De cynische verkleuring van legitimiteit en acceptatie: een rechtssociologische studie naar de regulering van seizoenarbeid in de aspergeteelt van Zuidoost-Nederland

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Summary

The Cynical Discoloration of Legitimacy and Acceptance

A Sociological Study after the Regulation of Seasonal Labour in the Asparagus Cultivation in the South-East of the Netherlands

This sociological study endeavours to connect the phenomenon of legitimacy with the processes of acceptance and cynicism. The empirical point of departure to study this relationship is the problem of authority between farmers and the Dutch government that came to the fore in the legal regulation of seasonal labour in horticulture. The harvest of asparagus has been chosen as a case study to examine the legitimacy of the state, the processes of acceptance and the influence of cynicism. Especially in this branch of market gardening, which encompasses a wide variety of farmers, the compliance with the legal rules concerning seasonal labour appears very problematic. The first central question of this research is as follows. Can the problematic acceptance of asparagus growers in the South-east of the Netherlands (the main production region) be interpreted as a policy problem that is relatively easy to overcome, a crisis of legitimacy that points at a breakdown of state authority or as a slumbering crisis of legitimacy that signifies an erosion of state authority? The second central question concentrates on the influence of tacit cynicism, which is characterised by pragmatic orientations and moral immunity. Can the problems of acceptance and legitimacy, that come to the fore in the policy concerning regulation of seasonal labour, for a substantial part be explained through the effects of hidden transcripts and cynical actions and orientations?

The objects of legitimacy which are studied, are in the first place the administrative institutions of the government which are directly involved with the legal regulation of seasonal labour. Also considered as objects of legitimacy, are semi state-organisations as the former agricultural board and the political regime of agrarian neocorporatism.

The composition of the study is as follows. In the theoretical part (chapters 1, 2 and 3) the concepts of legitimacy, acceptance, non-acceptance and cynicism are dealt with. This treatment leads to typologies of acceptance and non-acceptance and to a scheme of cynical actions. Attention is also given to the phenomenon of trust in modern societies and the concept of kynism (the normative counterpart of cynicism). After the construction of the theoretical framework the problem definition is worked out on three different levels: micro, meso and macro.

The empirical part (chapters 4, 5, 6 and 7) gives a description of the field-research that was undertaken of asparagus growers, seasonal labourers, interest groups and administrative organisations. Besides the presentation of empirical data, gathered through interviews and participant observation, this part also contains a description of the political and socio-historic backgrounds which are relevant to understand the balance of power between farmers and government institutions. Furthermore, there is an analysis of lawsuits and judicial proceedings in this context.
In the concluding part (chapter 8 and conclusion) the theoretical concepts and framework that were developed in the first part, are applied to the case study that was portrayed in part two. These concluding observations are the basis of the final conclusion where the problem definition of this study is answered.

**Theoretical Part**

Contrary to judicial or philosophical treatments of legitimacy, sociologists tend to approach legitimacy in a more ‘realistic’ way. For sociologists, the legitimacy of an authority can only be determined on the basis of empirical research that give clarity about the likelihood that people are willing to follow the commands or assignments of the person(s) who is (are) in charge. In this study legitimacy is defined as authority that has a certain degree of stability and durability due to the fact that citizens or subordinates are in general prepared to obey the persons or administrative organisations in charge because they believe that these persons or organisations and/or the social and political arrangement in which these are embedded, are dealing in an acceptable way with social values that can count on their (discursive or intuitive) approval and acceptance.

Besides describing the empirical state of affairs with concern to legitimacy, sociologists are also interested in the social values that can explain the legitimacy of authority. Max Weber distinguished three famous legitimising principles in this context: traditional authority, charismatic authority and legal rational authority. The type of legal rational authority is typical for modern western societies. In the wake of Weber many social scientists have tried to improve or renew this threefold typology. Niklas Luhmann for instance has brought to attention the self-legitimizing effects of rational procedures that are common in modern societies. More recently Hoekema en Van Manen presented different types of legality that can be seen as a further completion of Weber’s type of legal rational authority. Despite these interesting efforts to develop Weber’s range of thought, there is an important aspect that still seems to be neglected in the sociological research of legitimacy. According to Doris Lucke the sociological focus on legitimacy has mainly been object oriented. In her study **Akzeptanz** Lucke claims that the focus is primarily on the social actors that claim authority. The subject side of legitimacy, the process of acceptance under the citizens or subordinates at the bottom, has until now not been systematically investigated. However, for a well-balanced account of legitimacy it is crucial to also examine the mode of acceptance by the subjects that are addressed. In this study the main subjects of acceptance are farmers and market gardeners that grow asparagus, (potential) seasonal labourers, employers’ associations and labour unions for the agrarian sector. Acceptance is defined as the degree of assent, approval or adjustment that social actors (explicitly or implicitly) show in their attitudes, beliefs and actions towards certain opinions, propositions, measurements or decisions and in which the motives to do so can vary from authentic convictions, natural habits up to rationally calculated self-interest or the fear of repercussions.

Building on the theoretical work of Lucke the following typology of acceptance, adapted to the specific goals of this research, can be designed:
**Typology of acceptance: individual citizens and legal regulation.**

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Authentic acceptance based on knowledge, conviction and understanding.</td>
</tr>
<tr>
<td>2</td>
<td>Demonstrative and subscribing acceptance without direct involvement.</td>
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<tr>
<td>3</td>
<td>Internalised, non-conscious or half-conscious acceptance formed by habit.</td>
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<tr>
<td>4</td>
<td>Opportunistic or calculating acceptance without inner conviction.</td>
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<tr>
<td>5</td>
<td>Acceptance because of embarrassment due to the (supposed) lack of alternatives.</td>
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<tr>
<td>6</td>
<td>Coerced or enforced acceptance imposed against one’s will.</td>
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</table>

Despite the merits of Lucke’s approach, her study about acceptance has some significant flaws. The most critical one is that her treatment of non-acceptance is unsatisfactory. Because of this a typology of non-acceptance, which in my opinion is necessary to get a full understanding of processes of (non-)acceptance, is absent. This study tries to develop such a typology of non-acceptance. Non-acceptance is the counterpart of acceptance and defined as the degree of resistance, protest, disapproval or unwillingness that social actors (explicitly or implicitly) show in their attitudes, beliefs and actions towards certain opinions, propositions, measurements or decisions and in which the motives to do so can vary from thought-out inner convictions, unmotivated habits till rationally calculated self-interest or the hard felt need to act rude and disrespectful. In order to present a typology of non-acceptance, it is useful to go into the concepts of hidden transcripts and cynicism. These are sensitising concepts that draw our attention to proceedings and actions which (can) take place offstage.

In his study *Domination and the Art of Resistance* James C. Scott describes hidden transcripts as domains of social action which, in contrast to public transcripts, are concealed from outsiders. Hidden transcripts especially occur in relationships of power wherein both the persons in charge and the subordinates develop strategies behind the scenes. The concept of hidden transcripts teaches us that resignation towards authority reveals little about the attitudes or practices of the citizens that possibly defy or evade the orders and assignments imposed upon them. Open obedience is therefore no proof of the legitimacy of authority. A good example of such evasive strategies, are feigning and double cross - faking and trying to cover such acts of faking. Feigning and double cross can be seen as modes of cynical behaviour.

Cynicism has been rarely studied by sociologists. For a description of modern cynicism, the studies of Jeffrey C. Goldfarb (*The Cynical Society*) and Peter Sloterdijk (*Kritik der zynischen Vernunft*) can serve as a starting-point. Both authors noticed the immunity of cynical action against moral reasoning. Modern cynicism is characterised by a consciousness that has armoured itself against rational critique. Cynicism can be defined as the entirety of pragmatic orientations, attitudes and social actions that are dominated by or, in a less strong sense, morally neutralised by a reflexive ‘ethic of realism’ that wards off normative counter-arguments and that implicitly or explicitly justifies its ‘morally wrong’ behaviour by referring to the practical course of affairs.

A popular example of cynicism in modern societies is the calculating citizen who doesn’t have any scruples about using the rules of law for his own benefit. Although this image oversimplifies, it gives us nevertheless a clue for characterising cynical action. An essential feature of cynical action seems to be the use of hidden agendas combined with an anthropology (or Weltanschauung) that sees self-interest as the driving force that makes the world go round. In addition, cynical action that takes place between two or more agents can be unilateral (one person does it) or mutual (everyone does it).
Building on the insights that are offered by the concepts of hidden transcripts and cynicism, the following typology of non-acceptance can be designed. Together the typologies of acceptance and non-acceptance form the theoretical framework to analyse the modes of (non-)acceptance that can be discovered in individual citizens confronted with legal regulation.

**Typology of non-acceptance**: individual citizens and legal regulation.

- **Type 1**: Well-considered non-acceptance that is authentic and will be openly clarified.
- **Type 2**: Demonstrative or sympathising non-acceptance without direct involvement.
- **Type 3**: Internalised, non-conscious or half-conscious non-acceptance formed by habit.
- **Type 4**: Emotional non-acceptance that is expressed without considering the consequences.
- **Type 5**: Sham acceptance of ‘as if’ that feigns assent or that tries to double-cross.
- **Type 6**: Cynical non-acceptance or quasi-acceptance that is expressed without shame.

The combination of an object oriented perspective (bringing into focus the legitimising activities of authorities and the goals and politics of the state) and a subject oriented perspective (bringing into focus the modes of acceptance by asparagus growers, seasonal labourers and the interest groups of employers and employees), leads to the following question. How can the empirical information about acceptance obtained on the level of direct social interaction be related to the issue of legitimacy that has a wider institutional dimension? Anthony Giddens’ concept of trust can be helpful here to bridge this theoretical gap between social integration and system integration. Giddens emphasises that trust in modern societies is in a certain sense blind trust. In our modern age trust is mediated by symbolic tokens and abstract systems that are build on specialised forms of knowledge. This does not mean that trust can do without personal encounters. Normally the social exchange of trust takes place at specific access points where lay persons and professionals come across each other. Conflicts and other examples of problematic acceptance that come to the fore in the encounters between citizens and intermediary expert organisations, are therefore an important source of information for the matter of legitimacy. They throw a light on the possible erosion of trust (in wider social systems) and inform us about the legitimising principles that function in (a specific part of) society. In this study special attention is given to the political regime known as agrarian neocorporatism. For a long period of time this regime successfully shaped the transference of trust between farmers and the government. In the last decade, however, the regime of agrarian neocorporatism has shown serious signs of disintegration.

Finally it seems inevitable to say something about a normative standard with regard to cynicism. Being perceived as a pragmatic and realistic worldview cynicism undoubtedly has a pejorative connotation to it. Sloterdijk however highlights a form of cynicism that has a critical potential and is an important source of freeing rationalism that should be rediscovered in our modern era. The archetype of such critical rationalism can be found in Diogenis of Synope who once lived in Athens and who was famous for his bold behaviour against authorities. He specified this sort of critical cynicism as kynicism. According to Sloterdijk, Diogenis represents a realism ‘at the bottom’ while cynicism is an opportunistic form of realism that has chosen for the ruling powers ‘at the top’. Although this sociological study does not pursue extensive ethical reflections, a brief attempt will be made to apply this normative standard of Sloterdijk to the cynical behaviour we come across in our field-research.
Empirical Part

The farms that grow asparagus in the South-east of the Netherlands vary enormously. Only a few specialised asparagus farmers get their main source of income out of this crop. Most asparagus growers are active on a small-scale and combine this culture with other agricultural activities. However, also on a small-scale asparagus can generate a lot of profit. Furthermore, the popularity of this crop is explained by the fact that a great part of the harvest can be directly sold at the farm. This custom of unofficial ‘home sale’ has a long tradition in this region and makes the growing of asparagus especially attractive. One could maintain that the informal organisation of seasonal labour reveals its origin from the traditional peasant society in this region. On the other hand, like all other agricultural activities, the growing of asparagus has clearly been influenced by the process of modernisation and professionalism. Farmers and market gardeners are surrounded by a Technological-Administrative-Task-Environment (TATE) that has rationalised and individualised the agricultural profession to a far-reaching extent.

Since the mid-eighties it has become more and more difficult for farmers to find sufficient seasonal labourers. In the nineties this eventually led to a lot of publicity about illegal seasonal labourers from Poland and intense political debates about the rules regarding seasonal labour. Besides political reasons one should also draw attention to demographic and economic causes which can explain this development. Decreasing birth rates and competition from the service industry have reduced the traditional reservoir of (potential) asparagus cutters (housewives, students). The increasing national and international competition in agriculture has imposed a lot of pressure on farmers and market gardeners. Uncertain economic prospects make the shortage of seasonal labourers during the asparagus harvest a very sensitive issue. For many farmers this means that an important additional source of income that could compensate for financial losses in other agricultural activities is threatened. Although a new technique of covering asparagus with black (or black-and-white) plastic makes the organisation of seasonal labour a little bit easier, asparagus growers are very dissatisfied with the legal regulation regarding seasonal labour.

Interviews with farmers and market gardeners have shown that the legislation concerning seasonal labour or ‘occasional’ labour is largely perceived as being unfair, highly impractical and impossible to comply with. In general the farmers and market gardeners were very sceptical about the government which in their opinion either didn’t support or even frustrated agricultural development. Frequently, asparagus growers referred to the favourable legislation in neighbouring countries, especially Germany. Across the border seasonal labour was much cheaper and that was why Dutch farmers were greatly disadvantaged. Some market gardeners even stated that the policy of the Dutch government was devastating and that in the near future asparagus would only be built abroad. Another point that has to be mentioned in this context, is the striking lack of political interest demonstrated by many farmers. Asparagus growers rarely go into collective action themselves and usually leave the handling of their political interests entirely to the experts in the agrarian interest groups to which they belong as members.

Although most asparagus growers are still highly discontented with the rules concerning seasonal labour, there is definitely an important change visible when a comparison is made with the practices in previous times. Until the mid-eighties nobody gave much attention to accounting or registration of their workers. In the nineties asparagus growers became quite aware that the organisation of seasonal labour could not be done on a fully informal basis and that one had to keep accounts of the people who were working during the harvest.
Farmers and market gardeners have in a way accepted that seasonal labour is regulated. However, this general acceptance of the principle of legal regulation does not mean that the legal regulation is in fact compiled with. In practice asparagus growers appear to deploy several strategies to evade or get (partially) around regulation. A well-known practice for instance is what is referred to as 'creative book-keeping'. The informal ties between farmers and ‘native’ workers that live in the local environs are still of vital importance for the organisation of seasonal work. Informal local networks form the basis of (partial) moonlighting and a black money circuit that is almost impossible to control for administrative organisations. Beside this widely practised method of creative book-keeping, there have been strategic ‘cat-and-mouse’-games between farmers and administrative organisations as asparagus growers attempted to avoid social security contributions or kept working with seasonal labourers without permits from Poland. This has led to a series of bitter conflicts and legal proceedings that reflect the deep distrust that has developed between farmers and administrative institutions.

The observations on the spot of two asparagus farms during the harvest, demonstrated that the position of the seasonal labourer is very dependent on the personal attitude of the farmer or market gardener. It made clear that ‘occasional’ workers are very indifferent to their legal position or the collective agreements concerning seasonal labour. Furthermore, the observations confirmed that the money that can be earned, is the main objective for cutting asparagus. The friendliness or unfriendliness of the employer is not unimportant but is nevertheless secondary in this respect.

Legislation concerning seasonal labour is not easy to describe. In a way the relevant regulations with regard to seasonal work in Dutch horticulture can be seen as an area where many regulations, measurements and political discussions meet. The following policy domains can be discerned: laws and rules concerning the system of social insurance, the organisation of the tax system and administrative registration, regulations with respect to foreign labourers, deployment of benefit recipients and collective labour agreements. Looking at the political developments concerning seasonal labour in the last decades and the shifting power positions of the different parties involved, one can see that some profound changes have taken place. Since the mid-eighties the legal net of regulation concerning seasonal labour has definitely tightened. The rules with respect to social security payments have become more severe. The introduction of a new tax system had some drastic consequences: employers became obliged to keep wage records for each seasonal worker. These administrative obligations were completed by a general identification law for employees. The official deployment of Polish labourers during the asparagus harvest came to an end because of a very restrictive policy as regards temporary work permits. Instead of permits for these Polish labourers, who were highly sought after by, special employment-finding projects for unemployed people (living in the Netherlands) were started by the regional Job Centre. In court market gardeners who appealed on the basis of the shortage of seasonal labourers in the Netherlands and the urgent need for work permits, were now themselves held responsible by the judge on account of their refusal to co-operate with the Job Centre. The working conditions on the farms even became a subject of public debate. The industrial insurance board for the sector and the labour inspectorate were putting more and more pressure on the farmers and market gardeners who tried to bend the rules.

Although the central government was successful in expanding its sphere of influence, the legal regulation of seasonal labour remained a controversial political issue. The law PMA that came into operation in 1997, and that was introduced to solve the shortage of seasonal labourers once and for all, didn’t have much effect. One could even say that this law failed to solve anything. Much to his surprise, the minister for Social Affairs noticed that employers’ organisations and labour unions brushed his ‘fresh’ law aside. In 1999 they introduced a special arrangement for seasonal labour, as a part of the collective labour agreements, that made
the law PMA in fact superfluous. Through this strategy labour unions and employers organisations regained administrative control and could circumvent central supervision of (newly created) administrative bodies that had diminished their political influence. However, the skirmish between the central government and the agrarian interest organisations concerning this matter, also confirms that the pressure groups of farmers and market gardeners are on the defensive since the regime of agrarian neocorporatism has been breaking down. The fact that the collective labour agreements were used as the means to escape from the influence of central institutions, is typical of the political turn they have made. After all, only a few years earlier the employers' organisations regarded these collective labour agreements as fully unsuitable with respect to the organisation of seasonal labour. Employers' organisations have furthermore accepted that also temporary seasonal workers are 'real' labourers that fall under the general rules of social insurance. Yet, the individual farmers and market gardeners often hold a very different view on this matter.

The problematic regulation of seasonal labour has led to a number of lawsuits. Through the years agricultural employers and their organisations, labour unions, the industrial insurance board for the sector, the Job Centre and the labour inspectorate became involved in several political-judicial conflicts. The judicial actions in court throw light on the orientations and strategic movements of the different parties involved. These legal proceedings certainly had legitimising effects and contributed to the acceptance of government policy concerning seasonal labour. However, these legitimising effects were not really strong and only took place after several years. The way to judicial 'depoliticising' knew several obstacles. The lawsuits in which work permits for Polish labourers were claimed by farmers, became even quite political and indeed marshalled asparagus growers instead of fragmenting their protest into individual cases. Referring to Luhmann one can explain the difficult way of judicial depoliticising by pointing at the political tasks executive organisations like the industrial insurance board and the Job Centre had to fulfil. According to Luhmann, legal proceedings are ideally navigated by conditional (if...then...) programmes. In the case that legal proceedings are traversed by certain policy goals that are dependent on political and economic conditions, the legitimising effects of litigation will stagnate. The introduction of the law PMA in 1997 was crucial in this context. This law freed the sector's industrial insurance board and the Job Centre, two important executives, of former 'disturbing' policy goals.

After 1995 the judicial conflicts about seasonal labour concentrated on a relatively small group of farmers that continued their bitter struggle with the labour inspectorate about their co-operation with Polish farms that bring in their own workers. According to the labour inspectorate these methods are illegal; it is even claimed that these farmers belong to a criminal organisation. The legal proceedings instituted by the labour inspectorate are aimed at maintaining law and order and have their basis in conditional programmes connected with severe sanctions. Most asparagus growers are resigned to the fact that things have changed and that an informal organisation of seasonal labour, as in the old days, is history.

Concluding Part

The application of the typologies of acceptance and non-acceptance on the (re)actions of asparagus growers and seasonal labours shows that cynicism in the form of tacit non-acceptance or opportunistic acceptance can be frequently discovered. There is a range of hidden transcripts that point at a deep distrust of the policy goals of the government. The dismissive attitudes and the hidden strategies for evading legal regulation are complemented by a lack of political interest and moral neutralisation through economic reasoning. In general
farmers and market gardeners feel themselves trapped between the economic reality of increasing international competition and the unreasonable legal demands that are imposed on them by administrative organisations. However, an interesting observation is that some realistic cynical orientations and actions could be categorised as (potential) cynical. In this context two ideal types (idealtypen) of agricultural employers can be distinguished: the office farmer and the kitchen farmer.

The legal regulation of seasonal labour is connected with a lot of social and judicial conflicts between farmers, several administrative organisations and also the labour union. The legitimising effects that usually accompany legal proceedings (Luhmann) only took place after a longer period of time. Looking at the hidden strategies that were followed by the different parties involved, one could say that the conflicts about rules with respect to social security, work permits for Polish labourers, the mobilisation of benefit recipients and collective labour agreements, led to a strategic-cynical action complex in which mutual trust became less and less. If we place the problematic acceptance, the modes of cynical actions and the growing distrust in the wider social context of political and social developments, the conclusion is that the problems of trust between farmers and the government have a structural character.

The political regime of agrarian neocorporatism doesn’t function as it used to do and the bridge of trust that was formed by intermediary organisations is slowly falling apart. One can also see that the principles that legitimised state authority in the agrarian sector have changed. The principle of co-operative legality, characteristic of the era of agrarian neocorporatism, has lost its political dominance. In the last decade farmers and market gardeners are even regularly confronted with command and control regulation.

The methods of creative book-keeping that were practised by almost all asparagus growers, are an example of tacit cynicism. In itself these ‘little’ cynical calculations are not an alarming matter for authorities. It is possible, and often the case, that such behaviour is abundant but doesn’t threaten the legitimacy of authorities in a serious way. These sorts of calculating and pragmatic (re)actions become alarming if they are socially and culturally embedded in a further-reaching cynicism that points at moral immunity against political values and community interests. The breakdown of the political regime of agrarian neocorporatism in the Netherlands can be seen as the structural embedding of the cynical (re)actions we observed.

The answers to the two central questions of this study are as follows. The problematic acceptance of asparagus growers in the South-east of the Netherlands can be interpreted as a slumbering crisis of legitimacy that has eroded state authority severely. Because of this severe erosion the legitimacy of state authority has approached the verge of a real crisis in which the government can no longer count on the trust of its agrarian citizens. This study about state authority and legal regulation of seasonal labour further shows that problems of acceptance and legitimacy can for a substantial part be explained through the effects of hidden transcripts and cynical actions and orientations.

The typologies of acceptance and non-acceptance, the scheme of different types of cynical action, are useful instruments to analyse the social impact of hidden transcripts and cynicism on the legitimacy of state authority. Through these typologies informal realities and the social dynamics behind the scenes can be more properly described. A social order can look stable, and therefore legitimate, but the key question is the quality of this stability. On which grounds of acceptance is a stable social order based? The concepts of acceptance, non-acceptance, hidden transcripts and cynicism make us susceptible to social phenomena which could otherwise be easily overlooked. These sensitising concepts can enrich the sociological research of legitimacy.