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Contested institutional legitimacy: an exploration of delegitimation, counter-legitimation and its consequences for open societies

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On the 6th of January 2021, the United States Capitol was violently attacked by a mob of Trump supporters. The angry mob did not accept the outcome of the presidential elections and attempted to disrupt the joint session assembled in Congress that would formalize Joe Biden's victory. Observers had predicted the elections could spark protests that – anti-government and right-wing – extremists would exploit to commit political violence. However, few had anticipated that it would escalate this far.

In the Netherlands, several cases have surfaced in which journalists, politicians, scientists, and judges are threatened by a variety of anti-government and conspiracy thinkers. The Covid-19 crisis and the government responses to it have catalyzed anti-system movements that question the legitimacy of certain state institutions, fueling processes of polarization in society (see for example: NCTV, 2021). Though political violence has remained relatively limited in the Netherlands, escalatory patterns towards further political violence are not unimaginable. The cases referred to above suggest that even relatively open societies with a long history of liberal democracy, including high-trust societies, cannot simply take the legitimacy of their institutions for granted. The examples above call for further interdisciplinary academic research on these issues. In this think paper we explore one such line of inquiry: the contested legitimacy of state institutions.

Legitimacy studies often refer to a largely Weberian, rational-legal, state-centric, and processual perspective in which power is considered legitimate if it is based on

procedures and exercised in accordance with clearly defined rules and regulations (Weber, 1978). In this way, state institutions are deemed to be representative and responsive to the population. But what happens if segments of the population do not feel represented by these institutions and believe the state is not responsive to their needs? What happens to the legitimacy that these institutions purport to possess?

In answering these questions **this paper addresses processes of delegitimation and counter-legitimation by which existing forms of governance and their claimed legitimacy are challenged by a variety of actors.**

It pays attention to how legitimacy is framed, challenged and attacked by those actors from below, and examines contemporary empirical examples of the proclaimed 'Western legitimacy crisis' (Ibsen, 2019). These cases are taken from recent experiences in The Netherlands.

Disenchanted segments of society usually hold their governments accountable for grievances or abuses through established institutions and avenues like courts, complaint mechanisms, ombudsmen, peaceful protests, or by raising issues in the media. These forms of redress remain within the societal order by using the institutions of the presumed open society. In other instances, however, these channels are perceived to be blocked or denied to them and consequently societal frustration with the existing political order grows. Societal groups may challenge the legitimacy of the government and the institutions of the state in such cases, in the most severe cases through political violence. We find that the legitimacy

of state institutions gets increasingly contested through processes of delegitimation. In more extreme cases, anti-state movements may even establish alternative governance structures to gain legitimacy among the population and specific international audiences. We refer to this second process as counter-legitimation. These forms are witnessed when, for example, anti-state movements set up their own forms of governance in competition with or parallel to existing state institutions (Schlichte & Schneckener, 2016; Terpstra & Frerks, 2017). For example, the Liberation Tigers of Tamil Eelam (LTTE), a rebel group in Sri Lanka, developed its own material and symbolic governance structures undermining the formal Sri Lankan state. Amongst others, this involved a parallel LTTE police force, judiciary, and taxation schemes (Terpstra & Frerks, 2017). By performing 'better' than the formal government such counter-state organizations hope to establish counter-legitimacy frames that benefit their political agendas. Similar cases include the Taliban in Afghanistan and Hezbollah in Lebanon.

In this think paper we explore three main questions:

- (a) What is delegitimation and counter-legitimation?
- (b) How does the empirical legitimacy of the state and its institutions get contested?
- (c) What are the consequences of contested institutional empirical legitimacy for open societies?

We thereby explore how the perceived illegitimacy of state institutions feeds into counter-state forces in society and how such counter-state forces delegitimize existing institutions. Theoretically we build on our prior academic work and insights on contested institutional legitimacy in societies experiencing armed conflict (Terpstra & Frerks, 2017; Terpstra, 2020). In this paper we focus our attention on a few empirical cases in the Netherlands.



Legitimacy, legitimation, and their opposites: a political and sociological exploration

Legitimacy is a prominent concept in the political and social sciences. Following the tradition of Max Weber, scholars have defined legitimacy as the “right to rule” (Gilley, 2009) or the “license to govern” (Schmelzle, 2015). According to Suchman (1995, p. 574), legitimacy is “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions”. Podder argues that legitimacy involves the “complex moral right of the state to impose rules on its subjects, while the latter agree to comply with such rules”, adding that political legitimacy resides in a ‘tacit social contract’ between state and society, or the ruler and the ruled (Podder, 2013, p. 19). It is possible to rule through coercive power only, but there is a broad consensus that legitimate power makes governing easier and more effective (Tyler, 2006). Particularly in open societies, legitimacy is an essential ingredient of government.

LEGITIMACY: PHASES AND DISCIPLINARY PERSPECTIVES

Prior research has approached legitimacy in different phases of the policy process, referred to as input, throughput, output, and outcome legitimacy (see for example: Schmidt, 2013; Bovens et al., 2020). In open societies input legitimacy is mainly concerned with the establishment of democratic control (Bovens et al., 2020, pp. 9–10). On the throughput-side the legitimacy issues are about the prevention of arbitrariness in the exercise of public power (Ibid., p. 10). The output legitimacy concerns the problem-solving quality of the process. It focuses on effectiveness and achievement of desired policy goals (Ibid., p. 5). Lastly, outcome-legitimacy applies to the social effects of the

policy and focuses on the achievement of desired social outcomes (Ibid., p. 5). All these aspects of legitimacy can increase or decrease over time. For example, an increased contestation over election results, a blurring of the separation of powers, or an increase in procedural injustices could lead to a decrease in the legitimacy of state institutions.

The existing academic literature generally distinguishes normative, legal, and empirical perspectives on legitimacy. The normative understanding is about the justification, whether an actor or institution should have the right to govern according to normative principles. The legal perspective considers the actions of actors and/or institutions in direct relation to existing laws. A third perspective – the one we will emphasize here as most useful for our purpose – is generally referred to as empirical legitimacy and is concerned with social acceptance ‘on the ground’. Empirical legitimacy refers to a given population’s sense of obligation or willingness to accept the authority of governance actors and institutions (Levi & Sacks, 2009; Risse & Stollenwerk, 2018). In this think paper we adopt this third perspective of empirical legitimacy because it allows “an analysis of the social construction of legitimacy; that is why people accept or reject a particular form of government and governance” and “everyday apperceptions (in the sense of critical consciousness, and recognition and valuation) of legitimacy” (Pardo & Prato, 2019, pp. 8–9).

Our adoption of the perspective of empirical legitimacy means our analysis is in the first instance not aimed at finding definitive answers about the legality or normative desirability of certain institutional set-ups or policy processes. Nevertheless, we are aware that certain normative assumptions are inherently part of the equation.



‘Particularly in open societies, legitimacy is an essential ingredient of government.’



‘It is particularly during its absence that we can fully appreciate the significance of legitimacy.’

The empirical legitimacy of institutions can be based on the understanding that the institutions are normatively desirable. Since we look at the setting of open societies and liberal democracies in this paper, normative assumptions about the desirability of the openness of societies and democratic values are inherently part of 'the bigger picture'. That being a given, we focus on how such assumptions can get questioned in society or by certain societal groups and which processes diminish the legitimacy of state institutions.

EMPIRICAL LEGITIMACY

As with many other aspects of society, it is particularly during its absence that we can fully appreciate the significance of legitimacy. Where it is present for longer periods of time, legitimacy is often taken for granted (Beetham, 1991, p. 6). However, Netelenbos emphasizes in that regard: "Political actors, actions, decisions, positions and institutions are in constant need for legitimacy – a legitimacy that cannot always be presumed quasi-naturally and unproblematically" (2014, p. v). As observed by Pardo and Prato (2019, p. 2): "As today, the 'fundamental accord' between the ruling élite and the rest of society (...) appears to be both more needed and chimerical than ever, the question arises: how much more governance failure before legitimacy is withdrawn and, consequently democracy is jeopardized?" These authors further observe that: "Every day, there are reports from across the world of

grassroots grievances that expose power that lacks legitimacy, as they bring to light both the obnoxious ways (...) in which dominant élite exercise power and the growing opposition in the wider society to their rhetoric and actions" (2019, p. 6). Pardo and Prato's editorial volume (2019) on the ethnographies of legitimacy strongly argues for an anthropological, field-based, empirical, and grounded understanding of the processes engendering or undermining legitimacy.

Generally, social scientists are concerned with legitimacy in particular historical societies or contexts rather than universally independent of any particular context (Beetham, 1991, p. 6). It is therefore important to note that legitimacy is not a fixed position for any actor or institution, but an on-going and dynamic interactive process contingent on a variety of other processes and factors. As put by Pardo and Prato: "(...) the conceptions and dynamics of legitimacy are subject to constant change and, we note, they do not have a separate existence isolated from other social processes. They vary, sometimes radically, from social set-up to social set-up (...) and equally radically, diachronically – again within the same local community, as well across a nation state and internationally" (2019, p. 10). Therefore, we should acknowledge that researchers, particularly social scientists, attempting to measure legitimacy or the lack thereof are often aiming at a moving target. These dynamics are particularly shown by the notions of legitimation, delegitimation and counter-legitimation which

connote movement rather than a state of being: the act or process of gaining or losing legitimacy or building alternative and competing sources of legitimacy.

INSTITUTIONAL ILLEGITIMACY

The legitimacy and illegitimacy of state and non-state institutions especially gains relevance in relation to anti-state movements in society. As Gurr (1970) pointed out about the legitimacy of political systems in relation to political violence: “the more legitimate they [political systems] are, the less likely their citizens are to be willing to attack them” (1970, p. 130). Beetham notes that studying the legitimacy of political regimes also “helps explain the erosion of power relations, and those dramatic breaches of social and political order that occur as riots, revolts and revolution” (1991, p. 6). From a more individual psychological perspective, Van den Bos (2018) for example shows how the experiences and perceptions of unfairness and injustice can tempt individuals to break the law and engage in violent extremist and terrorist behavior.

The loss or undermining of the state’s legitimacy is a longer historical process that may take decades, as the account of the Sri Lankan armed conflict exemplifies (Frerks & Dirkx, 2018, Terpstra & Frerks, 2017). From examples of armed conflict around the world, we know that the perceived illegitimacy of state institutions and state actors can bolster the legitimacy of the

state’s opponents, and some of them may ultimately succeed in overthrowing the government. From a normative perspective, revolts against the state could, in some instances, be interpreted as ‘ultimate’ forms of democracy, or forms of ‘deep democracy’. Though the long-term effects of the Arab Spring have failed to materialize in various countries, it did show how the perceived illegitimacy of state institutions can instigate ‘change from below’ and demands for better representation and accountability.

STUDYING EMPIRICAL (IL)LEGITIMACY: AIMING AT A MOVING TARGET

The experienced illegitimacy of institutions may present itself in various sectors of society. Amongst others, Nivette (2014) highlights political, economic, educational and welfare institutions:

In political institutions, a tyrannical dictator, unfair or exclusive electoral system, or an unrepresentative national parliament may all be sources of illegitimacy to citizens. Within economic and work institutions, unequal pay, non-meritocratic promotions and poor or dangerous working conditions may delegitimize and weaken commitment to these institutions. (...) Education and welfare institutions may lose legitimacy by discriminating against certain groups, providing unequal services, or as further extensions of state power, they may suffer tangentially from political illegitimacies (2014, p. 103).

Attempting to measure the (il)legitimacy of state institutions, Gilley (2006) distinguishes three groups of indicators: views of legality, views of justification and acts of consent. Views of legality and views of justification can be investigated through attitudes and actions, whereas the acts of consent can only be researched through action. Though the Netherlands scores high on most of Gilley's indicators (Table 1), we aim to highlight a few developments that demonstrate how some of these indicators appear to have come under

scrutiny recently. Furthermore, though Gilley's measurement of the legitimacy of state institutions provides cross-national insights into the levels of state legitimacy, it is less accommodating to provide a specific, localized insight in the processes that may foster a decline on some of the legitimacy indicators. We therefore base our own analysis on a more qualitative assessment of delegitimation processes, yet still based on selected indicators from Gilley's list.

Table 1. Gilley's three groups of indicators

INDICATORS	
VIEWS OF LEGALITY	<ul style="list-style-type: none"> • Attitude surveys about legality • Attitude surveys about corruption • Acceptance of electoral or revolutionary mandates • Views of police, judges and civil servants • Demonstrations or social movements over legal or constitutional issues • Importance of laws or constitution in political life • Dissonance over election results
VIEWS OF JUSTIFICATION	<ul style="list-style-type: none"> • Surveys of political system support, political trust, alienation, etc. • Views of effectiveness of political institutions • Popularity of embedded polity (authoritarian leaders or parties) • Political violence • Size of internal secret police • Political prisoners • Anti-system movements/ secessionism/civil war • Mass emigration • Crime levels
ACTS OF CONSENT	<ul style="list-style-type: none"> • Election turnout, voter registration • Military recruitment, use of mercenary soldiers • Tax payments/reliance on foreign loans or resource export taxes • Popular mobilization in authoritarian states

DELEGITIMATION AND COUNTER-LEGITIMATION

Here, we perceive delegitimation as the processes and mechanisms that foster a decrease of legitimacy on one or more of the legitimacy indicators. In our conceptualization we follow Barker who states that legitimation – the attempt to acquire legitimacy – can be defined as “an action or series of actions—speech, writing, ritual, display—whereby people justify to themselves or others the actions they are taking and the identities they are expressing or claiming” (Barker, 2003, pp. 163–164). In this paper that refers to the institutions of the state. Delegitimation functions in the opposite direction: actions or series of actions that undermine the legitimacy of the institution. Processes of delegitimation can originate from within these institutions or from outsiders. For example, the mailing votes in the US presidential elections proved to be somewhat of a weakness in the election system, but at the same time Trump supporters highlighted these potential deficiencies and incorporated them into a larger narrative of election fraud. In other words, state institutions may – inadvertently – delegitimize themselves, while oppositional actors attempt to do so more actively. Mostly, however, it is an interplay between the two.

Drawing from Barker, our conceptualization of counter-legitimation goes yet another step further. Counter-legitimation refers to an action or series of actions – speech, writing, ritual,

display – whereby anti-state forces justify the actions they are taking and the identities they are expressing or claiming, to themselves or to others, specifically targeted to legitimize an alternative institutional order, at the expense of the prevailing state institutions that may sometimes even be actively attacked.

Yet, at the same time, the right to protest, to express opposition, etc. are at the core of liberal democracies. Then, when do democratic forms of opposition and protest potentially turn into less democratic ones? Following Beetham (1991, p. 209) we argue it is only when the opposition is designed to make the policies of government fully unworkable, or actively to bring it down, or to demonstrate allegiance to a different political order, that it moves from healthy democratic opposition towards more extreme forms of delegitimation and counter-legitimation. Though this provides some guidance, we are aware it still leaves ample room for multiple interpretations. In the qualitative case examples below, we attempt to show what different forms of opposition may teach us about contested institutional legitimacy.



‘When do democratic forms of opposition and protest potentially turn into less democratic ones?’

Empirical examples of contested institutional legitimacy

We highlight three empirical examples in the Netherlands to inquire these processes of delegitimation and counter-legitimation in open societies. We look at the childcare allowance affair, the Farmers Defence Force (FDf), and the 5G conspiracies. Obviously other and more examples from Europe or other parts of the world could have qualified. However, we chose these three examples because they – each in their own right – teach us something about the delegitimation of institutional legitimacy in our own country. Furthermore, each example occupies a different position on the thin line between democratic and less democratic oppositional processes.

CHILDCARE ALLOWANCE AFFAIR

The childcare allowance affair came to light in the Netherlands over the past few years, after critical questions of a lawyer representing some of the victims, and subsequent research carried out by the Nationale Ombudsman (2017). Recipients of these allowances had been incorrectly accused of fraud by the tax authorities and had been forced to pay back large sums of these allowances, often covering several years, and multiplied by fines. Large-scale criminalization of families had taken place with serious consequences, such as indebtedness, hypothecation, sale of property, divorces, children being separated from their families and flight abroad.

For years the signals exonerating the victims had been systematically ignored or brushed aside. The victims of this affair and some parliamentarians

showed how the tax authorities operated unethically and with disregard for the fundamental rights of citizens who had received these childcare allowances. Victims of the affair also attempted to fight the tax claims in court and in the media, while parliamentarians attempted to gain further information from the tax authorities and tried to hold the responsible ministers to account. The media played an important role in disseminating knowledge on the objectionable practices of the authorities leading to wide-spread anger and indignation.

Eventually a parliamentary Interrogation Committee investigated the childcare allowance affair. The committee published its report with the title: ‘Unprecedented Injustice’. The committee conclusively established that “fundamental principles of the rule of law were violated” by the Dutch tax authority, with fraud investigations into families triggered by “something as simple as an administrative error, without any malicious intent” (Tweede Kamer der Staten-Generaal, 2021). It also asserted that the state withheld crucial information from parliamentarians. Eventually the Dutch cabinet resigned early 2021 after the committee’s report was made public.

We highlight this example because it demonstrates an erosion of trust in existing institutions of the state. The scandal created large-scale indignation in press, especially when it also transpired that the authorities had ignored prevailing signals of the abuses and had conspired to hide the affair from the public. The institutions of the state lost confidence to a point where it had become not



‘The erosion of legitimacy in existing political systems is visible in the sympathy for conspiracy theories that not only circulate online but have their significant effects in the physical world too.’



justifiable how the state had operated vis-à-vis these individual victims. Based on Gilley's indicators of institutional legitimacy, we can establish that the views about civil servants or government in this case deteriorated and that demonstrations over legal issues erupted; both were signs of decreased empirical legitimacy. At the same time, however, this case shows how the system eventually corrected itself. The opposition that emerged was not designed to make the policies of government fully unworkable, or to bring government down, or to demonstrate allegiance to a different political order. Therefore, we conclude that the responses have remained within the boundaries of democratic opposition.

THE FARMERS DEFENSE FORCE (FDF)

The second example is the FDF. The FDF is an opposition movement of Dutch farmers, and it essentially claims that the Dutch government has neglected and harmed farmers' interests. They call themselves fighters or combatants and adopt a militancy previously unknown among Dutch farmers organizations. The FDF claimed, for example, that the nitrogen calculation of the National Institute for Public Health and the Environment (RIVM) was factually incorrect. Because of those calculations, a number of farmers would have to sell their businesses for the Netherlands as a whole to meet the nitrogen quota.

The FDF actively attempted to delegitimize the calculations of the RIVM. The FDF claimed the

nitrogen calculations were politically biased and aimed to deliberately disenfranchise the farmers. The neutrality of this state institution was questioned and thereby the legitimacy of the underlying system, which they depicted as 'treacherous politicians, powerholders and charlatans' who bend the law and enrich themselves at the cost of the farmers. At the same time the FDF has been involved in public-friendly actions and publicity through TV spots to win popular sympathy.

The FDF operates within some of the existing state institutions, but also fundamentally questions others. The FDF has, for example, used legal means prevailing within the judicial system of the Netherlands but it also resorted to a more radical and provocative repertoire of actions hitherto unseen by the traditional representatives of farmers organizations. It organized several large-scale demonstrations with tractors and heavy agricultural equipment blocking roads and virtually invading the Hague in numbers far beyond what had been permitted by the authorities. The FDF also resorted to violence during an assault on the government's provincial headquarters of Groningen, wrecking its entrance with a tractor. After a lighter fence was pushed aside by FDF tractors, army trucks were placed to prevent them from approaching Parliament in the Hague, and local level authorities had to ban FDF tractors from the public roads. The relevant ministers offered to continue a dialogue with the different stakeholders, including the FDF, but thus

far this has not resulted in any form of rapprochement between the state and the FDF who remains deeply skeptical about the government's intentions.

Based on Gilley's indicators of institutional legitimacy, we can establish that views of politicians and civil servants deteriorated amongst the FDF supporters, and that political violence erupted. This can be seen as a decrease in empirical institutional legitimacy. Furthermore, we can establish that the opposition is on the boundary of making the policies of government unworkable. It does not show an allegiance to a different political order but is certainly distrustful of the existing one. In October 2021, the FDF was able to stop a plan to reduce nitrogen emissions by main players in the agrarian sector collaborating in AgriNL, allegedly by intimidation and threats to block the participating firms and organizations. Depending on how their behavior evolves, we will have to see whether the FDF crosses the boundary between democratic opposition and aggressive forms of delegitimation.

5G CONSPIRACIES

This last example is about 5G conspiracies. Distrust around telecommunication technologies has existed for decades but it gained new ground and a broader resonance during the Covid-19 pandemic. Particularly new 5G networks became part of larger and increasingly popular conspiracy theories. A group of conspiracists believes 5G networks are

making people ill, rather than the corona virus. These 5G networks needed to be stopped to prevent more people from getting affected. In the Netherlands, these 5G conspiracy theories motivated individuals to set telecommunication towers on fire. Over the past year this happened to about thirty towers in the Netherlands (NCTV 2020). These anti 5G incidents are not centrally coordinated but seem to be instigated by a multiplicity of sympathizers that operate in parallel or loose networks at the most.

The counter-legitimation of the 5G conspiracy is built around a narrative in which it is asserted that the world is ruled by a small band of political elites. Corona and 5G are linked to control populations and limit civilian freedom. One increasingly popular narrative here, is the pandemic as being instigated by global elites like Bill Gates or George Soros to institute mandatory worldwide vaccinations. These vaccinations allegedly hold tracking chips activated by 5G radio waves. According to these conspiracists, state institutions, governments, big tech, mainstream media, and scientists are not to be trusted. According to these narratives, those actors are legitimizing 'fake news' and serving the 'deep state'. According to this reading people need to 'wake up' from the false political reality that is consumed through and disseminated by existing institutions, including journalism, science, and judges.

The RIVM has carried out additional research to measure the exposure to electromagnetic fields

from telecommunication systems and concluded that exposure below the limits is not harmful for the public health (RIVM, 2020). This fails to convince the 5G activists, as this evidence is deemed to be part of the same conspiracy and hence not to be trusted. In the meantime, the police have tried to locate and arrest the pyromaniacs. Recently, a first conviction in response to one of these burnings took place.

The erosion of legitimacy in existing political systems is visible in the sympathy for conspiracy theories that not only circulate online but have their significant effects in the physical world too. These conspiracy theories demonstrate a fundamental distrust in state institutions, governments, and political elites particularly. The Covid-19 pandemic catalyzed existing and instigated new conspiracies undermining the legitimacy of state institutions.

Based on Gilley's indicators of institutional legitimacy, we can establish that anti-system movements gained further momentum and that political violence erupted around the 5G-towers. This can be seen as a decrease in empirical institutional legitimacy. The opposition is designated to make the policies of government fully unworkable, to actively to bring it down, and to demonstrate allegiance to a different political order. As such, we estimate that at least part of this opposition passes the threshold from democratic opposition to extreme forms of delegitimation and counter-legitimation.



Considering legitimacy as the “generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions”, as Suchman (1995) stated, all three cases highlight – albeit in very different ways – a contestation over the legitimacy of existing state institutions. Following our perspective of empirical legitimacy, we have explored these cases of delegitimation and counter-legitimation and how these examples stand vis-à-vis democratic and less democratic oppositional processes.

PARALLELS

Parallels are a lack of trust in – certain – state institutions. In the case of the childcare allowance affair, the official parliamentary interrogation committee eventually laid bare some of the fundamental shortcomings in how the involved state institutions operated. The parliamentary report called for introspection and improvement in all three branches of the trias politica. A few critical parliamentarians, the Ombudsman and the media contributed to the public outcry and indignation, essentially holding these institutions to account. A recent report by I&O research showed the effect of the childcare allowance affair on the general public’s trust in Dutch authorities: for 71 percent of the respondents the childcare allowance affair had a negative effect on the general trust in the institutions of the state. The Dutch cabinet of prime minister Rutte resigned over the childcare

allowance affair early 2021 but still a remaining 47 percent of a representative sample of respondents qualified the resignation as an insufficient response (I&O Research, 2021).

DIFFERENCES

An important difference with the other two cases, however, is that – to some extent – existing state institutions brought the childcare allowance affair case to light. Though the case demonstrates a clear distrust in the institutions of those who were severely affected by the affair, the system eventually – though far too late – corrected itself. Another important difference is that in the childcare allowance affair distrust is based on fairly unambiguously established facts presented by a parliamentary investigation committee after hearing involved parties. The report’s findings served undoubtedly to confirm earlier suspicions and it also remains to be seen whether and how the government will be able and prepared to effectively redress the consequences despite its hurried decision to pay a standardized compensation to all victims of the affair which in turn also drew criticisms from several corners, including the Council of State.

The FDF case shows how opposition operates both within and outside the institutional system. The FDF pursues legal means to achieve their political objectives, but their protests also escalated into political violence against the system and more recently they used forms of intimidation



and threats. Furthermore, in both the FDF and 5G case we observe how the protagonists actively and deliberately question the legitimacy of state institutions by producing a repertoire of delegitimation strategies and narratives directed at their own followers as well as the wider public. The distrust is either a result of mutual interactions and incipient forms of organization of farmers or more loosely organized exchanges through social media in the case of the 5G conspiracists among themselves or their followers.

The third case on 5G goes a fundamental step further than the FDF case. The 5G case shows how opposition positions itself explicitly against and outside the liberal democratic system. The

adherents assert that the world is ruled by a small band of autocratic political elites, not by representative bodies based on fair and free elections. The existing state institutions are perceived as complicit with that band of political elites, accompanied by the idea that 5G is used to brainwash the population which justifies – in their view – the violence used.

Though this undoubtedly deserves further research, it seems that other sources of information, mostly accessed through internet and social media have replaced earlier acknowledged forms of truth and authority. It is plausible that new technologies catalyze tendencies that in psychological research have longer been referred

to as “confirmation bias”: people tend to give precedence to information that fits within their existing beliefs (see for example: Nickerson, 1998). Online this is an important development, as users mainly tend to select claims that adhere to their own system of beliefs and set views, and tend to ignore dissenting information. Existing algorithms in social media only seem to exacerbate those so-called ‘echo chambers’. Particularly when it comes to the 5G case, the wide availability of content on the web fosters the aggregation of likeminded people where debates tend to enforce group polarization (Del Vicario et al., 2016). These technological developments are potentially a strong catalyst of a counter-legitimation discourse.

OPPOSITION AS CRUCIAL ELEMENT OF LIBERAL DEMOCRACIES

It is crucial to note, finally, that political resistance and opposition is crucial for a well-functioning democracy, including the right to protest. The main difference is whether it functions within the democratic system, or whether it slides towards more anti-democratic forms of opposition. In other words, processes of delegitimation can in a first instance concern a justifiable distrust in a specific government or in specific policies, but it can also be, or become, much more fundamental and anti-democratic. It then produces a loss of trust in existing democratic institutions altogether. In other words, the opposition sees no solution within the existing institutions of the state

anymore and expresses itself through alternative ‘extra-parliamentary’ means. The difference between the two is a fine line and requires an on-going debate over the boundaries between legitimate opposition and opposition that effectively undermines liberal democracy as a whole. We attempted to shed light on how to approach this grey area from the perspective of empirical institutional legitimacy, especially by employing the notions of delegitimation and counter-legitimation. At the same time, the analysis from the perspective of empirical legitimacy has also laid bare more normative questions about open societies that warrant concern and precautions not to take all claims about democracy and openness for granted.

‘Political resistance and opposition is crucial for a well-functioning democracy, including the right to protest.’

Empirical legitimacy as we have discussed it throughout this paper, is not a fixed position for any actor or institution, but an on-going and dynamic interactive process. Legitimacy can be lost as well as restored; the ‘right to rule’ can be earned as well as it can dissipate. As a Dutch proverb says: ‘Trust arrives on foot and leaves on horseback’. The cases described above show that a loss of trust in institutions cannot simply be re-established. Therefore, open societies need to pay close attention to the ways in which institutions – inadvertently – lose the confidence of the public, and when democratic opposition turns into less democratic opposition to the liberal democratic system or resorts to violent means outside the system.

The 5G example shows how fundamentally and deeply some groups in society distrust the institutions of the state. While the 5G conspiracists may arguably encompass a minority of the Dutch population, we know from other places around the world that escalatory patterns potentially turn into further political violence and turmoil, even in presumed open societies. Therefore, the contestation over the legitimacy of state institutions demands our on-going attention, both academically, practically, and politically.

The interdisciplinary research on forms of delegitimation and counter-legitimation can develop in relation to the existing literature on conflict escalation and radicalization. Furthermore, our research direction relates to the literature on ‘democratic backsliding’ that specifically looks at the state-led debilitation or

elimination of political institutions that sustain an existing democracy (see for example: Bermeo, 2016). We must be aware that behind the façade or under the cloth of democracy impermissible practices may take place and evoke resistance. Furthermore, it speaks directly to the existing research on populism, fascism, and authoritarianism. A relevant research direction that we have not discussed yet, but logically follows is the legitimacy of non-state institutions like civil society organizations. Finally, we see possibilities to relate further research to new ‘geographies of governmentality’ and ‘deep democracy’ (see for example: Appadurai, 2001) that go beyond a focus on the state and offer alternative institutional forms of legitimacy both beyond and below the state.

We are aware that we have not been able to arrive at definite answers yet, but we hope this think paper will stimulate further debate on this crucial subject and engender new research ideas in this direction. For now, we suggest a wider and more in-depth study of the above or similar cases, especially those that further explore these processes of delegitimation and counter-legitimation. A further exploration of what induces people to be receptive to such practices and strategies and what the characteristic features and attitudes, psychologically and sociologically, of such individuals and groups are, would be of great value. We also recommend a larger corpus of case studies that would enable cross-national comparisons, including effective, or less effective, responses by the state.



‘We must be aware that behind the façade or under the cloth of democracy impermissible practices may take place and evoke resistance.’

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