

Wintering geese in the Netherlands...legitimate policy?

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1 Introduction

The purpose of this summary paper is to explore the issue of legitimacy in the concrete case study of wintering geese in the Netherlands¹². This paper starts with a section that places the theoretical notions of legitimacy in relation to the character of nature conservation in the Netherlands. The next section describes in some detail the implementation of the Policy Framework Fauna Management (PFFM). In the final section the legitimacy of the PFFM is assessed. Rather than giving a simplistic normative judgement, the assessment tries to highlight the problems and possibilities of legitimacy production in nature conservation policy.

2 The issue of Legitimacy in Dutch Nature Policy

Legitimacy refers to the question why the outcomes of binding collective decision making ought to be accepted by those whose interests are being harmed by the decision in question (Scharpf 1970; 1999; 2004; Weber 1972: 16-17, Chapter 9). In modern-day western democracies individual interests are seen as legitimate concerns, which cannot be harmed without valid reasons. So when there is a higher order commonality (society) whose interest could collide with those of the constituting individuals, well-founded arguments need to be provided to legitimize outcomes of collective decision-making that places the collective concern over and above individual interests.

This issue of legitimacy especially arises in 'dilemma'- and 'zero sum'-games (Scharpf 2004). In the former the binding force of collective courses of action is severely weakened by the availability of opportunistic choice options and in the latter a redistribution of resources from some agents to others is implied. Unpopular policy and decisions are not unthinkable in these situations, even if they provide an often necessary and urgent remedy to societal problems. Nonetheless in today's democratic society the state is no longer omnipotent and omniscient, has lost its monopoly on policy making to other public and private agents and has increasingly become embedded in a multi-level governance structure that combines, in a complex and incoherent way, territorial and functional modes of organization.

This implies that well-founded arguments need to be provided for in relation to both the outcomes/effects of the intended decision as well to the procedures that

¹ This summary paper is a condensed version of a detailed account of the implementation of the Policy framework Fauna Management in the Netherlands. For the full article please contact gilbert.leistra@wur.nl.

² The information that was used to describe the case study in this paper was obtained by means of in-depth interviews, document analysis and following media coverage.

led up to the decision. A government can not base its legitimacy on output or efficiency alone, if it wants to call itself a democracy. Democratic regimes get their legitimacy from different types of arrangements - through majority rule and the protection of minorities as well as through procedures and securing the needs of society at large (Larsson 2002). Legitimacy can therefore be seen as a function of the interdependence and interplay of procedures (input and throughput) and results (output). The assumption is that whether one likes it or not legitimacy increasingly has to be produced procedurally, since substantive sources of legitimacy — religion, charisma, tradition, scientific expertise (Weber 1972; Friedrich 1972) — that often establish the foundation of many policy and political processes and outcomes, have increasingly lost their legitimating force. The limits of rationality and the multitude of actors at different administrative levels increase the need for more emphasis on the input and throughput requirements of legitimacy production. This need can also be observed in Dutch Nature Conservation Policy.

The birth of what could be called a Dutch tradition of nature conservation policy dates from the late 19th century. However, it was not until 1990 that Dutch nature policy became mature with the introduction of the first nature policy plan. Characteristic of the 1990 plan is a so-called ecological ideal that was used as a benchmark: a scientific reconstruction of what living nature under given physical conditions would have looked like in the absence of human influences. This ecological norm was presented as an objective criterion, which was devoid of any subjective element. Considerations of cultural history did not matter; nature was not a matter of taste. As such, the 1990 plan is a textbook example of top-down planning, based on substantive sources of legitimacy and the implementation process of the 1990 Nature Policy Plan came to a virtual standstill as local stakeholders increasingly used their obstruction powers to protect their interests. In response, the government gradually abandoned its centralist, top-down planning approach and increasingly switched to methods of participatory and interactive policy-making (Hajer & Wagenaar 2004; Akkerman et al. 2004).

We clearly see a transformation of Dutch nature conservation policy over time from an explicit top down approach that derived its legitimacy from substantive sources, in particular scientific expertise, to a much more procedurally oriented policy making mode in which individual interests, even those that ran counter to ecological and environmental considerations, were accepted as legitimate claims and hence would have to be included in the policy making process. We will see how, and if, this shift in policy strategy has taken effect in current nature conservation policy practices by looking at the exemplary case of foraging sites for wintering geese. The establishment of foraging sites for wintering geese can be seen as representative of many of the nature conservation policy processes in the Netherlands. It is a process characterized by (inter)national goals and responsibilities, processes at different administrative levels and a multitude of actors with their own specific interests. The many coordination and distribution issues that surface throughout the policy process at all administrative levels raise strong legitimacy requirements! Therefore this case study provides an excellent opportunity to gain insight in the problems and possibilities of legitimacy production in what clearly is a multi-level, multi-agent and ultimately, a highly controversial arena of policy making and policy implementation.

3 Wintering Geese

In November 2003 the minister of Agriculture presented the next phase in almost half a century of "handling" wild geese populations: the Policy Framework Fauna Management (PFFM). Whereas in the 1970's geese were put on the (inter)national policy agenda due to the alarming decline in wild populations as a result of excessive hunting, the cause of concern at the beginning of the 21st century is not their threatened survival but their success at it. The international and national initiatives taken from the 70's onwards have proven to be so successful that currently 1.5 million wild geese, half off all wild geese wintering on the European continent, winter in the Netherlands (Sanders, M.E. et al, 2004), which emphasizes the responsibility of the Netherlands in protecting the wild populations of geese. As a result the damage inflicted to agricultural crops has augmented dramatically.

The species Greylag Goose (*Anser anser*), White-fronted Goose (*Anser albifrons*) and the Eurasian Wigeon (*Anas Penelope*) are responsible for 53% of all wildlife damage (Ebbing, 2003). In 2002 the annual total for these three species amounted to a little over € 2 million, € 500,000 more than in 1996 and a stunning € 1.5 million higher than in 1990, while no end to its rise appeared imminent (Ebbing et al. 2003). The mounting costs of indemnification and the growing distress of the agricultural community confronted with the wintering populations led up to the PFFM that foresees in the establishment of 80.000 ha foraging sites. This strategy focuses on (i) providing the agricultural community with a durable solution while at the same time (ii) safeguarding the geese populations and (iii) keeping the costs of indemnification in check.

Only within the boundaries of the foraging sites would farmers have a right to indemnification for damages and other costs. A farmer located in an established foraging site can expect to be compensated for crop damage; will receive a management fee and an additional stimulant bonus for participating, a total of about € 250,- per ha a year when participating in the PFFM (Ebbing 2004). Outside these areas farmers would be allowed to dispel wintering geese and to shoot them if necessary to prevent crop damage, but they can no longer rely on indemnification, even if their efforts prove to be fruitless.

Noteworthy about this strategy is that in terms of Scharpf's (2004) analytical distinction the PFFM represents a shift from a pure coordination game without distributive consequences to a zero sum game with evident distributive effects. As such, there have to be good reasons for the losses of the one and the gains of the other in order to overcome the obstruction power of the losers. In the absence of good substantive reasons – the equivalent to our substantial sources of legitimacy -- the only alternative left would be the production of legitimacy by procedural means.

Foreseen were three phases of implementation, including rather strict time-paths to assure efficient tuning to the application procedure for Subsidy schemes Agricultural Nature Management (SAN). By formally anchoring the foraging sites to SAN subsidy packages part of the costs involved in the management of foraging sites are being passed on to the European Union as SAN packages are co-financed by the European Union. The top-down implementation of the PFFM, that entailed many uncertainties regarding the height of the subsidy packages and possible restrictions to future agricultural practices, met with nation wide resistance. In response the House of Representatives stressed the need to secure

local support, implying a replacement of the traditional top-down approach characterizing Dutch nature policy making more generally by a more collaborative approach in which local agents are invited to contribute to a collective solution that could meet a greater level of local commitment than could authoritative solutions. In the terms used in this paper, it represented a shift from more substantive sources of legitimacy production to procedural ones; a shift that was forced upon the Department of Agriculture by the fact that through its own policies, as we discussed above, it had changed the political setting from a coordination game into a zero sum game.

The new focus on public support did however not alter the initial timeframe. To assure the co-financing with EU money the deadline of June 2005 was kept in place. The Minister stresses the necessity of the success of a swift implementation of the PFFM, as the costs of compensation have increased up to € 7 million in 2004.

To understand how local/regional differences affect the legitimacy requirements of a national policy in different settings the implementation process was followed in three different provinces. Due to ecological/agricultural differences the attractiveness of different parts of the Netherlands to the wintering populations varies. The PFFM takes this into account as the distribution of the 80.000 hectares are based on so called "geese days" (the number of geese multiplied with the number of days the geese are present in an area). Most provinces have been allotted quota between a 1000 and 10.000 hectares. These quotas are in fact a good indication of the respective contribution of each province to the convergence of the problem at the national level, but also give an indication of the perceived problem at the provincial level. It should be obvious that the problem in Limburg, allotted a quota of 600 hectares, is of a totally different order that of the province Friesland that has been assigned the largest quota with a 30.000 hectares.



fig. 1 Three provinces under investigation

Limburg, Friesland, and Brabant (see fig.1) are chosen to highlight the regional differences and the consequences this has for implementing a uniform national policy to heterogeneous regional situations. The dissimilarities in the allocation of the "geese problem", and the history of dealing with this situation in different contexts, prove to be important in the success of the implementation of the PFFM.

The character of this summary paper does not allow for a rich and detailed account of the implementation process. For this reason the process for the three provinces under investigation has been summarized in the table below.

	Limburg 600 ha	Friesland 30.000 ha	Brabant 3.348 ha
2003 PFFM	Top-down approach Successful !!!	Fr. Authorities protested to top-down approach	Top-down approach was unsuccessful
September 2004: Demand for public support → procedural legitimacy !!!			
Up till July 2005 Gaining support	-	Successful! 50.000 requested New problem	Unsuccessful Support for only 1600 ha
Success/Failure factors	No politicization of the problem	- Trust - Shared problem - Existing network - Courage - room for initiative	- top-down process - distrust - no shared history - no shared problem frame - strict deadline/no time - uncertainties

At the time of writing (April 2006), the Minister of Agriculture reports back to the House of Representatives of the Dutch Parliament with the message that 100.000 hectares have been made available for wintering geese. It appears that the implementation of the PFFM is successful and managed to generate enough support in the 12 provinces. However, some critical remarks need to be made. The 100.000 hectares are in part the result of the initiative of the Nature Conservation Agencies that delineated 40.000 hectares on nature reserves in their care. This is an extra effort, which won't add to the costs of the PFFM as these agencies are financed through other means. Although the 60.000 demarcated by the provinces can be regarded as a success in light of the initial resistance to the PFFM, we must however not forget that the procedural remedy to the initially top-down approach was focussed on acquiring support in prior delineated sites ex post. Under the assumption that farmers within the foraging sites stand to gain, which is evident in Friesland, only within the initially resisting agricultural communities in the other provinces an attempt was made to convince these communities they stand to gain by participating. The realization that those farmers delineated outside the foraging sites have not in fact been involved in the process, makes it difficult legitimating the overall PFFM. It is not unthinkable that

those initially left out of the process start to realize that you indeed stand to gain when located in a foraging site. Especially when the effort of dispelling the wintering populations proves unfruitful and cause damages that are not compensated.

Although 100.000 ha have been delineated and the PFFM has taken effect it will to all likely hood not end the discussions regarding wintering geese. The SAN packages have still not been approved and until that moment the PFFM is financed without EU money and consequently the € 14 million (the annual costs of the PFFM) will have to be paid by the Dutch taxpayer. Most of the provinces have assigned their quotas and have as a consequence distributed their financial means. Only provinces like Brabant, who did not succeed in appointing their total quota, have room for manoeuvre in delineating their total quota allotted when the larger agricultural community becomes convinced that participating means benefiting, rather than loosing when left out. The other provinces with the exception of Friesland, might be confronted with an agricultural community that demands participation in the PFFM, but will have no financial room for extra delineation.

The uncertainties permeating the PFFM remain. Although some of the uncertainties have diminished, regarding for example the effects on future agricultural practices, other uncertainties prevail or surface e.g. regarding the effectiveness of the "stick and carrot" strategy on 80.000 hectares. During the implementation of the PFFM a contra expertise of Birdlife indicated the necessity of 150.000 hectares to safeguard the wintering populations which will have considerable consequences when this proves to be accurate. An elaborate evaluation process has been set up for which Alterra, a scientific research institute focussed on green space, has been contracted. Both the ecological and the social aspects of the policy will be analysed and evaluated.

4 Reflection and discussion

The purpose of this summary paper is not so much to assess the legitimacy of the PFFM in the form of a normative judgment; legitimate or not! In this paper we try to illustrate some of the problems and possibilities of legitimacy production in the hope to contribute to how to deal with the process of making necessary tradeoffs between the input, throughput and output requirements of legitimacy. To accomplish this we need to evaluate both the efficaciousness of the policy (output) as well as the processes that led up to the decision and implementation (input and throughput).

Acceptance can be regarded as a measure for legitimacy. However, the absence of acceptance and the resistance to decisions or policy does not automatically imply an absence of legitimacy. The initial resistance to the PFFM should therefore not automatically be interpreted deficient in legitimacy. The PFFM foresees in a redistribution of resources from some agents to others. Unpopular policy or decisions are not improbable in these situations, even if these envisage providing an often necessary and urgent remedy to societal problems. The intended result of the PFFM was and still is the (i) provision a durable solution to the agricultural community while at the same time (ii) safeguarding the geese populations and (iii) keeping the costs of indemnification in check. This intended "output" was predominantly based on substantive sources: scientific arguments provided by the department of agriculture in her (un)surprisingly traditional top-

down role! However the limits of rationality, exemplified by the many scientific and practical uncertainties embedded in the proposed solutions, combined with a multitude of actors involved “and” responsible for the success of this policy created a situation in which resistance to the PFFM was likely to occur. The lack of legitimacy is in this case not due to the actual resistance to the PFFM, but due to a lack of reflexivity on part of the parties responsible for the PFFM, which is surprising as the recent shift of strategy in Dutch nature policy suggests a more bottom-up approach based on procedural legitimacy production.

Although the Department of Agriculture should and could have been more in tune with the sentiments in the field, the apparent lack of reflexivity should also be ascribed to the “multilevel” conditions of this particular case. If the case of wintering geese is anything to go by we see that Dutch nature policy-making is a multilevel governance setting, albeit to a lesser extent and in different guises than is generally thought, for even in this relatively new policy domain the impact of supranational policy making appears limited. While conventionally described as a process whereby national regulatory agents are increasingly restricted in scope and depth by supra-national polities and agents like the EU, it is obvious, as is demonstrated in this paper, that national authorities remain in control of content and strategy. At the same time the importance of other public and private agents in the policy process are apparent as well. Although the Department of Agriculture has taken initiative in the problem definition the provincial authorities are since 2002 by law responsible for the implementation of nature conservation policy and subsequently for dealing with wildlife damage. This new strategy where the department of Agriculture sets out strategy but leaves the implementation up to lower administrative bodies can explain to a certain extent the lack of reflexivity. The redistribution of responsibilities seemed to have created a transient situation where the different actors are probing to find out who is responsible for what. The situation in Brabant is elucidating in this respect as they resisted to implement the first phase of the PFFM but ultimately decided to tag along for the ride and delineated foraging sites in a top-down process. The Friesland authorities are an exception to the rule and never initiated a top-down attempt, aware of the resistance this approach would cause.

In terms of shifts between the different modes of the production of procedural legitimacy – input, output end throughput legitimacy – is this case enlightening. What started out as a policy that was largely leant on output legitimacy was over time confronted with a need to install more demanding forms of procedural legitimacy, namely input and throughput legitimacy. As was demonstrated by the unwillingness of farmers to accept the expert judgments of environmentalists and policy makers, substantive sources of legitimacy, in particular scientific expertise, have gradually lost their self-evident nature, both as a result of reasons that are internal to the environmental sciences (paradigmatic pluralism) and as a result of the increasing politicization of environmental planning. The material presented here also provides some backing for Scharpf's (2004) claim that not each and every decision raises similar legitimacy requirements. Dutch policies concerning wintering geese remained largely uncontroversial as long as each and every farmer could claim indemnification. Things started to change when the state changed its policy in a distribution regime, in fact introducing scarcity. After all, participating in the PFFM is supposed to provide a farmer with a durable solution, which entails clarity about the amount of indemnification and clear expectations of a farmer's responsibility. The farmer outside the established foraging site, although able to dispel visiting geese, gets no indemnification when suffering damages. This is best illustrated by the situation in Friesland where support was

found for 50.000 ha whereas the provincial authorities only had 30.000 ha to distribute. It seems however, that only within Friesland this is the case. Outside Friesland the uncertainties and the arrogant top-down approach entailed in the PFFM had the opposite effect. The advantages of participating were not seen, certainly not in the first phase of implementation. This resistance is however not necessarily a vote for the option of dispelling without indemnification. Rather, it could be understood as a dismissal of the aggregate of the PFFM. Thus no matter where you are located, inside or outside the foraging, the perception is that you stand to loose.

The procedural remedy that was undertaken to counteract the resistance to the top-down policy proved to be both successful as unsuccessful. The characteristics that allowed for a productive process in Friesland were not present in Brabant, but more importantly were also not allowed to develop. The procedural attempt to gain support and secure legitimacy ex post proofed to be only partially successful. The time restraint of the deadline, the uncertainties of the PFFM and the lack of a network of actors to fall back on, proofed all to be hindering the process of acquiring support. The provincial authorities of Brabant were caught between two fires. Although the provincial authorities were aware of their responsibility of implementing the PFFM, it did not want to assign the sites without support of those communities that are ultimately responsible for the success. The need for a distributive solution was not perceived at the provincial level, but the national strategy required active involvement. At the same time the provincial authorities have been given little or no means to communicate the PFFM and to gain support. The announced strategy of gaining support, articulated at the national level proofs to be understood by the agricultural communities in Brabant as paying lip service. The Department of Agriculture can be held accountable for assigning a by time limited task with many uncertainties that can expect to generate a lot of resistance. At the same time the provincial authorities can be held responsible for so easily agreeing to the task assigned to them, especially when one realizes that they have significant responsibilities under the FF-Act.

More work needs to be done to assess what the relation is between the shifts in governance and the shifts in legitimacy production that can be observed in this case. The shifts we can observe in this particular case are mostly reactions to failed output attempts rather than conscious choices to produce legitimacy from start to end. What seems crucial is the ascendance of a certain measure of reflexivity on the side of public authorities and policy makers. For only if the limits of rationality are fully recognized -- because of planning failures or because of bottom up resistance ('the weapons of the weak') -- and hence a search for knowledgeable agents is initiated with whom the burden of governance could be shared, is there a shift from substantial to procedural legitimacy to begin with. And only if procedural modes of legitimacy production have become predominant, will it be possible to observe shifts between input, output and/or throughput legitimacy.

However, this does not (yet) tell us anything about the reasons behind shifts between the three. It could well be the case that upon closer consideration of the case material presented here, intermediate variables, such as available time (the deadline) or the degree of centralization and/or decentralization, appear to be more important. More details too are needed in order to assess these shifts normatively. Any assessment will have to be multidimensional, since we live in normatively complex world in which none of the available normative criteria can

cover all our legitimate moral intuitions (Bader & Engelen 2003). To simplify hugely, we will need both prudential and moral criteria and will have to be perceptive enough to deal with the many tradeoffs between them. One such trade-off can be observed in the case material presented above. Because of time constraints, the provincial authorities in Brabant replaced the deliberative consultation process by a much more minimalist and formal consultation procedure. As such, this was a shift from throughput-modes of legitimacy to a more output-based mode of legitimacy. What this implies is that throughput procedures are good in inclusiveness and equal democratic participation but bad in efficiency and effectiveness, while for output-based modes of legitimacy it is the other way around. We not only may wish to identify more of these tradeoffs, but, as ethicists and political philosophers, ought to search, in a more prospective fashion, for modes of co-decision-making that might soften the starkness of these very same tradeoffs.

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