Grey area policies

A CASE STUDY OF THE COVID-19 CURFEW IN THE NETHERLANDS

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Abstract

In this thesis the central research question is: Is the political decision to enforce a curfew in the Netherlands a case of good governance of evidence or of a wicked problem? In order to find an answer to this question OMT advices, minutes of Second Chamber debates and minutes of court cases regarding the curfew are the focus of analysis. The theoretical frameworks to be used in the analyses are Parkhurst's (2017) model of good governance of evidence and Head's (2008) model of wicked problems. From these theoretical models certain aspects are selected and expanded upon to serve as lens of the analysis. There is also a suggested relation between the two models. This relation would be a scale relation, when there is more good governance of evidence the problem becomes less wicked and vice versa. The central conclusion is that little elements of good governance of evidence were found wile wicked problems elements were in abundance. Thus the curfew is a case of a wicked problem. With the elements of the theoretical models that were found in the data cases the suggested relation was not definitively established and thus not true.

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Introduction

Policy made by a government should be useful and effective. In order to create a large support base among citizens and to tackle the actual societal problem at hand. This should especially be the case with policy made to combat the global COVID-19 pandemic, where the situation is more challenging and complex than in many other societal policy problems. A social challenge like a global pandemic without much experience in dealing with epidemics and fundamental knowledge of the virus is a large trial and error process. One could almost say that a challenge like that becomes unsolvable, as the factors that contribute to a pandemic are not only in the hands of national policy makers, but also in those of other policy makers around the world. The COVID-19 pandemic came in many waves and in late January 2021 the situation became so threatening that the Dutch government instituted a curfew. This curfew was met with significantly more resistance by groups of citizens and politicians than all other COVID-19 measures (Tweede Kamer der Staten Generaal, 2021, 2021-2; Rechtbank Den Haag, 2021, 2021-2).

A curfew is a measure that had been seen in countries around the world. Countries such as France, the United Kingdom or Germany opted for a curfew during the worst times of a COVID-19 wave. In these countries the results of - and opinions about - the curfew are mixed. In France, the curfew was experienced as very positive. The curfew as a COVID-19 measure was even so successful that during one particular wave in the winter of 2021 France advanced the starting time of their curfew. From 22:00 to 18:00 (Outbreak Management Team, 2021-2). While around the same time Germany suspended their national curfew, instead favouring a more local approach (Tweede Kamer der Staten Generaal, 2021). A curfew is a tricky measure to implement. Being prevented to come and go where a person wants to is fundamentally in conflict with the European Convention on Human Rights (ECHR), which with Article 2 of Section 4 protects the right of freedom of movement (European Court on Human Rights, 2021, p.37). This right of the freedom of movement is also entrenched in the constitution of the Netherlands through Article 15, that guarantees that nobody can be deprived of their freedom (De Nederlandse Grondwet, N.D.). However, both the constitution and the ECHR have mechanisms that could allow for a curfew to be implemented. The ECHR states also in Section 4 Article 2: 'No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' (European Court on Human Rights, 2021, p. 37) At the same time the Dutch government is tasked with protecting the health of the Dutch public in Article 22 of the constitution (De Nederlandse Grondwet, N.D.).

All these articles create a difficult situation when the world is engulfed in a pandemic. On the one hand the government has to always protect the human rights, that they are bound to in multiple treaties and by the Dutch constitution. At the same time the government is tasked with protecting the health of Dutch citizens and allowed to restrict the right to freedom of movement if that helps protecting the health of citizens. As one can imagine, this creates a grey area where the government can decide to implement a curfew to act according to Article 22. However, in that same grey area there can be politicians, groups of citizens or others that might find a curfew unconstitutional, disproportional and maybe even close to tyranny.

The overall goal of this research is to gain more insight into policy measures that operate is this constitutional grey area. The aim of this thesis is to make a scientific contribution as well as a societal one. The scientific contribution of this study is to gain more insight into the effect of the nature of the problem on the way evidence is used in policies. It could be for example that even if evidence is used properly, that that does not make a problem more solvable. This would then be because other elements of wicked problems are prevalent in the policy problem.. The opposite could also be true, a problem becomes more solvable (or less wicked) if evidence is used. It is not unreasonable to assume that severe crises will keep arising in society and thus the chance of problems moving into such a constitutional grey area are also possible. This research contributes to discovering if there is a relation between the nature or insolvability of a problem (wicked problems) and the way in which scientific evidence was handled in the policy process (good governance of evidence).

The societal contribution of this study is to inform policy makers of the effects that good use of evidence could have on a policy problem. For policy makers, especially for policies in a constitutional grey area, it might be useful to realise that problems could become more solvable and debates less fierce and more constructive if evidence is applied properly. On the other hand it could prepare policy makers for the difficulties of dealing with a crisis like a pandemic, in which a lack of peer reviewed scientific data could explain the difficulties in a political process.

The main research question of this thesis is:

> *Is the political decision to enforce a curfew in the Netherlands a case of good governance of evidence or of a wicked problem?*

In order to answer this main research question several sub-questions are used. These sub-questions are:

- How should we understand the concepts of 'good governance of evidence' and 'wicked problem'?
- What role did evidence play in the policy process that led to the curfew?

- Which features of 'good governance of evidence' are visible in the policy process that led to the curfew?
- Which features of 'wicked problems' are visible in the policy process that led to the curfew?

The first sub question is a theoretical one. It covers the key theoretical concepts that structure the thesis and splits these concepts into different dimensions. The second sub question is empirical and descriptive. It covers the most important phenomenon of the thesis: the place of scientific evidence in policymaking processes with the decision to go for a curfew as the central case. The last two sub question are analytical ones. These questions link the theory covered in first sub question to the empirical material covered in answering the second.

This study would have liked to be able to make use of minutes of the OMT meetings as well as minutes of cabinet meetings. As much of the current data allows us to inspect elements of good governance of evidence and wicked problems, however these minutes could give a great insight into the policy process prior to the advice by the OMT and the policy decision to implement a curfew.

Theory

In the theory section the sub-question *How should we understand the concepts of 'good governance of evidence' and 'wicked problem'?* is discussed. In this thesis, the concepts of good governance of evidence and wicked problems are presented as being opposed to one another. It is the expectation that when it is possible to follow the principles of good governance of evidence in a policymaking process, the problem dealt with is not 'wicked' and that when a problem is wicked it will be difficult to follow the principles of good governance of evidence. To develop that expectation further the concept of good governance of evidence and wicked problems will be explained in depth. The focus in these explanations is on the sub-concepts that are going to be used in this thesis. From the sub-concepts of good governance of evidence and wicked problems two hypotheses will arrise. One for the concept of good governance of evidence and one for wicked problems. To check whether the suggested opposition between the two concepts could also exist, a third hypothesis will be introduced, suggesting a relation between the two concepts.

Good governance of evidence

The theory of 'good governance of evidence' is the first theory by which this thesis will try to establish a relation between evidence use and wickedness in the political process of the curfew. In this theory governance is defined as 'the art of governing' with this art consisting of the multitude of arrangements and processes that dictate the way in which collective decisions are made and outcomes are reached (Parkhurst, 2017, p. 159-160). Parkhurst summarizes the different normative principles of 'good governance' as two categories. The first category is the addressing of outcomes of decision-making and the second category is about the decision-making process.

The model that Parkhurst developed identifies four components that are necessary for using evidence in governance (Parkhurst, 2017, p. 160). These components are:

- The need to consider appropriate evidence, the need to address the political considerations relevant within a policy decision.
- The need for accountability in evidence use, accountability ensures that the evidence use reaches back to the public.
- The need for transparency, evidence use needs to be open to scrutiny.
- Contestability, public debate and the opportunity for appeal processes is necessary, also from the scientific standpoint that questioning and debate are part of the scientific process.

Parkhurst puts focus on these four elements in his book 'The Politics of Evidence' by discussing them in separate chapters. Together with four other elements (public representation, public deliberation

systematic evidence and quality of evidence) that Parkhurst only elaborates on in one table, the model can be expanded into eight elements that according to Parkhurst are necessary for 'good governance of evidence' (Parkhurst, 2017, p. 160-163). The eight elements are appropriateness, quality, rigour, stewardship, representation, transparency, deliberation, and contestability (Parkhurst, 2017, p. 163). The elements appropriateness, transparency and deliberation are concerned with the creation and use of evidence leading up to the political decision. The other elements of good governance of evidence mainly deal with characteristics and quality of the evidence used. The elements appropriateness, transparency and deliberation can be tested in the policy and political process for which the evidence was used. Therefore these elements have been selected for this study and will be expanded upon below.

First element: What makes evidence appropriate

Parkhurst analyses multiple papers in an attempt to define what appropriate evidence to be used in policy making decisions is. His starting point is the attributes that according to Cash et al are essential in order for science to inform policy effectively. These attributes are: credibility, salience and legitimacy (Parkhurst, 2017, p. 108-109). Credibility can be defined as the 'scientific adequacy of the technical evidence and arguments' (Parkhurst, 2017, p. 109). Salience is used to describe the relevance of the evaluation of the decision-makers' needs. Lastly, legitimacy is the perception that the information and technology has been produced without any bias, and is fair in the way it treats views and interests (Parkhurst, 2017, p. 109). Parkhurst developed a framework in which the credibility and salience of evidence in the policy process is expanded upon.

Expanding on these concepts, Parkhurst has developed a framework of three disciplinary perspectives that can be used to test if evidence is appropriate to be used in policy. The first disciplinary perspective is that the evidence needs to address the actual key policy concerns. Important to remember is that data can be socially constructed, the defining of variables and the interpretation of data is influenced by our culture or environment. Therefore the evidence can be useful or not depending on how the variables are defined, this needs to be kept in mind when reviewing evidence (Parkhurst, 2017, p. 113). The second perspective is that evidence has to be constructed in such a way that it is actually useful in addressing the policy concern. This perspective is best explained through the quote of Cartwright: ''For policy and practice we do not need to know "it works somewhere". We need evidence for "it-will-work-for-us"' (Parkhurst, 2017, p. 115). The evidence used in policy-making needs to function in the context of the policy. Thus, if it works in another context, that doesn't mean that it works in this context. This is especially true in the social world of policy and politics, where alternative mechanisms often create very different outcomes (Parkhurst, 2017, p. 115-116). The third principle is that evidence has to be applicable to the local context of the problem. When using evidence in the policy-making process it is important to find out which evidence works for what. Evidence needs to work for the local context of the policy problem. Parkhurst exemplifies this through the 'success of prison reform' paper of Pawson and Tilley, where evidence always suggested that prison reform doesn't work at all

they argued that this conclusion came about because of some general definition of success. While when certain approaches were judged in their local context, success was found (Parkhurst, 2017, p. 116).

Meeting these three principles is essential for evidence to be appropriate in the policy-making process. This framework is further expanded by citing a few criteria that the evidence have to meet in order to be of high quality. These criteria are: The evidence has to be applied in line with integrity to scientific principles. The application of evidence has to be systematic in order to include all relevant information regarding the issue, this needs to be done in a consistent and up-to-date way. The evidence gathered through high-quality methods, that is relevant to the type of data, think of well designed surveys with a significant sample size (Parkhurst, 2017, p. 123).

Second element: Transparency in a political process

Parkhurst attributes transparency to the same mechanisms that are used to achieve legitimacy and accountability in the process of finding good evidence for policy transparency. In this thesis however, the focus will be on whether people or organisations make it clear on what their statements are based. In a parliamentary debate it could be that politicians make statements without mentioning if they have evidence for that statement, or just making a general statement like: "scientist say…" Those statements will be considered as not transparent as they do not deliver enough information to make their statements checkable.

Third element: Deliberations for the curfew.

The last element that this thesis will be looking at is deliberation. Deliberation is the term that Parkhurst uses to describe whether a political or policy process allowed for different viewpoints when making decisions. This is achieved through engaging with the public in order to identify different values and concerns that need to be addressed in the policy process (Parkhurst, 2017, p. 162). In this thesis the focus will be on whether multiple viewpoints can be seen to be taken in a decision making process. For example, an OMT advice can only talk about the R-number, then the assumption would be that other viewpoints were not take into account. However, if the advice contains something like: regardless of the effects for mental wellbeing or the economy this and this measure should still be taken. Then it can be assumed that the economy and the mental health of citizens was considered when making their advice.

The principles of Parkhurst's framework translate the four concepts of appropriate evidence, accountability, transparency and contestability into eight principles. Of these eight principles, appropriateness, transparency and deliberation will be used to asses whether the political process regarding the curfew is a case of good governance of evidence. This will be done by testing the following hypothesis:

(H1) *The political decision to enforce a curfew in the Netherlands is a case of good governance of evidence.*

The hypothesis will be accepted when all three elements of good governance of evidence (appropriateness, transparency and deliberation) are found in the data. When two elements are found the hypothesis is neither accepted nor rejected and with one or no elements present in the data the hypothesis is rejected.

Wicked problems

The concept of wicked problems has been associated with more modern problems. Problems categorized as wicked have been described as "complex, open-ended and intractable" (Head, 2008, p. 101). In wicked problems the nature of the problem as well as solutions are ongoing topic of debate. In the emergence of wicked problems as a concept there have been two groups who have contributed to the development of the first wicked problem frameworks (Head, 2008, p. 101). Both groups sought to counter the perceived dominance of rational-technical approaches on social policy and urban planning issues in the US of the 1960's. The first group came from the public administration domain. Their critique was that the policy programs were too complex to ever be successful. This was because of the unfeasible levels of goal-clarity, coordination and information. In short, policy makers should not hold on to a blueprint policy that works everywhere, but should work to tackle less ambitious elements of the problem that are more easily managed (Head, 2008, p. 101). The other group of critics found their basis in social policy analysis. Again the technical approach was the basis of the critique. This group argued that the technical starting point is guaranteed to clash with overlooked perspectives, values or experiences that stakeholders can have (Head, 2008, p. 102).

The first theoretical concept of wicked problems has been developed in by Rittel and Weber, in 1973 they published a paper in which it was stated that 'major urban and social problems will no longer be solved through an engineering approach' (Head, 2008, p. 102). Society had become too divers and the difference in attitudes and values of social groups does not allow for clear and agreed solutions. Because modern social problems are no longer approachable in the same way as the more mathematical problems of science a different approach is needed. The idea of wicked problems arrived from this idea of ill-defined social problems and (value) judgement in the problem solving process (Head, 2008, p. 102). As said earlier, the first framework to conceptualise wicked problems was set up by Rittel and Weber, they identified ten characteristics of wicked problems (Head, 2008, p. 102). These characteristics are:

1. There is no definitive formulation of a wicked problem. The scope and definition of the problem is not agreed upon.
2. Wicked problems have no "stopping rule".

3. Solutions to wicked problems are not true or false, but good or bad, depending on the stakeholder.

4. There is no immediate and no ultimate test of a solution to a wicked problem.

5. Every (attempted) solution to a wicked problem is a "one-shot operation"; the results cannot be readily undone, and there is no opportunity to learn by trial and error.

6. Wicked problems do not have an enumerable (or an exhaustively describable) set of potential solutions, nor is there a well-described set of permissible operations that may be incorporated into the plan.

7. Every wicked problem is essentially unique.

8. Every wicked problem can be considered to be a symptom of another problem.

9. The existence of a discrepancy representing a wicked problem can be explained in numerous ways.

10. The planner has no "right to be wrong".

These characteristics still form the bedrock of modern theories about wicked problems. These characteristics also started to help find explanations for difficulties that scholars found in the areas of environment policy, urban planning or social policy (Head, 2008, p. 103). The concept of wicked problems helps to give insight into why social policies become controversial, fail to achieve their goals or become too difficult to monitor or manage. There is no answer however to the question of the solvability of a problem if it has been identified as wicked (Head, 2008, p. 103).

One of the theories on wicked problems that build on the characteristics of Rittel and Weber is the model by Koppenjan and Klijn. This model defines the characteristics into three dimensions: complexity, uncertainty and divergence (Head, 2008, p. 103-104). When the three dimensions of

Table 1: Complexity, uncertainty and divergence

Complexity of elements, sub-systems and interdependencies	Low	Moderate	High
Uncertainty in relation to risks, consequences of action, and changing patterns	Low	Moderate	High
Divergence and fragmentation in viewpoints, values, strategic intentions	Low	Moderate	High
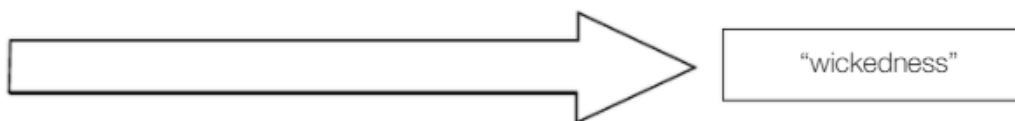
$\longrightarrow$ "wickedness"

Source: Head, 2008

wickedness are combined through the relationships between them, the measure of wickedness in a problem intensifies. To Koppenjan and Klijn there is a measure of wickedness in a problem. A problem is not wicked when there is just a high level of complexity. But when stakeholders are also not in agreement on aspects of the problem the wickedness intensifies.

First element: Complexity

The first element of a wicked problem is complexity. Complexity in a policy problem can arise from many different things. Complexity always focusses on the (institutional) elements that are inherent to the problem. For example, a problem becomes more wicked when there are more ministries, municipalities and NGO's part of the problem solving process. In the case of the curfew it might be good to look at how the curfew would be enforced, if the police finds it easy to enforce, the level of wickedness decreases.

Second element: Uncertainty

The second element is uncertainty. This element deals with the amount of information that is available to the problem solver as well as the agreement on information that is available. If there is little evidence to help with understanding the problem then that problem becomes more wicked. It is not only important that information is available, but also that stakeholders are in agreement on what evidence counts as fact and what evidence does not. In this thesis the focus will be on whether there is agreement on what counts as evidence to support the effectiveness of a curfew.

Third element: Divergence

The last element is divergence. Divergence deals with the norms and values of the different stakeholders. Divergence increases when stakeholders are not in agreement on what values should be prevalent as well as an agreement of other elements like what problem solving strategies should be prevalent. In the data there will be a search for whether stakeholders agree or disagree on if the curfew was the correct COVID-19 measure, as well as if the focus of COVID-19 measures should focus on reducing the infection rate only or if other viewpoints are also considered (for example, whether economical or social viewpoints are also taken into account).

The framework of wicked problems consists of the three elements complexity, uncertainty and divergence. These three elements will be used to asses whether the political process regarding the curfew is a case of a wicked problem. This will be done by testing the following hypothesis:

(H2) *The political decision to enforce a curfew in the Netherlands is a case of a wicked problem.*

The hypothesis will be accepted when all three elements of wicked problems (complexity, uncertainty and divergence) are found in the data. When two elements are found the hypothesis is neither accepted nor rejected and with one or no elements present in the data the hypothesis is rejected.

The relationship between good governance of evidence and wicked problems

The expectation that the good governance of evidence and wicked problems are opposed concepts comes from the issue of clarity of – and agreement on – the problem. In order for evidence to be used properly in a political process there needs to be a lot of agreement on the nature of the problem and what evidence can be used as well as that it will help solve the problem. With wicked problems the contrary is the case, the less is certain regarding the problem the more wicked it becomes. As mentioned above, in a wicked problem there is no certainty about its internal elements, what is true and what is not regarding the information and there is no agreement on values of the stakeholders. Because of the opposition of both theoretical concepts it is expected and assumed that there can be not both good governance of evidence and a lot of wickedness in the same policy problem. The relation between the elements is inversed and is assumed to work like a scale, when more evidence is used properly the wickedness of a problem declines.

As described at the start of the theory section, this thesis will try to establish whether there is a relation between good use of evidence in policy processes and the possible insolvability of problems in a policy process due to their wickedness. First, Hypothesis 1 will be tested in order to establish whether the policy process of the curfew has been working with evidence properly. Then, Hypothesis 2 will be checked to make clear what the amount of wickedness in the policy process of the curfew is. In order to try and establish a relationship between these two hypotheses a third hypothesis is needed:

H3 The first and the second hypothesis cannot be accepted at the very same time

This hypothesis is accepted when one of the previous hypotheses is accepted and the other rejected at the same time. When both H1 and H2 are accepted, rejected or undecided this hypothesis will be rejected. When the third hypothesis is accepted the assumption that there is a relation will be established. If hypothesis three is accepted there is a inverted relation between the two theoretical concepts. This would mean that the wickedness of a policy problem increases when the principles of good governance of evidence are not adhered to in the policy process and vice versa.

Methodology

Research design

The goal of this research lies in discovering if there is an opposition to be found between the two theoretical models when looking at the curfew in the Netherlands. As explained before, this study suggests that there is a relation between the way in which scientific evidence is handled in a policy process and whether the problem has a high level of wickedness. In order to test the hypotheses this study looks towards the qualitative research methods that are discussed by George and Bennet (2005). From the methods proposed in their paper it is important to take into account that this study wants to test the same hypotheses across different cases.

In order to test this hypothesised relation between the two theoretical elements this research is structured as a within-case analysis and cross-case comparisons study as described by George and Bennet (2005), based on a comparison of structured analyses. The different cases will be analysed on the basis of a coding scheme, this coding scheme is comprised of three elements of good governance of evidence (Parkhurst, 2017) and the elements of wicked problems (Head, 2008). The analyses are done by first testing whether the theoretical elements are found in the data cases, and in order to draw a more general conclusion the findings in the cases are compared. Then the analyses are compared with the scale relationship in mind. From this, a possible relationship could be concluded.

Data collection

In order to test whether there is a relation between the two theoretical models can be found the policy and political process regarding the curfew is looked at. In order to do this there has been made a selection of cases that give insight into these processes. This consists of (a) the advices of the Outbreak Management team, (b) the minutes of the parliamentary debates of the 21st of January and the 18th of February and (c) minutes of the summary appeal of Viruswaarheid and the court appeal cases of February of 2021.

Minutes that form the hearth of the policy process are not yet published. These are the minutes of the OMT meetings as well as minutes of cabinet meetings. Therefore, the best way to asses the policy process is by looking at the advices of the OMT that the government based its decision on. In order to test the political aspect of the curfew as a policy problem this study also analyses the two parliamentary debates in which the curfew was discussed specifically. These debates allow for more insights next to that of the OMT and the government. Lastly there are the court rulings. The court rulings are analysed in order to create more context regarding the curfew outside of the political sphere. To see whether elements of both theoretical concepts can also be found outside the political sphere.

Research methods

The curfew in the Netherlands will be analysed by being examined through the lenses of the concepts good governance of evidence and wicked problems, as explained in the theory section of this study. To make the analyses systematic a coding scheme has been developed (table 2). This coding scheme is developed along the second method outlined by Hsieh and Shannon (2005), which states that preliminary codes are developed before reading the data. The coding scheme is used to code the data cases in the program ATLAS.ti. The codes are divided along the different elements of good governance of evidence and wicked problems. These different theoretical elements are then split up again along the different data case groups for the analysis.

The codes have a 'is or is not' structure with theoretical elements being either found or not found. For many codes a reference point has to be established in order to work. The reference point will be the opinion of the government, and by extension the policy (decision) of implementing a curfew. This will mean that if a politician or judge does not agree with the government (for example, a politician does not think that the curfew is a proportional measure) then that would mean that a 'no agreement' code would be applied.

In the next section the codes that were found in the data cases will be discussed and explained. From this the hypotheses can be rejected or accepted and a conclusion about the suggested relation between the theoretical concepts can be drawn.

Table 2. Coding scheme for models of good governance of evidence and wicked problems

THEORY ELEMENT	DATA CASE	CODE
1. GOOD GOVERNANCE OF EVIDENCE – APPROPRIATENESS	1.1 OMT	1.1.1 The evidence used was generally applicable
		1.1.2 The evidence used was applicable to the Dutch context
	1.2 Second Chamber	1.2.1 The evidence used by the political party was generally applicable
		1.2.2 The evidence used by the political party was applicable to the Dutch context
	1.3 Court appeals	1.3.1 The evidence used in the verdict was generally applicable
		1.3.2 The evidence used in the verdict was applicable to the Dutch context
2. GOOD GOVERNANCE OF EVIDENCE – TRANSPARENCY	2.1 OMT	2.1.1 The OMT made clear which evidence was used
		2.1.2 The OMT was not clear which evidence was used
	2.2 Second Chamber	2.2.1 The Political party was clear about evidence used in debate
		2.2.2 The Political party was not clear about evidence used in debate

	2.3 Court appeals	2.3.1 The judge was clear about evidence used in their verdict
		2.3.2 The judge was not clear about evidence used in their verdict
3. GOOD GOVERNANCE OF EVIDENCE- DELIBERATION	3.1 OMT	3.1.1 There is only one viewpoint in their advice
		3.1.2 There are multiple viewpoints in their advice
	3.2 Second Chamber	3.2.1 The party only has one viewpoint in the debates
		3.2.2 The party has multiple viewpoint in the debates
	3.3 Court appeals	3.3.1 There is only one viewpoint in the verdict.
		3.3.2 There are multiple viewpoints in the verdict.
4. WICKED PROBLEMS – COMPLEXITY	4.1 OMT	4.1.1 The advice is clear about the elements of the curfew
		4.1.2 The advice is not clear about the elements of the curfew
	4.2 Second Chamber	4.2.1 The party is clear about the elements of the curfew
		4.2.2 The party is not clear about the elements of the curfew
	4.3 Court appeals	4.3.1 The verdict is clear about the elements of the curfew
		4.3.2 The verdict is not clear about the elements of the curfew
5. WICKED PROBLEM – UNCERTAINTY	5.1 OMT	5.1.1 There is no agreement on the information of the problem
		5.1.2 There is agreement on the information of the problem
	5.2 Second Chamber	5.2.1 There is no agreement on the information of the problem
		5.2.2 There is agreement on the information of the problem
	5.3 Court appeals	5.3.1 There is no agreement on the information of the problem
		5.3.2 There is agreement on the information of the problem
6. WICKED PROBLEMS – DIVERGENCE	6.1 OMT	6.1.1 There is fragmentation in the values
		6.1.2 There is no fragmentation in values
	6.2 Second Chamber	6.2.1 There is fragmentation in the values
		6.2.2 There is no fragmentation in values
	6.3 Court appeals	6.3.1 There is fragmentation in the values
		6.3.2 There is no fragmentation in values

Data

The data section of this study discusses the sub-question: *What role did evidence play in the policy process that led to the curfew?* This is done by analysing OMT advices, two parliamentary debates and court cases that dealt with the curfew.

OMT advices

During the OMT meetings in the fall of 2020 and the start of 2021 the idea of a curfew was already floating around. The OMT did not advise the implementation of a curfew necessary at those points in time. What changed the opinion of the OMT was mainly the concern regarding more infectious mutations of the original COVID-19 virus from South Africa and the United Kingdom. At the time of the advice to implement a curfew little was yet known about these mutations and the fear was that next to more infections also the lethality of the virus would increase. Thus the advice came to implement a curfew (Outbreak Management Team, 2021-3, Outbreak Management Team, 2021-4).

Good governance of evidence

When looking at the OMT advice regarding the curfew through the lense of good governance of evidence a few thinks stick out very clearly.

(a) Appropriateness

First of al the advice does not mention whether the scientific studies are evidence that is constructed to work in the Netherlands or that it discusses curfews in general or in other countries. Because of the lack of scientific studies on the area of curfews at the time of the pandemic and the fact that the Netherlands did not have a curfew earlier, it is save to assume that these four studies were not constructed to work in the Netherlands. Taken this into account there are three counts of code 1.1.1 to be found. This is all of the counts of evidence mentioned and whether it was constructed properly.

(b) Transparency

There is not a lot of evidence that is used to support the curfew as a policy measure. The OMT is aware of this. In the 96th advice the OMT makes clear that four studies are used for making an argument in support of a curfew (Outbreak Management Team, 2021-3, Outbreak Management Team, 2021-4). Not a lot of time is spend discussing how these studies explain the usefulness of a curfew. In a cabinet briefing in the Catshuis, the official residence of the prime-minister, the OMT expands a little bit more on which four studies are used to motivate their advice (Rijksinstituut voor Volksgezondheid en Milieu, 2021). The briefing was only published some months later than the advice. Regardless, if this counts as transparent use of evidence the OMT advices are transparent.

(c) Deliberation

In the advices given by the OMT there are some mentions of making a consideration regarding side effects of the curfew, the OMT acknowledges for example the importance of reopening primary education and day-care for the children (Outbreak Management Team, 2021-4). Throughout their advices the counts of deliberation are found when discussing the curfew, this count is two times.

Wicked problems

When looking at elements of wicked problems the OMT advices mainly stay clear of the discussion whether a curfew is proportional, legal or morally acceptable. When looking at whether the advices add to the complexity and uncertainty of the curfew as a policy process there are also few indications towards both reducing and increasing complexity or uncertainty.

(a) Complexity

The OMT refrains from discussing how a curfew would be arranged in legislative terms. The government is responsible for creating a proper legal base as well as enforcement etcetera. The OMT advices give no elements that can reduce complexity. There is some mention that the OMT realises that exemptions have to be included in the legislation for example for caregivers (Outbreak Management Team, 2021-3). Next to this there are no counts of reduced or increased complexity to be found in the advices.

(b) Uncertainty

The OMT states for example that 'a curfew may result in a reduction of 8 to 13 percent' (Outbreak Management Team, 2021-4). This does not indicate a lot of clearness about the information that is available about the effectiveness of curfews. This does again pop up when the OMT is asked to discuss alternatives to a curfew. The OMT starts that discussion with admitting that they find it difficult to asses whether other measures might have the same or greater effects than a curfew, again creating more uncertainty about the curfew (Outbreak Management Team, 2021-4). What is interesting is that there are eight counts of statements by the OMT that would suggest a lack of information on the problem. These consist of statements like 'It is very difficult to judge the measure individually, because they are always implemented in bundles of measures. Because of this, it is difficult to say how much effect a curfew will have in the Netherlands on top of the existing measures (Outbreak Management Team, 2021-3). To combat this, there are only two mentions that would reduce uncertainty, those are the statements that a curfew would be effective in reducing the infection rate.

(c) *Divergence*

The OMT does not go into a discussion about norms or values that would be important when contemplating a curfew. The advices do not deal with the question whether a curfew is a proper measure

to implement under the Dutch constitution or if a breach of human rights is a bridge too far. Thus, there are no counts of either increasing or decreasing divergence found in the OMT advices.

Parliamentary debates

After the OMT advised the government to implement a curfew the government made an announcement that it would. However, in order to keep the whole process democratic every implementation and prolonging of the curfew was discussed in the Second Chamber of the Dutch parliament. In the parliamentary debates a large division was visible between the coalition parties that also form the government and opposition parties. Coalition parties often will take the position of regretting that a curfew is implemented but it was seen as a necessary evil. While opposition parties tend to heavily oppose the measure (Tweede Kamer der Staten Generaal, 2021, Tweede Kamer der Staten Generaal, 2021-1).

Good governance of evidence

Regarding elements of good governance of evidence in the parliamentary debates it is noticeable that solid scientific evidence is rarely mentioned in general. Many parties instead focus on the moral reasons to support or object to a curfew. Discussions often involve politicians mentioning that a curfew does or does not work, but they rarely mention on the basis of what evidence they make that claim. There are however a few times that elements are found by which the theoretical concept of good governance of evidence can be tested.

(a) Appropriateness

Throughout the debates it is remarkable that when evidence is mentioned there is never any mention of their sources. Coalition parties often refer to the evidence also put forward by the OMT. Opposition parties also claim to have evidence that supports their position that a curfew does not work. Both coalition as opposition parties do not mention however what their sources are. As a result it is very difficult to analyse whether that evidence is constructed to be used in the Netherlands. However, because there is still no mention of research done specifically in the Netherlands by the time of the second debate (about a month after the implementation of the curfew) it is assumed that the evidence mentioned in the debates is mainly based on curfews of other countries.

(b) Transparency

Throughout both the parliamentary debates there are politicians that do refer to evidence to expand on their statements. This can be both evidence that is in favour of a curfew as well as opposing it. DENK frontman Kuzu for example mentions that scientific evidence claims that a curfew is only effective when there is a support base among the population (Tweede Kamer der Staten Generaal, 2021). What is interesting is that many times when a politician mentions that there statement is support by scientific

evidence, it is most of the time coalition parties that refer to the evidence the OMT used in their advice. At the same time, many opposition parties did not support their stance with evidence. Throughout both debates much evidence use is in the from of a political party mentioning that there are scientist that have produced evidence to support that statement. The counts that evidence is presented in this way was fifteen times throughout both debates, this is the same as the amount of times that politicians were not transparent in their evidence use.

(c) Deliberation

Next to the fact that parties rarely mention the evidence that should support their position is still the question of deliberation. Many parties consider multiple consequences of the curfew, at least when explaining their position in supporting or opposing the curfew. Especially the multiple views are what makes the parties take their opposition or support stances. Many opposition parties find the mental health risks or the plain curbing of constitutional liberties unacceptable. Supporting parties often prioritise the reducing of the infection rates to anything else, this does not mean however that they are not considering the side effects. The government for example argues that extremely harsh measures (like a curfew) are the fastest way to reopening society.

Wicked problems

Codes of wicked problems are being found a lot within the parliamentary debates. Among both coalition parties and opposition parties there have been a lot of questions put forward that make clear that the complexity, uncertainty and divergence of the curfew is significantly high. Across both debates the amount of times parties are questioning elements or information of the curfew is about the same. With a little bit more disagreement on information in the second debate. Across both debates there is the hard-line discussion between the parties fully opposed to the curfew, who can only argue that it is a 'sign of impotence and panic' as Geert Wilders of the Partij Voor de Vrijheid put it (Tweede Kamer der Staten Generaal, 2021). The other side are the coalition and supporting parties that are of the opinion that a curfew does have effect.

(a) Complexity

This division becomes also very clear when looking at elements of the curfew. Throughout the two debates there are 28 counts of statements that suggest much complexity, this stands in contrast to the only two statements that reduce the complexity of the curfew. Many parties are asking the government about how the enforcement of the rule will work. Parties worry that the police are already overladen with tasks and that a curfew is too difficult. As Lilian Marijnissen of the Socialistische Partij puts it; 'Our police officers already have a difficult position in this crisis. They have a lot on their plate. They have justifiably big worries regarding these measures: what is this going to mean for them?' (Tweede Kamer der Staten Generaal, 2021) During the second debate a lot of discussion about elements of the curfew was focused on the legal basis of the curfew. A day before this debate a summary appeal by

Viruswaarheid had ruled that the judicial basis for the curfew was not legal. The judge also ruled that the curfew was not properly substantiated and not proportional. This proportionality discussion again led to a lot of uncertainty when looking at the curfew. The fact that the Wbbbg the legal basis for the curfew was created complexity. The way the government dealt with the court ruling even more. The government created separate speed legislation that would work via another legal basis (the COVID-19 law that was already approved by parliament was the basis for this new law). At the same time the government asked for a higher appeal to the ruling, this makes it seem like they want to keep the dubious way of enforcing the curfew in place. Kees van der Staaij van de Staats Gereformeerde Partij states: 'It is very tedious and confusing that we are confronted with court rulings, multiple political debates and multiple legislative processes about the curfew. A lot of people can no longer understand how it all fits together. (Tweede Kamer der Staten Generaal, 2021-2)

(b) Uncertainty

Across these supporting parties there is still a lot of uncertainty, Jesse Klaver of GroenLinks for example asks the government very clearly what next to the expected reduction in infections are the expected effects if the curfew (on the economy, domestic violence etcetera). This shows that even parties that support the curfew as a 'necessary evil' still have a lot of questions about the (side-)effects and find it difficult to see the whole picture (Tweede Kamer der Staten Generaal, 2021). This is, just like with uncertainty, very heavily reflected in the count of the 'no information' code. This code was found 44 times while the code that suggest a agreement on the information was only found about seven times.

(c) Divergence

Next to finding a lot of examples that suggest a lot of complexity and uncertainty there are also examples of divergence. As described earlier there is a large division between prioritising the dropping of the amount of infections and other priorities like reducing economic damage, mental health risks from isolation or the educational development delays (Tweede Kamer der Staten Generaal, 2021, Tweede Kamer der Staten Generaal, 2021-2). Elements of divergence are found in an almost equal amount. The difficulty here is that many parties both opposition and coalition are worried about side effects of the curfew, and many parties are questioning the right way to approach the pandemic. This would suggest a large amount of divergence. However, not only coalition parties but also some opposition parties voted in favour of implementing a curfew.

Court appeals

In the summary appeal of Viruswaarheid against the Dutch government is in the core a discussion about the judicial route chosen by the government to implement the curfew. This organisation considers the approach of the government in combatting the COVID-19 virus to be unlawful and unconstitutional, this is especially the case regarding the curfew (Rechtbank Den Haag 2021). The judge

ruled in the summary appeal that the Wbbbg was not the right judicial way to go about implementing a curfew.

After the court ruling in the summary appeal the government started an appeal of the decision of the judge. The appeal was held on the 26th of February 2021. In this appeal the case as it was discussed in the summary appeal was reviewed again, they judge in this appeal did also review the position of the judge of the summary appeal (Rechtbank Den Haag 2021-2). In the appeal the judge concludes that the judge of the summary appeal should have taken a more restrained position when judging the legislative and political choices of the government. The appeal judge ruled that the decision of the summary appeal should be rejected and that the government was in the right (Rechtbank Den Haag, 2021-2).

Good governance of evidence

In both the appeals there was practically no mention of evidence. This is mainly because both judges don't deal with the argumentation of the effectiveness of the curfew. Instead the focus is put on the legal framework that makes the curfew enforceable. Because the focus is not on the effectiveness of the curfew there are also no elements of good governance of evidence to be found.

Wicked problems

(a) Complexity

There are luckily some elements of wicked problems to be found in the court appeals. In line with the parliamentary debates and the OMT advices is are there more indications of complexity than clearness about the curfew in the rulings. A large part of the court rulings deal with the definition of an emergency situation as required before the Wbbbg can be applied. This difference in interpretation of an emergency situation is an example through which the court rulings create more complexity regarding the curfew. Throughout the two verdicts there were five counts of statements that increased the complexity, against two that would reduce it.

(b) Uncertainty

In general the verdicts are most of the time in agreement about information of the curfew. Both rulings actually conclude that a curfew could be helpful and agree with the position of the government in that regard. There are still some questions put forward by both judges that could increase the uncertainty. This results in a balance of six counts of decreasing uncertainty opposed by four counts of increasing uncertainty. This is remarkable considering the fact that agreement on the information of the curfew is a hotly contested element in the parliamentary debates.

(c) Divergence

Also unsurprisingly there is a notable difference in divergence between the ruling of the summary appeal and the appeal case of the government. In the summary appeal there is some divergence of values, mainly based on the proportionality of the curfew (Rechtbank Den Haag, 2021). While the appeal case

of the curfew is almost exclusively in agreement on norms and values with the government. When counting the codes of increasing and decreasing divergence throughout both court rulings there is predominantly no divergence found, there are seven counts of agreement on values opposed by only three counts of disagreement in values.

Conceptualization

Hypothesis 1: Good governance of evidence

This section deals with the hypothesis: (H1) *The political decision to enforce a curfew in the Netherlands is a case of good governance of evidence.* This is done by looking at the data cases through the elements of good governance of evidence as discussed in the theory section. Across all the different policy, political and legal cases that have been reviewed it became difficult to find elements of good governance of evidence. The OMT and the government based the curfew as a policy measure on four different scientific studies, but these studies were not expanded upon by the OMT in the advice. Political parties and the judges almost never even mention evidence to support their statements and opinions. This makes it very difficult to make a measure of how good the governance of the available evidence was.

From what evidence there was used there is much question about the *appropriateness* of that evidence. As mentioned earlier, there is no concrete mention of the precise contents of the evidence. There is also no discussion or expansion on what exactly is learned from the evidence, especially from the OMT. A reason for this could be the complex situation of the pandemic in which much information is still unknown. This lack of discussion on the used evidence makes it difficult to asses the appropriateness of the evidence. As stated before there is a save assumption that the evidence that was used was not constructed for the Netherlands, as there was no earlier curfew in the Netherlands and no data would be available to asses the effectiveness of a curfew in the Netherlands. It can be concluded that the evidence used in the policy process of the curfew is appropriate according to the concept of good governance of evidence.

Regarding *transparency* there is more balance, at least for the evidence that is mentioned. Some evidence is presented in a transparent manner, for example the OMT that makes clear that there are four reviews that are used. But at the same time many statements (especially from politicians) are not substantiated with evidence. For the evidence that was used in the policy and political process there was sufficient transparency regarding the sources.

There is however a good degree of *deliberation* going on. The OMT mentions in their advice that a curfew is the only way to reopen society as quickly as possible by reducing the R-number. There is some deliberation in their advice about alternative measures. Many politicians from both coalition as well as opposition parties have many questions about mental health, economic damage and other side affects that a curfew may have. This shows a lot of deliberation from the politicians. The fact however that both on the 21st of January and the 18th of February the government does not have any insight into side effects of the curfew might suggest that the policy process was single-mindedly focused on reducing

the infection rate and introducing a curfew. All in all the element of deliberation is found throughout the data.

From what evidence was used in both the policy, political and legal process there is really not a lot of appropriateness and some transparency to be found. The political process shows a lot of deliberation regarding side effects of the curfew but also alternative measures and the OMT advices also consider alternatives to a curfew. It could be of course that when minutes of OMT or cabinet meetings become public that there will be a whole different insight into the policy process of the curfew. With the current data that is available the hypothesis: (H1) *The political decision to enforce a curfew in the Netherlands is a case of good governance of evidence* should remain undecided, as two of the three elements of good governance of evidence are found in the available data.

Hypothesis 2: Wicked problems

This section deals with the hypothesis: (H2) *The political decision to enforce a curfew in the Netherlands is a case of a wicked problem.* This is done by looking at the data cases through the elements of wicked problems as discussed in the theory section. Elements of a wicked problem are much more available than that of good governance of evidence. Throughout the advices, political debates and the court appeals it becomes clear that the curfew is a difficult policy topic to work with.

Across all the policy, political and legal data cases it becomes clear that elements that make a problem more wicked are much more present than the elements that make a problem less wicked. Throughout the cases there are indications that the problem contains a lot of *complexity*. The OMT indicates this by stating in their advice that to make the curfew work properly that there will be a lot of exceptions put in. The parliamentary debates also add to the complexity of the curfew as both coalition parties as opposition parties do wonder how the curfew is shaped. Questions about things like caregiver exemptions, enforcement or curfew-evading-behaviour makes clear that many politicians find it difficult to understand the whole concept and that the complexity of the whole policy measure is high. Next to these questions the discussion about the legal basis arose just before the debate on the 18th of February. This discussion on the legal basis is also found in the court appeals. This created even more complexity as the discussion about how the legally substantiate such a measure became the centre of the debate. All in all across all cases the uncertainty of the curfew as a policy problem is present.

The *uncertainty* regarding the curfew is also present in the data cases. The OMT makes it clear that the curfew is very difficult to substantiate with scientific evidence and they have only four studies to support the policy advice. This lack of agreement on information becomes very apparent in the debates. Across both opposition and coalition parties there is much discussion and uncertainty about the curfew. Especially discussions about its effectiveness and the evidence used. These discussions are seen

across both debates. The agreement on information is either lacking or shaky in the cases and thus there is still a lot of uncertainty regarding the curfew.

Discussion on values is mainly held in the debates. Across parties there is a fair amount of *divergence* in values. Many politicians ask questions about if this is the best way to go forward. Some parties are very opposed to the curfew and find it unconstitutional and are of the opinion that accepting the side effects for what they are is not acceptable. On the other hand there are some parties that agree with the government, not unsurprisingly otherwise there would not have been a majority in parliament to support the curfew. In general in can be concluded that there is still a significant amount of discussion about what values should be followed in deciding on a curfew and this creates a significant amount of divergence.

When reviewing the data through the elements of wicked problems there can be seen that there is a lot of data where complexity and uncertainty are very prevalent. Discussions about the side effects of the curfew, the actual effectiveness, implementation and enforcement issues and the legal basis of the curfew create a lot of complexity and uncertainty. Next to this there is also much divergence on the topic, especially within the parliamentary debates. With all three elements of wicked problems being very much present within the data cases the hypothesis (H2) *The political decision to enforce a curfew in the Netherlands is a case of a wicked problem* can be accepted as true.

Hypothesis 3: The relation between good governance of evidence and wicked problems

As discussed above the elements that would indicate a proper use of evidence as discussed in the theory of good governance of evidence are few in number. This is due to two main reasons. The first reason is that many politicians do not use evidence to support their claims about the effects and effectiveness of a curfew, this means that there is little evidence to even review with the principles of good governance of evidence. The second reason for this is that the evidence that is used is not discussed much any further. The OMT for example mentions the use of four studies for their advice without discussing these studies or even mentioning them. However, there for the information that was provided there was transparency. It is also unclear whether the outcomes of other studies are discussed when forming the OMT advice. Based on some assumptions the hypothesis that there would be many elements of good governance of evidence found remained undecided in the conceptualisation because of a lack of indications that the elements of appropriateness, transparency and deliberation are being present or absent in the evidence used in the policy and political processes of the curfew.

What was found in abundance in the cases that were studied were elements of wicked problems. Throughout the OMT advices there were some indications that the curfew was a complex policy problem

and that a lot of information was still missing. This uncertainty and complexity became especially evident when analysing the two parliamentary debates. Not only were there many questions that indicate a high level of complexity, like enforcement or exemptions, and much uncertainty, about effectiveness or side effects. There was also a lot of divergence about values that counted regarding the curfew and pandemic. Primarily opposition parties regarded the curfew as unconstitutional, not the right approach to the pandemic and a sign of panic by the government. These elements of complexity, uncertainty and divergence became even more pronounced when the court appeal of Viruswaarheid challenged the legal foundation of the curfew. In light of all these elements the hypothesis that the elements of wicked problems would be visible was accepted.

As discussed in the theory part of this study there is assumed to be a relation between how evidence is treated in policy and the level of wickedness of a policy problem. The assumed relation can be seen as a sort of scale, on the one end there is the good governance of evidence and on the other the level of wickedness of a policy problem. When the principles of good governance of evidence are followed by policy makers and politicians the level of wickedness of a policy problem decreases or is low, and vice versa, when the principles of good governance of evidence are not followed the policy problem is very wicked. As discussed above there is little trace of 'proper' evidence use in the policy process of the problem. At the same time there were not enough lack of elements to conclude a bad use of evidence. At the same time the problem can be defined as very wicked. As hypothesis one remains undecided and hypothesis two is accepted the the hypothesis (H3) *The first and the second hypothesis cannot be accepted at the very same time* is rejected to be true and a relation between the proper use of evidence and the level of wickedness in a policy problem is not established.

Conclusion and discussion

Conclusion

This study looked at the policy and political process of the curfew that was implemented in the Netherlands from the 23rd of January 2021. A policy measure like a curfew is in and of itself a controversial measure. This is because a curfew operates in a constitutional grey space between the task of the government on the one hand to protect the health of the citizens and the obligation to not limit the freedoms of citizens on the other hand. This study analysed the political and policy process through the lenses of good governance of evidence and wicked problems. With the added assumption that the presence of many elements of good governance of evidence leads to less elements of wicked problems being present.

This study looks at the concepts of good governance of evidence and wicked problems. For both concepts certain elements have been selected to apply to the data. For good governance of evidence the elements are: (a) appropriateness, whether evidence is selected and constructed to apply to the policy problem in the Netherlands; (b) transparency, is it clear which evidence is used and is the evidence open to scrutiny and (c) deliberation, this deals with whether there were one or multiple viewpoints taken into consideration during the policy process. For wicked problems the elements are: (a) complexity, this deals with the internal elements of the curfew; (b) uncertainty, about the information regarding the policy problem and (c) divergence, the disagreement on norms and verlues regarding the policy process.

In the data a proper use of evidence as discussed in the theory of good governance of evidence are few in number. The two reasons for this already discussed in the conceptualization are (1) the lack of evidence use by politicians during debates and (2) there is no further discussion on the evidence that is used by the OMT, politicians or the government. What was found in abundance in the cases that were studied were elements of wicked problems. Throughout the OMT advices there were some indications that the curfew was a complex policy problem and that a lot of information was still missing. Especially uncertainty and complexity became very evident when analysing the two parliamentary debates. Next to many indications of complexity and uncertainty there was also a lot of divergence, for example by discussing the constitutionality of the curfew.

Based on some assumptions the hypothesis that there would be many elements of good governance of evidence found was left undicided in the conceptualisation because of a lack of indications that the element of appropriateness was present in the data. At the same time transparency and deliberation are being found in the evidence used in the policy and political processes of the curfew.

The elements of complexity, uncertainty and divergence where found throughout all data. In light of all these elements the hypothesis that the elements of wicked problems would be visible was accepted.

This study also suggested a relation between the two theoretical models. This scale relation would suggest that when the elements of good governance of evidence would be adhered to, the level of wickedness of the problem would decrease. With the data available this relation was assumed to be false.

This study started with the central research question *Is the political decision to enforce a curfew in the Netherlands a case of good governance of evidence or of a wicked problem?* Based on the data analyses the curfew in the Netherlands can be seen as a case of a wicked problem. This is because in the data available about the policy and political processes many elements of wicked problems were found. At the same time elements of good governance of evidence were found less but still enough to not be able to decisively accept or reject hypothesis one.

Discussion

The process that led to this study has some strengths and weaknesses. The first strength is that the data cases encompassed more than just the policy process, this allows for a more fair assessment of the wicked problem elements within the curfew. A second strength is the research approach by which the theoretical frameworks are systematic used within the data through codes, this leads to more clear and reliable results.

One of the biggest weaknesses of this study is the lack of insight into the process that led up to the decision of the government to implement a curfew. Minutes of OMT meetings and cabinet meetings are being kept in secret for 25 years. This is done to create a safe environment for cabinet members and OMT members to discuss many different options and approaches for policy without a possible public outcry or backlash from the press. This however does also mean that at this point in time there is no clarity on how the decision to implement a curfew came to be. Insight into how the curfew became a policy measure could allow for more analysis of the curfew as a policy measure. Having knowledge of the policy process could for example tell us more about whether elements of good governance of evidence where present in the policy forming process. Also elements that might reduce the wickedness of the policy problem could be present in the policy process. This could contribute to the curfew being a less wicked policy problem. If there had been more time it would have been possible to address this issue by issuing a WOB-request to the Dutch government. According to the law Wet Openbaar Bestuur (WOB) a request can be put forward by any citizens to get insight into government documents that are not yet published. A government department will then (partly) publish documents that were part of the

request, however the law permits certain information to keep the secrecy and thus a WOB-request is no guarantee that the right documents will be published or that the published documents contain the right information. Waiting 25 years always remains an option.

Something else that this study could have addressed is the fact that the wickedness of a policy problem is not only determined by the political landscape surrounding the problem. In a very polarised political landscape the wickedness of a problem in the political context could be high just as a result of political parties not agreeing with the government out of principle. In order to combat this it could have been a good idea to research how different groups of experts (like virologists and economists) look at the curfew. Testing whether the curfew can be labelled as wicked from multiple dimensions makes the conclusion whether it is indeed wicked more valid.

Another risk inherent in this study that needs to be discussed is the assessment of good governance of evidence in the policy process of the curfew. In this thesis there is the conclusion that not a lot of elements are found in the data cases. However, there are some footnotes to be made regarding this 'bad governance of evidence'. Maybe it is a bit of an elephant in the room but this policy process took place during the COVID-19 pandemic. As a result of this pandemic, that was only global for about a year at the time of the curfew, there was a lot of things unclear. The virus itself had to be understood while it was already mutating and there were no prior events where the effectiveness of curfews could be researched. Also the rapid changing situations, especially with the mutations, changed the needs and questions regarding the pandemic constantly. Therefore it could be harsh and unfair to judge that the Dutch government and the OMT did not do their governance of evidence right, while it might be that they were just working with the knowledge and evidence that was available at the time. Especially considering that proper scientific evidence needs time to be developed and even more time to be reviewed. Evidence that was developed along scientific and societal standards might make the policy problem more solvable. While it is imaginable that the divergence of the curfew (or other controversial policies) might never disappear, agreement on the elements and information of the problem can reduce complexity and uncertainty. Thus, proper scientific evidence can reduce the wickedness of the policy problem.

In this study there was the scientific aim to gain more insight into the relation between the nature of a policy problem and the way policy makers use evidence in the policy process. In the conceptualisation the relation between the two theoretical models was said to be not existing. From this conclusion it follows then that the way policy makers apply evidence in the policy process can not change the wickedness of a policy problem. In other words, regardless of the proper use of evidence the problem still remains insolvable. This could be because there are still high levels of complexity or divergence. However there is a footnote to be made here. It might be that when the policy process is more transparent there is more good governance of evidence, at the same time this transparency by the

government could lead to less divergence. The conclusions of this study are after all based on a policy process about little is known and the political reaction to that policy process.

This study also aimed to make a societal contribution. The aim was to inform policy makers about the effects that correct use of evidence could have on a policy problem. From the conclusions of this study it follows that regardless of how well a policy maker handles the evidence, the policy problem does not become more solvable or debatable. However the same footnote as with the scientific contribution applies.

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Appendix A: data appendix

Data case	Data source	Description	Use of document
OMT	Policy advice	Different advices produced by the OMT to help the government combat the COVID-19 crisis	The 96th advice part one and two were read and coded. Other advices were scanned but not coded
	Research report	A research rapport created by the OMT to understand behaviour of citizens regarding the pandemic	The document was scanned but not coded.
	Presentation	Presentation given by the OMT to the Dutch government to inform the cabinet about the COVID-19 pandemic	The document was read but not coded
Parliamentary debates	Minutes of Parliamentary debates	Minutes of the debates about COVID-19 held on the 21st of January and 21nd of February 2021	The minutes of both debates were read and coded
	Correspondence	Letters send by the Dutch government to parliament with information regarding the COVID-19 pandemic	The letters were read but not coded
Court cases	Summary of court proceedings	Minutes of the court proceedings of the appeal of Viruswaarheid and the summary appeal against that ruling	The minutes were read and coded