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# Interpreting the state–citizen nexus in contemporary Nordic legal and social citizenship: the case of divergence in restriction on freedom of movement as a mitigation policy in the COVID-19 pandemic

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## Abstract

The aim of this article was to use an interpretivist approach to analyse the state–citizen nexus in general and the conflict between civil and social rights imposing restrictions on people’s freedom of movement during the COVID-19 pandemic in the Nordic countries: Sweden (restrictions were voluntary and relied on nudging and individual implementation), Norway (restrictions of movement were for everyone and was enforced by authorities), and Finland (restrictions of movement were for the capital region and was enforced by authorities). Sweden focused more on upholding the civil rights vis-à-vis social rights whereas in Norway and Finland social rights have trumped civil rights in the face of the pandemic. Thus, the analysis suggests that the Nordic countries cannot be understood as monoliths in all respects. The article thereby contributes to a greater understanding of how the Nordic governments prioritise civil and social rights differently when they are forced to choose.

**Keywords:** Citizenship; Social rights; civil rights; COVID-19; Nordic countries

## Introduction

This article explores the divergence between Sweden, Norway, and Finland in *policies on restrictions of the movement of citizens* during the COVID-19 pandemic. COVID-19 represents an interesting case as the pandemic brings forth dilemmas where norms are tested and often forces people as well as policy makers to prioritise one principle over another. The puzzle here is the diverging paths on curbing freedom of movement in the Nordic countries. The point of departure is based on the assumption that the Nordic countries share a similar social democratic welfare state regime which is based on a long tradition of cooperation and harmonisation of social policies (Brommesson, 2018; Midtbøen, Birkvad, & Bivand Erdal, 2018). Generally, the Nordic countries are perceived as egalitarian welfare societies (Esping-Andersen, 1990) that *inter alia* represent well-functioning democracies with high-quality institutions, extensive and reliable welfare benefits, showing only limited socioeconomic, cultural, and geographical differences (Greve et al., 2021; Rothstein & Uslaner, 2005). Within these well-functioning societies, individual freedom of movement represents a key value of *Nordic citizenship* which is protected

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in the constitutions of the Nordic countries. Despite such similarities and common ground values, the countries differed significantly in addressing the COVID-19 pandemic, particularly in terms of freedom of movement.

Previous studies on citizenship suggest that the perception of the Nordic countries as monolith is questioned. Researchers see diverging directions on critical issues such as exclusion and inclusion regarding among other things the right to welfare services and immigration policies (Brochmann & Hagelund, 2012; Lister, 2009; Sainsbury, 2012). As argued in this article, the differences have been highlighted further during the pandemic.

Lockdown and restriction of movement of citizens challenge important principles of liberal democracy (Boin & Bynander, 2015; Larsson & Rhinard, 2021). In emergencies, individual rights might be curtailed for a larger utilitarian good, social justice, or any other ethical consideration that pits civil rights against individual and group social rights. However, the regulations that were implemented and recommendations that were communicated to the public in different phases during the COVID-19 pandemic clashed with citizens' experience of this freedom (Martela et al., 2020; Petridou & Zahariadis, 2021). Given this, the divergent approaches in the Nordic countries to the right to freedom of movement are both surprising and interesting to compare and elaborate further.

Today, it is well known that Sweden among the Nordic countries became the outlier in handling the pandemic (Government Offices of Sweden, 2020, p. 80). There has been plentiful research on the COVID-19 management, i.e., infection control measures, human rights implications, and policy learning in the Nordic countries (e.g., Brusselaers et al., 2022; Geloso et al., 2021; Kuhlmann et al., 2021). Still, there is a lack of interpretivist studies that show how the restrictions on freedom of movement were implemented, and subsequently how policy makers made sense of them in the Nordic countries from a citizenship perspective. In our case, the pandemic offers a unique point of departure to explore the state–citizen nexus in contemporary Nordic legal and social citizenship in general and the dilemma that occurred which pitted civil rights (right to freedom of movement) vis-à-vis social rights (right to health) against each other.

The article uses an interpretivist case study approach based on the assumption that the Nordic countries share several characteristics, such as similar conceptions of liberal and social rights. Our approach uses a dilemma situation in which COVID-19 is an event that forces policy makers to prioritise either civil or social rights in decision-making. A comparative interpretivist approach is in this case fruitful when questioning assumptions that lie behind theoretical concepts (Serpa, 2021). The article draws upon Berggren and Trädgårdh's (2012) study that labels the Nordic countries as promoting statist individualism/individual autonomy and therefore shares a similar understanding of the state–citizen nexus.

The three illustrative critical cases used in this article focus on *restriction of movement* as a COVID-19 mitigation policy. The article deliberates on how the choice to implement restrictions on freedom of movement or not can be understood as an expression of a stronger emphasis on social rights on the one hand or civil rights on the other hand in times of crises. Thus, highlighting what implications those practices have for understanding the nexus of legal and social rights. In terms of restrictions of movement Sweden, Norway and Finland diverged: In Sweden, restrictions on movement were voluntary and relied on nudging and individual implementation. Hence, these were recommendations that were not enforceable by authorities. In Norway, restrictions of movement applied to everyone and were sanctioned, and in Finland, restrictions of movement were regulations that applied only to the capital region and were sanctioned and enforced by authorities.

The article proceeds as follows: The second part provides a rationale for the study and a theoretical background. The third part assesses whether different understandings of Nordic citizenships can be identified through the practice of restrictions of movement during the COVID-19 pandemic, through three cases in Norway, Sweden, and Finland, respectively. The fourth and final part presents the results of the analysis and concludes that Sweden stands out most through its prioritisation of civil rights which means arguing for more reliance on soft laws and communication about individuals' own responsibilities, and more importantly, an aversion to promote a "crisis citizenship" with stark restrictions on civil rights. Perhaps enabled by the existence of emergency laws, the analysis of Norway and Finland shows

that they are more willing to argue for focusing on social rights, thereby implementing a “crisis citizenship” and separate nexus of legal and social rights during crisis times. In doing so, they not only relied on more coercive authority that under normal circumstances would be infringements of civil rights, signalling a possible lack of trust in citizens’ ability to accept a restriction of movement without coercion.

### Background – rationale and limitations

The rationale for our assessment is the notion of the Nordic countries as monoliths, including shared values. According to Esping-Andersen (1990), the Nordic countries share similar views on social citizenship and include a welfare mix which implies a strong welfare state with high-quality social services for all citizens. He calls this the social democratic welfare regime, which is characterised by universalism, comparatively generous social transfers, a commitment to full employment, and income protection which all signal a strongly interventionist State (Eikemo & Bamba, 2008, p. 5). As indicated below, similar views are highlighted in other analyses of citizenship in the Nordic countries.

In times of crisis, such as the COVID-19 pandemic, the interdependent relationship between individuals and the political community is put to the test in several ways, and it is reasonable to expect that the relationship between the state and individuals would be negotiated similarly in the Nordic countries during the pandemic – which was evidently not the case. Although restrictions varied and policy learning took place in all three countries, Sweden was the only country in the Nordics that did not impose any legally binding restriction of movements between February 2020 and February 2022. Therefore, it is an interesting starting point to analyse the restriction of movement and coercion as a watershed between the Nordic countries. In this article, particular focus is put on the most severe restrictions that were put into place during the whole pandemic, namely restrictions on freedom of movement.

Interpretative policy analysis (IPA) is applied as a method to understand the diverging paths in the Nordic countries when it comes to prioritising civil or social rights in possible restriction of movement during the pandemic. IPA diverges from mainstream positivist policy analysis by focusing on how policy actors interact by addressing “the social meaning of policies and the practices in which this meaning is embedded” (Durnova & Zittoun, 2011, p. 103). Moreover, such a perspective seeks to “develop a deeper, interpretative understanding of policy practices and policy process in general, having extended their scope over time to include perspectives on discourse, narration, governmentality and practice” (Durnova & Zittoun, 2011, p. 103). The rationale of an interpretivist comparison of the state–citizen nexus in contemporary Nordic legal and social citizenship is central because there was a specific anomaly between Sweden on the one hand, and Finland and Norway on the other hand when it came to restricting civil rights in general and the freedom of movement in particular.

This article argues that citizenship as a concept is interesting to explore further because it describes the interdependent relationship between individuals and the political community, and is connected to political, civic, and social rights (Bloemraad et al., 2019). Moreover, as argued by Roche (2002), changing contexts and complexities require attempts to understand “new levels of theory and practice in the field of citizenship in general and social citizenship in particular” (Roche, 2002, p. 2).

### Nordic citizenship

Citizenship is both a legal and a social construct (Midtbøen et al., 2018, p. 20). It is often described as the foundation of our understanding of the interdependent relationship between the individuals and the political community and sets out *who* is a member of a political community, *what* that membership entails, and *what it should* entail (Bloemraad et al., 2019). The modern conception of citizenship is often defined as a legal status in a political community connected with rights (political, civic, and social) and to some degree duties (pay tax and obey the law) (Smith, 2002, p. 105). According to Marshall, citizenship

was created in three phases: in the first phase, “civil citizenship appeared in the early eighteenth century as the emerging capitalist economies developed institutions that protected private property, guaranteed the freedom of contract and gave citizens access to unlimited bargaining in the marketplace” (Wagner, 2004, p. 280). In this phase, citizenship was a privilege for the proprietary class of society. In the second phase at the end of the nineteenth century, political rights were added for men to vote, followed by female citizenship/voting rights in the twentieth century. After the Second World War, which made up the third phase, social rights developed to grant working people a modicum of economic welfare, social security, and “the right to participate fully in the heritage and economic wealth of society” (Wagner, 2004, p. 280).

Social rights consist of those rights that provide the individual with the *freedom to* participate in society, such as the right to education, health care, or various aspects of welfare. Civil rights consist of those rights that provide *freedom from* abuses and interference by third parties (most notably governments), among the most important of which are the rights to own property (...) [P]olitical rights move beyond the mere protection of the individual’s private sphere and toward his or her active participation in society. This includes the right to vote or the right to hold office and, generally speaking, entitles the individual to take part in the process of collective will formation in the public sphere. (Matten & Crane, 2005, p. 17)

Civil rights are fundamental in liberal democracies as the former will protect the rights of the individual from the coercive government that might target individuals and groups as part of the policy. Civil citizenship is also the first form of citizenship to emerge as a result of the emergence of nation-states – freedom, according to Marshall’s theoretical account of citizenship, therefore starts first and foremost with civil rights that protect individuals from the States overusing power and protecting individuals of basic rights such a freedom of movement and right to property. In Marshall’s (1950) understanding, this is the most fundamental understanding of citizenship and everything else (political rights, social rights) has evolved afterwards.

The debate between focus on civil rights or on social rights has been a fundamental question that has reappeared during the pandemic. Should individuals’ rights to freedom of movement be limited if this curbs the pandemic? Should people’s freedom to private life be limited by invading people’s private sphere through surveillance, or people’s use of property by limiting people’s access, such as their access to weekend cabins during the pandemic or the organising of private parties?

### *Conflicts between liberal and social rights*

The trade-off between social rights and civil rights in the pandemic illuminates the inherent conflict between the *liberal* and *communitarian* aspects of citizenship in the cases of restrictions of movement that need to be explored more in depth. Liberalism “puts a strong emphasis on the individual, and most rights involve liberties that adhere to each and every person” (Isin & Turner, 2002, p. 3). Liberals and social liberals have problems agreeing on how individual freedom should be implemented. This debate ranges from putting emphasis on *negative rights*, which leaves the citizen to live happily without state interference, to *positive rights* which emphasises that the citizens need the welfare state to live a dignified life (Schuck, 2002, pp. 131–132).

The political philosopher John Stuart Mill has two basic assumptions of liberal citizenship. First, individual liberty is something that the State tends to be opposed to. Thus, increasing the state’s power reduces the individual’s liberty. Second, the pursuit of one’s interest that does not affect others is entirely the province of the individual, within which one must be free to do as one pleases without the law’s interference (Schuck, 2002, pp. 133–134). The main goal of a liberal city is to optimise the balance “between leaving people’s private lives alone and preventing suffering” (Rorty, 1989, pp. 94–95). As demonstrated in the pandemic – such a view of an individual citizen and his/her rights stands in contrast to a more communitarian approach both in theory and practice.

Communitarianism “emphasizes the community (or the society or the nation), whose primary concern is the cohesive and just functioning of society” (Isin & Turner, 2002, p. 4). This resonates with Rousseau’s conception of citizenship, which is based on the social contract where a city is more than a town and a collection of houses in a specific space. Houses make a town, but citizens make a city. The main principle is that each citizen in an act of association places his or her person and power under a direction of a general will. The city is, according to Rousseau, an association of citizens that together creates a moral and collective body and a public person named the city. Moral behaviour is only possible in the community and only the community can prescribe socially binding obligations (Wagner, 2004).

Thus, the liberal democratic citizen includes two separate elements: civil rights on one hand, but also the overall collective community on the other. The latter sets boundaries for individual freedom as both to prevent harm to society but also to keep up social cohesion and group interests. These two elements are in practice fraught with difficulties that are exacerbated during times of crisis, such as the COVID-19 pandemic.

Nordensvärd and Ketola (2022) have explored the importance of not just legislative and policy, but also actual informal aspects of citizenship. According to them, social practices evolve, change, and sometimes reach a stable point where the social practices become codified, written down, or turned into law. They argue that “formal citizenship together with formal welfare rights represent just one particular crystallization of such informal practice”, and that there is an interdependent (rather than evolutionary) relationship between formal welfare at the national level and informal welfare practices at local and transnational levels (Nordensvärd & Ketola, 2022, p. 1).

In assessing the apparent success of the Nordic countries in handling the 2007/08 financial crisis, Berggren and Trädgårdh (2012) set out the argument that the Nordic countries, through their handling of the crisis, offer us a shared understanding of radical individualism and a strong state working in tandem. The whole “Nordic institutional framework is characterised by its capacity to promote both social trust (confidence in institutions and rule of law), and individual autonomy consistent with the logic of the market society” (Berggren and Trädgårdh, 2012, p. 24). Thus, in the Nordic social contract, the meaning behind the state and the individual working in tandem is that policies should maximise individual autonomy and social mobility while the individuals should trust the institutions and make most of their individual autonomy, which has been institutionalised through “a plethora of laws and policies” affecting citizens in all Nordic countries in their everyday life (Berggren and Trädgårdh, 2012, pp. 2414–2415). In essence, this is what Berggren and Trädgårdh coin “statist individualism” (Berggren and Trädgårdh, 2012).

Berggren and Trädgårdh’s argument is compelling because crisis situations – such as the pandemic – pitches civil rights against health rights, and therefore tests the values that form the basis of liberal and social citizenship. This, in turn, enables the interpretation and creation of an alternative understanding of how institutions and autonomy of individuals are different in the three Nordic countries assessed in the article.

### Civil-social rights nexus in the Nordic countries

For the purpose of analysing the “operationalisation” of freedom of movement, the article focuses on the analysis of the implementation of the isolation of the Capitol Region in Finland, and the internal border closures and subsequent “cabin ban” in Norway, on the one hand, and the decision to continue with free movement in Sweden on the other hand. The reason for this is not only that they represent critical cases that stand in stark contrast to each other, but that they in the case of Norway and Finland also include legally binding restrictions on movement that highlight the state–citizen nexus.

Provisions in constitutions for dealing with emergencies vary between countries. This aspect has been widely discussed and applied as explanation for the differences – and at times a reason for not implementing stricter measures throughout the pandemic. In short, restrictions on freedom of movement were possible in Norway and Finland in part because the respective constitutions allow such

restrictions on fundamental rights and freedoms in emergency situations, by virtue of declaring a State of Exception (SOE), while the Swedish constitution on the other hand “remains silent on emergency situations” (Cornell & Salminen, 2018, p. 249) and hence “lacks a provision which allows for the proclamation of an SOE in peacetime crisis” (Klamberg, 2020, p. 2). However, according to Klamberg, *this does not mean that Sweden lacked the tools to implement restrictions of freedom of movement*: each statute law contains clauses that may be used for emergency situations. For instance, the Public Order Act (*ordningslagen*) gives the police and the government if needed the power to limit assembly, the Act on Communicable Disease (*smittskyddslagen*) “offers numerous extraordinary measures” such as placing persons in quarantine and even the introduction of cordon (i.e., physical protection of borders and buildings) in order to prevent the spread of dangerous diseases. (Klamberg, 2020, p. 4; also see Cornell & Salminen, 2018, p. 223).

Moreover, in a study of emergency powers in response to COVID-19, Lundgren et al. (2020, p. 24) concluded that “international human rights also allow very strict measures as a response to the pandemic including a lockdown and stay-at-home orders – without declaring a SOE”. Given this, the three countries could limit freedom of movement to handle the pandemic. The cases are briefly discussed below, highlighting what consequences for citizenship the measures taken had, as well as the subsequent conflict between liberal and social rights that the measures entailed.

### *Finland – the isolation of the capitol region of Uusimaa in Finland*

The most extreme measure for Finland was imposed in late March 2020 when the government (i.e., the prime minister’s office), Ministry of Social Affairs and Health, and the Finnish Institute for Health and Welfare (THL) on March 25 submitted to Parliament a decree concerning the use of powers under the Emergency Powers Act relating to the restrictions on movement (Finnish Government, 2020; Valmiuslaki (1552/2011), 2011; Valtioneuvoston asetus valmiuslain 118 §:ssä säädettyjen toimivaltuuksien käyttöönotosta, 2020).

The purpose of the restrictions was to prevent further spread of coronavirus infections and thus slow the spread of the pandemic by limiting non-essential movement across the regional border of Uusimaa in a situation where previous restrictions were deemed insufficient. The restriction was a clear interference with the right to freedom of movement. Although infections occurred in practically all Finnish regions, the level of infections in the Uusimaa region exceeded what public health officials deemed as a critical threshold, triggering the isolation. The regulation entered into force on March 27 and was abolished on April 15, 2020.

The Government justified the isolation with the high level of COVID-19 infections that had been confirmed in the Region of Uusimaa, which was twice the number of other Regions in Finland. Additionally, the spread was largely believed to occur when people travel, typically to their holiday properties where they were presumed to meet friends and relatives that would become infected (Valtioneuvoston kanslia, 2020, p. 6).

Essential work-related travel was permitted but required travellers to provide the police with an account of the destination and purpose of their travel. People that were spending time at their cabins and holiday properties but otherwise resided in the Region of Uusimaa were urged by the Prime Minister to return as soon as possible. The police emphasised in a statement, that any movement violating the restrictions must be essential, given that the aim of the movement restrictions was to contain the transmission of the coronavirus in order to save lives and avoid overburdening the healthcare system. The main argument was that the restrictions were in the interest of all Finnish Citizens, not just citizens residing in the Region of Uusimaa (Police of Finland, 2021).

The main responsibility for enforcing the restrictions was placed on the police. However, other branches of government contributed substantially by monitoring the intensive work that 30 roadblocks and checkpoints implied. In other words, the police were mainly responsible for enforcing the temporary regulation but were supported by 750 conscripts and 40 professional soldiers from four different brigades of the Defence Forces, together forming an Executive Assistance Detachment (Niemi & Raunio,

2022, p. 5). While the use of the Finnish Defence Forces might seem radical, it is not uncommon that the Defence Forces support other authorities during difficult situations by providing assistance to ensure the safety of society during emergency conditions. The situation caused by the coronavirus was deemed an emergency that required providing such assistance to the Finnish Police in their task of isolating the Region of Uusimaa. The main task of the Defence Forces, particularly that of the conscripts, was to direct traffic as they cannot participate in dangerous tasks while providing support to other authorities. Therefore, no other powers were given to the conscripts. The initial intention was to keep the isolation until the April 19.

During the isolation, the police stopped and checked over half a million vehicles out of which *over 4000 were denied crossing*, resulting in over a hundred fines and approximately the same number of warnings being issued. The legality of some of the fines issued were, however, questioned. The Parliamentary Ombudsman, for instance, ruled that some of the fines issued did not comply with legislation (Office of the Parliamentary Ombudsman, 2020). On April 15, 2020, the Government decided to lift the isolation, arguing that the isolation no longer was legally justifiable. Although the isolation was no longer deemed necessary, the Ministry of the Interior recommended that unnecessary travel, such as travel to holiday properties within the country, was to be avoided.

#### *Norway – municipal border closures and “cabin ban”*

In crises, borders typically become a central theme by virtue of forming a defensive barrier against external threats, e.g., pandemics and terrorism (Serpa, 2021). Borders were a central theme in Norway throughout the pandemic. The discretionary power of local administrations (i.e., municipalities) is high in Norway (Baldersheim & Rose, 2005), and the Contagious Disease Act and the National Preparedness Plan provide local authorities latitude in implementing infection control measures (NOU 2021:6, 2021a). Early in the pandemic, several municipalities closed their borders and some also implemented a ban against staying at holiday properties in connection with the outbreak of COVID-19, the so-called cabin ban. The closure of borders between municipalities implied, among other things, that Norwegians who worked in a different municipality than the one they were residents in could not go to work (NOU 2021:6, 2021b; Marthinussen, 2023), and that citizens could neither enjoy their rights to move freely nor the rights to use their own property.

In a hearing statement to the Norwegian corona commission, Bergen municipality emphasised that central authorities were not prepared and coordinated, and that Bergen municipality therefore had to implement local regulations prior to the national regulation in accordance with the Contagious Disease Act (Smittevernloven, 1994, § 4–1), a point also emphasised by several other municipalities (NOU 2021:6, 2021b).

The actions taken affected some municipalities more than others. On March 11, Nordreisa municipality awaited ski-tourists from central Europe. Aware of the precarious situation the Mayor and Chief Medical Officer (CMO) agreed on a lockdown of the municipality. Until March 11, national authorities had yet to implement national regulations and the tension between national authorities and municipalities increased (NOU 2021:6, 2021a; Sandvik, 2020, pp. 96–97). From March 12, the Government urged everyone to avoid unnecessary travel.

Municipalities continued to communicate a need to enforce restrictions on domestic travel through quarantines – southern quarantines (*Søringkarantene*) – in particular (Hoel Lie, 2023). On March 15, the Government adopted a law on a formal cabin ban in an extraordinary Cabinet meeting. The “cabin ban” (*Hytteforbud*) entered into force on March 19, 2020 and was a *national prohibition* that implied that all people with a cabin in another municipality than the one they were registered as residing in could not stay in their cabins. While they could visit the cabin, they were not allowed to stay overnight. It was a strict regulation that interfered with the right to freedom of movement for all people with a cabin, and people who had planned to go to those sites. The same rules applied throughout the period (NOU 2021:6a).

The Norwegian Institute of Human Rights (NIM) argued in a letter to the Government that “The so-called cabin ban also constitutes an intervention in the freedom of movement [...], and to that extent

also in the right to property [...]” (Mestad & Nystuen, 2020, p. 9), and as such constitutes a potential violation of the Constitution. It was also a controversial law that created a public debate in which professors of law, the Government, expert authorities (FHI and Helsedirektoratet), and civil society participated. Over time, (April 20) the prohibition on staying at holiday properties was abolished.

The regulation intended to secure compliance through two mechanisms: First, section 6 *Penalty* of the regulation states that “Intentional or grossly negligent violation of the provisions of these Regulations is punishable by a fine or imprisonment for up to six months[...]” (Forskrift nr. 294/2020, 2020, § 6). Thus, there was little to no room for interpretations one way or the other. However, it is one thing to regulate and decide on sanctions, a connected challenge, the second mechanism, is to detect and sanction violations, i.e., enforcement. Largely, compliance with regulations can emerge from several sources. One is of course sanctions, while it also can emerge from fear and trust among the public in response to governments and authorities crisis communication (Esiasson, P., et al, 2020; Wodak, 2020). Enforcement of the cabin ban regulation, on the other hand, was facilitated through the Norwegian National Home Guard who assisted municipalities in preventing people from traveling to- and staying in their cabins.

### *Sweden – voluntary compliance and individual interpretation*

Sweden relied on a strategy of voluntary compliance based on advice and recommendations set out by authorities (Askim & Bergström, 2021; Kuhlmann et al., 2021). This stance was motivated by a perceived inability to implement a crisis law, which hinges on declaring an SOE. Invoking existing laws was seen as problematic because that would impede the freedom of movement – a constitutional right. Thus, the Swedish government, including the Public Health Authority, justified the transfer of responsibility to individuals through the need to handle the crisis within existing political limits (Larsson, 2021).

A strategy of voluntary compliance will, of course, limit freedom of movement differently between individuals because the meaning behind the recommendations and advice are interpreted differently. Thus, whether recommendations on measures that would limit freedom of movement actually did so, depended heavily on individuals’ understanding of the information that is communicated and hence their understanding of their role in limiting the spread of the virus, which subsequently affects compliance with the recommendations. As in Norway, there was a concern that Swedes travel to ski resorts during Easter. Nonetheless, the recommendation in Sweden to “seriously consider” limiting travel within the Swedish borders (Folkhälsomyndigheten, 2020a), and emphasised by the Government to “refrain from all non-essential travel [...] within the country” (Löfven, 2020a), and that people *should* avoid large gatherings and take personal responsibility (Folkhälsomyndigheten, 2020b). While the initial recommendation was to refrain from unnecessary travel, the recommendation from May 13 was that “Trips that correspond to one to two hours by car from the place of residence can be carried out under certain conditions” (Löfven, 2020b).

However, the only restrictions of the movement were to very specific places such as retirement homes and particular meeting points. In sum, the application of recommendations and advice was based on voluntary compliance with no enforcement mechanisms other than communication and through attempts to create new norms of behaviour. Consequently, individual judgment, in addition to public nudges against the pandemic (Pierre, 2020), were the main tools through which Swedish authorities could ensure compliance with the recommendations.

### *Varying understanding of the civil-social right nexus in the Nordic countries*

While the imposed restrictions or lack thereof can be justified by the legal framework in the countries in question it is worth noting that options existed in all three cases. This highlights the need to consider the informal dimension of the actions taken. In other words, the formal and informal understanding of the civil-social right nexus often illuminates visible parts of citizenship whereas the informal aspects are seen



in social practices and interpretations. Even if Sweden, Norway, and Finland have strong protection for the freedom of movement of all its citizens, only Sweden went to great lengths during the pandemic to protect the civil rights, where – as argued above – both Norway and Finland prioritised the health rights and protection of vulnerable groups, which took precedence over civil rights. How the statist individualism was interpreted in a crisis situation in Finland, Norway, and Sweden will be discussed below. In order to guide the forthcoming discussion we have created a figure that illustrates the dimensions of the nexus of governance vis-a-vis rights (Figure 1).

### Finland and Norway

The decision to invoke restriction of movement in Finland highlighted a choice to limit the constitutional right to life, personal liberty, and integrity emphasised in section seven, as well as the right to freely move within the country and to choose their place of residence emphasised in section nine of the Constitution of Finland (Oikeusministeriö, 1999). Still, the argument was that the restriction of movement was constitutional as it was seen as necessary to protect the wellbeing of citizens and that such restrictions of civil rights would save lives (Valtioneuvoston kanslia, 2020, p. 6). This view was seconded by the Constitutional Law Committee, arguing that safeguarding the functional capacity of the health-care system was central to the extent that infringements of other constitutional rights were necessary (Eduskunta, 2020a, 2020b).

While both health and wellbeing, emphasised in section 19 of the constitution (Oikeusministeriö, 1999), as well as freedom of movement, remain constitutional rights, the decision was in this case to prioritise the health-care system and, particularly the health of those most vulnerable in society, i.e., elderly people, even if this would come at the expense of citizens that were not at high risk of severe complications, in case they were infected. Despite many drastic measures that have an enormous impact on citizens' everyday lives and freedom of movement and assembly the public largely remained supportive of the government and the lockdown measures, signalling high trust in political institutions. Somewhat surprisingly, the government even had to justify why no further restrictions, such as compulsory use of face masks, had been introduced (Niemikari & Raunio, 2022, p. 13). Thus, Finland decided to impose draconian restrictions of one region and leave the rest out, highlighting a particular informal and pragmatic implementation of restrictions due to the level of infection rates.

The Norwegian cabin ban was consistently motivated by a need to protect local health-care capacities. This motivation was – according to Professor of Law Hans Fredrik Marthinussen,

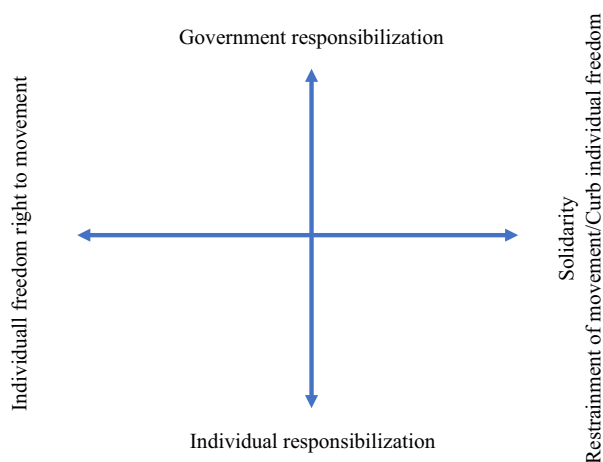


Figure 1. Nexus of rights vs. governance.

perplexing because neither the Act relating to control of communicable disease, nor the preparatory work (*forarbeider*) gave basis for the implementation of infection control measures that prohibit people from traveling to- and staying at their holiday properties to protect local health care capacities (Marthinussen, 2020). Municipalities who have ski resorts increase their population with some up to 9000 people every winter, and with limited capacity to handle both injuries from ski accidents of various sorts, and a pandemic of the scale that was expected, was “enough” basis to restrict inflow of people who did not have their primary residence in the municipality. As in Finland, communitarianism, an emphasis on the society or the nation at large initially took precedence over individuals’ freedom from state control. Meanwhile, different social groups were affected differently by the measures in the pandemic. One can therefore ask whether a state’s interference with freedom of movement and restricting infection control measures in general can be justified for the good of society or as precautionary measures.

Nevertheless, in the presence of a pandemic, trade-offs must be made between these two types vis-à-vis rights to liberty and rights to health. If the government follows a fiat policy of lockdown, then the benefits outweigh the costs for the elderly as the right to health is ranked above the right to liberty. Conversely, if the government follows a hands-off policy of no lockdown, then the benefits outweigh the costs for the young as the right to liberty is ranked above the right to health.

### Sweden

Sweden stands out most through its reliance on voluntary compliance through soft laws which imply emphasis on recommendations and advice, but also an aversion to having a specific “crisis citizenship” and two different sets of legal and social rights in crisis times and in non-crisis times. In contrast to the Nordic countries, the most similar cases of the Swedish approach to individual civil liberties in enforcing little to none towards freedom of movement were found in Asia, namely South Korea and Taiwan (Garzarelli, Keeton, & Siteo, 2022). The interesting case in Sweden was the political discourse around the authorities trusting the citizens and allowing them to manage and regulate itself without a coercive state. “This is the case of Sweden, where the belief that nudging individuals to stay at home whenever possible is sufficient to elicit a binding response” (Garzarelli et al., 2022, p. 11). This led to the fact that the maintenance of basic civil liberties was to larger degrees upheld as Sweden affirmed the fundamental core of the Swedish policy response (Garzarelli et al., 2022).

Generally, Sweden’s restrictions were seen as some of the most liberal in both Europe and the Western world (cf. Ahlander & O’Connor, 2020; Milne, 2020). The understanding of governance relied on policy measures of self-responsibility instead of stricter regulations and policing: “Perhaps most importantly, government and agencies preferred to issue recommendations on the appropriate social behaviour instead of coercive regulations. It is this aspect of the Swedish approach that has perhaps triggered most international curiosity” (Pierre, 2020, p. 480).

There was a lot of interpretation in trying to understand why Sweden did not implement restriction of movement. Some highlighted that a discourse around underlying institutional preconditions governing Swedish society played a critical role in how the government responded during the pandemic (Winblad, Swenning, & Spangler, 2021). As a result, some scholars have called the Swedish approach to mitigate the spread of COVID-19 “government as usual” (Kuhlmann et al., 2021). As argued earlier, there was an interpretation and understanding of the Swedish constitution and subsequent legislation that emphasise individual rights before the rights and duties of the collective or the state, effectively circumcising the understood powers of the state to act in times of crisis. There is an understanding that the instrument of Government only acknowledges an act of war committed towards Sweden as an extraordinary event enabling government to attain higher levels of power than the constitution normally provides (cf. chap. 15 SFS, 1974, p. 152). Even a specific pandemic law did not budge the freedom of movement in Sweden.

Even if legal scholars have argued that the government at times has exceeded its powers through a supra-legal SOE, these few events have been very limited in time and scope (Cornell & Salminen, 2018).

Bigger crises during peacetime is therefore managed in accordance with the constitution, whereby acts taken by the government need to pertain to the principles of necessity, appropriateness, and proportionality, while held accountable to the parliament at all times.

### Concluding discussion and implication for social policy

As the three critical cases demonstrate, the Norwegian and Finnish governments implemented penally sanctioned regulations, while the Swedish government and agencies “preferred to issue recommendations and advice on the appropriate social behaviour instead of coercive regulations” (Pierre, 2020, p. 480). Thus, in Sweden, everyday life continued albeit in a slightly moderated manner as self-imposed government guidelines, rather than penally sanctioned regulations or hard-touch quarantine measures, set the bar for social activities. Additionally, as has been argued elsewhere (cf. Larsson, 2021; Pierre, 2020), the underlying understanding and the discourse of institutional preconditions governing the Swedish society played a critical role in making sense of how the government responded during the pandemic, seconded by a strong voice and rationale from the Swedish Public Health Authority (Kleja, 2020). Even in crisis, the different Swedish rights should be balanced against each other. In its striving to get as close to business-as-usual discourse as Sweden does not take a cue from neighbouring countries in priming the health rights of vulnerable groups vis-à-vis the majority’s civil rights and the overall need to keep society as normal as possible.

The aim of this article was to make an interpretivist use of the state–citizen nexus to create an understanding of why the Nordic countries diverged in interpreting the civil-social rights nexus when it comes to imposing restrictions on people’s freedom of movement in the COVID-19 pandemic

While the Nordic countries still share a similar social democratic welfare state regime at large, the interpretation of the usage of restrictions on freedom of movement as a mitigation policy highlights diverging directions between the countries in terms of their understanding of aspects of citizenship, such as inclusion and exclusion. This is also in line with the arguments put forth by Nordensvärd and Ketola (2022) who have argued that citizenship is not just made up of formal laws but also is made and remade through social practices and interpretations of laws and culture that could exist in an informal understanding of what should and could be done in times of crisis. This article brings out a more nuanced understanding of social practices during a pandemic where governments have to make difficult decisions. The analysis suggests that the Nordic countries cannot be understood as monoliths in all respects. The article thereby contributes to a greater understanding of how the Nordic government prioritises civil and social rights when they are forced to choose, raising additional questions about citizenship and invites and requires further empirical analysis.

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