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The “foreign” virus? COVID and border closures: The case of Norway

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Background

- Most severe border closures in modern times
- Significant impact on Norwegian and foreign nationals in Norway
- Little public and philosophical debate on the justification of such policies
- WHO and other international health regulators are against it (Saxena et al 2021, 4-5)

Note: We are not concerned with border restrictions, such as testing and quarantine, but rather with border closures (access to country).

Purpose: To investigate the *moral justification* for the recent Norwegian border closure, and whether it can stand up to scrutiny.

Note: We don't think appeal to emergency is enough to justify employing just *any* kind of measure.

Overview

1. Brief description of Norway's border restrictions
2. The attempts to justify the restrictions
 - The imported infection argument
 - The pragmatic argument
 - The sovereignty argument
3. The arguments against border closures
 - The consequentialist argument (nationalism and social cohesion)
 - The freedom argument
 - The justice argument
4. Conclusion

The case of Norway

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- Justification given by Erna Solberg: New variants, limit travel as much as possible, understanding that this will have severe consequences for some people, but necessary to limit the risk of imported infections
- Border closure
- Also for EEA citizens
- In addition, travel is made very difficult
- Parallels : Hungary and New Zealand/Australia
- Probably illegal, but that is not our focus, which is rather whether such restrictions have a moral justification

PRO (1): The 'imported infection' argument

- Most oft-cited justification for border closures
- Yet, WHO recommendation: 'Travel measures that significantly interfere with international traffic may only be justified at the beginning of an outbreak' (WHO, 2020; cf. Devi 2020)
- Suppression strategy in Norway?
- Overwhelming majority of infections in Norway due to domestic spread
- Most imported infections: guest workers and holidaying Norwegians
- Border restrictions and quarantine can be an effective tool in controlling pandemics (Haug et. al. 2020)
- Yet, Norway has had quite relaxed hotel quarantine system, and have allowed many Norwegian citizens quarantine in their homes, with minimal control

PRO (2): The pragmatic argument

Political and economic reasons: Right-wing government supported by anti-immigration party, and Norway has enough funds to offset negative economic consequences.

→ Explanations, not justifications

The argument from *epistemic ignorance*: “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 et al forthcoming).

→ It is easier to close borders than to institute proper testing and quarantine measures

→ But once again, this is a better argument early in a pandemic than late: explains perhaps but why would it justify?

PRO (3): The sovereignty argument

The most common reasons for states to be able to protect their borders are to protect the economy, security, welfare, culture, or collective self-determination of the citizens (Song 2018, Wellman 2020).

Debate between those who defend a state's right to control its borders and those who want more extensive freedom of movement or open borders. Yet, even those who argue for the state to have large latitude in restricting immigration, think there are limits to this power.

For example David Miller: “the reasons the state gives for its selective admissions policy must be good reasons, reasons that the immigrants *ought* to accept give that the general aims of the policy are legitimate ones” (2016, p. 105).

- Legitimate aims, good reasons, protect basic rights, etc.
- But is this the case in regards to the Norwegian border restrictions?

PRO (3): The sovereignty argument (*cont'd*)

- In the present case: (i) most of those affected are already in the country; (ii) what drives the argument is either the state's right to self-determination or, if the state is democratic (as is Norway), the majority's opinion.
- Song (2018. 395) about *non-democratic* regimes: "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."
- We don't think these conditions are fulfilled in Norway's present border control regime. Can an appeal to *democratic* self-determination help? We don't think so since then the conditions to be fulfilled are even more stringent.

CONTRA (1) Nationalism and social cohesion

Exclusionary nationalism:

- «Importsmitte» reinforces exclusionary nationalism
- Stigmatises and alienates part of the population
- Does not only impact foreigners, though that is bad enough in itself

Michael Blake: “The state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well.” (2002, 284)

Social cohesion:

- Absent good reasons given to people, this will impact the social compact
- This is strengthened by the contrast between quite a relaxed pandemic measures inside Norway, with very strict and (unjustified/unjustifiable) measures on the border

CONTRA (2) The freedom argument

- It is clear that closing borders violates several freedoms; hence a natural way to argue against border closures can be done in the name of protecting our freedoms.
- However, this is too simple. For, it is also a well-known dictum that no freedoms are unlimited; in particular, freedoms can clash with each other and in the process of adjudication some are bound to come out as restricted.
- There are two ways to go from here:
 - *The Rawlsian approach*: Are there basic rights and liberties affected and are they legitimately restricted? We argue for a negative answer.
 - *The Millian approach*: Is there sufficient harm prevented to balance out the harm caused by border closure? We argue for a negative answer.

CONTRA (2) The freedom argument (*cont'd*)

Two further additions need also to be considered:

- Even if we are wrong about promoting the balance of basic liberties in the Rawlsian case, border restrictions are likely to promote the same balance better.
- In Norway, despite the domestic spread of the virus, there have never been similar restrictions in place on domestic travel.

The cantilever argument

Joseph Carens: «If it is so important for people to have the right to move freely within a state, isn't it equally important for them to have the right to move across borders?» (2013, 239)

Reverse cantilever argument

The reactions to the so-called «søringkarantene» show us how important internal freedom of movement is during a pandemic. This indicates how important it is to have international freedom of movement, also during a pandemic.

CONTRA (3) The justice argument

- How are the burdens and benefits of the closures of borders distributed?
- No doubt they are unequal, but are they *unjust*?
 - When one part of the population has to satisfy demands that the other part of society doesn't, we have at least a *prima facie* case for injustice.
 - To avoid such a verdict, special justification has to be given. But we have found no satisfactory justification.
- We are also handling a case in which certain relationships become negatively affected; in particular, they become unjust themselves.
 - One reason for this could be the same as above: the unequal distribution of burdens.
 - Relationships are often unjust due to inequalities of power and status. Recall the *sovereignty argument*.

Conclusion

What we've learnt:

- The moral justification for border closures does not stand up, certainly not in the case of Norway.
- Also a series of harmful effects speak against them: Nationalism and social cohesion.
- Furthermore, they raise concerns of unjustified restrictions on freedom and of injustice.

What to learn for the next pandemic:

- Apologies should be made to lessen impact on social cohesion.
- Border restrictions should be proportionate, and closures can only be short time (until proper testing and quarantine is in place).
- Good public reasons should be given and rules should be clear.

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