Munich Social Science Review, New Series, vol. 3 (2020)

The Future Viability of the Dutch Democracy: A Model Case

Peter Brouwer
Beurtvaartstraat 46, 7311 MR, Apeldoorn, The Netherlands.

Klaas Staal
Karlstad Business School, Karlstad University, Universitetsgatan 2, 651 88 Karlstad, Sweden. klaas.staal@kau.se.

Abstract: The government of the Netherlands evoked a State Commission to write an advice on the future viability of the Dutch democracy. In this contribution, we describe the issues and proposals the Commission discusses in its reports, and thus provide insights in the functioning of a modern democracy and on the discussion of improving it. This paper also enables the non-Dutch speaking scientists to provide input to this discussion.

Keywords: Democracy, elections, institutions, reforms, the Netherlands
JEL classification: D02; D70; D72; H10; Z18

1. Introduction

In 2017, the government of the Netherlands evoked a State Commission to investigate the Dutch parliamentary system ”Staatscommissie parlementair stelsel” and suggest, when necessary, reforms of or other measures for the future viability of the Dutch democracy (Staatscourant 2017).[1] The three

[1] For more information on the State Commission (mostly in Dutch), see https://www.staatscommissieparlementairstelsel.nl/, an extensive account (in English) of the Commission’s analysis is presented in Staatscommissie (2019).

ISSN 0170-2521
ISBN 978-3-88278-312-4
www.accedoverlag.de

main documents, all in Dutch, the State Commission has published are first a problem analysis (Staatscommissie 2017), an interim status report (Staatscommissie 2018a), and then a final report (Staatscommissie 2018b). In our contribution, we present a comprehensive account of the issues discussed by the Commission, focusing on width rather than depth. This provides international scholars with insights on the discussion of improving a modern democracy the possibility of providing input on the discussion on the Dutch case: as we point out, many issues that play a role in the Dutch discourse are also relevant in other countries. Moreover, the Commission (Staatscommissie 2018b) presents a motivated choice of recommendations, but active citizen groups or political parties may disagree with these recommendations; for many issues we also present the arguments supporting the alternatives for the chosen recommendations. We start with a description of the relevant Dutch institutions in section 2 and the State Commission and its assignment in section 3. In section 4, we present and reflect on the issues and solutions raised by the State Commission. Finally, in section 5 we present the response by the Dutch government.

2. Survey of the Dutch Institutions

In this section, we give a brief description of the Dutch state institutions, focusing on those parts that are relevant for the analysis of the State Commission (for an extensive discussion, see Ramkema et al. 2008; Andeweg and Irwin 2014).

Largely following the Dutch Constitution "Grondwet 2017", we consecutively describe the government, the parliament, other state institutions, legislation, changing the constitution and fundamental rights. Most of the text of the current version of the Dutch Constitution is from 1983. Some minor changes were made later, the last one in 2017. The latest Dutch-government provided English translation is Constitution (2008).

2.1 The Government

The Dutch government "Regering" comprises of a hereditary monarch and the ministers. The ministers are, however, responsible for acts of government. The ministers together constitute the cabinet, which is

chaired by a prime minister. The cabinet decides upon overall government policy and promotes the coherence thereof.

2.2 The Parliament

The Dutch parliament, or States General "Staten Generaal", consists of two chambers representing the entire people of the Netherlands. It consists of the Lower House "Tweede Kamer" with 150 members and the Upper House "Eerste Kamer" with 75 members.[2] The sittings of the States General are held in public. The members of the Lower House are chosen in secret ballots with proportional representation. For the Lower House, there are direct elections at least every four years, while Upper House members are elected by the members of provincial councils.

The members of the twelve provincial councils are chosen in secret ballots with proportional representation every fourth year, usually not at the same date as the elections for the Lower House. Within three months after the elections for the provincial councils, the newly elected cast their votes, weighted by the population of their respective province, to elect the members of the Upper House. It is not possible to be a member of both Houses, or a member of one and simultaneously hold particularly public functions, like, e.g., member of government, Council of State, Court of Audit, or Supreme Court (for the latter three, see the description below). The Dutch cabinet ministers, e.g., thus cannot be members of parliament.

The members of both Houses are not bound by a mandate or instructions when casting their votes, and both Houses, either separately (the usual case) or jointly, take decisions by majority. The government is obliged to provide any information requested by parliament, unless this conflicts with the interests of the State. In addition, both Houses, jointly or separately, have the right of inquiry "parlementaire enquête". Everybody in the Netherlands is obliged to testify, under oath, for a "parlementaire enquête commissie".

[2] Note that, perhaps confusingly, the Upper House is thus called the First "Eerste" Chamber and the Lower House the Second "Tweede" Chamber of parliament, even though laws are first discussed in the Lower House.

2.3 Other State Institutions

The King presides the Council of State "Raad van State".[3] This Council is consulted by parliament on legislative proposals and for the approval of international treaties. The members of the Council are appointed for life by Royal Decree, i.e., by the government, but can resign or retire. Alternatively, they can be suspended or dismissed by an act of parliament. The parliament can also assign additional duties to the Council, and change its organization or composition.

Members of the Supreme Court "Hoge Raad" are appointed for life by Royal Decree, i.e., by the government, each from a list of three persons proposed by the Lower House, but can resign or retire. Alternatively, they can be suspended or dismissed by a court that is part of the judiciary. Acts by parliament and treaties are not reviewed by the courts. The parliament can also assign additional duties to the Court.

The Court of Audit "Algemene Rekenkamer" examines the State's revenues and expenditures. Members of the Court are appointed for life by Royal Decree, i.e., by the government, from a list of three persons proposed by the Lower House, but can resign or retire. Alternatively, they can be suspended or dismissed by an act of parliament. The parliament can also assign additional duties to the Court, and change its organization or composition.

The National Ombudsman "Nationale Ombudsman" investigates, on request or on own initiative, actions taken by administrative government. The National Ombudsman and the Deputy Ombudsman are appointed for a given time period by parliament, but can resign or retire. Alternatively, they can be suspended or dismissed by an act of parliament. The parliament can also assign additional duties to the Ombudsman.

Provinces and municipalities, their boundaries, and their prerogatives are determined by acts of parliament. They are headed by provincial and municipal councils elected proportionally for four years by the citizens in the respective jurisdictions, and those elected to these councils are not bound by a mandate or instructions when casting their votes. The provincial administration "Gedeputeerde Staten" consists of the executive "Gedeputeerden" and the Kings' Commissioner "Commissaris van de Koning" who is appointed by Royal Decree, i.e., by the national

[3] Meetings of the Council are usually chaired by its vice-president, who is therefore also colloquially known as the "onderkoning" (under-king).

government. The municipal administration "College van Burgemeesters and Wethouders" consists of the executive "Wethouders" and the mayor "Burgemeester". The latter is appointed by Royal Decree, is a member of the municipal administration (but not of the council), and chairs both the council and the administration.

2.4 Legislation

Government and parliament jointly enact acts. Bills can be presented on behalf of the King, i.e., on behalf of the government, or on behalf of the Lower House. A bill that has not yet been passed can be amended by the Lower House. As soon as the Lower House passes a bill, it sends it to the Upper House, which then considers the bill in the form as sent to it by the Lower House. The Upper House, however, does not have the right to initiate or amend a bill. A bill becomes an act of parliament once it has been passed by both Houses of parliament and ratified by the King.

The approval of international treaties is laid down by an act of parliament. If the treaty conflicts with the Constitution, it can be approved only if at least two-third of the votes cast are in favor. The same holds for conferring legislative, executive and judicial powers to international institutions. National legal provisions are not applicable if they are in conflict with provisions of these international treaties or resolutions by these international institutions. When national legislation conflicts with the national Constitution, citizens cannot file a lawsuit at national courts. The latter is possible, however, when national legislation conflicts with international treaties.

2.5 Amendment of the Constitution

The Government or the Lower House can propose amendments to the Constitution. First, an amendment has to consecutively get majority approval by the Lower and then the Upper House. After that, new elections for the Lower House have to take place. The newly elected members of the Lower House and after that the members of the Upper House then have to consecutively approve the amendment with at least two-third majorities.

2.6 Fundamental Rights

The Constitution (2017) also specifies fundamental rights that enable individuals to live in freedom and to take part in society and politics without interference by the state. These fundamental rights include equality for the law and freedom from discrimination, of religion, of expression and the right to privacy.

3. The State Commission

A state commission is an ad hoc advisory body that the government can evoke by decree. Its job description is given in this decree, and in the past several commissions have looked at different topics. Just two examples are the commissions on the reassessment of parenthood and the one considering the implications of climate changes and raising sea levels.[4] The State Commission on the future viability of the parliamentary system was evoked on February 2017 by a Royal Decree, i.e., by the Dutch government at that time (Staatscourant 2017).

This advice, to give *before* January 2019, on the future viability of the Dutch parliamentary system should deliberate on: (i) the desire of Dutch citizens to engage more in policy and politics; (ii) the increase in importance of decision making at the European Union level; (iii) the decentralization of many tasks; (iv) the increase in the volatility of the electorate; and (v) the influence of digitalization and social media. For these reasons, the government finds it desirable to reflect on elections, tasks, and the position and functioning of the parliamentary system.

4. Proposals and Recommendations

Our presentation of the proposals and suggestions made by the State Commission follows the same structure as in Chapters 4, 5 and 6 of Staatscommissie (2018a), while incorporating the Commission's recommendations as given in Staatscommissie (2018b, Chapters 5, 6, and 7, respectively). We thus present, respectively, the Commission's thoughts and choices on the enhancement of the democratic pillar in section 4.1, of constitutional democracy in section 4.2 and of parliament in section 4.3.

[4] The former commission also provides its report in English, see Government Committee on the Reassessment of Parenthood (2016).

4.1 Enhancement of the Democratic Pillar

The State Commission writes that the Dutch system of representative democracy with proportional representation of political parties is largely successful: Of 178 countries, the Netherlands' score on a liberal democracy index is 12th (V-Dem Institute 2017).[5] A proportional system represents preferences better in parliament than a majoritarian one; it increases the responsiveness of and the trust in the system; and it allows for the representation of small minorities. Proportional representation is therefore popular with Dutch citizens who, mostly, see it as a just and fair system (Bovens et al. 2014; Hendriks et al. 2016; den Ridder and Dekker 2016). Many citizens, however, feel not properly represented and for, e.g., the lower educated or those living outside the densely populated western part of the Netherlands, this is indeed the case, as the highly educated individuals from the western part of the Netherlands are overrepresented in parliament. (Hakhverdian and van der Meer 2018; van den Berg 1983: 227-237).

For some areas, e.g., emigration and European integration, there is also a distinction between implemented policy and citizen's preference (van der Meer et al. 2017; Lefkofridfi et al. 2014; Andeweg 2018). The Commission also notes that both the system of government and the election process are of good quality (see, respectively, Dahlström et al. 2015: 29: Norris et al. 2013), but that voters have little influence on which coalition government is formed after an election. Sticking to proportional presentation and direct elections, the Commission therefore discusses: the electoral system (see section 4.1.1); political fragmentation (4.1.2); voter turnout (4.1.3); citizen participation (4.1.4); referenda (4.1.5); voters' influence on the formation of the government (4.1.6); and transparency regarding the process of forming a government (4.1.7).

4.1.1 The Electoral System

In direct elections for the 150 seats in the Lower House, at least every four years, the election threshold to get a seat in parliament is 2/3% (=

[5] Countries with a (statistically insignificant) higher score are Norway, Sweden, Estonia, Switzerland, Denmark, Costa Rica, Finland, Australia, New Zealand, Portugal, and Belgium. France and Germany are 13th and 14th. Syria, Eritrea, and North Korea are at the bottom of the list.

100/150) of the valid votes cast. All candidates running for elections do so as candidates on a party list. After the elections, the votes cast on all party candidates are added together, and this sum determines the number of seats the party gets. These party seats are then, in principle, distributed according to the ordering of the candidates on the list, except when there is a candidate who passes the within-the-list election threshold of 25% of 2/3%. That is, if the party gets at least one seat then candidates crossing this threshold will have precedence to get a seat to those candidates who do not, even if this candidate got a low place on the party list.

To alleviate weaknesses in representativeness in the Lower House, Staatsommissie (2018a) mentions two potential reforms, which could improve the representation of preferences and the role of political parties (for similar arguments, see PvdA 2005). The *first alternative* is lowering the within-the-list election threshold from 25% to 10% or even 0% of 2/3%. This would increase the personal component, the influence of the electorate on the individual who is elected. The *second alternative* consist of the proposal made by Burgerforum Kiesstelsel (2006). In this system, a voter casts a vote either on a party list or on an individual from one of the parties.

Both votes are aggregated for each party, and party shares determine the proportional distribution of the 150 seats over the parties. A party's total number of votes on individual members divided by its number of seats are the within-party threshold: Each candidate who receives more votes than this threshold automatically obtains a seat in parliament. The remaining party seats are then allocated according the ordering of the candidates on the election list. The first option has, according to the Commission, the advantage that it can be straightforwardly implemented, but that its effect on the political parties can be far-reaching. The latter is, however, not negative per se, as party discipline and the power of the parliamentary leader can be mitigated. The importance of the ordering of list by the party decreases (or is even eliminated), which decreases the role of political parties, but increases the party's due diligence in putting up the list. A disadvantage is that, according to Dekker and den Ridder (2018), most of the Dutch electorate prefers to vote on a party. The second option does not have these disadvantages: those who want to cast their votes on a party can still do so, and the ordering on the party list remains relevant.

The strengthening of the regional component (increasing representativeness of the national regions) in the electoral system is a wish of the Dutch government (VVD et al. 2017: 8) and a considerable part of the

Dutch electorate (van der Meer et al. 2017). For the electoral system, Staatscommissie (2018a) therefore ponders changing it into a mixed electoral system. It mentions three such systems for the direct elections of the Lower House.[6] The *first alternative electoral system* is a mixed member proportional system in which voters have two votes. One vote is used to decide the representative of a single-seat constituency; the other vote is cast for a political party. The number of a party's seats depends proportionally on the share of the second votes this it gets. Examples of these systems are in Germany, New Zealand, Scotland, and Wales. A problem with such a system is that the requested proportionality, as described in section 2.2, in most cases requires overhang seats, which conflicts with the fixed number of 150 seats (see also section 2.2). For these reasons and the complicated nature of system, the Commission rejects this possibility.

The *second alternative electoral system* is a mixed member proportional system in which voters have a single vote. Voters then vote on a party-list candidate. A certain share of the 150 seats (say, 100) are given to the candidates winning in the districts, while the remaining (50) seats are then distributed to make the seat distribution proportional to the vote shares won by the party lists. Examples of these systems are in Sweden, Denmark, and Norway. The Commission discards this system as this electoral system is more complicated than the existing one and potential conflicts with proportionality in the distribution of seats (see also van de Velde et al. 2013: 9-10; this proportionality could also be restored, however, by depriving one or more of the 100 candidates of their seat if their party did not reach the required share of votes). The *third alternative electoral system* is the one closest to the existing system and revives the role of the 20 electoral districts "Kieskringen". These districts now fulfill mainly an administrative role,[7] but political parties would then be forced

[6] The Commission mentions that all three systems can be combined with the Danish system in which there are (say 100) electoral districts and several (say 20) electoral areas encompassing several districts. Each party has to list one candidate in each district, the same candidate can be nominated for several districts. A voter can select either one of the candidates in this voter's own district, or for one of the candidates nominated in one of the other districts which are in the voter's electoral area. The remaining 50 seats are then allocated to ensure proportionality. Felsenthal (2017) comments on policy/philosophical principles underlying representative assemblies.

[7] These electoral districts lost much of their role after another State Commission headed by J. Oppenheim in 1913-1914 advised the implementation of a proportional instead of a majoritarian system.

to present different lists (with the exception for the top candidate) in each of the 20 districts. The Commission notes that the third option is the one closest to the existing system, but rejects it, as it is also the one with the smallest increase in the regional component. Van Coppenolle (2017) and Marien (2011), however, argue that the size of the electoral districts would be optimal to forge a personal connection between the electorate and the elected.

In its recommendation, Staatscommissie (2018b) chooses the system proposed by Burgerforum Kiesstelsel (2006) to strengthen the personal and regional components. Additionally, this system makes an explicit distinction between a vote on a party and one on an individual candidate, in line with how most current voters already perceive their vote (Holstein 2006) and the intention of the constitution (Loots 2004: 129-131). It makes this choice even though strengthening the regional component is only important to a minority of the electorate (van der Meer et al. 2017: 93). The Commission points out that this system can easily be combined with nomination districts as in Denmark (Cox et al. 2005) or Bavaria (Zicht 2018). In line with Lijphart (2004), the Commission sticks to proportional elections, as this enables also small groups to have their representation in the Lower House. However, Golder and Stramski (2010) -citing Powell (2000)- write that "democracies employing majoritarian electoral institutions are better at promoting things like government mandates, identifiability, clarity of responsibility, and accountability, whereas democracies employing proportional-representation institutions are superior at dispersing power, providing choice and generating ideological congruence between citizens and their representatives. They find, however, that "the level of ideological congruence between the citizens and their government is not substantively higher in proportional democracies than in majoritarian ones." Moreover, concentrating on representatives, Stadelmann et al. 2019 show that, although ideological divergence between the electorate and its representatives takes place in both systems, this discrepancy is larger in a proportional system (Stadelmann et al. 2019). Another argument for reducing the proportional component is that majority-elected representatives are less prone to be influenced by lobbying (see Giger and Klüver 2016; Stadelmann et al. 2016). Mueller (1996: 13-15), however, warns that a majoritarian system gives incentives for elected representatives to let prevail local over national interests.

4.1.2 Political Fragmentation

Proportional representation and the low election threshold of 2/3% leads to a considerable number of parties represented in the Lower House. The disintegration of the parliamentary delegation of a party can increase this number even further. Dutch citizens (Dekker and den Ridder 2018; van der Meer et al. 2017) and the State Commission see this political fragmentation as problematic. The Commission writes that it complicates the formation of a government supported by a parliamentarian majority, that it reduces the influence of the electorate on the type of majority-supported government formed after an election (Staatscommissie 2017: 22; Staatscommissie 2018a: 40), and that it hinders political parties supporting this government to keep a distinctive political profile. This lack of a distinctive profile is not appreciated by the electorate (van Wessel 2016). Staatscommissie (2018a) therefore discusses (i) an increase in the election threshold; (ii) an increase in the election deposit; and (iii) a change in the treatment of disintegrated parliamentary factions, to mitigate fragmentation.

An *increase in the election threshold* to, e.g., 2% would ceteris paribus have only a small effect on, for example, the last election for the Lower House in 2017. Such a threshold would then have prevented, ceteris paribus, only one party (Forum for Democracy, with two of the 150 seats) entering parliament. A majority in the Lower House voted for the proposal by Kolfschoten et al. (1970) for such an increase to 2%, but the Government did not implement this change. Larger effects would require increases of the threshold to (the German) 5% or (the Turkish) 10%. The Commission sees as an advantage that it makes political processes less complicated, including the post-election formation of governments and the governability of the country. The major disadvantage is, however, that it decreases the representativeness of the Lower House, especially if it is increased from an almost ineffective 2% to a more effective threshold of 5% or 10%. Moreover, according to van der Meer (2017: 80), political parties close to the election threshold might be less supportive of a government struggling to get majority support in the Lower House. The Commission therefore sees little net benefits in increasing the election threshold.

An *increase in the election deposit* is another possibility to mitigate the fragmentation in parliament. New political parties have to pay a deposit of €11.250. Only if the new party manages to get at least one seat in the

Lower House, it gets a refund. According to the Commission, this can be a means to exclude non-serious parties, without being a prohibitive for serious contenders who are thought to have enough supporters to raise the funds. Over the last decades, however, the deposit has significantly decreased when measured in current prices. In 1951, for example, the deposit was approximately €36.000 in 2016 Euros. The Commission therefore proposes to increase the guarantee deposit stepwise. This discernment between parties is, perhaps, to the letter but certainly not to the spirit on the constitutional ban of discrimination, we therefore propose that all political parties should pay such a guarantee deposit.

A *change in the treatment of breakaway factions* can be another way to moderate fragmentation. Currently, a member of the Lower House breaking away from a party becomes a 'group' (not a 'faction'), with only minor reductions in, for example, financial support and parliamentarian speaking time. According to the Commission the possibilities to change this are, however, limited since the members of both Houses of parliament are not bounded by mandate or instructions (see section 2.2). Its proposal is to work instead with financial incentives. Now, a member (or a group of members) split from a party does not have to pay a guarantee deposit for participating in the next elections for the Lower House, and the proposal is to abolish this exception. The Commission sees, however, a practical problem in the case of a fragmentation of a party, as it might then remain unclear which fraction is the legal successor (and hence freed from paying a deposit).

In Staatscommissie (2018b), the Commission notes that there is no empirical evidence that political fragmentation in the Dutch parliament has increased in the last 50 years and recommends an increase in the already-discussed guarantee deposit. Additionally, it suggests an increase in the number of statements of support that political parties need to collect before they are allowed on the ballot paper. The Commission, however, does not deliberate on another concern regarding political fragmentation: the potential effects it can have on the quality of governance. Mueller (2007: 259) presents some illustrative cases of low levels of political fragmentation and high levels of quality of government. Following Lapuente and Nistotskaya (2009) and Charron and Lapuente (2010), political fragmentation may imply that politicians are unwilling or unable to put effort in enhancing the quality of government if these effort bear fruit in the long run only. Charron and Lapuente (2011) present empirical evidence based on subnational European regions, that there is indeed a

negative correlation between political fragmentation and the quality of governance.

4.1.3 Voter Turnout

The Commission (Staatscommissie 2018a) writes that the legitimacy of the parliamentary representative system is enhanced by a high voter turnout. Moreover, since some groups (lower educated, young, migrants) are characterized by low turnout rates (van der Meer et al. 2017: 51, 65), the risk is that their interests are less well represented. The Commission thus sees increasing voter turnout, especially among groups characterized by low turnout rates, as a policy objective and therefore makes proposals on the following: (i) polling stations; (ii) ballot papers; (iii) voters abroad; (iv) early voting; (v) voting age; and (vi) mandatory voting.

For the *polling stations*, the Commission puts emphasis on having a sufficiently large numbers of polling stations, especially in areas frequented by groups characterized by low turnouts, and that these stations are accessible for disabled persons. For the *ballot papers*, it is noted that the size of the ballot paper makes it for many, especially the elderly, hard to handle, and that its layout is difficult to understand for functionally illiterate and the visibly and mentally disabled (OESCE 2017: 18). The Commission therefore advises to proceed with the experiment conducted between 2012 and 2016 to simplify ballot papers, as described in Binnenlandse Zaken en Koninkrijksrelaties (2016: 4-14); and to make the ballot papers electronically countable to lower the currently large number of trust-undermining mistakes when counting the ballot by hand (Kiesraad 2017: 6-7, 13).

For *voters abroad*, voting is complicated. They have to register themselves for the election, and if they do not authorize somebody to vote on their behalf, their paper ballots are sent by ordinary mail. After filling in, they have to return their votes to the municipality of The Hague or to a Dutch Embassy. Since the postal services are not always reliable, these votes can come too late. The Commission therefore proposes to open the possibility to send the documents by email, and to open more ballot boxes in countries in which the postal services are not reliable. The possibility of *early voting* can be created by opening some ballot boxes earlier by a limited number of days or by creating the possibility to vote by postal mail. The Commission sees as an advantage that this could break down barriers that would otherwise prevent citizens from casting their votes.

Decreasing the *voting age* could increase voter turnout, too. The effectiveness and appropriateness, however, are debatable (see Binnenlandse Zaken en Koninkrijksrelaties 2010; Jacobs 2018: 214; van der Kolk and Aarts 2010: 44-45, 48; Zeglovits and Aichholzer 2014). The Commission therefore finds it inopportune to decrease the voting age. Turnout can also be increased with introducing *mandatory voting*. The Commission, however, objects against this as it sees voting as a right, not as an obligation and it also does not see the value of casting votes without the intrinsic motivation to do so. Moreover, van der Meer (2017: 40) and Dekker and den Ridder (2018: 28) argue that voters do not become more interested or involved when forced to vote.

In its final report, Staatscommissie (2018b), the Commission emphasizes the importance of polling stations in educational institutions. In these institutions, there are many first-time voters, and if they cast their vote in the election then this has a lasting positive impact on the probability that they will also vote in later elections (Bhatti and Hansen 2012). The Commission thus suggests to increase turnout especially among groups characterized by low turnouts (lower educated, young, migrants), for example by opening polling stations in places visited frequently by these groups.[8]

For those with the right to vote but living outside the Netherlands, the necessary costs and effort required are clearly higher, and the Commission is thus right to press for lower hurdles for this group. To influence turnout rates, we suggest strengthening democratic knowledge and skills, especially for those with weaker socio-economic backgrounds, to enhance their turnout, as outlined below. Another possibility to increase turnout rates is to consider elements of Swedish elections, which are characterized by high turnout rates. Two elements stand out: the first that national, regional and local elections are organized simultaneously, and secondly the extended possibilities for casting a vote earlier. Against the first element one could make a case by claiming that people cannot distinguish between local and national issues. The differences between the outcomes

[8] Such policies, however, run the risk of running against the freedom from discrimination – recall the Voting Rights Act of 1965 against the Jim Crow rules impeding African Americans from voting (see, e.g., https://www.vox.com/2015/3/6/8163229/voting-rights-act-1965), or the closing of polling stations (see, e.g., https://www.brookings.edu/blog/fixgov/2016/11/08/voter-suppression-in-u-s-elections/). Instead of enhancing the turnout of the specific groups, the government should offer everybody the opportunity to vote at the, to the extent possible, same costs and effort levels.

of the three Swedish elections, however, suggest that this is only the case for at most a limited share of the voters. The State Commission's objection against early voting is that people may change their opinions.

The Swedish solution to this is that the early votes are kept in envelop with the voters' number at the voting office in the voters' place of residence. On the last polling day, the voter can request this envelop and change the votes. Staatscommissie (2018b) recommends creating the possibility to vote early, either by postal mail or by opening ballot box earlier, also because it could avoid breaking the secrecy of election for those who would otherwise mandate someone else to vote on their behalf. According to Giammo and Brox (2010), however, the disadvantages are that early voters might miss some of the information spread in the election campaign. The Commission does not further discuss the information asymmetries induced by early voting or possibilities to deal with this as this is done in, e.g., Sweden. It also unclear whether the possibility of early voting increases turnout (see Burden et al. 2009; Giammo and Brox 2010; James 2010; McDonald et al. 2008; Gronke et al. 2007). In addition to the recommendations with respect to increase turnout, Staatscommissie (2018b) deems it necessary to publish election results of each individual ballot box, not only at the community level.

4.1.4 Citizen Participation

To compensate shortcomings in the representative system, direct-democratic instruments can be used. These instruments can be at the start of the political process, or as a correction once a decision is reached. The latter, in the form of a so-called corrective referendum, in which citizens can vote on acts approved by parliament, is discussed in the next subsection; of the former Staatscommissie (2018a) debates two types of agenda setting: quantitative and qualitative instruments, which can be used to increase citizens' participation in legislation.

An example of a *quantitative instrument* is the citizens' initiative "burgerinitiatief". In such an initiative, if at least 40.000 citizens sign a petition, the Lower House has to discuss the issue. The Commission sees this as a way to alleviate shortcomings in the representative system. Examples of *qualitative instruments* are the existing possibility to consult citizens over the internet "internetconsultatie", or the citizen's forum "burgerforum", or the possibility of (committees in) parliament to invite citizens to hear their opinions. The Commission mentions that these

instruments have a high participation threshold for the low-skilled, but sees as advantages that it can enrich the decision-making process and increase the acceptance of its outcomes. Problematic are, however, the high participation threshold for certain groups in the population, which might imply that these groups' interests are not properly represented. A citizen forum has been used only once, in 2006 to consult the opinion of 140 randomly selected individuals on the electoral system "Burgerforum Kiesstelsel". The government, however, did not incorporate the Burger-forum's advice. The Commission thus mentions, that if such an instrument is not carefully used, for example, by not explicitly specifying the expected bandwidth of the advice, it can be counterproductive.

In its final report, Staatscommissie (2018b), the Commission stresses the importance of three pre-conditions for this form of participation in decision-making: (i) the topic and its delimitation should be clear beforehand; (ii) how the outcome of the participation will be used should be made explicit in advance; and (iii) participation is consultative, the final decision-making remains a task of the elected representatives. The Commission advises to make a better use of the citizens' initiative, by increasing parliament's responsiveness to such initiatives, and by changing the parliamentary limit from two years to one year of not considering an initiative after its topic is already discussed in parliament. The Commission also considers the consultation of citizens over the internet as an appropriate instrument to enhance participation in decision-making. This is done in, for example, Luxemburg.[9]

It should be taken into consideration that participation in this form of consultation is limited and not representative. However, the Commission recommends using it more often and more creatively, by also making use of the social media (see also Raad voor het Openbaar Bestuur 2018). A *more direct say of citizens* in the form of a citizens´ assembly, of which the members are randomly drawn from the population to discuss a certain topic, is also a way to increase the representativeness in decision-making.

Frey (2017) also proposes randomly drawing citizens, but then to serve a term as a member of parliament. Tridimas (2018), however, argues that in modern societies (in contrast to ancient Athens), this may not work. A citizen's assembly can be seen as an elegant compromise. However, the Commission notes again that participation is limited and not representative

[9] See https://chamber.lu/wps/portal/public/Accueil/TravailALaChambre/Petitions/RoleDesPetitions.

of the whole electorate. To circumvent the lack of representativeness, the Commission recommends having citizen assemblies consisting of groups that are underrepresented (like, e.g., the young). To increase the chance of a citizen assembly's success (the Committee mentions assemblies on electoral reform in the Netherlands -Bijleveld-Schouten 2008-, Iceland -Ólafsson 2016-, and Canada -Pilon 2010- as unsuccessful ones), the Commission recommends combining them with other participation instruments.

4.1.5 Referenda

The State Committee (Staatscommissie 2018a,b) writes that a binding corrective referendum can strengthen the future viability of the representative democracy.[10] Such a referendum can function as a safety valve, strengthening the legitimacy of and trust in the system. In this respect, the Commission explicitly mentions the possibility that, despite proportional representation, due to the election of parties, a majority in parliament can exist despite the lack of such a majority among the voters, the so-called Ostrogorski's paradox (see, e.g., Nurmi 1999: 70 et seq.). It also strengthens political parties by increasing party membership (Peeters 2016) and forces politicians to be more responsive to the preferences of the population (Leemann and Wasserfallen 2016; Liechtenstein 2014: 176-177). A further strengthening of the role of political parties is connected to the tendency of voters to follow party lines on the referendum issue (van der Brug et al. 2018).

A referendum can also counteract the problem that the preferences of the higher-educated individuals, for example, with respect to European integration, are better represented in parliament then the preferences of the lower educated (Hakhverdian and Schakel 2017: 54 et seq.; Bovens and Wille 2011), which leads to a higher level of satisfaction of higher-educated individuals with the functioning of parliament (den Ridder and

[10] Orviska (2018) notes that the introduction of a referendum might decrease turnout, thus conflicting with another objective discussed by the Commission. A referendum increases the costs of voting (e.g., information costs), thus decreases the probability of an individual voting, and due to information overload might reduce the tendency to vote in any context (see also Fox and Johnston 2017). Le Maux (2018) notes that the empirical literature remains unclear about justifying direct participation rights by government failures associated with representative systems, while Nurmi (2017) raises the question who should decide on which questions are subjected to a referendum.

Dekker 2015: 51-52). According to van der Meer et al. (2017), a large majority of the Dutch electorate supports referenda. Moreover, international evidence shows that direct democracy increases the objective and subjective well-being of citizens (Kirchgässner et al. 1999; Kirchgässner and Feld 2000; Frey and Stutzer 2000, 2002; Kirchgässner 2015). Since a non-binding referendum can alienate the electorate if the government does not follow the outcome (Hendriks et al. 2017), a binding one is preferred by the Commission.[11] A threshold in the outcome instead of a participation threshold can then warrant the legitimacy of the outcome, as the latter creates the possibility of strategic abstentions (cf. Aguilar-Conraria and Magelhaes 2010). The Commission notes, however, that the primacy of decision-making should remain in the parliamentary process and hence rejects binding initiatives in referenda.

4.1.6 Voters' Influence on the Formation of Government

After elections for the Lower House, a new government has to be formed. In general, proportionality implies that there is not a single party that gets a majority in the House; hence several parties need to form a coalition government. The early negotiations are chaired by an *informateur*, who is elected by the Lower House; the final negotiations on a coalition agreement by a *formateur*, who is also elected by the Lower House and usually becomes the prime minister of the new government. The electorate, however, has little influence on the formation of government, and according to van der Meer et al. (2017) a large part of the electorate wants to have a larger sway on it. The Commission therefore considers the following options: (i) a majoritarian system; (ii) a presidential system; (iii) a formateur elected by the voters; (iv) the formation of political blocs; (v) minority governments; (vi) less detailed coalition agreements; and (vii) not automatically new elections after a government loses a vote of confidence.

A *majoritarian system* can give the electorate more influence on the formation of government. Elections in a majoritarian system tend to produce outcomes with fewer parties, and often the largest party forms the government. This creates a more direct connection between the election and government formation. The lack of proportional representation, and thus a larger potential gap between the population's preferences and

[11] A non-binding corrective referendum was abolished in July 2018.

preferences represented in parliament, however, is the reason for the Commission to reject this idea.

A *presidential system* gives the voters a more direct say on the formation of government. This would, however, imply the end of the parliamentary democracy and hence the Commission rejects this idea, too. Lijphart (2004) supports this by writing "there is a strong scholarly consensus in favor of parliamentary government".

A *formateur elected by the voters* is, however, possible within the parliamentary system. The Commission recommends granting an elected formateur a limited amount of time. If after this period no new government is formed, the Lower House can then (as is the case now) decide on who to entrust the task. The Commission discusses two ways the formateur can be elected, either simultaneously with the elections for the Lower House with a potential run-off two weeks later, or simultaneously with the elections for the Lower House with an ordinal voting system in which voters rank candidates. An advantage of the first possibility is that it enables a political regrouping creating more clarity about which type of governments contender could form; its disadvantages are the time and financial means it takes to organize such a second vote, and a potential lower turnout. An advantage of the second possibility is the necessity of just a single election; a disadvantage is the impossibility of political regrouping. In Staatscommissie (2018b), the Commission proposes to introduce a formateur elected with an ordinal voting system. Examples of such single transferrable vote systems can be found in Australia, Ireland, Malta, and Northern Ireland (see Nohlen 2013: 410-419; Gallagher 2002).

The *formation of political blocs* also increases the influence of the electorate on the formation of government. The Commission explicitly mentions Denmark and Sweden, in which blocs of parties create a clearer picture of the government that can be formed after the election (Christiansen and Klemmensen 2015: 33-34). With an elected formateur in two rounds, one can expect this formation of political clusters. The Commission also suggests reintroducing the possibility to form combined lists that are important for the distribution of the remainder seats in the apportionment after elections (this possibility was abolished in December 2017).

A *minority government* is seen as an emergency measure in the current political culture. Strøm (1990), however, argues that minority governments are neither unstable nor ineffective. The Commission pleads, however, to change the view on minority governments, and explicitly

include this possibility in the assignment of the formateur. Reasons are that with further fragmentation, it gets harder to form majority governments; that minority governments allow for more homogeneous coalitions; and that it increases dualism, i.e., the separation of powers between the cabinet and parliament (Christiansen and Klemmensen 2015: 26-46, describe the Scandinavian experience). The Commission notes, however, that this also requires a change in the Dutch political culture that puts importance on majority consensus.

The Commission pleads for *less detailed coalition agreements*. This would strengthen the controlling role of the Lower House, as the parties supporting the government will then be bound by the coalition agreement in fewer cases. The Commission makes three suggestions for reaching shorter agreements. Firstly, more homogeneous minority cabinets need less detailed agreements; secondly, more transparency in coalition negotiations (discussed in the next subsection); and thirdly, long-term agreements between political parties on topics that have a longtime horizon, like defense and physical infrastructure.

Finally, the Commission pleads for dropping the practice of *organizing new elections directly after a government loses a vote of confidence*. If the motive of the loss of confidence is not too substantial and an alternative coalition is readily available, this alternative coalition could form a new government. Connected to this, Staatscommissie (2018b) investigates the possibility to replace votes of no confidence with constructive votes of no confidence, in line with the possibility of the German parliament (Grundgesetz 2019: §68.1). Such a constructive vote implies that a majority in parliament exists which supports a prospective alternative government coalition. However, the Commission decided against this, as it would take away the current possibility of the Lower House of withdrawing confidence, ousting the government and triggering new elections. Moreover, Strøm et al. (1994) argue that constructive votes of no confidence preclude minority governments.

Additionally, Lijphart (2004) writes that, while, on the one hand, constructive votes of no confidence increase government stability, they, on the other hand, create the possibility that the government has no majority to pass its legislative program.

4.1.7 Transparency Regarding the Process of Forming a Government

As described above, after elections for the Lower House a coalition government has to be formed. During this process, an insufficient amount of information (and over the years less and less information) is given to parliament and the electorate (van Baalen and van Kessel 2012: 154-158; van Poelgeest 2011: 124). Even though the State Commission writes that some confidentiality is indispensable, it sees this at odds with the role of the Lower House and therefore urges more involvement of the Lower House, both relating to its content and in the process itself.

The Commission sees this in the perspective of a more systematic process of the coalition negotiations. In each of the following three suggested steps, the Lower House should be more frequently informed. The first step is deciding on which political parties are involved in the negotiations; the second determining the main issues the new government faces; and the last step establishing the necessary policy measures. Staatscommissie (2018b) proposes to introduce the obligation to inform the Lower House to make sure that the Lower House can fulfill its duties. Stasavage (2004) provides theoretical and historical evidence that this transparency is in the interests of the citizens.

4.2 Enhancement of Constitutional Democracy

The State Commission writes that it is naïve to think that the Dutch democracy would be immune for threads from inside or outside the country. It sees the following risks: (the threat of) terrorism; foreign involvement in elections and political decision-making; undermining of the system through infiltration by the underworld; and the presence of anti-democratic and anti-constitutional forces in the political system (AIVD 2018). The first and third risks, however, fall outside the Commission's assignment. The Commission discusses the fourth risk under the name institutional safeguards (see section 4.2.1), and the second risk under rules for digital election campaigns (4.2.2). Other measures for the enhancement of the constitutional democracy are constitutional review; the appointment of members of the Supreme Court; and strengthening the population's knowledge and skills of democracy.

4.2.1 Institutional Safeguards

The Dutch political system includes a number of existing safeguards (see, e.g., Rijpkema 2015: 146-205). The Commission (Staatscommissie 2018 a,b) mentions the system of proportional presentation, enabling the representation of minority interests in parliament, and through the formation of coalition governments, an internal distribution of power; the checks and balances in the bicameral system and the advisory role of the Council of State; that the constitution cannot be changed easily; and the presence of a strong and democratically organized civil society. Despite these existing safeguards, the Commission sees strengthening and extending them as a necessity (see also AIVD 2018; Rijpkema 2015: 203-205), and therefore discusses (i) new safeguards; (ii) adaptation of rules to ban parties; and (iii) a new law on political parties.

One possible *new safeguard* is to include a constitutional guarantee of perpetuity for some crucial democratic and constitutional clauses. The entrenchment clause in the German Basic Law is mentioned as an example (Grundgesetz 2019: §79.3). Given the difficult and time-consuming procedures to revise the Dutch Constitution, however, the Commission does not see noteworthy added value in doing so. Another possibility is extending the Constitution by the right to resistance, as a last resort, against anyone who jeopardize the constitutional order. The Commission again gives the German Basic Law as an example (Grundgesetz 2019: §20.4). Due to a lack of an objective definition of what constitutes such a danger, however, this brings the risk of disproportional actions and therefore the Commission rejects this possibility.

The last safeguard discussed is the prohibition of gifts from foreign countries to political parties. This prohibition is also proposed by Binnenlandse Zaken en Koninkrijksrelaties (2018: 50-51), while Dutch citizens living abroad would form the exception. The Commission rejects this as it sees the distinction between foreign and domestic gifts as not justifiable. It admits, however, that gifts to political parties create the risk of corruption and it therefore proposes to put a maximum amount to these gifts. Additionally, such a maximum would promote equality of opportunities between political parties.

A *political party ban* is currently possible under the Dutch civil law, if the party's purpose or actions are in violation of public order. Since a party ban is a last resort, the Commission argues that a separate legal footing is necessary (Rijpkema 2015: 187 et seq). The Commission agrees

with this opinion, and ponders separate laws and procedures for party bans. Since such bans, however, inevitably are in conflict with fundamental rights, the Commission also discusses lighter measures, for example administrative measures like the temporary stop of subsidies and the exclusion from airtime on radio and television or the prosecution of instigators. In sum, the Commission sees the following steps: first the prosecution of the party's foremen, for example, for hate crimes or inciting violence; then administrative measures; and, finally, a party ban, if purpose and actions violate public order or if there is immediate danger of this. The Commission (Staatscommissie 2018b) stresses that, for the final step of a party ban the legal basis should be in line with existing jurisprudence and guidelines at the European level (Council of Europe 2016; European Court of Human Rights 2002, 2003, 2011, 2013, 2016, e.g., on party bans in Hungary, Russia, and Turkey; Lange et al. 2016 discuss the role of imminent danger in a comparative study of Germany, France, Spain, the United Kingdom, and the United States), and that this decision should be taken by the judiciary, preferably by a Constitutional Court.

The rules on a ban of political parties, discussed above, should be written in a *new law on the financing of political parties*. This law could also include the already existing regulations on the revenues and expenditures of election campaigns, currently in the law political parties' finances "Wet financiering politieke partijen", the proposals on limiting gifts to parties, and rules on digital campaigns (see the next subsection).

4.2.2 Digitalization

Digitalization creates new possibilities to enhance democracy. The State Commission mentions the increase in the accessibility of information and the possibility of political parties to contact the electorate (Dobber et al. 2017). Prins (2017), Zuiderveen Borgesius et al. (2018), and Bodo et al. (2016) warn, however, that digital campaigns risk inflicting the personal autonomy of the individual voter. Zuiderveen Borgesius et al. (2018) note that the European privacy legislation and the system of proportional representation give more protection than in the United States of America, but the restricted juridical possibilities are vague. There is also the risk of creating information bubbles. The fact that it is not always clear who is sending a digital message increases the possibility that foreign powers interfere in the political process (AIVD 2018: 9). Microtargeting and

disinformation interferes with two vital functions of the media in a democracy: providing and analyzing information (van Keulen et al. 2018: 4). The Commission sees this as a serious threat to democracy, as if someone is able to influence unnoticed the preferences of the electorate, elections are no longer free and fair (Bartlett 2018: 101). The Commission (2018a) notes that the current legal framework does not properly cover the possibilities created by digitalization and therefore discusses three interventions to strengthen the future viability of the democracy: (i) rules for digital elections campaigns; (ii) an independent supervisor for the protection of democracy; and (iii) attention for the protection of the digital infrastructure.

The Commission (Staatscommissie 2018b) deems it necessary to make additional *rules for digital election campaigns*. In line with the recommendations made by the European Commission (2018a), a political advertisement should make clear who is sending and paying for it, and why someone gets the advertisement. Others also stress the importance of this transparency (e.g., in the United Kingdom: Information Commissioner 2018; in the Netherlands: Straathof et al. 2018, Hazenberg et al. 2018). In Europe, microtargeting of political advertisements is done in a different way than in the United States of America (Bennett 2016; Hazenberg et al. 2018), due to electoral differences, the European privacy rules, and the lack of party's access to a register of voters.

According to the Commission, microtargeting can undermine trust in democratic processes (Prins 2017; Tambini 2018; Zuiderveen Borgesius et al. 2017). It can be counteracted by enforcing more transparency. The same holds for algorithms on digital platforms (Prins 2017; Vetzo et al. 2018: 129). The Commission proposes to include these rules in a new law on political parties (see the previous subsection). Following the European Commission's (2018a) recommendation, an independent supervisor, with the power to sanction participants, should be created. This supervisor would then enforce the new rules deemed necessary by the State Commission. Finally, in line with the European Commission (2018b), the State Commission see it as necessary to have minimum standards for the *protection of the digital infrastructure* used by, for example, the parliament, the courts, and the Council of State.

4.2.3 Constitutional Review

The Constitution prohibits the review of acts and treaties by the judiciary (Grondwet 2017: §120). The State Commission (Staatscommissie 2018a,b) sees this as a loophole in the legal protection of individuals and of the democratic rule of law. In the process of legislation, the constitutionality of a law can be addressed at different phases: in the preparatory phase by the civil service, in the advice of the Council of State, and finally in the parliamentary procedure in the Lower and then the Upper House. This implies that the question of constitutionality is reserved for the legislator as the highest interpreter of the Constitution. This choice is motivated by the fact that the legislator is elected, while judges are appointed. Judges have, however, the right to review acts in the light of international treaties, which is used as an argument for giving them a say also on the constitutionality of laws. It is, however, uncertain whether the constitutionality of all new laws is always reviewed in any of the phases of the legislation.

The shift in the importance from normative (orders and prohibitions) to framework (defining the division of responsibilities) legislation and the decrease in quality of the legislative process (Raad van State 2016: 10-21) are other arguments for the judicial review. Staatscommissie (2018b) therefore suggests putting more emphasis on the constitutionality ex ante, that is, in the different phases of the legislation process, but also ex post. The preferred option is a concentrated constitutional review by a (not yet existing) Constitutional Court, as is done by the Bundesverfassungsgericht in Germany. An important reason for this is that it prevents the politicization of the rest of the judicial system.

The Commission thinks the Court should have the following competences: (i) reviewing legislation against the fundamental rights specified in the Constitution (see section 2.6 for an outline); (ii) giving a legal opinion (ex ante) on whether international treaties deviate from the Constitution and should therefore be approved by a supermajority in parliament (see section 2.5); (iii) settling disputes between public bodies and testing the Constitutionality of EU (and other international) treaties; and (iv) deciding on party bans (cf. the above subsection Institutional Safeguards). A review by the Constitutional Court, however, should only be possible for laws that already entered into force (with an exception for international treaties). According to Staatscommissie (2018b), opening up the possibility to review law proposals, as is the case in, e.g., Belgium,

France and Germany, could cause tensions between the judiciary, the Council of State, and the Upper House.

4.2.4 Appointment of Members of the Supreme Court

Members of the Supreme Court are appointed for life by Royal Decree, i.e., by the government, each from a list of three persons proposed by the Lower House. Although not the focus of the State Commission's assignment, the independence and neutrality of the judges are important enough for the Commission to note that (party) politics should not get the upper hand in the nomination procedure, as has already happened twice. The Commission (Staatscommissie 2018a,b) therefore advises to change the Constitution such that a member of the Supreme Court (or of the proposed Constitutional Court) is appointed by Royal Decree based on a binding nomination made by a committee consisting of one expert appointed by the Lower House, one expert appointed by the Supreme Court, and one expert appointed by the Supreme Court and the Lower House jointly.

4.2.5 Strengthening Knowledge and Skills of Democracy

The State Commission (Staatscommissie 2018a,b) writes that there is a deeply rooted civil society in the Netherlands. According to SCP (2017: 100) and Dekker and den Ridder (2018: 21, 29, 40), however, a substantial part of the youth lacks sufficient knowledge on the functioning of the parliamentary system. Schofield (2017) indeed stresses the importance of the electorate's knowledgeability in democratic decision-making. In an international comparison, this lack of knowledge turns out to be more pronounced in the Netherlands (Maslowski et al. 2012). In addition, Munniksma et al. (2017: 25, 36, 78, 83) and Nieuwelink (2016: 137) write that the level of this knowledge varies by level of education and other socio-economic variables. The Dutch government (see VVD et al. 2017: 10) and the Commission therefore claim more attention for increasing the level of knowledge and skills of democracy.

The lack of knowledge should be alleviated by making civic education a part of the school curriculum obligatory, to give schools the means to perform this task, and to look at other institutions that can play a role in this. The Commission rejects, however, lowering the voting age (see also under voter turnout in section 4.1). The Commission (Staatscommissie

2018b) advises to make Liberation Day "Bevrijdingsdag" a national holiday. On this day, May 5th, the end of the occupation by Nazi Germany is celebrated. The name should be changed into Freedom Day "Vrijheidsdag" and the celebrations could then also include open-house activities of government buildings and festivals of democracy, as in, e.g., Scandinavian and Baltic countries.[12]

Finally, the Commission pleads for strengthening digital citizenship to cope with the dangers and opportunities of digitalization. Several possibilities are mentioned (see also van Keulen et al. 2018: 6): specifying what the own responsibility of the media is; increasing the knowledge of the functioning and dangers of the (digital) news coverage; monitoring developments in the manipulations of news. Digitalization can help, e.g., to increase voter turnout Kendall (2017), but Orviska (2018) notes that efforts must be made to ensure that it does not favor those groups (the young, the better educated) who may be expected to have better access to these means.

4.3 Strengthening the Parliament

For strengthening the role of parliament, the State Commission discusses: the tasks of both houses (see section 4.3.1); the Lower House as a recognizable and influential parliament (4.3.2); and the domain of parliament, given its changing role because of both decentralizations, liberalizations, and privatizations (4.3.3) as well as the European Union (4.3.4).

4.3.1 The Tasks of Both Houses

The State Commission (Staatscommissie 2018a,b) writes that a parliamentary system consisting of two Houses has as a big advantage that in a second reading, a correction of imperfections in the first reading of bills is possible. For this reason (Verslag van de Tijdelijke Commissie Werkwijze Eerste Kamer 2017), it makes sense that the Upper House, in which the second reading takes place, focusses on the quality, legality, feasibility and enforceability of bills. The Commission notes that for doing

[12] See http://democracyfestivals.org/about).

so, it is important that none of the members of the Upper House are bound by the coalition agreement negotiated by the parties forming the government. The only formal instrument the Upper House has for its task, however, is rejection, and this instrument is, in the eyes of the Commission, too heavy and blunt. It also rarely happens that this instrument is used (Otjes 2015); so that the Upper House's formal influence on the legislation is small compared to the Lower House's influence. Its indirect influence, however, could be larger, as the Government and the Lower House might anticipate resistance in the Upper House. Over time, informal instruments that the Upper House can use to exert influence have developed, like a pledge of Government that a part of the bill will not be enacted, or that the interpretation of the bill is changed.

These informal instruments, however, are problematic since the Constitution states that the Upper House should consider the bill in the form as sent to it by the Lower House (see section 2.4). They also damage the political primacy of the Lower House. Both Houses nonetheless represent the people of the Netherlands (see section 2.2), so bills can also be rejected based on party programs in the Upper House. Over the last decades, it has gotten harder to form a government coalition that has a majority in both Houses that lasts the four years for which the Lower House is elected. This obstructs the political decision-making process. For these reasons, the Commission considers: (i) the introduction of a dialogue between both Houses; (ii) a change in the election of the Upper House; and (iii) changing the role of the Upper House in a revision of the Constitution.

The Commission notes that in most countries with a comparable bicameral system, the Upper House does not have the last say, as it does in the Netherlands. (In the Western-European countries with a bicameral system, of the unitary states only Italy and of the federal states only Switzerland and -on some issues- Germany know a right of veto, while of the federal states the Czech Republic, France, Ireland, Poland, Slovenia, Spain, and the UK only know a suspensive veto of the Upper House; Drexhage 2014: 23). Often it is the case that the Upper House has the right to send a bill back to the Lower House or start negotiations with the other House (Drexhage 2014: 23). The Commission notes that in other countries with a bicameral system, a dialogue between both Houses is more common (Tsebelis and Money 1997: 55). The drawback of an *introduction of a dialogue between both Houses*, however, is that it does not answer the question what happens if both Houses do not compromise. The

Commission (Staatscommissie 2018b) proposes that the Lower House gets the last say in such a case, instead of a conciliation commission, consisting of members of both Houses, to find a compromise. This choice is motivated by the wish to leave the political primacy at the directly elected Lower House, and by the fact that, in most countries with a bicameral system, similar procedures exist. The exceptions to the latter are Austria, Germany, and the Netherlands (Knippenberg 2002; Drexhage 2014), Norton 2007 provides an international perspective on upper houses.

A reconciliation mechanism is also proposed by Frey (2017), albeit for close referendum outcomes. Tsebelis (2018) argues, however, that agenda setting is important to prevent conflicting outcomes. He suggests putting up several proposals and to use approval voting to select the outcome. (Kliemt 2017 also comments on the importance of the agenda setting power in this respect.) In this context, Dimitrova and Steunenberg (2017) also stress the importance of reconciliation before the vote takes place, for example to avoid polarization around an issue. Dowding (2017) proposes to put first the status quo versus change on a ballot, and (if change receives a majority) then put various alternatives on a second ballot. Franzoni (2018) stresses the point that the pro- and opponents are not homogeneous groups, which makes comprising more difficult, and that a yes/no vote does not take into account the intensity of preferences. Kantorowicz (2017) notes that the navette-type system of conciliation can empower upper chambers, biasing policies towards the status quo.

The Commission also contemplates a *change in the election of the Upper House*. A direct election would increase its democratic legitimacy, but at the same time endangers the political primacy of the Lower House. It also makes it harder to find solutions if the composition of both Houses differs significantly. The latter problems could be avoided by organizing elections at the same day, but that involves the risk that the Upper House becomes less relevant over time. The Commission (Staatscommissie 2018b) therefore advises to keep the indirect election of the Upper House by the directly elected provincial councils, instead of, for example, the municipal councils. The latter alternative electoral body would give foreigners –who have the right to participate in local elections- an (indirect) influence on the composition of the Upper House, and this possibility was therefore rejected already in Staatscommissie (2018a). For an election by the municipal councils it is also important that the composition of the electoral body would differ more than the provincial councils from the composition of the Lower House, as the share of local

parties represented in the municipal councils is higher. The Commission also rejects the suggested change of the election of half of the Upper House's members, by the provincial councils, for a period of six years.[13] This comes, writes the Commission, at a cost of representativeness of the House.

An *amendment of the Constitution* is not an easy process (see section 2.5). In the second round, in which both Houses have to vote with a supermajority in favor of the revision, it could happen that the Lower House does so, but that the revision then fails in the Upper House. This would make the position of the Upper House vulnerable. The Commission (Staatscommissie 2018b) therefore proposes to let both Houses decide jointly in the second round of votes on a revision of the Constitution.

4.3.2 The Lower House as a Recognizable and Influential Parliament

The State Commission (Staatscommissie 2018a,b) notes that the trust in the national parliament in the Netherlands is high, also in comparison with other countries (the five EU countries with the highest trust levels are Sweden 73%, the Netherlands 67%, Denmark 64%, Finland 62% and Germany 58%, while the five lowest are the Czech Republic, Slovenia, Bulgaria, each 17%, Croatia 15% and Greece 13%; Eurobarometer 2017: 49). Some criticism, however, is seen as unavoidable, as parliament continuously makes decisions that are seen as unjust and cumbersome by parts of the population. Some developments related to the functioning of parliament are studied by the Commission in more detail. The first is the lack of sufficient attention for the quality and enforceability of the law (Tijdelijke commissie werkwijze Eerste Kamer 2017: 14).

The parliament does not only have the task to control the government but it also has a responsibility for the legality and enforceability of the law (Bovend'Eert and Kummeling 2017: 231-232). In the last decades, Bovend'Eert (2015: 115) notes that parliament has manifested itself more and more as second government body. In addition, political parties, as in many other countries in western Europe, tend to identify themselves more with the state and less with their role as a mediator between the electorate and representatives (Mair 2006). The Lower House is, however, not only an institute to control the government, with discussions of political values

[13] This procedure was in use before 1983.

(for example, by asking parliamentary questions; see Otjes and Louwers 2018), but also an institute representing the general interest of the Dutch population. For a more detailed discussion of the different roles of parliament, see van den Berg (2007: 15-37). The Commission (Staatscommissie 2018 a,b) therefore investigates (i) parliamentary research; (ii) parliamentary committees; (iii) cooperation with other institutions; and (iv) an improvement of the disclosure of information.

Parliament's right of inquiry (see section 2.2) has been used to render a verdict over political mistakes and learn lessons for the future. *Parliamentary research* (in different forms) should also be used broader to investigate social, technological and other developments and base future policy on the findings, so that parliament, as in the United Kingdom, functions as a central place in which ideas and opinions meet, are analyzed and evaluated (Loeffen 2013: 56).

To decrease the tendency to manifest itself as a second government body, the Lower House should organize its *parliamentary committees* less along the lines of the different ministries and more along the lines of themes that are of importance to society (Hagelstein 1991: 385 et seq). Even though the Lower House has this opportunity, it has rarely used it and the Commission therefore suggests strengthening the existing committees further, for example by giving them more administrative support and more working visits. According to Mickler (2017), parliamentary committees in the United Kingdom, Malta, and the Netherlands, have the lowest, while in Italy, Germany, and Sweden the highest degree of autonomy. Strong committees are important since parliamentary committees turn out to be essential for the functioning of parliaments in western European democracies (Strøm 1998), and Staatscommissie (2018b) suggest stronger committees resembling their role in the United States of America (Janse de Jonge 2012: 110-115). More administrative and research support can also compensate for the shorter average tenure of Members of the Lower House, and the ensuing decrease in its institutional memory.

Another possibility to increase the amount of information and its analyses available to parliament is to *cooperate with other institutions*, like the Council of State, the Court of Audit and the National Ombudsman (see section 2.3), universities and more. Finally, the Commission advises to improve the *disclosure of information*, in line with the constitutionally required public access to its deliberations (see section 2.2). The Commission mentions examples using the internet in Germany (www.

abgeordnetenwatch.de), in the United Kingdom (www.theyworkfor you.com and www.writetothem.com) and for the European Parliament (www.votewatch.eu). The Commission also advocates to draw up a protocol about the Government's duty to disclose information to the Lower House (see section 2.2), a register to keep track record of the Government's commitments to the Lower House, and to increase vigilance in keeping track of gifts, additional positions and interests of the members of parliament (Council of Europe 2018).

4.3.3 The Domain of Parliament: Decentralizations, Privatizations, and Autonomous Entities

The State Commission (Staatscommissie 2018a) notes that the domain of parliament has decreased due to decentralizations: as some tasks are delegated to provinces or municipalities (see section 2.3). This does not necessitate, however, changes in the parliamentary system. The Commission and Raad van State (2018: 44-46) nevertheless note that with decentralizations tasks are delegated without the appropriate prerogatives and financial means. The Commission therefore urges the parliament to put more emphasize on its responsibility for the system in the case of decentralizations to lower level of governments, privatizations and delegation of tasks to autonomous entities like administrative authorities and public agencies.

With *decentralizations*, a problem can emerge regarding accountability. Even though the parliament as such remains responsible for the functioning of the whole decentralized system, it should neither be hold responsible for nor interfere with particular cases. The exception would then be if the malfunctioning follows a structural pattern. The Commission (Staatscommissie 2018b) therefore advices to give decentralizations a legal basis, which should arrange the following points: 1) a critical description of the decentralized tasks and responsibilities; 2) a greater involvement at the early stage of the Lower House; 3) the simultaneous decentralization of sufficient financial means; 4) the simultaneous decentralization of the appropriate policy prerogatives; 5) guarantees of sufficient democratic control; 6) unambiguous evaluation measures as controls for success of the decentralization; and 7) the political responsibility at the Ministry of the Interior and Kingdom Relations.

In the case of a *privatization*, responsibilities are transferred to a private legal entity. The consequences are that direct democratic control on the

functioning is no longer possible. There is a similar problem with delegating tasks to an *autonomous administrative authority* "zelfstandig bestuursorgaan", which acts with public authority, but there is no specific minister who bears responsibility. Algemene Rekenkamer (2012: 31) points out that this also complicates controlling the accounting, even though these entities are financed with public money. These disadvantages do not play a role if tasks are delegated to *public agencies* "agentschap", which are outside the government's organization, but the government remains fully responsible for. The Commission therefore advices to give preference to the possibility of creating a public agency (instead of an administrative authority) when considering a privatization or delegation of tasks. The Commission not only advices to draw up a legal basis for a privatization or delegation of tasks, but also specifying a roadmap with criterions, using the advices made by Algemene Rekenkamer (2012: 5) and Parlementaire Onderzoekscommissie Privatisering/Verzelfstandigen Overheidsdiensten (2012: 47-48).

4.3.4 The Domain of Parliament: The European Union

The State Commission (Staatscommissie 2018a,b) notes the influence and the decision-making power of parliament has changed and sometimes decreased due to transfer of competences to the European Union (EU). These changes are not without problems, as there is a democratic deficit in EU decision making. There is no fully-fledged parliamentary system with an EU government that is accountable for all policy areas and that needs the confidence of an EU parliament. To compensate for the loss of control and for the democratic deficit, the Commission names the parliamentary scrutiny reservation, subsidiarity test, the right of inquiry, the yellow-card procedure, and access to the documents of the Council of Ministers. According to the Commission and Mastenbroek et al. (2014: 13), however, these instruments are not adequate to compensate the democratic deficit and are not used sufficiently, so little or no effect can be found on EU decision making. The Commission therefore deems it desirable that the involvement of parliament is rooted in a new Europe Act, inspired by the German Europagesetz (2013).

Problematic for the Commission is also the lack of transparency in EU decision making (see also Parlementair Advocaat 2017: 3-4; European Ombudsman 2018), especially when documents are marked as 'limité', 'confidential', or 'restraint'. The Commission therefore recommends

clarifying and increasing this transparency, ponders granting the national parliamentary committees working on EU decision-making more administrative support, and stresses the importance of cooperation with other national parliaments in the yellow-card procedure. The Commission also stresses the importance of differences between EU decision-making, which is mainly based on consensus through compromises and concessions ('policy without politics'), and national decision-making, in which it is clear who are the supporters and opponents ('politics without policy'). It also advices that ministers should not only be heard (and held responsible) after Council meetings, but should also be heard before these meetings to clarify what the nature of the engagement is.

Another advice is to discuss EU matters in a joint committee of both Houses. Finally, with respect to EU Treaties, the Commission advices that a Constitutional Court (see section 4.2) should have the right to review them, comparable with the role of the German Constitutional Court (Bundesverfassungsgericht). In addition, since international treaties have precedence over national legislation, including the Constitution, EU treaties should be approved by parliament with supermajorities, as would be necessary for constitutional amendments (see section 2.5). For the latter, the Commission mentions the proposal made by a member of parliament, van der Staaij (2016), in this direction. The Commission, however, does not propose to apply this for all international treaties that transfer decision-making authorities, not just EU treaties.

5. Governmental Response

The Dutch government gives an account of its position on the reports published by the State Commission in June 2019 (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2019a) and clarifies its position, answering to questions raised by parliament in October 2019 (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2019b). These reports group the Commission's proposals in four categories: (A) those that are mostly or completely adopted; (B) proposals that are not simply adopted, but for which the government needs more time to determine its position; (C) those that are rejected; and (D) proposals directed at the Upper and Lower Houses of parliament. Category A includes: (1) reforming the voting system; (2) writing a Law on Political Parties; (3) strengthening the knowledge and skills of democracy; (4) increasing participation of citizens in legislation; (5) strengthening digital citizenship;

(6) fostering the use of (digital) citizens' forums; (7) changing the procedure of modifying the Constitution; (8) changing the election of the Upper House; (9) adapting the appointment procedure of Members of the Supreme Court; (10) strengthening the information position of members of parliament; and (11) increasing the role of parliament in decision making in the European Union.

Category B comprises: (1) the introduction of a binding corrective referendum; (2) constitutional review of legislation by a newly-formed Constitutional Court; (3) a decrease the voting age from 18 to 16 years (even though the Commission advises against this); (4) introducing a dialogue between both Houses of parliament by giving the Upper House the right to send legislation back to the Lower House; (5) an evaluation of the decentralization of tasks to lower levels of government; (6) an evaluation of the decentralization of tasks to administrative authorities; and (7) introducing legislation specifying the role of parliament in decision making in the European Union, as parliament has initiated legislation on this already (Maij and Mulder 2017). The rejected proposals (Category C) are: (1) to introduce an elected formateur; and (2) to make Liberation Day a national holiday, as this is deemed to be in the realm of social partners to decide on. The government argues that an elected formateur does not adhere to the logic in the Dutch constitutional arrangements, but promises to look further at the process of forming a government after elections in more detail. For the Commission's proposals directed at the Houses of parliament (Category D) the government is reticent in taking a position, as it sees this as the prerogative of parliament itself to decide on this.

References

Aguiar-Conraria, L. & Magelhaes, P.C. (2010). Referendum-designs, quorum rules and turnout. *Public Choice* 144(1-2), 63-81.

AIVD (2018). *Jaarverslag 2017*. Den Haag: Algemene Inlichtingen- en Veiligheidsdienst.

Algemene Rekenkamer (2012). *Kaderwet zbo's: Reikwijdte en implementatie*. Den Haag: Algemene Rekenkamer.

Andeweg, R.B. (2018). *Kiezers, Kamerleden en 'de Kloof'*. Leiden: Universiteit Leiden.

Andeweg, R.B. & Irwin, G.A. (2014). *Governance and Politics of the Netherlands*. Basingstoke: Palgrave Macmillan.

Baalen, C. van, & van Kessel, A. (2012). *De kabinetsformatie in vijftig stappen*. Amsterdam: Boom uitgevers.

Bartlett, J. (2018). *The People Vs Tech: How the internet is killing democracy (and how we save it)*. London: Ebury Press.

Berg, J.Th.J. van den (1983). *De toegang tot het Binnenhof: De maatschappelijke herkomst van de Tweede-Kamerleden tussen 1849 en 1970*. Weesp: Van Holkema & Warendorf.

Berg, J.Th.J. van den (2007). Het parlement: één instelling, drie instituties. In: Berg, J.Th.J. van den, Verheij, L.F.M. & Broeksteeg, J.L.W. (Eds.), *Het Parlement: Staatsrechtconferentie 2006*. Nijmegen: Wolf Legal Publishers.

Bhatti, Y. & Hansen, K.M. (2012). Leaving the Nest and the Social Act of Voting: Turnout among First-Time Voters. *Journal of Elections, Public Opinion and Parties* 22(4), 380-406.

Bijleveld-Schouten, A.Th.B. (2008). Bestuurlijke vernieuwing. *Kamerstukken* 30184-20.

Binnenlandse Zaken en Koninkrijksrelaties (2010). Het verlagen van de kiesgerechtigde leeftijd tot 16 jaar: Debatten, argumenten en consequenties. *Kamerstukken I* 2009/10, 31012(E).

Binnenlandse Zaken en Koninkrijksrelaties (2016). Doorontwikkelen en testen concept model 1 stembiljet. *Kamerstukken I* 2015-2016, 31142(blg-742650).

Binnenlandse Zaken en Koninkrijksrelaties (2018). Het publieke belang van politieke partijen: Eindrapport van de Evaluatie- en adviescommissie Wet financiering politieke partijen. *Kamerstukken I* 2018: Kamerbrief 01-02-2018.

Bodo, B., Helberger, N. & de Vreese, C. (2016). Political micro-targeting: a Manchurian candidate or just a dark horse? *Internet Policy Review* 6(4), 1-13.

Bovend'Eert, P.P.T. (2015). De centrale positie van de Tweede Kamer: De parlementaire kerntaken sinds 1814. In: Aerts, R., van Baalen, C., Oddens, J., Smit, D. & te Velde, H. (Eds.), *In dit Huis: Twee eeuwen Tweede Kamer*. Amsterdam: Boom.

Bovend'Eert, P.P.T., van Baalen, C.C. & van Kessel, A. van. (2015). *Zonder koningin: Het officiële evaluatierapport over de kabinetsformatie van 2012*. Amsterdam: Elsevier boeken.

Bovend'Eert, P.P.T. & Kummeling, H.R.B.M. (2017). *Het Nederlandse parlement*. Alphen aan den Rijn: Wolters Kluwer.

Bovens, M., Dekker, P. & Tiemeijer, W. -red.- (2014). *Gescheiden werelden? Een verkenning van sociaal-culturele tegenstellingen in Nederland*. Den Haag: Sociaal Cultureel Planbureau & Wetenschappelijke Raad voor het Regeringsbeleid.

Bovens, M. & Wille, A. (2014). *Diplomademocratie: Over de spanning tussen meritocratie en democratie*. Amsterdam: Prometheus Uitgeverij.

Brug, W. van der, Meer, T. van der & Pas, D. van der (2018). Voting in the Dutch 'Ukraine-referendum': a panel study on the dynamics of party preference, EU-attitudes, and referendum-specific considerations. *Acta Politica* 53, 496-516.

Burden, B.C., Canon, D.T., Mayer, K.R. & Moynihan, D.P. (2009). *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections*. University of Wisconsin-Madison: Working Paper.

Burgerforum Kiesstelsel (2016). Met één stem meer keus: Advies van het Burgerforum Kiesstelsel over het toekomstig kiesstelsel. Available online: https://www.parlement.com/9291000/d/advbrgk.pdf

Charron, N. & Lapuente, V. (2010). Does democracy produce quality of government? *European Journal of Political Research* 49(4), 443-470.

Charron, N. & Lapuente, V. (2011). *Why Do Some Regions in Europe Have Higher Quality of Government?* University of Gothenburg: The Quality of Government Institute.

Christiansen, F.J. & Klemmensen, R. (2015). *Danish Experiences with Coalition Governments and Coalition Governance*. København: Danish Institute for Parties and Democracy - DIPD.

Constitution (2008). The Constitution of the Kingdom of the Netherlands 2008. Available online: https://www.government.nl/binaries/government/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008/the-constitution-of-the-kingdom-of-the-netherlands-2008.pdf

Council of Europe (2016). *Compilation of Venice Commission Opinions and Reports Concerning Political Parties*. Strasbourg: Venice Commission.

Council of Europe (2018). *Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors – second compliance report Netherlands*. Strasbourg: Group of States against Corruption (GRECO).

Cox, G.W., McGubbins, M.D. & Skjaeveland, A. (2005). *The Danish Folketinget: Some Notes*. Duke University Working Paper.

Dahlström, C., Teorell, J., Dahlberg, S., Hartmann, F., Lindberg, A. & Nistotskaya, M. (2015). *The Quality of Government Expert Survey II Report*. University of Gothenburg: The Quality of Government Institute.

Dekker, P. & den Ridder, J. (2018). *Lastige kwesties: Acht focusgroepen over vertegenwoordiging en stemmen*. Den Haag: Sociaal en Cultureel Planbureau.

Dimitrova, A. & Steunenberg, B. (2017). Pitfalls on the Road to Frey's Democracy of the Future: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(1), 213-222.

Dobber, T., Trilling, D. Helberger, N. & Vreese, C.H. de (2017). Two crates of beer and 40 pizzas: the adoption of innovative political behavioral targeting techniques. *Internet policy review: Journal on internet regulation* 6(4), 1-25.

Dowding, K. (2017). Developing Democracy: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(1), 207-212.

Drexhage, E.C. (2014). *Parlementaire tweekamerstelsels: Een internationale vergelijking*. Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties.

Eurobarometer (2017). *Public opinion in the European Union*. European Union Project Number 2018.1828.

Europagesetz (2013), Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union. *Bundesgesetzblatt* 2013 I(36), 2170-2174.

European Commission (2018a). *Commission recommendation on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament*. COM(2018)5949.

European Commission (2018b). *Commission communication on securing free and fair European elections*. COM(2018)637.

European Court of Human Rights (2002). *Case of Yazar and Others v. Turkey*. Applications nos. 22723/93, 22724/93, 22725/93.

European Court of Human Rights (2003). *Case of Refah Partisi (The Welfare Party) and Others v. Turkey*. Applications nos. 41340/98, 41342/98, 41343/98, 41344/98.

European Court of Human Rights (2011). *Case of Republican Party of Russia v. Russia. Application no. 12976/07. European Court of Human Rights (2013)*. Case of Vona v. Hungary. Application no. 35943/10.

European Court of Human Rights (2016). *Factsheet – Political parties and associations*. Strasbourg: European Court of Human Rights.

European Ombudsman (2018). *Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process*. Brussels: European Ombudsman.

Felsenthal, D.S. (2017). Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(1), 195-200.

Fox, S. & Johnston, R. (2017). Well-Intentioned Fantasy? A Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(1), 229-235.

Franzoni, L.G. (2018). The Voter in the House of Mirrors: Comment on "Proposals for a Democracy of the Future" by Brun Frey. *Homo Oeconomicus* 35(1-2), 117-121.

Frey, B.S. (2017). Proposals for a democracy of the future. *Homo Oeconomicus* 34(1), 1-9.

Frey, B.S. & Stutzer, A. (2000). Happiness, economy and institutions. *Economic Journal* 110(446), 918-938.

Frey, B.S. & Stutzer, A. (2002). Happiness and economics. Princeton: Princeton University Press.

Gallagher, M. (2002). Ireland: The Archetypal Single Transferable Vote System. In: Reynolds, A. & Reilly, B. (Eds.), *Electoral System Design*. Stockholm: International IDEA.

Giammo, J.D. & Brox, B.J. (2010). Reducing the Cost of Participation: Are States Getting a Return on Early Voting? *Political Research Quarterly* 63(2), 295-303.

Giger, N. & Klüver, H. (2016). Voting Against Your Constituents? How Lobbying Affects Representation. *American Journal of Political Science* 60(1), 190-205.

Golder, M. & Stramski, J. (2010). Ideological Congruence and Electoral Institutions. *American Journal of Political Science* 54(1), 90-106.

Government Committee on the Reassessment of Parenthood (2016). Child and Parents in the 21st Century. Available online: https://www.government.nl/binaries/government/documents/reports/2016/12/07/child-and-parent-in-the-21ste-century/Child+and+parents+in+the+21st+century+ENG.PDF

Grondwet (2017). Grondwet voor het Koninkrijk der Nederlanden. Available online: http://wetten.overheid.nl/BWBR0001840/2017-11-17

Gronke, P., Galanes-Rosenbaum, E. & Miller, P.A. (2007), *Political Science & Politics* 40(4), 639-645.

Grundgesetz (2019). Grundgesetz für die Bundesrepublik Deutschland. Available online: http://www.gesetze-im-internet.de/gg/GG.pdf

Hazenberg, H., van den Hoven, J., Cunningham, S., Alfano, M., Ashari, H., Sullivan, E. & Turcios Rodriguez, E. (1998). *Micro-Targeting and ICT media in the Dutch Parliamentary system: Technological changes in Dutch Democracy*. Technische Universiteit Delft Working Paper.

Hagelstein, G.H. (1991). *De parlementaire commissies*. Groningen: Wolters-Noordhoff.

Hakhverdian, A. & van der Meer, T.W.G. (2017). Spiegel van de samenleving? Politieke vertegenwoordiging en ongelijkheid in Nederland. In: Andeweg, R.B., & Leyenaar, M. (Eds.), *Alle stemmen tellen! Een eeuw algemeen kiesrecht*. Amsterdam: Amsterdam University Press.

Hakhverdian, A. & Schakel, W. (2011). Nepparlement? Een pleidooi voor politiek hokjesdenken. Amsterdam: University Press.

Helbing, H., Frey, B.S., Gigerenzer, G., Hafen, E., Hagner, M., Hofstetter, Y., Hoven, J. van den, Zicari, R.V. & Zwitter, A. (2017). Will Democracy Survive Big Data and Artificial Intelligence? *Scientific American*, February 25, 2017.

Hendriks, F., van der Krieken, K., & Wagenaar, C. (2017). *Democratische zegen of vloek? Aantekeningen bij het referendum*. Amsterdam: Amsterdam University Press.

Hendriks, F., van der Krieken, K., van Zuydam, S., & Roelands, M. (2016). Bewegende beelden van de democratie: Legitimiteitsmonitor Democratisch Bestuur 2015. Available online: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2016/01/01/bewegende-beelden-van-democratie/bewegende-beelden-van-democratie.pdf

Holsteijn, J. van (2006). Personen en personalisering. Available online: https://www.nemokennislink.nl/publicaties/personen-en-personalisering/

Information Commissioner (2018). *Democracy disrupted? Personal information and political influence*. Wilmslow: Information Commissioner's Office.

Jacobs, K. (2018). Naar een verdere uitbreiding van het actief stemrecht? In: Andeweg, R.B., & Leyenaar, M. (Eds.), *Alle stemmen tellen! Een eeuw algemeen kiesrecht*. Amsterdam: Amsterdam University Press.

James, T. (2010). *Early In-Person Voting: Effects on Underrepresented Voters, Voting Turnout, and Election Administration*. Project Vote: Issues in Election Administration Policy Paper.

Janse de Jonge, E. (2012). *Amerikaans Staatsrecht: Beschouwingen over de rule of Law, staatsinstellingen en politiek in de Verenigde Staten van Noord-Amerika*. Nijmegen: Wolf Legal Publishers.

Kantorowicz, J. (2017). Democracy of the Future: Comment on "Proposals for a Democracy of the Future by Bruno Frey. *Homo Oeconomicus* 34(2), 223-228.

Kendall, R. (2017). Aligning Democracy: A Comment on Bruno S. Frey's "Proposals for a Democracy of the Future". *Homo Oeconomicus* 34(2), 243-251.

Keulen, I. van, Korthagen, I., Diederen P. & van Boheemen, P. (2018). *Digitalisering van het nieuws – Online nieuwsgedrag, desinformatie en personalisatie in Nederland*. Den Haag: Rathenau Instituut.

Kiesraad (2017). *Evaluatie-advies Tweede Kamerverkiezing 15 maart 2017*. Den Haag: Secretariaat Kiesraad.

Kirchgässner, G. (2015). *Direct democracy, changes and challenges*. CREMA Working Paper No. 2015-09.

Kirchgässner, G., & Feld, L.P. (2000). Direct democracy, political culture and the outcome of economic policy: A report on the Swiss experience. *European Journal of Political Economy* 16(2), 287-306.

Kirchgässner, G., Feld, L.P. & Savioz, M.R. (1999). *Die Direkte Demokratie. Modern, Erfolgreich, Entwicklungs- und Exportfähig*. Helbing and Lichtenhahn/Vahlen: Basel and Munich.

Kliemt, H. (2017). Direct constitutional democracy: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 37(1), 237-242.

Knippenberg, E.T.C. (2002). *De Senaat: Rechtsvergelijkend onderzoek naar het House of Lords, de Sénat, de Eerste Kamer en de Bundesrat*. Den Haag: Sdu Uitgevers.

Kolfschoten, E.J.M., Andriessen, W.J. & van Schaik, Th.E.E. (1970). Ontwerp van wet - Voorstel van wet van de heren Kolfschoten, Andriessen en Van Schaik tot wijziging van de Kieswet strekkende tot verhoging van de kiesdrempel bij de verkiezing voor de Tweede Kamer der Staten-Generaal. *Kamerstukken I* 1970-1971, 10985(2).

Kolk, H. van der, & Aarts, K. (2010). Het verlagen van de kiesgerechtigde leeftijd tot 16 jaar; debatten, argumenten en consequenties. Enschede: Universiteit Twente.

Lange, R. de, Efthymiou, N. & Tienen, F. van (2016). *Risico's voor de democratie – Een juridische verkenning van het gevaar-criterium in het democratisch verdedigingsrepertoire in vijf landen: Duitsland, Frankrijk, Spanje, het Verenigd Koninkrijk en de Verenigde Staten*. Rotterdam: Erasmus Universiteit.

Lapuente, V. & Nistotskaya, M. (2009). To the Short-Sighted Victor Belong the Spoils: Politics and Merit Adoption in Comparative Perspective. *Governance: An International Journal of Policy, Administration, and Institutions* 22(3), 431-458.

Le Maux, B. (2018). On the Necessary and Sufficient Condition for Increasing Direct Participation Rights in Democracies: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 35(1-2), 101-109.

Leemann, L. & Wasserfallen, F. (2016). The Democratic Effect of Direct Democracy. *American Political Science Review* 110(4), 750-762.

Lefkofridfi, Z., Wagner, M. & Willmann, J.E. (2014). Left-Authoritarians and Policy Representation in Western Europe: Electoral Choice across Ideological Dimensions. *Electoral Studies* 37(1), 65-90.

Liechtenstein, H.-A. II. von (2014). *Der Staat im dritten Jahrtausend*. Triesen: van Eck Verlag.

Lijphart, A. (2004). Constitutional design for divided societies. *Journal of Democracy* 15(2), 96-109.

Loeffen, S.C. (2013). *Parlementair onderzoek: Een studie van het onderzoeksrecht in Nederland, het Verenigd Koninkrijk en de Verenigde Staten*. Den Haag: Sdu Uitgevers.

Loots, J. (2004). Voor het volk, van het volk: Van districtenstelsel naar evenredige vertegenwoordiging. Amsterdam: Wereldbibliotheek.

Maij, M.E. & Mulder, A. (2017). Initiatiefvoorstel Wet informatiepositie Staten-Generaal inzake de Europese Unie. *Kamerstukken* 34 695.

Mair, P. (2006). Ruling the Void? The Hallowing of Western Democracy. *New Left Review* 42, 25-51.

Marien, S. (2011). The effect of electoral outcomes on political trust: A multi-level analysis of 23 countries. *Electoral Studies* 30(4), 712-726.

Maslowski, R., Werf, M.P.C.V.D., Oonk, G.H., Naayer, H.M., & Isac, M.M. (2012). *Burgerschapscompetenties van leerlingen in de onderbouw van het voortgezet onderwijs: Eindrapport van de*

International Civic and Citizenship Education Study (ICCS) in Nederland. Rijksuniversiteit Groningen.

Mastenbroek, E., Zwaan, P., Groen, A., van Meurs, W., Reiding, H., Dörrenbächer, N. & Neuhold, C. (2014). *Gericht op Europa: Nationale parlementaire controle op Europese besluitvorming na het Verdrag van Lissabon*. Nijmegen: Radboud Universiteit Nijmegen.

McDonald, M.P. (2008). The Return of the Voter: Voter Turnout in the 2008 Election. *Forum* 6(4), Article 4.

Meer, T.W.G. van der (2017). *Niet de kiezer is gek*. Houten: Spectrum.

Meer, T. van der, van der Kolk, H. & Rekker, R. (2017). *Aanhoudend wisselvallig: Nationaal Kiezersonderzoek 2017*. Leiden: Stichting Kiezersonderzoek Nederland.

Mickler (2017). Committee autonomy in parliamentary systems – coalition logic or congressional rationales? *Journal of Legislative Studies* 23(3), 367-391.

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2019a). Kabinetsstandpunt eindrapport staatscommissie parlementair stelsel. Available online: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/06/26/kabinetsstandpunt-over-het-advies-van-de-staatscommissie-parlementair-stelsel/kabinetsstandpunt-over-het-advies-van-de-staatscommissie-parlementair-stelsel.pdf.

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2019b). Antwoorden eindrapport van de Staatscommissie parlementair stelsel. Available online: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2019/10/16/antwoorden-eindrapport-van-de-staatscommissie-parlementair-stelsel/antwoorden-eindrapport-van-de-staatscommissie-parlementair-stelsel.pdf.

Mueller, D.C. (1996). *Constitutional Democracy*. New York: Oxford University Press.

Munniksma, A., Dijkstra, A.B., van der Veen, I., Ledoux, G. van de Werfhorst, H. & ten Dam, G. (2017). *Burgerschap in het voortgezet onderwijs: Nederland in vergelijkend perspectief*. Amsterdam: Amsterdam University Press.

Nieuwelink, H. (2016). *Becoming a democratic citizen: A study among adolescents in different educational tracks*. Amsterdam: Drukwerk-consultancy.

Nohlen, D. (2013). *Wahlrecht und Parteiensystem: Zur Theorie und Empirie der Wahlsysteme*. Stuttgart: utb GmbH.

Norris, P., Frank, R.W. & Martínez i Coma, F. (2013). Assessing the Quality of Elections. *Journal of Democracy* 24(4), 214-135.

Norton, P. (2007). Adding Value? The Role of Second Chambers. *Asia Pacific Law Review* 15(1), 3-18.

Nurmi, H. (1999). *Voting Paradoxes and How to Deal with Them*. Berlin: Springer.

Nurmi, H. (2017). Reforming Democracy: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(1), 201-205.

OECD (2017). *The Netherlands: Parliamentary elections 15 March 2017. Election Assessment Mission Final Report*. Warsaw: OSCE/ODHIR.

Ólafsson, J. (2016). The Constituent Assembly: A study in failure. In: Ingimundarson, V., Urfalino, P. & Erlingsdottir, I. (Eds.), *Iceland's Financial Crisis: The politics of blame, protest, and reconstruction*. Abingdon: Routledge.

Orviska, M. (2018). A Different Perspective on Current Problems: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 35(1-2), 111-116.

Otjes, S. (2015). De Vier Wetten van Noten getoetst. In: Braak, B. van den (ed.), Het 'probleem' Eerste Kamer: Visies op de toekomstige rol van de Senaat. *Montesquieu-reeks* 5, 52-67.

Otjes, S. & Louwerse, T. (2018). Parliamentary questions as party tools. *West European Politics* 41(2), 496-516.

Parlementair Advocaat (2017). Nieuwe Commissievoorstellen en initiatieven van de lidstaten van de Europese Unie. *Kamerstukken II* 2016-2017, 22 112 nr. 2321.

Parlementaire Onderzoekscommissie Privatisering/Verzelfstandigen Overheidsdiensten (2012). Verbinding verbroken? Onderzoek naar de parlementaire besluitvorming over de privatisering en verzelf-standiging van overheidsdiensten. *Kamerstukken* I 2012-2013, C, A.

Peeters, Y. (2016). (Re-)join the party! The effects of direct democracy on party membership in Europe. *European Journal of Political Research* 55(1), 138-159.

Pilon, D. (2010). The 2005 and 2009 Referenda on Voting System Change in British Columbia. *Canadian Political Science Review* 4(2-3), 73-89.

Poelgeest, L. van (2011). *Kabinetsformaties 1982-2002: Een staatkundig overzicht*. Den Haag: Boom Lemma uitgevers.

Powell, G.B. (2000). *Elections as Instruments of Democracy: Majoritarian and Proportional Visions*. New Haven: Yale University Press.

Prins, J.E.J. (2017). Politiek profileren. *Nederlands Juristenblad* 92(38), 2799.

PvdA (2005). *De Leidende Burger: Eindrapport Projectgroep Democratie & Bestuurlijke Vernieuwing*. Den Haag: Partij van de Arbeid.

Raad van State (2016). *Jaarverslag Raad van State 2015*. Den Haag: Raad van State.

Raad van State (2018). *Jaarverslag Raad van State 2017*. Den Haag: Raad van State.

Raad voor het Openbaar Bestuur (2018). *Over referenda en andere vormen van burger-participatie op nationaal niveau*. Den Haag: Raad voor het Openbaar Bestuur.

Ramkema, H., Hesselink, K.P. & Parren, S. (2008). *The Dutch Political System in a Nutshell*. Amsterdam: Instituut voor Publiek en Politiek.

Ridder, J. den, & Dekker, P. (2015). *Meer democratie, minder politiek? Een studie van publieke opinie in Nederland*. Den Haag: Sociaal en Cultureel Planbureau.

Rijpkema, B. (2015). *Weerbare democratie: De grenzen van democratische tolerantie*. Amsterdam: Nieuw Amsterdam.

Schofield, N. (2017). Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 34(2), 191-194.

SCP (2017). *De sociale staat van Nederland 2017*. Den Haag: Sociaal en Cultureel Planbureau.

Staaij, C. van der (2016). Voorstel van rijkswet van het lid Van der Staaij houdende verklaring dat er grond bestaat een voorstel in overweging te nemen tot verandering in de Grondwet, strekkende tot invoering van het vereiste van een meerderheid van twee derden van het aantal uitgebrachte stemmen in de Staten-Generaal voor de goedkeuring van verdragen betreffende de Europese Unie. *Kamerstukken* II 2016-2017, 30 874 (R1818).

Staatscommissie (2017). Probleemverkenning. Available online: https://www.staatscommissieparlementairstelsel.nl/binaries/staatscommissie-parlementair-stelsel/documenten/publicaties/2017/10/18/probleem verkenning-staatscommissie-parlementair-stelsel/Probleem verkenning_18+oktober+2017_.pdf

Staatscommissie (2018a). Tussenstand. Available online: https://www.staatscommissieparlementairstelsel.nl/binaries/staatscommissie-

parlementairstelsel/documenten/publicaties/2018/06/21/tussenstand/Tussenstand_WEB.pdf

Staatscommissie (2018b). Eindrapport. Available online: https://www.staatscommissieparlementairstelsel.nl/binaries/staatscommissie-parlementair-stelsel/documenten/rapporten/samenvattingen/12/13/eindrapport/Eindrapport+-+Lage+drempels%2C+hoge+dijken.pdf

Staatscommissie (2019). Democracy and the Rule of Law in Equilibrium. Available online: https://www.staatscommissie parlementairstelsel.nl/binaries/staatscommissieparlementairstelsel/documenten/rapporten/samenvattingen/072019/18/download-the-english-translation-of-the-final-report-of-the-state-commission/Integrale+vertaling.pdf.

Staatscourant (2017). Instellingsbesluit staatscommissie parlementair stelsel. Available online: https://zoek.officielebekendmakingen.nl/stcrt-2017-6895.html

Stadelmann, D., Portmann, M. & Eichenberger, R. (2016). How Lobbying Affects Representation: Results for Majority-Elected Politicians. *B.E. Journal of Economic Analysis & Policy* 16(4), 20160040.

Stadelmann, D., Portmann, M. & Eichenberger, R. (2019). Preference Representation and the Influence of Political Parties in Majoritarian vs. Proportional Systems: An Empirical Test. *British Journal of Political Science* 49(1), 181-204.

Stasavage, D. (2004). Open-Door or Closed-Door? Transparency in Domestic and International Bargaining. *International Organization* 58, 667-703.

Straathof, B, van Veldhuizen, S. & Bijlsma, M. (2018). *Platforms veranderen de wereld: Beleid voor transparantie*. CPB Policy Brief 2017/11.

Strøm, K. (1990). *Minority Government and Majority Rule*. Cambridge: Cambridge University Press.

Strøm, K. (1998). Parliamentary Committees in European Democracies. *Journal of Legislative Studies* 4(1), 21-59.

Strøm, K., Budge, I. & Laver, M.J. (1994). Constraints on Cabinet Formation in Parliamentary Democracies. *American Journal of Political Science* 38(2), 303-335.

Tambini, D. (2018). Social Media Power and Election Legitimacy. In: Tambini, D. & Moore, M. (Eds.), *Digital dominance: The power of Google, Amazon, Facebook, and Apple*. Oxford University Press.

Tijdelijke commissie werkwijze Eerste Kamer (2017). Verslag van de Tijdelijke commissie werkwijze Eerste Kamer. *Kamerstukken* I 2016-2017 CXXIV-A.

Tridimas, G. (2018). On Sortition: Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 35(1-2), 91-100.

Tsebelis, G. (2018). How Can We Keep Direct Democracy and Avoid "Kolotoumba": Comment on "Proposals for a Democracy of the Future" by Bruno Frey. *Homo Oeconomicus* 35(1-2), 81-90.

Tsebelis, G. & Money, J. (1997). *Bicameralism*. Cambridge: Cambridge University Press.

V-Dem Institute (2018). *Democracy for all? V-Dem Annual Democracy Report 2018*. Gothenburg: University of Gothenburg.

Van Coppenolle, B. (2017). Remembering One's Representative: How District Magnitude and List Type Affect Candidate Recognition. *Political Studies* 30(4), 1-22.

Vetzo, M.J., Gerards, J.H. & Nehmelman, R. (2018). *Algoritmes en grondrechten*. Den Haag: Boom Juridisch.

VVD, CDA, D66 & CU (2017). Vertrouwen in de toekomst. [Coalition agreement] Available online: https://www.kabinetsformatie2017.nl/binaries/kabinetsformatie/documenten/publicaties/2017/10/10/regeerakkoord-vertrouwen-in-de-toekomst/Regeerakkoord+2017-2021.pdf

Wessel, M. van (2017). Citizens as Sense-Makers: Towards a Deeper Appreciation of Citizens' Understanding of Democratic Politics. *Political Studies* 65(1), 127-145.

Zeglovits, E. & Aichholzer, J. (2014). Are People More Inclined to Vote at 16 than at 18? Evidence for the First-Time Voting Boost Among 16- to 25-Year-Olds in Austria. *Journal of Elections, Public Opinion and Parties* 24(3), 351-361.

Zicht, W. (2018). Bayern: Wahlsystem. Available online: https://www.wahlrecht.de/landtage/bayern.htm

Zuiderveen Borgesius, F.J., Möller, J., Kruikemeier, S., Farthaigh, R.O., Irion, K., Dobber, T., Bodo, B. & Vreese, C. de (2018). Online Political Microtargeting: Promises and Threats for Democracy. *Utrecht Law Review* 14(1), 82-96.