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Introduction[1]

Each year my very first lecture of the course in Constitutional Law for the first year students in Amsterdam – the majority of whom are on that occasion notoriously unprepared – opens with an opinion poll. I pose the question of who holds ultimate power in the Netherlands. Four choices are offered: the government, the people, the electorate, or the constitution-making power. Each year a majority of 45-54 per cent considers the government to have ultimate authority, and only about 12–16 per cent think it is 'the people', and about 8–13 per cent the electorate. About a quarter of the students indicate that the constitution-making power as the ultimate authority – these students have, in preparation of the lecture, read the relevant chapter of the textbook we use, which indicates this is the best answer. So in the minds of nearly an absolute majority of junior law students, the government is the ultimate authority, even though a subsequent question makes evident that they nearly unanimously hold their country to be a democracy. Democracy and Executive dominance seem part of the same political consciousness. This suggests that democracy can have strong top-down features, a kind of neo-monarchical democracy. Responsibility can be considered a key concept in understanding this paradoxical state of affairs.

This chapter attempts to explain this for the Netherlands. On the one hand, Executive dominance has its roots in the pre-democratic constitutional system and practice, but, on the other, this has been counter-balanced with requirements of parliamentary legitimacy ever since the bases of a parliamentary system of government were laid down in 1848 and further developed in the subsequent decades, in which a non-state monopolized idea of democracy prevailed.

The emphasis in this chapter is on the description of the relevant constitutional law. The particularities and specificities of the functioning of the constitutional institutions and their interaction in terms of the mechanisms of responsibility can only be understood in their historical and politico-cultural contexts. On these contexts we first make some preliminary remarks.

1 This contribution was drafted in July 2021 and finalized on 4 August 2021. Later developments have not been included.

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A Preliminary Historical Remark on the Parliamentary System in the Netherlands

In 1814, after an interlude of constitutional instability after the French Revolution, the Netherlands, which had been the Republic of the United Provinces from 1579 to 1795, became a sovereign principality, and in 1815 the Vienna Congress turned it into a Kingdom. In the liberal revolution of 1848, ministerial responsibility for the acts of the King was introduced as well as direct elections (with census voting rights for the richer tax-paying men only) for the Lower House (*Tweede Kamer*). This basically set the political system on the road from a monarchical to a parliamentary system of government. The parliamentary system came to definitive fruition in the political practice of the 1860s with the confirmation of the unwritten rule of constitutional law, valid and uncodified to this day, that requires both individual ministers and the cabinet as a whole to resign when they lose the confidence of the Lower House. The parliamentary system of government has phased out the political power of the King, who is mainly viewed as a symbolic representation of the unity of the nation, who will have to give in to any wishes of the ministers, and whose political influence within government does not extend beyond Bagehot's triple 'rights': to be consulted, to encourage and to warn, which are moral rather than political rights.

The franchise for men was introduced in 1917 and for women in 1919, which is the moment at which the Netherlands can be said to have become a democracy.

An Excursus on Political Culture

In the *longue durée* of constitutional history in the Netherlands, one of the landmarks is the period of the Republic of the United Provinces that lasted from the 'Dutch Revolt' against the Spanish overlord in the last quarter of the sixteenth century till the time of the French Revolution in the late eighteenth century. The structure of this bicentennial republic was complicated, in as much as formally the United Provinces were no more than a confederate structure of seven provinces that formally retained sovereignty. This experience of a successful republic that did not claim sovereignty goes some way towards explaining why the concept of sovereignty until today does not play an important role in constitutional textbooks. If it is treated at all, it tends to be considered an unhelpful idea: holders of power and authority are always acting in an environment of other holders of power and authority. The practice of the days of the Republic was essentially that of a continuous search for an as high as possible degree of consensus and compromise, which, one may say, entered into the DNA of the political culture of the Netherlands. In the last quarter of the nineteenth century, a pervasive system of consociationalism, developed, consisting of four principal social configurations, determined by religious or ideological denomination: mainly the Protestant, the Catholic and the 'neutral' pillars of society; the 'neutral' in turn being divided into a liberal and a social-democrat pillar (though also the Protestants, strongly inclined to theological hair-splitting and hence church-splitting had its various sub-pillars).

Each had its own institutions, ranging from youth clubs, mutual insurance companies, sports clubs, schools, trade unions and employers' unions, newspapers and broadcasting societies, to of course each one's own political party – political parties are hence part and parcel of societal organizations and therefore (to this day) not considered part of the state, as is the case in some other continental European countries. Many aspects of the concept of *contre démocratie* as developed in France by Rosanvallon are alien and difficult to apply to the Dutch political culture viewed from an historical perspective.

None of the social 'pillars' of pillarized society represented a majority, necessitating continuous negotiation and compromise in order to achieve effective government. Although this make-up of society and politics may seem to be the institutionalization of fragmentation, precisely at the political level the engrained necessity of striving for consensual decision-making created an overall stable, political and national system of a self-evident mutually tolerated differentiation and socio-cultural pluralism, that was able to act through its political elites. It moreover allowed the emancipation of the numerically large minority of Catholics.

This 'pillarized' society began gradually disappearing with the era of secularization halfway through the 1960s. In many ways, the secular and non-religious majority that was formed by the turn of the millennium created a new cultural background, in which a new and numerically quite small religious minority[2] created by an influx of 'guest labour' from Turkey and Morocco in the 1970s and 1980s, under special treaty arrangements to fill the gaps in the cheap labour market, made it possible to mobilize the populists' perception of a 'new' religion[3] as a threat to the 'dominant culture'. The continued fragmentation of the political landscape since the 1980s can now be understood, not as expressing engrained socio-cultural and ideological cleavages, but rather as a consequence of their gradual erosion in a context of fragmented, individualized and unmediated social communication, which translates into personalized politics also within established political parties.

2 Centraal Bureau Statistiek, 18 December 2020. Available at: https://www.cbs.nl/nl-nl/nieuws/2020/51/meerderheid-nederlandse-bevolking-behoort-niet-tot-religieuze-groep. In 2019, the number of inhabitants of the Netherlands that identify themselves as adhering to Islam is 5 per cent (no religion 54.1 per cent; Catholic 20.1 per cent; Protestant 14.8 per cent; other 5.9 per cent), This influx was combined with the immigration of nearly 300,000 people, a third of the population, from Surinam after its independence in 1975, but these immigrants were mainly Christian or otherwise Hindu or even smaller religious denominations such as Confucian Chinese and even fewer Jews. Also, in the 1950s a group of East-Indians, notably from the South Mollucans, who had served in the Netherlands East-Indian Army had immigrated and settled as a separate group; they were solidly Protestant but upheld the political ideal of constituting an independent Mollucan Republic, with a president and government in exile in the Netherlands; the second-generation Mollucans in the Netherlands revolted in the 1970s, undertook violent action in the form of occupying the Indonesian Embassy and hijacking trains and holding school children hostage in order to have the political ideals of their parents recognized by the Netherlands' government.

3 The Kingdom of the Netherlands' main colony until 1945 was the East Indies, present-day Indonesia, and had at the time (as it still has) the largest Muslim population in the world.

Identification of the Executive Branch

The Form of the State

In this chapter, the focus is on the Netherlands in Europe. Formally, the Kingdom of the Netherlands is composed of four countries: the Netherlands (which consists of a state on the European continent, and of three small islands in the Caribbean that prior to 10 October 2010 were part of the Netherlands Antilles that now have a separate status as territorial public authorities comparable to municipalities[4]): Aruba, Curaçao, and St. Maarten.[5]

The form of *the Kingdom* can be said to be more or less federal in nature in as much as there is a separation of those affairs that are for the institutions of the Kingdom *stricto sensu* – among which defence, foreign relations, and the nationality of persons and ships – but all other affairs are to be governed autonomously by the respective parts of the Kingdom.

The form of state of *the Netherlands* (the country within the Kingdom) is that of a decentralized unitary state, in which there is *territorial* decentralization in the form of provinces (12) and municipalities (352 as at 1 January 2021,[6] a number that is still very gradually declining, and is down from approximately 1,100 municipalities in 1900). Municipalities and provinces enjoy autonomy to the extent superior levels of government do not cover a certain area by legislative acts,[7] and remain free to issue local legislative acts (byelaws) and administrative acts as regards autonomous matters, which in practice, in particular, concern matters of public order and its enforcement. A limit on their powers is the power

4 The isles of Bonaire, St. Eustatius and Saba.

5 The constitutional relations between the countries comprising the Kingdom are governed by the *Statuut voor het Koninkrijk* (1954), each having a Constitution of its own; the Caribbean islands that form part of the Netherlands now have a constitutional basis in the Constitution of the Netherlands (*Grondwet*), as given in Article 132(a):

> 1. By act of parliament, territorial public entities other than provinces and municipalities may be created and dissolved in the Caribbean part of the Netherlands … 4. Rules and other specific measures may be laid down for these public entities in view of special circumstances which distinguish them essentially from the European part of the Netherlands.

6 Data from the Vereniging Nederlandse Gemeenten [Association of Netherlands Municipalities] of which all municipalities are a member, see https://vng.nl/artikelen/onze-leden.

7 This is expressed in the provisions in the Act on the Provinces (*Provinciewet*), Articles 118–119 and the Act on Municipalities (*Gemeentewet*), Articles 121–122, which provide that if a matter has been the object of legislation or regulation by central government (for the provinces) or by provincial government (for the municipalities), the posterior power to regulate the same matter in a complementary manner remains intact unless this provincial/municipal regulation is in conflict with the higher legislation/regulation; whereas anterior provincial/municipal regulations lapse as soon as the relevant matter that it covers is the object of later superior legislation or regulation.

of the central government to quash decisions that it deems unlawful or in conflict with the general interest; this power is used quite rarely.[8]

These territorial decentralized bodies also carry out tasks the superior legislation requires them to undertake. In practice, municipalities are more important because they carry out more tasks with regard to citizens because national legislation requires them to do so, for instance, in the field of education and social welfare. Many important governmental tasks in the field of mental health care, youth care, work and welfare, and social care facilities, were decentralized to municipalities in 2015 with the idea that local solutions are closer to citizens and therefore better adapted to the needs of the people. However, not only was there a financial target of reducing expenditure in these fields of 600 million Euros, also there was a basic lack of expertise at the local level, for instance, in the field of youth care (which comprises general youth health care, youth psychiatry, youth in crisis support, support of disabled youth, protection of vulnerable youth, and rehabilitation of youth involved in crime). The solution was that in many of these fields, municipalities grouped together with sometimes as many of 40 municipalities, to share specialized services in the field. These inter-municipal forms of cooperation under their own boards composed of members of the boards of participating municipalities, have no counterpart in the form of an elected representation of the people, as exists in every municipality.

The powers of *territorially* decentralized corporations is in principle general and not limited to any specific subject matter. This is different for *functional* decentralization. One practically important form of functional decentralization is that of so-called 'Water Boards', *waterschappen*, which as an autonomous task are in charge of managing the level of water and the quality of water and all that pertains thereto – they are territorially organized, but it is their specific general interest that they are created to serve that makes them functionally decentralized bodies. The task of water management is a hugely important public task, given the fact that the Netherlands lies in the delta of the major European rivers, in particular the Rhine and Meuse, and moreover relatively large parts of the country are below sea level. On the basis of this fact, André M. Donner (constitutional lawyer and long-time member and President of the European Court of Justice and of the European Court of Human Rights) gave a completely different definition of the State in his textbook on Dutch constitutional law: 'The State, that is the dikes.'[9] This very

8 A search of the national official journal, *Staatsblad*, since 1993 indicated that quashing by the government happened 28 times until 2010; since then it has happened only twice. The reasons for this is that the Ministry for the Interior consults more frequently and intensively with municipalities concerning possibly unlawful or undesirable decisions, which is as a rule informal instead of formal, although there are many formal legal requirements on the basis of which municipalities have duties to inform the ministry.

9 C. W. Van der Pot, *Handboek van het Nederlandse Staatsrecht*, 14th edn., eds D. J. Elzinga, R. de Lange, H. G. Hoogers, and L. Prakke (Deventer: Wolters Kluwer, 2001), p. 151.

matter-of-fact definition of the State reflects the nature of the constitution as being quite different from that of most continental European states.[10]

Another form of functional decentralization is in the field of the economy and professions. Under the Constitution, public bodies for the professions and trades can be established by or pursuant to an Act of Parliament.[11] Public bodies for professions were established for advocates, for notaries, chartered accountants, and for ships' pilots. Public bodies for the trades and industry were established as regards specific branches of the economy on the basis of a further Act of Parliament, the Public Industrial Organization, particularly in the agricultural sector, but most of the corporations under this Act were dissolved in the 1980s and 1990s. The corporations under the Public Industrial Organization of 1950 (and subsequently amended) were bipartite and composed of workers and employers, while the overarching Social and Economic Council is tripartite: trade unions, employers' organizations, and the government are represented. This Council is still functioning as a very important forum for negotiating the parameters of economic policy. It reflects the long-term consensus-oriented social structure of the Netherlands, which is closely related to the history of the Netherlands as composed of minorities that have over the centuries needed to permanently negotiate compromises to create legitimacy for public decision-making.

System of Government

The constitutional definition of the government (Art. 42(1)) Constitution) comprises both the ministers and the King: 'The government shall comprise the King and the Ministers.' The responsibility *in sensu pleno* is, however, allocated to the ministers, while the King cannot be forced to account for his acts and omissions (Art. 42(2) Constitution): 'The King is inviolable; the Ministers shall be responsible.'

Until 1983, the text of the Constitution was explicit in saying that the government had the executive power.[12] As this was considered to be a not very helpful

10 Further, L. F. M. Besselink, 'Grundstrukturen staatlichen Verfassungsrechts: Niederlande', in *Handbuch Ius Publicum Europaeum, Band I: Grundlagen und Grundzüge staatlichen Verfassungsrechts*, eds A. von Bogdandy, P. Cruz Villalón, P. M. Huber, and C.F. Müller Verlag (Heidelberg: C.F. Müller, 2007), pp. 327–388.

11 *Grondwet* [The Constitution of the Netherlands], Art. 134:

> 1. Public bodies for the professions and trades and other public bodies may be established and dissolved by or pursuant to Act of Parliament. 2. The duties and organisation of such bodies, the composition and powers of their administrative organs and public access to their meetings shall be regulated by Act of Parliament. Legislative powers may be granted to their administrative organs by or pursuant to Act of Parliament. 3. Supervision of the administrative organs shall be regulated by Act of Parliament. Decisions by the administrative organs may be quashed only if they are in conflict with the law or the public interest.

12 *Grondwet* [The Constitution of the Netherlands], Art. 56: 'Executive powers shall lie with the King.' 'The King' in this provision, which dates back to 1814, was

provision in as much as it tended to be more descriptive than attributing actual power, it was omitted, also because in reality the distinction between legislative and executive power has never been as clear-cut as in some countries, such as the United States of America.

The constitutional definition of the concept of 'the government' in combination with the allocation of governmental responsibility for the King's acts and omissions to ministers means in present-day practice that the Executive is, on the one hand, composite in nature, yet the decisional power resides in the ministers. The King does indeed have certain governmental powers, in as much as the Constitution attributes to him the power to introduce bills in Parliament, sign royal decrees. and ratify Acts of Parliament. But the responsibility for the exercise of these powers lies entirely with the ministers. Since 1983, this political primacy has been expressed in Article 45(3) of the Constitution, and located in the Council of Ministers as the collegiate body that decides on governmental policy:

1 The ministers together shall constitute the Council of Ministers.
2 The Prime Minister shall chair the Council of Ministers.
3 *The Council of Ministers shall consider and decide upon overall government policy and shall promote the coherence thereof.*

This provision is a codification of this part of the system of government as it evolved in the nineteenth century. Collective ministerial responsibility is very important, and all politically sensitive matters are discussed and decided in the Council of Ministers. Within the Council, ministers have a significant amount of power due to the necessity of achieving consensus; this is partly reflected in the provision in the Rules of Procedure of the Council of Ministers that no minister may act contrary to the decisions of the Council.[13] In practice, this means that a minister who disagrees with a decision of the Council will have to resign, or will have to swallow whatever his or her objections may have been. Another element in the power of ministers is that they are the ones who are supposed to carry out decisions of the Council of Ministers.

Since 1948, not only ministers are members of the national Executive, but there are also state secretaries. State secretaries act as a kind of under-minister under a specific minister but they carry political responsibility to Parliament for their acts and omissions.[14] State secretaries are not a member of the Council of Ministers, although they are in common parlance considered to be members of the 'cabinet'.

understood to mean 'the King acting under ministerial responsibility' ever since 1848, and hence 'the King' is 'the government'.

13 *Reglement van orde van de ministerraad*, Art. 11 and 12.

14 *Grondwet* [Constitution of the Netherlands], Art. 46(2):

> 1. State secretaries may be appointed and dismissed by royal decree. 2. A state secretary shall act in cases in which the Minister considers it necessary and in compliance with his instructions in his place as a minister. On that account the state secretary carries responsibility, without prejudice to the responsibility of the Minister.

The Form of Cabinets

As a practice established in 1919 and that is considered by some an unwritten rule of constitutional law, a cabinet tenders its resignation on the eve of elections for the Lower House, thus opening up the possibility of the forming of a cabinet of whatever composition that can count on sufficient support in the Lower House. 'Sufficient support' is thus at a minimum that it is not sent away on the first occasion in the Lower House. This requires in practice coalition building through negotiations between a number of political parties represented in the Lower House that are willing to support (or tolerate) a specific cabinet. Since 2012 this has been conducted under the aegis of the Lower House itself, prior to which it was the King to coordinate, always acting on the advice of the leaders of parties represented in the Lower House. These negotiations tend to be quite protracted negotiations, that in the last six decades have always resulted in extensive and often highly detailed 'agreements to govern', *regeerakkoorden*. These agreements are concluded between the negotiators – usually the political leaders – of the relevant parliamentary groups in the Lower House and usually subjected to approval by the respective groups. The forming of the cabinet is the moment *par excellence* for the Lower House to exercise positive influence on the government policies for the coming period. The Lower House majority has in political practice as a major task to guard what was agreed in the coalition agreement. And at the same time, the Lower House's overarching function is in fact to keep the coalition in power.

Should no political crisis occur that forces the government out, the duration of a cabinet would roughly run parallel to the periodic election of the Lower House every four years. This, however, is so only in a minority of cases.

Except at the periodic Lower House elections, cabinets resign due to intervening political crises that cannot be resolved between the coalition parties. This happens frequently. It has become very unusual to have this kind of crisis resolved by negotiating a new government agreement and the forming of a new cabinet only, on the basis of the same Lower House. There is a deeply engrained practice that a cabinet crisis leads to Lower House elections. However, this is not to have the precise crisis as such resolved, since cabinets do not stay on so as to have the problem decided by the electorate. This can be explained by the fact that usually a crisis between ministers along political lines within the cabinet, will extend also to a crisis between the coalition parties in the Lower House. However, the possibility remains open of a new coalition being formed on the basis in the same Lower House that was elected previously. For a fully-fledged political cabinet, this arguably happened for the last time in 1972 (Biesheuvel II cabinet), or otherwise 1965 (Cals cabinet); it is still sometimes done for interim cabinets that needed to be formed after a crisis due to the immediate resignation of the cabinet members of one or two coalition parties (e.g., the Van Agt III and Balkenende III cabinets of 1982 and 2006), which were minority cabinets.

The long duration of the process of forming a cabinet means that there are long periods of relative Executive weakness in as much as potentially controversial issues

are left to be decided by the next cabinet on the basis of the new coalition agreement – not only is this considered politically desirable, it is also an expression of the constitutional fact that the cabinet in place during the coalition negotiations have already resigned and therefore the Lower House cannot use the instrument of no-confidence effectively. Combined with the Pavlov reaction of 'cabinet crisis = Lower House elections', the Netherlands is liable to considerable political instability.

Box 7.1 and Tables 7.1 and 7.2 present data on the duration of the government entities.

Box 7.1 Duration of cabinets, the number of cabinets, and of the Lower House

- Since July 1946 to 2017, the Netherlands has had 29 cabinets.
- The average duration of the process of a cabinet has been 78 days, but the data show that the duration has increased significantly over the last decades.
- The average duration of a cabinet is 925 days, which is about two and a half years, which is considerably less than the normative four years.

A 'Dualist' Constitutional Relationship Between the Executive and Parliament and 'Monist' Tendencies in Parliamentary Practice

This is based on 'cabinet government' somewhat similar to the Westminster model. However, and unlike Westminster, the ministers are not necessarily selected from Parliament. In fact, the membership of the Lower House (or Upper House for that matter) is a constitutional incompatibility for ministers and state secretaries.[15] These have been recruited, to this day and age, not only from the

15 *Grondwet* [Constitution of the Netherlands], Art. 57(2):

> A member of the States General may not be a Minister, state secretary, member of the Raad van State [Council of State], member of the Algemene Rekenkamer [General Chamber of Audit], National ombudsman, or deputy ombudsman, member of the Hoge Raad [Supreme Court] or Procurator General or Advocate General at the Hoge Raad.

There is one exception for when elections are held in which a minister or state secretary stands as a candidate in Lower House elections and is then elected to Parliament in Art. 57(3) Constitution, which provision can only be understood against the customary rule that a cabinet resigns on the eve of Lower House elections: '3. Notwithstanding the above, a Minister or state secretary who has offered to tender his resignation may combine this office with membership of the States General until such time as a decision is taken on such resignation.' So during the formation of a new cabinet after Lower House elections, a minister or state secretary can be both Member of Parliament and be a minister or state secretary.

Table 7.1 Duration of Dutch Cabinets

1	*Cabine*	*Prime Minister*	*Time in office*	*Days*
1	Schermerhorn-Drees	Willem Schermerhorn	25 June 1945–3 July 1946	373
2	Beel I	Louis Beel	3 July 1946–7 August 1948	766
3	Drees I	Willem Drees	7 August 1948–15 March 1951	950
4	Drees II	Willem Drees	15 March 1951–2 September 1952	537
5	Drees III	Willem Drees	2 September 1952–13 October 1956	1502
6	Drees IV	Willem Drees	13 October 1956–22 December 1958	800
7	Beel II	Louis Beel	22 December 1958–19 May 1959	148
8	De Quay	Jan de Quay	19 May 1959–24 July 1963	1527
9	Marijnen	Victor Marijnen	24 July 1963–14 April 1965	630
10	Cals	Jo Cals	14 April 1965–22 November 1966	587
11	Zijlstra	Jelle Zijlstra	22 November 1966–5 April 1967	134
12	De Jong	Piet de Jong	5 April 1967–6 July 1971	1553
13	Biesheuvel I	Barend Biesheuvel	6 July 1971–9 August 1972	400
14	Biesheuvel II	Barend Biesheuvel	9 August 1972–11 May 1973	275
15	Den Uyl	Joop den Uyl	11 May 1973–19 December 1977	1683
16	Van Agt I	Dries van Agt	19 December 1977–11 September 1981	1362
17	Van Agt II	Dries van Agt	11 September 1981–29 May 1982	260
18	Van Agt III	Dries van Agt	29 May 1982–4 November 1982	159
19	Lubbers I	Ruud Lubbers	4 November 1982–14 July 1986	1348
20	Lubbers II	Ruud Lubbers	14 July 1986–7 November 1989	1212
21	Lubbers III	Ruud Lubbers	7 November 1989–22 August 1994	1749
22	Kok I	Wim Kok	22 August 1994–3 August 1998	1442
23	Kok II	Wim Kok	3 August 1998–22 July 2002	1449
24	Balkenende I	Jan Peter Balkenende	22 July 2002–27 May 2003	309

1	*Cabine*	*Prime Minister*	*Time in office*	*Days*
25	Balkenende II	Jan Peter Balkenende	27 May 2003–7 July 2006	1137
26	Balkenende III	Jan Peter Balkenende	7 July 2006–22 February 2007	230
27	Balkenende IV	Jan Peter Balkenende	22 February 2007–14 October 2010	1330
28	Rutte I	Mark Rutte	14 October 2010–5 November 2012	753
29	Rutte II	Mark Rutte	5 November 2012–26 October 2017	1816
30	Rutte III	Mark Rutte	26 October 2017–10 January 2022	1538
31	Rutte IV	Mark Rutte	10 January 2022–	

parliamentary ranks but also from outside Parliament, though members of government that are recruited from outside Parliament have mostly had ties of allegiance through membership of one of the political parties that compose the government (Box 7.2). In this sense, cabinets have been 'parliamentary' cabinets according to the Dutch political jargon.

Box 7.2 Recruitment of the Third Rutte cabinet

The third government headed by the conservative liberal Mark Rutte (2017–2021) had in total 20 ministers during its period in government. Of these, no less than 13 were not a Member of Parliament at the time they were appointed as a minister.[16] Apart from ministers, there were in total 11 persons appointed state secretary. Of these, three were not a Member of Parliament at the time of their appointment.

16 This concerns the Minister of Health, Welfare and Sports and Deputy Prime Minister, Hugo M. de Jonge (CDA, Christian Democrat); Minister of the Interior and Deputy Prime Minister, Kajsa H. Ollongren (D66 progressive liberals; Minister of Foreign Affairs, Stef A. Blok (VVD, conservative liberals) since 7 March 2018); Minister for Foreign Trade and Development Cooperation, Sigrid A.M. Kaag (D66); Minister of Justice and Security, Ferdinand B.J. Grapperhaus (CDA); Minister of Education, Culture and Science, Ingrid K. van Engelshoven (D66); Minister for Primary and Secondary Education and Media, Arie Slob (Christen-Unie – righ-wing Protestant); Minister of Finance, Wopke A. Hoekstra (CDA); Minister of Defence, Ank Th.B. Bijleveld (CDA); Minister of Infrastructure and Water Management, Cora van Nieuwenhuizen (VVD); Minister of Economic Affairs and Climate, Eric D. Wiebes (VVD) until his resignation on 15 January 2021; Minister for Medical Care, M.J. van Rijn (PvdA-Labour) who was interim-minister from 23 March 2020 until 9 July 2020, and Bruno Bruins (VVD), who resigned on 19 March 2020.

Table 7.2 Duration of Dutch Parliaments

TK general elections		*Parliamentary term*	*Time in office (days)*	*Time between election/collapse of government and formation of new cabinet (days)*
1	17 May 1946	4 June 1946–27 July 1948	784	47
2	7 July 1948	27 July 1948–15 July 1952	1449	31/50
3	25 June 1952	15 July 1952–3 July 1956	1449	69
4	13 June 1956	3 July 1956–20 March 1959	990	122/11
5	12 March 1959	20 March 1959–5 June 1963	1538	68
6	15 May 1963	5 June 1963–23 February 1967	1359	70/46/40
7	15 February 1967	23 February 1967–11 May 1971	1538	49
8	28 April 1971	11 May 1971–7 December 1972	576	69/19
9	29 November 1972	7 December 1972–8 June 1977	1644	163
10	25 May 1977	8 June 1977–10 June 1981	1463	208
11	26 May 1981	10 June 1981–16 September 1982	463	108/17
12	8 September 1982	16 September 1982–4 June 1986	1357	57
13	21 May 1986	4 June 1986–14 September 1989	1198	54
14	6 September 1989	14 September 1989–17 May 1994	1706	62
15	3 May 1994	17 May 1994–19 May 1998	1463	111
16	6 May 1998	19 May 1998–23 May 2002	1465	89
17	15 May 2002	23 May 2002–30 January 2003	252	68
18	22 January 2003	30 January 2003–30 November 2006	1400	125/7
19	22 November 2006	30 November 2006–17 June 2010	1295	92
20	9 June 2010	17 June 2010–20 September 2012	826	127
21	12 September 2012	20 September 2012–23 March 2017	1645	54
22	15 March 2017	23 March 2017–31 March 2021	1411	225
23	17 March 2021	31 March 2021–		300

The political ties of members of government to the respective political groups have usually been very strong indeed. Nowadays, these take the informal institutional shape of weekly meetings of the ministers of a particular group with the parliamentary group (or its leadership) in the Lower House, in which all important topics are politically harmonized in order to retain coherence between the positions of the respective ministers with their parliamentary groups in the Lower House, and hence of the cabinet with the parliamentary majority.

The relatively large number of cabinet members that come from outside Parliament and often have no prominent formal position in the relevant political party is constitutionally different from other European systems of government. The mechanisms of political harmonization like the ones just described, serve both to make sure that views of the cabinet members are explained to the parliamentary group, but also to keep cabinet ministers aligned with political views prevailing in their own political group in Parliament. The political homogeneity required under a parliamentary system of government between the government and a parliamentary majority leads necessarily to a large amount of 'monism' in their relations. The room for manoeuvre within these relations tends, however, to be to the disadvantage of Parliament, rather than the Executive, as we explain below.

The Workings of Responsibility

The Standard Account of Ministerial Responsibility

The standard account of political ministerial responsibility in the Netherlands' constitutional theory distinguishes three dimensions of responsibility: (1) being responsible or carrying responsibility (*verantwoordelijkheid dragen*); (2) accounting for one's responsibility or to be held accountable (*verantwoording afleggen*); and (3) sanctioning responsibility (*verantwoordelijkheid sanctioneren*). This is different from UK constitutional usage, where 'ministerial responsibility' is associated in particular and more narrowly with the sanction for being responsible: a minister is said to be held responsible when a minister resigns for what he or she has done or failed to do. The broader understanding, however, provides for a somewhat more refined analytical understanding off the position of the executive.[17]

Decisive for the question of who is responsible, is the answer to the question, who has been assigned which powers? The delimitation of the powers of the Executive can be approached by looking at the doctrine of the separation of powers.

17 M. Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework', *European Law Journal* 13, no. 4 (June 2007): pp. 447–468. This broader understanding was introduced into the English language literature and applied to the concept of 'accountability' by Mark Bovens, who together with others built a research programme on accountability of executive bodies in the EU. See M. Bovens, D. Curtin, and P. Hart (eds), *The Real World of EU Accountability: What Deficit?* (Oxford: Oxford University Press, 2010).

The powers of the Executive in a parliamentary system tend to follow in the abstract from the submission of the executive power to the legislative power; the legislature legislates, the government executes the laws. As the legislative power in the Netherlands is plenary in the sense that it can pass laws on any matter, albeit within the limits set by the Constitution, in particular (but not only) in the form of the fundamental rights chapter of the Constitution, the power of the Executive is derived from the power of the legislature.

This, however, is neither constitutionally, nor practically a fully adequate way of circumscribing the scope of executive powers, particularly if we want to understand the operation of responsibility in constitutional and political practice. Constitutionally, the distinction between executive and legislative powers is far from clear-cut. This is evident also from the definition of the legislative power, as acts of Parliament *and government jointly.*[18] Moreover, there are the lingering consequences of monarchy evident in the architecture of the Constitution. Since 1983, the Constitution opens with a chapter on fundamental rights, but Chapter 2 is entitled 'the Government', while 'The States General' (Parliament) is only Chapter 3. This indicates the order of importance of the constitutional institutions. Moreover, the Constitution occasionally identifies a certain specific area in which it is the government that holds responsibility, such as having the ultimate responsibility for the armed forces,[19] although since 2000 this power is hedged with the obligation to inform Parliament in advance of the deployment or making available of armed forces to maintain or promote the international legal order, including for humanitarian aid in cases of armed conflict.[20]

One can say that since the introduction of ministerial responsibility in 1848 and the settlement of the rule of no confidence in the second half of the nineteenth century, there has remained a certain ambiguity in the parliamentary system of government. In 1848, the pre-democratic slogan, 'the government governs, the Lower House holds to account' (*le gouvernement gouverne, la Chambre contrôle; de regering regeert, de Kamer controleert*) was used to indicate the separation of the functions of government and of Parliament. Curiously, this slogan is still used quite often in parliamentary debate, and this is never meant as a reinforcement of the powers of Parliament in concrete contexts.[21] Clearly, the government is in the driving seat, supported by a huge bureaucracy, while the Lower House has bound itself in the coalition agreements, and has with very few support staff indeed. So there is a certain post-monarchical proclivity to consider the government as a practical driver of politics, while a general agenda-setting power is reserved for the

18 *Grondwet* [Constitution of the Netherlands], Art. 81: 'Acts of Parliament shall be enacted jointly by the government and the States General.'

19 *Grondwet* [Constitution of the Netherlands], Art. 97(2): 'The Government has supreme authority over the armed forces.'

20 *Grondwet* [Constitution of the Netherlands], Art. 100.

21 A quick search and random check of the hits in the digitalized verbatim records since 1996 of both Houses of Parliament, the *Handelingen van de Tweede en Eerste Kamer*, results in more then 300 hits as to the plenary debates; search key '*regering regeert*', with filter '*Handelingen*' at: www.officielebekendmakingen.nl.

Lower House mainly to the period of the formation of the cabinet, during which a full programme is negotiated between the parliamentary groups in the Lower House that form the coalition government.

The phenomenon of dominance by the Executive has been a general trend in Europe since the introduction of the franchise and the at least partly related growth of the welfare state. The increase of public activity for the benefit of citizens in the welfare state has been accompanied by a progressive retreat of the legislature in favour of the executive, of which the power to set delegated legislation is a clear symptom. Since 1879, the Dutch Supreme Court (*Hoge Raad*) has held that royal decrees require a basis in an Act of Parliament (HR 13 January 1879, the so-called *Meerenberg* judgment), but nowadays such a basis is so general as granting discretion not merely to strictly implement the Act of Parliament involved, but to legislate as it seems fit within the Act's indicated scope.

The Normative Versus Factual Notion of Being Responsible

A crucial aspect of being responsible is what 'being responsible' is actually supposed to mean. In this respect, there is a tendency in political practice to take 'responsibility' to mean that a member of government is the one who *factually* did something or failed to do something. In the practice of governmental positions taken towards Parliament and the general public when things somehow go wrong – that is to say when the government accounts for the responsibility that is attributed to it (the second dimension of 'responsibility' distinguished above) – the general strategy is that the member of government involved did not himself or herself cause the mishap, for instance, because of the complexity of the bureaucratic action which was not brought to the attention of the relevant minister or state secretary in time for him or her to act or act differently and steer the course of executive action (or failure to act). The emphasis is on a narration of the facts so as to establish physical and factual causation. From the legal perspective, however, *being responsible* is not a matter of factual and physical causation, but being responsible is in its essence a matter of normative attribution of certain action (or failure to act) to a person. The political narratives concerning the facts and factual causation, in concrete cases in which something went wrong, can of course have consequences in the very different context of the *third* dimension of responsibility we distinguished above, i.e., in the sphere of the *sanctioning* of the accountability of the responsible member of government, which we discuss below. But this should not be confused with the first dimension of *being responsible*, which is an essentially normative nature of the legal attribution of responsibility.

This is quite clear from the text of Article 42(2) of the Constitution, which establishes responsibility of ministers for acts and omissions of the King, saying the King is immune and the ministers are responsible. Clearly, ministers cannot factually or physically prevent the King from engaging in certain acts or from failing to act where he should have acted. Being responsible is the consequence of a *normative* attribution of the responsibility for those failures, and is quite separate

from the issue of what a minister has done or could have done to prevent the King's failures.

Although criminal ministerial responsibility was introduced in the Constitution in 1840 (and elaborated in the Act on Ministerial Responsibility of 1855, which exclusively concerns criminal ministerial responsibility), no prosecution has ever occurred. This is also because the monopoly over an order to prosecute rests with either the government (by Royal Decree) or the Lower House; the prosecutor is the Procurator-General of the Supreme Court (*Hoge Raad*), and the *forum privilegiatum* is the Supreme Court (Art. 119 Constitution). The reason for this is largely that political responsibility under the aegis of the parliamentary system and the rule of no confidence as it took shape in the 1860s, eclipsed the issue of criminal responsibility, in the sense that if a controversy involving illegal behaviour in the context of policy failures arises and political responsibility is engaged and actually sanctioned by the Parliament, criminal prosecution over the same facts becomes inopportune and inappropriate.

Responsibility for Whom?

Ministers carry political responsibility:

- for their own acts and omissions;
- for decisions of the Council of Ministers (together with the other members of the Council);
- for the King (Art. 42(2), Constitution);
- for state secretaries acting under their responsibility;
- for subordinate civil servants (Art. 44(1), Constitution);[22]
- for executive and other matters determined in specific legislation.

The Constitution specifies that state secretaries carry political responsibility for their own acts, although this does not detract from the responsibility of the minister in whose department they work.[23] In practice, the responsibility of a minister for acts of a state secretary within his or her ministerial department is rarely invoked, and whenever a state secretary has ended up in trouble in Parliament to the point of having to resign, this has never had political consequences for the minister under whom he or she worked.

The division of labour between members of government determines the minister (or state secretary) who is responsible. It should be clear, however, that when it concerns major political issues, the responsibility is not limited to individual ministers or state secretaries, but is a matter of shared responsibility as a consequence of the constitutional principle of cabinet government that makes the Council of Ministers responsible for the general governmental policy. This means in practice

22 *Grondwet* [Constitution of the Netherlands], Article 44(1): 'Ministries shall be established by Royal Decree. They shall be headed by a Minister.'

23 See note 13.

that the Prime Minister shows up in Parliament and is interrogated in the media whenever a matter acquires political salience – some prime ministers, however, may shun their exposure to criticism by leaving controversial matters to be dealt with by the competent minister only as long as possible (the present Prime Minister, Rutte, is a case in point).

When we combine the large number of issues that come within the scope of executive competence with the broad concept of responsibility as liability, political responsibility of the members of government is wide in scope indeed.

Nevertheless, there are a large number of cases in which legislation has created executive agencies which are explicitly placed outside the remit of ministerial responsibility. This not only applies to the *De Nederlandse Bank*, the Netherlands Central Bank, but also to a large set of other agencies and supervisory bodies, even if they have regulatory and standard setting and conflict resolution powers that are similar to not only administrative but quasi-legislative and even quasi-judicial powers. Notable cases are health, data protection, financial and competition and consumer interest authorities and supervisory agencies.

Responsibility to Whom?

The member of government who is responsible accounts for it traditionally in Parliament. Since the late 1960s, however, then Prime Minister De Jong began giving a television interview on Friday evenings after the weekly meeting of the Council of Ministers. Over time this changed to a general press conference of the Prime Minister after the meeting of the Council of Ministers. We spend a few words on each of these forums of accountability.

The Lower House is the chamber of Parliament with political primacy over the Upper House (*Eerste Kamer*). It is composed of full-time politicians, as opposed to the senators who generally also have a main job outside Parliament; it is the protagonist in the forming of the cabinet, from which process the Upper House is practically excluded (although constitutional law opinion is prevalent that an expression of lack of confidence, for instance, in the form of the rejection of a bill that is important for the cabinet, can lead to the resignation of the cabinet or an individual minister). Formally, however, the government is obliged to provide any information that a member of the Upper House requests, and it needs to assent to any bill (and hence can reject any piece of legislation it dislikes), so it can frustrate governmental policy significantly if it should wish to do so. In fact, in recent times, government coalitions (with sometimes only a small majority in the Lower House) failed to have a majority in the Upper House, which has led to mostly informal processes of involvement of political groups in the Upper House whenever the government fears rejection of a bill in this chamber.

Each House possesses the following constitutional instruments of holding the government to account:

- right to government information through oral or written questions;[24]

24 *Grondwet* [Constitution of the Netherlands], Art. 68:

- power to interrogate in Parliament (also minorities can request debates with the government);[25]
- power to pursue an in-depth investigation (*enquête*) with powers to hear witnesses under oath (a parliamentary instrument used sparingly) and order the production of documents;[26] to which the Lower House has added the power to engage in a parliamentary inquiry by a temporary parliamentary inquiry committee;[27]
- power to hold hearings.[28]

Both Houses have full autonomy over their own agenda, although the Lower House or one of its committees can convene at the request of a minister. This is not viewed as an agenda-setting power of the government properly, unlike in France, nor has it been used as such.

Very important is the rule that civil servants do not appear in ordinary debates in either of the Houses of Parliament. If Parliament wants to call on a particular civil servant, for instance, in a hearing which may or may not be limited to a 'technical' briefing, he or she can only appear with the approval of the minister under which the relevant civil servant acts. Proposals to make it possible for civil servants to become a counterpart, rather than exclusively the ministers and state secretaries, have consistently been rejected in practice in as much as this was viewed as leading to a dilution of political ministerial responsibility and increasing the chances of displacing the sites of political action. This position of civil servants reinforces the responsibility that has to be attributed to the minister for the acts and failures of civil servants.

As to the press and other public media, the continuous growth of information flowing from the government to the press after Council of Minister meetings has had, as a consequence, that it is neither Parliament, nor the civil servants, but the general public which first hears of points discussed in the Council of Ministers. Unlike the UK, there is no parliamentary privilege in being informed first of the intention of the government to initiate legislation. That said, it must immediately be pointed out that the meetings of the Council of Ministers are secret, so the Prime Minister will only relate whatever is settled and outside controversy in the Council of Ministers, while journalists in the general press conference focus on the political issues of the day, which is not necessarily what is or has been at stake in the Council of Ministers. Therefore, from these press conferences one does not generally gain a full picture of

> Ministers and State Secretaries shall provide, orally or in writing, the Houses either separately or in joint session with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State.

Rules of Procedure Lower House, Art. 136–139 (oral questions) and 134–135 (written questions); Rules of procedure Upper House, Art. 140 (written questions).

25 Rules of Procedure Lower House Art. 54(a) (debate at request of 30 members) and Art. 133; Rules of Procedure Upper House, Art. 139.

26 *Enquêtewet* [Act on Parliamentary Enquiry].

27 Rules of Procedure Lower House, Art. 142.

28 Rules of Procedure Lower House, Art. 29; Rules of Procedure, Art. 53.

the matters discussed in the Council of Ministers, but only of the things that the Prime Minister deems opportune to tell; so these press conferences tend to be a general discussion with the Prime Minister of the political events of the day. Nevertheless, these press conferences clearly have created a forum for accountability of the government to the general public.

The Prime Minister's press conferences are paralleled by a flow of public statements and interviews from the respective ministries, their press officers and spin doctors. One can say that also here a certain forum for accountability to the general public has been created, although in recent decades these have turned into 'spin' which can manipulate issues of accountability, in particular when it concerns unilateral public relations statements in the media.

The role of the media is therefore important, as is appropriate in a democracy where ultimately citizens have to decide – however indirect that may be – the fate of the Executive through elections. There is also a downside to the consequent media dependence as regards the functioning of the constitutional institutions of accountability. Members of Parliament, mainly for lack of sufficient support to be able to engage in in-depth investigations on their own initiative, tend to respond first on the cues that the government presents to Parliament, where the initiative lies generally in day-to-day politics. Outside official government information, Members of Parliament prove themselves to be extremely dependent on media sources, which may not be free from their own constraints. Generally, this implies that the process of political responsibility and accountability tends to be focused on incidents rather than on underlying causes in terms of policies and their remedies in view of a particular conception of the public good. 'Calling out' those who are depicted as responsible for the next little or large scandal is what executive responsibility very often boils down to.

Sanctioning Responsibility

The ultimate sanction in a parliamentary system of government is that a government or an individual minister or state secretary loses the confidence of the Lower House. In the Netherlands this entails the legal duty to resign. Beyond this legal duty there are no rules concerning the manner in which a no confidence motion is to be expressed, what form it takes, and what procedures should be observed.[29]

Two things are crucial to understand as regards the rule of no confidence as far as the operation of the parliamentary system is concerned. First, notwithstanding the fact that the only rule of the parliamentary system is negative, i.e., a rule of no confidence, and that at no point is there a formal requirement to enjoy positive confidence, in the context of coalition governments, the most important role of the parliamentary majority is to keep the coalition in power. Given the complexity of forming coalitions, breaking the coalition is conceived negatively, also because this usually means general elections and the electorate has often – though not

29 This is different at provincial and municipal levels, where the Act on the Provinces and the Act on Municipalities give detailed procedural rules for expressing a lack of confidence in the elected councils in provincial and municipal Executives.

uniformly – shown not to favour the party that is openly causing a cabinet crisis. Overall, this enhances the dominance of the government within the everyday functioning of the parliamentary system.

Second, the fact that the rule of no confidence is an unwritten, customary constitutional law, that is limited to the obligation to resign once a no confidence motion is expressed, entails that there are no formal or procedural requirements concerning the expression of no confidence. This means in practice that although the classic form of a resolution expressing no confidence can occur, the expression of no confidence can also take the shape of the rejection of the budget, the adoption of an amendment that the government or a minister has declared unacceptable, the rejection of a government bill, or the adoption of a resolution that expresses disapproval. The circumstances determine whether the expressions are an expression of no confidence, and the major issue is ultimately whether either Parliament intends it to mean an expression of no confidence, or the government (or its relevant member) takes it as an expression of no confidence. This may not always be clear from the outset of a parliamentary debate or set of debates and may therefore be a matter that only gradually develops. The lack of confidence may crystallize around a resolution, or a decision to reject a bill or amend it in a specific manner, but it may not even reach that point. So it is the interpretation of the whole of the relevant political events and mutual statements made that determines whether there is a situation of no confidence.

In both the case of individual ministers and state secretaries and that of the cabinet resignation, the expression of no confidence remains implicit. There is a clear preference for resignation *at one's own initiative, suae sponte* in cases of problems for which both a minister or cabinet bears political responsibility. Parliament often gives explicit cues, in particular from the member's own or one of the coalition parties. But sometimes the decision to resign for reasons of political responsibility is not one where a parliamentary majority would necessarily want to insist. An example is the resignation of the second *Kok cabinet* in April 2002 upon the appearance of a detailed historical study on the role of the Dutch UN contingent, *Dutchbat*, in the Fall of Srebrenica, which immediately led to the murder of at least 7,000 Bosnian Muslim men and boys in 1995. An example where a parliamentary investigation was the cue to the resignation of the cabinet is the third Rutte cabinet that resigned after the parliamentary report on the scandal on child care bonuses (see Box 7.3) shortly before the periodic Lower House elections of Spring 2021 (with the exception of the Minister of Economic Affairs, who had been state secretary responsible for the Tax and Customs Administration, the cabinet did not actually leave office but stayed on as a caretaker cabinet).

Box 7.3 The child care bonuses scandal

The recent scandal concerning the quasi-punitive recovery from over 20,000 families of child day care support that was administered in the form of fiscal bonuses illustrates this. The practice was that people who made even a minor administrative mistake like missing signatures, or failed to pay their

> own contribution of sometimes no more than a few hundred Euros or less, or did not do so in time, had to refund tens of thousands of Euros for the actual full cost of day care that had been provided on the basis of an incomplete file – a sum of money which they could not pay in the first place, which is why they received the fiscal bonus. The group of citizens included hundreds of cases based on ethnic profiling. A group of affected citizens filed a complaint to the Minister of Justice against a number of ministers and state secretaries for committing criminal offences by public functionaries in office (Criminal Code, Articles 355(3) and (4) and 356). This gave rise to the Minister of Justice requesting the Procurator-General at the Supreme Court undertake a preliminary investigation into the question whether the complaint contained sufficient indication to start a proper criminal investigation. In his report the Procurator-General found there was no reasonable suspicion of one of the alleged criminal offences, and took into account, among other things, that many of the facts had been proscribed and could no longer be prosecuted, and significantly that a short parliamentary investigation into the scandal not only made it legally impossible to use the documentation produced specifically to the parliamentary committee in any criminal investigation (Art. 30 Act on Parliamentary Inquiries, *Wet op de parlementaire enquête*), as well as the fact that political responsibility was taken by the cabinet in the form of its resignation after the publication of the parliamentary committee's report and a trajectory for the reparation of damage was underway.[30]

The sanction of no confidence is rarely applied to the whole cabinet by a parliamentary majority turning against the government. Usually, as we already remarked, a political crisis within the cabinet is along political party lines and spills over into a rupture between coalition parties in Parliament. The last time an explicit parliamentary majority stood in opposition to a politically homogenous cabinet and voted a resolution that was taken to be a motion of censure, was in October 1966 (the fall of the Cals cabinet).

As regards individual ministers and state secretaries the situation is different. Unless a minister who gets into trouble is supported by his or her political party to the point where the latter is willing to break the coalition – which is generally perceived as a great threat that should be avoided even at relatively high cost – he or she is sacrificed easily. This happens fairly frequently. So individual ministers or state secretaries cannot rely, without clear support of the whole cabinet, on using the threat of resigning, as this may only weaken his or her position. It may be remarked that individual ministers or state secretaries do not always resign in Parliament, but these day it regularly takes the shape of a press statement made by the person involved, in front of

30 *Kamerstukken* [Parliamentary documents], *Tweede Kamer der Staten-Generaal* 2020–2021, 31066 nr. 799, 5 March 2021, Appendix.

media cameras and microphones in the ministerial department in which he or she worked. This is a remarkable symptom of the mediatic form and nature of the process of political responsibility and accountability.

Since 1977, no less than 38 ministers or state secretaries have resigned for political reasons, i.e. excluding those who resigned for reasons, such as death, ill health, or an appointment elsewhere (such as mayor, or an international organization) (Table 7.3).[31]

Altogether the rule of no confidence is a parliamentary instrument of last resort that is employed as a background issue to put pressure on the cabinet or its members, within a political game of parliament to convince the government to do something it might not be inclined to do of itself, and convince the government to threaten to resign.

As regards the cabinet, the relative rarity of expressions of no confidence means that instead of negative sanction, the positive sanction of retaining sufficient confidence (i.e., not being sent away) is practically the more important sanction. This is also what one can see in practice: the activity of managing everyday politics is about the government staying in power, and the most important task of the majority (i.e., the coalition parties) is to keep the government in power. Holding the government and its members to account should not lead to rocking the boat too much as this might put the coalition at risk.

The role of the Upper House in the sanctioning phase of political responsibility is somewhat controversial. There is disagreement as to the Upper House's power to send a whole cabinet home, although there is less controversy that as a matter of fact individual ministers or state secretaries can be forced to resign. The reason for this controversy is that the Upper House is not supposed to have the political primacy compared to the Lower House, as was already mentioned above. This is expressed in the Upper House having less powers over the legislative process than

Table 7.3 Resignation of individual ministers and state secretaries since 1977

Governments	*Dates*	*Numbers of ministers/state secretaries who resigned*
Three cabinets under Prime Minister Van Agt	1977–1982	3
Three cabinets under Prime Minister Lubbers	1982–1994	10
Two cabinets under Prime Minister Kok	1994–2002	3
Four cabinets under Prime Minister Balkenende	2002–2010	10
Three cabinets under Prime Minister Rutte	2010–2021	12

31 For a detailed account of all the cases of individual resignations in the period 1918 to 2002, see respectively C. Brand, *Gevallen op het Binnenhof: Afgetreden ministers en staatssecretarissen 1918–1966* (Amsterdam: Boom Uitgevers, 2014); for the period, see A. Bos, *Verloren vertrouwen: Afgetreden ministers en staatssecretarissen 1967–2002* (Amsterdam: Boom Uitgevers, 2021).

the Lower House, notably it lacks the power of initiative and the power to amend bills, as well as its absence in the process of forming a cabinet. So some constitutional lawyers hold the view that the power to break a cabinet, also in the form of the rejection of a bill for political reasons, is unlawful or at any rate constitutionally undesirable.

The other view is that, for a bill to become an Act of Parliament, the Upper House needs to consent to the bill, and it therefore has the full right to reject any bill, and is moreover constitutionally always the one who decides *after* the Lower House has decided on the bill, therefore giving it, in temporal terms and constitutionally, the final word. Moreover, there is no such thing as a difference between political and non-political reasons for adopting or rejecting a bill. The Upper House, being elected by the provincial councils immediately after these have been elected, makes them no less a politically legitimate popular representative body than the Lower House.

Sanctioning of 'Mediatic Responsibility': the Role of Elections

As in most parliamentary systems of government, Executives are not elected in the Netherlands. The composition of the government is determined by Lower House, so indirectly Lower House elections provide a degree of 'input legitimacy' – one of the very few cases of positive influence of citizens on political decision-making, given the absence of binding citizens initiatives or referenda in the Netherlands. Apart from providing 'input' into the political process, elections can also be 'feedback' in the form of negatively or positively sanctioning the political powers and their representatives, by voting them in or out of power.

These two elements should, however, not be exaggerated. For one thing, there is the structural feature of permanent political minorities, in combination with an electoral system of near perfect proportional representation, that have led to the necessity always to be ready to compromise in order to be able to build coalitions that ideally are sustainable over a period of about four years. Democratic elections do not automatically translate into parliamentary majorities that are the basis of durable and stable executives. Elections are about expressing preferences through the ballot box, of which the aggregated majority mix that prevails is a matter of interpreting the electoral outcome, or better: it never leads to the expression of a coherent set of majority policy preferences, but needs to be constructed in post-electoral coalition negotiations. Elections may indirectly legitimize the Executive, but they do not substantively determine concrete policy options; in the final mix of the coalition compromise, most substantive issue preferences of a particular political party are diluted. This creates distance between citizens and the political institutions of government.

Another thing to bear in mind is that during electoral campaigns, there is a certain reticence among politicians of political parties that might want to form part of a next coalition, to emphasize elections as the 'day of reckoning' with one's political competitors' performance. After the elections one may have to sit around the table with one's opponents, and an over-emphasis on the things they might have done wrong,

might unnecessarily burden the negotiations. There is therefore a certain emphasis on promised future policies. This combines with the advantage of, in particular, the incumbent Prime Minister, who tends to be the political standard bearer for a cabinet, during election campaigns. This enhances the Schumpeter-type of democracy where the governing elites vie for legitimacy in elections.

Of course, electoral feedback processes cannot exist for the unelected independent executive and supervisory agencies, as exist in the Netherlands as everywhere in the European Union. Political accountability seems by definition excluded, but accountability is not fully excluded.

For independent executive agencies, their accountability depends to the highest degree on their transparency and their reporting to the general public, which, however, does not have any possibility of sanctioning their operation or failures, except if in individual cases judicial review is possible (legal accountability). This remains the greatest political problem of these agencies. However, as we can see in the context of some of these independent agencies, it is not fully excluded that, apart from public reporting, elected bodies such as parliaments engage in an exchange of views with representatives of such agencies. With regard to independent supervisory agencies, parliaments could – and sometimes do so systematically already (e.g., in the case of ombudsman institutions) – make strategic use of their reports to take action in particular cases or fields, for instance, in cases of wrongs or abuses that could be remedied through intervention by legislation or action by the political executive.

Conclusion: Executive Dominance and the Nature of Democracy

The Netherlands has a somewhat paradoxical tradition of, on the one hand, a strongly socially embedded concept of democracy. But it also has a long-term political tradition of strong government, which is not merely going back to the monarchy that was established in 1814 and with William I (and II for that matter) governing as enlightened despots under a constitution, but beyond that to the days of the Republic of the United Provinces in which it was accepted that prominent citizens from 'notable' families, meritorious mainly in (mostly trade-oriented) economic terms, ran the institutions of confederal, provincial, and city government. With the coming of age of democracy by the end of the 'long nineteenth century', with the introduction of the universal franchise, this tradition was not immediately swept away. For many reasons that are unrelated to the particular political culture of the Netherlands, Executive dominance has only been enhanced, among which the rise of the social welfare state and globalization, not least in the form of Europeanization. These reasons are not unique to the Netherlands and apply also to other European States. All of these affect the nature of democracy in European states, and also the Netherlands.

In effect, dominance of the Executive, also within the constitutional structures and practical functioning of the parliamentary system of government, tends to turn into a *top-down* democracy, at least in everyday politics: the Executive seeks legitimacy for the decisions it has made, and democracy is the right of the people to agree with what the powers-that-be have decided. This is rather different from the idea of sovereignty of the people, or the idea that government be by the

people, which suggests democracy to be *bottom-up*. Only a strong sense of responsibility on the part of those who have been attributed power with which that responsibility goes, and strong institutions and instruments of holding the Executive to account could compensate for that.