The Open Society and Its Future

Think Paper Series #1

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Institutions for
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PREFACE

The 'open society' is a core concept in Institutions for Open Societies (IOS), one of the four strategic themes at Utrecht University. But what does it stand for? What do we talk about when we talk about Institutions for Open Societies? This volume tries to shed some light on the various meanings and interpretations of this core notion.

The 'open society' cannot be taken for granted. It is a highly contested concept, both intellectually and in practice. Across the world, key institutions for open societies, such as an independent judiciary or freedom of speech, are currently under siege. This volume takes stock of some of these challenges.

This is the first volume with IOS think papers. Think papers are meant to address academic topics that are of general interest to the community of IOS scholars. First of all, they are *think* pieces: meant to stimulate and enhance the debate. They try to shed light on more generic questions, that researchers in the various sub communities of IOS may have come across. Secondly, they are *papers:* they are not full-fledged journal articles, but relatively informal papers, that provide intermediate reports of ongoing debates.

The present volume has its origin in the *Institutions Toogdag*, a conference that took place at Utrecht University on 16 September 2019. All papers are based on presentations that were held that day. The first paper, by Mark Bovens, was sent to all participants beforehand, to provide a general frame of reference. It discusses various perspectives on the 'open society' and a corresponding variety of challenges. The other papers address specific challenges to the open society, such as digital-technological challenges (Van Dijck), the rise of Big Tech (Gerbrandy), ecological challenges (Feola), or they provide more general reflections on the notion of society (Visser) and on the role of universities (Kummeling).

We would like to express our special thanks to Sanne Groen, senior communications consultant with IOS, who has done a tremendous job in transforming a set of rough presentations into this slick volume.

Mark Bovens & Marcus Düwell

THE OPEN SOCIETY AND ITS CHALLENGES

PROF. MARK BOVENS

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A CONTESTED CONCEPT

When Institutions for Open Societies started as a strategic theme at Utrecht University, we spent much time and effort discussing as well as defining the concept of 'institution'. Different disciplines had different views on which social phenomena qualify as an institution. By contrast, the 'open society' has received very little attention. It has been a sort of neutral appendix to our strategic theme that was more or less taken for granted. We cannot afford to do so anymore.

Over the past decade, the notion of the 'open society' has become highly contested, both as a normative ideal and as an empirical reality. This situation is not only the case in countries that have never been open societies, such as the former Soviet Union or communist China. Democratic backsliding can be observed in many new democracies such as Brazil, Turkey, the Philippines, Poland and Hungary, where authoritarian rulers have little concern for the rule of law. Even in established democracies such as the US and Western Europe, the notion of the open society has come under fire in a variety of ways. New populist parties have successfully campaigned on majoritarian notions of democracy in which there is little respect for constitutional checks and balances or for the civil liberties of minorities.

According to Freedom House, there has been a global decline in political rights and civil liberties for an alarming 13 consecutive years, from 2005 to 2018: 'The global average score has declined each year, and countries with net score declines have consistently outnumbered those with net improvements.' (Freedom House, 2019).

The notion of the open society is not only contested politically; it is also a contested concept in a more intellectual sense (Gallie, 1956). First, the notion of an 'open society' is a 'topos', a commonplace phrase that denotes a normative evaluation. It can be used as an authoritative shorthand in intellectual and political debates to rally support or to discredit opponents. One way to study the notion of 'open society' would be to trace how the notion has been used strategically in political discourse. Second, as with other abstract, qualitative notions such as 'democracy' or 'responsibility', there is a variety of meanings attached to the concept and there is no consensus on what an 'open society' is or should be. Another way to study the notion of 'open society' would be to analyse how the notion has been contested over time in intellectual debates.

Third, as different disciplines and intellectual traditions have different views of what constitutes an open society, they consequently perceive different threats and challenges as well.

In this paper, I will focus on the third type of analysis by distinguishing philosophical, cultural, socio-economic and constitutional perspectives on the open society. These academic perspectives are closely related, but they are distinct – just as family members share many traits and yet are individually distinguishable. Each perspective identifies somewhat different threats and challenges. distinguishable. Each perspective identifies somewhat different threats and challenges.

PHILOSOPHICAL PERSPECTIVES

Any discussion of the open society cannot afford to pass over the seminal work of Karl Popper (1945), who coined the concept of 'open society'. In his book The Open Society and its Enemies, Popper reflected on the intellectual roots of the rise of totalitarianism in the 20th century. According to Popper, the intellectual origins of modern totalitarianism go back to the writings of Plato, Hegel and Marx. These 'enemies of the open society' share a historicist worldview, according to which the fate of mankind is determined by grand historical trends and absolutist principles, which are only accessible by intellectual elites. In opposition to these 'deterministic' thinkers, Popper championed the humanist ideal of the open society. According to Popper, an open society is characterised by:

- personal and individual responsibility;
- critical rationalism;
- the recognition of human fallibility;
- falsification as the core of scientific reasoning;
- the recognition that institutions are man made;
- piecemeal social engineering.

For Popper, the opposite of an open society was a totalitarian society, in which laws, institutions and scientific principles are beyond criticism because they are God-given, based on a natural order or derived from universal truths.

From a Popperian perspective, a major contemporary challenge to the ideal of an open society would be the rise of anti-intellectualism and non-scientific reasoning. Examples could be the denial of climate change, the abundance of conspiracy theories on the Internet and the distrust of scientific expertise regarding vaccination. Another challenge could be the rise of identity politics, in particular the tendency to regard individuals as group members who share collective identities and collective responsibilities instead of as individual persons with specific personal, hybrid identities as well as specific individual responsibilities.

Popper's interpretation of Western philosophy is rather personal – some would even say idiosyncratic – and can be understood as a private quest to identify the intellectual origins of the rise of totalitarianism in Nazi Germany and in the Soviet Union. From a broader philosophical perspective, the notion of an 'open society' is part of a long liberal philosophical tradition that emphasizes individual autonomy, liberty, and personal emancipation. The 'open society' is a normative ideal that is based on the notion that the autonomy and rights of individual citizens deserve respect and are the ultimate basis for the legitimate exercise of public power.

This liberal philosophical tradition came to a full development in the European Enlightenment. It is an attempt to legitimize and limit the exercise of public power on the basis of individual liberties and popular sovereignty, instead of on tradition, theocracy, or *raison d'etat.* Major thinkers in this tradition are Rousseau, Locke, Kant, Mill, and Rawls. According to this liberal philosophical tradition, an open society is characterised by:

- individual autonomy;
- popular sovereignty;
- civil liberties as inalienable rights;
- equal opportunity;
- open enquiry and free conscience.

From this liberal philosophical perspective, the opposite of an open society is an *illiberal* society, in which the personal autonomy and freedom of individual citizens are not respected.

Seen from this broader liberal perspective, the contemporary world is filled with challenges. Across the world, political liberalism is under siege. The wave of democratisation after the demise of communism has begun to roll back. According to Freedom House, the share of Not Free countries has risen to 26 per cent since 2005, while the share of Free countries has declined to 44 per cent (Freedom House, 2019). The Soviet Union and communist China may have converted to market economies, but this fact does not mean that they have become liberal societies. On the contrary, Russia is a democracy in name only and Putin has turned it into an illiberal state. Under the regime of Xi, China is rapidly becoming an oppressive state in which millions of citizens are detained in concentration camps and large parts of the population are under close surveillance of the state with the help of advanced information technologies.

SOCIO-CULTURAL PERSPECTIVES

The notion of the open society also has a *socio-cultural* dimension, which is closely connected to this Enlightenment tradition. An open society is characterised by cultural openness, religious tolerance and artistic pluralism. In an open society, any religious, cultural or ideological dogma can be the object of criticism and public scrutiny. This socio-cultural perspective on the open society has its roots in early modern processes of secularisation and religious pluralism, particularly in the cities of Northern Italy and the Low Countries (Berman, 1983). In an open society, arts, sciences, politics and religion are separate spheres with their own autonomy. None of these spheres has dominance over the others. Religion and politics should be separated, neither should they be allowed to interfere with the arts and sciences. This separation of state, church, and arts and sciences implies a series of socio-cultural freedoms and institutions:

· absence of censorship;
· freedom of press;
· freedom of speech;
· academic freedom;
· religious tolerance;
· an open and vibrant public sphere.

The opposite of an open society, from this socio-cultural perspective, is a dogmatic society in which there is no room for criticism, dissidence and pluralism.

From this perspective, a major contemporary challenge has been the rise of radical Islam. Across the Islamic world, Salafist or Wahhabi interpretations of the Quran have been on the rise, often financed by theocratic regimes in the Middle East. In these orthodox interpretations, there is only one, God-given truth, which is why critics, apostates and infidels may be persecuted.

In Western democracies, often as a reaction to the rise of radical Islam, tolerance of Muslim minorities is under pressure. Likewise, the tendency of a range of populist leaders to discredit the media and to frame any critical reporting as 'fake news' undermines the freedom of the press. In a similar vein, academic freedom is under attack in various EU Member States such as in Hungary, where the Orbán regime forced the Central European University to close its doors. A more secular, albeit rather minor challenge in the Western academic world is the demand for 'safe spaces' in the universities, which may result in censorship and intellectual closure.

SOCIO-ECONOMIC PERSPECTIVES

Third, the notion of 'open society' also has a more empirical dimension. From a socio-economic point of view, an open society is dynamic, heterogeneous and inclusive. For example, open societies are characterised by:

· high degrees of social mobility;
· high degrees of geographic mobility;
· a broad availability of material means for individual development;
· low thresholds for entering markets;
· low thresholds for citizenship;
· low thresholds for membership of political and economic elites;
· relatively open borders;
· a high tolerance for social, technological and cultural innovation.

The opposite of an open society is a closed society, in which social stratification is based on ascription rather than on merit, citizens do not migrate beyond their ancestral homelands, markets are absent or inaccessible for outsiders, and in which cultural and technological conservatism are dominant.

From this socio-economic perspective, many Western societies are becoming less open. Economic inequalities are increasing within many countries. After decades of social mobility and economic growth, the promises of meritocracy cannot be kept anymore. Social, cultural and economic capital once again determine social stratification, instead of merit. Children from well-educated families do much better in schools and have more successful careers than equally intelligent children from less well-educated families. Likewise, political elites have become educational elites. In many Western societies, it has become more difficult to obtain citizenship and there are strong political pressures to close the borders for immigrants.

CONSTITUTIONAL PERSPECTIVES

Finally, the open society is also a *constitutional* model. In modern legal theory, the notion of an open society refers to a specific form of public governance.

In an open society, might does not make right; power is only legitimate if it is based on specific procedures and exercised in accordance with explicit rules. This model is the legal translation of the notion of a liberal democracy. An open society, in the constitutional sense, has the following characteristics:

- public power is exercised on the basis of clear and general laws;
- the construction of these laws is based on parliamentary sovereignty;
- rule-making bodies are representative of and responsive to the population;
- there are democratic elections, majority rule and minority rights;
- the exercise of powers is equitable, in accordance with fair and just procedures;
- individual citizens have access to an independent judiciary;
- governance is transparent and accountable.

From this perspective, the opposite of an open society is an *authoritarian* or *totalitarian* regime. Prime examples of the latter in the 20th century were Nazi Germany, the Soviet Union, communist China and Cambodia under the Khmer Rouge. Recently, Venezuela is a case in point.

From this perspective, the rise of majoritarian notions of democracy is a major challenge. In contemporary democracies, many populist leaders espouse a majoritarian idea of democracy, in which the winner takes all. An electoral victory, even if it is with a tiny majority, is seen as a licence to dominate. As Donald Trump characteristically expressed it: 'I won. You lost. Now you shut up.' In these populist, majoritarian interpretations of democracy, there is little respect for the constitutional checks and balances that have been put in place to curb power . These mechanisms, such as the rule of law, minority rights, good governance, an independent judiciary, transparency and accountability, are presented as bureaucratic obstacles that stand in the way of the exercise of the will of the people. Examples of this type of challenge are the autocratic policies of Erdoğan in Turkey, Orbán in Hungary, Duterte in the Philippines and Bolsonaro in Brazil.

VARIETIES OF OPENNESS

By distinguishing different perspectives, we can get a more multi-dimensional understanding of the openness of societies. There is a large variety of regimes in terms of openness. For example, the more normative elements based on the liberal, socio-cultural and constitutional perspectives do not always coincide with the socio-economic aspects of the open society. Using these two dimensions, one could plot various countries in terms of openness:

Table 1: Two dimensions of openness

Constitutional Socio-economic	++	- -
++	EU	CHINA
- -	US	RUSSIA

Countries that do well in terms of constitutional checks and balances, such as the US and many EU Member States, have been performing less well in terms of social mobility over the past decade and have showed rising thresholds for membership of political and economic elites (Bovens & Wille, 2017). By contrast, China has been characterised in the past decades by high degrees of social and geographic mobility as well as a high tolerance for social and technological innovation, but by decreasing respect for individual rights and a strong increase in autocracy. Russia, under the regime of Putin, seems to be stagnating in socio-economic as well as in cultural and political perspectives on openness.

OLD AND NEW CHALLENGES

Some of the threats to the open society are rather familiar. The autocratic policies of Erdoğan, Orbán, Duterte and Bolsonaro are typical cases of democratic backsliding; lapses into twentieth- or even nineteenth-century political practices. They are twenty-first century versions of the populist *caudillos* in South America and of the fascist dictators in Italy, Spain and Portugal. Other threats, such as the rise of free-market totalitarianism in mainland China and Russia, are novel hybrids of capitalism, communism and nationalism.

However, in the 21st century with its massive waves of globalisation, a series of novel challenges to the ideal of the open society can be observed.

How can we establish constitutional checks and balances beyond the nation states? How can we apply these constitutional ideals to policy challenges that go far beyond national borders, such as dealing with climate change, combatting international terrorism or curbing the power of 'Big Tech'? It may well be that in contemporary Western democracies, major threats to some forms of openness do not come from state institutions, but from Facebook, Huawei or Google.

THE LIMITS OF OPENNESS

Another challenge concerns the limits of openness. How much openness can a society endure before it ceases to be a society? Similar issues have risen with regard to transparency (O'Neill, 2002; Grimmelikhuijsen, 2012). Complete transparency is undesirable for corporations and public institutions, because it blocks innovation as well as creativity and may diminish legitimacy in the long run. Full disclosure is unbearable for individual citizens, as it robs them of any form of privacy.

Societies, as any social institution, cannot exist without some form of closure. No contemporary society, not even the most liberal democracy, is fully open in terms of border control and access to citizenship. Welfare regimes are untenable, economically and politically, without limitations to access. The same is true for a variety of other institutions, such as universities, schools, cooperatives and civil-society organisations. They cannot survive without some forms of closure and exclusion.

This observation raises another series of intellectual challenges. Some analytical issues are: what constitutes a 'society' and what defines the boundaries of an open society? Empirical issues are: which forms of exclusion are more effective than others and are considered more legitimate by citizens as well as members?

Likewise, the normative issues are: which limits to membership and citizenship are legitimate in liberal democracies? Different notions of what constitutes a society will lead to different justifications of limits to citizenship – food for thought and topics for future IOS Think Papers.

REFERENCES

Berman, H. (1983). *Law and Revolution: The Formation of the Western Legal Tradition.* Harvard: Harvard University Press.

Bovens, M. & Wille, A. (2017). *Diploma Democracy: The Rise of Political Meritocracy.* Oxford: Oxford University Press.

Freedom House (2019). *Democracy in Retreat: Freedom in the World 2019.* Washington, DC: Freedom House.

Gallie, W.B. (1956). Essentially Contested Concepts. *Proceedings of the Aristotelian Society,* 56, 167–198.

Grimmelikhuijsen, S. (2012). A good man but a bad wizard. About the limits and future of transparency of democratic governments. *Information Polity,* 17 (3/4), 293-302.

O'Neill, O.(2002). A Question of Trust: The BBC Reith Lectures. Cambridge: Cambridge University Press.

Popper, K. (1945). *The Open Society and Its Enemies.* London: Routledge.

By distinguishing different perspectives, we can get a more multi-dimensional understanding of the openness of societies.

OPEN SOCIETIES AND THE TECHNICAL-DIGITAL PERSPECTIVE

PROF. JOSÉ VAN DIJCK

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INTRODUCTION

In his opening essay, Mark Bovens rightly argues that the notion of 'open societies' requires an updated, systematic reflection. His overview of four perspectives – the philosophical, cultural, socio-economic and constitutional perspective – is illuminating, particularly because he challenges the concept of open societies by sketching the opposite scenarios from those four points of view: the illiberal, dogmatic, traditional and totalitarian society. Theorising about the concept of open societies from these four disciplinary perspectives while exploring its negative extremes is a real eye-opener, not in the least because each of these four scenarios could still be imaginable in the current time and age. To complete the scope of viable scenarios, though, I would like to add a fifth perspective to Bovens' model. The notion of the Open Society, as I will argue below, also requires a distinct technological perspective; more specifically, a digital-technological dimension that is becoming more important by the day. This perspective also prompts a counter-scenario that needs to be considered when taking stock of potential threats to open societies and their institutions.

THE TECHNOLOGICAL PERSPECTIVE

Since the nineteenth century, a technological perspective has been associated with the paradigm of industrial progress and innovation, inevitably leading to more economic welfare and better working conditions for citizens. In the twentieth century, the emergence of electronic systems such as broadcast media and communication technologies specifically added the promise of an open democratic society. First, telephones, radio and television provided new channels for connecting, speaking and broadcasting. Later, digital information and communication technologies started to transform our professional as well as our personal lives. At the turn of the millennium, we could witness how the Internet and the World Wide Web transformed societies into a global digital arena. The privilege of broadcasting no longer rested in the hands of a few powerful market or state actors.

Everyone could now raise his or her voice and get it amplified over the 'wireless'. We were promised a world where everyone and everything is connected through wireless devices as well as online infrastructures.

After Tim Berners-Lee launched his invention in 1992, utopian predictions of what the WWW would mean for open societies and democracies abounded. Speech would be free, communication would be for free and broadcasting was now free to everyone. Most of these projections concerning the future of information and communication technologies were in line with the traditional modernist perspective of technological innovation automatically leading to social progress. The prospect for a digital utopia was an open society in which digital technologies would:

· allow for open communication;
· promote free speech;
· offer global reach and borderless information exchange;
· facilitate easy access to public life;
· promote equal power between market, state and civil-society actors;
· provide a transparent digital infrastructure that is based on open data architecture.

Such optimistic scenarios for the Internet have dominated public opinion for nearly twenty-five years. They were abundantly promoted by tech companies with slogans such as 'Broadcast Yourself' (YouTube) and 'Connect the world' (Facebook).

However, the year 2016 was a turning point and put an end to the global Internet euphoria, when the American presidential elections as well as Brexit cast serious doubts on the boundaries of open and free digital systems (Van Dijck, Poell & De Waal, 2018). Datafication, commodification and algorithmic manipulation had increasingly penetrated the heart of open societies.

Over the course of ten years, private platforms had been allowed to disrupt markets and circumvent institutions, while transforming social as well as civic practices and affecting democratic processes. The governance of open democratic societies, relying mostly on government bodies and independent institutions, barely kept pace with the growing overload of free and easily accessible information on the Internet. In the year 2020, open societies are therefore faced with serious challenges stemming from technological changes but requiring more than just a technological perspective.

A TECHNOCRATIC COUNTER-SCENARIO

In line with Mark Bovens' outline of four perspectives on open societies, each point of view also triggers a distinct counter-scenario. From the technological perspective, the opposite of an open society is a *technocratic* (or techno-bureaucratic) society. In this society, communication and information exchange are highly opaque, due to complex data flows and invisible algorithmic computation. It is a society where digital manipulation has led to near-perfect imitations and deep fakes, where there are no transparent rules for determining what is real and what is not, what can be trusted and what cannot. Taken one step further, it is a surveillance society which turns users into digital labourers and citizens into data providers – micro producers that keep the system running without being given any insight into how the system is run.

In such an extreme scenario, independent public institutions that were once designed to govern the open society (such as courts, schools, government agencies, news organisations or health agencies) have outsourced their decision-making to algorithms. Decisions can no longer be explained, because these algorithms are proprietary assets owned by global companies.

In its darkest manifestations, the techno-bureaucratic society turns into a place where only a handful of AI engineers still understand how data flows feed self-learning algorithms, until they outsmart the very engineers who invented them. In other words, the opposite of an open society is an 'algocracy' where people are governed *by* digital technologies but are unable to *govern* these same technologies (Gillespie, 2018). The reason is that there is no longer a position outside the technocracy from which independent 'public governance' takes place.

We may wonder whether this dystopian scenario has already left the drawing board. For the past two or three years, we have witnessed a backlash against tech companies which became the largest operators on the Internet in less than two decades: Google, Facebook, Apple, Amazon and Microsoft. Scandals involving fake news, hate speech, Russian trolling factories, election manipulation, massive privacy and security breaches, tax evasion and a number of other controversies have set off a 'techlash', which has been a remarkable turnaround since 2016.

Some scholars have recently argued that the dystopian opposite of an open society has already turned to reality. Shoshana Zuboff (2019), for instance, introduced the term 'surveillance capitalism' and Saskia Sassen (2018) deployed the notion of 'extractive logics' to articulate her discontent. Both are very skeptical of a renaissance of open societies in the digital age, which Internet gurus considered to be the holy grail only ten years ago.

TOWARDS A NEW MODEL OF INSTITUTIONAL TRUST

I am not arguing that we are in the midst of such a counter-scenario, but I do think that current Western societies are undergoing a profound paradigm shift. Open, democratic societies are moving from an institutional-professional model of trust towards a technical-industrial model of trust. The first model is based on human-made rules of power governed by publicly accountable institutions and professionals. The second model is founded on algorithmic computation and governed by business models whose dynamics are based on obscure rules of power.

American and Western European societies risk becoming less open, because they are increasingly dependent on a global digital infrastructure.

Open societies are faced with serious challenges stemming from technological changes.

What is indeed most disconcerting is that this digital infrastructure, which is almost fully incorporated, yields little power to civil-society actors, independent institutions and citizen initiatives. After decades of datafication, when public institutions enthusiastically partnered with tech companies in making the algorithmic turn, they now start to realise that simply opening up their databases to private co-operators does not automatically result in a more open society. Predictive algorithms, nourished by a goldmine of data that are generated by users, have been turned into proprietary assets that do not always benefit the common good. However, it is too simple to say that the power of Big Tech needs curbing; arguably, breaking up powerful tech-companies is not a one-size-fits-all solution. Power has become distributed over many platforms and networks, while private digital infrastructures have penetrated the very core of public institutions and governance.

As a result, a purely technological perspective is not sufficient to remedy the serious challenges that we are facing. To keep societies open, we need to invest not just in technological solutions but also in our institutions – more than ever. Technological innovations need to be accompanied by institutional innovations. When Google, Facebook, Amazon and Apple developed the digital infrastructure on which we now all rely, they were keen on evading or bypassing institutions and regulatory agencies. They wanted to move fast and break things.

Institutions need to move sensibly and save things – democratic practices and principles that matter to all of us.

Over the past few years, we have come to realise just how crucial institutions are in imposing checks and balances on technological innovations. Think of the difficulty to keep social media channels clear of hate speech and fake news – a problem that Facebook and Google have been unable to tackle so far. Think of the difficulty to maintain financially stable economies when cryptocurrencies and 'experiments' such as Facebook's Libra are going to enter the market. Also think of facial recognition systems that can be linked to automated weapon systems powered by AI technology. When we look at major developments in the digital world, we can only notice that our social institutions and regulators are constantly lagging behind game-changing as well as life-changing technologies. Good governance needs time, patience and belief in public values if it is to live up to the standards of legitimacy that we have come to expect from government agencies as well as governing bodies (Suzor, 2019).

In order to restore the ideal of the open society, we need to strengthen independent institutions, making them knowledgeable and robust. Institutions are there for a reason: we trust that they have the patience and sensibility to funnel innovation, at a certain distance from the persistent pressure of industrial progress and monetisation. We have put institutions in place to guard the well-being of citizens and to deliver balanced judgement in times of rapid change, which bring along new conflicts of interest.

Institutions for an open society ought to be critical as well as independent of state and market actors; they should also be resilient and constantly aware of the implications of technological innovations for public values as well as the common good.

CONCLUSION

Technological visionary Stewart Brand remarked in the 1970s: "Once a new technology rolls over you, if you're not part of the steamroller, you are part of the road." Our naive trust in the resilience of societal institutions has been tested over and over again in the past few years. In order to avoid that institutions will one day have indeed become part of the road, we need to invest in open societies AND institutional resilience. We need to examine the problem of open societies from all disciplinary angles; socio-economic, political, legal, cultural AND technological perspectives are needed to prepare a comprehensive response to the challenges ahead. Institutional innovation should become just as sexy as technological innovation. Combining technological ingenuity with institutional innovation is crucial to keep societies open and democratic in the future.

I am therefore proud that Utrecht University is investing in this strategic theme of Institutions for Open Societies, along with substantial investments in focus areas such as 'Governing the Digital Society' and 'Human-centered AI'.

REFERENCES

Gillespie, T. (2018). 'Regulation of and by platforms' in: *Sage Handbook of Social Media*, ed. by J. Burgess, A. Marwick & T. Poell. London: Sage, pp. 254-78.

Sassen, S. (2018) Embedded borderings: making new geographies of centrality, Territory, Politics, Governance, 6:1, pp. 5-15, DOI: 10.1080/21622671.2017.1290546

Suzor, N. (2019) A constitutional moment: How we might reimagine platform governance. *Computer Law & Security Review; The International Journal of Technology Law and Practice.* https://doi.org/10.1016/j.clsr.2019.105381

Van Dijck, J., Poell, T. & de Waal, M. (2019) The Platform Society. *Public Values in a Connective World.* New York: Oxford University Press.

Zuboff, S. (2019). *The Age of Surveillance Capitalism. The fight for a human future at the new frontier of power.* New York: Profile Books.

GLOBAL CHALLENGES, BIG TECH AND LEGAL RESPONSES

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INTRODUCTION

Given that the theme of this volume is 'The Open Society and its Future' and that I am a lawyer, it is probably unsurprising that I will focus on the legal responses to the challenges regarding the open society [1]. However, as 'the law' is a vast body of principles, rules and practices, I am familiar with only a small segment. My contribution will therefore concentrate on a slice of the legal system and a slice of the many global challenges to that legal system (I use 'the legal system' and 'the law' somewhat interchangeably in this contribution to indicate the sum of legal principles, rules, legal institutions and legal practices). These challenges broadly reflect the challenges to open societies in general and to the European open societies in particular. The idea is that the findings related to this slice can be relevant to the legal system more generally. The conclusion at the end of this paper will be that there often seems to be a mismatch between the system of the law – with its focus on systematisation, classification, internal coherence and logic – and the questions that the global challenges pose to the law.

As a result, the law is struggling to advance adequate legal responses, while its foundational principles are themselves under threat as well.

To arrive at that conclusion, this contribution follows a classical line of reasoning. I will briefly set out the theoretical context, which is found in the conceptual framework of Mark Bovens (see first article in this volume) but which I will tweak to focus on the legal system. I will also briefly set the scene of 'global challenges' (Section 2). The slice comes into focus in Section 3, where I will zoom in on the power of Big Tech firms and its ramifications for European competition law. Finally, I will zoom out again to see what can be learned more generally (Section 4).

PERSPECTIVES ON THE OPEN SOCIETY AND THE IMPLICATIONS FOR THE LAW

In his paper, Mark Bovens set out his reflections on the concept of 'Open Societies'. He used four perspectives to show how the Open Society can be conceptualised. In her contribution to this paper, José van Dijck added a fifth perspective (see the second paper in this volume).

These general perspectives are useful for understanding what we mean when we talk about open societies. They are also useful to zoom in on the function and conceptualisation of the law in an open society. Though it is not a perfect fit, the table below sketches these implications for the legal system:

Perspectives on Open Society & implications for perception of the legal system	
Philosophical perspective: Popperian/ liberal	A Popperian perspective to the Open Society implies that the legal system is never absolute. As rules are based on scientific insights and intellectual reasoning, they can be adapted and changed. It is a positivist perspective in the sense that the law is man-made: its validity depends on how we agree that the law is made by us. A liberal Open Society is explicitly based on the notion of the 'rule of law': the legal system at the very least protects fundamental rights and individual liberties, while it provides checks and balances for political power. It is also based on the notion of legality: the exercise of power is legitimised in law.
Socio-cultural perspective	This perspective implies that the legal system establishes and protects the public sphere. It includes the protection of freedom of press and freedom of speech, the freedom to gather and to protest, and the safeguarding of access to a plurality of voices in the media.
Socio-economic perspective	This perspective implies that the legal system establishes markets as a system for economic order, but it also provides socio-economic rights and equalisers.
Constitutional perspective	From a legal point of view, the constitutional perspective overlaps with the liberal perspective, though it may form a more fully developed democratic basis of the legal system. The legal (constitutional) system provides a model of governance based on the rule of law and democracy. How we make the law and how we determine who has power is based on these democratic processes. This fact means that legislation is based on and legitimised in its procedural embedding in democratic processes as well.

The constitutional perspective on open societies that Bovens provides seems to be the most complete 'legal' perspective. It provides a richer conceptualisation of the role of the legal system, but these four perspectives provide useful starting points for the next step in this paper's analysis: how do global challenges affect the legal system in an open society and how should legal systems respond, if at all?

At this point, it is perhaps useful to point out that my reasoning is partly based on the premise that an open society is the *better* alternative. This normative position can be justified from both an internal and an external perspective. For lawyers, the grounds for taking normative positions are often found within the setting and the coherence of the legal system itself. [2] However, equally often, the normative grounds come from an external perspective. One normative foundation for the position that the open society is the better alternative can be found in political philosophy: a liberal society is better than an illiberal society when considering human autonomy as a starting point for how societies should be shaped and governed. Another foundation is situated within the legal system itself, which reflects these notions of autonomy and liberty. In the Dutch and European legal context, the notions of constitutionality, rule of law as well as democracy are enshrined in foundational texts and principles, including in the European Treaties and the national constitution. [3] The implications of this normative position are at least twofold: first, the legal system should be geared towards constituting and protecting the tenets of an open society; second, if there are threats, they should be understood and countered.

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2   I am aware that this may sound like a circular kind of reasoning, but it is a useful starting point for many legal analyses: if the goal of the specific rule is X (such as equal pay for men and women), which is based on the value of Y (non-discrimination, equality, inclusiveness) or Z (higher production, economic growth), it is a valid exercise to evaluate the application or enforcement of that rule in light of these goals.

3   For example, see the Treaty on the European Union, Article 2, which reads: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-diation, tolerance, justice, solidarity and equality between women and men prevail.'

However, at an abstract level, it is not always easy to know what it is that we should therefore guard *against.* What are the threats? I am mirroring Bovens' approach to sketch the look and feel of a legal system in *non-open* societies (whose characteristics can be considered to represent the threats: illiberal, dogmatic, traditional and totalitarian).

Perspectives on non-open society & the legal system	
Philosophical perspective: illiberal society	In an illiberal society, there is no protection of fundamental rights or individual liberties, while there are no checks and balances for power: the strong make and enforce the rules, but the weak are not protected.
Socio-cultural perspective: dogmatic society	In a dogmatic society, the law is absolute and is based on dogmas. Freedom of speech is limited or absent; media coverage that contradicts dogma is not tolerated. Dogma might be based on religion – which would imply a religious-fundamentalist society – or on a particular ideology, but not necessarily.
Socio-economic perspective: traditional society	In a traditional society, the law is based on tradition; it is not easily questioned or changed. This fact implies that the law protects vested corporate and political interests. For example, if inequality is inherent in 'how things are done' and full capitalism is the traditional basis for economic order, the law will not have an equalising function.
Constitutional perspective: totalitarian society	In a totalitarian society, there is no basis for governance in the rule of law, nor a protection of democratic processes for legislation.

In conclusion: *these* elements of non-open societies are what we are guarding against. Such threats are not new; they are the basis for the history of shaping liberal, open societies. However, the global challenges confront the open society with new questions, which raise new challenges for the legal system might as well.

The world today is faced with challenges, many of which are not confined to one country or even one region. We have come to call these familiar challenges global.

Examples are global warming and climate change, leading to the need for an energy transition; the subsequent displacement of people, leading to migration; rising inequality and populism; or the impact of digitalisation on society. These challenges have different roots, but their shared characteristics include that they are multifaceted and complex, that their roots and manifestations intersect, and that their solutions cannot be found only at the level of individual countries

Global challenges have repercussions for the legal system of open societies. On the one hand, the legal system in an open society itself might be under siege; for example, because of direct threats to the independence of the judiciary or to lawyers, or as a result of eroding trust in the legal system. On the other hand, even if there are no direct threats, the legal system may have difficulties shaping a timely response to these challenges. If it does respond, however, it can act as a bulwark against the threat to open societies.

There seem to be several general responses possible. First, the legal system can adapt to a changing societal context. The law mutates, it accommodates, it encompasses new situations into the existing tapestry of legal norms. Such adaptation is inherent in any legal system within an open society, because societies never really stay the same. The difference, however, is perhaps one of complexity and pace: the global challenges lead to rapid societal changes, with which the normal slow tempo of legal development cannot keep up (even though the reason for this slowness is consistency and legal certainty). This situation may uproot the system as a result of great leaps or fundamental changes that lead to discussions about the remit of the law.

Second, the legal system might react by non-accommodation. Its existing concepts, however broadly they might be construed within the boundaries of legal interpretation, cannot reasonably (legally, constitutionally) be stretched to cover these new situations or deal with these challenges. Legal actors might say that 'this issue is not for the law but for politics'. This response may lead to gaps in the legal system. The law cannot keep up; there are no rules, laws or legal concepts that can govern these new societal realities. That fact is not necessarily problematic in itself, unless politics is also gridlocked due to the exact complexities of the challenges involved. In this case, a third reaction is possible: the legal system itself adapts by deviating (slightly or greatly) from the principles of the rule of law. The debate on whether courts should take 'political' decisions or be the legislator is relevant here and some of the discussions in the European Union seem to be examples of exactly this tension.

BIG TECH AND COMPETITION LAW

To make the analysis more concrete, this section will attempt to apply the above to the intersection of one *slice* of the legal system – European competition law – with one *slice* of the many global challenges: the rise and dominance of Big Tech companies. At the end of this section, I will relate the analysis of this intersection to the legal perspectives of threats to the open society in a new table.

> *Global challenges confront the open society with new questions, which raise new challenges for the legal system as well.*

The 'Big Tech' label is generally used to indicate the major technology companies Facebook, Google (more precisely, its mother company Alphabet), Amazon, Apple and Microsoft. We could quibble about whether other large companies that are just as important to our everyday lives should also be included. Examples include agri-food and chemical conglomerate DowDuPont as well as its recent spin-off companies Dow and DuPont resulting from the break-up of the giant (Root, 2019), or pharmaceutical giants the likes of Bayer, Pfizer and AstraZeneca. Indeed, these companies are becoming increasingly technology-based and embrace business models offering platform-based services. For now, the main difference is the Big Tech companies' basis in computing technologies and their direct relationship with consumer-users, generally by way of a multi-sided platform. The Big Tech companies, at least the Big Five, share another characteristic: they are indeed very big – in size, in reach, in market share, in global scope, in the development of countless interlocking services tied to the platform and perhaps also in ambition. Such big companies existed in the past, but these five seem worrisome. The question that I have been pondering is why. Is this 'bigness' something new and why or why not? If so, what does it mean for European competition law?

Competition law (it is called *antitrust law* in the USA) is concerned with markets and the free market mechanism. It is about how the competition process takes place and is organised, while it assumes that market-based competition will generally lead to higher economic welfare (and that growth in economic welfare is good). Competition law, in all jurisdictions where it exists, prohibits cartels.

Cartels lead to combined market shares and to higher prices than the market mechanism would produce, resulting in profits for companies at the expense of consumers' wallets. Competition law is generally concerned with monopolies as well; or, in the more precise language of European competition law, it is concerned with companies that have a dominant market position. Dominant companies often lack the restraining effects of competition, which will induce them to raise prices to 'monopoly prices' or neglect quality and innovation. European competition law prevents dominant positions from arising by way of an *ex ante* system to control mergers and acquisitions. It can fine dominant companies for *abusing* their dominance to the detriment of competition and consumers. In other words, competition law is concerned with the effects of market *power*.

Large companies of the past had market power through high market shares (they held a dominant position). They had deep pockets, were able to leverage market power from one market to another and could exclude rivals from entering the market or growing a sizeable market share. Competition law dealt, and deals, with these market effects. Large companies have been criticised for their lobbying power before as well (which was used in order to affect policies and legislation), for their intimate relations with the politically powerful and for the 'capture' of those that should enforce the competition rules against them. A century ago, in a setting where rising corporate conglomerate power was deeply entwined with political structures, this trend was called 'bigness' in the USA (Stoller, 2019). The concern about the effects of bigness on competition and markets (and thus consumers) but also on politics and legislation led to the famous break-up of 'trusts'. The effect of trusts on both the market and on democracy seems to have been what led to this distrust.

Today, there is a resurgence of large companies, at least in the tech markets. Apple, Amazon, Microsoft, Google and Facebook are present in almost every corner of the world and in the daily lives of millions of consumer-users. Though their exact businesses differ, they overlap in many segments of consumer tech markets. Their shared characteristics include size, market capitalisation (they have a lot of money) and their relentless quest for growth.

There is more to it, however, which has led me to positing that the power of Big Tech companies is something new. I have labelled it 'Modern Bigness', which refers to the old idea that powerful companies can be problematic not just from a perspective of competition and well-functioning markets, but also from the perspective of a well-functioning democracy. These combined concerns have resurfaced with Big Tech (Gerbrandy, 2018). From the perspective of protecting open societies, it might be their entwinedness that is indeed the most worrisome. The power of Modern Bigness, of course, is also built on having powerful market positions. These positions are founded on quickly developing technology, wonderful innovations as well as vast computing and processing power. In some consumer markets, one company rules (e.g. Google on the market for Internet searches); in many other markets, these companies function in oligopolies in differing combinations (e.g. cloud computing, online shopping). In terms of turnover, access to 'pocket' money and capitalisation, these companies are also shockingly large. By way of example, Google's revenue in the fiscal year of 2018 amounted to a whopping 160.74 billion USD, which is largely composed of advertising revenues.

For Big Tech companies, furthermore, the driving business model is based on 'stacking' layers of services (and sometimes hardware as well, in the form of devices). The result is an ecosystem in which users become 'locked in' and competitors can be 'fenced off'. It has become obvious that ubiquitous data-gathering, combined with data-processing and algorithmic capabilities, are important drivers for growth. Within these ecosystems, the companies have become 'gatekeepers', providing, guiding and guarding access to as well as between actors that generate content and applications. As a result, Google has become our access point to the Internet, Facebook has become an important curator of news and Amazon has become the 'everything store' – at least for the USA.

All these elements (and probably other ones) lead to enormously powerful positions; the *combined* elements of power are set to have effects well beyond the direct relationship between producer and consumer. For example, an aggressive strategy of buying start-ups has changed the incentives for innovation. The business model based on the 'platformisation' of services has influenced and changed societal arrangements for labour as well as insurance practices. It has changed how news is created and how misinformation is spreading, while it has also influenced business culture across the globe. Moreover, data aggregation and algorithms can now be used to recognise individuals and predict human behaviour. Used for good, they can allow humans to flourish, but they can also be used in a system of repression.

Of course, as the Cambridge Analytica affair has shown us, platform services can be misused as well to influence citizen's behaviour; for example, in voting.

The question is now: what is the legal response to all of the above? The answer can only be that the law is struggling, but there is hope that it will find its bearings through legal-conceptual development and politically driven legislative efforts.

From the perspective of European competition law, the response has been to keep the focus on market effects. One of the first lawsuits in the tech market was against Microsoft, while a more recent and currently more relevant case is that the European Commission (in charge of enforcing European Competition law) has fined Google several times.[4] Google abused its dominant position in Internet searches by hindering other companies from competing. It has also been fined for abusing its dominant position on the market for mobile operating systems (by way of its Android OS) to hinder access to competing mobile search services, as well as for abusing its dominant position in the market for advertising. The Commission has started investigations into Amazon (abusing its dominance through the use of sensitive data from independent retailers who sell on its marketplace),[5] Apple (for example, in a number of state aid cases which attracted the attention of the European Commission)[6] and Facebook (which was recently fined by the European Commission for having allegedly provided misleading information during the 2014 takeover of WhatsApp).[7]

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4   Among other things, see the most relevant antitrust cases against Google such as the recent European Commission cases Google Search (Shopping) (CASE AT.39740) of June 2017 or Google Android (CASE AT.40099) of July 2018 and the very recent Google Search (AdSense), of which a press release is available at https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770.

5   A press release of 17 July 2019 on the Amazon investigation is available at https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291.

6   For example, see European Commission, Aid to Apple (State Aid SA.38373 – Ireland).

7   A press releasee of 18 May 2017 on the Facebook investigation is available at https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369.

These cases are all examples of business-as-usual competition law: existing doctrines and concepts are used for new situations, to which they are adapted (and sometimes stretched).

One of the main problems, however, is that these procedures take a long time to finish: the investigations at the Commission (and their national counterparts) may take years, while legal recourse to the European Union Courts adds to the duration.

As a result, though the answer of the law might be satisfactory from a substantive point of view, the legal response is indeed slow. This slowness is an issue in the fast-moving markets in which Big Tech companies are active.

More fundamentally, European competition law has no answer to the effects of the power of Modern Bigness companies if they are felt elsewhere, outside the market relationship of business and consumers. That 'elsewhere' could be labelled as the public domain, the domain of democratic interaction and of public discourse. There are more questions here than answers. For example, if the effects of newsfeed curation or social media consumption are indeed that users are contained in an echo chamber or filter bubble, what does it mean for the notion that democracy is based on open debate, diverse news sources and an exchange of opinion in the shared public domain – which is dependent on the pluralism of voices in media, among other things? What if algorithms, which are based on gathering and combining many 'data points', are used to nudge a person into voting instead of not voting, or towards a certain preference in voting? What does that situation mean for our democratic processes? If there is a causal relationship between polarisation and the rise of populism on the one hand and the workings of the algorithms on social platforms on the other, how should we respond? What happens when Big Tech

companies enter regulated markets or the public domain by offering patient database warehousing, personalised health-care services or educational services by providing them to budget-restrained schools and health-care providers for 'free' (while of course gathering data in the process)? Is this situation problematic in an open society? What should the response be if profiling by the algorithms of powerful companies leads to discrimination and strengthening of bias?

So far, European competition law has no answer to these problems. As they are not market problems, they are not competition problems; the problems do not occur in the market domain. While they are potential problems, they arise in the public domain, where the user is not a consumer but a *citizen.* This fact produces a very defensible argument from the perspective of this slice of the legal system (also see the next section), which essentially says: it is not my problem; solve it in a different way! Of course, however, this reaction might be too easy and too quick from an internal legal perspective (within competition law) as well as an external perspective (from the position of protecting against threats to the open society). After all, from the business perspective of the Big Tech companies, there is no difference between the user-consumer and the user-citizen, as the driving business force for many – though not all – platform services is advertising. It therefore makes no difference from the perspective of the precise targeting that can be performed on the basis of personal user data whether the user is a user-consumer looking to book a holiday in the Carinthian mountains or a user-citizen 'consuming' news or being targeted by political campaigns. In other words, the source of both is the same power that Modern Bigness brings; the effects are entangled. Ultimately, this source is the concentration of vast power in the hands of private companies.

In essence, European competition law is an instrument against private power, because such power is distrusted in an open society (as is public power). However, competition law has no answer to these non-market effects. Because of its different focus at present, and perhaps also because the law has become more fragmented into occasionally highly specialised segments with their own logic and language, it is difficult for competition law to shape a response that takes in the wider perspective of protecting the open society. In the absence of other laws and regulations (though see Section 4 for a change in this respect), there is a gap in the legal system from the perspective of protecting the open society.

This analysis of the specific challenges posed by Big Tech can be mapped onto the legal system's perspectives of Open Societies, labelling the threats that a lack of response might entail:

BIG CHALLENGES AS CHALLENGES FOR THE LEGAL SYSTEM

The intersection of a slice of law (European competition law) and a slice of the global challenges (Big Tech) unsurprisingly leads to the general conclusion that the legal system is struggling to shape a response. The legal system is slow to respond, but there is no reason to despair. To be fair, this fact might be because we are caught in the middle of the adaptation process. European competition law is adapting to the realities of Big Tech when combatting the effects of Modern Bigness in the market domain, the domain of consumers and producers. Competition law has not focused on the effects that are felt in the public domain. There are reasons for it to do so nonetheless: first and foremost because there is no reason from the business perspective of the Big Tech companies to distinguish public and market domains,

The intersection of Big Tech and competition law: challenges for Open Societies	
Liberal perspective; threat: surveillance society	Digitalisation is neither negative nor positive from a Popperian or liberal perspective on Open Societies. Though the neutrality of technology is contested, it is difficult to see how technology itself has a negative effect on intellectual reasoning. However, digital power is a threat. It is problematic if there is no legal response to the power of Modern Bigness in the sense of *accountability* for power (especially in the public domain). With *public* power comes responsibility for fundamental rights, such as privacy and equal treatment, but there is no such immediacy for private market power. As a result, there is a lack of checks and balances in the legal system (digital power can also be *public* power without proper checks and balances). Either one (or a combination) could lead to a *surveillance* society.
Socio-cultural perspective; threat: manipulative society	An immediate concern is the challenge of Big Tech companies to the public sphere of news, its impact on democratic processes and the media (digital power can also be *public* power over news). Either one (or a combination) could lead to a *manipulative* society.
Socio-economic perspective; threat: unequal society	The adaptation of competition and regulatory law to new forms of market effects is being shaped. However, the response to the platformisation of labour and the effects on inequality in society are unclear. If left unchecked by public regulation and socio-economic equalisers, it will lead to an *unequal* society.
Constitutional perspective; threat: powerless society	In addition to the above, the power of Big Tech companies may lead to excessive lobbying and capture, as well as more directly to influencing democratic and legislative processes. Accountability and legitimacy, checks and balances in private as well as public power and their interplay need rethinking. For the legal system, the constitutional threat also lies in the mismatch between the globalised economy that gives rise to private digital power and the localised legal systems, leading to a *powerless* legal system and society.

and second because European competition law is ultimately a very good instrument to combat the negative effects of private power. If it can adapt and stretch itself, it would mean that this gap in the legal system is filled through a development within the existing legal framework. The danger lies in stretching too far and crossing the boundaries inherent in a properly functioning rule of law. Partly for this reason, the debate on the boundaries of European competition law has been a very lively one.

Of course, other rules and regulations that address part of the challenges are in place, such as privacy protection rules, regulation in relation to labour and regulation of public services. These rules do not focus on the *power* of the Big Tech companies as such, however, while power seems to be the greatest threat in open societies.

This fact is salient considering the future branching out of tech companies into food, health-care services, personalised nutrition and warfare. However, new rules are already considered,[8] which might provide a counterbalancing factor against private power – though not precisely tackling the issues that I raised above. Predominantly in the USA, the most drastic measure is considered: breaking up the powerful companies, based on the 'old' version of anti-trust legislation. Even the EU is no longer 'ruling out' that breaking up private power is ultimately a necessary response.

If what we have learned from the intersection of two slices holds true for global challenges on a general level, we can conclude that global challenges also affect open societies.
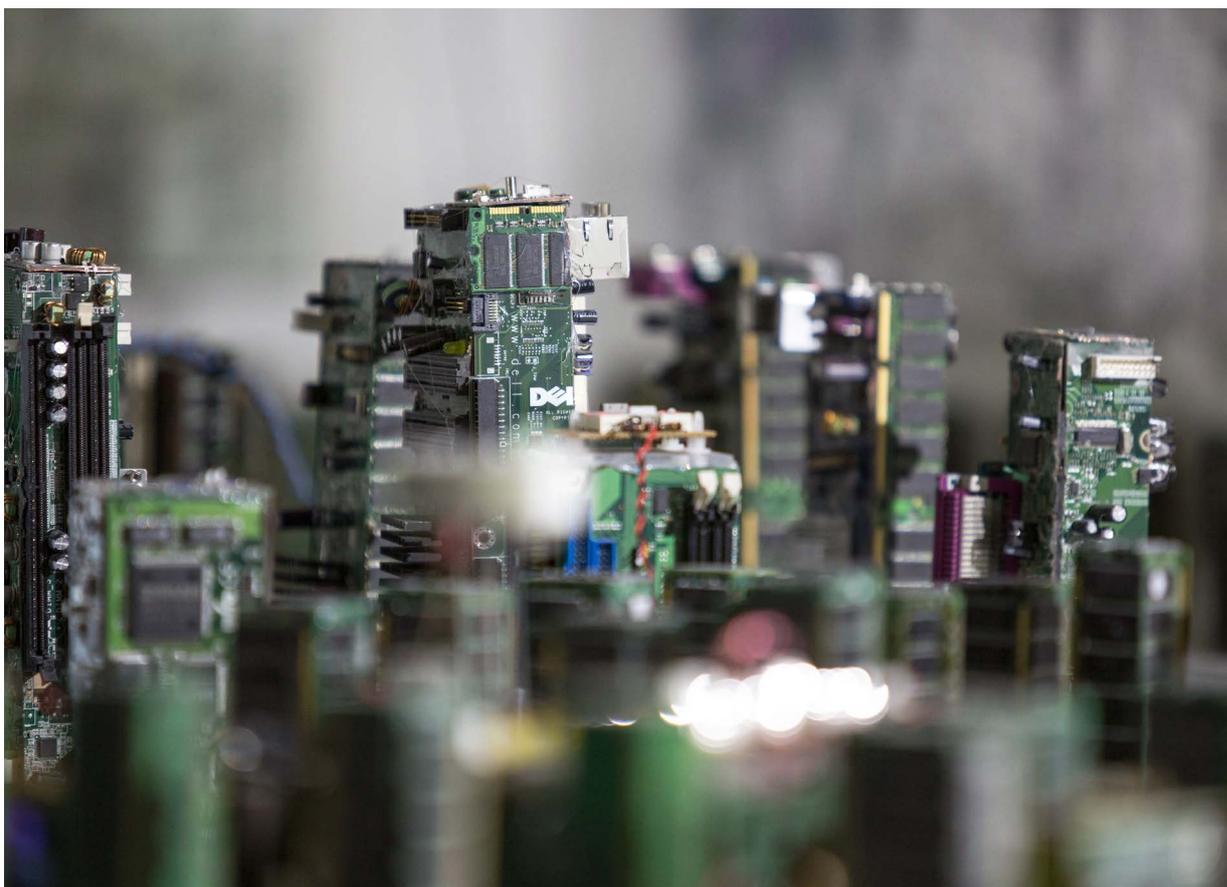
8   For example, see the European Parliament resolution of 30 May 2018 on the future of food and farming, preamble G, which reads that 'whereas it is vital to halt and reverse the current concentration of power in the hands of the large retail sector and big business'. The resolution further acknowledges the importance of creating a level playing field among farmers and empowering local farmers to move up the value chain.

Threats to the legal system itself may be part of these challenges: an obvious example can be found in the threats of some European governments to the independence of the judiciary, which is a cornerstone of the legal and governance system in an open society. Such threats are very specific and cannot be accommodated within the legal system itself. However, all global challenges also raise issues to which the legal system itself must respond. While the legal system is willing – and often able – to adapt and accommodate, accommodation is sometimes a bridge too far; crossing that bridge might lead to new breaches in the rule of law. Democratically legitimised legislation will have to be shaped in order to address these gaps in the legal system. Specifically in relation to digitalisation and the power of Big Tech companies, the threats pertain to a surveillance society, a manipulative society, an unequal society and a powerless society. For the other global challenges, similar dire perspectives can be sketched, underlining the importance of a robust legal system. Even though the legislative process might be slow due to the complexities of global challenges (and the contestability of the necessary rules and regulations), there are really no viable alternatives, based on the rule of law and a system of democratic governance from the perspective of safeguarding an open society.

REFERENCES

Gerbrandy, A. (2018). Conceptualizing Big Tech as 'Modern Bigness' and its implications for European Competition Law. Submission to: *Shaping competition policy in the era of digitization.* European Commission, Brussels.

Root, A. (2019, 29 April). DowDuPont is splitting into 3 companies: here's everything you need to know. *Barron's.* Retrieved on: 20 September 2019, from www.barrons.com/articles/ dowdupont-spinoff-dow-dupont-corteva-51556552428.

Stoller, M. (2019). *Goliath: The 100-Year War Between Monopoly Power and Democracy.* New York: Simon & Schuster.

OPEN SOCIETIES AND ECOLOGICAL CHALLENGES: TRANSFORMATION TO SUSTAINABILITY?

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In this short essay[1], I will explore Mark Bovens' framework of perspectives on open societies in relation to the major ecological challenges presently faced by open – as well as 'less open' – societies (see first article in this volume). In short, I argue that the threat posed by ecological challenges, such as climate change, exposes the dysfunctions of our common socio-economic perspective of open societies. This perspective represents a normative ideal as well as an empirical reality with regard to the societal institutions and practices that have contributed to environmental degradation in the first place. Therefore, in order to regenerate and sustain human as well as non-human life on this planet, one of our tasks as social scientists is to conceive of and contribute to realising societies that are socio-economically open in other ways. Social scientists should ask critical questions about the kinds of socio-ecological relations that we collectively wish to construct. They should also engage with civil society experiences that experiment with concrete principles and practices of other types of openness.

The argument is divided into three parts. First, I will briefly sketch the contours of current ecological challenges, arguing that they pose an existential threat to our open societies as we know them. In turn, this threat imposes a transformation, either in an anticipatory and somewhat socially desirable direction or forced. The latter case is likely to have undesirable and disruptive outcomes affecting both human and non-human well-being.

Second, I use Bovens' framework to reflect on the bi-directional relations between ecological challenges and open societies. I do so by discussing two questions, namely:

1. What can open societies do to engender a transformation to sustainability?
2. What do ecological challenges do to the normative ideal and empirical reality of open societies?

Third, I propose that questioning the normative ideas and empirical realities of openness in our societies should involve taking the vantage point of those collective agents who are already constructing social spaces, if not whole

societies, whose openness does not depend on ecological disruption and environmental injustice, but rather on the re-articulation of socioecological relations with the aim and promise to regenerate and sustain human and non-human life on this planet.

The threat posed by ecological challenges, such as climate change, exposes the dysfunctions of our common socio-economic perspective of open societies.

ECOLOGICAL CHALLENGES

Our societies are dealing with several interconnected ecological challenges. Not only are we already experiencing the largely negative effects of climate change (Intergovernmental Panel on Climate Change [IPCC], 2018), but we also face the equally worrisome challenges of biodiversity loss (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services [IPBES], 2019), plastic pollution (Eriksen et al., 2014) and resource depletion, the latter including soil, fisheries (Worm et al., 2009), oil (Sorrel et al., 2010) and fresh water (Rodell et al., 2018).

These challenges are deeply entangled with as well as exacerbated by multiple interactions and feedback mechanisms. For example, deforestation can act as a barrier to climate change mitigation, while climate change contributes to biodiversity loss. The interactive and compounding effect of ecological challenges, which is increasingly recognised, has been explored in the literature from various approaches such as the so-called water–energy–food 'nexus' (Leck et al., 2015).

It is crucial to recognise that current ecological challenges are largely anthropogenic. The graphs shown in Figure 1, which are very well known among sustainability scholars, illustrate the so-called 'great acceleration' that has characterised global socio-economic and earth system trends since at least the period after the Second World War. Scholars have associated this acceleration with the onset of the Anthropocene: a new era in which humans and societies have become a global geophysical force (Steffen et al., 2015).
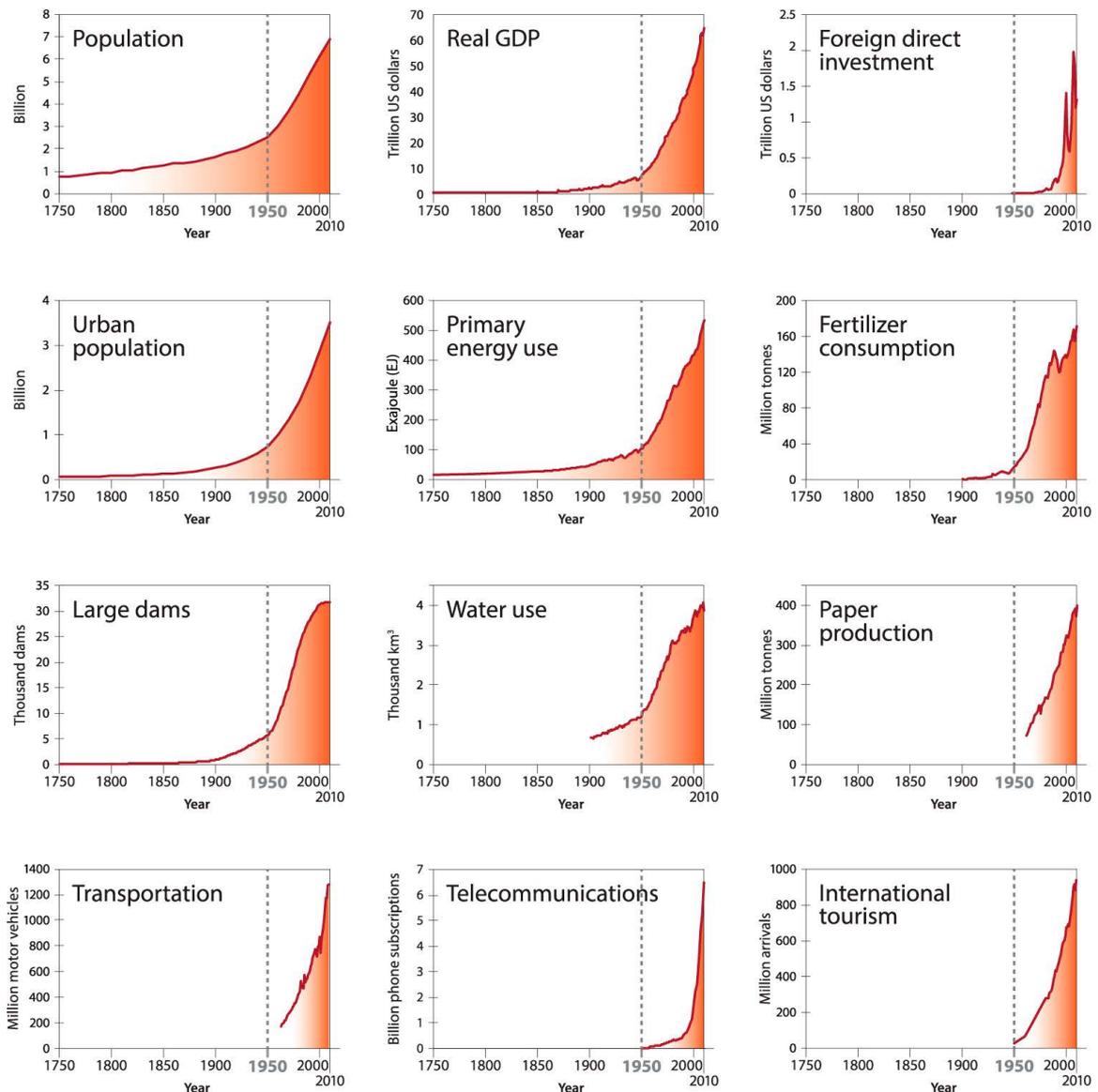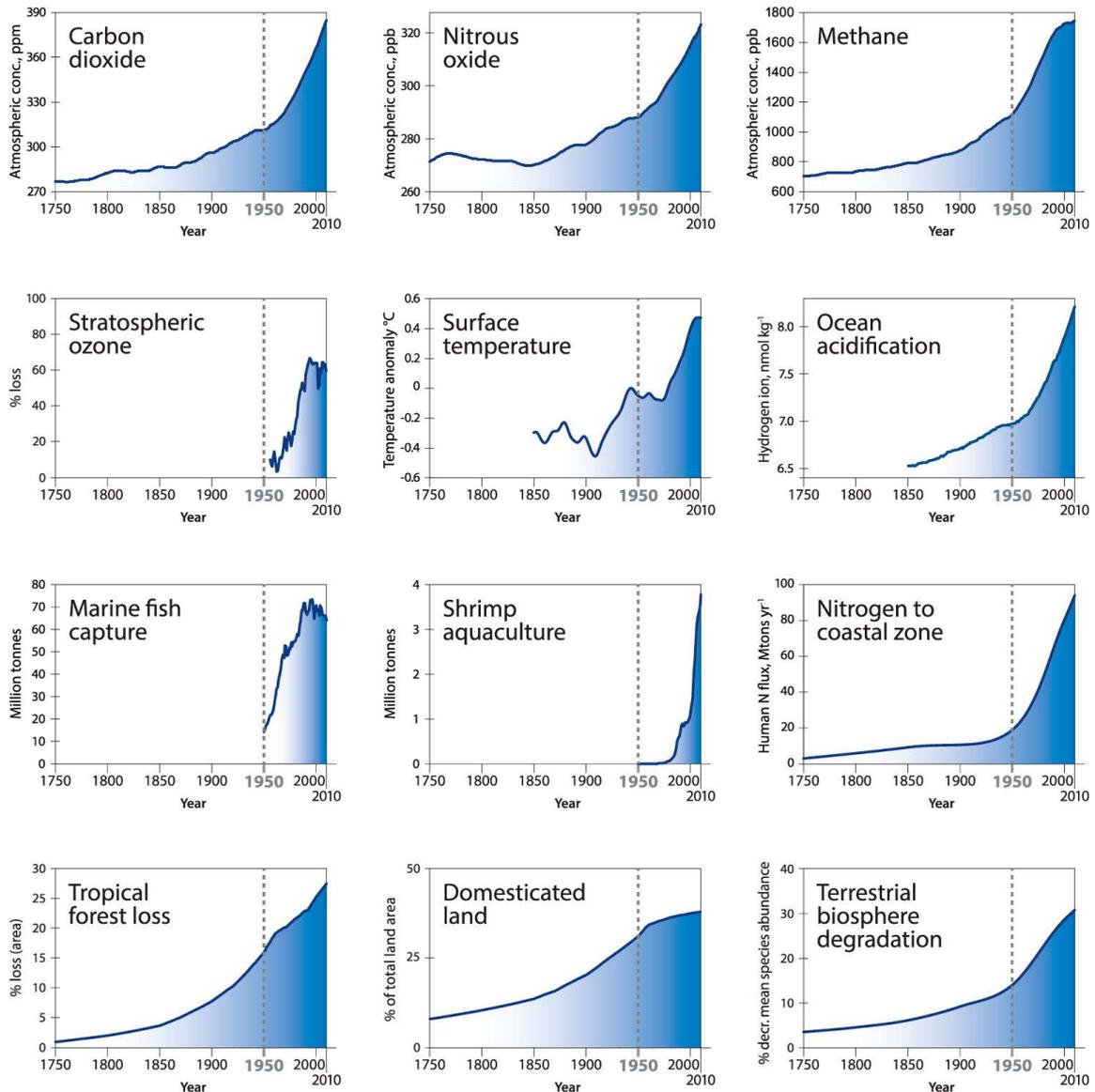
Figure 1. The trajectory of the Anthropocene: The Great Acceleration. Source: Steffen et al., 2015

The temporal identification and analysis of the underlying causes and ideological implications of the very term 'Anthropocene' are highly contested, as this homogenizing term obscures Western (open) societies' disproportionate historical contribution to the great acceleration (Malm and Hornborg, 2014; Lövbrand et al., 2015; Moore, 2017). Nevertheless, there is strong and broad consensus in the scientific community that the effects of the great acceleration are undermining various vital ecological functions on which both human and non-human life depend.

Many ecological systems are now unable to support human societies, and the human impact has already exceeded or is poised to surpass the carrying capacity of ecosystems with regard to, among others, fundamental biodiversity functions and nitrogen and phosphorus cycles (Rockström et al., 2009).

In the specific case of climate change, we sometimes fail to recognise that this existential threat is unprecedented for the human species.

Never in modern history have human societies faced concentrations of CO2 as high as today's (Henley and Abram, 2017), while global annual emissions are still rising (Le Quéré et al., 2018). In fact, never before in the past 800,000 years have such concentration levels been achieved. The last time that temperatures were as high as the current levels, approximately 100,000 years ago, the sea level was nine meters higher than it is today (Henley and Abram, 2017). To aggravate this situation, average temperatures are increasing and heading towards scenarios that are well beyond the 1.5–2 degrees Celsius targeted in the Paris Agreement, even when current national pledges for climate action are taken into account (Pauw et al., 2019).

To reiterate: the human species, but predominantly Western open society, has severely undermined the biophysical conditions for its own and other species' safe existence on this planet. Large parts of human as well as non-human life are facing an existential threat of unprecedented magnitude and scope (Lenton et al., 2019), while it is unclear whether open societies are equipped to address these challenges.

TRANSFORMATION TO SUSTAINABILITY

It is increasingly agreed that the threat posed by current ecological challenges can only be addressed through a transformation to sustainability. With the recognition that the progressively disruptive modes of human interaction with the biophysical environment have resulted in an unprecedented existential threat to human and non-human life, the notion of a 'transformation to sustainability' has gradually become institutionalised in global scientific and policy-making communities (Feola, 2015).

The core idea of transformation to sustainability denotes a major, fundamental change, as opposed to minor, marginal or incremental shifts (Feola, 2015). Transformation is not to be understood as a homogeneous process, but rather as an ensemble of multi-level, multi-scale processes that may involve material and/or symbolic as well as structural and/or functional aspects of social systems.

The urgent need for transformation is reflected in a range of governmental as well as non-governmental scientific and policy initiatives, particularly as exhibited in the agendas of global collaborative initiatives such as Future Earth, the Intergovernmental Panel on Climate Change (IPCC) and the World Social Science Report 2013 by the International Social Science Council (ISSC) and United Nations Educational, Scientific and Cultural Organization (UNESCO). Similarly, the United Nations' Sustainable Development Goals aim to 'transform our world', while the International Science Council has inaugurated a programme promoting the transformation to sustainability.

However, while calls for a transformation to sustainability abound in today's political and academic arenas, they are most often flawed. They suffer from the illusion that such a transformation can solely be achieved through technological innovation, or at best through socio-technical innovation in systems of provision such as energy, transport or agri-food systems. This narrow notion of transformation has underpinned popular understandings of sustainable development and more recently green growth, which fail to challenge deeply rooted cultural frames of our open societies.

In fact, they specifically reproduce assumptions about the dominance of technologies and market mechanisms as drivers of socio-ecological change, while downplaying the possibility of human or political agency beyond the constraints of economic roles (e.g., consumers and entrepreneurs).

In contrast to such narrow techno- and econo-centric approaches, scholars such as Sheila Jasanoff and Sang-Hyun Kim have argued that the transformation to sustainability must entail questioning the fundamental principles on which our societies are based:

> *Energy transitions [...] will need to reconfigure the physical deep structures of civilization [...]. Equally [...] radical changes in the fuel supply are likely to transform social infrastructures, changing established patterns of life and work and allocating benefits and burdens differently from before* (Jasanoff and Kim, 2013: 189).

Leading human geographer Leslie Head goes further in stating that:

> *It is widely recognised that we need to shift some very big cultural frame—the importance of economic growth, the dominance of fossil fuel capitalism, the hope of modernity as unending progress—to deal adequately with the climate change challenge* (Head, 2019: ix).

These arguments resonate with the thinking of many environmental humanities scholars, including Donna Haraway, Anna Tsing, Bruno Latour and Rosi Braidotti. They have examined the links between the current ecological crisis on the one hand and the flaws of the capitalist-modernist framework, the related belief in environmental modernisation, and the logics of simplification, homogeneity and control on the other.

In their distinct ways, these and other scholars have laid the foundations for a reconsideration of modern notions of nature and society. They have also provided arguments for an expanded notion of civilisation which encompasses the complex networks of human and non-human relations that sustain life on Earth (Latour, 2017a).

The late sociologist Ulrich Beck reminded us that climate change is already transforming societies:

> *[...] climate change is an agent of metamorphosis. It has already altered our way of being in the world – the way we live in the world, think about the world, and seek to act upon the world through social action and politics* (Beck, 2015: 4).

Similarly, Latour (2017b) has argued that societies have already entered a new climatic regime, which is shaking the ethical, political, theological and scientific dimensions of what he regards as a now obsolete modern-scientific notion of nature. Beck (2016) preferred to use the term 'metamorphosis' rather than transformation in order to stress a fundamental change of the social and political order beyond the reproduction of the present, moving towards a 'terra incognita' (unknown territory) in which certainties break down and societies morph into something not yet understandable.

Although we have no instructions for navigating such unknown territory, nor even a predefined goalpost at which to aim, these contributions help us open up the conceptual and political space to conceive of a transformation to sustainability beyond existing institutional arrangements and established understandings of the openness of our societies.

To the extent that concepts and practices of a transformation to sustainability must question the very foundations of social order in ways that are incompatible with existing socio-ecological relations, this process must therefore entail a deliberate unmaking, a deconstruction, a disarticulation (Feola, 2019). Both symbolically and materially, we must unmake modernist, techno- and econo-centric understandings of who we are, how we relate with each other as well as with non-human species and how we act in the world.

WHAT CAN OPEN SOCIETIES DO TO REALISE A TRANSFORMATION TO SUSTAINABILITY?

The relationship between ecological challenges and open societies is bi-directional: the degrees and forms of societies' openness inform the type and scope of human responses to this threat. In turn, Ulrich Beck, Bruno Latour and others have suggested that this threat may already be changing the ways in which we think about as well as try to affect the world through social action and politics. Here, I approach the first leg of this relationship: are open societies more conducive to a deliberate, anticipatory and somewhat socially desirable transformation to sustainability?

At least in principle, we can expect open societies to offer better conditions than closed societies for informed collective debate that can result in effective responses to ecological challenges. After all, as argued by Bovens, anti-intellectualism in 'closed' societies hinders scientific knowledge production (for example, on climate change), environmental protection, as well as informed debate about ethics, politics and economic models.

Furthermore, open societies are characterised by governance regimes that we can associate with at least the potential for social transformation.

I refer here to traits that cut across the philosophical, socio-cultural and constitutional perspectives on open societies, as discussed by Bovens. For example, open societies defend freedoms (of speech, press, etc.) and are tolerant of differences (e.g. religious), hence enabling the circulation of critical ideas and new knowledge. They also exercise power in ways that are transparent and responsive to citizens, which creates opportunities for concerned citizens and collectives to pressure rulemaking bodies as well as public powers into action towards sustainability. Finally, open societies are characterised by openness to innovation and cooperation, both of which are crucial in collective processes of transformation to sustainability.

However, two caveats are in order. First, as the work of investigative journalists as well as academics has clearly shown (Oreskes and Conway, 2011; Mayer, 2016; Rich, 2019), the 'openness' of open societies can be misused by powerful actors and vested interests to mislead the public and decision-makers (e.g. through the dissemination of doubts about the science of climate change). Their aim is to resist rather than to promote action towards sustainability – let alone transformation.

Second, framing ecological challenges as existential threats calls for urgent action, which might invite political responses that prioritise environmental *outcomes* over democratic *means* and managerial approaches over political disputes. Some academics have considered the idea that democracy may need to be suspended in order to respond to the existential threat posed by ecological challenges. For example, Norwegian academic Jørgen Randers (2012) argued that:

In a democratic society it is very difficult to get the frame conditions around business decisions in such a way that businesses start to do what is socially beneficial rather than what is short-term profitable [...] what does it take in order to make capitalist society allocate capital to what society needs as opposed to what is profitable. And that is basically a change in some of the prices that are surrounding business and the most important one is of course the price on climate gas emissions [...] But how in the world do you then make democratic society pass such legislation? [...] you should then start by asking if it is at all conceivable that democratic society delegates authority to someone over or beyond them in the short term in order to achieve long-term good, and the answer is yes, dictators in Rome were appointed for a limited period of time, to be able to pass rapid technocratic decisions when Rome was challenged.

Although Randers' proposal for the suspension of some democratic institutions may be meant to be temporary and for the long-term collective good, it questions central characteristics of open societies from what Bovens calls a constitutional perspective. Societies that would implement such actions would tend towards totalitarianism. The suspension of open societies is also postulated by eco-fascist and far-right ecologist movements (Biehl and Staudenmaier, 1995; Balša, 2019). In such propositions, the suspension tends to be permanent and for the benefit of a selected ethnic group. These proposals suspend parts of what Bovens calls the socio-cultural perspective of open societies and therefore tend towards traditional ethno-centric forms of closed societies. Although these ideas are minoritarian in the sustainability debate, it would be a mistake to dismiss them, as they are persistent and are well-aligned with the recent relative success of far-right political parties as well as the decline of political rights and civil liberties (Freedom House, 2019).

WHAT DO ECOLOGICAL CHALLENGES DO TO THE NORMATIVE IDEAL AND THE EMPIRICAL REALITY OF OPEN SOCIETIES?

The second crucial question that we need to address is whether ecological challenges call into question the notion of open society in the first place: what do ecological challenges do to the normative ideal and the empirical reality of open societies?

The existential threat posed by ecological challenges calls into question some fundamental premises of open societies, specifically those falling into the socio-economic perspective as discussed by Bovens. The transformation to sustainability must involve the reconsideration of these core characteristics. Here, I discuss four of them in turn: individualism; the dominant role of markets; the characterisation of socio-economic openness in terms of the broad availability of material means for individual development; and a high degree of geographical mobility.

First, individualism is rooted in modern separations between social groups as well as between humans and non-humans. These dualist ontologies justify domination, foster a utilitarian approach to relations among humans as well as between humans and non-humans, and encourage the exploitation of ecosystems as results in ecological challenges (Gibson-Graham, 2006; Latour, 2017b). These separations are problematic at a moment when we urgently need collective action and cooperation to tackle ecological challenges. Right now, the inescapable connection between humans and non-humans needs to be reassembled to sustain life on Earth.

Second, the dominant role of markets as arenas of exchange has evolved into the pervasive application of market logics in almost all realms of social life, as well as the widespread commodification of human and non-human life (Sandel, 2012).

Among other things, market logics of optimisation, utilitarian rationality and disconnection from the emotional basis of social life have also penetrated some branches of environmentalism, as in the case of payment for ecosystem services schemes. This pervasiveness of market logic has fuelled the exploitation of ecosystems and the disintegration of social institutions, through which human and non-human life alike are sacrificed in the name of the market economy's survival (Nel, 2015).

Third, the characterisation of socio-economic openness with regard to the broad availability of material means for individual development is problematic in many ways. It reinforces individualism and reductionist utilitarian understandings of the human character, which in turn inform the design of social institutions that reproduce this supposed nature (Jackson, 2016). This perspective also foregrounds the *quantity* of material resources, which are appropriated through a supposedly endless economic expansion at an ever-growing pace. The result is the aforementioned great acceleration, which in turn speeds up social life to alienating levels (Rosa et al., 2017). All these things occur at the expense of the *quality* of development; i.e. the actual well-being derived from any consumed quantity of products and services, the social meanings attributed to those products, the human capabilities that they activate and ethical considerations (e.g. justice and dignity) associated with consumption patterns (Jackson, 2016).

Fourth and finally, a high degree of geographical mobility has allowed for the externalisation of the side effects of modernisation. For example, these effects are embodied in the trans-frontier shipment of waste as well as the delocalisation of extractive and other highly polluting industries. Paradoxically, or perhaps not, these and other

forms of externalisation displace environmental harm to societies that are most often much less open than our Western societies. As a result, their degree of non-openness enables powerful actors to harm their human and non-human members. Furthermore, as elucidated by Mitchell (2009) and others, open, democratic Western societies in the post-war period have locked closed societies into linkages between the flow of resources (especially, oil) and international finance on which the democratic stability of Western open societies was thought to depend. These same connections gave rise to unlimited economic growth as the main object of democratic politics at the expense of both the socio-economic and the constitutional openness of non-Western societies. In short, open societies in the West can afford to be open in the socio-economic terms described by Bovens due to the existence of closed societies that bear the social and ecological harms of their openness.

SOCIETIES CAN BE OPEN IN OTHER WAYS

Ecological challenges expose the dysfunctions of our common socio-economic understanding of open societies as well as their institutions and practices. If we look for them, we can nonetheless find possibilities in our own societies to be open in ways that do not depend on ecological disruption and environmental injustice, nor on closed societies bearing the cost of other societies' openness.

To do so, we must acknowledge and value existing politics and the everyday foundations of action, taking them as points of departure rather than abstract categories, as argued by Nightingale et al. (2019) and Feola et al. (2019). Following this approach enables scholars to prioritise values, normative commitments and experiential as well as plural ways of knowing, being and doing within the debate on climate change or other ecological challenges.

We observe the emergence of and experimentation by institutions for societies that are open in other ways through the experiences of many civic initiatives, social movement struggles and alternative socio-ecological relations. Such experiences cover community economies, alternative systems of exchange, local food networks, eco-communities, municipalism initiatives and cooperatives, among other things (Gibson-Graham, 2006; Carlsson, 2008; Wright, 2013; Harcourt, 2014; Böhm et al., 2015).

These concrete collective experiences chart new territory by prefiguring in their practice the 'alternative' social arrangements or institutions that they envision as political ends. In doing so, they reinterpret the core principles of open societies in fundamentally different terms, particularly within the context of a socio-economic perspective, but also beyond (Table 1).

Table 1. Principles of societies open otherwise

Cornerstones of open societies (socio-economic perspective)	Cornerstones of societies open otherwise
Wealth	Wellbeing
Accumulation	Commoning
Growth (limitless)	Balance (limits)
Efficiency	Sufficiency
Individual	Collective
Rationality	Multiple forms of socio-cultural engagement
Separation	Relation
Utilitarianism	Care
Externalization	Responsibility
Placeless-ness	Place-based-ness
Human	Human and non-human

It remains to be seen whether and how such ideas and practices that are currently being experimented with and prefigured can constitute a basis for our societal institutions in the future.

Nevertheless, these experiences show that existing notions of society's openness can be — and are already being — deliberately unmade to construct social spaces (Feola, 2019), if not whole societies. The openness of these societies does not depend on ecological disruption and environmental injustice, but rather on the re-articulation of socio-ecological relations which aim and promise to regenerate as well as sustain human and non-human life on this planet.

CONCLUSION

I have contended that in order to regenerate and sustain life on Earth, one of our tasks as social scientists is to conceive of and contribute to realising societies that are 'open in other ways' from a socio-economic perspective. To do so, we must ask critical questions about the kinds of social ecological relations that we collectively wish to construct. While social critique is surely alive, it can be perceived as superfluous when action towards ecological challenges is urgently needed. As proposed by Lövbrand et al., the 'social sciences need to cultivate political thought that extends beyond "the products and services" demanded by societal stakeholders in the transition to sustainability. [P]romising and urgent […] are efforts to open conceptual and political space where a diversity of green diagnoses, comprehensions and problematizations can be debated and contested' (2015: 216).

I have furthermore proposed that a critical step towards such openness is the questioning of the normative ideas and empirical realities of openness in our societies. We must do so from the vantage point of those collective agents who are already building social spaces that are open in other ways. By acknowledging and examining these concrete experiences, social scientists may not find ready-made 'solutions' for navigating the unknown territory of our changing planet.

However, they may realise that the blueprints of institutions for open societies that can respond to ecological challenges and thereby redefine our societies may already be in the making. Finally, I suggest that abandoning the detached role of observer and developing dedicated research strategies for the co-production of those blueprints will be an exciting as well as a necessary next move.

REFERENCES

Balša, L. (2019). Beyond Ecofascism? Far-Right Ecologism (FRE) as a Framework for Future Inquiries. Environmental Values. Online-first, DOI 10.3197/096327120X157528103239 22.

Beck, U. (2016). *The Metamorphosis of the World.* Cambridge and Malden: Polity Press.

Biehl, J., & Staudenmaier, P. (1995). *Ecofascism: Lessons From the German Experience.* Edinburgh: AK Press.

Böhm, S., Bharucha, Z.P., Pretty, J. (2015). Ecocultures: Blueprints for Sustainable Communities. London: Routledge.

Carlsson, C. (2008). *Nowtopia: How Pirate Programmers, Outlaw Bicyclists, and Vacant-lot Gardeners are Inventing the Future Today.* Oakland: AK Press.

Eriksen, M., Lebreton, L.C., Carson, H.S., Thiel, M., Moore, C.J., Borerro, Reisser, J. (2014). Plastic pollution in the world's oceans: more than 5 trillion plastic pieces weighing over 250,000 tons afloat at sea. *PLOS ONE, 9* (12), p.e111913.

Feola, G. (2015). Societal transformation in response to global environmental change: A review of emerging concepts. *Ambio, 44* (5), 376-390.

Feola, G. (2019). Degrowth and the unmaking of capitalism: beyond 'decolonization of the imaginary'. ACME: *An International Journal for Critical Geographies, 18* (4), 977-997.

Feola, G., Geoghegan, H., Arnall, A. (Eds.). (2019). *Climate and Culture: Multidisciplinary Perspectives on a Warming World.* New York: Cambridge University Press.

Freedom House. (2019). *Democracy in Retreat: Freedom in the World 2019.* Washington, DC: Freedom House.

Gibson-Graham, J.K. (2006). *A Postcapitalist Politics*. Minneapolis: University of Minnesota Press.

Harcourt, W. (2014). The future of capitalism: a consideration of alternatives. *Cambridge Journal of Economics, 38,* 1307–1328.

Head, L. (2019). Foreword. In G. Feola, H. Geoghegan A. Arnall, (Eds.), *Climate and Culture: Multidisciplinary Perspectives on a Warming World.* Cambridge: Cambridge University Press.

Henley, B. and Abram, N. (2017, June 12). The three-minute story of 800,000 years of climate change with a sting in the tail. *The Conversation.*
Retrieved on July 7 2020, from https://theconversation.com/the-three-minute-story-of-800-000-years-of-climate-change-with-a-sting-in-the-tail-73368

Jackson, T. (2016). Prosperity Without Growth: Foundations for the Economy of Tomorrow(2nd edition). London: Routledge.

Jasanoff, S. and Kim, S.H. (2013). Sociotechnical imaginaries and national energy policies. *Science as Culture, 22* (2), 189–196.

Latour, B. (2017a). Down to Earth: Politics in the New Climatic Regime. Cambridge and Medford: Polity.

Latour, B. (2017b). Facing Gaia: Eight Lectures on the New Climatic Regime. Cambridge and Medford: Polity.

Le Quéré, C., Andrew, R.M., Friedlingstein, P., Sitch, S., Hauck, S., Pongratz, J., Zheng, B. (2018). Global Carbon Budget 2018. *Earth System Science Data, 10* (4), 2141-2194.

Leck, H., Conway, D., Bradshaw, M. and Rees, J. (2015). Tracing the water–energy–food nexus: Description, theory and practice. *Geography Compass, 9* (8), 445-460.

Lenton, T.M., Rockström, J., Gaffney, O., Rahmstorf, S., Richardson, K., Steffen, W. and Schellnhuber, H.J. (2019). Climate tipping points—too risky to bet against. *Nature, 575,* 592-595.

Lövbrand, E., Beck, S., Chilvers, J., Forsyth, T., Hedrén, J., Hulme, M., Lidskog, R., Vasileiadou, E. (2015). Who speaks for the future of Earth? How critical social science can extend the conversation on the Anthropocene. *Global Environmental Change, 32,* 211-218.

Malm, A. and Hornborg, A. (2014). The geology of mankind? A critique of the Anthropocene narrative. The *Anthropocene Review, 1* (1), 62-69.

Mayer, J. (2016). Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right. New York: Doubleday.

Mitchell, T. (2009). Carbon democracy. *Economy and Society, 38* (3), 399-432.

Moore, J.W. (2017). The Capitalocene, Part I: On the nature and origins of our ecological crisis. *The Journal of Peasant Studies, 44,* 594-630.

Nel, A. (2015). The choreography of sacrifice: Market environmentalism, biopolitics and environmental damage. *Geoforum, 65,* 246-254.

Nightingale, A.J., Eriksen, S., Taylor, M., Forsyth, T., Pelling, M., Newsham, A., Whitfield, S. (2019). Beyond Technical Fixes: climate solutions and the great derangement. Climate and Development, DOI: 10.1080/17565529.2019.1624495

Wright, E.O., (2013). Transforming Capitalism through Real Utopias. *American Sociological Review, 78,* 1-25.

Oreskes, N. and Conway, E.M. (2011). Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming. London: Bloomsbury Publishing.

Pauw, W.P., Castro, P., Pickering, J. and Bhasin, S. (2019). Conditional nationally determined contributions in the Paris Agreement: foothold for equity or Achilles heel? Climate Policy, DOI: 10.1080/14693062.2019.1635874.

Randers, J. (Interviewee). (2012, August 12). '2052': "It's the story of humanity not rising to the occasion. Transition Culture.

Retrieved on July 7 2020, from www.transitionculture.org/2012/08/17/an-interview-with-jorgen-randers-its-the-story-of-humanity-not-rising-to-the-occasion/).

Rich, N. (2019). Losing earth: the decade we almost stopped climate change. London: Picador.

Rockström, J., Steffen, W., Noone, K., Persson, Å., Chapin III, F.S., Lambin, E., Foley, J. (2009). Planetary boundaries: exploring the safe operating space for humanity. *Ecology and Society, 14* (2).

Rodell, M., Famiglietti, J.S., Wiese, D.N., Reager, J.T., Beaudoing, H.K., Landerer, F.W. and Lo, M.H. (2018). Emerging trends in global freshwater availability. *Nature, 557* (7707), 651–659.

Rosa, H., Dörre, K., Lessenich, S. (2017). Appropriation, Activation and Acceleration: The Escalatory Logics of Capitalist Modernity and the Crises of Dynamic Stabilization. *Theory, Culture & Society, 34,* 53–73.

Sandel, M.J. (2012). What Money Can't Buy: the Moral Limits of Markets. London: Penguin.

Sorrell, S., Speirs, J., Bentley, R., Brandt, A. and Miller, R. (2010). Global oil depletion: A review of the evidence. *Energy Policy, 38* (9), 5290–5295.

Steffen, W., Broadgate, W., Deutsch, L., Gaffney, O., Ludwig, C. (2015). The trajectory of the Anthropocene: The Great Acceleration. The Anthropocene Review 2, 81–98. https://doi.org/10.1177/2053019614564785

Worm, B., Hilborn, R., Baum, J.K., Branch, T.A., Collie, J.S., Costello, C., Jensen, O.P. (2009). Rebuilding global fisheries. *Science, 325* (5940), 578-585.

OPEN SOCIETY AS ITS OWN ENEMY

DRS. ARNO VISSER

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With his invitation to speak here, Prof. Bas van Bavel, scientific director of Institutions for Open Societies, gave me the instruction: "You can be nice". Perhaps that is what happens when you are a representative of an institution that is by nature aiming on what goes wrong, and whether we are still living up to standards, laws, and procedures.

My predecessor described herself the following: "I am walking bad news". I describe my institutional role as "putting the lights on at a party". That job is President of the Netherlands Court of Audit. And to the readers from abroad; we are in fact not a Court. I do not exactly know why it is translated that way. Internationally, the Netherlands Court of Audit belongs to the Supreme Audit Institutions. That is SAI as abbreviation. And 'SAI' in Dutch means … boring.

So coming from a world of supreme institutions in a national context, a world that is working on very practical audit routines every day, I feel a bit uncomfortable about the debate on the Open Society and its Future, the central theme of this publication. Let me put it forward as a thesis: **Society ceases to exist when it is not defined as something that is recognizable for its 'members' - and when it does not exclude others, even other societies. Without a notion of group-identity the open society becomes its own enemy.**

So coming from world of supreme institutions in a national context, a world that is daily working on very practical audit routines, I have this uncomfortable feeling in the debate. Let me put it forward as a thesis: Society ceases to exist when it is not defined as something that is recognizable for its 'members' - and when it doesn't exclude others even other societies. Without a notion of group-identity the open society becomes its own enemy.

Why this thesis? What strikes me is that most of the attention goes to the definition of 'openness'. The question is mostly: what makes a society an open society? And, if a society is not open, what makes it a closed society? So the debate mostly focuses on: What is open and what is closed? But what about the concept of society itself? Why not focus on the question: What makes a certain group of people a society?

Let me take you back in time. A little more than a 100 years ago this continent had three multi-ethnic, multi-cultural, multi-lingual empires: the Austrian, the Russian and the Turkish emperors, tsars and sultans ruled over many people, not only in numbers of people or in square kilometers of area, but mostly and foremost in an immense diversity of nationals with a variety of cultural backgrounds.

This all changed after WWI. As a young diplomat, the later British Member of Parliament Harold Nicolson met as secretary with the three leaders of government to discuss the future. He was shocked by the outcome of the meeting and wrote his wife, the well-known writer Vita Sackville-West, afterwards: "My god, they are cutting Asia Minor into pieces, like it was a piece of cake".

American president Woodrow Wilson, who served as president of the United States from 1913 to 1921, wanted to use the principle of self-determination of people as a guiding principle for the future.

The French president Clemenceau and the British prime minister Lloyd George asked him multiple times: "What defines a people? Is it language? Is it religion? Is it ethnicity?"

They did not get a clear answer from their American colleague. But the principle of self-determination was determinative for the creation of many new countries. From Iraq to Yugoslavia.

The result was, as you all may know, the start of many, many new wars and conflicts in which historic heritage and cultural identity played an important role. And yet today, we witness that there is no Czechoslovakia anymore, the Crimea got occupied, Kurds still fight for their self-determination, Catalonia wants more independence.
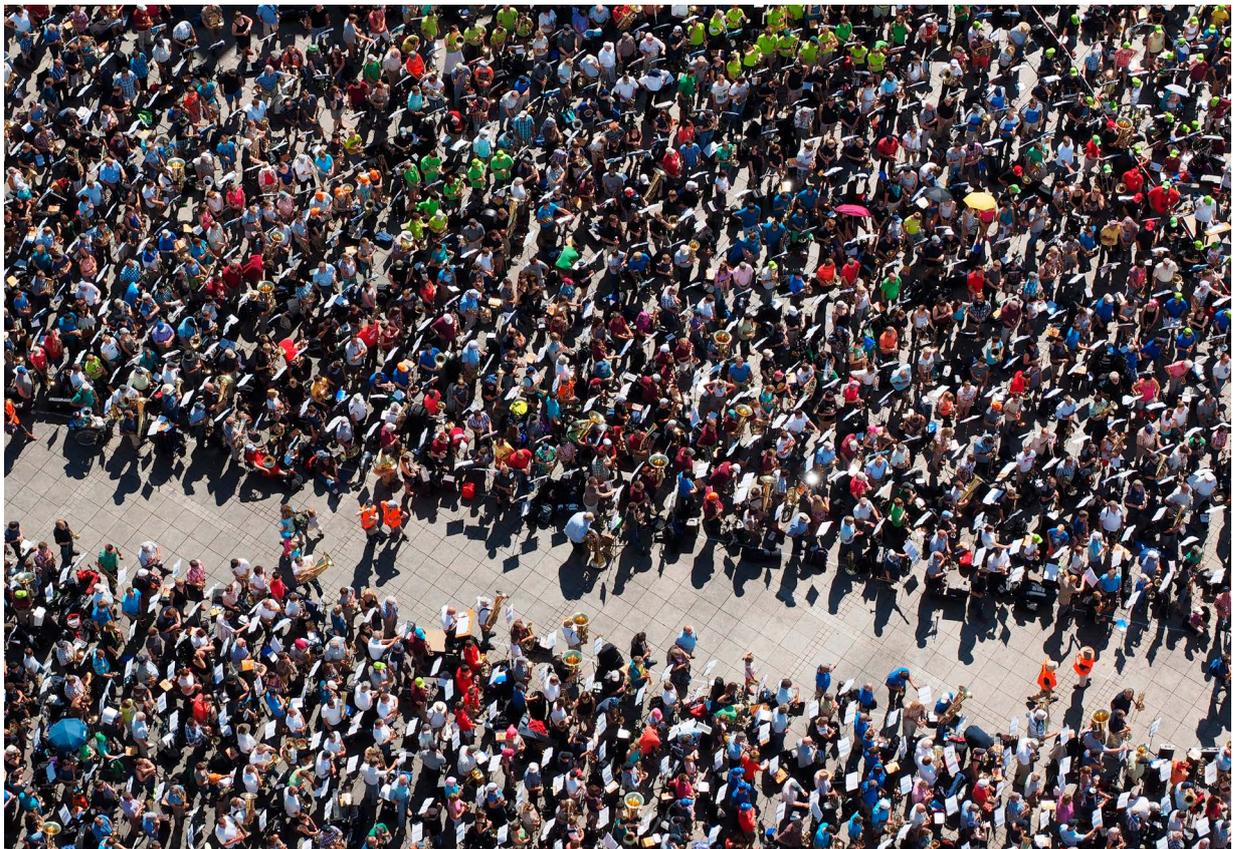
We also see that the governance of countries like Belgium and the United Kingdom are adjusted in such a way, that state institutions that bear legal powers and representational bodies, decentralise to the Flemish and French speaking people, to the Scots, the Welsh and the English.

There is more to illustrate the quest for identity. Furthermore, of course, there is Brexit. But we should not forget that before the British referendum, a majority of the Dutch and the French voted 'no' in EU-referenda as well. But in those cases the national government did not want to 'deliver'.

So my question is: what is currently really happening with the concept of society? How can we understand these developments after decades of change, in terms of globalisation, migration, and multilateral forms of government like the EU?

Could it be that the idea or the concept of 'society' is underexposed? That the things which bind people together are ignored? And if so, should that not be an object of study itself: society as an institution?

In a notorious speech – to some it was the speech that opened Pandora's box of nationalism, Euroscepticism and ultimately Brexit – then prime-minister Margaret Thatcher stated that:

> *"Europe will be stronger precisely because it has France as France, Spain as Spain, Britain as Britain, each with its own customs, traditions and identity. It would be folly to try to fit them into some sort of identikit European personality."*

Anyone who reads that Brugge-speech today might question why it was perceived as startling at the time. Nowadays, the words that Thatcher spoke could be considered 'mainstream'.

Take this quote for example: *"Certainly we want to see Europe more united and with a greater sense of common purpose. But it must be in a way which preserves the different traditions, parliamentary powers and sense of national pride in one's own country; for these have been the source of Europe's vitality through the centuries."*

And: *"Let Europe be a family of nations, understanding each other better, appreciating each other more, doing more together but relishing our national identity no less than our common European endeavour."*

Back on topic: the Open Society. Let us not forget that the institutions of an open society were born and created in a specific context: cause, location and persona. And it is this context that partly defines the idea of 'society'. A society comprises a group of people that created something together and passed that on. It requires a group of people that take care of that specific heritage together and feel responsible for it. That shared heritage makes you able to be part of it.

In his contribution to this Think Papers series, Mark Bovens writes: "For Popper the opposite of an open society was a closed society in which laws, institutions and scientific principles are beyond criticism (….)". Could there be a negative, in addition to the opposite? A situation where criticism on laws, institutions and scientific principles finds it root-cause somewhere else? Something that is perhaps to easily put aside as 'populism'?

My question to you is: Could a society, and especially an open society, be something without borders? Without a clear definition of what it is and what is not? Is the open society the salad without the need of a salad bowl: a mix of ingredients sticking together by itself without the need for something that gives shape? Is an open society so open that anyone can enter

or leave it? Is it boundless? But then, if you can enter and leave something so easily, does it really exist?

So do we not only need to (re)define the concept of openness, but also the concept of society itself?

That is why my thesis for the minds from the academia is: **Society ceases to exist when it is not defined as something that is recognizable for its 'members' - and when it doesn't exclude others even other societies. Without a notion of group-identity the open society becomes its own enemy.**

I do hope you take time to answer this, while I will take some more time to scrutinise public spending.

THE ROLE OF UNIVERSITIES IN AND FOR OPEN SOCIETIES

PROF. HENK KUMMELING

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In the years that I worked for and with the people of the Strategic Theme of Institutions for Open Societies (IOS), I had to explain on numerous accounts the concept of Institutions and why it was of the greatest importance to study them in a multidisciplinary as well as an interdisciplinary manner. After a few minutes of explaining, national and international colleagues practically always seemed to be convinced, and even became a little bit jealous that we had taken up such a daring endeavour. In retrospect, it is quite amazing that in all the talks which I had, hardly anyone raised questions about the concept of 'Open Society'[1].

Did people simply not dare to tell that they had not read Popper's work, or were they afraid to admit that they had problems understanding it? Or did we all take the 'Open Society' for granted? If so, we know by now that the 'Open Society' has become an increasingly tested and contested concept in recent years.

In my capacity as Rector Magnificus, I see myself confronted with some fundamental questions such as: What is the role of the university in the open society?

What can it do to create a better understanding of and perhaps even more support for the concept? In what way can universities contribute to the protection of the open society?

How wonderful and even comforting it is that we have a Strategic Research Theme on Institutions for Open Societies! However, the results of research are not always comforting. Quite recently, I finished a chapter in a book (Kummeling, 2020), which has as its core question: does the Dutch parliament function as an institutional shock absorber in times of national and international turbulence? With the rise of populist parties, which are more interested in identity than in compromise, it has become more and more difficult to perform this task.

How to explain the rise of populist parties? How to explain the division of support for these parties? There are a lot of theories out there. A recent comprehensive study by Roger Eatwell and Matthew Goodwin (2018)[2] shows that rather than social class, income or age, education plays the dominant role. The higher educated are less likely to become supporters of populist political parties.

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1   The contribution by Mark Bovens triggered me to reflect on this concept (see the first article in this publication).
2   Compare also: Bovens, M. & Wille, A. (2017). Diploma Democracy: The Rise of Political Meritocracy. Oxford: Oxford University Press.

With education we come to the core business of the university. What can we offer to the outside world, as well as to our own educational programmes, since even a part of our own students seem to be attracted by populist parties or their leaders? Is the core narrative of Institutions for Open Societies given enough attention in our educational programmes and courses? I am sure that we can and must do more. We even have a legal obligation to promote a sense of societal responsibility among our students (Bakker, 2016). In our teaching, we will have to pay more attention to individual freedoms, equal treatment, tolerance, respect for minorities etc.

A less traditional task of universities lies in the area of public engagement. Quite recently, I started a project on how to perform in the media with a small group of our prominent professors. The reason was partly to overcome the reluctance of our academics to participate in societal and political debates, but also to gather more knowledge on what the do's and don'ts are in order to maintain your integrity as an academic in the public debate. We see too many self-declared experts producing 'fake expertise', consequently lowering the esteem for scholarship and science.

There are also important questions to answer when it comes to the openness of the international, national and local academic communities themselves.

Do we enter into research cooperation with Chinese colleagues, knowing that their government has quite different views on data protection, privacy and academic freedom in general (Van Deursen and Kummeling, 2019)?

Closer to home, the EU urges us to seek closer cooperation with universities in Eastern Europe. Quite recently, we did set up a European Universities Network (better known to some as the Macron network) with ELTE University in Hungary, among others.[3]

Of course, we have to act carefully in these situations, but I see it as an important duty for our university to contribute to academic freedom on an international level and to support colleagues who work under much more difficult circumstances.

We take academic freedom at home for granted. Here, you can investigate and discuss anything with which an intelligent mind can come up. There is no censorship, while the few existing boundaries are mostly to do with criminal law. However, an 'Open University' – here understood within the framework of IOS – is always a place of tension; friendly tension, I would like to add. The reason is that the quest for the truth, as we understand it, is a never-ending story.

As tensions and contestation are part and parcel of academic freedom, the creation of so-called safe spaces on campuses in the US and the UK is worrisome. Of course, we do not tolerate violence and harassment. However, if we start protecting people against the opinions of others by setting limitations to the freedom of speech, it is a very dangerous way to go – especially in an academic environment. How can we prevent such a thing from happening at our university?

For me, these questions are intriguing. They reach to the core of what academia stands for. I am afraid that we will be confronted with them in the years to come. The university has a special responsibility in and for the open society. We have to be aware of that responsibility, but we can also do more to make good on it.

REFERENCES

Bakker, W. (2016). *Opleiden voor de open samenleving.* Inaugural address, Utrecht University.

Eatwell, R., Goodwin, M. (2018). *National Populism: The Revolt Against Liberal Democracy.* London: Penguin Books.

Kummeling, H. (2020). Staten-Generaal. In: E.R. Muller, H. Kummeling, & R. Nehmelman (Eds.), *Instituten van de Staat* (pp. 69-90). Deventer: Kluwer.

Van Deursen, S. & Kummeling, H. (2019). The New Silk Road: a bumpy ride for Sino−European collaborative research under the GDPR?. *Higher Education* 78(5), pp. 911−930.

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3 www.uu.nl/en/collaborate/charm-eu.

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