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The changing role of the nation-state and regulation: Workplace bullying legislation in The Netherlands

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Abstract
Workplace bullying literature has focused mainly on actions of individual targets of mistreatment, undertaken to address the problem, and on analyses of the effectiveness of responses. Less attention has been paid to the efficacy of state regulation in establishing a climate of prevention as well as redress. We examine the role of the Dutch Working Conditions Act as a means of mitigating workplace bullying from the perspective of legislative intention, processes and outcomes. Semi-structured interviews with stakeholders involved in creating, influencing and implementing the Act are analysed thematically to highlight how contextual, employer and phenomenon-specific factors affect the effectiveness of legislation with regard to workplace bullying. The findings indicate that state involvement, organisational commitment and collective action are

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all important contributors in reducing workplace bullying, but that even in the context of neoliberalism, the role of the nation-state is of critical importance, notwithstanding initiatives by employers.

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Keywords
Anti-bullying legislation, coping, Dutch Working Conditions Act, labour inspectors, neoliberalism, state, targets, unions

Introduction

Workplace bullying, alternatively labelled workplace emotional abuse/workplace harassment, is defined as subtle and/or overt negative behaviour embodying aggression, hostility and intimidation. It is generally characterised by repetition and frequency and displayed by an individual and/or group to another individual and/or group at work. It may be manifested directly and/or indirectly, privately and/or publicly, in real and/or virtual forms, and it occurs in the context of an existing or evolving unequal power relationship (D'Cruz, 2015). Persistence, evidenced through systematic patterned mistreatment over a period of time, informs legal definitions of workplace bullying (Cobb, 2017), though cyber abuse reconceptualises temporal understandings (D'Cruz and Noronha, 2018). A psychosocial problem under the rubric of workplace violence (Chappell and Di Martino, 2006), workplace bullying is unethical behaviour that goes against universal norms of social acceptability (Ramsay et al., 2011). Research from work and organisational psychology indicates that targets of workplace bullying tend to experience physical, emotional and behavioural strain and often victimisation and trauma (Nielsen et al., 2015). Targets may seek to actively address the situation, using adaptive and constructive strategies which make problem-focused coping relevant. They may hold direct discussions with the bully and engage informal and/or formal organisational options such as supervisory interventions and the filing of complaints. Very often, targets' attempts at problem-focused coping fail, owing to the workplace ethos and political dynamics, even when organisational redress mechanisms are formally available. Targets then fall back on emotion-focused coping, involving regulating their own thoughts and feelings. Cognitive restructuring, compartmentalisation, social support and spiritual leanings are common. Finally, feeling helpless, targets may quit the employer organisation and seek employment elsewhere – a response that may be seen as maladaptive and destructive (D'Cruz and Noronha, 2010, 2012, 2018; Karatuna, 2015; Reknes et al., 2016; Zapf and Gross, 2001).

Much workplace bullying literature has focused on actions undertaken by individual targets to address the problem, analysing their efficacy. Less attention has been paid to evaluating the relevance and effectiveness of the nation-state, apart from recent analyses of the availability and scope of regulation (e.g. Hanley and O'Rourke, 2016; Lippel, 2010; Lippel and Cox, 2018). Aetiological factors underlying workplace bullying are increasingly extending beyond protagonists' features such as personality, behaviour and micropolitical dynamics, to emphasise workplace characteristics (Bohle et al., 2017).

Even so, the focus has been largely the work–environment hypothesis, subsuming job roles, leadership styles, group dynamics and so on (D'Cruz, 2015).

Emerging research findings provide more generalised contextual insights, showing how the neoliberal project, with its accompanying processes of deregulation and flexibility in pursuit of profit maximisation and competitive advantage, affects organisational design and catalyses organisational change (D'Cruz et al., 2014). These organisational dynamics, which Bohle et al. term 'pressure, disorganisation and regulatory failure' (PDR), are found to unleash cultures of abuse within organisations as workplaces seek to survive a volatile business environment (Bohle et al., 2017: 447; D'Cruz et al., 2014; Lippel and Quinlan, 2011). This development accentuates psychosocial risks, especially psychological violence at work (Lippel and Quinlan, 2011; Quinlan, 2007) which is now understood as a wider sociopolitical issue that is high on the agenda of the International Labour Organization (ILO), with a convention reported to be in the offing (ILO, 2018). There are, therefore, important questions to be raised, concerning the effectiveness of workplace regulation. What can state protections achieve in the face of overall deregulation of the employer–employee relationship? Do such protections nevertheless remain worthwhile? Addressing this analytical gap, we discuss the efficacy of workplace bullying legislation in The Netherlands[1] in the light of the changing role of the nation-state.

The role of the nation-state and work-related regulation

The changes that took place in the international economic environment during the 1970s and the early 1980s affected virtually every country. Most nation-states (henceforth also the state) had to deal with high inflation, slow growth and the two oil shocks, forcing them to find ways to adjust to increasing economic integration and competition. This economic environment provided a favourable climate for neoliberal ideas that advocated the unrestrained power of markets over the state (Kus, 2006). Since then, neoliberalism, emphasising the centrality of markets, privatisation of government resources and removal of government protections, has spread globally (Kalleberg, 2009; Quinlan and Sheldon, 2011). Deregulation is considered a road to growth and prosperity, while heavy taxes, high and rigid wages, extensive job rights and inflexible labour markets are seen as impeding growth (Esping-Andersen, 1996). These macro-level changes have led employers to seek greater flexibility in their relations with workers. The various types of corporate restructuring, privatisation, attacks on welfare provisions and a concomitant hostility towards trade unions have transformed the nature of the employment relationship (Hartman, 2005; Kalleberg, 2009; Noronha and Beale, 2012). Power dynamics at work are now even more strongly skewed in favour of employers than has previously been the case (Quinlan and Sheldon, 2011). These changes have implications for psychosocial risks at work, and it is not surprising that workplace bullying is considered to be on the rise in the light of restructuring, outsourcing, downsizing, layoffs, job insecurity, precarity and so forth (Bohle et al., 2017; D'Cruz, 2015; D'Cruz et al., 2014; Lippel and Quinlan, 2011; Quinlan, 2007). Yet, the neoliberal agenda makes a strong plea for doing away with regulations that provide protection to workers in the formal sector (Noronha and Sharma, 1999), with further adverse implications for worker well-being (Quinlan, 2007).

Under such circumstances, it is no longer a given that the state can or should ensure minimum labour standards, promote countervailing power, redistribute wealth or coordinate corporatist strategies which feature labour as a prominent contributor and principal beneficiary. In fact, in most states, the shift of political power away from labour is accepted. Consequently, most states are now unwilling or unable to confront powerful global firms, which can disinvest with relative ease by relocating production to more business-friendly jurisdictions (Arthurs, 2008; Noronha and D'Cruz, 2017). The state not only creates enabling conditions for firms to engage with global markets but also provides industrial relations space to entice foreign direct investment (Noronha and D'Cruz, 2016). The simple threat of exit by multi-national corporations (MNCs) is sufficient for many states to loosen regulatory controls (Blackett, 2001). Clearly, MNCs are increasingly distant from direct legal mechanisms to hold them accountable by the state (Barrientos and Smith, 2007). Rather, states seek to adapt their national economies to the perceived requirements of the world economy by attempting to create new spaces for capital accumulation (Smith, 2015). Firms induce this behaviour in order to escape institutional constraints or to seek institutional arrangements that are more compatible with their changed strategic objectives (Stringer et al., 2016), leading to regulatory competition, with each individual state regulating downwards or dithering on enforcement of labour standards. Ironically, some point out that in the face of this inability of the state to fill the regulatory gap, firms have introduced self-regulatory initiatives (Arthurs, 2008; Blackett, 2001).

In contrast to the foregoing scenario, others argue that it is a myth that the power of the state to influence global corporations is being eroded inexorably by the unstoppable power of MNCs (Liu and Dicken, 2006). National governments continue to exercise considerable power, not only in setting the context within which MNCs operate but also in the very constitution of forms of economic integration (Smith, 2015). State action or inaction creates the enabling conditions for how firms, regions and nations are able to engage with global markets. This includes policies such as wage-setting, tariffs, taxes (and tax concessions), infrastructure provision, education, training and research and spatial planning (such as the establishment of free trade zones and business hubs; Neilson et al., 2014).

The Dutch context

The influence of neoliberalism is discernible even in coordinated market economies such as The Netherlands. It is argued that the Dutch context is gradually moving towards a more flexible system of labour relations (with fewer state interventions, more leeway for employment relation negotiations between the social partners (i.e. trade unions and employer organisations) and decentralisation of collective bargaining agreements (Boselie, 2009)). Since the 1990s, the share of low-wage flexible employment has been growing rapidly. This obviously signals the strength of employers, with trade unions unable to curb the growing precariousness (Boonstra et al., 2012). This decentralisation and individualisation in The Netherlands is taking place in the main areas of labour contracts, working time arrangements, reward systems and development plans, while collective agreements continue to exist with regard to employment, wage development and

social security at the societal and industrial levels (De Leede et al., 2004). Unions, on their part, have started to develop multiple strategies ranging from collective bargaining to litigation and from organising to influencing public opinion and the legislative process (Boonstra et al., 2012). Consequently, trust and cooperation between employers and employees is no longer automatic and tensions are increasing especially where collective bargaining is concerned (De Beer and Keune, 2017). Further, foreign MNCs resist constraints in an institutional context such as The Netherlands by circumventing specific regulations (Noronha et al., 2018a). There is evidence that foreign MNCs, whose management style and culture are different from the Dutch, value works councils as local phenomena to avoid union involvement (Looise and Drucker, 2003). Although coordination still remains central to the Dutch context, it is constantly modified and adapted to allow the market mechanism to function and expand as a consequence of deliberate liberal policy choice by the state or pressure by foreign MNCs (Touwen, 2014).

In line with the aforementioned circumstances, even where regulation to protect employees from psychosocial risks (including workplace bullying) exists, the scope of the regulation to address underlying causes and the availability and empowerment of the state machinery to execute the regulation are critical. That is, states see psychosocial risks as integral aspects of workplace regulation and mandate labour inspectorates to pay attention to them (Lippel and Quinlan, 2011; Quinlan, 2007). Yet, given the simultaneous changing role of the state in the light of neoliberalism and the related increase in psychosocial risks including workplace bullying, it is important to examine how effective worker protections are.

It is against this theoretical backdrop that we explore the efficacy of the Dutch Working Conditions Act/*Arbowet* (henceforth also the Working Conditions Act or the Act) as perceived by stakeholders associated with creating, influencing and implementing the Act, such as trade unionists, human resource (HR) managers, works council members, confidential counsellors, occupational and health and safety (OHS) personnel, labour inspectors (henceforth also inspectors), academics, experts and so on. The *Arbowet* serves as an interesting case study since it is one of the earliest acts worldwide on workplace bullying and is considered to be robust, as it is designed to provide holistic intervention with numerous checks and balances to ensure successful execution. Moreover, the inclusion of multiple viewpoints enriches insights into the research question, allowing varied opinions to be captured. However, before going any further, a brief description of the *Arbowet* is required.

The Dutch Working Conditions Act/*Arbowet*

Dutch legislation on workplace bullying, though part of the Working Conditions Act/*Arbowet* which addresses OHS concerns, specifically attends to emotional abuse within and outside the organisation. In place since 1994, the *Arbowet* earlier considered workplace bullying as a subset of psychological aggression (Hubert, 2003). However, amendments in 2007 have accorded the phenomenon independent status as a separate subject, underscoring the concerted effort at intervention within the country (Hubert, 2012). Based on a reading of the law (Dutch Working Conditions Act, n.d.), available literature (e.g. Hubert, 2003, 2012) and primary data from key informants (see the 'Method' section), an overview of the Act is summarised below. As per the Act, bullying

encompasses all forms of intimidating behaviour of a structural nature, repeated over time, coming from one or more employees (colleagues and/or managers) aimed at an employee or group of employees unable to defend themselves against this behaviour. The Act's conceptualisation of workplace bullying coincides with standard definitions in the substantive area. Dutch employers, regardless of size, are legally obliged to undertake primary, secondary and tertiary intervention, including both preventive steps to ensure the well-being of their entire workforce as well as relief measures which involve protection to targets and penalties to bullies. These include the following:

(a) Undertaking a risk inventorisation and evaluation (RIE) exercise, establishing a policy on appropriate behaviour/misconduct and developing a plan of action to address issues arising from the RIE and linked to policy execution – to be reviewed and revised periodically, taking into account the latest technical and scientific insights;

(b) Appointing within the organisation a prevention advisor (*preventiemedewerker*), whose position is legally protected and who ensures compliance with the Act;

(c) Having an internal or external certified OHS service provider (*arbodienst*) or OHS physician (*arboarts*) for interventions, particularly at secondary and tertiary levels (including treatment, counselling, rehabilitation and mediation), who can make further referrals as needed; and

(d) Formulating grievance procedures and instituting complaints committees so that targets can formally file reports about misbehaviour, with the organisation empowered to award sanctions when executing the recommendations of the complaints committee.

Identifying confidential counsellors (*vertrouwenspersonen*), either within or outside the workplace but with no conflict of interests in their various roles, who serve as points of contact for targets, providing them with solace and advice about the options available, is strongly recommended. Apart from maintaining industry/branch[2] stipulated standards (as per available specifically created working conditions catalogues (*arbocatalogi*) duly approved by designated OHS providers (*arbodiensten*)) and legally mandated requirements, the endeavour represents the joint action of employers and employees, with the works council (*ondernemingsraad*/OR)/staff representatives (*personeelsvertegenwoordiging*/PVT)/staff assembly (*personeelsvergadering*) being necessarily involved and having to approve organisational measures. Organisations can, thus, customise their responses while adhering to the specified levels of protection required. Employer associations and trade unions play a role at various stages, including influencing the content, requirements and execution of the legislation at national, industry and organisational levels. Organisations are directed to build awareness among their employees about workplace bullying and available protections. The Labour Inspectorate/Inspectorate of Social Affairs and Employment (*Inspectie SZW/Sociale Zaken en Werkgelegenheid*) under the Ministry of Social Affairs and Employment (*Ministerie SZW/van Sociale Zaken en Werkgelegenheid*) is empowered to monitor employer compliance with the Act and can issue warnings, fines, suspensions and other sanctions in instances of default, with all establishments in The Netherlands coming under its purview.

The provisions of the *Arbowet* facilitate the protection of targets of workplace bullying. Targets can seek advice from confidential counsellors, approach supervisors and HR managers, request mediation, get psychological and medical interventions from therapists and doctors and file formal internal complaints, apart from turning to trade unions and to the Labour Inspectorate. Being public law, the *Arbowet* does not allow for litigation. Targets wishing to pursue litigation can file cases under other laws which apply to their specific situation (e.g. Article 7:658 of the Civil Code (*Burgerlijk Wetboek*)). Under litigation, if targets' complaints are upheld, employers are liable to pay targets damages (including legal costs), back wages and treatment costs, reinstate targets who have had to give up their jobs as well as bear fines and other penalties including dealing with the bullies. Commitment to the eradication of workplace bullying in The Netherlands is further demonstrated through the ongoing 4-year nationwide programme under the Ministry of Social Affairs and Employment started in 2014, which focuses on reducing psychosocial risks, including bullying, across all industries and sectors.

The *Arbowet* represents a robust instrument. It addresses workplace bullying at all three levels of prevention, providing targets with relief, redress and rehabilitation. It ensures the appropriate involvement of stakeholders including administrators, employers and employees. On these counts, it contrasts with the Swedish Ordinance on Victimisation at Work and the Australian Fair Work Act. The former was launched without adequate background preparation, aggravated by attendant socioeconomic and cultural factors (Hoel and Einarsen, 2010). The latter focuses on prevention, without remedies that bestow justice on targets and impose penalties on bullies and employers, subverting effective resolution (Hanley and O'Rourke, 2016). Yet, is the *Arbowet* effective in addressing the issue of workplace bullying in the light of the changing role of the nation-state under neoliberalism?

Method

We sought to address the foregoing research question through a qualitative inquiry with the stakeholders involved in creating, influencing and executing the *Arbowet*. We chose a qualitative approach since, in providing contextualised and holistic descriptions and explanations of experiences and processes, it facilitates the preservation of complexity and the assessment of causality (Creswell, 1998; Miles and Huberman, 1994). Ethical protocols were observed. Participation was voluntary and anonymous, based on informed consent, confidentiality of the respondent's identity and choice of withdrawal.

We identified key informants via the roles associated with the *Arbowet* and recruited participants through Internet resources linked to the Act, personal contacts of the authors and later snowball sampling as earlier interviewees put the first author in touch with others in their network. All roles mentioned in or pertinent to the Act as indicated in the literature were covered, except complaints committees and practising lawyers as access to these parties did not materialise despite persistent efforts. The inclusion of various roles facilitated sources triangulation (Krefting, 1991), providing a comprehensive view of, and sharpening our insights into, the *Arbowet* as a means of addressing workplace bullying. This is so because each role brings in a specific focus and contribution and holds a particular function and relevance. In addition, we interviewed

Table 1. Participant details.

Role	Public sector	Private sector	Voluntary sector
Confidential counsellor	3 women		1 woman
Prevention advisor			1 woman
OR representative	1 man		
HR manager	1 man	4 women	1 woman
Legal counsel		1 woman	
Administrative head/employer	2 (1 man, 1 woman)		
Unionist	6 women		
Labour inspector	2 men		
Employer organisation	1 man		
Policy-making group	2 women		
Occupational social worker	1 woman		
Mediator	1 man		
Expert/consultant	2 women		
Academic	3 men		
Total	33		

HR: human resource.

three academics who specialised in OHS legislation (one), labour law (one) and OHS issues (one) as well as two consultants with expertise in workplace bullying (see Table 1). Participants (23 women and 10 men) were based across The Netherlands, with 15 of them employed in public, private or voluntary firms representing various industries and organisational sizes.

Data were gathered during September to October 2014 and September to November 2016 when the first author undertook semi-structured interviews with the key informants (four people interviewed in 2014 were again interviewed in 2016). Conducted in English and recorded with participant permission, the interviews focused on understanding the Act and on participant perspectives on the effectiveness of the Act as a means to tackle workplace bullying and aid targets' coping, and ranged from 45 minutes to 5 hours (M=2 hours), with most interviews being about 90 minutes. Recorded interviews were later transcribed verbatim.

Data were analysed thematically, with a view to retaining participants' voices. In developing sub-themes, themes and major themes, the researchers 'immersed' themselves in the data, thereby identifying emergent categories and patterns (Crabtree and Miller, 1992). Linkages between categories and patterns were used to develop sub-themes. Sub-themes which held together in a meaningful, yet distinct, way were grouped into themes. Those themes which dovetailed together in a coherent, yet specific, manner were furthered as major themes (Patton, 1990). In addition to convergence in participants' viewpoints, divergence, often linked to their role vis-à-vis the Act, was noted and included in the findings. Except in one instance, variations in participants' perspectives did not embody contradictions but rather showcased different aspects of the problematic pinpointed due to their particular interface with the Act. Sources triangulation and member checks (Krefting, 1991) ensured methodological rigour.

Findings

Thematic analyses yielded three major themes, namely, *the dilutive effect of context, inconsistent and indifferent employer responses* and *the inherent complexities of the phenomenon.* The major themes, together with their themes and sub-themes, highlighted participants' perspectives on the effectiveness of the *Arbowet* in the context of the changing role of the nation-state. Overall, participants maintained that the robust conceptualisation of the *Arbowet* is compromised by caveats in implementation. In their view, a law is indispensable to address the problem of workplace bullying and protect targets since it ensures that efforts towards appropriate workplace behaviour are not ignored or undermined but mandated and required. Yet, the mere presence of a law does little if it is not translated into effective practice. Below, we present the study findings, elucidating participants' opinions including similarities and differences and weaving in vignettes of participants' interviews. As mentioned earlier, variations in participants' opinions were not contradictory, except in a single instance, but rather reflected the insights accruing from their specific roles. Divergences, therefore, extended the breadth and depth of insights gained from convergences, providing a comprehensive picture.

The dilutive effect of context

Twelve participants, particularly unionists and academics – with support from inspectors, experts and representatives of policy-making groups and employer organisations with regard to specific themes and/or sub-themes – shared their views that the contemporary neoliberal context which emphasised the pursuit of competitiveness had numerous fallouts for the *Arbowet*. Deregulation to encourage free enterprise was one. Consequently, it was not surprising that from 2007, the Dutch government had reduced its role in the *Arbowet*, leaving the various arrangements to the responsibility and discretion of employers and employees. Prior to 2007, the *Arbowet* was more directive, with explicit stipulations. After 2007, though the law indicated the various aspects of intervention that organisations had to oversee, the particularities were left to the social partners. This decision in favour of freedom and flexibility was based on employer perspectives that the pre-2007 specifications were ill-suited to their needs and administratively cumbersome to their functioning; hence, customised measures created by the social partners would be more appropriate. To illustrate, before 2007, working conditions catalogues were created by the Labour Inspectorate but, after 2007, working conditions catalogues have been developed by the branch offices. Similarly, earlier, the government laid down specific and stringent requirements with regard to employers' choice of OHS services so that a holistic and high-quality package was chosen; however, a tie-up with a single certified physician is now sufficient, with his or her referrals being considered adequate.

The *Arbowet*, thus, now indicates requirements that must be in place without being prescriptive, emphasising that companies should strive for the best available practices. Participants pointed out that such an approach has four implications. Assigning the specificities of the law to the social partners, under the rationale of facilitating more tailor-made, self-driven initiatives that are likely to receive greater adherence, while lowering government supervision, has resulted in poorer quality measures and even attempts to

dodge expectations. Besides, with the government's work and hence expenses now reduced, the costs of the endeavour are borne by trade unions and employer organisations. Further, while the Act is public law which allows the Labour Inspectorate to enforce the stipulations, the enactment is actually via arrangements between employers and employees which become private law. In effect, the Labour Inspectorate represents the government for a public law but enforces private law, unleashing anomalies into the legal system. Moreover, laying down general legislation and leaving the specifics to be fleshed out by the social partners, who are inherently unequal, means that the law cannot be guaranteed and the Dutch government is not completely fulfilling its responsibility to the public. Ambiguities that creep in as a result were considered as compromising targets' interests:

> *Arbowet* is robust but now the government is less involved, less regulating. Employers have more power and unions are a bit sidelined … this does not help. Victims lose out badly. (Participant 31/academic)

Reduction of government expenditure was another fallout of the current neoliberal project, with its impact in two areas, as elaborated by participants. First, the government limited the number of and curbed the roles of inspectors, in breach of ILO Convention 81 as well as European regulations on the expected number of inspectors. With 200 inspectors being currently available throughout The Netherlands, two implications emerge: (a) since inspections are carried out in terms of priority sectors and in terms of nature of risks, compliance with the Act as far as workplace bullying is concerned is checked only if linked to these factors. Generally, the Labour Inspectorate looks at workplace bullying more in terms of external risks rather than internal ones, linked to sectors where service is relevant. The Labour Inspectorate has never been able to inspect all organisations in The Netherlands, and with the lower number of inspectors and the particular criteria surrounding inspections, this coverage drops even further. With the scale of operations reduced, there is, therefore, a good chance that many organisations will never be inspected. (b) Since January 2014, inspectors are not obliged to look into individual complaints of workplace bullying but will necessarily investigate instances of such abuse if they are reported via works councils or trade unions. This contrasts with the earlier practice of taking up complaints from individuals such as targets, bystanders and employees. The rationale behind such a move is also that unions and works councils intervene prior to the matter being handed over so that solutions are sought early on, lowering inspectors' workloads. Yet, this reduces the options available to targets while simultaneously subverting the chances of documenting/keeping a count of the incidence of the problem. More importantly, it fails to consider the political dynamics and vested interests within organisations that could influence the intervention by the works councils and unions. Further, small organisations do not have works councils and may lack their equivalent of a staff assembly, shrinking the avenues targets can pursue in their quest to halt the negative acts they face:

> There are less [*sic*] options for the victims nowadays. Because we have fewer inspectors here in The Netherlands, so the victims cannot approach directly any more. They must ask their

> unions to do this and unions will do it if there are many workers affected. Or they can ask their ORs but ORs want to look more at the business side. So victims have to find their own way. (Participant 15/unionist)

Second, the government restricted funds available to the branches for the purpose of developing working conditions catalogues. As highlighted earlier, the 2007 amendment of the Act put the onus of developing working conditions catalogues on employers and employees via the branch office. Related to this decision, the government allocated €50,000 to each branch to develop the catalogues for its two most important risks, with the further instruction that, in order to avoid duplication, branches could refer to each other's catalogues if they have similar risks. Yet, focusing on two risks implied sidelining others, including those that newly arose, and borrowing from other branches proved impractical since specificities varied according to industry. Moreover, with no further government funding, branches could neither expand the number of risks examined nor revise the two on which they focused, unless they arranged for funds to cover the costs.

Participants here underscored that prioritising the interests of employers, thereby lowering the influence of trade unions, is the third effect of ongoing business imperatives. Conventionally, unions have played a critical role in ensuring that psychosocial risks remain on the agenda not just at the macro, policy level but also at the micro, enterprise level. In the former case, unions not only ensure that psychosocial risks form part of the catalogues, opposing employer groups who seek to sideline these matters, but also create awareness about the Act among the public, who often fail to realise its presence and value. Unions may even try to have psychosocial risks included in the collective bargaining agreements. In the latter case, unions influence the implementation of the *Arbowet* in organisations not just by working with the works council and with their members within the organisation but also through negotiations with the top management and HR department. Indeed, the role of the union is even more critical in small organisations where there is no works council, since the staff assembly may be non-existent or ineffective due to the control of the owner.

The weakening of unions adversely affects the efficacy of the law in several ways. Unions are rendered less successful on issues they fight, leading them to be perceived as ineffective and irrelevant. This lowers the number of members they can attract, with further consequences on their power and strength. Unions exert less influence on the works councils which, as the latter approve employer initiatives, are key players in the implementation of the *Arbowet*. Although works councils are legally empowered and have a role in organisational functioning, this increasingly remains on paper. Works councils are overloaded with priorities linked to organisational survival. Their members, unaware of their powers and rights, are easily influenced by management. With declining density,[3] unions are stretched in trying to make works council members aware of their position on all relevant issues. This pertains to not only union members on the works council but also the works council group as a whole. Unions are, therefore, less effective in ensuring that policy-makers, employers and works councils commit to addressing workplace bullying. Targets of bullying then have fewer and less effective avenues to tap as they seek to ameliorate their mistreatment.

Inconsistent and indifferent employer responses

While leaving the particularities of intervention requirements to the social partners, the law nonetheless stipulates that all organisations across industries, including public, private and voluntary sectors, must conduct an RIE, have a policy, make an action plan, link up with an OHS physician and institute a complaints committee. Participants described variations in employer acquiescence with these requirements, with academics and unionists estimating that only 40% to 50% of Dutch organisations implement the *Arbowet* and pointing out that, whereas the public sector, as the face of the government, was more likely to be compliant, private sector responses varied with organisational size. This latter observation was supported by the HR managers and experts included in the study. Participants concurred that variations in organisational responses impacted targets' options to deal with the situation.

What accounts for employers' variations in spite of the mandate of the law? Restrictions on the recruitment and roles of labour inspectors were seen to constitute a significant reason, since the probability of checks is almost negligible and the opportunity for individual complaints to be heard is minuscule. The declining power of trade unions emerged as equally important, since they are less effective in influencing governments, employers, ORs and even employees themselves. Amendments to the Act in 2007, in providing the social partners with greater leeway, have watered down the requirements. Accordingly, employers may conduct RIE exercises with a single question on workplace bullying administered to a few employees. Capturing the dynamics of the workplace accurately is then difficult. Similarly, prevention advisors are often arbitrarily chosen from anywhere in the organisation and may lack a relevant background as well as receive limited training. Although their position is mandated and protected by law, they may have no interest in the role and/or be co-opted by the management to downplay the requirements of the Act. Besides, organisations may have policies or codes of conduct against bullying but these may be just a single sentence which provides limited direction. Revisions to the policy based on another RIE exercise may be done very sporadically, rather than at regular intervals which keep pace with requirements arising within the organisation or linked to emerging technical and scientific insights. It is not uncommon for organisations to focus more on physical OHS issues rather than psychosocial risks:

> Each company deals with the *Arbowet* as they wish. Usually big companies have lots of resources so they are able to handle the requirements properly. In small firms, there are few people so the owner may do [*sic*] many roles and then the law is not really followed. It is a bit tricky if the owner is the *preventiemedewerker* and the HR all in one. (Participant 4/confidential counsellor)

Unionists, academics, experts, confidential counsellors, prevention advisors, occupational social workers, mediators and inspectors in the sample held that organisational leadership, ideology and culture as well as resource and competitiveness concerns influence implementation. The top management may not prioritise psychological risks, believing them to be irrelevant to or absent in the organisation, and/or choose to conserve organisational money, time and energy for business objectives critical to survival, particularly in the current economic environment where resources are limited.

The position of the works council, both in terms of a pro-employer focus and a lack of awareness about its own rights and roles, contributes to the situation. Generally, it is the negotiations between the management, the HR department, the works council and the prevention advisor that are critical. Contingent on how the power play between these protagonists unfolds, organisations respond to the *Arbowet*. Indeed, though the law mandates that all personnel involved in the execution of the Act should be allowed to work autonomously and should not be penalised for appropriate conduct of their responsibilities, workplace realities may be different. Although organisations may not castigate, they could hamper the work of these personnel, making it difficult to implement the law. It is here that HR managers' divergent views were contradictory, in that, they insisted that top management is committed to preventing and resolving workplace bullying. Indeed, HR managers, legal counsel, employer organisation representatives and employers among the participants believed that workplace bullying was not a common experience in The Netherlands. HR managers based their view on the low, even negligible, rates of internal complaints, including informal ones. They emphasised that pro-employee top management teams and organisational cultures keep workplace bullying at bay while simultaneously acknowledging that, when workplace bullying does occur, targets are often deterred from seeking help due to the complexities of the phenomenon. At the same time, HR managers as well as unionists highlighted that emerging sectors such as information technology (IT) which boast of inclusivist human resource management (HRM) strategies[4] (Peetz, 2002) neither have works councils nor encourage unions. This is a matter of concern since D'Cruz and Noronha (2010) have earlier cautioned about target vulnerability in such situations:

> Employers do not pay attention to bullying. Their focus is productivity. Bullying is the employee's problem. Why should they spend on it? These days, ORs are weak, labour inspectors are too few. So no checks as such. Unions are active but workers are not joining unions so much. (Participant 8/unionist)

Notwithstanding the extent to which organisations have implemented the *Arbowet*, whether partially, fully or not at all, many participants (namely, unionists, academics, experts, confidential counsellors, prevention advisors, occupational social workers and mediators) highlighted that supervisors, managers, top leaders and HR departments in most organisations display indifference when confronted with the issue, impeding the attempt to tackle it. Various reasons were advanced. One, denial that such misbehaviour occurs in their setting, ostensibly because of its associated complications, is common. Two, considering the relationship between two adult employees to be beyond their purview, which is focused on task fulfilment and organisational success, is emphasised. Three, holding targets responsible for the aetiology and resolution of the situation, thereby perpetuating a victim-blaming approach, negates work environment involvement. Participants here further stated that the largely top-down nature of workplace bullying in The Netherlands plays a role since the management would not wish to reprimand one of its own members. It is not uncommon for the HR department to toe the line as it privileges its strategic business partner role. More importantly, the participants pointed out that bullying could inform organisational culture, being a part of managerial style. Indeed, they were unanimous in their view that, though the *Arbowet* lays down sound

requirements, variability in implementation due to the aforementioned factors impacts targets' empowerment and well-being. Interestingly, HR managers in the sample insisted that top management and HR professionals always sought to assist targets, since they wished to promote a healthy workplace which ensured optimal productivity.

All participants advocated early intervention to halt the course of workplace bullying, indicating that leaving the situation unattended allows it to fester and worsen to the point of becoming unamenable to resolution. Yet, some participants (namely, experts, confidential counsellors, unionists, academics, works council representatives, administrative heads, mediators, prevention advisors and occupational social workers) acknowledged that when targets approach the organisation for assistance, even informally, they are usually further victimised. Unionists and academics opined that because the costs of indifference are negligible, organisations are comfortable pursuing an apathetic stand. The management opines that targets will not pursue litigation due to its pre-requisite of proof, which can be ambiguous or even unavailable in cases of bullying, and its exorbitant costs. Even in instances of formal internal complaints, the management is confident that the financial impact will be limited if the grievance is upheld because it can influence the complaints committee on these lines and enjoys the prerogative of executing the recommendations.

Even so, all participants described few instances of successful resolution, linked to organisational commitment to employee well-being and dignified workplaces. Here, the top management and the HR department maintained impartial positions and made genuine attempts to address the situation. In smaller organisations, informal interventions were often sufficient owing to a more collegial work environment. In larger organisations, apart from informal interventions which usually could iron out the situation, the possibility of separating the two protagonists through transfers to different work units was facilitated by organisational size. Even when formal internal complaints are resorted to, they may be resolved such that targets stay on in the organisation or handled in ways whereby targets feel supported even if the grievance is not upheld. Participants underscored that culture and leadership at work are critical to whether and how bullying is addressed, postulating that perhaps employers need more assistance to implement the law and to adopt practical measures to address the problem.

The inherent complexities of the phenomenon

Confidential counsellors, prevention advisors, legal counsel, administrative heads, unionists, experts, academics, occupational social workers, mediators and one HR manager spoke of the special features of workplace bullying. Since the unique attributes of the phenomenon, as elaborated below, make targets reluctant to seek redress for their problem, the availability of the law does not necessarily provide a sense of protection, nor does it motivate a fight for justice, constraining problem-focused coping. Misbehaviour can be covert and subtle, being open to interpretation. Manifestations of bullying need not provide targets with sufficient proof to back their claims. Witnesses may be unavailable when abuse occurs privately or may be unwilling to support publicly when abuse occurs in front of them. Power imbalances between targets and bullies, sometimes originating in hierarchical differences, emerge during the course of

misbehaviour as targets feel increasingly vulnerable and helpless. Target defencelessness is usually compounded when there is organisational support for the bully. Notions of subjectivity are often invoked when situations of workplace bullying are brought up for discussion:

> Bullying can be doubted, questioned. So victims feel unsure if the law will really help them. (Participant 2/expert)

According to the aforementioned participants (except the legal counsel and the HR manager), targets may gain support and advice from confidential counsellors but remain uncertain whether and how to proceed further as they doubt how people will react. If the bully is their immediate superior and/or well connected in the organisation, targets may try informal means but will generally remain wary of approaching the HR department or filing formal internal complaints. Targets generally harbour the view that they will be further victimised by the HR department and the larger organisation such that their confidentiality will be violated, their experiences of bullying will intensify, they may face retaliation and they will be expelled from the organisation. Targets, therefore, prefer to solve the problem on their own; if they cannot, they decide to quit. Only in instances where targets are sure that the organisational culture is impartial will they actively pursue the matter with the HR department or through a formal internal complaint.

Turning to trade unions helps targets on various fronts. Apart from support and advice about the available options, unions may approach organisations formally or informally to represent their member. Unionists among the participants shared the view that, by and large, employers show openness to listening to the issue because their reputations are at stake but they may not be committed to or effective in solving the situation. Yet, targets generally approach unions after the situation has escalated to a very severe level. This is usually after they have approached managers and HR departments whose handling of the situation aggravates the problem. At that juncture, though the union tries to assist them through various interventions such as checking collective bargaining agreements and legal possibilities, these often do not work. Quitting remains the only/best option and then unions try to negotiate a good settlement, looking at agreements, laws and so on, for their member, notwithstanding whether the latter is on a permanent or temporary contract. Unions capitalise on the argument that it is the employer's responsibility to provide a good work environment and, as this did not happen, compensation is in order. Even so, unions emphasise that the process of negotiating settlements at this stage is delicate as employers are not prone to parting with money easily.

Among the participants, experts, confidential counsellors, unionists, academics, works council representatives, administrative heads, mediators, prevention advisors and occupational social workers pointed out that very few targets opt for formal internal complaints, underscoring the strain it entailed. The challenges associated with the complaints process persist even when targets are supported by unions. Complaints processes precipitate negative dynamics, with further humiliation of the target, apathy displayed by bystanders who feel torn between colleagues and growing hostility between targets and bullies due to the accumulation of written documents detailing the problem. Complaints procedures need not end with justice for targets, but instead, bring in physical and mental strain:

> It is not easy to bring up a bullying complaint. The victim must have evidence. Co-workers are not always willing to be a part of the process, so that means you will not have evidence. And if the supervisor is the bully, then it (a complaint) means fighting against that person. This can be very stressful because the supervisor is more powerful. So victims have to feel confident. (Participant 14/administrative head)

Inspectors, academics and unionists indicated that using the option of approaching the Labour Inspectorate was an important avenue of resolution for targets, embodying an active approach to tackling the problem, particularly in instances where their employers were not complying with the *Arbowet*. Once a complaint was lodged, inspectors would visit the organisation, study the situation and direct the organisation further, issuing warnings and sanctions if required. Organisations indirectly benefitted through the gain of greater clarity on the law. But with the current directive that complaints which will definitely get attention must come via the trade union or the works council, targets' alternatives for support are limited.

Litigation is an option for targets, especially when all other interventions have not worked, and may be pursued independently or via the trade union. Although litigation must be pursued under other relevant laws, violations of the *Arbowet* can be cited to support the case. Even so, as all participants stated, litigation is not a common option in The Netherlands, deterrents being the costs in money, time, energy and making the issue public. Moreover, as a unionist underscored, it is not always easy to fight and win cases on bullying, so people tread this route only if they are sure they have a strong case backed by sufficient proof. Further, in an expert's view, people do not wish to go through the challenges of litigation and then end up traumatised if the matter is not resolved in their favour. Hence, to cite a unionist, when people get enough financial compensation initially from employer-linked, and later, if needed, from government-linked, employee insurance schemes,[5] to address issues pertaining to illness that follows from being bullied, they tend not to go to court.

Experts point out that targets often change jobs or try to cope by themselves (these are the most common means) – or, at best, try to manage with facilities for support available within the organisation (e.g. the confidential counsellor/the OHS personnel). This is probably one reason why workplace bullying cases do not come to light and so the problem seems small, with organisations insisting that it does not exist. Nonetheless, all participants emphasised that contemporaneously, the option of quitting is more constrained because of labour market limitations. Targets then have to endure a negative situation, notwithstanding the consequent emotional and physical strain. Some participants – namely, experts, academics, unionists, inspectors, confidential counsellors and occupational social workers – pointed out that this is possibly the reason why the number of workplace bullying cases is higher currently.

Discussion

The active involvement of the nation-state is a necessary pre-condition for the success of anti-bullying legislation. The presence of legislation signals national intolerance of the issue, indicating that the state recognises workplace emotional abuse as a problem. But this must be followed up with the state's influence in implementation through a strong

agency directing and enforcing the law (Hoel and Einarsen, 2010; Lippel and Quinlan, 2011). The *Arbowet* in its current form evidences that the state has lent legitimacy to the issue. Yet, through the 2007 amendment, the state has deflected responsibility for implementing the law, delegating it to the social partners. The decrease in state supervision, administrative backing and financial outlays represents a regressive step, favouring employers and exacerbating the differences between the social partners. The compromising of employee interests translates into fewer and less reliable options for targets of workplace bullying. Thus, taking the specific case of the *Arbowet*, we recognise the paradoxical position of the state.

On the one hand, the state conceptualises and implements employee protections – a role we have shown to be indispensable. Notwithstanding the dynamics of neoliberalism, the state's role remains central for the success of anti-bullying legislation. Our findings show that law, to be effective, must include explicit guidelines and be accompanied by adequate administrative and financial support, organisational commitment and collective action, reinforcing Quinlan (2007). Where the assessments and interventions to be undertaken are hazy and the resources and personnel required for execution are inadequate, regulatory success is compromised (Lippel and Quinlan, 2011). The complexities associated with workplace bullying are not impossible to address, as evidenced in other cases of human interaction involving diversity and discrimination (Hoel and Einarsen, 2010). On the other hand, when the state itself endorses neoliberalism, favouring deregulation and flexibility, there are two consequences: (a) increased workplace risk factors that trigger workplace bullying and (b) decreased state machinery to ensure adherence to the law. The changing state has adversely affected the efficacy of labour inspectors, limiting their role capacity to address the underlying causes of the problem (Quinlan, 2007). Nevertheless, our findings show that national governments continue to exercise considerable power (Smith, 2015), necessary if employee interests are to be protected in a neoliberal context (Noronha et al., 2018b). Under such circumstances, if the state is to safeguard employee rights, it would do well to adopt a strategy of 'institutional reflexivity' (Rhodes et al., 2010: 110), entailing ongoing and active vigilance and self-critique of ideologies, policies, mechanisms, practices and so on, undertaken in order to ensure sustained commitment to employee well-being.

Following from the above, organisational commitment to eliminating the problem of workplace bullying is a critical factor. Indeed, even alongside the call for legislation in countries where regulation is lacking, it is not surprising to observe the emphasis on ensuring the appropriateness of workplace culture (D'Cruz, 2018; D'Cruz and Noronha, 2010; Thirlwall, 2015). Moreover, though sanctions by the state's administration are necessary to ensure compliance (Hoel and Einarsen, 2010), the effectiveness of the mechanisms thus put in place depends on the attitudes of the management (Hanley and O'Rourke, 2016). An HRM philosophy that privileges care and humanism (Winstanley and Woodall, 2000), aligned with its conventional employee advocacy role (Harrington, 2010), is indispensable.

Waning union strength compromises the effectiveness of the *Arbowet*. Collective action is recognised as the most viable alternative to address workplace bullying when other avenues fail (Beale and Hoel, 2011; Hoel and Beale, 2006; Ironside and Seifert, 2003). Indeed, the influence of Dutch trade unions in maintaining government and

employer focus on psychosocial risks in general and workplace bullying in particular cannot be ignored. Building up greater influence through increasing membership, transnational collaboration and social movement unionism – particularly of a global reach – is important (Kloosterboer, 2007). To this end, union revitalisation requires a reconsideration of strategic choices (Kochan et al., 1986) in order to move beyond narrow economic objectives to embrace wider political processes (Gall, 2009).

In conclusion, further research is needed across different countries with robust anti-bullying laws to assess how the role of the nation-state affects workplace bullying, particularly in the context of neoliberalism. The insights gained from such endeavours will point out the route towards ensuring efficacious anti-bullying legislation that promotes better mechanisms to tackle and eliminate workplace emotional abuse.

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Notes

1. It may be noted that the 2017 amendments to the Dutch Working Conditions Act are unrelated to this article as the study it reports was undertaken between 2014 and 2016.
2. A branch (trade association) comprises employer organisations related to a particular industry. It is monitored by the Labour Inspectorate/Inspectorate of Social Affairs and Employment (*Inspectie SZW/Sociale Zaken en Werkgelegenheid*).
3. Union density in The Netherlands shows a downwards trend from 22.6% in 2000 to 17.3% in 2016 (Organisation for Economic Co-operation and Development (OECD), 2018).
4. Inclusivist human resource management (HRM) strategies involve the use of employee involvement schemes and human resource (HR) initiatives that emphasise employee identification with, loyalty towards and complete reliance on the employer (Peetz, 2002).
5. See https://www.arbeidsongeschiktheid.org/ and https://www.uwv.nl/overuwv/wat-is-uwv/index.aspx for details on how employer-linked and government-linked employee insurance schemes work in The Netherlands.

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