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The rise and fall of the Dutch referendum law (2015-2018): Initiation, use, and abolition of the corrective, citizen-initiated and non-binding referendum

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The rise and fall of the Dutch referendum law (2015-2018):

Initiation, use, and abolition of the corrective, citizen-initiated and non-binding referendum

Abstract

In 2018 the Netherlands became the first democratic country to abolish its national referendum legislation. The Dutch referendum law of 2015-2018 allowed facultative, citizen-initiated, corrective, non-binding referendums, to veto specific types of laws passed by parliament. The referendum law included an ill-suited turnout threshold that created a strategic dilemma and a psychological side effect among voters.

In the three years between introduction and abolition, two referendums were triggered. After the first referendum –a treaty between the EU and Ukraine, rejected by Dutch voters – support for referendums soured among centrist politicians and highly educated, progressive voters. Despite positive experiences with the second referendum, the legislation was abolished as part of the coalition agreement by the new government.

This article provides a thick description of the Dutch referendum legislation trajectory (instigation, design, implementation, and abolition) to an international audience as well as a theoretical explanation of its comparatively late introduction and remarkably swift abolition. We discuss the roles of public opinion and coalition politics in the face of constitutional rigidity. Ultimately, we draw three broader theoretical lessons from the Dutch referendum experience.

Keywords

referendum, direct democracy, electoral reform, the Netherlands, public opinion

Introduction

In the last three decades, several Western democracies introduced or expanded their national referendum legislation to allow legislative minorities or citizens to call for referendums. New Zealand introduced such legislation in 1993, Portugal in 1997, Croatia in 2000, Luxembourg in 2005, France in 2008, Bulgaria in 2009, and the Netherlands in 2015 (Bedock, 2017:261-277; Setälä and Schiller, 2012:13). The reverse – the abolition of referendum legislation – was non-existent, until the Netherlands became the first democratic country to do so in 2018.

Despite the expansion of referendum legislation over the past two decades, studies examining what factors led to this legislation being introduced remain scarce (but see: Scarrow, 2001; Jacobs, 2011; Bedock, 2017). Extant studies stress the role of public opinion and of coalition politics. Regarding the former, referendums are more likely to be introduced when there is broad public support for them. Regarding the latter, parties that are often in opposition tend to benefit more from the opportunities (legislative minority or citizen-initiated) referendums offer and such parties tend to be more in favour of referendums.[1] It, however, remains to be seen whether these factors may also, inversely, explain the abolition of referendum legislation. The first country to abolish such legislation, the Dutch case, presents an interesting learning case. Moreover, an in-depth analysis of this case holds obvious relevance to the more common phenomenon of countries making their referendum legislation more restrictive. While restrictive reforms are less common than reforms that make referendum legislation more inclusive, they do occur.[2]

The aim of this article is twofold. First, it aims to provide a thick description of the Dutch referendum legislation trajectory for an international, academic audience. It covers the introduction of the referendum law in 2015, its distinct nature, its use, and its subsequent abolition in 2018. The nature of the Dutch referendum law was corrective, citizen-initiated, and non-binding, a combination that the scholarly literature had considered theoretically plausible

but empirically non-existent (Altman, 2011). As such, the Dutch experience might offer important insights into referendums and democratic institutional reform in general.

Second, this article aims to provide a theoretical explanation of the comparatively late introduction and remarkably swift abolition of the Dutch referendum law. We argue that coalition politics has been the crucial factor to explain the late introduction and quick abolition of the referendum. Constitutional rigidity provided an important condition, empowering pivotal actors that could only be swayed via coalition agreements. Public opinion contributed to the abolition of the referendum only insofar that after 2016 increasing ambivalence towards the referendum as an instrument among specific subsets of the population – progressive and highly educated voters – lowered the barrier for progressive parties that traditionally staunchly supported the referendum to change their position.

The long road towards the Dutch referendum law

The Netherlands had little experience with referendums prior to 2005. No national referendum had been organized since the short-lived radical Batavian Republic (1796-1806). The introduction of a referendum of any type would be an ongoing topic of discussion for many decades, but did not gain momentum until the 1980s. In 1986 a Government Advisory Commission, led by former Prime Minister Biesheuvel, recommended the option to institute a binding, corrective referendum that would enable citizens to veto a law that had passed both houses of parliament. Government and most parliamentary party factions rejected this unanimous advice upon publication (Andeweg, 1989: 52).

Nevertheless, a decade later it led to a government-sponsored bill for a binding referendum by the coalition of Labour (PvdA), Liberal Conservatives (VVD) and Liberal-Democrats (D66) during the Kok-I and Kok-II governments between 1994 and 2002 (Hendriks *et al*., 2017). This bill failed – by a single vote – to obtain a constitutionally mandated two-thirds majority

in the Senate in the second reading in 1999 (Van Merriënboer, 2000). Although support in the Lower House – particularly of the reluctant VVD faction – had been secured in the coalition agreements of 1994 and 1998, members of the Senate generally do not feel bound to these agreements. Numerically, the full support of the VVD faction in the Senate was required to obtain the required two-thirds majority. Yet, one VVD senator (former vice-PM and former party leader Hans Wiegel) voted against the proposal for principled as well as personal[3] reasons.

The rejection of the binding referendum legislation led to a ministerial crisis that was solved in two ways. First, via a simple majority vote, the coalition parties adopted a short-lived, temporary replacement law (2002-2004) that enabled a non-binding, corrective referendum (i.e., without constitutional adjustment). It was never used at the national level due to its high barriers.[4] Second, the coalition parties initiated a new attempt at a binding referendum via constitutional amendment. While they succeeded in passing this proposal in the first reading, it failed to reach a two-thirds majority in the second reading in 2004, as the new government coalition (Balkenende-II, consisting of Christian-Democrats CDA, Liberal Conservatives VVD and Liberal-Democrats D66, between 2003 and 2006) took up a strictly neutral position towards the referendum.

By then, a new, significantly more modest push towards a referendum was under way. Parliament – led by opposition parties Labour (PvdA), the Greens (GroenLinks), and government party the Liberal-Democrats (D66) – initiated a non-binding referendum on the proposed Treaty establishing a Constitution for the European Union (TCE). Government did not block this ad-hoc referendum law. Crucially, one of the other government parties – the VVD – also voted in favour of the law to provide a majority. While the VVD party line continued to be against referendums and was in favour of the European Constitution, the party was divided on both issues. Specifically, co-party leader and leader of the parliamentary

faction, Jozias van Aartsen, was in favour of referendums and sceptical of the European Constitution. Moreover, the party was still recovering from the 2002 "Fortuyn Revolt" election, in which the party lost almost 40% of its electorate, particularly to the populist List Pim Fortuyn movement. Van Aartsen successfully sold the referendum to his fellow VVD MPs as a way to recover the lost votes (Jacobs, 2011:200).

Turnout for the 2005 referendum on the European Constitution was high (63.3%) and the proposed constitution was rejected by a wide margin (61.5%). Although the outcome countered the hopes of a large majority in parliament (see Table 3 below), the experience with the 2005 referendum bolstered politicians who had already been supportive of the instrument (Nijeboer, 2005). MPs of Labour, the Greens, and the Liberal-Democrats initiated two bills that would institutionalise a citizen-initiated, corrective referendum. Because the VVD had returned to its anti-referendum stance, it would take almost ten years before the bills enjoyed majority support.[5]

The first of these two bills (June 2005) proposed a binding referendum that required the difficult process of passing a constitutional amendment, similar to the one that had failed in 1999. By 2015 the bill had passed the first round (obtaining simple majorities in both houses of parliament), and awaited new elections for a second vote in parliament (where it would require a two-thirds majority in both houses).

The second bill (November 2005) proposed a non-binding referendum, and thus required a simple majority in parliament to be accepted. The Lower House passed the law, the *Wet Raadgevend Referendum* (acronym: Wrr), in February 2013, followed by the Senate in April 2014. It came into practice on July 1st, 2015. In order to attain the required majority, the initiators of the bill had to make some concessions. To assuage concerns by the populist radical left Socialist Party, they had to clarify that the bill would also cover international treaties (Tweede Kamer der Staten-Generaal, 2006). In the Senate, support by the Labour party was

crucial, but only provided under two conditions (Eerste Kamer der Staten-Generaal, 2013). *First*, the non-binding referendum was to be abolished once a binding referendum would be instated, to prevent citizens from opportunistically selecting one type of referendum over another. *Second*, the non-binding referendum would only be valid if turnout exceeded a threshold of 30% of the electorate, to prevent a small group of voters having a decisive vote. Both conditions were accepted by the initiators and integrated into the new law.[6]

Precisely these three amendments would come to haunt the initiators of the Wrr, as they played a role in the ultimate abolition of the law. The inclusion of international treaties would be an important complicating factor in the first referendum under the new law in the 2016, on the mixed international and supranational treaty between the European Union and Ukraine. The link between the non-binding and binding referendum laws would be used as an argument to abolish the non-binding referendum law in 2018 after the proposal for a binding referendum had been shot down in parliament in 2017. The turnout threshold would lead to a strategic dilemma among voters (see below), similar to the turnout dilemma demonstrated repeatedly in the Italian experience (Uleri, 2002).

The nature of the instrument

The referendum law of 2015, the *Wet raadgevend referendum* (Wrr), opened the possibility to organise a particular type of referendum that until then had been considered theoretically plausible but not applied in practice.

First, it was corrective. It could only overturn proposals that had been passed by both houses of parliament and signed into law. It could thus not bypass parliamentary debate, nor could it be used to propose new legislation.

Second, it was citizen-initiated and facultative. There was no obligation to organise a referendum for any particular legislation to become effective. The initiative to organise a

referendum rested with citizens rather than government or parliament. Signature thresholds moderated the possibility to organise a referendum: a first stage of four weeks to collect 10,000 valid signatures to request a referendum, followed by a second stage of six weeks for 300,000 newly collected signatures. In international comparison, the number of signatures required in the Netherlands was low relative to the size of the electorate, at around 2.3%, whereas most countries employ 5% to 10% thresholds (Morel, 2018; Hendriks et al, 2020). However, the six-week term was comparatively very short.[7] Unforeseen by government and parliament, the required signatures were collected digitally as well as physically, making it easier to pass both thresholds.[8] The referendum initiators developed an online application for digital signature collection, collecting and printing the digitally collected forms and submitting them to the Electoral Council on paper. In 2016 the Electoral Council decided that there were insufficient legal grounds to refuse these digitally collected signatures, as they satisfied the legal requirements as described in the Wrr.[9]

Third, it was non-binding. Government and parliament would not be legally bound to reject a law whenever the outcome of the referendum was a Nay – though they were formally obliged to reconsider and decide to pass or reject the law in question. Yet, the Wrr included a 30% turnout threshold. Whilst turnout thresholds are relatively common in referendums, and 30% represents no remarkable variation on international practice (a.o. Aguiar-Conraria & Magalhaes, 2010; Morel, 2018), the combination of a validity threshold with a non-binding character is exceptional. The advisory character of referendum outcomes under the Wrr called the turnout threshold into question: can an advice be invalid?

Altogether, the Wrr comprised an unprecedented combination of three characteristics. In his classification of referendums according to three main characteristics – published prior to the introduction of the Wrr – Altman (2011) listed a bottom-up, corrective and advisory referendum as a hypothetical category with no empirical examples.

The Wrr exempted some types of laws. No referendum was possible on the monarchy and the royal family, the government budget, the constitution, and the execution of international treaties. However, new treaties that encompassed both supranational elements (on which Dutch parliament has no final say) and international elements (on which it has) were not exempted. This proved to be a bone of contention in the first referendum organised under the new law.

Two nationwide referendums

Between 2015 and 2018 four attempts to organise a corrective referendum made it past the first hurdle (10,000 signatures), though two of these did not make it past the second hurdle (300,000 signatures). While the two successful attempts benefited from extensive online media attention, they experienced a decisive surge in signatures only after televised (satirical) news shows paid attention to these initiatives.

The first referendum took place on 6 April 2016 and questioned whether voters agreed with the Dutch approval of an association treaty between the European Union and Ukraine. The referendum was initiated by a coalition of three groups: *Burgercomité-EU*, *Forum voor Democratie* (FvD) and weblog *GeenStijl*. Some of these initiators openly professed that they were more interested in interpreting the outcome as a vote on EU-membership than in the treaty itself (Hendriks et al., 2017). Nevertheless, voters mostly based their vote on arguments related to the treaty, such as perceptions of corruption in Ukraine and anticipated Ukrainian EU-membership (for those against) and trade prospects (for those in favour) (Van der Brug et al., 2018). Only 7.5% of respondents in a post-referendum study mentioned 'a vote against the EU' as a motive (Jacobs et al., 2016:17-18,57). Voters agreed in large numbers that the topic was not very suitable for a referendum (Jacobs et al., 2016:22).

The second referendum was held on 15 March 2018 and concerned a modernised Act on the Intelligence and Security Services (acronym: Wiv2017). The act aimed to regulate data

collection and interception authorisations for the regular and military security services as well as oversight provisions and regulations for data sharing with foreign services. A group of students initiated the referendum, supported by a broad coalition of privacy organisations. Despite general agreement that a modernisation of the outdated 2002 act was required, there were prominent concerns about the severity of privacy infringements under the proposed new act. Pro- and con-voters alike generally considered the topic suitable for a referendum, because of the delicate balance between security and privacy (Jacobs et al., 2018:20). Voter motivations reflected this dilemma. Proponents of the law emphasized national security; opponents emphasized the invasion of privacy, an improper formulation of the new act, and the risk that sensitive data might fall into foreign hands (Jacobs et al., 2018:16-17). The referendum coincided with nationwide municipal elections, which boosted turnout as well as the share of blank votes (Jacobs et al., 2018:26).

[Table 1 here]

Both referendums resulted in wins for the No-camp.[10] Although Prime Minister Mark Rutte stated on multiple occasions that he 'totally' opposes referendums and considers them an 'abomination' or an 'airy pastime', the government did take action after both defeats. After the 2016 referendum, the government did not withdraw support for the association treaty but negotiated an addendum that covered the most prominent concerns raised by the opponents of the treaty as mentioned above (Hendriks et al., 2017). After the 2018 referendum, the government amended six elements of the Wiv2017 in line with the concerns highlighted during the campaign (Rijksoverheid, 2018). Whether the addendums and amendments were sufficient to satisfy voters has remained a topic of debate.

Three complaints on the referendum law

In the immediate aftermath of each of the two referendums, three complaints about the institutional configuration of the Wrr were raised.

The first and most prominent of these complaints was the 30% threshold that was set in place to make the non-binding referendum valid. This threshold turned out to have perverse unforeseen side effects. On the one hand, it created a *strategic dilemma* for citizens who favoured the law in question. Either proponents would turn out to vote in favour of the law and affect the outcome (but increasing the chance of the turnout threshold being met), or they would not turn out in the hope that the turnout threshold would not be met (but deflating the Yes-share of the vote). Both strategies can backfire, particularly when the predicted turnout is close to the turnout threshold and the outcome is unpredictable. Under such circumstances it is virtually impossible to make a considered choice between the two strategies. This dilemma was particularly salient in the first referendum, when turnout was predicted to barely meet the 30% threshold. Hoping to suppress turnout, a substantial number of potential Yes-voters did not vote. Yet, their number was not sufficiently large to affect the outcome of the election substantively (Jacobs et al., 2016:34-36).

On the other hand, although the threshold was intended to reduce pressure on government, it had the inverse *psychological effect*. Once the threshold was met, many citizens argued, government would be morally obliged to act on the outcome of the corrective referendum, despite its uniquely non-binding nature. This sentiment found support among yes-, no- and non-voters alike (Jacobs et al., 2016:26). Moreover, in the run-up to the 2016 referendum, two key parties in the Lower House that originally voted in favour of the EU-Ukraine Association Agreement (Labour and the Christian-Democrats) promised to vote against the treaty if the threshold would be met and the treaty's opponents would be victorious. De facto, they thereby declared the referendum binding, despite its advisory status. By contrast, in 2018 various

parties, most prominently the Christian-Democrats who were by then part of the government coalition, announced that they would ignore referendum result regardless of its outcome and validity, allegedly because of the pending abolition of the Wrr.

A second complaint was raised by politicians and journalists, who suggested that corrective referendums predominantly mobilize opponents of the law under consideration to cast their vote. As such, the instrument would be a toy for naysayers. Yet, panel studies (by the inter-university consortium that is also responsible for the Dutch Parliamentary Election Surveys) suggest that this complaint does not hold. Instead, both in 2016 and in 2018 proponents were slightly more likely to turn out than opponents, despite the strategic incentives that they experienced due to the turnout threshold (Jacobs et al., 2016, 2018). Hence, the No-camp won simply because there were more voters that opposed the legislation, not because the No-camp was better at mobilizing its voters. The complaint about selective turnout mirrors a similar argument about the nature of the No-vote as primarily a vote against the sitting government coalition. While trust in government did play a role, its impact on vote choice in the 2016 referendum was decidedly smaller than the impact of substantive arguments (Van der Brug et al., 2018), just like in earlier referendums on the European Union across Europe (e.g. Hobolt, 2009; Glencross and Trechsel, 2011).

Third, a recurrent argument against the corrective referendum was its binary nature. The initiators of the 2018 referendum had not aimed to vote down the full Act on the Intelligence and Security Services (Wiv2017), but criticized specific elements in that Act dealing with privacy. This was mirrored in public opinion: merely 34% of respondents considered the old Act (Wiv2002) to be an acceptable policy solution. An adaptation of the Wiv2017, featuring stricter data and oversight obligations, would have found support by a large majority of voters (Wagenaar, 2019). Yet, because of the default binary ballot and the fact that the Wrr did not

allow initiators to appeal for voting on the partial abolition of the law, the preference for adapted legislation could not be expressed.

The Wrr was set to be evaluated by Parliament in 2018, where it could have addressed complaints such as these. Yet, the law would be abolished before it could come to that.

The abolition of the referendum law

March 2017 saw new elections for the Lower House and the formation of a new government. The three most visible campaigners of the 2016 referendum each fronted a new political party, although only one of them (the radical right Forum for Democracy by Thierry Baudet) obtained seats in parliament. Despite the participation of these new parties, the referendum itself was a marginal theme in an election campaign dominated by substantive themes such as migration, economic affairs, the environment, and crime (Ruigrok et al., 2017).

By September 2017 several political parties' support for referendums had waned. The proposed constitutional amendment to introduce a binding, corrective referendum was unceremoniously defeated in the Lower House of parliament (with a mere 30% of the MPs voting in favour). The initiators (Labour, Greens, and Liberal-Democrats) no longer supported the constitutional amendment that they themselves had instigated (see Table 2 below), referring directly to bad experiences with the 2016 referendum (Nieuwsuur, 2017).

In October 2017 a new government coalition was formed. The Liberal Conservatives (VVD), Christian-Democrats (CDA), Orthodox Protestants (CU) and – by means of concession – Liberal-Democrats (D66) agreed to withdraw the existing, non-binding referendum law, the Wrr.

The coalition agreement stated the intention to abolish citizen-initiated referendums because they 'had not met expectations' (VVD-CDA-D66-CU, 2017). Yet, it did not specify what the expectations of the instrument had been in the first place, and what they had been based on. The

coalition agreement mentioned three reasons for the apparent failure of the instrument: (1) controversy over initiation procedures, (2) diverging interpretations of the results, and (3) the recent defeat of the binding referendum (claiming post-hoc that the non-binding variant was always merely meant to be 'an intermediate step'). The Minister of Interior Affairs cited 'eroding political support' and the 'disappointment' and 'alienation' of voters (Ollongren, 2017). Yet, while public support for referendums had decreased slightly, proponents still vastly outnumbered the opponents and public support for the Wrr remained high (Van der Meer et al., 2018; see also Figures 1 and 2 below). Moreover, while there was broad agreement that the turnout threshold raised the wrong expectations, this could have been remedied by amending the Wrr. Such amendments to referendum legislature have been the common *modus operandi* in other countries, similar to the commonly incremental changes that are made to electoral laws (Bedock, 2017).

Two procedural aspects of the intended abolition met with particular resistance in political, societal and academic circles. Firstly, the abolition was considered premature, because the evaluation, planned for 2018, was not awaited. Secondly, the government intended that the legislation to abolish the referendum law would itself be exempted from being subject to a referendum request. Constitutional jurists debated the legal sustainability of this argument; political scientists criticised the government's handling of the abolition procedure in the face of good governance.

Ultimately, the withdrawal of the referendum legislation was supported by a majority in both houses of parliament, consisting of the coalition parties (VVD, CDA, D66, CU) and the hardline orthodox reformed fringe party SGP; all other opposition parties were unanimously opposed. A lawsuit questioning the legality of the withdrawal without the possibility of a referendum on this withdrawal found no support in court. After 3 years and 9 days the Wrr was abolished.

Explaining the rise and fall of the Dutch referendum law

Public opinion on referendums

Studies on the *introduction* of referendum legislation often point to the role of public opinion. Indeed, a demand for greater participatory opportunities has been explicitly linked to the expansion of referendum legislation in the US and Western Europe (Scarrow, 2001: 652-653). The explanation scholars have offered is that a public demand for more direct democracy enables a minority of reformist politicians to pressure their otherwise more reluctant colleagues into agreeing with referendum legislation (Renwick, 2010). The act of opposing such legalisation would be electorally detrimental (cf. act-contingent motivations; Reed and Thiess, 2001). Hence, while public opinion typically does not directly trigger the introduction of referendum legislation, it creates fertile ground for doing so. This in turn makes referendum legislation more likely in the long term (cf. Rahat, 2008:28).

Conversely, scholars have noted that *restricting* referendum legislation is an extremely risky endeavour that can have an impact on political trust (Qvortrup, 2005:161).[11] Broad public support for referendum legislation acts as a "legitimacy constraint", a force that shields referendum legislation from being restricted or abolished (cf. Renwick, 2010:63). Such legitimacy constraints are most powerful when (1) support for the legislation is high, (2) an election is coming up, and (3) the reform process is onerous and many institutional steps have to be taken (Renwick, 2010: 63-64).

In the Dutch case, public opinion offers a less straightforward explanation for the implementation and abolition of the referendum legislation. For decades, the referendum has found broad support in Dutch society, albeit notably subjected to the leading principle of representative democracy (Den Ridder and Dekker, 2015; Van der Meer et al., 2018). While

the public opinion's evident favourability of the referendum provided fertile ground for its introduction, it cannot explain the timing of its legal implementation in the short run.

Moreover, public opinion fails to offer a straightforward explanation of its abolition. Although the 2016 referendum on the EU-Ukraine Association Agreement caused a decline in support for referendums, a clear majority of Dutch citizens continued to support the instrument.[12] The ongoing net support for the referendum, however, did not function as a relevant barrier against the abolition of the Wrr. Government made haste to ensure that the abolition was completed in the first year of its existence, when the next election was still far away. This weakened the function of public opinion as a shield against abolition (Renwick, 2010: 63-64).

To the extent that public opinion did play a role, the retraction was enabled by declining support among a specific subsection of the electorate: progressive voters and the higher educated.

[Figure 1 here]

Since 2006, the Dutch Parliamentary Election Survey contained a question measuring support for referendums directly: '*On some of the important decisions that are to be made in our country, voters should be able to vote by means of a referendum'* with a 5-point Likert scale of support.[13] Average support went down from 75% in 2006 via 69% in 2010 and 67% in 2012, to 58% in 2017. More informative is net support: the share of supporters minus the share of opponents of the referendum, excluding those with a neutral or non-committed answer (see Figure 1). Net support decreased from 60% in 2006 to 33% in 2017. Remarkably, the decline in net support was sharpest among the electorate of progressive parties such as PvdA (Labour), GL (Greens) and D66 (Democrats), which had proposed the referendum law in 2005. The – in 2017 much reduced – electorate of the PvdA even displayed net opposition

to the instrument. Yet, despite the decline, a clear majority of the Dutch electorate continued to support the referendum.

[Figure 2 here]

The Dutch quarterly *Citizen's Outlook Barometer* by the Netherlands Institute for Social Research offers a more detailed look into citizens' support for the general statement: 'It would be good if citizens could co-decide on important political decisions.' This statement is understood to measure support for referendums, despite not using the term directly. Again, we subtract the share of opponents from the share of supporters. Figure 2 displays large net support for referendums among most educational categories. The share of supporter and opponents of referendums balance out only among voters who completed university. Remarkably, immediately after the 2016 referendum support eroded among these highly educated voters, whereas support among other educational groups hardly changed. This mirrors voting behaviour in the 2016 referendum, when voters with a university-level diploma overwhelmingly voted Yes, while other education groups decisively voted No (Jacobs et al., 2016:16). Support among the higher educated rebounded somewhat after 2016, and did not decline again following the 2018 referendum. Nevertheless, the educational gap in support for the referendum echoes the theme of educational divisions in Dutch politics (Bovens and Wille 2017).

While these shifts in public opinion cannot directly explain the abolition of the Wrr, declining support among particularly highly educated and progressive voters lessened constraints on political parties that traditionally supported the referendum.

Coalition Politics

This brings us to a second, complementary explanation for referendum laws, i.e. the balance of political power in parliament, particularly within the government coalition. As Rahat and Hazan (2011:488-489) stress, one of the major barriers to any reform is coalition politics: "the establishment and maintenance of coalitions is part of democratic politics". Coalition politics plays an especially strong role when the procedures dictate a simple majority. Here "the government can pass a reform on its own with the support of the parliamentary majority" (Bedock, 2017: 257).[14] What matters most in such cases is whether the coalition (1) consists of parties that are strongly committed to the coalitions' survival (Rahat & Hazan: 2011: 485), and (2) is able to form a "bundle of reforms" that offer "'spoils' to each member of the coalition" (Bedock, 2017:256).

The introduction and abolition of referendum legislation has been strongly constrained by the notoriously rigid Dutch constitution (Gerards, 2016). A change to the constitution requires not only parliamentary majorities in both houses, but also qualified majorities (2/3rds) in both houses of parliament in the subsequent term. For a long time, proposals for referendum legislature aimed for a constitutionally embedded law. There was only relatively late success, and only in cases when initiators opted for a non-binding referendum as this would not require constitutional amendment.[15] Yet, the lack of constitutional embedding also implied that any new legislation could be abolished by a simple majority in both houses of parliament. In other words, it reduced the chance that legitimacy constraints could play out fully. This implication subjected the referendum itself to coalition politics (see Table 2).

The referendum (or the more general theme of democratic reform) has never been a dominant theme in election campaigns. Since 1989 all subsequent government coalitions contained proponents and opponents of the referendum. Its introduction could be obstructed by many veto players including regular government parties such as the VVD or the CDA or even individual MPs within these parties (cf. Hollander, 2019: 237-238). The success of attempts to introduce

referendum legislation would depend on the coalition agreement (such as the 2002 Temporary Referendum Law which was enabled by the 1998 Kok II coalition agreement[16]) or on one of the veto players changing stance (e.g., 2003-2005, by VVD party leader Van Aartsen).

Between 2003 and 2017 coalition agreements did not bind coalition parties stringently on the topic of the referendum, thereby allowing coalition parties to vote differently on the matter. This was especially relevant for the PvdA as one of the initiators of the Wrr, when it joined a government coalition with the VVD in 2012. The initiators could submit the proposals for a binding and a non-binding referendum, which had been lingering since 2012, to a vote.

[Table 2 somewhat here]

The Dutch experiences with introducing referendum legislation illustrates that "the politics of reform are to a great extent about building and rebuilding coalitions" (Rahat, 2008:3). That did not end with the introduction of the Wrr.

Once the Wrr had been introduced, the law could not simply be abolished, unless one of the proponent parties switched position. D66 had campaigned in 2017 with a party manifesto that explicitly took up a position against the abolition of the Wrr. Yet, it would renege on this policy position after the elections, when it formed a government coalition with parties that had previously opposed the Wrr and participated in a coalition agreement that would abolish it.

D66 was the only political party to switch position on the Wrr in 2018 compared to 2013 (see Table 2: the only party that voted Yes on the introduction as well as the abolition of the Wrr). That switch was decisive. In the parliamentary debate on the abolition of the Wrr in February 2018, D66 defended its parliamentary support for the abolition by explicitly underpinning its commitment to the coalition agreement. Rather, D66 argued it preferred a binding variant –

even though in September 2017 it had rejected the existing binding referendum proposal in the second reading.

These justifications cannot explain the positional shift by D66 during the coalition formation period. Two other explanations help explain this switch. First, D66 was able to secure a concession in exchange for its support for abolishing the referendum law (Kieskamp, 2018; Knoop, 2018). The elimination of constitutional barriers against the direct election of mayors had been a longstanding aim of D66, and was included in the coalition agreement. Second, by 2017 the electoral risk of a switch by D66 had decreased after losing both national referendums to date (2005 and 2016) (see Table 3). D66 voters were considerably more ambivalent in towards the referendum in 2017 than they had been before (see Figure 1). The well-established winner/loser effect of winning referendums on support for the instrument of the referendum itself (cf. Werner, 2019; Brummel, 2020) likely holds for politicians as well as voters, particularly lacking any longstanding experience with the instrument.

[Table 3 somewhat here]

As such, public opinion may have played an indirect role. After the 2016 referendum, support for the referendum decreased sharply among the highly educated, progressive voters for the three parties that had traditionally been its staunchest supporters. During the coalition formation of 2017 this lessened the electoral pressure on D66 – whose electorate in large part consisted of higher educated voters[17] – enabling them to agree to the abolition of the law they themselves had helped introduce. The risk of losing voters diminished further by the rather ambivalent stance of the two other progressive parties.

In other words, we can explain the abolition of the referendum law as an interplay between constitutional rigidity, public opinion, and coalition politics. Constitutional rigidity created veto

players, so that referendum legislation could not be embedded in the constitution. Declining support for the referendum among highly educated and progressive voters (likely in response to repeated losses) weakened the constraints to change stance tactically during coalition negotiations. Pivotal parties whose support was necessary to introduce binding referendum legislation (i.e., the VVD) or to abolish the non-binding referendum (i.e., D66) were repeatedly bound by the politics of coalition agreements.

Conclusion: Lessons from the Dutch referendum experience

Abolition is the most radical way to restrict referendum legislation. Yet, even this radical example offers relevant insights for moderate restrictions. First, the Dutch experience downplays the importance of public opinion as a fertile ground for or barrier against reform (Qvortrup, 2005; Renwick, 2010). Even in this extreme case – the wholesale abolition of referendum legislation – general public opinion ultimately proved to be somewhat trivial: the simple majority procedure required to abolish the legislation provided few hindrances, elections were far away, and coalition parties were strongly committed to the survival of the coalition (cf. Renwick, 2010).

Rather, the Dutch experience with referendum legislation emphasize the role of pivotal parties and coalition politics, in a context of constitutional rigidity. Steps towards the (ultimately failed) introduction of a binding referendum as well as the abolition of the non-binding referendum depended on the position of a pivotal party. Ultimately, coalition politics were the crucial factor in the reform process (cf. Rahat and Hazan, 2011), when the pivotal party was bound to a coalition agreement.

Yet, coalition politics was conditioned by two factors. First, the constraints of constitutional rigidity determined which party functioned as the pivotal player that could prevent the introduction of the binding referendum (i.e., VVD). The lack of such constraints created other

pivotal players (i.e., D66) that could abolish the non-binding referendum. Second, after their first actual experience with the non-binding referendum, support for the referendum declined among the electorate of the parties that traditionally supported the referendum. This lowered the barriers for these parties to change position.

Discussion: broader implications

There are broader lessons to draw from the short-lived referendum experience in the Netherlands. First, it underpins the importance of political culture in understanding the functioning of institutions and reform. The Dutch referendum illustrates the adagio of Karl Popper (1945: 110) that institutions need not only be well-designed, but also well-manned. Politicians were responsible for most of the confusion, both in design (allowing referendums on new supranational treaties; introducing a turnout threshold to a non-binding referendum) as well as in practice (de facto declaring a non-binding referendum binding in 2016, or irrelevant in 2018). Yet, rather than benefiting from experience by improving the instrument, a parliamentary majority withdrew the referendum law, citing confusion among citizens. Indirectly, they were able withdraw the national referendum legislation because the rigidity of the Dutch constitution had necessitated politicians to work around constitutional amendments, leaving the referendum legislation unprotected by the strengthened position of being embedded in the constitution. In late 2018 a new Government Advisory Committee, led by former Minister Remkes, responded by unanimously recommending the introduction of a *binding* referendum with an approval (rather than turnout) threshold, citing Dutch politicians' incapability to deal with the non-binding variant (SPS, 2019 [2018]).

Second, the response to the introduction of the referendum law lends credence to the thermostatic model of public opinion (Soroka and Wlezien, 2010). This thesis reads that public opinion responds to new policies by moving in the opposite direction. Dutch experiences with

the referendum instrument show a similar thermostatic response: support declined among policymakers and progressive, highly-educated voters as soon as the referendum instrument was first put to use in 2016. This might not be due to policies (i.e., the Wrr) that overshot the median voter, but rather due to the reality of an instrument that could not meet the high hopes attached to it by an electorate lacking experience with referendums. Particularly highly educated and progressive voters had found themselves on the losing side. In the face of such lacking experience with the instrument of the referendum, losers' consent was not evident (Werner, 2019; Brummel, 2020).

Third, referendums are a functional solution to the Ostrogorski paradox. According to this paradox, the core of representative democracy – the aggregation of voters' preferences on a range of issues into votes for a political party – is likely to induce a mismatch between parliament and the electorate on at least some of these issues (Rae and Daudt, 1976). The formulation of a coalition agreement exacerbates this mismatch, functioning as a second round of aggregation. The corrective referendum offers a functional solution to the effects of the Ostrogorski paradox. Yet, as the Dutch case demonstrates, it puts the often hard-fought compromises and exchanges between coalition parties at risk. Somewhat ironically, the withdrawal of the Dutch referendum law in 2018 has itself become a typical example of the Ostrogorski paradox that it had aimed to solve.

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[1] The former are often referred to as "act-contingent motivations", the latter as "outcome-contingent motivations" (Reed & Thiess, 2001).

[2] For instance, Portugal introduced a restrictive reform in 1998 (Bedock, 2017); Belgium in 1998 (Jacobs, 2011).

[3] According to Wiegel himself, he was persuaded not to give in to political pressure by a note from his wife telling him he would not be allowed into his own house if he would support the referendum legislation (Goslinga et al., 1999).

[4] The barriers included a signed request to organize a referendum by at least 600,000 citizens (i.e., 5% of the potential electorate), to be collected within six weeks.

[5] In the Netherlands bills do not automatically 'die' when a new parliament is installed. Hence, the proponents of the referendum bills could wait until there was a sufficient majority in favour of them.

[6] Although the Dutch Senate can only veto but not amend policy proposals, the initiators of the referendum legislation accepted these conditions and laid them before both houses of parliament.

[7] In a comparison with provisions for citizen-initiated, corrective referendums in 11 other countries, Hendriks, Jacobs and Wagenaar (2020) show that only two countries employ shorter terms. The majority of countries allow three or more months for signature collection. The number of signatures required proportional to the electorate varies from approximately 1% to 25% with the majority employing thresholds around 5% to 10% of the electorate.

[8] Formalized digital signature collection processes – involving government-initiated signature collection forms and existing infrastructures for identity verification – are uncommon in popular initiatives and veto referendums. Digital signature collection for European Citizens' Initiatives presents an innovative, though not fully successful, exception (Susha & Grönlund, 2014).

[9] In their evaluation of the referendum, the Electoral Council explained their decision to consider the digitally collected signatures to be valid (Evaluatie raadgevend referendum 6 april 2016, 24th May 2016).

[10] The Electoral Council ruled that the plurality in the second referendum should be interpreted as a win for the No-camp.

[11] As the Dutch case is the first where referendum legislation was abolished, no prior study examined such an instance. However, some work exists on the restriction of referendum legislation.

[12] The 2017 Dutch Parliamentary Election Survey allows us to analyse support for specific elements of the Wrr in detail. It indicates that a majority of voters supports referendums on general laws (53% vs 34% who do not) and international treaties (52% vs 36%) but not on the government budget (34% vs 54%).

[13] The 2003 survey posed this question as well, but without a neutral answer category.

[14] This quote is taken from Bedock's set of conclusions about 'divisive reforms' that require a simple majority. This is the ideal type that best applies to the Dutch referendum law: the reform had a set of proponents and a set of opponents (there was no general consensus) and the procedure required a simple majority.

[15] The successful attempts include the temporary law between 2002 and 2004, the ad-hoc law in 2005, and the Wrr between 2015 and 2018.

[16] The failure of the proposal for a binding referendum in 1999 by a narrow veto of the Senate fits this explanation: in the Dutch political culture the coalition agreement does not bind co-partisan members of the Senate.

[17] According to the Dutch Parliamentary Election Survey of 2017, approximately two-thirds of D66 voters had completed an education at ISCED levels 5-8 (applied sciences; university), compared to 40% of the general electorate.

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Table 1. Referendum results

	EU-Ukraine Association Agreement (2016)	Intelligence & Security Services referendum (2018)
Yes-vote	38.21%	46.53%
No-vote	61.00%	49.44%
Blank	0.79%	4.03%
Invalid	0.92%	0.35%
Turnout	*32.28%*	*51.54%*

Source: www.kiesraad.nl

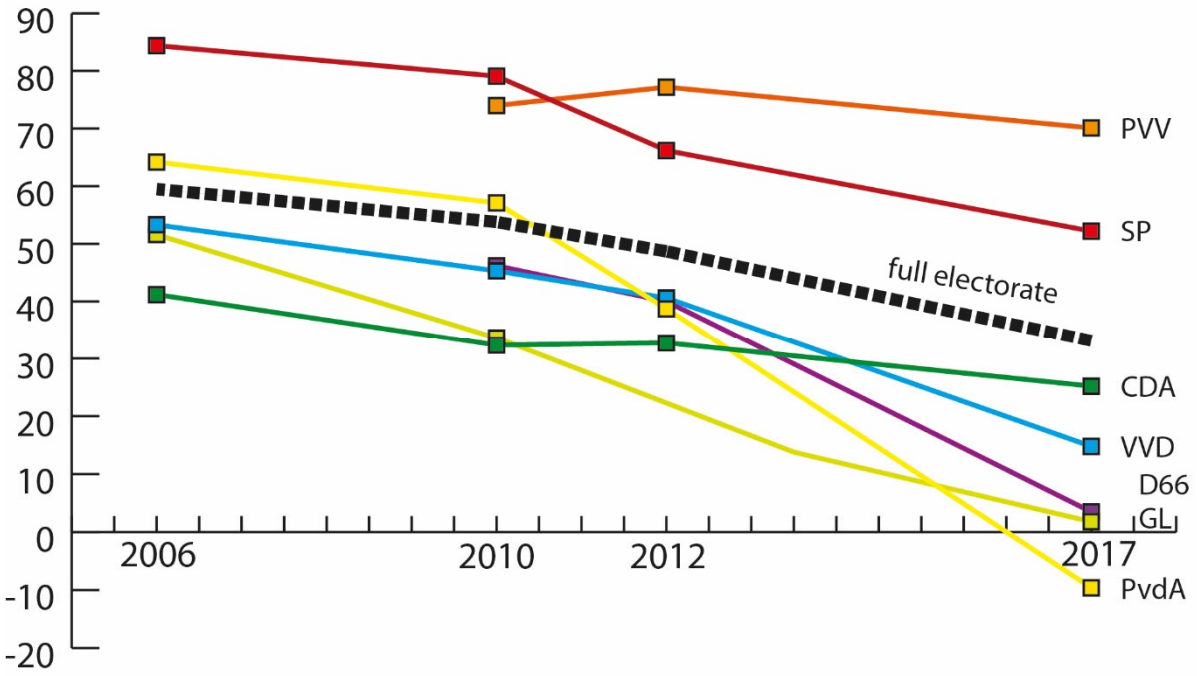

Figure 1. Net support for referendums in the Netherlands (2006-2017), by party electorate

Source: Dutch Parliamentary Election Surveys (weighted by demographics, party size)

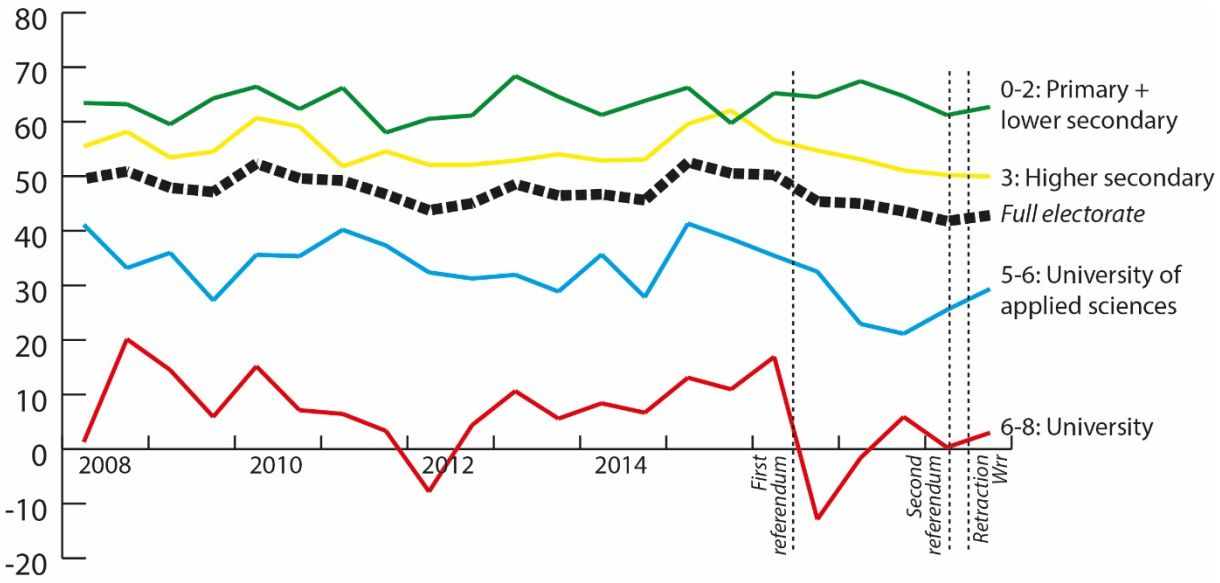

Figure 2. Net support for citizen co-decision making on important political issues (2008-2019), by level of education (ISCED 2011)

Source: Citizens' Outlook Barometer (weighted by demographics, party size)

Table 2. Parliamentary support for the referendum and the withdrawal of the Wrr, by party (1997-2018)

	Binding referendum (1st reading)		Binding referendum (2nd reading)		Temporary referendum law + Binding referendum (1st reading)[4]		Binding referendum (2nd reading)	Adhoc law referendum TCE		Non-binding referendum (Wrr) + Binding referendum (1st reading)[5]		Binding referendum (2nd reading)	Abolition Wrr	
	1997 TK	1997 EK	1999 TK	1999 EK	2001 TK	2001 EK	2004 TK	2003 TK	2005 EK	2013 TK	2014 EK	2017 TK	2018 TK	2018 EK
CDA	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y
PvdA	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N
VVD	Y	Y[1]	Y	Y[1]	Y	Y[1]	N	Y	Y	N	N	N	Y	Y
D66	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y
GL	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N[1]	N	N
SP	Y	Y	Y	Y	Y	Y	Y[3]	Y	Y	Y	Y	Y	N	N
CU					N	N	N	N	N	N	N	N	Y	Y
GPV	N	N	N	N										
RPF	N	N	N	N										
SGP	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y
AOV	Y[2]	Y/N[2]		N[2]										
Unie 55+	N													
LPF							Y	Y	Y					
PVV										Y	Y	Y	N	N
PvdD										Y	Y	Y	N	N
50+										Y	Y	Y	N	N
FvD												Y	N	
DENK												N	N	
POG		Y		Y										
OSF						Y			Y		Y			N
Requirement	*50%+1*	*50%+1*	*66.6%*	*66.6%*	*50%+1*	*50%+1*	*66.6%*	*50%+1*	*50%+1*	*50%+1*	*50%+1*	*66.6%*	*50%+1*	*50%+1*
Result	*Y*	*Y*	*Y*	*N*	*Y*	*Y*	*N*	*Y*	*Y*	*Y*	*Y*	*N*	*Y*	*Y*

Y: Votes in favour of the proposal. N: Votes against the proposal. TK: Tweede Kamer (Lower House). EK: Eerste Kamer (Senate).

1 A minority (one or more MPs) of this party faction voted otherwise

2 Party had fractured before this moment in Lower and Upper House. In 1997 its original MPs in TK all voted Yes, except one. Its two original MPs in the Senate voted differently in 1997. Both voted Nay in 1999.
3 One MP who had by this point split from the SP also voted in favour of the proposal
4 The temporary referendum law and the binding referendum (first reading) were separate proposals. Parliament voted on these proposals on the same day. Support for both proposals was identical along party lines and defection (in the VVD Senate faction).
5 The non-binding referendum (Wrr) and the binding referendum (first reading) were separate proposals. The Lower House voted on these proposals on different days; the Senate on the same day. Support for both proposals was identical along party lines.

Table 3. Political parties' substantive position during the referendums of 2005, 2016, and 2018.

	EU Constitution (2005)	EU-Ukraine Association Agreement (2016)	Act on the Intelligence and Security Services, Wiv2017 (2018)
CDA	P	P	P
PvdA	P	P	[3]
VVD	P	P	P
D66	P	P	P
GL	P	P	C
SP	C	C	C
CU	C	P	P
SGP	C	P	P
PVV	C[1]	C[2]	[3]
PvdD		C	C
50+		P	P
FvD		C[4]	C
DENK			C
Referendum outcome	C	C	C

P: Supports the law, speaks out in favour N: Does not support the law, speaks out against

1 Officially: Its predecessor (Group Wilders)
2 Various splits (most notably VNL) also campaigned against the treaty.
3 Mixed or no explicit position during the campaign. PvdA had voted in favor of the Wiv in parliament, but took up a neutral position during the campaign. PVV had voted in favor of the Wiv in parliament, but did not campaign (its dominant position being commitment to the referendum outcome in advance).
4 At this moment FvD had not yet transformed itself into a political party. It was one of the most visible campaigners against the treaty.