the country (Office of the Prime Minister(a) 2021) (Fange 2021).

In these articles the politicians do not merely want to explain, but also to justify the closing of Norwegian borders to large groups of people. 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 restrictions, such as more testing, vaccine requirements and quarantine, but also the *closing* of borders?

Consider the following three points. One, the fact that is appealed to – ‘importing’ infection from abroad – can be cited by *every* government around the world. After all, outside Wuhan, China, where the virus originated, 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]; cf. Saxena and others 2021: 4-5). 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. While it is difficult to disentangle all the effects of various pandemic response policies, both modelling and the limited number of observational studies indicate that this is correct: “Models have found that strict border closures could have helped limit viral transmission in the pandemic’s early days. But once the virus started spreading in other countries, border closures provided little benefit” (Mallapaty 2021). At the same time, undue focus on travel and border restrictions and closures risks hindering effective infection control (Devi 2020). Three, certainly in 2021 the overwhelming majority of infections in Norway, and the spread of new variants, have been due to the domestic spread of the virus.<sup>8</sup>

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 out entirely (as evidenced by repeated local lockdowns). So, it is natural to ask why closing the borders is chosen instead of 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, when it closed its borders, was in the beginning phase of the pandemic *compared to other countries* since the infection level had been low, and during the Spring of 2021 the percentage of new variants was low. 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 of complete border closure, whereby their own citizens were 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 implemented 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.<sup>9</sup> 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.<sup>10</sup>

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 supports this well (Haug, Geyrhofer & Londei 2020; Voigt and others forthcoming). But the question is why border restrictions must take the form of partial or complete border *closures*. Indeed, border restrictions such as quarantine and testing 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, little justification and debate, grounded on epidemiological projections, have been provided as to why border closures rather than increased testing and quarantine were needed, nor an evaluation of what the impact of the various policy choices might be. In special circumstances, perhaps as in the case of New Zealand and Australia, a suppression strategy that employs complete border closure can be warranted. Perhaps it is, *ceteris paribus* – though we will argue below that it does not. But Norway has not been, and in 2021 certainly is not, in an even remotely similar situation. Given all the other available forms of border control policies – testing, home quarantine, hotel quarantine, home or hotel isolation – 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.<sup>11</sup>

### ***The pragmatic argument***

One possible reason behind present Norwegian border policy could be political. For some time the parliamentary support for the previous right-wing government was secured by the FrP (The Progress Party), the most nationalistic and anti-immigration mainstream political party in Norway. There might therefore be a temptation to be seen as strict on immigration, particularly since 2021 was an election year.<sup>12</sup> However, we are reluctant to take such political considerations as good arguments for border closure. It is hardly relevant for the rightness and wrongness of such a policy, whether or not it promotes the popularity of the government. This might well *explain* the policy, but it most certainly does not morally *justify* it.

There is, however, another candidate for a pragmatic justification of border closures. In a recent article, Scheall & Crutchfield (2021) 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 2021: 20) 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 opted to try to minimize physical suffering due to the virus via the blunt and comparatively simplistic tool of economic and societal lockdown.” (Scheall & Crutchfield 2021: 19) 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 and Crutchfield 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 2021: fn. 6) This, as they argue, is a particularly salient point in later phases of the pandemic, in particular after the Autumn of 2020, as we by then had 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<sup>13</sup>). Policymakers could perhaps 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. One might therefore reasonably argue that such a precautionary approach was justifiable, given the lack of knowledge early on in the pandemic. However, 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 choices based on epistemic ignorance.

Finally, one could argue that, due to the emergence of new variants, we are *continuously* in an epistemically impoverished situation. But this does not sound reasonable. Although variants indeed emerge, only very few of them are classified as variants of concern or of interest by the WHO.<sup>14</sup> These variants, most recently the dominant delta variant and the now threatening omicron variant, emerge rarely and not entirely unexpectedly (insofar as we know that unless a significant majority of world population is vaccinated, the emergence of variants is likely). This has two important consequences. One, the claim that we are continuously in an epistemically impoverished situation is false. We think the following appears to be a more accurate description: we are moving between long periods of relative epistemic certainty (‘calm’) through short periods of epistemic uncertainty (‘upheaval’). Two, in between these long periods we have ample time to prepare for the emergence of new variants. This is especially so since by now the relevant institutions have developed effective ways of monitoring and studying COVID variants, we have vaccinations and we now also have COVID medications. All in all, what follows from the virus’ tendency to mutate is that there *might* at most be short periods when border closures are warranted – although we would even doubt that that is the case.<sup>15</sup>

However, Scheall & Crutchfield (2021), 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 had 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 2021: 24). 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 its borders. The arguments that rely on *collective self-determination* are particularly pertinent in our case (Altman & Wellman 2011, Fine 2013, Miller 2016, Song 2018). These arguments build on the idea that states need to control their borders in order to allow for collective self-determination. If such arguments are to justify the current partial border closures, they must rely on two assumptions: First, territorial states have the right to decide what happens on their territory, including border policy. Second, 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, roughly, as the claim that the people are the ultimate source of political authority - we call this the *sovereignty argument*.

The first thing to note about this argument is that none of its proponents argue that such a right to collective self-determination is unlimited. As Sarah Fine puts it in discussing the particularly vexed case of immigration: “We cannot simply come down on the side of the state without explaining exactly why the state’s claims trump those of would-be immigrants, or without thinking carefully about the limits to the state’s legitimate claims regarding self-determination” (2013: 263). This looks fairly uncontroversial: surely, states cannot just decide to do *anything* in the name of collective self-determination and claim that such a justification trumps all others. While states can decide their policies within reason, there are other concerns, rights and interests than self-determination that need to be weighed. For example, while states can decide to attack other states or punish their own population, these are all severe actions that, because they clearly conflict with the rights, interests, dignity of some people, call for a justification. The same is true in the present case: border closures in a pandemic are among the most severe actions a state can take, and whether or not this can be done in the name of state sovereignty is a matter for (public) justification.

Let us therefore consider what might be the minimal requirements for such a justification. 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 may be justified. However, it seems apparent that several of these mechanisms are not in place in relation to Norway's recent border closure. First, 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 members of transnational families.<sup>16</sup> 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 different circumstances, and which freedoms should be given priority. We address this in some detail below. Succinctly put, we do not believe that, especially given existing alternatives, i.e., border restrictions such as quarantining and testing 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.<sup>17</sup> 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 – and many, if not most, governments in Europe (and the world) – have acquired special powers.<sup>18</sup> This significantly reduces accountability. Lastly, the two groups also differ in terms of the forms of dissent 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 below in our positive arguments 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 that might consist of testing, quarantine, isolation and targeted, short-term 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 so in Norway. So, assuming the majority of the Norwegian public supports



border closure, is that not just enough to justify the policy? We do not think that it is. In addition to the above minimal requirements, in the case of democracies, more stringent conditions should be appealed to. Liberal democracies combine the idea of popular sovereignty – taken here to entail some kind of simplified majority rule – with restrictions on the power of the state (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 the 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 like Norway they deserve protection. In any case, some special justification would be needed, which has not been provided and which we have not found so far.

One could still say that all of the above discussion presupposes one crucial thing: that the political collective in question – the Norwegian political community – does in fact include those whose rights are not respected, for whom proper dissent is not available and to whom the decision-makers are not properly accountable. But is this really so? One could deny this and argue that the Norwegian government does not therefore owe anything to those people whose rights are here being impinged. Yet, the truth of this position is far from clear. At this point it is worth reminding ourselves of exactly who have been impacted by border closures. No doubt many migrants with no ties to the country have been affected. But let us set them aside for now – in this paper our aim is not to argue for a more liberal immigration policy *per se*. Even so, many more people affected by the policy remain, for whom the present approach is at least questionable. Take Norwegian citizens first. Presumably not even an imaginary objector would doubt that they are part of the relevant collective. The largest group are probably those who are residents but not citizens: EU/EEA citizens, permanent residents, and relevant visa holders. What about them?

Exactly how we understand the ‘people’ in question becomes important here. This is another much discussed issue. If one subscribes to a nationalist or some kind of culture-based approach, many individuals who are ‘only’ residents in the country may not belong to the collective. But this is not the only way to conceive of ‘peoplehood.’ As Sarah Fine (2013: 264) points out, “[m]any states are multinational, many national groups cross over the borders of states, and many citizens of many states do not identify with the majority national group in that state.” It is therefore not always easy to define exactly who constitutes the people who are supposed to be self-determining. For example, Song (2018: 396) 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, become connected to a particular territory by virtue of its members having a pre-institutional right to occupancy on the given territory. This in turn is grounded in peoples’ stable residency for the pursuit of life projects, claims Song. We cannot pursue this topic further here, but our point is simple: plausible ways exist to constitute the people, connect them to a territory and be part of the collective that do not exclude individuals with stable residence and whose centre of life is in the given place. And these people, however variously constituted, have not been given adequate justification for the border closure.

## Why not 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 other positive arguments as to why Norway should try to avoid such policies in the future? In the following we discuss two such arguments: 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 freedom argument*

It is clear that closing borders violates several freedoms; hence a natural argument against border closures can be made in the name of protecting our freedoms. However, this argument is too simplistic, since 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 applies especially in the special circumstances of a global pandemic. We will consider an approach to this question using a broadly Rawlsian framework.<sup>19</sup>

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 a balance between all fundamental freedoms. The ultimate aim, as embodied in John Rawls' (2001: 42-3) 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 affects 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. Nickel (1994: 769) argues, for example, that "the avoidance of the destruction of one's health and normal physical and mental abilities" should be acknowledged as 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." Using 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. Exactly how this clause is to be understood is an intricate matter, but the notion that plays a central role is that of "the central range of applications" of basic liberties. Rawls' view is that 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. How we obtain a fully adequate scheme of basic liberties is by using our institutions to secure the basic liberties in their central range of application, and if

this is not possible, by showing that restrictions within this central range promote 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 they do. The general framework is given by another Rawlsian idea. Rawls (2005: 290) writes that two phases are involved in providing a defensible system of basic liberties. The first phase involves specifying a list of basic liberties under general headings. The second involves further specifying 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 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 impacted and 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 above, we do not think that merely promoting security rights, such as the right to health, adequately shows this.

There are three additional reasons for this. First, we should not forget that, as we have emphasized throughout this paper, border closures are not the only way of dealing with imported infections. Border restrictions of different types and strictness can be used instead. These restrictions would arguably compromise our basic liberties (much) less than border closures do. So, even if we are wrong about promoting the balance of basic liberties above, border restrictions are likely to promote the same balance better.

Second, it is important to consider that there is a major discrepancy between Norway's domestic and international border policy. Despite the domestic spread of the virus, similar restrictions have never been imposed on domestic travel. Indeed, there have been *recommendations* to avoid unnecessary domestic travel, but no *restrictions* have been placed on domestic travel. Furthermore, we find an interesting difference regarding what has been considered necessary domestically versus internationally. Whereas the government has been more willing to consider journeys within Norway for the purposes of family visits as "essential"<sup>20</sup>, such journeys across international borders have more often been deemed "nonessential"<sup>21</sup>. This is relevant since we could argue that the balance of basic liberties is promoted because all the domestic liberties have remained in place. However, it is at least questionable to what extent – 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?

Finally, third, 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?<sup>22</sup> Sharply distinguishing freedoms in this way is far from self-evident, even if often politically expedient (because it is implicitly or explicitly accepted by the public).

### ***The justice argument***

Our final argument against current border closures builds on theories of distributive justice and relates to how burdens are distributed and relationships respected. 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*. 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, or do their jobs. These activities are important, moreover, 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 the 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. We are not advocating such a policy, but this example illustrates the inequality in burden sharing.

Now, an easy-sounding retort could be made that these demands are unquestionably additional and unequal – but are they also *unjust* demands? For a start, when one part of the population has to satisfy demands that another part of society does not, we have at least a *prima facie* case for injustice. To avoid such a conclusion, 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 (what philosophers call 'supererogatory'). In this case, these people are owed gratitude in one form or another. This is clearly not how the Norwegian border policy is understood presently, though. This suggests instead that the common perception is that the sacrifice called for is a *duty* that 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 to 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 the distribution of burdens becomes unequal in the way described above as a result of border closure, the relationship between citizens and residents with and 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 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 differs, sometimes radically; nor are their rights to dissent the same. So, in addition to unjust burdens, unjust relationships are also created in the wake of border closures.

## Summary and concluding remarks

The choice to close the borders or keep them open is a question of values; it is a moral choice. In order for the choice to be justified, it must not merely be explained pragmatically or politically but also have a valid moral explanation. What are the values that merit this policy choice? Even if border closures, as opposed to rigorous border restrictions like quarantining and testing, 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 over implementing other border restrictions like quarantining, testing and vaccination requirements, 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 provides 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 would favour border restrictions over closed borders.

The balance is further tilted in this direction if we consider the possible consequences of border closures. Perhaps two of these adverse effects stand out most clearly.<sup>23</sup> There is already significant evidence that COVID, in part through specific pandemic policies, negatively affects refugees, asylum seekers, migrant workers, transnational families and so on. Stigmatization, xenophobia and racism are perhaps the most dangerous impacts. These kinds of views can be seen in the public narratives surrounding the pandemic in Norway: particularly in the discussion of *importsmitte* (imported infection), *migrant virus* and so on.<sup>24</sup> These terms stigmatize, and, in some contexts, they are *meant* to stigmatize and alienate.<sup>25</sup>

In addition to the stigmatization embodied by these terms and the direct impact this can have on some citizens and migrants, the potential for long-term impact also needs to be considered. It is usual to look at a citizen's or resident's relation to the state as 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 travelling.

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 solid public justification 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 implemented to support businesses and people who have lost work, this does not help those who cannot see their children, their partners or their parents due to border restrictions.

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? The 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 people's trust and respect for the Norwegian state. Thus, it seems far from obvious that closing borders is a good policy to adopt in a pandemic.

Pandemics often usher in radical changes in society. It is too early to tell whether this will happen now – but our relationships to borders and foreigners, both inside and outside the country, might well change and not for 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 aspires to be one when the next pandemic comes around. Or does it instead want 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, such an explanation is still missing from the public debate.

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## Notes

<sup>1</sup> For a definition, see Horst & Olsen (2021).

<sup>2</sup> For a proper characterization of COVID, see Schwartz (2020).

<sup>3</sup> For a recent discussion, see Kraaijeveld (2020).

<sup>4</sup> Owen (2020) is an exception.

<sup>5</sup> It should be noted that there is also a debate within the literature as to whether the interests of citizens might legitimate emigration restrictions, in particular, in relation to skilled health workers (Brock & Blake, 2015). The idea being discussed is the claim that the need for providing health services in countries, for example, justify emigration restrictions. Whereas Brock argues that they can, subject to

certain limitations, Blake is more skeptical about using such policies. We thank a reviewer for drawing our attention to this connection.

<sup>6</sup> *Partial border closure* is the policy of banning entry by particular groups of people based on their nationality, for example. By contrast, a *complete border closure* refers to shutting the border to everyone. Norway has endorsed the former policy and has not been alone in implementing such policies. Indeed, most countries have implemented complete or partial border closures at various times during the pandemic (Shiraef et al., 2021).

<sup>7</sup> See, for example, Cogorno (2021).

<sup>8</sup> Look for 'registrert smitte' on VG's online database (VG 2021).

<sup>9</sup> Compare the UK practice, for example Adams (2021).

<sup>10</sup> Italy is a good example. See Gedi Visual (2020) under the heading "Distribuzione dell'origine dei casi Covid-19 diagnosticati in Italia."

<sup>11</sup> The development, introduction and widespread use of vaccines (in particular, the new mRNA vaccines) and the even more recent development of medication (COVID pills such as Paxlovid) further strengthen this conclusion, of course. However, it should be noted that especially the former was used also to open up borders throughout the world. The emergence of the latest COVID variant, Omicron, appears to be changing this picture as we write, however. Later in the text, we argue that this appearance is misleading.

<sup>12</sup> 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).

<sup>13</sup> See the rather damning report of the Independent Panel for Pandemic Preparedness Response in Johnson Sirleaf and Clark (2021).

<sup>14</sup> For these classifications, see WHO "Tracking SARS-CoV-2 variants."

<sup>15</sup> Thus, we are not particularly supportive of the drastic border measures that are once again spreading in the world in response to the recently discovered Omicron variant (these words were written in December 2021). This new variant poses risks along three dimensions: how infectious it is (quickness of spread); how dangerous it is (severity of symptoms); how likely it is that it bypasses bodily defenses (vaccine-induced or otherwise). At least at present there is a near consensus regarding the first dimension that the variant is very likely to be more infectious than even the Delta variant. The other two dimensions are much harder to assess and so the diagnosis of epistemic poverty is more appropriate here. However, what this at most justifies are short-term, targeted border closures (to countries where there already is community transmission) for the period while we gain more knowledge – this is presently roughly estimated to take a couple of weeks until we have community transmission within Norway. Moreover, since we have already had similar experiences at least twice – the Alpha variant and the Delta variant – by now we have, or certainly should have, the relevant systems in place to deal with the situation without border closures, such as border restrictions in the form of testing, quarantining and tracing). This is also in line with WHO recommendations. For more see Harrison (2021).

<sup>16</sup> For ongoing research on the effects of COVID on transnational families in Norway, see Bell, Staver & Tølgensbakk (forthcoming).

<sup>17</sup> Although the date has now passed, this was particularly relevant when writing the first draft of this article, since Norway had national elections in September 2021.

<sup>18</sup> For details, see Ekroll & Ask (2020).

<sup>19</sup> The broader theoretical background for the argument that follows can be found in McLeod & Tanyi (forthcoming).

<sup>20</sup> Consider for example the Minister of Justice defending her trip “home” as necessary (Janssen 2020).

<sup>21</sup> Specified “essential” trips abroad for Norwegian residents as of May 2021 include only such trips as those for the birth of one’s child or seeing seriously ill or dying relatives (Ministry of Justice and Public Security 2021).

<sup>22</sup> There is a parallel here with a well-known argument from the global justice literature: Joseph Carens’ (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.

<sup>23</sup> We think, and in an earlier draft of this paper have elaborated upon how fleshing out these considerations could be turned into a consequentialist argument against border closures. The argument would run along roughly two lines: how border closures lead to damaging exclusionary nationalism and how they destroy social cohesion. We also argue in that earlier draft that interesting parallels exist with the works of Blake (2002), Egan (2020) and Cabrera (2020), as well as with the empirical data in Elias and others (2021). We thank our reviewers for convincing us that such a consequentialist argument needs to be expanded before it can be published in its own right.

<sup>24</sup> See for example Helland (2021) or Sæbbe (2021).

<sup>25</sup> 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).

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