

GOVERNMENT
of the
NETHERLANDS

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PREFACE

Complaint is frequently made by teachers and students of comparative government that there is little material available in English on the constitutions and governments of the small and intermediate states. This complaint is well-founded as far as literature in English on the Dutch constitution and government is concerned. This is regrettable, for the Dutch government has some unique features. It is also one of the best established and most successful of the democratic governments. Furthermore, the Dutch and the Indonesians are at the moment groping for new forms of political association. The writers, convinced that an English translation of the Netherlands Constitution and a brief description of the Dutch government and politics would meet a need, have cooperated to publish this study.

In fairness to Dr. Eldersveld it is necessary to state that he is responsible for only Chapter IX, Trends in Government and Politics Since Liberation.

Whatever defects attach to the other chapters and whatever errors have been embodied in them are my responsibility. In the translation of the Netherlands Constitution I have sought accuracy rather than a literary rendition. The advantages of this for the student are obvious.

A. V.

June 10, 1947
Lexington, Kentucky.

CHAPTER I

THE CONSTITUTION

With the fall of Napoleon a new era began for the Netherlands. On the 30th day of November, 1813, the son of the last stadtholder of the United Provinces, who had fled to England in 1795 when the French invaded the country, landed in triumph at Scheveningen and became the first King of the Kingdom of the Netherlands as William I. The whole nation felt the need for a new constitution to replace the vague and loose regulations which had held the United Provinces together with a weak central government. The initiative for the constitution came from the King but its main features came largely from Gysbert Karel van Hogendorp, who in the long years of the French occupation had given much thought to problems of constitutional law and was one of the triumvirate who had urged the Prince of Orange to return to the Netherlands. The constitution was adopted by a large convention of "notables",—for the most part persons who had held office under the old regime. This Constitution had at least one unique feature: it was the first Constitution in Europe to contain an amending process flexible enough to be really workable.¹ With the decision of the Congress of Vienna to unite Belgium and the Netherlands under the kingship of William I, the Netherlands Constitution had to be changed and amplified. This was done in 1815. The procedure for revising the Constitution was made considerably more difficult by this revision.²

The first change in the Constitution did not come along constitutional channels. Just as the inclusion of Belgium made necessary a revision of the Constitution of 1815, so the final recognition of the secession of Belgium in 1839 made necessary a revision of the Constitution of 1815. The changes made in 1840 were practically limited to what had become necessary because of the secession of Belgium. A large element in the population was not satisfied with this revision: it wanted a

¹ A. A. H. Struycken, *Het Staatsrecht van het Koninkrijk der Nederlanden*. Arnhem. 1928, p. 51.

² Some Dutch scholars regard the Constitution of 1815 as formally a new Constitution. This question is of little practical importance, as the Constitution of 1815 was built upon that of 1814. See Struycken, *op. cit.*, 58.

liberalization of the Constitution, and in particular it desired greater parliamentary control over finances. An effort made in 1844-5 by the great Liberal leader Thorbecke and a small group of followers to pass a proposal for constitutional revision through the States General failed. Revolutionary disorders in 1848 in other capitals caused the King suddenly to change his attitude of opposition to constitutional revision and within the year important changes had been written into the Constitution. The principle of ministerial responsibility to the States General was formally adopted and the process for constitutional revision was made much less difficult. However, the control of Parliament over the ministers was not definitely established in practice until 1868.³

Since 1848 the Constitution has been amended and revised a number of times, namely in 1884, 1887, 1917, 1922 and 1938. The revisions of 1884 and of 1938 were of no great significance. The most important provisions in the revision of 1887 were those simplifying the basis for suffrage and increasing the control of the States General over the ratification of treaties. The revision of 1917 provided for universal male suffrage, proportional representation in the Second Chamber, and state financial support of private or special schools. The latter question had for fifty years been a burning issue in Netherlands politics.

The constitutional revision of 1922 came as a result of revolutionary threats in both the Netherlands and in the East Indies in November, 1918. At home there was considerable unrest, due to scarcity of food. There was also some disaffection in a few sections of the army. Probably influenced by the success of the revolutionary forces in Germany, Troelstra, the leader of the Netherlands Socialist Party, apparently thought that the opportunity had arrived to take over the government.⁴ He greatly misjudged the situation, as he himself shortly after admitted. As counter-measures the Government strengthened the garrisons in the larger cities and made an announcement promising important social reforms "in keeping with the more rapid pulse-beat" of the times. When the Governor-General

³ See Chapter on "Parliament".

⁴ In the Second Chamber and in a popular meeting in Rotterdam, Troelstra made statements of a revolutionary character.

of the East Indies received a cablegram about these events he was himself faced with a disorderly legislature which was loudly demanding far reaching reforms in the governmental system of the dependency. He hurriedly and without previously consulting the Minister of Colonies at The Hague, likewise made an announcement promising reforms. The constitutional revision of 1922 was made to fulfill these two promises.

While the constitutional revision of 1922 was rather extensive it was not of unusual significance. The provisions with respect to succession to the throne were made more restrictive.⁵ The war powers of the Crown were limited by a requirement that war could not be declared without an authorization from the States General. The Crown's treaty-making power was also restricted. Unless previously authorized by law, the Crown could no longer ratify a treaty until after the States General had approved it, and adherence to and denunciation of treaties could now take place only in pursuance of law. The provisions regarding the qualifications for voting were slightly changed, compulsory voting was removed from the Constitution, and suffrage was extended to women by dropping the word male from the suffrage article. The system of proportional representation was extended to the First Chamber. The promises of the Governor General of the East Indies of greater autonomy for that dependency were redeemed, in so far as mere constitutional revision could do so, by changes in the Articles dealing with the colonies. The words "colonies and possessions in other parts of the world" were taken out of the Constitution and the colonial articles were modified so as to assure the East Indies greater autonomy.

THE AMENDING PROCESS

The method of amending the Constitution is simple but not very easy. The first step is like the enactment of an ordinary law. The law must declare that there is ground for the proposed change in the Constitution,⁶ and contain the exact wording of the proposed change.⁷ After the proclamation of this law the Chambers are dissolved. The new Chambers consider the proposal, as embodied in the law and can adopt the

⁵ See Chapter on "The Monarchy".

⁶ Before 1848 the law had to declare the "necessity" for the change.

⁷ Article 202.

change only by a two-thirds vote of those present.⁸ At this stage no changes can be made, either by the Government or by the Chambers. Unlike the American system the changes are not added to the Constitution as separate, additional articles, but are written into the Constitution in the appropriate place. The Crown is charged with making public the revised Constitution, "after, in so far as is necessary, the chapters, the sections of each chapter and the articles have been currently numbered and the references changed."⁹

Because of this method of revision it becomes necessary in referring to the Constitution, especially when referring to an article by its number, to name the particular revision to which the reference applies. It is customary to speak of the Constitution of 1917, the Constitution of 1938, etc. By this method much of the historical character of the document is lost, for all repealed sections are dropped and there is nothing in the Constitution to indicate when and what changes have been made at various times.

The method of revision has been criticized as too difficult.¹⁰ Specifically, criticism has been directed at the two-thirds vote requirement for passage of the proposed revision by the Chambers after dissolution. In a brochure¹¹ published in 1913, Professor Krabbe attacked the system of setting the Constitution above the law by making it more difficult to change the Constitution than to pass ordinary legislation. He charged that it was wrong in principle and useless in practice. It was wrong in principle because no group has a right to hinder the progress of the will of the majority. He gave a number of examples to prove that it was impossible to assure the supremacy of the Constitution by artificial means. There seemed, however, to be very little popular sentiment for changing the amending procedure.

INTERPRETATION OF THE CONSTITUTION

The observance of the Constitution was entrusted to the law-making power, namely, the States General and the Crown,

⁸ Article 202.

⁹ Article 205.

¹⁰ In 1938 eight specific constitutional changes were proposed. Two of the eight proposals failed to receive the necessary two-thirds vote by the Chambers after the election.

¹¹ *Ongezonde Lectuur*, Groningen, 1913. See also R. Kranenberg, *Het Nederlandsch Staatsrecht*. Haarlem. 1930, II, 468.

without supervision of the judiciary. The Constitution contains the phrase "The laws are inviolable."¹² This clause added to the Constitution in 1848, was adopted to place beyond all doubt the validity of the law and to deny any other power in the State the right to question the validity of a law on the grounds of conflict with the Constitution.

The judiciary accepted this curtailment of its powers. It declared itself without authority to ascertain whether a law is or is not in conformity with the Constitution, substantively or procedurally. The supremacy of the legislative power in interpreting the Constitution seems to be generally accepted. There was no controversy with respect to it.¹³

¹² This is the second clause of Article 124. The first clause reads as follows: "all proposals of law, accepted by the States General and approved by the King, receive the force of law and are proclaimed by the King."

¹³ Kranenburg, a leading student of Netherlands constitutional law, concludes that the Netherlands law-making power has adhered as strictly to the Netherlands Constitution as the American judiciary has to the United States Constitution. When confronted with difficult situations both have had to interpret the Constitution rather freely. *Staatsrecht*, II, p. 20.

CHAPTER II

MONARCHY

Though the monarchy dates only from 1813 the reigning family has its roots deep in Dutch national history. From the days of Prince William the Silent, who was honored with the title of "Father of the Fatherland", the House of Orange has been associated with the leading events of Dutch history and its life closely linked with the life of the nation. William the Silent sacrificed life and fortune in the struggle for independence from the Catholic Spanish Monarchy and his sons successfully concluded the eighty years war which the Dutch fought for their independence. Members of the House of Orange continued to play an important role in the life of the Republic and it was only natural that after the period of French occupation and oppression the nation should turn to the Prince of Orange as the natural leader in the struggle for the recovery of independence. Already in the days of the Republic the House of Orange had acquired a semi-monarchical character through the office of stadtholder. While the stadtholdership remained a provincial office until the end of the Republic it had in effect become a national one by the first half of the 18th century, since the choice of the various provinces for the office more and more fell upon the same member of the Orange family, and when finally Prince William IV was chosen stadtholder in all of the provinces the office was made hereditary.

The Netherlands has had only four sovereigns during the period of monarchy. When the French were driven out of the country in 1813 Prince William was recalled from his exile in England to be elevated amid great popular rejoicing to the throne of the newly formed Kingdom of the Netherlands. A ruler of considerable initiative and force, he did much to promote commerce and industry. However, his early popularity rapidly declined and during the last decade of his reign it was completely dissipated. Responsibility for the separation of Belgium was attributed to his personal regime. The war with

Belgium had at first not been unpopular but the struggle became very unpopular when the King needlessly continued it after all hope of winning it was gone. The King's financial administration, which he had almost completely withdrawn from the control of the States General, caused grave unrest. His determination to marry a Catholic woman, a member of the Belgian nobility, against the wishes of the vast majority of the Dutch people, furnished the final impulse leading to his resignation, which took place in 1840.

William I was succeeded by his son, who became William II. As Prince of Orange he had acquired a reputation as a liberal. In the year before his coronation he had urged a more liberal constitution. Once ensconced upon his throne he was as jealous of his royal prerogatives as his father, but with less ability to maintain them. Foreign affairs especially did he wish to keep under his control. He resisted the movement for a more liberal constitution as long as he dared, but when the news came to him of revolutionary events in other countries he suddenly yielded, changing, as he himself said, from an extreme conservative to an advanced liberal in twenty-four hours.¹ His reign was of relatively short duration. He died the year following the constitutional reforms.

William III, who came to the throne in 1849, reigned for over forty years. The first half of his reign was characterized by a bitter struggle with Parliament. The struggle reached its climax in the years 1866 to 1868. In the latter year Parliament definitely established its supremacy, which fact the king henceforth loyally accepted. William III died in 1890, after the death of all his sons, which left the House of Orange without a male descendant for the first time in three centuries. He was survived by an only daughter of his second marriage, Princess Wilhelmina, then only ten years of age. Until Queen Wilhelmina's coronation in 1898 the country was under the regency of the Queen-Mother, Emma. Queen Emma revealed herself a woman of great sagacity, devotion and sympathy. She

¹ On March 16, 1849, William II called in the diplomatic representatives of Great Britain, Austria, Prussia and Russia and declared to them, "Vous voyez devant vous un homme qui de tres conservatif est devenu en 24 heures tres liberal. Mais le fait est que tout non monde m'abandonne et je me suis trouve tout d'un coup seul . . . J'ai cru qu'il valait mieux avoir l'air au moins d'accorder librement ce que plus tard j'aurais ete force a donner." W. H. De Beaufort, *Staatkundige Opstellen*. Note p. 13-14.

did much to recover for the House of Orange the popularity which it had lost under the first three kings.

From 1814 to 1890 the sovereignty of the Grand Duchy of Luxembourg also rested with the Kings of the Netherlands. Since only male heirs could succeed to the title, the succession went to another branch of the Orange family, upon the death of William III.

Queen Wilhelmina very speedily won the respect of the whole nation for her intelligence and sound judgment. She is recognized by all as a person of great force of character and of keen intellect. Her ministers prepare as thoroughly for a conference with her as they do for a debate in Parliament. Her keen inquiries and her insistence that all measures be carefully thought out and prepared has brought embarrassment and confusion to not a few weak or inexperienced ministers. Unflinchingly has she devoted herself to the duties of a constitutional monarch. Because of a certain rigidity she has in the past been more respected than loved by her subjects, but during the last decade or more she has enjoyed both the affection and respect of her people. Her conduct during the war in doggedly carrying on the struggle against Nazi Germany strengthened her hold on the Dutch nation. The fortieth anniversary of her reign was celebrated with great enthusiasm in 1938.

The monarchy was more popular in the decade before the German invasion for several reasons. Queen Wilhelmina is highly respected and Princess Juliana is very popular. The threats since the World War to democratic institutions by radical movements from both right and left caused a reversion of attitude of many who were formerly hostile to the monarchy. The Socialist Party was in principle inclined to republicanism, but with the rise of fascism it began more and more to accept and support the monarchy. The Socialists came to see in the monarchy a bulwark against dictatorship. A former editor-in-chief of the Dutch Labor press declared after the elections of 1937, in which the National Socialists received a sharp set-back, that he had become monarchical in sentiment. He urged his party formally to announce support of the monarchy.² That may be said to have occurred in August, 1939, when Albarda,

² See *De Gids*, July, 1937.

the leader of the Socialist Party and Dr. van den Tempel, likewise a Socialist, accepted positions in the De Geer Ministry. Hitherto Socialists had refused to enter the cabinet.

SUCCESSION TO THE THRONE

The system of succession is carefully prescribed in the Constitution. Those first eligible to the throne are the sons and further male descendants of William I, along the male line by right of primogeniture and representation.³ In the absence of a successor in accordance with these rules the oldest living daughter of the last deceased king becomes the heir to the throne.⁴ In the case there are no daughters of the last deceased king then the right of succession falls successively upon the daughters of his deceased sons, the grandsons of his deceased daughters, and the daughters of his deceased daughters.⁵ In the absence also of heirs in this group the man or woman most closely related to the last deceased king in the line of descent of Queen Wilhelmina, becomes the heir to the throne, provided he or she is not further removed than three degrees of blood relationship.⁶

For many decades the question of the succession to the throne was a matter of grave concern to the Dutch people. King William III lost three sons through death and was survived by an only child, the present Queen. Queen Wilhelmina had only one child, Princess Juliana. From the Dutch national point of view the situation was very undesirable, for after Princess Juliana the persons next in line of succession all belonged to foreign royal families, mostly German, which had not the least contact with Dutch life and the Dutch people.⁷ When the question of a revision of the Constitution was brought before the States General in 1917 several members urged upon the government the desirability of revising the articles dealing with succession so as to exclude the possibility of foreign heirs. The government refused to adopt these suggestions, stating that for reasons which it could not make public, it could not in the then existing circumstances lend its cooperation to such action. But circumstances rapidly changed. The fall of many of the German dynasties as a result of the revolution in 1918 made the question so urgent that the new ministry which came

³ Constitution, Articles 10 and 11.

⁴ Article 12.

⁵ Article 13.

⁶ Article 14.

⁷ The next in line of succession after Princess Juliana was the Grand-Duke of Sax-Weimar-Eisenach, grandson of Princess Sophie, daughter of King William II.

to power in that year decided to include it in the preparation for a new constitutional revision.

The first step in the revision of the constitutional provisions with respect to succession was the appointment of a government commission to study the problem and to draft recommendations. The Commission, which made its report in 1920, declared that it regarded the monarchical form of government as highly beneficial to the country, but only so long as the preservation of a truly national kingship was possible. "For this reason all those who offer no certainty that they share our national feelings and are not sufficiently acquainted with our native conditions, should be excluded from the succession." The commission therefore recommended that the right of succession henceforth be limited to the descendants of Queen Wilhelmina and that in the event that there should be no male descendants along the male line, the succession should not extend beyond the second degree of relationship of the last deceased king. The proposal if adopted would greatly increase the possibility of the time arriving when there would be no heirs. The government commission drafted a proposal for that eventuality. In case of no qualified successor the Commission proposed that the future form of government should be determined by a popular referendum. If the result of the referendum should be in favor of a continuation of the monarchy a new king should be chosen by the States General.

The government accepted the recommendation of the commission with respect to the restriction of the right of succession but rejected the proposal for a referendum in case of no qualified successor. It held that any reference to another form of government was out of place in a constitution like that of the Dutch. If forced in that direction by inability to maintain the monarchy the constitutional amending process⁸ was always open. Parliament further modified the recommendations of the Commission by restricting the right of succession to the third instead of the second degree of relationship of the last deceased king, descendant of Queen Wilhelmina. The result of these changes in the Constitution was to leave Princess Juliana as the only qualified heir to the throne.

In addition to regulating the hereditary succession to the throne the Constitution also contains provisions for an eventual choice of a king or an heir to the throne. Whenever upon the death of the king there is no qualified heir the Council of State must within four months call the States General together in

⁸ Chapter XI of the Constitution. Since a Constitutional amendment must receive the approval of a newly elected parliament by a two-thirds vote, a minority may be able to prevent a change of the form of government and thus force a new royal house upon the Dutch people against the wishes of the majority.

double numbers for the purpose of naming a new king. Whenever there is a prospect that there will be no qualified successor to the King, he may be named by parliament upon nomination of the King. The States General for this purpose is called together in double numbers. In both cases the two houses deliberate and decide in joint session.

The Netherlands Constitution guards very strongly against foreign influence. Before the 1922 revision the Constitution stipulated that the king could not wear a foreign crown, with the exception of that of Luxembourg. That exception was removed by the revision of 1922.⁹ Moreover, excluded from the right of succession are all children and their descendants born out of a marriage entered into by a King or a Queen without consultation with the States General, or born out of a marriage of a Prince or Princess of the reigning royal house without the approval of law. Should a Queen contract a marriage without consultation with the States General she must abdicate. Should a Princess contract marriage without parliamentary approval she loses the right to the Crown.¹⁰

According to the theory of the Constitution there must always be a bearer of the royal dignity. The Constitution therefore calls for a regency whenever (1) the King is a minor,¹¹ (2) the King is incapable of reigning,¹² or (3) the King temporarily lays down his royal duties.¹³ In the first case the regent is chosen by the States General in joint session before the contingency occurs. Whenever the ministry is of the opinion the King is not in a state to reign it informs the Council of State of its findings and asks the Council for advice to be given within a specific period.¹⁴ If at the end of this period the Ministry continues in its judgment, it must convene the States General in joint session and lay before it its conclusion, together with the advice of the Council of State, if there is any.¹⁵ If the States General in joint session likewise concludes that the King is incapable of reigning, the Prince of Orange or the daughter of the King, who is presumptive heir to the throne, automatically becomes regent, provided they are 18 years of age.¹⁶ If there is no presumptive heir or the presumptive heir is not yet 18 years old, the States General in joint session elects the regent. In temporary emergencies, as in the absence of

⁹ See Article 21.

¹⁰ Article 17.

¹¹ Article 36. The King reaches his majority upon his 18th birthday.

¹² Article 38.

¹³ Article 43. This provision was added to the Constitution with the revision of 1922 to cover such possibilities as illness or visits to the colonies or distant countries.

¹⁴ Article 38.

¹⁵ Article 39.

¹⁶ Articles 40, 41.

king or regent, or when there is no King or Regent, the Council of State serves as regent.¹⁷

The annual income which members of the royal family shall receive from the public treasury is laid down in the Constitution. Before 1938 the King received 1,200,000 florins a year¹⁸ in addition to the income from the crown domain, which was about equal to another million florins.¹⁹ A maximum of 100,000 florins annually was allowed for the maintenance of the palaces.²⁰ The annual income of a Queen-widow was set at 300,000 florins.²¹ The Prince of Orange and the daughter of the King, who is presumptive heir to the throne were entitled to receive a yearly income of 200,000 florins from the time they reached 18 years of age. Upon marriage the income was increased to 400,000 per year.²² With the constitutional revision of 1938 the annual income of the King, exclusive of the income from the crown domain, was reduced to 1,000,000 florins. The annual income of a Queen-Widow was reduced to 200,000 florins.²³ Provision was made for a separate income for the consort of a reigning Queen. This was set at 200,000 florins annually. In case of the Queen's death he remains in the enjoyment of this income so long as he remains a widower and retains Netherlands nationality. Likewise provision was made for a separate income for the consort of a Princess who is the presumptive heir to the throne. Instead of an annual income of 400,000 florins for the Princess after marriage, as before, she now continues to receive 200,000 florins annually while her consort receives a like sum.²⁴

¹⁷ Article 42.

¹⁸ Constitution, Article 22.

¹⁹ Kraenburg, I, 138.

²⁰ Constitution, Article 23.

²¹ Article 26.

²² Article 28.

²³ Article 26.

²⁴ Article 29.

CHAPTER III COUNCIL OF STATE

COMPOSITION

An important constitutional organ, though some of its functions are of uncertain value, is the Council of State. Aside from stating that the King is chairman and the Prince of Orange and the daughter of the King who is the presumptive heir to the Crown have a seat in the Council, the Constitution leaves the composition of the Council to be determined by legislation.¹ The Council is composed of a vice-president and ten members,² appointed by the Crown. The Crown may appoint Princes of the royal family, other than the Prince of Orange, who is a member under the provisions of the Constitution, members of the Council. Retirement is compulsory at the age of seventy-five. Councilors in extraordinary service may be appointed by the Crown. These may not exceed ten in number and may participate only in specific activities of the Council. They do not take part in the work of settling administrative differences and they receive no salary for their work.³ The Constitution prohibits the vice-president or members of the Council from being at the same time members of the States General.⁴

In order to make the Council more independent of the Ministry the salaries of the members are regulated by law and not by the crown, as is the case with other councils, boards and officials.⁵

FUNCTIONS

The Council of State has a number of miscellaneous functions. First, it is charged by the Constitution with the duty of calling the States General in extraordinary session whenever upon the death of the King there is no qualified successor.⁶ Secondly, the Council temporarily exercises the royal prerogatives whenever upon the death of the King there is no qualified

¹ Article 76.

² The membership was in 1934 reduced from 14 to 10.

³ Law on the Composition and Powers of the Council of State, Articles 1 to 5. For a convenient compilation of the Constitution and Constitutional laws and decrees see *Grondwet voor het Koninkrijk der Nederlanden naar de wijziging van 1938*, by G. G. Pekelharing. W.E.J. Tjeenk Willink, Zwolle, 1938.

⁴ Article 99.

⁵ Article 65. Judges and the General Auditing Office also enjoy this status.

⁶ Article 19. See Chapter I for a more detailed account of the procedure under this article.

successor and in the absence or incapacity of both King and Regent.⁷ Whenever in these contingencies a Regency must be set up the Council of State must introduce a bill to that end within thirty days after the assumption of the Royal prerogatives.⁸ Thirdly, the Council of State in exercising the Royal authority does not have the power of dissolving the chambers.⁹ The Council of State serves in an advisory capacity to the Council of Ministers whenever the latter is of the opinion that the King has become incapacitated. In this case the ministry must ask the Council for its advice before laying the matter before the States General for its¹⁰ decision.

Fourthly, the Council serves as an advisory body to the Ministry in all proposals of legislation to the States General or by the States General and in all general measures of administration whether affecting the Kingdom, Netherlands-Indies, Suriname or Curacao. While it is compulsory for the Crown to consult the Council in these matters the decision in each case rests solely with the Crown.¹¹ Fifthly, the Law on the Composition and Powers of the Council of State requires that the Crown consult the Council before annulling acts of the provincial legislatures, and executive councils and municipal administrations.¹² Sixthly, the Council must be consulted by the Crown in all cases required by law, and the Crown may consult it in all matters of general or special interest wherein it deems it necessary.¹³

Seventhly, the Council is empowered to make suggestions to the Crown concerning subjects of legislation or administration.¹⁴ Eighthly, when requested, the divisions of the Council serve the respective heads of ministerial departments in matters of legislation and administration.¹⁵

Lastly, the Council serves as an administrative court. The Constitution merely states that the Council of State or one of its divisions may be charged with giving opinions in disputes.¹⁶ The Law on the Composition and Powers of the Council of State, however, charges the Council with the examination of administrative disputes and such other disputes as are subject

⁷ Article 46. This article states that the Council of State exercises the royal prerogatives under the following circumstances: (a) in the interval between the death of a king who has not a qualified successor and the choosing of a new king, in the interval between the death of the King and the appointment of a regent for his minor successor and in case the Successor or regent is absent; (b) in case the Regent dies, until his successor is named and takes over the Regency; (c) in case the successor to the Crown is uncertain and a Regent has not yet been appointed or is absent.

⁸ Ibid.

⁹ Article 75.

¹⁰ Article 38.

¹¹ Article 77.

¹² Article 22.

¹³ Article 24.

¹⁴ Law on the Composition and Powers of the Council of State, Article 25.

¹⁵ Ibid, Article 26.

¹⁶ Article 78.

to the Crown for settlement, and of recommending a decision to the Crown.¹⁷ Five members of the Council, including the Vice-President, are permanently designated to serve as an administrative court.

The Council of State was originally intended to be a council of elder statesmen who could serve as a support and shield for the King. It was expected to protect the King against dangerous popular movements; to keep the balance between the two powers in the State. For an advisory council of elder statesmen the time was already past in 1815 and the development of the Council was quite otherwise than planned. Though the Council was never held in high regard, Dutch statesmen could not relinquish the hope that something could be made of it. The numerous suggestions for its abolition never gained enough support to win the day. At the time of the constitutional revision of 1848 the abolition of the Council was seriously discussed and the decision to abolish it nearly reached.¹⁸ Until as late as 1861, when the Law on the Composition and Powers of the Council of State was passed, two conceptions with respect to the functions of the Council were still struggling for supremacy. One group wished the body to serve as an advisory council to the King alone, another group wished it to function as an advisory council to the Government, i. e. King and Ministers. An amendment to the bill proposed by Thorbecke, the great Liberal leader, took from the council the character of an independent advisory body to the King.¹⁹ The Council of State became an advisory body of the responsible government and not of the King alone. Responsible ministers stand between the King and the Council. The King cannot ask the Council for advice, nor the Council offer it to the King except through a responsible minister. While the King by virtue of his office is chairman of the Council of State he as a matter of course never attends the meetings.

Dissatisfaction with the Council has been frequently expressed by leading Dutch statesmen. Heemskerk, who was prime minister from 1883 to 1888, declared after several years of membership on the Council that in his opinion it withdrew more powers and abilities from active state service than it placed at its disposal.²⁰ Another ex-prime minister, Dr. A. Kuyper, premier from 1901-5, expressed his criticism of the Council at greater length and in more detail.²¹ It was Kuyper's view that the Council of State lacks character of its own, due primarily to the fact that there is no unity in the task conferred

¹⁷ Articles 23.

¹⁸ Kranenburg, II, 104.

¹⁹ Kranenburg, II, 106.

²⁰ Quoted by Kranenburg, II, 107.

²¹ *Antirevolutionaire Staatskunde*, II, 150 ff. Amsterdam, 1916.

upon it. On the one hand it gives the impression of being superfluous and on the other hand of having too many and varied activities.

The Council's influence on legislation and administration has steadily dwindled. Its technical advice is sometimes followed but rarely its political advice. The Ministers and Departments know the attitude of the majority of the members of the Council and they are therefore prepared to meet these objections in advance. The members of the Council naturally do this part of their work very perfunctorily. They know in advance that their criticisms will be given little if any consideration. The written debates between the Ministers and the Council are never published but quickly find their way to the archives. Kuyper stated that the Council's criticism of proposed legislation is almost identical with that received from the sections of the States General, and hence add nothing. He concluded that the only result of this phase of the Council's work is an unnecessary loss of time.²²

Only two functions of the Council of State are of any significance. These are its work as an administrative court and as the temporary bearer of the sovereign prerogatives. As an administrative court it does not itself render decisions as does the French Council of State; it merely recommends decisions to the appropriate Minister. The Minister may adopt the draft decision as his own or depart from it, as he sees fit. Since the ministers are political officials and succeeding ministries often lack continuity, Dutch administrative rulings lack system and coherence. Dr. Kuyper doubted whether the Council of State, because of its membership, is the proper body to serve as an administrative court. The councilors are chosen in the first instance by the Minister of the Interior, subject to the approval of the Ministry. Dr. Kuyper who favored decentralization of administration, felt that devolution had no chance before the Council, since it was too strongly a part of the central government. He suggested that administrative jurisdiction be transferred to an independent body on which the provincial and municipal governments had representation as well as the central government.

Not even with respect to its function as the temporary bearer of the Royal power has the Council of State been free from criticism. A leading Dutch jurist declared that the Council is too large a body for the exercise of this function, and sug-

²² Kuyper suggested that the Council of State be transformed into a confidential council of information and advice attached to the King himself and that the work of technical criticism of legislation and administrative measures be transferred to a legislative drafting bureau. Op. cit. p. 157.

gested as the solution to the problem that the Vice-President of the Council be charged with this duty.²³

Probably the chief reason why in spite of general dissatisfaction with its suggestions for the abolition of the Council of State have not met with greater response is that it serves as an honorary retreat for elderly Dutch statesmen who desire positions of semi-retirement. As such it serves a not unuseful purpose.

²³ Struycken, A.A.H., *op. cit.*, p. 421.

CHAPTER IV THE STATES GENERAL

THE FIRST CHAMBER

Had it not been for the union of Belgium with the Netherlands in 1815 the Netherlands very probably would have had a unicameral system. Under the Republic there was only one chamber, and the Constitution of 1814 made provision for only one chamber, but in the commission which redrafted the constitution in 1815 the Belgian members insisted upon two chambers, against the wishes of the Dutch members.

Under the Constitution of 1815 the First Chamber was composed of life members, chosen by the King from among those who belonged to the most eminent in the country by virtue of birth, wealth or services to the State. The membership was to be not less than 40 nor more than 60.¹ Members must have attained the age of forty years. The King apparently regarded the First Chamber as a tool of the Crown, for he soon reduced it to subserviency. During the years of the union with Belgium the First Chamber gave little sign of life.² With the secession of Belgium the original reason for the second Chamber was gone and at the time of the constitutional revision of 1840 many members of the Second Chamber demanded the abolition of what they called a purposeless and useless institution. Had not the Chamber already been in existence the establishment of one would not have received a moment's consideration. But it was in existence and the Government, while secretly hoping that it would die a natural death, declared it to be "one of the fundamental provisions of the Netherlands Constitutional law." Under this verdict it continued its insignificant existence.³ With two exceptions it passed all bills sent to it by the Second Chamber between 1840 and 1848. Many members did not attend for years.⁴ The King's followers who lost positions by elections in the Second Chamber were elevated to membership in the First, where for less work they received 500 guilders more salary annually.

The First Chamber was almost universally condemned in 1848, and yet the institution was not abolished by the constitu-

¹ The best study on the First Chamber is *De Eerste Kamer in Nederland*, by M. J. Kramer, Amsterdam, 1918.

² De Beaufort, *Staatkundige Opstellen*, pp. 79-86. The First Chamber during this period was called the "menagerie du roi."

³ The Constitution was revised in 1840 to reduce the members of the First Chamber to a minimum of 20 and a maximum of 40.

⁴ De Beaufort, *op. cit.*, *loc. cit.*

tional revision of that year. It probably would have been if the Second Chamber had been representative of the public opinion of the day. Moreover, the Second Chamber had either to accept or reject the revision as a whole, since it did not have the power of amendment. Advocates for the retention of the First Chamber argued that since the members of the Second Chamber would now be chosen by direct election the First Chamber had become necessary as a protection for the King. However, the First Chamber was reformed. Its members were no longer to be appointed by the King. Instead they were to be elected by the provincial legislatures for a term of nine years, one third retiring every three years. Membership was restricted to the highest direct taxpayers in each province so that only one out of every 3,000 persons was eligible. Its sessions would no longer be secret. Instead of a lucrative salary its members would receive only expenses.

At the time of the constitutional revision of 1887 there no longer was a demand for the abolition of the First Chamber. Such differences of opinion as did exist related only to its composition. The qualifications for membership were lowered and extended. While membership was still limited to the highest direct taxpayers, one out of every 1500 persons now became eligible. In addition persons who held or had held one or more important public offices, specified by law, were eligible for membership in the First Chamber. The size of the membership was increased from 40 to 50.

In 1917 the qualifications for membership in the First Chamber were made the same as those for the Second Chamber. In 1922 the term of office was shortened to six years, one-half of the membership retiring every three years. The members of the First Chamber were elected by the members of the provincial councils on the basis of proportional representation.⁵

The powers of the First Chamber are considerably less than the powers of the Second Chamber. It possesses neither the power of initiation nor of amendment. But while it formally does not have the power of amendment, in practice it can sometimes get results which are almost the equivalent by threatening to reject a measure unless it is modified. The powers of the First Chamber were enlarged only once after 1848, and that was in 1887, when the power of investigation was granted to it. Of this power it has made practically no use.

The First Chamber has no direct influence on the formation of ministries. Nevertheless it has often caused the fall of

⁵ The members of the councils of North Brabant, Zealand, Utrecht and Limburg as a group elected 13 members of the First Chamber; the council members of Gelderland, Overijssel, Groningen and Drenthe, 13 members. North Holland and Vriesland, 12 members and South Holland alone, 12 members. Law of June 23, 1922. *Stbl.* No. 294.

individual ministers.⁶ Summarizing its behavior before World War II it may be said that when the same political group or coalition had a majority in both Chambers the First Chamber generally approved all measures of a political nature sent up by the Second Chamber. With respect to bills of a neutral nature it exercised more independence. - In votes on these measures it reflected its conservative composition by delaying and rejecting measures of a social or financial nature. It opposed the raising of direct taxes and the reduction of consumption taxes. It likewise opposed steps in the direction of free trade. It was also more nationalistic than the Second Chamber, as it indicated by its rejection of the Belgian Treaty in 1927 and its attitude toward military measures. - On the other hand the threatened intervention by the First Chamber in the crisis of 1868 helped the parliamentary system to triumph over monarchical rule. In general it may be said that changes in the party strength in the Second Chamber were reflected a little later and less forcefully in the First Chamber. During the first three quarters of a century the First Chamber was dissolved separately from the Second Chamber only once. It was dissolved in 1904 when it rejected Kuyper's Education Bill. In the election following the dissolution the Christian coalition parties obtained control of the Chamber. In the elections the following year the Christian coalition parties lost control of the Second Chamber, and the Liberal government found the majority of the First Chamber an obstacle. From 1918 to 1940 the Christian coalition parties had a majority in both chambers.

While generally regarded as a valuable political institution,⁷ the First Chamber nevertheless continued to be an object of criticism. De Beaufort, long a leading member of the States General and Minister of Foreign Affairs in the Pierson Cabinet, was of the opinion that the powers of the First Chamber ought to be increased.⁸ Its work was too simple; it could only point out defects and *lacunae*. He felt that the First Chamber should be given the power of amendment. Professor Krabbe, on the other hand, voiced the opinion that its work was not simple enough. Krabbe suggested that the sole function of the First Chamber should be to serve as a guardian or

⁶ By adverse votes the First Chamber, since 1868, caused the fall of the following individual ministers: DeWaal, Minister of Colonies, 1870; Keuchenius, Minister of Colonies, 1890; Staal, Minister of War, 1907; Van Karnebeek, Minister of Foreign Affairs, 1927.

⁷ De Beaufort wrote in 1905: "It can safely be said that at present it is practically universally agreed that the First Chamber is appreciated as an indispensable part of our governmental institutions." *Staatkundige Opstellen*, p. 84. However, Elout, summarizing his examination of opinions on the subject, states that while the First Chamber was not regarded as indispensable, it was generally believed that its retention (in principle) might be useful. *De Eerste Kamer. Kritische Compilatie van Enkele Meeningen*, 1907.

⁸ *Op. cit.*, pp. 86 ff.

corrective of the representative character of the Second Chamber. If it doubted whether a measure passed by the Second Chamber was in conformity with the popular will it should have the power to submit the measure to a popular referendum.⁹ Another Dutch statesman suggested a change in the composition of the First Chamber by making its membership consist of all former ministers.¹⁰

A feature of the First Chamber most frequently criticized is the election of its members by the Provincial States, the legislative bodies of the provinces. In the election for the Provincial States, one of the first questions asked is for whom the candidates would vote as members of the First Chamber. Provincial issues do not always receive first consideration. Moreover, since the Provincial States cannot be dissolved, the dissolution of the First Chamber is generally of little value. It was also stated in the first decades after the reforms of the First Chamber in 1848 that this method of choosing the members of the First Chamber would give it a strongly provincial character. This fear was not borne out in fact. Repeatedly the Provincial States chose persons from other provinces and very rarely did they choose persons from their own membership.

In 1905 a commission was appointed by the Government to study the whole question and to present it with recommendations. The Committee, which brought out its report in 1906, unanimously recommended that the First Chamber be retained. It considered but rejected for recommendation the idea of abolishing the method of indirect election or of a dissolution of the Provincial States in consequence of a dissolution of the First Chamber. It recommended that the special qualifications for membership be dropped and that the First Chamber be given the power of amendment on all measures save financial bills. The Government introduced its proposals for change late in 1907, and these were, with two exceptions, in agreement with the recommendations of the Commission. It rejected the Commission's recommendation for enlarging the powers of the First Chamber by giving it the right of amendment, and it proposed the dissolution of the Provincial States whenever the First Chamber should be dissolved. Before the States General could act on the Government's proposal the Cabinet had fallen.

The question of the First Chamber, together with the suffrage question was again submitted to a commission in 1910. This commission recommended that the qualification for membership should be made the same as for the Second Chamber

⁹ First published in *De Gids*, 1910. Also included in *Staatsrechtelijke Opstellen*, 1927, I, Chap. III, "De Eerste Kamer."

¹⁰ J. B. Kan, "Ons Hoogerhuis", *De Gids*, 1910.

and that it be given the right of amendment. The Heemskerk cabinet presented these proposals to Parliament in 1913 shortly before the regular elections of that year. The Ministry went out before the States General had an opportunity to vote on them.

In the debate preceding the Constitutional revision of 1922 the bicameral system was sharply attacked. Mr. Oud, the leader of the Liberal Democratic Party, proposed the abolition of the First Chamber and the substitution for it of an optional referendum.¹¹ He was supported by the leaders of the Socialist and Communist parties, Troelstra and Van Revesteijn. The amendment embodying the proposal was lost by a vote of 46 to 38.¹² The Government had proposed a number of reforms looking toward democratization of the First Chamber; namely, election by the Provincial States on the basis of proportional representation, election for terms of four years with simultaneous retirement of all members and the possibility of the dissolution of the Provincial States upon dissolution of the First Chamber.¹³ These proposals were accepted by the Second Chamber, but were lost in the First Chamber by a vote of 24 to 21. The Government then introduced new proposals, in which the provision for the dissolution of the Provincial States was dropped and the term of office was made six years, with one half of the members retiring every three years. These proposals pleased both houses.

The result of the introduction of proportional representation in the election of members of the First Chamber has been to make the political position of the First Chamber practically a duplicate of the Second Chamber. Instead of a reorganization in the direction of a more organic representation as many Dutch leaders desired, the reforms of 1922 made the First Chamber more than ever a duplication of the Second Chamber. The effect was also to emphasize the electoral function of the Provincial States, to the detriment of its function as a provincial legislative body. The reforms made in the First Chamber by the 1917 and 1922 revisions of the Constitution by no means satisfied everybody. While public sentiment was in favor of retaining the First Chamber there was much disagreement on the manner of its composition, election and powers.

¹¹ *Handelingen Tweede Kamer*, 1921-22, pp. 577 ff.

¹² *Handelingen Tweede Kamer*, 1921-22, p. 663. Mr. Oud argued that the "bulwark" theory had been proved wrong, that the guarding against precipitous action of the Second Chamber was actually nothing more than rejection of bills by a Chamber politically different, that the First Chamber itself had taken overhasty actions, and that an optional referendum would serve the function of revision better than the First Chamber.

¹³ *Ibid.* 1920-21, Bijlagen, Nos. 451, 454, 455.

SECOND CHAMBER

The provisions of the original Constitution of the Kingdom with respect to the Second Chamber, were anything but liberal. Members of the Second Chamber were chosen by a series of indirect elections. They were elected by the Provisional States, whose members in turn were elected by municipal councils and electoral colleges. Members of the municipal councils were not even chosen directly by the voters.

At the time of the Constitutional revision in 1848 two electoral systems were presented, both in the direction of a more democratic method of selecting the members of the Second Chamber. The two alternative methods presented were: (1) Direct election with a relatively high qualification for voters, or (2) election through delegates chosen by electors with no or very low qualifications. The first method was adopted. The method of indirect election had become so odious that it was feared that the people would never regard the Second Chamber as truly representative so long as its members were not directly chosen. It was thought that the people would much prefer direct election, even if fewer voters participated in the elections.

The Constitution gave the States General power to set the qualifications for voters, with the restriction, however, that it would have to require the payment of a direct tax of not less than twenty nor more than one hundred sixty guilders.

For twenty-five years there was no great demand for increasing the electorate. The total number of voters during the period from 1848 to 1887 was approximately 100,000.¹⁴ A proposal to lower qualifications in 1874 met defeat in the Second Chamber, but the demand for an extension of the suffrage became more intense from this time on. The country was badly in need of a reform of the tax system, but Parliament, under the influence of the small electorate of the larger tax-payers, refused to vote for such reform. The suffrage article of the constitutional revision of 1888 represents a compromise between those who wanted barriers against universal suffrage kept in the Constitution and those who wished the entire matter of suffrage left to the regulation of the States General. The latter view won; the States General was given the power to grant suffrage to males who possessed "marks of fitness and social well-being."

In the parliamentary session of 1892-3 the Government introduced a bill which would extend suffrage to all those who could read and write and support themselves and their dependents. This was giving the constitutional article on suffrage regulation a very liberal interpretation; the bill would have made

¹⁴ H. Collin, *Saevis, Tranquillus in Undis. Toehchting op het Antirevolutionair Beginsel Program*. Amsterdam. 1934. p. 180.

suffrage very nearly universal. The bill met serious opposition in the Second Chamber, which finally passed an amendment re-introducing taxpaying qualifications. The Ministry asked for a dissolution of the Chamber and went to the country on the issue. It lost the election and resigned. Under the succeeding Ministry a law was passed greatly extending the suffrage but which nevertheless left many city workers and a number of farm laborers without the franchise.¹⁵

In the Speech from the Throne of 1913 the new Cort van der Linden Government promised a revision of the suffrage article in the Constitution. The Government indicated that it would propose general suffrage for men on the basis of proportional representation and the removal of the constitutional hindrances to suffrage for women. The constitutional revision was officially announced on December 12, 1917. It provided for the direct election of members of the Second Chamber by all male Netherlanders, who have attained the age of 23 years.¹⁶ The constitutional revision also made possible the introduction of women suffrage by legislation, with the restriction that tax-paying could not be made a qualification. By law of August 9, 1917, the word "male" was removed from the suffrage law, and the women were thus given the suffrage upon the same basis as the males. With the revision of 1922 women suffrage was incorporated in the Constitution itself. The obligation to vote, which had been adopted in the constitutional revision of 1917, was dropped from the Constitution in 1922.

PROPORTIONAL REPRESENTATION

The Constitution required that the members of the Chambers be elected on the basis of proportional representation,¹⁷ but left to legislation the selection of the system to be adopted. The Government and Parliament chose the list system as the most suitable for the Netherlands. First used in the 1918 elections, the Dutch have had nearly two decades of experience with the system. The results must, on the whole, be considered unfavorable. Proportional representation increased the political stability of the Chambers. Shifts in the relative strength of the larger parties were small. A fantastic number of parties placed candidates in the field; at some elections the figure ran as high as fifty. Fortunately not all were able to elect candidates;

¹⁵ Those enfranchised were: all who paid an annual land tax of at least one guilder, or who paid a small direct tax, or paid house rent of a certain amount, or who owned national bonds of at least 100 guilders in amount, or who received salaries or pensions up to a certain amount, or who had a bank deposit of at least 50 guilders, or who passed a prescribed examination. The number of voters in 1903 was 624,000 out of a total population of over 5,000,000 in 1899. De Beaufort, *Staatkundige Opstellen*, pp. 119-158.

¹⁶ The law has set the age at 25 years.

¹⁷ Articles 84 and 85. The provision for proportional representation was incorporated in the Constitution with the revision of 1917.

nevertheless about a dozen parties generally achieved representation in a chamber (the Second) of 100. Another result was an increase in the number of members of the Chambers who either lived in The Hague or moved to The Hague upon election. Of the 100 members of the Second Chamber elected in 1937, not less than 32 lived in The Hague and 44 in the province of South Holland. Eighteen more came from the province of North Holland. Under proportional representation, and especially of the List system, it is not nearly as necessary to live in a specific section as it is under the direct system. Proportional Representation in the form adopted also increased the control of the party organization over the selection of candidates and over the members of the party in the Chambers.

In spite of this experience and much criticism of the system it is doubtful whether the Dutch will soon give up proportional representation. Mr. J. W. Albarda, former leader of the Social Democratic Party and a member of the Ministry in exile during the war, points to two solid advantages of the system. "One is that proportional representation has caused the election contest to become far more than formerly a contest of principles, directions, and objectives, and far less than formerly a contest for and in behalf of the personality of the candidate. The other is that proportional representation has brought a certain stability into the political balance of power. At least local and more or less accidental circumstances no longer play a decisive role in election results In general, the majority in the chamber reflects the majority in the population. It is no longer possible for a minority to rule.¹⁸ He admits the grave disadvantage of the multiplication of parties, but holds that this weakness can be largely eliminated by corrective legislation penalizing the smaller parties. Some legislation in this direction has already been passed.

COMPULSORY VOTING

The obligation to vote was made a constitutional principle with the revision of 1917, but was again removed from the Constitution in 1922. However, the opponents of compulsory voting lost the struggle to delete it from the Suffrage Law.

It cannot be said that the Netherlands experience with compulsory voting has been satisfactory. Delinquents were so numerous that it was practically impossible to prosecute them in the larger cities.¹⁹ In 1925 the minister of Justice proposed the abolition of the penal sanction, but his bill was amended so as

¹⁸ In chapter on "Constitutional and Political Aspects" in the volume on *The Netherlands*. Berkeley. 1943. p. 99.

¹⁹ As a protest against compulsory voting the protestors and politically indifferent in 1919 in Amsterdam elected a person to the city council who had been repeatedly sentenced for being drunk. A similar incident occurred in Rotterdam in 1923. Kranenburg, *op. cit.*, I, 241.

to make prosecution simpler and easier instead. The Second Chamber passed a Government proposal to amend the suffrage law so as to grant exemption from compulsory voting on grounds of conscientious objections or religious convictions. The amendment was rejected by the First Chamber. Obligatory voting, judging from the Dutch experience, whether right or wrong in principle, is unworkable in practice.²⁰

COMPOSITION, QUALIFICATIONS OF MEMBERS, SALARIES AND PRIVILEGES

The membership of the Second Chamber is fixed at 100 members, the term of office at four years. All Netherlanders and Netherlands subjects²¹ who have attained the age of thirty and who have not been deprived of the right to vote under the existing law, unless for minor offenses, are eligible for membership. No one can be a member of both Chambers at the same time.²² A member of the States General cannot simultaneously hold the following offices: Minister,²³ Vice-President or member of the Council of State, Vice-President or member of the High Court, Procurer-General or Advocate-General before the High Court, President or member of the Accounting Chamber, Commissioner of the King in the Provinces, nor clerk of either chamber. Soldiers and sailors in active service are placed upon the non-active list for the duration of their term if elected to either chamber.

Sentiment in the Netherlands was very strongly against encouraging the existence of a class of professional politicians. For this reason remuneration of members of the Second Chamber was purposely kept low. The word salary was studiously omitted from the Constitution and the statutes. Members of the Second Chamber receive an indemnification of 4,500 guilders per year and traveling expenses.²⁴ Former members receive pensions at the rate of 120 guilders for each year of service, to a maximum of 2,800 guilders annually. The pension is suspended upon reelection. Widows and orphans likewise received small pensions.²⁵

²⁰ See Kranenburg, *op. cit.*, I, pp. 240-3.

²¹ This provision makes Colonials eligible for membership. In 1933 an Indonesian was elected a member of the Second Chamber. He was re-elected in 1937.

²² Constitution. Art. 99.

²³ This office was included in 1938. No member of the States General had been at the same time a Minister for over forty years. The Constitution permitted a Minister, who had been chosen a member of Parliament in an election, to hold both offices for three months. Art. 99.

²⁴ From 1848 to 1917 the indemnification was only 2,000 guilders. This was increased to 3,000 guilders in 1917, and to 5,000 guilders in 1922. In 1938 it was reduced to 4,500 guilders.

²⁵ The pension of the widow was half, that of each child one-fifth of the pension which the deceased member would have received.

The presiding officer is appointed by the Crown for the duration of a session from a list of three presented by the Chamber. He receives a remuneration of 9,000 guilders. The Chamber elects its clerk, who can not at the same time be a member of the States General.

The States General meets at least once a year. Its ordinary session is opened on the third Tuesday in September. The King can call special sessions as often as he deems necessary. The session of the States General is opened in a joint meeting of both chambers by the King or by a commission appointed by him. It is closed in like manner. Upon the dissolution of either or both Chambers the King closes the session of the States General. When either or both Chambers are dissolved, the decree ordering the dissolution must contain a call for an election within forty days and for the meeting of the newly chosen chambers within three months.²⁶ The Constitution makes the Chambers the judges of the qualifications of their members in so far as the law does not stipulate otherwise. This makes it possible for the States General to refer certain aspects on the whole question of eligibility and election disputes to the courts.²⁷

JOINT MEETINGS

The two Chambers meet together as one body whenever there exists the prospect that there will be no qualified successor to the throne,²⁸ and when upon the death of the King there is no qualified successor.²⁹ In these two contingencies the Chambers are to be called in double strength, chosen in the ordinary way. Joint sessions of the two Chambers also take place: (1) for the inauguration of the King,³⁰ (2) for consideration of the proposals for regulating the guardianship of the King or the regent,³¹ (3) receiving the reports from the ministers in case the King or regent was unable to discharge the duties of his office,³² (4) for the oath-taking of the guardian of a minor King or for the oath-taking of the Regent,³³ and (5) for the opening and closing of a session.³⁴ The Chairman of the First Chamber presides at all joint sessions of the two Chambers.³⁵

²⁶ Const. Art. 75.

²⁷ Art. 101.

²⁸ Art. 18.

²⁹ Art. 19.

³⁰ Art. 50.

³¹ Arts. 30, 33, 35, 40 and 41.

³² Arts. 34, 43.

³³ Arts. 32, 42.

³⁴ Art. 104.

³⁵ Art. 111.

POWER OF PARLIAMENT

Only the Second Chamber has the right of initiation, but rarely does the Second Chamber use this right.³⁶ The Constitution gives the Second Chamber and the combined meeting of the two Chambers the right to amend bills introduced by the King. Thus by exclusion the First Chamber lacks this power. Because it was felt that too much use was made of this power the rules of order of the Second Chamber were amended so as to put obstacles in the way of making amendments. The right of making amendments has also been limited by the provision that amendments may not introduce an entirely new element into a bill.

Both Chambers have the right of investigation, but the First Chamber rarely makes use of it.³⁷ Both Chambers have the right to direct addresses to the King. The Second Chamber also has the right, in case of vacancies in the High Court and the General Auditing Chamber, to propose the names of three persons from which the Crown makes its selection.³⁸ Both Chambers have the right of interpellation.³⁹

³⁶ Arts. 119-124. A bill which originated in the Second Chamber did not become a law unless approved by the King. In 1917 the Cort van der Linden ministry refused to accept a bill which originated in the Second Chamber and had passed the First Chamber, and it did not resign.

³⁷ Art. 98.

³⁸ Arts. 164 and 180.

³⁹ Art. 97.

CHAPTER V

THE MINISTRY

Development of Parliamentary Control

Under King William I the ministers played a subordinate role. According to the Constitution of 1815 the ministers were appointed and discharged "at the pleasure" of the King. Of this power William I made wide use. He regarded the ministers as his personal, obedient servants. And even among his servants ministers did not hold the greatest position of influence. That was reserved for another functionary, the General Secretary of State.

Against that system there was opposition in the Constitutional Commission of 1815. The opposition to it grew with the years and became very powerful in the last years of the reign of William I. In 1830, the Belgians rebelled against his rule. The first effect of the Belgian revolution was to unite the Dutch behind their King, but when it became clear that the King's policy was a complete failure and when he stubbornly persisted in continuing the struggle long after it had become hopeless, the Dutch people, too, became hostile to his personal regime. The Government's finances were in a confused condition and there had been irregularities in their administration. In the session of 1839-40 the Second Chamber twice in succession voted overwhelmingly against the Government. As a result of these adverse votes the Ministers of Finances and Colonies were forced to resign. This was the first victory of Parliament in the struggle with the King over the responsibility of the ministers. In the slight revision of the Constitution of 1840—a revision made necessary by the separation of Belgium—the ministers were made responsible for the legality of all acts of administration in which they participated. Though the rule of the political responsibility of the ministers had not yet been incorporated in the Constitution the King saw the drift of events, and unwilling to accept the trend, he abdicated.¹

While the outward forms changed somewhat under the reign of William II, actually the Government continued very much as it had. Dissatisfaction and unrest did not abate; it mounted. As the opposition sharpened it became more purposeful. This was in part due to the fact that the opposition had found a powerful parliamentary leader in Thorbecke, the

¹ October 7, 1840.

great Liberal statesman. But the stimulus needed to make possible the constitutional reforms without revolution came from the outside world. With the news of revolutions in other European capitals, the King underwent a radical change of political principles. The Constitutional revision of 1848 was the result. In the Constitution was incorporated an article stating: "The King is inviolable; the ministers are responsible." The principle of full ministerial responsibility was thus formally recognized.²

In spite of this formal recognition in the Constitution of the principle of full ministerial responsibility, it took another two decades before the States General was able definitely to establish a positive control over the ministry. During this period the States General asserted a negative control; no cabinet of whose policy the States General disapproved could continue in office. The result was a period of political instability. The so-called "Royal Cabinets" were short-lived, but not all of the cabinets during this period were of this type. The two Thorbecke cabinets (1848-1853 and 1862-1866) were parliamentary cabinets in the full sense of the term. But the King appointed a parliamentary cabinet only when he found it impossible to avoid it.

The conflict between King and States General came to a head during the years 1866 to 1868. In June 1866 a new ministry came to power, with Mijer, the presumable formateur of the Cabinet, as Minister of Colonies. The previous cabinet had fallen on a colonial issue and Mijer declared that the chief task of the new cabinet would be the solution of the colonial problem on which the last cabinet had fallen. However, a few months later and shortly after the meeting of States General in September the Minister of Colonies, Mijer, retired and was succeeded by a wholly unknown political figure. Two days later Mijer was appointed Governor General of the East Indies. The Second Chamber was incensed at this action. An Antirevolutionary member of the Second Chamber, Keuchenius, concluded a very critical speech by proposing a motion disapproving the retirement from the cabinet of Mijer. After a heated debate of two days the motion was adopted by a vote of 39 to 23.

The Government opposed the motion as unconstitutional and revolutionary. It asked the King for a dissolution of the Second Chamber on the ground that the Chamber had exceeded its powers and had invaded the prerogatives of the Crown.³ The dissolution of the Chamber was followed by the most fiercely waged election campaign in Dutch history. The King boldly

² For the Constitutional history of the period from 1815 to 1848 see: Gösses en Japikse, *Handboek tot de Staatkundig Geschiedenis van Nederland*, pp. 740-813. Tweede Druk 1927; Kranenburg, *Nederlandsche Staatsrecht*, I, 139-148. Haarlem, 1930. Struycken, *Staatsrecht*, pp. 51-69, Arnhem, 1928.

³ In reply to this charge twelve law professors issued a statement upholding the constitutionality of the act of the Second Chamber.

came out in support of his Ministry. He issued a proclamation, adorned with the national colors, and sent a copy to every voter. The election returned a Liberal majority, though somewhat weakened. The Ministry, however, did not resign. Mijer went as Governor General to the East Indies and two Ministers were decorated. The following year a new conflict arose; this time over the policy of the Minister of Foreign Affairs with respect to the Luxembourg question. The Second Chamber indicated its disapproval of his policy by rejecting the budget of the Department of Foreign Affairs.⁴ The Cabinet offered its resignation but the King refused to accept it; instead the King dissolved the Second Chamber. The election campaign which followed did not center around the direct issue which precipitated the dissolution. The Ministry made the issue a choice between support of the King and the anti-monarchical majority of the Second Chamber. The Ministry lost the battle. The election resulted in an increased majority for the opposition. Still the Ministry refused to retire. After an interpellation by the leader of the Liberals, Thorbecke, the Second Chamber passed a resolution condemning the dissolution. Not even after this did the Ministry resign. For the second time the Second Chamber rejected the budget of the Department for Foreign Affairs. The Ministry was considering a third dissolution when the First Chamber, under the leadership of a number of greatly respected political leaders suddenly intervened by an address to the King. The Cabinet now handed in its resignation. With this the parliamentary system was definitely established. Since then no ministry has attempted to govern in defiance of the Chambers, when the latter were backed by a majority of the voters.⁵

PECULIAR CHARACTERISTICS OF DUTCH MINISTRIES

The Dutch parliamentary system has a number of peculiar features. A parliamentary cabinet in the sense of a homogenous body of men held rather closely together by common political views and backed by a majority of the Chambers, is practically unknown in Dutch history. There have been very few such cabinets and none in the last fifty years. The office of prime minister was unknown. One reason for this peculiar development was the disappearance of the two party system almost immediately after full ministerial responsibility to Parliament was established in 1868. The Dutch are strongly individualistic and tend to divide into small groups on most issues. Religious divisions came to cut across the old political groupings along economic and social lines, with the result that a large

⁴ The vote was 38 to 36.

⁵ See for the political developments during this period, Kranenburg, I, 148-165 and Gosses and Japikse, pp. 813-832.

number of small political parties developed. The adoption in 1917 of proportional representation accentuated this tendency. Furthermore, most of the elections after 1868 failed to render decisive popular verdicts; no definite conclusions could be drawn from the elections. And lastly, these numerous small parties were frequently without outstanding leadership, at least without leadership great enough to dominate a coalition and weld it into a more closely knit, politically effective combination. Doctor Abraham Kuyper in 1901 attempted to remold the Council of Ministers after the English cabinet and to make himself prime minister, but even he, forceful leader that he was, was unable to achieve this.

The numerous small parties carried on their election campaigns under such sharply outlined and mutually divergent programs that agreement upon a coalition program after election became difficult and almost impossible. A strongly organized political cabinet was therefore generally out of the question. The only solution then was a mildly political and non-parliamentary cabinet,—non-parliamentary in the sense that its members were generally not taken from parliament and were administrators rather than political leaders. Under these conditions the organizer of the ministry was not always a political leader and, even if he was, did not always take a place in the ministry. The Dutch custom that a minister may not be a member of Parliament strengthened this tendency. The Ministry of Cort van der Linden, 1913–1918, was in large part made up of non-parliamentarians, and the organizer-chairman himself was not a member of either Chamber, nor did he hold a leading position in any party. From 1918 to 1939 a coalition of the three chief religious parties, the Antirevolutionary, the Christian Historical Union—both Protestant parties—and the Catholic Party, generally called the parties of the right, commanded a parliamentary majority. Yet the leader of the largest party of the coalition, the Catholic Party, officially did not form the ministry in 1918 and did not take a place in it. The ministries from 1922 to 1933, except for the short-lived Colijn Cabinet of 1925–26, did not contain the leader of any of the majority parties. There was not only no real leadership in the ministry, but the majority coalition was so loosely united that no political program could be carried out. There was no working majority for any positive measure and some ministers suffered one defeat after another even when evading controversial issues as much as possible. Twice during the last few decades the resignation of the Ministry resulted in crises of several months' duration. But since no other ministry could command a majority there followed cabinets which could do no more than carry on the administration.

Dissolution of the chambers no longer offered an avenue of escape from this anomalous situation, for the system of proportional representation destroyed the possibility of large shifts in the party alignment in Parliament through a small shift in the popular vote. Relative party strength had become very nearly stabilized. The upshot of it all was that under these conditions parliament could exert only a negative control over the Ministry and the execution of a positive political program became impossible.

One of the chief causes for these difficulties was to be found in the existence of the religious parties, for they made party alignments along purely political lines more difficult. For over forty years Dutch politics was dominated by the issue of government subsidies for private religious schools. On this issue the coalition of the three largest religious parties was chiefly based. But the so-called parties of the left had little in common save opposition to this measure. The opposition included parties of such widely divergent views as the Socialists and the Liberal Party, the latter about the most conservative party in the country. When in 1913 the religious coalition lost the majority of the Second Chamber a coalition cabinet of the left nevertheless became impossible for the reason that the Socialist Party refused to form or enter a coalition ministry. A parliamentary deadlock ensued. The Queen eventually called upon Cort van der Linden, a non-political figure, to form a cabinet. Cort van der Linden himself rejected the term "extra-parliamentair" as descriptive of his cabinet, explaining that he had regarded it as his duty in solving the crisis to feel his way back to the voters and to form a cabinet outside of the parties in the Second Chamber. For this reason his ministry was often called the "ministry of the popular will." Though the Socialists had refused to join a left coalition ministry they made the Cort van der Linden ministry possible by giving it their support. In the 1918 election the religious parties received a majority of the Second Chamber and they retained it through all the elections of the next twenty years. But the passage of the law granting financial equality of private with public schools removed the issue which had held the coalition firmly together and when in 1925 the Christian Historical Union party gave its support to the Kersten amendment, providing for the abolition of diplomatic representation at the Vatican, the Catholic party regarded the Coalition as having come to an end. The result was a long Ministerial crisis and finally an extra-parliamentary ministry under Jhr. de Geer, the leader of the Christian Historical Party.

The great economic depression in Holland, as elsewhere, led to new political forms. In the parliamentary election of 1933

Colijn had won a great personal triumph. He was regarded as the "strong man" of the country and the results clearly pointed to him as the electors' choice for cabinet-former. In view of the seriousness of the problems and the slight majority of the Christian parties in the Second Chamber Colijn decided upon a "national" cabinet. He was successful in forming a ministry from five parties,—the Liberal and Liberal Democratic parties in addition to the three Christian parties. This ministry contained an unusually large number of party leaders. After the 1937 parliamentary elections Colijn returned to the narrower Christian coalition base for the formation of his fourth ministry. The old coalition became subject to increasing strain, the breach between Colijn and his party and the Catholic party over financial policy became constantly wider. Due to this internal dissention the Cabinet resigned in July, 1939. Since the ministry's resignation was chiefly due to the Catholic attacks upon it and Colijn, the latter felt the Catholic party should take the full consequences for its acts and be required to form a ministry. Catholic leaders called upon by the Queen to form a ministry were unsuccessful. Responding to a second request by the Queen Colijn succeeded in forming a cabinet,⁶ which, however, was rejected by the Second Chamber by a no-confidence motion introduced by the leader of the Catholic party.

The political situation was now badly confused. The Catholics who had been chiefly responsible for the resignation of Colijn and his Fourth ministry, and who were responsible for the defeat of Colijn's Fifth Ministry, were themselves unable to form a cabinet. There were also differences on fundamental issues between them and the Socialists, who had supported them in defeating the Colijn Ministry. In refusing to form a ministry with the Socialists the Catholics shrank from the logical consequence of their acts. Many wished to punish the Catholics by having the party game played out to the bitter end. When Dr. de Geer, the leader of the Christian Historical Party, accepted the Queen's invitation to form a ministry he was sharply criticized. In reply to his critics he said:

"I consider the recent no-confidence motion a serious mistake but I love my country too much to want those who made this mistake to be compelled to bear its full consequences. At this moment that would be dangerous from the national as well as the international point of view. This may have its attraction as political sport, but the interests of the country require action of another kind."⁷

⁶A remarkable feature of this so-called "Fifth" Colijn Ministry was that four of its eleven members were former East Indies officials.

⁷London Times, August 5, 1939.

To the great surprise of the country de Geer succeeded in forming a ministry. Instead of a six-party coalition cabinet, which he had hoped for, his cabinet contained two representatives each of Catholic and Socialist parties in addition to two of his party. The remaining ministers were non-partisan, with the exception of Professor P. F. Gerbrandy, who was a member of the Antirevolutionary Party, but who entered the ministry against the wishes of his party and therefore was not regarded as a representative of it in the cabinet. This was the first ministry in Dutch history to contain Socialists. The long discussed possibility of a Catholic-Socialist coalition had finally come to pass, though under Christian Historical leadership and diluted by the presence of a large number of non-partisan ministers and somewhat disguised as a "national" cabinet.⁸ The Second World War broke out only a few weeks after this ministry came to power.

Because of these peculiar features of Dutch political life there was much discussion concerning the real nature of the Cabinet and of the position of the Minister-President. The relation of the Cabinet to Parliament was different from what it was in most parliamentary countries. While the Constitution did not forbid it, ministers were not members of Parliament.⁹ Public opinion was strongly against uniting the two offices in one person. The two functions were regarded as mutually incompatible. The States General represented the people over against the Government. The "controlled" can not and should not at the same time be "controller," so ran the argument. Moreover, the ministers stand and should stand, according to Dutch political thinking, above the parties. As servants of the Crown they should assume a certain impartiality towards all parties, although the general policy of the Cabinet must, of course, be in conformity with the spirit of the majority in Parliament.¹⁰ When a leader of a party entered a ministry he resigned the party leadership, in order that the party might feel free to criticize the policy of the Ministry.

⁸ It must be remembered that the Christian Historical Union Party had only eight seats (out of a total membership of the Second Chamber of 100), while the Catholic Party had thirty-one and the Social Democrats twenty-three.

⁹ In the Pierson Cabinet (1897-1901) two members retained their seats in the Second Chamber. The experiment was generally regarded as a failure. The fact that only two ministers out of the eight were members of Parliament made their position exceptional with respect to their colleagues, both in the ministry and in Parliament. The practice was never resumed. Van Houten, a leader of the Liberal Party, was the only leading Dutch statesman who held that the double role was necessary to the proper functioning of the parliamentary system, contending that the parliamentary system required that the Crown govern with the leaders of the majority in Parliament.

¹⁰ See De Savornin Lohman. *Onze Constitutie*, pp. 394-5. 4th Ed. Utrecht, 1926. See also Kuyper, *Antirevolutionaire Staatskunde*, II, 159 ff. Thorbecke once declared that there was probably no office in the State so little reconcilable with membership in Parliament as that of minister. See Doyeweerd, *De Ministerraad in het Nederlandsche Staatsrecht*, p. 254. Amsterdam, 1917.

Another feature of pre-war Dutch cabinets which strongly influences their character, was the inclusion of non-political or bureaucratic ministers. In some cabinets as many as half of the ministers were non-political. The departments of Internal Affairs and of Finances were generally regarded as most political, while the Departments of War, Marine, Waterways and Foreign Affairs were regarded as technical or purely administrative. Ministers of War and Marine have been carried over into new opposition ministries.¹¹ The presence in the cabinet of non-political members created problems, for their vote in the cabinet meetings sometimes affected decisions on political questions. In general their presence tended to strengthen the power of the cabinet-former, for to him they owed their positions, and for that reason voted with him. Kuyper suggested that technical ministers should refrain from voting on political questions.¹² This suggestion encountered the difficulty of distinguishing between political and technical questions. Furthermore it might exclude the vote of the minister whose department was most affected by the particular question.¹³

In spite of the obstacles in Dutch political life to the development of the parliamentary system as it has developed in England, steps in the evolution of the solidarity of the cabinet were rather clearly marked. When the King himself no longer formed the ministries, but called upon someone else to do it, such unity as the cabinet possessed was derived from the cabinet organizer. He had to select his colleagues and draft a program to make a combination which would be successful in obtaining the support of a majority of the States General. In consequence the organizer of the cabinet necessarily came to stand in a special relation to both King and States General. He had a special responsibility. He had to do all in his power to make the cabinet function effectively in carrying out the program of the cabinet. Formal recognition of this special position of the cabinet-organizer came slowly; measures to strengthen the solidarity of the cabinet met opposition. Before 1874 the chairmanship of the Council of Ministers rotated every three months, but after that date the former of the cabinet was always the chairman. But so tenaciously did the ministers cling to the theory of the equality of the members of the Cabinet that

¹¹ In 1908 the Minister of Marine continued on though the Government shifted from the left to the right. In the 1937-39 Cabinet the Ministers of Waterways and Foreign Affairs were regarded as non-political. The former was the chief permanent official in the department he came to head, and the latter was taken from the diplomatic service. Neither had taken an active part in party life. See Article by Prins, "De Homogeniteit der Nederlandsche Kabinetten". *De Gids*, May, 1937.

¹² *Antirevolutionaire Staatkunde*, II, 174-5.

¹³ For the reason that all ministers have an equal vote in the cabinet meetings, the distinction between political and technical ministers is open to serious objection, yet it does serve to point to a peculiarity of Dutch ministries.

it was not until 1901 that the Rules of Order of the Council of Ministers were changed to conform somewhat to the practice,¹⁴ and then it evoked a small storm in Parliament. Ministers feared a dictatorship from the permanent chairman; members of Parliament feared it would destroy the individual responsibility of Ministers. To save the susceptibilities of their colleagues Minister-Presidents like Pierson and Kuyper always made it appear that every time they represented the Ministry before King or States General they did so after being specially authorized to do so by their colleagues. In 1905 after the retirement of the Kuyper cabinet the Rules of Order of the Council of Ministers were again revised to limit the term of office of the chairman. The term of office was made a year, subject to extension by re-election. This, however, made no change in practice.

Differences between department heads went first to the Minister-President. If he could not bring about agreement the dispute was placed before the cabinet for decision. Since nearly all projects required funds, there were many controversies with the Minister of Finances. For this reason aspirants to ministerial office objected to the union of the office of Minister of Finances with that of Minister-President of the Council of Ministers, for the natural mediator of such controversies was lacking in such a cabinet.

During the two decades previous to the German invasion efforts were made to strengthen the solidarity of the Ministry. By Royal Decree of September 13, 1918, ministers before taking action on matters touching general governmental policy but which do not belong to those which must come before the Cabinet, were required to consult the Minister-President. If the two could not reach an agreement the question was to be placed before the cabinet for decision. In 1937 the Minister-President was relieved of the burden of heading one of the administrative departments by the creation of a small Department of General Affairs. It was felt that he needed more time to devote to problems of general policy and to promote the collective solution of the grave political, social and economic problems which the country then faced. Preparation had been made for an even more advanced step. The Constitution was amended so as to make possible the appointment of ministers without portfolio.¹⁵ However, the ideal of cabinet solidarity made little progress in practice, due chiefly to the widening breach between the Protestant parties, the Antirevolutionary party in particular, and the Catholic Party.¹⁶

¹⁴ Article 2 was changed to enable the Crown to appoint a chairman for an indefinite period.

¹⁵ Ministers without portfolio were first appointed after the German invasion. Raden A. A. Soejono, a Javanese, was made such in June, 1942. He was the first non-Netherlander subject to be appointed a minister.

¹⁶ *Vrij Nederland*, November 22, 1941.

Even exile and the crisis of war failed to knit the cabinet and give the Minister-President increased power, at least not until after a cabinet crisis. On October 14, 1941, the two Catholic members of the cabinet, Th. J. M. Welter, Minister of Colonies, and M. P. L. Steenberghe, Minister of Economic Affairs, sent in their resignations, which were granted as of November 20. They resigned because Minister-President Gerbrandy had made an official announcement without consulting all of the members of the cabinet. The official announcement did not touch the special province of either minister, nor did the ministers object to the substance of the announcement. The Premier justified his act on the ground that a purposeful, vigorous prosecution of the war made it necessary for him to make quick decisions, which did not always give time for broad consultation with his colleagues. All the other members of the cabinet upheld his position.

Ministerial departments are created by the Crown. The number of departments increased from seven in 1877 to eleven in 1935, with variation in combinations and numbers from time to time. Throughout the period since 1877 there have been Departments of Foreign Affairs, Justice, Internal Affairs, Finance and Colonies. Until 1928 there were Departments of Marine and War; in that year the two departments were combined into a Department of Defense. The remaining departments have been split off from the Department of the Interior. In 1937 a Department of General Affairs was created. In the De Geer ministry which came to power in August 1939 there were the following departments: General Affairs, Foreign Affairs, Justice, Internal Affairs, Education, Finances, Defense, Waterways, Economic Affairs, Social Affairs, and Colonies. The Minister-President, Jhr. de Geer, assumed the direction of the Department of Finances as well as that of General Affairs.

For unusual services ex-ministers may be given the title of Minister of State. Occasionally it is given to ministers while still in office. Formerly Ministers of State sat with the Council of Ministers but there are no longer any prerogatives attached to the title. It is purely honorary.¹⁷

RESPONSIBILITY OF THE CABINET

The responsibility of the cabinet as a unit extended only as far as its solidarity, which was determined by the program on which it was organized. Whenever there arose a difference be-

¹⁷ At the time of the German invasion of Holland the following were ministers of State: H. A. van Karnebeek, former Minister for Foreign Affairs; D. Fock, former Minister of Colonies, Governor of Suriname and Governor General of the East Indies; H. Colijn, former Minister of War, of Marine, of Finances of Colonies and five times President of the Council of Ministers; D. J. de Geer, former Minister of Finances and Minister-President of the Council; P. J. M. Aalberse, former Minister of Labor, Chairman of the Second Chamber and member of the Council of State; F. Beelaerts van Blokland, former Minister to China, Minister for Foreign Affairs and Vice-President of the Council of State.

tween Cabinet and Parliament regarding a matter included in the program the Chambers, and especially the Second Chamber, could demand the resignation of the Cabinet.* Whenever a dispute between Parliament and Cabinet touched a matter not included in the program then only could the Cabinet force the issue. By doing so it virtually extended its program to include this matter. The Ministers were always free to refuse to accept responsibility for a matter not included in the program of the Cabinet. On all questions outside of the cabinet program the individual ministers concerned were responsible.¹⁸ As a result the retirement of individual ministers because of difficulties with Parliament was rather frequent.¹⁹ A difficult situation would have arisen if the Cabinet-Maker had been forced out by parliament on a non-partisan matter or should have retired on his own initiative, but this situation never arose. It would seem that the Cabinet would then, too, have to resign, since the Cabinet revolved about its organizer. Without his presence it would cease to be a Cabinet.

FUNCTION OF THE CABINET

The Rules of Order of the Council of Ministers required that the Cabinet deliberate and decide in general over everything which required consultation among the Heads of Departments in order to assure unity in the application of Administration principles.²⁰ In particular the Rules of Order required that all bills before they are sent to the Council of State shall come before the Cabinet. All bills against which the Council of State had entered serious criticisms required submission to the Cabinet, unless the urgency of the bill made this impossible. Furthermore all projects of general measures of administration, agreements with foreign states, important instructions to diplomats relating to foreign policy and the appointment to important offices required submission to the Cabinet. The following offices are specifically named as falling under the above rule: the presiding officers of the two chambers; the Vice-President and the members of the Council of State; the President and members of the General Auditing Office, the Director of the cabinet of the Queen, the heads of foreign missions, hav-

* H. Dooyeweerd, *De Ministerraad in het Nederlandsche Staatsrecht*, pp. 286-7.

¹⁸ Ministers who have retired individually because of difficulties with Parliament (since 1890) are: Keuchenius, Minister of Colonies, 1890; Jansen, Minister of Marine, 1897; Eland, Minister of War, 1901; Cohen Stuart, Minister of Marine, 1907; Stall, Minister of War, 1907; Ridder van Rappard, Minister of War, 1908; Wentholt, Minister of Marine, 1912; Cool, Minister of War, 1917; Treub, Minister of Finances, 1916; Bosboom, Minister of War, 1921; De Vories, Minister of Finances, 1921; Pop, Minister of War, 1921; Van Karnebeek, Minister of Foreign Affairs, 1927.

²⁰ The Rules of Order of the Council of Ministers may be found in *Parlement en Kiezer*, 1937-38, pp. 19-21.

ing the rank of minister; the President, the Procurer-General, the members and the Advocate-General of the High Court; the President of the High Military Court and the Fiscal Advocate; the presidents and the attorneys general of the courts; the commissioners in the provinces; the commander of the Army in the field; the curators of the imperial universities and of the Technical Institute; the burgomasters of cities having a population of 50,000 or more, the Governor-General of Netherlands Indies; the Lieutenant-Governor General of Netherlands Indies; the Vice-President and members of the Council of Netherlands Indies; the Commander of the Army of Netherlands Indies; the Commander of the Navy in Netherlands Indies; the President of the High Court in the Netherlands Indies; the President of the General Auditing Office in the Netherlands Indies; and the Governors of Suriname and Curacao.

CHAPTER VI

THE JUDICIARY

THE CONSTITUTION AND THE COURTS

While the Dutch are strongly attached to the principle of the separation of powers and have a long and rather detailed basic law, they have been averse to conferring upon the courts power to set aside legislation on the grounds of conflict with the Constitution. Before 1848 there seems to have been some uncertainty about the constitutional provision on this matter, but all doubt was set aside in that year when there was introduced into the Constitution the brief but pregnant statement, "The laws are inviolable."¹ The phraseology was at the time criticized for lacking in clarity but both the ministers and States General were agreed as to the purpose of the provision, namely not only to guarantee the supremacy of the law over the provincial and municipal ordinances, but also to protect it from encroachment by the executive and judicial branches of the national government.

The courts have loyally accepted this principle. They declare that they have no authority to examine whether a law, because of its substance or because of the manner of its enactment, is in conflict with the Constitution. Promulgation of the law is the duty of the Crown, for which the appropriate minister is responsible to the States General. The courts accept the law as valid if it is properly certified; they will not examine whether there has been negligence or fraud by the minister in the performance of this duty. It is up to the States General to observe the Constitution substantively and procedurally, and to compel observance by the other branches of the government. This means, in the last analysis, that the States General is the interpreter of the Constitution. Most Netherlanders are of the opinion that the States General has been fairly faithful to its trust, and that, in any case, it is better to vest this function in the legislature than in the courts. There are provisions in the Constitution which are the result of political compromises; to leave their interpretation to the courts is to expose them to involvement in political controversy.²

¹ Article 124, clause 2.

² See Kranenburg, *op. cit.*, II, 20.

THE JUDICIAL ORGANS

There was no unified judicial system under the Republic. The French had put an end to this fragmentation of judicial authority. The French occupation left its mark on the Dutch judicial system as probably nowhere else in the Dutch governmental structure. Having experienced the advantages of a unified system of courts the Dutch had little desire to return to the old judicial system and institutions of the Republic. The Constitution in the first article of the Chapter on Justice gives evidence of the determination to maintain a unified system of courts by declaring that "Justice is administered everywhere in the Realm in the name of the King."³ The Dutch also retained many of the French titles and names for court officers and for the courts themselves.

In the Constitution of 1815 a concession was made to the old provincialism by providing for an intermediate court in each of the provinces but in the constitutional revision of 1948 this requirement was dropped. By a law of 1875 the provincial courts were abolished, and the number of intermediate courts reduced to five.

The independence of the judges is amply guaranteed in the Constitution. While the judges are appointed by the Crown, they are appointed for life and can be removed only by the High Council, in the cases indicated by law.⁴ They may be retired by the Crown only upon their own request. Because the appointment of judges was for life it was not thought proper to provide by legislation for the retirement of judges after they had attained a certain age. By the constitutional revision of 1922 a clause was inserted in Article 173 stating that "The law may stipulate that at the attainment of a specified age discharge may be granted." All of these provisions apply to the Solicitor-General (Procureur Generaal) of the High Council as well as to the judges.

Members of the High Council are appointed in a special manner. Whenever a vacancy occurs in the High Council that body so informs the Second Chamber, which thereupon proposes three names to the Crown as candidates for the position.⁵ While the Crown according to the Constitution is free to select one of these persons for appointment to the highest court in the land, it has become traditional for the Crown to appoint the person whose name appears first on the list.⁶ The Crown appoints the president and the vice president from among the members of the High Council.

³ Article 156.

⁴ Article 173, clause 3.

⁵ Article 170.

⁶ Kranenburg, II, 27-28.

Upon the High Council is conferred the special function of trying the chief officials of the Government. Members of the States General, the Ministers, the Governor of Netherlands Indies, the Governors of Surinam and Curacao, the members of the Council of State and Commissioners of the Crown in the provinces and such other officials and members of superior bodies as the law may designate, stand trial before the High Court. The charges may be brought and pressed either by the Crown or by the Second Chamber.⁷

The High Council supervises the work of the lower courts, as well as the observance of the law by the judges. It may in conformity with the prescriptions of the law, nullify and suspend their acts, dispositions and decisions, whenever they are in conflict with the law."⁸

The remaining powers of the High Council are regulated by law.

The High Council is composed of eleven members. Attached to the Court is a Solicitor General and five advocates general. The Council is divided into three chambers, namely, for civil, criminal and tax cases. Most of its jurisdiction is appellate.

There are five intermediate courts, called *Gerechtshoven* (judicial courts). The court of Hertogenbosch, with eight judges serves the province of Limburg and North Brabant; the court for Gelderland and Overijssel, with nine judges, has its seat at Arnhem; the court at the Hague, with fifteen judges, serves South Holland and Zeeland; at Amsterdam is the court for North Holland and Utrecht, with fourteen judges; the court serving the provinces of Friesland, Groningen and Drenthe has its headquarters at Leeuwarden and has seven judges.

Below these five *Gerechtshoven* are nineteen district or *Arrondissement* law courts. For minor cases there are courts like our justice of the peace and police courts.

ADMINISTRATIVE LAW AND COURTS

The Dutch have developed administrative jurisprudence to a high degree, at least by American standards. Individuals and lower governmental organs may turn to the courts for remedies against arbitrary and illegal acts and neglect of duty by officials and administrative agencies. The maxim that "the King can do no wrong" finds little favor in Dutch legal thought.⁹ Yet a general administrative law system has not been instituted. There are gaps in the legislation covering it. In 1894 a governmental commission issued a report on the subject of general

⁷ Article 171.

⁸ Article 172.

⁹ For further discussion of this subject see the chapter on the Council of State, which serves primarily as the chief administrative court.

and unified legislation for the regulation of administrative law, and Mr. Loeff, Minister of Justice in the Kuyper cabinet (1901-1905) introduced legislation in parliament to this end. Loeff's bills failed of passage, however, partly as a result of sharp criticism of them by Professor Struycken. The latter argued that it was undesirable to restrict freedom of action of administration, even if this freedom should involve violation of law, because the judge who would have to be intrusted with the "supervision" might on occasion be too independent. The demand for increased legal protection against the government continues but it has not yet been strong enough to effect a broad, general legislative program on the subject.¹⁰

JUDGE OR JURY

The jury is unknown to the Dutch judicial system. There has been some agitation for its introduction but it is improbable that it will occur within the foreseeable future. Kuyper, the great leader of the Antirevolutionary party in his early years suggested the adoption of an institution akin to the jury for the purpose of strengthening the relationship between the administration of justice and the moral consciousness of the nation, yet he was rather critical of the ordinary jury system.¹¹ By the constitutional revision of 1922 the way was opened for the introduction of the jury in a limited number of cases. Article 162, which restricted the exercise of judicial power to judges designated by the law, was amended so as to make it possible for persons not belonging to the Judiciary to participate in the adjudication of civil cases. The government had desired to extend this to criminal as well as to civil cases, but this part of the proposal was rejected by the States General.

¹⁰ H. Colyn, *Saevis Tranquillus in Undis*; pp. 326-327. Minister of Justice Donner in 1931 appointed a commission to re-examine the whole subject.

¹¹ See Colyn, *op. cit.*, 330-332, for a very sharp criticism of the jury system.

CHAPTER VII

FORMULATION AND CONTROL OF FOREIGN POLICY¹

During the century from the separation of Belgium in 1839 to the German invasion in 1940, the Netherlands successfully followed a policy of neutrality and isolation. It did this in spite of its military weakness, its precarious geographic position, its vast colonial empire, large merchant marine, and important overseas interests. In the days of the Republic it was generally in the vortex of world politics; as a buffer state in union with Belgium from 1815 to 1839 it could not wholly escape involvement in international politics. But, after the separation of Belgium, the Dutch people turned in aversion from the spirit and mechanism of European statecraft and developed a small-power, isolationist policy to a point little short of perfection. For this reason an examination of the formulation and control of Dutch foreign policy during this period is of more than usual interest.

CONSTITUTIONAL PROVISIONS

The Constitution of 1814 conferred upon the King, *i. e.*, the Crown, almost unlimited power over foreign relations. This came about largely as a reaction to the system under the Republic, under which the foreign relations power was so weak that the Republic had made itself infamous for unbelievable dilatoriness in its relation with other states.² The King was granted the power to declare war, make peace, conclude alliances and treaties of whatever sort, and to appoint and dismiss diplomatic agents. But in the constitutional revisions of 1848 and after, the power of the King over foreign relations was considerably reduced. Moreover, the long battle for parliamentary supremacy over the ministry was definitely established in 1868.

Declaration of War. Until the constitutional revision of 1922 the power to declare war rested with the Crown, which had merely to inform the States General of the fact. From 1814 on there had been leading political figures who advocated that the power to declare war be vested in Parliament. Heemskerk, the Conservative leader, was one of these.³ On the other hand, the great Liberal leader Thorbecke opposed it. A determined ef-

¹ This chapter was first published as an article in *The Journal of Politics*, November, 1944.

² R. Fruin, *Geschiedenis der Staatsinstellingen in Nederland* (The Hague, 1901), p. 304.

³ J. Heemskerk, *Practijk Onzer Grondwet* (1881), Vol. 1, pp. 56 ff.

fort was made at the time of the constitutional revision of 1887 to require the prior consent of the States General to a declaration of war, but the resolution to incorporate this change in the article was defeated by a large vote. The arguments advanced against the proposed change indicate something of the difficulty of the problem. It was argued that since the Crown is in charge of the conduct of foreign relations, it must have the power to cause the state of war to begin at the precise moment desired by it. A large assembly, it was contended, would more easily be carried along by emotion than a few persons, and would not as strongly feel the responsibility for its decision. Moreover, war would never be initiated by the Netherlands, since it would prove too disastrous for the country, and after all, it was impossible to prescribe for other states the rule that they do not make war on the Netherlands without first obtaining the consent of the States General. Furthermore, every declaration of war would be preceded by mobilization, which the Crown could not carry through without the cooperation of the Chambers.⁴

The reaction against war was so strong after the first World War that the article on the power to declare war was thoroughly revised in the constitutional revision of 1922. The final text of the article⁵ was made to read as follows:

The King seeks to settle disputes with foreign Powers by adjudication and other peaceful means. He does not declare war until after prior approval by the States General.

The provision that the approval of the States General must be obtained before the Crown can declare war was proposed by the Government, but the first sentence was incorporated in the article as the result of the efforts of the Social Democrats Schaper and Troelstra. The Government regarded the proposal by the Socialists as out of place in a constitution, since it did not deal with the regulation or distribution of power, but with directives. To this the sponsors replied that it would serve the peace-loving Dutch people well if their constitution testified in this manner to the fixed purpose of the nation to place law above violence. "Other nations would be, without doubt, thus reminded of the work of The Hague; they would appreciate this constitutional confession and not impossibly follow it. And although this legislative testimony may not be decisive in making for peace or war, a constitution should reflect the principles which a people accept in an important area of policy."

Some members of Parliament did not like the proposed changes but accepted them as a "concession to the spirit of the

⁴ See H. L. Asser, *De buitenlandsche betrekkingen van Nederland. 1860-1889.* (Haarlem, 1889), p. 93.

⁵ Article 59.

times." The only opposition came from those who wished to go further. Some of these wanted to withhold the power to declare war from the Crown until after it had received consent to do so by an unusual majority of both Chambers; others wished a popular referendum to precede a declaration of war. Still others, represented principally by the Liberal Democrats under Marchant, wished Parliament to restrict the military powers of the Crown by requiring the prior approval of the Chambers to all military measures directed against a Foreign Power. It was felt by the sponsors of the last amendment that unless Parliament could control the previous military measures its power to withhold consent to a declaration would be illusory. All these projects were rejected by a large vote. The text of the article was accepted by the Second Chamber by a vote of 67 to 18. Not all of the 18 who voted against the revised article were opposed to the principles it embodied. Marchant and the Liberal Democrats voted against it because the word "war" was retained in the Constitution.⁶

The article received its first and only test on May 10, 1940, when the German army marched against Holland and Belgium. The States General was not convened, and the Netherlands declaration of war took the form of a reply by Foreign Minister van Kleffens to the note handed him that morning by the German Minister at The Hague, in which van Kleffens tersely stated that "in view of the unprecedented German attack on the Netherlands, an attack perpetrated without any previous warning, the Netherlands Government considered that a state of war had now arisen between the Kingdom and Germany."

Treaty-Making. Under the Constitution of 1814 the King's power over treaty-making was exclusive. All the Constitution required was that he inform the States General of treaties and alliances concluded. In the Constitution of 1815 this extensive power was restricted somewhat. Henceforth treaties concluded in time of peace which involved cession or exchange of any part of the Kingdom or its possessions in other parts of the world required the approval of the States General before they could be ratified by the King. On the other hand, the requirement that the King must inform the States General of the conclusion of treaties and alliances was somewhat relaxed by the incorporation of the phrase, "as soon as he judges that the interest and security of the Kingdom permit it."

More important was the restriction which came with the revision of 1848. The article on treaty-making was revised so

⁶ See *Handelingen Tweede Kamer*, 1921-22, pp. 406-441, for the debate on the article. See also F. J. A. Huart, *Grondwetscherziening 1917 en 1922* (Arnhem, 1925), pp. 50-59.

⁷ E. N. Van Kleffens, *Juggernaut over Holland* (New York, 1941), p. 89.

as specifically to require the King to impart to both Chambers the contents of all treaties he might conclude. Moreover, the types of treaties which required approval by the States General before they could be ratified by the King were extended to include those which contained any stipulation or change affecting legal rights, and the phrase "concluded in time of peace" was dropped. In the constitutional revision of 1887 a third category of treaties was added to those which required parliamentary approval before the Crown could proceed with ratification: namely, those which imposed financial obligations on the Kingdom. A new clause was added to make clear that the approval of the States General was not required for treaties which had been concluded under a prior authorization by law. In these cases the States General was presumed to have given its approval in advance.

Already at the time of the constitutional revision of 1887 there had been pleas by leading members of the States General that the treaty-making article be changed so as to require parliamentary approval of all treaties, and that demand had become quite general in the decade before the constitutional revision of 1922. Among the treaties which did not before 1922 require the approval of the States General were some of the most important, as for example treaties of alliance. Moreover, it was not always easy to determine whether a given treaty fell within the three categories requiring parliamentary approval, and the question of which did and which did not require the approval of the States General was a constantly recurring problem.

With the constitutional revision of 1922 the final step was taken of requiring the approval of the States General for the ratification of all treaties. The consent of the States General was henceforth likewise required for adherence to and renunciation of treaties. This provision was added to cover collective treaties, which had become increasingly numerous. The proposal of the Government was far more sweeping than the wording finally adopted. The Government had proposed to revise the clause to read as follows:

Treaties and other agreements with foreign Powers are, unless concluded by the King under legislative authorization, not binding until after ratification by the King under the authority of law or approval by law. Renunciation takes place only by authorization of law.

The Government's proposed revision implied a distinction between treaties and agreements on the one hand and oral agreements on the other. As the Government explained in the Memorandum of Reply:

The conduct of foreign relations consists in large part in the making of oral agreements of all sorts and of all degrees of im-

portance with other governments or their representatives. Such agreements are, as it were, made daily, either in The Hague or at places where our diplomatic missions are established, and are often intended to go into effect at once. A prescription which would require the cooperation of the legislature for all oral agreements would penalize the conduct of foreign relations and place the Government in an impossible position with respect to other Powers.*

It was the purpose of the Government to amend the Constitution so as to require parliamentary approval for all agreements with foreign states except minor or purely administrative agreements. But by an amendment from the floor of the Second Chamber the proposed revision was changed so as again to make form rather than substance the test of whether a treaty requires parliamentary consent to ratification.*

Under the provision of Article 63 of the Constitution the representative bodies of the overseas territories must be consulted before the States General may pass legislation affecting them. In conformity with the provision all treaties in any way affecting the East Indies, Surinam or Curacao are sent to the representative bodies of these dependencies before they are submitted to the States General for obtaining its consent to ratification.

While the Constitution merely demands approval by the States General, in practice the approval invariably took the form of a law. Treaties affecting individuals became binding upon them and became enforceable by the courts without further legislation. While there was some division of opinion among Dutch jurists, the prevailing opinion was that treaties were superior to laws and could even set aside provisions of the Constitution. This seems also to have been the position of the High Court in a decision of May, 1906.¹⁰

PRACTICE

Speech from the Throne. The Speech from the Throne with which the Sovereign opens the States General each year almost

* *Handelingen Tweede Kamer*, 1921-22, p. 433.

* As a result of the various revisions the articles of the Constitution touching on the foreign relations power have been as follows since 1922:

Art. 58. The King has supreme administration over foreign relations.

Art. 59. The King seeks to settle differences with foreign Powers by adjustment and other peaceful means. He does not declare war until after previous approval of the States General.

Art. 60. The King concludes and ratifies all treaties with foreign Powers.

Unless the King by law has had reserved to himself the authority to ratify a treaty, the treaty is not ratified until after it has been approved by the States General.

Adhesion to and renunciation of treaties takes place by the King only by authority of law.

The States General is informed of other agreements with foreign Powers as quickly as possible.

¹⁰ R. Kranenburg, *Het Nederlandsch Staatsrecht* (Haarlem, 1928), Vol. 1, pp. 375-378. See *Handelingen der Nederlandsche Juristen Vereeniging*, 1937, Vol. 1, for an interesting discussion of these questions by Professors B. M. Telders and J. H. W. Verzijl.

invariably contains a short paragraph of sonorous phrases on the good relations which happily prevail between the Netherlands and all foreign powers. When it was absent from the speech from the Throne of 1922 some members of Parliament inferred that there were difficulties somewhere.¹¹ Since the Dutch government never engaged in bold foreign policies the Speech from the Throne rarely contained anything but the most routine and stereotyped phrases on foreign relations. Both Chambers have the right of replying to the speech and can thus also express their views upon international questions at this time, but the Second Chamber has made no use of this right in decades.

Royal House and Foreign Policy. The influence of the Sovereign and his family on the conduct of foreign policy is, of course, difficult to trace in a constitutional monarchy. His personal influence behind the scenes may be great, but the Foreign Minister bears the full responsibility for every act falling within his sphere, and never may he bring his Sovereign's attitude into the discussions before Parliament. But as Kuyper once pointed out,¹² the relationship of the King to other Kings and Princes is of a very peculiar character. They are often related in blood or marriage; they correspond with each other and pay each other visits, during which important conversations take place which ought not to be held except in the presence of the Foreign Minister. And ambassadors have the privilege of demanding an audience with the head of the state. The Foreign Minister should accompany the Monarch on all royal visits, but the position of the Netherlands in world politics had become so unimportant that Dutch Kings and Queens never bothered to have the Foreign Minister accompany them, apparently on the theory that such visits had no other character than that of a purely social visit. But on their return visits the foreign Sovereigns would come properly accompanied by the Foreign Minister, all of which came as a shock to Dutch isolationist sentiment.

There is one item of evidence, even if scant and fragmentary, that the members of the royal family did play a role in foreign policy or influence it in one way or another. Queen Sophie, a member of the House of Wurttemberg, was an ardent admirer of French culture and very favorably disposed towards France. In 1875, when relations between France and Germany were again tense, Queen Sophie apparently warned the French Government that the German Chancellor had evil

¹¹ *Handelingen Eerste Kamer*, 1922-23, p. 665.

¹² *Antirevolutionaire Staatkunde* (Kampen, 1924), Vol. 2, pp. 194-195.

intensions with respect to Belgium. Prince Bismark seems to have known about and resented the intervention.¹³

A peculiar incident occurred in 1901, when Minister of War Eland, who had previously strongly advocated an eight-months militia service, refused to accept an amendment to his army re-organization bill providing for this period of militia service and resigned when the amendment was passed over his protest. P. J. Troelstra, the Socialist leader, thereupon interpellated Minister-President Pierson, in effect asking whether the retired Minister of War had yielded to pressure from royal personages. Pierson replied "that it goes without saying, that whatever takes place between the Crown and the Ministers must remain secret and cannot be made the subject of any announcement."¹⁴ However, Troelstra wrote that years later (1915) Eland told him that he had refused to accept the eight-months military training amendment to his army bill out of loyalty to the royal family. He felt obligated to do as he did as a result of a conference with the Queen-Mother Emma and Prince Hendrik, the Queen's consort.¹⁵

The Boer War broke out not long after Queen Wilhelmina ascended the throne. She, like the entire Dutch nation, was very sympathetic with the Boers and, like the Netherlands Government and people, could find no effective means of expressing that sympathy. At the request of Lleyds, the Boer representative in Europe, she did write a personal letter to the German Emperor on behalf of the Boers.¹⁶

It has been frequently suggested that the influence of Queen Wilhelmina on foreign policy in the first World War was considerable, but little documentary evidence of this has yet come to light. In the early months of 1918, when relations with Germany were very tense because of the controversy over the transit trade over Holland to Belgium there seems to have been a serious conflict between Minister of War de Jonge and the Commander-in-Chief of the Army, General Snijders. According to rumor, Minister de Jonge wished to remove Snijders as Commander-in-Chief for failure and apparent unwillingness to prepare the Eastern as well as the Western defenses of the country. According to the rumor, the removal did not take place because the Queen refused to sign the order for removal,

¹³ See "Vorsten en Politiek" by G. van Overbeek, *De Socialistische Gids*, Vol. 11 (1936).

¹⁴ *Handelingen Tweede Kamer, 1900-1901*, pp. 1419 ff.

¹⁵ *Gedenkschriften* (Amsterdam, 1931), Vol. 2, pp. 189-190

¹⁶ W. J. Lleyds, *Tweede Verzameling* (correspondentie 1899-1900) Deel I, Tweede Band, p. 468. *Die Grosse Politik der Europäischen Kabinette*, Vol. 15, p. 535 n. The writer has been told that the Queen had a preference for professional diplomats as foreign ministers, dating from her experience in the Boer War. According to the informant she felt that de Beaufort had been too timid, that a diplomat would have found a way of doing something.

on the grounds that such action at the time would be bad for the morale of the country and might be interpreted abroad as a sign of weakness. Troelstra interpellated Minister-President Ruys de Beerenbrouck on the subject, who admitted that there had been some difficulties about General Snijders in the previous cabinet and that he was not removed because of the approaching elections. In the debates which followed, de Geer, later to become Minister-President, pointed out that "whenever a Minister of War proposes that a Commander-in-Chief be removed and the Crown advises against it or refuses to cooperate, then the minister who acquiesces is responsible, and he alone."¹⁷

The Ministry and Foreign Policy. There has been, at least since 1901, a greater collective responsibility of the Ministry for the conduct of foreign affairs than for internal policy and administration. All ministers, under the Rules of Order of the Council of Ministers, were required to submit to the Council bills and proposed general administrative orders, but the Minister of Foreign Affairs was, in addition, required to submit all matters with respect to treaties with foreign powers, "weighty" instructions to diplomatic representatives, and other important matters concerning foreign policy to the Council for deliberation and decision.

Procedure in the Chambers. Extensive debates on foreign policy occurred regularly each year in the Chambers at the time of the consideration of the Foreign Office budgets. The Government's budget, introduced at the beginning of the session,¹⁸ was first examined by the five sections into which the members of the Chambers were divided by lot. Each section appointed a reporter and the five reporters formed a committee which drafted a report embodying the views of the sections.¹⁹ If the report was of such a nature that a written reply was expected from the government it was called a "preliminary" report; otherwise a "report." Sometimes the reporters consulted with the Foreign Minister, either in writing or orally, before laying the report before the Chamber. The sittings of the sections were private. The Minister of Foreign Affairs replied to the criticisms of the sections in a "Memorandum of Reply." It was no

¹⁷ Troelstra, *op. cit.*, Vol. 4, pp. 178-179.

¹⁸ Prior to their introduction in the Chambers, however, all bills were sent to the Sovereign and the Council of State for advice and comment, but these comments were, of course, never published.

¹⁹ The members of the sections also had before them such Orange and White Books as the Foreign Office had prepared for submission to Parliament that year. The Orange Books contained reports and documents relating to Netherlands' foreign affairs over a specific period. The periodic Orange Books were discontinued in 1924 but were resumed again with the outbreak of the war in 1939. There were in addition the White Books which dealt with specific questions or conferences, such as the Washington Naval Disarmament Conference, the Belgian Treaty, etc. Since the beginning of the operation of the League of Nations a White Book on the work of the Assembly of the League was published each year, and also on the work of the Council during the years when the Netherlands was a member of that body.

easy task to draft the reply, for the reports of the committee of reporters were generally vague and superficial. Nor were they always a true index of the views of the members. The Minister of Foreign Affairs was free at any stage of the legislative process to introduce changes in the original bill. The next step was the debate in the Chamber. After approval by the Second Chamber the bill went through the same procedure in the First Chamber.

This system of committees of rotating membership for the examination of bills, including the budget, was frequently criticized. Struycken,²⁰ for example, insisted strongly that unless a system of standing committees was introduced, Parliament would degenerate into a body which spent its day in broad deliberations over all kinds of subjects without exercising any real influence and without accomplishing its legislative work as it should. The endless debates which filled the ever thicker volumes of the Proceedings were read by no one and exercised a steadily diminishing authority. Modern social and economic life had caused governmental activities to become so wide and varied in scope that it was impossible for Parliament to perform its function properly without introducing differentiation and discipline in its method of work. But the members of Parliament disliked the idea of standing committees. They feared that they might not be able to control standing committees, that they would become too powerful. Also, because both Chambers were small bodies, the members probably did not like to turn the major part of the work over to committees of specialists. And it must also be remembered that in a parliamentary system the actual drafting of bills is the work of the Departments and not of Parliament.

Resistance to the creation of standing committees finally had to make a partial surrender to the demands of a movement which swept the world, including neutral Holland with its small power politics, during the first World War. As a result of the outbreak of the World War criticism of diplomats and "secret diplomacy" became very strong, and the demand for the democratic control of foreign policy became irresistible. In 1917 the platforms of the Catholic, Anti-Revolutionary, Liberal, and Liberal Democratic parties all carried planks calling for greater control over foreign relations. It was felt that there must be control before the event. Responsibility after the event was not sufficient; there had to be a parliamentary control over the conduct of foreign policy. Van Leeuwen, a Socialist member of the Second Chamber, introduced a resolution in 1915 calling for the creation of a permanent committee on foreign

²⁰ *Het Bestuur der Buitenlandsche Betrekkingen* (Arnhem, 1918), pp. 290-91.

affairs.²¹ It was not until the tenth of May, 1917, that the resolution was adopted, by a vote of 38 to 31.²² The resolution described the function of the committee as "regular consultation with the Government with respect to matters of foreign policy."

The Government opposed the resolution. Prime Minister Cort van Linden declared that the committee would lead to division of responsibility, which was in violation of the Constitution.²³ Foreign Minister Loudon declared that it was impossible to give greater publicity than he had; that he would not tell such a committee anything he would not tell the Chambers; and that he would most certainly not give it any secret information.²⁴ Some members of Parliament feared that the committee might decrease rather than enlarge Parliament's control over foreign policy, that the Ministry would hide behind the committee, and the latter feeling itself extremely important in its function, might become even more secretive than the Ministry. These critics felt that the chief function of the committee would turn out to be the keeping of secrets and the prevention of debate.²⁵

The Chairman, or Speaker, and the Secretary of the Second Chamber were ex-officio members of the committee, and they served as chairman and secretary respectively. In addition, the committee was composed of six members, chosen at the beginning of each session by the Chairman of the Chamber. With occasional exceptions, the committee was composed of the leaders in the Chamber of the six largest parties. Much was expected of the committee, but in twenty years it failed to develop any great authority or to exercise any considerable influence on Dutch

²¹ The original motion had called for greater participation in the administration of foreign affairs.

²² *Handelingen Tweede Kamer*, 1916-17, p. 2523. The votes against the resolution came from the Anti-Revolutionary, Christian Historical, and Catholic members.

²³ *Handelingen Tweede Kamer*, 1916-17, p. 2503.

²⁴ *Ibid.*, p. 2051.

²⁵ In the course of the debate an interesting speech was made by de Savornin Lohman, the leader of the Christian Historical Party, in which the following points were stressed: both absolutist and democratic countries were at war; people can be swayed and will support their government; it was by no means certain that the people would judge more wisely, carefully and impartially than governments; with respect to nearly every treaty defended in the Chamber the Foreign Minister has had to protect himself against the reproach of having yielded too much to the foreign Power; governments through the press seek to influence the masses; if a committee were established and the committee knew everything but could not speak, it would be of little use to the Chamber; the committee which can not speak and the Chamber which does not know stand very weak against the Government; as for greater publicity in the conduct of foreign policy, this was a policy which could not well be begun by small states since they can not play with the cards on the table when the Great Powers play with the cards concealed; in the end it would mean that the Great Powers would tell the small Powers nothing, and thus make their position more dangerous; diplomacy was not the cause of the war; indeed, it had softened clashes and retarded the war; the cause of the war was the lack of moral concepts and laws based on them. *Ibid.*, pp. 2495-97.

foreign policy.²⁶ In several important matters, as for example the exchange of notes with the United States with respect to the exploitation of the Djambi oil fields and the departure of the German Crown Prince from the Netherlands, the Foreign Minister did not consult the committee. In its early history Foreign Minister van Karnebeek discussed confidential matters with the committee, but the committee members violated their obligation of secrecy. As a result he and subsequent ministers feared to tell the committee much. Furthermore, generally there was little to say. The Foreign Minister of a small power pursuing a cautious policy of isolation and neutrality does not often have exciting information to share or bold plans on which to confer. When it was suggested in the Preliminary Report of the First Chamber in the session of 1922-23 that the First Chamber should also create a Committee on Foreign Affairs and the Foreign Minister was asked for his views on the matter, the latter showed little enthusiasm and gave an evasive answer.²⁷ As in other parliamentary systems, the Chambers could also influence foreign policy by means of questions, interpellations, and investigations.

DISCONTENT WITH THE CONDUCT OF FOREIGN RELATIONS

Secrecy. Dissatisfaction with the lack of publicity in the conduct of foreign policy runs like a red thread through the parliamentary history of the Netherlands during the last century. In the early years the example of England was frequently called upon to support demands for greater publicity. In reply to demands for greater publicity and the use of England as an example the reply was invariably that Holland as a small power could not do what England did. As Prime Minister, the great Liberal Leader, Thorbecke, stated in 1852 in reply to the use of England as an example: ". . . this is no example; there Parliament has a share in the administration, and I am of the opinion that this assembly [the Second Chamber] can never be a cabinet for the handling of foreign affairs. England has a stomach which can stand much. In England things can be said which can not be said here."²⁸ Foreign Minister Cremers in the

²⁶ Troelstra, the Socialist Leader, who served on the committee until 1925, expressed his disappointment in his memoirs. He ascribes the responsibility for the failure of the committee to its members, "who carefully refrained from expressing their judgments and were afraid to accept any responsibility." *Op. cit.*, Vol. 4, pp. 297-298.

²⁷ *Handelingen Eerste Kamer*, 1922-23, p. 165 and p. 346. However, a standing committee on commercial policy was established by the Second Chamber in 1932, after the passage of the so called *Clearing Law*.

²⁸ Quoted by W. J. van Welderen baron Rengers, *Schets eener parlementaire geschiedenis van Nederland van 1849 tot 1891* (2nd ed., The Hague, 1905), Vol. 1, p. 123. While in general Thorbecke pleaded for more publicity he was very moderate in his views. He held that the interests of the State set a proper and rather sharp limit on publicity. See *Overzicht der Staatkundige Denkbeelden van Johan Rudolph Thorbecke (1798-1872)*, by W. Verkade (Arnhem, 1935).

session of 1864-65 likewise strongly objected to an appeal based on the example of England. England, he declared, enjoyed an insular position and was a great sea power, and as such, "has acquired the right to express and reveal its views frankly everywhere and at all times. . . . If we followed the example of England we would constantly be in trouble with all European countries."²⁹

Members of Parliament repeatedly complained that they first learned of the position taken by their Government in foreign politics from documents published by other Governments. In the session of 1898-99 Foreign Minister de Beaufort was again urged to publish "blue books." De Beaufort replied that he was not conscious that he had ever kept anything secret which could be made public without injury to the general interest and whereof the issuance would have been of any profit. The publication of "blue books" was not advisable for the Netherlands. "In the case of transactions with great powers," the Minister declared, "we shall not lightly proceed to publicity before the great power has done so, and when it has done so, publication from our side is really no longer necessary, as it would involve a mere duplication of documents already published."³⁰ In the following session de Beaufort further justified his policy by stating that before the Department of Foreign Affairs could publish anything it had to consult the foreign governments involved, "because especially for a power of the second rank," he said, "I deem it important not to make a decision with respect to the publication of documents until after consultation with the power concerned."³¹

Foreign Minister de Marees van Swinderen once complained in Parliament that the members did not appreciate the work done by the Department and the diplomatic representatives abroad. To this a member of the Second Chamber replied that the members could not very well appreciate what they knew nothing about. Year after year members of Parliament had asked for information on the work of the Foreign Office. For many years no Orange Books were published; when they were, they contained nothing. To this reproach the Minister replied that there was not always enough suitable material to publish an Orange Book every year.³² However, van Swinderen the next year launched upon a policy of greater publicity and of attempting to arrive at a more confidential basis with the Cham-

²⁹ Quoted by Asser, *op. cit.*, p. 14. In the session of 1898-99 members of the First Chamber pressed for the publication of the reply of their Government to the Russian disarmament proposal, again pointing to the British example. Foreign Minister de Beaufort refused to comply with the demand. *Handelingen Eerste Kamer*, 1898-99, p. 157.

³⁰ *Handelingen Eerste Kamer*, 1897-98, pp. 160, 129, 180.

³¹ *Handelingen Tweede Kamer*, 1899-1900, p. 576.

³² *Ibid.*, 1909-10, pp. 663-664, 692.

bers. "A large area of my activities," he declared, "will have to be withheld from the direct control of Parliament, but just because of that I wish to win your confidence by making it my task to extend the open field as much as possible, at the expense of the closed workshop, and thus make you see that I have a claim on your confidence."³⁴ He began to issue annual Orange Books, he discussed their contents with the Chambers, as also the difficulties of concrete foreign policies. Only a small group was interested, however. The contents of the Orange Books again declined, the discussion fell to lower levels, and soon the relations between Minister and Parliament were back on the old basis.³⁴

The demand for greater publicity and more democratic control over the conduct of foreign relations became insistent during World War I. For the first time in many decades the Netherlands international position was difficult and it could no longer get along with a passive foreign policy. After every diplomatic crisis there arose a vociferous demand in Parliament that the Government inform the States General on the course of events and take it into its confidence. After the requisitioning of the Dutch ships by Great Britain and the Allies in the early months of 1918 many members of the Second Chamber were especially bitter. Troelstra reproached Foreign Minister Loudon and the Government for making important decisions without seeking contact with Parliament. On March 19 Troelstra expressed the feeling of many members when he declared, "I do not hesitate to say that it cannot go this way any longer. A Parliament which respects itself, a people which does not want to be governed by a few autocrats, the moment its vital interests are touched, can no longer tolerate this."³⁵

With the creation of the Committee for Foreign Affairs and a change of spirit of international relations, a change toward greater parliamentary participation in the conduct of foreign relations was expected after the World War. Colijn, speaking in the First Chamber on March 6, 1919, interpreted the practically universal desire and expectation, when he declared, "Until now it has not been the custom in the States General to participate in an active manner in discussions of foreign policy. Whether that has been good or bad I do not at this moment care to discuss. Accomplished facts cannot be changed. But this I believe I may say, that in the future we members of both branches of the representative body must regard ourselves as under obligation to take a more active part in the conduct

³⁴ *Ibid.*, 1909-10, p. 545.

³⁵ Struycken, *op. cit.*, pp. 59, 60.

³⁶ *Handelingen Tweede Kamer*, 1917-18, p. 2048. See pages 2048 to 2056 for the expression of similar views by others.

of this phase of our policy.”³⁶ But this expectation was not realized. Van Karnebeek, Foreign Minister for nine years following the World War, quickly acquired and thereafter sustained a reputation of having little sympathy for the movement for democratic control of foreign policy. Troelstra had asked the Foreign Minister about the composition of the Dutch delegation to the first League of Nations Assembly meeting, and what the attitude of the government was towards the problems coming before the meeting. He complained that the contents of the polite answer he had received really came down to this: this is none of Parliament’s business.³⁷ Van Karnebeek also had difficulties with the press. With respect to this, Dr. Kuyper advised him either to tell all or keep completely silent, and not to open an affair slightly and then say that the rest must remain secret. To this van Karnebeek replied that he was eager to appease the press, since it meant increased strength for his policy in difficult times. He could not subscribe to Kuyper’s views that the Foreign Minister should either tell all or keep all secret. About certain matters all could not be told, yet there was need of allaying false rumors.³⁸

The Committee of Foreign Affairs was a distinct disappointment. It was even suggested that the Committee represented a retrogression rather than an advance, since the members of the Second Chamber now learned less of foreign policy than before. Ministerial contact with the Committee was not contact with the Chamber, and members of the Chamber were not satisfied when the Minister spoke only to the Committee. If the Committee members maintained the complete secrecy to which they were pledged, the members of the Chamber were little better off than before; when the Committee members began to impart information of what happened in Committee sessions the Foreign Minister ceased confiding in the Committee.³⁹

Appeals from members of Parliament for a more liberal rule met no response.⁴⁰ The same reserve was practiced with respect to access to the Foreign Office Archives. For all documents the archives are open only up to 1850; for certain types of documents, to 1870, and for a limited number of other papers to a little later date, at the discretion of Foreign Office officials.⁴¹

Submission of Treaties to Parliament. There was frequent dissatisfaction in Parliament over the tardiness with

³⁶ *Handelingen Eerste Kamer*, 1819-19, p. 188.

³⁷ *Handelingen Tweede Kamer*, 1920-21, p. 1262.

³⁸ *Handelingen Eerste Kamer*, 1919-20, p. 308.

³⁹ *Handelingen Tweede Kamer*, 1919-20, pp. 431-37.

⁴⁰ *Ibid.*, 1915-16, p. 58.

⁴¹ It has been suggested to the writer that the reason for this policy is to be found in the fact that there are so many unsettled questions pending between the Netherlands and Belgium.

which bills for the approval of treaties were introduced. It was contended that Parliament seldom was given enough time to examine and discuss the treaties. In meeting this criticism on the occasion of the submission of the treaties resulting from the Second Peace Conference, Minister de Marees van Swinderen explained that the delay was due to the necessity of obtaining from each member of the cabinet his views on whether each of the treaties had to be submitted to Parliament, in accordance with the provisions of the Constitution. The wording of the Constitution was very vague and differences of opinion were natural. That nearly all of the treaties were submitted did not mean that all the ministers held the same views, but he (van Swinderen) preferred, where there was any doubt, to lay the treaties before Parliament for approval. On a former occasion—after the First Hague Peace Conference—the mistake had been made of not submitting enough to the Chambers. He preferred to submit too much rather than too little.⁴³

Foreign Minister van Karnebeek seems to have made a broad promise to Parliament of submitting to it all agreements with foreign states, whether in treaty form or not, and then to have gone back on his promise. On April 26, 1923, he declared to the First Chamber that it was his intention to submit to Parliament for its approval all agreements, even those in the form of an exchange of notes.⁴⁴ When confronted with this statement a year later van Karnebeek stated that he had only meant to say that in the future more would be submitted to the States General than before.⁴⁴ The preliminary report of the Second Chamber for that year named three instances of violations of his promise during the year, but the Minister sought to justify his position by contending that these cases involved either provisional agreements or extensions of old treaties. Members of Parliament saw in this only an effort on the part of the Minister to evade not only his own promises, but also the requirements of the Constitution.⁴⁵

During the last few years there seems to have been a tendency to evade the constitutional requirements with respect to submission of treaties for parliamentary approval. For example, the Netherlands government adhered provisionally to the International Sugar Convention of 1937 and the Oslo Convention for Economic Cooperation of the same year, without the approval of Parliament. This was done in order that the conventions might become operative at once, rather than wait months upon parliamentary approval. This may have been highly desirable, but it was nevertheless a violation of the Con-

⁴³ *Handelingen Tweede Kamer*, 1908-09, pp. 2360-61.

⁴⁴ *Handelingen Eerste Kamer*, 1922-23, p. 687.

⁴⁵ *Ibid.*, 1923-24, p. 621.

⁴⁶ *Ibid.*, 1923-24, pp. 518-519.

stitution. Even more flagrant was the adherence to the regulations governing the conduct of submarines with respect to merchant ships. These regulations formed Part IV of the Treaty for the Limitation and Reduction of Naval Armament, signed at London on April 22, 1930, by Great Britain, France, Italy, and Japan. The terms of the Treaty provided that it would remain in force only until December 31, 1936, with the exception of Part IV, which contained the regulations on submarine warfare and concluded with a clause stating, "The High Contracting Parties invite all other Powers to express their assent to the above rules." In response to an invitation from Great Britain the Netherlands Government on September 30, 1937, declared its adhesion to these rules "expressly and for an unlimited period." While technically the Government had declared its adhesion only to the rule and not to the Treaty, which had expired, in fact it was a general convention to which the Government was adhering, and the Constitution explicitly provides that "adherence to and renunciation of conventions takes place by the King only by the authority of law."⁴⁶ However, Foreign Minister Patijn thought that the constitutional requirements were satisfied by a mere notification of the adherence to the States General.⁴⁷

SMALL POWER CAUTION

The peculiar nature of foreign policy and the difficulties which beset a small power in the conduct of its foreign relations were frequently the subject of discussions in Parliament. Former Foreign Minister de Beaufort once declared in the Second Chamber that it was absolutely necessary to give greater confidence to the Foreign Minister than to the other ministers. "I have never been an advocate," he stated, "of requiring Ministers of Foreign Affairs to give extensive information on affairs that are still pending, and I believe men have always done well in observing great soberness in this respect."⁴⁸ It was frequently pointed out that the work of other departments almost exclusively affected the citizens of the home country whereas the activities of the Department of Foreign Affairs affected other governments and their citizens or subjects. Therefore the latter was under the necessity of moving with greater caution.

When Professor Anema of the Free University of Amsterdam declared in the First Chamber that Minister van Karnebeek had a reputation for having little sympathy with the move-

⁴⁶ Article 60, last clause.

⁴⁷ See articles "Parlement, suiker conventie en Grondwet" and "Parlement en internationale rechtsregelen" in *De Nieuwe Rotterdamse Courant* of June 9 and October 15, 1937, respectively.

⁴⁸ *Handelingen Tweede Kamer*, 1907-8, p. 498.

ment for the democratic control of foreign policy and for more open diplomacy and declared that he hoped the Minister would remove that stigma, the Foreign Minister explained and justified his position at some length. Those who determine policy of large powers are much less restricted than those who are responsible for the policy of small countries, argued van Karnebeek. It is so much easier for them to correct mistakes in foreign policy, to retract a spoken word which is belied by events. There are so many factors of uncertainty in foreign policy. It is impossible to be certain that a statement made during the day will not be proved false by night. Because of these circumstances, every foreign minister practices a certain reserve. In spite of the information one may have, which is always imperfect, in spite of the best will, one cannot be sure whether affairs will turn out as one expected or planned. One has little knowledge of some of the many currents and factors which determine a given situation. Therefore, one must be very careful in his utterances. "And just because the conduct of the foreign policy of small states is so much more delicate than for those who have at their disposal great instruments of power, a certain reserve and caution is commanded."⁴⁹

In direct contrast with the position of van Karnebeek was the view expressed in the First Chamber a decade earlier by van Heeckeren van Kell, at the time a member of the Dutch diplomatic corps. He contended that in general the members of the States General and of the Government were much too timid in the discussion of diplomatic questions, that the large powers would treat the Netherlands with more respect and that its international position would be much improved if the Dutch should as a fixed policy discuss all diplomatic questions openly and never through fear refrain from giving publicity to so-called delicate questions. "The power of a small country like ours lies, insofar as its diplomatic relations are concerned," he declared, "not in the maintenance of secrecy, but in the greatest possible publicity; the greater the publicity, the fewer the delicate questions."⁵⁰

In view of the timidity which was frankly admitted by Foreign Minister van Karnebeek in the above statement, an incident related by the leader of the Socialist Party, Mr. Troelstra, becomes rather significant. According to his own story,⁵¹ Troelstra wished to discuss the occupation of the Ruhr in the Second Chamber and consulted van Karnebeek about it. Van Karnebeek admitted that there were earnest reasons for holding the interpellation and Troelstra promised great caution.

⁴⁹ May 17, 1922, *Handelingen Eerste Kamer*, 1921-22, p. 1020.

⁵⁰ *Handelingen Eerste Kamer*, 1909-10, p. 384.

⁵¹ Troelstra, *op. cit.*, Vol. 4, pp. 299-300.

But van Karnebeek had serious objections to an interpellation on the subject, since he feared it would disturb relations with France. When Troelstra attempted an interpellation the Chairman of the Second Chamber and the majority refused to grant him the privilege of holding one. This timidity sometimes went far. When de Savornin Lohman in the Second Chamber on December 17, 1914, advocated that the small powers organize a League based upon the observance of treaties and placing law above force and spoke of those large powers who would refuse to join such a League as "those who rightly may be called barbarians," both the Chairman of the Chamber and Foreign Minister Loudon at once sharply protested the expression.⁶³

A somewhat contradictory explanation of the peculiar character of the conduct of Dutch foreign relations was given by Struycken, who later was often consulted by the Foreign Minister. According to Struycken the Dutch diplomatic circle formed a strongly closed and isolated *milieu*; foreign policy was the only governmental function which had been reserved for a specific social group, namely the aristocracy. Since this function gave this group its social standing, it carefully guarded against intermingling by others. It was practically impossible for others to break into the diplomatic service and win a place of equality with the aristocrats. The stringent exclusiveness of the Dutch court circle had also aided this monopoly of the conduct of foreign policy by a class. So it was that the administration of foreign policy remained a foreign or unassimilated element in the Dutch democratic community. Everything was systematically kept secret from the people and Parliament, which showed little knowledge of or interest in foreign policy and accepted the situation with resignation. Out of fear that something, which might injure policy, might become public, everything was kept secret. Moreover, as representatives of a small power, determined upon following a policy of isolation and neutrality, the role of the Dutch diplomats was a modest one; and those who have little of significance to impart, in order to clothe themselves with an air of importance, conceal even the little they do know.⁶⁴ A few years later Struycken expressed somewhat different sentiments. Members of Parliament, he now stated, because of ignorance of world politics and international affairs, complain that the Minister of Foreign Affairs is withholding information. The Foreign Office had sent to the States General systematic reports of the work of the Dutch delegations to the League of Nations, but the States General accepted them without discussion. "Members of the States General must acquire a better acquaintance with foreign powers

⁶³ *Handelingen Tweede Kamer, 1914-15, pp. 383-385.*

⁶⁴ *Het bestuur der buitenlandsche betrekkingen, pp. 75-79.*

and a greater interest in them; if they lack the time or the desire a democratization is impossible."⁵⁴

Members of the States General were not as ignorant of world politics and foreign policy as the above picture would indicate. The situation of the Netherlands in the heart of Western Europe and the large colonial and commercial interests of the Netherlands brought Netherlanders in contact with peoples of the whole world, while their marvelous facility in speaking at least two or three foreign languages gave them access to a wide variety of outside information. A better explanation was given by Colijn in a speech in the First Chamber on March 18, 1927. He ascribed the failure of members of Parliament to develop a keen interest in foreign policy to the fact that for nearly a century, with the exception of the Luxembourg question and a few occasions in the first World War, the Dutch people had not been called upon actually to carry on a foreign policy. Both people and government had become thoroughly passive in their attitude towards the conduct of foreign policy.

⁵⁴ *De Hoofdtrekken van Nederland's buitenlandse beleid* (Arnhem, 1923), p. 11.

CHAPTER VIII

PROVINCIAL AND MUNICIPAL GOVERNMENT

Under the Republic the center of power was in the provinces. The States General, aside from a long-decadent Council of State, was the only national organ, and the jealous provinces kept it under strict control. The inherent weakness of this government was at times overcome by the leadership of the province of Holland, where the bulk of country's economic and naval strength lay, and by the House of Orange. In times of national peril these two cooperated, but in times of security from external danger the two were generally in bitter rivalry.

There had developed over the course of the years a widespread desire for a stronger national government; the brief experience with the highly centralized administrative system of the Napoleonic period had strengthened the determination not to return to the old feeble system. What was adopted in the 1815 Constitution was a system midway between the weak federalism of the Republic and the centralized administrative bureaucracy of Napoleon. The provinces were to enjoy autonomy in their internal administration, but within limits. To make certain that the provincial governments remained within these limits, their legislative measures were not to be valid until approved by the Crown.

The development in practice, however, was quite different from what was envisaged by the Constitution. From the beginning the crown played an active rather than merely a passive role in the provincial government. One reason for this development was the fact that the provincial legislative body, called the Provincial States, had practically no sources of revenue under its own control, but was dependent upon the central government for its finances. Thus instead of the provinces retaining too great power, as was feared in 1815, the provinces lost even the autonomy which the Constitution had reserved for them.

In the Constitutional revision of 1848 provincial autonomy was put on a sounder basis. The principles of autonomy were stated with greater precision; the power of prescribing the provincial administrative organization was taken away from the Crown and conferred upon the States General; and the provinces were granted their own sources of revenue to meet their expenditures. The Crown, however retained the power of granting or withholding approval of provincial ordinances.

These general constitutional provisions with respect to provincial government have remained practically the same to this day.

The Constitution (Art. 136) grants the provincial council the power to regulate and to administer the affairs of the province without defining them. The provincial ordinances require the approval of the Crown, but the latter may withhold approval only after having consulted the Council of State. Furthermore, the order of disapproval must be supported by reasons for the decision. There has been considerable disagreement as to the actual function of the Crown with respect to this power of approval. There are those who hold that the Crown may disapprove only those provincial measures which are in conflict with the law or the national interest. There are others who hold that the Crown may apply the test of whether the measure is in the interest of the province as well. In the latter case the Crown virtually becomes a part of the legislative machinery of the province. The better view seems to be that the Crown may withhold approval only if the provincial measure is in conflict with the national interest.¹

The Constitution (Art. 138) specifically requires the approval of the Crown for every measure of the provincial council in instituting, modifying or abolishing a provincial tax. The annual provincial budget must likewise have the approval of the Crown; the budget becomes law only after approval by parliament.

The provincial governments also serve as the enforcement agencies of the national government. Whenever an act of parliament or a royal decree (general measure of administration) require it the provincial councils must extend their cooperation in the enforcement of these measures (Art. 137). A similar provision obtains with respect to the governments of the communes or municipalities (Art. 146). The practice of leaving the enforcement of national laws and decrees to local officials the Dutch call self-administration. They cherish this right as much as they do autonomy, and the two are generally linked together.

Out of fear that there might be a revival of the independence of the provinces which prevailed under the Republic and was the cause of so many evils, the power of the provincial governments was hedged with these numerous controls. That fear completely disappeared many decades ago, and public opinion before the German invasion was moving in the direction of demanding greater autonomy for the provinces. The tasks of the provincial governments are now practically limited to polder matters, roads and bridges, vocational education and care of the insane.

¹ See Kranenburg, II, 175-176.

PROVINCIAL COUNCILS

The legislative body of the province is the Provincial States.¹ In the days of the Republic it was composed of representatives of estates and cities, and though this feature was dropped in 1815, the name States was retained. Members of the States are chosen for terms of four years by residents of the province who are Netherlands citizens. The age qualification for suffrage is left to parliament to determine by law, but the Constitution stipulates that the age may not be less than 23 years. The members are elected on the basis of proportional representation. Qualifications for membership are as follows: Netherlands citizenship, residence within the province, and 25 years of age. The Constitution (Art. 183) stipulates that members of the councils must vote without instructions from, or consultation with, the electors.

The number of members of each provincial council is determined by act of parliament. It varies with the population of the provinces; South Holland having the largest council (82 members) and Drenthe the smallest (35 members).²

Members of the Provincial States, also serve as the electoral college in the election of the members of the First Chamber of the States General. As might be expected this special function has had a very great influence on the composition of the States. In the election of the members of the Provincial States national party issues and maneuvering receive greater consideration than provincial interests. This is generally regarded as unfortunate. Not infrequently members of the States are also members of the States General.

DEPUTIZED STATES

The Provincial States is not merely a legislative or regulating body; the Constitution also invests it with administrative functions. The latter function it performs chiefly through an executive committee, which is called the Deputized States. "The States appoint from among its members a board of Dep-

² The population of the Netherlands by provinces according to the 1930 census was as follows:

Drenthe	222,432
Gelderland	829,293
Groningen	392,436
Lumburg	550,840
North Brabant	896,386
North Holland	1,509,587
Overijssel	520,788
South Holland	1,957,578
Utrecht	406,960
Vriesland	399,659
Zeeland	247,606
	<hr/>
	7,935,565

utilized States," so runs Article 141 of the Constitution, "to which is assigned according to rules to be determined by law, the daily guidance and administration of affairs, regardless of whether or not the States are in session." The Provincial Law, which supplements the broad outlines of the above Constitutional provision, provides that the Deputized States shall consist of six members, except in Drenthe, where the requirement is four members, elected for a term of four years, at the opening of each new States. Its members receive a salary, one-half a fixed amount and the other half distributed among the members every three months in proportion to the number of sessions attended by each. In addition to its purely executive functions the Deputized States is also charged with the settlement of administrative disputes arising within the province. It also supervises the governments of the *communes*.

The Deputized States have a dual task and a dual responsibility. They are the servants of the provincial governments primarily, but they are also the agents of the national government. For their acts in the former capacity they are responsible to the Provincial States, for their activities in the latter they are answerable to the Crown. The Crown likewise has power to suspend or annul measures of the Provincial States or if its Deputized States which are in conflict with the law or the general interest.³

COMMISSIONER OF THE CROWN

At the head of the government of the province stands the Crown Commissioner. He is appointed by the Crown and is charged with the execution of the orders of the central government and the supervision of the work of the States.⁴ He is regarded by the Constitution as an officer of the national government, as is evident from the fact that it makes his salary and the cost of his official residence a charge upon that government.⁵ Yet the Constitution not only makes him chairman both of the States and of the Deputized States, but also gives him a voice in the first and a vote as well in the last named body.⁶ In pursuance of this trend in the Constitution itself, the Provincial Law charges the Commissioner with the execution of all the decisions and judgments of the States and the Deputized States. The Crown Commissioner thus becomes in fact an official of both the central and the provincial government. As a result of his dual position the commissioner frequently finds himself caught in an unpleasant position between the two governments.

³ Art 142.

⁴ Art. 143 cl. 1.

⁵ *Ibid.*

⁶ Art. 143, cl. 2.

MUNICIPAL GOVERNMENT

The eleven provinces of the Kingdom of the Netherlands are divided into communes,⁷ or municipalities. While they constitute subordinate units of the provinces, their governments nevertheless in many respects enjoy greater autonomy than do the provincial governments. The explanation of this development is to be found in the fact already noted, namely, the profound distrust in which the provinces were held in the later days of the Republic and the fear of the reassertion of those rights which had so weakened the government before the Napoleonic period.

The States General has the power to prescribe the composition, structure and authority of the municipal governments, in conformity, however, with the provisions of the Constitution on this subject. "There stands at the head of municipality a council," so states the Constitution,⁸ elected for a specific number of years by residents of the municipality, Netherlands nationals, who may not be less than 23 years of age. The election takes place on the basis of proportional representation. The chairman of the Council, better known as the burgomaster, is appointed by the Crown, either from within or outside of the membership of the Council.

"To the Council is left," as the Constitution has it, "the regulation and the administration of the affairs of the municipality;"⁹ it may make such ordinances as it deems necessary in the interest of the municipality.¹⁰ But whenever the regulation and administration of the affairs of a municipality are grossly mismanaged, the States General may by law depart from the above provisions and prescribe how the municipal affairs shall be administered.¹¹

The Crown is authorized, in a manner prescribed by the States General, to suspend and to annul measures of municipal governments which are in conflict with law or the general interest.¹² It will be noted that in this respect the municipal governments have greater autonomy than the provincial administrations, as the ordinances of the Provincial States need the approval of the Crown before they become effective, while the measures of the former can only be suspended or annulled after they have been enacted.

The municipal governments are subject to considerable financial control. The preparation of the budget and the approval of estimates is regulated by law.¹³ The measures of the

⁷ The Dutch word is Gemeente.

⁸ Article 145.

⁹ Article 146, cl. 1.

¹⁰ *Ibid.*, cl. 2.

¹¹ *Ibid.*, cl. 4.

¹² Article 147.

¹³ Article 148, cl. 2.

municipal governments respecting the imposition, modification or abolition of a local tax requires the approval of the Crown,¹⁴ and the States General determines the general rules regarding local taxes.¹⁵ These taxes may not hamper the transit, the exportation or the importation of goods from other municipalities.¹⁶ The municipal governments are also subject to some financial restriction from the provincial Governments. Measures of the former with respect to such disposition over municipal property or such legal civil transactions as may be designated by the States General, as also budgets are subject to the approval of Deputized States of the Provincial Councils.¹⁷

The Constitution makes possible common or joint action between two or more municipalities. In a manner regulated by law, that is, by the States General, two or more municipalities may join in promoting their affairs or interest in establishing institutions or works.¹⁸ This is done by the creation of a commission or the formation of a public corporation.

MUNICIPAL COUNCIL

The composition and structure of the municipal governments is determined by the Municipal Law. The size of the councils varies from seven in municipalities with a population of less than 3,000 to 45 in municipalities of over 200,000. One leading Dutch authority holds that the councils in the populous cities are much too large for the nature of their functions.¹⁹ Though both the Constitution and the Municipal Law look upon the Council as both a legislative and an executive organ, in the larger municipalities the executive function has been lost, and the councils exercise only a controlling power. Members are elected along national party lines, and the councils function much like a parliament.

While the Constitution is silent about an executive committee like the Deputized States of the Provincial Council, the Municipal Law requires a similar body for the municipal governments. The Municipal Law makes the Burgomaster and the Aldermen the executive committee of the municipal council. The Aldermen are elected by the Council from among its own members, the number varying with the population of the municipalities. In municipalities of 20,000 population or less the number of aldermen is set at two, in those with a population of more than 20,000 but less than 100,000, the number is three or four, as the Council may determine, in municipalities of over

¹⁴ Article 149, cl. 1.

¹⁵ *Ibid.*, cl. 2.

¹⁶ *Ibid.*, cl. 3.

¹⁷ Article 148, cl. 1.

¹⁸ Article 151.

¹⁹ *Kranenburg, op. cit.*, II, 264.

100,000 residents, four, five or six, again as the Council may determine. They are elected for a term of four years, but are eligible to immediate reelection. Aldermen receive a salary fixed by the Deputized States, after having consulted the Municipal council, and with the approval of the Crown.

According to the Municipal Law, the function of the Aldermen is to assist the burgomaster in the execution of the various tasks of municipal administration. Naturally, their function in the large cities differs considerably from what it is in the rural municipalities. In the former they have extensive and important duties and they enjoy much independence from the burgomaster. In the larger cities they function individually very much like the commissioners in the American Commission form of city government. The Municipal Law states that Burgomaster and Aldermen are responsible to the Council for the daily administration, and they are under obligation to extend to the Council such information as it may demand. Whether the Burgomaster and Aldermen are individually or collectively responsible, or both, is not clear. In the great cities, where each alderman has a highly specialized function and each works in considerable independence of the others, the tendency is toward individual responsibility.

THE BURGOMASTER

While there is some doubt as to whether the Crown Commissioner is a provincial official, there is no doubt about the Burgomaster being predominantly a municipal official. Though he is appointed by the Crown, and subject to removal by it, he is clearly a local official. He is the presiding officer of the Council and also of the Board of Burgomaster and Aldermen. In the latter he has the deciding vote in case of a tie. Nevertheless the Burgomaster has important functions to perform with respect to the national government. He must guard against municipal violations of the national laws and of encroachments upon the national interests. He may not permit any act, which he regards as in conflict with the national law or interest, to be executed. In this case he must inform the body responsible for the measure, and the Deputized States of his opinion within 24 hours. The latter immediately informs the Crown. If the Crown does not suspend or annul the measure within 30 days, the Burgomaster must carry out the decision. Moreover, the Burgomaster is the agent of the national government in the execution of its laws in the municipality. Thus, though a local official, the burgomaster spends much of his time on work for the national government.

The burgomaster is appointed for a term of six years, but he may be removed at any time by the Crown. His salary is fixed by the Deputized States in consultation with the Municipal Council, subject to the approval of the Crown. In appointing burgomasters the Crown generally makes its selections from among the members of the party most strongly represented in the Municipal Council, but this practice is not always followed.

The burgomastership has become a career. After serving as municipal secretary for a number of years, young men solicit a position as burgomaster of a small municipality. As they gain experience they seek appointment to larger municipalities. As a result few cities have burgomasters appointed from their own residents. This has caused considerable dissatisfaction with the system and voices have arisen demanding popular election of the burgomasters. However, the work of the burgomasters has become so highly specialized that it is doubtful whether candidates with the necessary qualifications would be obtained by popular election. So long as the present system of local autonomy with a high degree of administrative centralization is retained the present practice of choosing burgomasters will not undergo much change. Experience likewise seems to indicate that most burgomasters regard themselves far more as head of the municipal administration than as an official of the central government.

CHAPTER IX

TRENDS IN GOVERNMENT AND POLITICS SINCE LIBERATION*

During the period of postwar reconstruction in the Netherlands democratic institutions have been revived and politics has been revitalized. Centuries of heroic struggle for independence, internal unity, and constitutional rule had, indeed, precluded any real or permanent success for the Nazi occupation of 1940. The democratic tradition in the Netherlands was too firmly embedded, after the historic Spanish and French interventions, to succumb meekly to a German totalitarianism of the twentieth century. As has been noted, this tradition, of liberal, constitutional monarchy, had been progressively defined and elaborated by the constitutional revisions of the nineteenth and early twentieth centuries. Since liberation in May, 1945, reconstruction has been accomplished within the outlines of the prewar constitutional revision of 1938.

The Netherlands Government-in-Exile maintained two major objectives during the war: full collaboration with the United Nations in the prosecution of the war, and careful planning for reconstruction after the war, both in Europe and in the empire. Since the day of its return this latter objective has been implemented vigorously, and great progressive strides have been made toward complete recovery. The government has turned an attentive ear to the new intellectual and social forces organized during the war by the underground. And as the crisis of reconstruction has been met, the return to prewar conditions of government has been accompanied by the emergence of new patterns of political control. Today the essential vitality of the liberal, if unique, political institutions in the postwar Netherlands cannot be disputed.

Early in 1945 the northern provinces of The Netherlands were freed from the last vestiges of German control, and a Government returning from exile addressed itself to the complex task of reconstruction. With the formal German surrender effective May 5, 1945, *de facto* authority, civilian and military, over all of The Netherlands, passed to the Supreme Allied Commander. The conditions of the transition in control had been described by an agreement among the governments of The United States, Great Britain, and The Netherlands in May,

* This chapter, with some alterations, incorporates material originally presented in James K. Pollock and Others, *Change and Crisis in European Government*, New York, Rinehart & Co., 1947, Chapter IX. Used by permission.

1944, and had been proclaimed by Queen Wilhelmina and General Eisenhower on October 9, 1944, for those areas progressively liberated.¹ During 1944 a Military Administration and a Civil Affairs Administration had been created by the London Government. Concomitantly after the day of invasion, both of these organizations were granted a greater measure of control until royal decree abolished the Special State of Siege on September 7, 1945.² The total liquidation of the Civil Affairs Administration was not accomplished until much later, the regular departments of the government only slowly absorbing its functions.

Late in May, 1945, the fugitive Cabinet met again on Dutch soil, followed by the return of the Queen to The Hague almost two months later. But the restitution of normal constitutional processes did not become a technical actuality until the Parliamentary elections of May 17, 1946, the Provincial elections of May 29, and the municipal elections of July 26. The new Catholic-Labor coalition was announced on July 1, 1946.

THE NAZI INTERLUDE

The organs and forms of democratic government were radically altered by the German invasion which commenced May 10, 1940. Hitler's initial enabling decree of May 18 appointed Dr. Seyss-Inquart as Reich-Commissioner, authorized him "to promulgate laws," and delimited the jurisdiction of civil and military administrators. Significantly, he decreed further that "the law, heretofore in force, shall remain in effect insofar as compatible with the purposes of the occupation."³ Thus was established the presumably legal basis of the entire German occupational policy. Deriving his mandate from this decree, and quoting it freely, the Reich-Commissioner issued a series of orders beginning with that of May 25, assuming "supreme governmental authority within the civil domain." Due to a spirit

¹ The agreement provided that "as soon as the military situation permits The Netherlands government shall resume their full constitutional responsibility for civil administration." For the agreement see *United Nations Review*, Special Supplement No. 4, Oct. 31, 1944, pp. 21-22. A preliminary explanation of the agreement is contained in *Ibid.*, Special Supplement No. 5, April 15, 1945, p. 18. The proclamations referred to are conveniently recorded in *Kniekerbocker Weekly*, Sept. 25, 1944, p. 3, Oct. 2, p. 12, and Oct. 9, p. 12.

² Article 195 of the 1938 Constitutional Revision provided for an ordinary state of siege. This was considered inadequate basis for the declaration of the special state of siege required by the exceptional circumstances in 1944. See the announcement of the Queen to this effect Apr. 24, 1943, in *Netherlands News*, X, September, 1944, 200. Also, Premier Gerbrandy's speeches of Sept. 21 and Dec. 8, 1943, *The United Nations Review*, Spec. Suppl. No. 3, Apr. 30, 1944, p. 14, and pp. 16-17.

³ All decrees were printed in the official journal, "Verordeningenblad voor het bezette Nederlandsche gebied." See Raphael Lemkin, *Axis Rule in Occupied Europe*, Washington: Carnegie Endowment for International Peace, Division of International Law, 1944, pp. 446-450 for this and also for a compilation of other selected decrees of the Reich-Commissioner.

of charity prevailing for Netherlanders as "akin in blood," special administrative treatment was planned. The original boundaries were to be kept inviolate. Indeed, a press release on the day of the invasion Foreign Minister von Ribbentrop announced that "Germany does not intend . . . to attack the integrity of . . . the kingdom of The Netherlands . . . either now or in the future."⁴

From the outset, however, despite a bewildering mildness in their public pronouncements, German authorities pursued a thorough-going reorganization of Dutch government. The peculiar, semi-autonomous position granted the police produced the net result that control was shared by a triumvirate consisting of Seyss-Inquart, civil administrator, Christiansen, military commander, and Rauter, head of the occupation police. Further, the Dutch Secretaries-General were integrated by the Reich-Commissioner into a newly-constituted subcabinet, completely responsible to the Office of the Reich-Commissioner. The central administration coordinated through this Office included four Nazi Commissioners-General. This consolidation and centralization actually concentrated authority in the hands of Seyss-Inquart.⁵ Anton Mussert's pseudo-authoritative "Cabinet," finally created in December, 1942, belatedly recognized the Dutch Nazis, but was so ineffectual for whatever purpose created, administrative or psychological, that it was abolished in July, 1944.⁶

As the Dutch refused to collaborate and as the resistance movement perfected its technique the occupation authorities resorted to more vigorous and violent procedures. The nadir of Nazi fortunes and the apogee of Nazi violence was reached with the nation-wide Railway Strike of September 17, 1944.⁷ In the meantime, the two chambers of the States General had been suspended on June 21, 1940, the Municipal and Provincial Councils by August, 1941, and already on July 4, 1941, the parliamentary parties had been dissolved.⁸ Certain functions of the Council of State, had been suspended in June, 1940, and new duties conferred upon it.⁹ By August, 1941, therefore,

⁴ *The New York Times*, May 11, 1940, p. 51.

⁵ For a thorough picture of Nazi administration in the Netherlands see *Army Service Forces Manual M357-2A, Civil Affairs Handbook*, "The Netherlands," 30 May, 1944 (prepared for the Military Government Division, Office of the Provost Marshal General, by the Research and Analysis Branch, Office of Strategic Services).

⁶ *Netherlands News*, V, 83, 231; X, 91. Also, *Army Service Forces Manual M357-2A*, p. 17.

⁷ An authoritative review of the significance and nature of the strike is presented in *Netherlands News*, XIII, 78-79.

⁸ Lemkin, *op. cit.*, pp. 203, 446, 453, 459, 461.

⁹ Scrupulous deference was paid by the Germans to specific constitutional provisions in the suspension of the functions of the Council of State. Particularly Articles 19, 38, 39, and 46 of the Constitution were mentioned and declared inoperative. See Lemkin, *op. cit.*, pp. 453-454.

the constitution had been openly or impliedly nullified and basic administrative and representative institutions had been shorn of authority and function. Despite the protestations of Hitler, von Ribbentrop, and Seyss-Inquart to the contrary, the "integrity" of the government of the Netherlands had been emasculated.

THE POST-WAR STATUS OF THE MONARCH

Since the war the concept and function of monarchy in The Netherlands has reached a new height of prestige. The pre-war status and role of the Queen was something more than purely symbolic; yet the Queen was always limited by the explicit constitutional guarantees and requirements of ministerial responsibility. The circumstances of the occupation, however, conspired to accentuate, rather than limit, royal power and position.¹⁰ The very fact of the Queen's flight to London with her government facilitated this development. In her proclamation explaining this step the Queen emphasized the necessity of "continuing to exercise freely the authority of the State," her "firm intention of returning," and the continuity of the kingdom as "a sovereign state," a "fully recognized member of the community of states."¹¹ This doctrine of legal continuity, accepted as sound by the Dutch and Allies, was lamented by German occupation authorities. They sedulously sought to destroy the Queen's authority, both actual and symbolic, by prohibiting displays of pictures of the royal family, by coercing the press, by purging textbooks and by penalizing all reference to the House of Orange. These attempts to undermine royal authority belied German professions of intent too obviously, and merely produced renewed declarations of Dutch allegiance.¹²

The monarchy's prestige was enhanced throughout this period by the unswerving loyalty of the underground press. The entire resistance movement, constantly directed by the London Government-in-Exile via Radio Orange, never questioned the return of the Queen. Early in the history of the occupation the political parties, attempting to arrive at some basis of mutual understanding with the Germans, issued a manifesto stating this willingness, but predicated on the unassailable continuity of the House of Orange. This assumption

¹⁰ This interpretation is ably presented in Karl Loewenstein, *Political Reconstruction*, New York: Macmillan, 1946, p. 169.

¹¹ *The New York Times*, May 15, 1940, p. 3.

¹² For a treatment of social, economic, and cultural conditions see the collection of studies in N.W. Posthumus (ed.), "The Netherlands during German Occupation," *The Annals of the American Academy of Political and Social Science*, May 1, 1946. A popular account of Holland's resistance to the Nazis is L. de Jong and J. W. F. Stoppelman, *The Lion Rampant* (New York: Querido, 1943), especially pp. 337-341 for an analysis of Dutch allegiance to the House of Orange.

the Germans refused to accept; as a consequence the parties for the most part voluntarily disbanded.¹³ Similarly, the joint manifesto published in August, 1944, by conservative and socialist newspapers recommended that in the post-war era the powers of the Crown be increased.¹⁴ No more conclusive evidence of the fidelity of the Dutch to their constitutional monarch is needed than the response of railway workers and the underground to the order of the Queen's government calling for the general railway strike late in 1944. This action constituted an overt reaffirmation by the Dutch of their recognition of the legal and regal authority resident in London.¹⁵

In all her actions as a fugitive sovereign the Queen repeatedly demonstrated adherence to the principle of institutional continuity. Since a legitimate Parliamentary basis for her ministry did not exist in London, she established an Extraordinary Advisory Council of 14 members in March, 1942, to assist the Government "as long as it has to exercise powers outside the Netherlands."¹⁶ In so doing she retained at least a semblance of constitutional propriety. In her relationship to the Cabinet she pursued a policy of strong leadership, constant consultation, intermittent radio appeals to her countrymen on behalf of and defending her Cabinet, and appointment of escaped resistance leaders to positions with, if not in, the Cabinet. Approval and allegiance of her subjects was unquestioned due to an uncanny awareness by the Queen of her dual role under the existing abnormal conditions, as personal sovereign and constitutional monarch.

Elaborate plans for the resumption of normal parliamentary processes were made and publicized by the Queen while in exile. In accord with such reassurances eleven days after total Nazi surrender the Gerbrandy Government resigned. Two days later the Queen set a new precedent by consulting with two former members of the resistance movement, Willem Drees and Professor Schermerhorn. Their cooperation with the Queen resulted in the formation of an interim Cabinet, hailed as leftist, broadly-based and drawn largely from the underground.

While in exile, therefore, the Queen effectively took part in the determination of the personnel and policy of the government. Prospects for constitutional change developed primarily from her speech of July, 1941, her announcement of plans for an Imperial Conference, February, 1942, and, above all, her

¹³ One political organization, "De Nederlandsche Unie," did attempt to conform and remained above ground for a time. Its membership was estimated at 800,000. It could not, however, follow the "New Order" completely and was outlawed in late 1941 or early 1942. See *Army Service Forces Manual*, *op. cit.*, p. 10, and N. W. Posthumus (ed.), *op. cit.*, p. 170, for these phases of the transition in the status of political parties.

¹⁴ *Netherlands News*, X, 95-97.

¹⁵ See Premier Gerbrandy's statement of May 30, 1945, in *Ibid.*, XII, 143.

¹⁶ *Ibid.*, III, 128; XI, 99.

highly significant speech of December, 1942, in which she outlined a proposal for a Netherlands Commonwealth of four equal parts, elaborated further by her statement of April, 1944.¹⁷ Her presentation of a positive ten-point program in the Parliamentary address of July 23, 1946, set the tone for the policy of reconstruction and constitutional revision. The participation of the Queen, especially since the beginning of the war, has been so increasingly public, persistent, and outspoken that her role and influence in policy-determination can not properly be construed as mere formalistic.

No dialectical disquisition is needed today to justify the concept of constitutional monarchy in The Netherlands. Partially due to sentiment, but above all as a result of personal leadership, the Queen has arrived at a position of great prestige and realistic importance. Her energy provided a stability during the war, never merely mystic. Ruling The Netherlands since 1898, an active member of one of the two oldest ruling dynasties in Europe, Queen Wilhelmina's acceptance and significance in modern Netherlands is at its peak: This is true not because of an idle claim of tenure and legitimism, but because The Netherlands Crown has demonstrated capacity, respect for democratic institutions, and because the crown has more than a formal position in the government of the kingdom.¹⁸

THE REALIGNMENT OF POLITICAL PARTIES

The results of the Parliamentary elections of May 17, 1946, produced, after much consultation, a government almost exclusively, a coalition of the two major parties. There are the Catholic State Party and the new Labor Party, the premiership being assumed by a representative of the progressive wing of the Catholic Party. The present Cabinet, under Premier Beel, supplanted the transitional, somewhat Laborite Cabinet of Professor Schermerhorn who, as founder of the resistance People's Movement, had been directed immediately after the total liberation to form a temporary government. The elections of 1946 were the first since 1937 and indicate several significant tendencies.

A more stable ministry with a more certain Parliamentary support is one discernible institutional change stemming from these elections. The present coalition has been entered by the new Labor Party whose predecessor, the Social Democratic Labor Party, had not been willing until 1939 to participate in the formation of the Government. This, despite the fact that the Social Democratic Labor Party in 1933 and 1937 was the

¹⁷ *Knickerbocker Weekly*, Dec. 18, 1944, pp. 33-42.

¹⁸ Cf. Loewenstein, *op. cit.*, pp. 139-140.

second largest Parliamentary group.¹⁹ Further, the present coalition is unprecedented since it has achieved an apparently successful compromise between the non-sectarian Left and the sectarian Right. The previous two-party coalition of any realistic stability existed from 1918 to 1925, and was a successful fusion of Catholic Party and Anti-Revolutionary (or Calvinist) Party interests. Dissention among and within the Parliamentary parties, on a religious as well as a social program, may now again be resolved, this time, in contrast to the post-World War I era, by a junction of moderate socialists and Catholic progressives. The Queen appears to have interpreted the election results accurately and refuses to entrust the new Cabinet to the leader of the conservative Catholics.

The prospects for stability are substantiated by the trend in the reduction of the number of parties having any great popular support. The introduction of proportional representation in The Netherlands in 1918 produced at once a multiplicity of parties, as many as 50 presenting lists in 1933. A subsequent modification of the electoral law reduced this number to 20 by 1937, but in the election of 1946 only nine parties participated. Whereas in 1933 14 parties secured seats in the lower house, today only half that number are represented. Contrary to expectations, fewer parties are contending for power today and consequently Dutch party life has been stabilized.²⁰

The party consolidation which contributed most to this stabilization was that of the confessional and non-sectarian parts of the Left. The most significant of the underground party organizations was "The Netherlands Peoples Movement" which sought to cast the parties of the Left into a new mould, and which was responsible for the formation of the interim Cabinet of early 1945. In the meantime, the Social Democratic Labor Party had met again after liberation, and refused a published offer for cooperation with the Communist Party. On February 7, 1946, the Social Democratic Congress made the decision to join the newly-formed Labor Party.²¹ This action provided the basic support needed by that party, which had united left-wing elements of the Protestant and Catholic parties. The present-day Labor Party is, therefore, but a recasting of

¹⁹ A recent brief history of Dutch parties has been presented by David Friedman in Bartholomew Landheer (ed.), *The Netherlands* (Berkeley and Los Angeles: University of California Press, 1943), pp. 107-131.

²⁰ The text of the Electoral Law, including the six revisions from 1917 to Mar. 15, 1946, is included in *Uitvoeringsbesluiten Kieswet* (Alphen aan den Rijn: N. Samson N. V., 1946). The Dutch system of P.R., providing for the single transferable vote within the list, has not been thoroughly studied of late, but in early comparative studies was regarded favorably. See C. G. Hoag, and G. H. Hallett, *Proportional Representation* (New York: Macmillan, 1926), pp. 64-5, 73-4, pp. 454-456. An explanation of the history of the suffrage, P.R., and the elections of 1937 is presented by J. W. Albarda, in Landheer (ed.), *op. cit.*

²¹ *The New York Times*, Feb. 9, 1946, p. 7.

dissident groups, but also a definite outgrowth of the feeling for political unanimity which crystallized during the occupation.

Two primary and five lesser national parties exist today. The Catholic State Party with 32 of the 100 seats in the lower house of the States General, and the Labor Party with 29 seats, outdistance all other parties by a considerable margin. The Catholic-Labor coalition controls almost two-thirds of the seats of the lower house. The three Protestant parties, with a total of 23 seats, the Communists with 10 seats, and the Liberal Party with six seats, are together an unorganized opposition. The Communist Party, only remaining opposition party of the Left, more than doubled its strength and representation since the elections of 1933 and 1937. Its strength is high in Rotterdam, Amsterdam, and The Hague. The potential Left-Communist and Labor Parties—controls from 45% to 65% of the total vote in these metropolitan electorates. Yet, the failure of the Communists to organize a solid Left has materially reduced their political effectiveness. Similarly, Protestant party factionalism still checkmates their possible solidarity. The total Right-wing oppositionist strength, Liberal and Protestant, is represented by the 27 seats they have won in the Lower Chamber.²² These potential party groupings have less significance today, however, than formerly, in the face of the realistic political alliance of the Catholic and Labor parties. This compromise may well demonstrate the "authenticity" and vitality of Dutch Parliamentary government, even in such an allegedly unhealthy political climate.

REESTABLISHMENT OF REPRESENTATIVE ASSEMBLIES

The vicissitudes of their legislatures since Nazi occupation indicate that the Dutch have remained devoted to their interpretation of representative democracy. Although both chambers of the States General were suspended by decree of June 21, 1940, neither the Dutch people nor their Government considered the constitutional continuity of the chambers to have been technically interrupted. While in exile the Government, extra-constitutionality, made nine appointments to fill vacancies in the two houses of Parliament.²³ As has been noted, an attempt was further made to provide a representative context

²² The election results on which these observations are based are found in the official report, "Besluit van het Stembureau," May 29, 1946, *Byvoegsel Tot De Nederlandsche Staatscourant*, No. 105. Also, summaries of this election for the Lower Chamber of the States General of May 17, 1946, will be found in *The New York Times*, May 18, 1946, p. 9; May 19, p. 30; May 20, p. 22; May 23, p. 10.

²³ Much of the following analysis of the evolution of representative, administrative, and judicial institutions is based on reports contained in *Netherlands News*, Vols., XII-XIV.

for the government in London by the appointment of a 14-man Extraordinary Advisory Council. Eight of the fourteen were from The Netherlands, four from the East Indies, and two represented the West Indies. The restoration of Parliament was constantly referred to by the Queen and Premier Gerbrandy in broadcasts to the Dutch. As the day approached for the Allied invasion the Queen broadcast plans for the steps to be taken in forming the new legitimate Parliament, dissolved the Advisory Council, and directed the resistance leaders to prepare for participation in the new Government. A Council of Trustees was organized by the underground, to represent all the interests of the resistance, and to advise the returning Government in the transition period. In May of 1945 this Council, made up of Catholics, Social Democrats, and Protestants, assumed its functions, working especially with the Civil Affairs Administration. It constituted the first post-liberation representative institution.

The second stage in the restoration of the national legislature was inaugurated when the interim Cabinet in July, 1945, created a Supreme Advisory Committee made up of 43 members of the old political parties and the new resistance leaders. This committee selected a five-man Parliamentary Purging Commission which investigated collaborationists charges against members of both former chambers. On September 24, 1945, an approved list of representatives to Parliament was issued, and the purged Lower Chamber convened the following day. The Upper Chamber met approximately one month later. In November both chambers met together and were addressed by the Queen who recommended measures for reconstruction and constitutional revision, especially advising imperial autonomy for Indonesia. This temporary Parliament passed a new electoral law the most important provisions of which lowered the voting age from 25 to 23 and abolished compulsory voting. After the preparation of completely revised electoral registers, the new Lower House was elected on May 17, 1946, and the new Upper House was selected twelve days later. The party alignment in the Upper House was very similar to that of the Lower, the Catholic and Labor Parties securing a total of 31 of the 50 seats filled.²⁴

Restoration of Provincial and Municipal legislatures proceeded slowly. The Germans had dissolved these bodies in August, 1941, as the final phase of the integration of the local government into the Nazi administrative scheme. Their duties were then performed by appointed boards of aldermen or administrators. Immediately after liberation "cleansing" of local

²⁴ *The New York Times*, May 31, 1946, p. 12.

government personnel was a primary concern. The old municipal councils, after investigation and purging, were permitted to resume their duties, as were the deputized estates of the provinces. But in April, 1945, a basic decree established a regular procedure for the restitution of municipal assemblies.²⁵ Interim municipal representative bodies were, by this decree, elected by an intermediate electoral college. The college was chosen by the Queen's provincial commissioner acting upon a list of names nominated to him by the mayor of the municipality. The municipal councils elected by this indirect, selective, and the detailed method were in existence a little more than a year, until the regular local elections of July 26, 1946.

The most striking result of these municipal elections was the Communist and Labor Party strength. Contrary to the trend in Parliamentary elections, the Labor Party exceeded Catholic Party strength. The Labor Party secured as high as 37% of the total vote in the municipalities, particularly in Rotterdam. Catholic Party strength was highest in the Hague, where it received 23% of the vote. The Communist-Labor strength in Rotterdam and Amsterdam totaled close to or over 60% of the vote cast. Each of these two parties, Communist and Labor, secured 15 seats, or one-third apiece, of the 45 seats on the Amsterdam Municipal Council. Party control of the large urban assemblies, therefore, in contrast to the national Parliament, is of a much more leftist complexion.²⁶

THE ADMINISTRATION AND THE JUDICIARY

Some change in the size and work of the Cabinet took place after 1940. There were thirteen Cabinet heads in 1946, an increase of four over 1933 and of one over the pre-war Cabinet. However, consolidation of some departments took place, and some reorganization of function. The Ministry for the Coordination of Warfare, set up in May, 1942, gave way after the war to a Ministry of Reconstruction. The Government-in-Exile had set up a six-man coordinating Committee of Ministers for Reconstruction, and this principle was continued in 1945 with the creation of four ministerial councils: for General Welfare, International Administration, Economic Affairs, and Reconstruction. The administrative hierarchy used by the Nazis was discarded. Special agencies, such as the Repatriation Service, Farm Plan Service, and the Rehabilitation Service, were organized immediately after German eviction. In the meantime, gradual normalization of the national administration took place.

²⁵ Summary of decree of Apr. 16, 1945, provided by Netherlands Information Bureau, Midwestern Division, Holland, Michigan.

²⁶ *The New York Times*, July 27, 1946, p. 11; July 28, p. 34.

A special problem concerns the role of Prince Bernhard in the post-war government. Although sitting on the Council of State, the Economic Council, and the Council of Mines, late in 1945 he expressed the hope and opinion "that a way can be found to satisfy my wish to assist in the country's rehabilitation without a constitutional clash with my position."²⁷

An interesting feature of pre-war Dutch government was the provision for quasi-public representative and regulatory bodies. The Constitutional Revision of 1917 opened the way for the creation of such organizations, and the Constitutional Revision of 1938 went further by permitting such bodies to exercise considerable legislative and administrative authority.²⁸ At least one underground proposal urged the extension of this principle, specifically by the incorporation of new representative "Social Chambers" into the government. The Nazis also pretended to utilize this idea, but subordinated these authorities to stringent German administrative control, and made personnel appointive. The Netherlands Agricultural Front and Landstand, created by the Germans, were specious attempts in this direction. The Central Food Council, set up before the war by the Dutch and representative of industry, agriculture, and small business, was robbed of its independence and integrity under the Nazis. The 36 Chambers of Commerce established by Parliament in 1922 were reorganized in November, 1941, into eleven units of control, carefully subjected to German supervision.

The returning Netherlands Government has demonstrated some intention of reconstructing anew and implementing further this concept of functional representation, consultation, and regulation. One such type of semi-official agency was used for consultative purposes after liberation and represented business and social interests. Exemplary was the 12-man Nationalization Commission, set up to investigate prospects for nationalizing the Netherlands Bank. Akin to this are the Council for Agriculture, Trade, and Industry, the Committee for Social Insurance, the Farm Planning Service, and the Press Council. The latter agency was charged with the job of preparing a new Press law. Secondly, there is some indication that such agencies may exercise specific regulatory authority, such as the Food Import Bureaus, set up in November, 1945, and the Industrial Authorities, created about the same time and whose regulatory control was made subject to approval and coordination of policy by a supervisory Economic Council. No complete information is available as to the extent to which this administrative prin-

²⁷ *Netherlands News*, XIII, 57.

²⁸ Articles 152-155 of the constitutional revision of 1938. See comment by J. W. Albarda in Landheer, *op. cit.*, pp. 101-103.

inciple will be pursued. A former Minister of Public Works, J. W. Albarda, has recently expressed the opinion that it will be used much more in the reconstructed government of the post-war years.

Legal and judicial reconstruction was admittedly a problem of the greatest magnitude. Nazi intrusion in this area was fourfold.²⁹ It included a revision of legal procedure, an expulsion or nazification of personnel, a reorganization for the judicial structure, and an introduction of entirely new concepts of law. Dutch Nazis infiltrated into the judiciary, even the Chairman of the Supreme Court being dismissed by the Reich Commissioner. Superimposed on the organization of Dutch courts was a system of special German courts—courts-martial, courts for German nationals, economic courts, Peace Courts, SS Police courts, and party courts. These were considered “lawfully constituted even if only one judge has the educational qualifications required for judicial tenure.” Finally, the Germans revised the basic content of the law by providing for dual nationality, marriage without parental consent, the extraterritorial validity of German criminal law, and the concept of the presumption of future guilt.

Upon liberation the Netherlands government abolished the German courts and began a systematic investigation of judicial personnel. It created special courts and retained the death penalty for the trial of collaborators. Courts of Honor were organized to try individuals suspected of collaboration in particular fields, such as art and music. A Council for the Reestablishment of Justice was set up August 20, 1945, to correct the legal relationships disrupted by the Nazis. In September, 1944, already the Supreme Court had been suspended for one month while being purified. An authoritative observer has contended that “the attitude of the Netherlands courts, taken as a whole, was not satisfactory.”³⁰ Although reorganization of judicial structure has been readily accomplished, achieving normalcy of legal relationships remained a tangled problem long after liberation.

CONCLUSION

To assess the accomplishments of the Netherlands in the past months of reconstruction is difficult. Even in the sphere of politics and government such a summary would be incomplete, either because of inadequacy of detailed information or because the transitional stage has by necessity been prolonged. In addressing the Netherlands Parliament on July 23, 1946, the

²⁹ Lemkin, *op. cit.*, and *Army Service Forces Manual M357-2A*.

³⁰ H. R. deZaaljer in N. W. Posthumus (ed.), *op. cit.*, p. 14. In September, 1944, the entire Supreme Court was suspended for one month.

Queen outlined long-term proposals, one of which was a thorough overhauling of the constitution by a state commission for revision.³¹ The Cheribon Agreement of November, 1946, represents the first step in recasting the constitutional position of Indonesia within the Empire. Similar developments are awaited for the West Indies. Just how far the Netherlands government will implement the Queen's proposals remains to be seen.

The extent of war damage suffered by the Netherlands, and the consequent economic plight of the country, presaged difficulties and discontented days for any reconstruction government. It has been variously estimated that total war damage amounted to from ten to fifteen billion guilders, or from one-third to one-half of the national fortune of 1939. Over a billion dollar loss to industry occurred, 50% of the forest area was denuded, and 17% of the land was found in 1946 unfit for cultivation due to the "salt water inundation strategy" of the retreating Germans. More than 300,000 laborers were conscripted by the Germans and transported to various parts of Europe, particularly to Russia.³² Many of the immediate post-liberation problems, such as food, coal, housing, have been at least partially alleviated. But the economic looting of the Netherlands was so systematic and vicious that long-range crises in land-utilization, reforestation, and reduced production were created. These will require unrelenting governmental planning.

The present Catholic-Labor coalition government has approached these problems realistically, if slowly. A sound budget, a revision of the tax structure, the establishment of a national Planning Service, price control, nationalization, labor legislation, and the effective use of the available labor supply—these are the jobs which have engrossed much of the government's attention. The social problem of the government cannot be interpreted as anything but mild and gradualistic. Premier Beel has announced himself in favor of further nationalization, in fact of all monopolistic enterprises, if investigation demonstrated the necessity. The Queen and the Premier have both emphasized the need for more social reforms. On the other hand, Premier Beel has also predicted that government control would have to gradually give way in some areas to private enterprise, and functional, quasi-public bodies vested with

³¹ *The New York Times*, July 24, 1946, p. 9. The Queen recommended autonomy for Surinam and Curacao, territorial readjustment of boundaries with Germany, reorganization of the broadcasting system, nationalization of the Netherlands Bank, public utilities, and enterprises of a monopolistic character, as well as much social reform legislation.

³² See N. W. Posthumus (ed.), *op. cit.*, pp. 33-78 for a detailed analysis of the effects of the Nazi occupation on economic life, especially the summary by H. Vos, p. 59.

specific power. No consistent policy of increased state control is, therefore contemplated.³³

Up to now no serious rift has occurred in the new Cabinet or Parliament. Some discontent has been reported, as well as occasional criticism by foreign observers.³⁴ In October, 1946, a proposed amendment permitting the conscription of Dutch troops for service overseas was reported to have revealed some dissention among Laborites and Catholic Party members. As yet there is no indication that this alleged disagreement is of serious proportions.

Far from merely reverting to the institutional pattern prevailing before the war, The Netherlands in the course of reconstruction has gone beyond the idea of mere "liberation." The Queen's prestige is greater today than before the war. Party reorientation is today a major factor in the prospects of a more stable ministry. Revitalization of legislatures, the judiciary, and the administrative agencies has already taken place. Some innovations have occurred; some retreat to basic constitutional processes has been insisted on. Above all, the Yalta concept of self-determined political reconstruction has proved a satisfactory and realistic guiding principle for the post-war Netherlands. The Netherlands Government and Queen have accepted the challenge of the postulate and have demonstrated its practicability.

³³ Cf. statements of Premier Beel quoted in *The New York Times*, June 23, 1946, p. 10; July 6, 1946, p. 6.

³⁴ J. R., "The Present Political Situation in Holland," *The World Today*, Institute of International Affairs, October, 1946, pp. 482-487.

CHAPTER X

POLITICAL RECONSTRUCTION OF THE EMPIRE

With a home territory of about 14,000 square miles and a population approaching 9,000,000, the Netherlands at the outbreak of the war controlled a vast dependent area in three separate territories—the East Indies, Surinam and Curacao. The first named had an area of 733,000 square miles and a population of nearly 70,000,000; Surinam an area of 54,000 square miles and a population of about 200,000, and Curacao an area of only 403 square miles but with a population almost equal to that of Surinam. Because of the vastly greater importance of the Indies and because of the existence there of a much more aggressive nationalist movement, the movement for imperial reconstruction and the problems connected with it are discussed only with reference to developments in Indonesia.¹

The events of the decade preceding Pearl Harbor, and especially those since the outbreak of the war, greatly accelerated political development in the East Indies. On the one hand all elements of its varied population joined in a demand for greater autonomy and changes in the structure of the imperial government, while on the other hand the German invasion of Holland and the flight of the Dutch Government to London weakened the hands of the Minister of Colonies and increased the actual power of the man who sat on the "throne" at Buitenzorg. There was a shift in the economic, financial and military center of gravity. The political authority of the Netherlands Government was diminished, the importance and role of the Indies government was greatly increased, with consequent greater freedom of action for the Governor General.

RETARDED INDONESIAN NATIONALISM

Compared with the Philippines or India, political conditions in the East Indies in 1939 represented a striking contrast. The nationalist movement among the indigenous peoples was not over three decades old and was still very immature. This was due to a number of factors, among which may be listed the following: (1) the lack of a cultural past of any significance, (2) the slowness with which the Dutch introduced lower West-

¹For a description of the government and discussion of the political problems of the two dependencies in the Western Hemisphere see "The Dutch Colonies in the Western World" by Amry Vandenbosch in *The Journal of Politics*, August, 1941.

ern education and the meagerness of facilities it provided for higher Western education, (3) the Dutch policy of respecting native customs and institutions and building upon them instead of forcing Western culture, (4) the difficulty of uniting in a common movement the peoples of widely separated islands, differing greatly in cultural developments, (5) the presence of large, economically important, non-indigenous population groups who blocked the economic progress of the Indonesians and served as a strong support of the Dutch rule, and, (6) the absence until 1918 of a central representative body in which the nationalists could develop their political talents and rally indigenous public opinion.

PRE-WAR DEVELOPMENTS

The Volksraad, the central legislative body, was opened in May, 1918. Though there was at the time hardly anything resembling a formal nationalist movement a sharp action for constitutional reforms immediately developed. Influenced probably as much by the revolutionary conditions prevailing throughout most of the world at the time as by the strength of the Indonesian nationalist movement, the Governor General in November promised wide reforms. The movement developed rapidly in the following decade and took on a revolutionary character, culminating in violent disorders in Sumatra and Java in 1926 and 1927. In the meanwhile constitutional reforms were made. The Netherlands Constitution was changed so as to accord the East Indian Government greater autonomy (1922), the Volksraad was raised from an advisory to a co-legislative body and the percentage of Indonesians in its membership was increased (1925). The Organic Law required (after 1929) that 30 of the 60 members of the Volksraad be Indonesians and of these two-thirds be elected. Twenty-five seats were reserved for Netherlanders, including indigenous Eurasians (Chinese and Arabians). Election took place by indirect vote.²

The depression worked a twofold influence on the nationalist movement. On the one hand financial difficulties handicapped the work of the nationalist organizations and the economic weakness of the Indonesian population reduced the tempo of the movement. On the other hand the economic and fiscal policies pursued by the Government were extremely unpopular among all population groups and caused them all to join in a demand for greater autonomy. It was assumed that the Government's policy was imposed from The Hague; resentment

²For a detailed description of the government of the Indies see *The Dutch East Indies: Its Government, Problems and Politics* by Amry Vandembosch. Berkeley, Third Revised Edition 1942.

was therefore directed at the Dutch Government, and the Minister of Colonies in particular, rather than at the Governor General. The deflationary and conservative fiscal policy followed by the Government was thought by the people in the Indies to be injurious to their interests, since the economic life of the Indies was dependent upon obtaining a market for Indies export commodities, mostly minerals and agricultural products. The quota system, in part devised to safeguard the Indies market for Dutch goods, tended to raise the cost of living while the deflationary financial policy depressed the sale of Indies products abroad.

Dissatisfaction with the policy was so general that Soetardjo, an Indonesian nationalist, succeeded in getting through the Volksraad in 1936 a resolution petitioning the Netherlands government for the convocation of an imperial conference to draft a plan for granting the Indies autonomy by a process of gradual change. It is significant that the Eurasians and even some Netherlanders voted for the resolution.

THE INDIES DURING THE WAR

Three important reform bills, introduced before the German invasion of the Netherlands, were before the Volksraad in the summer of 1940. The bills, sponsored by Indonesian nationalists, called for the adoption for official use of the words "Indonesia" and "Indonesian," for the creation of an Indies or Indonesian citizenship, and for changing the Volksraad into a full fledged parliament and the creation of an imperial council for the regulation of the common interests of the Netherlands, the Netherlands-Indies, Curacao and Surinam. The bills found considerable support, even among the European members, but were nevertheless withdrawn when the Government declared them unacceptable.

But pressure for political reforms could not be altogether resisted. On the 14th of September (1940) the Government announced the appointment of a commission, with Dr. F. H. Visman, a member of the Council of the Indies, as chairman, and charged it with the task of ascertaining the desires, aspirations and ideas with respect to the political development of the Indies current among all sections of the population. The commission, which was expected to report toward the end of 1941, was to submit a statement of its findings and an analysis of what the consequences of the desired reforms would be. The Visman Commission issued its report³ a few weeks before the

³ *Verslag van de Commissie tot Bestudeering van Staatsechtelijke Hervormingen*. Deel I, Indies Ontwikkeling Tusschen den Eersten en den Tweeden Wereldoorlog. Batavia, 1941. Deel II, Indies Wenschen. Batavia, 1942.

Indies fell. Because of the greatly changed circumstances after the war this report has had practically no influence.

The appointment of the Visman Commission by no means satisfied the widespread desire for political reforms. Indeed, there was general disappointment at the attitude of the Government and there was much criticism of the Visman Commission. Its membership was regarded as too largely official and its powers as too limited. The Government found itself in an embarrassing position and while it sought to clarify and justify its position, it was not very successful in allaying criticism. Little by little it yielded to the pressure for political reform, but never rapidly enough to satisfy even the Dutch in the Indies. The Indies government did not deny the need for reforms but it pleaded that now was not the time for far-reaching changes, and that for three fundamental reasons, namely, (1) it was impossible to foresee what the material conditions or spiritual attitude of the world would be, even in the relatively near future, (2) basic changes in the Indies political structure would require changes in the Netherlands Constitution and in the Indies Organic Law, and these changes could not during the war be made in the normal way, and (3) good faith required that this should not be done so long as the States General was not in a position to participate in the deliberations. The Governor General declared that positive and fundamental reforms must wait until after the liberation of Holland and that no commitments to specific reforms should be made in advance.

COMMITMENTS TO CONSTITUTIONAL REFORMS

In May, 1941, assurances of post-war reforms were made by members of the Dutch Government in London. Minister of Colonies Welter and Foreign Minister van Kleffens honored the Indies with a visit in April and May; and in a radio address just previous to his departure Welter assured the people of the Indies that the political structure of the Kingdom would have to be changed after the War so as to make it conform to the new position which the Indies had acquired in and through the war. Queen Wilhelmina in a radio address to the empire on May 10 gave a similar assurance. In his address opening the Volksraad on June 16, Governor General van Starckenborgh Stachouwer repeated the promises made by the Queen and the Minister of Colonies, indicating changes in the internal political structure as well as in imperial relationships. An advisory imperial conference would be convened upon the restoration of peace.

After the Queen's first declaration the Government was compelled to make further concessions. Both Europeans⁴ and Indonesians insisted that the machinery for constitutional reforms be set in motion at once and to this demand the Government finally made a concession. Preparation for reforms, the Government announced, would take place in five stages as follows: (1) the convocation of an imperial conference, composed of representatives from each of the four parts of the empire, with authority to make suggestions but not concrete proposals, (2) the creation of a commission to consider the suggestions of the conference and to formulate definite proposals, (3) consideration of the concrete proposals by the Netherlands government, (4) consideration of the reforms proposed by the Dutch Government by the representative bodies in the overseas parts of the empire, and (5) incorporation of the changes in the Constitution and other laws. The Indies government not long thereafter appointed its delegates to the imperial conference in order that they might have sufficient time to prepare for their work. Whether the conference would convene before the end of the war, in case the war continued for some time, was not clear from the announcement.⁵

The enemy occupation of Holland and the transfer of the government to London made for cultural, economic and political autonomy of the Indies. Cut off from the metropolitan country, the Indies were compelled to supply their own needs. New colleges were added to the University of the Indies, a military and naval college were established, new literary and other periodicals begun and an Indies-centered outlook was developed. Until the outbreak of the war in the Far East the Indies export surplus was so large that funds were ample for both government and private enterprise. Just as the war broke out in the East P. A. Kerstens was appointed Minister of Commerce and H. J. van Mook as Minister of Colonies in the London Cabinet. Kerstens had been a consistent advocate of greater autonomy and van Mook was known as a person of marked liberal views.

⁴This insistence came, for example, from a person like P. A. Kerstens, a leader of the Catholic Party in the Volksraad and during the war Minister of Commerce in the Dutch Cabinet in London.

⁵In a statement on January 27, 1942, the Netherlands Government declared that "Participation (in the conference) will be as follows: from the Netherlands, 15 members; Netherlands-Indies, 15 members; and Surinam and Curacao each three. Of the 15 members from the Netherlands-Indies, 10 will be appointed by the Government of the Netherlands-Indies on recommendation of the People's Council and five by the Government of the Netherlands-Indies. Members from Surinam and Curacao will be appointed by the Governor, two on recommendation of the States (legislative body) and one of the Government."

"The conference's task will be of an advisory nature and the conference itself will be in the nature of a round-table discussion which will consider all wishes and opinions in regard to the position of the various territories within the structure of the Empire and will make recommendation on the basis of these discussions."

The former was for many years a resident of the Indies, while van Mook was born there and had spent all his active years in the Indies' Civil Service. Because of the Japanese attack on the Indies van Mook was made Lieutenant-Governor-General of the Indies instead, to assist the Governor General in the crisis. Upon the fall of Java to the Japanese van Mook did become Minister of Colonies, in which post he served during most of the remaining war years. With the liberation of the Indies van Mook again became Lieutenant-Governor-General. Two prominent Indonesians, who were taken out of the Indies before it fell, were made members of the Dutch ministry in London.

While there was substantial agreement among all population groups in their desire for greater autonomy, there was much less agreement as to the nature and extent of the internal political reforms desirable. The Indonesians, the Chinese, the Arabs and the Europeans as groups held conflicting views, and there were also differing views within the groups.

A year after Pearl Harbor the Netherlands Government reemphasized and further outlined its plans for imperial reorganization. It did this by means of a radio address by the Queen on December 6, 1942. Referring to the proposed imperial conference the Queen said "I visualize, without anticipating the recommendations of the future conference, that they will be directed towards a commonwealth in which the Netherlands, Indonesia, Surinam and Curacao will participate, with complete self-reliance and freedom of conduct for each part regarding its internal affairs, but with the readiness to render mutual assistance."

"It is my opinion that such a combination of independence and collaboration can give the kingdom and its parts the strength to carry fully their responsibility, both internally and externally. This would leave no room for discrimination according to race or nationality; only the ability of the individual citizens and the needs of the various groups of the population will determine the policy of the Government."

DEVELOPMENT AFTER THE LIBERATION

When the Japanese finally capitulated in August, 1945, the Dutch found a situation in the Indies which only a few of them had anticipated. The Netherlands had been occupied by the Germans for five years and the Dutch had been largely isolated from the outside world. Most Dutch thought that the plans for imperial political reforms which had been announced by their Government could now be peacefully set in motion. To their consternation their government was met by open revolt in Java

and Sumatra, the two islands in which are concentrated six-sevenths of the population of the Indies.

Several factors contributed to this development. The rapid conquests of the Japanese caused much loss of prestige for the Western Powers, and especially for the Dutch. The long Japanese occupation intensified the desire for independence and an aversion to all forms of imperialism, whether mild and benevolent or harsh and grossly exploitative. Japanese terrorism and propaganda also help to account for the violence and the extreme bitterness which manifested itself after the collapse of the Japanese and the attempted return of the Dutch authorities. The Indonesian Republic was formed some days before the surrender of Japan; it was established under the leadership of Soekarno and the instigation of the Japanese officials who saw the inevitable end of their rule. But the Republic would have been created without the Japanese machinations.* In any case the Dutch were unprepared to occupy any administrative vacuum which may have existed in the first weeks after the Japanese capitulation. The occupation of the Indies was assigned to the British forces, and General Christison who arrived rather belatedly with a small contingent of troops gave de facto recognition to the Indonesian Republic and expressed a desire to cooperate with its officials. With this declaration of General Christison the prestige of the Republic rose enormously and its support increased tremendously.

Java had been the center of the nationalist movement. The movement was not nearly so strong in Sumatra as in Java, but it was nevertheless much further developed there than on any of the other islands. Conditions on these other islands made it possible to restore order first and to negotiate afterwards; but with respect to Java, and to a lesser degree Sumatra, the British and the Dutch were too weak militarily to attempt that procedure. Moreover, the Dutch Government, under the advice and able leadership of van Mook, quickly concluded that the best policy was to attempt to win the confidence of the Javanese and in cooperation with their more moderate leaders to establish authority and order on the basis of voluntary consent.

President Soekarno himself had been a collaborator and his first cabinet was composed of collaborators and terrorists, but he soon brought in as prime minister a man by the name of Sjahrir, a fairly moderate and democratic nationalist. Negotiations nevertheless progressed only slowly. In a statement on February 10, 1946, the Netherlands Government declared through Lieutenant-Governor-General van Mook the

* See *De Achtergrond van het Indonesische Vraagstuk*, by J. Verküyl, a missionary in Java. The Hague, 1946.

principles which it was prepared to accept as a basis for an agreement. These principles were as follows:

"(A) There shall be a Commonwealth of Indonesia, a partner in the Kingdom composed of territories possessing different degrees of autonomy.

"(B) There shall be established an Indonesian citizenship for all born in Indonesia; Netherlands and Indonesian citizens shall be entitled to exercise all civic rights in all parts of the Kingdom.

"(C) The domestic affairs of the Commonwealth of Indonesia shall be managed independently by the Commonwealth's own institutions: for the Commonwealth as a whole the creation of a democratic representative body containing therefore a substantial Indonesian majority is contemplated and furthermore a Cabinet formed in political harmony with the representative body and a representative of the Crown as the head of the Government's executive.

"(D) To be enabled to fulfill the obligations incumbent upon the Kingdom as a result of Article 73 of the Chapter of the United Nations the representative of the Crown shall possess under his responsibility to the Government of the Kingdom certain special powers to guarantee fundamental rights, efficient administration and sound financial management. These powers shall be exercised only when these rights and interests are affected.

"(E) The envisaged Constitution, containing the above-mentioned structure shall comprise guarantees for fundamental rights such as freedom of worship, legal equality without discrimination as to creed or race, protection of person and of property, independence of the judiciary, protection of the rights of minorities, a freedom of education and freedom of opinion and expression.

"(F) The central institutions functioning for the entire Kingdom shall be composed of representatives of the constituent parts of the Kingdom. The establishment of a Commonwealth-Cabinet composed of Ministers from the constituent parts of the Kingdom is contemplated as also Commonwealth-legislation requiring the agreement of the Parliaments of the respective constituent parts of the Kingdom.

"(G) After the entry into force of the above-mentioned Constitution the Netherlands Government shall promote the early admission of the Commonwealth of Indonesia as a member of the United Nations Organizations."

The Indonesian representatives were unable wholly to accept these proposals; negotiations dragged on. The Indonesians demanded the recognition of Indonesia as a sovereign state after which they would be prepared to enter into a political alliance with the Netherlands on the basis of a treaty and close cooperation in every respect. The Netherlands Government took the point of view that it regarded such a structure

¹ Letter of the Minister for Overseas Territories to the Chairman of the Second Chamber of the States General. *Handelingen der Staten Generaal, Zitting 1945-1946, Bijlagen No. 155.*

“as incompatible with the responsibilities to which the Kingdom of the Netherlands is entitled with respect to Indonesia, as well as with those with which it will have to assume responsibility internationally with regard to Indonesia.”⁸

During the early months of 1946 negotiations were transferred to the Netherlands, when an Indonesian delegation under the leadership of Sjahrir journeyed thither. In these negotiations the Dutch Government sought to reach an agreement in the form of a bi-lateral protocol, but to no avail.

In August, 1946, the Netherlands Government obtained the approval of the States General to create a Commission-General to proceed to the Indies to negotiate with the representatives of the Indonesian Republic and to cooperate in the preparation of a new legal order in the Indies. Professor Schermerhoorn, the first Prime Minister after the liberation of the country, was chosen to head the commission of three members. On November 15, 1946, a draft agreement⁹ of seventeen articles was signed provisionally by the Commission General and the Indonesian delegates.

NETHERLANDS-INDONESIAN AGREEMENT

In the agreement the Netherlands Government recognizes the government of the Indonesian Republic as exercising de facto authority in Java, Madura and Sumatra. The two governments agree to cooperate for the rapid establishment of “a sovereign, democratic state on federal basis, called the United States of Indonesia.” If the people of any area indicates by democratic processes that it does not wish to enter the union, a special relationship of this people to both the Netherlands and to the Republic will be created: The United States of Indonesia will be composed of Borneo, the Great East and the Republic. The Constitution of the United States of Indonesia will be established by a constituent assembly composed of representatives of the Republic and the other future partners in the union, the representatives to be chosen by democratic methods.

The Netherlands Government and the Government of the Republic further agree to cooperate in the formation of a Netherlands-Indonesian Union for the promotion of their common interests. For the purposes of this Union Curacao and Surinam will be assimilated to the Netherlands. The Union thus will be composed of the Netherlands on the one hand, and of the United States of Indonesia on the other. The Union is to have its own organs, with cooperation in foreign relations, de-

⁸ Speech of Mr. Logemann, Minister for Overseas Territories, to the Second Chamber on May 2, 1946.

⁹ See appendix II for the text of the agreement. The official text may be found in *Handelingen der Staten Generaal, Zitting 1946-47, Bijlagen, No. 367, No. 1.*

fence, and so far as necessary, finances, as also subjects of an economic and cultural nature. At the head of the Union will be the King of the Netherlands, and all actions for the advancement of the common interests will be taken in his name. High commissioners will represent each member at the Government of the other.

The Netherlands-Indonesian agreement is to be implemented by a Statute, which will be drafted by a conference between the representatives of the Netherlands and the United States of Indonesia as a member of the United Nations immediately after the establishment of the Netherlands-Indonesian Union.

There was considerable opposition to the agreement in the Netherlands, led chiefly by Gerbrandy, who was prime minister during the war years when the government was in London, and Welter, former East Indies official and Minister of Colonies. The States General approved the agreement by a substantial majority.

Throughout the period of negotiations there were repeated outbreaks of fighting, and the Indonesian Republican Government for some time hesitated formally to sign the agreement. On March 2, 1947, the Agreement was formally signed by representatives of both Governments. The troubled atmosphere in which the agreement was finally made effective was indicated by Premier Soetan Sjahrir in his address on this occasion. Said he, "There is still a great deal of uncertainty, doubt and even distrust about this important event. It is still not very clear to most of the people in this country what the future will hold. There is still a great deal of pain and many uncertainties . . . But there are also signs indicating a clear spirit and a clear atmosphere around us."¹⁰

Many difficulties, not least of which are the internal problems of the Republic, still lie ahead on the road of this novel experiment in new governmental forms and relations. As the Minister of Overseas Territories stated in his written comments on the agreement, "This is no Constitution, but rather a statement of principles. It is not a legal but a political document." It is incomplete and vague. It must still be implemented. Even with the best of good will this will not be an easy task. Yet with so many difficulties already overcome success would seem assured.

¹⁰ *Netherlands News Letter*, April 1, 1947.

CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS AFTER THE REVISION OF 1938

CHAPTER I

THE REALM AND ITS INHABITANTS

Article 1. The Kingdom of the Netherlands comprises the territories of the Netherlands, Netherlands-Indies, Surinam and Curacao.

2. The Constitution is binding only for the Realm in Europe, in so far as the contrary does not appear.

Wherever in the following articles the Realm is named, only the Realm in Europe is meant.

3. Provinces and communes may by law be united and divided in new forms.

The boundaries of the Realm, of the provinces and of the communes may be changed by law.

4. All persons in the territory of the Realm have equal right to protection of persons and goods.

The law regulates the admission and the expulsion of aliens and the general conditions under which treaties with foreign powers may be concluded for their extradition.

5. Every Netherlander is eligible to every public service.

No alien is thereto eligible except in accordance with the law.

6. The law declares who are Netherlanders and who are residents (inhabitants).

Naturalization takes place by or under authorization of law.

The law regulates the consequences of naturalization with respect to the spouse and children of the naturalized person.

7. No one needs previous authorization to express his thoughts or feelings in the press, subject to each person's responsibility according to law.

8. Every one has the right to submit petitions, provided they are in writing, to the proper authorities.

Each petition must be signed by the petitioner. Signing on behalf of others can take place only when the authorization in writing accompanies the petition.

Bodies having a legal existence may submit petitions to the proper authorities, but only with respect to subjects belonging to their specific activities.

9. The right of association and assembly of residents is acknowledged.

The exercise of this right is regulated and limited by law in the interest of public order.

CHAPTER II

THE KING

Section 1.

Succession to the Throne

10. The Crown of the Netherlands is and remains bestowed upon His Majesty Willem Frederik, Prince of Orange-Nassau, to be possessed by Him and His legal descendents by heredity only in conformity with the following provisions:

11. The Crown descends by heredity upon His sons and further male descendents who are the offspring of male descendents by right of the first-born with this understanding, that by the death of a legal claimant his sons or further male descendents out of the male line succeed him in the same way, and the Crown never goes over to a younger line or a younger branch, so long as such descendents are to be found in the older line or older branch.

12. In the absence of successors, as directed in the preceding article, the Crown goes to the oldest living daughter of the last deceased King.

13. In the absence also of daughters of the last deceased King the Crown goes to the oldest living daughter of the oldest of his previously deceased sons, of whom daughters are living; in the absence of such daughters to the oldest living son of the oldest of his previously deceased daughters, of whom sons are living, and in the absence also of such sons to the oldest living daughter of the oldest of his deceased daughters, of whom daughters are living.

14. In the absence of a successor entitled to the Crown in accordance with the three preceding articles, it (the Crown) goes to the man or woman who is nearest, though not further removed than the third degree of blood relationship to the last deceased King, in the line of her Majesty Queen Wilhelmina, Princess of Orange-Nassau.

In case of like degrees of blood-relationship men have preference over women, and thereafter the first born.

15. Abdication of the Crown has with respect to succession the same consequences as death. Save for the provision in the following article, children born after the abdication are excluded from the succession.

16. The child with which (whereof) a woman is pregnant at the time of the death of the King, with respect to the right to the Crown, is regarded as already born. Still-born, it is regarded as never having existed.

17. Excluded from the succession, both for themselves as well as their descendants, are all children born of a marriage contracted by a King or a Queen without consultation with the States General, or by a Prince or Princess of the reigning dynasty without consent by law.

A marriage thus contracted causes a Queen to abdicate, and a Princess to lose her right to the Crown.

Whenever the Crown, whether by succession or as a consequence of Article 18 or 19, goes over to another dynasty, these provisions apply only for such marriages as are concluded after the transferral.

18. Whenever there is a prospect that there will be no qualified successor according to the Constitution, a successor may be appointed by a law whereof the bill was proposed by the King.

The States-General, convened for this purpose in double numbers, deliberates and decides on this matter in joint session.

19. Whenever at the death of the King there is no qualified successor according to the Constitution, the States General is convened in joint session by the Council of State within four months after the death, for the purpose of appointing a King.

20. All of the provisions with respect to the succession are applicable to the descendants of the King, upon whom the Crown descends in accordance with one of Articles 12, 13, 14, 18 or 19 in this sense, that the new dynasty with respect to the succession to Him, takes its origin in the same way and with the same consequences as does the House of Orange-Nassau from the deceased King Willem Frederik, Prince of Orange-Nassau, according to Article 10.

21. The King may not wear a foreign Crown,

In no case may the seat of the government be moved outside of the Realm.

Section 2.

The income of the Crown.

22. Besides the income from the domains, ceded by the law of August 26, 1822, and returned by King William II to the State as Crownland in 1848, the King enjoys an annual income as a charge upon treasury of the Realm of 1,000,000 florins.

23. There are prepared for the King for use summer and winter residences, for whose maintenance, however, not more

than 100,000 florins may annually be made a charge upon the Realm.

24. The King and the members of the Royal House, named in Articles 26, 28 and 29, are exempt from all personal taxes. No exemption from any other tax is enjoyed by them.

25. The King organizes his Household as seems best to Him.

26. The consort of a reigning Queen enjoys from the Realm's treasury an annual income of 200,000 florins; he continues in the enjoyment of this income after the death of the Queen, so long as he remains a widower and retains the status of Netherlander.

A Queen enjoys, after the death of the King; out of the Realm's treasury, an annual income of 200,000 florins during her widowhood.

27. The eldest of the King's sons, or further male descendants, who is the apparent heir to the Crown, is the King's first subject, and carries the title of Prince of Orange.

28. The Prince of Orange enjoys from the Realm's treasury a yearly income of 200,000 florins, to be granted from the time he reaches the age of eighteen years.

This income is increased to 400,000 florins after contracting a marriage which is approved by law.

After the death of the Prince of Orange the Princess-Widow receives from the Realm's treasury an annual income of 200,000 florins during her widowhood.

29. The daughter of the King, who is the presumptive heir to the Crown, enjoys from the Realm's treasury an annual income of 200,000 florins, to be granted from the time when she reaches the age of eighteen years.

In case she contracts a marriage, which is approved by law, her consort will likewise receive from the Realm's treasury an annual income of 200,000 florins; he continues in the enjoyment of his income after the death of the Princess, so long as he remains a widower and retains the status of widower.

After the death of her consort the Princess will receive, so long as she remains unmarried, an annual income of 400,000 florins.

The incomes meant by this article continue, in case a Prince of Orange is born later.

30. The amounts, set in this section, may be changed by law.

The Chambers of the States General can not pass such a bill nor modify or withdraw such a bill except by a two-thirds vote of all the members of each of the Chambers.

Section 3.

The Guardianship of the King.

31. The King attains majority after he reaches the age of eighteen years.

The same applies to the Prince of Orange or the daughter of the King, who is the presumptive heir to the Crown, in case these become Regents.

32. The guardianship of the King who is a minor is regulated, and the guardian or guardians appointed, by law.

On a bill for such a law the States General deliberates and decides in a joint session.

33. This guardianship law is enacted during the life of the King in the event of the majority of his successors. Should this have not occurred, if feasible some of the nearest blood relatives of the minor King shall be consulted with respect to the regulation of the guardianship.

34. Before assuming the guardianship, each guardian, in a joint session of the States General, with the Chairman administering, takes the following oath or makes the following promise:

“I swear (promise) loyalty to the King; I swear (promise) sacredly to fulfill all the duties which the guardianship imposes upon me, and especially to endeavor to instil in the King attachment to the Constitution and love for His people.”

“So truly help me God Almighty.”
 (“That I promise.”)

35. In case the King becomes unable to discharge his duties, the necessary supervision over his person is provided in accordance with the regulations specified with respect to the guardianship of a minor King.

The oath or promise of the guardian or guardians, appointed for this purpose, is determined by law.

Section 4.

The Regency

36. During the minority of the King the Royal authority is exercised by a Regent.

37. The Regent is appointed by a law, which may also regulate the succession in the regency until the time of the King's majority. On the bill of this law the States General deliberate and decide in joint session.

The law, for the eventuality of the minority of his successors, is enacted while the King is still living.

38. The Royal authority is likewise conferred upon a Regent, in case of the King's inability to reign.

Whenever the ministers, convened in council, judge that this contingency exists, they inform the Council of State of their finding, with the request to render advice within a specified time.

39. If, after the expiration of the specified time, they continue in their judgment, they convene the States General in joint session, for the purpose of reporting on the existing situation, at the same time transmitting the advice of the Council of State, in case this has been rendered.

40. If the States General in joint session judge that the situation described in Article 38, first clause, obtains, then they so declare by a resolution which shall be proclaimed upon the order of the chairman designated in Article 111, second clause, and which shall go into effect upon the day of proclamation.

In the absence of this chairman a chairman is named by the meeting.

41. In the case of Article 40, the Prince of Orange or the daughter of the King, who is the heir apparent to the Crown, when he or she has reached his or her eighteenth birthday, is Regent by legal right.

42. If there is no Prince of Orange or a daughter of the King, who is heir apparent to the throne, or if either has not completed his or her eighteenth year, then the regency shall be taken care of in the manner specified in Article 37; in the last case until the time when they shall have reached their eighteenth birthday.

43. The Royal authority is likewise assumed by a Regent, in case the King in accordance with a law, whereof the bill has been proposed by him, has laid down the temporary exercise of the Royal authority. On the bill of this law, which at the same time provides for the appointment of the Regent, the States General deliberates and decides in joint session.

44. With the assumption of the Regency, the Regent in a joint session of the States General places in the hands of the chairman the following oath or promise:

"I swear (promise) loyalty to the King; I swear (promise) that in the assumption of the Royal authorities, so long as the King is a minor (so long as the King remains incapable of assuming the reign or the Royal authority is not being exercised) I shall steadily support and maintain the Constitution.

“I swear (promise) that I shall defend and guard the independence and the territory of the State with all my powers; that I shall protect the general and special freedom, and the rights of all the King’s subjects and of each of them, and I shall apply to the maintenance and promotion of the general welfare—all means which the laws place at my disposal, as a good and faithful Regent is obligated to do.

“So truly help me God Almighty.”

(“This I promise.”).

45. Whenever a Regent becomes unable to assume the regency, Articles 38, clause 2, 39 and 40, are applicable.

If the succession to the regency is not regulated then Article 37, first clause, shall be applied.

46. The Royal authority shall be exercised by the Council of State:

1. At the death of the King, so long as no provision has been made for the succession to the throne according to Article 19, no Regent has been appointed for the minor Successor-to-the-throne, or the Successor-to-the-throne or Regent is absent:

2. In the cases of Articles 40 and 45, so long as the Regent is unprovided or absent; and at the death of the Regent, so long as his successor has not been named and has not assumed the regency;

3. In case the successor to the throne is uncertain and the Regent is unprovided or absent.

This exercise legally ceases as soon as the qualified Successor-to-the-throne or Regent has assumed his dignity.

Whenever provision must be made for the regency, the Council of State shall present the bill of law necessary to this end:

in the cases mentioned under 1 and 2 within the period of a month after the assumption of the exercise of Royal authority;

in the case mentioned under 3, within the period of a month after the succession to the throne has ceased to be uncertain.

47. A law shall stipulate, upon the appointment of the Regent or upon the assumption of the regency by the Prince of Orange or by the daughter of the King, who is the presumptive heir to the throne, the sum which will be placed on the yearly income of the Crown for the costs of the regency.

This stipulation cannot be changed during the regency.

48. As soon as the case described in Article 38 ceases to exist, this is declared by the States General in a resolution,

which shall be proclaimed upon the command of the chairman mentioned in Article 40.

49. This resolution shall be made upon the proposal of the Regent or of at least twenty members of the States General.

These members must hand in their proposal to the Chairman of the First Chamber, who shall immediately convene both chambers in joint session.

If the chambers are not in session the members are authorized to convoke the assembly themselves.

50. The ministers and the guardian or guardians are personally under obligation (to the Chambers of the States General, as frequently as this is demanded, to make a report concerning the condition of the King or the Regent).

Article 97, third clause, is with respect to this also applicable.

51. Immediately after the proclamation resolution described in Article 48 the King resumes the reign.

Section 5.

The Inauguration of the King

52. The King, having assumed the reign, solemnly takes the oath of office as soon as possible and is inaugurated within the city of Amsterdam, in a public and joint session of the States General.

53. In this assembly the following oath or promise is made by the King:

“I swear (promise) to the Netherlands people, that I shall support and maintain the Constitution and defend and guard the territory of the State; that I shall protect the general and special freedoms and the rights of all my subjects, and I shall apply to the maintenance and promotion of the general welfare all means which the laws place my disposal, as a good King is obligated to do.

“So truly help me God Almighty.”

(“That I promise.”)

54. After having taken this oath or made this promise the King is inaugurated in the same assembly by the States General, whose Chairman pronounces the following solemn declaration, which successively by him and each of the members, individually, is sworn to or confirmed:

“In the name of the Netherlands people and in conformity with the Constitution, we receive and swear allegiance to You as King, we swear (promise) that we will maintain your inviolability, and the rights of your Crown; we swear

(promise) to do everything that a good and faithful States General is obligated to do.”

“So truly help us God Almighty!”

(“That we promise!”)

Section 6.

The Power of the King

55. The King is inviolable; the ministers are responsible.

56. The Executive power rests with the King.

57. General measures of administration are established by the King.

Stipulations, to be enforced by penalties, are not made by these measures except by virtue of law.

58. The supreme direction of foreign relations rests with the King.

59. The King seeks to settle disputes with foreign powers by means of judicial settlement and other peaceful means. He does not declare war without the previous approval of the States General.

60. The King concludes and ratifies all treaties with foreign powers. Unless the King has by law reserved to himself the authority to ratify the treaties, a treaty shall not be ratified until after it has been approved by the States General.

Adhesion to and renunciation of treaties takes place only by authority of law.

The States General is informed of other agreements with foreign powers as quickly as possible.

61. Supreme authority over the sea and land forces rests with King.

The military officers are appointed by him. They are promoted, discharged or placed on pension by him, according to regulations to be provided by law.

The pensions are regulated by law.

62. The supreme direction of the Netherlands Indies, Surinam and Curacao rests with the Crown.

In so far as certain powers are not reserved to the King by the Constitution or law, the general direction in the name of the King is exercised in the Netherlands Indies by the Governor-General and in Surinam and Curacao by the Governors, in a manner to be regulated by law.

The King annually makes a comprehensive report to the States General on the administration and state of the Netherlands Indies, Surinam and Curacao.

63. The governmental organization of the Netherlands Indies, Surinam and Curacao is established by law; other subjects shall be regulated by law as soon as the need for it appears to exist. With the exceptions to be stipulated by law, the representative body of the territory concerned shall in a manner to be regulated by law, be consulted.

Undiminished by the stipulation in the first clause of this article, the regulation of the internal affairs of the Netherlands Indies, Surinam and Curacao, is left to organs established there in a manner to be established by law, unless the authority to regulate certain subjects or in certain cases is reserved by law to the King.

64. The ordinances, established by the organs intended in the second clause of the foregoing article, may be nullified by law on the ground of conflict with the Constitution, with the law or the general interest.

Such ordinances may be suspended by the King in a manner to be determined by law.

65. The supreme direction of the general finances rests with the King. He regulates the remuneration of all boards and officials, which are paid out of the Realm's treasury.

The law regulates the remuneration of the Council of State, of the General Auditing Chamber and of the judiciary.

The King places the remunerations on the budget of the Realm's expenditures.

The pensions of officials are regulated by law.

66. The King has the power of mint. He may authorize having his likeness stamped on the coins.

67. The King grants nobility. No Netherlander may accept foreign nobility.

68. Orders of Nobility are instituted by law, upon the proposal of the King.

69. Foreign orders, to which no obligations are attached, may be accepted by the King and, with his approval, by the Princes of his House.

In no case may other Netherlanders, or foreigners who are in the Netherlands' government service, accept foreign order-emblems, titles, rank or dignity, without special permission of the King.

70. The King has the power of pardon of penalties imposed by the courts.

He exercises this power after having obtained the advice of the judge designated thereto by a general measure of administration.

Amnesty or annulment are granted only by law.

71. Dispensation from legal provisions can be granted by the King only by authorization of law.

The law, which permits this authorization, names the conditions with respect to which the authority of dispensation extends.

Dispensation of provisions of general measures of administration is permitted in so far as the King has expressly reserved to himself the authority thereto by the measure.

72. The disputes between provinces mutually; provinces and municipalities; municipalities mutually; as also between provinces or municipalities and water districts, moor districts and moor polders; not belonging to those mentioned in Article 160, or to those whereof the decision by virtue of Article 161 is entrusted to the customary judge or to a board, with administrative jurisdiction, are decided by the King.

73. The King lays bills before the States General and makes such other proposals to them as he deems necessary.

He has the power to approve or disapprove bills passed by the States General.

74. The manner of promulgating the laws and the general measures of administration and the date on which they become binding, are regulated by law.

The form of promulgation of laws is the following:

“We etc. King of the Netherlands,

All, who shall see or hear this voice, greetings! Be it known:

Whereas We have taken into consideration that etc.

(The reasons for the law)

Therefore, We, having consulted the Council of State, and in general consultation with the States General, have approved and consented, as we approve and consent by these,” etc.

(The content of the law).

“Given,” etc.:

In case a Queen reigns or the Royal authority is exercised by a Regent of the Council of State, the necessary modifications will be made in this form.

75. The King has the power to dissolve the Chambers of the States General either separately or both at the same time.

The decree, whereby the dissolution is proclaimed, must include the order for the election within forty days of new chambers, and for the convening of the newly chosen Chambers within three months.

For chambers elected after a dissolution the law may prescribe another session-duration than is stipulated in Articles 88 and 94.

The Council of State, when exercising the Royal authority, does not exercise the right of dissolution.

Section 7.

The Council of State, the Ministers and the Permanent Boards of Advice and Assistance

76. There is a Council of State, whose composition and authority are regulated by law.

The King is Chairman of the Council and appoints the members.

The Prince of Orange and the daughter of the King who is the presumptive heir to the Crown, have, after they have attained the age of eighteen years, a legal right to sit in the Council.

77. The King presents to the Council of State for its consideration all proposals to be made by him to the States General or made to him by it, as well as all general measures of administration of the Realm and of Netherlands-Indies, Surinam and Curacao.

At the head of the decrees to be issued mention is to be made that the Council of State has been consulted concerning it.

The King further consults the Council of State on all matters wherein he deems this necessary.

The King alone decides and gives notice in each case of the decision he has made to the Council of State.

78. The law may confer on the Council of State or a division of this Council jurisdiction over disputes.

79. The King institutes ministerial departments.

He appoints ministers and discharges them according to his pleasure. He may appoint ministers who are not charged with the conduct of a ministerial department.

The ministers provide for the execution of the Constitution and other laws, in so far as this is dependent upon the Crown.

Their responsibility is regulated by law.

On taking their position they place in the hands of the King the following oath or promise:

“I swear (promise) loyalty to the King and to the Constitution; I swear (promise) to fulfill faithfully all the duties which the ministerial office imposes upon me.”

“So truly help me God almighty!”

(“This I promise!”)

Before being permitted to take this oath or make this promise, they take the following oath (declaration and promise) of purification:

“I swear (declare) that I, in order to be appointed Minister, have not either directly or indirectly, made any gifts or promises of gifts to any person, under whatever name or pretext.”

“I swear (promise) that I, to do or not to do anything whatever in this position, will not accept any promises or gifts, directly or indirectly, from anybody, whoever he may be.”

“So truly help me God Almighty!”

(“This I declare and promise!”)

All royal decrees and orders are countersigned by one or more ministers.

80. The establishment of permanent boards of advice and assistance to the Government occurs by virtue of law, which also contains the regulations concerning their appointment, composition, method of work and authority.

CHAPTER III
THE STATES GENERAL

Section 1.

The Composition of the States General

81. The States General represent the entire Netherlands people.

82. The States General are divided into a First and Second Chamber.

83. The members of the Second Chamber are chosen directly by the residents, who are Netherlands or recognized by the law as Netherlands subjects, who have reached the age stipulated by law, which may not be less than twenty-three years. Each voter has one vote only.

The law specifies in how far the exercise of the right of suffrage is suspended for the military personnel of the sea and land forces for the period when they are in the service.

From the exercise of the right of suffrage are excluded those who have been denied that right by irrevocable judicial sentence; those who have been legally deprived of their freedom; those who by irrevocable judicial decision, because of insanity or feeble-mindedness, have lost the right of disposition and management of their goods and those who have been deprived of the parental authority or guardianship of one or more children. To irrevocable sentence to imprisonment for more than a year for beggary and vagrancy as also to more than two irrevocable sentences for public drunkenness falling within a period to be determined by law, the law attaches temporary or permanent loss of suffrage.

84. The Second Chamber consists of a hundred members, chosen on the basis of proportional representation within limits to be determined by law.

Everything which further concerns suffrage and the manner of election, is regulated by law.

85. The First Chamber consists of fifty members.

They are chosen by the members of the States of the provinces on the basis of proportional representation within the limits to be determined by law.

86. Whenever the States General is convened in double numbers, there is added to the usual number of each chamber

an equal number of extraordinary members, to be elected in the same manner as the ordinary members.

The decree of convention at the same time indicates the day of election.

Section 2.

The Second Chamber of the States-General

87. To be eligible for membership in the Second Chamber, it is required that one be a Netherlander or recognized by the law as a Netherlander, to have reached the age of thirty years, not to be disqualified for membership, nor be excluded from the right of suffrage by virtue of the regulation made pursuant to Article 83, third clause, with the exception of judicial deprivation of freedom and sentence to imprisonment for other offenses than beggary or vagrancy or because of a fact from which public drunkenness is apparent.

88. The members of the Second Chamber are elected for four years. They retire simultaneously and are immediately eligible for reelection.

89. The members vote without order or consultation with those who elect them.

90. Upon assumption of their office they make the following oath or make the following promise:

“I swear (promise) loyalty to the Constitution.”
so truly help me, God almighty!”
 (“This I promise.”)

Before being admitted to take this oath or make this promise, they take the following oath (make the following declaration or promise of) purification:

“I swear (declare) that I, in order to be elected member of the States General, have not either directly or indirectly, made any gifts or promises of gifts to any person, under whatever name or pretext.

“I swear (promise) that I, to do or not to do anything whatever in this position, will not accept any promises or gifts, directly or indirectly, whoever he may be.

“So truly help me God almighty!”
 (“This I declare and promise!”)

These oaths (promises and declarations) are administered by the King or by the Chairman in a session of the Chamber, thereto empowered by the King.

91. The Chairman is appointed by the King for the period of a session, from a list of three members presented by the Chamber.

92. The members receive compensation of 4500 florins per year, besides reimbursement for travel expenses, in accordance with regulations to be established by law. To the Chairman is granted an additional compensation of 4500 florins per year.

The compensation intended in the above clause is not enjoyed by the members who hold the office of minister, nor by those who remain absent during an entire session, nor who by consequence of the rules of order of the Chamber are excluded from attending its sessions.

Retiring members receive a pension of 120 florins for each year during which they were members of the Chamber, to a maximum of 2800 florins. This pension is not received, so long as a retired member holds the office of Minister, or after re-election, receives the compensation meant by the first clause. The law regulates in what other cases, wherein addition to this pension, an income or pension is received directly or indirectly from a public fund, the first named pension is diminished.

To widows and orphans of Chamber-members or former Chamber-members pensions are granted according to regulations to be established by law.

The amounts, established in this article, may be modified by law.

The Chambers of the States General may pass a bill for such a law, likewise a bill for the modification or repeal of such a law, only by a two-thirds vote of the number of members of which each of the Chambers consists.

Section 3.

The First Chamber of the States General

93. To be eligible for membership of the First Chamber, one must fulfill the same qualifications as are set for membership of the Second Chamber.

94. The members of the First Chamber are elected for six years. Article 89 is applicable to them.

Upon assuming their position they take the same oaths (promises and declarations) as are required for the members of the Second Chamber, either before the King or in the First Chamber before the Chairman, empowered thereto by the King.

They receive travel and maintenance costs according to law.

One half retire every three years. The retiring members are immediately eligible for reelection.

95. The Chairman is appointed by the King from the members for the period of a session.

Section 4.

Dispositions Common to Both Chambers

96. No one can simultaneously be a member of both Chambers.

He who is elected a member of both chambers declares which of these appointment he accepts.

97. The ministers have a seat in both chambers. They have as such only an advisory voice. They may be assisted in the session by officials thereto assigned by them.

They give the chambers, either orally or in writing, the desired information, the extension of which can not be considered in conflict with the interests of the State.

They may be requested by each of the Chambers to be present for that purpose at their sessions.

98. Both chambers serve, each separately as well as in joint session, the right of investigation (*enquete*), to be regulated by law.

99. A member of the States General cannot at the same time be a minister, vice-president or member of the Council of State, president, vice-president or member of procurer-general, or the advocate-general at the High Court, nor president or member of the general auditing office, nor Commissioner of the King in a province.

Nevertheless a Minister, chosen a member of the States-General at an election, may unite for not more than three months the office of minister and the membership of the States General.

The law regulates in so far as is necessary the consequences of the union of the membership of one of the Chambers with other than the offices excluded by the first clause, the salaries of which are paid out of the treasury of the Realm.

Members of the armed forces in actual service, having accepted membership of one of the chambers, are, during this membership, by right placed on non-activity. Ceasing to be members, they return to active service.

100. The members of the States-General, as well as the ministers, the commissioners meant in Article 13, second clause, and the officials, meant in Article 97, first clause, are not liable to legal prosecution for what they have said in the session or have presented to it in writing.

101. In so far as the law does not provide otherwise, each Chamber examines the credentials of new incoming members, and judges the disputes which arise with respect to the credentials or the election itself, according to rules to be established by law.

102. Each Chamber appoints its clerk. This person may not at the same time be a member of one of the Chambers.

103. The States-General assemble at least once a year.

Their regular session is opened on the third Thursday of September.

The King convenes a special session, as often as he judges necessary.

104. The separate sessions of both chambers, as well as the joint sessions, are held in public.

The doors are closed whenever one-tenth of the members present so demand, or the chairman thinks it necessary.

The meeting determines whether it shall deliberate with closed doors.

With respect to points dealt with in closed session, decisions may also be taken.

105. If upon the death of the King or the renunciation of the crown, the session is closed, then the States General meet without previous call.

This special session is opened on the firteenth day after the death or abdication. If the chambers are dissolved this period begins after the conclusion of the election.

106. The session of the States-General is opened by the King or by committee on his behalf in joint meeting of both chambers. It is closed in the same manner, whenever he judges that the interest of the State does not require its continuance.

The usual annual session lasts at least twenty days, unless the King makes use of the power described in Article 75.

107. With the dissolution of one of the chambers or of both, the King likewise closes the session of the States General.

108. The Chambers may not, either separately or in joint meeting, deliberate or take action, if not more than half of the members are present.

109. All decisions on business are taken by an absolute majority of members voting.

In case of a tie the taking of the decision is postponed until the next meeting.

In this case, as well as in a full meeting, with a tie vote the proposal is regarded as not passed.

The voting must take place by individual roll call, whenever demanded by one member, and then orally.

110. The voting on persons for the appointments or missions named in the constitution, takes place by closed and signed ballots.

The absolute majority of the persons voting decides; in case of a tie vote, the decision is by lot.

111. In a joint session the two chambers are regarded as only one and the members take seats among each other as they wish.

The Chairman of the First Chamber presides over the meeting.

Section 5.

The Legislative Power

112. The legislative power is exercised jointly by the King and the States General.

113. The King sends all proposals, whether for a law or others, to the Second Chamber by a written message or by a commission.

He may charge commissioners especially designated by him to assist the ministers in the handling of these proposals in the sessions of the States General.

114. In the public consideration of any proposal of the King an examination of the proposal always precedes.

The Chamber stipulates in the Rules of Order the manner in which this examination is instituted.

115. The Second Chamber as also the joint meeting of the States General has the power to make modification in proposal of the King.

116. Whenever the Second Chamber decides to accept the proposal, whether unchanged or modified, it sends the proposal to the First Chamber with the following formula :

The Second Chamber of the States-General sends to the First Chamber the annexed proposal of the King and is of judgment that it, as enclosed should be adopted by the States-General.

Whenever the Second Chamber decides not to accept the proposal it informs the King of this with the following formula :

The Second Chamber of the States-General expresses gratitude to the King for his zeal in the promotion of the interests of the State and respectfully requests Him to further consider the proposal made.

117. The First Chamber considers, taking account of Article 114, the proposal as adopted by the Second Chamber.

Whenever it decides to adopt the proposal it informs the King and the Second Chamber thereof with the following formula :

“To the King.

“The States-General expresses their gratitude to the King for his zeal in promoting the interests of the State and join themselves with the proposal as annexed.”

“To the Second Chamber

“The First Chamber of the States-General informs the Second Chamber that it has joined itself with the proposal relative to, sent to the Second Chamber on the”

Whenever the First Chamber decides not to adopt the proposal, it informs the King and the Second Chamber thereof with the following formula:

“To the King.

“The First Chamber of the States General expresses its gratitude to the King for His zeal in promoting the interests of the State and respectfully requests him further to consider the proposal made.”

“To the Second Chamber

“The First Chamber of the States General informs the Second Chamber that it has respectfully requested the King to consider further the proposal relative to, sent to it by the Second Chamber on”

118. So long as the First Chamber has not decided, the King retains the authority to withdraw the proposal made by him.

119. The States-General have the power to make proposals of law to the King.

120. The proposal thereto belongs exclusively to the Second Chamber, which considers the proposal in the same manner as is required, with respect to the King's proposals, and, after adoption, sends it to the First Chamber with the following formula:

“The Second Chamber of the States-General sends to the First Chamber the annexed proposal, and is of judgment that the States-General should request the King's consent thereto.”

It is authorized to commission one or more of its members to defend in writing and orally its proposal in the First Chamber.

121. Whenever the First Chamber, after having deliberated thereon in the usual manner, approves the proposal it sends the proposal to the King with the following formula:

“The States-General, judging that the annexed proposal might tend to the promotion of the interests of the State respectfully requests the King's consent thereto.”

Further it informs the Second Chamber with the following formula:

“The First Chamber of the States General informs the Second Chamber that it has joined itself with the proposal relative to, received on the, and has in the name of the States-General requested the King’s consent thereto.”

Whenever the First Chamber does not approve, it informs the Second Chamber of this with the following formula:

“The First Chamber of the States-General has found no sufficient reason to request the King’s consent to the annexed proposal, which is being returned.

122. Proposals other than bills of law, may be made to the King by each chamber separately

123. The King lets the States-General know as quickly as possible whether or not he approves a proposal for a law adopted by them. This notification takes place with one of the following formulas:

“The King consents to the proposal.”

or:

“The King holds the proposal in consideration.”

124. All proposals for law adopted by the States-General and approved by the King, receive the force of law and are proclaimed by the King.

The laws are inviolable.

125. The laws are binding only for the Realm, in so far as it is not expressed therein that they are binding for the Netherlands-Indies, Surinam and Curacao.

Section 6.

The Budget

126. The budgets of all of the expenditures of the Realm are fixed by law, and the means to cover them indicated.

127. The bills of the general budget laws are introduced in the Second Chamber by the King immediately after the opening of the ordinary session of the States-General before the beginning of the period for which the budget must serve. That period may not be longer than for two years.

128. No chapter of the budget of expenditures can include more than that for one department of general administration.

Each chapter is comprised in one or more bills of law. Through such a law transcription may be permitted.

129. The accounting of the expenditures and revenues for each service is made, subject to the accounting approved by the Auditing Office, to the legislative power according to the prescriptions of the law.

CHAPTER IV

PROVINCIAL STATES AND MUNICIPAL ADMINISTRATIONS

Section 1.

The Composition of the Provincial States

130. The members of the Provincial States are directly elected for four years by the residents of the province who are Netherlanders, or recognized by the law as Netherlands subjects, who have reached the age to be determined by law, which may not be less than twenty-three years. The election takes place on the basis of proportional representation within the limits to be set by law.

The last sentence of the first clause, the second and third clause of Article 83 are applicable.

They retire simultaneously and are immediately re-eligible.

To be eligible for membership in the Provincial States it is required that one be a Netherlander or a Netherlands subject and a resident of the province, have reached the age of twenty-five years, not be deprived of eligibility nor excluded from the exercise of the right of suffrage by virtue of the regulation made with respect thereto in pursuance of Article 83, third clause, with the exception of judicial deprivation of liberty and condemnation to imprisonment for other than beggary or vagrancy, or because of a fact from which public drunkenness is apparent.

The election of the members of the Provincial States takes place in a manner to be regulated by law.

131. The members of the States upon assuming their position take the following oath (or make the following promise):

“I swear loyalty to the constitution and to the laws of the Realm.”

“So truly help me God almighty!”

(“This I promise!”)

They are admitted to this oath (promise) after having first taken the same oath of purification (declaration and promise) as specified above in article 90 for the members of the Second Chamber of the States-General.

132. The States meet as often in the year as the law stipulates, and further whenever they are called by the King in special session.

The meetings are public, with the same reservation as is stipulated in Article 104 with respect to the meeting of the Chambers of the States General.

133. The members of the States vote without directions from or consultation with the electors.

134. With respect to deliberating and voting the same rules apply as are prescribed for the Chambers of the States General in Articles 108, 109 and 110, first clause.

Section 2.

The Power of the Provincial States

135. The authority and power of the States are regulated by law in observance of the prescriptions contained in the following articles of this section.

136. To the States are left the regulation and administration of the affairs of the province.

They make the ordinances which they deem necessary for the provincial interest.

These ordinances require the approval of the King; this approval may not be refused except by reason-supported decree, the Council of State having been consulted.

137. Whenever the laws or the general measures of administration demand it, the States extend their cooperation to the execution thereof.

138. Every measure of the States to institute, modify or abolish a provincial tax requires the approval of the King.

The law provides general rules with respect to provincial taxes.

These taxes may not hamper the transit, the export to or the imports from other provinces.

139. The budget of provincial receipts and expenditures, to be made annually by the States, requires the approval of the King.

The law regulates the establishment of provincial accounting.

140. The States may press the interests of their provinces and the inhabitants thereof with the King and the States General.

141. The States appoint from among their members a board, to which, according to the regulations to be established

by law, the daily administration and execution of business is committed, and this whether the States are in session or not.

142. The power of the King to suspend and to annul actions of the provincial States, which are in conflict with the law or the general interest, is regulated by law.

143. The King appoints in each Province a Commissioner who is charged with the execution of his directions and the supervision of the work of the States.

This Commissioner is chairman of the meeting of the Provincial States and of the Deputized States and has a vote in the last named board.

His annual salary and the costs of maintaining his house are placed on the budget of the Realm. The law determines whether other expenditures of the provincial administration shall be a charge upon the Realm.

Section 3.

The Municipal Administration

144. The composition, organization and authority of the municipal administrations are regulated in observance of the prescriptions contained in the following articles of this section.

145. At the head of the municipality is a council, whose members are chosen directly for a definite number of years by the residents of the municipality, who are Netherlanders or recognized by the law as Netherlanders, who have reached an age to be specified by law, which may not be less than twenty years. The elections take place on the basis of proportional representation within limits to be set by law.

The last sentence of the first clause, the second and third clause of Article 83 are applicable.

To be a member of the Council it is required that one be a Netherlander or recognized as a Netherlander subject by the law, and a resident of the municipality, have completed the age of twenty-three years, not to be deprived of eligibility, nor excluded from the right of suffrage by the regulations made in pursuance of Article 83, third clause, with the exception of judicial deprivation of liberty and condemnation to incarceration for other than beggary or vagrancy or because of a fact from which public drunkenness is evident.

The election of the council takes place in a manner to be regulated by law.

The Chairman is appointed and removed by the King, also outside the members of the council.

146. To the council is left the regulation and administration of the affairs of the municipality. It may, in cases to be specified, in observance of the regulations to be instituted, subject to its supervision, confer the administration to be specified phases of administration of the municipality, in whole or in part, to other organs.

It makes the ordinances, which it deems necessary in the interest of the municipality.

Whenever the laws, general measures of administration or provincial ordinances demand it, the municipal administrations extend their cooperation to the execution thereof.

Whenever the regulation and the administration of the affairs of a municipality are being gravely neglected, the law may stipulate, in departure from the first and second clause of this article, the manner in which the administration of the municipality shall be provided.

The law stipulates what authority replaces the municipal administration whenever the latter fails to execute the laws, the general measures of administration or (to provide) the provincial ordinances.

147. The power of the King to suspend and to annul the acts of the municipal administration which are in conflict with the law or the general interest, is regulated by law.

148. The acts of the municipal administration, concerning such disposition with respect to municipal property or such other civil law actions as the law designates, as well as the budget of receipts and expenditures, are submitted to the approval of the Deputized States.

The preparation of the budget and the fixing of the accounts is regulated by law.

149. The actions of the municipal administrations concerning the institution, modification or abolition of a local tax require the approval of the King.

The law provides the general regulations with respect to local taxes.

These taxes may not impede the transit, the export to and the import from other municipalities.

150. The above-mentioned administrations may advocate the interests of their municipalities before the King, the States General and the States of the province to which they belong.

151. The law regulates the provision in matters, interests, institutions or works in which two or more municipalities are concerned.

CHAPTER V

PUBLIC BODIES FOR PROFESSIONS AND TRADES

152. The law may establish bodies for specified professions and businesses and groups thereof, as well as for professional and business life in general, with regulatory powers.

The composition, organization and authority of these bodies are regulated by law.

153. The law may confer upon these bodies authority to make ordinances.

154. The actions of these bodies, which are in conflict with the law or the general interest, may be suspended and annulled in accordance with rules to be established by law.

The law may subject certain actions of these bodies to approval, according to rules to be established by it.

CHAPTER VI

BODIES WITH ORDINANCE-MAKING AUTHORITY

155. The law may grant ordinance-making power to other bodies than those named in the Constitution.

CHAPTER VII

JUSTICE

Section 1.

General Provisions

156. Everywhere in the Realm justice is administered in the name of the King.

157. Civil and commercial law, civil and military penal law, legal pleading and the organization of judicial power are regulated by law in general codes, with the exception of the authority of the legislative authority to regulate a few subjects in special laws.

158. Expropriation for the general good may not take place except after previous declaration by law that the general good requires expropriation and with compensation enjoyed in advance or guaranteed in advance, all in conformity with the prescriptions of the law.

The law determines the cases in which advance declaration by law is not required.

The requirement that the reparations due be paid or guaranteed in advance does not apply whenever war, danger of war, insurrection, fire or floods demand an immediate possession.

The article is not applicable to ground-hauling to which the right existed in 1886.

159. In cases where in the general interest property must be destroyed or must be rendered useless, whether temporarily or permanently, by the public authority, compensation must be made, unless the law specifies to the contrary.

The use of property for the preparation and the institution of military inundations whenever this is required on account of war or danger of war, is regulated by law.

160. Only the courts may take cognizance of legal disputes over property or rights flowing therefrom, over debt claims and other civil rights.

161. The law may confer the decision of legal disputes, not belonging to those mentioned in Article 160, either upon the customary judge or to a board charged with administrative jurisdiction; it regulates the manner of handling and the consequences of the decision.

162. The judicial power is exercised only by judges designated by law. The law may provide that in the adjudication of cases to be indicated by it, such as are intended by Article 160, persons not belonging to the judiciary, may participate.

163. No one may be removed from the jurisdiction of the judge which the law assigns him.

The law regulates the manner in which disputes over authority, which have developed between the administrative and judicial power, are decided.

164. With the exception of the cases stipulated in the law, no one may be taken into custody except upon order of a judge stating the reason for the detention. The writ must be served upon the person against whom it is directed as soon as possible after the arrest.

The law determines the form of this order and the time within which the persons arrested must be given a hearing.

165. Entrance to a house against the wish (will) of the inhabitant is permitted only in the cases provided by law, by virtue of a special or general commission of an authority designated by law.

The law regulates the forms which must be observed in exercise of this authority.

166. The secrecy of letters entrusted to the post or other public institutions of transport is inviolable, except upon order of a judge, in the cases circumscribed by law.

167. Upon no misdeed may be placed as punishment the general confiscation of goods belonging to the guilty person.

168. All judgments must state the grounds upon which they rest, and in criminal cases must indicate the legal prescriptions upon which the sentence is based.

The verdict takes place with open doors.

Exclusive of the exceptions stipulated by law the sessions are public.

The judge may in the interest of public order and morals depart from this rule.

For punishable acts, to be designated by law, the requirements stipulated in the first and second clauses may be departed from.

Section 2.

The Judicial Authority

169. There is a supreme judicial court with the name of High Council of the Netherlands, the members of which are appointed by the King in conformity with the following article.

170. When a vacancy occurs it is reported by the High Council to the Second Chamber of the States General, which, for the purpose of filling it, presents the Crown a list of three persons, in order to make a selection therefrom.

The King appoints the president and the vice-president from the members of the High Council.

171. The members of the States General, the ministers, the Governor General of the Netherlands-Indies and the Governors of Surinam and of Curacao, the members of the Council of State, and the Commissioners of the King in the provinces stand trial even after retirement, for official misdeeds committed in these positions before the High Council, to be prosecuted by the King or by the Second Chamber.

The law may stipulate that still other officials and members of superior boards stand trial before the High Council for official misdeeds.

172. The High Council has supervision over the regular course and adjudication of legal cases, as well as the observance of the law by the members of the judicial authority and by the persons designated at the end of Article 162.

It may, in conformity with the provision made by the law with respect thereto, and exclusive of the exceptions to be made by the law, annul and suspend their acts, dispositions and judgments, when in conflict with the law.

The remaining powers of the High Council are regulated by law.

173. The members of the judicial authority are appointed by the King.

The members of the judicial authority charged with jurisdiction, and the solicitor-general attached to the High Council, are appointed for life.

The law can stipulate that they may be granted discharge when they attain a certain age.

They can be removed or discharged by verdict of the High Council in the cases indicated by law.

Upon their own request they may be discharged by the King.

In case a board is charged with administrative jurisdiction of last resort for the Realm, the first, second, third and fifth clause of this article are not applicable to the members thereof.

They may be removed or discharged in the manner and in the cases designated by law.

This article is not applicable to those who are exclusively charged with jurisdiction over persons members of the sea or land forces or to any other armed forces, or with the decision of disciplinary matters.

CHAPTER VIII

RELIGION

174. Everybody professes his religious opinions in complete freedom, subject to the protection of society and its members from the violation of the criminal law.

175. To all ecclesiastical societies in the Realm equal protection is extended.

176. The professors of the different religions all enjoy the same civil and citizenship rights and have equal right to hold dignities, offices and employment.

177. All public religious exercises within buildings and in closed places are permitted subject to necessary measures for the assurance of public order and tranquility.

Under the same provisions public religious exercises outside of buildings and enclosed areas remain lawful where they are now permitted in accordance with the laws and regulations.

178. The salaries, pensions and other incomes, regardless of their character, now enjoyed by the various religious faiths or their ministers remain assured to these faiths.

To the ministers, who until now have received from the Realm's treasury no salary or an inadequate salary, a salary may be granted or the existing one increased.

179. The King exercises care that all ecclesiastical societies observe the laws of the State.

180. The intervention of the government is not required in correspondence with the heads of various ecclesiastical societies, nor, except for responsibility according to law, with the proclamation of ecclesiastical prescriptions.

CHAPTER IX

FINANCES

181. No taxes may be levied for the benefit of the Realm's treasury, except by virtue of law.

This provision is also applicable to fees for the use of the Realm's works and institutions, in so far as the regulation of these fees is not reserved to the King.

182. No privileges may be granted in the matter of taxes.

183. Contracts of the State with its creditors are guaranteed. The debt is taken into consideration each year for the promotion of the interests of the creditors of the State.

184. The weight, quality and value of coins are regulated by law.

185. The suspension of and the responsibility for the affairs of mintage and the decision of disputes with respect to the alloy, quality and matters of a similar nature, are regulated by law.

186. There is a General Auditing Office, whose organization and function is regulated by law.

When a vacancy occurs in this Office the Second Chamber of the States-General sends a list of three persons to the King, who makes an appointment therefrom.

The members of the Auditing Chamber are appointed for life.

The third, fourth and fifth clauses of Article 173 is applicable to them.

CHAPTER X

DEFENSE

187. All Netherlanders in physical condition to do so, are obligated to cooperate in the maintenance of the independence of the Realm and the defense of its territory.

This obligation may also be imposed on residents who are not Netherlanders.

188. For the protection of the interests of the State there is a sea and land force, composed of volunteers and of conscripts.

The law regulates compulsory war service. It also regulates the obligations with respect to defending the Realm which may be imposed on those who do not belong to the sea and land forces.

189. The conditions upon which, for reasons of serious conscientious objections, freedom from war service may be extended, are stipulated by law.

190. Foreign troops are not taken into service except by virtue of law.

191. Conscripts for sea duty are bound to serve in and outside of Europe. For the service to be fulfilled in the Netherlands-Indies, Surinam and Curacao, special advantages are accorded by law.

192. Conscripts to serve on land may not be sent to the Netherlands-Indies, Surinam and Curacao except with their consent.

193. Whenever in case of war, danger of war or other unusual circumstances conscripts who are not in actual service are wholly or in part called to arms by the King in an emergency, a bill is immediately introduced in the States General, in order to limit as much as possible the continuance of the conscript under arms.

194. All the expenses of the armies are met out of the Realm's treasury.

The quartering and the maintenance of the persons under arms, the transportation and the supplying of whatever nature for the armies or defense works demanded of the Realm, may not be imposed upon one or more residents or municipalities except by general regulations fixed by law with reparations.

The exceptions to these general rules for the event of war, threat of war or other unusual circumstances, are fixed by law.

The King decides whether threat of war, in the sense in which that word is used in the laws of the Realm, is present.

195. For the maintenance of internal and external security every part of the territory of the Realm may be declared by the King or by his authority to be in a state of siege. The law determines the manner in which and the cases wherein this can take place, and regulates the consequences.

By this regulation it may be stipulated that the constitutional powers of the civil authority with respect to public order and the police in whole or in part pass to the military authority, and that the civil authorities be subordinated to the military.

In this case Articles 7, 9, 165, and 166 of the Constitution may be further departed from.

In case of war also Article 163, first clause, may be departed from.

CHAPTER XI

WATER-AFFAIRS ADMINISTRATION

196. The law provides the rules with respect to the water-affairs administration, the superior supervision and subordinate suspension thereunder included, in observance of the prescriptions comprised in the following articles of this chapter.

197. The King has the supreme supervision over everything which concerns the water-affairs administration irrespective of whether the costs thereof are paid out of the Realm's treasury or met in some other manner.

198. The States of the Provinces have supervision over all water-affairs works, water districts, peat districts and peat polders. Nevertheless, the law may confer the supervision over specific works to others.

The States are authorized, with the approval of the King, to make changes in the existing organizations and regulations of water districts, peat districts and peat polders, to abolish water districts, peat districts and peat polders, to create new ones and to establish new regulations for such organizations. The administrations of these organizations may make proposals to the States of the Provinces for modifying the organizations and regulations.

199. The administrations of water districts, peat districts and peat polders may in accordance with rules determined by law enact ordinances in the interest of the management of the organizations.

CHAPTER XII

EDUCATION AND RELIEF ADMINISTRATION

200. Education is an object of unremitting care of the Government.

The right to give instruction is free, subject to the supervision of the Government, and beyond that, in so far as it concerns the general formative lower and intermediate education, subject to investigation as to the qualification and morals of the teacher, all to be regulated by law.

Public education is regulated by law, in conformity with respect for everyone's religious concepts.

In each municipality adequate public, general formative lower education in a sufficient number of schools is furnished by the Government. In conformity with rules to be fixed by law, these provisions may be departed from, provided opportunity for the reception of such instruction to be financed in whole or in part out of public funds, are regulated by law, in observance, in so far as special education is concerned, of freedom of opinion.

These standards are, for general formative lower education, regulated in such a manner that the quality of special education paid wholly out of public funds and of public education, are equally satisfactorily assured. In this regulation especially the freedom of special schools with respect to the choice of means of instruction and the appointment of teachers is respected.

The expenditures of special general lower education, which meets the conditions to be determined by law, are met out of public funds in the same manner as public education. The law determines the conditions upon which aids for special general formative intermediate and preparatory higher education are granted out of public funds.

The King annually makes a report on the state of education in the States General.

201. The administration of indigent relief is an object of continuous care of the government, and is regulated by law. The King annually makes an extensive report on the activities with respect thereto to the States General.

CHAPTER XIII

CHANGES

202. Every proposal for a change in the Constitution indicates explicitly the proposed change. The law declares that there are grounds for taking into consideration the proposed change proposed by it.

203. After the proclamation of this law the Chambers are dissolved. The new Chambers consider the proposal and can adopt the identical above-named law only by a two-thirds majority of the votes cast.

204. The changes in the Constitution, established by the King and the States General, are solemnly promulgated and inserted in the Constitution.

205. The text of the revised Constitution is made public by the King, after, in so far as is necessary, the sections of each chapter and the articles are consecutively numbered and references are changed.

206. The authorities existing at the moment of the proclamation of a change in the Constitution, the binding laws, regulations and decisions remain in force, until they are replaced by others in accordance with the Constitution.

ADDITIONAL ARTICLES

Article I—The seigniorial rights concerning recommendations or appointment of persons to public or ecclesiastical positions are abolished.

The abolition of the remaining seigniorial rights and indemnification of the possessors can be determined and regulated by law.

Article II—The first clause of Article 159 remains inapplicable until the legal regulation concerning the cases in which no indemnification for loss to property which has been destroyed or rendered useless for a long or short period, is extended, shall have come into force.

Article III—The third clause of Article 92 leaves the pensions of those already retired undiminished.

Retiring members receive a pension of 150 fls. a year for each year during which previous to the proclamation of the provision, they were members of the Chamber, to a maximum of 3,000 fls. If the sum thus acquired is less than 2800 fls.

120 fls. is added for each succeeding year until 2800 fls. is reached.

The pensions referred to in this article may be changed by law.

The bill for such law, as well as the bill for the revision or repeal of such a law, cannot be adopted by the Chambers of the States General except by the two-thirds vote of all the members of which each chambers is composed.

Belongs to the Royal decree of February 25, 1938, S. 300.

Known to me,
the Minister of Interior Affairs,
Van Boeyen

THE NETHERLANDS-INDONESIAN AGREEMENT¹

Preamble.—The Netherlands Government, represented by the Commission General for the Netherlands Indies, and the Government of the Republic of Indonesia, represented by the Indonesian delegation, moved by a sincere desire to insure good relations between the peoples of the Netherlands and Indonesia in new forms of voluntary cooperation which offer the best guarantee for sound and strong development of both countries in the future and which make it possible to give a new foundation to the relationship between the two peoples; agree as follows and will submit this agreement at the shortest possible notice for the approval of the respective Parliaments:

Article I. The Netherlands Government recognizes the Government of the Republic of Indonesia as exercising de facto authority over Java, Madura and Sumatra. The areas occupied by Allied or Netherlands forces shall be included gradually, through mutual cooperation, in Republican territory. To this end, the necessary measures shall at once be taken in order that this inclusion shall be completed at the latest on the date mentioned in Article XII.

Article II. The Netherlands Government and the Government of the Republic shall cooperate in the rapid formation of a sovereign democratic state on a federal basis to be called the United States of Indonesia.

Article III. The United States of Indonesia shall comprise the entire territory of the Netherlands Indies with the provision, however, that in case the population of any territory, after due consultation with the other territories, should decide by democratic process that they are not, or not yet, willing to join the United States of Indonesia they can establish a special relationship for such a territory to the United States of Indonesia and to the Kingdom of the Netherlands.

¹ *Kuickerbocker Weekly*, December 2, 1946.

Article IV. The component parts of the United States of Indonesia shall be the Republic of Indonesia, Borneo, and the Great East without prejudice to the right of the population of any territory to decide by democratic process that its position in the United States of Indonesia shall be arranged otherwise. Without derogation of the provisions of Article III. And of the first paragraph of this article, the United States of Indonesia may make special arrangements concerning the territory of its capital.

Article V. The constitution of the United States of Indonesia shall be determined by a constituent assembly composed of the democratically nominated representatives of the Republic and of the other future partners of the United States of Indonesia to which the following paragraph of this article shall apply. Both parties shall consult each other on the method of participation in this constituent assembly by the Republic of Indonesia, by the territories not under the authority of the Republic and by the groups of the population not, or insufficiently, represented with due observance of the responsibility of the Netherlands Government and the Government of the Republic, respectively.

Article VI. To promote the joint interests of the Netherlands and Indonesia, the Netherlands Government and the Government of the Republic of Indonesia shall cooperate in the establishment of a Netherlands Indonesian union by which the Kingdom of the Netherlands, comprising the Netherlands, the Netherlands Indies, Surinam and Curacao, shall be converted into said union consisting on the one hand of the Kingdom of the Netherlands, comprising the Netherlands, Surinam and Curacao, and on the other hand in the United States of Indonesia.

The foregoing paragraph does not exclude the possibility of a further arrangement of the relations between the Netherlands, Surinam and Curacao.

Article VII. A. The Netherlands Indonesian Union shall have its own organs to promote the joint interests of the Kingdom of the Netherlands and the United States of Indonesia.

B. These organs shall be formed by the governments of the Kingdom of the Netherlands and the United States of Indonesia and, if necessary, by the Parliaments of those countries.

C. The joint interests shall be considered to be cooperation on foreign relations, defense and, as far as necessary, finance, as well as subjects of an economic or cultural nature.

Article VIII. The King (Queen) of the Netherlands shall be at the head of the Netherlands Indonesian Union. Decrees and resolutions concerning the joint interests shall be issued by the organs of the Union in the King's (Queen's) name.

Article IX. In order to promote the interests of the United States of Indonesia in the Netherlands and of the Kingdom of the Netherlands in Indonesia, a High Commissioner shall be appointed by the respective governments.

Article X. Statutes of the Netherlands Indonesian Union shall, furthermore, contain provisions regarding:

A. Safeguarding of the rights of both parties towards one another and guarantees for the fulfillment of their mutual obligations;

B. Mutual exercise of civic rights by Netherlands and Indonesian citizens;

C. Regulations containing provisions in case no agreement can be reached by the organs of the Union;

D. Regulation of the manner and conditions of the assistance to be given by the services of the Kingdom of the Netherlands to the United States of Indonesia as long as the services of the latter are not, or are insufficiently, organized, and

E. Safeguarding in both parts of the Union of the fundamental human rights and liberties referred to in the Charter of the United Nations Organization.

Article XI The statutes of the Netherlands Indonesian Union shall be drafted by a conference of representatives of the Kingdom of the Netherlands and the future United States of Indonesia.

B. The statutes shall come into effect after approval by the respective Parliaments.

Article XII. The Netherlands Government and the Government of the Republic of Indonesia shall endeavor to establish the United States of Indonesia and the Netherlands Indonesian Union before January 1, 1949.

Article XIII. The Netherlands Government shall forthwith take the necessary steps in order to obtain the admission of the United States of Indonesia as a member of the United Nations Organization immediately after the formation of the Netherlands Indonesian Union.

Article XIV. The Government of the Republic of Indonesia recognizes the claims of all non-Indonesians to the restoration of their rights and the restitution of their goods as far as they are exercised or to be found in the territory over which it exercised de facto authority. A joint commission will be set up to effect this restoration and restitution.

Article XV. In order to reform the government of the Indies in such a way that its composition and procedure shall conform as closely as possible to the recognition of the Republic of Indonesia and to its projected constitutional structure, the Netherlands Government, pending the realization of the United States of Indonesia and of the Netherlands Indonesian Union, shall forthwith initiate the necessary local measures to adjust the constitutional and international position of the Kingdom of the Netherlands to the new situation.

Article XVI. Directly after the conclusion of this agreement, both parties shall proceed to reduce their armed forces. They will consult together concerning the extent and rate of this reduction and their cooperation in military matters.

Article XVII. A. For the cooperation between the Netherlands Government and the Government of the Republic contemplated in this agreement, an organization shall be called into existence of delegations to be appointed by each of the two governments with a joint secretariat.

B. The Netherlands Government and the Government of the Republic of Indonesia shall settle by arbitration any dispute which might arise from this agreement and which cannot be solved by joint consultation in conference between those dele-

gations. In that case a chairman of another nationality with a deciding vote shall be appointed by agreement between the delegations or, if such agreement cannot be reached, by the President of the International Court of Justice.

Article XVIII. This agreement shall be drawn up in the Netherlands and Indonesian languages. Both texts shall have equal authority.

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