



Why tighter controls may be the wrong impulse: Peaceful assembly in the Netherlands through the lens of deliberative democracy

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Abstract

Following a letter from the Netherlands Committee of Jurists for Human Rights (NJCM) urging reflection on the necessity of the right to peaceful assembly in a democratic society, this article examines the democratic function of protest through the lens of deliberative democracy. It asks what role peaceful assembly plays in processes of public opinion- and will-formation, and what risks arise when states increasingly regulate protest through a public order framework. Drawing on Habermas' theory of the public sphere, the article argues that restrictive approaches to protest may undermine democratic legitimacy by constraining communicative processes essential to political decision-making. In doing so, it highlights how measures aimed at controlling protest risk being counterproductive to the goals of democratic stability and governance.¹

Key words: Demonstration, Protest, Peaceful Assembly, Deliberative Democracy, Pluralism, Public Sphere, Communicative action, Repression, Control, Public Order, Rule of Law

Introduction

Civic space monitoring bodies, human rights defenders, and NGOs note a gradual erosion of the right of peaceful assembly in the Netherlands through a range of measures before, during and after protests, including increased surveillance, more violent policing, and sanctions for protestors.² Yet, recent empirical research commissioned by the Dutch Scientific Research and Data Center opens with the statement that 97% of protests do not pose a risk to public order and safety.³ These concerned bodies are not the only ones raising alarm bells, in February of this year a letter from the Netherlands Committee of Jurists for Human Rights (Nederlands Juristen Comité voor de

¹ Jürgen Habermas, *A New Structural Transformation of the Public Sphere and Deliberative Politics* (Ciaran Cronin tr, Polity Press 2023) 81-83

² Amnesty International, *Under Protected and Over Restricted: The State of the Right to Protest in 21 European Countries*. (Amnesty International, 2024) <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>; Civil Liberties Union for Europe, *Rule of Law Report 2024* (2024). <https://www.liberties.eu/en/stories/rolreport2024-main/45014>

³ Wetenschappelijk Onderzoek- en Datacentrum (WODC), *Het Recht om te Demonstreren in de Democratische Rechtsstaat*. (The Right to Demonstrate in the Democratic Rule of Law State) (WODC, 206) <https://repository.wodc.nl/handle/20.500.12832/3499>



Mensenrechten (NJCM)) to the then freshly formed Dutch cabinet highlighted a trend in the way national politics has been communicating about demonstrations.⁴

The Committee asked the government to resist the urge to focus on incidents, while appealing to party leaders to maintain respect for ‘het demonstratierecht’ (the right to protest). Drawing attention to the aforementioned research that had concluded that no additional legal restrictions – such as a proposed face-cover ban - were required to the Dutch demonstration law, the NJCM also requested reflection by the government on protests for a free, democratic society.⁵

This blog then examines what the right to demonstrate does for democracy and democratic society by examining it through the lens of deliberative democracy. Specifically, it considers the consequences of restrictive state practices for democratic states such as the Netherlands under a theory of democracy that insists on a priori collective ‘opinion- and will-formation’ in the public sphere.⁶

First, the right of peaceful assembly is briefly outlined, and the core tension underlined. Secondly, the concept of deliberative democracy and the role demonstration plays within it is sketched. With this at hand, recent possible rights conflicts in the Dutch context are reflected on. The aim is to re-centre the democratic (multi)function of peaceful assemblies at the heart of this right, to shed light on how current repressive tendencies, beyond posing rights conflicts, could be counterproductive to government aims.

The right of peaceful assembly

In the Netherlands, the right to demonstrate is protected constitutionally in Article 9 ‘Grondwet’ and supplemented by the ‘Wet Openbare Manifestaties’ (Public Assembly Law).⁷ In international law, the right of peaceful assembly is enshrined in multiple instruments, including Article 21 of the International Covenant on Civil and Political Rights (ICCPR).⁸ UN General Comment 37

⁴ Nederlands Juristen Comité voor de Mensenrechten (Dutch Lawyers Committee for Human Rights), ‘NJCM calls on authorities: do not restrict the right to protest unnecessarily or disproportionately’ (Letter to the Dutch Parliament) <<https://njcm.nl/actueel/njcm-roept-op-beperk-het-demonstratierecht-niet-onnodig-en-disproportioneel/>> accessed 31 March 2026

⁵ Nederlands Juristen Comité voor de Mensenrechten (Dutch Lawyers Committee for Human Rights), ‘NJCM calls on authorities: do not restrict the right to protest unnecessarily or disproportionately’ (Letter to the Dutch Parliament) <<https://njcm.nl/actueel/njcm-roept-op-beperk-het-demonstratierecht-niet-onnodig-en-disproportioneel/>>

⁶ Jürgen Habermas, *A New Structural Transformation of the Public Sphere and Deliberative Politics* (Ciaran Cronin tr, Polity Press 2023) 81

⁷ *Wet openbare manifestaties (Wet van 20 april 1988, houdende bepalingen betreffende de uitoefening van de vrijheid van godsdienst en levensovertuiging en van het recht tot vergadering en betoging*, Stb 1988, 157) (Netherlands)

⁸ International Covenant on Civil Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art. 21



(2020) on Article 21 aligns with jurisprudence interpreting Article 11 of the European Convention on Human Rights (ECHR) and is used to further highlight the contours of the right here.⁹

The fundamental right of peaceful assembly ‘enables individuals to express themselves collectively and to participate in shaping their societies’.¹⁰ Under the ICCPR, states are obligated to take all legal and other measures to ensure this purpose.¹¹ States have a positive obligation to facilitate citizens’ exercise of the right and a negative obligation to refrain from unwarranted interference, i.e. through prohibitions, restrictions, blocks, dispersions, disruptions, or sanctions without justification. As such, participants should be able to achieve their protest aims effectively the state’s promotion of ‘an enabling environment’.¹² Restrictions are only permissible on three stated grounds and must be provided by sufficiently precise law that avoid sweeping discretions on those charged with enforcement.¹³ In other words, there are limits on restrictions which must be ‘necessary for a democratic society’ - a high threshold - meaning laws around public safety and order shouldn’t just be ‘reasonable’ or ‘expedient but necessary and proportionate for a society that relies on democracy, rule of law, political pluralism and human rights’.¹⁴ Any limitation must therefore represent a pressing social need, with the onus on the state to evidence this.

A shift to protest politics

Although the obligation to facilitate participation forms the fundament of the right, and despite protests being mostly peaceful in the Netherlands, politicians have increasingly started to examine demonstration through a public order lens in both practice and rhetoric.¹⁵ This comes at a time when a shift from party politics to protest politics has been highlighted, with European youth believing demonstrations to be as, or more, effective than their voice at the ballot.¹⁶ Scholars point out that such a shift can fundamentally change the relationship between governments and citizens;

⁹ Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020)

¹⁰ Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020) para 1

¹¹ Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020) para 21

¹² Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020) paras 23-24.

¹³ The three permissible grounds: National security; public order and safety, health or moral and other’s rights and freedoms.

¹⁴ Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020) paras 8 and 40

¹⁵ Monitoring Action for Civic Space (MACS), Country Report 2025: The Netherlands (MACS, 2025) pp. 16-17

¹⁶ Jacqueline van Stekelenburg, ‘Embracing the democratic dance: Navigating the complex terrain of modern democracy’ in István Hegedűs, Erik Uszkiewicz (Eds.), *What can Liberals and Democrats Fight with?: Finding a Winning Narrative in the High-stakes 2024 European Elections* (Magyarországi Európa Társaság – Hungarian Europe Society 2024) 49.



potentially leading to democratic backsliding as the dynamic is negotiated without the guardrails of checks and balances.¹⁷

Demonstrations through the lens of deliberative democracy

Examining the essential role of demonstrations through the lens of deliberative democracy offers insight into why states should favour strengthening facilitation over control. ‘Deliberative democracy’ is a term that surfaced in 1980, and a concept embraced by Jürgen Habermas in his life work.¹⁸ and in literary dialogue with both advocates and critics, Habermas crafted (and course corrected) a robust interdisciplinary theory to grasp the sustenance and repair of enduring rule of law democracies. In contrast to minimalist conceptions as the vying for votes based on aggregated individual preferences, with deliberative democracy, Habermas reconstructs a thicker notion. Fusing both normative and empirical arguments, Habermas posits that votes at the ballot must be a priori legitimized by a form of direct democracy characterized by the ‘more or less’ rational deliberation over shared public interests that takes place in the ‘public sphere’.¹⁹

The ‘public sphere’ in Habermas’ reconstruction, dates to pre-democratic revolution, and to the emergence of the print age when journals and newspapers proliferated, sparking debates on collective interests in coffee houses, salons, libraries, and workplaces. According to Habermas, the ‘communicative action’ of the ‘public sphere’ – the physical and virtual civic space of today – is transmitted from the ‘periphery’ to a public-political sphere. This second space represents the networked and merged results of the debates and interests formed in the informal public sphere. These collectively formed claims are then pressed to parties and parliament in ‘a constitutionally regulated circulation of power’.²⁰

In Habermas’ reconstruction, the communicative action of the ‘public sphere’ operated as the genesis of institutionalised democratic rule of law states. In modern day democracies, engaged, deliberative participation in the public sphere - including sit-ins, demonstrations, activism and

¹⁷ Jacqueline van Stekelenburg, ‘Embracing the democratic dance: Navigating the complex terrain of modern democracy’ in István Hegedűs, Erik Uszkiewicz (Eds.), *What can Liberals and Democrats Fight with?: Finding a Winning Narrative in the High-stakes 2024 European Elections* (Magyarországi Európa Társaság – Hungarian Europe Society 2024) 49.

¹⁸ John S Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics and Contestations* (Oxford University Press, 2000) 2

¹⁹ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996)

²⁰ Seeliger, Martin & Sevignani, Sebastian, (2022). *A New Structural Transformation of the Public Sphere? An Introduction*. *Theory, Culture & Society*, 39(4), 3-16; Habermas, Jürgen Habermas (1996). *Between Facts and Norms*. (Polity Press) 386.



social movements - functions as indispensable critical dissent to institutional and state forums.²¹ Moreover, the circulation of communicative power, from the informal to the public-political and finally to the institutionalised sphere, legitimizes state policy. Without the flow of communicative power stemming from the outer periphery, Habermas argues, citizens would be unable to recognize their conflict of opinions in the results of government action through the laws that address them.²² Deliberative democracy insists on the inclusion of everyone in the public sphere in the debate and relies on a wide circulation of information.²³ Furthermore, the aforementioned circulation of power is nullified if communication in the 'public sphere' becomes coerced or loses its spontaneous, informal character.²⁴

When political rights such as peaceful assembly are reviewed through the deliberative lens, wherein discourse in the 'public sphere' holds as much, if not more, weight as one's individual voice at the ballot, the significance of this right can be viewed in sharp relief. Peaceful assemblies must be rigorously protected because their discursive substance forms the essence of democratic practice. Protest plays an integral, multifunctional role as part of a constitutionally embedded system. They can play a role in protecting citizens' private rights. Equally they can play a role in subjectively reinterpreting laws to reflect society's changing norms, while also operating as warning sensor for the 'political system'.²⁵ Sometimes described as *a channel to vent*, demonstrations as part of civic space, work so much harder.

Command and control, but at what cost?

In 2025, Dutch parliament passed several motions calling for stricter rules around demonstrations, including laws to criminalize the blocking of critical infrastructure and to streamline the prosecution of protestors. Additionally, different legal proposals were put forward with the aim of restricting protests. These included a proposal that would allow mayors to order the removal of online protest content if deemed a disturbance of public order, and one that would lend police

²¹ Donatella della Porta and Nicole Doerr, 'Deliberation in Protests and Social Movements' in André Bächtiger and others (eds), *The Oxford Handbook of Deliberative Democracy* (OUP 2018) 392

²² Jürgen Habermas, *A New Structural Transformation of the Public Sphere and Deliberative Politics* (Ciaran Cronin tr, Polity Press 2023) 19

²³ William Smith, 'Democracy, Deliberation and Disobedience' (2004) 10 *Res Publica* 353

²⁴ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) 386

²⁵ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) 359 384



powers to gather public data concerning threats to public order.²⁶ Also of note, in November 2024, the Mayor of Amsterdam enforced a six-day blanket ban following clashes between Ajax and Maccabi Tel Aviv fans. The legality of the ban is now being challenged by Amnesty Netherlands on behalf of PILP (Public Interest Litigation Project).²⁷ The question is, beyond rights conflicts, why are such repressive tendencies the wrong impulse?

Drawing on key historical periods when the public's crisis consciousness rose to catalytic tenor, Habermas argued that a critical moment when actors in civil society can 'assume a surprisingly active and momentous role',²⁸ is when issues in the media and/or the political system originate or are managed from the centre of power.²⁹ At such times, institutionalized power is no longer receptive to the warning signals from the informal 'public sphere' that operates as the more sensitive sensor to emerging social problems. However, it is precisely during such moments of democratic distortion, that prioritizing the protection of an open 'public sphere' becomes all the more crucial.

This is all the more important so that the disparate actors found in this space – characterized by weaker agency and a disorganized character – are provided the environment to transform into a collective force capable of becoming a tangible influence on formal political institutions. When conditions facilitate this, the 'public sphere' has the capacity to restore the direction of communicative flow.³⁰ In contrast, according to Habermas, when the 'public sphere' becomes narrowed, controlled in advance, or more aligned with power, the 'public sphere' may start to hold the appearance of legitimacy without the substance.³¹ Thus, repressive tendencies, driven from a public order and safety perspective as they increasingly are, may produce the opposite of their aims. Furthermore, democracy itself becomes endangered.

²⁶ <https://zoek.officielebekendmakingen.nl/kst-34324-20.pdf>

²⁷ 'PILP represents Amnesty and co-plaintiffs in case against demonstration ban in Amsterdam' (August 28, 2025) < <https://pilp.nu/en/pilp-vertegenwoordigt-amnesty-en-mede-eisers-in-zaak-tegen-demonstratieverbod-amsterdam-2/> >

²⁸ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) 380

²⁹ E.g. Human Rights Watch findings that Meta systemic censorship of content of Palestine content across its platforms.< <https://www.hrw.org/report/2023/12/21/metas-broken-promises/systemic-censorship-palestine-content-instagram-and> >

³⁰ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) 380

³¹ Habermas, *Between Facts and Norms*, 382



Facilitating a constitutionally embedded system

Another key condition to facilitate the communicative flow from the ‘periphery’ along the long road to institutionalized power is the capacity of protests to cause controversy; to be deliberately disruptive. This, in order to gain the media attention and public solidarity needed. Along with General Comment 37 highlighting the need for ‘a significant degree of tolerance’ in this respect, the principle of within ‘sight and sound’ is crucial. It is imperative that actions can reach a protest’s target audience(s) using its purpose.³²

In the Netherlands, the WOM hands over discretion of whether a protest may proceed or not to municipalities. Yet, researchers assert that the subtle nuances enveloping the law (and international human rights law) may not always be properly recognized by local government, leading to unclear or contentious situations for citizens.³³ To this point, in the case of a group of Extinction Rebellion activists blocking the A12, the government retrospectively acknowledged in a ‘friendly settlement’ declaration before the ECtHR that area bans which had been imposed on the protest were not in line with the requirements of Article 11 of the Convention and therefore constituted a violation.³⁴ A 2026 report by the National Ombudsman also draws attention to ‘legally questionable’ municipal restrictions that go against the (spirit) of the right to demonstrate.³⁵ Finally on this point, concerned bodies also point out that the WOM deviates from international human rights law by allowing an additional ground for restrictions; ‘in the interests of traffic’ – which may effectively create a blanket ban on a site which may be relevant for a protest’s purpose.³⁶

When Habermas’ thinking is followed, practices that prioritize control over facilitation may further escalate issues, leading to a need for acts of civil disobedience. In Habermas’ theory, such an escalation signals ‘conflict mode’ and another attempt to reestablish the circulation of communicative power in the right direction. Beyond justifying civil disobedience, the subtext of

³² Human Rights Committee, United Nations International Covenant on Civil and Political Rights General Comment No. 37 (2020) on the right of peaceful assembly (article 21) (CCPR/C/GC/37, 2020) paras 26, 53, 57

³³ N.J.L. Swart ‘Climate activism on the motorway. Blockades and the right to protest in the Netherlands’ (Centrum voor Openbare Orde en Veiligheid, 14 September, 2023)

< <https://openbareorde.nl/climate-activism-on-the-motorway-blockades-and-the-right-to-protest-in-the-netherlands/>>

³⁴ Hofstede v the Netherlands App nos 26424/23, 26433/23 and 26439/23 (ECtHR, 3 April 2025)

³⁵ Nationale ombudsman, Sta voor protest! (Nationale ombudsman, 26 May 2026)

<https://www.nationaleombudsman.nl/publicaties/onderzoeken/sta-voor-protest>

³⁶ Amnesty International Nederland, Demonstratierecht onder druk: Regels en praktijk in Nederland moeten beter — Samenvatting en aanbevelingen (Amnesty International Nederland, 14 November 2022)

https://www.amnesty.nl/content/uploads/2022/11/AMN_22_33_demonstratierecht-onder-druk_samenvatting-en-aanbevelingen.pdf



intensification is, according to Habermas, ‘aimed at a political system that as constitutionally organized, may not detach itself from civil society and make itself independent vis-à-vis the periphery.’³⁷ Through the lens of deliberative democracy, municipal responses should therefore tolerate controversy and prioritize facilitation of peaceful assemblies in order reaffirm the necessary link between civil and political society. Beyond ensuring against further escalation (or chilling effects), facilitation over ‘command and control’ protects the political system from being pulled into a ‘whirlpool of legitimation deficits’ - sustaining democracy. Hence, the first response should rather be to address the root causes of the issues being protested and their underlying grievances while continuing to strengthen channels for public participation.

Conclusion

Recent repressive tendencies around demonstrations show that in the Netherlands, like elsewhere in the EU in the last years, the impulse of the authorities has been to navigate peaceful assemblies through a public order and safety perspective. Through the framework of Habermas’ deliberative democracy, this article has shown that peaceful assembly plays a multifunctional role in democratic life, particularly in sustaining processes of communicative power within the public sphere.

From this perspective, tightening controls on protest risks weakening the very communicative structures that confer legitimacy on democratic decision-making. Rather than enhancing stability, restrictive measures may reduce institutional responsiveness and erode trust between civil society and the political system. In this sense, measures intended to manage public order may become counterproductive to democratic resilience.

A deliberative democratic approach instead supports prioritising facilitation over restriction, ensuring that peaceful assembly remains an effective channel through which grievances, perspectives, and social conflicts can be expressed and transformed into democratic input. Protecting this function is not only a matter of rights compliance but also of sustaining the conditions for democratic legitimacy itself.

³⁷ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996) 380-383



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