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The Erosion of Borderless Norden? Practices and Discourses on Nordic Border Restrictions in Finland and Sweden during the Covid-19 Pandemic

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Nordic countries are part of the borderless Schengen Area, but free movement in the Nordic countries, or Norden, dates back even further: no border controls or restrictions on workers' movements have existed since the entry into force of the Nordic labour market and passport union in 1958. This article outlines how Finland and its neighbour Sweden, the only Nordic country to keep borders open for Finland in 2020, approached closed borders in Norden during the Covid-19 pandemic, when free movement of Nordic citizens was suspended for the first time in almost 70 years, to be restored only in summer 2021. The article examines the Finnish and Swedish border practices and political debates. Parliamentary discourses are analysed from the perspective of two ideal types of argumentation, namely utilitarian and deontological, arguing that the suspension of free movement leaves long-lasting scars in the trust of both politicians and citizens in interaction across borders.

Keywords: free movement; Schengen; Nordic countries; European Union; covid-19; fundamental rights

1. Introduction

The Nordic countries are often lumped together, even though there are also notable differences between the countries. In terms of transnational engagement, the differences are rather large: Finland and Sweden are not NATO members, but are part of the EU, while Denmark is a long-standing member of both, with an opt-out from Justice and Home Affairs in the EU. Norway and Iceland, in turn, are NATO members only. Despite these differences, the free movement of EU/EEA citizens applies similarly in all countries and all countries are also part of the borderless Schengen Area. The Nordic countries already had free movement and a common labour market before any of them joined the European Community or European Union, thanks to the establishment of the Nordic passport union in 1954, which entered into force in 1958. Within the European Union, the right to free movement has since become a fundamental right of EU citizens, enshrined in the EU Charter of Fundamental Rights. It is thus somewhat curious that the Nordic countries have had very strict entry bans during the pandemic, given that the Nordic countries have traditionally had a restrained approach to restricting fundamental rights and have usually been ranked highest when the rule of law and realisation of individuals' fundamental rights are assessed.¹

The Covid-19 pandemic led to the reintroduction of internal border controls and entry bans for Nordic citizens, but this was not the first time when internal border controls had been utilised in the Nordic countries after joining the Schengen Area in 2001. Sweden, Denmark and Norway have had border controls, intended to be temporary, on some of their mutual borders since the so-called migration crisis in

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¹ See World Justice Project. Rule of Law Index 2020. In 2020, the index included 128 countries and the four top countries were Nordic countries in the following order: 1) Denmark, 2) Norway, 3) Finland and 4) Sweden.

2015/2016. However, these checks were meant to control the movement of third-country nationals and did not restrict the movement or mobility of EU citizens within the Nordic countries. Therefore, the Covid-19 pandemic was the first time that the movement of Nordic citizens has been categorically banned between the countries. Whereas Denmark, Norway and Finland had already introduced internal border controls and issued an entry ban in mid-March 2020, Sweden only implemented a general ban for Nordic and EU citizens in February 2021 with the spread of the so-called UK variant of the Covid-19 virus.² EU and Nordic citizens could thus enter Sweden throughout 2020, even though the significantly worse infection rates in that country obviously discouraged people from travelling to Sweden. Swedish citizens could not enter the neighbouring countries without specific grounds, which varied throughout the pandemic from essential work to living in a border community.

Even before Covid-19, there have been conflicts over the absence of borders, as shown in previous literature. The mass-scale movement of Finns, including Finnish Roma, in the 1960s and 1970s caused controversy in Sweden.³ In addition, Denmark challenged the Schengen *acquis* in 2011 when it started to implement passport controls at the Swedish border; after Swedish and EU-level criticism, this practice was eventually discontinued.⁴ Even though Nordic cooperation, mainly in the form of the Nordic Council, existed before the Nordic countries joined the European Union, the countries have not been able to coordinate their EU policies.⁵ Finland and Sweden joined the EU at the same time in 1995, but they scarcely coordinate their EU positions despite close Nordic administrative cooperation on other issues.⁶ This lack of coordination may also be visible in the free movement context, as it is a question of EU cooperation.⁷

So far as the Covid-19 pandemic is concerned, previous research has analysed in particular the differences between the Swedish and Danish measures, showing that Swedes trusted their governments and officials less.⁸ It has also been suggested that Sweden stuck to its principled approach instead of selecting an adaptive and pragmatic approach during the first wave and its exit phase.⁹ One study points out that in both Sweden and Denmark the media discourse on Covid-19 focused on justifying the adopted policies, regardless of whether the voices were elected officials or leading experts.¹⁰ Overall, it seems that Covid-19 has shown that countries with similar characteristics, such as state stability, universal welfare state, multiparty system, high political engagement, generalised trust, social capital and political trust, may still end up choosing different policy options.¹¹ Despite this, the contacts between the Nordic countries have been frequent, both among the Ministers for Nordic Affairs within the Nordic Council and also between the chief epidemiologists of the countries, whose diverging views had a significant impact on the policy choices of the countries.¹² In contrast, the choices made with regard to free movement restrictions were both uncoordinated and varied between the countries.

In this article, the aim is to analyse the Finnish and Swedish arguments related to restrictions at the Nordic borders in order to demonstrate that Nordic unity, so long presumed to be a shared value, has been revealed

² See Danish Ministry of Justice, *Notat om den EU-retlige vurdering af grænsekontrol og afvisning som led i indsatsen vedrørende COVID-19*, no 1428814, 15 March 2020; Finnish Ministry of the Interior, *Muistio 1732020: Rajavalvonnan väliaikainen palauttaminen sisärajoille*; Swedish Ministry of Justice, *Förordning (2020:1258) om tillfälligt inreseförbud vid resor från EES-stater och vissa andra stater till Sverige*.

³ Miika Tervonen, 'The Nordic Passport Union and Its Discontents: Unintended Consequences of Free Movement' in Johan Strang (ed), *Nordic Cooperation: A European Region in Transition* (Routledge 2015) 131–145.

⁴ *idem*

⁵ Tobias Etzold, 'The Nordic Council of Ministers: Aspirations for More Political Relevance' (2020) 8 *Politics and Governance* 11.

⁶ Per Lægrend and Lise H Rykkja 'Nordic Administrative Collaboration: Scope, Predictors and Effects on Policy Design and Administrative Reform Measures' (2020) 8 *Politics and Governance* 21.

⁷ For Nordic coordination and lack of it in international organisations, see e.g. Norbert Götz and Heidi Haggren, *Regional cooperation and international organizations: the Nordic model in transnational alignment* (Routledge 2009); Thorsten Borring Olesen and Johan Strang, 'European Challenge to Nordic Institutional Cooperation: Past, Present and Future' in Strang (n 3).

⁸ Julie Hassing Nielsen and Johannes Lindvall, 'Trust in Government in Sweden and Denmark during the COVID-19 Epidemic' (2021) 44 *West European Politics* 1180.

⁹ Arjen Boin and Martin Lodge, 'Responding to the COVID-19 Crisis: A Principled or Pragmatist Approach?' (2021) 28 *Journal of European Public Policy* 1131.

¹⁰ Erik Bækkeskov, Olivier Rubin and Per Ola Öberg, 'Monotonous or Pluralistic Public Discourse? Reason-Giving and Dissent in Denmark's and Sweden's Early 2020 COVID-19 Responses' (2021) 28 *Journal of European Public Policy* 1321.

¹¹ Nielsen and Lindvall (n 8).

¹² Jussi Sippola, 'Ystävällisin terveisin Anders Tegnell' *Helsingin Sanomat* (4 July 2021).

by the pandemic to be far more fragile and uncertain. In order to do that, we analyse the Finnish and Swedish politicians' perspectives on free movement restrictions in light of moral approaches. To be specific, we will examine both the practices of border restrictions and Finnish and Swedish parliamentary debates that dealt with border restrictions in the Nordic countries, examining whether they rely on utilitarian thinking, i.e. the costs and benefits of free movement restrictions, or deontological ideas, i.e. balancing between prioritising the right to free movement and other fundamental rights.

Section 2 deals with the analytical framework and data of the article. Thereafter, we discuss the practices of border restrictions in Finland and Sweden, after which we move on to a discussion on border restrictions. We examine, on the basis of debates on Nordic border restrictions, the approaches of Finnish and Swedish MPs in their accounts of free movement restrictions. The concluding section speculates on the future of Nordic cooperation and open borders in a post-pandemic setting.

2. Data and Framework for Analysis

The analysed empirical material consists of Finnish and Swedish parliamentary debates gathered from the websites of the national parliaments with a search phrase "border* AND swed*/fin*" in the respective languages between March 2020 and June 2021. The results were filtered to only include reports, parliamentary debates and written questions and responses to them by the government, since they were considered the most interesting venues for analysing MPs' arguments related to border closures. All results were reviewed, and relevant material was gathered based on whether it actually discussed border restrictions in the Nordic countries. In both countries, the query results included the annual report of the countries' delegations to the Nordic Council as well as the debates on those reports. In addition, there were written questions and a specific debate on Nordic border restrictions in the Swedish Parliament. The relevant documents were carefully examined, and each argument related to borders was categorised as utilitarian or deontological based on whether it focused on cost/benefit arguments or duties related to opening or closing of borders.

No specific debate has been held in the Finnish Parliament on border closures, which have been supported by both government and opposition parties. In total, eleven written questions were presented to the government related to the border restrictions between March 2020 and June 2021, but otherwise the topic has not been prevalent in the Finnish Parliament. In Finland, the only debate related to Nordic border restrictions concerned the annual report of the Nordic Council; in Sweden, in addition to a similar debate, there was also a separate debate held on Nordic border restrictions in the Swedish Parliament. The Swedish material also included four written questions on border closures.

In addition to the parliamentary material, official national and EU documents and decisions on travel restrictions, reviews of national ombudsmen and supreme courts as well as EU case law on free movement restrictions were utilised to examine the practices of free movement suspension discussed in Section 3. After that, in Section 4, we outline the debates and provide examples of typical arguments and analyse them on the utilitarianism-deontology scale. All the statements in the analytical and other sections were translated by the authors.

The utilitarian-deontological debate, serving as the basis for the analytical framework of the parliamentary debates, has been one of the most defining of the modern moral theoretical debates.¹³ It underlies many other dualistic structures, such as International Relations and International Law debates on the logic of consequentiality and on the logic of appropriateness, the Weberian distinction between instrumental rationality and value rationality,¹⁴ and the division of practical reasoning into instrumental and value-based variants.¹⁵ It has also had significant impact on legal argumentation theories.¹⁶ The theories have been presented in several different forms, but the basic ideas are simple: utilitarian thinking focuses on the consequences of an action and the deontological thinking places pre-determined duties at the centre of moral deliberation.

¹³ See e.g. William K Frankena, 'The Concept of Morality' (1966) 63 *The Journal of Philosophy* 692.

¹⁴ Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) 24.

¹⁵ James G March and Johan P Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (Free Press 1989); Douglas N Walton, *Media Argumentation: Dialectic, Persuasion and Rhetoric* (Cambridge University Press 2007) 30–37.

¹⁶ See e.g. Aleksander Peczenik, *On law and reason* (Springer 2009); Robert Alexy, *A theory of legal argumentation: the theory of rational discourse as theory of legal justification* (Oxford University Press 2010).

Utilitarianism is based on the idea that actions, which maximise the overall well-being (utility), are right, while those which tend to reduce well-being are wrong. In practice, utilitarianism thus constitutes one branch of consequential ethics.¹⁷ Utilitarianism can be defined as ‘the best outcome is the one that gives to people the greatest net sum of benefits minus burdens’.¹⁸ In political discourses in general, the utility dimension is, by and large, based on a means-goal premise (or calculation), whereby a certain means is expected to achieve a certain goal.¹⁹ For example, free movement should represent an instrument aimed at a certain target, such as economic, income-based benefits, or the prevention of negative consequences, for example in terms of job security for host nation residents.

In our analysis, the difference between utilitarianism and deontological ethics is made based on whether the focus is on consequences of the travel restrictions or on the duty to either uphold restrictions or uphold open borders. Deontological ethics, in fact, can also refer to several moral theories which are guided by certain duties. The deontological thinking can be traced back to a Kantian principle, which goes by the name of the categorical imperative: ‘Act as if the maxim of your action were to become through your will a universal law of nature’.²⁰ The basic idea is that one’s actions are guided by a certain principle, such as upholding the right to free movement of EU citizens.

In deontological ethics, it is not the consequences, as in utilitarianism, that define whether an action is right or wrong, but the fact that we have duties, which bind us in every situation. Deontological ethics can also be called a moral-practical discourse, in which it is important to justify one’s actions with rules and universal principles.²¹ Compared with utilitarianism, deontology can be considered to defend an idea of absolute rights that should not be restricted, whereas utilitarianism regards rights as more relative, which can be sacrificed for the common good.

In the analysis, we will examine whether this idea of duties as the basis of action is relevant in the debates on Nordic border restrictions or whether the focus is more on the benefits of free movement in the utilitarian vein. To put it simply, a utilitarian view would focus on the (negative or positive) consequences of border restrictions, whereas a deontological approach would emphasise the violation of an important principle as such, or justify its violation with a more important principle. The four ideal types of argumentation are presented in the table below (**Table 1**), which also provides examples of which types of arguments can be categorised in which group. As can be seen, both utilitarian and deontological approaches can be used to justify and criticise border closures. The basic difference is that a utilitarian approaches free movement as a means to an end, while a deontologist considers it to be a value. We start with the Finnish case, where little debate on Nordic border restrictions was held and then move onto the Swedish case where there was more discussion on the topic.

Before moving onto analysing the parliamentary debates based on the framework described above, we outline the policies and practices of free movement suspension during the Covid-19 pandemic.

Table 1: Ideal discourse types related to border restrictions and examples.

	Utilitarian	Deontological
Justification of border restrictions	End (e.g. securing life/health/healthcare) justifies the means of restricting free movement	Other values (e.g. right to life/health/healthcare) weigh more than the value of free movement
Criticism of border restrictions	End (e.g. preventing harm to people) justifies the means of upholding free movement	The value of free movement weighs more than other values (e.g. right to life/health/healthcare)

¹⁷ GEM Anscombe, ‘Modern Moral Philosophy’ (1958) 33 *Philosophy* 1.

¹⁸ Derek Parfit, *Reasons and Persons* (Clarendon Press 1984).

¹⁹ Isabela Fairclough and Norman Fairclough, *Political Discourse Analysis* (Routledge 2012) 89.

²⁰ Immanuel Kant, *Foundations of the Metaphysics of Morals: And What Is Enlightenment?* (Macmillan 1959).

²¹ Jürgen Habermas, *Justification and Application: Remarks on Discourse Ethics* (Polity Press 1994).

3. Suspending Free Movement: Policies and Practices in Sweden and Finland

The criteria of and restrictions on the right to free movement, a fundamental right of EU citizens, are regulated in the Free Movement Directive (2004/38/EC), which grants all EU citizens the right to reside in any EU country for three months without registration. Thereafter, they have to demonstrate that they are working, studying, applying for work or have the means not to become a burden on the social security system of the state of residence. In addition to public policy and public security, the Free Movement Directive allows restrictions based on public health and provides the following requirement: 'the only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State' (Article 29(1)).²² The Commission provided additional guidance for regulating free movement in the Covid-19 pandemic. In its May 2020 guidance on restoring free movement, the Commission outlined that, in addition to the epidemiological situation and the necessity of the measures, the member states must compare 'the benefits of maintaining blanket restrictions with the economic and social considerations, including the impact on EU cross-border labour mobility and trade'.²³ The Commission thus emphasised economic and social considerations in the free movement restrictions. It could be considered that life and health are not considered super-fundamental rights but can be compromised for economic and social reasons, which also have long-term impacts on life and health.

The Schengen Borders Code (SBC, Regulation 399/2016), in turn, regulates the passport-free Schengen Area. The SBC provides for the possibility to reintroduce internal border control within the borderless Schengen Area for up to six months in the event of a threat to public policy and the internal security of a state. When making a decision on internal border control, Article 26 requires that the member state must take into account the impact of the threat and the impact on the free movement of persons. In the early stages of the Covid-19 pandemic on 16 March 2020, the Commission also provided guidelines on border management measures, stating that border controls can be introduced for the risk of a contagious disease, but they must take into account health considerations.²⁴

In the Covid-19 pandemic, the internal border controls ensured that the free movement restrictions were complied with. However, they were already in use in three Nordic countries before the pandemic. For years, the situation had been contrary to the Schengen Borders Code in Sweden, Norway and Denmark, as all the legal bases for internal border control had been exhausted in these and three other states (Germany, France and Austria). The countries had continued their internal border controls based on secondary movements of third-country nationals and/or a terrorist threat since the so-called refugee crisis. However, although violating the maximum duration stipulated in the Schengen Borders Code, the terrorism-based internal border controls can be considered to be more justified from the free movement perspective, since they do not hinder the movement of EU citizens. Some commentators also seem to interpret the Schengen Borders Code differently: according to Deutsche Welle, a representative of the German Interior Ministry interpreted the Code to mean that the time limits would be reset every six months and applied only to each specific notification.²⁵ However, there is no such mention of this in the Schengen Borders Code. The Finnish Minister of the Interior, in turn, admitted that the Finnish prolongation after six months constituted an 'illegal state of affairs'.²⁶ Regardless of the legality of the measures, the silent approval for the pre-Covid or post-2015 border controls also illustrates that controlling the movement of third-country nationals within the European

²² See also Panos Koutrakos, 'Public Security Exceptions and EU Free Movement Law' in Panos Koutrakos, Niamh Nic Shuibhne and Phil Syrpis (eds), *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality* (Bloomsbury 2016) 190–217.

²³ European Commission, Communication from the Commission, COVID-19: Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls. C(2020) 3250 final, 13 May 13 2020.

²⁴ European Commission, COVID-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services. C(2020) 1753 final, 16 March 2020.

²⁵ Schacht, Kira (2019), Grenzkontrollen in EU-Ländern stellen Schengen infrage [Border checks in EU countries challenge Schengen Agreement], Deutsche Welle, 13 November 2019, <https://www.dw.com/de/grenzkontrol-len-in-eu-l%C3%A4ndern-stellen-schengen-infrage/a-51033606> (accessed 4 September 2021).

²⁶ Televised interview on *Uutisetra* on 7 November 2020.

Union is tolerated better than restricting the movement of EU citizens.²⁷ Indeed, the European Commission urged the member states to lift their Covid-based internal border controls after only two months.²⁸

Once the Covid-19 crisis had started in March 2020, in addition to internal border controls, almost all EU countries except Sweden implemented entry restrictions for EU citizens. The Swedish Government only drafted a decree on a temporary entry ban from Denmark and the UK in December 2020,²⁹ which was first replaced by a decree adding Norway to the list in January 2021,³⁰ and finally with an entry ban from EEA countries and some other countries in February 2021.³¹ However, Sweden lifted entry restrictions from other Nordic countries at the end of May 2021,³² even though the entry restrictions were valid until the end of August.³³ In March 2020, Sweden did impose an entry ban on *third-country nationals* in accordance with the EU Council decision of 17 March 2020.³⁴ This measure was also taken by the other Nordic states, but it seems somewhat bizarre that Sweden did not have any ban on any EEA nationals for the first nine months.

In the Swedish decree relating to people coming from Denmark and the UK, exceptions were only granted for diplomatic staff, couriers of foreign states, transport sector workers or workers in international organisations. However, when the ban was extended to all EEA nationals, there were more exceptions, such as having a negative Covid-19 test, minors, those participating in health transport, essential family reasons, humanitarian reasons, urgent health measures in Sweden, reindeer herding, mariners and those involved in international police, customs or search and rescue operations. At no point has Sweden provided a notification to the EU on internal border controls based on the Covid-19 situation, but the country continues to maintain internal border controls based on terrorist threats and 'shortcomings in the protection of the external borders'.³⁵ It is interesting that the country thus violates the Schengen Borders Code with these prolonged controls, but simultaneously accuses other Nordic countries of unjustifiably restricting the free movement of Nordic citizens. The difference is, of course, that the Swedish controls do not prevent the movement of Nordic citizens, which seems to make them more justifiable for EU citizens in light of the fundamental right to free movement.

In Finland, entry restrictions were imposed by the same government decision that introduced internal border controls on 17 March 2020.³⁶ In addition to essential travel, it only allowed Finnish citizens, EU citizens registered in Finland and their family members and third-country nationals with a residence permit to enter Finland. Transit was also allowed for EU citizens, and essential travel was defined, inter alia, as staff leaving and boarding vessels, and traffic related to search and rescue and health care. Interestingly, the decision specifically mentioned that third-country nationals could leave Finland and later it was also specified that Finnish citizens had the right to leave the country according to Section 9 of the Constitution.³⁷ In practice, everyone thus had the right to leave the country, which makes one wonder why these different groups had to be specifically mentioned. The decision refers to Section 156a of the Aliens Act which allows entry for EU citizens to be restricted based on public health reasons, but does not elaborate what these restrictions entail in terms of freedom of movement of EU nationals. Eventually, Finland lifted all internal border controls and entry restrictions on 25 July 2021.

²⁷ On pre-Covid restrictions, see Sara Casella Colombeau, 'Crisis of Schengen? The Effect of Two "Migrant Crises" (2011 and 2015) on the Free Movement of People at an Internal Schengen Border' (2020) 46 *Journal of Ethnic and Migration Studies* 2258.

²⁸ European Commission (n 23).

²⁹ Swedish Ministry of Justice, Förrordning om tillfälligt inreseförbud vid resor från Danmark eller Förenade kungariket till Sverige SFS 2020:1258.

³⁰ Swedish Ministry of Justice, Förrordning om dels fortsatt giltighet av förrordningen (2020:1258) om tillfälligt inreseförbud vid resor från Danmark eller Förenade kungariket till Sverige, dels ändring i samma förrordning.

³¹ Swedish Ministry of Justice, Förrordning (2020:1258) om tillfälligt inreseförbud vid resor från EES-stater och vissa andra stater till Sverige (n 1).

³² Swedish Ministry of Justice, Förrordning om dels fortsatt giltighet av förrordningen (2020:1258) om tillfälligt inreseförbud vid resor från EES-stater och vissa andra stater till Sverige, dels ändring i samma förrordning (28 May 2021).

³³ Swedish Ministry of Justice, Förrordning om fortsatt giltighet av förrordningen (2020:127) om tillfälligt inreseförbud till Sverige (27 May 2021).

³⁴ European Council of the European Union, 'Conclusions by the President of the European Council Following the Video Conference with Members of the European Council on COVID-19' 2020.

³⁵ Swedish Delegation, 'Prolongation of the temporary reintroduction of border controls at the Swedish internal borders in accordance with Article 25 of Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)' 13 October 2021.

³⁶ Finnish Ministry of the Interior, 'Rajavalvonnan väliaikainen palauttaminen sisärajoille' (Muistio 17.3.2020).

³⁷ *Ibid.*

One normative problem with regard to the Finnish measures is that the Finnish Border Guard imposed criminal law sanctions for both foreign and Finnish citizens on the basis of crossing the state border in a manner contrary to the government decision. The act of crossing could have been punished as a minor state border offence as stipulated in Section 71 of Chapter 17 of the Finnish Criminal Code. The Finnish Border Guard informed the media in April 2021 that there had been 110 minor state border offences and approximately 40 state border offences, and that there had been offenders from Sweden, Finland and other countries.³⁸

From a legal perspective emphasising the proportionality principle, the starting point should be that criminal law-based restrictions are to be approached in a reserved manner and the issue is to be managed administratively.³⁹ The assessment of restrictions should also take into account respective constitutions, EU law, Nordic conventions and international law relevant to free movement. For example, the precedence principle of EU law prevents national legislation from unjustifiably restricting free movement enabled by EU law.⁴⁰ Free movement restrictions can also be contrary to the proportionality principle from the perspective of EU law; it would also be disproportionate to restrict free movement with very severe fines.⁴¹ We are not aware that criminal law sanctions would have been imposed in Sweden and thereby have enforced Covid-19 restrictions by use of the Criminal Code.

In addition to disproportionate sanctions, judging by the decision of both countries to emphasise working in the exceptions to entry bans, it may be that the core of the right to free movement is still considered to consist of workers' movements and other aspects of free movement remain secondary, such as indigenous Sámi rights to reindeer-herding across borders.⁴² There was also a debate on border communities in general, and the Tornedals Council, which consists of 13 municipalities in the Swedish, Finnish and Norwegian border regions, also issued a proposal to create a specific border pass for people living in border regions. It had already been put forward in June 2020 and, in addition to being discussed in the Swedish Parliament,⁴³ a written question was also presented to the Finnish government on the border pass, and the Interior Minister deemed it an idea worth considering.⁴⁴ The border regions were indeed given greater consideration in summer 2020, including the Finnish decision to allow free movement for "border communities" in August 2020,⁴⁵ which was retracted again in January 2021,⁴⁶ but reinstated for Norwegian border communities on 24 May 2021.⁴⁷ In the Swedish parliamentary debate on Nordic border restrictions, the Minister for Nordic Affairs took credit for taking the initiative for the Finnish border community exemption, in addition to mentioning that Denmark put in place exceptions for Swedish people living near the Danish border and that they have also cooperated with the Norwegian politicians.⁴⁸ The lack of coordination thus does not mean lack of contact, but the sharing of information and opinions has not meant harmonisation.

Overall, until February 2021 and again since June 2021, Finns could thus freely enter Sweden and return, but the situation was different for Swedes. Some relief was in place between August 2020 and January 2021, when Swedish people living in the border communities could enter Finland. However, despite Sweden

³⁸ Tiia Haapakangas, 'Ruotsalaismedia: Suomen ja Ruotsin rajalla kirjattu korona- aikana 150 valtionrajarikosta – vakavimmissa tapauksissa uhkana vuosi vankeutta' (Lapin Kansa 15 April 2021).

³⁹ For the problems related to free movement and criminal law, see preliminary ruling proceedings from the Court of Justice of the European Union (CJEU) requested by the Finnish Supreme Court on 21 January 2020 concerning minor state border offence R 2018/618. The proceedings refer to the requirement in Articles 27(2) and 5(5) of the Free Movement Directive that restrictions to free movement must be proportionate, and to the fact that member states cannot impose a punishment that is not proportionate, such as imprisonment, when restricting free movement.

⁴⁰ The precedence principle included in EU law receives institutional support from the CJEU judgments Case C-26/62 *Van Gend & Loos* [1963] ECLI:EU:C:1963:1 and Case C-6/64 *Costa v. ENEL* [1964] ECLI:EU:C:1964:66.

⁴¹ See e.g. CJEU Case C-378/97 *Wijzenbeek* [1999] ECLI:EU:C:1999:439, para 44; Case C-265/88 *Messner* [1989] ECLI:EU:C:1989:632 para 14; and Case C-193/94 *Skaniavi and Chryssanthakopoulos* [1996] ECLI:EU:C:1996:70 para 36.

⁴² There was an appeal to the Parliamentary Ombudsman of Finland concerning Sámi rights, see decision 'Sisärajavalvonnän käynnistäminen ja alkuperäiskansa saamelaisten oikeudet', 30 August 2021.

⁴³ Swedish Parliament, Riksdagens Protokoll 2020/21:94 (16 March 2021).

⁴⁴ Maria Ohisalo, Vastaus kirjalliseen kysymykseen Tornionlaakson rajapassista (9 September 2020).

⁴⁵ Muistio 19082020: Rajavalvonnän väliaikaisesta palauttamisesta sisärajoille tehdyn päätöksen muuttaminen ja päätöksen voimassaolon jatkaminen.

⁴⁶ Muistio 2212021: Rajavalvonnän väliaikaisesta palauttamisesta sisärajoille tehdyn päätöksen muuttaminen ja päätöksen voimassaolon jatkaminen.

⁴⁷ Muistio 19052021: Sisärajavalvonnän väliaikaisesta palauttamisesta sisärajoille tehdyn päätöksen muuttaminen ja päätöksen voimassaolon jatkaminen.

⁴⁸ Swedish Parliament (n 43).

opening borders for Finns in May 2021, Finland only allowed entry from Sweden when opening borders for all EU citizens on 25 July 2021. Swedes and other EU citizens have been refused entry at the Finnish border, for example, on the basis that their work was not specified in the list of essential work drafted by the government.⁴⁹ After February 2021, Finns were also restricted from entering Sweden for a few months but, in practice, anyone with a negative Covid-19 test could enter. The situation has thus been much easier for Finns wanting to travel to Sweden, a fact which was also reflected in the Finnish and Swedish debates analysed in the following section.

4. Debating Suspension of Free Movement in the Finnish and Swedish Parliaments

4.1. Finnish Parliamentary Discourses on Nordic Cooperation

In Finland, free movement restrictions in Norden received some attention from the opposition; opposition MPs presented eleven written questions to the government on the topic. The Interior Minister responded to ten written questions, which were presented by representatives of the Finns Party (8) and the Coalition Party (2). In addition, there was one question from a Coalition Party MP which was answered by the Minister for Nordic Cooperation and Equality from the Swedish People's Party, on opening borders and Nordic cooperation during the pandemic.

The Minister for Nordic Cooperation emphasised Nordic cooperation during the pandemic but stated that opening borders was also connected to ensuring health security, thus suggesting a utilitarian balancing between free movement and health.⁵⁰ In a similar vein, the Minister of the Interior seemed to approach free movement from a utilitarian perspective. For example, she responded to a question related to border restrictions at the Finnish-Swedish border by stating how much border crossings and thus infection risks have been reduced in Northern Finland.⁵¹ In addition, she responded to another question on the prolonged violation of free movement by arguing that it was necessary to continue internal border controls in order to prevent the spread of the pandemic and to protect people's lives and health.⁵² The idea seems to be that when free movement is restricted, greater good is achieved, which comes close to legal weighing and balancing theories.⁵³ At least when it comes to free movement, the end appears to justify the means for the Minister of the Interior (and the government).

Border issues were also taken into consideration in the Annual Report of the Finnish Delegation to the Nordic Council (consisting of Finnish MPs). The report deplored the effects of border restrictions in Norden.⁵⁴ The report also mentioned that there had been suspicion shown in border regions about the citizens of the other state.⁵⁵ Both the report and the related preliminary debate in the Finnish Parliament also expressed concern that the measures during the pandemic might have an effect on Nordic cooperation in the future. What is to be noted is that border closures were only brought up in two statements in the debate, which are described below.

The Annual Report was presented by a member of the Prime Minister's party, Social Democrats, according to whom some have considered that the border closures "may leave even more permanent marks and damage in Nordic cooperation".⁵⁶ The MP traced the problems at the borders to the different Covid-19 strategies of the countries, thus suggesting that the decisions were made on a utilitarian footing based on optimal consequences. It seems that the problem for the MP was mainly the effect on Nordic cooperation, as the MP also mentioned the sorrow and difficulties caused by the border closures. This suggests that the approach to free movement restrictions is based on a utilitarian perspective: the restrictions are judged by the consequences they cause. The MP did not criticise the border restrictions as violating fundamental rights as such, but just expressed concern over their future impacts.

⁴⁹ Decisions on refusals of entry obtained from the Finnish Border Guard. We have requested and received examples of nine such decisions provided in 2020 by the Finnish Border Guard, where a person attempting to enter Finland from Sweden had been refused entry at the Finnish border. The refusal of entry decisions in our possession were provided between 23 April and 25 October 2020.

⁵⁰ Thomas Blomqvist, 'Vastaus kirjalliseen kysymykseen hallituksen strategiasta rajojen avaamiseksi' (9 June 2020).

⁵¹ Maria Ohisalo, 'Vastaus kirjalliseen kysymykseen henkilöliikenteestä Suomen ja Ruotsin rajalla' (21 April 2020).

⁵² Maria Ohisalo, 'Vastaus kirjalliseen kysymykseen Schengenin matkustusrajotusten ja Euroopan liikkumisvapauden pitkittyneestä rikkomisesta Suomessa sekä vihreän todistuksen käyttöönotosta matkustamisen sallimiseksi' (23 June 2021).

⁵³ Peczenik (n 16).

⁵⁴ Pohjoismaiden neuvosto Suomen valtuuskunta toimintakertomus 2020.

⁵⁵ idem 13.

⁵⁶ Finnish Parliament, Täysistunto 3.6.2021.

A Centre MP, also representing a government party, emphasised the uniqueness of Norden, which is based on close cooperation and the absence of borders. The MP also specifically mentioned the right to life as the legal good in the name of which borders were closed. The approach can be considered to be deontological in the sense that protecting people's right to life weighs more than upholding the right to free movement.⁵⁷ Whereas the Minister of the Interior discussed concrete consequences of the restrictions in the utilitarian vein, this address weighed the right to free movement against another fundamental right, the right to life, which the MP put above free movement. In this case, it is thus not a question of how many lives were actually saved by the restrictions, but of a value-based situation where the right to life trumps the right to free movement at a theoretical level.

Even though border closures in Norden were hardly discussed in the Finnish Parliament, what can be concluded from the Finnish debate is that the relation between border closures and Nordic cooperation had scarcely been considered, and also that border closures might have negative consequences, even though they could be justified on the basis of trying to prevent infections. The Ministers can be considered to be the most authoritative government representatives, who justified the restrictions based on their consequences in preventing Covid-19 infections. MPs of government parties, in turn, also adopted a critical attitude to the restrictions as well as a deontological approach to them. In practice, all MPs in the material studied approved of the border restrictions as such, even though the written questions did suggest either loosening or tightening the measures.

It would seem that Nordic borders were not very relevant for the Finnish parties as such, but mainly for some individual MPs, such as a Finns Party MP from the Swedish border region, who presented half of the written questions of the party. On the basis of the debate, one could also suggest that the issue was not politicised in Finland, but the discourses of individual MPs mainly represented their personal moral views. The government ministers representing the Greens and the Swedish People's Party, in turn, justified the measures made by the government on the basis of utilitarian argumentation. Interestingly enough, the only representative of the Prime Minister's party (SDP) was an MP chairing the Finnish Delegation to the Nordic Council, who deplored the consequences of the border controls for Nordic cooperation. The utilitarian approach suggests that the right to free movement is considered a somewhat relative right, but the utilitarian discourse may also simply relate to the need to justify the Finnish decision. Using a value-based deontological perspective, undermining the value of the right to free movement might not seem as politically feasible. However, the view was different in Sweden, as we observe in Section 4.2.

4.2. Swedish Parliamentary Debates on the Suspension of Free Movement

In addition to two parliamentary debates, the Swedish material included four written questions to the government, three of which were presented by the Swedish Democrats and one by the right-wing Moderate Party, both sitting in the opposition. The Social Democratic Minister for Foreign Trade and Nordic Affairs responded to all of them and confirmed that the government was working closely with other Nordic governments to facilitate cross-border commuting. The same statement was included in several responses, including one on 9 June 2021, where she stated that open borders 'are not only a question concerning citizens and companies in the border regions but also important for the Nordic cooperation that is based on free movement'.⁵⁸ Even though she acknowledged the role of free movement for companies in Norden, she also emphasised the value of free movement for Nordic cooperation in the deontological vein.

Compared with the Finnish report, the tone is more critical in the Annual Report of the Swedish Delegation to the Nordic Council, which stated that lack of uniformity and communication led to problems, closed borders created difficulties and critical debate between the countries might harm Nordic cooperation.⁵⁹ The report even suggested that the pandemic had already harmed relations and created mistrust, both at the political and citizen level.⁶⁰ The same was reiterated by the Foreign Affairs Committee of the Swedish Parliament, which stated that mistrust might exist on a long-term basis for Nordic cooperation, especially in the border regions.⁶¹ There was also a parliamentary debate on the report, where politicians brought up the problems created by the border restrictions. For example, a Moderate Party MP opened the debate, noting

⁵⁷ *idem*.

⁵⁸ Coronacertifikat och ökad rörlighet inom Norden. Svar på skriftlig fråga 2020/21:3026 besvarad av Statsrådet Anna Hallberg (S).

⁵⁹ Nordiska rådets svenska delegations berättelse om verksamheten under 2020.

⁶⁰ *idem* 6.

⁶¹ Utrikesutskottets betänkande 2020/21:UU4 nordiskt samarbete, 13.

that the border restrictions had been especially hard for shops and entrepreneurs in the border region.⁶² The other statement in the debate was by a Swedish Democrat MP who used more deontological language, describing Norden as a family.⁶³

In addition to the references to free movement in the debate concerning the Nordic Council, a particular debate entitled 'special debate on border restrictions in Norden and situation in the border regions' was held on 16 March 2021.⁶⁴ A similar debate on Nordic border restrictions had also been requested to be held by the Finnish Parliament before the beginning of November 2021.⁶⁵ The Swedish debate showed the importance which the Swedish MPs put on the borderless Norden, which they justified mainly on the basis of deontological arguments. The following arguments are all derived from that debate, where the Nordic border restrictions were mostly discussed in the analysed material.

The debate started with a duty-based tone with the Social Democratic Minister for Foreign Trade and Nordic Affairs, who stated that:

Norden is unique. We have one of the oldest and most comprehensive regional cooperation in the world. Our cooperation is based on common values and mutual ambition for being able to live and work in the whole Norden. Norden is our common home. Our community is part of our culture and our identity, of our history and our future. Our cooperation strengthens our countries' position out in the world.

Thereafter she went on to list the 'unacceptable' problems caused by border closures and called for the Nordic countries to have more joint responsibility for border regions, also stating that 'interpersonal trust' is the cornerstone of Nordic cooperation. She thus painted a picture where the other Nordic countries had not complied with their duty of preserving this trust and the possibility for people to continue their lives, 'which see no border'. Compared with the Finnish Minister of the Interior, who justified border restrictions on the basis of health consequences, the Swedish Minister emphasised the duty to uphold open borders as a token of interpersonal trust among the Nordic countries, which can be considered a deontological argument.

Later on in the debate, a government representative from the Green Party suggested that the reason why the other countries had closed their borders against Sweden was related to fear and that poor decisions are made when they are based on fear.⁶⁶ The government representatives thus implied that the other countries had not upheld their moral duty when making these poor decisions, which reflects a deontological approach where free movement is an important value that reflects Nordic communality.

In contrast to government representatives, opposition politicians also had utilitarian features in their discourses. An MP from the right-wing Moderate Party stated that Norway was the most important trade partner, Denmark the fourth and Finland the fifth most important, which made the point that "here is our home". He also stated that Swedish commuters in Norway should not be called "dirty Swedes" or Danes shouted at in a Swedish supermarket. Apparently, these sorts of situations have taken place, which implies that mistrust does not only take place between politicians but also between ordinary citizens. He came back to mistrust in his later intervention as well, where he stated that 'what I see as a big danger is that the Nordic trust now erodes quickly'. Even though he justified the existence of open borders with the utilitarian trade argument, his criticism of the restrictions was based more on deontological arguments about the symbolic value of open borders for Nordic communality.

A representative of the Swedish Democrat Party drew attention, in a utilitarian vein, to the fact that Norden is Sweden's second largest trade partner and that there are 50,000 Nordic citizens who commute to another Nordic country. He also later referred to a study made by Copenhagen Economics, according to which trade between the Nordic countries would have increased 146 per cent if the borders were only as strict as those for each individual country, again taking a utilitarian position. Contrary to the other politicians, this representative of the nationalist-populist party clearly preferred Nordic cooperation over EU cooperation, also alleging that it is often 'the EU level, which makes it more difficult or prevents renewing Nordic conventions and agreements'. According to him, the EU's anti-discrimination rules prevent the Nordic countries from, for

⁶² Swedish Parliament, Riksdagens snabbprotokoll 2020/21:32 (2 June 2021).

⁶³ *idem*.

⁶⁴ Swedish Parliament (n 43).

⁶⁵ Erkki Tuomioja and Lulu Ranne, *Keskustelualoite Pohjoismaiden välisestä rajaesteistä* (19 March 2021).

⁶⁶ Swedish Parliament (n 43).

example, renewing a decades-old agreement on the common labour market, since it is forbidden to favour Nordic citizens over other EU citizens. He also cited a questionnaire, according to which more than six in ten people have an increased worry of not being able to meet family members on the other side of the border. Whereas open borders in Norden are again justified by a utilitarian approach, the MP seemed to approach the Covid-19 restrictions with deontological arguments, based on the special communality between the Nordic countries that does not exist at the EU level. For him, Nordic communality thus seemed to be the prevailing deontological principle, which should not be hampered by border restrictions or EU legislation.

A member of the Christian Democratic Party from the opposition also cited examples of the problems which people had had during the pandemic, including being obligated to wear an orange warning vest or not being able to have lunch with colleagues due to being Swedish and working in another Nordic country. This can be considered as a more utilitarian comment than those of most other MPs, as it focuses on the negative consequences for Swedish workers, and this is more concrete than the other deontological arguments.

The debate on Nordic border restrictions was closed by the Nordic Affairs Minister, stating that for a long time, Nordic countries have felt that they can trust each other, wish each other well and work towards the same goal. Overall, the tone was thus mainly deontological, as free movement was presented as a token of the Nordic countries' mutual trust, which had now been hampered as the other countries had closed their borders against Sweden out of fear.

Most of the Swedish politicians deplored the other Nordic countries for upholding restrictions that violated the Nordic principle of mutual trust, a violation which was made worse by the negative consequences of closed borders. Whereas Finnish politicians argued that the restrictions could be justified in the name of the utilitarian common good despite their negative consequences, most of the Swedish politicians considered border closures unjustified from the deontological viewpoint. The different tones of the discourse might also relate to the different policy choices: it is perhaps more convenient to justify border restrictions with the utilitarian benefits they create, while criticising the closed borders of other countries may be more effective from the value-based, deontological viewpoint.

Interestingly, both countries have similar parties in government and opposition, with the Social Democrats and Greens in the government, and right-wing parties in the opposition. Nevertheless, the countries had diametrically opposed policies at the beginning of the pandemic. The analysed debates also suggest that free movement in Norden received more cross-party support in Sweden, where all parties criticised free movement restrictions, although they could have blamed the government for not imposing such restrictions. In Finland, in turn, the opposition parties were supportive of closing borders. The fact that we cannot find similarities between sister parties in the two countries suggests that the different approaches are based on country differences rather than political ones.

5. Discussion and Future of Free Movement in Norden

Before the Covid-19 pandemic, free movement within the Nordic countries had been considered an important part of a Nordic democratic *Rechtsstaat* complying with the rule of law, the violation of which, even with good intentions, could not be justified. In this sense, the right to move in the Nordic countries has, throughout history, become an almost Nozickian individual liberty,⁶⁷ which has led to a duty of the Nordic countries not to create restrictions between them. Nordic free movement may even be considered to be a stronger individual right than free movement within the EU, whose legitimacy has been disputed in the political discourses of several countries.⁶⁸

As our analysis has demonstrated, the pandemic has repealed the assumption of inviolable free movement within the Nordic countries. This has created tension between the Nordic countries, as Sweden has sought to maintain the concept of the ideal of Nordic free movement. At a general level, the root causes of these tensions cannot be accounted for by the different notions of the Nordic countries concerning the normative weight of fundamental rights, such as the relationship between free movement, right to life and health as well as the freedom to engage in commercial activity. At a concrete level, all Nordic countries have considered the right to life a central individual right, but balanced it differently with other rights, such as the right to free movement. It is thus interesting to note that, despite being similar societies with, for example, a welfare

⁶⁷ Robert Nozick, *Anarchy, State, and Utopia* (Blackwell 2001); see also Matt Matravers, 'Twentieth-Century Political Philosophy', in Moran Dermot (ed) *The Routledge Companion to Twentieth Century Philosophy* (Routledge 2008) 900.

⁶⁸ Salla Heinikoski, *The History and Politics of Free Movement within the European Union: European Borders of Justice* (Bloomsbury Academic, London, 2020).

state and multiparty systems, they have come to different conclusions on what are considered reasonable restrictions on free movement.

In contrast, when assessing the justifiability of the restrictive measures, it has been interesting to observe how instrumental the approach towards individual rights and especially Nordic free movement has been. For example, MPs in Finland have defended the restriction of free movement with utilitarian arguments, such as by assessing the societal benefits of the restrictions. Swedish politicians, however, utilised more deontological argumentation, focusing on the duty to uphold free movement.

Even though utilitarianism holds a strong political attraction in crisis situations, utilitarian argumentation should be approached in a cautious way when speaking about individual rights, such as the right to free movement. It is unclear, for example, what sorts of benefits or damage may have followed from free movement restrictions in the Nordic countries. The assessment becomes more difficult due to the fact that cost-benefit calculations should be able to consider different types of long-term effects, such as the impact of the restrictions on Nordic cooperation, erosion of mutual trust and the impact of the restrictions on individual well-being.

In addition, attention must be paid to the fact that “utilitarianisation” of free movement as primarily an economic right would seem to significantly reduce the value of free movement as an individual right. By utilitarianisation, we mean that free movement restrictions have been defended mainly with cost-benefit argumentation in Finland, and the exemptions to the entry ban at first only concerned work critical to the functioning of society. Even though emphasis on labour is understandable, the danger is that free movement is turned into a right of workers in the Nordic countries. If this were the case, it would no longer be a discussion about an individual right, but a right whose enjoyment depends, for example, on a person’s socio-economic status, ability to work or other similar factors.

Finally, we would like to consider what sorts of long-term effects the free movement restrictions in Norden might have. It is very likely that post-pandemic, Nordic free movement is quickly reinstated as an individual right that is not restricted in any way. The pandemic has, however, demonstrated that Nordic free movement is a fragile individual right. This has been a surprise, even a shock, for many Nordic citizens, because in practice everyone under 70 years old has been accustomed to living without taking any notice of Nordic borders. This insecurity has been added to with the fact that, for example, Finland and Sweden have had different approaches to restricting mobility between the countries. The fundamental right to free movement of Finns and Swedes as EU citizens does seem to have a stronger position in Sweden, while Finnish politicians seem to be more willing to compromise it in the face of risks to national citizens, regardless of the harm to EU and Nordic cooperation.

Competing Interests

The authors have no competing interests to declare.

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