

Protest and public order

A critical discourse analysis of the Dutch political rearticulation of the right to protest



Master thesis
Engaging Public Issues
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June 2025

Abstract

Central to this thesis is the rearticulation of the right to protest within Dutch political discourse. In recent years, pressing social, economic, and environmental crises have prompted people to exercise this right with increasing frequency and assertiveness. Growing calls for law enforcement against such disruptive protests stand in tension with the Dutch government's claim to uphold democratic principles. This study investigates how Dutch national politicians justify legislative proposals that seek to restrict the right to protest. Critical discourse analysis of governmental communications reveals that justifications rest on profoundly neoliberal conceptions of public order. By conflating criminal law and human rights, both advocates and opponent of legislative restrictions acknowledge the necessity of combating disorder.

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Acknowledgements

This thesis would not have been realised without the invaluable participation of the ministers and members of parliament in the parliamentary debate on the right to protest held on 22 January 2025. Writing the results sections would have been decidedly less engaging without their contributions, which moreover serve as a compelling illustration of the contemporary state of political rhetoric.

1. Introduction

In recent years, pressing social, economic, and environmental crises have prompted people worldwide to exercise their right to protest with increasing frequency and assertiveness. Protesters often deliberately engage in disruptive actions as a strategic means of drawing attention to their cause. Some social movements explicitly draw on theories of civil disobedience to justify such methods, openly acknowledging their use of disruptive yet peaceful tactics, including, at times, the deliberate violation of laws (Farmers Defence Force, 2021; Extinction Rebellion, n.d.). These groups argue that disruption is necessary to ensure that their voices are heard. In many Western European countries, such tactics have sparked heated public and political debate regarding the acceptable limits of disruption in public spaces. Politicians are increasingly seeking to curtail what they perceive as an expanding scope of disruptive actions claimed under the right to protest. Notably, calls for stricter law enforcement are no longer confined to populist rhetoric but are becoming normalised across the political spectrum. Governments aiming to respond more stringently to disruption are exploring legal mechanisms to restrict protests. Recent legislative developments such as the United Kingdom's *Public Order Act 2023* and Italy's *Decreto Sicurezza 2025* exemplify this trend.

The Netherlands, too, has witnessed growing calls for legal reform to facilitate enforcement against disruptive protests. Mayors are facing considerable criticism in public discourse regarding their handling of protests in the context of their responsibility to maintain public order – occasionally receiving severe condemnations from national politicians (Wilders, 2024). Conversely, Dutch human rights organisations have raised concerns that the right to protest, as enshrined in the Dutch Constitution and protected under the European Convention on Human Rights (ECHR), is under threat. They warn that mayors are adopting overly restrictive approaches (De Nationale Ombudsman, 2018; Amnesty International Netherlands, 2022; College voor de rechten van de mens, 2023). In 2024, the Dutch cabinet commissioned ‘independent research’ by the Research and Data Centre of the ministry of justice (WODC) to examine the legal boundaries of permissible restrictions under international human rights law (De Jonge & Yeşilgöz-Zegerius, 2024), with the results expected in August 2025. Some politicians, however, are not awaiting the outcome of the commissioned research and have already introduced legislative proposals aimed at tightening regulations.

To justify these proposals, proponents frequently invoke the necessity of maintaining public order. Yet, the Dutch legal concept of public order remains ambiguous, thereby leaving space for political interpretation. This thesis adopts the perspective of critical discourse analysis, positing that discourse surrounding the right to protest is shaped predominantly by those in positions of power, namely, national politicians engaged in these debates. The central aim of this research is to provide insights in the underlying political ideologies that determine the discursive use of the concept ‘public order’ in the rearticulation of the right to protest. Accordingly, the thesis addresses the following research question: *How do conceptions of ‘public order’ shape the political rearticulation of the right to protest?*

“This book will neither review nor adjudicate these important debates in democratic theory, but only suggest that debates about popular demonstrations tend to be governed either by fears of chaos or by radical hope for the future, though sometimes fear and hope get interlocked in complex ways.” (Butler, 2015, p. 1-2)

2. Theoretical framework

A democratic paradox

A starting point for this thesis is that to examine the current rearticulation of the right to protest, it must be situated in its broader political context. Political discourse in the Netherlands is characterised by governments that assert their identity as a modern liberal democracy (e.g., Rijksoverheid, n.d.), and grapple with the political and ideological stakes involved in defending this claim. A fundamental aspect of progressive democratic rule is the protection of the right to protest, as enshrined in the legal doctrine of international human rights. This right guarantees that citizens can assemble in public spaces to collectively express opposition to particular issues. Protest enables minority groups to challenge the will of the majority as ostensibly represented through parliamentary politics (Gerards, 2019). Consequently, it also serves to safeguard citizens' opposition to the government, protecting them from (illegitimate) interference or sanctions from authorities. Considered one of the 'foundations of a democratic society' by the European Court of Human Rights (ECrHR), the right to protest constitutes such a crucial component of the claim to be a democracy that the state is obliged to protect this right at all costs.

Thus, governments are paradoxically expected to protect the right to protest from interference by the government itself. As Butler (2015, p. 158) puts it: "(...) governments are under strict obligations to restrain themselves from attacking the rights of assembly by the illegitimate use of police and judicial powers to detain, arrest, harass, threaten, censor, imprison, injure, or kill." According to them, it does not make sense for the people to rely on governments to do so. The risk of this interpretation of the human right is that the right only exists insofar as the government confers it on its people, and only to the extent that a government agrees to facilitate it. In that case, any restriction on the right to protest by the government could not be opposed by asserting the right to protest (Butler 2015, p. 158).

The applicable human rights doctrine mitigates this paradox by simultaneously providing the right (Article 11.1 ECHR) and establishing the conditions under which it can be exercised (Article 11.2 ECHR). As these conditions are outlined by law, they appear inseparable from the right, acquiring a sense of universality. Member states of the ECHR are permitted to impose restrictions on the right to protest in pursuit of what are deemed 'legitimate aims', where the legitimacy of these aims is grounded in their compliance with democratic principles (Gerards, 2019). While censorship is a characteristic of authoritarian regimes, restrictions on protests in democratic societies cannot be based on the content of the protest. Democratic governments, which are expected to remain receptive to substantive opposition from citizens, may only impose limitations on protests insofar as they concern the physical occupation or use of public space. Accordingly, Article 11.2 of the ECHR allows the Dutch government to restrict the right to peaceful assembly when it is necessary in the interest of 'national security or public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others'. In practice, these legitimate aims are often framed subsumed under the overarching heading of 'maintaining public order'.

Note that rather than absolved, the paradox is in the first place justified by the legal framework in which it is embedded, which is supposed to be universal too. The presumption of both the legal framework's and the legitimate aims' universality in a modern liberal democracy can be traced back to the works of classic social contract thinkers such as Hobbes and Locke.

Social contract theories

The question of how to justify the government's power to regulate the conditions under which the government can be opposed, can be brought back to the question of the legitimization of governmental sovereignty in the first place. Thomas Hobbes and John Locke believed that state sovereignty is

grounded in a social contract. In order to find the function of the state, they sought to imagine how individuals would behave in a 'state of nature', a condition in which no political authority exists and people are truly free and equal. According to Hobbes, the state of nature is characterised by a grim and violent existence, where life is "solitary, poor, nasty, brutish, and short" due to the constant conflict between individuals (1651, par. 8). Faced with such disorder, individuals come to realise that it is in their best interest to enter into a social contract. This agreement involves surrendering part of their power to a central authority, the sovereign, in exchange for security, protection, and the preservation of peace (Hobbes, 1651, par. 18). The social contract establishes the state and transforms isolated individuals into citizens with a shared common interest, bound by laws and regulations for the greater good. As visually captured in the famous cover of *Leviathan*, Hobbes' vision of the sovereign is not merely a ruler above the law, but one who embodies the collective will of the people.

Both Hobbes and Locke believed in the existence of inalienable fundamental rights which are inherent to every individual from birth and can principally not be relinquished. However, according to Locke, people to some extent already comply with these moral principles in the state of nature, although conflicts arise over the interpretation and enforcement of these fundamental rights (1689, par. 4-15). Commonly known as the 'father of liberalism', he states that people establish a government primarily to function as an impartial arbiter. When the government functions properly, everyone benefits from obeying the law. The inalienable fundamental rights, which are natural because they are bestowed upon us by God, include the right to life, liberty, and property. Locke's theory of property is one of his key contributions to political philosophy. In his *Second Treatise of Government*, he explains that when individuals combine their human labour with natural resources, such as land or raw materials, those resources become their legitimate property (1689, par. 25-51).¹ Even in the state of nature, individuals have the right to defend their property and liberty, but these rights could easily be violated. People therefore hand over a portion of their individual liberty to a government in exchange for the protection of their natural rights (Locke, 1689, par. 95-121).

Thus, social contract theory provides a twofold justification for the paradox according to which the government should protect protesters from governmental interference. First, the conditions under which the government may restrict the right to protest are enshrined in law. People consented to surrendering law-making power to the government because it serves everyone's interest, and obeying the law is reasonable since the government represents the will of the people, or at least the majority. Secondly, the reasons for restricting the right to protest as formulated in the ECHR align with the rationale social contract theorists provide for why individuals would surrender sovereignty to the government. According to Hobbes, people do so to prevent the chaos of the state of nature and ensure security against one another. This rationale is reflected in legitimate aims such as national security, public safety, and the prevention of disorder or crime (and the protection of health or morals). For Locke, additionally, the government's function is to protect the individuals' natural rights to life, liberty, and property from violation by others, which corresponds to the legitimate aim of protecting the rights and freedoms of others.

Neoliberalism

Although social contract theories have been heavily criticised and revised, their ideas are still often regarded as the political foundation of modern liberal democracies. In particular, Locke's classical liberalism forms the philosophical basis for contemporary neoliberalism. In *A Brief History of Neoliberalism*, Harvey (2005) states that there has been a shift towards neoliberal theory in political-economic policies and practices, which by now has been embraced by almost all states. According to

¹ John Locke's theory on private appropriation has been widely criticised by contemporary scholars for providing a legitimisation of England's settler colonialism in 'America'.

him, neoliberalism has become the dominant mode of discourse, with pervasive effects on ways of thinking “to the point where it has become incorporated into the common-sense way many of us interpret, live in, and understand the world” (Harvey, 2005, p. 3). Therefore, the current political rearticulation of the right to protest is considered to occur within a discourse shaped by – potentially implicit – neoliberal logics. To comprehend how public order could serve as a justification for restrictions on the right to protest, the underlying neoliberal assumptions must be unravelled and exposed.

Neoliberalism gained prominence particularly from the 1970s onwards, influenced by economists such as Friedrich Hayek and Milton Friedman, and implemented in governmental policies by leaders such as Margaret Thatcher and Ronald Reagan (Harvey, 2005, p. 1-4). Neoliberalism advocates for free-market capitalism as the most effective means of fostering economic growth and improving living standards. It asserts that the state’s role in economic affairs should be minimal, limited to establishing and maintaining an institutional framework that supports private property rights and free trade, thereby ensuring the proper functioning of market forces. The rationality of the *homo economicus* and the economic laws of supply and demand should determine prices, wages, and the distribution of goods and services. Rather than government intervention, the mechanisms of the ‘invisible hand’ and ‘trickle-down effect’ are believed to guarantee the greatest welfare for the greatest number of individuals. The optimisation of the functioning of such mechanisms would require a ‘depoliticised’ government, where ideological politics are replaced by ‘amoral’ management of society.

The rise of neoliberalism coincided with the increasing importance of human rights in governing discourse (Harvey, 2005, p. 176). In the prosperous societies of post-World War II Europe, human rights advocates emphasised the protection of social justice, equality, and human dignity. In *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Whyte (2019) argues that early neoliberals strategically embraced the discourse of human rights, even though its values often conflict with the amorality attributed to neoliberal rationality. According to Whyte, however, adopting a human rights discourse provided a “philosophy of high-minded ideals” for the vicious free-market system (2019). To serve as a suitable moral framework for legitimising the neoliberal agenda, neoliberalism effectively stripped the human rights discourse of its more radical elements, instead emphasising the value that both discourses have in common: the promotion of individual freedom (Harvey, 2005, p. 5). The right to liberty and property, already declared natural and inalienable by Locke, are today codified as the classical fundamental rights, which protect the personal freedom of the individual against state intervention. The focus is on the individual’s right to shape their life freely, both culturally and economically – along with corresponding responsibility. As Thatcher famously asserted, “there is no such thing as society”, generally understood as that people cannot cast their problems to a government, since “It is our duty to look after ourselves.”²

Additionally, neoliberalism integrated the human rights framework by asserting that individual freedoms can only be safeguarded within a free-market society. To do so, neoliberal regimes frequently invoke the term ‘democracy’, but give this concept a distinct meaning in which the right to protest is more difficult to reconcile. For neoliberalism, democracy primarily signifies the absence of state intervention, with any society that is not a free-market society regarded as totalitarian. While neoliberalism requires state sovereignty to protect the rights to freedom and property, it opposes popular sovereignty (Whyte, 2019), usually considered to be a core feature of democracy. Market functioning is seen as better safeguarded by a select group of technical administrators instead of by the will of the

² In an interview for Women’s Own in September 1987, Margaret Thatcher said: “Who is society? There is no such thing! There are individual men and women and there are families and no government can do anything except through people and people look to themselves first. It is our duty to look after ourselves and then also to help look after our neighbour and life is a reciprocal business...”

majority. Rather than relying on parliamentary government, conflicting ideas are preferably resolved through the legal system (Harvey, 2005, p. 176). Therefore, neoliberalism is not inherently anti-state, but demands that the state remain 'apolitical', instead supporting the alleged neutral realm of 'civil society'.

Civil society is conceived as a domain of mutually beneficial, self-interested relations between free individuals, which the state must protect from political challenges (Whyte, 2019). Public space, then, can be considered the physical arena where people engage with civil society. In this context, public space does not inherently possess intrinsic value but functions primarily as a venue for free individuals to pursue their own economic interests. The competition that naturally arises within such spaces serves as an impetus for hard work and entrepreneurship, ultimately contributing to greater prosperity. From this perspective, the privatisation of public space is often perceived as a catalyst for investment, under the assumption that the profits generated by these ventures will eventually 'trickle down' to benefit everyone. In particular, urban public space is conceived as a site for efficient logistics, with the state's role largely confined to ensuring the smooth flow of capital (Harvey, 2012).

The consequence of this interpretation of public space is that any form of exercising the right to protest is seen as a potential disruption to the desired order and stability. Public space, much like society itself, is conceived as a collection of individuals who all seek to utilise that space in order to pursue their economic interests. Important, here, is that (neo)liberal theory is based on an interpretation of liberty in which one individual's freedom necessarily comes at the expense of another's. From this perspective, protesting may be regarded as an action that limits other citizens, who also have a legitimate claim to the use of public space. Therefore, restricting protests in public spaces can be viewed as a necessary measure to balance the competing interests of individuals wishing to utilise that space. Since the state's role is to support market functioning by safeguarding order and stability, and protests potentially disrupt the order in public space, a 'democratic' government is allowed to restrict the right to protest so other individuals can freely exert their right to liberty and property.

3. Methodology

Critical discourse analysis

The data of this thesis will be addressed using critical discourse analysis (CDA). This relatively recent school of discourse analysis assumes that structural relationships of dominance are manifested in language. Social power is defined as a form of control exerted in the interest of one group over another, influencing both the actions and thoughts of the dominated group members (Van Dijk, 1995, p. 20). Discursively implemented dominance involves preferential access to text and context, so control over discourse is considered a resource of power in modern society. Discourse is both socially conditioned and socially constitutive, meaning that it helps sustain and reproduce the status quo (Wodak, 2014, p. 303). In this case, discourse is seen as a means through which (political) ideologies are reproduced (Van Dijk, 1995, p. 18; Blommaert & Bulcaen, 2000, p. 450). The purpose of CDA, then, is to reveal the implicit assumptions that render dominant ideologies neutral (Wodak, 2014, p. 306). It specifically focuses on “the strategies of manipulation, legitimation, the manufacture of consent, and other discursive ways to influence the minds (and indirectly the actions) of the people in the interest of the powerful” (Van Dijk, 1995, p. 18).

The critical approach of CDA is not restricted to its view on the relationship between language and society but also concerns the relationship between its own analysis and the practices it investigates. CDA scholars are aware of the effects that their work, in turn, has on social reality and advocate interventionism in the practices they critically investigate (Blommaert & Bulcaen, 2000, p. 449). CDA pursues emancipatory objectives: namely, altering the unequal distributions of economic, cultural, and political goods to bring a system of excessive inequalities of power into crisis and achieve social justice (Wodak, 2014, p. 305). It is not surprising that CDA is often seen as biased and therefore unscientific by scholars who believe that their ‘objective’ work does not imply a stance or sociopolitical position. However, as academic research is always integrated into and dependent on social structures, I agree with CDA scholars who argue that research that is not critical serves to sustain the status quo (Van Dijk, 1995, p. 19). Unlike other, implicitly political studies of discourse, this thesis explicitly formulates its oppositional stance while intending to adhere to principles of self-criticism (Wodak, 2014, pp. 303–305).

Data selection and thematic framework

The emergent public debate surrounding the right to protest and the issue of disruption takes place across multiple societal domains. This thesis specifically concentrates on contestations within the Dutch political context, particularly within institutionalised settings where politicians have direct influence over the legislation or enforcement of this right. Consequently, the primary focus lies on official government communications from the Dutch parliament (lower chamber) and the cabinet. To capture the most current political discourse, the latest available government communications at the time of writing have been selected. The analysed data comprises mainly ministerial letters to parliament and a transcript of the parliamentary debate held on 22 January 2025. These documents are included in the appendix.

Drawing on the theoretical framework outlined above, a set of thematic categories has been identified as likely to feature in government communications concerning the right to protest. These themes will not be quantitatively counted but will be qualitatively interpreted, with attention paid to the manner in which politicians invoke them. The themes are as follows:

- Emphasising the democratic claim
- Recognition of the democratic paradox
- Relying on legal possibilities for restrictions
- Referring to security or safety
- Referring to smooth logistical capital flows
- Referring to the rights of others

Through analysing how ministers and members of parliament (MPs) engage with these themes, this thesis aims to reveal the implicit assumptions that render the dominant neoliberal rationalities neutral. Furthermore, the political affiliation of the speakers will be considered to contextualise the political stakes underpinning their arguments.

4. Results

The rearticulation's playing field

The analysed governmental communications reveal that the current political rearticulation of the right to protest in the Netherlands centres on three key developments: the introduction of legislation imposing a general ban on face-covering clothing during protests; a prohibition of demonstrations during official commemorative events; and the contention that disruptive protests cannot be regarded as peaceful, and, therefore, can never be protected under the human right to protest. While the proposed bans on face coverings and demonstrations during commemorative events appear primarily targeted at those protesting the genocide in Palestine, the concern over public disruption has emerged predominantly in response to the climate movement, particularly XR's direct actions against fossil fuel subsidies. As the contestation surrounding disruptions is the primary focus of this analysis, the remaining two themes will be addressed only briefly insofar as they relate to this issue.

Distinguishing these themes reveals that the current rearticulation entails proposals for restriction of the right to protest. Although the minister of justice and security briefly asserted during the parliamentary debate on 22 January 2025 that his intention to 'set boundaries' (*begrenzen*) should not be equated with 'restricting' (*beperken*) the right to protest, the data clearly indicate that the political contestation surrounding this right is divided between two opposing camps: proponents of restrictions and opponents of such measures. It was only during the concluding phase of the debate that the possibility was raised that protest rights in the Netherlands might, in fact, require reinforcement. A motion proposing that the WODC explore this possibility was officially advised against by the minister of the interior. When pressed for an explanation, the minister contended that the WODC is an independent research institute, and therefore the cabinet does not direct its research agenda; moreover, the current research design already aims to reinforce the right to protest:

Minister of the interior (NSC): *"Because the cabinet already protects the right to protest, you can really trust us on that."*

Without exception, each politician who participated in the debate began by affirming their deep appreciation for the right to protest, describing it as a 'valuable right' (*een groot goed*) or even something to be 'cherished' (*koesteren*). Its value was often substantiated by reference to historical examples of social rights secured through citizens exercising their right to protest. As anticipated, politicians explicitly characterised the right to protest as a fundamental principle of liberal democracy, integral to the identity of the Netherlands as a democratic state:

CU: *"In a dictatorship, the people are silent; in a democracy, they speak."*

CDA: *"The right to protest is a crown jewel of our democratic rule of law."*

Moreover, all parties positioned themselves rhetorically as guardians of democracy. The repetition of this stance was so pronounced that some speakers remarked on it with a touch of irony:

CDA: *"I share with the Party for the Animals this ode to the right to protest."*

This discursive alignment is significant, as it defines the conceptual framework within which arguments for restricting protest must be situated. Dutch politicians, in other words, situate the debate about protest rights within the language of democratic legitimacy, presenting themselves as its defenders.

Form or content

The right to protest allows restrictions solely based on the form, not on the content of a protest. This distinction is important for the democratic claim, yet political debates clearly show difficulty of completely banning the content of protests from the rearticulation of the right. Opponents of restrictions frequently accuse ministers, mayors, or fellow MPs of conflating irritation with the content of protests. They would charge law enforcement while applying a double standard. Outside parliamentary debates, this critique is often illustrated by the classic example of the police response to disruptive road blockades by XR compared to those organised by farmers. Especially smaller parties seem to feel unrestrained in openly supporting their preferred demonstrations in order to accuse others of cherry-picking (*selectief shoppen*). For instance, JA21 strongly discredits XR, while DENK openly supports protests related to Palestine and asylum seekers' centres. Noteworthy, however, also MPs from parties positioned closer to the 'political centre' sometimes make bold comparisons. CDA interrupted the PvdD during the opening speech, questioning about a barn occupation six years ago by arguing that the protest against pig slaughter in industrial farming caused stress to the animals – without mentioning that activists were locked inside the barn for hours on police orders, as their safety could not be guaranteed due to farmers gathered outside threatening them:

CDA: *"I am referring, in particular, to the barn occupation in Boxtel five years ago. Dozens of demonstrators committed trespassing, which caused stress to the animals."*

Nonetheless, the minister maintains that irritation over the content of protests and their form can be strictly separated. In doing so, the minister denies any allegation of censorship from MP's. Coincidentally, according to the VVD, it is always the same protesters engaging in disruptive tactics: 'farmers, pro-Palestine protesters, and climate activists'. In first instance, opponents do not immediately fall for this reasoning. They mention that also restrictions based on the form create a risk:

SP: *"A government that decides what can be protested against, or how it can be protested, is frankly quite frightening."*

With these concerns, this MP articulates the democratic paradox previously described. The minister's claim that the issue solely concerns the form of protest is insufficient to justify restrictions, since this still allows the minister to determine which protests are deemed acceptable and which are not. To legitimise such restrictions, a more complex rhetorical manoeuvre is required, namely the distinction between peaceful and disruptive protests.

Disruptive 'versus' peaceful protest

The central argumentative strategy of calls to restrict disruptive protests rests on a specific interpretation of the legal framework governing protest rights and criminal law. The pivotal issue lies in the legal doctrine that only peaceful assemblies are protected under Article 11 ECHR. Politicians justify proposed restrictions by implying that the key legal distinction lies between peaceful and disruptive protests – thereby suggesting that disruptive protests are by definition violent and thus not protected under Article 11 ECHR. Initially, government communications consistently mentioned 'protests that purposefully break the law', however not necessarily declaring these protests unpeaceful. The new ministers of justice and the interior of the (by now already fallen) cabinet Schoof I, however, increasingly portrayed peaceful and disruptive protests as mutually exclusive categories, exemplified most clearly in the government statement of 10 January 2025. This is why the dichotomy between peaceful and disruptive conduct is

foregrounded by the MP for the PvdD, who initiated the debate on 22 January 2025. She opens the debate providing a clear legal critique of the legal interpretation that presents peacefulness and interpretation as mutually exclusive categories, and warns of its implications. The remainder of the debate is largely marked by rhetorical attempts by several politicians to reaffirm and legitimise the dichotomy.

Building on the rhetorical construction of the mutual exclusivity between ‘peaceful’ and ‘disruptive’ protest, a second interesting legal argumentation is introduced. This concerns the principle that although protests may not be restricted on the basis of their content, they can be restricted on the basis of their form. Since such form-based restrictions are legally permissible, the argument goes, they should therefore be enforced. As such, this reasoning relies solely on the mere possibility of imposing restrictions to justify actual limitations on protest rights. In Article 11 ECHR, however, the possibility of restrictions is formulated the other way round: the general principle is that protests must be facilitated, and restrictions on the grounds of disorder are an exception permitted under prescribed conditions. The argument that since the conditional exception exists, it must be applied, seems not particularly convincing. After all, it is directly at odds with the human rights doctrine codified in Article 11 ECHR.

Therefore, in the political debate surrounding disruptive protests, this argument is often paired with a closely related one grounded in criminal law: that any disruption of public order constitutes a criminal offence and must consequently be sanctioned. Thus, the mere possibility of punishing protesters becomes the justification for the actual imposition of punishment. This criminal law variant of the argument seems to be more convincing than the previously described human rights one, likely due to the nature of the criminal law domain. It resonates with the appeal of punitive populism, which capitalises on a widespread societal sentiment that illegality must inevitably be met with retribution. This is why proponents of restrictions can, for example, state:

Minister of justice (VVD): *“It may indeed cause friction, but it is not lawlessness. Criminal offences remain criminal offences, even in the context of demonstrations.”*

However, this reasoning, too, is at odds with the legal framework in place. Under Dutch criminal law, meeting the formal criteria of a criminal offence does not automatically result in the penalty prescribed by the Criminal Code for several reasons. Most importantly here, the right to protest can nullify the criminality of actions that would otherwise constitute an offence. This follows from the rationale underlying the right to protest, which holds that certain conduct deserves greater protection from state intervention when it occurs within the context of a protest. Opponents of restrictions try to highlight this rationale:

PvdD: *“It’s telling that the cabinet insists on drawing a nonsensical distinction between peaceful protest and disruptive action. It is nonsensical because the very aim of protest is to draw attention to injustice. Nuisance and civil disobedience are part of a free democracy.”*

Thus, they resort to the rather general notion that protests are intended to ‘create friction’, instead of articulating that the rationale of the right to protest can actually nullify the criminality of conduct. While ‘nuisance and civil disobedience’ are emphasised to be a part of democracy, it appears a bridge too far to defend criminal acts committed by protesters. This evidently remains a difficult political position, which is being exploited by politicians in favour of restrictions. They compare criminal behaviour and corresponding retribution during protests to any other situation:

JA21: *“If I drive 5 kilometres over the speed limit, I get a fine. Why are climate activists allowed to misbehave every week?”*

By eliminating the purpose of the right to protest from the debate, while simultaneously emphasising that it is specifically protesters who are responsible for criminal acts through disruption, politicians tap into public sentiments of perceived unfairness regarding unpunished offences. After all, the law should apply equally to all; thus, if protesters are seen to consistently ‘get away’ with their actions, it creates the impression that they enjoy privileged status. Protesters are considered to ‘abuse’ the right to protest through their ‘intentional’ disruption of public order. Although these terms are rather meaningless in this context, they deliberately evoke associations with criminal law, where concepts like intent and abuse carry legal significance. By emphasising the intent behind disruption, politicians attribute malicious motivations to disruptive protesters:

SP: *“It is also under pressure from rioters who, under the guise of the right to protest, commit serious criminal offences.”*

By asserting that protesters incite unrest and chaos merely because they enjoy doing so, the possibility that such actions are part of a broader political agenda is carefully avoided:

D66: *“Some [protesters] deliberately crossed the boundaries of the law; for the outrage, for the thrill, or for the attention.”*

Through a gradual and deliberate construction of this narrative, protesters are depicted as ‘thugs’ (*tuig*), rather than as concerned citizens seeking to draw attention to their criticisms of the government:

PVV: *“Disorderly and law-breaking actions have nothing to do with protests by citizens who feel unheard or concerned about a societal issue. No, this entire Extinction Rebellion circus is orchestrated by a shadowy group that incites a paid band of fools to break the law.”*

This process of criminalisation allows politicians to dismiss disruptive protesters as unworthy of serious engagement. The underlying message is that politicians would be willing to engage in dialogue with respectable citizens who exercise their right to protest ‘properly’, but there is no reasonable obligation to do so with thugs who supposedly abuse the right in order to riot. This principle also manifests as the justification for proposals advocating a complete ban on face-covering clothing for protesters. The ministers candidly acknowledge that the primary aim of this prohibition is to facilitate the retrospective identification of protesters for criminal investigations. Ironically, the only reservations concerning this proposal stem from their recognition that it may pose difficulties when individuals in the Netherlands seek to express opposition to dictatorial regimes, which are likely to afterwards impose sanctions on these peaceful protesters – such as those in Iran and China.

Opponents of restrictions warn for a twofold political development: on the one hand, criminalisation of protesters, on the other, the normalisation of restrictions of the right to protest. Yet, the effectiveness of the rhetorical strategy regarding disruptive protests lies precisely in the conflation of these two elements. The criminalisation of protesters seems to function as a means to bypass the ECHR’s framework for justification of restrictions. Consequently, the substantive meaning of ‘disorder’ as mentioned in that framework is never really questioned as such. Therefore, the theorised neoliberal rationale of why ‘public order’ deserves protection is not evident in the political debate, yet maintaining public order clearly plays a prominent role in legitimising restrictions on the right to protest. In the current rearticulation, the concept of public order is predominantly interpreted through the lens of specific criminal offences. I will first analyse the extent to which these specific criminal offences can be

understood as an expression of neoliberal logic, before summarising what this reveals about prevailing conceptions of public order within the discourse on disruptive protests.

Neoliberal logic of public order crimes

In all analysed governmental communications, the criminal offence most frequently attributed to disruptive protesters is vandalism. Politicians who seek to justify the imposition of restrictions consistently assert that such protesters have caused damage. At the same time, even those who oppose such restrictions often feel compelled to stress that vandalism is unequivocally unacceptable:

PvdD: *“Let me be clear: the Party for the Animals strongly condemns the use of violence and vandalism.”*

By condemning the act of damaging private property under all conditions, politicians evidently prioritise the protection of individual property rights over the exercise of the right to protest. This reflects the inalienability of property rights as rooted in liberal political philosophy. It is remarkable, however, that vandalism is the most frequently cited offence in this context, given that it is not directly related to issues of ‘publicness’ or ‘order’. Most significantly, references to vandalism are almost always accompanied by references to violence. By rhetorically coupling these two terms, a discursive link is established between disruptive protest, specific criminal behaviour, and the legal requirement of peacefulness, a condition necessary for protection under the right to protest. The consistent association of vandalism with violence thus contributes to a narrative in which the peacefulness requirement of Article 11 ECHR is interpreted as excluding any form of damage to property. Put differently, property rights are construed in such expansive terms that they effectively absorb the very concept of peacefulness.

The prioritisation of property rights is also evident in the enforcement strategies against vandalism that politicians regard as most effective. A motion has been proposed requesting an investigation into the most effective means of recovering damages caused by protesters or the organisation that initiated a disruptive action. This approach reinforces the principle that the right to protest does not override the ostensibly neutral rules of civil law, which regulate relations between citizens within civil society. Any individual who inflicts damage upon another’s property – or that of the state during the course of a protest is expected to provide compensation, and the exercise of a fundamental human right does not absolve them of this obligation. The presumption that imposing financial penalties on protesters serves as an effective deterrent reflects a distinctly liberal worldview. It assumes a conception of the individual as *homo economicus*, who rationally weighs the costs and benefits of engaging in disruptive behaviour. The underlying logic posits that, once the financial costs reach a sufficiently high threshold, the anticipated benefits will no longer outweigh them. This rational choice theory, however, rests on a self-interested definition of ‘benefit’ – a premise that is perhaps difficult to sustain in the context of social justice activism, where motivations frequently transcend considerations of personal gain.

The same economic rationale is employed in evaluating the proportionality of police enforcement and criminal sanctions. Politicians appear to assume that disruptive protesters factor anticipated police repression into their decision-making calculation. If the existing levels of police repression prove insufficient to dissuade protesters, they are deemed excessively persistent:

SGP: *“People who choose to protest in this way are not made of sugar.”*

Accordingly, to deter protesters effectively, state intervention must be more severe. It is noteworthy that politicians explicitly invoke the term ‘chilling effect’ (*afschrikwekkend effect*) in this context. This term refers to the sense of intimidation caused by state intervention, which discourages individuals from

exercising their right to protest in the future. The concept of a chilling effect has been developed by the ECtHR as a potential risk arising from restrictions on the right to protest, which national authorities are obliged to actively prevent. The ECtHR's jurisprudence establishes that criminal sanctions imposed on peaceful protesters are permissible only insofar as they do not produce a chilling effect. However, in Dutch parliamentary debate, the term is employed in precisely the opposite sense: current police enforcement is considered insufficiently deterrent to protesters. Thus, politicians have appropriated the term 'chilling effect', effectively inverting its original intent.

While property rights play a significant role in the meaning attributed to public order, neoliberal thought is less explicitly reflected in conceptions of public space. In the analysed government communications, various reasons are mentioned as to why disturbances of public order caused by blockades would be problematic. However, the argument that road blockades disrupt capitalist flows, which according to neoliberal policies should be protected at all costs, is not evidently recognisable. Rather than the concern for capitalist logistics, the inconvenience caused for other road users is mentioned. Here, the 'normal' use of roads by vehicles is prioritised over the use of the street as a space for political contestation. Most often, however, the argument presented is that road blockades are unsafe, either without explaining which risks they exactly pose, or with reference to the hypothetical example of ambulances being unable to use the road:

SGP: *"Yet highways have been blocked 35 times, posing safety and public order risks."*

Furthermore, a legislative proposal was put forward aiming at intensifying the criminalisation of blocking 'vital infrastructure'. Although the specific necessity of protecting infrastructure could signal neoliberal logic, the political debate does not elaborate on why it deserves this extra level of protection, other than general warnings for "great risks for our national safety". The argumentation in support of this proposal essentially rests on the fact that the United Kingdom has already introduced similar stricter regulations in the Public Order Act 2023.

Concluding so far, a rule of the political discourse appears to be the assumption that there exists a clear and unambiguous definition of 'public order' and 'disorder'. The underlying value of public order is never explicitly stated but is presumed to be both known and uniformly understood by all participants in the debate. Proponents of restrictions on the right to protest consistently define public order in terms of criminal offences. By placing the criminalisation of disruptive behaviours at the forefront, restricting the right to protest becomes a seemingly logical subsequent step. Even politicians who oppose restrictions feel compelled to condemn those specific criminal acts. While doing so, they often acknowledge the necessity of fighting disorder:

PvdD: *"It gives me the impression that this isn't about tackling disorder, but about discrediting certain groups [of protesters]."*

This is a first example of how political disagreement – in this case, the criminalisation of disruptive protesters – masks a consensus on the importance of maintaining public order.

Tensions between authorities

The political rhetorical conflation of the human rights system and Dutch criminal law creates several incoherent stances and tensions between the politicians themselves and diverse other state authorities: the law, mayors, the public prosecutor service, judges, and police. The legal fields are composed by complex legal frameworks, characterised by several open-ended terms that require interpretation and application by the competent authorities. The scope for interpretative discretion of such terms, such as 'public order', influences the perception of role of law in societal developments. Within the context of

rearticulating the right to protest, the perceived function of the law reveals a fundamental tension in parliamentary debates. On the one hand, justifications for imposing restrictions heavily depend on the purportedly fixed and determinate character of the law. This is evident in the recurring argument that disruptive conduct is, by definition, prohibited under criminal law and must therefore be sanctioned accordingly. On the other hand, the same law is interpreted reductively when the concept of public order is invoked, where the legal balancing mechanisms and the jurisprudence surrounding restrictions on the right to protest are conveniently omitted. Thus, the data reveal an incoherent approach of the law. While criminal law is treated as self-evident, the right to protest is framed as contingent, implying that the legislature bears the responsibility to ‘norm’ (*normeren*) in accordance with the evolving democratic will of the people:

SGP: *“It now seems a bit as though Ms. Teunissen [PvdD] is saying that this type of law is a sort of natural phenomenon that can never change. But you can also see certain societal views on this issue, and we are here as a parliament to potentially amend laws.”*

This incoherence also reflects a deeper tension concerning the role of parliament itself as part of the legislative state power. Much of the political debate on public order centres on the relationship between the legislature and those authorities charged with the practical implementation of the human rights limitation framework, namely, the mayor, the public prosecution service, and the criminal courts. Opponents of restrictions frequently argue that existing legislation already provides sufficient grounds for intervention in disruptive protests, rendering additional legislative measures superfluous. They highlight a joint letter from mayors to parliament expressing no desire for more severe rules. This proves a powerful point, since even proponents recognise the mayor’s authority as the executive power responsible for maintaining public order. In this regard, all MPs adopt a deferential stance, perceiving themselves as serving the mayor, with all proposed legislative amendments framed as intended solely to facilitate the practical day-to-day exercise of the authority of the mayor. Such deference by elected representatives to unelected officials is noteworthy, as it reveals yet another peculiar incoherence in the position of those advocating for additional restrictions. When confronted with the argument that mayors themselves consider the current legal framework sufficient to impose restrictions on protesters, proponents have little option but to claim that this framework is nevertheless inadequate, given the continued occurrence of disruptive protests:

CDA: *“We must unfortunately conclude that there has been no enforcement.”*

Implicit in this line of reasoning is the suggestion that mayors are failing to fulfil their duties in practice, which is at odds with the deferential attitude of MPs towards mayors. The same line of reasoning, justifying the need for further legislation based on an alleged lack of rigorous enforcement, is repeated with regard to other authorities:

CU: *“And above all: how will he [the minister of justice] ensure that demonstrators who break the law no longer go unpunished? Does he recognise my frustration about this apparent impunity, and especially about the apparent disparities in how demonstrations are treated?”*

PVV: *“How is it possible that there were 700 arrests yet no prosecutions?”*

Because it is politically far-reaching to defend criminal acts committed during protests, MPs that oppose additional legislation respond by shifting the responsibility for lack of strict enforcement to judicial authorities:

PvdD: *“The Party for the Animals has always said that it is up to the court to decide whether a criminal offense has been committed or not. On appeal, these demonstrators were acquitted. We ourselves therefore have no judgment on this, but the demonstrators were acquitted.”*

By invoking the authority of the public prosecution service and the judiciary, opponents of restrictions on the right to protest implicitly challenge the commitment of opponents of such measures to the rule of law, particularly the independent status of the judiciary within the Dutch democratic system. However, this challenge is not made explicitly, allowing proponents to avoid having to formulate contrary claims. Apparently, in the current political rearticulation of the right to protest, politicians are less committed to upholding the aspiration of a rule of law than to the democratic claim. Especially more marginal right-wing parties show little hesitation in disregarding judicial authority altogether, while even the VVD minister of justice only feels compelled to defend the public prosecution service, which formally falls under his responsibility.

Given the humble stance adopted by MPs, positioning themselves as advocates seeking to facilitate the daily administrative practices of mayors, it is not surprising that police capacity is frequently cited as a practical barrier to effective enforcement against disruptive protests. This argument, of course, had already been widely advanced by supporters of restrictions in the public debate outside parliament. Relying on the general assumption that the presence of police enhances safety, they argue that the large-scale deployment of police to end blockades comes at the expense of having ‘blue in our neighbourhoods’. Ironically, within the parliamentary debate, the lack of police capacity is reused as an argument by ‘left-wing’ politicians opposed to restrictions on the right to protest. They point to the joint letter from mayors, who not only assert that they already possess sufficient legal powers, but also request increased police capacity. In doing so, they seek to frame the issue of disruptive protests primarily as a practical challenge, thereby aiming to demonstrate that the existing legal framework surrounding the right to protest does not require further limitations.

However, by adopting this position, these politicians admit that disruptive protests are problematic. This is a second example of how political disagreement masks consensus on the necessity of maintaining public order. While disagreeing on whether additional legislation or increasing police capacity would be the most effective means of stopping disruptive protests, politicians proceed on the assumption that intervention is the only viable option, and none raise the fundamental question of why this must be the case. The sole exception is JA21’s MP, who openly questions why authorities do not decide to leave protesters who are blocking roads where they are. He candidly admits that his aversion to XR is so intense that his remark can only be interpreted as a sadistic hope that climate activists should be run over by cars.

The right to public space

Concluding so far, the rearticulation of the right to protest is characterised by the criminalisation of disruption, which thus primarily defines the concept of public order. In the political discourse, the emphasis on certain specific criminal offences offers the clearest and most direct explanation as to why disruptive protests are deemed to disturb public order. The rationale behind criminalising these specific offences is often grounded in the neoliberal idea that the state must protect individuals’ property rights. However, alongside this explicit neoliberal conception of public order as the safeguarding of property rights, the parliamentary debate also includes more ambiguous, general claims regarding other freedoms of individuals, such as:

Minister of justice (VVD): “(...) *the WODC will also investigate this issue: how does the personal freedom of a protester compare to the personal freedom of, for example, private individuals?*”

The minister’s choice of wording is particular, as the importance of ‘a protester’s freedom’ lies precisely in the notion that this is not a personal liberty, but rather a collective one. Moreover, the fact that personal freedoms are set against one another here reflects the liberal premise that one individual’s freedom ceases where another’s begins. The legitimacy of state sovereignty, here, resides in the state’s role in protecting citizens from infringements upon their freedoms by other citizens. But what, in this context, constitutes the ‘personal freedom of for example individuals’ exactly?

Since the matter concerns behaviour that disrupts public order, these freedoms relate to the rights exercised by citizens in their use of public space. This presupposes a conception of public space as a public good, which must be shared by all individuals entitled to some degree of access. The freedom of individuals thus entails the right of every citizen to utilise public space in accordance with their own preferences. The underlying liberal assumption is that the use of public space by some inevitably occurs at the expense of others, and it is the role of the state to adjudicate a fair distribution in this regard. In this debate, politicians establish the norms that determine this equitable allocation, and in the Dutch political landscape, this often occurs through the invocation of the term ‘normal’:

Minister of justice (VVD): “*It is not normal to chain or glue oneself to a motorway. Behave normally! It is not normal.*”

Here, a hierarchy is constructed regarding what constitutes ‘normal’ use of public space, which takes precedence and, consequently, deserves protection from the disruptive use by protesters. However, what exactly constitutes ‘normal’ use of public space is only sporadically illustrated through examples. ‘Normal’ behaviour is rarely justified with explicit reference to practices that serve logistical capitalism. There is little appeal to concerns of traffic flow or supply chain continuity. While references are made to the fact that road blockades cause traffic jams and, therefore, inconvenience drivers who ‘simply’ wish to commute to work, the right to ‘normal’ use of public space at times extends beyond this direct link with neoliberal arguments. For instance, it may encompass the right not to be confronted with the unsettling sight of masked individuals while walking on the street:

CDA: “(...), *it is also very unpleasant for bystanders who are not protesting to see masked individuals walking around in their city. I find that truly undesirable.*”

The claim that disruptive protests infringe upon the ‘personal freedoms of other individuals’ functions as a last-resort argument. Even if such disruptive behaviour is not necessarily unlawful, it is nonetheless framed as coming at the expense of the rights of others to make undisturbed use of public space. In line with the criminalisation narrative, disruptive protesters are thus depicted as violating widely held social norms associated with the conduct of decent, rational citizens. Politicians reinforce this portrayal by repeatedly voicing their own irritation at those who choose to inconvenience others through protest, thereby aligning emotional response with normative judgement.

Diminishing public support

This irritation, politicians assure when questioned, concerns not the content but the form of the protest. However, since even with regard to the form alone, personal irritation on the part of politicians is not a legitimate basis for legislative decision-making, such irritation is subsequently projected onto ‘the

majority’ or ‘ordinary citizens’. The assertion that disruptive protests are widely disapproved by the public is reflected in the frequent invocation of the concept of ‘public support’ (*draagvlak*):

Minister of justice (VVD): *“What matters to me is the public support for the manner in which we demonstrate. That is indeed relevant, because if the way of protesting no longer has societal backing, I could double the police force — which, by the way, I cannot; (...) — but then we can no longer demonstrate in a normal way here.”*

Disruptive protesters are said to undermine support for the right to protest in as such, by angering non-protesting citizens towards all protesters. This implies, first and foremost, that the legitimacy of human right to protest depends on societal approval. This notion is fundamentally at odds with the principle that the right to protest protects minorities who wish to express themselves against the tyranny of the majority.

Moreover, addressing concerns about declining societal support introduces yet another striking inversion in the rhetoric surrounding the right to protest. In recent years, national human rights organisations such as the National Ombudsman and Amnesty International Netherlands have published reports warning that the right to protest in the Netherlands is ‘under pressure’ (De Nationale Ombudsman, 2018; Amnesty International Netherlands, 2022). With this now familiar expression in public discourse, they refer to the increasing state interference, specifically, the growing tendency of mayors and police to exercise their powers earlier and more forcefully. Politicians, by contrast, argue that the right to protest is under pressure due to the conduct of disruptive protesters themselves:

Minister of justice (VVD): *“I do not at all believe that the right to protest in the Netherlands is under pressure, except insofar as public support for it is under pressure. That is how I experience it.”*

Similar to the appropriation of the term chilling effect, by employing it while attributing the opposite meaning to it, a comparable rhetorical manoeuvre now occurs with the expression that the right to protest is under pressure. This stark inversion is frequently justified in passing with the phrase:

“A small group spoils it for the rest.” (Een kleine groep verpest het voor de rest.)

What it is that is being spoilt here, remains undefined. This sentence is emblematic for the rearticulation of the right to protest, as it encapsulates many of the described neoliberal implicit assumptions. By introducing the problem of diminishing public support, politicians not only position themselves as protectors of victimised fellow citizens against the irritating protesters in a direct sense. They also portray these disruptive protesters as responsible for the purported erosion of public support among those very citizens. Consequently, by restricting the right to protest, politicians paradoxically claim to be safeguarding the right itself:

CDA: *“Protesting is a fundamental right, but it is no excuse for anarchy. If we want this right to retain its value, we must set clear boundaries and take a firm stance against violations. Let us ensure that protesting becomes once again a symbol of democracy, rather than chaos.”*

After all, this right is regarded as a fundamental principle of our liberal democratic society, and must therefore be cherished for those citizens who wish to exercise it in a decent, normal manner. This principle is also demonstrated in the broad, general appeal to the common-sense liberal notion that rights come with duties, without ever specifying precisely what those duties entail:

NSC: *“Demonstrations are an essential right in a democracy and a crucial safeguard against a totalitarian state. Citizens must be able to express themselves openly against the government, even – or especially – when that message is unwelcome. We must not make concessions on this constitutional freedom. However, freedoms also entail responsibilities. We must collectively acknowledge that these responsibilities are not being met by a relatively small, yet highly visible, group of demonstrators.”*

Seemingly a kind of moral platitude, dressed in legal language, this notion reveals the true nature of the debate. It implicates that one has the right to protest, but is obligated to exercise that right only in ways that the government considers acceptable. Thus, the notion of duties pertains primarily to the self-discipline expected of right-holders.

Negation of relationship politicians-protesters

The focus shifts to the relationship between disruptive protesters and their fellow citizens, with disruption portrayed as the distorting factor in that relationship. An MP even attempts to advise protesters on better strategies that might salvage this relationship by suggesting that such confrontational tactics are counterproductive:

CU: *“Protests are allowed irritate me, but sometimes we need to say to each other: behave yourself, because that only strengthens your argument.”*

In doing so, she implies that the goal of disruptive protesters is to convince fellow citizens of their political stance, rather than to directly challenge the politicians themselves. In this articulation, the government’s relationship with the protesters is entirely effaced – rendering the debate more reflective of a neoliberal rationale than one grounded in social contract theory. The omission of the politicians’ own role is once again facilitated by the criminalising portrayal of protesters, who are consequently no longer regarded as reasonable citizens whose interests warrant representation in parliament. They are considered external to the Dutch population:

Minister of the interior (NSC): *“We are zooming in on the category of protests that the Netherlands is particularly troubled by.”*

The perceived lack of necessity to engage substantively with protesters is not only a position advanced by proponents of restrictions on the right to protest, but has become normalised throughout the entire political discourse. Only once does a MP from the SP raise the idea that politicians should be open to the demands of protesters. However, even this suggestion is framed as a solution to insufficient police capacity. This illustrates how the relationship between protesters and politicians is systematically negated, while protests are increasingly reduced to a matter of public order.

In this narrative, even the police are regarded as more integral to the body of democratic citizens than the disruptive protesters. This can be deduced from the fact that all politicians feel compelled to express gratitude towards police officers. They commend the police for their willingness to repeatedly arrest peaceful protesters, even when such actions are described as ‘inexplicable’, and when the police themselves claim to ‘no longer understand’ the situation:

SP: *“And yes, I sometimes get frustrated when a large police presence is required. I have great respect for the fact that they nevertheless show up time and again. I also fully understand their irritation.”*

The police are thus portrayed as a separate, apolitical entity, a victim who, like other fellow citizens, bears the burden of the inconvenience caused by disruptive protesters. It goes without saying that this rhetorically established relationship between the police and protesters is never linked to the politicians themselves.

Dignity

In line with neoliberal principles, which reduce the role of government to a technocratic, executive function, the rearticulation of the right to protest involves framing disruptive protests primarily as matters of public order. Within the analysed political discourse, discussions surrounding a ban on protests during commemorative events constitute a notable exception to this managerial, depoliticised approach to politics. This is the only subtopic within the debate where legislative proposals to restrict the right to protest explicitly reflect judgements concerning the content of the protests. The protection afforded to commemorative events is grounded in notions of nationality and dignity, rendering them “almost holy moments”. Ironically, the intrinsic value of the right to protest is occasionally linked to the same origins as the value attributed to commemoration:

PvdD: *“Let us not forget one crucial point: the right to protest is deliberately enshrined in the European Convention on Human Rights. This Convention was established after the Second World War with the guiding principle: never again.”*

The Dutch culture of remembrance surrounding the Second World War, which commands respect from all who find themselves within our borders on the 4th of May, rests on the conviction that we, as a nation and as Dutch citizens, have learned our lessons and will never again perpetrate such atrocities against humanity:

CU: *“However, even then, you still have to show respect. If there are relatives of Holocaust victims present, I do not care what you think of whichever president, but then you simply have to take into account who is present there. I consider that a matter of respect and decency. So I would not excuse that either, but rather say: let us fight for justice without causing suffering ourselves. So, practice what you preach.”*

By glorifying the act of remembrance, politicians who represent this self-conscious people seek to absolve themselves from complicity in the genocide that unfolded before their very eyes. Only those individuals who seek to disturb this moment of national dignity still have to learn.

VVD: *“Concluding. As far as my party is concerned, there is no room to spread terrorist ideology through demonstrations. I also want to prioritise the right to commemorate above the right to protest.”*

5. Conclusion

Central to this thesis is the observed rearticulation of the right to protest within Dutch political discourse. It has been noted that the growing calls for law enforcement against disruptive protests stand in tension with the Dutch government's claim to uphold democratic principles (Butler, 2015). Human rights doctrine expects a democratic government to protect political contestation against interference by the government itself. This study investigates how Dutch national politicians navigate this paradox; in other words, how they justify legislative proposals that seek to restrict the right to protest. Given that restrictions on the right to protest are not permitted on the basis of content, but may be justified on the basis of form, it was theorised that such justifications rest upon a particular conception of public order.

Through an analysis of governmental communications and a parliamentary debate concerning the right to protest, it is found that the prevailing conception of public order within this political rearticulation is profoundly neoliberal. By discursively conflating the legal domains of criminal law and human rights, the substantive meaning of public order is left unquestioned, with an assumed, unambiguous definition and underlying value accepted by all participants in the debate. CDA reveals that not only proponents of restrictions on protest rights, but also 'left-wing' politicians opposing such measures, acknowledge the necessity of combating disorder. The neoliberal interpretation of public order as an unquestioned premise enables a 'debate' about the limits of the right to protest. Consequently, both proponents and opponents of restrictions, in their own ways, serve to defend the status quo (Wodak, 2014). Public order is predominantly interpreted through the lens of specific criminal offences, which in turn reflect a neoliberal rationale prioritising the protection of private property above all else (Harvey, 2005).

Neoliberal logics also shape the conception of public space and the relationships between citizens. Protesters who disrupt public order are portrayed as inconveniencing other individuals, thereby limiting their right to use public space in a 'normal' manner (Harvey, 2012). By framing disruptive actions as directed towards fellow citizens, politicians entirely elide the protesters' political appeal to the government itself. Through the criminalisation of such protesters, they are excluded from the citizen population whose political demands parliament should address. Thus, the neoliberal perspective shifts the ideological justification for political decisions towards a technical, bureaucratic management of public order (Harvey, 2005). Its insistence on state sovereignty to protect freedoms and property rights, while fundamentally opposing popular sovereignty, is also reflected in the unchallenged assumption favouring increased police deployment against protesters. By appropriating the claim that the right to protest is under pressure, politicians advocating restrictions present themselves as defenders of democracy.

Since all participants in the political discourse recognise that the right to protest is inseparable from democratic ideals, the current rearticulation of protest rights simultaneously constitutes a recalibration of the very conception of democracy itself. This thesis has demonstrated that the government's law enforcement against those who oppose it is institutionalised, depoliticised, and aligned with the human rights and freedom values underpinning our modern neoliberal democracy. Hence, the findings align with a body of scholarship characterising neoliberal regimes as increasingly authoritarian. Bruff (2014, p. 115), for example, observes a reconfiguration of the state into a less democratic entity through constitutional and legal reforms designed to insulate particular policies and institutions from social and political dissent. Under authoritarian neoliberalism, dominant social groups are less interested in neutralising resistance through concessions, "instead favouring explicit exclusion and marginalisation of subordinate social groups through the constitutionally and legally engineered self-disempowerment of nominally democratic institutions, governments, and parliaments" (Bruff, 2014, p. 116). Similarly, Wacquant (2012) argues that neoliberalism increasingly repurposes law towards

repressive ends, thereby enhancing the punitive functions of the state. Recent incidents involving ‘disruptive’ peaceful protesters and police in the Netherlands suggest that this repressive development is accelerating.

As the last paragraph of the results section shows, and in line with many critical social theorists, I interpret the intensified repression under neoliberalism as an attempt to resolve the legitimization crisis of capitalist ‘democratic’ states, and more broadly, the crises inherent to global racial capitalism. I contend that this authoritarian ‘fix’ is but a temporary adaptation of capitalism, equally untenable as previous ones. As Bruff notes: “The apparent strengthening of the state simultaneously entails its growing fragility, for it is becoming an increasingly direct target of a range of popular struggles, demands, and discontent by way of the pressures emanating from this strengthening” (2014, p. 124-125). The fragility of the repressive neoliberal state can be exposed by continuing to disrupt its orders.

Appendix

List of analysed documents

- Informative letter from the minister of the interior and the minister of justice to parliament, dated 19 April 2024 (19 pages).
- Informative letter from the minister of the interior to parliament, dated 12 January 2025.
- Informative letter from the minister of justice to parliament, answering parliamentary questions from GroenLinks-PvdA's MP, dates 20 January 2025 (5 pages).
- Legislative proposal and explanatory memorandum from VVD's MP under the name of *Law on Combating Online-Incited Public Order Disturbances*, dated 27 March 2025 (13 pages).
- Memorandum from the Research and Data Centre of the ministry of justice (WODC). Research design for the commissioned research titled *Sustainability of the Legal Framework and Strengthening the Action Perspective of the Right to Demonstrate*, dated 20 January 2025 (3 pages).
- Stenographic account of the parliamentary debate from 22 January 2025. Textual account of all interventions by ministers and members of parliament during the debate (100 pages).
- Official news statement from the cabinet on the national government's website titled *Cabinet explores measures to counter the undermining of demonstrations*, dated 10 January 2025. <https://www.rijksoverheid.nl/actueel/nieuws/2025/01/10/kabinet-treedt-op-tegen-bewust-ontwrichtende-acties-die-het-demonstratierecht-ondermijnen>

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