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Sweden's Constitution Decides Its Covid-19 Exceptionalism

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Sweden's Constitution Decides Its Covid-19 Exceptionalism

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Abstract:

The Swedish policy response to covid-19 stands out as exceptional in international comparisons. The approach adopted is fundamentally determined by the Swedish constitution. Three articles of the constitution are central for this explanation. The first one guarantees the freedom of movement for Swedish citizens, thus ruling out the use of nation-wide lockdowns as an instrument in peacetime. The second one establishes independence for public agencies, allowing them to design and administer the policy response to the pandemic with a minimal interference by the central government. The third one reserves exceptional powers to local government, making a central response to the pandemic difficult to implement. In addition, the Swedish approach is fostered by strong trust by the public in the government, in public authorities and in the workings of the political system.

Key words: Covid-19, pandemic, constitution, trust, Sweden,.

JEL classification: E65, E71, F52, H1, H4, H7, I1

Sweden's Constitution Decides Its Covid-19 Exceptionalism

Introduction^{1 2}

The coronavirus has triggered drastic policy measures such as lockdowns and severe restrictions on the freedom of movement of people in many countries. Politicians have put their citizens in house arrest. Sweden is one clear exception to this pattern: no nation-wide mandatory lockdown has been enforced. Swedes are able to move freely within their country as well as across the Swedish border – although they may be stopped from entering.

True, there are restrictions concerning the maximum size of public gatherings. No more than 50 persons can meet. Restaurants that do not adhere to social distancing rules can be forced to shut down. Day care facilities and elementary schools have remained open. High schools and universities have been closed. Still, the public authorities rely essentially on recommendations and information concerning hand-washing, social distancing, self-isolation, travelling, working from home rather than on any legally binding measures.

Here Sweden is not showing the middle way. Why is the policy response in Sweden so different? The purpose of this short note is to provide an answer to this question.

The Swedish approach has drawn immense international interest. Many explanations for its exceptionalism have been presented. However, as a rule the main reason for the Swedish policy response has not been brought out. It is determined by the legislative framework, more precisely by the rules of the constitution concerning the freedom of personal movement and concerning the independence of public authorities and local authorities.³

¹ I have benefitted from constructive discussion with Joakim Nergelius on the design and history of the Swedish constitution. Fredrik NG Andersson, Benny Carlson, Oskar Grevesmühl, Magnus Jerneck, Daniel Klein, Johannes Lindvall, Ingvar Mattson, Titti Mattsson, Ulf Persson, Felix Roth, Erik Wengström, Gunnar Wetterberg and Geoffrey Wood have given me helpful suggestions. Felix Roth and Dag Rydorff have helped with the data collection. The usual disclaimer holds.

² The thesis elaborated on in this paper was first presented in Lars Jonung and Steve H. Hanke “Freedom and Sweden's Constitution”, published in the *Wall Street Journal*, May 21, 2020.

³ For example, a recent IMF report suggests that the Swedish approach is based on “the view that the pandemic would last a long time” without any mentioning of the role of the Swedish constitution. See IMF (2020).

A lively debate about the pros and cons of the Swedish experiment has evolved in terms of health outcomes. In particular, the high covid-19 death rate among the elderly and a higher mortality rate in Sweden than in the other Nordic countries is a source of controversy. However, the consequences of the Swedish covid-19 response in terms of mortality rates and herd immunity are not dealt with in this report. No attempt is made to evaluate if the strategy adopted is better or worse than the policies chosen by other countries. Instead, the focus here is solely on the determinants of the Swedish policy response to covid-19.

The pandemic is simultaneously an issue of healthcare and of economics. The economic consequences of the present pandemic are enormous.⁴ These are determined to a large extent by the measures taken by government authorities, which in turn depend on the incentives and restrictions facing policymakers. As argued here, the institutional framework for the policymaking is the key to understanding the Swedish approach to the covid-19 pandemic.

1. The role of the constitution

The Swedish approach to covid-19 is primarily due to the design of the Swedish constitution.⁵ Two paragraphs in the Swedish constitution dictate the character of the policy response, the first one concerns personal freedom of movement, the second one concerns the particular Swedish independence of public agencies or authorities (*myndigheter*). In addition, the constitution gives extensive powers to local government in designing policy measures concerning the pandemic, restricting the role of the central government.

1.1. The constitution guarantees personal freedom of movement

The Swedish government is not allowed to declare a state of emergency in peacetime. Thus, the main factor behind Swedish exceptionalism during the pandemic is that the Swedish constitution prohibits the use of lockdowns as seen from Chapter 2, Article 8 in the Swedish constitution (*Regeringsformen*).

⁴ A pre-corona study of the possible macroeconomic consequences of a pandemic in Europe by Jonung and Röger (2006) illustrate some of these effects on economic growth. This study assumed a pandemic lasting for a short time without any lockdowns on economic activity and with no effects on financial markets. The present policies of lockdowns across the world have severely deepened the contractionary effects of the covid-19 pandemic.

⁵ The Swedish constitution consists of four pieces of legislation, forming the *grundlagarna*. The most important piece in this context is *Regeringsformen* (the Swedish constitution). See Isberg (2016).

*Everyone shall be protected in their relations with the public institutions against deprivations of personal liberty. All Swedish citizens shall also in other respects be guaranteed freedom of movement within the Realm and freedom to depart the Realm.*⁶

The above paragraph thus guarantees full freedom of movement for Swedish citizens within Sweden and across the Swedish border under peacetime conditions. The paragraph is not absolute. As stated by Nergelius (2018, p. 150), there are exceptions for example for prisoners and conscripts for military service, restricting their freedom of movement, as stated in Chapter 2, Article 20-21 in *Regeringsformen*. Local restrictions on the movement of people can be adopted for health reasons. However, there is no exception for a contingency like a pandemic. Thus, these rules cannot be adopted for a full nationwide lockdown similar to those put in place in other countries.

Why is there no exception for a pandemic while there are exceptions for a number of other contingencies in the *Regeringsform*? The most likely answer, suggested by Joakim Nergelius, is that the writers of the present constitution did not consider the use of a lockdown in case of a pandemic.⁷ However, the *Regeringsform* (Chapter 2, Article 24) allows the government to restrict the freedom of meeting and of demonstration due to an “epidemic”:

Freedom of assembly and freedom to demonstrate may be limited in the interests of preserving public order and public safety at a meeting or demonstration, or with regard to the circulation of traffic. These freedoms may otherwise be limited only with regard to the security of the Realm or in order to combat an epidemic.

The freedom of assembly has also been restricted by a ban of all public meetings with more than 50 participants as part of the government’s strategy to deal with covid-19.

1.2. The constitution guarantees the independence of public agencies

Public agencies (*myndigheter*) are independent from the government according to the constitution. This tradition goes far back in history. A first step was taken in the *Regeringsform* of 1634 designing the structure of public agencies. It came about after the death of King Gustavus Adolphus II in the Thirty Years War while Crown Princess Christina was coming of age. A second step was the *Regeringsform* of 1720, following the death of Charles XII, restricting the power of the King and establishing independent public agencies.

⁶ This quote is taken from Isberg (2016).

⁷ Personal communication with Joakim Nergelius, professor in constitutional law at Örebro University.

Today, the Swedish system is based on administrative dualism, where the public agencies are set up outside the ministries of the central government.⁸ As stated by Nergelius (2018, p. 300), the independence of public agencies from the government “is unusual or even unique in an international perspective”.⁹

As explained in the English introduction to the *Regeringsform*, the government

*has no powers to intervene in an agency's decisions in specific matters relating to the application of the law or the due exercise of its authority. In many other countries, it is common for an individual minister to have the power to intervene directly through a decision in an agency's day-to-day operations. This possibility does not exist in Sweden, however. Collective Government decision-making and the ban on instructing agencies on individual matters are expressions of the prohibition of 'ministerial rule', as it is often called. The Riksdag is responsible for monitoring to ensure that ministerial rule does not occur. Should the Government consider that an agency has not applied a law correctly its only remedy is to seek to amend the relevant legislation.*¹⁰

This approach reflects the wording of the constitution in Chapter 12, Article 2 of the *Regeringsform*:

Independence of administration

*No public authority, including the Riksdag, or decision-making body of any local authority, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis an individual or a local authority, or relating to the application of law.*¹¹

The constitution thus prevents ministerial rule (*ministerstyre*) that is interference by ministers of government in affairs that are assigned to various public authorities. Public agencies are thus given a status to some extent similar to the independence of courts and of the Riksbank, the Swedish central bank. Still, the government appoints the heads of the public agencies and determines their budgets.

⁸ See Öberg (2020, p. 158).

⁹ To some extent, the Swedish system survives in Finland as well, due to the common history of Finland and Sweden until 1809.

¹⁰ See <https://www.government.se/how-sweden-is-governed/public-agencies-and-how-they-are-governed>

¹¹ See <https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf>

The Public Health Agency of Sweden (*Folkhälsomyndigheten*) is such a public authority, now in charge of framing and designing the policy response to the pandemic. It is run by experts in epidemiology, not by political appointees. These experts have developed a broad approach.

The collaborative work of health economists and epidemiologists at the Swedish Public Health Agency has produced a response that explicitly considers the overall impact of the corona policies on the health of the Swedish people and on the Swedish economy.

The constitution insulates the public authorities from direct political meddling to a much greater degree than in any other democracy, allowing experts to design the policy response. Although the government is not formally bound to follow the recommendations of public agencies, by tradition this is the case.

1.3. The constitution guarantees self-government at the local level

In addition, the Swedish constitution gives a strong role to local self-government (*kommunalt självstyre*). This is an old tradition going back to the late Middle Ages. The autonomy of the local authorities is anchored in Chapter 14 in *Regeringsformen* on Local Authorities.¹² They are given the right to levy taxes as well:

Art. 2. The local authorities are responsible for local and regional matters of public interest on the principle of local self-government.

Art. 4. The local authorities may levy tax for the management of their affairs.

Self-government through the municipalities at the local level and the regions, formerly *landstingen*, at the regional level covers actually the major share of the large Swedish public sector, including the healthcare sector and the care of the elderly. Thus, the power of the central government is limited by the independence of the local authorities. This decentralized structure contributes to the exceptional Swedish response to the pandemic.

¹² See also Pierre (2015, p 10) stating that “Local autonomy is exceptionally strong in Sweden. It is written into the Constitution to safeguard local institutions from impositions by central government. Except for a few stipulated types of actions, municipalities are essentially free to pursue their interests in whatever way they choose.” This freedom of action has been revealed by the response of different municipalities to the covid-19 pandemic.

2. The role of trust

As the Swedish constitution prohibits the use of lockdowns and state of emergency as policy tools, the government has to rely primarily on information and recommendations to influence the behavior of the public. The impact of this type of policy tools is closely related to the degree of trust in society.

It is commonly claimed that Sweden has a culture where the public holds a strong trust in public institutions, in government effectiveness and honesty, in the accountability of elected politicians, in the democratic process and in the rule of law.

This can be seen from various studies like the Eurobarometer surveys covering all EU member states. Here the Swedish respondents display a high trust in their national government, while citizens in many EU member states hold considerably lower trust in their governments. See Figure 1 showing the trust in the national government calculated as an average across the EU from biannual Eurobarometer 2013 to 2019.¹³

According to other surveys, interpersonal trust in Sweden is among the highest in the world.¹⁴ In response to the survey question "Generally speaking, would you say that most people can be trusted or that you need to be very careful in dealing with people", 63 per cent of the Swedish respondents replied "Most people can be trusted". A similar figure for the United States was much lower, about 30 per cent.¹⁵

Trust is also a crucial determinant of the credibility and thus the impact of the recommendations and analyses of public authorities. Public trust is a necessary condition for a public authority to stand out as independent from the national government in order to function efficiently. This point is brought out in a report on the prerequisites for establishing a fiscal policy council in Portugal using the Swedish fiscal policy council as a prototype (see Jonung 2014). The lack of trust in Portugal is striking compared to Sweden as illustrated in Table 1.

The argument here is straightforward: trust in an independent government authority like a fiscal policy council strengthens its capacity to influence the government and enhances its independence. The same argument can be made concerning the capacity of an independent

¹³ Roth and Jonung (2020, Figure 8.3) show that trust in the national government in Sweden is in the top among EU member state after the 2008 global financial crisis.

¹⁴ See for example Wengström (2020).

¹⁵ See Ortiz-Ospina and Roser (2020). A similar pattern emerges in the World Values Surveys.

public authority to head the response to a pandemic. When people trust the public administration, it will follow the recommendations given by the authorities in charge of health policies as well as those given by the government.

The Swedish approach is based on a virtuous circle - given the constitutional framework. The public trusts the government and thus the government can rely on advice and recommendations as sufficient policy instruments. This state of affairs represents a positive form of equilibrium of expectations. The public expects the government/the public administration to deliver the proper response while the government/the public authorities expect the public to act accordingly. It is a stable state of affairs as long as the expectations of the two parties remain coordinated.¹⁶

3. The role of the economics profession

The covid-19 pandemic has tremendous economic effects as revealed by the rise in unemployment, decline in growth and the huge expansion of government expenditures to counter the contractionary impact of the pandemic. Thus, economists have emerged in the media, commonly arguing that any policy measure should be based on a comparison between the costs and benefits involved. So far, this way of thinking in terms of trade-offs supports the approach adopted in Sweden. Likewise, many Swedish epidemiologists are influenced by an economic approach in their recommendations.

The strong role of the economics profession in public debate in Sweden has a long tradition going back to the public engagement of prominent economists such as Knut Wicksell, Gustav Cassel and Eli Heckscher at the turn of the 20th century.¹⁷ This tradition is reflected in the high standing of independent experts in the public debate.

In the debate on the Swedish exception, a host of other factors have been suggested.¹⁸ They emphasize for example the strong liberal tradition in Swedish history or the long period of peace, making it difficult for Swedes to understand the dangers that can threaten society.

¹⁶ The Swedish approach can also be viewed as based on a social contract where the parties involved trust each other. As long as there is trust in the contract, it will be upheld.

¹⁷ See Carlson and Jonung (2005).

¹⁸ See for example Karlson, Stern and Klein (2020) for an account.

However, these factors are of secondary importance compared to those presented above founded in the design of the Swedish constitution.¹⁹

4. Will the Swedish approach be successful?

There are in principle two ways to influence the behavior of the public by policy measures; either by instruments based on coercion and force or by tools aimed at voluntary changes in behavior. The present pandemic serves as an illustration of these two approaches. In the first case, compulsory lockdowns are used as a prime instrument in many countries. In the second case, advice, persuasion and recommendations by the authorities represent the policy instruments adopted.

Which choice of policy will work best during a pandemic? We do not know at this stage. Swedes do follow the recommendations by the Public Health Agency and by the government to a large extent. Still, they have their freedom to move around. They cannot be arrested or punished for not following the rules as in many other countries as in Sweden there are few binding rules.

Will the Swedish model be successful? The full answer will be available in the coming years. Now Sweden is serving as an exciting experiment – or the rest of the world is the experiment as seen from a Swedish perspective. So far, the approach taken has a strong backing from the public.²⁰

There are signs that the Swedish model is under threat. The government rushed through legislation that gives it more power to close down restaurants and activities that are deemed risky. It has, however, to have the acceptance by the Riksdag for such measures. This piece of legislation will end in June 2020. There is also a rising criticism based on the high mortality rates due to covid-19 in homes caring for the elderly presently and on the lack of testing.

¹⁹ See Angner and Arrhenius (2020) for an analysis of the Swedish exception similar to the account given in this report. Otherwise, most reports on the Swedish corona-response ignore the constitutional perspective.

²⁰ See Wengström (2020).

5. Conclusions

The Swedish strategy in dealing with covid-19, commonly described as liberal, lax or permissive, stands out as exceptional in an international context. It is essentially based on advice and recommendations concerning individual behavior, not on binding compulsory measures like lockdowns. The main reason for this exceptionalism of a rules-based approach limiting the power of the government is found in the design of the Swedish constitution, reflecting a trajectory going far back in Swedish history. The constitution mirrors the norms held by the public concerning freedom and the power of central government as well. Commonly, the international attention given to Sweden does not pay attention to these roots. Most Swedes are not aware of them either. They listen to the advice and recommendations of the Public Health Agency and other government authorities and adjust according to their free will.

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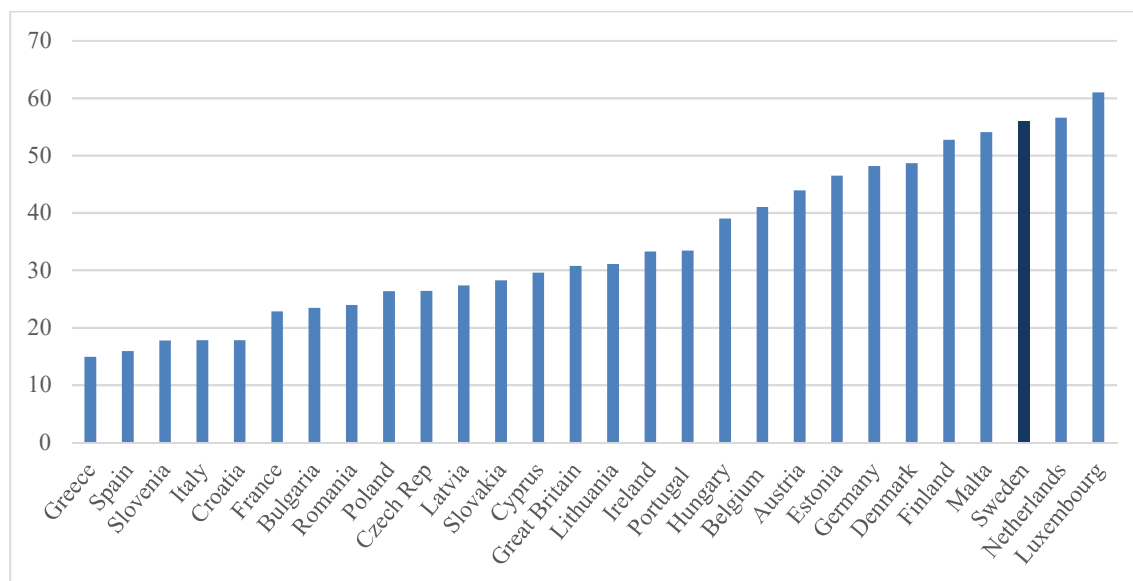
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Figure 1. Average Trust in the National Government across the EU from November 2013 to May 2019. Number of respondents who tend to trust the national government, percent.

Tend to trust



Source: Standard Eurobarometer 80-91.

Table 1. Trust in political parties, the government and the parliament and satisfaction with the way democracy works in Portugal and Sweden in the fall of 2012, per cent of respondents.

	Portugal			Sweden		
	<i>Tend to trust</i>	<i>Tend not to trust</i>	<i>Don't know</i>	<i>Tend to trust</i>	<i>Tend not to trust</i>	<i>Don't know</i>
Political parties	17	79	4	35	61	4
The Government	22	74	4	59	38	3
The Parliament	23	73	4	68	29	3
	<i>Not</i>			<i>Not</i>		
	<i>Very/Fairly</i>	<i>very/Not at all</i>	<i>Don't know</i>	<i>Very/Fairly</i>	<i>very/Not at all</i>	<i>Don't know</i>
Satisfaction with the way democracy works	25	74	1	86	13	1

Source: Jonung (2014).

Comments: The table is based on data from Eurobarometer 78. More recent Eurobarometer surveys demonstrate a general rise in trust in Portugal.