

Reforming the Electoral System of the Dutch Lower House of Parliament: An Unsuccessful Story

By Gert-Jan Leenknecht* and Gerhard van der Schyff**

Abstract

Which element of democracy is to prevail in the composition of parliament: an accurate reflection of minorities and their ideas, or a strong bond between citizens and their representatives? The answer, it seems, is to be determined to a large extent by the national political culture. The political history of the Netherlands makes strict proportionality the highest principle in this regard. Over the years, various attempts at fundamental electoral reform have been left stranded. It seems that the current system of proportional representation will remain intact in the Netherlands in spite of periodic attempts at change, as it probably best reflects the Dutch culture's longing for maximum inclusiveness.

A. Introduction

The principle of proportional representation has become a standard fixture of the constitutional and political landscape of the Netherlands in electing the *Tweede Kamer der Staten-Generaal* [Lower House of Parliament]. So important has the principle of proportionality become in that chamber's election that it is even guaranteed in section 53(1) of the Constitution.¹ At present though, much uncertainty exists as to how this principle is to be realized in order to ensure an effective link between voters and their elected representatives. In other words, the principle of proportionality may be sacred, but its particular shape is the topic of continued debate. This debate is also influenced by the changing face of Dutch society. Whereas voters used to identify quite closely with political parties, with

* Ph.D., Senior Lecturer in Constitutional and Administrative Law, Tilburg University, P.O. Box 90153, 5000LE Tilburg, the Netherlands, email: G.Leenknecht@uvt.nl

** Ph.D., Lecturer in Constitutional and Administrative Law, Tilburg University, P.O. Box 90153, 5000LE Tilburg, the Netherlands, email: G.vdrSchyff@uvt.nl

¹ Section 53(1): The members of both Chambers shall be elected by proportional representation within the limits to be laid down by Act of Parliament.

party affiliation often passing on from one generation to the next, voters now have become increasingly detached from such traditional bonds.² Political parties have lost some of their luster while at the same time the need has grown for voters in a highly individualized society to identify with their elected representatives. This has fuelled various calls over the years for the current electoral system to be reformed in order to ensure the lower house's continued political legitimacy.³ However, proposal after proposal has met with defeat. A far reaching proposal was again put forward in 2005, but the legislative bill containing the proposal was withdrawn soon after its tabling, while more recent proposals brought about on the government's initiative still need to be politically considered.

In this piece we intend to provide a critical view on the recent discussions concerning the Dutch electoral system with regards to the lower house. First the system will be characterized and explained, after which the most important proposals for reform will be studied and commented upon. It is also to be noted that attention will not be paid to the election of the *Eerste Kamer der Staten-Generaal* [Upper House], which is indirectly elected via the provincial assemblies.⁴

B. The Dutch electoral system: a short overview

The system for the election of the Dutch parliament's lower house, as laid down in the *Elections Act* of 1989, is currently one of the most proportional systems in the world.⁵ Parties acquire one of the one hundred fifty available seats for every 1/150th, or 0.667%, of the total number of votes. There exists no additional threshold, and although the country is divided into 19 electoral districts, mainly for

² RUDY B. ANDEWEG AND GALEN A. IRWIN, GOVERNANCE AND POLITICS OF THE NETHERLANDS 70-71 (2002); M.C. BURKENS, H.R.B.M. KUMMELING, B.P. VERMEULEN, AND R.J.G.M. WIDDERSHOVEN, BEGINSELEN VAN DE DEMOCRATISCHE RECHTSSTAAT 6TH ED. 243-245. (2006).

³ PAUL P.T. BOVEND'EERT AND HENK R.B.M. KUMMELING, HET NEDERLANDSE PARLEMENT 10TH ED. 83-90 (2004); Jan A. van Schagen and Henk R.B.M. Kummeling, *The Proposals for Electoral Reform in the United Kingdom and the Netherlands*, in CONSTITUTIONALISM, UNIVERSALISM AND DEMOCRACY. THE DUTCH CONTRIBUTION TO THE FIFTH WORLD CONGRESS OF THE INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW, 1-29 (D.J. Elzinga, F. Goudappel and H.R.B.M. Kummeling eds., 1999); P.P.T. Bovend'Eert, *Naar een Gemengd Kiesstelsel: Versterking van de Parlementaire Democratie*, 53 ARS AEQUI 78 (2004); J.A. van Schagen, *Naar een Nieuw Kiesstelsel*, 51 ARS AEQUI 5 (2002) for an overview.

⁴ On this chamber see, A. POSTMA AND B.J. BONENKAMP, AAN DEZE ZIJDE VAN HET BINNENHOF (1990).

⁵ DENNIS C. MUELLER, CONSTITUTIONAL DEMOCRACY 132 (1996); JAN A. VAN SCHAGEN, ELECTORAL SYSTEMS AND REPRESENTATIVE GOVERNMENT 27 (2000); Arend Lijphart, *The Dutch Electoral System in Comparative Perspective: Extreme Proportional Representation, Multipartism and the Failure of Electoral Reform*, 14 NETHERLANDS JOURNAL OF SOCIOLOGY 115-133 (1978); RUDY B. ANDEWEG AND GALEN A. IRWIN, GOVERNANCE AND POLITICS OF THE NETHERLANDS 77, 78 (2002).

administrative purposes,⁶ the country is treated as a single constituency. The electorate casts single non-transferable votes on individual candidates, but all seats are initially allocated to lists (parties), whereby the order of the candidates on the list determines which of them are elected. Candidates who are too low on a list may still acquire a seat over higher placed candidates if they receive more than 25% of the number of votes needed for a single seat – that is 0.1667% of the total number of votes.⁷ This system ensures that the division of seats in the lower house is an accurate reflection of all votes cast. The Dutch proportional electoral system is arguably then one of the most democratic systems of representation to be found – or is it?

Dutch politics is dominated by political parties and by party elites and party leaderships in particular.⁸ Candidates for membership of the lower house are chosen by their respective parties in procedures usually involving both the party leadership and party members.⁹ The allegiance of those candidates, therefore, lies first and foremost with the party, not the electorate.¹⁰ Consequently, the vast majority of members of parliament (MP's) are absolutely unknown to the general public, as they are elected in the slipstream of their party leader. Usually only a few relatively well-known higher placed candidates succeed in obtaining a seat individually by winning the required number of preferential votes. Furthermore, MP's live their professional lives mostly under the so-called 'Hague cheese cover', referring to the splendid isolation of the country's main political institutions. Regular 'working visits' to the more distant parts of the country do not make up for this lack of contact between MP's and their electorate. For the largest part the lower house, therefore, enjoys relatively little legitimacy.¹¹ The bond between the electorate and the elected has faded, and the distance between society and the political system has grown into a wide gap. This raises the question whether the introduction of an element of constituency voting into the electoral system could provide the remedy.

⁶ Parties can list different candidates for each of these districts; they may also choose not to take part in the national elections in all districts, in which case they lose potential voters.

⁷ *Elections Act*, sections P15-P18.

⁸ BOVEND'EERT AND KUMMELING (note 3), 351. This becomes quite clear when it is considered that voters have no direct influence on the formation of a coalition after an election. As no political party has scored an absolute majority in parliament since 1917, party elites are very important in forming governments.

⁹ RUDY B. ANDEWEG AND GALEN A. IRWIN, *GOVERNANCE AND POLITICS OF THE NETHERLANDS* 80-85 (2002).

¹⁰ BOVEND'EERT AND KUMMELING (note 3), 67, 84; BURKENS ET AL. (note 2), 244.

¹¹ VAN SCHAGEN, (note 5), 39.

In a way, this would take Dutch parliamentary democracy back in time by almost a hundred years. The current proportional electoral system dates from 1917, when it replaced a constituency voting system that had been introduced by the 1848 constitutional revision, a landmark in the development of the Dutch parliamentary system of government. In the second half of the nineteenth century Dutch politics was dominated by two large blocs, namely the confessional or religious parties on the one hand, and the liberals on the other; both sides consisting of various smaller factions. Towards the end of the century socialists entered the arena, but initially they were relatively small in number. Liberals generally formed the largest bloc. Dutch cabinets therefore, had a predominantly liberal character for most of the second half of the nineteenth century.¹²

The constituency voting system was abolished in 1917 because it had met with serious problems and criticism. Liberal cabinets were said to have been guilty of gerrymandering every time district borders had to be redetermined due to population shifts and growth.¹³ As a reaction to this, the number of constituencies was fixed by constitutional revision in 1887. Furthermore, by the end of the nineteenth century the Netherlands increasingly became a society of political, cultural and religious minorities, which was not reflected in the composition of the lower house due to the electoral system. Generally, there was a growing disappointment among the electorate because various minority groups repeatedly found their votes to be meaningless since only district winners were elected, a disappointment which gradually led to lower turnout at elections.

The so-called 'Pacification' of 1917, a broad political compromise between liberals, confessionals and socialists on two major political issues, led to the introduction of a system of proportional representation, as well as universal suffrage.¹⁴ Initially, there was no threshold to the extent that even small parties that had not succeeded in winning a single seat could still acquire one of the residual seats, and several parties did so in 1918. A threshold was introduced shortly after the 1918 elections in the form of a required percentage of the quota, in order to prevent the political fragmentation of the lower house. Nevertheless, the introduction of proportional representation has had far-reaching consequences for Dutch parliamentary democracy.

¹² ENID LAKEMAN, *HOW DEMOCRACIES VOTE. A STUDY OF ELECTORAL SYSTEMS* 203-206 (1974).

¹³ ANNE BOS, RON DE JONG AND JASPER LOOTS, *EEN SPRONG IN HET DUISTER. DE OVERGANG VAN HET ABSOLUTE MEERDERHEIDSTELSEL NAAR HET TELSEL VAN EVENREDIGE VERTEGENWOORDIGING IN 1918* 13-14 (2005).

¹⁴ Initially, the right to vote was limited to men, but in 1919 it was granted to women as well.

First of all, the political spectrum widened and dissipated considerably.¹⁵ In the general election of 1918, seventeen out of a total of thirty-one competing parties won seats. In 1922, forty-eight parties took part in the election, twelve of which acquired seats; and as much as fifty-four parties – a national record – took part in 1933, fourteen of those being awarded with seats. After the Second World War, initially there were fewer parties competing for seats (ten in 1946), but since the 1960s between fifteen and twenty-five parties usually took part. In 2006 there were twenty-four parties competing, with nineteen in 2003 and sixteen in 2002, while on average about ten parties are represented in the lower house. The composition of the lower house often becomes even more diverse, as conflicts within existing parties sometimes lead to splits and the formation of new ‘one person parties’, so that during certain periods over fifteen independent groups are active within the chamber.¹⁶

Since 1917, the outcome of elections usually leaves open various options for government coalitions, making cabinet formation a much more complicated process.¹⁷ The formation of a Dutch cabinet is almost without exception a long and tedious process, and usually takes several months.¹⁸ This is caused by the fact that the largest party rarely wins more than a third (fifty) of the total number of seats, and often considerably fewer seats. In most cases, the two largest parties together do not even command a majority in the lower house – seventy-six seats, half the total number of seats plus one – so that the formation of a stable cabinet requires a third party. And that still leaves open the question whether those two or three parties can find enough common political ground to cooperate within a cabinet. The fact that there exists no direct relation between the results of elections and composition of government sometimes leads to a surprising outcome of the formation process, as a party that wins the election may very well ‘lose’ the cabinet formation. The socialist *Partij van de Arbeid* (PvdA) for example won the 1977 elections and acquired a staggering fifty-three seats, becoming the largest party by a margin of four seats. During the formation process, however, the PvdA set its stakes too high, and the longest formation ever, spanning two hundred eight days, ultimately resulted in a coalition government of the *Christen Democratisch Appel*

¹⁵ BURKENS ET AL. (note 2), 200.

¹⁶ These statistics are available at: www.parlement.com, under ‘Tweede Kamer’ and ‘verkiezingen 1918-2006’ (last accessed 28 March 2007).

¹⁷ AREND LIJPHART AND BERNARD GROFMAN, CHOOSING AN ELECTORAL SYSTEM. ISSUES AND ALTERNATIVES 32-33 (1984).

¹⁸ BOVEND'EERT AND KUMMELING (note 3), 388-391. We should note that forming a Belgian cabinet has now proven to be at least equally difficult, and much more complex.

[Christian Democratic, CDA] and the liberal *Volkspartij voor Vrijheid en Democratie* (VVD).¹⁹

The formation process, which usually results in elaborate coalition agreements, causes a strong monistic relationship between parliament and the cabinet.²⁰ The parliamentary majority that supports the cabinet mainly serves to enable the cabinet to realize its policy plans. This monism has given rise to democracy based on the seeking of consensus. Important decisions are taken in informal meetings of the most powerful politicians, captains of industry, and other stakeholders, while parliamentary procedures sometimes seem to be little more than stage performances.²¹ But criticism has grown loud in recent years over what is perceived as 'backroom politics' with citizens calling for politics to be exposed to full daylight and for politicians to be more responsive to public opinion. Calls are often heard for a stronger relation between the represented and the representative, and a stronger and more critical parliament facing government. One of the options that is frequently put forward to achieve this is a revision of the electoral system.²² The assumption is that the introduction of constituency voting would strengthen the legitimacy of MP's, and strengthen the position of parliament vis-à-vis the cabinet. Since the 1960s, several proposals for revision of the electoral system have been put forward, but none of those ever materialized. The most recent attempt at electoral reform in 2005 is discussed below.

C. The 2005 Bill

Dissatisfaction with the electoral system and its failure to strengthen the bond between the electorate and the elected led to the tabling by the government of a bill in 2005 that would have seen far reaching reform of the *Elections Act*. The bill was a balancing act between two principles, namely that of proportional representation and the desire to establish a direct link between politicians and citizens. It was felt that proportionality had to be maintained, as the principle ensures that a wide variety of voices are heard in parliament, thereby giving an accurate reflection of popular opinion.²³ In defense of proportional representation the government also

¹⁹ J. BOSMANS, *STAATKUNDIGE VORMGEVING IN NEDERLAND: DE TIJD NA 1940* VOL. II 108-113 (1999)

²⁰ Burkens et al. (note 2), 246.

²¹ Burkens et al. (note 2), 261-265.

²² R.B. Andeweg, *Proeve van een Vernieuwd Kiesstelsel*, 78 *NEDERLANDS JURISTENBLAD* 1542-1547 (2003); D.J. ELZINGA, *HET NEDERLANDSE KIESRECHT* 21-24 (1997); VAN SCHAGEN (note 5), 39.

²³ Explanatory Report, *Parliamentary Papers II* 2004/2005, 29 986, no. 3, para. 2.4.

argued that such a system safeguarded the election of female and minority candidates more so than systems based solely on constituencies, while it also led to higher election turnouts.²⁴ This last point was also on the government's mind in tabling the bill, as one of its aims was to improve voter turnout, which failed to regain its 1977 peak of eighty-eight percent, while usually hovering around eighty percent and falling to seventy-three percent in 1998.²⁵

In satisfying both of its aims, the bill settled on a 'mixed' electoral system. MP's would be chosen from candidates on national party lists, but also from candidates standing in constituencies.²⁶ This was seen as the best option in ensuring that parliament reflected national opinion by maintaining proportional representation, while still forging a tangible link with the population.²⁷ A variety of systems were considered in which lists and constituencies were combined in deciding on the particular form that the new system had to take.²⁸

It was decided that half of the MP's, seventy-five in other words, would be elected by constituencies while the remaining seventy-five would be elected from lists.²⁹ Members would be elected from multi-member constituencies, such as in Sweden, as opposed to single member constituencies along the lines of the German model. For this purpose the bill proposed twenty such constituencies that would each return between two and five members.³⁰ For example, the constituency of Zeeland, with 377,000 inhabitants, would return two members, while a larger constituency such as The Hague with 963,000 inhabitants would elect five members.

Voters were to be given two ballots, a national non-transferable vote to be cast on a candidate standing on a party list, and the other on a candidate in their particular

²⁴ The government based its argument on AREND LIJPHART, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* (1999).

²⁵ Although it could probably be argued that voter turnout was still quite high in relation to other democracies, it was nonetheless felt that a downward trend was to be identified that had to be halted or reversed before it went too far. RUDY B. ANDEWEG AND GALEN A. IRWIN, *GOVERNANCE AND POLITICS OF THE NETHERLANDS* 74, 75 (2002).

²⁶ See *Electoral Systems in Europe* 18-19 (Brussels: European Centre for Parliamentary Research and Documentation, Simon McGee ed., 2000).

²⁷ The government based its argument on *MIXED-MEMBER ELECTORAL SYSTEMS: THE BEST OF BOTH WORLDS?* (Matthew Soberg Shugart and Martin P. Wattenberg eds., 2003).

²⁸ E.g. Austria, Germany, Sweden, Italy, Denmark, New Zealand and Scotland.

²⁹ *Electoral Reform Bill*, Parliamentary Papers II 2004/2005, 29 986, no. 2, section E1.

³⁰ *Id.*, para. 2.5.

constituency. Candidates were barred from standing in more than one constituency, but could have stood on a party list as well as in a constituency. In other words, a double candidature of party list and constituency would have been allowed, but not in multiple constituencies.

The principle of proportionality would still have determined the overall election outcome, as a party's total number of seats would have reflected the percentage of votes gained by its list. For example, fifteen percent of the votes cast nationwide on a particular list would have resulted in fifteen percent of the seats for that party's candidates – the country would still have formed a single constituency for proportional purposes. Obviously political parties then at least had to submit a party list in order to participate in a general election, because without such a list they could not score any votes with which to capture parliamentary seats. The reverse was not the case though, as political parties were not obliged to field constituency candidates apart from list candidates. The possibility of standing as an independent in a constituency, such as is the case with the United Kingdom's pure constituency system, did not form part of the possibilities.

While a party's total number of seats won would have been determined by its number of list votes, the seats so gained would first have been allocated to that party's candidates who won in their respective constituencies, only after which list candidates became eligible for election.³¹ Unqualified, this means that a candidate who wins a constituency seat without having achieved the quota necessary to capture a seat based on proportionality would still be elected, whereas a list candidate who did in fact meet the quota could so be left unelected. For example, based on a standard election turnout and calculated on a strict proportional basis, a seat is usually captured with approximately 60,000 votes in the Netherlands. A mixed system with a preference for constituency candidates could see such a candidate score a mere 20,000 votes and still be elected by their constituents. Meanwhile, a list candidate who did in fact gain the required 60,000 votes may face losing election if there are no seats left to divide after the allocation of available seats to constituency candidates. To soften this problem the bill included a threshold for candidates from constituencies.³² They had to attain at least fifty percent of the quota in order to be elected, thereby avoiding too much disparity between the votes to be attained by a party's list and constituency candidates in deciding who won seats, while still expressing a preference for constituency candidates.

³¹ *Id.*, section P1.

³² *Id.*, section P1c.

Another problem arose in the division of seats, as it could happen that a party's number of elected constituency candidates outnumber the actual number of seats it becomes entitled to based on the percentage of votes cast on its list. For example, a party is entitled to four seats based on its national list vote, while five of its constituency candidates were returned. As the size of the lower house is fixed in the Constitution by section 51(2) at one hundred fifty seats, it becomes impossible to simply allocate such 'surplus' candidates extra seats, as is the case in Germany with so-called *Überhang* mandates that cause a fluctuation of the *Bundestag's* [German Lower House) size.³³ Not only would such a course have run foul of the lower house's size restrictions, but importantly also of the principle of proportionality, something of which the bill's drafters sought strict adherence. The solution put forward amounted to awarding 'whole' seats to parties, leaving fractions to be added together in calculating remaining seats for constituency candidates who could not be elected on the strength of their party's list performance. This can be explained as follows: party A, based on its proportional strength, becomes entitled to 15.4 seats; it will then be awarded 15 'whole' seats, while the 0.4 seat will be added to the similar surplus of other parties in creating seats to be awarded to constituency candidates left behind by their party's national results.

Like all bills, the bill for electoral reform was submitted for consideration to the Council of State, a politically neutral body entrusted with rendering non-binding advice to parliament and government on the constitutionality and quality of legislative proposals.

D. Report by the Council of State

The Council of State paid due consideration to the bill and the motives underlying the initiative. Upon having studied the bill the Council reached the conclusion that the proposed legislation only satisfied its purpose, namely that of creating a tangible link between the electorate and their representatives, in a very marginal way.³⁴ The bill was found to be too complicated without achieving what it set out to do. It was, however, recognized that parliament increasingly took on the role of agent of government policy, instead of acting as popular mouthpiece in steering and controlling such policy. The Council recommended that this problem had to be remedied by enhancing parliament's independence against the government, something that could very well be achieved by changing the electoral system, it noted.

³³ VAN SCHAGEN (note 5), 31.

³⁴ *Council of State Report*, Parliamentary Papers II 2004/2005, 29 986, no. 5, para. 4.

In turning its attention to the bill itself, a number of critical observations were made in analyzing it.³⁵ For example, the argument was made that the bill would result more in a competition between different candidates within the various political parties in attaining favorable nominations for constituency seats, than a real competition between the candidates of various parties within constituencies. The constituencies were also judged too large to allow any real bond to be created between politicians and their constituents. For example, the average Member of Parliament elected from a constituency would represent 216,000 inhabitants, a figure thought too high by the Council. The size of the districts' populations was also judged as being detrimental to smaller political parties that would generally fail to elect their candidates on a geographical basis. This is something that would have been counter to Dutch political culture, which is based on consensus politics by including the largest possible number of stakeholders when taking decisions. Constituencies would become the preserve of the larger and established political parties while possibly sidelining the voice of political minorities. Issue was also taken up with the fact that a constituency candidate who fails to be elected geographically could still secure a parliamentary seat by having their name on a party list. In essence this would contradict the democratic choice of constituents who decided not to elect such a candidate to parliament in the first place. The Council further opined that the real number of constituency members in the lower house would actually be smaller than the seventy-five members envisaged by the bill. The reason being that senior politicians would choose to stand in constituencies in order to ensure their safe election, but upon serving in government such members must vacate their seats, only to be replaced by list candidates not elected by any particular constituency. In short, far-reaching electoral reform under the bill would, according to the Council, only have served to complicate the electoral system, without really producing a sufficient geographical nexus between the lower house and its voters.

The withdrawal of the bill, without it even having been debated in parliament, came as no surprise seeing the reservations made about it.³⁶ Yet, the general mood still dictated that electoral reform had to provide the key to constituting a truly representative and responsive lower house, hence the most recent proposals which are discussed below.

³⁵ *Id.*, para. 4a.

³⁶ *Notice of Withdrawal*, Parliamentary Papers II, 2005/2006, 29 986, no. 6.

E. Other proposals for reform

As we mentioned above, several proposals for the reform of the Dutch electoral system have been put forward since the 1960s, mainly by various commissions. The *Cals/Donner-Commission*, for example, created in 1967, was rather positive towards the introduction of an element of constituency voting, but its ideas found little favor.³⁷ In the early 1990s, the *De Koning-Commission* examined the introduction of the German mixed system, but rejected it since it found that it would not have significantly strengthened the legitimacy of MP's and also because it felt that the system was simply too complicated. It also examined the transition to a full-blown constituency voting system, but rejected that as well for being too harmful for smaller parties in the lower house, thereby affecting a critical element of Dutch political culture. Finally, it argued in favor of strengthening the influence of preferential votes by lowering the threshold for candidates to win individual seats.³⁸ The latter proposal is the only one that was realized, in the form of the twenty-five percent of the quota that is currently required for an individual seat.

The most recent report on reform of the electoral system was produced by the *Burgerforum kiesstelsel* [Citizen Forum on the Electoral System], which was convened by the Minister for Administrative Innovation as a reaction to the stranding of the 2005 Bill. The Forum consisted of one hundred forty citizens, randomly picked from a pool of volunteers, who were burdened with the task of assessing the opinions in the country on the electoral system, as well as advising the minister on future reform. It reported on 14 December 2006, advising the minister to allow voters to cast a single vote, *either* on a list (a political party in most cases), *or* on a particular candidate on a list.³⁹ According to the proposal, seats are to be allocated to each list in relation to the total number of votes cast on that list, including those cast on individual candidates – therefore, a proportional system. By voting for an individual candidate, voters would be able to break the order of candidates on the list. For example, when forty percent of the votes a party wins are cast on the list, forty percent of its candidates are elected according to the order of the list. The other sixty percent of its candidates are elected according to the number of votes they won. There would be no additional threshold for these candidates to acquire a seat, so it would probably become easier for lower placed candidates to win a seat in the lower house than is the case at present.

³⁷ *Report of the Cals/Donner Commission*, Den Haag: Government Publication, 1971.

³⁸ *Report of the De Koning Commission*, Parliamentary Papers II 1992/1993, 21 427, no. 36-37.

³⁹ *BURGERFORUM KIESSTELSEL, MET ÉÉN STEM MEER KEUS, ADVIES VAN HET BURGERFORUM KIESSTELSEL* (2006). Available in English at: www.burgerforumkiesstelsel.nl (last accessed 20 November 2007).

But would it really change the face of our lower house, and would it significantly strengthen the bond between the voters and their representatives? The proposal would probably mean that some little known backbenchers would have to make room for a number of other, equally little known backbenchers. Agreed, those backbenchers would be directly elected, but it would do very little to strengthen the legitimacy of members of the lower house in general. So the question is, should the Netherlands go through the trouble of introducing a complicating element into its current electoral system, when it will very probably have so little effect?

As already mentioned the Forum presented its report to the minister in December 2006. But the Forum suffered the bad luck that the *Balkenende II*-cabinet was already brought down by one of the coalition parties in the lower house in June 2006. An interim cabinet (*Balkenende III*) prepared elections for 22 November of that same year; after the elections, a centre-left oriented cabinet (*Balkenende IV*) consisting of the CDA, PvdA and the conservative *ChristenUnie* was formed. The coalition pact that was agreed between these parties in February 2007 does not mention a word about the electoral system.⁴⁰ As a matter of fact, the government has to date not yet taken any official position regarding the proposal put forward by the Citizen Forum. The proposal may very well end up at the bottom of the drawer – as has happened with all but one proposal over the last forty years.

F. Conclusions

The unsuccessful story of the reform of the Dutch electoral system is about wanting to sit on the fence, run with the hare, and hunt with the hounds, all at the same time. Both politicians and citizens want a decisive and responsive lower house that accurately reflects all relevant political minorities, and at the same time enjoys strong legitimacy. This combination appears to be a complex compromise which is hard to reach. Holding on to strict proportionality necessarily means that elections are fought on a national level, which in turn implies a crucial role for national party organizations and party elites. Consequently, creating a bond between the electorate and their representatives will remain problematic. This gives rise to unease among politicians, as they are accused of creating and maintaining a wide gap between politics and the citizen. Putting the bond between electorate and representatives first implies a transition to a constituency based electoral system, but then strict proportionality must be abandoned. Consequently there will be considerably less room for small political factions within the national political

⁴⁰ Coalition Pact between the lower house factions of the CDA, PvdA, and ChristenUnie, Den Haag, 27 February 2007, available at: www.parlement.com, under 'regeringsbeleid' and 'regeerakkoord' (last accessed on 28 March 2007).

institutions, and in all likelihood the power of national party elites will decline. It is clear that the established political parties will not accept these consequences, partly out of self-preservation, partly for fear of being accused of leaving new political factions in the cold.

Moreover, giving up the principle of proportionality would imply a revision of the Constitution, something which requires two readings separated by a general election, and with a two-thirds majority in the second reading. This is a particularly time consuming procedure, the outcome of which is never entirely predictable. In the recent past other proposals for constitutional reform have been rejected by the upper house and proposals for electoral reform could very well suffer the same fate.⁴¹

A solution could be not to apply the proportionality principle in an absolute or strict fashion, thereby avoiding a constitutional revision. Even without near pure proportionality, the composition of the lower house of parliament could then still give an adequate reflection of the religious and ideological groups within society. However, combinations of a proportional system and a constituency voting system on the other hand prove to be rather complex in their functioning. The consequences of introducing a mixed system are also largely unpredictable. For fear of losing their position and power base, established parties are then understandably very reluctant, conservative even, when it comes to fundamental reform of the Dutch electoral system. Dutch constitutional history shows that fundamental changes in the system of government require pressing external factors, such as serious social unrest, or the urgent threat of war or armed revolution – pressures which are not at all imminent.⁴²

Generally, the crucial question is, 'which element of democracy is to prevail in the composition of the lower house?'. The choice is between an accurate reflection of minorities and their ideas, in order to ensure that all voices are heard at the political level, and a strong bond between citizens and their representatives, to ensure strong legitimacy and responsiveness of representatives to the direct needs of their voters. The answer, it seems, is to be determined to a large extent by the national political culture. The political history of the Netherlands, which is characterized by a large variety of religious and ideological groupings and by the desire for broad political consensus in the constant battle against common enemies and other

⁴¹ E.g., on 18 May 1999 (known as the *Nacht van Wiegel*) the upper house rejected a revision bill, which would have introduced the corrective referendum as part of the legislative procedure for acts of parliament.

⁴² As was the case in 1795 (the Batavian Revolution), 1840-48 (the Revolutionary years), 1917 (the Pacification).

threats, makes strict proportionality the highest principle. Countries that have a much more homogeneous population in a religious and ideological sense, which are not as wary of large political shifts or even temporary political instability, may prefer a more direct relation between the electorate and its representatives. On balance it then seems as if the current system of proportional representation will remain intact in the Netherlands in spite of periodic attempts at change, as it probably best reflects the Dutch culture's longing for maximum inclusiveness.