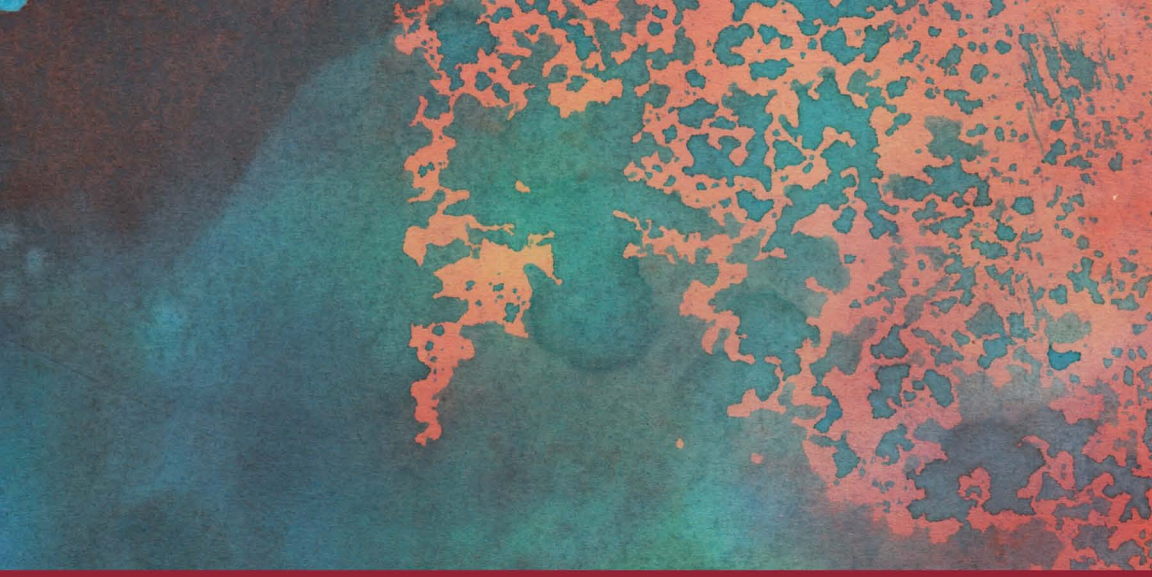
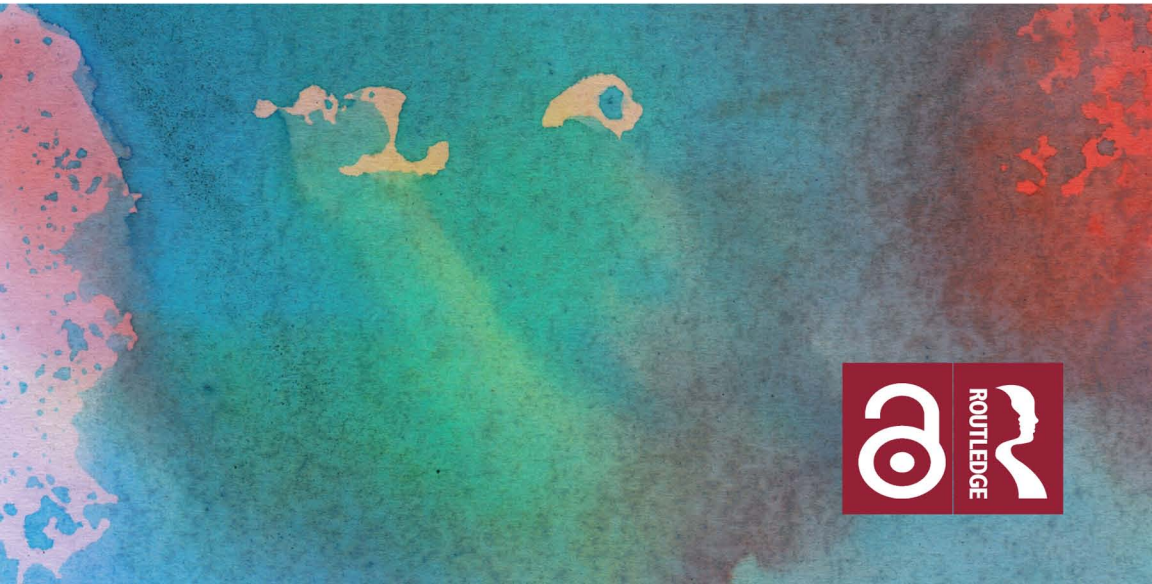


Routledge Studies in Modern History

REFORMING SENATES

UPPER LEGISLATIVE HOUSES IN NORTH ATLANTIC SMALL POWERS 1800-PRESENT

Edited by
Nikolaj Bijleveld, Colin Grittner, David E. Smith
and Wybren Verstegen



Reforming Senates

This new study of senates in small powers across the North Atlantic shows that the establishment and the reform of these upper legislative houses have followed remarkably parallel trajectories. Senate reforms emerged in the wake of deep political crises within the North Atlantic world and were influenced by the comparatively weak positions of small powers. Reformers responded to crises and constantly looked beyond borders and oceans for inspiration to keep their senates relevant.

Nikolaj Bijleveld, historian, is a staff member at the University of Groningen.

Colin Grittner teaches Canadian history in Vancouver, British Columbia, Canada, and has held postdoctoral fellowships at the University of British Columbia and the University of New Brunswick.

David E. Smith is a former president of the Canadian Political Science Association and the author of a number of books on the Canadian Parliament and Canadian federalism.

Wybren Verstegen is Associate Professor in Economic and Social History at Vrije University, Amsterdam.

Routledge Studies in Modern History

Castro and Franco
The Backstage of Cold War Diplomacy
Haruko Hosoda

Model Workers in China, 1949–1965
Constructing A New Citizen
James Farley

Making Sense of Mining History
Themes and Agendas
Edited by Stefan Berger and Peter Alexander

Transatlantic Trade and Global Cultural Transfers Since 1492
More Than Commodities
Edited by Martina Kaller and Frank Jacob

Contesting the Origins of the First World War
An Historiographical Argument
Troy R E Paddock

India at 70
Multidisciplinary Approaches
Edited by Ruth Maxey and Paul McGarr

1917 and the Consequences
Edited by Gerhard Besier and Katarzyna Stoklosa

Reforming Senates
Upper Legislative Houses in North Atlantic Small Powers 1800–present
Edited by Nikolaj Bijleveld, Colin Grittner, David E. Smith and Wybren Verstegen

For a full list of titles, please visit: www.routledge.com/history/series/MODHIST

Reforming Senates

Upper Legislative Houses in North Atlantic Small Powers 1800–present

Edited by
Nikolaj Bijleveld, Colin Grittner, David E. Smith and Wybren Verstegen

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2020
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2020 selection and editorial matter, Nikolaj Bijleveld, Colin Grittner, David E. Smith and Wybren Verstegen; individual chapters, the contributors

The right of the editors to be identified as the author of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

The Open Access version of this book, available at www.taylorfrancis.com, has been made available under a Creative Commons Attribution-Non Commercial-No Derivatives 4.0 license.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
A catalog record for this book has been requested

ISBN: 978-0-367-33968-5 (hbk)
ISBN: 978-0-429-32311-9 (ebk)

Typeset in Times New Roman
by Apex CoVantage, LLC

Contents

List of figures viii
List of contributors ix
Preface xi
KAREL DAVIDS

Reforming senates in the post-revolutionary North Atlantic world: an introduction 1
NIKOLAJ BIJLEVELD AND WYBREN VERSTEGEN

PART I
The need for a senate (c. 1790–1870) 13

1 Senates and bicameralism in revolutionary Europe (c. 1795–1800) 15
JORIS ODDENS

2 The rise and fall of the quasi-bicameral system of Norway (1814–2007) 29
EIVIND SMITH

3 Members of the Senate in the Southern Netherlands (Belgium) between restoration and revolution (1815–1831) 43
ELS WITTE

4 A liberal senate: the Danish *Landsting* of 1849 60
FLEMMING JUUL CHRISTIANSEN

5 The Senate of Canada: renewed life to an original intent 75
DAVID E. SMITH

PART II
Democracy, the people and the Senate (c. 1848–1935) 89

6 Constitutional conservatism, anti-democratic ideology, and the elective principle in British North America's upper legislative houses, 1848–1867 91
COLIN GRITTNER

7 Aristocratic populism: the Belgian Senate and the language of democracy, 1848–1893 106
MARNIX BEYEN

8 Rejecting the upper chamber: national unity, democratisation and imperial rule in the Grand Duchy of Finland, 1860–1906 116
ONNI PEKONEN

9 The Swedish Senate, 1867–1970: from elitist moderniser to democratic subordinate 133
TORBJÖRN NILSSON

10 The Senate and the 'Social Majority': Joannes Theodorus Buys (1826–1893) and a 'Meritocracy' in the Netherlands (1848–1887) 146
WYBREN VERSTEGEN

11 The Irish Senate, 1920–1936 154
JOHN DORNEY

PART III
Does a state still need a senate? (c. 1920–present) 171

12 The vitality of the Dutch Senate: two centuries of reforms and staying in power 173
BERT VAN DEN BRAAK

13 Marginalising the upper house: the Liberal Party, the Senate and democratic reform in 1920s Canada 188
ADAM COOMBS

14 Vocational voices or puppets of the lower house? Irish senators, 1938–1948 202
MARTIN O'DONOGHUE

15 The rise and fall of bicameralism in Sweden, 1866–1970 216
JOAKIM NERGELIUS

16 Unicameralism in Denmark: abolition of the Senate, current functioning and debate 225
ASBJØRN SKJÆVELAND

17 Precarious bicameralism? Senates in Ireland from the late Middle Ages to the present 239
MUIRIS MACCARTHAIGH AND SHANE MARTIN

18 Founding principles, constitutional conventions and the representation of Francophones living outside Quebec – the Canadian Senate since 1867 255
LINDA CARDINAL

Appendix 268
Index 269

Figures

17.1 Reasons given for not voting in the Seanad referendum in Ireland 248
17.2 Reasons given for not voting in the Seanad referendum in Ireland. 249
17.3 Reasons given for having voted to retain the Seanad in Ireland 250
18.1 Senatorial nominations of Francophones living outside Quebec under successive Prime Ministers since 1867 261

Contributors

Marnix Beyen is Professor of History and a member of Power in History – Centre for Political History at the University of Antwerp.

Nikolaj Bijleveld, historian, is a staff member at the University of Groningen Business School.

Bert van den Braak is Professor of Parliamentary History and Parliamentary System at Maastricht University and a researcher at the Montesquieu Institute, The Hague.

Linda Cardinal holds a Research Chair in Canadian Francophonie and Public Policies at the University of Ottowa.

Flemming Juul Christiansen is Associate Professor in Politics and Public Administration at Roskilde University.

Adam Coombs is a PhD candidate in Canadian history at the University of British Columbia.

Karel Davids is Emeritus Professor of Economic and Social History of the faculties of Humanities and the School of Business and Economics at Vrije Universiteit Amsterdam.

John Dorney is a historian of the Irish revolutionary period, 1919–1924.

Colin Grittner teaches Canadian history at McGill University.

Muiris MacCarthaigh is Senior Lecturer in Politics and Public Administration at Queen's University Belfast.

Shane Martin is Anthony King Professor in Comparative Government at the University of Essex.

Joakim Nergelius is Professor of Legal Theory at Örebro University.

Torbjörn Nilsson is Professor of History at Södertörns Högskola.

Martin O'Donoghue lectures in modern Irish history and public history at the University of Limerick.

Joris Oddens is a postdoctoral researcher on political culture and parliamentary history at the University of Padova and a guest researcher at the Huygens Institute for the History of the Netherlands.

Onni Pekonen has specialised in parliamentary history and politics and works as a specialist on EU affairs at the Finnish prime minister's office, Helsinki.

Asbjørn Skjæveland is Associate Professor in the Department of Political Science, Aarhus School of Business and Social Sciences, Aarhus University.

David E. Smith is Adjunct Professor, Politics and Public Administration, Ryerson University.

Eivind Smith is Professor of Public Law at the University of Oslo.

Wybren Verstegen is Associate Professor in Economic and Social History at Vrije Universiteit Amsterdam.

Els Witte is Emeritus Professor in History and Honorary Rector of Vrije Universiteit Brussel.

Preface

In the Netherlands, the most important statesman of the nineteenth century was Johan Rudolf Thorbecke (1798–1872). Thorbecke was the chief framer of the Dutch Constitution of 1848, which still forms the basis of the country's political system. Among the various reforms which the Constitution introduced was a change in how members of the Senate were selected (in Dutch *Eerste Kamer*, First Chamber). Henceforth, the senators would no longer be appointed by the king (as laid down in the Constitution of 1815) but be chosen by the representative assemblies of the separate provinces. Although the upper chamber, in contrast to the lower chamber, would therefore be elected indirectly and by a more restricted, less popular electorate, this reform nevertheless marked a significant shift in the balance of political power that saw the upper chamber become more independent from the king. This was one of the ways in which the Constitution of 1848 contributed to the transformation of the Netherlands into a constitutional monarchy.

In Thorbecke's view, the post-1848 Senate was not an ideal institution, but even so, he saw it as part and parcel of a new, more sophisticated, more democratic institutional framework, including a constitutional monarch, which he envisaged in the political philosophy he had elaborated over the previous ten years. One of the building blocks of this philosophy was the conviction that constitutions were to be moulded in flexible ways, adapting to historical situations, challenges and changes. Another key element was its international orientation, especially with an eye to the position of small powers. According to Thorbecke, a good constitution was more than a formal entity – it was a 'national force' that could make small countries less vulnerable and could help them in the long run to retain their independence in the face of revolutionary and aggressive threats from greater powers beyond their borders. He was convinced that small countries in particular needed a firmly established political system for this purpose.

This book deals with senates in small constitutional monarchies in the North Atlantic world, such as the Netherlands, with powerful neighbours. In particular, this book discusses these senates in the nineteenth, twentieth and early twenty-first century and focuses both on moments when their very existence was in jeopardy or on periods when their role, workings or composition underwent important transformations. In line with Thorbecke's thinking, the contributors to this volume consider the foundation and functions of senates to be highly dynamic phenomena.

The chapters examine changing relations between senates, monarchs and different groups in the populations, as well as the variable relationship between senates and other state institutions. The question of whether small countries in the North Atlantic were especially concerned with the stability of their constitutions because of their vulnerable position *vis-à-vis* great powers, such as France, Germany, Russia, Great Britain and the United States, is also discussed.

This volume is the outcome of a project about the history of senates funded by a foundation named after Johan Rudolf Thorbecke, *Fonds Staatsman Thorbecke*, which is managed by the Royal Netherlands Academy of Arts and Sciences (KNAW). This project, based at Vrije Universiteit Amsterdam, was, under my supervision, coordinated by Wybren Verstegen (Vrije Universiteit Amsterdam) and Nikolaj Bijleveld (University of Groningen) with the assistance of Daan Jansen and Kariem Ahmed. The first drafts of the studies brought together in this volume were discussed at a workshop titled 'Senates in crises: The Senate and the people in North Atlantic small power constitutional monarchies', held at the KNAW in Amsterdam in May 2018. Together with Colin Grittner (University of New Brunswick) and David E. Smith (Ryerson University), Bijleveld and Verstegen formed the editorial team which saw to it that the drafts were rewritten as chapters for this book. I am confident that this volume, *Reforming Senates*, makes a significant contribution to the fields of political history, political science and sociology, as well as to public debates on the role of upper chambers in Western democracies today.

Karel Davids

Reforming senates in the post-revolutionary North Atlantic world

An introduction

Nikolaj Bijleveld and Wybren Verstegen

Introduction

The rationale for connecting the historiography of the senates in small European countries and Canada against the background of the major powers in the North Atlantic is illustrated in a quote from George Brown, one of the architects of Canadian bicameralism, from 1865:

> We are striving to do peacefully what Holland and Belgium, after years of strife, were unable to accomplish. We are seeking by calm discussion to settle questions that Austria and Hungary, that Denmark and Germany, that Russia and Poland, could only crush by the iron heel, or armed force. We are seeking to do without foreign intervention that which deluged in blood the sunny plains of Italy. We are striving to settle forever issues hardly less momentous than those that have rent the neighbouring republic and are now exposing it to all the horrors of civil war.
>
> (Ajzenstat et al. 2003)

During the American Civil War (1861–1865), Canadian politicians worked under severe political pressure from Westminster to give their country a constitution that would keep this British colony, with its population from French and English descent, together. They knew how ethnic, religious and linguistic divisions, as well as nationalistic sentiment, could easily tear states apart.

In the nineteenth century, small powers all over the North Atlantic faced similar risks, problems and threats. Denmark had a German-speaking minority that aimed for secession. The United Kingdom of the Netherlands was divided by linguistic and religious barriers that split the country into two states after the revolutionary year, 1830. In Ireland, religious differences continue to divide the country to this day. In Canada, one of the most important building-blocks of the new constitution – and the proposed solution to this division – was the creation of a senate, with senators to be appointed by the Crown (the governor-general). It gave and still gives power to and could and still can prevent legislation that harms the country's French-speaking minority (Cardinal, this volume; Smith, D. E., this volume).

In the countries scrutinised in this volume – Belgium, Canada, Denmark, Finland, Ireland, Norway, Sweden and the Netherlands – senates were always

formed under the more or less explicit supervision of the great powers or at least in the knowledge that powerful neighbours might interfere in domestic affairs, be it France, Great Britain, Germany, Russia, the United States or the dwindling might of Sweden in the case of Norway (Smith, E., this volume). A good example is the Belgian Senate, created after the revolution of 1830 as an answer to the English and French concerns about the potentially radical character of the new state (Stengers 1995). This, however, was not the only way in which the existence of strong neighbours influenced constitutional thinking in small nation-states. In Canada and the Netherlands, for instance, constitutions, including their senatorial provisions, were even seen as a way of making nations stronger, i.e. less vulnerable to aggressive and powerful neighbours (Boyko 2014; Drentje 1998).

The senates selected for this volume share a vulnerability *vis à vis* the great powers, which distinguish them from the often-analysed and more famous upper chambers, such as the American or French Senates or the British House of Lords, which are still overrepresented in the literature (Schnatterer 2015). Furthermore, the countries in this volume share a common heritage with respect both to the Age of Revolution and to upcoming nationalism in the nineteenth century. Moreover, they also looked to each other when formulating their constitutions or even when deciding which role the senate should play, as the quote from George Brown illustrates. In all these small powers, senates were criticised every now and again and would frequently come under attack. In some cases, they were faced with the threat of abolition or were even abolished altogether, especially over the course of the twentieth century. Finally, all these senates seem to have gone through a process that reveals a lot of commonalities in the way they functioned and were reformed and discussed.

In the nineteenth century, bicameralism appeared to be the norm for nation states that were gradually transferring away from the traditional division of power between a monarch and estates to more democratic forms that left room for a novel idea – representation of 'the people'. This could lead to constitutions without (proper) senates, as in Norway (Smith, E., this volume) and Finland (Pekonen, this volume), or to a gradual disappearance of the senate, as in Sweden (Nergelius, this volume) and Denmark (Skjæveland, this volume). In that respect, the Nordic countries have a special reputation: in all these very stable democracies, senates either never existed or were abolished. Examining these nations together helps explain the paternity, transformation and relevance of the senates as legislative institutions over time.

All senates involved in this study differ considerably from each other, and there is no suggestion that they will come to resemble each other in the future. This is not due to the constitution-makers in these countries operating in isolation. Of course, they worked within their own political context, which generated different compromises in different circumstances (Drentje 2004), but they were certainly acquainted with the ideas, practices and usefulness of examples in neighbouring countries. Norway, for instance, was inspired by the Dutch Batavian Republic (Smith, E., this volume); the revolutionary Sister Republics of France looked at the United States and France itself for inspiration (Oddens, this volume); and

Finland copied ideas from its Scandinavian neighbours (Pekonen, this volume). The outcome of the complex processes of making and remaking (but seldom imitating) constitutions was that senators could be appointed or chosen (1) by a large or small constituency, (2) at a central or at a regional level and (3) by the rich, the experienced or the better educated. They could be chosen directly or indirectly, with complicated voting systems, partly by special interest groups or by the same people who held a vote for the people's assembly. While the people's assemblies tended to resemble each other because of, for example, democratic ideals, universal suffrage, party politics etc., the senates discussed in this volume differ profoundly in terms of how they were constructed, how they operated and how politicians were admitted to the chambers (Riescher 2010).

The roles of the senates

From a historical perspective, we see how, in the nineteenth century, these countries struggled with the transition from the old political regime with a privileged position for elites to a new and more democratic system. Exactly how this compromise became manifest in the senate and the extent to which the senators remained in power depended heavily on the specific circumstances in which the senates were established. These were influenced by specific national ideas, revolutionary pressure, pressure from major neighbouring countries, social tensions, war etc. Bicameralism appears to have been a generally acceptable solution. A lower house would offer 'the people' power, while the senate would ensure that the old elites (nobility and sometimes the clergy and landed elites) or previously independent federal states maintained some of their influence in the new political system. Especially in the nineteenth century, as Els Witte stresses (this volume), individuals were more important than their mandates. As a result and sometimes quite literally, as in the cases of Denmark (Christiansen, this volume) and the Netherlands (Van den Braak, this volume; Witte, this volume), senates were born from or maintained because of the compromise between progressive and conservative forces.

Even though the senate came to represent the old powers, one must not make the mistake of interpreting the senate as a classical element that would inevitably disappear from the new political parliamentary system. Envisioning bicameralism as the result of a compromise makes even more sense when looking at the role the upper house was expected to play in the nineteenth century. The newly formed senates played – or were supposed to play – an important role in stabilising the political situation in their country. In all cases, they served to assure that parliaments would think twice before putting new legislation into practice. Originally, even this common idea of what bicameralism was did not exist. In the Revolutionary Age, which influenced the political framework of the whole Atlantic World (Israel 2017), the idea of installing two councils, one of which was often called a senate, did not necessarily result in bicameralism. In some cases, the senate was the legislature that proposed laws, and the other council possessed limited power and was not seen as being connected to the senate or even as part of the legislative edifice in the first place (Oddens, this volume).

In a time when countries in the Western world were gradually becoming more democratic, senates gained more prominence as *chambres de réflexion* to counter overly revolutionary or centripetal tendencies. Under parliamentarism, 'majority rule', so was the idea, needed a countervailing power. In practice, this also meant that the requirements for senators differed from those for the people's representatives, though these differences tended to diminish over time – for example, how they were elected (the franchise) or appointed. A move towards radicalism is, however, not the only danger of majority rule. Majority rule sometimes necessitates the protection of the interests of minorities or social groups. This became one of the functions of the Senate in Ireland (Dorney, this volume; O'Donoghue, this volume) and was especially successful in Canada (Cardinal, this volume). Senates in other countries, such as the Netherlands and Denmark (Christiansen, this volume), did not take up such a role, even though these countries had significant religious and ethnic minorities. In the Netherlands, religious parties opted for a broader representation of the population in the Senate but not necessarily for their fellow brethren, which solved the issue of minority representation in a different way (Van den Braak, this volume). Federal Canada is a union despite its internal differences and gave room to a linguistic minority and, gradually, to other (ethnic) minorities. The newly established unitary nation states in Europe, however, aimed to unify their citizens under one nation, which interfered with the representation of linguistic, religious and ethnic minorities.

The attempts to abolish senates proved to be a long, capricious and sometimes futile processes. In Denmark, the first attempt failed after the issue was entangled in other political discussions (Skjæveland, this volume). A second attempt succeeded because the issue was linked to matters concerning the future of the monarchy. Senates in each country encountered opposition. With the increasing emancipation of the people, they were accused more and more often of being conservative and sometimes even undemocratic. This accusation persisted, even though senates – because of the impact of democratic ideas concerning representation, franchise and eligibility – gradually came to resemble the lower houses in terms of social composition. In and of itself, this critique was obviously not enough, since many of the countries in this volume still have a functioning senate to this day. Path dependency, i.e. the way senates are integrated in the state system, the criteria for constitutional changes or the extent to which they differ from the lower house appears to explain why abolition can be so difficult to realise. In non-federal states, the old elites lost their power over time, as democratic principles became more widely accepted. If a senate did not succeed in reforming itself sufficiently, it might become outdated or redundant. Abolition could be sped up when the constitution was organised in a way that made fundamental changes relatively easy (Nergelius, this volume).

Both the upper house's ability to be adjusted to meet critique and its opportunities to reform and reinvent itself are closely related and highly relevant in the history of the senates. Senates could reform themselves based on the presupposition that parliament should not make 'hasty' decisions. From the nineteenth century onwards, senates used their position as a *chambre de réflexion* to check the

quality of laws accepted by the people's assembly – for example, what occurred in the Netherlands. Here, the Senate examined whether new laws were in line with existing legislation, whether a new law might generate unforeseen consequences and whether a new law was to be considered just in the light of certain principles (Van den Braak, this volume). This function explains not only why but also how a 'second' chamber of 'sober thought' was formed in the cases of the Batavian Republic (Oddens, this volume) and Norway (Smith, E., this volume) by means of selecting certain members from a unicameral parliament to formulate a second opinion. The persisting desire to prevent hasty decisions may explain why, *after* the abolition of a senate, some of its original functions reappear in another guise, as Asbjørn Skjæveland (this volume) and Eivind Smith (this volume) illustrate for Denmark and Norway (cf. Riescher 2010).

'Thinking twice', however, does not mean that senates played a conservative role from the outset. Senates do more than block or delay laws accepted by the lower chamber or promote the interests of the elites. As studies about upper chambers show, their role can be far more fruitful: a senate can foster reconciliation in transitional phases (Baturo & Elgie 2018; Nilsson, this volume), prevent disintegration (as in Canada), promote consistency in legislation (as in the Netherlands), mollify opposition from conservative elites and put a break on overly rash decisions made by the people's chamber (Verstegen, this volume). This stabilising aspect should not, however, be stressed too much. Most of the countries under scrutiny in this volume have been stable democracies for a long time. Though created to give stability to parliamentary systems, senates as such, it appears, can be useful, but they are not always a *sine qua non* for this stability, as the Nordic countries show.

Structure and themes of this volume

Eighteen case studies have been brought together in this book. Despite the vast variety in appearances of the senates and the multidisciplinary character of this volume, we can identify clear commonalities between the senates, often related to specific historical periods. Without pretending to offer an exhaustive list of issues covered by the authors and without using our periodisation as a straitjacket, we have ordered this volume thematically and chronologically in three parts. Since comparable developments in different nations do not always happen simultaneously, there are a few cases for which our thematic approach does not overlap with the suggested periods. Finally, it is important to realise that the chapters offer many more valuable insights than we can introduce here.

The first part, *The need for a senate*, concerns the way in which countries discussed and positioned the senate between the executive – either the monarch or the (revolutionary) government – and the people's assembly. This is roughly the period between Thermidor (1794), when France and its Sister Republics introduced senates as a reaction to the Jacobinism of the earlier period (Oddens, this volume), and the revolutions and upheavals of 1830 (Witte, this volume), 1837 (in Canada, Ducharme 2010) or 1848 (in Europe), which led to important reshuffles

in the position of senates in many European countries. In this period, many countries decided to install a senate, but which exact role it would play was not yet clear. Oddens (this volume) illustrates that, during the Age of Revolution, the role of the senate was not related to bicameralism as it is today. Another example is Norway, which rejected a bicameral system but nevertheless decided to install a pseudo-senate (Smith, E. this volume) – possibly because it needed such a body or because bicameralism was seen as a sign of national maturity (quoted in Smith, D. E., this volume). The case of Denmark shows how nationalistic sentiments, the pressure of a war and the impact of revolutionary thoughts contributed to all parties agreeing with quite a liberal Senate (Christiansen, this volume).

All nations treated in this study share a revolutionary past, and all felt the need to discuss the installation of a senate. Especially in this period, the role of the major, powerful neighbours was of significant importance. During the American Revolution and after the downfall of Napoleon, revolutionary threats were feared equally by minor powers and the major powers surrounding them. In many of Europe's new monarchies in the early nineteenth century, senates were originally envisioned as a 'bulwarks' protecting the crown against revolutionary tendencies. This function makes clear that the Weberian idea of parliament as 'a counterforce, a representation of those ruled by the administration' does not always hold (Palonen 2019). During the Restoration and after the Revolution of 1830, most of the small states in Northern and Western Europe saw political reform under the watchful eye of the major powers that surrounded them, and they often depended on these nations. In 1813, the Netherlands became a new monarchy, followed by Belgium in 1830, and both countries installed a senate (Witte, this volume). Sweden chose the parvenu Bernadotte as its king in 1818. Finland was torn loose from Sweden in 1809, and the Russian tsar became, from the Finnish point of view, a new monarch. Even Ireland, as MacCartheigh and Martin (this volume) remind us, was in an entirely new political situation after the failed rebellion and French intervention of 1798. The country lost its own Parliament after the Act of Union with Great Britain in 1800.

Once established, we see that senates periodically encountered crises related to wars, nationalist movements and the call for democratisation, which would later force the houses to legitimise and reform their role and function. This becomes clear in the second part of this volume, titled *Democracy, the people and the senate*, which primarily covers the period after the Revolution of 1848 and the 1860s until well into the early twentieth century, when nationalism and universal suffrage threatened or disrupted the existing order. Ultimately, these processes led to the Canadian federal constitution of 1867 (Smith, D. E., this volume) and to the installation and reformation of senates in a more conservative direction in Denmark (Skjæveland, this volume) and Sweden (Nilsson, this volume) in the 1860s. As the position of monarchs became less important over the nineteenth century and foreign powers stepped back, senates could – though not always along a linear path, as the case of Denmark shows – evolve in another, more conservative direction which came down to representing the interests of the elite (Verstegen, this volume). Colin Grittner (this volume) especially makes clear that,

in the middle of the nineteenth century, the Canadian landed elite supported the idea of creating an elective upper chamber with high property qualifications for voters at the provincial level to safeguard their interests, though they did not succeed. In Sweden, these attempts were more successful (Nilsson, this volume), and in Denmark, a new Senate became a conservative bulwark in 1866, successfully dominating Danish politics until 1901 (Bijleveld & Verstegen 2015). Nevertheless, as the cases of Belgium and Sweden illustrate, representing the interests of the elites did not necessarily mean that the senates blocked all changes. The Swedish upper house was quite progressive in an economic perspective (Nilsson, this volume), while Belgian senators saw it as their (conservative) duty to 'the people' to democratise (Beyen, this volume). In Finland however, the support for a house of second thought gradually faded as the confidence in 'the people' undermined the perceived necessity of a separate chamber, and the *lack* of foreign intervention during the Russian Revolution of 1905 gave Finns the room to decide *not* to install a senate.

By the twentieth century, parliamentarism and universal suffrage had been accepted, and 'the people' had become the true sovereign of the state; as such, senates started meeting new challenges. They had to reformulate their legitimacy; the claim that senates were 'representative bodies' came in for strong criticism, which becomes clear in the third part of this volume, titled *Does a state still need a senate?* An interesting case here is Ireland. After the First World War, strong foreign intervention led to the installation of a senate. Dorney (this volume) makes clear that British interference negatively influenced the legitimacy of the Irish Senate, which was considerably reformed from above in the 1930s. As we approach the twentieth century, we get closer to the existing literature on senates, in which legitimacy is a central issue. An interesting case here is Canada, where, according to Adam Coombs (this volume), after the First World War, attacking the existence of the Senate was an electoral strategy employed by the Prime Minister. In Ireland, the ruling party, *Fianna Fáil*, used the same argument in the 1930s (Dorney, this volume). Such opportunism is a forgotten aspect in the history of senates.

These events lead to the next question: why were senates abolished in some countries in the twentieth century but not in others? Some of them proved difficult to abolish for different reasons, as Meg Russell and Mark Sandford (2002) argued convincingly and as David E. Smith (this volume) illustrates for the Canadian case and Bert van den Braak (this volume) for that of the Netherlands. Senates have been criticised for having too little power or too much power, for being a carbon copy of the lower chamber, for not being democratic enough etc. (Russel & Sandford 2002). In some cases, the critique resulted in their abolition, as Asbjørn Skjæveland (this volume) and Joakim Nergelius (this volume) discuss for Denmark and Sweden, respectively. From a Nordic perspective, the question of whether a state needs a senate can be answered with a clear 'no'. These countries have proven that stable democracies can easily do without a senate, but they still look for institutions that facilitate reflection and second thought and political representation of the people. In the Netherlands, Ireland and Canada, despite

endless criticism, senates are still in 'full swing', with the Irish Senate surviving a referendum on its abolition in 2013 (MacCartheigh & Martin, this volume). The Dutch Senate has succeeded in enhancing its power (Van den Braak, this volume) and the Canadian Senate has even managed to secure new roles (Cardinal, this volume). In Canada, the Senate has gained importance as an institute for ethnic and gender representation, while in Ireland, the Seanad was meant to represent religious and professional groups in society (O'Donoghue, this volume). This ability to reform themselves contests the broadly accepted notion that senates are inevitably on their way out. Some would even say that states need senates or at least need the room to reflect on legislation.

Theory and history

There is already extensive literature on bicameral systems, especially concerning the people's assemblies and the upper houses of major political powers. The digitisation of newspapers and the proceedings of upper houses and the availability of comparative data – as provided by the Inter-Parliamentary Union, for instance – have led to a rise in the number of specialised books on senates, but it is widely accepted that the topic still needs more attention (Baldwin & Shell 2001). More specifically, Schnatterer (2015), based on a database of more than 1,000 studies published from 1970 onwards, has noticed that academics are becoming more interested in senates, though this has mainly resulted in studies of senates in relation to the people's assemblies. Little research has, however, been conducted into their internal dynamics. Our study falls within a more recent trend, as perceived by Schnatterer and taking a more actor-centred approach. Still, in these studies, senates are not normally associated with political turmoil. On the contrary, they are considered to be perhaps the most stable element within any parliamentary system. This is probably the legacy of Montesquieu, being the darling of many theories about the balance of political forces within states. The fact that senates are supposed to stabilise a parliamentary system does not mean that they actually do so. The nineteenth-century examples of Denmark and Sweden make clear that senates can block necessary reforms while undermining their own legitimacy (Skjæveland, this volume; Nilsson, this volume). The crises we referred to in our conference 'Senates in Crises' are firstly those moments in history when the existence of senates was in jeopardy. Secondly and more frequently, these crises are moments of political upheaval, which saw the installation, prerogatives, workings and organisation of senates change. As the chapters by Bert van den Braak (this volume) about the Netherlands and by David E. Smith (this volume) about Canada make clear, these changes were not necessarily formal in nature. Senates can adapt and take on a different role without any constitutional change, which is the phenomenon that inspired the title of this volume.

Many studies focus on the legitimisation of senates. Blom (1992, p. 22) calls bicameralism a 'systematically inconvenient aspect of modern parliamentarism'. Authors offer a wide range of reasons for the justification of their endurance. Here, we see the idea echoed that bicameralism is a reflection of the past, if not

an impediment for a genuinely democratic future. In this interpretation, a senate or an upper chamber is a historical successor of the estate of the nobility, which is incorrect. As Coakley has pointed out, the way estates functioned in historical times was much more complicated, and they were more than just a prelude to modern bicameralism. In addition, it is argued that the idea that the bicameral system in England was a model for other nations is a political myth, both in theory and in practice (Coakley 2014; Drexhage 2015; Haas 2010). The problem here is that when we take the British parliamentary system as the model of an early bicameral system, theoretical notions of bicameralism create a mythical history for senates that overlook the huge, innovative jump that was made in the Revolutionary Age. The emergence of senates is related to modern constitutional state-building – starting with the American Senate – and is not a remnant of pre-revolutionary times. The novelty of nineteenth- and early-twentieth-century senates is often overlooked (Haas 2010). As Drexhage (2015) rightly points out, 'the American Senate was the first example of a bicameral system that was not intended to represent different estates or social classes'.

Our volume deviates from the standard approach of investigating and analysing the present-day differences between senates in a selection of countries, treating the past as a prelude to the present. It is obvious that the literature on senates has focused greatly on the making of classifications and typologies, mostly elaborating further on the work of Arend Lijphart, in order to get a grip of the subject. However, we can agree with Blom that the subject is too amorphous to do so successfully, as all classifications differ according to the theoretical hypotheses scholars try to prove (cf. Blom 1992; Russell 2000; Haas 2010; Drexhage 2015). Interpreting bicameralism as a relic of the past explains why, on a more theoretical level, studies about senates often start by wondering why they have not yet disappeared altogether (Coakley 2014; Haas 2010; Bijleveld & Verstegen 2019). On the contrary, as Nikolaj Bijleveld pointed out during a workshop in Amsterdam, recent decades show a revival of bicameralism in newly established (non-federal) democracies (cf. Coakley 2014).

Although the chapters presented here are written within the framework of nation states, they offer a wide range of insights about the history of senates. Of course, all the states considered here have their own peculiarities. Canada, for instance, until recently had far fewer inhabitants than the great powers in the Atlantic world and could therefore be considered a 'minor power', similar to the other nations covered here. Because of the country's growth from the middle of the nineteenth century onwards, however, as well as its sheer size and federal structure, the role of its Senate is different from what is found in minor powers in Europe. In general, a strong link can be noted between federalism and bicameralism (Drexhage 2015). Nevertheless, when comparing the function and the role of senates in federal and unitary states, this link becomes less relevant (Coakley 2014). The effectiveness of upper chambers in federations was recently discussed in Gamper (2018).

Much like Canada, Ireland was part of the British Commonwealth for a long time and has a traumatic history that cannot be seen elsewhere in the North

Atlantic (MacCartheigh & Martin, this volume). Other countries also have their own historic peculiarities: we have already mentioned the Belgian revolution of 1830 (Witte, this volume) and the Schleswig Wars between Germany and Denmark (Christiansen, this volume), which influenced the shaping of the upper houses. Senates tend to reflect nations' typical political cultures (Haas 2010) and the specific circumstances under which they were established and reformed. Furthermore, the way they were embedded in national political systems strongly influenced their possibility to adapt and reform, and this level of flexibility proved to be very important to senates since it could make the difference between either abolition or survival and even adaptation to new roles.

Though each state has a history of its own, comparisons between states are very useful as we do not just focus on how senates function within a national framework. We compare how senates, according to political reformers, *should* function and how they adapted or could adapt to new circumstances. The way reformers envisioned the roles of senates was influenced by what happened in neighbouring countries and reflected these issues and political problems. Senates changed both in crises and because of crises. Above all, reformers sought to (re-)invent senates in order to prevent the reocurrence of political crises, at home or elsewhere, or to adapt them to new political ideologies and practices.

Without aiming to endorse senates – as we know that states can do without them – we think our fascination with the subject is at least partly due to the fact that senates, as we know them now, were once a *new* phenomenon, part and parcel of the modern Western world, and managed to ride the high tide of democratic reforms.

References

Ajzenstat, J. et al. (eds.) (2003), *Canada's Founding Debate* (Toronto: University of Toronto Press).

Baldwin, N. and Shell, D. (2001), *Second Chambers* (London: Frank Cass).

Baturo, A. and Elgie, R (2018), 'why do authoritarian regimes adopt bicameralism cooptation, control, and masking controversial reforms', *Democratization* 25(5), pp. 919–937.

Bijleveld, N. and Verstegen, W. (2015), 'Adjusting the Horrors of Civil War. Reforming the Senate in Small Power Democracies in the Nationalistic Crises of the 1860s: Canada, Denmark and Sweden' [paper presented at Transatlantic Studies Association 14th Annual Conference]. Available at: www.rug.nl/staff/n.h.bijleveld/research/publications.html (accessed 23 March 2019).

Bijleveld, N. and Verstegen, W. (2019), 'Een Sourdine of een echte volksvertegenwoordiging? Memo over de senaat aan de Staatscommissie Bezinning Parlementair Stelsel'. Available at: www.rug.nl/staff/n.h.bijleveld/research (accessed 23 March 2019).

Blom, H.W. (1992), 'Bicameralism – history – theory – problems', in: Blom, H.W. (ed.), *Bicameralisme: tweekamerstelsel vroeger en nu: handelingen van de Internationale Conferentie ter gelegenheid van het 175-jarig bestaan van de Eerste Kamer der Staten-Generaal in de Nederlanden* (The Hague: Sdu), pp. 29–32.

Boyko, J. (2014), *Blood and Daring. How Canada fought the American Civil War and Forged a Nation* (Toronto: Vintage Canada).

Coakley, J. (2014), 'The strange revival of bicameralism', *Journal of Legislative Studies* 20(4), pp. 542–572.

Drentje, J. (1998), *Het vrijste volk der wereld. Thorbecke Nederland en Europa* (Zwolle: Waanders).

Drentje, J. (2004), *Thorbecke. Een filosoof in de politiek* (Amsterdam: Boom).

Drexhage, B. (2015), *Bicameral Legislatures. An International Comparison* (The Hague: Ministry of the Interior and Kingdom Relations).

Ducharme, M. (2010), *Le concept de liberté au Canada à l'époque des révolutions atlantiques 1776–1838* (Montreal: McGikk University Press).

Gamper, A. (ed.) (2018), *Representing Regions, Challenging Bicameralism. Perspectives on Federalism. Special Issue* 10(2).

Haas, C.M. (2010), 'Sein oder nicht sein: Bikameralismus und die Funktion Zweiter Kammern', in: Gisela Riescher et al. (eds.), *Zweite Kammern* (München: Oldenbourg Wissenschaftsverlag), pp. 3–18.

Israel, J. (2017), *The Expanding Blaze. How the American Revolution Ignited the World, 1775–1848* (Princeton: Princeton University Press).

Laureys, V. et al. (eds.) (1995), *De geschiedenis van de Belgische senaat* (Tielt: Lannoo).

Palonen, K. (2019), *Parliamentary Procedure, Rhetoric and Time* (London: Palgrave MacMillan).

Riescher, G. et al. (eds.) (2010), *Zweite Kammern* (München: Oldenbourg Wissen schaftsverlag).

Russell, M. (2000), *Reforming the House of Lords* (Oxford: Oxford University Press).

Russell, M., Sandford M. (2002), 'Why are Second Chambers so Difficult to Reform', *The Journal of Legislative Studies*. 8(3), pp. 79–89.

Schnatterer, T. (2015), 'Understudied and underestimated? What determines scientific attention on second chambers?', *French Politics* 13(3), pp. 302–317.

Stengers, J. (1995), 'De grondwet van 1831: theorie en praktijk', in: Laureys, V. et al. (eds.), *De geschiedenis van de Belgische senaat* (Tielt: Lannoo), pp. 31–42.

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

Part I

The need for a senate (c. 1790–1870)

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

1 Senates and bicameralism in revolutionary Europe (c. 1795–1800)

Joris Oddens

Introduction

This chapter explores the concept of bicameralism and the idea of a senate in the constitutional debates and (draft) constitutions of the most important revolutionary states on the European continent at the turn of the eighteenth century. Although this volume deals with senates in smaller states, it is, for a proper understanding of the paths that were taken in such small states, indispensable to start with the constitutional debate that took place in France after the Reign of Terror. In the first section I will analyse a particular moment in this debate that marks the transition away from unicameralism but, as I will argue, not quite towards bicameralism.

In the second section of this chapter, I will move on to show how the French constitution of Year III and the programmatic text accompanying it shaped the constitutions of the so-called Sister Republics. One of the most durable of the Sister Republics was the Batavian Republic, which was founded in 1795 and comprised the territories of the early modern Dutch Republic. In the Batavian Republic, the constitutional debate about the organisation of legislature was more complex and better documented than in the other Sister Republics, so I will discuss this debate separately in the third section. The examples provided in this chapter demonstrate that, in the Age of Revolution, the idea of bicameralism still had the potential to develop in very different directions and that in the minds of the revolutionary generation, the concept of a senate, while usually associated with mature age and experience, was not necessarily linked to the functions commonly performed by upper houses in modern bicameral systems.

France

In the summer of 1794, the French Reign of Terror came to an end with the fall of the Committee of Public Safety (*Comité de Salut Public*) led by Robespierre. In the years that followed – the period we know as the Thermidorean Reaction – the dominant explanation of how the Terror had come about was that the national convention (*Convention Nationale*) had made a rash and impulsive decision by giving a few of its members – Robespierre *cum suis* – too much power (Gueniffey 2000). In the eyes of the Thermidoreans, the situation had escalated because there

had been no constitution since the summer of 1792. A new constitution had been presented and approved in 1793, but it was never implemented.

In April 1795, eleven members of the national convention – which, for the time being, continued to exist – were given the task of adapting the 1793 constitution in such a way that it could be put into effect. In June 1795, this committee presented a draft constitution during a plenary session of the convention. Committee member Pierre Daunou had been the principal architect of the draft, but the report with which the draft was introduced had been written by Daunou's fellow member François-Antoine de Boissy d'Anglas, who also read it in the convention (Boissy d'Anglas 1795; cf. Jainchill 2008; Bozec 1996).

The committee started out by stating that it had attempted to keep the good elements of the 1793 constitution but that it had come to the conclusion that this was impossible (Boissy d'Anglas 1795; cf. Morabito 1996). The committee had therefore decided to write an entirely new draft, which it had tried to do in such a way that there would never be a second Terror. The committee had devoted much attention reforming the legislature, in particular. Boissy d'Anglas reminded his colleagues in the Convention that no one knew better than they what could happen with a system consisting of just one assembly: 'You know well to what a point the audacity of some wretches, the usurped popularity of a demagogue, and the continual sport of factions may mislead an assembly without reins or counterpoise' (Boissy d'Anglas quoted in *Plan of the New Constitution 1795*, p. 4).

The committee had therefore deemed it necessary to split the legislature into two assemblies, which would each represent a different power. The Council of Five Hundred (*Conseil des Cinq-Cents*) would propose legislation; the Council of Elders (*Conseil des Anciens*), consisting of 250 members, would reject or approve laws proposed by the Council of Five Hundred. The committee defended the choice for two legislative councils, which had been weighed and found wanting in earlier phases of the French Revolution, by pointing to the constitutions of the various American States (Boissy d'Anglas 1795; Jourdan 2008).

The Thermidorean constitutional committee had conceived of this new legislature within a classical republican framework. Its main source of inspiration was a French adaptation of the political treatise *A defence of the constitutions of government of the United States of America*, written in 1787 by John Adams (cf. Gauchet 1995). This adaptation was produced by Lamare (Adams 1792), about whom little is known. Adams had interpreted the constitutions of the various American states in the light of the theory of mixed government, which prescribed that the ideal type of government consisted of democratic, aristocratic, and monarchical elements that kept each other in balance (cf. Walsh 1915; Richard 1995). To Adams, the first two elements in the American state constitutions were represented by the two assemblies of the legislature. The indispensable third element, in Adams's eyes, was an independent executive power – the state governor in the case of the American states. In one of the first sentences of his *Defence*, Adams introduced the expression 'checks and balances', by which he meant the totality of constitutional mechanisms of control through which the various powers in a mixed government were kept in place (cf. Wootton 2006).

In the United States, the concept of checks and balances had, in the following years, become a popular way to describe the American version of mixed government. Apart from this, Adams's *Defence* had not met with much enthusiasm from the framers of the US federal constitution, who convened in Philadelphia around the time of its publication. The problem was that Adams's explanation of the theory of mixed government did not remind Americans of their state constitutions as much as it reminded them of the hated political system of the British monarchy from which they had only recently freed themselves. The fact that Adams considered the senate to be the aristocratic element in the state constitutions made Americans think of the privileged position the House of Lords held within British society (cf. Wood 1969; Rakove 1997).

The leading framers also had the system of mixed government in mind, but to them, the three elements of this system were not represented by the two assemblies of the legislature and the president but by Congress as a whole, the courts, and the president respectively. Thus, the framers combined mixed government with the three powers – legislative, executive, and judicial – that, in the second half of the eighteenth century, were usually associated with the work of Montesquieu. Their checks and balances primarily consisted of the presidential veto over the decisions of Congress, the principle of judicial review, and the right of Congress to exert control over certain presidential competences (Gwyn 1965; Vile 1967; Manin 1994).

The Thermidorean constitutional committee, by contrast, went along with Adams's view on the system of checks and balances. The committee was aware of the possible negative associations this view could invoke. It tried to tackle potential criticism by stating that the Council of Elders should be considered an aristocratic body in the functional sense of the word, not in the social sense (Boissy d'Anglas 1795). Quoting the French adaptation of Adams's *Defence*, Boissy d'Anglas said in the convention 'that there is no good government, no stable constitution, without the balance of the three powers' (the two powers of the legislature and the executive power) (Boissy d'Anglas 1795, p. 46). The three powers that were identified by the committee represented three different functions: proposing, ratifying, and executing legislation.

For the French, this new orientation on a text that was produced at the margins of the American constitutional debate meant a radical break with previous theoretical underpinnings of their constitutional framework. Rousseau and Sieyes, until that moment the most influential theorists of the French Revolution, were both indebted to a tradition of monarchical thinkers, such as Bodin and Hobbes, who had rejected the theory of mixed government in their works (Manin 1994; Richard 1995). The Thermidoreans tried to explain the Terror by resorting to a theory that had been made famous by Polybius in classical antiquity. In their eyes, the national convention founded in 1792 had had too many characteristics of direct democracy and, as the theory of mixed government predicted, France had therefore fallen into a state of anarchy on which Robespierre had been able to build his reign of terror (Boissy d'Anglas 1795). To avoid this happening in the future, the balance between the three powers now needed to be determined by the

constitution. Next to the two legislative powers that made up the legislature, the constitutional committee envisioned an executive that did not consist of a single person – as it did in the United States – but of an institution with five members, called the directory (*Directoire*) (Boissy d'Anglas 1795).

The executive did not have a veto in the French draft constitution, which was different from what Adams had advocated, nor could it exert influence on the legislative process in any other way. As some contemporaries observed, the constitutional committee had dressed its constitution in the language of mixed government, but, in reality, the very essence of this theory, namely the mechanisms of control with which the different powers could keep each other in balance, could only be found in the legislative veto that was given to the Council of Elders. The committee had, in fact, opted for a form of separation of powers under the guise of a system of mixed government and checks and balances (Troper 1980; Gueniffey 1993; Jainchill 2008).

The ambiguity of the committee's position becomes clearer when we compare Boissy d'Anglas's report to the draft constitution itself (*Constitution de la République française* 1795). The chapter on the legislature was called 'Legislative Power' (*Pouvoir legislative*) in the singular form, while the plural form would have been more consistent with the idea of two legislative powers. Moreover, the draft constitution also contained chapters called 'Executive Power' (*Pouvoir executive*) and 'Judiciary Power' (*Pouvoir judiciaire*), which suggests a more Montesquieuean understanding of the separation of powers. We may thus conclude that Daunou, the main author of the draft, and Boissy d'Anglas, the author of the committee report, represented two different intellectual strands within the constitutional committee.

In any event, the national convention adhered to the committee's line of reasoning and accepted the system of checks and balances as the underlying principle on which the new constitution should be based. The new constitution, which created a Legislative Body (*Corps legislative*) consisting of two councils, was adopted by the convention on 22 August 1795. The first session of the two councils took place two months later (Lyons 1975; Woronoff 1984).

The Sister Republics

The constitution of Year III, as the French constitution of the year 1795 has become known, became an important point of reference in the various smaller republics within the French revolutionary sphere of influence, which are often called the Sister Republics (cf. Oddens, Rutjes & Jacobs 2015). These republics produced and in most cases adopted constitutions of their own. The constitutions of the Cisalpine Republic (founded in 1797 in present-day northern Italy), the Roman Republic (founded in 1798 in present-day central Italy), and the Helvetic Republic (founded in 1798 in present-day Switzerland) were imposed by French invaders after little or no constitutional debate, even if native constitutional thinkers were occasionally involved in framing the draft constitutions (cf. Zaghi 1992; Formica 1994; Armando 2000; Böning 1998; Giuntella 1954; Montalcini & Alberti 1917; Holenstein 2015; Baumann 2013).

Nevertheless, the chapters in these constitutions that deal with the legislature show both similarities and differences with respect to the French model that are worth considering (cf. Archivio delle Costituzioni Storiche 2006; *Entwurf der helvetischen Staatsverfassung* 1798). All three constitutions establish a legislature consisting of two assemblies: a larger assembly proposing laws and a smaller assembly sanctioning them. The Roman and Cisalpine constitutions, like the French constitution, call their legislature 'Legislative Body' (*Corpo legislativo*), while the Helvetic constitution opts for 'Legislative Power' (*Pouvoir legislative*, *gezetsgebende Gewalt*). In all three constitutions, the two assemblies of the legislative branch are called, as they were in France, 'councils' rather than 'chambers' or 'houses'. In France, as we have seen, the use of 'council' implied a system in which the two assemblies of the legislature were understood to be separate powers. The formulation of the first articles of both the Roman constitution ('Il potere legislativo è esercitato da due consigli distinti e indipendenti l'uno dall'altro') and the Helvetic constitution ('Le pouvoir législatif est exercé par deux conseils distincts, séparés, indépendants l'un de l'autre') suggests that this interpretation applied here as well.

The titles given to the councils vary. In the Cisalpine constitution, the two councils are called the Great Council (*Gran Consiglio*) and the Council of Elders (*Consiglio dei Seniori*). The Roman constitution opts for Tribune (*Tribunato*) and Senate *(Senato*), while the Helvetic constitution establishes the Great Council (*Grand Conseil*, *Groβe Rath*) and the Senate (*Sénat*, *Senat*). This nomenclature seems to have been partly inspired by classical antiquity (in the Roman case) and the early modern old regime (both Italian republics such as Venice and Genova and the cities of the Swiss confederation had legislative institutions that were called Great Council). The name change was unavoidable for the lower chambers, as they had fewer members than the French Council of Five Hundred. As for the upper chambers, the various alternatives are obviously close to the French title in an etymological sense, because the original Latin *senatus* translates as 'assembly of elders'.

Were the members of the various upper chambers in fact envisioned to be older or more experienced than those of the lower chambers? In the French and Cisalpine constitution, (male) citizens would have to be over 40 and 30 respectively to be eligible; in the Roman Republic, this was 35 and 25 respectively. According to the Helvetic constitution, members of the great council would have to be over 25; members of the Senate, over 30. On top of that, however, to be eligible for the Senate, citizens would have to be former members of the Helvetic Directory (comparable to the French *Directoire*), the great council, or one of the executive or judicial state institutions, and they would have to be married or widowed.

There are also Sister Republics where constitutions were drafted more independently from France. One such republic was the short-lived Parthenopean or Neapolitan Republic (founded in 1799 in the former Kingdom of Naples) (cf. Battaglini 1992; Rao 1994). In the latter republic, which has been called the most autonomous of the Italian Sister Republics, a constitutional committee produced a draft constitution (Ferrari 2015). This draft was never put into effect, because

King Ferdinand VI was restored to power after six months, but it is worthwhile considering it because it is accompanied by a report written by Mario Pagano (1799), the principal author of the draft, in which the committee's choices are accounted for. Pagano lauded the constitution of Year III, and the Neapolitan draft generally follows the French model, but there is a significant difference with regard to the legislature in particular.

Pagano wrote that his committee had maintained the French idea of a legislature consisting of two parts because it slowed down the legislative process and gave laws their necessary maturity. The committee had come to the conclusion, however, that it was better to attribute the function of proposing laws to a small body of older men than to a larger assembly of younger men. In doing so, the committee had not only followed the example of the ancient republics but also thought of a number of reasons itself. In larger assemblies, discussions tended to get sidetracked and lost in details. As for the proper age of the members, proposing laws required 'cool analysis' rather than 'bold genius'. Sanctioning laws, on the other hand, was something that could best be done by assemblies consisting of many members because that meant that draft legislation would be considered from all possible sides. Therefore, the committee proposed a legislature in which a senate (*Senato*) of fifty members proposed legislation, while a council (*Consiglio*) of 120 members was given the legislative veto. Members of the council needed to be over 30, but members of the senate needed to be over 40, married or widowed, and former members of the departmental government or the judiciary.

The most durable of the Sister Republics proved to be the Batavian Republic, which replaced the Republic of the Seven United Provinces after the invasion of a combined army of French troops and Dutch exiles in January 1795. Unlike their counterparts in most other Sister Republics, the Dutch revolutionaries were allowed relatively more leeway to conduct their own process of constitution-building by the French *République mère* (cf. Oddens 2012b; Rutjes 2012a; Grijzenhout, Van Sas & Velema 2013). Until 1801, the French intervened no more than a few times. As we will see in the next section, however, one of these interventions in particular had important consequences for the way the legislature was to be organised.

The Batavian Republic

Between 1796 and 1798, a national assembly (*Nationale Vergadering*) of 126 members convened in The Hague. This deliberative assembly, which had legislative, executive, and constituent powers, served as a provisional governing body that was from the outset supposed to be replaced by a new legislature after the ratification of a written constitution (cf. Oddens 2012b). After it had been constituted, the national assembly selected, in accordance with what it had been instructed, a committee of twenty-one members to frame a draft constitution.

None of the members of the national assembly had any doubt that the specific circumstances of the Batavian Republic required a new and original constitution. Their constitutional thinking was shaped not only by the recent developments in

France but also by their own history and the history of other ancient and modern republics. However, with regard to the particular question of how the legislative branch of government was to be organised, there were considerably fewer examples they deemed legitimate. As children of the Enlightenment, the members of the national assembly were prepared to seriously consider only examples grounded in 'experience' (*ondervinding*). From ancient history, the Batavian revolutionaries did not know of any cases of representative government (cf. *Dagverhaal* 1796–1798, Vol. 4; Rutjes 2012b). In the more recent past, there was, of course, the example of British Parliament, but the Batavian revolutionaries had read Thomas Paine carefully enough to be convinced that true representative government could not exist in a monarchical state. The very word 'parliament' said enough for them: this suggested a talking shop without real power, a consultative assembly of sorts that could not make any legitimate claim towards exercising the sovereignty of the people (*Dagverhaal* 1796–1798, Vol. 4).

The only kind of experience that the members of the national assembly deemed relevant pertained to representative government in free republics, such as their own. This brought their possible examples down to two: the United States of America and France. Of these, the Unites States was known to the Batavians as a republic that had prospered from the very moment it was founded and that was not torn by internal discord. Yet in the Dutch constitutional debate, the American model played only a minor role (cf. Rowen 1977; Schulte Nordholt 1988; Oddens 2012a). This was primarily due to the greater geographical distance, which meant the Batavians had only a superficial knowledge of the American political realities (Jourdan 2008). Moreover and somewhat paradoxically, the French example held more weight for the Batavians precisely because the revolution in France had recovered from a major crisis, and in the United States, at least as far as they could see, the political system had never been seriously tested. So it happened that the experience of the French Reign of Terror was very much present in the Batavian debate. The fundamental issue in this debate was the question of to which extent the French precedent was actually applicable to the Batavian situation.

One of the questions taken up by the Batavian constitutional committee was whether the legislature would consist of one or two assemblies. Both in the committee and in the plenum of the national assembly – which subsequently discussed the committee's draft constitution – two positions emerged. The majority position was in favour of two assemblies. The principal argument for dividing the legislative branch into two assemblies was the argument, by now familiar to us, that in a legislature consisting of a single assembly, abuse of power would be unavoidable: demagogues would inevitably capture such a Parliament, and the result would be either despotism or anarchy (*Dagverhaal* 1796–1798, Vol. 3). This argument seems to have been directly inspired by the report of the French constitutional committee, written by Boissy d'Anglas, which was referred to explicitly (Oddens 2012b).

The mostly radical Batavian deputies, who argued against two assemblies, did not fear an anarchical or despotic legislative branch as much as they feared an all-too-powerful executive who could divide, conquer, and dominate a weak

legislature. Moreover, they feared that two independently elected assemblies would lead to class distinction: the *esprit de corps* that would develop in each of the two assemblies would spill over into society at large, making the egalitarian Batavian Republic a second Great Britain, with its Commons and Lords (De Gou 1975).

The radicals also thought it wrong to follow the French example in this respect. While in France it had proved necessary to split the legislature because of the passionate national character of the French and because a large country such as France required a large legislative body with many members, the phlegmatic character of the Dutch and the fact that the Batavian Republic was a far less populous country made a legislature consisting of a single assembly the preferable option (*Dagverhaal*, Vol. 3, pp. 677–679). The moderate deputies were not convinced by the national character argument. As one deputy put it: 'All humans are humans; they all have the same passions' (*Dagverhaal*, Vol. 4, p. 721).

The advocates of the two-assembly system won the first battle in the constitutional debate: the constitution that was drafted by the national assembly contained a plan for a legislature with two 'chambers' that were called great chamber (*Grote Kamer*) and chamber of elders (*Kamer der Oudsten*) (De Gou 1983–1985). The war over the legislature, however, was not yet won. The draft constitution was subjected to a plebiscite and rejected by an overwhelming majority of the eligible voters in the summer of 1797 (cf. De Jong 2018). A new national assembly was elected, which nominated a new constitutional committee. This committee considered a new variant in which parliamentary debates would first take place in two separate assemblies, after which these assemblies would be merged for a final debate and vote. The majority of the committee, however, was now in favour of a unicameral legislature (De Gou 1988–1990).

The second constitutional committee would never present a full draft constitution to the second national assembly, as an impatient radical minority in the assembly staged – with the assent of the French envoy in The Hague and the generals commanding the French-Batavian military troops in the Batavian Republic – a parliamentary coup in an attempt to force a breakthrough in the deadlocked constitutional process in January 1798. They deposed their most important political opponents in the national assembly and renamed the remaining rump parliament the 'constituent assembly' (*Constituerende Vergadering*). They also created a provisional executive (*Intermediair Uitvoerend Bewind*) modelled after the French directory and instituted a new constitutional committee.

This third committee, which now consisted wholly of radicals, tended even more strongly towards a single assembly than the previous one had, but it now found the directory in its way. In exchange for its support of the coup, the French Government demanded a say in the drafting of the constitution and provided the committee with a list of demands they wanted to be respected, probably drawn up by French Director La Révellière-Lépeaux. Aided by the total French ignorance of the Dutch language, the committee got away with taking much less notice of these demands than the French Government would have wished, but it proved impossible to ignore the demands of two legislative assemblies: an attempt to

adopt the compromise that had been considered by the second committee earlier was blocked by the French envoy. Thus, the third constitutional committee of the Batavian Republic ultimately settled for a legislature with two assemblies in the draft constitution that was again subjected to and this time ratified by the people on 23 April 1798. The radical regime that was responsible for this constitution was overthrown by a counter-coup the following June, but the more moderate regime that assumed power through this coup decided to maintain the constitution, so the new 'Representative Body' (*Vertegenwoordigend Lichaam*) stipulated by the constitution was constituted on 31 July 1798.

The system that had finally been adopted had certain elements in common with its counterparts in France and other Sister Republics, but it also had a number of distinctive features. The names featured in the first draft constitution – the great chamber and chamber of elders – were abandoned for the more neutral 'first chamber' (*Eerste Kamer*) and 'second chamber' (*Tweede Kamer*), which were intended to eliminate any suggestion of the two chambers representing different social classes. The function of approving or rejecting draft legislation was – in contrast to the modern Dutch Parliament, where the first chamber is the upper chamber – fulfilled by the second chamber.

Furthermore, the first and the second chambers were not elected independently of one another. The constitution established an electoral system that divided the Batavian Republic into districts. The number of districts depended on the size of the population: one district per twenty thousand inhabitants. At the time of the first elections, there were ninety-four districts, each of which elected a deputy for the Representative Body. Every year, elections were held in a third of the districts, replacing a third of the deputies. While this element was also present in the French constitutions of 1793 and 1795, an innovative feature was that every year after the elections had taken place and the new deputies had assumed office, all deputies convened in a joint session and elected thirty members for the second chamber, leaving the remaining members to constitute the first chamber (*Staatsregeling voor het Bataafsche Volk* 1798).

This particular legislative system was designed by a constitutional committee that had not wanted two assemblies in the first place and that considered this variant, which was believed to avoid the formation of *esprit de corps* in either of the chambers, the lesser of two evils. The fact that the members of the second chamber were to be elected by their peers and not chosen by ballot implies some notion of a *chambre de réflexion*, but the age difference between the members of the two assemblies stipulated by the constitutions of all the other republics discussed earlier was absent in the Batavian Republic. In practice, the thirty deputies who were elected members of the second chamber during the joint session of 31 July 1798 turned out to be neither older nor better educated nor more experienced than those deputies who, as a result, were to constitute the first chamber.

The first constitutional Parliament of the Netherlands, which existed for thirty-eight months, has hardly been studied by historians, so it is difficult to assess how well it functioned (Oddens 2015). What is clear is that, at least according to part of the new political establishment, it did not function well enough, because

on 17 September the representative body was disbanded in another coup d'état. This coup was preceded by a conflict between the legislature and the executive about revision of the constitution. While the present constitution stipulated that revisions could not be made before 1804, three of the five members of the ruling 'Executive Government' (*Uitvoerend Bewind*) had nevertheless commissioned the drafting of a new constitution. The main argument used by advocates of constitutional revision was that, over the past three years, discord in Parliament had obstructed the legislative process (Alkemade 2014). While they did not so much attack the bicameral system as such, the new constitution that was eventually implemented after the coup had a single assembly of only thirty-five members, called 'Legislative Body' (*Wetgevend Lichaam*). This assembly actually functioned as an upper chamber, as it could only approve or reject proposed legislation; the executive power had been given the exclusive right of initiative (*Staatsregeling des Bataafschen volks* 1801). The Netherlands would henceforth remain without a bicameral system until the creation of the States-General of the United Kingdom of the Netherlands in 1815 (Oddens 2015).

Conclusion

While all the constitutions discussed in this chapter established legislatures consisting of two assemblies, I have in most cases refrained from calling them bicameral. To the constitutional committee that was responsible for the drafting of the French constitution of Year III – or at least to the author of the influential programmatic text that accompanied this constitution – the two assemblies of the legislature represented two different powers in a constitutional system of checks and balances. The assemblies were not called 'chambers' but 'councils': in this interpretation, the two assemblies were seen not as two chambers of the same legislative edifice but as entirely separate institutions. Given that the legislative assemblies were also called 'councils' in the constitutions of most of the other Sister Republics and that it was stressed even more than in France that they were 'distinct, separate and independent from one another', this seems to have been the leading interpretation throughout the French sphere of influence from 1795 onwards.

Another common feature in the constitutions of most of the revolutionary republics was that one of the two councils was more limited in number and reserved for older, more experienced men. These councils were called 'Council of Elders' or 'Senate', which etymologically comes down to the same thing. In most cases these councils were vested with the power of sanctioning legislation, but in one of the discussed constitutions, that of the Parthenopean or Neapolitan Republic, the smaller, more experienced council was attributed the function of drafting and proposing legislation.

In both respects, the Batavian Republic is the exception. In the Dutch debates leading to the draft constitution of 1797, the word 'council' had been considered for the legislative assemblies, but a majority of the members of the national assembly ultimately opted for the word 'Chamber' precisely because they felt that 'council' implied two legislative bodies that were fully separate from one another,

which was something they – unlike the French – did not desire (*Dagverhaal*, Vol. 4; Oddens 2012b). One might argue, therefore, that the Batavians were the only revolutionaries in continental Europe who, at some point in their constitution-making process, envisioned a bicameral legislature in the present-day sense of one institution with two branches.

In subsequent debates, the choice for 'Chamber' was always maintained, but the initial plan to create a 'Chamber of Elders', which can still be found in the 1797 draft constitution, was never realised. This plan was abandoned in the Batavian Republic because a radical minority in the national assembly did not want a bicameral legislature at all. When these radicals assumed power with French support and drafted the constitution that was to be adopted in 1798, they saw themselves forced to give in to the French demand of two assemblies, but they were careful not to allow any social differentiation between the 'first chamber' and the 'second chamber' – neither in title nor in composition nor even in the way the members of both chambers were elected by the people.

The late eighteenth-century revolutions gave rise to the construction of a first generation of parliamentary systems on the European continent. Politicians and intellectuals assigned with the framing of constitutions considered political writings and existing foreign models, but their understanding of these examples was coloured by their own political experiences and by the constitutional history of their state or its predecessors. Their constitution-building process was further shaped by internal political struggles and by varying degrees of foreign intervention. These dynamics resulted in a number of outcomes that might appear quite similar to each other in comparison to later generations of parliamentary systems but on closer inspection have significant differences with regard to the organisation of the legislature, its nomenclature, and its place within the constitutional balance of power.

References

Adams, J. (1792), *Défense des constitutions americaines, ou De la nécessité d'une balance dans les pouvoirs d'un gouvernement libre*, Vols. 1–2 (Paris: Buisson).

Alkemade, D. (2014), *De Bataafse reactie. Bataafs constitutioneel denken en de staatsregeling van 1801* (Unpublished MA thesis: University of Amsterdam).

Archivio delle Costituzioni Storiche (2006), *Costituzione napoletana del 1799. Rapporto del comitato di legislazione al governo provvisorio*. Available at: www.dircost.unito.it/cs/paesi/italia.shtml (accessed 4 March 2019).

Armando, D., Cattaneo, M. and Donato, M.P. (2000), *Una rivoluzione difficile. La Repubblica roma del 1798–1799* (Pisa: Istituti editoriali e poligrafici internazionali).

Battaglini, M. (1992), *La Repubblica Napoletana. Origini, nascita, struttura* (Rome: Guerini e Assoc).

Baumann, T. (2013), *Das helvetische Parlament. Parlamentarismus im Lichte des Gegensatzes zwischen aufgeklärter Bildungselite und revolutionären Patrioten* (Geneva: Slatkine).

Boissy d'Anglas, F.-A. (1795), de *Discours préliminaire au projet de constitution pour la République française, prononcé par Boissy d'Anglas, au nom de la Commission des Onze, dans la séance du 5 Messidor, an 3* (s.l).

Boissy d'Anglas, F.-A. (1795), *Plan of the New Constitution of the French Republic with the Report Presented to the Convention from the Commission of Eleven, [. . .]* (Edinburgh: s.n.).

Böning, H. (1998), *Der Traum von Freiheit und Gleichheit. Helvetische Revolution und Republik (1798–1803) – Die Schweiz auf dem Weg zur bürgerlichen Demokratie* (Zurich: Orell Füssli).

Bozec, C. Le (1996), 'Boissy d'Anglas et la Constitution de l'An III', in: Dupuy, R. and Morabito, M. (eds.), *1795. Pour une République sans Révolution* (Rennes: Presses Universitaires de Rennes).

Constitution de la République française (1795) (Paris).

Dagverhaal der handelingen van de Nationaale Vergadering representeerende het Volk van Nederland (1796–1798), Vols. 1–9 (The Hague: Schelle en comp.).

De Gou, L. (ed.) (1975), *Het Plan van Constitutie. Chronologische bewerking van het archief van de eerste constitutiecommissie ingesteld bij decreet van de Nationale Vergadering van 15 maart 1796* (The Hague: Nijhoff).

De Gou, L. (ed.) (1983–1985), *Het Ontwerp van Constitutie. De behandeling van het Plan van Constitutie in de Nationale Vergadering*, Vols. 1–3 (The Hague: Nijhoff).

De Gou, L. (ed.) (1988–1990), *De Staatsregeling van 1798. Bronnen voor de totstandkoming*, Vols. 1–2 (The Hague: Instituut voor Nederlandse Geschiedenis).

De Jong, J. (2018), *Democratie in kinderschoenen. Twee referenda over de eerste Nederlandse grondwet, 1797–1798* (Nijmegen: Vantilt).

Entwurf der helvetischen Staatsverfassung (1798), (Luzern: Balthasar und Meyer).

Ferrari, V. (2015), 'The Neapolitan republican experiment of 1799: Legislation, balance of power, and the workings of democracy between theory and practice', in: Oddens, J., Rutjes, M. and Jacobs, E. (eds.), *The Political Culture of the Sister Republics, 1794–1806: France, the Netherlands, Switzerland, and Italy* (Amsterdam: Amsterdam University Press), pp. 135–140.

Formica, M. (1994), *La città e la rivoluzione. Roma 1798–1799* (Rome: Istituto per la storia del Risorgimento italiano).

Gauchet, M. (1995), *La révolution des pouvoirs. La souveraineté, le peuple et la représentation, 1789–1799* (Paris: Gallimard).

Giuntella, V.E. (ed.) (1954), *Assemblee della Repubblica romana*, Vol. 1 (1798–1799) (Bologna: Zanichelli).

Grijzenhout, F., Van Sas, N. and Velema, W. (eds.) (2013), *Het Bataafse experiment. Politiek en cultuur rond 1800* (Nijmegen: Vantilt).

Gueniffey, P. (1993), *La nombre et la raison. La Révolution française et les élections* (Paris: Ecole des hautes études en sciences sociales).

Gueniffey, P. (2000), *La politique de la Terreur. Essai sur la violence révolutionnaire, 1789–1794* (Paris: Gallimard).

Gwyn, W.B. (1965), *The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution* (New Orleans: Tulane University).

Holenstein, A. (2015), 'The invention of democratic parliamentary practices in the Helvetic republic: Some remarks', in: Oddens, J., Rutjes, M. and Jacobs, E. (eds.), *The Political Culture of the Sister Republics, 1794–1806: France, the Netherlands, Switzerland, and Italy* (Amsterdam: Amsterdam University Press), pp. 127–134.

Jainchill, A. (2008), *Reimagining Politics after the Terror: The Republican Origins of French Liberalism* (Ithaca: Cornell University Press).

Jourdan, A. (2008), *La Révolution batave entre la France et l'Amerique (1795–1806)* (Rennes: Presses Universitaires de Rennes).

Lamare (1792), *Défense des constitutions americaines, ou De la nécessité d'une balance dans les pouvoirs d'un gouvernement libre*, Vols. 1–2 (Paris).

Lyons, M. (1975), *France under the Directory* (Cambridge: Cambridge University Press).

Manin, B. (1994), 'Checks, balances and boundaries: The separation of powers in the constitutional debate of 1787', in: Fontana, B. (ed.), *The Invention of the Modern Republic* (Cambridge: Cambridge University Press).

Montalcini, C. and Alberti, A. (eds.) (1917), *Assemblee della Repubblica cisalpina*, Vol. 1 (Bologna: Zanichelli).

Morabito, M. (1996), 'Les nouveautés constitutionnelles de l'an III', in: Dupuy, R. and Morabito, M. (eds.), *1795. Pour une République sans Révolution* (Rennes : Presses Universitaires de Rennes), pp. 166–177.

Oddens, J. (2012a), 'No Extended Sphere: The Batavian Understanding of the American Constitution and the Problem of Faction', *Early American Studies* 10(2), pp. 382–414.

Oddens, J. (2012b), *Pioniers in schaduwbeeld. Het eerste parlement van Nederland 1796–1798* (Nijmegen: Vantilt).

Oddens, J. (2015), 'Zoeken naar eendracht. Parlementaire vertegenwoordiging in Nederland tot 1815', in: Aerts, R. et al. (eds.), *In dit Huis. Twee eeuwen Tweede Kamer* (Amsterdam: Boom), pp. 253–277.

Oddens, J., Rutjes, M. and Jacobs, E. (eds.) (2015), *The Political Culture of the Sister Republics, 1794–1806: France, the Netherlands, Switzerland, and Italy* (Amsterdam: Amsterdam University Press).

Pagano, F.M. (1799), 'Constituzione Napoletana del 1977. Rapporto del comitato di legislazione al governo provvisorio'. Available at: www.dircost.unito.it/cs/docs/napoli1799.htm (accessed 4 April 2019).

Projet de Constitution helvétique (1798), (Basel: J. Decker).

Rakove, J.N. (1997), *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books).

Rao, A.M. (1994), 'La Repubblica Napoletana del 1799', in: Galasso, G. and Romeo, R. (eds.), *Storia del Mezzogiorno*, Vol. 4.2. *Il Regno dagli Angioini ai Bornoni* (Rome: Editalia|), pp. 471–539.

Richard, C.J. (1995), *The Founders and the Classics: Greece, Rome and the American Enlightenment* (Cambridge, MA: Harvard University Press).

Rowen, H. (1977), 'The union of Utrecht and the articles of confederation, the Batavian constitution and the American constitution: A double parallel', in: Vierhaus, R. (ed.), *Herrschaftsverträge, Wahlkapitulationen, Fundamentalgesetze* (Göttingen: Vandenhoeck & Ruprecht), pp. 281–293.

Rutjes, M. (2012a), *Door gelijkheid gegrepen. Democratie, burgerschap en staat in Nederland 1795–1801* (Nijmegen: Vantilt).

Rutjes, M. (2012b), '"Niet geheel applicabel op deze tijd". De Klassieke Oudheid in het politieke discours van de Bataafse Republiek, 1795–1801', in: Raat, A.J.P., Velema, W.R.E and Baar-de Weerd, C. (eds.), *De Oudheid in de Achttiende Eeuw* (Utrecht: Werkgroep 18e Eeuw), pp. 75–86.

Schulte Nordholt, J.W. (1988), 'The paradox of an example: Contemporary European perceptions of the American constitution', in: Steve Ickringill (ed.), *The Early American Republic: The Making of a Nation. The Making of a Culture* (Amsterdam: Free University Press), pp. 151–167.

Staatsregeling des Bataafschen volks (1801), (The Hague: Staatsdrukkerij).

Staatsregeling voor het Bataafsche Volk (1798), (The Hague: Nationaale Drukkerij).

Troper, M. (1980), *La séparation des pouvoirs et l'histoire constitutionnelle française* (Paris: Librairie générale de droit et de jurisprudence).

Vile, J.C. (1967), *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press).

Walsh, C.M. (1915), *The Political Science of John Adams: A Study in the Theory of Mixed Government and the Bicameral System* (New York: Putnam).

Wood, G.S. (1969), *The Creation of the American Republic* (New York: W.W. Norton).

Wootton, D. (2006), 'Liberty, metaphor, and mechanism. "Checks and balances" and the origins of modern constitutionalism', in: Womersley, D. (ed.), *Liberty and American Experience in the Eighteenth Century* (Indianapolis: Liberty Fund), pp. 209–274.

Woronoff, D. (1984), *The Thermidorean Regime and the Directory, 1794–1799* (Cambridge: Cambridge University Press).

Zaghi, C. (1992), *Il Direttorio francese e la Repubblica cisalpine*. 2 Vols. (Rome: Istituto storico Italiano per l'età moderna e contemporanea).

2 The rise and fall of the quasi-bicameral system of Norway (1814–2007)

Eivind Smith

Norway in a Scandinavian context

The constitution of Norway remains primarily a national phenomenon, despite having borrowed important features from (international) political philosophy and foreign constitutions. National experiences must be understood in their social and historical context. In a number of important respects, Norway's context is Scandinavia, where geographical and linguistic proximity and the presence of comparatively strong welfare states contribute to enhancing the impression of Denmark, Norway and Sweden as a relatively homogeneous group of countries. Constitutionally, their common label as constitutional monarchies contributes to underpinning the impression of wide-reaching homogeneity. Even the presence of purely unicameral parliaments may appear to further confirm the impression of a strong cross-border community.

On the other hand, a closer look at the relevant constitutional systems uncovers a number of reasons for warning against the temptation to ratify the impression of Scandinavian homogeneity. Learning about the systems of government that emerged in the two historical centres (Copenhagen and Stockholm) would provide a good starting point for those who strive to understand a number of differences between the three national systems in the field of constitutional law (Krunke & Thorarensen 2018). As a matter of fact, the position of Denmark and Sweden as two dominant and opposing powers since the late medieval period paved the way for important differences between the three western states that appeared later (Denmark and Norway, followed by Iceland) and the two eastern ones (Sweden, followed by Finland).

With the exception of the replacement of the absolute monarchy by a constitutional one introduced by the constitution of 1814, Norway never aimed at completely abolishing key institutional patterns inherited from the absolute Danish-Norwegian monarchy (1661–1814) once its full statehood was re-established. In the eastern part of the realm, the new state of Finland adopted a similar position regarding its Swedish heritage. Here, that position was even strengthened by the new state's resistance to Russian influence within the framework of the newly created Grand Duchy (1809–1917), with the tsar acting as grand duke. This way, Scandinavia ended up with two overarching

systems of public law, albeit with internal differences between the states that have grown considerably over time.

The absence of any common Scandinavian heritage is patent even when it comes to these countries' former bicameral (or similar) parliaments. In Denmark-Norway, the presence of an absolute monarchy left no room for a representative assembly. In Norway, that situation changed after 1814, but in Denmark it remained until the king finally curtailed his own absolute powers by 'giving' the country its first modern constitution in 1849. A bicameral parliament formed a key part of the new institutional apparatus in Denmark but changed its character over time. During a short period, the members of both chambers were elected according to relatively inclusive norms with regard to the right to vote. According to the second constitution (1866), adopted in the aftermath of Denmark's military defeat against Prussia (1864), the major part of the members of the upper chamber (*Landsting*) was chosen by an electorate dominated by high-income groups, including the still powerful landowners, and twelve out of sixty-six members were appointed by the king (Christensen et al. 2016). Had the electoral turnout in the subsequent mandatory referendum been sufficient to satisfy the constitutional requirements of the time, the conservative upper chamber would have been abolished by the new constitution adopted by Parliament in 1939. By contrast, the constitutional text on which Parliament voted (1953) in the aftermath of the Second World War passed the test of the mandatory referendum because of both positive support and sufficient turnout. Its main contribution to the institutional landscape was the establishment of the lower chamber (*Folketing*, meaning people's assembly) as Denmark's single-chamber Parliament (cf. Christiansen, this volume; Skjæveland, this volume).

On the eastern shores of Øresund, royal power was less absolute. Sweden entered the nineteenth century with the inherited system of estates composed of not just three but four chambers (nobility, clergy, bourgeoisie and peasantry). The 1809 Instrument of Government kept this pattern until constitutional amendments (1866) replaced it with a bicameral system whose upper chamber was elected by and among the members of the county and city councils for eight-year terms. From 1905, each of the two chambers was housed in two almost identical semicircular halls within the new Parliament, where the interaction between the members of the two chambers was further facilitated by architectural features such as a monumental corridor linking the two halls. Together with the existence of joint committees and, even more importantly, the emergence of a modern system of political parties, such features inevitably paved the way for the ultimate abolishment of the bicameral system. The current unicameral Parliament (*Riksdag*) has been in place since 1971 (cf. Nergelius, this volume; Nilsson, this volume).

Chronology alone is sufficient to demonstrate that no Danish model was at hand when it came to the design of the new Parliament of Norway, nor did the 1814 Constituent Assembly consider the age-old Swedish 'model' of four estates. How, then, did modern Norway's bicameral system come about?

How did the Norwegian bicameral system come about?

In the aftermath of the battle of Leipzig, the king of Denmark-Norway, an ally of Napoleon, was forced to hand over the kingdom of Norway to the king of Sweden by virtue of the Treaty of Kiel, concluded on 14 January 1814. From the Swedish side, the main architect of the arrangement was not the old and childless king himself but Jean Baptiste Bernadotte, Napoleonic *maréchal* of France and elected crown prince of Sweden under the name Karl Johan (Charles Jean). The motivation for his wish to take over Norway was at least partly to compensate Sweden's loss of its eastern provinces (now known as Finland) to the tsar of Russia (1809), without having to start new wars against the Russian Empire.

As a consequence of the king's relinquishing his Norwegian realm, a group of prominent Norwegians considered themselves freed from their allegiance to the institution that they had considered as their legitimate head of state. Opposing the treatment of Norway as royal property to be handed over to the country's hereditary enemy, they argued on the basis of the increasingly strong ideas about popular sovereignty and convinced the residing governor, Prince Christian Frederik of Denmark-Norway, to call a Constituent Assembly. Consisting of indirectly elected members from all over the country, the assembly (*Riksforsamling*) gathered in April 1814 at Eidsvoll, north of Oslo, and unanimously adopted the Norwegian constitution six weeks later (17 May). Norway's declaration of independence was enshrined in the very first article, separate chapters inspired by the new philosophy of enlightenment dealt with the *trias politica*, and a number of citizen and human rights were included in the *corpus*, not just in a preamble or as additional text, like in the French and US constitutions.

By virtue of the norms enshrined in the constitution, the assembly elected the residing prince as the first constitutional king of Norway. Among other functions, he was the commander of the Norwegian armies during the short war following the Swedish attack led by Bernadotte in July–August. According to an armistice concluded in August 1814, King Christian Frederik convoked the country's new Parliament for an extraordinary session, handed over his powers and abdicated in October of the same year. He returned to Denmark, where he later became the last king to remain an absolute monarch for his entire reign. In fact, King Christian VIII died the year before his successor accepted the first modern constitution in 1849. Rather ironically, the young prince who called the Constituent Assembly of Norway, inspired by new ideas about popular sovereignty and was elected as king of Norway accordingly, refused to take a similar step before he died as king of his own homeland, Denmark. The armistice also required that the Norwegian constitution be amended in order to establish a kind of personal union between Sweden and Norway. By virtue of the amended text, the Parliament elected the king of Sweden as the king of Norway in November. The monarchy remained constitutional within the relatively unchanged institutional framework that had been established by the original constitution of 1814.

A key element of the constitution was the clause in Article 49: 'The People exercises the legislative power at the National Assembly, consisting of two sections,

viz. the Lag-Thing and the Odels-Thing'. In Norwegian, the text adopted by the Constituent Assembly explicitly spelled out the name of the plenary chamber (*Storting* or great assembly). As the common denominator of these three names is a word inspired by the name given to Norse medieval regional and local assemblies (*thing*), it should be regarded, of course, as an element of the post-1814 Norwegian nation-building efforts based upon real or invented historical traditions. At present, we may leave aside that the provision about the legislative power in the hands of 'the people' was – and formally remains – inappropriate. That power does not belong to 'the people' alone but is shared between Parliament and the king in council. In fact, royal approbation is still required for a legislative text to become law (Article 78). Until 2007, the constitution vested the legislative power in one assembly split in two. The system has later been qualified as modified unicameral (cf. Hoff 1951).

The Constituent Assembly had little time at its disposal to establish a new *fait accompli* before the probable arrival of the Swedish army. This contributes to explaining why no complete minutes exist for the deliberations. Nevertheless, a number of key elements are known, including several private draft constitutions submitted to the assembly. The bicameral system proposed by the most influential of these draft constitutions, written by lecturer Johan Gunder Adler and Judge Christian Magnus Falsen (Adler & Falsen 1814), was clearly inspired by 'The constitution for the United States of America'. The importance of this draft was enhanced by the fact that Falsen himself acted as chairman of the Constituent Assembly's committee charged with drafting the new constitution, and he sometimes served as president of the assembly itself. Those who supported the idea of a bicameral system as part of the new state apparatus needed to address, however, the fact that Norway nurtured no federal or regional elements even slightly similar to those underpinning the bicameral element of the US Congress. Since Norwegian nobility was already very limited and would, in any case, soon be abolished by the very same constitution, the idea of establishing something akin to the British House of Lords did not surface during the deliberations regarding the Constituent Assembly.

With few other credible external criteria at hand for the composition of an upper house for Norway, the Adler-Falsen draft constitution subsequently proposed a single assembly composed of representatives designated by common elections organised biennially. Once gathered, the assembly would elect one-fourth of its own members to sit in an upper chamber (*Lagting*), with the remaining MPs staffing the lower chamber (*Odelsting*). Seeing that members of the *Lagting* had six-year mandates, while two years was the general norm, they would not stand for election at the end of each ordinary electoral term. Despite its ingenuity, the Adler-Falsen proposal was not broadly supported at Eidsvoll, where many preferred a purely unicameral solution, which could potentially better ensure that the will of the majority was not hampered or delayed by a small group of more or less self-confident senators. Supported by a majority of fifty-four to fifty-two, the final outcome became a modified version of the Adler-Falsen model. According to the adopted rules, all members of the Parliament would be elected by virtue of

identical electoral rules, eligibility and geographical distribution. Once elected, however, the assembly would select one-fourth of its own members to sit in the upper chamber (*Lagting*). The three-year electoral mandate, however, applied to all. After a constitutional amendment adopted in 1938, the mandate was extended to four years.

It has been suggested that the solution was inspired by the 1801 constitution of the Batavian Republic (Stevens, Porier & Berg 2008), which was one of the texts considered by the leading figures during the preparation of the constitution for Norway. In addition to the US constitution, the list of foreign examples included the French 1791 constitution, the Batavian and Cadix constitutions, the Swedish 1809 form of government and some of the North American state constitutions. According to Articles 49–52 of this short-lived republican text, a unicameral Parliament would select a minority of its own members to sit in a separate chamber. Institutionally, this feature may seem close both to the Adler-Falsen draft and to the final solution. When it came to the functions of the two 'modified unicameral' parliaments, however, the connection between the Batavian and Norwegian solutions is considerably more distant. As a matter of fact, it seems as if the twelve members of the upper chamber of the Batavian Republic were selected in order to discuss legislative bills, while the plenary assembly was left with the task of approving or rejecting the texts subsequently submitted by the upper chamber (Article 50) (cf. Oddens, this volume). In fact, this solution appears to be much closer to a modern system of parliamentary commissions charged with the preparation of parliament's final deliberations than to a system in which two sub-chambers are bestowed with more or less equal powers in legislative affairs.

In comparison with the Norwegian system, the twelve Batavian 'senators' were tasked with duties that resembled those of the lower chamber (Odelsting) much more closely than those of the upper chamber (Lagting). In legislative affairs, the Lagting intervened after the lower chamber and was constrained to discussing and voting on bills that had already been adopted by the lower chamber. With regard to the latter, it had the choice between accepting them in their entirety or rejecting them, after which the final say was given to the plenary formation.

The sub-chambers as parts of Parliament

When it was originally adopted, the system was probably thought of as one in which most of the affairs that the constitution has vested in Parliament should be carried out by the sub-chambers, not in plenary sittings. However, the only subject matter for which the constitution clearly provided for deliberation by the sub-chambers was ordinary statutes. For a bill to become law, it had to be approved first by the lower chamber and subsequently by the upper chamber, before finally being submitted for royal assent. In cases of disagreement between the two chambers, a second *navette* was to be carried out. If the two chambers still disagreed, the *Storting* would have the final say but could only adopt a bill with the support of a two-thirds majority.

During the first decades of the new constitution, coinciding with the reign of *maréchal* Bernadotte as king of Norway (1818–1844), the royal veto power was used rather frequently. For a Parliament that grew increasingly opposed to the king, it thus became important to seek out new ways to avoid the need of obtaining royal assent. It gradually appeared that the best way would be to get around the sub-chambers, to which the requirement of royal assent incontestably applied. The statutes (*lov*) for which this procedure was required were poorly specified in the constitution, which was one of the reasons that it was possible to exclude politically important matters, such as taxation and budgets, from the field of *formal* statutory law, where both the consent of each sub-chamber and royal assent were needed. Instead, such issues were eventually deliberated in plenary sittings, thus avoiding the risk of a royal veto.

As part of the overall institutional picture, this development added to the fact that the power of constitutional amendment always belonged to the plenary assembly. Politically, if not in strictly legal terms, even the fact that the commissions charged with the preparation of the affairs to be deliberated in the successive assemblies were essentially common to the entire Parliament paved the way for enhanced coherence across the sub-chamber divide. Throughout the nineteenth century, the *Storting* thus gradually became the key political element within the national assembly. As soon as ministerial responsibility emerged in parliamentary practice, even questions of non-confidence were systematically voted on in plenary sittings.

Only in one field did the constitution keep the functions of the two sub-chambers entirely separate – criminal proceedings against ministers, members of Parliament and of the supreme court for their conduct *ex officio* had to be adjudicated by a special court (*Riksretten*, the national court). In such cases, it was up to the lower chamber alone to decide whether to initiate proceedings. Once proceedings had been initiated, the members of the upper chamber sat on the bench together with members of the supreme court in a three-to-two ratio. Moreover, the president of the Lagting, not the supreme court, acted as president of the national court. The national court was thus a strongly politicised institution. It was no surprise, then, that the majority in the parliament, in several of the eight cases adjudicated so far, made deliberate use of the possibilities that the system offered for ensuring that the verdict followed the preference of the majority. We will later discuss the most prominent of these cases – one that had a direct and rather dramatic bearing on the constitutional position of the Norwegian monarchy.

A solution shaped by the crisis?

The internal organisation of a parliament is a key part of any effort at drawing up a constitution. Two centuries ago, the question of bicameralism became part of those considerations. The answer given by the Constituent Assembly of Norway was nevertheless close to being negative, and the solution that was ultimately reached represents nothing more than the most careful version of a bicameral system. As such, the outcome looks more like a somewhat modified unicameral

system than a genuine two-chamber parliament. Why did the assembly nevertheless bother to adopt elements of bicameralism at all?

One option could be to see it as a product of Norway's existential crisis, which gave rise to the Constituent Assembly itself, a crisis that continued to develop during the deliberations of the assembly. In fact, a military attack with the aim of ensuring respect for the Treaty of Kiel was expected once the Swedish army had had the time to return from the European continent after the end of the campaign against Napoleon's armies. In retrospect, we know that the attack actually came in late July.

The deputies were perfectly aware of the overall political situation. As a consequence, their main preoccupation during the deliberations at Eidsvoll was deciding whether to simply declare Norway's independence or to explore the best possible union with Sweden, an outcome that influential groups among the deputies regarded to be unavoidable anyway. By contrast, the assembly's primary aim in drawing up a new constitution for Norway was not fundamentally questioned. In any case, a great number of the items regarding the shape of that instrument had little or nothing to do with the ongoing political crisis. In particular, nothing indicates that the crisis itself influenced the various positions in favour of or against a kind of bicameral parliament. There are no indicators that the narrow outcome in favour of the weak form of bicameralism that actually found its way into the institutional apparatus of the new state had any visible bearing on the choice between full and limited independence.

An upper chamber in defence of the monarchy?

Another possible explanation might be that the bicameral solution was chosen as a kind protection of the monarchical government that would soon be adopted. However, formally retaining the monarchy in the constitution was not seriously questioned at Eidsvoll or in society, which suggests in itself that the very idea of having recourse to a form of bicameralism in defence of the monarchy did not occur during the deliberations.

The resident prince, who issued the call for the election to the Constituent Assembly and later accepted his election as Norway's first constitutional monarch, lived amid this turmoil. Residing in a part of the manor house where the assembly met, he regularly invited its members to his table without distinguishing between nobles, merchants, military men or peasants. Although he did not directly take part in the assembly's deliberations, he took great interest in the ongoing constitution-making process. Nothing seems to substantiate, however, that he took any particular interest in the bicameral question that was discussed literally next door.

Taking a different approach, it may also be worthwhile recalling that the imminent possibility of some kind of union with Sweden imposed on Norway *manu militari* was present in the minds of the members of the Constituent Assembly. This raises the question of why the majority would want to include enhanced institutional defence for a monarchy it did not want in the constitution of a reborn

Norway. In November 1814, the very first Storting actually adopted the revisions to the May constitution needed in order to provide for the personal union with Sweden, as foreseen by the August armistice. The fact that the modified unicameral system established by the Constituent Assembly was not touched adds further support in favour of the suggestion that the bicameral solution, though a moderate one, was reached in relative isolation from the question of the monarchical government.

In any case, the modified unicameral system, in which all members of the Storting were elected simultaneously and according the same rules, did not leave any space for the Lagting as an actor with a radically different political agenda from that of the Odelsting. The ultimate test of this proposal came as political divisions between the traditional political elites (supported by the monarchy) and the growing liberal opposition crystallised towards the end of the nineteenth century. An important battleground was provided by the opposition's increasingly urgent quest for constitutional change in order to give ministers access to Parliament with the right to speak but not to vote. This would actually represent a first step towards the emergence of a system with governmental responsibility towards the Storting, as such a system cannot exist if it is not possible for ministers to discuss political options, defend bills and respond to criticism during parliamentary sittings. The executive understood well that giving ministers access to Parliament would provide it with strong supplementary instruments of control towards the executive.

When the Sorting amended the constitution in 1880, the king, supported by his council (the government), declined to give his assent. This was the third time that this amendment had been vetoed, despite the fact that the Parliament had already adopted an identical version of the amendment twice with general elections interposed. The text of the constitution was silent, however, on the executive's role in the process of constitutional amendment. This gave rise to the opportunity to crystallise the conflict with regard to ministerial access to the Storting into a debate about the correct interpretation of the constitution: did the king have the right to veto constitutional amendments in the first place? If so, would a veto be absolute? Or would it simply be suspensory? The latter position could be supported by analogy to the explicit rules concerning vetoing power with regard to ordinary legislation, which gave the king the power to veto bills adopted by the Parliament in identical terms twice, with general elections in between. If the same text was approved after voting for the third time after the next general elections, however, it would become law even without royal assent.

The executive, supported by the conservative groups in the Storting (and by the Faculty of Law), regarded the constitution as a kind of pact between the king and the people and argued that, as such, it could not be amended without the consent of both the legislative and the executive powers. Unsurprisingly, the liberal opposition favoured the suspensory veto option. At that time, the most radical option (no veto power at all) gained no substantive support. Until the amendment met its third veto in 1880, the constitutional question regarding the extent of the veto power had never become that urgent. Now, it could no longer be avoided: if the

Storting accepted the king's third refusal of the same text, it would entail more than just the failure of what was regarded to be a politically important reform. Even more fundamentally, parliament's surrender would imply accepting the conservative view of the existence of an absolute veto power against constitutional amendments adopted by the Storting according to otherwise uncontested procedural standards.

The situation sparked intense political debate. The liberal party-to-be (*Venstre*, the Left) was as in favour of the constitutional amendment as it was opposed to the doctrine of absolute veto in the hands of the executive. In the 1882 general elections, it obtained an overwhelming majority in the Storting (83 out of 114). This numerical strength was used to pack the upper chamber with the party's own followers, while still ensuring a number of seats in the Odelsting that would be sufficient for making sure that the Odelsting would adopt a subsequent proposal to prosecute the members of the sitting government for not having formally protested against the royal veto, according to Article 30, paragraph 3 of the 1814 constitution. As two-thirds of the members of the national court would *ex officio* be chosen among the members of the upper chamber that all belonged to the liberal opposition, it came as no surprise that the verdict given in 1884 led to the ministers losing their seats. Nor was it a surprise that the majority on the bench outnumbered the supreme court judges that made up the remaining one-third of the votes within the national court.

In the absence of today's parliamentary tools, the national court was actually used as a kind of impeachment mechanism. More fundamentally, however, it functioned as a kind of constitutional court in the sense that the verdict could not have been reached if the court had not interpreted the constitution as establishing a suspensory veto power rather than absolute power. From then on, this became the only possible interpretation *de facto*, if not *de jure*. Notwithstanding rumours about an imminent military coup, the king finally accepted his defeat and appointed the leader of the liberal opposition as the new prime minister. Later in the same year, the Storting adapted the controversial amendment of the constitution in order to avoid any further discussion about its legal validity. As the amendment was now regarded as valid *eo ipso*, no quest for royal assent was issued.

For reasons already suggested, the amendment represented an important first step towards the subsequent emergence of parliamentary government in Norway through lasting political practice. The path was not linear, and the principle itself did not gain global acceptance by both sides of the political spectrum before the personal union with Sweden was finally broken up and a separate Norwegian dynasty was installed, which we will return to later. In fact, the legal obligation for the government and individual ministers to offer their resignation in case of parliamentary non-confidence was included in the constitution only in 2007 (Article 15).

Regarding the history of bicameralism in Norway, however, the main point is that the 1883–1884 crisis provides a dramatic testimony to the absence of any credible function of the upper chamber as one in defence of the monarchy (or the monarch). On the contrary: the modified unicameral system, in combination

with the special court for judging ministers and other top officials, proved a most efficient tool for combatting the monarch's opinions in cases where they stood in the way of solutions preferred by a majority in parliament.

A conservative chamber?

Rather than reflecting particular concerns for Norway in the spring of 1814, it seems as if the Constituent Assembly handled the particular question of the overall organisation of the parliament-to-come in relative isolation from the immediate political context. The influence that current political philosophy and knowledge of foreign constitutions exerted on leading members of the assembly seems much more important. One underlying line of reflection may thus have been that even independent Norway should embrace an element so common in pre-Eidsvoll foreign constitutions as a bicameral parliament. Which arguments may have determined the Constituent Assembly's choice for a modified unicameral parliament?

From a comparative perspective, the idea of a conservative upper house provides one possible answer. If we trust the authors of the most influential private draft constitutions, however, it clearly appears that they insisted on separation of powers between Parliament and the executive as the prime safeguard against acts likely to threaten the constitutional equilibrium between the two branches of government (Adler & Falsen 1814). They do not mention the modified unicameral system that they proposed as an instrument in relation to this key aspect of the constitutional system. It is worth mentioning that even if the Adler-Falsen proposal of a six-year mandate for the members of the upper chamber had been adopted, it would have led to two considerably different chambers when compared to the model finally adopted by the Constituent Assembly.

In any case, it is hard to see why one would want to provide those selected to sit in the upper chamber with tools for radical resistance against the opinions prevailing in the larger of the two sub-chambers and even in the future Storting. The 1883–1884 Riksrett case already provides an illuminating, albeit probably unintended, example of the consequences of the opposite choice, even with regard to the position of the monarch.

A chambre de réflexion?

In the light of comparative experience of that time, the notion of the future upper chamber as a *chambre de réflexion* appears to be a more convincing answer to the question of what convinced a narrow majority at Eidsvoll to adopt any kind of bicameralism at all.

It is true that the constitution itself did not establish criteria for parliament's selection of MPs to sit in the upper chamber. Instead, the selection of all the members of the great assembly took place according to the same rules on eligibilty and the right to vote, the duration of the mandate, etc., regardless of which of the sub-chambers the future representatives would sit in. In principle at least, the electorate could neither know nor influence the likely status of a given MP within

parliament once elected. Nevertheless, it seems that, on average, the number of representatives with legal training was considerably higher in the Lagting than in the Odelsting (Nordby 2004). In 1814 and 1824, as much as 65 per cent of its members had been through this kind of higher education, while only 15 per cent of the members of the lower chamber had a similar background. This pattern fits well with the notion of the upper chamber as a chamber of reflection, intended to take upon itself the task of reviewing decisions made by a lower house packed with the bulk of MPs who had little or no higher education – most farmers included.

After 1850, however, the percentage of 'educated' members became roughly equal in both chambers, and eventually it declined in the great assembly as a whole towards the end of the century. With the establishment of political parties in the modern age, from the 1880s onwards, the overall *de facto* norm gradually became to distribute the MPs between the two chambers according to the parties' proportional strength in the elections, as reflected by their presence in the plenary chamber. In combination with the increasing prevalence of party discipline, this development curtailed any possibility of substantive political influence for the upper chamber. Instead, the members of the upper chamber would normally act according to the party divides, as already reflected in the discussions and votes in the lower chamber, rather than as agents of independent reflection or wisdom.

This development contributes to explaining why, during the last years of the bicameral system, presumably influential MPs were sometimes assigned to the Lagting rather than to the politically more important Odelsting. The purpose was not to enhance the prestige or political importance of the upper house, but such instances rather reflected the fact that those seats were the less burdensome. This was due to the fact that a member of the Lagting could never be tasked with the preparation of the final report of the relevant standing committee on matters to be presented first in the Odelsting. Instead, the relevant MPs would be free to devote more time to party matters, etc.

The final decay

The Bernadotte dynasty relinquished the throne of Norway after a unilateral Norwegian move in 1905, which was later ratified by a bilateral treaty. The constitution was rewritten in order to eliminate the traces of the personal union with Sweden, which had been the main outcome of the events of August–November, 1814. The institutional changes thus essentially involved getting rid of a monarch with two crowns and replacing him with one whose only realm was Norway. No other reshuffling of the constitution took place. Instead, the Norwegian state apparatus, which was in many ways actually very different from the constitutional apparatus in Sweden, continued to function more or less as it had during the last decades of the nineteenth century. Politically, however, it profited greatly from getting rid of the more or less constant struggle with regard to the future of the Norwegian-Swedish union of the previous decades.

By virtue of the constitutional norms to that effect, the new king of Norway was to be elected by the Storting. The election did not take place, however, until after a consultative referendum – held upon its own demand – had ensured almost

80 per cent support for the proposed pretender. After the new king of the present dynasty – the second son of the Danish king Frederik VIII – had presented his oath to Parliament in November 1905 under the historically relevant name Haakon VII, any foundation for a continued struggle between the monarch and Parliament disappeared. Simultaneously, the idea of a possible role for the Lagting in defence of the monarchy as such or in any other kind of discussion about the form of government lost its *raison d'être*.

In order to understand the functions of the modified unicameral system during the last century of its existence, however, the general acceptance of ministerial responsibility towards Parliament that soon followed is even more important. This development is intimately linked, of course, to the solidification of the political parties throughout the twentieth century. That process even led to the firm, though informal, confirmation of a system of proportionality between the parties with regard to the distribution of MPs between the sub-chambers (as in the standing commissions). In both chambers, party discipline ended up prevailing to such an extent that the upper chamber lost all relevance as an influential or at least meaningful part of the political decision-making apparatus.

In the last decades of its existence, the upper chamber met only because its concurring vote was formally needed for making bills pass before the executive made them law. In general, the meetings lasted only a few minutes. Once the quorum was satisfied, the president's sole task became to state that nobody had asked for the floor, that no vote was needed because nobody had the intention to vote against the texts already adopted by the Odelsting and that the meeting had come to an end (Smith 2007). With very few exceptions, this became practice even in cases where the preceding vote in the Odelsting revealed sharp political disagreement.

By constitutional necessity, the system nevertheless continued to function until an external event provided the pretext for finally allowing the formal *coup de grace*. This happened as part of a move towards a reform of the national court in order to make it more independent from parliament. Some even regarded a similar reform as a contribution to reinvigorating the national court as an instrument of some practical use: even if the possibility of criminal conduct could not be completely excluded, the different mechanisms for ministerial responsibility provided by the century-old parliamentary system of government made it appear obsolete.

As already noted, the constitution assigned different roles to the sub-chambers with regard to the system for penal responsibility. The authors of the reform proposed having Parliament retain the power to initiate proceedings against ministers, MPs and members of the supreme court by transferring the role initially assigned to the lower chamber to the plenary. At the same time, excluding MPs from the bench was supposed to make the Riksrett more court-like. The political relevance of the division of Parliament into sub-chambers for legislative matters had long faded away. If its role regarding the national court was eliminated by constitutional amendment, no convincing *raison d'être* for maintaining the system would subsist.

The bill on this constitutional amendment was finally submitted to Parliament in 2007, and it was framed in accordance with the previously mentioned considerations. In the new system, people selected by the great assembly in the aftermath

of each general election among non-acting members of Parliament take care of the 'political' element within the national court. So far, Parliament has chosen former MPs according to the political distribution of seats after the last elections. Moreover, members are given six-year terms rather than being selected for particular cases. On the bench, the members of the supreme court are still outnumbered by those elected by parliament but have seen their relative share increased to five out of the court's eleven members.

The package of constitutional amendments adopted in 2007 included the formal elimination of the modified unicameral system and the corresponding reform of the system of penal responsibility for ministers, MPs and members of the supreme court. By virtue of an explicit provision to that effect, the sub-chambers nevertheless continued to function until the end of the relevant electoral term (2009). Norway has since been among the Scandinavian countries with pure unicameral systems (Smith 2008).

At a few crossroads, the initial version of the national court showed its importance, and it has survived in a revised form. By contrast, Norway's modified unicameral system lacked any clear or compelling purpose and rarely played a political role of any importance. After the reform, the only formal relic of that system is that the great assembly, no longer its sub-chambers, must adopt statutes twice and in identical terms at an interval of a minimum of three days before submitting the text for executive assent. So far, however, even the occasion for further reflection that this delay might provide has lacked any political significance.

References

Adler, J.G. and Falsen, C.M. (1814), *Udkast til en Constitution for Kongeriget Norge* (Christiania).

Christensen, J.P. et al. (2016), *Dansk Statsret*, 2nd edition (Copenhagen: Jurist- og økonomforbundets forlag).

Hoff, G. (1951), 'Norway's three "tings" ', *Parliamentary Affairs* 5, pp. 445–448.

Krunke, H. and Thorarensen, B. (eds.) (2018), *The Nordic Constitutions. A Comparative and Contextual Study* (Oxford: Hart Publishing).

Nordby, T. (2004), *I politikkens sentrum. Variasjoner i Stortingets makt 1814–2004* (Oslo: Universitetsforlaget).

Smith, E. (2007), 'Requiem pour un système bicaméral défunt', in: Andersen, R. et al. (eds.), *En hommage à Francis Delpérée. Itinéraires d'un constitutionnaliste* (Bruxelles-Paris: Bruylant-L.G.D.J.), pp. 1441–1452.

Smith, E. (2008), 'Norway – the end of bicameralism', *Public Law*, pp. 393–395.

Stevens, F., Porier, P. and Berg, P.A.J. (eds.) (2008), *Documents constitutionnels de la Belgique, du Luxembourg et des Pays-Bas 1789–1848* [Vol. 7 of Dippel, H. (ed.), *Constitutions of the World from the Late 18th Century to the Early 19th Century*], (München: K.G. Saur).

The Constitution of the Kingdom of Norway. Translated pursuant to order of Government (1814), (Christiania: Jacob Lehmann).

The Nordic countries today

(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

3 Members of the Senate in the Southern Netherlands (Belgium) between restoration and revolution (1815–1831)

Els Witte

Introduction

In the aftermath of the defeats of Napoleon (1814–1815), a number of European states saw the emergence of restoration regimes in which elements of the modern system (citizens with equal rights, freedoms, and political participation; parliaments with legislative and supervisory capacities) coincided with remains of the old regime (a strong monarch with subservient ministers, powerful nobility, an inflexibly repressive government, etc.). Senates referred to the old regime because of the role they ascribed to nobility. In 1814, an interesting version of such a restoration regime appeared in the Netherlands – a country with its own constitution and its own monarch, William I of Orange-Nassau. The founding father of this constitution, G. K. count van Hogendorp, ensured that nobility enjoyed a protected position. There would be knighthoods (*Ridderschappen*), i.e. electoral bodies consisting of members of the wealthy aristocracy that would exercise a powerful role in the States-Provincial and appoint the members of the States-General. The constitution of 1814 did not, however, provide for a senate (*Eerste Kamer*) (Velema 1998; Van Poelgeest 2013).

William I reached an agreement with England to merge the Northern and Southern Netherlands to form a buffer state against France. The other European powers agreed to this United Kingdom of the Netherlands (*Verenigd Koninkrijk der Nederlanden*). In accordance with the Eight Articles, the Southern Netherlands were granted the right, jointly with the Northern Netherlands, to determine the content of the constitution. In practice, though, the constitution of 1814 was taken as the point of departure. Moreover, in the mixed constitutional commission chaired by Van Hogendorp, it soon became apparent that the South had its own political culture and mental framework and would clearly be making its own demands. One of these was to have a senate (Witte 2016a). Because the Senate was an initiative of the South, which also influenced its composition and functions, I should like to focus here on the Southern members of the Senate. There is also a second reason why these members of the Senate deserve more attention than they have received so far. Unlike their Northern colleagues, for whom little changed until 1848, the Southern members of the Senate, following the change of government brought about in the revolutionary year, 1830, and its aftermath, had to face a major crisis

that put an abrupt end to their mandates and replaced the restoration Senate of 1815 with a more modern model.

A Senate for the South

Why the need for a Senate in the South? Of the eleven Southern members of the commission, seven were staunch supporters of the idea. The issue of a bicameral system was therefore bound to feature on the agenda and would give rise to many a heated debate. Five members of the aristocracy – C. count de Mérode, C. count de Thiennes, P. count d'Arschot, C. baron de Méan, and F. du Bois – were strongly in favour of a chamber that would represent the nobility, but even J. Raepsaet, a Flemish traditionalist well versed in old Belgian law, joined the struggle in favour of a Senate (Colenbrander 1908–1909). They were well aware that they represented the interests of the Southern nobility, which, compared with the situation in the North, was twice as large and included many high-ranking aristocrats (princes, marquises, counts, and viscounts). There was the old hereditary aristocracy going back to before the seventeenth century, including a few families that went back as far as the Burgundians. In the seventeenth and the eighteenth centuries, the Spanish and Austrian monarchs had also conferred titles on the basis of exercised functions. Over the centuries, the Habsburg emperors, German monarchs, and especially the French kings had also raised many to the ranks of the aristocracy in the Netherlands. Primogeniture, the system by which the firstborn inherits his parents' estate, was by and large the rule, which meant that land ownership remained concentrated in particular families. However, members of the aristocracy had suffered at the hands of the French republicans and now hoped that their property, rights and privileges would be reinstated and that the *ancien régime* would be reinstalled (Witte 2015). 'Our nobility must be able to live again' was the wish expressed by De Mérode, and De Thiennes referred to the need to maintain the moral strength of the nobility.

If the nobility were to be represented separately in the Senate, this would restore the prominent role of high-ranking and wealthy aristocratic families in the community. This position was most vigorously defended by Raepsaet. He was in favour of nothing less than a full return to the old constitutions of the period before 1795 and an States-General consisting of three estates. At the very least, he believed that the higher clergy should also be granted the right to sit in the Senate. De Mérode was also in favour of the clergy's being granted legislative power once more. For both these members, as for the other noblemen, the Senate might well have consisted exclusively of members of the hereditary aristocracy. The aristocrats also had their minds set on members elected from among and by the members of the knighthoods and were in favour of a separate voting right based on class distinction. A number of noblemen from the Northern Netherlands sided with their Southern colleagues in the latter's struggle to secure a central position for nobility in the new system (Colenbrander 1908–1909).

During the restoration period, the memory of the French revolution, the French republic, and most certainly the Terror were forcefully driven to the background.

Republican principles and especially Jacobin ideas were strongly opposed. It was no different in the Netherlands. The restoration elite distanced itself from the Batavian republic of the 1790s, which would be associated with civil discord, absence of government, and even anarchy from then on. In the South, nobody wanted to be reminded of the period of Robespierre. Even in 1830–1831, i.e. after the revolution, the Constituent Assembly continued to refer to the period with a significant degree of abhorrence. The aristocratic preference expressed by Van Hogendorp in the constitution of 1814 was completely in line with this attitude, which was also obvious in the discussions of the constitutional commission in 1815 (Velema 1998; Witte 2017). Not only aristocrats but also proponents of what would be referred to as aristocratic liberalism made their views known, taking their inspiration from Montesquieu and Benjamin Constant. These ideas were well known: the nobility must be a bulwark against democratic unrest and an antidote to the elected element. In its capacity as a mediating body, the aristocratic Senate could therefore ensure political durability and stability and guarantee a moderate government. This Senate could also mediate between the monarch and the people and prevent both the monarch from becoming despotic and the people from rising up in rebellion (De Dijn 2008).

But what did the king think about all this? Though he did not personally take part in the gatherings of the constitutional commission, he was kept very accurately informed both in writing and orally by Van Hogendorp, and everyone knew that long-time Bonapartist C. van Maanen and former minister J. Mollerus could be relied upon to uphold the interests of the monarch. It was no secret that the king had long cherished ambitions for his now much larger kingdom and that he was prepared to use all the power and authority he needed to achieve them. The king and Van Hogendorp were therefore not in favour of the English model – with its House of Lords and a powerful Parliament. The French *Chambre des Pairs* was more to their liking, with members chosen for life by the king from among the hereditary aristocracy. However, since there were less members of the hereditary aristocracy in the Northern Netherlands, Northern members of the commission were reluctant to follow suit. Nevertheless, the king was aware of the social importance of Southern noblemen and was keen to establish a link with them – a tie with the monarchy – to associate them with land management and to be able to rely on them. This could, of course, be achieved via the knighthoods and States-Provincial, but a Senate would be an added advantage. The idea of an aristocratic Senate appointed by the king was certainly not one to be dismissed. Members of the commission who were opposed to a separate estates system might even consider appointment by the king as an acceptable alternative. As De Mérode, D'Arschot, and Du Bois explained, if the members of the Senate could not come from the knighthoods, they could always be appointed by the king (Colenbrander 1908–1909).

Nevertheless, after many discussions, there were still enough members to oppose the idea of an aristocratic Senate – certainly among the Northern members, which included Van Maanen, for instance, who was firmly opposed to any form of privileged estate and to a specific role for the clergy. There were those

who feared that the *pairs* (peers) could all too easily impose their own views on the king. There were also a number of liberal members in the South – administrators and magistrates during the French period, such as Dotrenge, De Coninck, and Leclercq, who were equally opposed to privileges for the aristocracy and the clergy. Dotrenge in particular took up the fight against privilege and came into direct conflict with De Mérode and De Thiennes. Former prefect J. B. Holvoet took the middle ground: though he agreed that the aristocracy was politically important, he was not prepared to grant exclusive power to aristocrats and became the rapporteur of a compromise proposal (Colenbrander 1908–1909).

The compromise cut the Gordian knot and received the backing of a majority of the members: there would not be a real aristocratic chamber. The Senate would include members of the moneyed class who could be appointed on the basis of services rendered to the state. There was no mention of the clergy, either. All members of the Senate were to be appointed for life by the king. De Mérode and De Thiennes were now alone in pleading for an aristocratic chamber and were left deeply disappointed. The king's pledge that he would appoint almost exclusively members of the aristocracy in the South did, however, provide some solace. Raepsaet, who was probably disappointed by the turn of events, had long-since returned home. The majority could now agree to the principle of a bicameral system. As the kingdom consisted of two geographical parts, so ran the argument, this could in itself justify expanding the States-General with the creation of a senate (Colenbrander 1908–1909; Witte 2016a). This was mainly a tactical argument, given that the members of the States-General represented the whole nation rather than just one of its constituent parts.

The text that appeared in the constitution considered the wise, moderating role of the Senate. The people's assembly (*Tweede Kamer*) was (by a matter of degrees) the elected element. The Senate was more associated with the monarchy. Its members were older (at least 40), the location of their assemblies alternated between Brussels and The Hague, and the allowance they received (3,000 fl.) was higher, but they were less numerous (40–60 members compared with 110 in the people's assembly). Members of the Senate would also be able to pass legislation and have the authority to exercise delaying power. By being granted the last say, they would also be able to block proceedings in the people's assembly (De Schepper 1990; Van den Braak 1998).

The Senate: le manège du Roi

At the time, the Senate was nicknamed *Le manège du Roi* (the king's merry-go-round), in reference to the subservient nature of the members. This denigrating phrase was used especially by the opposition and featured in contemporary sources concerning the Senate. The Southern opposition especially stressed the Senate's docile attitude, and during the Belgian constitutional debates (1830–1831), the image portrayed of the Senate was particularly negative. The Senate was often presented as an example that was not to be followed (National Congress 1830, 13–18 Dec.). This negative image had much to do with the appointment policy of

William I in general. The king was known for applying a kind of patronage system based on appointing the most loyal members he could find, from whom he would expect little or no public criticism and who would not be allowed to remain in the same position for long. In addition, appointments would also be used on occasion as a form of discipline. Not surprisingly, the king was often criticised for appointing too many 'yes-men'.

The king's appointment policy in the Senate was hardly any different. Nevertheless, membership to the Senate was a much sought-after appointment. Members considered the position to be an honour bestowed upon them by the king, the climax of a career in service of the kingdom, and for the dyed-in-the-wool legitimists among them, proof of the king's trust (Van den Braak 1998; De Schepper 1990). We may ask, however, what happened in practice. Let us focus on the group of Southern members of the Senate appointed between 1815 and 1830–45 appointments, corresponding by and large to the number of Northern members.

Let us first consider whether the king kept his promise and appointed primarily members of the aristocracy (Van den Braak 1998; De Schepper 1990; Almanach 1840; Wapenboek 1990). This was certainly the case. In theory, the king was under no obligation to appoint members on the basis of birthright, though that is exactly what happened in practice. Only two members appointed between 1815 and 1830 are not listed as belonging to the nobility. One of them, P. F. Nicolaï, belonged to an old family of magistrates from Liège and became the ruling president of the supreme court of Liège after his stint as a member of the Senate.

Two former governors, C. de Brouckère and B. J. Holvoet, joined the ranks of the nobility before they became members of the Senate, the former without a title and the latter as a knight. Nevertheless, the vast majority of the Southern members of the Senate belonged to the high and old nobility. This was due to the fact that members were recruited from among the king's court dignitaries (grand marshal, chamberlain, etc.), who were required to have seniority going back several generations, as the dividing line set by the king was the beginning of the seventeenth century (Witte 2015). Some ten members of the Senate belonged to this category, but other members were descendants of equally old families. The princes De Chimay and De Gavre; the marquises De Trazegnies; and the counts De Liederkerke Beaufort, De Bethune, De Berlaymont, De Marnix, and Du Chastel were but a few prominent examples.[1] All were, of course, more than sufficiently wealthy to sit in the knighthoods of their respective provinces, in which some, such as count Van der Meere de Cruyshoutem, had leading positions. When members were appointed, it was important that no province should feel it was being overlooked, although no formal rules for regional representation existed in the Senate.

How did the king deal with the controversial issue of the presence of the clergy? The king had been unable to reach a compromise concerning the relationship between church and state with Archbishop De Broglie and his intransigent Catholic followers, as a result of which a major conflict had broken out between them. These conservative Catholics were firmly opposed to the religious pluralism provided by the constitution and were not prepared to accept any other religion than Catholicism for the South. The ruling government had to adjust to this

situation. De Broglie was prosecuted and forced to flee, after which a compromise agreement was made with De Broglie's successor, F. A. prince de Méan. The new archbishop was immediately appointed as a Senate member, which was a clear signal that the king was grateful to the archbishop for his help and was prepared to meet the Roman Catholics halfway (Van Zanten 2004).

Members of the aristocracy in administrative and political positions were also eligible to become members of the Senate. The largest group came from the people's assembly and consisted mainly of non-re-elected members. It included a few members of both the old nobility and the *noblesse de robe* of the Austrian period, such as counts De Borchgrave, D'Hemricourt, and De Vinck. A minister and a minister of state were also appointed to the Senate: count De Thiennes and baron Goubau d'Hovorst. Liège, the two Flanderses, and South Brabant each had a former governor in the Senate. Count De Carmin moved straight from the States-Provincial to the Senate, and knight De Moreau was a former member of the provincial executive of Namur. Count De Bethune was appointed on the basis of his former position as district commissioner of Hainaut province. Knight Membrede was yet another example of a counsellor of state who became a member of the Senate. Given how members were appointed, it is not surprising that, with time, a number of members of the constitutional commission were also invited to sit in the Senate. This was the case for counts De Thiennes and D'Arschot and knight Holvoet.

The Senate was thus primarily populated with loyal members from the administrative-political sector. But what about the other socioeconomic and socio-political sectors? Only Major General Van der Burch, who was a member of the general staff, was appointed to the Senate from the army. Most nobles were landowners whose large estates could include many villages and for whom farming leases were a major source of income. Therefore, agricultural concerns were also *their* concerns. Industrial, commercial, and financial activities had not had any bearing on how noble titles were conferred in the past, which meant that no representatives of these sectors could be found among the nobles, except for members of families in the ore extraction business (Janssens 1998; Witte 2015). Baron F. H. d'Anethan, for example, belonged to a family of wealthy steel mill owners in the province of Luxemburg. The cultural and scientific sectors also had a few representatives. Prince De Gavre was a committed freemason and an active member of the Brussels Academy of Arts and Sciences, which had been re-established after its abolition by the French. Viscount De Nieuport played a central part in the institution not only in his capacity as director but also as a distinguished mathematician – one of the few in the South with a truly international reputation in the discipline (*Biographie Nationale* s.d., De Gavre; Van Bendegem 2018).

In short, the Southern group of the Senate had all the features of a classic restoration-elite dominated by the nobility. Its members all came from families that held different offices in the United Kingdom of the Netherlands. These families were generally fairly extended and had several different branches, and more than one member of more than one generation was typically a public figure. They constituted the social peak of the Southern elite and could therefore not easily be overlooked by the king.

Were they all the yes-men they were made out to be? The situation needs to be considered with caution, even though little is known about what actually happened in the Senate. The desire to keep the Senate beyond the reach of the people means that sources are very scarce, but it can hardly be denied that the king had managed to appoint a majority of loyal figures. What the king understood by loyalty can be surmised from the circumstances surrounding the appointment of two former governors, De Brouckère and Membrède. Having failed to achieve what was expected from them in their inability to prevent the election of liberals in the States-Provincial, they resigned, were replaced, and were promptly appointed to the Senate, as a kind of punishment. The king always chose the reliable De Thiennes to act as president of the Senate. As a rule, members of the Senate were not in the habit of being critical, since they took their oath to the king very seriously, and respect for the House of Orange grew fast in their midst (De Schepper 1990; Van den Braak 1998; Ramaekers 1989; Witte 2014).

We should also stress the very particular nature of the members of the Senate. Individuals were more important than their mandates. Some of the nobles of the South matched the Orange-Nassaus in terms of pedigree and wealth and they were treated with respect. The members of the Senate generally enjoyed personal relations with the monarch and his family – certainly if they belonged to the royal household or held a position as a minister or governor. Furthermore, the king would air his views in personal after-dinner conversations (Gerretson 1936). Politics were therefore conducted in an atmosphere of 'like-knows-like'. There could, however, also be negative sides to the situation: personal clashes could not be ruled out. Differences of opinion of a political nature were common, but private tensions also occurred. This was the case with G. de Trazegnies, for instance, who was an intimate of the Prince of Orange and was thus tied to the difficult relationship between the king and his eldest son. Della Faille d'Huyse was made to pay because his son was a member of the opposition (De Schepper 1990; Colenbrander 1931; François 1987).

Unfortunately, the records of the deliberations of the Senate do not enable us to follow the workings of the Senate closely. The members of the Senate convened far less frequently than the members of the Chamber of Representatives and gathered for a only couple of days; meetings took place behind closed doors and were regarded as being of little interest to members of the public. Absenteeism was widespread. It was also difficult to trigger discussions. During the meetings, the agenda was observed strictly because many bills and proposals had to be dealt in very little time. The casting of the vote was what mattered. There was little talk of adversarial procedure and even less of an exchange of arguments, the sources confirm. It was only when Membrède became president that the voting occurred after the deliberations (Van Zanten 2004). The Senate had no right of initiative, and its role was restricted to accepting or rejecting proposals. Although the latter did occur, it happened considerably less frequently. Even though the Senate could block bills, the fact is that only six bills were rejected, while 430 were accepted. Comments were made out of principle or for technical reasons, and some fifteen royal bills had to be redrafted, but there were usually few objections (De Schepper 1990).

Though there was seldom talk of a collective form of opposition in the Senate, we can consider the tax bill of 1821 in this context: the economic interests of the South were under threat, and even in the Senate, the bill was supported by no more than a slim majority, as the Southern members of the Senate – except for a few 'defectors' – all voted against the bill. Matters related to the corn trade were also regarded as sensitive (De Schepper 1990). This, however, does not mean that there were no individual opposition members at work in the Senate. Archbishop De Méan, for example, who had lent his support to the king in the disputed matter of the foundation of the *Collegium Philosophicum*, changed sides and joined the group of Van Bommel, De Gerlache, and Sterckx, who defended the interests of the church in the name of freedom of education and religion. The attitude of the archbishop naturally influenced other Catholic members of the Senate (Van Zanten 2004). The king's policy with respect to the use of languages was yet another bone of contention. The fact that Dutch was the official language of the central government also generated a great deal of opposition in the South on the part of the French-speaking elite in Wallonia, Brussels, and Flanders. The peers of the members of the Senate voiced this opposition in the States-Provincial, and the members of the Senate expressed their opposition by speaking only French in the meetings and by forcing their Northern colleagues to do the same. Moreover, French was the language they spoke with the king and the king's family. Counts De Renesse and D'Arschot publicly expressed their preference for French, with D'Arschot even referring Dutch as '*ce jargon barbare*' (that uncivilised jargon) (Witte 2016b; De Schepper 1990).

From 1828–1829 onwards, it became obvious that a group of liberal and Catholic-liberal opponents in the people's assembly was becoming increasingly more vocal. Southern members set the tone but could rely on a certain amount of support from the North. At the centre of the opposition movement were concerns about freedom of the press, freedom of education, and ministerial accountability. The Catholic liberals focused on religion and freedom of education; the liberals, on freedom of the press and the reinforcement of parliamentarism. There were also heated budget debates in the people's assembly, with opposing votes mainly coming from the Southern members (Van Zanten 2004). Though this all resonated loudly in the people's assembly, there was still strong support for government policy. However, there was also a small group in the Senate, including De Trazegnies, Van der Burch, and De Bethune, that had grievances about freedom of education, freedom of the press, ministerial accountability, and the implementation of the concordat, which they wished to impart to the king. Twelve members, mainly in the South, supported them, but they were unable to win a majority. We have already seen that count D'Arschot was the most fervent opponent – he was the only member of the Senate who voted against the 1830 budget – but count De Spangen was also critical of government policy, which means that the group of members of the Senate who criticised government policy was in fact larger than is generally suggested (De Schepper 1990). It was also a well-known fact that the sons of some of the members of the Senate belonged to the opposition. This was the case with Charles de Brouckère and with the family of baron d'Anethan, for instance. Clément, son

of the Berlaymont family, joined the pro-Belgian faction, and the son of Van de Meere de Cruyshoutem, who had served in the army in the Dutch East Indies, became one of the leaders of the revolution in 1830 (Witte 2015). This may not have said much about the political position of their fathers, but it certainly did nothing to strengthen the trust that the king had put in them. In short, the mood of opposition had also taken hold of a minority in the Senate, even though, as we shall see, this did not really shake the trust the members of the Senate had put in the House of Orange, except for a few notable exceptions.

An elected senate in an independent Belgium

Even if opposition leaders in both chambers wanted to introduce a number of changes in the political system, they were not the ones who wanted to take matters further and aim for a separation between North and South. This role was played by the much more radical journalists and other opponents from the educated middle class. They succeeded in diverting the protest of the lower social classes against the social consequences of the economic crisis of 1829–1830 to serve their own political aims. The looting that occurred at the end of the month of August 1830, preparing Brussels for combat to be able to defend the city against the army that would be brought in to restore order, the violent clashes during the September days that caused more than one thousand deaths, the (unilateral) declaration of independence, the change of power by force of arms and the election of a constituent assembly – all of these were very much in line with their strategy (Witte 2010).

The question whether there would be a Senate in the political system of an independent Belgium was high on the agenda of the National Congress. The context in which these debates took place was very different from that of 1815. A select constitutional committee drafted a preparatory text, but it was the plenary Constituent Assembly, consisting of two hundred elected members of Congress, that made the final decision. The tax quota for voting rights remained as high as ever, but the abolition of the tiered system by the States-Provincial and the introduction of a group of voters with voting rights based on education and position (liberal professions, priests, etc.) provided for a somewhat broader social makeup (Magits 1981; Van den Steene 1963). Those in favour saw the Senate as being in line with monarchical ideas, and since the monarchy had already been accepted by Congress, they could reassure their European neighbours of the virtue of this move, to which the moderate bicameral system also contributed.

There were now fewer conservative aristocrats. The titled nobility represented no more than a quarter of the total number of members. Half of them were strong supporters of the House of Orange, who sat side by side with noblemen who had joined the ranks of the opposition mainly on religious grounds, reacting against the religious policy of the protestant King William I (Magits 1981; Stevens 1981). Both groups, joined by a number of traditionalists and conservative Catholics, defended the interests of the nobility and major landowners. They were in favour of separate, hereditary, and aristocratic representation and therefore also in favour

of a Senate. A number of members originally supported the idea of appointments by the king from a list of candidates exclusively drawn up by eligible voters from the aristocracy. Others believed that prelates and high-ranking official dignitaries should *ex officio* be granted a seat in the Senate, a situation that in some ways appeared then to be more conservative than in 1815. The same arguments that had been used then re-emerged: for example, the socio-economic importance of the landowning nobility; its mediating role between the monarch and the people – after all, monarchy had been chosen over the republic; its role as a bulwark against and mitigating influence on the democratically elected Chamber of Representatives; the useful French model of the *pairs* (peers); and the importance of Southern traditions (National Congress 1830, 13–15 Dec.).

Unsurprisingly, these proposals met with a fair amount of aversion on the part of staunch liberals and even more so of left-wing liberals, democrats, Catholics, and Jacobin-minded republicans. Though the latter group did not command a majority, it was certainly very active and particularly assertive. As far as they were concerned, the *ancien régime* was now obsolete, and they were totally opposed to an aristocratic chamber. Most of these Jacobins even refused to consider the idea of two chambers, as could be expected. The aristocratic element had to be driven back and the power of the king curbed as much as possible, which meant that a single elected chamber would be sufficient. Furthermore, did a separate chamber for the nobility not constitute an infringement of the principle of equality (National Congress 1830, 13–15 Dec.)? In short, the Senate caused a divide in the National Congress of 1830, and a deep chasm appeared between those who held either of the two extreme positions.

The liberals and the Catholics, who had forged a union alliance before 1830 on the basis of freedom-related principles (freedom of religion, freedom of the press, and reinforced parlementarism), wanted to give the new system a chance and were therefore prepared to make concessions and build bridges. A number of liberals showed moderation and quoted, as their predecessors had done in 1815, Montesquieu's preference for the moderating role of the nobility and large landowners, while also drawing on Constant's very similar ideas. Devaux, for example, considered that because they constituted a very influential minority, it was important to give this social group what it wanted. Otherwise, he feared 'that the nobles would continue to challenge our freedoms'. As such, no effort was spared in trying to find a middle road. After many discussions in the commissions and in the central commission, and after long and heated debates in the plenary assembly, a compromise was finally reached, though it was not an easy one (National Congress 1830, 16–18 Dec.).

The principle of equality was left untouched. The idea of a separate chamber for the nobility was abandoned, and appointments by the monarch were suppressed. There would be a senate, but it would be an elected senate, mirrorring the Chamber of Representatives. An initial proposal allowed the Provincial Councils to function as electoral bodies after the model of the Chamber of Representatives in the United Kingdom of the Netherlands and thus to maintain a tiered system. Critics on the left, however, pointed out that the provinces were no longer

political bodies but administrative institutions. The same limited electoral body with voting rights based on a high tax quota (but not also on education and office) would elect the members of the Senate. The power of the nobles and large landowners would still be protected but now indirectly so. The eligibility tax quota for voting rights was kept high enough – 1,000 fl. – so that, in practice, the overwhelming majority would remain in the hands of the wealthy landowners and, accordingly, of the nobility so that the group's privileges would be maintained. The eligibility tax was re-adjusted at the last moment. The patent tax was included on the strength of a very narrow majority so that wealthy members of the industrial, commercial, and financial bourgeoisie could be granted seats in the elected Senate. The theory of equality was thus adapted to the new realities of the sociopolitical power relationships (National Congress 1830, 17–18 Dec.; Witte 2016a; Stengers 1975).

And what part did the members of the former Senate of the United Kingdom of the Netherlands play in all this? With the exception of the staunchly pro-Belgium count D'Arschot, count De Renesse, and marquis De Trazegnies, who had both been elected as members of congress for their loyalty to the House of Orange, none of the members of the Senate took part in the process. They suffered the fate of so many who had belonged to the establishment. Some of them were set upon during the looting and outbreaks of violence. The residence of Prince De Gavre was set alight, and the prince fled to seek refuge in The Hague. The same happened to a member of the Goubau family, and a member of the Du Chastel family was also assaulted. Burgomaster De Bethune was also forced to flee (Witte 2016b). When, in mid-September, the king summoned the members of the States-General to come and discuss the future of the kingdom, members of both chambers left the city for The Hague as the revolutionaries taunted and jeered at their '*députaille*'. The administrative separation between North and South under King William I had now become a negotiable subject and a majority of the southern members in both chambers voted in favour. The same happened in the Senate (Smits 1983; Gerlache 1843). In October 1830, the Prince of Orange was in Antwerp, as he tried to save what could still be saved. Count De Borchgrave and baron Goubau were involved in the process, as were members of the Du Chastel and D'Anethan families (Witte 2015).

We have already noted that few members of the Senate were inclined to take up the struggle in the National Congress against the revolution and for the House of Orange. Orangist supporters included members of the Della Faille and De Stockem families. The remaining members of the former Senate reflected the different categories of the Orangist countermovement. Some sought refuge in the isolation of their castles, remaining silent and politically passive. Count De Thiennes, for example, withdrew from public life to the seclusion of his castle in Lombise in the province of Hainaut. Nothing more was heard of C. de Brouckère, C. de Keverberg, and Van der Meere. However, there was also a large group of people who joined the countermovement and openly aired their orangist sympathies. Among them were some twenty ex-members of the Senate. Some of them were even active in the activist core group, including the marquis De Trazegnies,

baron De Vinck, and count De Borchgrave, but all of them would suffer the fate of the Orangist families and fall into the gaping chasm between Belgium and the Netherlands (Witte 2015).

The former members of the Senate no longer had any ties with the new Senate that was elected at the end of August 1831. Only De Renesse stood firm, while all the other elected members of the Senate were newcomers, mainly conservative Catholics who had also sat in the National Congress. The competition between the nobility and the *roturiers* (commoners) was much more ferocious than under William I. The elected nature of the Senate and the change of elite had driven the old and high nobility further into the background. The link between aristocracy, landownership, and political power remained strong in the Senate, but aristocratic institutions, such as the knighthoods, the States-Provincial, and the appointed Senate, disappeared and with them also the key role played by the old and high nobility. The latter was replaced by nobles who had not held power or had held only very little power before 1830 and who, as confirmed Catholics, now stood up for the protected position of the church. Accounting for 57 per cent of all members, the nobility still had a majority in the Senate and still topped the social hierarchy, but members of the higher, very wealthy bourgeoisie had now also become a force to be reckoned with (Witte 2015; Stengers 1975).

Another difference with the Senate in the United Kingdom of the Netherlands concerned the assimilation of the powers of the Chamber of Representatives and the Senate. The Senate now had the power to both propose and amend legislation. It convened in public, like the chamber, and its minutes were published *verbatim*. Nonetheless, it was still the conservative element in the system. The minimum age for membership – the Senate being an institution that was meant to offset the more democratic position of the Chamber of Representatives by its considered and conciliatory attitude – was still 40. An exception was made for the heir to the throne, who was granted the right to vote at 25. He had been given a seat in the Senate to help him become familiar with the workings of Parliament. In the Chamber of Representatives, however, the minimum age was 25. The Senate also remained a smaller body, with less than half the number of members with seats in the chamber, but the stabilising element could also be surmised from the fact that members of the Senate could hold their seats for a much longer period before they had to be re-elected. The term was four years for members of the chamber and eight for members of the Senate (Stengers 1999). It soon became obvious that the chamber was much more assertive than the Senate. In the post-revolutionary years, 1831–1832, the atmosphere in the chamber was often tense. The sittings in the Senate, on the other hand, were by and large more serene, and the commotion concerning the banks or acrimonious discussions were by no means the rule, which was probably helped by the status and age of the members. The government could generally rely on much larger majorities in the Senate than in the Chamber of Representatives (François 1999). It appeared, then, that the Senate carefully took into account the task it had been assigned by the Belgian constitutional legislator, as mentioned before.

A brief final comment

Let us by way of conclusion briefly put the responsibilities of the Southern members of the Senate of the United Kingdom of the Netherlands into a historical perspective. Their main task during the whole period under scrutiny was to act as the mouthpiece in Parliament of the nation's conservative stratum and counterbalance the somewhat more democratic, elected component of the political system. They represented carefully considered, prudent legislation, which, at the time, was associated with ownership, high social status, and age.

In some respects, this way of thinking was not really new to them; rather, it was actually quite familiar to those who had held offices before 1814. The South had been part of France for twenty years (1794–1814). Under the *Directoire* (Directory), it had been the task of the *Conseil des Anciens* (Council of Elders) to reject or accept the legislative proposals formulated by the *Conseil des Cinq Cents* (Council of Five Hundred), and though the Senate, which was appointed by Napoleon himself, had been a backup instrument rather than an autonomous body under Napoleon, its members – all over 40 – were required to carefully scrutinise all legislation.

In the United Kingdom of the Netherlands, the Senate was an integral part of Parliament (Staten-Generaal) whose task was to examine the legislation of the Chamber of Representatives and decide whether it could be accepted. It would be difficult to speak of vigorous action on the part of the Senate, but the members did what was expected from them, some much more diligently than others. The government had to be assisted constructively, but the Senate was more than a group of sycophants. For quite a few members of the Senate, being a member was not simply an honorary position. Furthermore, though the Chamber of Representatives thought otherwise, they took their activities fairly seriously.

They had to give shape to the conservative ideas present in society. But could they do this convincingly? There was hardly any societal feedback. Their activities were performed behind closed doors, without the publication of parliamentary proceedings. The natural habitat of most of the group was the high, old nobility – people who considered themselves superior to all others classes and led isolated lives far removed from other social groups, with their own values, moral standards, and customs. Had they been elected, they would have had to rely mainly on the support of the knighthoods. Those who had held official positions would also have belonged to the small privileged administrative elite, closely related and subservient to the king's authority.

Inasmuch as that he picked the members of the Senate, the king considered the Senate as one of the places within the political system where he could occupy centre stage without granting too much power to Parliament. The people's assembly was generally far from rebellious, which meant that the Senate was often pleased to lend a helping hand to the king. The king was seldom disappointed, and servility was the most common attitude. In addition to its mandatory tasks, the Senate

had very few options to actively participate in government. Though designated for life, which provided for a certain degree of independence, the lack of power to propose legislation and check and challenge the actions of the government severely restricted their sphere of influence.

Some members of the Senate were also influenced by early liberal ideas and the desire for political renewal. With the help of the constitutional freedoms, they too wished to exempt church and education from government control. Less power to the government, more checks on the opaque financial policy, and members of Parliament who would have more to say if ministers were made accountable to them – these ideas gradually started to seep through. These were political demands that the king would not take into account – demands that gave rise to a power crisis and also caused the split between North and South in 1830. The change of elites that followed signalled the end of the mandates of almost all Southern members of the Senate.

Their successors operated in a more modern model. The Senate had been the target of considerable criticism in 1830, and the change was now obvious. The basic principle, however, remained the same. Conservative forces had to have their say in the face of advancing liberalism that was clearly growing in bourgeois and middle class circles, but the link with conservative society was now stronger. The nobility no longer monopolised the makeup of the political body – there was now room for the upper stratum of bourgeois society. Members of the Senate now received their mandates from the voters and had to submit to re-elections. The public nature of the proceedings ensured that the voters were kept informed of the actions of the Senate. The primacy of the Chamber of Representatives was reduced. Legislation could now also be proposed by the Senate, and the principle of ministerial accountability also applied to this chamber. Even though Leopold I tried to use his connections with members of the Chamber of Representatives and Senate to exercise more influence than was allowed by the constitution; personal relationships were still important; and members of the Senate remained more docile than members of the chamber of representatives, the Senate was no longer an instrument that the king and the government could use as they pleased.

Members of the Senate were able to carry out their functions without having to face inextricable political crises until the end of the nineteenth century. The Senate was apparently well adapted to the conservative section of bourgeois democracy. When the latter expanded under pressure from democratic forces, the composition of the Senate changed. In line with opinions regarding the exclusion of women from the political system, however, the Senate continued to be the male stronghold it had been throughout the nineteenth century. Not until after the Second World War would the first women take their seats in Senate. It was no different for Dutch-speaking senators. All through the nineteenth century and still at the beginning of the twentieth century, only French was spoken in the Senate, and this would only change under pressure from the Flemish movement.

Note

1 Members oth the old aristocracy of the 16th century and before: C.A.A. prince de Gavre, P.J.M.G. marquise de Trazegnies, J.F.A. viscount de Preud'homme d'Hailly de Nieuport, G.G.M. count de Marnix, M.F.H. count de Liedekerke Beaufort, T.H. count de Berlaimont, P. count de Lens de Lichtervelde, P.J.M. count d'Arschot Schoonhoven, C.A.L. count van der Burch, H. count du Chastel. From the Spanish period: M.L.count van der Noot marquise d'Assche, C.count de Renesse Breidbach, C.C. viscount de Vaernewijkck d'Angest, M.F. baron Goubau d'Hovorst, C.F. baron de Stockhem de Heer, M.A.B. count de Bethune d'Hesdigneul, F.L.N. count de Spanghen, C.I.P. count de Thiennes de Lombise, C.C.M. count de Thiennes de Leinbourg et de Rumbeke, J.B. count d'Hane de Steenhuyse, F.H.J. baron d'Anethan, J. della Faille de Leverghem. From the Austrian period: J.G. count de Borchgrave d'Altena, C.A.E. count van der Meere de Cruyshoutem, A.E. count d'Hemricourt de Jemeppes, G.A. baron de Feltz, J.J. baron de Vinck de Wuest Wesel, J.M.G. knight de Moreau de Bioul. F.J. de Riquet prince de Chimay and count de Caraman, F.A. prince de Méan, L.F.G. marquise de Harchies de Vlaemertinghe, I.C. count de Carnin de Staden all had French aristocratic origins. King William I gave C.R. de Néverlée de la Fortelle and C.J.F. de Keverberg d'Aldengoor the title of baron in 1816.

References

Almanach de la Cour de Bruxelles de 1725 à 1840 (1840), (Brussels).

Biographie de Nationale (s.d.), Vol. 7 (Brussels).

Colenbrander, H. (1908–1909), *Ontstaan der Grondwet (1814–1815). Bronnenverzameling*, Vol. 2 (The Hague: Martinus Nijhoff).

Colenbrander, H. (1931), *Willem I. Koning der Nederlanden* (Amsterdam: Meulenhoff).

De Dijn, A. (2008), *French Political Thought from Montesquieu to Tocqueville. Liberty in a Levelled Society?* (Cambridge: Cambridge University Press).

De Gerlache, E.C. (1843), *Histoire du royaume des Pays Bas*, Vol. 3 (Brussels).

De Schepper, H. (1990), 'De Eerste Kamer in het Verenigd Koninkrijk der Nederlanden', in: Postma, A. et al. (eds.). *Aan deze zijde van het Binnenhof. Gedenkboek ter gelegenheid van het 175-jarig bestaan van de Eerste Kamer der Staten Generaal* (The Hague: Sdu Uitgevers), pp. 15–58.

François, L. (1987), *Elite en gezag. Analyse van de Belgische elite in haar relatie tot de politieke regimewisselingen, 1785–1835* (Gent, Unpublished thesis).

François, L. et al. (1999), 'De Senaat, 1831–1893', in: Laureys, V. et al. (eds.), *De geschiedenis van de Belgische Senaat, 1831–1995* (Tielt: Lannoo), pp. 44–87.

Gerretson, C. (1936), 'Gesprekken met den koning, 1826–1836', *Bijdragen en Mededelingen Historisch Genootschap* 57, pp. 110–226.

Janssens, P. (1998), *L'Evolution de la noblesse depuis la fin du Moyen Age* (Brussels: Crédit Communal).

Magits, M. (1981), 'De socio-politieke samenstelling van de Volksraad', *Revue belge d'histoire contemporaine* 12, pp. 581–608.

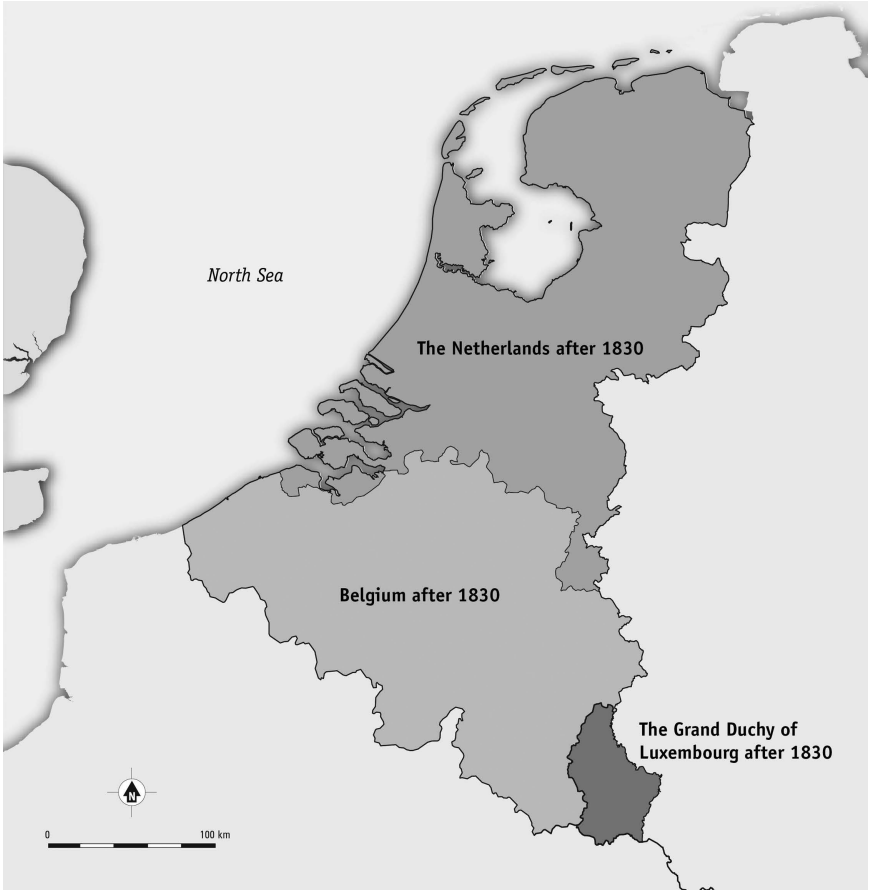
National Congress (1830), 'Meetings'. Available at: www.unionisme.be (accessed 11 March 2019).

Ramaekers, E.P.M. (1989), 'Charles de Brouckère (1757–1850), gouverneur van Limburg, 1815–1828', in: Wieland, J.H.M. et al. (eds.), *De gouverneurs van beide Limburgen 1815–1989* (Maastricht: LGOG), pp. 4–25.

Smits, A. (1983), *1830. Scheuring in de Nederlanden*, Vol. 1 (Courtrai-Heule: UGA).

Stengers, J. et al. (1975), *Index des Eligibles au Sénat (1831–1893)* (Brussels: KVAB).
Stengers, J. (1999), 'De Grondwet van 1831: theorie en praktijk', in: Laureys, V. et al. (eds.), *De geschiedenis van de Belgische Senaat, 1831–1995* (Tielt: Lannoo), pp. 31–42.
Stevens, F. (1981), 'Een belangrijke fase in de wordingsgeschiedenis van de Belgische grondwet: de optie voor een tweekamerstelsel', *Revue belge d'histoire contemporaine* XII, pp. 641–661.
Van Bendegem, J.P. (2018), 'Wiskunde en wetenschap in turbulente tijden', in: Tollebeek, J., Witte, E. and Kurgan, G. (eds.), *De wereld van de zuidelijke geleerden. De Académie Royale des Sciences et Belles-Lettres de Bruxelles onder Willem I* (Louvain: Peeters Publishers), pp. 119–147.
Van den Braak, B. (1998), *De Eerste Kamer. Geschiedenis, samenstelling en betekenis, 1815–1995* (The Hague: Sdu Uitgevers).
Van den Steene, W. (1963), *De Belgische grondwetscommissie (1830–1831). Tekst van haar notulen en ontstaan van de Belgische grondwet* (Brussels: KVAB).
Van Poelgeest, B. (2013), 'Tussen oud en nieuw: het ontwerpen van de grondwet als een rechtshistorisch mozaïek', in: De Haan, I., Den Hoed, P. and Te Velde, H. (eds.), *Een Nieuwe Staat. Het begin van het Koninkrijk der Nederlanden* (Amsterdam: Bert Bakker), pp. 67–75.
Van Zanten, J. (2004), *Schielijk, winzucht, zwaarhoofd en bedaard. Politieke discussie en oppositievorming, 1813–1840* (Amsterdam: Wereldbibliotheek).
Velema, W. (1998), 'Revolutie, Republiek en Constitutie. De ideologische context van de eerste Nederlandse Grondwet', in: Van Sas, N. and Te Velde, H. (ed.), *De Eeuw van de Grondwet. Grondwet en Politiek in Nederland, 1798–1917* (Deventer: Kluwer), pp. 20–45.
Wapenboek van de Belgische adel (1990), Vol. 4 (Brussels).
Witte, E. (2010), *La construction de la Belgique, 1828–1847* (Brussels: Le Cri).
Witte, E. (2014), 'De Oranjecultus in België', in: Te Velde, H. and Haks, D. (eds.), *Oranje onder. Populair orangisme van Willem van Oranje tot nu* (Amsterdam: Prometheus-Bert Bakker), pp. 157–176.
Witte, E. (2015), 'L'aristocratie belge et l'orangisme (1815–1850)', *Revue belge de philologie et d'histoire* 93, pp. 439–486.
Witte, E. (2016a), 'De Grondwet van het Verenigd Koninkrijk der Nederlanden (1815) en het ontstaan van de Belgische constitutie (1831)', in: Alen, A. et al. (eds.), *De Grondwet van het Verenigd Koninkrijk der Nederlanden van 1815. Staatkundige en historische beschouwingen uit België en Nederland* (The Hague: Boom-die Keure), pp. 15–44.
Witte, E. (2016b), *Le royaume perdu. Les orangistes belges contre la révolution (1828–1850)* (Brussels: Samsa).
Witte, E. (2017), 'Repubic and public sovereignty. The Belgian Case, 1830–1831' (Paper Interdisciplinary Colloquium, 21 Sept. 2017, K.U. Leuven, The Belgian Constitution of 1831).
Witte E. (2018), 'Republic and public sovereignty. The Belgian Case (1830–1831)', Giornale di Storia constituzionale, 35(1), pp. 89–112

The Netherlands before and after 1830



(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

4 A liberal senate

The Danish *Landsting* of 1849

Flemming Juul Christiansen

Introduction

The Danish constitution of 5 June 1849 introduced the bicameral Parliament. Unlike most other smaller constitutional monarchies at the time, the electorate of the Senate in Denmark, or the upper chamber, became as inclusive as that of the lower chamber, allowing 70 per cent of the male population over 30 to vote. This situation persisted until the Senate became more aristocratic after the constitutional revision in 1866. In the Constituent Assembly of 1848–1849, the question of whether to introduce a bi- or unicameral system and the criteria for suffrage and eligibility raised the most discussion. The introduction of bicameralism became a compromise among various factions of the left, centre and right.

This chapter takes up two discussions within the theoretical approach of 'historical institutionalism' in political science and sociology. First, it argues that 'timing' may have mattered greatly in the sense that initial power structures created a 'path dependency' and that this may have affected what happened in 1848 (Pierson & Skocpol 2002). Second, the chapter takes up the argument suggested by Kaspersen (2004), that the sudden and major change from absolutism to a system with relatively broad representation in Denmark in 1848 was for its time an unintended consequence of warfare. At the time of the abolition of absolutism, Denmark fought an army consisting of forces from the German Confederation and German-oriented inhabitants of the Duchies of Schleswig and Holstein, which belonged to the Danish conglomerate state. The impact of the war will be demonstrated in the second section, when this chapter presents and analyses the discussions in the Constituent Assembly and highlights the time pressure faced by the Assembly because of the ongoing war. Conservatives, inspired by international developments, were in favour of a bicameral system with limited suffrage and a senate that was intended to function as a delaying 'moderate force' (Hjelholt 1949, p. 105). However, the principles of democracy and nationalism, ignited by the war, gave weight to the liberal demands for a unicameral system in Denmark. As a result, the third and final section of this chapter concludes that the Danish liberal Senate was a wartime compromise between an international trend of senates functioning as *chambres de réflexion* and revolutionary democratic principles that allowed for universal suffrage in both chambers.

This chapter mainly utilises secondary literature written by historians who covered the Constitutuent Assembly quite extensively. They had access to the procedures employed by the Assembly, state council and government. Furthermore, this chapter makes use of materials – which have been left to the Danish National Archive – from the constitutional committee, which was in charge of designing a proposal for a new constitution. The studies of the 1849 constitution by politician and historian Niels Neergaard (1854–1936, MP from 1887 to 1890 and 1892 to 1932; PM from 1908 to 1809), his contemporaries and the jubilee publications from 1949 and 1999 were important sources for this chapter on the Danish liberal Senate (Neergaard 1892; Hjelholt 1949; Møller 1949; Thorsen 1953; Bjørn 1999; Knudsen 2001; Bjørn 2003).

Historical background of the Danish monarchy and the events of 1848

The Danish monarchy of 1848 consisted of four parts: the Danish Kingdom and the Duchies of Schleswig, Holstein and Lauenburg, all of which had the king of Denmark as their head. Iceland, the Faroe Islands and Greenland also belonged to the Kingdom of Denmark. Attached to the Kingdom of Norway, they became part of the Danish-Norwegian Union from 1380 to 1814. The Treaty of Kiel, 1814, then transferred them to Denmark rather than to the Swedish-Norwegian Union (1814–1905). The Kingdom also possessed colonies in the West Indies and on the Gold Coast. The Kingdom of Denmark traces its history back to at least the tenth century. Holstein and Lauenburg were completely German-speaking areas, and both were members of the German Confederation established after the Treaty of Vienna, 1815. Schleswig was originally a Danish fiefdom, but for centuries it had had German as its administrative language, just like Holstein. In the early nineteenth century, Danish was the language spoken by the people and the language used in church in the Northern part; German, in the Southern part (Bijleveld 2008).

As in other parts of Europe after the Napoleonic Wars, nationalist and liberal sentiments inside the monarchy strengthened after 1815 and during the 1830s and 1840s in particular. Schleswig was the apple of discord. Both sides in the conflict rejected a division, wanting all of Schleswig. The goal of the Danish nationalists was a united Danish national state, including all of Schleswig, under a free constitution. The German-minded nationalists in Schleswig and Holstein wanted a joint Schleswig-Holstein under a free constitution, with Schleswig admitted into the German Confederation (Friisberg 1974). Furthermore, they pointed at a declaration dating from 1460 – the Ribe letter – issued by King Christian I of Denmark, in which he promised the nobility of Holstein to never separate Schleswig and Holstein. To complicate these matters further, it became likely during the 1840s that the male line of the Danish Oldenburg dynasty, which had reigned since 1448, would end since the crown prince was twice divorced and childless. It was not clear whether the same succession rights of the Duchies also applied to the Kingdom.

By the beginning of 1848, the Danish monarchy was still absolutist, as it had been since 1660. In the first half of the nineteenth century, Denmark was a state run largely by a bureaucracy based on the rule of law and with civil servants largely appointed by merit. Nevertheless, all authority originated from the powers of the king. The liberal sentiments of the time desired a constitution to limit the power of the king and to guarantee the rights and representation of the citizens. King Frederik VI (1768–1839; reg. 1784–1839, crown prince regent until 1808) had passed liberal reforms in his youth that freed the peasantry from adscription. Yet in the later years of his long rule, he and the civil servants around him had become resistant to change.

Despite the king's reluctance towards reforms, the liberals' demands were met to a certain extent with the 1833 installation of 'consultative provincial assemblies of estates' for the different parts of the monarchy: two for the Danish Kingdom, one for Schleswig and one for Holstein and Lauenburg. These estates could only give advice to the King. Their electorate was about 2.8 per cent of adult males (Engelstoft & Wendt 1934). Intended to put a brake on liberal demands, the estates turned out to stimulate political debate and contributed to political involvement of many citizens across the country. The king and his main advisors were primarily concerned that more freedom would engender nationalism and endanger the unity of the remaining parts of the monarchy. After losing Norway in 1814, the government was primarily concerned with keeping the conglomerate state intact.

With the death of Frederik VI in 1839, the liberals had high expectations for his cousin, Christian VIII (1784–1848, ruling from 1839), who in his youth had ruled as the constitutional king of Norway for a few months in 1814 and was generally considered a progressive figure. Yet the new king kept many of his predecessor's advisers and refused to give the people a free constitution. Meanwhile, antagonism grew in Schleswig. In 1840, Christian VIII ordered Danish to be the language of administration in those parts of Schleswig where it was already used in schools and churches. He also declared that the same succession rights of the Kingdom applied to the Duchies (where women could inherit the throne in the absence of any direct male line from Frederik III), hoping to retain the monarchy for his dynastic successors. German nationalists contested this, arguing for the right of succession in the Duchies to belong to a pure male line going back all the way to Christian I, hoping for a successor who would be more sympathetic to their cause than the king of Denmark. When Christian VIII suddenly fell ill and died on 20 January 1848, he advised, from his deathbed, his politically inexperienced son, Frederik VII (1808–1863, ruling from 1848), to establish a free constitution and to find new advisers (Bjørn 1999).

Soon, on 28 January, the king publicly announced his intention to give up absolute rule. He invited representatives from the estates of the Kingdom and the Duchies to discuss a possible constitution with him, and it soon looked as if a compromise was within reach (Bjørn 1999). Subsequently, external events completely took over this process. The 1848 February Revolution in Paris ignited liberal and national sentiments across Europe, not only in Vienna and Berlin – the main cities of the German Confederation – but also in Copenhagen (Denmark) and

Kiel (Holstein). There, citizens met and made proclamations. On 18 March 1848, a delegation from Kiel headed to Copenhagen in order to prevent the Danish liberals from having their demands realised. Upon their arrival, they were informed that the king had dismissed the government (Friisberg 1974). A new government was formed with representatives from all of the dominant political camps: conservatives, national liberals and 'friends of the peasants' (*Bondevennerne*). The king declared he would no longer rule as an absolute monarch; instead, he would act on the advice of his new ministers, which predominantly supported the nationalist Danish cause (Bjørn 1999).

The response of the new government to the delegation from Kiel was to acknowledge the demand for a free constitution for Holstein only. The Duchy of Schleswig was to be closely connected to or even incorporated into the Danish Kingdom. When news about the new government in Copenhagen reached the Duchies, a rebellion broke out in Holstein and parts of Schleswig. The Danish Kingdom soon mobilised an army based on conscription, and the First Schleswig War (1848–1851) followed.

Decision to elect a Constituent Assembly

The new government in Copenhagen promised the people a new constitution. Since the king still formally held absolute power, it would have been possible to issue a constitution in his name. The government, however, wanted to anchor the new freedoms in 'the people' more than in the 'grace' of the king (Møller 1949, p. 68). Therefore, it opted to have a Constituent Assembly design a constitution for the king and the government to ratify. Next, the government had to decide on the electorate of the Constituent Assembly. In 1848, the minister of education and church affairs (1848), Ditlev Gothard Monrad (1811–1887) was most influential, arguing in favour of extended suffrage, thus avoiding the division of the nation into voters and non-voters (Møller 1949). His view prevailed, and the king agreed to grant the right to vote to all adult men above 30, with certain disqualifying exceptions, such as the non-possession of a household – i.e. servants, prisoners or disempowered individuals. These provisions would allow approximately 70 per cent of men above the age of 30 to vote. About one-third of the voters did cast a vote for the Constitutional Assembly (Neergaard 1892). Men above 25 were eligible for election. The conservative minister of the navy (1848–1850), Christian Christoffer Zahrtmann (1793–1853), argued that 'the intelligent and conservative' should be allotted a considerable share (Thorsen 1967). The government united on the compromise that the king – now acting on the advice of the government – was to appoint one-quarter of the Assembly to compensate for the effect of the extended suffrage (Bjørn 1999). The appointments by the king should 'calm and dampen [. . .] overly hasty decisions resulting from general suffrage' (Neergaard 1892). Although the Constituent Assembly became unicameral, similar arguments later became important for the establishment of the Senate in Denmark.

The proposal of the government as to elections for the Constituent Assembly received the support of the two consultative provincial estate assemblies within

the Kingdom. This was the time of the 'spirit of 48', in which a patriotic and democratic mood of equality prevailed (Bjørn 1999; Neergaard 1892). The connotation of the term 'democracy' changed from negative to positive at this point (Nygaard 2011). As soldiers and the common man had shown so much courage on the battlefield, opposition against a broader franchise disappeared (Neergaard 1892). Rather, there was some opposition towards the appointments to be made by the king since they were believed to demonstrate a lack of confidence in the will of the common people (Neergaard 1892). The electoral law came into force in July 1848, and the elections took place on 5 October 1848 in 114 single-member districts, each contributing about 12,000 voters (Engelstoft 1949).

The factions in the Constituent Assembly

The candidates for the Assembly did not represent political parties in the modern sense of the word (Thorsen 1953). Historians do, however, identify three broader factions among the candidates, as they do later within the Constituent Assembly and subsequently in Parliament – conservatives, national liberals and 'friends of the peasants', which were at the time already labelled as right, centre and left. The conservatives favoured a bicameral system with a moderating senate appointed either by the king or through very limited suffrage. The conservatives found their supporters among civil servants and urban citizens, in particular of the older generation, and from large estate owners and the aristocracy (Høgh 1972). The national liberals supported a liberal constitution with guaranteed freedoms but were divided over the degree of the extension of suffrage and whether to have two chambers or one. This party was largely inspired by national and liberal movements elsewhere in Europe at the time (Salvadori 1972). It was supported by intellectual urban elites and citizens – the younger generation in particular. This movement was dominated by a group of men born around 1810, several of whom went on to obtain important positions in Parliament and in government and as civil servants and who strongly affected Danish politics until 1864. During the 1840s, they had advocated the reforms and nationalist policies that prevailed after the governmental shift in 1848.

Established only in 1846, the Society for the Friends of the Peasants had amassed almost 10,000 members by the summer of 1848 (Neergaard 1892). The Danish peasantry, which made up by far the largest part of the population, had made great advances since major reforms at the end of the eighteenth century by gradually replacing sharecropping and introducing better education. A peasant-oriented national ideology arose around a number of figures, in particular N.F.S. Grundtvig (1783–1872), a Lutheran pastor, thinker and author who called for a political – national, democratic and religious – awakening among the peasantry (Korsgaard 2014). Politically, the 'friends of the peasants' were in favour of extended voting rights and a unicameral system with no appointment of representatives by the king. It had its strongest support in the peasantry, but some of its candidates were academics. The older and the younger generations of political actors were divided between Danish nationalists (national liberals

and a few conservatives and 'friends of the peasants', as well as the king, Frederik VII) and anti-nationalists (most conservatives and 'fiends of the peasants') (Vammen 2011).

During the electoral campaign in the summer of 1848, the question of the extension of suffrage was most important, with the question of a uni- or bicameral system receiving much less attention (Neergaard 1892). The political tendencies of the 114 elected and thirty-eight appointed members of the Constituent Assembly have been assessed in various different ways since they did not vote consistently across matters (Neergaard 1892; Jensen 1915; Elberling 1949; Olsen 1972). According to Neergaard, thirty-three right-wing members (conservatives), thirty-two centrists (national liberals) and forty-four left-wingers ('friends of the peasants') were elected. The king appointed five members to represent Iceland and one to represent the Faroe Islands (Neergaard 1892; Bjørn 1999). After the appointments by the king, the Assembly developed a slightly more conservative bent, with the numbers changing to fifty-four, forty-three and forty-seven respectively. Roughly speaking, however, each political tendency accounted for one-third of the members. Of the elected members, fifty-seven were civil servants, thirty-eight were peasants, seventeen were trade and craftsmen, fifteen came from larger estates and the rest came from other trades (Bjørn 1999). Compared with the population at large, the civil servants, who had played the dominant role in the government during the final decades of absolutism, were still clearly overrepresented but now had to share power. Despite the underrepresentation of the peasants, they were now much better represented than before.

At the opening meeting of the Constituent Assembly on 23 October 1848, the government presented its proposal for a constitution (reprinted by Bjørn 1999). The proposal suggested two chambers, both directly elected by 'the people'. The suffrage for both chambers would include anyone above the age of 30 under the same rules that had applied to the Constituent Assembly election. The Senate (*Landsting*) would comprise one-fourth of the members of the lower chamber *(Folketing*). However, to be eligible for the Senate, one had to be at least 40. The proposed minimum age for members of the lower chamber was 25, which was below the voting age. Members of the Senate would not receive an allowance, unlike the members of the lower chamber. The members of the Senate were to be elected for eight years, and every fourth year, half of them would run for election again. The members of the lower chamber would be elected for a term of four years.

This proposal was issued by a committee consisting of three ministers. The government had discussed the draft during several meetings. Monrad – who came to write the draft in cooperation with Orla Lehmann (1810–1870; minister without portfolio 1848) – had studied the Belgian constitution of 1831 and the Norwegian constitution of 1814 and reused formulations found in them (Møller 1949). Belgium had a bicameral parliament and required that voters pay a certain amount of taxes and another, higher amount to be eligible for election (cf. Witte, this volume). Norway elected a unicameral parliament that divided itself into two chambers afterwards (cf. Smith, E., this volume). From its first draft of 26 June,

the preparatory cabinet committee worked with a bicameral system. It argued that a senate could become 'a regulator to prevent overly hasty action', i.e. it should become a *chambre de réflexion*. In the internal proceedings from the drafting committee, we see that Monrad had argued for a very low tax requirement. Nevertheless, he and other ministers were also concerned about 'the danger of communism' (Møller 1949, pp. 59–63; Thorsen 1967, p. 81; cf. Nygaard 2011).

There was internal disagreement between the ministers in the cabinet as to whether Denmark should have one or two chambers and whether they should be subject to dissolution or not. A. F. Tscherning (1795–1874, minister of war 1848), the most left-leaning member of the government, did not think a senate would make much of a difference. However, he was opposed by a number of more conservative ministers. The head of government, Adam Wilhelm Moltke (1785–1864, prime minister 1848–1852), was concerned that the moderating effect of the proposed senate would be weakened, and he later argued for a lower chamber of 'personalities' and a senate of 'property' (Møller 1949, p. 78). It culminated in a vote in the state council, with Monrad's point of view prevailing. As summarised by Møller (1949, p. 80), his idea was for both 'chambers to originate directly from the people but with different characters, in all aspects equal, but also equally subject to dissolution'.

The constitutional proposal of the government, including a rather liberal senate, formed the foundation for the negotiations about the constitution that began within the Constituent Assembly from October 1848 to May 1849. The European context for the work changed during that period. While revolutionary euphoria characterised the early months of 1848, reactionary forces had suppressed the revolutions in Vienna and Berlin by the end of the year. In Copenhagen, the 'March ministry' broke down over the issue of how to handle Schleswig. In November, a new government, still headed by Moltke, featured more conservatives and still included several national liberals – but no one from the left. In August 1848, the war over Schleswig came to a truce, and peace negotiations followed in London. By the end of February, negotiations in London broke down and war resumed in April 1849.

These events did not seem to have profoundly affected the negotiations concerning the constitution, but they did turn time into a factor. Because of the generally more anti-revolutionary mood, conservatives believed that as time passed by, their cause would benefit. A peace deal involving foreign powers, in particular, would restrain the calls for democracy. At an early stage, they proposed to abandon the work of the Assembly, arguing to halt negotiations concerning a constitution as long as the Schleswig question could not be settled due to the war, but this proposal was defeated (forty-seven in favour, one hundred against). Over the next six months, the Constituent Assembly debated the question of one or two chambers several times, voting on amendments to the proposed constitution regarding the issue of bicameralism. The issue became closely connected with the issue of extended suffrage, which meant that most members of the Assembly now saw it as the most important question. The debate divided the three main factions, with the left supporting unicameralism and extended suffrage and the right supporting

bicameralism with limited suffrage, at least for the Senate, or alternatively one chamber with limited suffrage. The centrists largely supported the proposal of the government, but some were open to restricted voting rights and eligibility out of concern for the level of public education, which was perceived to be insufficient, especially among the peasantry (Jørgensen 1968).

The deliberations in the Assembly proceeded as follows. In October 1848, the Assembly divided itself by lot into five groups that, in December 1848, each elected two members to a 'Constitutional Committee'. Together with seven members elected by the Assembly at large, the Committee came to consist of seventeen members. This procedure benefitted centrist members, and ultimately it consisted of nine centrists, four conservatives and four left wing members. The Committee worked until the end of February without reaching an agreement. It ended up with six different minority reports on its composition, i.e. voting rights and eligibility – as well as several proposals on whether to have a senate or not. (Engelstoft 1949; Bjørn 1999). These reports reflected positions from the left of the political spectrum to the right. The largest minority supported the proposal of the government. Yet the result that passed on 25 May 1849 was influenced by ideas in two of the other minority reports about more conservative eligibility criteria for the Senate.

Following the presentation of the six minority reports, debates, negotiations and coalition-building emerged within the Constituent Assembly. Again, the issue of bicameralism was linked to the issue of suffrage. The conservative faction decided, for tactical reasons, to support a unicameral solution. If this proposal passed with support from the left, the idea was that the government and the centrists would have to delay their work on the constitution for some time, at least until there was a peace settlement. Meanwhile, two centrist representatives – Mads Pagh Bruun (1809–1884) and Christian Magdalus Jespersen (1809–1873), both members of the Constituent Assembly – proposed an amendment suggesting an indirectly elected senate (voters selecting electors in broad constituencies who then elected the senate members). Over time, the Senate would be elected by the municipalities. Until then, the franchise would be similar to the lower chamber but with high eligibility requirements: an income of 1,200 *Rigsbankdaler* or a tax payment of 200 *Rigsbankdaler* annually and an age requirement of 40.

The new minister of culture and education, Johan Nicolai Madvig (1804–1886, minister 1848–1851), a centrist with conservative leanings, wanted more 'conservative guarantees' than those that were offered in the government's original proposal and urged the conservatives to give up their unicameral proposal. A vote was taken: twenty-eight in favour of one chamber, 112 against. Next, there was a vote on the Bruun and Jespersen amendment, which passed by a narrow margin of sixty-eight votes (conservatives and some centrists) to sixty-six (other centrists and left-wing members). With such divided support in the Constituent Assembly, the government declared that it would not recommend that the king ratify the constitution. Through Madvig, it stated that such a narrow majority could be 'coincidental' and a result of the 'moods of the moment' and that there might be 'strength' and 'insight' in such a large minority. This gave the conservatives new hopes to delay and win time. Because of the pressure, the left-leaning representatives

changed their mind and decided to support the Bruun-Rasmussen amendment, making it clear that a broad majority for a new constitution was within reach. In a new vote, the amendment passed 127 to thirteen, with broad support from members of all three political leanings.

With regard to indirect election and eligibility criteria, the amendment that passed was more conservative than the government's original proposal and more in line with the new centrist-conservative government. The outcome was that an estimated 4 per cent of the electorate could be elected to the Senate (Nygaard 2017), but extended suffrage remained in place for the Senate without tax requirements. The final proposal for a new constitution came to a vote on 25 May 1849 and passed with 119 votes against four. On 3 June, the government unanimously recommended the proposal to the king, who signed it 5 June 1849. This date is now constitution Day in Denmark.

What followed? The end of the war and its effect on the Constitution

After the great power of Russia compelled the forces of the German Confederation to retreat, Denmark defeated the Schleswig-Holstein separatists, which ended the First Schleswig War in 1851. A peace treaty was hard to reach because of incompatible demands on both sides. Furthermore, the European great powers insisted on the unity of the Danish monarchy, secured in a constitutional union between the Kingdom and the three Duchies. This required the settlement of the question concerning the succession of the Danish king. Russia, in particular, was not satisfied with the Danish democratic 'experiment'. During the peace negotiations in London in 1852, Prince Christian of Glücksburg (later King Christian IX 1818–1906, ruling from 1863) was elected successor. Furthermore, there was an explicit ban against the incorporation of Schleswig into the Danish Kingdom and the obligation to design a constitution for the conglomerate Kingdom. These decisions, laid down in the London Protocol of 1852, were labelled in Denmark as 'the European necessity', and conservative governments ruling until 1854 aimed to follow the decisions but met with resistance from the national liberals.

The London Protocol aimed at solving the dynastic claims of all parties but offered no solution to the nationalist sentiments that had caused the conflict. Therefore, none of the parties involved were satisfied with the peace treaty. A new 'joint constitution' came into effect in 1855 for matters of the conglomerate Kingdom – defence, monarchy, foreign affairs – leaving the constitution of June 1849 intact for interior matters. The new constitution operated with a 'Council of the Realm' elected on terms much more favourable to the conservatives (of the eighty members, twenty were appointed by the king, thirty were elected by estates and thirty were elected by the same electorate as that which elected the lower chamber and the Senate) – with an early version of proportional representation. It was a unicameral body with representatives from both the Kingdom and the Duchies. It was boycotted by German-speaking representatives, however, and in 1857 the German Confederation decided that it did not live up to the London Protocol (Bjørn 2003).

Vammen (2011) argues that the state became 'empty' during those years, since the dominant political faction of the national liberals was unwilling to adopt the policy required by the international powers in the peace treaty of 1852.

The German nationalists resented pro-Danish language policies in Schleswig put in place by the national liberal governments in power from 1854 until 1864. In 1863, the government saw an opportunity to pass a constitution that covered only the joint areas of concern in the Danish Kingdom and the Duchy of Schleswig. This constitution was based on a bicameral system with a senate that had about one-fifth of its members appointed by the king, while all other members were elected according to the 1849 constitution. As such, this was a rather liberal senate, and generally speaking, the joint constitution was also more liberal than its 1855 counterpart. This constitution passed in the end of 1863 and awaited only the signature of the king, who suddenly fell ill and died.

Unlike his predecessor, the new king, Christian IX, was a staunch supporter of a united Kingdom, yet he gave into the pressure from the government to sign the new constitution for Denmark and Schleswig. The incorporation of Schleswig into a constitution together with the Kingdom of Denmark was a blatant violation of the London Protocol of 1852, providing Austria and Prussia with a *casus belli*. They invaded the Duchies and much of Jutland in 1864 and defeated the Danish army. The peace between Denmark, Prussia and Austria signed in Vienna in 1864 saw the Danish Kingdom lose all the Duchies. This left Denmark as a small country with two constitutions: the one from 1849 for interior matters and the one from 1863 for those matters that concerned the Kingdom as a whole. It also had four Chambers, two for each structure. In 1866, a new constitution replaced this system. The 1864 defeat was blamed heavily on the national liberals and democratic rule. Negotiations resulted in a new constitution with a largely unchanged lower house but a profoundly more conservative Senate. Again, the Senate had fallen victim to the need to reach a compromise.

Discussion

The liberal Senate (1848–1866) was the result of a compromise. The government and the Constituent Assembly believed that 'an honest senate' should be a moderating force (Hjelholt 1949, p. 105). Did the Senate live up to these intentions? Testimony from members of the two new Chambers shows that the lower chamber soon became the more important since this was where the government usually introduced bills, and the meetings of the Senate were fewer and shorter (Hjelholt 1949). Peter Christian Kierkegaard (1805–1888, member of the Senate 1849–1853 and brother of the famous philosopher Søren Kierkegaard) stated that the Senate only occasionally had a moderating influence and that the debates there were less cheerful (Hjelholt 1949). The approximate size of the party factions in the lower chamber and the Senate 1849–1866 is presented in Table 4.1. Not all members are easy to allocate to particular party factions, so the numbers should be read with much caution. Nevertheless, they do indicate that the Senate had a more conservative bent – an observation that has also been made in qualitative terms

Table 4.1 Approximate party positions in the Danish Parliament, 1849–1866

Lower House	*Left*	*Centre*	*Right*	*Others*
1849	45	42	8	6
1852	40	47	9	5
1855	54	23	21	3
1858	15 + 41 = 56	20	16	9
1861	34	46	5	9
1864	39	40	11	11
1865	5 + 17 + 20 = 42	20 + 20 = 40	4	5
1866, June	15 + 13 + 30 = 58	20 + 10 = 30	13	0

Source: 101 members in total (three elections in 1853 and 1854 omitted)

Senate	*Left*	*Centre*	*Right*	*Others*
1849	13	13	26	
1853	14	11	27	
1855	13	15	23	1
1859	20	14	17	1
1863	23	14	14	1
1866, May	21	11	19	1

Source: Fifty-two members in total

by Hjelholt (1949). The numbers also demonstrate that the left grew stronger over time, most likely as a consequence of higher turnout. This was due primarily to the peasantry, who were initially more likely to vote for the lower chamber but later started voting for the Senate too.

The Danish constitution of 1849 introduced some democratic and many liberal components, including broad, almost general suffrage for men above the age of 30 for both houses. This analysis shows that the constitution was the result of a compromise between the main factions of the left, centre and right of the political spectrum, which represented different attitudes towards democracy, ranging from support to moderate support to criticism. A liberal senate made sense – the centre and the left supported extended suffrage, and the centre and the right supported bicameralism, the former wanting a moderating and delaying body and the latter preferring a system with a narrower electorate. Even when the external conditions changed throughout the course of 1848, with the major European powers moving away from national revolution and democracy, the Constituent Assembly remained in place and finished its task of making a new constitution that was still inspired by the revolutionary moods of 1848. On the one hand, these external changes encouraged the conservatives to attempt various delaying tactics. Yet it also spurred the left to accept a compromise that moved the government's original proposal in a slightly more conservative direction. Otherwise, the renewed reaction in Europe would mean that there would most likely not have been a new

constitution for quite some time to come (Neergaard 1892). The external conditions meant that the right and the left operated under different time horizons, and this difference helped them strike a compromise.

The composition of the Constituent Assembly was not exogenous to the process. It was crucial for the process and the outcome that the Constituent Assembly was elected by a relatively broad electorate while being supplemented with royal appointments, and the left managed to get a significant number of members elected who supported a greater degree of democracy. One wonders why the government opted for such extended suffrage in the first place. The analysis here points to the strong perception that, despite a revolutionary mood throughout Europe that led to uprisings in Paris and Kiel and a diffuse fear of 'communism', the Danes had shown that their national character was of a moderate nature. With conscription in place to help the country fight a war for the nationalist cause, it became harder to deny the people the right to vote. To that extent, this chapter confirms the argument put forward by Lars Bo Kaspersen (2004), but this contribution also highlights another dimension. The acceptance of extended suffrage depended on the introduction of a senate, which was primarily the result of a compromise between the three factions within the Constituent Assembly. Broader changes in society, such as the emancipation of the bourgeoisie, the mobilisation of the farmers and the increasing strength of reactionary forces in Europe, played significant roles as well (cf. Vammen 2011).

The constitutional process of 1848–1849 came too late to solve the conflict between Danish and German nationalists inside the Kingdom. The constitution covered only the Kingdom proper and did not consider having a senate for the Kingdom as a whole by giving the Duchies and/or the German-speaking minority a place in the Senate. Such a proposal would have had the support of most conservatives, who defended the interests of the Kingdom as a whole. The events of March 1848 meant the end of such a senate and postponed a solution until after a peace settlement. As we have seen, no such solution was ever accepted by both Danish and German speakers between 1852 and the next war, in 1864. Such a policy became more typical for the twentieth and the twenty-first centuries than for the nineteenth century – in line with the government's current attempts to unify the Danish regions instead of leaving room for regionalism (cf. Frandsen 2013).

Conclusion

Extended suffrage gave the left, which represented the peasants, a chance to elect a high number of representatives to the Constituent Assembly, where this group managed to act as a disciplined unit with a clear idea about its goals. Without prior organisation in the Society for the Friends of the Peasants, the left would, most likely, not have become such a strong force in the Constituent Assembly. Although its leaders did not play as active a role in the negotiations as the national liberals and conservatives, they were able to differentiate between their primary aim, general suffrage, and their secondary aim, unicameralism. They did not acquiesce when the conservatives offered unicameralism, knowing that it could come at the

expense of extended voting rights. In the end, they delivered enough votes for the compromise to gain a broad majority and persuade the government to recommend the new constitution to the king.

Viewed from a North Atlantic perspective, the 1848–1849 crisis of the Danish realm made it possible for groups that normally would have been excluded to participate in political deliberations, resulting in a liberal constitution in which the principle of extended suffrage and the presence of a senate functioned as the main bargaining chips. The establishment of the Danish Senate was a result of a compromise and was intended to function as a counterweight to extended suffrage. Nevertheless, compared with the senates in the North Atlantic region that were established somewhat earlier (e.g. in Belgium) or later in the 1860s (e.g. Sweden, Canada and Denmark), it was still relatively liberal. The compromise reflected the powers of its time. In that sense, Monrad was right when he responded to fellow minister Tscherning in a state council meeting on April 6, 1848: 'one should [. . .] recall that the constitution of a realm depends on the stars under which it is born' (Møller 1949, p. 67).

References

Bijleveld, N. (2008), 'Language, national culture and the clergy in nineteenth-century Denmark', in: Broomans, P. et al. (eds.), *The Beloved Mothertongue: Ethnolinguistic Nationalism in Small Nations: Inventories and Reflections* (Leuven: Peeters Publishers), pp. 93–107.

Bjørn, C. (1999), *Kampen om grundloven* (Copenhagen: Fremad).

Bjørn, C. (2003), '1814–64', in: Bjørn, C. and Due-Nielsen, C. (eds.), *Fra helstat til nationalstat 1814–1914* (Copenhagen: Gyldendal), pp. 13–263.

Elberling, V. (1949), *Rigsdagens Medlemmer gennem 100 Aar* (Copenhagen: J.H. Schultz Forlag).

Engelstoft, P. (1949), 'Den grundlovsgivende rigsforsamling', in: Fabricius, K. et al. (eds.), *Den Danske Rigsdag 1849–1949*, Vol. 1 (Copenhagen: J.H. Schultz Forlag), pp. 11–40.

Engelstoft, P. and Wendt, F.W. (1934), *Haandbog i Danmarks politiske historie. Fra freden i Kiel til vore dage* (Copenhagen: Gyldendalske Boghandel).

Frandsen, S.B. (2013), 'Some Reflections on Schleswig and Holstein as contested regions', in: Bregnsbo, M. and Jensen, K.V. (eds.), *Schleswig-Holstein – Contested Region(s) Through History* (Odense: Syddansk Universitetsforlag), pp. 15–24.

Friisberg, C. (1974), *På vej mod et demokrati. Fra junigrundloven 1849 til junigrundloven 1915* (Copenhagen: Fremad 1974).

Hjelholt, H. (1949), 'Under junigrundloven 1849–1966', in: Fabricius, K. et al. (eds.), *Den Danske Rigsdag 1849–1949*, Vol. 1 (Copenhagen: J.H. Schultz Forlag), pp. 95–340.

Høgh, E. (1972), *Vælgeradfærd i Danmark 1849–1901. En politisk sociologisk analyse* (Copenhagen: Jørgen Paludans Forlag).

Jensen, J.P. (1915), *Valgene til Rigsdagen 1848–1915. En historisk-statistisk Fremstilling* (Roskilde: Roskilde Dagblads Trykkeri).

Jørgensen, E.S. (1968), 'Partier og partimodsætninger 1848–1864', in: Salomonssen, P. (ed.), *Den politiske magtkamp 1866–1901* (Copenhagen: Jørgen Paludans Forlag), pp. 11–24.

Kaspersen, L.B. (2004), 'How Denmark became democratic: The impact of warfare and military reforms', *Acta Sociologica* 47(1), pp. 71–89.

Knudsen, T. (2001), *Da demokrati blev til folkestyre. Dansk demokratihistorie*, Vol. 1 (Copenhagen: Akademisk Forlag).

Korsgaard, O. (2014), *N.F.S. Grundtvig as a Political Thinker* (Copenhagen: DJØF Publishing).

Møller, J. (1949), 'Forarbejder til grundlovsudkastet', in: Fabricius, K. et al. (eds.), *Den Danske Rigsdag 1849–1949*, Vol. 1 (Copenhagen: J.H. Schultz Forlag), pp. 41–94.

Neergaard, N. (1892), *Under Junigrundloven. En Fremstilling af det danske Folks politiske Historie fra 1848 til 1866. Første bind* (Copenhagen: P.G. Philipsens Forlag).

Nygaard, B. (2011), 'Demokratibegrebets gennembrud i Danmark 1848', *Historisk Tidsskrift* 111(1), pp. 37–73.

Nygaard, B. (2017), *Grundloven* (Aarhus: Aarhus Universitetsforlag).

Olsen, P.N. (1972), 'At the cradle of a party system: Voting patterns and voting groups in the Danish Constitutional Convention 1848–1849', *Scandinavian Political Studies* 7, pp. 119–135.

Pierson, P. and Skocpol, T. (2002), 'Historical institutionalism in contemporary political science', in: Katznelson, I. and Milner, H.V. (eds.), *Political Science: The State of the Discipline* (New York: W.W. Norton & Co.), pp. 693–721.

Salvadori, M. (ed.) (1972), *European Liberalism* (London: John Wiley & Sons).

Thorsen, S. (1953), *Folkets Veje. Gennem dansk Politik 1849–1949* (Copenhagen: Forlaget Fremad).

Thorsen, S. (1967), *De danske ministerier. Et hundrede politisk-historiske biografier* (Copenhagen: Pensionsforsikringsanstalten).

Vammen, H. (2011), *Den tomme stat. Angst og ansvar i dansk politik 1848–1864* (Copenhagen: Museum Tusculanums Forlag).

Denmark, including the Duchies of Schleswig and Holstein

(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

5 The Senate of Canada

Renewed life to an original intent

David E. Smith

Setting

Originally, Canada was a colony of France; after 1763 and the Treaty of Paris, it was a colony of the United Kingdom, within whose borders lived two European peoples and a large indigenous population. Those demographic realities are important to remember in any study of a senate in Canada – whether in the past or today. Equally important to remember is that, only a decade after the Conquest, the majority of North America's English population formed their own separate country, the United States. In 2017, on the occasion of Canada's 150th birthday and referring to the Conquest, the *New York Times* described modern Canada as coming 'pre-broken' (Marche 2017). Here, the author of the article maintained, was why there is even today a strong disposition in the country to accommodate difference.

Canada is a federation, created in 1867 and today comprising ten provinces and three territories. Of the ten provinces, only five have ever had unelected legislative councils (in addition to people's assemblies) either when they were colonies before 1867 or as provinces thereafter. All but two provinces abolished these bodies before 1900 – the last was Quebec, in 1968 (Kitchin 1974).

Canada is a constitutional monarchy whose sovereign is the sovereign of the United Kingdom. Nonetheless, the Canadian Crown is a separate entity from the Crown in the United Kingdom. Indeed, an amendment to the constitution of Canada 'in relation to [. . .] the office of the Queen, the governor general and the lieutenant governor of a province [who represents the Queen in the province]' requires unanimous consent of both houses of the Canadian Parliament and the peoples' assembly of each of the country's ten provinces (*Constitution Act, 1982*).

The Crown is inextricably linked to Canada. For instance, senators are not elected but rather appointed by the Crown on the advice of the prime minister. Recently, this provision allowed for a total transformation in the existing system: the present prime minister has delegated the selection of nominees to an independent advisory panel. It is those nominees whom he now recommends to the governor general for appointment. No law or constitutional amendment was used to achieve this end (since the prime minister holds a monopoly on advice to the Crown), although this change has arguably produced the greatest transformation

in the composition and working of Canada's parliamentary institutions since 1867. Rather, it was the presence of the Crown and the provision for the Crown's appointment of senators (on advice) which made it possible.

Canada has a written constitution, the *Constitution Act*, *1867*, but the terms of that document refer almost exclusively to matters of federalism. While the Act provides for an elected chamber, the House of Commons, understandings about parliamentary government as they relate to that House – for example, 'open discussion, freedom of association, and vigorously contested elections' (what might be called the British Tradition) – are left unspecified and depend upon constitutional custom and convention, many of which are older than Canada itself (Sharman 1990). As an important aside, it need be said that Canadians are tolerant of constitutional ambiguity. In fact, it is due to this disposition that the country's political institutions work better in practice than in theory (Smith 2017).

The 1867 Act also provides for the non-elected Senate, and it is essential to be clear as to its cardinal characteristics – (1) appointment by the Crown (at one time for life, but since 1965 until age 75) and (2) a fixed number of senators (twenty-four) for each of the four regions, two comprising single provinces and two comprising either three or four provinces each. Additional senators have been added – six to Newfoundland and Labrador when it entered as a province in 1949 and later one each to the three northern territories – for a total 105 senators. In terms of numbers, the Senate plays a sanctuary role for the less populous provinces, a role recognised through a constitutional amendment in 1915 which guarantees that no province will have fewer members of Parliament than it has senators (*Constitution Act, 1915*). Unlike the House of Lords in Great Britain, there is no possibility of adding additional members, except for a temporary expansion limited to a maximum of eight (*Constitution Act, 1867*, p. 26), and this has happened only once, in 1990, when the government was determined to see a controversial tax measure passed. Note, therefore, that the Senate, more than the House of Commons, is purpose-built; for that reason, it, more than any other institution, provides the basis for a 'theory' of Canada's federation (senatorial regions, it could be argued, constitute a rare institutional affirmation of federalism). It might be for this reason that, historically, reforms to the Senate have usually proposed as their rationale an improvement to the federal system. Notwithstanding the provision of s.23 of the *Constitution Act*, *1867*, which requires that appointees (men, until 1930) hold real property worth at least 4,000 dollars in the province for which they are appointed, it is important to emphasise that the object of this requirement was to help guarantee that appointees would be more financially (and thus, politically) independent than members of the House of Commons. Admittedly, this provision also protected the interests of property holders more generally. Nonetheless, the Senate has never been an elitist body whose composition is determined by divisions of birth or class. Therefore, recent changes in the selection process signal no change in social, as opposed to partisan political, values. In Canada, deference has invariably been paid to electoral power, that is to votes rather than to social status.

Background

In Anglo-American political systems great weight is given to precedent, a feature that contributes to the sense of constitutional ambiguity noted earlier, since precedent is subject to interpretation. Thus, initial outcomes may be strongly self-reinforcing and hard to reverse; another way of making this point is to say that 'forsaken alternatives become increasingly unreachable with the passage of time'. This, Paul Pierson (2004), the American political scientist and author, has argued, is an example of the effect of time on politics. Two examples may be cited to illustrate this generalisation. First, the fixed number of members per region in the Senate had its origin in the fixed numbers assigned to the Legislative Council (that is, the Colonial Senate) in the period of United Canada that preceded confederation. A fixed number of members also helped protect the Francophone and Roman Catholic population, which was in relative decline, or threatened decline, as English immigration increased. A second example would be that political obstruction by the Senate has always been and remains rare. For this reason the original structure continues to entrench itself. Except for the governments of Pierre Trudeau in 1980 and Stephen Harper a quarter-century later, there has never been an attempt made by *a government* to change the structure of the Senate. Such Senate reform proposals as there have been, for instance to make the chamber elected, effective and equal (in terms of numbers per province), were non-public in origin, coming from interest groups, in this particular case the Canada West Foundation, Alberta. Third, political parties in Parliament who oppose federal government trade and economic policies have their roots in western Canada, beginning in the period of the First World War; the Canada West Foundation was associated with the populist but conservative Reform Party, which originated in Alberta in the last decade of the twentieth century.

Again, in Pierson's (2004, p. 13) words, 'The fact that something happens slowly, however, does not make it unimportant' – witness the emerging awareness of bicameralism as a feature of Canada's Parliament today, in large part because of the Supreme Court's 2014 opinion and the government's appointment of an independent advisory committee to select potential nominees. Canadian experience and especially the ever-shifting makeup of its population in consequence of immigration from Asia, Europe and South America have shaped the Senate over time. One might say that as Canada changes, so too must the Senate. As will be argued later, demographic and sociocultural change and a decline in traditional party allegiances among voters are combining to make the Senate today a platform for the voice of democracy as much as it has historically been an instrument of federalism. It could be said that bicameralism is as vital to the realisation of the constitutional objective set down in 1867 in the preamble to s.91 of the *Constitution Act* – 'the Peace, Order, and good Government of Canada' – as the division of powers is to maintaining the federation. Indeed, in 2018, there is no question but that the role of the Senate in Canada's bicameral Parliament, and more particularly its relationship to the House of Commons, where under the principle of responsible government the government must command the support of a majority of elected MPs, is recognised to be of paramount importance.

It is not possible to speak of Canada's Senate without speaking of the House of Lords and the United States Senate (at that time), two non-elected chambers which the Fathers of Confederation (the name given Canada's founding fathers) knew well but rejected, with long-term consequences for the politics of the federation. Even today, critics of the Senate will sometimes refer to the chamber as Canada's 'House of Lords,' though there never was any factual basis for the analogy. Canada is a federation, the United Kingdom is not, and more than that, the creation of the Senate was an absolute condition made by the colonies that later became the provinces of Quebec, New Brunswick and Nova Scotia for entering into the Confederation. From their perspective, it was one important way of achieving a balance alongside Ontario's much larger population than that of the combined eastern provinces. In the words of a pre-eminent 'Father,' George Brown, 'On no other condition would we have advanced a step' (*Parliamentary Debates* 1951, p. 88). That said, the Westminster model, of which Canada was the first self-governing colony in the Empire to emulate, exercised a very strong influence on colonial and later Canadians. One reason often overlooked is the paramountcy of the Crown, which at the time of Canada's creation was identified with Queen Victoria, then at the zenith of her reign, having become Empress of India a decade earlier. Crown, Senate and Commons on the western side of the Atlantic could (and were) easily, if mistakenly, interpreted as mirror images of Crown, Lords and Commons on the eastern side.

The other obvious example of which the architects of Confederation were aware but whose details they refused to copy was that of the United States Senate. The United States was a large federation, as Canada needed to be if the British North American colonies were to be united. Yet the structure of the Senate of the U.S. Congress, as set down in 1787, found little favour north of the forty-ninth parallel. The selection by provincial legislatures of delegates from among their numbers to sit at the centre, as was done by state legislatures in the United States until the ratification of the Seventeenth Amendment in 1913, violated the common sense of Parliament as the supreme legislative power (as in the United Kingdom) and the belief British North Americans held that the creation of a national parliament of *two* chambers marked an important step towards constitutional maturity. According to J. C. Bourinot (1837–1902), journalist and later clerk first of the Senate and then of the Commons, one justification for an upper chamber was this desire for national status in Canada's dealings with other countries, particularly with the United States. At least until the middle of the twentieth century, when New Zealand (1950), Denmark (1953) and Sweden (1970) moved from bicameral to unicameral legislatures, a two-house parliament was considered one of the signs of national maturity. By contrast, in 1895, Bourinot (1895, pp. 19–20) wrote:

> Unicameral bodies fall into three or four main groups: the parliaments of minor states of southeastern Europe, Servia, Bulgaria and Greece; the congresses of the states of Central America, Nicaragua excepted, compose another group; the *Landtags* of the Austrian crown lands are one-chambered, and so are nearly all of the diets of the minor German states, excepting those of the free cities.

The ambitions of Canadian politicians for national autonomy aimed higher than that, if only because they were embarking on a unique enterprise – the creation of what in time would be referred to as a bilingual and bicultural federation of continental scale.

The architects of the Canadian federation may have rejected some of the details of the American precursor, but they retained the principle of a distribution of powers between two levels of jurisdiction. Where the difference lay in Canada was in the presence of a common Crown at both levels of jurisdiction. In one sense, Canada is a monarchy because there is neither now nor at any time previous republican sentiment of any strength. The exception to that generalisation might be in Lower Canada in the 1830s, before the grant by Great Britain of the principle of responsible government and before in consequence the French-speaking majority could make its voice heard. But once that principle was acknowledged after the rebellions of 1837, particularly in what is today Quebec, no organised movement of any influence to introduce republican institutions reappeared, despite both the fact that Canada lay to the north of an undefended border with one of the largest and most vigorous republics in the world and the intermingling of the agrarian populations of the two countries (Coats & MacLean 1943; Hansen 1940). That Canada should have developed its parliamentary and federal institutions with so little influence from its powerful neighbour is a subject that deserves more investigation than it has received (Smith 1999). One factor that has been given insufficient attention in this regard is the anti-republican or, perhaps more accurately, pro-clerical sentiment evident in Quebec for decades after the French Revolution. During the American War of Independence, troops supporting the revolutionary cause, which included the separation of church and state, invaded Quebec, they were not welcome in Montreal and other communities for this reason as much as – or more than – their belligerent behaviour.

Canadians do not think of boundaries with other countries, because except for the United States, there are no boundaries. In that respect, Canada might be seen as an island bounded in three directions by oceans and to the south by the United States. And much of the landmass of Canada, particularly the vast area that embraces Hudson Bay, is occupied by the pre-Cambrian (or Laurentian) Shield, comprising rock, lakes and trees. The population of this part of the country is mainly indigenous. Indeed, the vast majority of the country's non-indigenous population lives within three hundred miles of the US border. Canada remains, as it has for centuries since the arrival of European settlers, a country characterised by east-west linear activity, be it in the form of railways, highways, television broadcasting, economic and recreational organisations and much more. This is how bureaucracy, political parties and the cabinet are organised. More to the point of this essay, this is how the Senate is organised: northern senators from Nunavut, the North-West Territories and Yukon were appointed only in 1975. All of which is to say that as imposing as geography is on Canadian life (Canadians live in five different time zones), it tends not to be given the close attention it warrants when the subject is politics, either as an organisation or as an activity.

By contrast, however, perhaps too much attention is given to time – in the sense of history – especially when the discussion has as its subject comparisons between Europe and Canada. While there is no doubt that the former may have longer settled histories (placing to one side the early habitation of indigenous populations in North America), that should not obscure the persistence of Canada's constitutional arrangements – federalism for 151 years and institutions of responsible government for an additional twenty-five years. While it is true that the franchise expanded in the post-Confederation years, aside from that there is a sense of a continuous present about its political structures – and this despite massive demographic growth (in the past fifty years the country's population has almost doubled; currently, it stands at 37 million people). A summary of the most notable changes would be rural settlement of the western part of the country in the late nineteenth and the early twentieth century, a striking rural-to-urban movement in population beginning in the latter part of the twentieth century and a significant broadening in demographic heterogeneity among immigrants in recent decades. The Crown, the House of Commons (whose members are elected under a single-member, simple plurality voting system) and the Senate, except for the very recent alteration in the manner of the selection of senators, remain as they were at the beginning. Compare that persistence with the striking constitutional changes that characterise Ireland and which are described by the authors of papers on that country in this book. Equally noteworthy is the absence in Canada of civil unrest or political strife. The one exception would be the secessionist movement in Quebec a quarter-century ago, yet that too has declined without, significantly, constitutional or institutional reforms.

The continuity of Canadian politics deserves more study than it has received. One part of the explanation lies in the fact that Canada has presented itself to the world – and to its own citizens – in company with international associations, for instance, the British Empire, the League of Nations and the United Nations. It is in those contexts that Canada and its citizens established in their own minds a strong sense of place. At the same time, it has been said that as English and French are the country's two official languages, 'Canada is well equipped to communicate with the world and to assert its presence' (*Report of the Royal Commission 1967*). This is a point too easily forgotten in an anti-colonial age: for most of her history Canada was more than a colony – she was part of 'a world-encircling empire' that included not only the Commonwealth but also the Francophonie. With regard to the Empire, she thought not about separation but about using her prestige to gain greater weight and strength within it and its Commonwealth successor (Frye 1976, p. 59). And that sense of place depended upon familiar rather than revolutionary relationships. Although Canada evolved a separate (from Great Britain) set of diplomatic ties, category of citizenship and international obligations, each nonetheless possessed a discernible common DNA: British history, institutions and political values. At the same time, from 1774 and the Quebec Act onwards, the Crown acknowledged and accommodated the Roman Catholic religion, the French language and French civil law. For these reasons, Canada, though not unique, today presents the image of a strongly international country, and there

is no doubt that the structure of the Senate, which grants equality of seats among senatorial divisions regardless of their population disparities, contributes to this bilingual and bicultural feature.

Interpretation

What I have said up to this point is pretty much standard script when talking about the constitution in Canada. If it diverges from what is usually said, it does so in the sense that it emphasises the transformation the Senate is experiencing because of the change in its appointment procedure. To repeat, where once nominees for the Senate were almost exclusively partisan in their selection, since 2015 partisanship as a criterion has virtually disappeared. As of October 2018, of the forty-three Senators appointed under the new procedure, none can be described as a visible partisan. There are three implications of this change: first, there will be a growth and strengthening in public attitudes towards bicameralism, with important consequences for public attitudes towards government generally and towards the Commons, cabinet, political parties and opposition specifically. Second, there is going to be a confounding of what the sense of the constitution is: the principle of responsible government may continue in its historic location, the House of Commons, but no longer will that, in itself, be an exhaustive explanation of Canadian government. Third, there will be re-examination of the criteria used to evaluate the quality of Canada's institutions and political processes. Neither the language nor criteria that have so long dominated political discourse in Canada are applicable to the situation of the new, emerging Senate.

Not only are Canadians confronting a form of parliamentary institutions different from what they have witnessed before but they are also limited in their response to the change by being constrained to interpret events using concepts and a political vocabulary retrieved from the past. Where, for instance, in a chamber without parties is 'the opposition'? It should be said that what is happening in Canada has its critics – but from a comparatively narrow perspective, that of non-elected senators challenging the principle of responsible government, which rests on control of the popularly elected House of Commons. See, for example, newspaper articles by Andrew Coyne (2008), 'Supreme Court Ensures Our Widely Reviled Patronage House (The Senate) Will Stay Forever' and ' Exactly Why Do We Need a Senate?', and by Konrad Yakabuski (2018), 'Senators Should be Elected – or Eliminated'. That this opinion should be so prominent despite the fact that the Fathers of Confederation could hardly have been more explicit in their rejection of an upper elected chamber, specifically on the grounds that a legislative body so constituted would rival the House of Commons, requires close study. The Supreme Court itself observed in 1980 that 'a primary purpose of the creation of the Senate [. . .] was to afford protection to the various sectional interests in Canada in relation to the *enactment* of legislation (emphasis added)'. In 2014, the Court once again said much the same thing in its discussion of the Senate as 'a complementary chamber of sober second thought' (*Reference re Legislative Authority* [1980]; *Reference re Senate Reform* 2014; cf. Harder 2018).

Where is there a crisis or difficulty when the Senate seems poised (1) to play a far more public role in the political life of the country than ever before and at the same time (2) to be acquiring new-found legitimacy in the eyes of Canadian citizens? Yet the more I thought about the question, the more I came to see that there may indeed be an emerging crisis – arising not from lack of legitimacy but, paradoxically, from the *onset* of legitimacy itself! More than that, this unprecedented challenge carries with it a concomitant query: what does a reinvigorated Senate say about the Crown in Canada? For the subjects are related, although the Canadian public has historically identified the appointed House as a partisan political body. Even those who understand that senators are appointed by the Crown (that is, by the governor general) see this as form without substance. Yet the Senate and the Crown are two parts of the three-part Parliament and, unlike the House of Commons, they share some important similarities, the most important among which is their role as deferential bodies – the Senate to the Commons and the governor general to the government drawn from the Commons. If the Senate, to its critics, is trespassing on the terrain of the Commons as the historic home of responsibility, there is at the present time, although less publicly discussed, concern in other quarters about clarifying, even codifying, the conventions of constitutional monarchy as they relate to the Crown's reserve power (Evatt & Forsey 1990; Forsey 1968; Twomey 2018).

Thus, while in their relationship to government and the Commons the Crown and the Senate may share a convention of restraint, both stand as potential limitations on the exercise of popular power. More than that, the Senate depends upon the Crown for its legitimacy, as the Fathers of Confederation intended when they rejected every proposal that the Senate should be elected, a rationale the Supreme Court of Canada confirmed in its advisory opinion in 2014: 'Introducing a process of consultative elections', said the Court, 'would change our constitution's architecture, by endowing Senators with a popular mandate which is inconsistent with the Senate's fundamental nature and role as a complementary chamber of sober second thought' (*Reference re Senate Reform* 2014, p. 708).

Public attitudes towards the Crown in Canada tend to be narrow, usually associating it with monarchy and more specifically the person of the sovereign. The small minority of Canadians who object to the Crown do so because of its form – that of being British – and not because they advocate a transformation to a republic. Canadians see but do not understand the Crown: one might label this an '*external* approach to things (relying on the evidence of the *eye* rather than the more emotional organs of sense)' (Allen 1958). Yet Canada's relationship to the Crown has contributed strongly to the development of the country's autonomy in its dealings with other countries and with the United Kingdom. The story of Canadian treaties, diplomatic representation abroad or separate Canadian citizenship is founded on a concept of a separate Canadian identity rooted in a distinct Canadian Crown. Similarly, the Crown and the Senate are more intimate in their relationship – recall that senators are creatures of the Crown's representative – than is generally acknowledged. In light of the existing constitutional arrangement, it is necessary to ask, what would happen to the Senate if the Crown were

to be abolished? The two parts of Parliament could hardly be more closely linked. More than that, the complementary role that the Supreme Court of Canada, in 2014, saw the Senate's role in the legislative process – that of completing the process, so to speak, and providing 'a "check" on the excesses of a winner-take-all majority rule' (by which MPs are elected) – is a scrutinising function the Crown depends upon before it grants royal assent to bills (Harder 2018, p. 11). Thus, if the Crown's place elevates the Senate, it may equally be said that the Senate's role as a chamber of sober second thought is vital to maintaining the integrity of the legislative process, of which the Crown is the acknowledged guardian. That does not mean that the opinion of the Senate necessarily determines the outcome of a question. What is more likely to happen, in light of the primacy of the principle of responsible government, is the position advanced by Senator Tony Dean during the vigorous debate in 2018 on legislation to legalise cannabis: 'This is an election-platform commitment, it is a major government bill. I think, at the end of the day, the Senate [must] recognise the primacy of the elected body' (LeBlanc 2018).

The achievement of universal male suffrage had no effect on the Senate both because federalism was the key consideration at its creation and because it was never understood to be primarily a societal bulwark. In fact, the Senate has been an important forum for minorities underrepresented in the Commons: women, indigenous peoples and French Canadians in provinces where they are not an electoral majority (cf. Cardinal, this volume). In one respect, the Senate might be considered static, since its numbers never change; by contrast, the House of Commons increases in size as a result of the Canadian formula for electoral redistribution. Indeed, in the last century the Commons has increased in numbers almost by the size, in number, of the Senate. In 2018, the Fathers of Confederation would recognise the Senate they designed but not the House of Commons, whose membership far exceeds its original number. Therefore, small provinces value their representation in the appointed Senate. Another factor in explaining growing public interest in and sympathy for an unelected chamber is the growing unpopularity of partisan politics and of party discipline in particular, as manifested in the work of the House of Commons. One reason for this development is a heightened belief in the need for real and perceived fairness, with a resulting transformation in the sense of what rules should look like. In the words of Australian scholar Judith Brett (2001), 'For those experienced with the modern informal meeting and its consensual style of reaching a decision, parliamentary procedure is no longer seen as enabling but as precluding cooperative action'. A reciprocal relationship appears to be emerging between senators and the public, one that is essentially different from that which happens between MP, as representative, and constituent, as represented.

Paradoxically, the Senate itself is being redefined as a new democratic instrument at the same time as the Commons, particularly the government in the Commons, is being forced, as a result of the Senate's activities, to address criticism of its activities more than ever before. Although the committee work of the Senate is regularly lauded by media, academics and the public, the scope of that activity and the sense of citizen access to its proceedings deserve closer study than may

be given here. Indicative of its volume, however, are data in the annual *Senate Report on Activities* for the period between both 2008 and 2009 and 2012 and 2013, which reveal that over 2,300 committee meetings have taken place with more than 6,000 witnesses in attendance, which produced roughly 500 committee reports (Senate of Canada s.d.).

As evidence of the dynamic of bicameralism, the primacy of one chamber appears to be in potential decline while the other appears to be on the rise. Thus, while critics of a non-partisan Senate might profess to see it imperilling the principle of responsible government, defenders of the new order might claim that it is saving democracy. If there is substance to those positions, here is where today's 'crisis' of Canada's Senate may reside, for it is challenging assumptions of governing that predate the Confederation. At this point, it is worth recalling that Canada has never had legislation such as the *Parliament Act*, *1911* of the United Kingdom, which reduced the House of Lords' power in the passage of legislation to that of a suspensive veto, which is to say that the Lords may delay but cannot defeat legislation. With that result, said American political scientist William Riker (1992), the Parliament at Westminster had become, in constitutional reality, 'a unicameral legislature'. That Canadians have never been induced to follow the example of 'the mother country' in this regard may be interpreted in different ways, but in the present context, it confirms widespread support for the original Senate and its powers, as set down in the *Constitution Act*, *1867*.

Although perhaps not an inundation, there is more media coverage of the Senate today and the tone and analysis of that examination is far more probing than previously. Such attention is to be preferred to the suffocation of business in the House of Commons by party discipline. More than that, there is an educative value to be gained from the controversy that may arise between the two houses: government is forced in its response to criticism from senators to take a position, with the result that the process of governing is becoming more public than ever before. Compare that outcome to the findings of a study about constrictive party discipline based on interviews with MPs in 2004 and in 2011, conducted by the Samara Centre for Democracy (Curry 2018). Today, even when government refuses to compromise, it is still more accountable than before because it has to explain – publicly – its decision again (and again) (Wherry 2018). One of the great benefits to accrue from the appearance of truly functioning bicameralism is a more informed citizenry. A significant consequence of the arrival of a more critical Senate (and with it energised bicameralism) is that the primacy of the House of Commons – in truth, government dominance of the Commons (and Parliament) – is being reduced.

It is difficult in 2018 to make an absolute judgment as to whether this development is good or bad for the future of Canadian politics. Certainly, it is possible to find critics: Ian Brodie (2018, pp. 11–12), Prime Minister Stephen Harper's (2006–2015) former chief of staff, has written that 'a Senate without partisans is a dangerous innovation'. On the other hand, Hugh Segal (2018) – Principal of Massey College, University of Toronto, a former Conservative senator (2005–2014) and former chief of staff to another Conservative prime minister, Brian

Mulroney – has argued that 'we can't return to a Senate ruled by partisan politics'. Perspective is required to make an informed judgment on this matter, and that requires time. In the interval and equally central to the discussion, are two additional questions: 'why, after almost a century and a half of stability, is this happening?' and 'why now?' First, there has been more than a decade of talk – but no action – by Conservatives on Senate reform, particularly to make the body elected. When the government of Stephen Harper finally acquiesced to pressure from within and outside Parliament to seek an advisory opinion from the Supreme Court of Canada as to whether his government's proposal to introduce a system of indirect election of senators (that is, elected within each province) was constitutional, the Court responded in 2014 that such a change would constitute a fundamental alteration to the terms of Confederation and therefore require amending the formula of the constitution – after which, talk of Senate reform abated. In reality, as we have seen, it was replaced by action on the part of the opposition Liberal party, first as opposition and then, after 2015, as government.

It would be an exaggeration to say, in light of this brief history, that political parties are in decline. Still, it would be a mistake to assume that recent and rather dramatic changes in parliamentary practice have not promoted the reputation of the Senate among those Canadians who express cynicism about political parties, because parties often seem unable to achieve what people want. The Senate was designed to provide balance in an otherwise unbalanced federation, which is one reason the Court in its opinion described it as a 'foundational political institution'. Now, freed of the partisan chains that linked them for a century and a half to the House of Commons and which denied their playing the compensatory role the architects of the constitution intended, senators are poised to undertake a new role as an ally of the people. Whether this is a crisis for the Senate may be open to debate, but that there will be contradictory understandings about the role of the non-partisan Senate in the future is unquestionable.

Conclusion

Historically, the reputation of the Senate of Canada among Canadians has not been particularly favourable. It was viewed as a partisan preserve whose members were scarcely less disciplined by party whips than were members of the House of Commons. Yet it is rather difficult to accept that negative assessment, if only because without the Senate of Canada there would have been no Canada and because for more than a century and a half it has brought a balance to opinion in Parliament that the Commons, whose composition has been based on elections, often felt free to ignore. If there is one undisputed characteristic of Canada, it is that the country is stable; if there is one institution more than any other that contributes to that condition, it is the Senate. What kind of marks can be given to the initiative now underway – where senators are accountable to no one but themselves? While the period under review may be short, there is no question that the Senate today is improving legislation, yet at the same time it is not thwarting government. Rather than limiting popular power, the Senate is promoting it.

References

Allen, W. (1958), *The English Novel: A Short Critical History* (London: Penguin Books).

Bourinot, J.G. (1895), 'The Canadian dominion and the proposed Australian constitution: A study in comparative politics', *Transactions of the Royal Society of Canada* 11(2), Vol. 1.

Brett, J. (2001), 'Parliament, Meetings and Civil Society', Australia, Senate Occasional Lecture Series, 27 July 2001. Available at: www.aph.gov.au/binaries/senate/pubs/pops/pop38/brett.pdf (accessed 4 March 2019).

Brodie, I. (2018), *At the Centre of Government: The Prime Minister and the Limits on Political Power* (Montreal-Kingston: McGill-Queen's University Press).

Coats, R.H. and MacLean, M.C. (1943), *The American-Born in Canada: A Statistical Interpretation* (Toronto: Ryerson Press).

Constitution Act (1867). Available at: https://laws-lois.justice.gc.ca/eng/Const/index.html (accessed 4 March 2019).

Constitution Act (1915). Available at: https://laws-lois.justice.gc.ca/eng/Const/index.html (accessed 4 March 2019).

Constitution Act (1982). Available at: https://laws-lois.justice.gc.ca/eng/Const/index.html (accessed 4 March 2019).

Coyne, A. (2014), 'Supreme court ensures our widely reviled patronage house (The Senate) will stay forever', *National Post*, 25 April.

Coyne, A. (2008), 'Exactly why do we need a senate?', *National Post*, 13 April, A7.

Curry, B. (2018), 'Party control in parliament is getting tighter, former MPs warn', *Globe and Mail*, 12 June, A6.

Evatt, H.V. and Forsey, E.A. (1990), *Evatt and Forsey on the Reserve Powers* [A complete and unabridged reprint of H.V. Evatt, *The King and His Dominion Governors* (2nd edition, 1967).

Forsey, E.A. (1968), *The Royal Power of Dissolution of Parliament in the British Commonwealth*, [reprint] (Sydney: Legal Books).

Frye, N. (1976), 'National consciousness in Canadian culture', *Transactions of the Royal Society of Canada*, 14, pp. 57–69.

Hansen, M.L. (1940), *The Mingling of the Canadian and American Peoples* (Toronto: Ryerson Press).

Harder, V. (2018), 'Complementarity: The constitutional role of the senate of Canada'. Available at: www.senate-gro.ca/wp-content/uploads/2018/04/Complementarity-The-Senates-Constitutional-Role-2018-04-12-Final_E.pdf (accessed 4 March 2019).

Kitchin, G.W. (1974), 'The abolition of upper chambers', in: Rowat, D.C. (ed.), *Provincial Government and Politics: Comparative Essays*, 2nd edition (Ottawa: Department of Political Science, Carleton University), pp. 61–82.

LeBlanc, D. (2018), 'Cannabis legalization bill is back in the senate', *Globe and Mail*, 19 June, p. 3.

Marche, S. (2017), 'Canada doesn't know how to party'. Available at: www.nytimes.com/2017/06/23/opinion/sunday/canada-doesnt-know-how-to-party.html (accessed 4 March 2019).

Parliamentary Debates on Confederation of the British North American Provinces (1951), (Ottawa: King's Printer, repr. 1865).

Pierson, P. (2004), *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press).

Reference re Legislative Authority of Parliament in Relation to the Upper House (s.d. [1980]), 1 Supreme Court Reports 54.

Reference re Senate Reform (2014), SCC 32, pp. 704–764.
Report of the Royal Commission on Bilingualism and Biculturalism (1967), Vol. 1 (Ottawa: Queen's Printer).
Riker, W.H. (1992), 'The justification of bicameralism', *International Political Science Review* 13(1), pp. 101–116.
Segal, H. (2018), 'We can't return to a senate ruled by partisan politics', *Globe and Mail*, 28 June, A13.
Senate of Canada (s.d.), Annual Reports on Activities. Available at: www.publications.gc.ca/site/eng/402516/publication.html (accessed 4 March 2019).
Sharman, C. (1990), 'Parliamentary federations and limited government: Constitutional design and redesign in Australia and Canada', *Journal of Theoretical Politics* 2, pp. 205–230.
Smith, D.E. (1999), *The Republican Option in Canada: Past and Present* (Toronto: University of Toronto Press).
Smith, D.E. (2017), *The Constitution in a Hall of Mirrors: Canada at 150* (Toronto: University of Toronto Press).
Twomey, A. (2018), *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge: Cambridge University Press).
Wherry, A. (2018), 'The senate's marijuana debate shows just how much has changed: A key government bill sent back with 46 amendments? It would have been unthinkable 4 years ago', *CBC News*, 7 June. Available at: www.cbc.ca/news/politics/senate-marijuana-vote-analysis-1.4696073 (accessed 4 March 2019).
Yakabuski, K. (2018), 'Senators should be elected – or eliminated', *Globe and Mail*, 28 April, O11.

Canada today

(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

Part II

Democracy, the people and the Senate (c. 1848–1935)

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

6 Constitutional conservatism, anti-democratic ideology, and the elective principle in British North America's upper legislative houses, 1848–1867

Colin Grittner

Introduction

Before Canada emerged as a nation-state in 1867, the former British North America consisted of a series of independent colonies each with its own bicameral legislature. These legislatures consisted of a lower house, or Legislative Assembly, elected by 'the people' and an upper house, or Legislative Council, appointed by its lieutenant governor. Much like their equivalents in Belgium and the Netherlands, these Legislative Councils originally served to curb democratic excess and defend landed interests, roles they filled through 1848 and the advent of responsible government. In Canada, responsible government refers to a parliamentary system where the governor's Executive Council (better known today as the prime minister and his cabinet) both sits within Parliament and finds itself responsible to the parliamentary majority. Under the responsible regime, colonial premiers – as leaders of both the Executive Councils and their own political parties – now instructed governors directly as to who should receive appointments to the upper houses. As a result, Legislative Councillors became responsible solely to the political party leaders who appointed them to their positions. For those who preferred the former colonial constitutions, constitutional government had become party government, and narrow party interests had replaced collective group interests. In the many-fronted battle for (and against) popular sovereignty – a battle that crossed social, cultural, economic, and more straightforwardly political lines – another check had seemingly fallen as the push toward democratization increased.

In 1849, the year following responsible government, calls rang out anew for elective Legislative Councils. By 1859, the assemblies of the colonies of Canada (now the provinces of Ontario and Quebec), New Brunswick, Nova Scotia, and Prince Edward Island had all endorsed the idea in principle. While only Canada and Prince Edward Island would actually make their upper houses elected, the pursuit of the elective principle across British North America generally unfolded around the same ideological positions. Self-declared radicals and republicans, at one extreme, wanted elective institutions spread as widely as possible. Uncompromising Tories at the other scoffed at anything that did not mirror the British House of Lords. Between these two poles lay the true contest over the colonial

upper houses. As reformers defended the responsible system they had so recently won, a new conservatism, I argue, formed in the wake of responsible government: one that still favoured the old mixed constitution of Crown, Lords, and Commons but looked to direct election to restore its former essence. These conservatives in particular pressed for elective Legislative Councils – accompanied by strict property qualifications for electors or candidates – in hopes of restoring political legitimacy to their upper houses, siphoning power from the people's assemblies and ultimately undercutting responsible government itself. Much like the Dutch, Swedish, and Danish conservatives seen elsewhere in this volume, British North American conservatives had thus looked to stifle the spread of democracy through elective institutions normally associated with democracy itself.

Historiography

Within Canadian historiography, discussions of British North America's elective Legislative Councils trace back to the earliest days of Canadian history as a profession. These early histories reflect institutional studies in their purest sense, where analyses took place within narrow provincial frameworks and ideas of expediency and partisanship dominated explanations for change (Harvey 1922; Mackay 1963; McArthur 1930; Hart 1960; Beck 1957; MacNutt 1960). Since the turn of the twenty-first century, provincial emphases have changed little when it comes to British North America's upper houses, and only the Canadian Legislative Council has received any recent attention. Even so, intellectual historians and political scientists, such as Jeffrey McNairn and David E. Smith, have done much to revitalise the subject through a deeper understanding of eighteenth- and nineteenth-century political thought. Both authors, writing concurrently, have claimed very much the same thing: that a dialectic between republicanism and conservatism gave rise to the Province of Canada's elected Legislative Council during the 1850s.

Within the British North American context, historians have tended to most closely associate republicanism with the Canadian Rebellions of 1837 and 1838. In response to perceived oligarchic rule, French-speaking Lower Canadians in particular turned to republican ideas of popular sovereignty to empower themselves as a provincial majority (Ducharme 2014b). As part of their famed Ninety-Two Resolutions of 1834, these so-called *patriotes* repeatedly demanded an elective Legislative Council so they might fully realise republican rule (Lower Canada 1834). The Imperial government's rejection of these Resolutions in 1837 ultimately led to open rebellion that autumn (Ducharme 2014b). Canadian conservatives, in their active support of the Imperial government, vehemently disassociated themselves from the *patriote* cause. Yet Canadian conservatives would also come to pursue an elective upper house less than twenty years later.

Acknowledging this situation, McNairn and Smith argue that these conservatives had a different example in mind when they pursued the elective principle: that of the republican United States. McNairn, for his part, emphasises the template offered by American Federalist thought. Responding to post-revolutionary political instability, the Federalists crafted an American federal constitution in

1787 that established separations of powers resting 'squarely on popular sovereignty, but that still encapsulated the benefits of the three classical forms of government [King, Lords, and Commons]' (McNairn 1996, p. 508). McNairn concludes that these conservative checks upon democratic excess served as a model for Canadian reformulations of the Legislative Council (McNairn 2000). While Smith ultimately agrees with McNairn in principle, he questions some of the details. The American Senate, as established by the federal constitution, would not operate electively until 1913. With this in mind, Smith argues that American *state* constitutions provided Canadian conservatives with working models for successfully balanced separations of powers. Just as elected state senates served as important and respected checks within state legislatures, an elective Legislative Council could fill the same role for Canada. Through this decision, Smith concludes that 'Canadians came closer than at any time in their history to facing the republican option' (Smith 1999, pp. 87–89).

While this chapter does not seek to contradict McNairn or Smith on these general points, it does take a closer look at the elective bodies that British North American conservatives hoped to establish. By 1855, all but three American states had eliminated the property qualifications on their state franchises (Keyssar 2000). These state franchises – grounded in republican ideals of white male equality and popular sovereignty – governed all state elections, including those for state senators (Scalia 1999). While British North American conservatives may have pursued the elective principle, they fundamentally resisted any broader application of republican government. Anything that approached universal manhood suffrage was viewed as anathema for the elective Legislative Councils. If British North America's lower houses served the people, its upper houses, according to these conservatives, needed to return to their original purpose and serve landed interests. The elective principle and restrictive property qualifications – for electors, candidates, or both – offered British North American conservatives a means to achieve this goal and restore the constitutions that responsible government had so recently unbalanced.

Responsible government and the elective principle

With this background in place, the story of British North America's elective Legislative Councils begins in earnest on 25 April 1849. The Canadian governor general, Lord Elgin, had just signed the so-called Rebellion Losses Bill into law, and in response, an angry Tory mob torched the market building that housed Canada's Parliament. Throughout the 1840s, Canadian conservatives had warned Elgin that responsible government would open the door to destructive legislation based upon selfish party interests (Fuimus 1847). To conservative eyes, Canada's Reform government had just endorsed the most unjust and self-serving party legislation imaginable. In the name of provincial reconciliation, the Rebellion Losses Bill compensated anyone who had lost property during the Lower Canadian Rebellions of 1837 and 1838, including those who had taken up arms against the Crown (Province of Canada 1849; cf. Careless 1967). Most of those who supported the uprisings now sided with the Reform cause. The Reform government

had to stack the upper house with multiple new members just to get the legislation to pass (British American League 1849a). For conservatives, the Rebellion Losses Bill had proven that the constitutional checks formerly offered by the Legislative Council no longer applied under responsible government. The Parliament building, now burning in the darkness, served as direct evidence of what might continue to happen without those former checks restored.

Canada's Rebellion Losses controversy offered the initial push for British North American conservatives towards elected Legislative Councils. As one historian notes, Canadian conservatives of all stripes responded to the legislation 'by organising Constitutional Societies to promote conservative policy' (Way 1995, p. 20). The largest of these societies, the British American League, formed in the days preceding Lord Elgin's fateful trip to Parliament. The League's purpose was twofold: first, to determine whether Canada should break its imperial connection to Great Britain; and second, to figure out how to restore political legitimacy to the province's Legislative Council (Allin 1915). On the first point, League members agreed: Canada would remain loyal. On the second point, opinions were much more divided. Some delegates, on the one hand, viewed it as 'essential to the interests and liberties of the people [. . .] that the Legislative Council should be elected'. For them, an elected upper house, when combined with strict qualifications for either candidates or voters, 'would be virtually and in fact a much more conservative body than we have at present' (British American League 1849a, pp. 7–8; British American League 1849b, app.xxv). Older Tories, on the other hand, balked at any mention of reform whatsoever and worked to preserve existing constitutional arrangements. The question ultimately proved so contentious that the League's general convention refused to discuss it further and instead referred it to the League's local branches (British American League 1849b). Answers trickled in soon enough. By January 1850, the majority of League associations had voted in favour of an elective upper house (Toronto *Independent* 1850).

The British American League never held another general convention to ratify these local results. The question of elective Legislative Councils had laid bare the ideological divisions between its two schools of conservatives. Although a majority of branches had endorsed the elective principle, the League's sizeable Tory component refused to accept the outcome. A letter from J. W. Gamble to the members of the Yorkville (Toronto) branch reveals the extent of those divisions. Gamble, a leading Leaguer from the Toronto area, supported the elective principle wholeheartedly. The Yorkville branch had not only disagreed with Gamble's position but had done so publicly, personally, and confrontationally. In Gamble's own words:

> It is with much concern that I have read [. . .] a resolution passed by you in reference to my views on the question of elective institutions. [. . .] [P]assing over the direct personal allusion to myself, [. . .] I submit whether any advantage to be derived from parading before the public merely conflicting opinions of members of an association, whose utility depends upon its unanimity, and whose measures, to carry weight with them, must be based upon some show of reason and sound sense, is not more than doubtful.
>
> (Gamble 1850)

Older Tories used such direct tactics alongside their broader colonial influence to forestall any further assemblies (Allin 1915). Without a mandate, the League's executive formally pursued the subject no further. Its public address of May 1850 made no mention of the Legislative Council whatsoever (Toronto *British Colonist* 1850).

The League's public silence, however, did not prevent its message from finding a wider audience. As part of its efforts to promote conservative policy, the British American League made repeated entreaties to potential sympathisers across British North America's Maritime colonies. League delegates, for instance, met with John Robertson and Charles Simonds of the New Brunswick Colonial Association in October 1849 (MacNutt 1960). These two groups agreed to meet again in Halifax to discuss, among other things, Legislative Councils and a broader union of the colonies. Persuaded by their Canadian counterparts, the New Brunswick Colonial Association would soon enough promote the elective principle for their own upper house as well (Toronto *North American* 1850). League delegates, moreover, sent out personal letters to 'prominent and influential citizens in Halifax' and circulated pamphlets within Maritime urban centres (Toronto *Independent* 1849). They also ensured to keep the Maritime press well informed. Newspapers throughout the eastern colonies highlighted the League, its conventions, and the arguments of its delegates. Maritime editors kept a keen eye on the idea of an elective upper house, whether they supported it or not (Fredericton *Head Quarters* 1849, 1850; Halifax *British Colonist* 1849a, 1849b, 1850a, 1850b).

Despite these apparent successes elsewhere, the British American League would not survive into 1851. The elective principle had torn it into two warring camps. The League's broader reaction against responsible government and its rejuvenated brand of conservatism had nonetheless travelled across British North America. These ideas, including elective Legislative Councils, would soon worm their way into colonial legislatures. From there, they would take on lives of their own.

Conservative legislation and the elective principle

In this regard, conservatives from Nova Scotia picked up the torch first. Responsible government, according to Nova Scotia's leading conservative, J. W. Johnston, had 'placed the Local affairs of the Province in the hands of the Executive Council unrestrained by any control on the part of the Lieutenant Governor or the Imperial Government' (Johnston 1850, p. 5). Executive oligarchy and party interests now reigned supreme. The 'Canadian Rebellion Reward Bill', as Johnston called it, had proven that the upper branches of government could no longer curtail unjust legislation under the responsible system. In Nova Scotia as well, Johnston saw the province's new Reform government acting in ways that sowed the same discordant seeds. Despite imperial policy, the new executive had dismissed one hundred Nova Scotian magistrates without cause or explanation, only to appoint 250 replacements. Reformers now sat on county benches across the province with friendship serving as their primary qualification (Johnston 1850, pp. 6–8; cf. Halifax *British Colonist* 1849c). Nova Scotia's new Reform executive had thus revealed an apparent willingness to exploit responsible government even

at the expense of local justice. Propelled by these concerns – alongside Prime Minister Lord John Russell's recent acceptance of an elective upper house for the Cape Colony in South Africa – Johnston read a series of sweeping resolutions to Nova Scotia's House of Assembly, headlined by 'the Election of the Legislative Council by the people' (Johnston 1850, p. 5; cf. Wight 1947, pp. 71–72). Johnston argued that only an elective upper house would break executive dependency and 'weaken those influences that result in merely party adhesions' (Johnston 1850, p. 5; cf. Nova Scotia 1850, pp. 565, 569). Johnston's conservative resolution for an elective Legislative Council signalled the first of its kind in British North America's history.

Johnston, in the end, failed in this initial resolution. A similar motion failed within Nova Scotia's upper house as well (Halifax *British Colonist* 1850c, 1850d, 1850e, 1850f). The province's Reform majority, having just secured responsible government, aligned against any constitutional change that might jeopardise its continued survival (Nova Scotia 1850, pp. 602–605). Even so, the idea of elective Legislative Councils gathered steam within British North American conservative circles. By March of 1850, Prince Edward Island conservatives had also given notice 'to render the Legislative Council ELECTIVE' based upon the belief that only an elected upper house would be 'truly "responsible" and useful to the public' (Charlottetown *Islander* 1850). Unfortunately for these conservatives, their motion died when the legislative session ended. From May to August of the same year, the Canadian Legislative Assembly also heard a total of four conservative motions for an elective upper house based upon similar arguments (Province of Canada 1850, pp. 17–18, 40, 91–94, 245). These motions also failed as well when Canada's Reform majority sided against them as threats to responsible government.

In New Brunswick, however, a conservative coalition government held power. Much like their compatriots elsewhere in British North America, New Brunswick conservatives also believed that

> [t]he extension of the principle of self-government has so increased the power of the House of Assembly over the Legislative Council [. . .] that the Legislative Council does not now retain the constitutional check which that Branch is called upon to exercise according to the theory of our mixed form of Government.

Seizing on the Imperial government's promise to the Cape Colony, these conservatives formally proposed an elective Legislative Council for New Brunswick so 'as to secure a more perfect constitutional balance [. . .] than any other attainable in the present state of Colonial Society' (New Brunswick 1850, pp. 348–349). The proposal received the Assembly's formal approval in April of 1850 and the colonial secretary's attention the following November. After some delay, New Brunswick obtained its reply in mid-February of 1851. The Imperial Government had no objection to an elected Legislative Council so long as it came with restrictive property qualifications attached for either electors or candidates (New Brunswick

1851a, p. 42). Such a decision had far-reaching implications. Not only had New Brunswickers obtained permission for an elective upper house but British North America's opponents to responsible government had also received the precedent they needed. If these conservatives wanted to restore legitimacy and power to their Legislative Councils, the Colonial Office accepted the elective principle so long as restrictive qualifications arrived alongside.

While New Brunswickers had obtained permission for an elective Legislative Council first, their pursuit of the principle ultimately went no further. When confronted with elective legislation tabled within New Brunswick's upper house in February of 1851, the province's Legislative Councillors themselves saw no reason as to why they should stoop to running for their offices (New Brunswick 1851b, pp. 62, 119). The majority of these Councillors believed that the Legislative Council had

> hitherto performed its function with every consideration of the public interest; and while preventing on the one hand improvident expenditure, hasty and imprudent legislation, it has on the other carefully avoided all captious or factious opposition to any well digested measure.

Because New Brunswick's Legislative Councillors reportedly continued to perform their customary duties, these same Councillors concluded that 'the Country is not prepared for, nor favourable to, such an organic change in the constitution of this Province' (New Brunswick 1851b, pp. 164–165). As a result of this intransigence, New Brunswick would retain an appointed Legislative Council for as long as it kept an upper chamber (Campbell 2007).

Nova Scotia, on the other hand, would come much closer to making its Legislative Council elected. Beginning in 1852, Nova Scotia's conservative legislators pushed elective legislation by adapting the language of democratic reform to a conservative's view of the British mixed constitution. According to J. W. Johnston, the elective principle was 'a step in advance' not only because it gave Nova Scotians 'the power of choosing their own law-givers' but also because it '[gave] to our constitution that stability without which any constitution is worth but little' (Halifax *British Colonist* 1852a, 1852b). Stability, here, would come through constitutional balance, and constitutional balance, in turn, would come through property. The House of Assembly had just replaced its property-based franchise with a ratepayers' franchise the previous year (Nova Scotia 1851). The latter's inclusiveness meant that the province's lower house now spoke for the people more than ever before. An elective Legislative Council, according to conservatives like Johnston, needed clear property qualifications to ensure the people's voice did not overwhelm any further those of property and wealth. Johnston's own suggestions looked to put these beliefs into practice. According to Johnston's original formulation, voters at Legislative Council elections would have had to possess real estate worth at least £100 and have it registered at least six months prior to an election. Candidates, conversely, would have needed to possess ten times that amount of real property – at least £1,000 worth – and have held the status of

British subject for at least thirty years. While Johnston eventually reduced these qualifications, he still ensured to foreground real property so 'as to preclude cavil or opposition from any, no matter how conservative in principle' (Halifax *British Colonist* 1852a). It would take some time, but these resolutions eventually came to vote in 1858 once Johnston and his Conservative party formed government.

Because of the Conservative strategy, the province's Liberal opposition had tremendous difficulty coordinating its response. On the one hand, some viewed the legislation as radical insofar as they believed it 'the duty of the Crown officers to preserve the form of government [. . .] and not to impose on us such a ridiculous hybrid, mongrel sort of constitution' (Nova Scotia 1858, p. 105). Conversely, other Liberals viewed an elective Legislative Council as intrinsically, even dangerously, conservative because it would 'strike a fatal blow at the [responsible] system of government' by eventually 'denud[ing] [the House of Assembly] of all real practical power'. More specifically, they worried that Johnston's proposed 'superior franchise' for Legislative Council elections would 'strike a death blow to the power of [the lower house]' in terms of its control over public spending (Nova Scotia 1858, pp. 107–108). These Liberals feared that a newly reinvigorated upper house – governed by higher franchise and candidacy qualifications – could legitimately claim to represent the property and wealth of Nova Scotia. An elected legislative body that represented a province's wealth theoretically had greater claim to dictate how government spent that wealth. Control over revenues could then conceivably shift from the lower house to the upper, thereby stripping the Assembly of its greatest privilege and taking the power of the purse from the people's hands. Although it may have appeared as radical, Johnston's game was about as conservative as it got. In the end, Nova Scotia's elective Legislative Council legislation deadlocked the Assembly, twenty-six to twenty-six. Johnston, as Conservative party leader, refused to pursue the legislation without a clear majority (Halifax *British Colonist* 1858). Soon enough, the Conservative fell from office, and Johnston retired from legislative politics. Nova Scotia's window for an elected upper house had ultimately closed for good.

New Brunswick and Nova Scotia would never have elective Legislative Councils despite the precedents they had set. Conservative arguments for constitutional balance and legislative legitimacy could not sway enough people to pursue further changes to responsible government. Those same arguments, however, had different effects in the Province of Canada and Prince Edward Island. In Canada, radical demands for widespread elective institutions had merged with a growing conservative acceptance of elective upper houses by the early 1850s. While these radicals had proposed qualifications actually lower than those for the Legislative Assembly, Canada's conservatives had something else in mind. As conservatives gained further power within the Assembly between 1852 and 1856, candidacy qualifications proposed for elected Legislative Councillors swelled from mere residency to £1,000 worth of unencumbered real property to £2,000 worth of unencumbered real property (Province of Canada 1852b, p. 197; Province of Canada 1853, p. 924; Province of Canada 1856b, p. 212). Even wealthy professionals in Canada's largest cities may not have held estates so large. Indeed,

George-Étienne Cartier – one of Montreal's most prominent lawyers and attorney general for Canada East from 1858 to 1862 – had paid only £1,600 for his well-appointed three-storey residence in downtown Montreal (Young 1981).

As these qualifications increased, Canada West's leading reformer, George Brown, looked on in horror. Just like reformers in Nova Scotia, Brown railed against an elected Legislative Council because, in his own words:

> It is a Tory measure [. . .] and will be resisted by every man who truly favours the cause of progression. [. . .] In this country it emanated from the Tory league, and in Nova Scotia it was submitted to Parliament by the Tory Attorney General, Mr. Johnston, and resisted by the progressive party on the ground that it was destructive to responsible government, that bane of Toryism.
>
> (Province of Canada 1852a, pp. 1105–1107)

Brown continued his attack outside Parliament through his newspaper, the Toronto *Globe*. Simultaneously enraged and mystified, he asked his readers:

> would this second elective chamber destroy Responsible Government? Of course it would. [. . .] We can understand the heat of the Tories, – we cannot understand the haste of Reformers to pull down a Constitution which gives them full and direct power. After fighting thirty years to obtain a position, and finding it to realize all our expectations – shall we fling it away without one solid complaint, to run after a theory?
>
> (Toronto *Globe* 1852)

As he reflected on these questions, Brown ultimately arrived at the conclusion that '[i]nstead of advancing in liberal opinions we are going back – instead of the control of the public will being more direct it is more remote' (Toronto *Globe* 1853). Despite Brown's warnings against further constitutional change, Canadian radicals united with the province's Conservatives in 1856 to establish British North America's first elective Legislative Council. The legislation required future Councillors to possess in fee simple the aforementioned £2,000 worth of real property (Province of Canada 1856a). As Canada's wealthiest inhabitants took their seats within the Legislative Council, they found themselves well placed to defend the interests of accumulated wealth. The people already had their house; the province's landed interests could once again claim theirs.

With the Canadian precedent emerging before them, Prince Edward Island's conservatives now made their final push for an elective Legislative Council as well. By 1859, Island voters had returned their Conservative party to power. In the meantime, public meetings across the Island demanded an elective Legislative Council to better realise 'true' responsible government (Charlottetown *Islander* 1858). By 1861, Island Conservatives had engineered enough support in both legislative houses to get elective legislation passed (Charlottetown *Examiner* 1860a, 1860b, 1860c). The legislation's final form, however, emerged at the behest of the new colonial secretary, the duke of Newcastle. Instead of property qualifications

for candidates, Newcastle preferred property qualifications for electors, which the government ultimately pegged at £100 of real property (Prince Edward Island 1862). Unlike in the Province of Canada, where property qualifications remained the basis for electoral enfranchisement, Prince Edward Island had linked its franchise to the performance of statute labour in 1853 (something Island men had to perform anyway) (Prince Edward Island 1853; Grittner 2012). Such a franchise had pushed colonial governance even further towards male participatory democracy. An elective Legislative Council, elected solely by property holders, promised to roll back this democratic advance and give Island proprietors a much stronger political voice (Charlottetown *Islander* 1863). Through the elective principle, the Island's landed elite had thus wrested back its house. As Legislative Councillors returned to their traditional position as propertied mediators between the people and the Crown, the question soon became, how would they use that position once they took their seats?

Elective legislative councils in principle and in practice

Canada's leading nineteenth-century conservative and first prime minister, John A. Macdonald, once pronounced that upper houses needed to represent property because '[t]he rights of minority must be protected, and the rich are always fewer in number than the poor' (Browne 2009, p. 98). Colonial conservatives like Macdonald had turned to elective Legislative Councils following responsible government in an attempt to put this idea into practice and limit democratic influence across British North America. Through the political legitimacy offered by direct election, British North America's upper houses could have conceivably gained the ability to not only stand up to the people's assemblies but also usurp their power (thereby undercutting responsible government itself). Yet these goals ultimately proved easier conceived than accomplished within the British North American setting. In the Province of Canada, the £2,000 candidacy qualification had drastically limited the pool of potential Councillors because few inhabitants possessed so much property in fee simple. While some constituencies held spirited elections, a full two-thirds of Council seats went uncontested by 1864 (Emery 2012; Hart 1960). The most talented candidates wanted to sit in the Legislative Assembly anyway, alongside their party leaders (Ajzenstat 2003). Canada's elective Legislative Council soon became a halfway house for those who lost their seats in the Assembly. Only '[o]ld men, dead politically or nearly dead physically' sat there by choice (in Shirley Carkner Hart's colourful words) (Hart 1960, p. 207). In 1859, the Legislative Council showed a glimmer of independence when, as a 'co-ordinate and co-equal branch', it refused to pass the annual supply bill that granted public spending (Province of Canada 1859, pp. 421, 438). Such defiance proved fleeting, and supply passed mere days later after some absentees returned and voted along party lines (Province of Canada 1859, p. 468). Canada's Legislative Council would never try anything like it again (Province of Canada 1865, p. 117). Its members, collectively, had neither the ambition nor the acumen to truly stand up to the people's house.

The elective principle similarly failed to rejuvenate the Legislative Council on Prince Edward Island. While some premiers had attempted to lead

government from the elected upper house, they quickly found themselves overshadowed as colonial finances remained firmly entrenched within the people's assembly. Soon enough, Islanders of all political stripes began to demand the upper chamber's total abolition. Some saw it as a 'useless institution' filled with 'rich noodles' (Charlottetown *Examiner* 1878a). Others viewed it as 'effete and expensive', wasting $7,000 per year (Charlottetown *Examiner* 1878b). Perhaps most important of all, conservatives who had supported the elective principle now derided the Legislative Council as neglectful of its duties. 'These Councillors were put in by the property-holders to look specially after their rights of property, and guard against hasty, oppressive or unjust legislation', one conservative editor declared in 1878. 'Every one of them [. . .] grossly violated the sacred trust reposed in them by carelessly and hastily "piling on the agony" upon the wronged country' by passing unpopular legislation in the form of direct taxes (Charlottetown *Presbyterian and Evangelical Protestant Union* 1878). The supposedly conservative body had proven far less conservative and far more partisan than hoped. It did not help that judges had interpreted Prince Edward Island's Legislative Council franchise incredibly broadly. Besides freeholders and leaseholders, squatters also voted at Legislative Council elections so long as they squatted on £100 (or $325) worth of land (Public Archives and Record Office of Prince Edward Island 1877–8). Such electors certainly did not represent the Island's landholding elite.

Prince Edward Island's elective Legislative Council would limp on through to 1893. Islanders ultimately recognised that they had too much government for such a small province and amalgamated their two houses into one (Harvey 1922; Kennedy 1997). By then, Canada's elective Legislative Council was long dead. The new provinces of Quebec and Ontario had rejected the elective principle at Confederation in 1867. Quebec returned to an appointed upper house, while Ontario abolished its upper house altogether. The new Dominion of Canada, with its capital in Ottawa, would also resort to an appointed Senate upon its creation in 1867. The elective principle had clearly disappointed its previous adherents (Ajzenstat 2003). It had not rebalanced the British North American constitutions, as promised; it had not waged war for landed interests; and it had not undercut responsible government. By the time legislators debated Canadian Confederation in 1864 and 1865, even John A. Macdonald showed little enthusiasm for the elective principle (Province of Canada 1865, p. 35). Conservatives like Macdonald had come to realise that it was easier to work within the responsible system – and to manipulate it – than to attack it directly through elective institutions (Ducharme 2014a). A weakened upper house, reliant upon government appointments, served shifting strategies in this regard.

References

Ajzenstat, J. (2003), 'Bicameralism and Canada's founders: The origins of the Canadian Senate', in: Joyal, S. (ed.), *Protecting Canadian Democracy: The Senate You Never Knew* (Montreal-Kingston: McGill-Queen's University Press), pp. 3–30.

Allin, C.D. (1915), *The British North American League*, *1849* (Toronto: The Ontario Historical Society).

Beck, J.M. (1957), *The Government of Nova Scotia* (Toronto: University of Toronto Press).

British American League (1849a), *Minutes of the Proceedings of a Convention of Delegates of the British American League, Held at Kingston (Canada West) on the 25th, and Adjournment the 26th, 27th, 28th and 31st Days of July 1849* (Kingston: The Chronicle and News Office).

British American League (1849b), *Minutes of the Proceedings of the Second Convention of Delegates of the British American League, Held at Toronto, C. W., on Thursday, November 1, and by Adjournment on the 2nd, 3rd, 5th, 6th and 7th of November 1849* (Toronto: The Patriot Office).

Browne, G.P. (ed.) (2009), 'Hewitt Bernard's notes on the Quebec Conference, 11–25 October, 1864', *Documents on the Confederation of British North America: A Compilation Based On Sir Joseph Pope's Confederation Documents Supplemented by other Official Material* (Montreal-Kingston: McGill-Queen's University Press), pp. 93–126.

Campbell, G. (2007), 'Defining and redefining democracy: The history of electoral reform in New Brunswick', in: Cross, W. (ed.), *Democratic Reform in New Brunswick* (Toronto: Canadian Scholars' Press), pp. 273–299.

Careless, J.M.S. (1967), *Union of the Canadas: The Growth of Canadian Institutions 1841–1857* (Toronto: McClelland and Stewart).

Charlottetown *Examiner* (1860a), 'The Legislative Council', 24 April, p. 3.

Charlottetown *Examiner* (1860b), 'The Swamping of the Legislative Council', 22 May, p. 3.

Charlottetown *Examiner* (1860c), 'The Swamping of the Council', 12 June, p. 2.

Charlottetown *Examiner* (1878a), 'Abolition of the Legislative Council', 19 April, p. 1.

Charlottetown *Examiner* (1878b), 'Legislative Council Elections', 11 October, p. 3.

Charlottetown *Islander* (1850), 'The Legislative Council', 22 March, p. 3.

Charlottetown *Islander* (1858), 'Public Meeting at Souris', 12 March, p. 2.

Charlottetown *Islander* (1863), 'Political Meeting in the Second Elective Legislative Council District', 2 January, p. 2.

Charlottetown *Presbyterian and Evangelical Protestant Union* (1878), 'The Legislative Council Elections', 7 November, p. 8.

Ducharme, M. (2014a), 'Macdonald and the Concept of Liberty', in: Dutil, P. and Hall, R. (eds.), *John A. Macdonald at 200: New Reflections and Legacies* (Toronto: Dundurn Press), pp. 141–169.

Ducharme, M. (2014b), *The Idea of Liberty in Canada During the Age of Atlantic Revolutions, 1776–1838* [transl. Peter Feldstein] (Montreal-Kingston: McGill-Queen's University Press).

Emery, G. (2012), *Elections in Oxford County, 1837–1875: A Case Study of Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press).

Fredericton *Head Quarters* (1849), 'The Address of the British League', 15 August, p. 2.

Fredericton *Head Quarters* (1850), 'Editorial', 16 January, p. 3.

Fuimus (1847), *Letter to His Excellency the Right Honorable Lord Elgin, on Responsible Government, As applied simply to the Province of Canada; Together with his Lordship's Celebrated Speech, Delivered in the House of Commons, as Lord Bruce, in 1841, Deprecating, in the Strongest Terms, All Appointments to Office by a Tottering Ministry, Not Enjoying the Confidence of the People* (Montreal: Donoghue & Mantz).

Gamble, J.W. (1850), *To the Members of the Yorkville Branch of the British American League* (Vaughan, ON).

Grittner, C. (2012), 'Working at the crossroads: Statute labour, manliness, and the electoral franchise on Victorian Prince Edward Island', *Journal of the Canadian Historical Association* 23(1), pp. 101–130.

Halifax *British Colonist* (1849a), 'The League', 16 August, p. 2.
Halifax *British Colonist* (1849b), 'The League', 18 August, p. 2.
Halifax *British Colonist* (1849c), 'A Greedy Executive', 15 September, p. 2.
Halifax *British Colonist* (1850a), 'Latest by Telegraph', 12 January, p. 2.
Halifax *British Colonist* (1850b), 'From Canada', 22 January, p. 2.
Halifax *British Colonist* (1850c), 'Provincial Legislature. Legislative Council. Question of Elective Council', 16 April, p. 1.
Halifax *British Colonist* (1850d), 'Provincial Legislature. Legislative Council. Question of Elective Council', 18 April, pp. 1–2.
Halifax *British Colonist* (1850e), 'Provincial Legislature. Legislative Council. Question of Elective Council', 20 April, pp. 1–2.
Halifax *British Colonist* (1850f), 'Provincial Legislature. Legislative Council. Question of Elective Council', 25 April, pp. 1–2.
Halifax *British Colonist* (1852a), 'Provincial Parliament. House of Assembly', 3 February, p. 2.
Halifax *British Colonist* (1852b), 'Hon. Mr. Johnston's Speech on the Elective Legislative Council Bill – *Concluded*', 6 March, p. 2.
Halifax *British Colonist* (1858), 'Editorial', 9 March, p. 2.
Hart, S.E.C. (1960), *The Elective Legislative Council in Canada under the Union: Its Role in the Political Scene* (MA thesis: Queen's University).
Harvey, D.C. (1922), 'The passing of the second chamber in Prince Edward Island', *Report of the Annual Meeting of the Canadian Historical Association* 1(1), pp. 22–31.
Johnston, J.W. (1850), *Speech Delivered by the Hon. J. W. Johnston, in the House of Assembly, On the 19th March, 1850, on Introducing Resolutions for Defining the Nation and Foundation of the Self-government of Nova Scotia in Her Local Affairs: And in Favor of an Elective Legislative Council* (Halifax: The British Colonist).
Kennedy, E. (1997), 'Tabling the legislature: One hundred years of general elections, 1893–1993', *Island Magazine* 42, pp. 13–24.
Keyssar, A. (2000), *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books).
Lower Canada (1834), *Journals of the House of Assembly of Lower Canada*.
Mackay, R.A. (1963), *The Unreformed Senate of Canada* [3rd rev. edition] (Toronto: McClelland and Stewart).
MacNutt, W.S. (1960), *New Brunswick. A History: 1784–1867* (Toronto: Macmillan).
McArthur, D. (1930), 'A Canadian experiment with an elective upper chamber', *Proceedings of the Royal Society of Canada* 24, 3rd series, section II, pp. 79–88.
McNairn, J.L. (1996), 'Publius of the north: Tory republicanism and the American constitution in Upper Canada, 1848–54', *Canadian Historical Review* 77(4), pp. 504–537.
McNairn, J.L. (2000), *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791–1854* (Toronto: University of Toronto Press).
New Brunswick (1850), *Journal of the House of Assembly of the Province of New Brunswick*.
New Brunswick (1851a), *Journal of the House of Assembly of the Province of New Brunswick*.
New Brunswick (1851b), *Journal of the Legislative Council of the Province of New Brunswick*.
Nova Scotia (1850), *Journal and Proceedings of the House of Assembly*.
Nova Scotia (1851), 'An act to extend the elective franchise', *Acts of the General Assembly of the Province of Nova Scotia*, 14 Vic., c. 2.
Nova Scotia (1858), *The Debates and Proceedings during the Third Session of the Twenty-First Parliament of the Province of Nova Scotia*.

Prince Edward Island (1853), 'An act to extend the elective franchise', *The Acts of the General Assembly of Prince Edward Island*, 16 Vic., c. 9.

Prince Edward Island (1862), 'An act to change the constitution of the legislative council, by rendering the same elective', *The Acts of the General Assembly of Prince Edward Island*, 25 Vic., c. 18.

Province of Canada (1849), 'An Act to provide for the indemnification of parties in Lower-Canada whose property was destroyed during the Rebellion in years one thousand eight hundred and thirty-seven, and one thousand eight hundred and thirty-eight', *Provincial Statutes of Canada*, 12 Vic., c. 58.

Province of Canada (1850), *Journals of the Legislative Assembly of the Province of Canada*, Vol. 9.

Province of Canada (1852a), *Debates of the Legislative Assembly of United Canada*, Vol. 11, part 1.

Province of Canada (1852b), *Journals of the Legislative Assembly of the Province of Canada*, Vol. 11, part 1.

Province of Canada (1853), *Journals of the Legislative Assembly of the Province of Canada*, Vol. 11, part 2.

Province of Canada (1856a), 'An Act to change the Constitution of the Legislative Council by rendering the same Elective', *Statutes of the Province of Canada passed in the Nineteenth and Twentieth Years of the Reign of Her Majesty Queen Victoria and in the Second Session of the Fifth Parliament of Canada*, 19 & 20 Vic., c. 140.

Province of Canada (1856b), *Journals of the Legislative Assembly of the Province of Canada*, Vol. 14.

Province of Canada (1859), *Journals of the Legislative Council of the Province of Canada*, Vol. 17.

Province of Canada (1865), *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 3rd Session, 8th Provincial Parliament of Canada* (Quebec: Hunter, Rose & Co.).

Public Archives and Records Office of Prince Edward Island (1877–8), RG2 Legislative Council fonds, series 2 Election papers, subseries 2, volume 2 'Revision of List of Electors for Second Electoral District for the Legislative Council for King's County.'

Scalia, L.J. (1999), *America's Jeffersonian Experiment: Remaking State Constitutions 1820–1850* (DeKalb, IL: Northern Illinois University Press).

Smith, D.E. (1999), *The Republican Option in Canada, Past and Present* (Toronto: University of Toronto Press).

Toronto *British Colonist* (1850), 'Address of the Central Committee of the British American League, to their Brethren, Countrymen and Fellow Colonists', 7 May, p. 2.

Toronto *Globe* (1852), 'An Elective Legislative Council', 13 April, p. 2.

Toronto *Globe* (1853), 'Elective Legislative Council', 4 June, p. 2.

Toronto *Independent* (1849), 'New Brunswick on the Canada League and Annexation', 25 October, p. 4.

Toronto *Independent* (1850), 'Getting on by degrees', 23 January, p. 3.

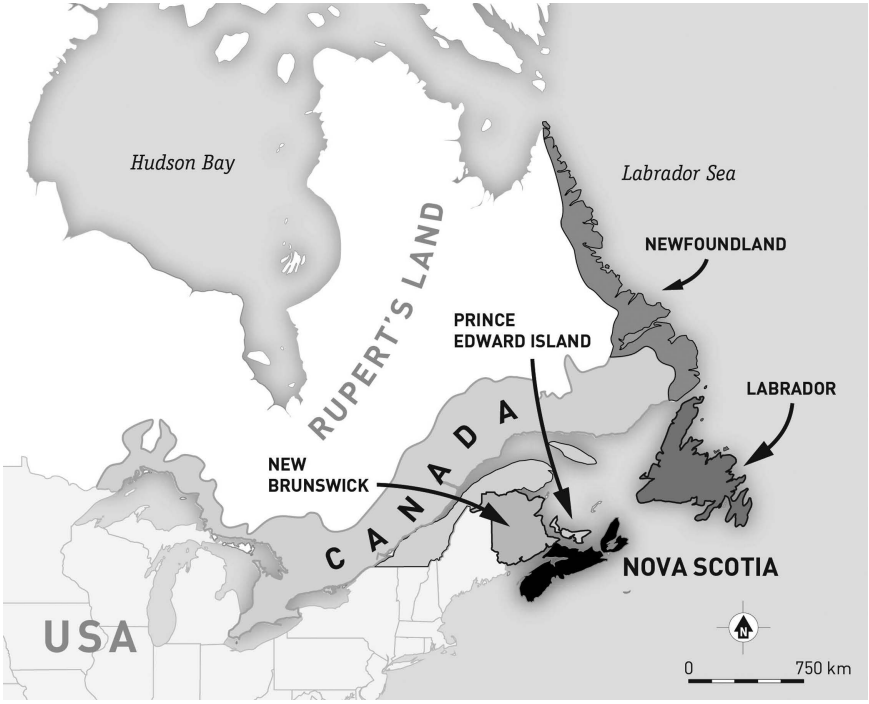
Toronto *North American* (1850), 'New Brunswick Colonial Association', 21 June, p. 3.

Way, P. (1995), 'The Canadian tory rebellion of 1849 and the demise of street politics in Toronto', *British Journal of Canadian Studies* 10(1), pp. 10–30.

Wight, M. (1947), *The Development of the Legislative Council 1606–1945* (London: Faber and Faber).

Young, B. (1981), *George-Etienne Cartier: Montreal Bourgeois* (Montreal-Kingston: McGill-Queen's University Press).

Eastern Northern America (Canada), c. 1840



(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

7 Aristocratic populism

The Belgian Senate and the language of democracy, 1848–1893

Marnix Beyen

Introduction

The Belgian Revolution of 1830 is often depicted as a conservative or 'stolen' revolution (Verschaffel & Rietbergen 2006). Triggered by social, ideological and religious revolt against an autocratic monarch, it employed the language of popular sovereignty in its first phase. During the constitutional debates, however – so the traditional storyline goes – the vested and new élites took power and replaced the language of popular sovereignty with that of national sovereignty and patriotism. According to this latter discourse, it was not the actual Belgian people who had taken power during the revolution but the Belgian nation – being a metaphysical entity encompassing past, present and future generations. Such a trans-historical nation could by definition not rule itself and therefore had to be represented by its élites. Hence, still according to that same narrative, conservative elements, such as censitary suffrage and bicameralism, had to be introduced in the institutional architecture of the new state. They would help to defend the age-old and venerable 'nation' against the short-sighted and self-interested 'people'.

Recently, scholars have unmasked this traditional view as a postwar invention. Based on the ideas of the interwar French constitutionalist Raymond Carré de Malberg, it is supposed to have been generalised by his Ghent colleague André Mast in the wake of the 1950 referendum about the fate of Leopold III. By presenting national instead of popular sovereignty as the foundation of the Belgian state, he tried to delegitimise referendums as a political tool. In reality, as scholars such as Raf Geenens and Stefan Sottiaux argue, the founding fathers of the Belgian state hardly made a distinction between 'the nation' and 'the people'. Hence, even if they wrote in the constitution that 'all powers emanate from the nation', they did not exclude popular sovereignty (Geenens & Sottiaux 2015; Clement & Van de Putte 2018). Democratic values were not, according to these scholars, hijacked for conservative purposes. Much rather, they present the Belgian constitution of 1831 as a hybrid compromise between several ideologies that were not as distinct from one another as they would later be imagined to be.

My own research has revealed that 'popular sovereignty' was a central concept in the discourse of members of the nineteenth-century Belgian House of Representatives. Liberals and conservatives alike stressed that they acted in the name

of the people in Parliament, and a common reproach in parliamentary discussions was that the opponent had 'betrayed popular sovereignty'. The difference with Dutch parliamentary culture, where the notion of popular sovereignty was viewed as a haunting spectre rather than an ideal to be strived for throughout the nineteenth century, turned out to be considerable (Beyen & Te Velde 2016).

Even if the founding fathers had the intention of keeping the threatening notion of 'popular sovereignty' at bay, they do not seem to have been successful. At least, such was the case in the House of Representatives. Was the situation different when we look at the Senate? At first glance, there are reasons to expect that it was. When looking at the institutional architecture of this upper chamber, it appears as an aristocratic antithesis of the (relatively) democratic House of Representatives. To be sure, the Senate was never meant to be a house for hereditary aristocrats alone; rather, it was supposed to represent aristocracy in the ancient Greek sense of the word, i.e. 'the rule of the best'. As the defenders of the vested interests of the countryside, however, noblemen were readily counted among these 'aristocrats' in the broader sense of the word.

The difference between the two chambers was found first of all in the conditions of eligibility. While in the House of Representatives these conditions were limited to sex (male) and age (25 years or older), the age threshold was higher (40) for election to the Senate, and candidates had to pay at least 1,000 florins (or 2,116 francs) in taxes. The constitution also stipulated a minimum rate of one candidate for every 6,000 inhabitants. In provinces where this minimum was not reached, those who paid the highest taxes below 1,000 florins would be added to the list of eligible candidates. In the lived reality of nineteenth-century Belgium, it turned out that candidates from the less wealthy strata often had to be added to the list. Even so, this stipulation contributed to a considerable (albeit slowly decreasing) over-representation of noblemen in the Belgian Senate throughout the nineteenth century (Stengers 2017; Stengers 1975).

On the other hand, the compromise of 1831 also introduced a 'democratic' element in the composition of the Belgian Senate. If its members by definition belonged to the highest strata of society, its electorate was exactly the same as that of the House of Representatives. In order to receive a vote, one had 'only' to be a man 25 years or older and pay 100 francs or more in taxes. Seen from the perspective of suffrage, the Belgian Senate undoubtedly was one of the most democratic upper chambers of its era.

This duality of the Senate's composition raises interesting questions with regard to the political language it engendered. Was it primarily an 'aristocratic' – and therefore conservative – language or did it leave room for democratic aspects? Where did the Belgian senators situate the source of sovereignty, if they did so at all – in the monarch, in a metahistorical 'nation', in the actual 'people', or in a mixture of all these sources?

Attempts to answer these questions in generalising ways are hampered by the fact that the Belgian Senate's proceedings have not been digitised in a searchable way, as has been done for the House of Representatives. Hence, quantitative and longitudinal assessments of the occurrence of terms such as '(popular)

sovereignty' are very hard to make. Therefore, I focus on specific debates, occurring in two periods of intense democratisation (1848 and 1893). Even then, I do not analyse the entire debates but opt for a microhistorical and hermeneutical analysis of specific passages. More specifically, I single out passages in which senators reflected on the identity and the role of their institution in the constitutional architecture in Belgium. Although I pay attention both to frequently recurring tropes and interventions that go against the grain, most will belong to the latter category. Rather than trying to reconstruct 'the' political language of the nineteenth-century Belgian Senate, I want to explore its limits: which discursive positions could be taken without being ostracised by the other members of the assembly? By quoting extensively from the proceedings, I try to bring the hitherto underexplored language of the Senate back to life in its richness and complexity.

1848: the voice of the people in the Senate

The revolutionary wave that travelled through large parts of Europe in 1848 left Belgium relatively untouched. This relative stability is most often explained by the fact that the Belgian government took some democratising measures (cf. Luykx 1977; Reynebeau 2003). The most important of these was the lowering of the franchise to its constitutional minimum of 20 florins (or 42 francs). By doing so, the government tried to prevent revolutionary movements in favour of greater democracy. Hence, even if this measure widened the electorate of both the House and the Senate considerably, it was more inspired by a form of 'preventative conservatism' than by a spirit of democracy (Girvin 1994). It should not come as a surprise, then, that the aristocratic Senate supported the measure with a large majority of twenty-six to seven (Luykx 1977). Moreover, in the discourse surrounding this electoral reform, senators tended to stress that it gave them the opportunity to play the moderating role that the constitution had assigned to their institution. The president of the Senate, the Tournai liberal Augustin Dumon-Dumortier, did so in a very elaborate way after the reform had been accepted. It is worthwhile to quote him extensively, since his words expressed feelings that seem to have been common among the senators at that time:

> The Senate, sirs, does not have the most brilliant role to play in the legislature. But it does have a role, and a very important one at that. One starts to recognise that, and soon it will be recognised everywhere, in all the constitutional countries where there is no moderating power, one will see that the governments will be at pains to sit down and move forward. We will always play our role of moderating and pacifying power with the same devotion. If the government and the other chamber have taken the initiative for great measures that have saved the country and that have made it pass the crisis that agitates all of Europe, one will never forget that we have taken part very actively in those measures by voting on them with a patriotic enthusiasm, that patriotism will never fail from the Senate's part. *L'Union fait la Force* [the official motto of Belgium]; we will stay united, we will stay

> strong, and we will defend the country's interests as we have done always since the day we were created.
>
> (Sénat de Belgique 1848, 27 June, p. 4)

Defending electoral reform was therefore wrapped not in the language of democracy but in that of patriotism and moderation. Should these terms simply be viewed as euphemisms for a defence of the monarchy and the aristocracy against the masses? The ensuing discussions about the address of the Senate as a reply to the throne speech made clear that they cannot simply be dismissed as such. In this address, as it was drafted by a special commission, paternalistic language was used about the need 'to search the necessary means to improve and to elevate the condition of the labour class'. It was stressed that this result could be reached not with the help of 'dangerous utopias' but only 'by moralising the working population, [. . .] by uplifting trade and industry, [. . .] by applying the arms that do not find an occupation to the improvement of the uncultivated lands'. 'The good practical sense and the feelings of philanthropy [*sentiments de philanthropie*] of our co-citizens', the address continued, 'will help the government to find the means to procure this interesting part of our population with the moral and material well-being that is the object of our studies' (Sénat de Belgique 1848, 28 June, p. 7). If some kind of social policy was advocated in the address, it did not seem to give a voice, let alone agency, to the people.

In the discussion about the commission's draft, however, a more active political role was assigned to the people. That was especially the case in the interventions by Alexandre de Royer de Woldre (also known as De Royer de Dour, 1795–1852), a baron from the Walloon city of Mons who had sat in the Senate since 1844, serving as its secretary between 1848 and 1850, and who leaned towards the liberal party. As a member of the commission that had drafted the address, he had inserted a passage pleading for a rationalisation of the civic guard, which would facilitate a reduction of expenses for the army. Since other members of the commission considered this an attack on the army – and, hence, indirectly on the king – the passage was removed from the draft that was presented to the plenary session. Not only did De Royer de Woldre protest vehemently against this removal but he also pleaded for the insertion of an amendment aiming at a 'social revision' of the functionaries' pensions as they were prescribed by a law of 1844. According to De Royer de Woldre, these pensions were an excessively heavy burden on the treasury, at the expense of the taxpayers.

Interestingly, this aristocrat justified his amendment by references to his voters and to 'the people' in general. Being a liberal, he expressed 'the most perfect confidence in the [Liberal] Cabinet' and especially in the minister of the Interior, but he immediately added that 'there is something more pressing than the intentions of the Cabinet, it is the voice of the people that has stigmatised this retirement pension law and that imperatively requires its revision'. This reference to 'the voice of the people' (*la voix du peuple*) in order to legitimise his own political behaviour was clearly taken from the language of popular sovereignty – a language De Royer de Woldre may have learnt while serving in Napoléon's armies

in 1813–1814 (cf. Mathieu 1910). Nonetheless, he used the terms 'people' and 'nation' synonymously, which became clear when he further dissected this 'voice of the people':

> That cry is unanimous in the nation. It has not been produced in the chambers, but it is unanimous in the country and I have to declare it, I have behind me 1500 voters who have sent me to this House in order to require the suppression of this law, and who will approve of my words.
>
> (Sénat de Belgique 1848, 28 June, p. 11)

This passage not only discursively interweaves 'the people', 'the nation' and 'the voters' into one homogeneous entity but also creates a dichotomy between this entity and 'the chambers'. As such, it contains the seeds of what would later become known as the language of populism. De Royer de Woldre seems to have understood that it was somehow unacceptable for an aristocrat to use such language in an aristocratic assembly. He was eager to add on 28 June 1848 that he had 'not accepted an imperative mandate' and that he 'would not have accepted it if it had been offered to me'. In doing so, he took his distance from the Rousseauist notion that members of an assembly should be accountable at each moment to their constituents and defended the autonomy of the representative. In spite of this autonomy, listening to the people/the nation was, he believed, the representative's primary task:

> I have understood the wish of the nation, I have understood the hardship under which the nation has sighed for some time, and it is necessary that this hardship disappears, it is necessary that this enormous expense that the people supports is alleviated.

The representative's autonomy, therefore, should be defended more against the throne and the cabinet than against 'the people'. Precisely that autonomous position *vis-à-vis* the king should be the point of departure for any address to the throne:

> if we can only insert in the address the paraphrase of the throne speech, then we should not discuss at all – we should limit ourselves to returning phrases and bringing them under the eyes of the throne. An address, however, is something else – it is the expression of the people, the expression of the country that mounts to the Throne, and if you can neither talk of the army nor of taxes, then to what is your address reduced?

If De Royer de Woldre persisted on 28 June 1848 'in demanding the maintenance in the address of the paragraph proposed by the commission', it was due to his desire

> to maintain for the Senate the right to say to the Crown (while observing the rules from which an assembly of this high stature should never deviate) what the people want; what the intimate thought of this assembly is.

Undoubtedly, De Royer de Woldre's insistence on the need to listen to the voice of the people was rather exceptional. Nonetheless, his position was defended by another Walloon aristocrat in the Senate, Camille baron de Tornaco from Huy (near Liege, 1807–1880). Like De Royer de Woldre, who was twelve years older, De Tornaco sided with the liberals. And like De Royer de Woldre, he stressed that he did not want to act against the king or the cabinet when he tried to maintain or insert certain passages in the address to the throne. On the contrary, he claimed on 29 June 1848:

> We have fulfilled a duty, that I will continue to fulfil very strictly towards the Cabinet. When one wants to preserve a king, one has to tell him the truth. When one wants to preserve a Cabinet, one owes it the truth, too.

This duty resided precisely in 'observing facts' and in 'reminding the power [*le pouvoir*] of the situation of the country'. In this respect, he found the executive in dire need of assistance:

> The bit of experience that I have amassed with these matters since the voters sent me to parliament, has proven to me that ministers often tend to have certain illusions with regard to the situation of the taxpayers; each year, we have seen an increase of the expenses, in spite of the incessant protests by the members of parliament, in spite of – and I remind you of this in honour of the Senate – the wishes expressed each year in this hall.
>
> (Sénat de Belgique 1848, 29 June, p. 16)

With words like these, De Tornaco seemed to follow De Royer de Woldre in his aristocratic populism: both legislative chambers had to make the voice of the people heard towards the king and the cabinet. The difference between both seemed to reside primarily in their assessment of the degree to which Parliament lived up to this task. De Royer de Woldre was rather negative about it: he believed that Parliament, as it actually operated (except for himself), sided with the authorities rather than the people. De Tornaco, for his part, did not see such a gap between the theory and the practice of parliamentary politics.

Even if De Royer de Woldre and De Tornaco were unable to alter the text of the address, their references to the voice of the people seem not to have aroused indignation. Far from being dominant, the language of democracy was accepted in the Senate – even if the word democracy was probably never used in a positive way.

1893: searching for legitimacy with the people

In the second half of the 1880s, social tensions in Belgian society resulted in large protest movements. The driving force behind them was the young but burgeoning socialist party (the 'Belgian Labourers' Party'). Apart from social laws, this party also claimed to advocate political democratisation. In 1893, a political majority in the House of Representatives changed the constitution in such a way

that a complicated, qualified form of universal male suffrage could indeed be introduced. All adult men received a vote for the legislative election; a second one was allotted to men who paid certain amounts of taxes. A third vote would even be given to people who possessed a university degree or a certificate of higher secondary education *or* who occupied professional positions that required such a form of schooling (Luykx 1977).

Unlike that of 1848, the 1893 reform also implied a fundamental transformation of the Senate. On the one hand, the electorate was no longer identical to that of the House of Representatives. On the other hand, the eligibility conditions for the senators were slightly lowered. In a complex set of electoral rules, two kinds of senators were created. The first group of senators, who amounted to slightly more than half of the Senate, were directly elected by the same plural system of universal male suffrage as the one applied to the House of Representatives (except that the voters had to be 30 years old instead of 25). For this category, the censitary eligibility conditions were lowered from 2,116 to 1,200 francs in taxes, and the minimum eligibility rate was lowered from 1/6,000 to 1/5,000 of the population. For the second group of senators, each provincial council assigned, without any eligibility conditions, two to four senators. This measure was not primarily introduced to strengthen the representation of regional interests in the Senate. Instead, it aimed at counterbalancing the democratisation of the eligibility conditions with a form of indirect election (as it existed in the Netherlands and France).

Although these measures did contribute to a certain degree of democratisation of the Senate's composition (the rate of noblemen decreasing from 51 per cent in 1892 to 45 per cent in 1894), it also enlarged the difference with the House of Representatives, where, after 1893, even members of the lower middle classes made their entrance (Libon & Nandrin 2017). Unavoidably, this duality was reflected in the self-representation and self-assessment of the senators. On the one hand, there was a certain pride in the fact that the Senate had once again played its moderating role by contributing to this solution. According to Charles de Coninck de Merckem (1836–1896), a Catholic West-Flemish politician who had recently become a baron, the upper chamber had 'proved, once again, its utility, the necessity of its existence by looking for and finding a satisfactory solution for the complex and difficult question of the revision of the constitution'. Since the Senate had taken 'a remarkable part in these debates', he expressed the hope 'that from now on its use and its existence will not be subjected to doubt anymore' (Sénat de Belgique 1893, 2 Sept., p. 664).

Unlike in 1848, the word 'democracy' was used positively (if only rarely) in these acts of self-glorification. The president of the Senate, Henri t'Kint de Roodenbeke de Naeyer (1817–1900), the Catholic baron of the East-Flemish town of Eeclo (Terlinden 1930), looked back at the passing of the constitutional reform in the following terms:

> May God protect our dear Fatherland! May it, under the roof of stable institutions and under the aegis of a national Dynasty that justly becomes more popular every day, offer to the world the example of a nation that is able to

> govern itself, by reconciling the preservation of order and peace with the wise and well-reflected deployment of democracy!
>
> (Sénat de Belgique 1893, 17 Oct., p. 2)

Implicitly, t'Kint de Roodenbeke de Naeyer associated the Senate with 'the preservation of order and peace', leaving 'the well-reflected deployment of democracy' to the House of Representatives. He did not, however, present the Senate as a bulwark against democracy.

If this self-complacent assessment of the Senate's role dominated after the vote of the constitutional reform, some of the senators during the debates had pleaded for more radical transformations of their own institution. The liberal Théophile Finet (1837–1910), representing the city of Arlon in the south of the Belgian Ardennes, was afraid that the maintenance of censitary eligibility qualifications would fatally diminish the legitimacy of the Senate in the eyes of the Belgian population:

> But look in which situation the Senate of censitaries will find itself if a conflict with the Chamber arises, and particularly if a question of either taxes, or military substitution, or heritage, or questions directly or indirectly related to individual fortune are at stake. The Senate may be perfectly right in the facts, but the electoral mass, composed of proletarians, will tell it's wrong.
>
> It will say: these are the rich ones, the censitaries, they do not want what the popular Chamber wants. And public opinion will say the Senate is wrong only because it will be composed of censitaries, and that will be the cause of its weakness.
>
> [. . .]
>
> Obviously, a censitary generally is conservative. But being rich does not suffice to exert prestige on public opinion, and what the Senate needs is a moral prestige that will make the country accept its decisions.
>
> (Sénat de Belgique 1893, 2 Sept., p. 644)

In order to strengthen his case against the censitary qualifications, Finet stressed that these had been 'excluded from all the Senates that have a more or less democratic character: it exists neither in France, nor in the United States, nor in Switzerland'. By presenting these countries as models, he implied that he considered democracy as a model for Belgium too. If the role of the Senate was to play a moderating role in this democracy, it could only do so if it was democratically legitimised. Unsurprisingly, this argument was used by a non-aristocratic senator, who, as a son of a labourer, had become an internationally active industrialist (cf. Syndicat d'Initiative de Jambes 2019).

Another industrialist-senator of non-noble descent, Finet's Liberal colleague from Charleroi (Hainaut), Emile Van den Dooren (1826–1909), made the same diagnosis but was even more pessimistic about the consequences of the Senate's choice not to promote a more radical transformation. In order to show that it had been 'a great mistake not to have increased to a very large degree the number

of eligibles to the Senate', he referred to the fact that his own constituency had only thirty-five eligible candidates for a population of 333,000 inhabitants. 'Maintaining such a privilege', he added, 'equals preparing the disappearance of the Senate'. Without mentioning the author (which was probably not necessary in a highly literate company such as the Senate), he referred to a fable of De La Fontaine to depict the consequences of this conservative decision: 'We have invited the people to a feast, but we serve it universal suffrage "in a narrow-necked vessel". It will only be able to enjoy it by overthrowing it and breaking it' (Sénat de Belgique 1893, 2 Sept., p. 644). In other words, the constitutional reform did not contain, according to Van den Dooren, a sufficient degree of democracy to prevent a revolution from taking place. Precisely because he did not want to contribute to such a state of affairs, he abstained from the vote.

Conclusion

It is impossible to say whether Belgian political history would have followed a different course if no Senate had been created. The dominant line of discourse within the nineteenth-century Senate was that it had played its constitutional role in an exemplary way. More precisely, there was a strong belief that the upper chamber had made an important contribution to the smooth adaptation of parliamentary institutions to the democratisation of society and hence to the success story of the Belgian state. Especially in times of accelerating democratisation, the Senate was needed to maintain law and order – such was the general view.

In this discourse, the Senate presented itself as a corrective against the 'rule of the mob' and not as the antithesis of democracy. Even if the word 'democracy' was seldom used in a positive way until the last decades of the nineteenth century, it was not unusual for senators to situate ultimate sovereignty in 'the people' rather than in the monarch or in transcendent forces. The Senate was all but immune to the language of popular sovereignty that prevailed in the Chamber of Representatives. This can at least partly be explained by the fact that, by the end of the century, a considerable portion of senators had been members of that latter house before they were elected to the Senate (Libon & Nandrin 2017).

The language of some senators could even be stamped as 'populist' in the sense that they defended the primacy of the people against the elites, the aristocracy and the king. The framing of this language, however, seems to have changed throughout the period. During the revolutionary wave of 1848, listening to 'the voice of the people' (a notion that was used in abstract and homogenising ways) was presented as a duty of the senators, in order to resist the royal prerogatives. It remains to be investigated whether this language was used primarily by those senators who had come to maturity during the French revolutionary and/or the Napoléonic period.

Forty-five years later, during the debates about the constitutional reform of 1893, this voice of the people seemed to have grown so loud that listening to it had become less of a duty than a necessity. By insufficiently democratising itself (by actually opening its doors to 'the people' – the *demos*), some senators of non-noble descent asserted that the Senate would threaten its own existence in a democratic world. In doing so, it would betray its own conservative duty of

maintaining and defending the traditional structures of society. Democratising itself was cast as a conservative duty in this discourse; conservatism, as a duty of the elites to the sovereign people. Combining these two duties was considered to be at the heart of the Senate's mission. In its self-perception, it remained deeply aristocratic and conservative, in the sense that it had to guarantee the 'rule (*kratos* in ancient Greek) of the best citizens (*aristoi* in ancient Greek)' in order to safeguard (*conservare* in Latin) the traditional structures of society. This function could only be exerted, however, at the grace of the sovereign people (*populus* in Latin). A refusal to listen to the voice of the latter would provoke revolution and ultimately the fall of the elites. Only populism and democracy, so it seemed, could save aristocratic conservatism in nineteenth-century Belgian political culture.

References

Beyen, M. and Te Velde, H. (2016), 'Passion and reason. Modern parliaments in the low countries', in: Ihalainen, P., Ilie, C. and Palonen, K. (eds.), *Parliament and Parliamentarism. A Comparative History of a European Concept* (New York: Berghahn Books), pp. 81–96.

Clement, J. and Van de Putte, M. (2018), 'The constitution of the Belgian people. The nation as legitimisation', *Journal of Constitutional History* 35, pp. 113–129.

Geenens, R. and Sottiaux, S. (2015), 'Sovereignty and direct democracy: Lessons from constant and the Belgian constitution', *European Constitutional Law Review* 11, pp. 293–320.

Girvin, B. (1994), *The Right in the Twentieth Century. Conservatism and Democracy* (London: Francis Pinter).

Libon, M. and Nandrin, J-P. (2017), 'De Senaat 1893–1918' in: Laureys, V., Wijngaert, M. van den and Velaers, J. (eds.), *De Belgische Senaat. Een geschiedenis. Instelling in verandering* (Tielt:Lannoo), pp. 60–71.

Luykx, T. (1977), *Politieke geschiedenis van België. Van 1789 tot 1914*, Vol. 1 (Amsterdam-Brussels: Elsevier).

Mathieu, E. (1910), 'Royer de Dour (Alexandre-Jean-Joseph, baron de)', in: *Biographie Nationale de Belgique*, Vol. 22 (Brussels: Académie Royale de Belgique), pp. 299–301.

Reynebeau, M. (2003), *Een geschiedenis van België* (Tielt: Lannoo).

Sénat de Belgique (1848), *Annales. S.E*. Available at: www.senate.be/www/?MIval=/index_senate&LANG=fr&MENUID=24400 (accessed 23 March 2019).

Sénat de Belgique (1893), *Annales*. Available at: www.senate.be/www/?MIval=/index_senate&LANG=fr&MENUID=24400 (accessed 23 March 2019).

Stengers, J. (ed.) (1975), *Index des éligibles au Sénat (1831–1893)* (Brussels: Palais des Académies).

Stengers, J. (2017), 'De Grondwet van 1831', in: Laureys, V., Van den Wijngaert, M. and Velaers, J. (eds.), *De Belgische Senaat. Een geschiedenis. Instelling in verandering* (Tielt: Lannoo), pp. 19–28.

Syndicat d'Initiative de Jambes (2019), 'Edition N°63 – Théophile-Joseph Finet (1837–1910)'. Available at: www.sijambes.be/art-et-patrimoine/155-theophile-joseph-finet-1837-1910.html (accessed 23 March 2019).

Terlinden, C. (1930), 't'Kint de Roodenbeke (Henri-Marie, baron puis comte)', in: *Biographie nationale de Belgique*, Vol. 25 (Brussels: Académie royale de Belgique), pp. 376–378.

Verschaffel, T. and Rietbergen, P. (eds.) (2006), *De erfenis van 1830* (Leuven-Voorburg: Acco).

8 Rejecting the upper chamber

National unity, democratisation and imperial rule in the Grand Duchy of Finland, 1860–1906

Onni Pekonen

Introduction

Finland underwent radical and abrupt parliamentary reform in the aftermath of the Russian Revolution of 1905. Europe's last four-estate system of representation was transformed directly into a unicameral parliament elected by universal and equal male and female suffrage in 1906. The decision to adopt a unicameral parliament was a dramatic departure from Finland's bicameral model parliaments, such as the Swedish *Riksdag*, which had dominated Finnish reform plans in the nineteenth century.

This chapter examines how and why Finnish reformers abandoned the bicameral model prevalent in European and North American discussions. Was the unicameral parliament merely a hasty improvisation resulting from the unexpected crisis of the Russian Revolution or a carefully prepared compromise? In order to understand the reform and its background, I examine how bicameral parliaments and their upper chambers were viewed in Finland based on the experiences and inspiration of other countries. What role did national and transnational political traditions, contexts and ideologies play? How did the Finnish reformers understand Finland's position as part of wider Nordic, European and North Atlantic parliamentary developments?

The chapter highlights, perhaps paradoxically, the central role of foreign examples, models and discussions in the efforts to create a national parliamentary tradition. Whilst Finland was part of transnational parliamentary publicity (Pekonen 2017b) and eager to learn from other countries, political reformers emphasised the need to apply foreign lessons to domestic circumstances. Finnish reform plans, prepared and debated for decades, were eventually realised and partly revised as a result of shifts in international politics.

Finland's constitutional status and national representation as part of the Russian Empire

Finland was annexed to the Russian Empire as a result of the Napoleonic Wars in 1809. Until then, Finland had been part of Sweden for over 500 years and constituted a sparsely populated area that made up approximately one-third of

the Kingdom. After the annexation, Finland became a relatively small north-western grand duchy of the Russian Empire, with the tsar as grand duke and its own national representative assembly. Tsar Alexander I summoned the Finnish estates (the nobility, the clergy, the burghers and the peasants) to the Diet of Porvoo in 1809, where he promised to uphold the constitutional laws, rights and privileges in Finland. From this event on, 'the Finnish constitution' became a question of varying dispute, especially between Finnish and Russian political and administrative elites. During the nineteenth century, Finnish political actors began to highlight the events at Porvoo as a state treaty, the founding moment of Finnish autonomy within the Russian Empire. Finnish politicians and scholars viewed the Swedish Instrument of Government of 1772 and the Union and Security Act of 1789 as Finnish constitutions, despite the fact that the emperor never officially validated them.

Until Finland's independence in 1917, the Finnish constitution was *de facto*: it seemed to exist and remain in force as long as it was respected and not challenged by the Finns and the Russians. One reason for this was the leeway it offered for both Finnish and Russian actors. On one hand, the Gustavian constitutions gave the monarch (the emperor) sufficiently vast powers. The task of the Diet of Finland was formally limited to examining and approving or rejecting proposals of the emperor. The proposals were prepared by Finland's domestic (*kotimainen*) government, which answered only to the emperor – not to the Diet. The domestic government was called 'the Senate', but it did not function as an upper chamber. On the other hand, the Finnish estates were able to expand their rights. Emperor Alexander II reconvened the estates in 1863 after a more than fifty-year hiatus, and after this the Diet met regularly, mostly in intervals of first five and then three years, until the Parliamentary Reform of 1906. Although the emperor had the right to reject any decision of the Diet, he mostly respected the Diet's decisions and took many of its petitions into account by transforming them into government proposals and reintroducing them to the estates. The emperor authorised the Diet Act of 1869, the first Finnish constitutional law, which, among other things, manifested the principle of the representation of the Finnish people. The Diet was the centre of Finnish public and political life from the 1860s onwards. Each decision the Diet made according to the (*de facto*) constitutions was an irreversible move towards strengthening Finland's special status within the Empire. Thus, the Diet was invaluable in strengthening the Finnish polity and protecting its interests (Engman 2017; Krusius-Ahrenberg 1981).

Alexander II introduced a reform program for Finland after Russia's defeat in the Crimean War. The final decision to convene the Diet was a result of the bloody January Uprising in Poland in 1863. As part of a series of concessions aimed at calming the situation within the Empire, Alexander II rewarded Finland with a Diet, which convened on 15 September 1863. Despite the enthusiasm for the reconvened Diet, Finnish political actors acknowledged the four-estate system as outdated and expressed hopes for a bicameral parliament. As in several other countries in the North Atlantic, suggestions were made for either reform or the establishment of a bicameral system. Encouraged by discussions in the press,

estate members petitioned to introduce a bicameral parliament with ministerial responsibility as early as 1863–1864. Finnish political actors argued that estate representation was 'unfitting and in contradiction to the demands of the time' and 'outdated in comparison to civilised and constitutional European countries'. The Diet, with its division of four mainly separate estates, was considered time-consuming, inefficient and undemocratic (cf. Pekonen 2017a).

Bicameralism – but of what kind?

Finland's position as part of the Russian Empire set the limits for parliamentary reform. Despite this, political groups discussed and debated the direction of Finnish parliamentary life with reference to a variety of foreign examples and developments. The discussions were considered preparations for the inevitable yet distant reforms. Finnish actors across the political spectrum argued that Finland, as a latecomer, could benefit from the experiences of other countries and, when possible, should update its existing system according to the demands of the time. This transition from the old forms and practices of estate representation towards modern Western parliaments was an active process of imitation and application, explained in Finland, for instance, through reference to 'the ABCs of parliamentary life' and 'rudiments of parliamentary work'. Despite Finland's remote location on the north-eastern edge of Europe, it was in no sense excluded from European and North American discussions. The press was an important means for the Finnish political protagonists, public servants and scholars to study foreign examples and plan future reforms (Pekonen 2014; Pekonen 2017b). Finnish arguments for bicameralism reflected and repeated ideas from foreign discussions.

The main principled arguments for bicameralism, which were repeated in the following decades, were expressed in Finnish public debate in the 1860s. The press highlighted that all prominent European parliaments were bicameral, and very few had changed their bicameral systems to something else. There was, in contrast, little experience with regard to unicameral assemblies. The liberal and nationalist political elite had a complex attitude towards the people. On the one hand, they were concerned about the political and social backwardness of the country and its people's low level of education. On the other hand, they argued that the highest principle of representative government was that state affairs should be based, in theory, at least, on 'the public opinion' or 'the will of the people's majority'. Consequently, the elite were convinced that Finland needed a bicameral parliament whose democratically elected lower chamber would be combined with an experienced, educated and intellectual upper chamber which could restrain immature expressions of the public opinion. The true public opinion and will of the people required time, discussion and exchange of arguments to shape, develop and mature (e.g. *Helsingfors Dagblad* 1863a). The question, then, remained how those who sat in the two chambers should be selected and how their relationship should be organised.

In search of foreign inspiration, Finnish political protagonists and scholars recognised two main forms of upper chamber. The first was based on the existence

of a strong aristocratic element which served as a 'natural' foundation for division between the chambers (e.g. *Helsingfors Dagblad* 1863b). Britain was highlighted as a prominent example of this form of bicameralism. In the second form, the upper chamber was created by electoral arrangements or by regional assemblies choosing the members, as was the case in countries such as Sweden, Denmark and the United States. It was the second form of bicameralism that raised most interest in Finland, as the country arguably lacked a strong aristocracy.

In the late nineteenth century, most members of the political elite saw the bicameral model as the best option for reform, but there was no consensus on how the system should be organised. Bicameral parliaments abroad were typically results of a long historical development or created as a compromise solution to a crisis. In nineteenth-century Finland, there was no opportunity for a thorough reform and thus no urgent need to agree and compromise. Thus, political groups settled for presenting proposals, criticising those of their opponents and discussing international examples.

In the 1860s, future Finnish reform prospects were discussed indirectly through and in connection with foreign debates. Because of its shared constitutional tradition and close political, cultural and economic links, Sweden was the closest and most frequently discussed example. The Swedish parliamentary reform of 1866 (cf. Nilsson, this volume; Nergelius, this volume) coincided with the formulation of the Finnish Diet Act of 1869 and a failed attempt to create and codify a constitution act for Finland, which would have decreased the prerogatives of the emperor. The Swedish Riksdag Act of 1810 and its later revisions were used as the main model for the Diet Act.

Louis de Geer had been the father of the Swedish reform, and his ideas and arguments inspired the Swedish-speaking liberals in Finland, who were loosely organised around the newspaper *Helsingfors Dagblad*. They argued that when the time was right, the Finnish reform could be based on Swedish bicameralism and correct its mistakes. The Finnish liberals had doubts whether the Swedish upper chamber could offer a sufficient hindrance to an immature public opinion. Leading Finnish liberals were strongly indebted to the British culture and practices of parliamentary debate and liberal authors such as John Stuart Mill. So it should refer to British culture (of parliamentary debate) and practices of parliamentary debate. These liberals argued that, regardless of the nature of the parliamentary system, a well-designed deliberative procedure was a necessity for securing a thorough examination of matters and making high-quality, legitimate decisions. According to the liberals, a representative assembly could only speak and decide in the name of the people after a thorough *debate*. Parliamentary rules should be used to force different opinions and arguments to clash and test each other's strengths and weaknesses in an open debate in multiple plenary readings. In no other way could a question be sufficiently examined from different sides. The priority of debate was an overriding principle in the political thought of the Finnish liberals. They argued, for example, that the upper chamber in a bicameral parliament should not be given a definite veto in decision-making. Instead, procedures should be in place in the lower chamber

to guarantee a thorough debate and careful examination (Pekonen 2014, 2017a). Such approaches to parliaments and parliamentary debate were typical among liberals across Europe (Ihalainen, Ilie & Palonen 2016).

In the early 1870s, the pro-Finnish language Fennoman nationalists, in contrast, argued that the Swedish reform had led to plotting, dispute and conflicts. Their main organ, the newspaper *Uusi Suometar* (1872), stated that many Swedes, in fact, complained that their reform had been implemented too early. The analysis of the Swedish case reflects a Fennoman nationalist aversion to the liberals' idea of debate as the essential characteristic of representative politics. Mainstream Fennoman nationalists were opposed to all factions and political parties that had the potential to divide the people and disturb the Fennoman idea of 'one language, one people'. The Fennomans found their opponents in the Swedish-speaking ascendant bourgeoisie and aristocracy, who, according to the Fennomans, held on to their privileges and obstructed reforms that were crucial to the development of the people's Finnish-speaking majority. The dispute between the Finnish and the Swedish languages dominated Finland's political life until the end of the nineteenth century. The Fennoman views on the Swedish reform and conflict reflected a tradition that would eventually play a central role in the rejection of bicameralism in Finland.

The question of bicameralism reappeared in Finnish public debate during a short wave of reform optimism in the 1880s. This sense of optimism was triggered by European reform debates and the emperor's decisions to grant the estates the right of motion and to convene the Diet every three years. The situation in Norway, for instance, motivated the Finns to try to introduce characteristics of parliamentary government and democratise the estate elections. All major political groups presented their reform plans. The nationalist Fennoman movement had started to split into factions, and the so-called *Valvoja* group, a liberal and internationally oriented faction of the Fennomans, was the most vocal advocate of bicameralism. Their model was based on Sweden, which 'shared a common past and somewhat similar social conditions' with Finland (Danielson 1881, p. 463). According to the *Valvoja* group, time was not ripe for thorough reform, but bicameralism could be introduced gradually by preserving the best aspects of the existing system.

The *Valvoja* group argued that the Swedish reformers had expected too much from the people and that the reform of 1866 had resulted in the one-sided rule of the peasantry and its *Lantmanna Party*. According to *Valvoja*, Swedish constitutions were not a sufficiently powerful bulwark against the dominance of a particular class. The 'purse of the state' was open only to the peasantry, and 'estate spirit' and 'estate envy' were still alive and kicking. Two prominent *Valvoja* members, professor of history J. R. Danielson and professor of philosophy Th. Rein, argued that, in order to avoid such mistakes in Finland, the two chambers should be given distinctly different characters. The lower chamber should represent the prevailing opinions of the moment, while the upper chamber was to represent more serious, intergenerational opinions and stable interests. The representatives of the upper chamber should thus have longer mandates than those of the lower chamber; the members of the upper chamber should be replaced gradually, while those of the

lower chamber were to be replaced all at once. According to Danielson and Rein, the two lower estates of the peasants and the burghers should be united into a democratic lower chamber, while the two higher estates of the nobility and the clergy would form an aristocratic upper chamber. Towns should be given relatively stronger representation in the lower chamber than the countryside, as cities were more civilised and politically active. Provincial assemblies would elect one-third of the upper chamber, and the nobility and the clergy would each elect one-third. After these revisions, both chambers could be given equal decision-making powers, and a joint vote of both chambers could be held in case of disagreement (Danielson 1881; Rein 1885).

Bicameralism was challenged in the 1880s mainly because of the situation in Denmark, where the opposition between two chambers had resulted in a total standstill of decision-making on budget and tax issues (cf. Skjæveland, this volume). As a result, the government dictated budgets. The Finnish liberals described the Danish situation as a crisis which had pushed the country to the verge of a *coup d'état* or a revolution. The *Valvoja* group found the Danish situation worrying and described it as 'contempt of the constitution' (Rein 1885, p. 431).

The main question with regard to the Danish case was how to overcome the deadlock between two chambers. Finnish discussants took the side of the lower chamber. The *Valvoja* group presented two options: either the lower chamber should have authority concerning budget and tax issues or it should be represented by more members in the joint votes of the two chambers. According to the group, the upper chamber should be given the right to 'give the people the chance to reflect and deliberate' but 'not to block its seriously considered will for good' (Rein 1885, p. 431).

The Finnish liberals argued that the Danish form of bicameralism was 'a severe mistake' and 'contrary to the principles of constitutionalism' as it did not give the lower chamber a lawful possibility to break the stubborn opposition of the upper chamber. As a solution, they argued, it would be wise to follow the example of Britain, where the rights of the House of Lords had been limited in matters of budget and taxation. In Britain, the House of Commons could influence the majority of the Lords by forcing the government to introduce new members. Thus, instead of a definite veto, the upper chamber had only moderating power and a suspensive veto (*Helsingfors Dagblad* 1885a, 1885b).

The rise of the unicameral model

The bicameral model was discussed in the Diet, local election and press debates and social movements and associations, for example in the meetings of the temperance movement (cf. *Waasan Lehti* 1887). The inevitability of a bicameral parliament was taken into account even when planning a new house for the Finnish estates in the 1880s. It was argued that the building should be equipped with facilities for the meetings of a future bicameral assembly (*Helsingfors Dagblad* 1882, 1883). Nonetheless, the consensus on the bicameral model became increasingly challenged towards the end of the nineteenth century.

A 'crisis of parliamentary politics' or 'crisis of parliamentarism' spread across Europe in the final decades of the nineteenth century. Increased pressure to open up parliaments to new groups and public scrutiny resulted in the (gradual) democratisation of suffrage and candidacy. Democratisation brought new groups to parliaments. The newcomers criticised parliaments as debating clubs of the elite and argued that parliament's slow and multiphase proceedings were intended to obstruct democratic progress and reforms necessary for the people. Parliaments were considered unable to keep up with the pace of progress (Vieira 2015). They became arenas for new controversy and heated disputes. National assemblies were challenged by scarcity of time resulting from growing agendas and longer speeches. Obstruction campaigns by nationalist and socialist minorities spread across Europe, inspired by the Irish obstruction in the British House of Commons in the late 1870s and early 1880s (Te Velde 2013). 'The whole future of parliamentarism' was at stake (Jellinek 1904). The crisis of parliaments was partly viewed as a crisis of bicameralism.

The challenges faced by bicameralism resulted in arguments stating that it was, in fact, safer either to keep the Finnish four-estate system or to upgrade it rather than adopting a bicameral parliament. For example, the Swedish-language newspaper *Nya Pressen*, suspicious of democratic reforms aimed against the aristocracy, argued that the 'reform fanatics' were unable to offer a good alternative for the old system, which had stood the test of time (*Nya Pressen* 1885). Actors with gradual reform plans argued that 'it is better to fix a poorly built hut than to move to an unknown, foreign palace' and that 'a reasonable man would rather renovate an old, sturdy house than tear it down to construct a new palace for mere amusement' (Numminen 1950; *Uusi Suometar* 1899).

Moreover, precautionary tales from abroad led to increased support of the unicameral model, which had, up to the 1880s, been considered the risky, revolutionary counterpart of bicameralism. The problems in Denmark resonated especially strongly with the Finns, whose Diet decision-making was often paralysed by a deadlock between two estates against two. The Diet decisions required a majority of three estates on regular matters. Two estates, the peasants and the clergy, had pro-Finnish Fennoman nationalist majorities, while the Nobility and the Burghers were in the hands of pro-Swedish members. The Fennomans argued that Finland was small, developing and still weak, and therefore could not afford to halt national progress by having two chambers fighting against each other. Finland needed more unity and harmony, while bicameral parliaments produced conflicts and politics.

The Fennoman nationalists started to move towards more radical democratic ideals from the early 1880s on. While the old generation of the Fennomans spoke in favour of the abstract 'public opinion' and 'will of the people', these rhetorical figures did not materialise in serious demands for extended suffrage until the 1880s. The Fennomans aimed their political rhetoric at the people's peasant majority. Their main organ, *Uusi Suometar* criticised *Valvoja's* reform proposals for favouring urban areas at the cost of the countryside. The Fennomans attacked the old privileges of the Swedish-speaking nobility. According to the Fennomans,

the nobility's representational rights were based neither on trust, ingenuity, education nor earned social status, but on an inherited 'fancy family name and a jingling coat of arms'. The Fennomans argued that the Nobility should give away its privileges and the three other estates should form a unicameral assembly. While earlier proposals were based on the use of electors among the lower echelons of society, and the number of tax units as criteria for suffrage rights, the Fennomans now claimed that direct elections, the principle of 'one man, one vote' and unicameralism were standards of the day. If implemented, they would increase the people's interest in striving for common national goals (*Uusi Suometar* 1881a, 1881b, 1884a).

In the 1880s, a new radical young Fennoman generation drew on empirical naturalism, individualism and moral relativism and stressed the need for a wide application of European democratic influences. The young students put faith in the idea of progress that emanated from the doctrine of evolution and the developments and explanations of natural sciences. Often combining nationalist Fennoman ideology with socialism, they spoke openly in support of radical democratic reform and argued that the spirit of the time had abandoned bicameralism. The power of landowners, aristocracy and capital had been replaced by humanism, civilisation and equality; representation based on class was replaced by representation of the people (*Aamulehti* 1882b, 1882c).

Unicameralism was now supported with the argument that it gave the most direct and undistorted expression of the will of the people's majority. It promoted national awareness and spirit, and strengthened Finland's autonomy and representation of the people. Unicameralism saved time and made decision-making more efficient (*Uusi Suometar* 1884a, 1884b). Upper chambers such as the British House of Lords and the Danish *Landsting* represented 'reaction' and 'conservatism' and 'obstructed progress', while democratic lower chambers were assemblies of freedom, democracy and the people. Upper chambers were becoming useless and obsolete (*Savo* 1887; *Päivälehti* 1896).

The revolutionary context of the Parliamentary Reform of 1906

The breakthrough of the unicameral model took place in the context of the Russian Revolution of 1905. In the 1890s, Russian constraints and the so-called February Manifesto published by Russian Emperor Nicholas II in 1899 shifted the political focus from the Finnish-Swedish language question to Finnish-Russian relations. The manifesto ruled that Russian authorities could bypass the Finnish Diet when revising Finnish constitutional laws. Other aims of the manifesto included, for example, the merging of the Finnish and Russian militaries. The so-called Constitutionalists, consisting of the more liberal faction of the Fennomans (Young Finns) and the Swedish Party, argued that passive resistance was the best way to end Russian 'oppression'. The Constitutionalists drew on legalism and argued that while the Emperor was an autocrat in Russia, he was a grand duke of Finland, which meant he was obliged to respect the Finnish constitution. The Constitutionalists argued that the 'illegal' decrees imposed by the Emperor should

not be obeyed but passively resisted. The conservative faction of the Fennoman nationalists (Old Finns), in contrast, supported appeasement in relation to the Empire and argued that Finnish interests would be best secured in the long run by submitting to most Russian demands.

Another political division became pivotal in the Parliamentary Reform of 1906. The Finnish labour movement, whose members lacked representation in the Diets, challenged the old political elite by actively invoking 'the will of the majority of the people', consisting of the workers and the poor. The Social Democratic Party of Finland was established in 1903 when the Finnish Labour Party (est. 1899) changed its name and proclaimed to be part of the international social democratic movement. The party's programme of 1903 was an almost direct translation of the *Hainfelder Programm* of Austria's Social Democratic Party (1888–1889) written by Victor Adler and approved by Karl Kautsky. While the rise of the labour movement and socialism were traditionally linked to industrial workers in urban areas, in Finland they spread swiftly to the countryside and among the poor landless peasantry. The rise of the Social Democratic Party challenged the position of the Fennoman nationalists as the sole and rightful representatives of the (common) Finnish people. The rise of socialism turned many of the Fennomans back to being supporters of more moderate reform and a calm and considerate upper chamber.

The Parliamentary Reform of 1906, as were all momentous reforms in early Finnish parliamentary life, was a result of shifts in Russian and international politics. During the Russian Revolution of 1905, demands for democratic reform were presented in the Empire, including the Baltic states and Poland. At the end of October 1905, the revolutionary spirit spread to Finland, where it manifested itself as a general strike. Collective action culminated in two main demands: the reversal of Russian attempts to integrate Finland into the Empire and the reform of Finland's outdated political system. All political groups shared these objectives. The Social Democratic Party (SDP), which had been a relatively modest force until the revolution, took the lead in the Finnish mobilisation and became a major political movement. The number of paying members of the SDP rose from 16,000 in early 1905 to 107,000 in October 1906 (Alapuro 2006). The party advocated its main concrete objective, the introduction of a unicameral assembly based on universal and equal suffrage for both men and women, with unprecedented force.

As a response to the revolutionary situation in Russia and pressure from the large-scale protests, Emperor Nicholas II signed a new manifesto on 4 November 1905, in which he reversed the February Manifesto of 1899 and gave Finland's domestic government the task of preparing a proposal for parliamentary reform. The manifesto laid down that the reform should be based on the 'demands of the time' and apply the principles of universal and equal suffrage. The manifesto did not say anything about the number of chambers. The publication of the manifesto was followed by intense public debate, in which political groups presented their proposals in reference to foreign examples and experiences. Newspapers published extensive presentations on foreign parliaments and constitutions. Public lectures were held and books were printed on the topic in order to influence and frame the Finnish reform.

Finland's domestic government appointed a reform committee to prepare proposals for a new parliament act and a new electoral act. The Committee consisted of 14 members representing the main political groups of the Swedish Party, the Social Democratic Party, and the Fennomans, divided into the conservative Old Finns and the more liberal Constitutionalist Young Finns. The committee had thorough knowledge of foreign parliaments and constitutions and experience in Diet work, ten of its members having been members of the estates. The committee members included, for example, the former *Valvoja* group members Th. Rein and J.R. Danielson, who had been active in the debates on bicameralism. The committee was in session for less than three months, from 8 December 1905 to 28 February 1906. The Emperor ratified the parliament act and the electoral act after hearing the Diet as well as Russian and Finnish authorities.

The parliamentary reform committee of 1905–1906 started its discussions on general principles and agreed that universal and equal suffrage, which had already been mentioned in the November Manifesto, would be implemented. Despite the fact that suffrage reform had been discussed for decades in Finland (Alapuro 2006), the democratisation of voting rights was dramatic and left its mark on the organisation of Parliament and its procedures.

The rejection of bicameralism

Unifying the people

The number of chambers was a heated topic in the parliamentary reform committee, and the Finnish reformers ultimately had several reasons for abandoning the bicameral. Firstly, it can be argued that the timing and political context of the reform played a crucial role in how Parliament would be organised. Non-socialist groups, who had earlier been satisfied with more moderate changes, such as a bicameral assembly and equal but not universal suffrage, eventually consented to the Social Democrats' demands for radical reform. In the unstable and revolutionary political situation, the non-socialist parties felt that only a unicameral parliament could efficiently calm civic unrest and unify the Finnish people in a critical, historical moment. There was a general consensus that the unique window of opportunity created by the revolutionary situation should be used effectively. The political elite feared that the long-awaited reform might not be passed at all if the nation seemed too divided or too much time was spent on disputations.

While the fear of political conflict and division had first been focused on the paralysis of intra-parliamentary decision-making, democratisation shed light on a wider extra-parliamentary context. The Fennoman leaders highlighted the importance of compromise during the general strike of 1905. Their rhetoric focused on restraining disagreement and conflict and stressing the need for national unity. Young Finn leader K. J. Ståhlberg argued that Finland's most important task at hand was to 'deepen and strengthen the internal harmony of the people'. Only through harmony could the Finnish people seize the moment. Ståhlberg argued

that all elements of the population should be included in striving for common national goals (Ståhlberg 1905, pp. 706–708).

In the reform committee, Old Finn leader J. R. Danielson argued that the exclusion of the intelligentsia from the chamber would only separate it from the people and create conflicts. Old Finn Juho Torppa argued that the problem of reaching consensus in the Diets was often the result of an inability to understand each other rather than irreconcilable views on common goals. Thus, 'common understanding' and 'full integration of different opinions' could be reached only in a unicameral parliament. Old Finn J. K. Paasikivi argued that a unicameral parliament was 'the best way to unify the people' (*Eduskunnanuudistamiskomitean pöytäkirjat* 1906). The participation of the people in a single chamber would strengthen patriotism and encourage Finns to strive for common goals.

These views stood, of course, in strong contrast to the typical criticism of unicameralism. The advocates of bicameralism had linked unicameralism to heated disputes, revolutions and chaos. In November 1905, for example, the anti-socialist Fennoman newspaper *Suomen Kansa* argued that the adoption of a unicameral system had resulted in a tyrannical government during the French Revolution. When a bicameral parliament was finally adopted, 'the people was already torn' and had 'gone wild', which resulted in the new despotism of Napoleon (*Suomen Kansa* 1905).

Defenders of unicameralism rejected such criticism by referring to the 'calm', 'stable' and 'considerate' Finnish national character, which helped the Finns avoid radicalism and resist the temptations of demagogues. Finnish actors mainly linked this character to people who lived in the countryside, which was the case for the majority of the Finnish population (*Aamulehti* 1882a, 1882b; *Koitar* 1905; *Turun Sanomat* 1905).

Strengthening national representation: Parliament as 'the people in miniature'

Unicameralism corresponded with the ideal of national representation for Finnish nationalists. According to the Fennomans, parliament should be 'the people in miniature' and offer 'a picture of the Finnish people as a whole'. It was argued that this could be made possible through proportional representation of different areas of the country and different classes of the population in one chamber.

The ideal surfaced in the Fennoman thought in the early Diets. In 1871, for instance, nationalist leader Yrjö Koskinen cited Mirabeau's speech in the French National Constituent Assembly in 1789: 'Like a map portrays mountains, dales, lakes and rivers, forests and plains, towns and villages, the representative assembly should present a miniature picture of all parts of the people as a unified whole' (*Uusi Suometar* 1871). The idea of representation of all parts of the people supported the Fennoman aim of speaking in the name of the people and gaining a majority in the representative assembly.

This conception of representation became a central argument for justifying the combination of universal suffrage, unicameral parliament and proportional

representation in the reform of 1906. The Fennomans believed that an internally harmonious assembly of all parts of the people would ensure the legitimacy of the Parliament and strengthen national representation both within Finland and in relation to Russia. Such a parliament would best be able to speak and decide in the name of the Finnish people.

The surrogates for an upper chamber and the powerless Parliament

Against the backdrop of democratisation and the rise of socialism, a central question for the non-socialist parties was how to secure 'thorough, considerate and calm discussion and reflection' against 'immature', 'inconsistent' and 'hasty decisions' made by 'the uneducated masses' and 'occasional majorities'. The aristocratic elite studied procedural and electoral ways to avoid 'the tyranny of the majority'.

The Social Democrats were unconditional in their demands for a unicameral parliament. Inspired by revolutionary spirit, the party demanded that, instead of leaving the reform in the hands of the 'oligarchic class representation' in the Diet, which would opt for a bicameral parliament, the question should be decided by a democratically elected, unicameral 'national (constituent) assembly' (*Työmies* 1905a). Both the Russian authorities and the non-socialist parties rejected such an approach. The non-socialists underlined that the reform should be implemented constitutionally – a legislative national assembly would be a revolutionary option. The socialist press used fierce rhetoric and implied its readiness to use violence if 'the traitors' were to introduce a bicameral parliament in which the elite sat unequally in a different chamber (*Työmies* 1905b).

The Old Finns were the first to consent to the demand for a unicameral parliament. They had lost support because of their appeasement policy and were looking to siphon some support from the SDP supporters, especially in the countryside. The socialists were frustrated with the Young Finns' indecision. Some prominent Young Finns, who had been allies of the socialists in the passive resistance, supported a bicameral assembly. In mid-November 1905, for instance, Young Finn Eero Erkko, who had recently returned from exile in the United States, suggested that Finland should model its parliament after the US Congress. Erkko argued that the Finnish workers opposed European upper chambers as hosts of capital and class interests, but in his eyes, both chambers of the US Congress were democratically elected and represented the people. According to Erkko, there were differences of neither class nor ideology between the House of Representatives and the Senate. Instead, they were based on differently sized electoral districts, different age requirements and mandates of a different length. Instead of general elections, US Senate members were 'elected indirectly' by the state legislators. Erkko tried to sell the idea of a bicameral assembly to the supporters of universal and equal suffrage (*Helsingin Sanomat* 1905).

Finally, the Young Finns also faltered in the face of public pressure and assented to unicameralism. It is notable that the non-socialist parties, the Young

Finns, the Old Finns and the Swedish Party, abandoned bicameralism, as they understood that there were other means to restrain the potentially negative side-effects of democratisation. The Young Finns argued that as much as democratic aspects could be incorporated into a bicameral assembly like the US Congress, a unicameral parliament could also be equipped with precautions against haste and disregard. The party argued that procedure should be used to protect the rights of the minority and to make sure that 'sudden winds in the public opinion could not harm the steady work of the State'. Norway became the main model for such plans (*Louhi* 1905a, 1905b, 1905c; *Turun Sanomat* 1905).

In contrast to bicameral assemblies, the models for a unicameral assembly were few and far between. Germany, Greece, Bulgaria and Norway were the main unicameral examples discussed. Norway (cf. Smith, E., this volume) was considered the most suitable model for Finland because of its somewhat similar social and political conditions. The qualified unicameralism of the Norwegian *Storting*, which had already been presented in the Finnish discussions in the 1880s, became a central model in the parliamentary reform committee after bicameralism was rejected. At first, non-socialist committee members sought to replace the separate upper chamber by electing part of the single chamber in a different manner. As the proposals were turned down as a form of bicameralism, the next effort was to divide the chamber into so-called 'sections' inspired by the Norwegian *Storting*. Young Finn E. N. Setälä proposed that the smaller section would comprise one-third and the larger two-thirds of the members. The two sections would deliberate separately, and in case of disagreement the sections would negotiate in a committee. If this were unsuccessful, a final decision would require a qualified majority of two-thirds in a joint vote of the two chambers. In contrast to Norway, where the *Storting* elected one-fourth of its members to the *Lagting*, Setälä's proposal aimed to give the upper section (one-third of the MPs) more power in legislation.

Some Finns criticised the *Lagting* for being 'a mere committee' or 'a mere echo' of the majority of the *Odelsting* (cf. Rein 1885). Further proposals on the sections were made. It was, for example, argued that the smaller section should consist of older and more experienced members so that it would be 'calmer', 'more serious' and protective of the role of the educated intellectuals. The larger section would be younger, 'more lively' and 'progressive'. According to one proposal, electoral success should be the leading criterion for one-third of the smaller section, as this would encourage parties to choose good, merited and experienced candidates (*Eduskunnanuudistamiskomitean pöytäkirjat* 1906; Mylly 2006).

Social Democrats and Old Finns eventually abandoned the sections, which were replaced with the so-called Grand Committee. Based on the proposal by Swedish Party representative Felix Heikel, the unicameral Parliament was given a sixty-member Grand Committee, which discussed every bill after a referral discussion, standing committee examination and the first plenary reading. The Grand Committee would draw up a report for the second plenary reading. If the report was not passed as such in the second plenary, it was sent back to the Grand Committee with amendments. At this point, the Grand Committee re-examined the

question and even had the right to send the bill back to the standing committee. In addition to blocking hasty decisions, the Grand Committee was designed to increase the influence of intelligent, experienced members. The members of the Grand Committee (as well as those of other committees) were elected proportionally and indirectly by the MPs (Mylly 2006). Committees have played a central role in the Finnish parliamentary work since the Diets. It is notable that the Finnish word for parliamentary committees, *valiokunta*, signifies a group of the best and most capable individuals.

Finnish advocates of bicameralism and qualified unicameralism included strict minority provisions in their proposals on joint votes of the chambers and sections. These were eventually replaced with the procedure of 'adjournment to the next elected parliament' – an internationally unique product of the Finnish reform. According to this procedure, a minority of at least one-third of MPs (sixty-seven out of two hundred members) could, during the third reading of a bill, require that it be left in abeyance until after the next parliamentary elections. Electoral terms were set to three years. Constitutional revision required a qualified majority of two-thirds of two consecutive parliaments or, if declared urgent, a qualified majority of five-sixths of one parliament (*Suomen Suuriruhtinaanmaan Valtiopäiväjärjestys* 1906, §§57–60).

The possible negative side effects of democratisation were also taken into account when planning the electoral laws. The reform committee designed a system of proportional representation based on party lists which gave parties the power to ensure that their intelligent and experienced candidates would be elected. Large electoral districts were introduced in order to guarantee that enough capable candidates stood for election.

The procedures of the non-socialists were aimed to increase the influence of the educated and experienced MPs, to slow down the deliberative process and to force the majority into compromise. They were designed as surrogates for bicameralism. The Social Democrats condemned the complex and multiphase procedure and primarily criticised the Grand Committee and the minority provisions for leaving too many possibilities for efficient obstruction of reform. They argued that the bourgeoisie had made the unicameral parliament 'a system of one-and-a-half chambers' and 'a bicameral parliament in disguise' (Kuusinen 1906a, pp. 99–103; 1906b, p. 246; e.g. *Sosialisti* 1907a, 1907b; *Sosialidemokraatti* 1908).

An essential reason for the final acceptance of the unicameral model was the representative assembly's lack of final decision-making power. New legislation required promulgation of the emperor, there was no parliamentary government and the emperor had the right to dissolve the unicameral Parliament (which he often did). Finnish reformers of 1906 argued that the Russian ruler and the strong government acted as a conservative bulwark against hasty and inconsiderate decision-making typical of unicameral parliaments. Constitutional reformers retained the unicameral Parliament after independence in 1917, but its powers were counterbalanced now with a strong presidency in a republic, adopted as a compromise after the plans for a monarchy failed (Ihalainen 2017). The (semi-)

presidential system gave the president veto powers in legislation and positioned him or her independent of Parliament.

Concluding remarks

Crisis made its presence known in the Finnish parliamentary reform in three ways. Firstly, the reform was made possible by the window of opportunity created by the crisis of the Russian Revolution. Secondly, the crisis created an exceptional opportunity for the supporters of radical democratic reform, which, thirdly, resulted in the crisis of the bicameral model. Despite the dramatic nature of the reform, there was continuity: discussions on bi- and unicameralism were based on arguments that had already been made in Finland as early as the 1880s.

The delayed reform resulted in a radical democratisation. Had an opportunity for reform appeared earlier, Finland would have probably adopted a bicameral parliament with more moderate suffrage reform. This tendency of democratic and parliamentary reform was acknowledged in the Finnish discussions based on foreign experiences (Danielson 1881; *Mikkeli* 1905).

The role of foreign models was essential in Finland, a small and rather peripheral country which was still in the process of creating its own national tradition and practices. Finland, as a latecomer to parliamentary reform, was able to benefit from the experiences of other countries and apply their lessons. Finnish actors used foreign examples selectively to frame, contextualise and interpret domestic political questions and to influence the development of Finnish parliamentary life. Models for parliamentary practice were sought from a variety of foreign cases, but there was a strong desire to connect and identify with the Scandinavian countries and, in this way, contribute to a Nordic approach to politics.

The Finnish case illustrates that there are alternative ways to include characteristics of upper chambers in unicameral parliaments. By the reform of 1906, Finnish reformers had gained expertise in procedure as a parliamentary tool. The Finns had used procedure to fight the deficiencies of the obsolete estate system in the Diets, when thorough reforms were impossible because of Russian opposition. Procedures designed to overcome the estate division played a central role in introducing forms of parliamentary deliberation and inter-estate committee negotiation while at the same time preserving the forms of estate representation (Pekonen 2017a). These lessons of procedurally blurring the chamber division were further applied in the parliamentary reform of 1906.

The presidential powers, the strict minority provisions and the Grand Committee's old role were dissolved gradually from the 1980s onwards, especially in the constitutional reform of 2000. Today, the adjournment to the next elected Parliament applies only in questions of the constitution, and the Grand Committee specialises in matters related to the European Union. The main work of the Finnish Parliament is considered to take place in committees behind closed doors, where disagreement can be solved more pragmatically and calmly than in plenary debates (Pekonen 2011).

References

Aamulehti (1882a), 'Muutama sana weroäyri-laskusta ja äänioikeuden täyttämisen perusteista. III', 18 March, p. 1.
Aamulehti (1882b), 'Säätyhuonekysymyksen johdosta', 3 May, p. 1.
Aamulehti (1882c), 'Wastinetta', 20 September, pp. 1–2.
Alapuro, R. (2006), 'The construction of the voter in Finland, C. 1860–1907', *Redescriptions: Yearbook of Political Thought and Conceptual History* 10, pp. 41–64.
Danielson, J.R. (1881), 'Edustuslaitoksemme kehittämisestä', *Valvoja* 22, pp. 459–472.
Eduskunnanuudistamiskomitean pöytäkirjat 1905–1906 (1906), (Helsinki: kan-sal-lis-ar-kis-to).
Engman, M. (2017), *Språkfrågan: Finlandssvenskhetens uppkomst 1812–1922* (Helsingfors: Svenska litteratursällskapet i Finland).
Helsingfors Dagblad (1882), 'Helsingfors den 23 April', 23 April, p. 2.
Helsingfors Dagblad (1883), 'Helsingfors den 20 Mars', 20 March, p. 2.
Helsingfors Dagblad (1885a), 'Helsingfors den 3 April', 3 April, p. 2.
Helsingfors Dagblad (1885b), 'Till frågan om representationsreform', 20 June, p. 2.
Helsingfors Dagblad (1863a), 'Representationsreformen i Sverige. II', 3 February 1863, p. 1.
Helsingfors Dagblad (1863b), 'Representationsreformen i Sverige. III', 5 February 1863, p. 1.
Helsingin Sanomat (1905), 'Yksikö vai kaksi kamaria. Amerikkalainen kaksikamarijärjestelmä', 16 November, p. 4.
Ihalainen, P. (2017), *The Springs of Democracy. National and Transnational Debates on Constitutional Reform in the British, German, Swedish and Finnish Parliaments, 1917–1919* (Helsinki: Finnish Literature Society).
Ihalainen, P., Ilie, C. and Palonen, K. (eds.) (2016), *Parliament and Parliamentarism: A Comparative History of a European Concept* (New York: Berghahn Books).
Jellinek, G. (1904), 'Parliamentary obstruction', *Political Science Quarterly* 19, pp. 579–588.
Koitar (1905), 'Mille kannalle?', 16 November, pp. 1–2.
Krusius-Ahrenberg, L. (1981), 'Valtiopäiväajatus etsii toteutumistaan (1856–1863)', in: Salervo O. et al. (eds.) *Suomen kansanedustuslaitoksen historia. Toinen osa*. (Helsinki: Eduskunnan historiakomitea), pp. 11–92.
Kuusinen, O.V. (1906a), 'Eduskuntakomitean ehdotus valtiopäiväjärjestykseksi', *So-si-a-lis-ti-nen Aikakauslehti* 1, pp. 99–103.
Kuusinen, O.V. (1906b), 'Eduskuntauudistuksen viimeiset vaiheet', *Sosialistinen Ai-ka-kaus-leh-ti* 1, pp. 242–247.
Louhi (1905a), 'Suomen uusi perustuslaki. III', 21 November, p. 1.
Louhi (1905b), 'Nuorsuomalaisten kokous Helsingissä', 21 November, pp. 1–2.
Louhi (1905c), 'Perustuslaillisten kokous Helsingissä', 21 November, p. 3.
Mikkeli (1905), 'Yksi- waiko kaksikamarijärjestelmä?', 22 November, pp. 1–2.
Mylly, J. (2006), *Edustuksellisen kansanvallan läpimurto* (Helsinki: Edita).
Numminen, J. (1950), 'G.V – LXI – K. Pieniä palasia liberaalisen liikkeen historiasta', *Historiallinen aikakauskirja* 2, pp. 164–185.
Nya Pressen (1885), 'Representationsreform', 22 August, p. 2.
Päivälehti (1896), 'Kirje Pariisista, waltiollisia waiheita', 29 April, p. 2.
Pekonen, K. (2011), *Puhe eduskunnassa* (Tampere: Vastapaino).
Pekonen, O. (2014), *Debating 'the ABCs of Parliamentary Life': The Learning of Parliamentary Rules and Practices in the Late Nineteenth-Century Finnish Diet and the Early Eduskunta* (Jyväskylä: University of Jyväskylä). Available at: http://urn.fi/URN:ISBN:978-951-39-5843-5 (accessed 4 March 2019).

Pekonen, O. (2017a), 'Parliamentarizing the estate diet: The debate on plenum plenorum in late 19th-century Finland', *Scandinavian Journal of History* 42, pp. 245–272.
Pekonen, O. (2017b), 'The political transfer of parliamentary concepts and practices in the European periphery: The case of obstruction in late nineteenth- and early twentieth-century Finland', *Parliaments, Estates and Representation* 37, pp. 281–300.
Rein, Th. (1885), 'Mietteitä viime valtiopäiväin johdosta. II. Edustuslaitoksemme muutoksesta', *Valvoja* 9, pp. 421–433.
Savo (1887), 'Kirjeitä Sawolle. IV. Köpenhamina elok. 13 p.', 23 August, p. 2.
Sosialidemokraatti (1908), 'Eduskunnan työtä hidastawa jarrutuslaitos pois', 5 March, p. 1.
Sosialisti (1907a), 'Missä syy eduskunnan työn wähyyteen?', 7 November, p. 2.
Sosialisti (1907b), 'Eduskunnan suuri valiokunta pois!', 26 November, p. 2.
Ståhlberg, K.J. (1905), 'Kansamme tärkein tehtävä', *Valvoja* 11, pp. 706–708.
Suomen Kansa (1905), 'Kehitystäkö vai kumouspolitiikkaa', 10 November, p. 2.
Suomen Suuriruhtinaanmaan Valtiopäiväjärjestys (1906), Available at: www.finlex.fi/fi/laki/alkup/1906/19060026001 (accessed 4 March 2019).
Te Velde, H. (2013), 'Parliamentary obstruction and the "crisis" of European parliamentary politics around 1900', *Redescriptions. Yearbook of Political Thought, Conceptual History and Feminist Theory* 16, pp. 125–147.
Turun Sanomat (1905), 'Eduskuntalaitoksen muutos', 19 November, pp. 1–2.
Työmies (1905a), 'Se hallituksen waali', 9 November, p. 1.
Työmies (1905b), 'Iltakatsaus', 9 November, p. 2.
Uusi Suometar (1871), 'Helsingistä', 20 December, p. 1.
Uusi Suometar (1872), 'Kirjeitä Ulkomaalta. i. Ruotsista', 7 June, p. 1.
Uusi Suometar (1881a), 'Parannuksista Suomen edustus-laitoksessa', 9 December, p. 1.
Uusi Suometar (1881b), 'Parannuksista Suomen edustus-laitoksessa', 12 December, p. 1.
Uusi Suometar (1884a), 'Lukekaa ja ajatelkaa!', 22 December, pp. 1–2.
Uusi Suometar (1884b), 'Lukekaa ja ajatelkaa!', 23 December, p. 1.
Uusi Suometar (1899), 'Muutos-ehdotukset aatelittomain säätyjen waalijärjestykseen. I', 13 May, p. 2.
Vieira, R.A. (2015), *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford: Oxford University Press).
Waasan Lehti (1887), 'Kokous yleisestä äänestyksestä', 26 October, p. 2.

9 The Swedish Senate, 1867–1970

From elitist moderniser to democratic subordinate

Torbjörn Nilsson

Introduction

In January 1867, the new Swedish Parliament, the bicameral *Riksdag*, was established. This system would remain in place for more than one hundred years, until the introduction of the single-chamber Parliament in 1971 (elected in 1970), which is still in use today. During the first half of this period, the upper chamber (*Första kammaren*) was highly influential and central to the political debate. After the democratic breakthrough of 1917–1921, the 'Senate' (a term seldom used in Sweden) lost its role and eventually became almost insignificant. It was abolished without protests, strong passions or solemn ceremonies in 1970.

Discussing Sweden's upper chamber up to the 1920s sheds some light on various important traits of Swedish political history. After some background on how and why the upper chamber was established, three questions will be discussed: 1) In what way did the organisation of the chamber – the veto held by the chamber, the strict rules for eligibility and the social character of its members – affect its power? 2) Which role did this elitist chamber play within the state's project of modernisation, contrary to the principles of *laissez-faire*? 3) The upper chamber was a product of undemocratic, graduated voting rights – how did its members react to calls for democratisation?

The chamber's history after 1921 will be mentioned only briefly, in the Epilogue. After the democratic breakthrough of 1917–1921, Sweden's upper chamber lost its prominent place in the Swedish parliamentary system, even though the two chambers formally remained as equal as they had been since 1867.

Parliamentary reform in the 1860s – a background

In Sweden, reforms of the traditional four-estate *Riksdag* or even a total abolition of the old parliamentary estate system had been discussed since the *coup d´état* by a group of high-ranking officers and civil servants of 1809. During that eventful year, Finland was lost to the Russian tsar, and royal autocracy was replaced by monarchic constitutionalism, regularised in the Instrument of Government, a part of the constitution from 1809. The following year, a new dynasty, Bernadotte, was chosen, but it would take more than fifty years to reach an agreement

on a new parliament system built on the principle of individuality instead of the old corporate estate principle, which had its roots in medieval society. Intensive debates preceded this decision, with the critical moment taking place on 7 December 1865, when the House of Nobility accepted the proposal of a bicameral system (Nilsson 1994; cf. Metcalf 1987).

The four-estate parliament – the nobility, the clergy, the burghers and the peasantry – had emerged from a traditional division of society. Despite these ties to old traditions, social groups that were considered important to society were integrated into the political system to an increasing extent. Foundry owners and city landlords, who had not enjoyed parliamentary representation thus far, were, for example, allowed to sit in the estate of burghers. Through these adjustments of the four-estate *Riksdag*, nearly all well-to-do social groups were represented. The important role of the peasants in Swedish history was illustrated by the estate of the peasantry, consisting of freeholders, the wealthier class of peasants.

The bicameral *Riksdag* was founded during an era of liberalism in the 1850s and 1860s, which also saw the abolition of guilds and the establishment of free trade, local government, rights of inheritance for women and (partial) religious freedom. The leading statesman and architect of the parliamentary reform, Louis De Geer (1818–1896), was prime minister from 1858 to 1870 and from 1875 to 1880, although the term 'prime minister' was not used before 1876. Like many of his aristocratic friends, he became a civil servant, even though, unlike them, he was initially relatively poor. His talent, wide circle of contacts and marriage to the wealthy Caroline Wachtmeister helped him advance his career. One should also mention his political companion, Johan August Gripenstedt (1813–1874), who successfully pushed through decisive liberal reforms as the minister of finance, 1856–1866. Gripenstedt had continually represented his aristocratic family in the House of Nobility from 1840 to 1866 and was a member of the lower chamber between 1867 and 1873 (Nilsson 1989).

The liberals strongly supported the parliamentary reform of 1865–1866 ('the representative reform'), sometimes describing it as a clear democratic victory. In reality, it was a compromise: it served as both a reform and a guarantee for maintaining the existing order. This conservation of the social system was also a prerequisite for De Geer. According to him, no important social group should lose its representation (Ekman 1966). The clergy, however, had lost much of its power, as only a few bishops and priests became members of the *Riksdag* after 1867. Instead, a special forum for deciding ecclesiastical issues was established, known as the 'council of the church'. Half of the members were laymen; the other half, priests. There were also permanent members, such as bishops. The council was independent of Parliament and could veto proposals on church matters.

Organisation and character

Joint elections to both chambers were perhaps the most important new element in the Swedish Parliament. The two chambers would be different but equal. They had the same number of representatives in the parliamentary joint committees,

and each chamber could vote against – and stop – legislative proposals. The king could also veto decisions he disliked. Another element of the royal prerogative was the right to appoint the speaker and the deputy speaker in both chambers. Abolition of this right was a recurring demand in the lower chamber after 1867.

As a moderate – or a liberal-conservative – De Geer emphasised the importance of avoiding autocracy and 'one-sided, hasty decisions' by the lower chamber and safeguarding 'the claims of education and capital'. He viewed wealth as a proof of individual capacity and the capability to hold an independent position against economic and political interests. Owing primarily to heavy restrictions on eligibility, the upper chamber, with its 125 members, was composed of estate owners, high officials and financiers. The number of members increased because of population growth, until it was fixed at 150 in 1894 (Nilsson 1969).

Another reason for the aristocratic character of the upper chamber was the voting system. The upper chamber was elected by county councils, which were, in turn, elected by local councils. The local franchise was relatively extensive, compared to the political franchise of the lower chamber (one-fifth of the adult male population). Approximately half of all adult men satisfied the minimum income threshold of 500 *riksdaler*, which was also the level of income at which one had to start paying taxes. This was not a coincidence, as the ruling classes considered that paying taxes marked the line between fully responsible citizens and the more unreliable poor people.

The relatively low income qualification, however, did not give the poor much influence. In the local elections, a graded scale was used, based on income and wealth, although electors had only one vote each in the second round. A very wealthy person could have hundreds of votes; an ordinary farmer, just one or two. Private companies were also allowed to vote in local elections, and towns and rural districts could be compared to joint stock companies. The more property one owned, the more votes one received. Ownership was viewed as synonymous with local economic interests and therefore legitimate local power (Norrlid 1970).

Theoretically, some women could also vote in local elections and, in this way, influence the composition of the county councils that elected the members of the Senate. However, very few women had property of their own because of the civil law that declared married women to be incapacitated. In the cities, some widows continued their deceased husbands' businesses, but not much is known with regard to whether any of them actually voted.

The rules for eligibility were also highly restrictive, which is another reason that only a few peasants were elected. To be eligible, one had to be at least 35 years old and either possess real estate to a value of 80,000 *riksdaler* or have an income of 4,000 *riksdaler*. In 1866, these restrictions granted eligibility to the upper chamber to only 6,000 men. Another economic obstacle was that members received no salary, as opposed to members of the lower chamber. Even potential candidates among the well-to-do peasants needed a regular income to afford living in Stockholm during the parliamentary sessions.

As mentioned, only slightly more than 20 per cent of the adult men were allowed to vote in the elections for the lower chamber. The demands on income

Table 9.1 Social composition of the Swedish upper chamber 1870–1910

	1870		*1890*		*1910*	
	N	*%*	*N*	*%*	*N*	*%*
1 Higher civil servants	**51**	**40,5**	**59**	**40,7**	**62**	**41,3**
A) Civil servants of trust*	34	27,0	28	19,3	25	16,7
B) Other civil servants	17	13,5	31	21,4	37	24,6
2 Lower civil servants	-		-	-	-	-
3 Free professions	**1**	**0,8**	**3**	**2,1**	**6**	**4,0**
4 Agrarian sector	**46**	**36,5**	**49**	**33,8**	**42**	**28,0**
5 Trade, industry	**28**	**22,2**	**34**	**23,4**	**40**	**26,7**
Total	**126**		**145**		**150**	

* 'Civil servants of trust' were appointed directly by the king and were expected to be loyal to his proposals, 'voting for the uniform'.

or wealth favoured freeholders but excluded tenants and the lower classes in the countryside. Most workers in the cities were also excluded, at least in the first decades. In 1867, more than 40 per cent of the members of the lower chamber were farmers (freeholders) and 12–13 per cent aristocratic landowners, giving the agrarian sector a majority, although the social and political divisions between the two groups could be sharp. The minority consisted of civil servants and businessmen. The last decades of the nineteenth century and the beginning of the twentieth century have often been called the heyday of the peasantry in Swedish history (Sköld & Halvarson 1966).

Modernisation, state and *laissez-faire*

Paradoxically, in an era of industrialisation, rural forces had been strengthened in the new Parliament. Businessmen and middle-class representatives had played a decisive role in the former estate of the burghers, the estate most receptive to reform. In the new bicameral Parliament, the urban middle-class members were reduced to a minority in both chambers. Farmers largely dominated the lower chamber, and the aristocratic landowners and high civil servants were the backbone of the upper chamber.

The social gap between the two chambers soon devolved into open hostility between the majority of landowners, factory owners and high officials in the upper chamber and the freeholders and middle-class representatives in the lower chamber. Radical or moderate proposals for an extended franchise for the lower chamber and fewer votes for the wealthy in local elections, which, ultimately, determined the character of the upper chamber, were prevented by a majority in the upper chamber. On the other hand, expansion of state activity and public

administration were often vetoed by the lower chamber. The farmers were not *laissez-faire* liberals, but they adopted a suspicious attitude towards bureaucracy and civil servants financed by taxes on the landed property, as was traditional for the peasantry.

The posthumous reputation of the first part of the upper chamber's existence (1867–1921) has been highly negative: it has been described as reactionary and an enemy of progress. Without doubt, the upper chamber defended existing power structures, but in technical, economic and other modernising areas, it succeeded in developing society, faced by an often traditional but more democratically influenced lower chamber. For that purpose, modernising reforms could set aside the liberal principle of a passive state (Nilsson 1994). Swedish historians have mostly stressed the 1860s and 1870s as a period dominated by *laissez-faire* attitudes. A commonly held idea is that state interventionist policy became important only after the issue of tariffs had brought the protectionists to power in 1888 (Nybom & Torstendahl 1989; Kilander 1991).

The concept of modernisation in this chapter is mainly applied to economic and administrative policy and comprises rational organisation, technical development and emphasis on the application of scientific methods. The history of the upper and the lower chambers from the 1860s to the 1880s shows that there is no inevitable correspondence between democracy and modernisation. The senators tried to change society in line with what rationality, technology and science demanded, while preserving old political structures, laws and traditions.

During this period, an interventionist policy was initiated with regard to forests, based mainly on the argument that the state should be allowed to protect vital national interests against exploitation, even if this meant restricting private ownership. As a result, several laws were introduced to guarantee the survival of the forests. Secondly, changes in the water laws showed that property rights were not sacred principles and that they could be restricted when far-reaching economic interests – communications and water transportation – were at stake. Landowners had to accept that their traditional control over waterways adjacent to their property was diminished for the common good. The third example is the National Board of Trade. After the victory of the free-trade policy in the 1850s and 1860s, liberals and anti-bureaucratic farmers insisted on the abolition of this department. When the first bicameral *Riksdag* met in 1867, it was thought that it would be just a matter of time before the National Board of Trade would be abolished, but its enemies never achieved their goal. Instead, the department gradually adopted more modern forms of encouraging trade, communication and industry. The policy of detailed regulations was replaced by comprehensive responsibility for education, technical development, information and patents.

A group of influential members of the upper chamber played a decisive role in all of these debates. Although they were adherents of moderate liberalism and free trade policy, they emphasised the need for state support. As a result, the Swedish state never lost its grip on the economy during this so-called *laissez-fai*re period. Instead, state activity simply took on different forms.

Both liberals and conservatives used the state as an instrument in their attempts at national modernisation. From this perspective, the upper chamber, with its more positive attitude towards allotments and government intervention to modernise (as, for example, in the banking system, education and economic legislation) was more progressive than the lower chamber. Most of the opponents to this interventionist policy were not classical liberals. More conspicuous was a group comprising judges who based their resistance on the classical concept of the rule of law and farmers with their old hostility to public authorities, bureaucracy and taxes. In the broad field of economic policy, the upper chamber acted as an engine for modernisation; the lower chamber, as a brake.

The important modernising reforms initiated by members of the upper chamber contradict the traditional view of the party system in the chamber's first decades as being rather loose, poorly organised and lacking in solidarity. Indeed, the parties in the upper chamber consisted of small groups, but they were strongly organised around a network of well-established members seeking to gain support from the mass of unorganised and independent members. The parties were primarily represented in only one of the chambers, although the Farmers' Party (*Lantmannapartiet*), the strongest group in the lower chamber, had a branch in the upper chamber as well (Nilsson 1994).

During the first years, the lower chamber was divided between a majority of loyal supporters of the moderate liberal government and a conservative minority, many of them actively opposing the new political system. More and more, the closely connected issues of national defence and the tax system became the most significant dividing lines for different existing and newly established groups or parties. The question was whether the upper chamber should work to strike a compromise with the farmers or not. There was contact between some of the senators and the farmers in the lower chamber, while the small contingent of farmers in the upper chamber had increased at the same time.

After a compromise agreement in 1885, the debate about free trade or protectionism took over as formative issue for the party system. Cooperation between groups in different chambers further increased because of the tariff conflict. Protectionists in both chambers formed what can be seen as an 'early-modern' right wing – in favour of tariffs, loyal to royal power, resistant to franchise reform and champions of military strength. Another favourite issue was hostility towards Norwegian radicals who were looking to abolish the personal union between the two countries, which had been established in 1814. This conservative and nationalist right-wing group controlled the upper chamber, but had supporters in the lower chamber as well. One can reverse all the standpoints just mentioned to get the political programme of their antagonists: liberals and farmers ('the left'), who held a majority in the lower chamber.

This was the beginning of a new era with modern parties, which were also organised outside the *Riksdag*. Now, the upper chamber was dominated by a majority of pronounced nationalists, protectionists and enemies of voting reforms. To some extent, the period of modernisation had ended.

The conservative fortress and democracy

When voting rights became the dominant political issue after 1900, the upper chamber could still use Acts of Parliament to stop every reform proposal it disliked. However, developments in 1909 (extended male suffrage) and 1917–1921 (parliamentary government, the abolition of the graded voting rights in local elections and women's suffrage) established democracy. The conservative upper chamber had given up its resistance. The primary reasons for this acquiescence were the revolutionary events in Russia and Germany. Revolutionary groups and social unrest were also potential threats in Sweden, promoted by syndicalists and left-wing dissidents from the Social Democrat Party. A democratic constitution seemed to be necessary to ensure continued calm, which is why it was supported by influential industrial leaders and, at last, by the king and the Anglo-Saxon-oriented crown prince. The upper chamber survived the turbulent years after the First World War, but it lost its significance.

Voices in favour of reforming the franchise after 1867 were few and far between in the lower chamber and almost non-existent in the upper chamber. The Farmers' Party was worried about the potential power of the increasing multitudes of tenants, agricultural workers and servants. For the freeholders, the real injustice was dominance by the elites in the upper chamber, preventing all political reforms that reduced their power.

For a long time, the conservative resistance to voting rights was grounded in the belief that voting was not a universal right. This was clearly expressed in 1896 by upper chamber protectionist Teofron Säve (1892–1910):

> Franchise is a mandate, not a right given to all sorts of people; it is a mission that the state gives to individuals who are qualified to fulfil the mission, and it is definitely not a right that belongs to a person just because he is born or citizen of a society.
>
> (Vallinder 1966, pp. 25–26)

However, after the turn of the century, expanded male suffrage was increasingly seen as inevitable, even by many conservative men (women were not allowed in the party before 1913). A modest reform was thought to satisfy middle groups of the peasantry and weaken the increasing demands for democracy. From that perspective, the main question became the introduction of conservative guarantees that were necessary to have the reform approved by the upper chamber. Another difficulty was the graded system of the election of the upper chamber, which made it a conservative stronghold against everything that threatened the traditional formation of society. The system was modified in 1909 but not abolished until 1918.

Women's suffrage was a subordinated issue in the beginning of the century, at least in parliament. Outside parliament, important women's organisations were established, consisting of Social Democratic, liberal and conservative activists (Rönnbäck 2004; Florin 2006). Left-wing parties – Social Democrats and liberals – included demands for women's suffrage in their political programmes but

were more hesitant with regard to fighting for male and women voting rights at the same time. There were still questions about whether women – if given the right – were prepared to vote. Maybe they would vote for the conservatives. There were also tactical questions. As long as the upper chamber had a conservative majority, any reform could be voted down. Accordingly, some wondered whether it was more practical to first secure voting rights for men and then use the increased power on the left to secure votes for women.

In 1902, landowner Erik Gustaf Boström became prime minister, a position he already had held from 1891 to 1900. During a parliamentary session in 1904, he presented a proposal on male suffrage and proportional elections for the lower chamber. At the same time, the restrictions were extensive – bankruptcy, unpaid taxes, dependency on benefits and the failure to report for compulsory military service all disqualified men from voting. Proportional elections were disliked by left-wing parties; therefore, the proposal was voted down by the lower chamber. In the following year, a similar proposal met the same destiny. The principle of universal (male) franchise had been established, but what did that mean?

For the first government (1905–1906) of the liberal Karl Staaff, universal male suffrage was at the top of the agenda. His proposal of voting rights and majority elections passed through the lower chamber without problem. Not surprisingly, though, it was voted down by the upper chamber. The alternative preferred by the senators included a cautious reform of local elections – a reduction of the maximum of an individual's votes. At least the upper chamber had accepted a small change to the election system, a cautious reform of the graded scale – which liberals and farmer had disliked so intensely. Staaff did not mention this problem in the government's proposal, which seems puzzling. But his radical, British-inspired parliamentary view gave the power to the democratic lower chamber. Its counterpart should not be reformed, because it would only postpone full democracy. Instead, the upper chamber should be set aside, weakening into insignificance (Stjernquist 1996; Esaiasson 2010).

Franchise by the conservative government

After Staaff's failure to realise his programme, conservative leader Arvid Lindman became prime minister. It seems like a paradox that the (male) franchise (in reality, 20 per cent of adult men were disqualified by unpaid taxes, etc.) was introduced in 1909 by a conservative government, rather than by democratic heroes Karl Staaff and the Social Democratic leader Hjalmar Branting (1860–1925). A century later, this conservative reform (alongside the relegation of the graded scale to local elections) was used by politicians from the liberal-conservative *Moderata samlingspartiet* as evidence for the party's democratic traditions. However, this statement is misleading (Nilsson 2011).

At a closer look, the mystery disappears. It was easier – or rather less difficult – for a leading conservative, a pragmatic politician like Lindman with his position and authority, to get a positive result in the *Riksdag*. The decisive factor was his capacity for presenting a proposal that could satisfy the moderate groups and at

the same time avoid opposition from the more conservative ones. Universal male franchise was supplemented by a reform of the local elections and the aforementioned restrictions that excluded 20 per cent of the potential male electorate. The proportional method would be used in elections for both chambers. For Lindman, it was better to take the initiative and realise a moderate franchise system than to find himself forced to accept a more radical system later. An expanded male franchise, with restrictions, was not as threatening as it had been before (Stjernquist 1996; Lewin 2010; Nilsson 2004). The reform of 1907–1909 reduced the exclusive character of the upper chamber and increased the prospects for the left parties. Yet the chamber kept its role as a conservative stronghold. Radical or moderate proposals would be voted down until full democratisation, 1917–1921.

When Karl Staaff became prime minister for the second time in 1911, the first proposal in the Swedish *Riksdag* on women's enfranchisement and eligibility was presented. A large majority in the lower chamber voted yes (140–66), but the upper chamber – appointed in accordance with the new rules – maintained its opposition, although by a smaller margin than before (86–58). Voting rights for women subsequently disappeared from the parliamentary arena between 1913 and 1917. The struggle for parliamentary government and the party truce during the First World War became obstacles.

The first government, including Social Democrats, was appointed in the autumn of 1917, with a liberal prime minister, Nils Edén. The upper chamber still resisted women's suffrage and dissolution of the graded scale that guaranteed a conservative majority in the upper chamber. The latter issue was most controversial. Women's suffrage was now seen by some conservatives as positive and they expected stronger sympathies for conservative ideas among women. There are no secure figures of female turnout at elections, in some way confirming conservative statements on politically uninterested women. In the first election, 47 per cent participated (62 per cent of men). In 1928, the figures were 63 per cent and 73 per cent respectively. More challenging was the democratisation or even the dissolution of the upper chamber. Liberals and Social Democrats (already the largest party in the lower chamber) would dominate both chambers. The conservatives' only chance was to get acceptance for minority guarantees and restrictions of voting rights that would affect poorer people most, such as age restrictions (minimising the role of the younger, presumably radical voters) and disqualification of all persons depending on welfare or with unpaid taxes (in this period, this usually meant poorer people). Another proposal was a slower implementation of the reform, avoiding the electorate doubling in size in one fell swoop.

Democratic breakthrough, 1918–1921

During the ordinary parliamentary session in the spring of 1918, a proposal from the leftist government on democratisation of the upper chamber and women's suffrage was once again stopped by the upper chamber. It would be the social upheavals in the final phase of World War I that at last opened the upper chamber up to democratic reforms (Stjernquist 1996; Andræ 1998; Nilsson 2005; Olsson 2000).

An extraordinary parliamentary session was summoned to sit in December 1918. The salaries of the civil servants had been greatly reduced because of wartime inflation war and had to be raised by the *Riksdag*. The collapse of Germany and the end of the war in November led to widespread social protests. Radical socialists wanted to proclaim a socialist state, inspired by the Bolshevik coup in Russia in 1917. In Finland, Hungary and the Baltic states, revolutionary uprisings had also occurred in 1918. Conservatives, liberals and the majority of the Social Democrats were worried that Sweden, too, would be subjected to social disturbances and revolutionary upheaval. Military preparations were made to meet riots and the trade unions were mobilised for a peaceful transition. Most likely, some of the Social Democratic leaders thought they could control the labour movement and used the threatening revolutionaries as an argument for democratic reform.

Conservatives in the upper chamber were subjected to strong pressure to yield to democratic reform. Especially important were the attitudes of business leaders (Söderpalm 1969). Archbishop Nathan Söderblom also requested conservatives to accept full democracy. The king (Gustaf V) tended to the same view, as did the crown prince, Gustav Adolf, who married to British princess. He was seen to be more amenable to British democratic traditions. The fear of a more radical development and the need for stability forced these groups to support reform. Some businessmen had sympathies for the liberal party and Branting and the union leaders had long shown themselves to be in favour of a lawful policy, avoiding revolutionary attempts and militant trade union actions.

The rapid development of riots and revolutions in Europe put democracy on the parliamentary agenda, although a formal decision on women's suffrage could not be made, just an agreement to schedule decisions for the coming years. Political suffrage, contrary to local suffrage, formed part of the constitution, and a change required a vote by an ordinary parliamentary session (1919), an election (1920) and then a new vote in the *Riksdag* (1921). The first parliamentary election on women's suffrage therefore was held in the autumn of the same year.

However, a real breakthrough for a democratic system had already been made in 1918, when both chambers accepted the democratisation of local elections (one person, one vote) on December 17. The rules concerning the upper chamber were approved in the lower chamber by a great majority (167–12). Only the left-wing Social Democratic party voted against them, advocating a more radical solution, including transitioning to a republic. In the upper chamber, the proposal was approved without a vote, which should not be interpreted as a total acceptance of democracy.

Some franchise restrictions were kept in the new system, such as bankruptcy, dependency on poor relief and unfilled compulsory military service. These qualifications would be abolished step by step and can be seen as guarantees that the conservatives demanded for accepting the democratic proposal. The voting age for the lower chamber was raised to 23 – for the county councils (that appointed the senators), it was raised to 27. The term of office in the upper chamber was extended from six to eight years, and the demands on eligibility (e.g. a voting

age of 35) were still more restricted than those of the lower chamber. All of these rules can be seen as conservative guarantees. Their effect, however, was limited, and they failed to prevent the left-wing parties (Social Democrats and liberals) from taking a dominant position. More decisive were the deteriorating relations between these two parties, resulting in weak governments for a decade.

Epilogue

From a parliamentary (and Western) view, the nineteenth century can be described as an era of bicameralism (Nilsson 1994; Miller 1968; Azéma & Winock 1972; Elwitt 1975). In many countries, absolutism or different forms of estate systems were replaced by two-chamber systems, different in form but sharing a common purpose: to guarantee the power of the important groups of factory owners and financiers, civil servants and more flexible landowners, both against the reactionary forces of the *ancien régime* and the calls for democracy from the underprivileged classes. At least in Sweden, the bicameral system largely succeeded in modernising society and meeting the demands set by intensified international economic competition. In Sweden, then, bicameralism can be seen as a transitional system between royal power and modern democracy. Needless to say, this perspective was not shared by the individuals involved in nineteenth-century politics.

The social tensions in the Swedish *Riksdag* largely correspond with the situation in Denmark, where the landowners in the upper chamber (*Landsting*) clashed with the farmers and urban radicals in the lower chamber (*Folketing*) (cf. Christiansen, this volume; Skjæveland, this volume). In contrast to Denmark, the Swedish system contained a mechanism for solving conflicts between the chambers on budgetary issues. Therefore, no political standstill could occur like the one in Denmark, which led conservative Prime Minister J.B.S. Estrup (in power between 1875 and 1894) to initiate emergency financial laws as a response to the resistance against the budget in the lower chamber (Fink 1986).

In the beginning, the French Senate was considered to be a conservative branch of government; however, in 1884, the lifelong mandates were abolished because of democratic demands. The Senate became a stronghold for moderate republican views. Following a monarchical constitution, though, moderate liberals in Sweden could be inspired by the French system, with a senate that encouraged deep reflection and common sense and defended the nation against the unreliable masses on the one hand and the reactionary aristocracy on the other.

The establishment of the two-chamber system with an elitist – or aristocratic – upper chamber can be viewed in the perspective of nineteenth-century European political history. Bicameralism was a transitional system between absolutism and modern democracy, at least when seen through the lens of posterity. These constitutional changes did not occur at the same time across Western Europe, but political developments from absolutism to democracy shared similar traits. In Sweden, this alleged conservative bulwark contributed to the modernisation of Swedish society up until the 1880s while remaining conservative in political respects.

The democratic breakthrough in the beginning of the twentieth century was more simultaneous, occurring during a period of fifteen to twenty years across various countries, gradually reducing the power of the Swedish upper chamber. The new democratic system in Sweden, introduced in 1921, soon made the two chambers politically identical. Variations in eligibility and term of office were too weak to challenge the strong party loyalty that was characteristic of Swedish political culture. In the 1950s and 1960s, it mainly worked to preserve the Social Democratic majority in votes in which both chambers participated. The system favoured big parties, and Social Democratic victories in the 1940s were decisive up to the 1960s because of indirect elections and long terms of office.

As early as the 1950s, claims for abolishing the upper chamber were raised – not for being undemocratic but for lacking a real function in the democratic system. Traditionally, the ideas of rationality and symmetry have been important in Sweden. Today, a 32 per cent share of the vote corresponds to exactly the same share of mandates. A unicameral *Riksdag* was introduced in 1970, and a couple of years later, a new constitution replaced the version drafted in 1809. The last session of the upper chamber was discretely concluded on 16 December 1970. The event was mentioned in the press, but very briefly. As a whole, the Senate disappeared quietly (cf. Nergelius, this volume). In a modern political system, a senate was seen as unnecessary, a relic from a distant past.

The further destiny of senates does not show any clear pattern. Some have survived, while others have been abolished (Denmark 1953, Sweden 1970). With the exception of federal states, the senates lack a strong position, at least in comparison with their position in the nineteenth century. Although, now and then, the need for a more careful and maybe less party-oriented parliamentary chamber is wanted. However, it seems that profound political changes must occur before a senate will be used once more in Swedish politics.

References

Andræ, C.G. (1998), *Revolt eller reform. Sverige inför revolutionerna i Europa 1917–1918* (Stockholm: Carlssons).

Azéma, J-P. and Winock, M. (1972), *Frankrikes historia under sju decennier 1870–1940* (Stockholm: PAN-Norstedt).

Ekman, S. (1966), *Slutstriden om representationsreformen* (Stockholm: Svenska Bokförlaget/Nordstedt).

Elwitt, S. (1975), *The Making of the Third Republic* (Baton Rouge: Louisiana State University Press).

Esaiasson, P. (2010), *Karl Staaff. Sveriges statsministrar under 100 år* (Stockholm: Bonniers).

Fink, T. (1986), *Estruptidens politiske historie 1875–1894*, Vols. 1–2 (Odense: Odense universitetsforlag).

Florin, C. (2006), *Kvinnor får röst: kön, känslor och politisk kultur i kvinnornas rösträttsrörelse* (Stockholm: Atlas).

Kilander, S. (1991), *Den nya staten och den gamla. En studie i ideologisk förändring* (Uppsala: Almqvist & Wiksell International).

Lewin, L. (2010), *Arvid Lindman. Sveriges statsministrar under 100 år* (Stockholm: Bonniers).

Metcalf, M. (ed.) (1987), *The Riksdag: A History of the Swedish Parliament* (Stockholm: Sveriges Riksdag).

Miller, K.E. (1968), *Government and Politics in Denmark* (Boston: Houghton Mifflin).

Nilsson, G.B. (1969), 'Den samhällsbevarande representationsreformen', *Scandia* 35, pp. 198–271.

Nilsson, G.B. (1989), *André Oscar Wallenberg II. Gyllene tider, 1856–1866* (Stockholm: Norstedts).

Nilsson, G.B. (2005), *The Founder: André Oscar Wallenberg (1816–1886): Swedish Banker, Politician & Journalist* (Stockholm: Almqvist & Wiksell International).

Nilsson, T. (1994), *Elitens svängrum. Första kammaren, staten och moderniseringen, 1867–1886*. (Stockholm: Almqvist & Wiksell International).

Nilsson, T. (2004), *Mellan arv och utopi. Moderata vägval under hundra år, 1904–2004*, (Stockholm: Santérus).

Nilsson, T. (2011), 'Högerns historia mer komplicerad än kritikerna tror', *Newsmill*. Available from 2008–2013 at: www.newsmill.se. Available at: http://urn.kb.se/resolve?urn=urn:nbn:se:sh:diva-38718 (accessed 4 March 2019).

Norrlid, I. (1970), 'Kommunen som bolag? En studie i liberal rösträttspolitik före första världskriget', *Scandia* 36, pp. 46–120.

Nybom, T. and Torstendahl, R. (eds.) (1989), *Byråkratisering och maktfördelning* (Lund: Studentlitteratur).

Olsson, S. (2000), *Den svenska högerns anpassning till demokratin* (Uppsala: Acta Universitatis Upsaliensis).

Rönnbäck, J. (2004), *Politikens genusgränser. Den kvinnliga rösträttsrörelsen och kampen för kvinnors politiska medborgarskap 1902–1921* (Stockholm: Atlas).

Sköld, L. and Halvarson, A. (1966), 'Den sociala omgrupperingen I Sverige efter 1866', *Samhälle och riksdag* I (Stockholm: Almqvist & Wiksell).

Söderpalm, S.A. (1969), *Storföretagarna och det demokratiska genombrottet. Ett perspektiv på första världskrigets svenska historia* (Lund: Gleerups).

Stjernquist, N. (1996), *Tvåkammartiden. Sveriges riksdag 1867–1970* (Stockholm: Sveriges Riksdag).

Vallinder, T. (1966), 'Rösträttsrörelsens idéer', in: Hadenius, S. (ed.), *Kring demokratins genombrott i Sverige* (Stockholm: Wahlström & Widstrand), pp. 24–54.

10 The Senate and the 'Social Majority'

Joannes Theodorus Buys (1826–1893) and a 'Meritocracy' in the Netherlands (1848–1887)

Wybren Verstegen

Introduction

After the revolution of 1848 and the constitutional reforms that followed, Dutch parliamentary history entered calmer waters. The Netherlands, as did many small power constitutional monarchies, developed into a rather balanced society with a constitution that has remained more or less stable to the present day. This stability, of course, did not mean there were no tensions or that everyone liked such constitutional stagnation.

One of the hotly debated issues in the surrounding countries around 1900 was the question of universal suffrage, and the Netherlands was no exception. Both liberals and conservatives abhorred this social-democratic ideal. One of those opponents of universal suffrage was a famous Dutch political commentator, prof. Joannes Theodorus Buys (1826–1893), who in the late 1880s wrote an extensive three-volume commentary on the Dutch constitution of 1848 that served as a textbook for a whole generation of students. In this study, Buys formulated a political model in which a meritocratic senate could act as a representation of what he called 'the Social Majority' of the nation. In this way, he hoped, one could circumvent the highly contested matter of universal suffrage. This idea highlights an outspoken, idealistic notion of what a senate might be and sober thoughts about the shortcomings of the Senate in the well-established Dutch constitutional framework that came into being in 1848.

Prof. Joannes Theodorus Buys (1826–1893)

Although he had already been forgotten within a few decades after his demise, Buys was a famous commentator on Dutch political developments in his lifetime (cf. Aerts 1997). He started as a liberal but became more and more conservative with regards to the 'social question' towards the end of his life. He supported the constitutional monarchy and developed an almost sentimental nationalism later on in his life. Born in Amsterdam, he became a well-to-do and versatile man in politics. He was a member of the Leiden city council (1881–1886) and a member of the provincial estates of Holland (1871–1893). As professor, first at the University of Amsterdam and later at Leiden University, he wrote many quoted and reviewed articles

on politics for an intellectual audience. Buys was also an official political advisor to the government and twice a member of state commissions on parliamentary reforms. He was the vice-president of the committee that studied the constitutional reforms of 1887, which gave non-binding advice to government and parliament – a difficult and time-consuming job (Staatscommissie 1884; cf. Heemskerk 1889). Not surprisingly, considering his positions, one of his more long-remembered criticisms was that it took much too long to change the Dutch constitution (Buijs 1887; cf. Kiewiet & Tang 2018; Hirsch Ballin & Leenknegt 2018). Between 1883 and 1888, he published three trend-setting books about the Dutch constitution. Part three, published in 1888, became a necessary supplement because the Dutch constitution was changed while he was writing parts one and two. Buys's books contain many comments on all aspects of the old and the new constitutions. When talking about the Senate, Buys especially elaborated on the ideas behind preserving the upper chamber in 1848 despite the criticism and ambiguities that surrounded the institution. Buys's comments on the constitution became standard reading material at universities, and many contemporary commentators drew upon them in their own works. Some of their comments are quoted in the conclusion of this chapter, as they are useful for a better understanding of Buys's opinions in the context of late nineteenth-century Dutch political developments and also explain why his ideals became obsolete in the age of universal suffrage.

The Senate and constitutional change in 1887

The Kingdom of the Netherlands came into existence in 1813. Its 1814 constitution envisaged a single people's assembly and not an upper and a lower chamber. The argument was that, before the French Revolution, the States General of the Republic of the Seven United Netherlands had also consisted of only one assembly. Neither the nobility nor the clergy had a separate assembly on the national level, as in France (before 1615) or England. Only at the local level and not even in all provinces, nobles had a separate voice alongside the cities. After the Reformation, the clergy lost this privilege. According to Gijsbert Karel Van Hogendorp (1762–1834), the main author of the constitution of 1814, aristocracy was already safeguarded because the (small) electorate would in all probability prefer notables to represent them (Buijs 1883–1888). In other words, the assembly itself, indirectly chosen, was 'aristocratic', a rule of 'the best'.

In 1815, the Northern Netherlands and the Southern Netherlands were united to form a strong buffer state against a revolutionary France. The clergy and the nobility in the South asked for an upper chamber and received it because the Dutch king needed their assistance to back up his contested power in this part of his new kingdom (cf. Witte, this volume). This upper chamber was mocked for being 'la ménagerie du roi' because its members were nominated by the king and were not expected to act independently. This upper chamber was designed as 'a bulwark' against the 'rush' of the lower chamber. Buys mocked this function on the grounds that, in the peaceful Dutch Parliament, no 'destructive torrent' could be expected (Buijs 1883).

In the revolutionary year of 1830, the Southern Netherlands formed a new kingdom, with its own upper chamber. Meanwhile, the upper chamber in the Northern Netherlands remained in place. Things changed considerably in 1848, when, faced by the threat of revolution, a new, far more liberal constitution came into being in the Netherlands. As a brake on liberalism, however, both the Dutch government and Parliament now chose to keep the upper chamber, while they had been opposed to such an institution in 1815.

Things changed again in the 1870s and 1880s. We should note that the Netherlands was in turmoil in these decades. The call for social reforms and universal suffrage became stronger, the first conference of the Communist International was held in The Hague in 1872, labour unions were becoming more powerful and, in 1881, the first Dutch socialist party was founded (Van Welderen-Rengers 1918). There were political demonstrations in support of universal suffrage in the capital, The Hague, in 1885 and fierce riots with lethal consequences in Buys's hometown of Amsterdam in 1886 (Van den Berg & Vis 2013). Buys was no friend to universal suffrage and feared its arrival, knowing all the while that the trend looked unstoppable. The other main background of the constitutional reforms of 1887 concerned the discussion of whether or not the state should subsidise not only public schools but also schools with a religious background (as was demanded by religious minorities).

Buys and the Dutch Senate

Buys devoted three commentaries to the Senate in his discussion of the Dutch constitution. The first and most important one is about twelve pages long, analysing Articles 75 and 78 of the constitution of 1848 (Buijs 1883). The articles themselves were no longer than one page. They state that the States-General consists of an upper ('first') and a lower ('second') chamber (Article 75). Article 78 established the number of members of the first chamber, the franchise qualifications for voters and the fact that senators are chosen by the Provincial Estates (Buijs 1883). Buys's second treatise offered a commentary of three pages on the international and historical position of upper chambers and the lack of a right of amendment in the upper chamber (Buijs 1883). The last treatise concerned Article 78 and the position of the upper chamber after the revision of 1887 (Buijs 1888). According to Buys the parliamentary committees that formulated the constitution of 1848 proved unable to offer any solid proposal concerning the upper chamber, so what came out of all deliberations was a *pis-aller*, or half-measure (Buijs 1883). In the reformed constitution of 1887, the requirements for membership of the upper chamber moved in the direction of Buys's ideas. We will return to this important change in more detail later on.

When reading deeper into the subject, it becomes clear that Buys mainly wrote about one central aspect of the upper chamber: its position between the government (including the monarch), the lower chamber and 'the people'. This basic aspect can be subdivided into four questions: What was the power of the upper chamber? Who were its members? How were they chosen? What balance did the upper chamber hold between the three others?

The power of the Dutch upper chamber after 1848

One of the basic principles Buys elucidated was the very limited options the upper chamber had to intervene in the political process. The Dutch upper chamber could (and can) either totally accept or totally reject a proposal forwarded by the lower chamber. Buys called this 'the murder axe' (nowadays also called 'the nuclear option'), and he preferred a situation in which the upper chamber could change proposals by amendment (Otjes 2015; Buijs 1888). Like his criticism on the slow process of constitutional amendment, this idea was also picked up in later discussions (De Beaufort 1893). Buys explained to his readers why the reformers had wanted to place this limit on of the power of the upper chamber in 1848. The idea ran as follows: if a government proposal were to be amended by the lower chamber in a way the government could not accept, the upper chamber should be able to make the whole proposal 'harmless' (Buijs 1883). The murder axe was also necessary because the *nation* (not the people) should be protected against a random power grab by the lower chamber. In other words, the upper chamber existed to protect and support *the government*. The upper chamber should be a counterweight of 'state and throne' to the 'democratic principle'. An upper chamber was considered necessary to undermine 'brash decisions' by its 'irascible sister', the lower chamber (Buijs 1883). Buys looked critically at this line of thought. If this were the only function of the upper chamber, why not stick to the old constitution, in which members of the upper chamber were appointed by the crown (Buijs 1883)?

As Buys critically stated, the upper chamber was a representative body that was supposed to protect the nation against the representatives of the people (in the lower house). According to him, this was so contradictory that he called it a 'circle squarer' (Buijs 1883). We should remember that, in the beginning, in 1813, the *Northern* Netherlands' lower chamber was not considered 'dangerous', as it was *in*directly elected. For that reason, Van Hogendorp saw no need for a separate upper chamber. But, after 1848, the lower chamber was *directly* elected, albeit by a very small constituency. The main reason the upper chamber was preserved in 1848 was a perception that the people's chamber had become too democratic and operated too 'closely' to its constituency. The upper chamber was there to prevent the potential overthrow of government when 'tempers would have made reasonable deliberations impossible' (Buijs 1883). This, explained Buys, was the 'democratic principle' feared by the conservative majority in parliament (Buijs 1883).

But why only the 'murder axe'? The argument ran like this, Buys wrote: if an upper chamber *could* make amendments, this meant that an upper chamber could formulate its *own* opinion, probably *against* the government (Buijs 1883). This was not the role envisioned for the upper chamber. The upper chamber should have real power but not be independent. As mentioned earlier, Buys supported the opposite idea – that a senate could make amendments. In practice, however, Buys acknowledged the usefulness of a dependent upper chamber. Because the lower house *knew* that the upper chamber might murder a proposal, the lower house would think twice when considering radical proposals (Buijs 1883).

Who were the senators?

After 1848, members of the upper chamber were no longer appointed but indirectly chosen by the electorate. A high franchise qualification census guaranteed that only the wealthiest in each province voted for members of the States-Provincial, who chose the members of the upper chamber (something they still do). According to the Catholic parliamentarian C.J.H. van Nispen van Sevenaer, who also sat as a member on the aforementioned committee of 1887, it would have been unfair if those who paid little in taxes held as much power as those who carried the heaviest burdens (Staatscommissie 1884).

Buys argued that these indirect elections implied a problem with the small electorate itself but acknowledged that it was in line with the fears of a directly elected assembly. So in 1848, the upper chamber became a timocracy (money-aristocracy). Only the wealthiest taxpayers could become senators. The qualifications proved so high that only one in 3,000 people in the provinces could be elected after 1848. After 1877, that number changed to one in 2,000 (Buijs 1883, 1888).

In 1887, parliament decided it wanted to change these rules. If the upper chamber wanted to ensure its place in the political future, Buys argued, it should not represent nobility or wealth but consist of a real aristocracy 'comprising the best elements of society' (Buijs 1883). In the discussions about constitutional reform, one member of Parliament, W. H. de Beaufort, asked for a wider pool of candidates for the upper chamber. The electorate (i.e. the States-Provincial), he believed, should be free to choose anyone who could sit as a member of the lower chamber, not just those from the small number of candidates the government had in mind. This would open the door for less wealthy, but intellectually highly qualified people (Buijs 1888). Buys sincerely appreciated this idea. For him, this would allow the upper chamber to compensate for one of the main shortcomings of the principle of 'one man one vote' (because the franchise counts only votes and does not weigh the qualities of the delegates) (Buijs 1883). Parliament discussed the way to solve this shortcoming. How could this principle be implemented? The rather straightforward idea of De Beaufort encountered some objections. First, the government believed the idea to be 'too democratic'. Second – and this was a remarkable objection – it would mean that the upper chamber could be become a real competitor of the lower chamber. The reason? Highly esteemed people would make the upper chamber too popular. Buys summed his reaction to this latter argument in one word: 'weird' (*zonderling*) (Buijs 1888). Parliament agreed that the upper chamber should not stay a timocracy. The final compromise was that members of the upper chamber should 1) be eligible for the people's chamber *and* 2) be among the highest taxpayers *or* (interestingly) 3) hold or have held important public functions. As a result, former judges, governors, cabinet members, ambassadors and the like could qualify for a position in the Senate, even if they were not among the elite taxpayers (Van Welderen-Rengers 1918). *This* was the Dutch meritocracy that populated the Dutch upper chamber after the reforms. It is a small wonder why Buys called the compromise 'flawed', but he was nevertheless satisfied that 'merit' was accepted as a criterion in *some* way or another (Buijs 1888).

The upper chamber and the people

Buys was not just skeptical about the Dutch constitution of 1848 and the reformed version of 1887. With the exceptions of the United States and England, upper chambers proved 'defective all over the world' (Buijs 1883). Buys meant that upper chambers had a rather passive, secondary role in policy-making. What distinguished the upper chamber of the United States from other upper chambers was the fact that it really was a *different* kind of representation (i.e. of the individual states) but nevertheless a real representation of the common interests of the nation (Buijs 1883). As the Dutch upper chamber was (and is) chosen by the representatives of the provinces, one could argue that this construction was rather close to the American one. Firstly, however, the power of the provinces in the Netherlands is very restricted compared to that of the American states, and secondly, members of the Dutch upper chamber do not represent their provinces in the way that American senators represent *their* states. The other exception, the English House of Lords, represented the nation in a totally different way. It represented not the electorate but the local (noble or aristocratic) rulers who, according to Buys actually ran the country(side). They were the 'natural bearers of the legislative process' as *they* were the people who had to work with the legislation in practice. Elsewhere, such 'components' ('*grondstoffen*', lit. 'resources') for an upper house were not available (Buijs 1883). Buijs (1888) mistakenly believed that the (indirect) Dutch way of electing senators was exceptional in that it was both strange and unique, when making comparisons with, e.g. Sweden (cf. Nilsson, this volume). With this in mind, what did the Dutch upper chamber actually represent?

We have already mentioned Buys's complaint about the contradiction that the upper chamber was a body that represented the people and functioned as a dam against the people's assembly. Buys offered an alternative opinion. The upper chamber, he wrote, should represent 'the Social Majority' (Buijs 1883). In all likelihood, he was referring to the people who did not have the vote. He explicitly refused to make clear what he meant by that, for which he was severely criticised later on (De Vooys 1906). Buys strongly distrusted universal suffrage, but he also distrusted the German example of a parliament under the powerful control of Bismarck (De Beaufort 1893). When coming of age, Buys, like the Dutch liberal statesman Johan Rudolph Thorbecke (1798–1872), who drafted the 1848 constitution, became more and more concerned about Germany (Drentje 1998). Like Thorbecke, he felt that the only answer to German imperialism was a steadfast nation and parliament. Only then would the cost of swallowing up the Dutch nation be too high for Germany. The Netherlands, however, was not a steadfast nation, nor did it possess a strong parliament, because Dutch politics, in Buys's view, had become too opportunistic instead of being governed by principles.

Other political commentators alongside Buys feared an American system, where universal suffrage went hand in hand with corruption and violence (Van Welderen-Rengers 1918). Buys's fear was not based on some abstract notion. France was scapegoated by Buys and many other Dutch liberal intellectuals because of its

socialist experiments after 1848 and even more because of the political effects of the plebiscites in France during the reign of Napoleon III (Aerts 1997). Such plebiscites were his worst nightmare, so to speak, because they showed that universal voting rights could easily result in the end of democracy.

It was obvious, however, that the higher echelons of Dutch society, which were represented in the lower chamber, did not speak for the entire population. That responsibility, almost by default, fell to the members of the upper chamber. In his later years, Buys became somewhat tangled in his fears, writing, for instance, that the lower classes, in the end, would rather rely on the monarch than on the 'tyrannical majority', without explaining what the difference was between the people, the Social Majority and the tyrannical majority. He also wrote that the modest nature of the Dutch people would prevent the emergence of universal suffrage. The point was, of course, that Buys did not trust the political wisdom of 'the people' or the people's assembly. He looked to the wiser men in politics, the members of the upper chamber, to protect the nation against its whims.

Final remarks: Buys and his critics

Buys strongly criticised the way the Dutch constitution had arranged how senators were chosen and the limited way the Senate could influence politics. It was surely a chamber of 'reflection', but it was also an institution that should protect the people and the nation against an overly democratic lower chamber (given that universal suffrage looked inevitable). To play such a role convincingly, members of the upper chamber should be chosen from the best people available and not from a 'moneyed aristocracy'.

Buys was not without opponents. Radical politicians in particular mocked his conservative ideas about universal suffrage and his vague ideas about the representation of the Social Majority (De Vooys 1906). We can make a distinction between those who knew he had become outmoded but accepted his standing as a wise political commentator and those who mocked him. For instance, in a *memoriam*, it was said that Buys watched from the dunes with a certain melancholy as universal suffrage washed ashore the coast of Holland, knowing it was unstoppable. In 1888, however, another commentator called him the Rip van Winkle of Dutch politics (Aerts 1997). He had been asleep for too long, so to speak, and was out of touch with the times. One of his critics wrote in 1888: 'there is nothing wrong with the political view of Buys, besides the year at the end of the article' (Hack van Outheusden 1888, p. 138). In the new constitution of 1887, Buys got his way, insofar as it became possible for former experienced politicians and high officials to become members of the upper house, even if they did not belong to the taxpaying elite. Buys's ideal that such a wise senate should have real power through capacity to amend laws, though, never materialised.

References

Aerts, R. (1997), *De Letterheren. Liberale cultuur in de negentiende eeuw: tijdschrift De Gids* (Amsterdam: Meulenhoff).

Buijs, J.Th. (1883), *De Grondwet. Toelichting en Kritiek*, Vol. 1 (Arnhem: Gouda Quint).

Buijs, J.Th. (1887), *De Grondwet. Toelichting en Kritiek*, Vol. 2 (Arnhem: Gouda Quint).
Buijs, J.Th. (1888), *De Grondwet. Toelichting en Kritiek*, *Van de wijzigingen in 1887 ingevoerd Vol. 3* (Arnhem: Gouda Quint).
De Beaufort, W.H. (1893), 'Mr. J.T. Buijs'*, De Gids* 57, pp. I–VIII.
De Vooys, C.G.N. (1906), 'Potgieter en het liberalisme, II', *De Beweging* 2, pp. 328–355.
Drentje, J. (1998), *Het vrijste volk der wereld. Thorbecke, Nederland en Europa* (Zwolle: Waanders).
Hack van Outheusden, Ph. (1888), 'Een ouderwetsche professor', *De Nieuwe Gids* 3, pp. 128–142.
Heemskerk, J. (1889), 'Een commentaar op de grondwet van 1887', *De Gids* 53, pp. 163–174.
Hirsch Ballin, E.M.H. and Leenknegt, G. (eds.) (2018), *Artikelsgewijs commentaar op de Grondwet*. Available at: www.nederlandrechtsstaat.nl/grondwet.html (accessed 2 April 2019).
Kiewiet, J. and Van der Tang, G.F.M. (2018), 'Commentaar op artikel 137 van de Grondwet', in: Hirsch Ballin, E.M.H. and Leenknegt, G. (eds.), *Artikelsgewijs commentaar op de Grondwet*. Webversion. Available at: www.nederlandrechtsstaat.nl/module/nlrs/script/viewer.asp?soort=commentaar&artikel=137 (accessed 4 April 2019).
Otjes, S. (2015), 'De toekomst van de Eerste Kamer, Vier Scenario's', in: Van den Braak, B. (ed.), *Het "Probleem Eerste Kamer". Visies op de toekomstige rol van de Senaat* (The Hague: Montesquieu Instituut, Policy Papers), pp. 7–24.
Staatscommissie (1884), *Verslag der Staatscommissie benoemd bij Koninklijk Besluit van 11 mei 1883 om te onderzoeken van welker bepalingen der grondwet herziening noodzakelijk en thans raadzaam is* (The Hague: Van Cleef).
Van den Berg, J.Th.J. and Vis, J.J. (2013), *De Eerste Honderdvijftig Jaar. Parlementaire Geschiedenis van Nederland, 1796–1946*, (Amsterdam: Bert Bakker).
Van den Braak, B. (ed.) (2015), *Het "Probleem Eerste Kamer". Visies op de toekomstige rol van de Senaat* (The Hague: Montesquieu Institute Policy Papers).
Van Welderen-Rengers, J. (1918), *Schets eener parlementaire geschiedenis van Nederland 1849 tot 1891* [3rd. Edition] (The Hague: Martinus Nijhoff).

11 The Irish Senate, 1920–1936

John Dorney

Introduction

In the years 1920–1921, Ireland had its first (short-lived) Senate under Home Rule (1914–1920). This chamber was the immediate predecessor of the independent Irish Free State Senate. The Senate of the Irish Free State lasted just fourteen years, from 1922 to 1936. It was established as the upper house of the Parliament of the newly founded Irish Free State after the enactment of the Anglo-Irish Treaty in 1922. It was intended to represent southern Ireland's Protestant minority, especially its landed, business and intellectual elite, in a country where the lower house would inevitably be dominated by Catholic Irish nationalists. A secondary function was to provide expert guidance for the Parliament's lower house, the *Dáil*, in enacting legislation, which it could delay or amend. In 1933 it was abolished by the nationalist *Fianna Fáil* (the 'Soldiers of Destiny') government under Eamon de Valera (1932–1948) as a result of its continual blocking of that government's legislation. The Senate deployed its delaying powers against its own abolition but gave itself only a stay of execution of two and half years, until 1936, when it ceased to exist.

This chapter examines the aims of the Irish Senates in the tumultuous period from 1920 to 1936, a period that encompassed the Irish achievement of independence, civil war and the painful integration of the losing faction of the war into democratic politics. The chapter will focus on two aspects of these Senates and the discussions they generated. First, these Senates were supposed to be institutions that would safeguard special interests, especially those of the Protestant minority and of women. Second, it was envisaged that they would look after the quality and legality of government proposals. This chapter on the Irish interbellum Senates will be subdivided into six periods (to some extent overlapping) and the discussions therein – about its functioning and the desirability of its maintenance. In this way, it explores how these Senates functioned in practice and why the Irish Free State Senate was finally abolished.

It will argue that the decline of the Irish Senate was due in part to the ascendancy of the idea of popular sovereignty, vested in a lower house of Parliament and elected by universal suffrage. In light of this, the role of upper houses came to be seen as an illegitimate block on the powers of elected government or an

unnecessary duplication of the lower house. For instance, in Britain, after the hereditary House of Lords rejected the Liberals' left-of-centre 'People's Budget' of 1909, the power of the Lords to oppose a 'money bill' was abolished and its veto over other legislation was reduced to a delay of two years (cf. Slapper & David 2009, p. 69). The Irish Free State Senate never had a power of veto, but nevertheless it eventually incurred the ire of the directly elected government, which felt the Senate was infringing on its powers. While on numerous occasions the Senate did provide useful aid to an inexperienced lower house of Parliament in drafting legislation, ultimately it saw its powers eroded and eventually abolished by parliamentarians who viewed political legitimacy as vested solely in the popularly elected lower house, the Dáil. The Senate's ostensible purpose as a seat of representation for Southern Ireland's Protestant minority was not easy to achieve. On the one occasion in which senators were directly elected by the public, in 1925, most Protestant 'Anglo-Irish' senators lost their seats, and it was only by the reintroduction of nomination and indirect election in 1928 that some of them were reinstated. Antagonism towards the Free State's Senate was particularly pronounced on the part of Irish Republicans, who viewed the upper house as a pro-British brake on progress towards full Irish independence. For this reason, senators came under physical attack during the Irish Civil War of 1922–1923, being specifically targeted by Republican paramilitaries in the Irish Republican Army (IRA). Once the political representatives of the Republicans opposed to the Anglo-Irish Treaty of 1922 (the party of Fianna Fáil) were voted into government in 1932, the Senate became a battleground in which senators attempted to block Fianna Fáil's agenda.

The 'Home Rule Senate', 1920–1921

Home Rule, or limited self-governance for Ireland within the United Kingdom, had first come on the agenda of British politics in the 1880s, when the Liberal government of William Gladstone tried but failed to pass it into law in 1886 – the Bill being voted down in the House of Commons by MPs who were concerned that it would prompt the breakup of the United Kingdom and possibly even of the British Empire. A second Home Rule Bill was passed in the House of Commons in 1893 but voted down in the Conservative and Unionist-dominated House of Lords; therefore, it did not become law. An upper chamber as part of an Irish Home Rule Parliament was included in the first and the second Home Rule Bills. The idea of the Senate was to ensure representation for Irish Protestants, many of whom, particularly in the northern province of Ulster, were Unionists – that is, for union with Britain and against Irish self-government – in a country that was approximately 70 per cent Catholic.

A third Home Rule Bill was drafted in 1912 as part of an electoral deal between the Liberal government of Herbert Asquith and Irish nationalists in the British Parliament at Westminster in return for the Irish Party's support for the Liberal government. By this time, the House of Commons had curtailed the powers of the House of Lords to a mere two-year delay on bills received from the House

of Commons. As a result, the first Home Rule Bill actually passed into law in August 1914. The legislation was, however, never enacted. In the face of Ulster Unionist resistance, it was suspended for the duration of the First World War, and ultimately Home Rule never became a reality. The 1912 Home Rule Bill envisaged an important role for a senate in an autonomous Ireland. Under this legislation, Ireland would have had two houses of Parliament: a House of Commons, with 164 elected members, and a Senate, with forty members, nominated by the Imperial Parliament at Westminster and intended to represent the interests of the Protestant minority. The Senate would have the right to hold up legislation and appeal it to the Imperial Parliament but not to ultimately block it. Given that the Westminster Parliament could overturn any law passed in Dublin – indeed, according to Prime Minister Herbert Asquith, 'the over-riding force of the Imperial Legislation can at any time nullify, amend or alter any act of the Irish Parliament' – the Senate's power would have been significant (Jackson 2000). The last attempt to enact Home Rule in Ireland came in 1920, when the Government of Ireland Act created parliaments in a partitioned Ireland, one for Northern Ireland, based in Belfast, and one for Southern Ireland, based in Dublin. The Act proposed a Senate in both Northern Ireland and Southern Ireland. The Northern Senate lasted as long as the original Northern Ireland administration, that is until direct British rule was reintroduced in 1972. The Southern Senate was instead a short-lived affair, meeting only once in 1921 in the midst of the guerrilla war now termed the Irish War of Independence. It was, however, important to the eventual evolution of the Irish Senate, as it heavily influenced the first working Irish *Seanad* of 1922–1934.

The Southern Ireland Home Rule Senate was to have sixty-four members. Three were co-opted automatically by virtue of their office: the lord chancellor and the lord mayors of Dublin and Cork. Seventeen were nominated by the lord lieutenant (the British Crown's representative in Ireland) to represent 'commerce, labour and the learned professions'. Four were to be elected by the Catholic bishops and two by the Protestant Church of Ireland. Another sixteen were peers, or members of the British House of Lords, who would hold their seats by virtue of their hereditary titles. Eight were nominated by British privy councillors and fourteen by Irish county councillors. In short, out of sixty-four senators, only twenty would be elected in Ireland and none by a popular vote (Coakley & Gallagher 1999). This Senate had a short life. It was ignored by Sinn Fein, the separatist party now ascendant in Irish politics, which boycotted the Southern Ireland Parliament. Only five senators turned up at the opening of the Parliament in June 1921, and it never met again. The Southern Ireland Senate was formally abolished with the signing of the Anglo-Irish Treaty in December 1921. There was, however, a strong overlap between the Home Rule Senate and the Free State Senate, or Seanad, that was created the following year. Moreover, because of its purpose under the 1920 Act as representative of Southern unionists, the Senate carried with it the baggage of a pro-British institution that was an impediment to the fully independent Irish Republic that many aspired to.

The making of the Free State Seanad, 1922

The Anglo-Irish Treaty signed on 6 December 1921 formally ended the war between the British government and the Irish separatists of Sinn Fein and the Irish Republican Army (IRA). The British did not concede a fully independent, all-Ireland Republic but rather an Irish Free State, on the same territory as Southern Ireland – that is, twenty-six of Ireland's thirty-two counties – which was to be a self-governing dominion of the British Commonwealth. The Treaty made no mention of the form of government the newly created Irish Free State would take. This decision was left to the Irish authorities, who were to draw up a constitution for the Free State that would in turn require approval by the British Parliament. Michael Collins and Arthur Griffith, heads of the Provisional Government set up to oversee the transition from British rule to the Free State, formed a committee in early 1922 to draft a new constitution. During the Treaty negotiations, Arthur Griffith had assured representatives of Southern Irish unionists that their interests would be safeguarded by the use of proportional representation in voting: a mechanism designed to ensure that minorities were fairly represented and that Southern unionists received 'due representation' in the Seanad (Byrne 2015).

It was not until June of 1922 that the first Irish constitution was published by Free State authorities, and it was October of that year when it was brought into force. Like the Home Rule bills that had preceded it, the 1922 constitution envisaged a two-house Parliament. The Dáil, directly elected by all citizens over 21 years of age, would enact legislation, while a senate or Seanad, sixty strong, would represent various social groups. The establishment of a senate and a proportional representation system of voting for the Dáil were two major safeguards sought by Unionists against the domination of the Protestant minority by the Catholic majority. The Unionists had a significant influence on determining the composition of the Seanad, but not all of their demands were agreed to. For instance, they sought a property qualification for voting for the Seanad which was rejected. As a compromise, the vote was restricted to those over 30 years of age (Manning s.d.). According to the constitution, 'citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life' – and oversee the legislation passed in the lower house. Unlike the Home Rule Senate, the first Seanad was envisaged as a rather democratic body. The constitution stated,

> All citizens of the Irish Free State (*Saorstát Eireann*) without distinction of sex who have reached the age of thirty years and who comply with the provisions of the prevailing electoral laws shall have the right to vote for members of Seanad Eireann.
>
> (Irish Free State 1922)

The candidates would first be selected by the Dáil and the existing Seanad members. Senators would serve terms of twelve years, and a quarter of the Seanad's members would face re-election every three years.

The Senate's powers were principally to delay and amend legislation. Dermot O'Sullivan, the Senate's clerk, remarked that 'the powers of the new Senate were severely restricted as compared with Second Chambers elsewhere' (O'Sullivan 1940). It had no absolute veto but could send legislation back to the Dáil if it did not agree with the proposal, and in the event the Dáil continued to pass it, it could suspend that legislation for 277 days, or nine months, before it was presented to the governor-general for the formality of the king's assent and then passed into law. In practice, this could mean a delay of up to eighteen months, as the Senate could invoke its delaying powers twice if the Dáil presented the same legislation the Senate had opposed on the first occasion. The exception to this was a 'money bill' – anything connected with taxation or public finances – which it could only hold up for twenty-one days. The Seanad had the right to initiate legislation which, if passed in the Senate, would come before the Dáil and, if passed there, would become law (Irish Free State 1922). There was, moreover, a provision whereby the Senate could request a joint sitting of both houses to discuss a money bill (O'Sullivan 1940). A further power the Senate possessed was, with a three-fifths majority in the upper house, to force a popular referendum on a law passed in the Dáil which had been rejected in the Senate. There was also a provision for senators to be nominated as 'external ministers' in the government (O'Sullivan 1940, pp. 87–89). Southern Unionists had wanted a minimum delaying power for the Senate of one year, while the provisional government, made up of pro-Treaty nationalists, had wanted a maximum delaying power of one year, so the nine-month delay the Seanad could impose was a compromise (O'Sullivan 1940). The Seanad was due to meet for the first time in December 1922. However, a furious division had arisen in the Irish Republican movement over the Anglo-Irish Treaty by this time, which some considered to betray Republican principles. In late June 1922, the split over the Treaty led to civil war between those who accepted the Free State and those who insisted on rejecting the Treaty in favour of an Irish Republic. Against this background, the Senate, associated strongly with the pro-Treaty position and its acceptance of membership of the British Commonwealth, became a target for violent attacks by the Republican faction.

The Free State Seanad in civil war, 1922–1923

While the constitution envisaged a directly elected senate, this was not possible in late 1922, with civil war raging across much of the country. Instead, the first Seanad was half nominated by the president of the Dáil, William T. Cosgrave (effectively the prime minister), while the other half was elected by members of the Dáil (Townshend 1998). Cahir Davitt, the Free State's attorney general, recalled:

> On December 6th [1922] the Irish Free State had come into being when its constitution was enacted by the Dáil sitting as a Constituent Assembly. The

> first Senate came into existence [. . .] by being partly elected and partly nominated as provided by the constitution and held its first meeting on December 9th under the Chairmanship of Lord Glenavy.
>
> (Davitt s.d.)

It was agreed that the senators would be nominated 'in a manner calculated to represent minorities or interests not adequately represented in the Dail' (O'Sullivan 1940). The Free State authorities depended on military and financial support from the British to get through the crisis of the Irish Civil War, and they knew that as a result they would have to reach out to members of the old pro-British elite in Ireland in the selection of senators. As Minister for Home Affairs Kevin O'Higgins put it:

> it comes well from us [the Catholic and nationalist majority] to make generous adjustment to show that these people were well regarded, not as alien enemies, not as planters [colonists] but that we regard them as part and parcel of this nation and that we wish them to take their share of its responsibilities.
>
> (Byrne 2015)

As a result of the need to placate Southern Unionists, the Senate, in fact, quite closely resembled the Home Rule Senate of 1920; former Unionists and holders of British hereditary titles were notably represented. The *Cathaoirleach* or chairman of the new Senate was, for instance, James Campbell, the Baron of Glenavy, a former Unionist member of Parliament for Dublin and lord chief justice for Ireland under British rule. He had participated in the Ulster resistance to Home Rule in 1912.

Anti-Treaty Republican propaganda in 1922 called the Senate 'England's faithful garrison in Ireland'(Foster 2015). One anti-Treaty writer catalogued Cosgrave's thirty nominees to the Senate as '24 confirmed imperialists and [Dublin] Castle hacks [i.e. pro-British careerists], 18 Freemasons [generally associated with Protestants and unionism] and 25 who were 'bitterly opposed to the idea of a Gaelic civilisation' (Foster 2015). Former Unionists were indeed overrepresented in the Seanad for their share of the population, but they were not a majority. The new Senate included sixteen former Unionists, including seven peers and five other aristocrats. In all, it included thirty-six Catholics, twenty Protestants, three Quakers and one Jewish member. Eleven senators had served in the British Army. It also included representatives of organised labour and small farmers, as well as representatives of big and small business (Byrne 2015). The Seanad was targeted by the anti-Treaty IRA in reprisal for the executions of their imprisoned fighters by the Free State. In response to such executions, Liam Lynch, the IRA leader, issued an order that 'all Free State supporters are traitors and deserve the latter's stark fate, therefore their houses must be destroyed at once' (Lynch 1922). And on 26 January 1923, anti-Treaty IRA Adjutant General Con Molony issued the following order:

> 1.Houses of members of 'Free State Senate' in attached list marked A and B will be destroyed. and 2.From the above date if any of our Prisoners of War

> are executed by the enemy, one of the Senators in the attached list [. . .] will be shot in reprisal.
>
> (O'Malley & Dolan 2007)

Moloney attached a list of the names of twenty senators and their addresses. Of these, fourteen were named as targets for assassination. Those marked for death included 'John Bagwell, General Manager Great Northern Railway, Imperialist and Freemason' and Henry Wilson, 'heir to the Marquis of Lansdowne, Imperialist and Freemason'. It also included Andrew Jameson, chairman of the Bank of Ireland; and Bryan Mahon, commander-in-chief of British forces in Ireland, 1916–1918 – respectively 'Imperialist and Freemason' (Lynch 1922). The list tells us something of Republican prejudices. Those marked for death were disproportionately upper-class 'Anglo-Irish' Protestants of either landed or capitalist background. However, it also tells us something about the nature of the first Free State Senate that so many of its members had occupied such senior social and political positions in British-ruled Ireland. Early 1923 saw an onslaught on the homes of senators and other 'Imperialists' around Dublin. Among the homes destroyed were those of Glenavy, the Senate's chairman, senators Bryan Mahon, Horace Plunkett, Maurice Moore and others (IRA [1923a]). Out of 199 'Big Houses' or mansions destroyed by the Republicans as reprisals, thirty belonged to senators (Dooley 2001). IRA Chief of Staff Liam Lynch also contemplated even more radical action, writing to anti-Treaty political leader Éamon de Valera in January 1923, advocating 'shooting a large number of senators' – 'at least four' – in reprisal for each execution of an IRA prisoner. At least in this case, de Valera managed to restrain the IRA chief of staff, telling him: 'it is unjustifiable to take the life of an innocent man and to make him suffer for the acts of the guilty' (De Valera 1923). There were several attempts to abduct and kill senators, but ultimately none were actually killed by the IRA during the Civil War (Dáil Eireann 1923). Senator John Bagwell, for instance, was kidnapped at gunpoint from his house in Howth, Dublin, and he was released only when the Free State threatened to execute several imprisoned Republican leaders if he was killed. Senator John Gogarty was also kidnapped and threatened with death but later released. The risk to the lives and homes of senators was not brought to an end until the IRA called a ceasefire in April 1923 and in May of that year instructed its fighters to 'dump arms' (Hopkinson 2004). Several prominent senators, notably James Douglas and Andrew Jameson, were involved in back-channel negotiations with anti-Treaty political leader Eamon de Valera, which helped to bring about the ceasefire and the end of the Civil War (IRA [1923b]).

The Seanad in the early Free State period, 1923–1932

The Seanad limped through the Civil War as an unelected and traumatised body. It did, however, make a number of notable contributions to the new Irish state in the following years. As political scientist Elaine Byrne (2015) argues, many senators

had experience in government and law that the directly elected *Teachta Daila*, or TDs [members of the Dáil], did not. Only five of the 153 members of the Dáil elected in 1923 had served in the British Parliament, and none had any ministerial experience outside the rebel underground Republican government of 1919–1921. In the upper house, by contrast, several members had served in either the House of Commons or the House of Lords in Westminster. James Douglas, the vice chair of the Seanad, took on the role of drafting standing orders and private members bills for both houses.

Between 1922 and 1928, the formative years of the Free State, a total of 238 bills came before the Senate for approval, including bills formally setting up the *Garda Siochana* or Irish police force, courts of Justice, local government bodies and rules for elections. Of these, the Seanad sent back and managed to amend ninety-three bills before they became law (Byrne 2015). The most significant of these was an amendment to the Courts of Justice Bill (1924). The original draft proposed that the executive (cabinet) could set the salaries of district judges. The Seanad, led by Glenavy, a former chief justice for Ireland himself, argued that this imperilled the independence of the judiciary and managed to get it amended so that the *Oireachtas* (houses of Parliament) as a whole could vote on setting judges' pay until 1926 (Byrne 2015). Maurice Manning (s.d.) notes that the Free State Senate received 489 bills from the Dáil; of these, the Senate amended 182, with virtually all amendments being accepted by the Dáil. The Senate used its power of suspension in only nine cases – and in two of those cases, the government refrained from passing the bills into law when the period of suspension had expired.

Yet in general, the Senate had only a limited effect in its original proposed function of safeguarding the interests of the Protestant minority or, for that matter, women's rights. This was at a time when, among other things, bans on divorce, contraception and women serving on juries were passed into law. In June 1925, the poet and senator W. B. Yeats (himself a Protestant by background, though a nationalist by conviction) famously railed against the banning of divorce by a majority Catholic lower house, claiming that it would alienate Irish Protestants from the state and crystallise the partition of Ireland. As he phrased it:

> It is perhaps the deepest political passion with this nation that North and South be united into one nation. If it ever comes that North and South unite, the North will not give up any liberty which she already possesses under her constitution. You will then have to grant to another people what you refuse to grant to those within your borders. If you show that this country, Southern Ireland, is going to be governed by Catholic ideas and by Catholic ideas alone, you will never get the North. You will create an impassable barrier between South and North, and you will pass more and more Catholic laws, while the North will, gradually, assimilate its divorce and other laws to those of England.
>
> (Seanad Éireann 1925)

Yeats's speech was essentially nationalist in tone, citing the unification of Ireland as his 'deepest political passion'. But it also reflected one of the original purposes of the Senate in that he claimed to speak on behalf of the Southern Protestant minority. Despite his efforts, the bill prohibiting divorce was passed in both houses. Indeed, the clerk and historian of the Senate, Dermot O'Sullivan, thought Yeats's speech 'deplorable [. . .] an envenomed attack on the religion of the majority of his countrymen' (O'Sullivan 1940).

The Senate of 1922 was not popularly elected – it was half nominated and half elected by members of the Dáil. Only in 1925 did the Seanad hold its first elections, for nineteen of the sixty seats in the Senate. In the face of a boycott by supporters of the anti-Treaty Sinn Fein party, only approximately 25 per cent of the electorate turned out to vote for seventy-six candidates, and they re-elected only eight of the existing senators nominated in 1922. Many former Unionists lost their seats, and the Seanad was now dominated by the representative of the pro-Treaty ruling party, Cumann na nGaedheal (roughly, the 'League of Irish'), followed by the Labour Party and the Farmers' Party (Coakley 2005). The Seanad had already effectively lost its original purpose of providing minority representation: an inevitable consequence of its being directly elected by an electorate that was overwhelmingly Catholic and nationalist. After the 1925 elections, the electoral system for the Seanad was changed so that in the senatorial elections of 1928, 1931 and 1934, its members would only be chosen by members of the Dáil and the Senate itself, not popularly elected. The contradiction was that a directly elected assembly would not represent minorities, while an indirectly elected one lacked popular legitimacy in the eyes of both the public and many members of the lower house.

Dermot O'Sullivan, a highly sympathetic observer of the Seanad, nevertheless noted that there was 'imperfect sympathy' between the members of the Dáil and those of the government on the one hand, most of whom had fought in the independence struggle against the British, and the Senate on the other, which was 'largely composed of men whose attitude during the national struggle was supposed, rightly or wrongly to have been one of apathy or even passive hostility'. What was more,

> The Dáil, moreover, was a product of universal suffrage and regarded itself as the real repository of the sovereign rights of the people; and in respects of law-making intended to share them as little as possible with the 'unrepresentative' second chamber'.
>
> (O'Sullivan 1940)

Perhaps as a result of this attitude among parliamentarians, the Seanad began losing power and influence by the late 1920s. In 1926 the upper house opposed but failed to stop legislation that barred women from taking civil service examinations. In 1927, senators had only limited success in amending a law passed by the Dáil removing women from jury duty. Under the compromise worked out between senator James Craig of Trinity College and Minister for Justice Kevin

O'Higgins, women would instead be excluded from the jury rolls but have the right to put themselves forward for inclusion if they had a special talent for the law, or as O'Higgins put it, 'an aptitude for that particular line of life' (McCarthy 2006). In the same year, O'Higgins managed to remove a provision in the 1922 constitution whereby a senator could be made a minister in the executive council or cabinet. O'Higgins thought it was 'a wrong thing' that senators, who were elected or nominated only 'with powers of revision, powers of criticism, powers of suggestion and even maximum powers of delay' could hold executive office over directly elected members of the Dáil (McCarthy 2006). O'Higgins' also removed the right of the Seanad to initiate legislation. His position was that sovereignty and real power must lie, in his view, with those directly elected by universal suffrage. In 1928, the right of the Senate to demand a referendum was also removed (O'Sullivan 1940).

Despite the fact that it would sometimes have a different opinion from that of the ruling party, *Cumman na nGaedheal*, the Seanad remained a bastion of pro-Treaty support. Cumman na nGaedheal was the party that grew out of the pro-Treaty faction of the Irish Civil War and was identified with a conciliatory attitude towards Britain. The Senate's close identification with one side of the Treaty identified the house as a whole with partisan politics and put them at odds with a resurgent anti-Treaty Republican political party. In 1926, most of the anti-Treaty veterans of the Civil War regrouped under Eamon de Valera in a new party, Fianna Fáil, which split from the older separatist party, Sinn Fein. Fianna Fáil was dedicated to dismantling the Treaty settlement and securing full Irish independence by political rather than military means. Fianna Fáil entered Parliament in 1927, ending their previous boycott of the Dáil (Coakley & Gallagher 1999).

In 1928, Fianna Fáil had six senators elected to the Seanad on the votes of their TDs or members of the Dáil. Campaigning for a dismantling of the Anglo-Irish Treaty, as well as a programme of social housing, land reform and economic nationalism, Fianna Fáil came to power after winning the General Election of 1932, with support from the Labour Party. Its stated goal was to undo the Treaty settlement and tear down those of its institutions – the Oath of Allegiance to the British monarch, the office of governor-general and the Seanad – that, so it believed, represented 'imperialist' interests in Ireland. One of the rising stars in the Fianna Fáil party, Sean Lemass, said in 1928 of the Senate: 'this bulwark of imperialism should be abolished by the people's representatives on the first available opportunity that they get' (Houses of the Oireachtas 2019). Lemass's words were prophetic, as within two years of coming to power, Fianna Fáil would indeed abolish the Irish Senate.

The Seanad under Fianna Fáil, 1932–1933

Many Irish parliamentarians from both sides of the Treaty divide had become impatient with the Senate's interfering, as they saw it, with the business of elected government. However, Fianna Fáil, with its objective of removing the remaining links with Britain, was an ideological enemy of the Seanad. Unsurprisingly

perhaps, the Seanad became a battleground in the first years of the Fianna Fáil government. Now it found itself in the classic position of an upper house: resisting, as most senators saw it, hasty and possibly unconstitutional legislation being introduced by a populist-dominated lower house of Parliament. Fianna Fáil and Eamon de Valera's first move with regard to remaking the Irish constitution was to neutralise the opposition to changes in the constitution of the governor-general, the king's representative in Ireland, whose approval was needed to pass any bill into law. They did this by replacing the incumbent pro-Treaty governor-general, James MacNeill, with de Valera loyalist Domhnall ua Buachalla, who dutifully signed into law any legislation passed by the Fianna Fáil government. By these means, de Valera successfully enacted a series of constitutional changes, despite the resistance of the Seanad, which could delay but not stop them (O Suilleabhain 2015). In 1932, Fianna Fáil passed a bill in the Dáil abolishing Article 17 of the Irish Free State's constitution, which obliged members of Parliament to take the Oath of Allegiance to the British monarch. The presence of such an oath was one of the major Republican objections to the Anglo-Irish Treaty. The Seanad, as was its right, proposed heavy amendments to the bill and returned it to the Dáil, delaying it by nine months. This was a clear case of a conservative upper house attempting to block or at least slow down what it considered to be radical legislation, incompatible with the Free State's constitution. De Valera himself, speaking before the Senate, argued that the Oath did not have democratic legitimacy, not having been chosen by the Irish people but imposed by Britain at the time of the Anglo-Irish Treaty in 1922. He argued that having been popularly elected, his government had a mandate to abolish the Oath (Seanad Éireann 1932).

De Valera's critics in the Seanad, with its disproportionate share of former Unionists, argued that abolishing the Oath risked alienating Britain. Senator James Douglas, a businessman senator since 1922 and a Quaker, for instance, alleged that de Valera preferred confrontation with the British to negotiation. He worried that the bill would 'affect our membership of the British Commonwealth – our trade and commerce, and last, but not least, the ultimate political unity of Ireland' (Seanad Éireann 1932). Somewhat ironically, pro-Treaty nationalist senators from Cumann na nGaedheal were far more intemperate in their criticism than former Unionists. Senator Sean Milroy, for instance, likened the Fianna Fáil government to 'pirates' who sought to 'scuttle the Free State'. Milroy believed that de Valera's government had no right to tamper with the constitution: 'I contend that the only valid authority upon which a proposal of this nature could rest is a clear mandate from the people, the electorate'. De Valera deftly outflanked this line of argument and the Senate generally by calling a fresh general election in which his Fianna Fáil party won an overall majority. Assured now of popular support, the Removal of the Oath Bill duly passed into law in May 1933 (Townshend 1998).

The abolition of the Seanad and the new Seanad of 1937

From this point onwards, the days of the first Seanad, now marked as a staunch opponent of de Valera's agenda, were numbered. It narrowly passed, albeit with

many amendments, his Land Annuities Bill in 1933, which withheld payments owed to Britain under the Treaty, starting a damaging trade war that lasted until 1938. Thereafter, de Valera unsuccessfully attempted to curtail the Seanad's power by suggesting reducing the maximum length of time it could hold up a bill from eighteen to three months (Manning s.d.). The next confrontation de Valera had with the Senate was when he attempted to broaden the local government franchise – the Senate resisted the widening of the right to vote in local elections and delayed it until 1934 (Manning s.d.).

The final conflict between the de Valera government and the Seanad – and the one that ultimately led to the Senate's abolition – resulted from the proscription of a right-wing paramilitary group. Upon coming to power, de Valera had sacked Garda Commissioner (chief of police) Eoin O'Duffy, an outspoken former pro-Treaty general. At the same time, he legalised the Republican paramilitaries of the IRA until 1936. In response to IRA intimidation of Cumman na nGaedheal supporters, O'Duffy gathered pro-Treaty army veterans into a grouping named the Army Comrades Association, popularly called the Blueshirts for their military-type uniform consisting of a blue shirt and black beret. O'Duffy adopted the trappings of continental fascism and some of its policies. He was by no means a fringe figure, becoming the first leader of the main opposition party – *Fine Gael* – which was a merger of Cumman na nGaedheal, the National Centre Party and the Blueshirts, now named the 'National Guard'. O'Duffy told the first Fine Gael congress that 'we should not make an idol of parliament, it is a human institution' (McGarry 2007). De Valera, meanwhile, commented that, 'we have not been unmindful of the developments on the continent [of Europe]' and accused the Blueshirts of having 'adopted the methods and symbols associated with dictatorships in other countries' (Broderick 2010).

With rioting taking place around Ireland between Fianna Fáil and IRA supporters on the one hand and the Blueshirt movement on the other, the Fianna Fáil government passed a law banning the wearing of uniforms – effectively proscribing the Blueshirts. The Seanad voted down the bill, delaying its passing by nine months. Again, in the face of entrenched partisan divisions, there was little possibility that the lower house, with its Fianna Fáil majority, would reflect on the Senate's opposition and simply change its mind. Rather, its opposition merely delayed the Blueshirt ban until the following year. Fianna Fáil and Republicans in general usually depicted the Free State Senate as a reactionary, pro-British institution that defied the will of the elected government. Certainly, the Seanad's last stand, trying to prevent the banning of a quasi-fascist street-fighting movement, appears somewhat sinister today. At the time, however, senators argued that de Valera's government was not only unconstitutionally dismantling the Anglo-Irish Treaty but also infringing on basic civil liberties, such as the freedoms of speech and association, given that he appeared to tolerate the activities of the IRA (O'Sullivan 1940). That this depiction had at least some truth was underlined when de Valera then passed another bill, the morning after the Senate had opposed the bill banning the wearing of uniforms. This bill, however, sought to abolish the Senate itself. Ordinarily, abolishing a house of Parliament would be extremely difficult, but by neutralising

the position of governor-general, which de Valera had filled with the compliant Domhnall Ua Buachalla, and with a safe majority in the Dáil, de Valera's government faced little legislative opposition. Predictably, de Valera's bill abolishing the Senate was not passed in the upper house itself. But after the maximum delay of eighteen months, the first Seanad ceased to exist on 29 May 1936 (Keogh 1994).

From 1936 to 1937, the Irish Free State had no upper house. In 1937, however, when introducing his new constitution – still the basis of law in Ireland today – de Valera set up a new Seanad. De Valera's constitution was passed by referendum and, unlike its predecessor, it could only be altered by popular vote through a referendum. The 1937 Seanad, its creators were determined to ensure, would not obstruct the powers of the lower house as had its predecessor. Many Fianna Fáil supporters had regarded the old Senate as a bastion of pro-British privilege. Sean Lemass, one of de Valera's most able lieutenants, said, 'if there is to be a second house, let it be a second house under our thumb' (Townshend 1998). Although 'vocationalism' served as the basis for representation in the Senate – whereby social groups, such as employers, labour, farmers and others, would be represented – in practice, the new Senate had little independence, and the Seanad was tightly controlled by whichever party controlled the Dáil. Many of the seats became jobs for either aspiring or retiring politicians, and, unlike its predecessor, the 1937 Seanad could not initiate legislation – it could only hold up bills for ninety days, which it has only done on the rarest of occasions (Coakley & Gallagher 1999; cf. O'Donoghue, this volume).

Conclusion

The Irish Free State Seanad was originally envisaged as a way of managing Irish democracy, representing the Unionist minority and preventing (or at least delaying) legislation that senators deemed hasty, ill-advised or unconstitutional. In these respects, it was not without achievement. It did bring members of the old Anglo-Irish class into Free State politics, for which it has been lauded as 'a unique experiment in idealism' (Byrne 2015). Moreover, the administrative experience of some members of the Senate was a significant help to Irish parliamentarians in enacting formative legislation, such as setting up standing orders for Parliament and officially establishing the police and law courts.

As a means of representing minorities, however, the Seanad ultimately suffered from a fatal contradiction. It could be popularly elected or represent former elites, but not both, as the 1925 election proved. Having largely lost its position as a body representing minorities after the 1925 election, its distinctive role in Irish politics was no longer clear, with the result that it was again nominated rather than directly elected in 1928. If, moreover, it was not to be popularly elected, it would lack legitimacy in the eyes of much of the public, who did not share the enthusiasm of the drafters of the 1922 constitution for an upper house that would represent former Unionists.

Had there been a consensus in Irish politics on the fact that power lay not only in popular sovereignty but also with the Crown and its appointees – as was the

case, for instance, in Canada during this period – the Seanad could have perhaps continued as a check on the power of the executive. But Ireland, with its particularly Irish Republican tradition of majoritarian democracy, was different. During the 1920s, even pro-Treaty Free State politicians grew irritated by the interference of the upper house in matters they considered to be the exclusive legislative prerogatives of the directly elected Dáil. The anti-Treaty Republicans were overtly hostile to the Senate as established under the 1922 constitution. In a system where the constitution could be changed by a majority vote in the lower house of Parliament, the Senate was uniquely vulnerable once it became identified as a partisan opponent of the de Valera government in 1932. For all of these reasons, the Free State Senate disappeared in 1936 and was replaced in 1937 by an almost powerless successor.

References

Broderick, E. (2010), *Intellectuals and the Ideological Hijacking of Fine Gael*, *1932–1938* (Cambridge: Cambridge Scholars Publishing).

Byrne, E.A. (2015), ' "A unique experiment in idealism". The Irish senate, 1922–1928', in: Farrell, M., Knirck, J. and Meehan, C. (eds.), *A Formative Decade, Ireland in the 1920s* (Newbridge: Irish Academic Press), pp. 59–85.

Coakley, J. (2005), 'Ireland's unique electoral experiment: The senate election of 1925', *Irish Political Studies* 20(3), pp. 231–269.

Coakley, J. and Gallagher, M. (1999), *Politics in the Republic of Ireland* (London: Routledge).

Dáil Eireann (1923), 'Debate – Wednesday', 31 January 1923. Available at: www.oireachtas.ie/en/debates/debate/dail/1923-01-31/21/

Davitt, C. (s.d.), 'Cahir Davitt witness statement 1751', Bureau of Military History, Irish Military Archives. Available at: http://bureauofmilitaryhistory.ie/reels/bmh/BMH.WS1751.pdf#page=64 (accessed 11 April 2019).

De Valera (1923), 'De Valera lynch correspondence 15–16 January 1923', Eamon De Valera Papers, University College Dublin Archive, P150/1749.

Dooley, T. (2001), *Decline of the Big House in Ireland* (Dublin: Wolfhound Press).

Foster, G. (2015), *The Irish Civil War and Society* (London: Palgrave MacMillan).

Hopkinson, M. (2004), *Green Against Green the Irish Civil War* (Dublin: Gill & MacMillan).

Houses of the Oireachtas (2019), 'History of parliament in Ireland'. Available at: www.oireachtas.ie/en/visit-and-learn/history-and-buildings/history-of-parliament-in-ireland/ (accessed 11 April 2019).

IRA [1923a], 'Dublin 2 Brigade reports', Twomey Papers, University College Dublin Archive, P69/22.

IRA [1923b], 'Executive meeting', De Valera Papers, University College Dublin Archive, P150/1740.

Irish Free State (1922), *Constitution of the Irish Free State (Saorstát Eireann) Act*. Available at: www.irishstatutebook.ie/1922/en/act/pub/0001/print.html (accessed 10 April 2019).

Jackson, A. (2000), 'British Ireland. What if Home Rule has been enacted in 1912?', in: Ferguson, N. (ed), *Virtual History. Alternatives and Counterfacts* (London: Penguin), pp. 175–227.

Keogh, D. (1994), *Twentieth Century Ireland. Nation and State* (London: Palgrave MacMillan).

Lynch, L. (1922), 'IRA general orders 9/12/22', Twomey Papers, University College Dublin Archive, P67/2.

Manning, M. (s.d.), 'The senate'. Available at: www.nui.ie/elections/referendum/docs/The_Senate_Maurice_Manning.pdf (accessed 8 April 2019).

McCarthy, J.P. (2006), *Kevin O'Higgins. Builder of the Irish State* (Newbridge: Irish Academic Press).

McGarry, F. (2007), *Eoin O'Duffy, a Self Made Hero* (Oxford: Oxford University Press).

O'Malley, C. and Dolan, A. (eds.) (2007), *No Surrender Here! The Civil War Papers of Ernie O'Malley* (Dublin: Lilliput Press).

O'Sullivan, D. (1940), *The Irish Free State and its Senate. A Study in Contemporary Politics* (London: Faber & Faber).

O'Suilleabhain, A. (2015), *Domnall O Buachalla*, *Rebellious National, Reluctant Governor* (Newbridge: Merrion Press).

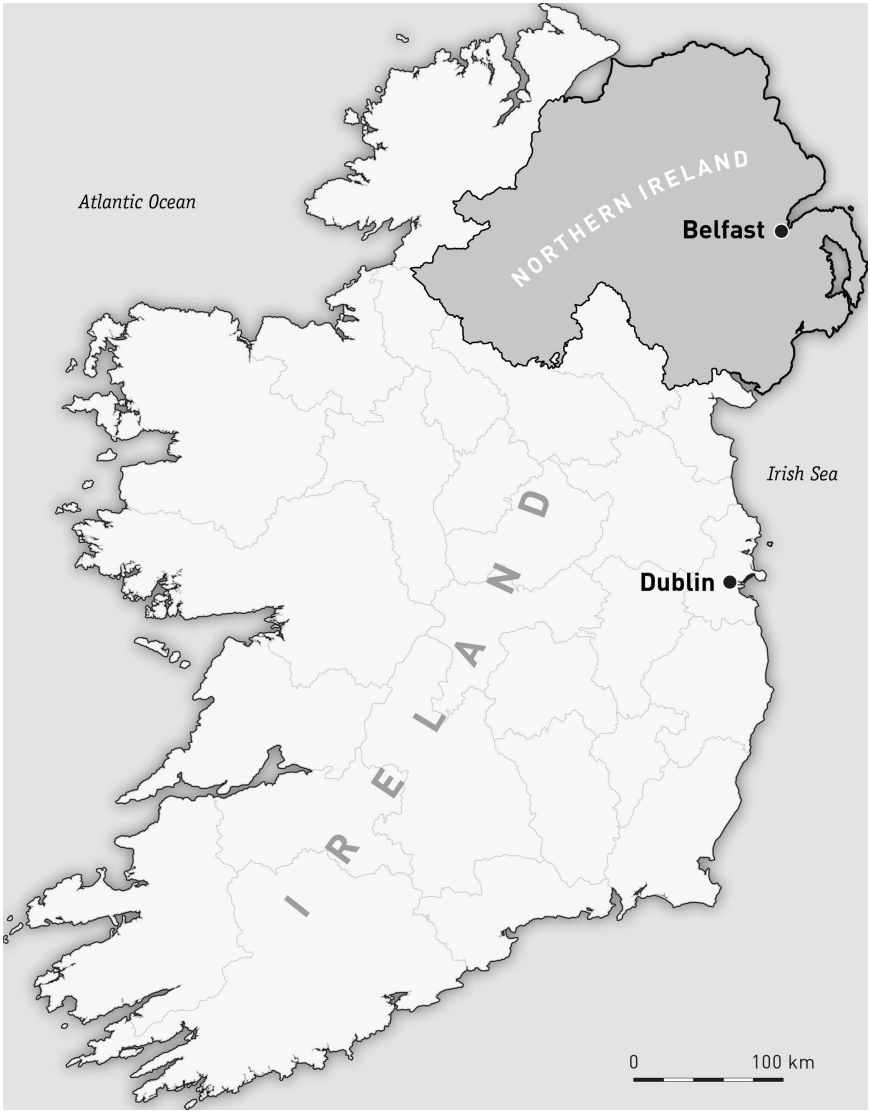
Seanad Éireann (1925), 'Debate – Thursday 11 June 1925'. Available at: www.oireachtas.ie/en/debates/debate/seanad/1925-06-11/12/ (accessed 11 April 2019).

Seanad Éireann (1932), 'Removal of the oath debate- Wednesday 25 May 1932'. Available at: www.oireachtas.ie/en/debates/debate/seanad/1932-05-25/3/ (accessed 11 April 2019).

Slapper, G. and David, K. (2009), *The English Legal System* (London-New York: Routledge-Cavendish).

Townshend, C. (1998), *Ireland. The Twentieth Century* (London: Hodder).

Ireland and Northern Ireland today



(Bert Brouwenstijn, Vrije Universiteit Amsterdam)

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

Part III

Does a state still need a senate? (c. 1920–present)

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

12 The vitality of the Dutch Senate

Two centuries of reforms and staying in power

Bert van den Braak

Introduction

The Dutch Senate (*Eerste Kamer*, lit. first chamber) has not only survived several attacks on its existence but also managed to covertly increase its political power in the process (Broeksteeg 2007). This chapter aims to explain how and why the Senate has been able to remain a major and respected force in Dutch politics.

To understand the history of the Dutch Senate, it should first be clarified why the Netherlands, which regained its independence after the Napoleonic era in 1813, has a bicameral system at all. What role did the 1815 constitution reserve for the Senate? What specific role would the Senate actually play? Was it a bulwark for the ruling class or an obstacle for legislation considered either too liberal or too democratic – or did the Senate make positive contributions as well? If so, what were they? Furthermore, I will analyse how the Senate managed to adapt to new situations and overcome the frequent accusations of its being superfluous and undemocratic. There were several instances, e.g. in 1830, 1848, 1918, 1922 and the 1960s, when the position of the Senate seemed to be in jeopardy. Why was the Senate not abolished at those times? Perhaps the existence of the Senate was not under nearly as big a threat as is commonly believed.

A major aspect of my analysis concerns the composition of the Senate. How did the background of the members of both the Senate and the House of Representatives differ? In many countries, regional representation is an important reason for the existence of an upper house. Was this the case in the Netherlands as well? And in what way, if any, are the provinces of the Netherlands and the Senate linked?

There has always been an ongoing discussion about the necessity of a senate in the Netherlands. The main conclusion of my 1998 study on the Dutch Senate was that the institution would not be abolished, and politicians would do better to change the discussion to how the role of the Senate could be improved (Van den Braak 1998). This is also what would eventually happen. I would still agree with my conclusion that the Senate could not be abolished, but in the years after the 1990s, there were several developments that should be considered, such as political fragmentation and instability and occasional opposing majorities in the House of Representatives and the Senate. At a later point, I will discuss the functioning of the parliamentary system in recent years. A final question we will consider is

how likely it is that the current system will be changed and what possibilities exist to facilitate that change, given the fact that constitutional reform in the Netherlands is a long and laborious process.

The workings of the Senate, 1815–1923

In the nineteenth century, bicameralism was generally seen as the 'normal' parliamentary model, used by most semi-democratic nations. For that reason, the Dutch unicameral Parliament, instituted in 1814 and called States-General in remembrance of the former Dutch Republic, was rather exceptional (Blom 1992; cf. Oddens, this volume). However, after the Netherlands was unified with the Southern Netherlands and Luxembourg in 1815, a constitutional commission was set up and concluded that there was good reason to divide Parliament into two houses (cf. Witte, this volume). The commission referred to the parliaments of major countries, such as those of France and the United Kingdom.

The first purpose of the second (upper) house was to create an institution that could prevent hasty law reforms and 'evil' (De Vries 2000). Those tasked for this job were appointed by the king (Beekelaar & De Schepper 1992). Any eminent man from the age of 40 could be appointed as a member for life. Thus, the Senate was not a house reserved for the nobility, as, for example, the British House of Lords was. Distinguished mayors in the North and landowners could be members as well. Nobility had never – save for in the South – played a prominent role in the North. In the Southern (Austrian) part of the Netherlands, nobles had been closely connected to the Austrian imperial court.

By creating this new house, King William (crowned on March 16, 1815 – before which he was only a sovereign) achieved what he wanted. This meant that the Senate could form a bulwark for him against the elected House of Representatives, which had the right to put forward bills – or the right of initiative. Belgian nobles would be incorporated in the new governmental system and the king could appoint and – as would become clear some years later – sack whomever he wanted (Van den Braak 1998).

In general, the Senate played the political role the king had intended, but dissatisfaction soon grew among the Belgian members (Witte, this volume). The few bills that were rejected were mostly initiated by Belgian MPs and dealt with taxes, trade, freedom of press, and the judicial system. This discontent could be linked to the general distress among Belgians with Northern domination and its free trade policy. The upper house appeared to be a bulwark not only for the king but also for the Northern part of the kingdom. Although the number of inhabitants in the South was much higher than that in the North, it had fewer representatives in Parliament, both in the Senate and in the House of Representatives. In the Senate, there were always some Southern members who remained loyal to the king and voted accordingly. Discontent in the South in 1830 ended in the separation of North and South and the emergence of the Kingdom of Belgium. Nevertheless, that did not mean the end of the Senate.

It took until 1840 for the separation to become anchored in a new constitution because it was not before 1839 that King William I accepted the cessation of the Southern half of his country. The constitution of 1815 stated that constitutional reform had to pass both houses twice. After it passed the House of Representatives for the second time, the new constitution doubled the number of members of the chamber and stipulated that it would act as a sort of constituent assembly.

Only a few (newly chosen) MPs advocated the abolition of the Senate. Johan Thorbecke, professor at Leiden University and future leader of the liberal (democratic) opposition, asserted in his writings that he saw no reason for the existence of a senate at all. Guillaume Groen van Prinsterer, the leader of an even smaller Protestant group, said that he considered the Dutch Senate a failed facsimile of the British House of Lords. Others pointed out the high costs. Still, the opponents were a minority. In general, it was accepted that only the king himself could put forward a constitutional reform. Since the king was satisfied with the existence of the Senate, no such proposal was to be expected, and the Senate's position was not in danger.

Yet in 1848, King William II, impressed as he was by the news of revolutionary movements in Germany and the stirrings of turmoil in Holland, 'went from being a conservative to a liberal in one night', as the popular saying goes. Thorbecke was asked to lead a commission tasked with creating a draft for constitutional reform. Beside ministerial responsibility, the proposed reforms included the possibility to dissolve Parliament and call new elections, the introduction of a yearly budget, Parliament's right to inquiry, the right of the House of Representatives to amend bills, and direct elections for both houses. As in 1840, all these reforms had to pass both houses twice, including the still staunchly conservative Senate.

In both houses of Parliament, several members opposed the king's political shift. These members wanted to maintain the strong position for the king, including his right to nominate the members of the Senate. Abolition of the Senate certainly stood no chance. In order to secure a majority for other, more important reforms, the liberals had to concede to a less democratic electoral system for the Senate. That electoral system was a copy of the one that had been used for electing the House of Representatives before 1848. Members of the Senate would be elected by the States-Provincial, the provincial parliaments, but only those who paid the highest taxes were eligible. The thirty-nine members were elected for a nine-year term, and there would be new elections for one-third of the Senate every three years.

The voting results in the Senate were very close. To prevent a negative outcome, the king had asked some elderly members to step down and appointed several new, more reform-minded members in advance. After a tie in the first vote, he persuaded one member, one of his own court officials, to change his vote to pass the first round. Before the vote for the second reading, a few new reform-minded members were again appointed. The reform was accepted with a clear majority. In 1849 a reformed Senate emerged (Van den Braak 1998). In its defence, Minister Dirk Donker Curtius stated that the main goal of the Senate was not to establish the good but to prevent 'evil'.

In 1849, a moderate liberal era started. In the years 1850–1851, Thorbecke, as home secretary, successfully defended legislation to implement constitutional reforms, such as laws on municipal and provincial government, parliamentary inquiries, and the new electoral laws. None of these governmental reforms, nor the process of economic liberalisation, faced strong opposition in the Senate. It was expected that the fact that only the extremely wealthy could become members of the Senate would have led to a more conservative body, but, in practice, the politics of both houses did not differ much at all. This does not mean that the Senate had no importance in Dutch politics. For example, the king still tried to use the Senate to block unwelcome legislation but was only successful in a few cases, using his influence to block a law on the laying of railway tracks, for instance. However, he could not prevent the passing of legislation which abolished the death penalty and repealed the tax on newspapers. The number of members loyal to the king decreased rapidly, and the capricious king soon lost interest in politics altogether.

In 1868, the Senate played a role in mediating a conflict between the liberal majority in the House of Representatives on one side and the king and his conservative government on the other. Despite suffering defeats in Parliament, the king would not let go of his cabinet. He dissolved the House of Representatives twice and threatened to do so a third time. Some senators intervened as mediators, thereby gaining the appreciation of some politicians, especially liberals, for the Senate.

Although the Senate's rejection of a bill would sometimes be criticised, there was no general discontent regarding the institution. From the 1880s onwards, most liberals were in favour of maintaining it so that it could act as a counterweight against the up-and-coming Christian parties. Since the late 1870s, protestant MPs had started to become a political force. In 1879, Abraham Kuyper successfully transformed the movement started by Groen van Prinsterer into a parliamentary faction and political party – the ARP (Anti-Revolutionary Party). At the same time, Catholic MPs broke off from the liberal line and also formed a faction in Parliament. Liberal power suffered slightly. Thus, it was the liberals who supported maintaining the Senate in the debates on constitutional reform in the 1880s, while the ARP and Catholics were in favour of transforming it. They wanted the Senate to become a house of broader social interests, consisting of dedicated delegates, for example, for scientists, employers, and trade unions (Van den Braak 1998).

However, there was no longer any support for the eligibility rules based on income. Eventually, a compromise was reached between the liberal and Christian parties. Membership of the Senate was opened for new groups, firstly by reducing the tax threshold for eligibility and secondly by extending the right to be elected to several high positions, e.g. judges, high-ranking officers, ministers, MPs, mayors of large cities, and professors. The reform was accepted in 1887, the same time as the expansion of suffrage. Now, all male citizens meeting a specific qualification, namely paying a certain amount of rent, having savings, or having passed exams, could become voters. As a part of constitutional reform, the Senate was expanded

to fifty members. Senators were still elected for terms of nine years, with one-third cycling out every three years.

The emergence of Christian and later socialist parties and the decline of liberal parties complicated politics, especially regarding the distribution of power in both houses. In the years 1888–1917, cabinets would occasionally have a majority in the House of Representatives, while having a minority in the Senate. In the general elections of 1888, the Christian parties, known as 'the coalition', achieved a small majority in the House of Representatives, and the first Christian cabinet was formed – named the Mackay cabinet, after its prime minister. The liberals continued to dominate the Senate. Despite the acceptance in both houses of an important new law on education, which would allow subsidisation of Christian primary schools, the cabinet faced a generally 'hostile' Senate. In the years after 1891, liberals came back into power, but in 1901 the Christian parties again became the largest block and took power, though faced by an opposing majority in the Senate. This was the Kuyper cabinet. In the years between 1888 and 1901, the Christian parties had won more seats in many provincial estates, but the nine-year term of senators slowed down that political shift in the Senate. Nevertheless, a shift in power did occur in some provinces, especially the large province of South-Holland.

When, in 1904, the Senate rejected a bill on higher education, the cabinet dissolved the Senate. The bill would have given graduates of the private (Christian) *Vrije Universiteit Amsterdam*, founded by Kuyper in 1880, equal rights to graduates of public universities. Liberals rejected the proposal vehemently. Election of all fifty seats in the Senate had the effect Kuyper had hoped for: Christian parties managed to acquire a majority in the Senate. After being issued a second time, the bill achieved a majority in both houses. The 1904 election led to a lasting shift in power. Until the 1960s, Christian parties would continue to dominate the Senate.

After the outbreak of the First World War in 1914, all parties agreed to pause. They also agreed to constitutional reforms to introduce general male suffrage, as well as formally regulating the equal subsidisation of public and private (Christian) schools. The latter issue had caused quite a political crisis at the time and led to a political deadlock between Christian parties on one side and socialist and liberal parties on the other. This 'pacification' of Dutch politics came into effect in 1917. It not only led to an increase in the number of voters but also extended passive suffrage to women. It would take until 1919 for women to obtain active suffrage, and in 1920 the first woman became a member of the Senate.

After the constitutional reforms of 1917, there were no longer specific conditions for eligibility for the Senate. However, the old electoral system for the Senate, which required that potential members be supported by a majority in the States-Provincial, stayed in place. Since Christian parties again benefitted most from the extension of suffrage, they now obtained an overwhelming majority in the Senate (Prakke 1990). It took until 1922 for a new electoral system for the Senate to be introduced, based on proportional representation. All members were to be chosen every four years by all members of the States-Provincial. The weight of the States-Provincial's votes was linked to the number of inhabitants per province.

Therefore, a vote in the province South-Holland, for instance, counted for much more than a vote in a sparsely populated province, such as Zeeland. Although the connection had never been particularly strong, many senators wanted to keep the connection between provinces and 'their' senators and opposed this idea of proportional representation.

A second, rather far-reaching proposal for reform was that the dissolution of the Senate could be followed by abolishing the States-Provincial, which would lead to new elections for the provincial assemblies. There was fierce resistance against this proposal in the Senate, fearing that it would disturb provincial government. Some also feared that party influence on the composition of the Senate would increase. The proposed electoral system made it possible to calculate the number of seats a party would get in the Senate in advance. Elections would thus become an almost mathematical process. The Senate rejected the bill with a vast majority. The cabinet had to come up with an alternative bill. The idea of dissolving the States-Provincial along with the Senate was left by the wayside and the new electoral system was proposed, consisting of four groups of provinces. Each group, which had no specific regional cohesion, would choose twelve or thirteen members of Senate. North-Holland and Friesland, for example, were tasked with choosing twelve members. The cabinet also proposed reducing the term of office to six years, with election for twenty-five members every three years. That way, there would still be some delay in the manifestation of electoral changes. In practice, this meant that elected States-Provincial were sometimes called to elect senators after only the second year of a three-year term.

Although few MPs and senators were particularly satisfied with this second bill, the necessity to have a new, fairer electoral system by the 1923 election year was more pressing. The second bill was adopted. In 1923, shortly before the new elections were to be held, a bill to implement this constitutional reform as electoral law was accepted as well. The outcome was a system that few approved of and that was, at most, considered 'second best' (Van den Braak 1998).

Members of the Senate

Given the royal right of appointment in the early nineteenth century, it is not surprising that all members of the Senate in 1815–1848 were from the upper class. Among them were court officials, high-ranking military officers, former ministers, and members of the urban elite and landowners, both from the North and South. Almost all Belgian members were noblemen. The composition of the House of Representatives was clearly very different. The Belgian members of that house included, for instance, various industrialists and several lawyers and judges. Some Northern members were merchants or bankers, but most of them were gentry or local governors. After the Belgians had seceded in 1830, the similarities between the members of both houses grew closer, although the Senate remained more elitist.

The constitutional change of 1848 and the new rules for elections led to major changes in both houses, both in terms of political composition and in the social

backgrounds of their members. The main intention behind this new electoral system was to ensure that the Senate would not be a copy of the House of Representatives. The States-Provincial was responsible for electing senators, and only the extremely wealthy were eligible. The minimum age for eligibility in the Senate was, however, lowered from 40 to 30 years, making it the same as the minimum age in the House of Representatives. There certainly were some differences, of course. There were more landowners and wealthy merchants among the senators, while the number of lawyers and judges was higher in the House of Representatives. After 1870, there were even some MPs who had been or still were journalists or middle-class merchants. In general, the House of Representatives and the Senate after 1848 did not differ as much as one would have expected. There were even family relations between members of both houses.

As mentioned earlier, the constitutional reform of 1887 brought an end to the exclusive right of the very wealthy to become member of the Senate. New groups were now eligible as well. Most importantly, MPs, some of whom came from the lower class, became eligible. Nevertheless, the electoral system ensured that it was not until 1911 and 1913 that a progressive liberal and a social democrat, respectively, were elected to the Senate. The reform in 1917 brought with it two houses without any formal distinctions with regard to eligibility.

The new electoral system in 1923 greatly increased the similarity of both houses in terms of political composition. The number of social democrats in the Senate, for instance, increased from four to eleven. Among them, as among Catholic and Protestant MPs, there were some trade union leaders and members of the working class. In comparison to the House of Representatives, the number of professors in the Senate was higher. Full-time professors could not become MPs. The House of Representatives had more journalists, party officials, and Protestant clergymen as members. This undoubtedly contributed to a different tone of debate in the two houses but not to different outcomes. A major change in 1923 was that the States-Provincial, as such, no longer elected senators. This appeared to diminish regional representation, but as stated earlier, regional representation was not common before 1923 either. Parties just looked for the provinces where they had the greatest chance of winning. The first socialist senator, Henri Polak, lived in North-Holland but was elected in Friesland. Catholics from Northern provinces had to apply as candidates in the Catholic Southern provinces to stand a chance of winning. The western provinces always dominated the Senate, and that did not change after 1923.

Still, in general, there were major differences in the social composition of both houses before and after 1917. They both became less elitist and soon started to better reflect a highly organised Dutch society, the so-called *Verzuiling* (compartmentalisation). Under *Verzuiling*, Dutch society was divided into four major social pillars: Catholic, Protestant, social-democratic, and liberal, each with its own organisation. This division of society lasted until the 1980s.

From the 1960s, distinctions between the Senate and House of Representatives grew again, mainly because of changes to the House of Representatives. After 1960, a process of professionalisation was set in motion. Until then, members of

both houses combined their political life with a separate profession, such as trade union leader, mayor, alderman, or provincial governor. In the 1960s, MPs more often became full-time professional MPs because of better pay and better work in an increasingly complex government. They simply had to focus on their parliamentary work. Among the MPs, now somewhat younger than before, there were many who had started off their careers in politics, which simultaneously led them to play a more active role in government. This development helped the Senate profile itself as a more distanced institution, with fewer 'politicised' members. To that extent, it was able to play a role as a 'house of reflection'. Sometimes senators even profiled themselves as 'amateur' politicians (which they were not, of course) to emphasise their somewhat greater degree of independence.

In the decades after 1980, the strictly divided Dutch society and its parallel political system gradually disappeared. The socialist and Catholic trade unions merged to a new federation, as did organisations of employers and farmers. The three Christian parties – two Protestant and one Catholic – merged into one, the CDA. Furthermore, society became more secular, and voters became more volatile. This was reflected in the composition of both houses. Representatives of new interest groups emerged, and those of traditional groups declined. The Senate, however, had more elderly members (although a 19-year-old member was elected in 2003), which meant that senators were generally more experienced than MPs. From 1983, parties also started sending more experienced managers to the Senate from sectors such as healthcare, insurance, welfare, and finance. Close connections with the daily practice of the sectors in which legislation had to be implemented helped them bring forward meaningful arguments. Simultaneously, the number of former ministers and leading politicians in the Senate increased.

This all contributed to growing self-confidence and public appreciation of the role of the Senate (Van den Braak 2009). It is not unusual for senators who are members of parties that oppose the existence of the Senate to become convinced advocates of the institute after a while. The combination of all these developments certainly helped the Senate to play a constructive role.

Discussions

Although liberals initially criticised the Senate, followed by Christian politicians in the 1880s, it was not until the emergence of socialist and radical-liberal politicians that a clear call for abolition was voiced. These politicians opposed the strong position of the Senate and its restricted accessibility. Given the relatively weak position of these groups, however, their proposals stood no chance.

The balance of power seemed to change for only a short period of time. During the revolutionary turmoil of November 1918, after the fall and flight of the German Emperor, who sought refuge in the Netherlands, Dutch socialist leader Pieter Jelles Troelstra believed that a political, nonviolent revolution was imminent. He was soon proved wrong, but centre-right politicians, including the Christian Charles Ruijs de Beerenbrouck cabinet, formed in 1918, were startled. They agreed on social and political reforms which were, as they said, in accordance

with the spirit of the times. A constituent commission was set up, chaired by the prime minister. Even some conservative liberals questioned the need for a senate in November 1918. One liberal MP said that only the parliamentary clerks would weep at the Senate's grave. Two years later, when everything calmed down, nothing had fundamentally changed. In the parliamentary debates on constitutional reforms, some right-wing MPs were sceptical about the necessity of a senate, but they were equally aware that there was only a very small chance that senators would vote for their own abolition. In the end, the proposal was not even supported by a plain majority, let alone the required two-thirds majority. Those in favour of maintaining the Senate stated that a second reading ('reflection') of bills remained useful.

After 1923, the Senate was almost a political copy of the House of Representatives. Conflicts in which the Senate played a major role were very rare, and only a small number of bills were rejected. The only bill worth mentioning is one in 1927 to approve a treaty with Belgium. In the aftermath of the First World War, relations between the Netherlands and Belgium were disturbed by Belgian accusations of Dutch passivity towards German demands during the war. Dutch foreign minister Herman Adriaan van Karnebeek made efforts to restore good relations, and in 1925, a treaty between the two nations was signed, creating a new connection between the Schelde, a river near Antwerp, and the Rhine, near Rotterdam. A broad protest movement was set up because many feared that the port of Rotterdam would be negatively impacted by this move. Most political parties were divided on the issue. In the House of Representatives, the bill to approve the treaty was accepted by a very small majority, but the Senate rejected it with thirty-three votes against seventeen. Minister Van Karnebeek resigned.

In the eyes of many, the rejection confirmed the necessity of a senate. It did not have to reject many bills, but by doing so, occasionally, it proved its right of existence. The Senate was seen as a valuable *slaperdijk* (lit. a sleeping dike, a backup dike in case the first dike were to fail). It was essential that there was always a possibility to block a bill in the Senate so that the House of Representatives would not have the final say. One of the other rare cases in which the Senate would again prove its usefulness was in 1968, when a tax bill was put forward to force tenants who lived in relatively cheap housing to move to more expensive homes. The Senate used its veto to safeguard the interests of the middle class, who would have suffered most from that bill. Only three senators supported the bill. A lack of political debate on legislation within the Senate raised questions about the need for this institution, as some saw it as a superfluous delay in the legislative process.

In the years between 1925 and 1965, the position of the Senate was not the subject of much discussion. In the 1950s, some members of a constitutional commission proposed taking away the Senate's right of budget, but no steps were taken to do so. In the 1960s, younger politicians started to question the political system, specifically addressing the formation of a new coalition without new elections after a political crisis. The influence of voters on the formation of government was very limited. Furthermore, the Christian central parties were considered to be too dominant, as they could always form a cabinet with either liberals or social democrats.

A new, less proportional electoral system and direct elections for the prime minister were proposed in order to increase voters influence. A major objective was a clear division between the political left and right. A new non-ideological party, D66 (lit. Democrats 1966), was established, with constitutional reform as its key issue. Some of these ideas were embraced by the social democrats and by some left-wing Christian politicians. In this political climate, characterised by a call for constitutional change, the existence of the Senate was also put on the political agenda. After the 1967 elections, in which D66 won seven seats, the centre-right De Jong cabinet (1967–1971) set up a new constitutional commission which recommended holding direct elections for the Senate in 1971. Only a minority of the commission favoured abolition.

In the early twentieth century, politicians had already considered altering the Senate's veto into a right to just return a bill. However, parties did not agree upon the question of who would have to make the final decision: the House of Representatives or the Senate. The Senate's right to return bills, without a (final) veto, would undermine its position, but giving the Senate both a right to return and allowing it to retain its veto would strengthen it. After parliamentary discussion in 1975, a motion was adopted that there should be no infringement on the position or rights of the Senate. The motion was put forward by the Christian democrats and supported by liberals and small Protestant parties. This meant the end to all discussion about the Senate. In 1983, the constitution was modernised, but no major changes were made to the system of government.

However, reconfirmation of the Senate's position was not the only outcome of these discussions. From 1983, all members were elected every four years, directly after the elections for the eleven (twelve after 1986) provincial states. As a result, there would now be a clear link between these two elections. All elected provincial deputies now acted as a single electoral college. Several politicians warned that this might cause problems in the future, for there certainly was a risk that national issues would overshadow the provincial elections. National politicians soon understood the importance of the provincial elections, even though they were second-order elections, with turnout being limited to less than fifty per cent on a few occasions. As they were midterm elections, they would function as a sort of poll on government policies.

Some argue that the political role of the Senate had increased because the elections for the States-Provincial – and thus indirectly the elections for the Senate – would be dominated by national issues. This is an oversimplification. From the 1980s, Dutch society and the economy started a period of reform and transition. Between 1945 and 1975, the Netherlands had seen a period of economic recovery and growth. A welfare state was established, and legislation did not face much resistance. That, in fact, was the main reason why the Senate did not play a particularly visible role: there was no need for it to do so. The economic crises of the 1970s ended this. After 1980, a neoliberal era started, characterised by privatisation and a limited government role. Austerity, especially in social laws, was unavoidable. Employers' rights came under pressure.

In order to successfully introduce legislation and decrease public spending after elections, coalition parties had to make firm agreements and tightened discipline among their fractions. By doing so, the role of the House of Representatives as counterweight against the government in the passing of legislation was weakened. The position of the Senate as a chamber of reflection grew stronger because hasty proposals occasionally led to bad legislation in years of crisis (Visscher 1994). Moreover, civilians and organisations turned to the Senate to voice their concerns much more often than in the past. At the same time, parties, mostly on the left, that had pursued the abolition of the Senate 'rediscovered' the political opportunities it offered. Its speaker (1987–1997), Herman Tjeenk Willink, a Labour politician, advocated that a united Senate which scrutinises and judges bills could play a useful role in the political process (Van den Braak 1998). The Senate ought to examine whether new rules were necessary, how they would be implemented, whether there was no disproportionate breach of rights, etc. (Bogdanor 1992). In that way, the Senate could play a positive role in the legislative process and could claim to be an almost apolitical judge of legislation.

Current role of the Senate

Compared to other senates, the Dutch Senate has a strong position in the legislative process (Knippenberg 2002). All bills that are accepted in the House of Representatives must also be scrutinised by the Senate. It does not have the right of amendment, but it does have a non-restricted veto. In practice, the veto does not seem to cause major problems, because it is not used very often. Bills are only rarely rejected (Eerste Kamer der Staten-Generaal 2019).

Instead, the Senate uses its veto in a more subtle way (Westerveld 2007). By threatening to use it, it can trigger informal adjustments or promises to improve a bill (Van den Berg 1994). Sometimes, government is forced to delay implementing a bill or to vow that existing rights will be guaranteed. Sometimes, government is compelled to agree to evaluate a bill sooner than originally proposed. Only after these promises are made will parties in the Senate show willingness to vote in favour of the bill. In recent years, the number of motions for anchoring the outcome of debates in the Senate has risen and promises made by government to the Senate are officially registered. This practice of expanded influence on legislation is described as 'a disguised right of amendment'. It is an additional right for a house that can formally only say 'yes' or 'no'.

There are several ways in which this right can be reinforced. The Senate can threaten to reject a bill if the cabinet is not willing to propose a new bill to change it (that new bill is called a *novelle*). This *novelle*, of course, must first pass the House of Representatives, as it is just like any other 'regular' bill. In general, that house will be willing to cooperate, because if it fails to do so, the law will presumably fail. However, a *novelle* can only be used to amend a very specific part of the present bill, and it is not applied very often. Sometimes, the Senate conditionally approves a bill. In that case, the government has to promise to amend the new

bill afterwards, before it comes into force. When the Senate is very critical about a bill, government will sometimes repeal it entirely before proposing a revised version at a later date. Most often, the Senate functions as a sort of marketplace where ministers and senators negotiate about amendments and promises (Van den Berg 1994). If the government has shown sufficient commitment, senators are generally willing to forget about their earlier objections.

Those in favour of a bicameral system know that the Senate should not become an obstacle in the legislative process. One can assume that using the veto too often could undermine the Senate's position. No political system is particularly satisfied with an institution that hinders legislation, and it would certainly prompt discussions about bicameralism. Therefore, the best senators can do is seek to strike a balance: threaten to reject a bill when there is a good chance of success and occasionally – but not too often – use the veto to let government know that victory is never guaranteed. It is not using the veto that matters as much as threatening to do so.

Cooperation between parties (both in government and the opposition) in the law-making process is now more common, with occasional successes. In debates about a new health insurance system in 2006, the health secretary had to make several concessions to the Senate, and the same happened in debates about new legislation on social welfare. A law for a new police organisation could only be implemented after the justice secretary had promised to submit a second law with modifications. Not all parties are always satisfied with the outcome of a debate, and the Senate is not apolitical at all, of course. Its members are politicians, and the government and opposition can play as much of a role in the Senate as they do in the House of Representatives. Political dominance in decision-making remains a fact. Most members of the Senate do agree that the House of Representatives is the primary political power. There is an awareness of the need to be somewhat restrained, but determining which specific situations require restraint is a matter of political consideration.

We inevitability saw this in the years 2011–2017, when the government coalition no longer had a majority in the Senate (Otjes & Louwerse 2014). Opposition parties are not obliged to vote in favour of government bills. During the second Rutte cabinet (2012–2017), the liberal–Social Democratic coalition did not have a majority in the Senate. Therefore, it had to negotiate with opposition parties to ensure a majority in both houses, with advantageous results for the coalition. By broadening support in the House of Representatives, it could also successfully manage the Senate. Parties in the Senate were compelled to follow the party line of their respective parties, which was determined in the House of Representatives. Senators had to accept these deals without having much chance to use the Senate's usual power.

The need to negotiate for the ruling parties could be explained from the increasing importance of the Senate, but at the same time the outcome confirmed that Senate fractions will mostly follow the judgement of their fellow party members in the House of Representatives.

Conclusion and implications

It seems obvious, but the main reason why the Netherlands still has a significant senate is political. It has managed to occasionally reform itself. Although there were some moments at which the Senate seemed to be in jeopardy, there was never any real momentum for it. Dutch politics has always been based on 'wheeling and dealing' and seeking compromise. Government policy in the Netherlands not only has to be vigorously supported but also, preferably, must be well and broadly supported (Timmermans & Andeweg 2000). Since 1922, no bill has been proposed with the aim of abolishing the Senate (Van den Braak 2000). Discussions about the Senate's continued existence ended as early as 1975. From the 1980s, a positive and constructive role of the institution had to be accepted by former critics because experience showed that the Senate had survived all attacks on its existence. Opposition parties, especially on the left, were all too keen to use the Senate as a useful institution by which they could obtain a firmer grasp on government policy. Although the Senate was set up as a bulwark, first for the king and, after 1848, more or less for the upper-class, it never was a hindering power. After the period between 1888 and 1918, in which both houses sometimes had opposing majorities, the Senate did not play a very significant role. That 'invisibility' only led to an absence of discontent (Cramer 1990).

New discussions about the role of the Senate began after 2010, when cabinets (led by Mark Rutte) had to deal with a stronger opposition in the Senate. The main question still is this: can it always be justified that an indirectly elected senate overrules decisions taken by the directly elected House of Representatives (Van den Braak 2015)? Some politicians reject such a 'political' role for the Senate. They want the Senate to play a merely non-political role in which guarding the quality of legislation is the main objective. There are, however, two issues with such an approach. First, the Senate is a political body with party politicians as members; second, the line between political and non-political arguments is often very thin. Some members, for instance, can state that a new bill will be hard to implement, while others may see no problems with that at all. A 'technical' judgement can and very often will be influenced by political opinion.

In 2016, a commission was installed and asked to investigate whether the parliamentary system requires improvement and if so, how (Staatscommissie parlementair stelsel 2017). The commission suggested the introduction of a right for the senate to send back bills to the lower house, with suggestion for adjustments. That House then should make a final decision about the bill. There also might be a slight chance that some sort of conciliation procedure for disputes between both houses will be introduced. That could be made possible if the united assembly of both houses is given a new role as mediator. That, too, will need constitutional reform, requiring a two-thirds majority in the second reading.

Such constitutional change would only be necessary if there were a greater chance of political stagnation in a situation where the two houses have opposite majorities, and opposition parties are unwilling to compromise on major issues. The problem, of course, is that nobody knows whether this is a realistic scenario.

Not only is changing the constitution not a political venture but it also would take several years. It can only be accomplished after elections (the first are in 2021, and after that, probably in 2025). So the Dutch Senate certainly will not be abolished soon, and fundamental changes are not to be expected either. For the future, the Senate will, in all likelihood, remain free from any crises that might jeopardise its continued existence.

References

Beekelaar, G.A.M. and De Schepper, H. (1992), 'The first chamber in the Netherlands 1815–1848', in: Blom, H.W. et al. (eds.), *Bicameralisme. Tweekamerstelsel vroeger en nu* (The Hague: Sdu), pp. 279–289.

Blom, H.W. (1992), 'Bicameralism – history – theory – problems', in: Blom, H.W. et al. (eds.), *Bicameralisme. Tweekamerstelsel vroeger en nu* (The Hague: Sdu), pp. 19–32.

Bogdanor, V. (1992), 'The problem of the Upper House', in: Blom, H.W. et al. (eds.), *Bicameralisme. Tweekamerstelsel vroeger en nu* (The Hague: Sdu), pp. 411–422.

Broeksteeg J.L.W. (2006), 'De Eerste Kamer als politiek orgaan', in: Berg, J.Th.J., Van den, Broeksteeg L.W. and Verhey, L.F.M. (eds.), *Het Parlement – Staatsrechtconferentie* (Maastricht: Wolf Legal Publishers), pp. 171–175.

Cramer, N. (1990), 'De Eerste Kamer na 1917 in heroverweging', in: Postma, A. et al. (eds.), *Aan deze zijde van het Binnenhof* (The Hague: Sdu), pp. 283–344.

De Vries, F. (2000), *De staatsrechtelijke positie van de Eerste Kamer* (Groningen: Wolters Kluwer).

Eerste Kamer der Staten-Generaal (2019), *Feiten en cijfers*. Available at: www.eerstekamer.nl/begrip/feiten_en_cijfers (accessed 13 March 2019).

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

Otjes, S. and Louwerse, T. (2014), 'A special majority cabinet? Supported minority governance and parliamentary behavior', *World Political Science Review* 10(2), pp. 343–365.

Prakke, L. (1990), 'Van links naar rechts. De Eerste Kamer van 1887 tot 1917', in: Postma, A. et al. (eds.), *Aan deze zijde van het Binnenhof* (The Hague: Sdu), pp. 227–265.

Staatscommissie parlementair stelsel (2017), *Probleemverkenning*. Available at: www.staatscommissieparlementairstelsel.nl/documenten/publicaties/2017/10/18/probleemverkenning-staatscommissie-parlementair-stelsel (accessed 10 March 2019).

Timmermans, A. and Andeweg, R.B. (2000), 'Coalition cabinets in the Netherlands: Still the politics of accommodation?', in: Muller, W.C. and Strøm, K. (eds.), *Coalition Governments in Western Europe* (Oxford: Oxford University Press), pp. 356–398.

Van den Berg, J.Th.J. (1994), 'De voorstellen van de commissies De Koning en De Jong inzake terugzendrecht, adviescolleges en werkwijze Tweede Kamer', in: Baljé, C.L. (ed.), *Vernieuwing en Eerste Kamer* (The Hague: Sdu), pp. 69–76.

Van den Braak, B.H. (1998), *De Eerste Kamer. Geschiedenis, samenstelling en betekenis – 1815–1991* (The Hague: Sdu).

Van den Braak, B.H. (2000), 'Met de tijd meegegaan. Eerste Kamer van bolwerk van de Kroon tot bolwerk van de burgers', in: Van Baalen, C.C. et al. (eds.), *Jaarboek Parlementaire Geschiedenis* (Nijmegen-The Hague: Centrum Parlementaire Geschiedenis-Sdu), pp. 44–59.

Van den Braak, B.H. (2009), 'Geen zelfreflectie, maar zelfbewustzijn. De Eerste Kamer in de periode 1995–2009', in: Van Baalen, C.C. et al. (eds.), *Jaarboek Parlementaire Geschiedenis* (Nijmegen-The Hague: Centrum Parlementaire Geschiedenis-Sdu), pp. 85–95.

Van den Braak, B.H. (ed.) (2015), *Het "probleem" Eerste Kamer. Visies op de toekomstige rol van de Senaat*, (The Hague: Montesquieu Institute).

Visscher, G. (1994), *Parlementaire invloed op wetgeving. Inventarisatie en analyse van de invloed van de beide Kamers der Staten-Generaal op de wetgevende activiteiten van de kabinetten-Marijnen tot en met -Lubbers I* (The Hague: Sdu).

Westerveld, M. (2007), 'Hoe zinvol is de Eerste Kamer? Enige reflecties naar aanleiding van het Preadvies 'Nut en doel van het tweekamerstelsel', in: Van den Berg, J.Th.J., Broeksteeg, J.L.W. and Verhey, L.F.M. (eds.), *Het Parlement – Staatsrechtconferentie 2006* (Maastricht: Wolf Legal Publishers), pp. 157–170.

13 Marginalising the upper house

The Liberal Party, the Senate and democratic reform in 1920s Canada

Adam Coombs

Introduction

Canadian voters in the 1921 Federal Election produced one of the most unexpected Parliaments in Canadian history. The incumbent Conservative Party, which had governed for the past ten years and seen Canada through the First World War, was now the third party in the House of Commons, and a combination of electoral defeats and retirements left it bereft of almost all of their senior leadership. As a final insult to the party, its new leader, Arthur Meighen, even lost his riding in Portage-Le-Prairie, Manitoba, to the newly formed Progressive Party. It was this Progressive Party, a collection of rural parliamentarians united under the informal leadership of Thomas Crerar, a former minister in the Conservative's wartime government, which was now the second largest party in lower chamber. The Progressives' rapid rise had only begun two years earlier when a group of angry farmers ran a candidate in an Ontario by-election to protest the Conservative's support for high tariffs on imported goods. Now this grassroots movement was the official opposition.

Most surprising of all was that the Liberal Party, now led by William Lyon Mackenzie King, had secured the majority of seats in the Commons. Having refused to support conscription in 1917, the Liberal caucus was reduced to a rump of Quebec members led by former prime minister Sir Wilfrid Laurier. By 1919 Laurier had died and King, a unilingual Anglophone who had spent the war working with the Rockefeller family in the USA, was elected leader of the Francophone-dominated party. Yet public anger at the Conservatives' failure to effectively manage the peacetime economy combined with the Progressives' surge in Western Canada handed the Liberals a one-seat majority on election night 1921.

In spite of his party's victory and the shambolic state of the Conservative Party, the new prime minister still faced substantial obstacles to implementing his legislative agenda. With only a one-seat majority in the House of Commons, the Liberal government was forced to temper their legislative ambitions. Additionally, the Liberals faced a hostile Senate dominated by Conservative partisans appointed by Prime Ministers Borden and Meighen during their decade in office. In order to meet this challenge, the Liberals needed to justify the supremacy of the House of Commons as the preeminent chamber of Parliament and thereby

delegitimise any attempt by the Senate to invoke its constitutional power to delay, block or amend legislation. It is this process and its long-term consequences that will serve as the focus of this chapter. Specifically, it will argue that, between 1921 and 1930, the King-led Liberals drew on the concept of the democratic mandate or the idea that the governing party and its leader were chosen to speak for the Canadian people, in order to bolster their own political standing and limit the ability of the appointed Senate to hinder the Liberal government.

This particular case study demonstrates how governing parties in Westminster systems employed democratic concepts, such as the democratic mandate as a means of solidifying their own position while limiting any opposition from the upper chamber. Particularly in countries like Canada, where constitutional reform was not politically feasible, the possibility of structural reform to the Senate was nil. Hence, a government facing a hostile Senate in this constitutional context had to ensure that voters viewed any exercise of power by senators, however legally valid, as a violation of democratic norms. However, the long-term effect of such a strategy was to further undermine the legitimacy of the Senate in the eyes of the voting public. In Canada's case, for an institution that had faced questions of legitimacy since its creation in 1867, these attacks could be particularly successful.

In order to demonstrate this argument, the chapter draws on two types of sources. The first consists of public remarks of key Liberal politicians, particularly those of Prime Minister King. The second is articles and editorials from prominent liberal newspapers of the era, such as the *Manitoba Free Press* (after 1931 the *Winnipeg Free Press*) and the *Toronto Globe* (later the *Globe and Mail*). Unlike earlier in Canadian history, when papers like the *Globe* were owned by political party leaders, they were independent operations with editorial policies controlled by their owners/operators, not the Liberals or the Conservatives. However, these newspapers still maintained strong connections to political parties, and their owners and editors were often involved in the affairs of the party. The most prominent example was the *Winnipeg Free Press*, which was owned by former Liberal cabinet minister Clifford Sifton and run by overtly partisan editor J. W. Dafoe. These papers thus provide a window into broader Liberal attitudes towards the Canadian Senate during the 1920s.

Historical and political context

Liberal Prime Minister William Lyon Mackenzie King's (1874–1950) personal history was unique for politicians of his era. While most Canadian politicians during the country's first fifty years were either born in the British Isles or heavily influenced by its history and politics, King was much closer culturally to Canada's southern neighbour, the United States of America.

King was the son of John King, an unsuccessful lawyer, and Isabella Grace Mackenzie, the daughter of William Lyon Mackenzie, a noted reform politician in early-nineteenth-century British North America and one of the leaders of the Upper Canada Rebellion of 1837 who spent time in exile in the United States. King spent his early life in Berlin, Ontario (now Kitchener), and completed his

BA at the University of Toronto before studying law at Toronto's Osgoode Hall. King's formative educational experiences, however, were in the United States. After failing to get a professorship at Osgoode Hall, King studied at the University of Chicago, where he worked closely with American reformer Jane Addams. He subsequently received his MA in political economy and his PhD from Harvard University in Cambridge, Massachusetts. King returned to Canada in 1900 to work as a civil servant and in 1908 was convinced to run for the Liberal Party in a federal by-election. Upon winning a seat in Parliament, King was made minister of labour by Liberal leader Wilfrid Laurier. Yet King, like most Liberal ministers, lost his seat in the federal election of 1911 and subsequently returned to the United States, where he was hired by John D. Rockefeller Jr. to head the Rockefeller Foundation's Department of Industrial Research. King served in this role throughout most of the First World War, only returning to Canada in mid-1917 to run unsuccessfully for the Liberals in the 1917 federal election.

Two years later, in 1919, Wilfrid Laurier, longtime Liberal Leader and King's political mentor, died, precipitating the first leadership convention in Canadian history. King ran for the leadership and won on the fourth ballot. Ironically, King, a unilingual Anglophone, won thanks to the support of Quebec delegates marshaled for King by his Quebec-lieutenant and later attorney general, Ernest Lapointe. King thus led the Liberal Party into the 1921 federal election, the first after the return to peacetime after the upheaval of the First World War.

King's invocation of the democratic mandate during the 1921 campaign was one example as to how his time in the United States shaped his politics. King's specific interpretation of the democratic mandate as conferring power on the executive was an invention that traced its origins to the nineteenth-century United States and the rhetoric of American president Andrew Jackson (1829–1837).

Within parliamentary systems, a majoritarian interpretation of political power has always emphasised the presidential-like role of the prime minister and sought to reduce Parliament to simply a ratifying body. However, the idea that the people directly conferred power on a specific individual was an American reinterpretation of this idea (Ihalainen, Ilie & Palonen 2016). This theory of mandate politics as it relates to elections rests on three basic assumptions. The first is the idea that election results carry a clear and directive message from the people to political leaders about their policy proposals. The second assumption is that this message is authoritative, and political leaders are duty-bound to uphold it. The final assumption is a negative imperative, stating that political leaders should not, barring exceptional circumstances, take substantial action without the expressed approval of the people in the form of a mandate granted through an election (Kelley Jr. 1983). Essentially, the idea of a mandate can be summarised as follows: voters send a message with their votes and public officials receive this message and act on it (Grossback, Peterson & Stimson 2006).

Andrew Jackson was the first to interpret majoritarian ideas through the lens of executive action: he argued that the president embodied the will of the American people and that his election was a mandate in favour of his key policies (Dahl 1990). Yet Jackson's views were not widely accepted by subsequent nineteenth-century

presidents, as the majority continued to argue for legislative or parliamentary, rather than executive, superiority. In 1912 Woodrow Wilson's electoral victory marked the reintroduction of mandate politics to American democracy. Rather than accepting the argument that legislative superiority was imperative for true democracy, Wilson reversed the proposition, arguing that legislative restrictions on presidential power were undemocratic. For Wilson, as for Jackson before him, the president was the only truly elected representative of the American people and had a popular mandate to act, while congressmen spoke only on behalf of specific regional interests (Dahl 1990).

As this chapter will demonstrate, Mackenzie King adopted this idea of the democratic mandate to reinforce his position as prime minister. The major challenge for King and his party in adopting this strategy was that, unlike in a proportional representative system and to a lesser degree the American system, in the Westminster system, there was no direct link between the popular vote and what party forms government. Rather, King was forced to construct what Matthew Shugart and John Carey describe as a 'false mandate' (Shugart & Carey 1992). These circumstances meant that it was much more challenging for King to convince Canadians that such a concept was relevant to Canadian politics. Ultimately, though, King and the Liberals were able to take a concept developed in the United States and successfully employ it in a Canadian context.

While King's invocation of the democratic mandate was new, as the *Ottawa Evening Citizen* highlighted in their 1921 election day issue, debating how the Senate and House of Commons related to each other was not. It had been the subject of political discussion in Canada since even before the Confederation in 1867. The newspaper chronicled eight previous attempts by the Commons to pass legislation limiting the power of the Senate, all of which failed (*Ottawa Evening Citizen* 1921). Additionally, as Norman Rogers informed King in a 1927 report, the Conservative MP Edward Lancaster had introduced legislation in the lower house calling for the complete abolition of the Senate in 1909, 1910 and 1911 (Rogers 1927). Finally, the Liberal Party's grassroots had repeatedly voiced their opposition to the power of the appointed Senate. Particularly during the 1919 party convention, numerous local Liberal organisations had forwarded resolutions supporting a variety of legislative proposals relating to the Senate, with options ranging from a mandatory retirement age to outright abolition. The predominant argument used to justify their resolutions was that, as the Northern Ontario Liberal Association detailed, the Senate was 'an appointed body, holding office for life, which is contrary to Liberal opinion and principle' (National Liberal Convention 1919). Thus, King's attacks on the power of the Senate not only were timely but also reflected a history of Liberal support for Senate reform initiatives and tapped into existing sympathies among many of the party's grassroots.

The English example

When discussing the role of the upper chamber of Parliament, the Liberals not only drew on Canadian history, but also on the debate over the powers of the

House of Lords in Britain. Particularly, in the years leading up to the First World War, clashes over what legislative or procedural mechanisms were required to resolve deadlock between the Commons and Lords became one of the most controversial issues in early-twentieth-century British politics. Traditionally, the only mechanism for resolving a deadlock between the Commons and the Lords was for the Crown to appoint additional Lords supportive of the particular piece of legislation. With the passage of the *Reform Act 1832*, only after King William IV threatened the Lords with creating an additional eighty peerages to ensure the bill passed, the convention developed that the Lords would not defeat publicly popular legislation. Additionally, convention dictated that the House of Lords could not amend money bills, as only the Commons had the ability to decide what funds would be available for the Crown to spend. Although unable to amend money bills, the Lords still had the prerogative to defeat them outright, setting the stage for the 1909–1911 conflict over the People's Budget (Bradley & Ewing 2008).

By the turn of the twentieth century, the Conservative-Unionists had a substantial majority in the Lords. Despite their dominance in the upper house, the 1906 general election saw the election of a reform-minded Liberal administration which had publicly committed to substantial public welfare programs. Between 1906 and 1908, conflict simmered between the two chambers, with the Lords rejecting or modifying key pieces of Liberal legislation. The conflict came to a head in 1909 when Chancellor of the Exchequer David Lloyd George introduced 'The People's Budget', which, among other measures, increased income taxes on the wealthy and instituted an additional land tax targeting the gentry. Conservatives in both houses saw the budget as highly redistributive and an attack on the aristocracy. While the Conservatives did not have the votes to defeat the budget in the Commons, they did in the House of Lords and voted 350 to seventy-five to veto the budget (Ball & Seldon 1994).

In response, the Liberals derided the upper chamber as undemocratic and called for a reform of the House of Lords. Additionally, Prime Minister Herbert Henry Asquith asked King Edward VII to appoint enough Liberal peers to ensure the budget's passage. However, that would require appointing over three hundred new peers, and the King refused to take such drastic action without the clear support of the British electorate. Consequently, Asquith asked for Parliament to be dissolved, and in the General Election of January 1910, the Liberals retained power, albeit with the help of Labour and Irish Parliamentary Party support in the Commons. This coalition was subsequently able to force through a modified version of the 1909 budget but with the controversial land tax removed. Inspired by the budget crisis, Asquith attempted to use his parliamentary majority to pass legislation removing the House of Lords' veto over legislation and replace it with the ability to delay money bills for one month and all other bills for a maximum of two years. This measure was, as predicted, quickly defeated in the upper chamber. Yet with the death of Edward VII in May of 1910 and George V's ascension to the throne, Asquith now had a sympathetic monarch willing to appoint additional peers to ensure the passage of reform legislation. When the Liberals' reform legislation was once again defeated in the House of Lords, Asquith requested another

general election for December 1910, which his coalition subsequently won. The Liberals were now able to pass a reform bill similar to the one rejected in 1910, and in August of 1911 the House of Lords passed the *Parliament Act 1911* by a seventeen-vote margin. The political drama surrounding the House of Lords reforms was well covered in the Canadian press, and many Canadians believed that Asquith's reforms should serve as inspiration for King and the Liberals.

The main problem was that the *Parliament Act 1911* did not address the main obstacle to the Liberal Party of Canada's legislative agenda. One of the key constitutional justifications for legally defining the powers of the Lords in respect to the Commons was to ensure that the Lords could not dictate government spending by amending or defeating a budget. On other legislation the Lords could delay a bill by two years. It was thus possible to understand the 1911 reforms not as a radical redistribution of powers within Parliament but rather a codification of existing convention. Within the Canadian context, however, the issue was not money bills, as King's budgets easily passed the Senate, but rather criminal code reform. In particular, since their convention in 1919, the Liberals had pledged to repeal the wartime anti-subversion provisions in Section 98 of the *Criminal Code of Canada*. Since the end of the First World War these laws had been used by police to target left-wing organisations, and repealing the section was almost unanimously opposed by Conservative senators. In order to ensure that his government's legislation passed unimpeded, any Senate reform bill would have to sanction much more extensive changes than the 1911 British one. Hence, the Liberals had to justify any future proposal not by appealing to constitutional precedent, as the British Liberals did, but by creating their own standards of democratic legitimacy based on the supposed desires of the Canadian people.

Attacks on the legitimacy of the Senate

Despite the centrality of the Senate in Liberal Party discourses and a legislative template based off the British *Parliamentary Act 1911*, Prime Minister King did not publicly discuss the need for such a bill until the summer of 1924, three years after being sworn in as prime minister (*Manitoba Free Press* 1924a). Rather, for the first three years of their term the Liberals relied on the *Manitoba Free Press* and their partisan Liberal editor J. W. Dafoe to build support for legislation limiting the Senate's power by highlighting how the Senate abused its power to 'trip up the government'. When King finally did address the issue in July 1924, he told the House, 'This year we have instances of bills that have passed this House in three separate sessions of parliament, and which have been rejected each time by the second Chamber'. King then referred to the 1911 British bill and argued,

> The time has come when the Commons in Canada should seek to gain rights and privileges with respect to legislation originating in the Chamber similar to those which have been obtained by the House of Commons in the Parliament of Westminster.

After assuring the House that his government would introduce legislation to ensure the supremacy of the House of Commons in the near future, King proceeded to justify his proposal by invoking a sense of civic duty in his audience. King told the House, 'I think we owe it to the people of our country with respect to laws demanded by the electorate to see to the supremacy in parliament of the elective chamber' (King 1924b). King claimed the electorate had chosen the Liberals to govern on the basis of their proposed laws, so the Senate had no moral authority to subvert the desires of not only cabinet but also the people they claimed to represent.

This message, that the Liberals' attempts to limit the power of the Senate were part of the fight to protect the rights of the people, was a key theme in many of the Prime Minister's speeches throughout the summer of 1924. In one from 20 August 1924 to the Kent County Liberal Association in Chatham, Ontario, King assured his audience, 'The government would proceed with all due caution in an effort to secure supremacy of the people's will'. While downplaying the radical natures of his party's proposals, King stated,

> I do believe the people will expect a Liberal government to see that the machinery of government is so arranged as to make possible that the will of the people will prevail in those great measures which are of such great concern to the people as a whole.
>
> (King 1924a)

For King it was obvious that the House of Commons should be preeminent, and any limits imposed on it by an appointed Senate were necessarily anti-democratic. Much like his comments in the Commons in July, King asserted that the Liberals, by virtue of their position as the governing party, were duty-bound to implement the wishes of the people expressed through a general election. Any partisan advantage the Liberals gained from this legislation was simply a by-product of the party's resolute commitment to democratic governance.

Despite spending the summer rallying support for his cause, King and the Liberals lacked sufficient confidence in their one-seat majority to introduce legislation on the matter during the fall session of 1924. Rather, King made vague promises to pass a bill similar to the 1911 British one without actually committing to anything. Such hesitancy did not stop the *Manitoba Free Press* from outlining potential legislation in a most generous light. In an editorial from October of 1924 Dafoe argued, 'The object of a second chamber is to ensure careful deliberation and to prevent hasty, ill-considered legislation. The proposed amendment would allow for this without permanently blocking the will of the people'. Additionally, Dafoe attempted to undermine any opposition to reform, stating,

> Opposition to such an amendment cannot come from regard for the public interest but only from dark, ulterior considerations. Is the will of the people to prevail in Canada, or are the interests to retain the hold which they have had upon the government of the country through the irresponsible Senate and otherwise?
>
> (Dafoe 1924)

By invoking the idea that the Senate was not responsible to any elected body, Dafoe sought to stigmatise any exercise of the Senate's constitutional power to block legislation. In the pages of the *Free Press*, what could be interpreted as a simple partisan conflict between Liberals and Conservatives was instead presented as a clash between the democratically elected representatives of the Canadian people and nefarious forces acting out of self-interest.

In December of 1924 *The Manitoba Free Press* published another editorial attacking Conservatives who defended the status quo with regard to the Senate. The paper characterised the Tory intransigence as misguided, stating, 'The Second Chamber occupies no such invincible position as our die-hards and stand-patters think' (*Manitoba Free Press* 1924b). In the face of substantial and sustained opposition from Conservative parliamentarians, the *Free Press* became more vocal in their support of the Liberal position. In an article from the summer of 1925 titled 'The Senate Reaches Out', the paper informed readers that not only were Senators and their Conservative allies in the House of Commons resisting reform but they also were the driving force behind

> a persistent movement to enlarge the powers of the Canadian Senate for a reason that is quite plain. Powers and influences that believe they have an indefeasible right to control this country are turning to the Senate as the grip upon the Commons shows signs of weakening.

Much as they had during the 1921 election campaign, the Liberals and their supporters sought to continue this attack on the Conservatives for failing to respect the basic pillar of Canadian democracy: responsible – or cabinet – government. As Dafoe reminded readers, 'our nominated Senate is . . . entirely irresponsible' (*Manitoba Free Press* 1925). But just as the Conservative or Union Government had had every constitutional right to govern until the House was dissolved, for they commanded a majority in the Commons, the Senate had a legal right to amend or veto legislation, and doing so did not contravene the tenants of responsible government. However, rather than relying on constitutional arguments which served only to undermine the Liberals' position, the party's intellectual leaders drew on the rhetoric of popular democracy to argue for an entirely new constitutional convention.

The *Manitoba Free Press* was not alone in supporting the Liberals. On 22 December 1924, the same date as that of the *Free Press* editorial quoted earlier, the traditionally Liberal *Toronto Globe* published a long editorial arguing in favour of legislation limiting the Senate's power. Specifically relying on Western Canadian grievances to bolster its contention, the *Globe* piece presented the Canadian Senate as a unique institution in democratic countries, stating,

> In no other country with a parliamentary tradition is the Upper House so frankly based on party patronage and so wholly independent of public opinion or public favour. Students of constitutional history who believe in democracy have a logical quarrel with such a body.
>
> (Toronto Globe 1924)

The paper declined to offer any evidence for its assertion, demonstrating how alleging that the Senate was uniquely undemocratic had simply become part of the arsenal of arguments Liberal supporters deployed with regularity. In the *Free Press* editorial from June of 1925, Dafoe compared the Senate unfavorably with the British House of Lords, writing, 'The House of Lords, it appears, is a mere shadow of a legislative body compared with our nominated Senate' (*Manitoba Free Press* 1925). Dafoe chose to ignore the hereditary nature of the House of Lords or the presence of Church of England bishops in the British upper house, rather emphasising that the appointed nature of the Senate combined with its unrestricted power to amend or veto legislation should be the primary factor in determining the democratic nature of each country's parliament.

Legislative inaction

Despite the advocacy of Liberal newspapers, legislation similar to the British initiative faced substantial obstacles. First was that it would require approval from both the House of Commons and the Senate. Essentially, the Conservative-dominated Senate would have to acquiesce to the supremacy of the Liberal-controlled Commons. Furthermore, the Senate had a constitutionally mandated number of seats, so the Prime Minister could not convince the governor general to appointing additional senators to ensure the government's legislation passed. Such a political reality meant that any reform initiative was a long-term project for the Liberals. As a result, King was willing to use the possibility of Senate reform as a tool for ensuring the Progressive Party supported the Liberals' tenuous majority. To do so, King made a series of personal guarantees to the Progressive Party regarding Senate appointments, pledging to appoint only Senators who would agree to support unspecified reform measures in the future. Thus, once the Liberals gained a majority in the Senate, they would then be in a position to pass whatever legislation deemed necessary. This solution to the challenge posed by the Senate was deeply flawed, as neither King's assurances nor the pledge of newly appointed Senators was legally enforceable. Even if the Progressives withdrew their support for the Liberals in the House of Commons to punish King's perfidy, once a Senator was appointed, there was no way to ensure they honoured the pledge King had extracted from them. As a consequence the Progressive Party dismissed this overture from the Liberal Party (Fraser 1954).

With the Liberals frustrated in the Commons, King's attempts to equate opposing the Liberal government's policies with opposition to democratic governance generally became an important campaign message for the Liberal Party in the September 1925 federal election. In a campaign pamphlet titled "Progress and Achievement", the National Liberal Federation employed King's rhetoric to appeal directly to voters. The pamphlet first reiterated the problems the Liberal administration faced from a hostile Senate before demonstrating how they would solve this problem:

> When there is a change in Government in Canada it usually happens that the Senate is controlled by the Opposition. This embarrasses a new government

> and its majority in the House and prevents the will of the people being fully carried out as expressed at the general election. . . . The people believe that the Canadian House of Commons should have the same power as the British House of Commons to pass legislation and the Prime Minister personally declared this to be his view. How he is going to bring this about was fully set forth in his keynote speech in North York. Liberal Senators already in office, as well as those who are to be appointed, will be pledged to support the necessary constitutional change. The government in this campaign is seeking a mandate from the people. If that be forthcoming, the will of the people will be translated into political action as soon as the supporters of the government constitute a substantial majority of the senate.
>
> (Liberal Party of Canada 1925)

What was essentially King's promise to the Progressives earlier in 1925 was now elevated by the National Liberal Federation to a key election pledge. The author echoed King's public comments by emphasising how critical it was that the Commons and through it the cabinet have unimpeded power to pass legislation. The Liberals justified this position by appealing to the idea of a democratic mandate conferred through a general election. Specifically, the Liberals argued that the victorious party in an election represented the will of the Canadian people. Such a claim was a fabrication though, as only 41 per cent of voters supported the Liberals in the 1921 election. Furthermore, with only 67.7 per cent voter turnout, only 29 per cent of eligible Canadians actually voted for the Liberals. For King to claim that the 1921 election results meant the Liberal Party spoke on behalf of all Canadians was a rhetorical sleight of hand designed to delegitimise opposition to the Liberal legislative agenda.

King's ability to claim a mandate from the people was further undermined after the 1925 federal election. The Liberals lost the popular vote 46 per cent to 40 per cent to the Conservatives and also won fifteen fewer seats, taking one hundred to the Conservatives 115. Yet King refused to resign as prime minister and, with the support of the twenty-two Progressive Party members, continued to govern. King's ministry managed to hold power until June 1926, when a scandal over bribery in the Department of Customs and Excise brought down the government. Before his government was defeated on a motion of censure, King requested the governor general dissolve Parliament and call a general election, but his request was refused. Instead, the governor general offered Arthur Meighen a chance to govern. Meighen's ministry lasted only three days before being defeated in the House of Commons, forcing a general election. Ultimately, though, the federal election of 1926 was only a partial victory for the Liberals. While they managed to win a plurality of seats with 116 and increase their share of the popular vote by 3 per cent (to 43 per cent), the Liberals lost the popular vote by 2 per cent to the Conservatives and were still seven seats short of a majority. However, King was able to rely on the eight votes of the Liberal-Progressives who, led by Manitoba MP and former Progressive Party leader Robert Forke, agreed to caucus with the Liberals and support the government on matters of confidence. Thus, much like after 1921, the Conservatives were once again facing a majority government in

the House of Commons and had to rely on their presence in the Senate to obstruct King's legislative agenda.

Without the political imperative of securing Progressive Party support on a vote by vote basis and with an increasing number of Liberal appointees in the upper chamber, curbing the power of the Senate was a much less pressing issue for King. Rather than risk engaging in public debates regarding the Senate, King commissioned a private report for the cabinet on political options regarding the upper chamber. King's personal secretary and future Liberal Member of Parliament Norman McLeod Rogers was tasked with writing this report and presented his recommendations to the Liberal Cabinet on 12 September 1927. In his report Rogers engaged with the idea of how the Senate limited the power of the elected House of Commons. Rogers recognised that, 'An elective Senate having a direct mandate from the people would be more aggressive and active in the discharge of its functions, and would thus command a greater respect throughout the country'. However, he then went on to clearly articulate the Liberal Party's reasons for opposing an elected upper chamber, stating:

> If the Senate were elective, would it not be disposed to claim equal powers with the House of Commons, or at least to insist on a measure of control with respect to money bills? Moreover, an elected Senate would be an avowedly partisan body. If the majorities in the two houses were of the same political complexion, the Senate would impose no effective check on the House of Commons. If the majorities in the two houses were of opposite political complexions, the Senate under partisan influence might abuse its powers for political purposes.
>
> (Rogers 1927)

This report, produced by King's political ally, provided the necessary justification for the prime minister's approach towards the Senate. Rather than focusing legislative efforts on changing how the Senate was constituted, for as Rogers argued, no method would resolve the problem of partisanship in the upper chamber, the Liberals instead chose to focus on limiting the powers of the Senate. This approach still preserved the ability of the governing party to use Senate appointments for patronage purposes but also confirmed the power of the prime minister and his cabinet to ensure that the Senate would not have the democratic legitimacy to challenge the legislative power of King and his ministers.

From 1926 through the end of King's term in 1930, the Senate continued to delay controversial aspects of the Liberals' legislative agenda. Most notable was the government's continued attempts to repeal Section 98 of the Criminal Code, which the Senate defeated five times between 1926 and 1930. As well, the Senate defeated proposed changes to the Immigration Act in 1927. Yet these defeats presented an excellent opportunity for the Liberals to highlight their supposed superiority. In January 1928, *Vancouver Sun* editor and partisan Liberal Robert J. Cromie published an editorial condemning the Conservative Party, arguing that its willingness to obstruct legislation in the Senate was undemocratic. An exchange

of letters between Cromie and Minister of Justice Ernest Lapointe demonstrated how the Liberals were happy to exploit the Conservatives' intransigence. Cromie told Lapointe, 'If the Liberal Party can hang this [anti-democratic] angle onto Toryism and drive it home . . . it will be a master stroke'. Cromie then went on to offer a historical analogy:

> From 1890 to 1900 there was an inferiority complex about the Conservative party in England because of their associations with the rich and rotting House of Lords; there was a superiority complex associated with Liberals during that period because they had associated with them the idea of progressiveness and intellectualism. That superiority complex is offering and is available to either of the political parties in Canada today; it properly belongs to the Liberal Party with its Liberal program of Canadianism.
>
> (Cromie 1928)

The Senate certainly did obstruct Liberal legislation, but their opposition allowed the governing party to reinforce to voters that the Liberals were the true protectors of Canadian democracy. The Liberals were also willing to further enhance this impression by letting the Senate Conservatives defeat legislation in the upper chamber by ensuring enough Liberal Senators missed key votes (Government of Canada 1936). In the short-term, these defeats were a slight setback to that session's agenda but cumulatively they reinforced the image the Liberal Party wanted to present to the Canadian public. The fact that, after the 1930 federal election, the now governing Conservatives refused to take any action to address the Senate or to reform its practices also reinforced the Liberals' narrative. Ultimately, telling people that a certain party was anti-democratic was a much more effective when they occasionally acted in the exact manner that the Liberals warned they would.

Conclusion

Returning to power in 1921 after a decade in opposition was always going to present a number of challenges for the Liberal Party of Canada. Besides managing a razor thin majority in the House of Commons, the Senate of Canada was the largest obstacle to the Liberals' and Prime Minister King's ambitions. The challenge for the Liberals was how to sideline the Senate and make senators hesitant to use their constitutionally prescribed powers to delay, block or amend legislation. Barring that, how could the Liberals ensure that any short-term defeat in the Senate was turned into the Liberals' long-term advantage? As this chapter has argued, the approach King, his party and their allies in the media adopted was to invoke the concept of a democratic mandate, supposedly conferred on the Liberals by the Canadian people. That is, the Liberals claimed that they, as the ruling party, and King, as their leader, spoke and legislated on behalf of the Canadian people as a whole. Consequently, the Senate represented only the parochial and selfish interests of Conservative elites.

Positing the existence of a democratic mandate, much less claiming that the Liberal Party had been granted one, required importing an American concept into a Canadian political system deeply influenced by its British connection and history. The Liberals and King exploited the lack of a consultative mechanism in the Westminster system through which the governing party could be clearly granted a mandate, allowing the Liberals to be vague in asserting how exactly they had been empowered to speak for the people. While Senators could point to the *British North America Act 1867* and conventions in the Westminster system as the source of their powers, these claims could be undercut by appealing to broader principles and malleable concepts, which were used by the Liberals to delegitimise any attempt by the Senate to assert its authority. Ultimately, as demonstrated, Senators were still willing to use their power to defeat government legislation and did so with semi-regularity throughout the 1920s. But each defeat also further enhanced the Liberals' narrative of a democratic party protecting the people and their freedom to govern themselves. By using its constitutionally granted powers, the Senate did not effectively assert itself but rather contributed to its ongoing irrelevance by confirming the worst allegations of King and the Liberal Party.

References

Ball, S. and Seldon, A. (eds.) (1994), *Conservative Century: The Conservative Party since 1900* (Oxford: Oxford University Press).

Bradley, A.W. and Ewing, K.W. (2008), *Constitutional and Administrative Law* [8th edition] (Harlow: Longman).

Cromie, R.J. (1928), *Correspondence from Robert J Cromie to Ernest Lapointe*, 10 January, Vol.3, File 3, Ernest Lapointe Fonds, Library and Archives Canada, Ottawa, Ontario, Canada.

Dafoe, J.W. (1924), 'The senate and the veto', *Manitoba Free Press*, 22 October.

Dahl, R. (1990), 'Myth of the presidential mandate', *Political Science Quarterly* 105(3), pp. 355–372.

Elections Canada (2019), 'Voter turnout at federal elections and referendums'. Available at: www.elections.ca/content.aspx?section=ele&dir=turn&document=index&lang=e (accessed 13 March 2019).

Fraser, B. (1954), 'A new senate, this is why we need it', *Maclean's*, 15 April, p. 40.

Grossback, L., Peterson, D. and Stimson, J. (2006), *Mandate Politics* (New York: Cambridge University Press).

Government of Canada (1936), 'Section 98 of criminal code' 20 June 1936, Box 11, File 38, Grant Dexter Fonds, Queen's University Archives, Kingston, Ontario, Canada.

Ihalainen, P., Ilie, C. and Palonen, K. (2016), 'Parliament as a conceptual nexus', in: Ihalainen, P., Ilie, C. and Palonen, K. (eds.), *Parliament and Parliamentarism: A Comparative History of a European Concept* (New York-Oxford: Berghahn books), pp. 1–16.

Kelley Jr., S. (1983), *Interpreting Elections* (Princeton, NJ: Princeton University Press).

King, M. (1924a), 'Speech by Mackenzie king to Kent liberal association in Chatham', 20 August. Vol. 630, Senate Reform, R.B. Bennett Fonds, Library and Archives Canada, Ottawa, Ontario, Canada.

King, M. (1924b), 'Transcript of a speech by Mackenzie king in the house of commons', 19 July, Vol. 630, Senate Reform, p. 389339, R.B. Bennett Fonds, Library and Archives Canada, Ottawa, Ontario, Canada.

Liberal Party of Canada (1925), *Progress and Achievement*, *Publication #1*, September 1925, Vol. 1200, Liberal Political Pamphlets, Liberal Party of Canada Fonds, Library and Archives of Canada, Ottawa, Ontario, Canada.

Manitoba Free Press (1924a), 'The branch lines that were not built', 9 January.

Manitoba Free Press (1924b), 'The senate and its powers', 22 December.

Manitoba Free Press (1925), 'The senate reaches out', 26 June.

National Liberal Convention (1919), *Resolutions, Recommendations and Suggestions for Platform and Programme, 5–7 August*, Vol. 1215, general election – 1940 pamphlets and speeches, liberal party of Canada fonds, Library and Archives Canada, Ottawa, Ontario, Canada.

Ottawa Evening Citizen (1921), 'Eighth attempt to curb power upper chamber', 6 December.

Rogers, N.M. (1927), *The Reform of the Senate, 12 September 1927*, MG26-J2, Vol. 1052 Microfilm reel C2723, pp. 97087–97152, William Lyon Mackenzie King Fonds, Library and Archives Canada, Ottawa, Ontario, Canada.

Shugart, M. and Carey, J. (1992), *Presidents and Assemblies. Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press).

The National Archive (1911), *Parliament Act 1911*. Available at: www.legislation.gov.uk/ukpga/Geo5/1-2/13/contents (accessed 13 March 2019).

Toronto Globe (1924), 'The senate as an issue', *Toronto Globe*, 22 December.

14 Vocational voices or puppets of the lower house?

Irish senators, 1938–1948

Martin O'Donoghue

Introduction

> It is easy to justify the bicameral system in the abstract – the pitiably weak attempts to discredit it in some of the Presidential speeches [Éamon de Valera's] are the best proof of that; but it is very difficult to suggest a scheme for a Second Chamber [Senate] that will function both efficiently and smoothly.
>
> – Binchy, 1936

The words of Daniel A. Binchy, University College Dublin scholar and former Irish Free State envoy to Germany, encapsulated the conundrum facing Irish advocates for a new senate in the 1930s. Many politicians and commentators desired the additional oversight offered by a second chamber, yet the government's actions made it clear that any effective senate would have to be different in character and composition from its predecessor. After the tumultuous final years of the state's first upper house, the reconstituted Senate emerged in 1938 from a constitutional crusade undertaken by the state's leader, Éamon de Valera, and his Fianna Fáil party, in power from 1932 to 1948. The clashes between de Valera and the previous Senate over issues relating to the 1921 Anglo-Irish Treaty and Irish sovereignty contributed significantly if not exclusively to that chamber's demise, while the state's new constitution (*Bunreacht na hÉireann)*, 1937, laid out the framework for its successor (O'Sullivan 1940; Manning 1970; cf. Dorney, this volume). It is perhaps for this reason that much of the scholarship on senates in independent Ireland has focused on the more colourful (and powerful) first incarnation of the upper house, which had such a public confrontation with the government in the early 1930s (O'Sullivan 1940; Byrne 2015). The scholarly consensus on the 1938 incarnation has been negative; many have criticised the chamber's shortcomings while pointing to possibilities for reform, while others have been scornful of its vocational ethos – an element instituted as a nod to the Catholic social thought popular among many Irish academics and writers at the time (Chubb 1954; Garvin 1969; Lee 1989). However, an examination of the chamber in the period between 1938 and 1948 reveals both its tendencies to confirm some of the its worst dismissals and to confound some of the broad generalisations made about the Senate.

The early years of the new upper house coincided with a critical juncture in the early history of the Irish state, Europe and the wider world. The new constitution gave the Irish state many of the features of a republic, settled its tariff war with Britain and, just as Europe seemed destined for conflict, secured the return of ports which had remained in British control in 1921 (Keogh & McCarthy 2007). The new Senate, *Seanad Éireann*, which met for the first time on 27 April 1938, bore the outward appearance at least of vocationalism, an ideal being espoused by Catholic thinkers and Fascist leaders on the continent. This chapter will investigate this influence, assessing the controversies over its vocational character and the problems faced by the chamber if it was to remain true to this ideal. However, while there is no denying the weaknesses of the Senate's selection and election procedures, the partisan nature of much of its proceedings and the limited scope of its legislative powers, this chapter intends to situate its origins and development in the context of the domestic and European crises in which it emerged. In doing so, it will seek to reflect on not only the membership of the house and the elements of vocationalism which did inform its activities but also the character of the Seanad and how members perceived their role in its first decade of operation.

Why vocationalism?

The rationale for the Senate established in 1922 had been clear: it provided a safeguard for religious minorities in the state which might not be represented in the lower house (the *Dáil*). It also followed a legislative idea visible in a number of proposals for 'home rule' in the late nineteenth and the early twentieth century (Akenson & Fallin 1970; Cahillane 2016). By the 1930s, however, the Free State Senate, along with other elements of the 1922 constitution, were no longer fit for de Valera's purpose (Coffey 2018b; cf. Dorney, this volume). The abolition of the Senate can be grouped together with de Valera dismantling the Treaty of 1921 and the tariff dispute with Britain, as issues causing disquiet among not only the Protestant minority but also the opposition more generally, partially explaining the desire for a new upper house (Bowman 1982).

The concerns of 1922 would not influence Fianna Fáil legislation in the 1930s. The party's Seán T. O'Kelly argued that provisions for minorities were no longer required and pointed out that it was the actions of Cumann na nGaedheal-led government in the 1920s that removed many of the previous Senate's more wide-ranging functions, including the power of referendum (Rohan 1982). Yet the action of O'Kelly's party in abolishing the upper house in 1936 and his subsequent commentary highlighted the fragile constitutional state of the country after so many amendments to the 1922 constitution and the practical destruction of the Treaty with Britain. The legacy of bitterness over the Civil War (1922–1923) also maintained an atmosphere of distrust in political circles; one contemporary commentator noted that the demise of the upper house meant de Valera had removed 'the last effective brake on his power' (Horgan 1934). Regardless of the fears and suspicions his political opponents may have held, it was, as Brian Farrell has noted, a 'classic opportunity for dictatorship' in an era of dictatorships (Farrell

1988, p. 30; cf. Keogh & McCarthy 2007). Instead, however, de Valera had begun to work on a new constitution, and the result, *Bunreacht na hÉireann*, was to include the re-constituted Senate.

As outlined by John Dorney in this volume, the method of election to the 1922 Senate on a triennial basis proved problematic, producing a dismally low turnout and a counting process that dragged on for weeks in 1925 (Coakley 2005). In the mid-1930s, de Valera himself seems to have been unconvinced by theories of bicameralism and, as Nicholas Mansergh (1934) pointed out, a unicameral system perhaps would have been more in tune with republican ideals. While Donal Coffey's recent research on the drafting of the 1937 constitution has pointed to the 'constitutional experimentation' visible in interwar Europe, his work has presented *Bunreacht na hÉireann* as a 'melange' of four influences – nationalism, interwar liberalism, the British parliamentary tradition and Catholicism (Coffey 2018a, pp. 2–4). While liberal democracy has been judged a dominant influence in the overall document, it was in the Senate where Catholic social thought was brought to the fore (Hogan 2012; Broderick 2017). Public debates on the Senate had long referenced Catholic social theory, which had grown in popularity and esteem, especially since the 1929 Papal Encyclical *Quadragesimo Anno*, which followed the earlier *Rerum Novarum* (1891) (Mullarkey 1999; O'Leary 2000; cf. Coyne 1934). In fact, a minority draft of a constitution in 1922 put forward by University College Cork academic Alfred O'Rahilly included a number of Catholic social principles, including a senate organised on vocational lines (Cahillane 2016). Ideas on these lines featured heavily in discussions for a second chamber in the intervening years, although Labour Party proposals to this effect in 1928 were withdrawn amid doubt as to how workable such a scheme would be (Kohn 1940). Such misgivings failed to dissuade advocates for vocationalism, who became more visible once the Free State Senate was set for abolition.

The Irish Jesuit literary and academic journal *Studies* was the forum for several ideas from Catholic intellectuals concerning the new Senate (Faughnan 1988). Expressing belief in vocationalism as the 'only alternative to the present intolerable' situation, O'Rahilly (1936, p. 8) warned the journal's readers that Ireland was 'well on our way towards what in another generation will be a totalitarian state under the dictatorship of a political clique and set of commissars miscalled civil servants'. He wanted a senate partially elected from the Dáil and partially elected from the vocational groups that existed in the state, admitting that the country was not yet organised properly in a vocational manner. Daniel Binchy (1936) lamented the decline and fall of the first Senate, owing to its amended method of election. He echoed the claims of many theorists that a senate should ideally be free from 'political strife' and contain a better class of representative than the lower chamber – whatever that might mean. Thus, he too argued for a senate based 'mainly, though not exclusively on vocational representation' (Binchy 1936, pp. 25–28). His proposal for a senate included a six-month power of delay on legislation, except where three-fifths of the senate rejected the bill. The bill would then be dead unless three-fifths of the Dáil passed it after six months. For Rev. Denis O'Keeffe (1936), professor of ethics and politics at University College Dublin,

the circumstances of the time, where 'representative democracy is no longer taken for granted', meant a second chamber was preferable as 'unicameral government makes it extraordinarily difficult for a democratic system to survive'.

Developments in European politics made such concerns easily understandable as 'strongmen' leaders of the right and left came to power. It must be highlighted, however, that the writers very much argued in the vein of the 'vocationalism' of the Vatican rather than the 'corporatism' of Mussolini, notwithstanding the fact that corporatism had been briefly espoused by the main opposition party, Fine Gael though it slowly abandoned the policy after the short-lived leadership of Eoin O'Duffy (Broderick 1994; Manning 1970; McGarry 2005). In any case, despite such dire warnings that an upper chamber based on vocational representation could help to preserve democracy, de Valera's interest seemed to extend only to a house with purely revisory responsibilities, and he mentioned the Norwegian example of a senate reflecting the lower chamber and therefore guaranteeing a government majority (Garvin 1969; cf. Smith, E., this volume). He also doubted whether a senate could either be neutral or work as a brake on the power of the lower house (Coffey 2018b). This makes it difficult to discern the exact reasons why he bowed to calls for a senate by setting a Commission on the Second House of the Oireachtas (Parliament) in 1936.

The commission featured a range of senior legal and administrative figures who met between June and September 1936 and produced a majority report along with two minority reports (Broderick 2017). While the majority report was influential in other respects, the system of choosing senators de Valera adopted drew on a vocational model suggested by one of the minority reports. While vocational on the one hand, de Valera's model included an electorate of politicians. Eleven of the senators were to be '*Taoiseach*'s nominees' (i.e. nominated by the PM) in a move that guaranteed a government majority and six senators to be elected from the University of Dublin (Trinity College) and the National University of Ireland. The composition of the rest of the house was organised along a system of vocational panels. This left forty-three seats to be filled from five 'vocational' panels drawn from the minority report: 'Culture and Education', 'Industry and Commerce', 'Labour', 'Agriculture' and 'Administration'. Senators were expected to have 'knowledge and practical experience' of the areas they represented (*Bunreacht* 1937, Art. 18). The electorate for these seats and the exact allocation of places on each panel was left to subsequent legislation rather than being enshrined in the constitution. The agreed tallies were 'Cultural and Educational' (five), 'Agricultural' (eleven), 'Labour' (eleven), 'Industrial and Commercial' (nine) and 'Administrative' (seven). However, the use of councillors and TDs (*Teachta Dála* – MPs) as electors – along with the fact just over half of candidates elected for the panels (twenty-two out of forty-three) would be nominated by TDs rather than nominated directly by 'vocational' bodies (Garvin 1969) – seemed to delay at best the provision contained in Article 19:

> Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of Seanad

> Éireann as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of this constitution.
>
> (*Bunreacht* 1937, Art. 19)

Yet de Valera persisted with the minority report as part of his constitutional overhaul. Prof. James Hogan of University College Cork encapsulated the contradictions, writing to fellow enthusiast Alfred O'Rahilly. Welcoming the inclusion of vocational principles in the constitution, Hogan looked forward to the provision for direct election from functional councils. However, he added:

> Unfortunately, it seems to me that most of the good is taken out of the provision by the fact that representatives of vocational groups are to be substituted for those elected by TDs and would-be TDs. We all know how slow people are to let go of any powers they may have, and I do not think it likely that TDs will be capable of that sort of self-denying ordinance by which representatives of functional or vocational groups would be directly elected. If TDs then don't give up their right to elect the 43 panel senators, then direct election will remain a dead letter.
>
> (Hogan s.d.)

He was to be proven correct.

The electoral system

Concerns about the electoral system were also articulated within government at the time and among those with no particular desire for vocational organisation. Minister for Finance Seán MacEntee wrote to de Valera in November 1936, arguing that 'the defects inherent in such a system are obvious'. At the very least, the franchise had to be widened in his view. Presuming that the desire was for an upper house with the 'same political outlook' as the Dáil, MacEntee suggested a senate elected by local politicians from around the country under three constituencies with proportional representation: 'rural areas', 'smaller urban areas' and 'larger urban areas' (MacEntee 1936a). In fact, MacEntee felt so strongly about the matter that he felt the government could lose a Dáil vote on the new senate unless they presented a house that was not 'the creature or the puppet of the Dáil' (MacEntee 1936b). As the cabinet intervened, diluting the university representation – potentially an obstacle to the government and a legacy of university representation in the lower house – was also considered, and the number of senators increased during the drafting process (Coffey 2018a). The mechanism for making vocationalism truly workable, however, still appeared to be missing.

Indeed, the work of the Seanad in its early years would often be undermined by accusations of corruption in the electoral system. As early as July 1942, agricultural panellist John Joseph Counihan raised a motion seeking a committee be appointed to investigate the method of electing the Seanad (Seanad Éireann

1942, 15 July; O'Donoghue 2016). While senior government senators immediately sought to defend the chamber, public and private concern at the operation of Senate nominations and elections only increased (Seanad Éireann 1942, 15 July). Agriculture Minister James Ryan wrote to de Valera on 27 October 1943, suggesting 1) enlarging the franchise and 2) for each county to return a candidate because 'I feel that it would not be possible for any candidate to bribe the majority of the members of any County Council' (Ryan 1943).

While another Senate motion calling for a judicial investigation into the elections was rejected in 1943, Labour party senators Michael Foran and Michael Colgan were unambiguous in their views that corruption was widespread – a theme taken up at the party conference in 1945 (Seanad Éireann 1943, 27 Oct.; *Irish Independent* 1945). Parties often instructed their members how to vote in Senate elections (Chubb 1954; Broderick 2017). Although only one case of corruption was ever proven, an Oireachtas committee was eventually set up to look at changing the method of election amid efforts on similar lines within Government (Lee 1989; Byrne 2013).

When the eventual reform bill was passing through the Seanad in 1946, opposition leader Michael Hayes argued that the Seanad 'was not in any sense vocational' and that the new legislation would do little to effect change in that regard (Seanad Éireann 1947, 12 Dec., cc.1599). The 1947 Seanad (Electoral Panel Members) Act maintained a complicated electoral system but at least increased the electorate to include senators and all councillors and greatly increased the quota required to be elected (which had been just eight under the original 1937 Act). The new Act then applied to all elections from 1948 onwards (Chubb 1954). However, the truly vocational election method provided for by Article 19 of the constitution has never come to pass.

Politicians or vocationalists? The membership, 1938–1948

Criticisms of the vocational character of the chamber is sustained by analysis of the members returned between 1938 and 1948. The '2nd Seanad' in 1938 contained nineteen senators who had served in the previous Senate between 1922 and 1936, while eighteen had been TDs prior to 1938, a figure only somewhat explained by the transfer of university representation from Dáil to Seanad (Rohan 1982). Such figures suggest a certain amount of continuity between the two versions of the upper house. In fact, the number of the senators who had also been members of the previous house at some point between 1922 and 1936 remained a sizeable minority throughout the period 1938–1948, with nineteen in the 3rd Seanad, eleven in the 4th Seanad and thirteen in the 5th Seanad. The number of ex-TDs also floated around the figure of twenty (elections to the Seanad occur after general elections to the Dáil, allowing unsuccessful candidates to seek consolation in the upper house). The subsequent election of those losing seats in the Dáil and the 'ascension' of some senators to the Dáil would seem to betray the early signs of what Cohan saw as the Seanad acting as the first rung of the political ladder for aspiring politicians and a resting home for older ones (Cohan 1972).

Although the majority report of the commission to set up the Senate called for women's representation, just four served as senators in the first decade, out of a total of 117. Just two of the female senators (Linda Kearns MacWhinney and former TD Margaret Mary Pearse) were elected onto vocational panels; Helena Concannon held a university seat, while Margaret Kennedy was a Taoiseach's nominee (*Report* 1936).

The selection of the eleven Taoiseach's nominees, a function essentially designed to ensure government advantage, could not be said to have been entirely partisan in the early years. For example, Frank MacDermot had been a thorn in de Valera's side in the Dáil as a representative of the National Farmers and Ratepayers' League (later the Centre Party), Fine Gael, and as an independent deputy. Nevertheless, the tone of appeals to de Valera for nomination preserved in Department of the Taoiseach files often centred on the past record of prospective candidates, particularly drawing on the War of Independence period (1919–1921). Many other appeals were personal entreaties for nominations to keep someone in public life, sometimes even for the sake of the individual's family, their locality or the strength of the Fianna Fáil party and were written by spouses, neighbours, community leaders or even other politicians. Such letters hardly speak of any idealised regard for the new chamber among party loyalists. Yet there is no evidence these appeals influenced de Valera. Of the eighty-three direct applications for nomination for the 2nd Seanad made by individuals or third parties acting on one's behalf, just one (Maurice George Moore) was nominated by the Taoiseach (*Applications* s.d.).

Perhaps unsurprisingly, since de Valera remained Taoiseach for this entire period under consideration here, the attrition rate in nominated senators was not very high. Including senators appointed during the life of each house to replace those Taoiseach nominees who vacated their seats, ten of those nominated by de Valera in the 3rd Seanad had been nominated by him for the 2nd. Of these, six remained nominees for the fourth and fifth houses. Two senators nominated by de Valera to the 3rd Seanad were again nominated to the fourth and fifth Senates by the Taoiseach. Furthermore, two senators, Seán Patrick Campbell and Margaret Mary Pearse, nominated for the first time to the short-lived fourth house, were again nominated to the 5th Seanad. This consistency may also be reflected in the fact that the second and fourth houses were of very brief tenure and did not afford adequate opportunities to representatives.

The work of the Seanad

The reconstituted Senate certainly lacked its predecessor's capacity to disrupt legislation and antagonise the government. In terms of legislative powers, the commission's majority report has been judged 'influential' as the Seanad's power of delay was reduced to ninety days for non-money bills (Hogan 2012). It could also only delay a boney bill by twenty-one days. Other bills could only be suspended by 180 days before a bill rejected by the upper chamber or one passed with amendments unacceptable to the lower house would be passed by the Dáil alone

(*Bunreacht na Éireann* 1937, art.23). However, the Seanad had the right to appeal whether a bill constituted a money bill to the newly created office of president (head of state), who could set up a Committee of Privilege with equal membership from both houses to rule on the matter (*Bunreacht na Éireann* 1937, art.22). Conversely, the constitution allowed for the delay period to be 'abridged' to a period laid out in the resolution of the Dáil if legislation was judged 'urgent' or occurred in time of national emergency and would remain law for ninety days unless both houses then agreed it should remain longer (*Bunreacht na hÉireann* 1937, art.24).

Party politics unquestionably dominated debating and voting patterns in the Seanad. The (*Irish Press* 1938) estimated the composition after the announcement of de Valera's nominees to be thirty-three pro-government senators and twenty-seven anti-government. The chair and vice-chair were elected along partisan lines from the house's inception (Byrne 2013). Between 1938 and 1948, responses were usually led by William Quirke and Michael Hayes as government and opposition leaders in the Seanad and Labour Party senators often grouped together in proposing and voting on motions, even in an era when the party was damaged by a lack of unity. Even if senators offered varying levels of agreement or disagreement with motions or proposed legislation, their voting patterns usually stayed in line. A government-sponsored bill was not defeated in the Seanad until 1959, although the upper house did succeed in forcing changes to the 1943 Intoxicating Liquor Act (Garvin 1969). While a number of bills in this period were passed with amendments proposed in the Senate and amendments put forward in the upper house had usually been accepted by the Dáil, the partisan reality of the chamber and its operation must have been depressing for true vocationalists.

Nevertheless, as I have argued elsewhere, the fact that a number of panel senators did behave in a vocational manner has often been lost in the fog of unsatisfactory electoral systems, accusations of corruption, party dominance and the progressive sidelining of the chamber in Irish public debate (O'Donoghue 2016). Despite such inherent problems, a significant portion of senators could be classed as representative of the sectors they were supposed to represent in the first decade, particularly on the labour and agriculture panels, though accurate classification is impeded by the fact that Irish society generally was not organised along vocational lines (O'Donoghue 2016). As Chubb (1954) pointed out, many of these examples owed to shrewd political connections rather than a suitable vocational electoral system. Yet motions moved by senators on their volition rather than legislation initiated in the lower house offered the best opportunity for independent action, and between 1938 and 1945, 76 per cent of motions on agricultural matters were moved or seconded by agriculture panellists; 58.3 per cent, in the case of industry and commerce (O'Donoghue 2016). While the fact that many senators withdrew motions having 'ventilated' the issue reflected the chamber's paucity of legislative power, noteworthy examples of vocational behaviour include Industrial and Commercial panellist James Green Douglas's proposal for a court for industrial disputes and Agriculture panellist Patrick Baxter's motion on a proposed agricultural commission. A similar idea to the former suggestion was behind the subsequent establishment of the Labour Court, while the latter motion saw action

much sooner as a commission on agriculture was set up in 1939 (Finlay 1996; O'Donoghue 2016).

Yet the Seanad's shortcomings as a vocational chamber undermined the work of any true idealists. In November 1938, Frank MacDermot and Michael Tierney moved a motion to set up a commission to examine ways of extending vocational organisation in Irish society (Seanad Éireann 1938, 13 July). Such a move, so clearly linked to any future for the Senate as a truly vocational house, was ultimately successful. The remarks of Tierney, perhaps the greatest advocate of vocationalism in the house, which argued that the Labour Party and the Farmers' Party would be redundant under vocationalism as both were symptoms of the disease of class warfare were interesting (Seanad Éireann 1938, 13 July). Nonetheless, how many in both parties and elsewhere in politics were as dedicated to the papal solution to this remained questionable. The Commission on Vocational Organisation was set up under the chairmanship of the Catholic bishop of Galway, Michael Brown. It did not report to government until 1943, when it was, by general historical consensus, largely ignored. While it was occasionally referenced after that, including in Seanad debates, the report was received badly, antagonising civil servants and cabinet members alike with its plans to reorganise Irish society and its suspicion of state bureaucracy (O'Leary 2000; Lee 1979). In fact, both then and afterwards, many senators disagreed with the vocationalist view. In 1946, William Fearon queried why party politics were sometimes referred to as something 'not entirely respectable' (Seanad Éireann 1946, 24 Jan., cc.124). Perhaps the Taoiseach articulated the majority view in the same debate when he told the house:

> You come back therefore to the point where you have to deal with some of the fallacies underlying these attacks on Parties. When you come to examine it, you will find that democracy cannot work without Parties, that people who have a particular point of view in common, group themselves together – people who can work together in order to get a particular point of view accepted.
> (Seanad Éireann 1946, 24 Jan., cc.107)

Matters of nation and state

Regardless of the issue of vocationalism, another major critique of the chamber remains the accusation of irrelevance. A 'farcical' debate on literary censorship in November 1942, which lasted four days as world war raged, has been widely ridiculed in dismissals of the Senate as a serious debating chamber (Ferriter 2004). Yet in the early years, the peculiar circumstances of war meant the Seanad fulfilled a public role often concerning censorship of a different kind. When the Second World War broke out in September 1939, de Valera's decision to declare neutrality received almost universal political support (Senator Frank MacDermot was a rare exception, but he resigned his seat in 1943 and criticised Irish neutrality from the United States) (MacDermot 1943; cf. Fisk 1983; Girvin 2006). The harsh enforcement of wartime censorship which went along with neutrality, however, meant the

houses of Parliament assumed a stronger role as forums for the requests and grievances of private citizens (Ó Drisceoil 1996). In addition to debates on 'emergency' legislation, senators raised motions on important issues such as the reception of refugees (Seanad Éireann 1940, 12 June). The danger of bombing raids on the country also saw debates on war risk insurance, where senator Hayes led opposition senators in seeking schemes to protect citizens and businesses in the event of attack (Seanad Éireann 1940, 28 August, 29 May, 25 Sept.). Censorship itself was regularly debated, whether because of senators moving motions on their own personal feelings or because of those of members of the public who petitioned them. One debate centred on the issue of constitutional rights and the necessary trade-off between the rights guaranteed in the new constitution and the precarious nature of Irish neutrality (Seanad Éireann 1941, 29 Jan.). Interestingly, one senator who raised complaints in the chamber, Donal O'Sullivan, was himself often censored or edited during the war, as he wrote articles for the formerly Unionist newspaper, the *Irish Times*, under the nom de plume 'Outis', which criticised Fianna Fáil, even comparing their policies to national socialism on one occasion (Seanad Éireann 1944, 27 Jan.; Knightly 1942; O'Sullivan 1944a, 1944b).

In truth, the complaints about censorship could be viewed through either of the two prisms suggested by Donal Ó Drisceoil (1996) when he wrote of the association of opposition to censorship with those uneasy at not being able to support Britain in war and the other perspective of the 'liberal agenda' of many independent senators. It was certainly a 'liberal agenda' at play in the famous case of literary censorship referred to earlier, when Sir John Keane moved a motion that the Censorship Board had lost public confidence. However, such representations gave the Senate a purpose and a certain degree of notoriety. As the war (and censorship) ended, this function of the Senate and the chamber lost one of its more effective means of garnering media attention. In contrast to the case in states which had been combatants in the conflict, the Irish Senate occupied a marginal role in any post-1945 imagining of a state which had escaped the worst ravages of the war (cf. Callabro 2015).

Conclusion

De Valera's long period in power ended in 1948 as an inter-party government was formed. While the electoral reform calmed accusations of corruption in the Senate, its place in public esteem was neither altered very much with the change of government nor improved as decades passed. Few political commentators nowadays would refer to senators by their panel rather than their party designation. By international standards, an unusually high number of independent representatives have been returned to both the *Dáil* and the Seanad since the foundation of the Free State in 1922. However, the major scholarly study of independent parliamentarians drew few distinctions between independents in the Dáil and the Seanad, even though it featured interviews with senators, including a history professor, John A. Murphy, who served as an independent in the upper house (1977–1982 and 1987–1992) (Weeks 2017).

Although, in one sense, the Seanad emerged between two crises – the tariff dispute and constitutional struggle at home and the subsequent outbreak of the Second World War – rather than in a crisis, the era of European dictatorships and the fragile constitutional state of the country make it easy to understand the desire for safeguards and another senate in 1938. The esteem in which social Catholic teachings were held meant that any ideas emanating from the Vatican could not be dismissed. This was evidenced by the distrust of civil servants and party politics expressed in academic and public debate, in the Report on Vocational Organisation and even, occasionally, in Seanad debates. It also seemed to satisfy the desire of some for a house which would protect the public from the government they had elected in the lower chamber and the hope that this house would produce a better, or at the very least different, house from the Dáil. The experience of the previous Senate ensured a contradictory tendency to look for a chamber that would be sufficiently subordinate not to do battle with the lower house. This was the unclear picture from which de Valera oversaw, with seemingly 'incompatible aims', the constitution of a new senate (Chubb 1954).

As outlined here, in the first decade of this Senate, there were certainly clear examples of senators who did represent their vocational panels. However, it would be foolhardy to use examples of motions such as those referenced earlier to make too strong a defence of vocationalism. Patrick Baxter represented an agricultural vocational body but was a member of the Farmers' Party. It could be argued he was representing vocational interest or party interests or indeed both. In fact, the Farmers' Party and the Labour Party could be seen as a 'vocational political parties. One can also observe the personal interest that may be seen in any parliament, such as John Counihan's moves to defend the cattle industry – hardly a surprise when we consider Garvin's (1969) point about the role of senator being, in effect, a part-time position. The main employment of senators confuses the matter further when they can qualify for numerous ill-defined panels at once. Speaking in 1946, Senator Michael Hayes felt that true test of a chamber was not its constitutional capacity but the contribution of its members. He concluded that despite 'severe handicaps' it had become something valuable and tangibly 'rather different from the Dáil', citing instances of legislation where he believed real improvements had been sought by the Seanad and accepted by the lower house (Seanad Éireann 1946, 24 Jan., cc.94–96).

Did the new Senate therefore attract, as hoped, people who would not otherwise find their way into public office? In some cases, the answer was yes. However, there was still serious overlap between Dáil and Seanad membership with career politicians dropping in and out of the second chamber. There were also senators who barely contributed to debates (Garvin 1969). In these ten years, the Seanad was home to many people who would fit the criteria required for government advisors or perhaps have been seen as 'social partners' in a later era (Lee 1979). Leading figures in the trade union movement and agricultural circles combined experts in agricultural science, law and medicine, governors of the Central Bank, esteemed scholars and parliamentarians of proven regard. Nevertheless, de Valera had stated he wanted people with experience of life and not a committee of

'experts' (Chubb 1954). It could be argued that he got both and that this reflects the confused nature of the selection process and the membership.

While the number of motions withdrawn after lengthy debate might imply that the house became a fruitless debating society, the chamber provided the oxygen of publicity to certain issues – a function that acquired peculiar importance during the Second World War. It did not equate to real power, but the Seanad was never intended to have such power, and in its early years, it enjoyed a prominence in the press and public debate that is now no longer the case. The reconstituted Seanad produced an intriguing mixture of senators; for a vocational chamber, it played host to a number of professional politicians and backbenchers, while a majority behaved primarily on party political lines. This is despite the fact that it attracted many high-calibre senators who drew attention to their own field of interest and represented their groups vigorously in public life, whether that grouping is judged as vocational or ideological. Such diversity of membership and contributions shows that the reconstituted Seanad was not a homogenous chamber by any means. In this sense, its early years provides an opportunity to examine the chamber's contribution and potential as well as the flaws which have undermined it from the beginning – an important starting point in any discussion of how the house might eventually be reformed.

References

Akenson, D.H. and Fallin, J.F. (1970), 'The Irish civil war and the drafting of the Free State constitution', *Éire-Ireland* 5(1–2, 4), pp. 10–26, 25–41, 9–28.

Applications for nomination to Seanad (s.d.), NAI, s10263.

Binchy, D.A. (1936), 'Proposals for a new senate', *Studies* 25(97), pp. 20–32.

Bowman, J. (1982), *De Valera and the Ulster Question, 1917–1973* (Oxford: Clarendon Press).

Broderick, E. (1994), 'The corporate labour policy of Fine Gael, 1934', *Irish Historical Studies* 29(113), pp. 88–99.

Broderick, E. (2017), *John Hearne: Architect of the 1937 Constitution* (Dublin: Irish Academic Press).

Bunreacht na Éireann (1937), (Dublin: Stationary Office).

Byrne, E.,(2013), 'Past reforms and present policy: Examining the Seanad Electoral Act, 1947'. Available at: http://historyhub.ie/past-reforms-present-policy (accessed 4 April 2019).

Byrne, E. (2015), 'A unique experiment in idealism? The Irish senate, 1922–28', in: Farrell, M., Knirck, J. and Meehan, C. (eds.), *A Formative Decade: Ireland in the 1920s* (Dublin: Irish Academic Press), pp. 59–85.

Cahillane, L. (2016), *Drafting the Irish Free State Constitution* (Manchester: Manchester University Press).

Callabro, V. (2015), 'The form of parliamentary government and "perfect" bicameralism in the Italian constitutional system: At the beginning of the Italian constituents' choices (1946–47)', *Parliaments, Estates and Representation* 35(1), pp. 84–108.

Chubb, B. (1954), 'Vocational representation and the Irish senate', *Political Studies* 2(2), pp. 97–111.

Coakley, J. (2005), 'Ireland's unique electoral experiment: The senate election of 1925', *Irish Political Studies* 20(3), pp. 231–269.

Coffey, D.K. (2018a), *Drafting the Irish Constitution, 1935–1937: Transnational Influences in Interwar Europe* (Basingstoke: Palgrave Macmillan).
Coffey, D.K. (2018b), *Constitutionalism in Ireland, 1932–1938: National, Commonwealth and International Perspectives* (Basingstoke: Palgrave Macmillan).
Cohan, A.S. (1972), *The Irish Political Elite* (Dublin: Gill and Macmillan).
Coyne, E.J. (1934), 'Corporative organization of society', *Studies* 23(90), pp. 185–202.
Farrell, B. (1988), *De Valera's Constitution and Ours* (Dublin: Gill and Macmillan).
Faughnan (1988), 'The Jesuits and the drafting of the Irish constitution of 1937', *Irish Historical Studies* 26(101), pp. 79–102.
Ferriter, D. (2004), *The Transformation of Ireland, 1900–2000* (London: Profile).
Finlay, I. (1996), *The Labour Court: '. . . Not an Ordinary Court of Law': A History of Fifty Years of the Labour Court from 1946 to 1996* (Dublin: Stationery Office).
Fisk, R. (1983), *In Time of War: Ireland, Ulster and the Price of Neutrality*, *1939–45* (Dublin: Gill and Macmillan).
Garvin, T. (1969), *The Irish Senate* (Dublin: Institute of Public Administration).
Girvin, B. (2006), *The Emergency: Neutral Ireland, 1939–45* (London: Pan).
Hogan, G. (2012), *The Origins of the Irish Constitution, 1928–41* (Dublin: Royal Irish Academy).
Hogan, J. (s.d.), 'James Hogan to O'Rahilly, University College Dublin Archives, Alfred O'Rahilly Papers P178/64.
Horgan, J.J. (1934), 'Legal revolution in the Irish free state', *The Round Table. The Commonwealth Journal of International Affairs* 24(95), pp. 579–598.
Irish Independent (1945), 28 May.
Irish Press (1938), 1 April.
Keogh, D. and McCarthy, A. (2007), *The Making of the Irish Constitution 1937* (Cork: Mercier Press).
Knightly, M. (1942), 'Knightly to proprietor of Irish Times', *Irish Times* 19 March.
Kohn, L. (1940), *The Constitution of the Irish Free State* (London: Allen & Unwin).
Lee, J.J. (1979), 'Aspects of corporatist thought in Ireland: The commission on vocational organisation, 1939–43', in: Cosgrove, A. and McCartney, D. (eds.), *Studies in Irish history presented to R. Dudley Edwards* (Dublin: UCD Press), pp. 324–346.
Lee, J.J. (1989), *Ireland 1912–85: Politics and Society* (Cambridge: Cambridge University Press).
MacDermot (1943), 'MacDermot to de Valera', 7 July, NAI Dept. of Taoiseach files, S97/9/435.
MacEntee, S. (1936a), 'MacEntee to de Valera', 13 November, University College Dublin Archives, Seán MacEntee papers, P67/183.
MacEntee, S. (1936b), 'MacEntee to de Valera', 14 November, University College Dublin Archives, Seán MacEntee papers P67/183.
Manning, M. (1970), *The Blueshirts* (Dublin: Gill and Macmillan).
Mansergh, N. (1934), *The Irish Free State: Its Government and Politics* (London: Allen & Unwin).
McGarry, F. (2005), *Eoin O'Duffy: A Self-made Hero* (Oxford: Oxford University Press).
Mullarkey, K. (1999), 'Ireland, the pope and vocationalism: The impact of the encyclical *Quadragesimo Anno*', in: Augusteijn, J. (ed.), *Ireland in the 1930s: New Perspectives* (Dublin: Four Courts Press), pp. 96–116.
O'Donoghue, M. (2016), ' "As nearly subservient" as it could be? Vocationalism and senatorial speaking behaviour in the Irish senate 1938–45', *Parliaments, Estates and Representation* 36(2), pp. 211–231.

Ó Drisceoil, D. (1996), *Censorship in Ireland, 1939–45: Neutrality, Politics and Society* (Cork: Cork University Press).
O'Keeffe, D. (1936), 'The problem of the senate', *Studies* 25(98), pp. 204–214.
O'Leary, D. (2000), *Vocationalism and Social Catholicism in Twentieth Century Ireland* (Dublin: Irish Academic Press).
O'Rahilly, A. (1936), 'The constitution and the senate', *Studies* 25(97), pp. 1–19.
O'Sullivan, D. (1940), *The Irish Free State and Its Senate* (London: Faber & Faber).
O'Sullivan, D. (1944a) 'OUTIS', *Irish Times*, 3 January.
O'Sullivan, D. (1944b), Note to 'OUTIS', O'Sullivan papers, University College Dublin Archives, P20/1–5.
Rohan, M. (1982), 'University representation, 1918–1938', *Administration* 29(3), pp. 260–285.
Ryan (1943), 'Ryan to de Valera', 27 October, NAI, Dept of Taoiseach files, s10949A.
Seanad Éireann, *Debates* (1938–1947), (Dublin: Stationary Office).
Weeks, L. (2017), *Independents in Irish Party Democracy* (Manchester: Manchester University Press).

15 The rise and fall of bicameralism in Sweden, 1866–1970

Joakim Nergelius

Introduction

The Swedish parliament of four estates followed from the constitution of 1809. In fact, however, it had older roots, dating as far back as the fifteenth century, when it consisted of nobility, clergy, bourgeoisie and peasants. In 1866, it was replaced by a bicameral system that was to last until 1970. The constitution of 1809 quite quickly became obsolete, and more gradually in other respects, which is hardly surprising given that it proclaimed, among other things, absolute monarchy. Thus, it quite simply seemed to be old-fashioned and failed to correspond to society's needs in the late nineteenth century. After 1920, when democracy prevailed, and until the current constitution (*Regeringsformen*, the Instrument of Government, IG) was enacted in 1974, it could have even be said that Sweden was a state without a wholly functioning constitution (Sterzel 1998).

The Swedish Parliament was thus bicameral from 1866 to 1970. This followed from the Parliament or *Riksdagsordningen* (Riksdag Act), which held a constitutional status and was seen as one of Sweden's four constitutional acts, although it regulated only the internal workings of Parliament. In 1970, that act was replaced by a new Riksdag Act, which was based on the fact that the Parliament is unicameral and no longer has constitutional status (though it formally has a higher status than ordinary laws in the Swedish hierarchy of legislature). The new constitution of 1974, which still exists today, clearly states that Sweden has a unicameral Parliament – with 349 members elected every fourth year (*Instrument of government* s.d., ch.3, art.1–3).

General historical background

Against this introductory background, we shall now see how the bicameral system in Sweden developed and then disappeared without following a detailed, linear or chronological path. It may be noted that, given the fact that the 104 years from 1866 until 1970 marked a period of great economical, political and social success for Sweden, it is somewhat surprising that the bicameral model was quite suddenly abolished (and that there is very little debate about its possible reappearance today). The reasons for this are, I think, twofold.

The first reason has to do with the perspective of popular sovereignty in the Swedish constitutional doctrine, heavily dominated by political scientists, from 1920 until circa 1995, when Sweden joined the EU. Secondly, the fact that the model for bicameralism chosen in 1866 gradually became increasingly old-fashioned, leading to, among other things, several unfair electoral results (notably in 1948, as explained later). The first of these reasons should be seen in light of the fact that the old constitution of 1809 was formally – but not in reality – based on the principle of separation of powers, a theory and a constitutional model that were then, towards the end of the nineteenth century, considered undemocratic in Sweden and thought to contribute to preventing true democratic reforms. It also meant that other constitutional perspectives were difficult to introduce into the debate.

The second reason became a real political issue sometime around 1950. It resulted from the fact that the direct elections of the lower and upper chamber, composed according to the local and municipal election results, were not held simultaneously. This helped the Social Democratic Party to remain in power from 1932 to 1976, to the great frustration of right-wing parties. The apparent weaknesses in the bicameral system eventually led to intensified demands for constitutional reform(s). It may also be noted that it explains why Sweden, quite uniquely, has, since 1970, had only one single election day – in September, when all local, municipal and national elections take place.

However, it must be noted that, in most other aspects, Swedish experiences of the bicameral system were actually positive. The two chambers were relatively equal in terms of legislative and other powers. From 1894, the upper chamber had 150 members; the lower chamber, 230 members. The explanation for the different sizes and electoral models of the two houses is that it allowed for equal representation for the cities and rural areas. One of the values that seem to have been lost after the reform in 1970 is, indeed, a kind of parliamentary protection of local and municipal self-governance.

Other traditional arguments in favor of bicameral systems advocated in other parts of the world, such as the need to protect a federal system or to secure representation for an – allegedly – 'enlightened' aristocracy, have not been discussed as often in Sweden, despite the fact that the 'upper classes' lost parliamentary representation of their own in 1866. Instead, other constitutional issues have been more visible in the debate. Ever since 1995, the development towards increased judicial review, a clearer constitutional role for the courts and some other aspects of separation of powers have been highly visible in Sweden, where the EU membership has had a more profound constitutional impact than in most other member states. Still, the idea to reintroduce bicameralism is very rarely heard in the political or constitutional debate. That is due to the fact that other constitutional issues have been considered more urgent and, probably, also that Sweden has avoided falling into any deep economic or societal crises. For instance, during the last severe economic downturn in Sweden, in the early 1990s, attention was given instead to reforms in the budgetary process (that made it easier for parliamentary minorities to get their budgets approved) (cf. *Instrument of government* s.d., ch.9). The issue

of bicameralism may, however, get more attention some other time in the future, should similar problems arise once more. It is a neglected issue in today's current constitutional debate that merits more attention both from scholars and from politicians (cf. Nergelius 2001).

Some crucial moments from 1866 to 1966

But why did different crises occur, then, and what sort of crises were they? One of the beliefs presented in this book is 'that the history of senates is related to political crises'. To some extent, this is true also for Sweden, though in relation to the bicameral system that existed from 1866 to 1970 (since the upper chamber in Sweden was never called or seen as a proper senate). Both the birth and the eventual abolition of this bicameral system are, in a way, related to different kinds of crises, though none of them may be described as fatal or extremely dramatic. However, in order to understand this, we have to go back to the period before the bicameral system was introduced, i.e. to the years 1809–1866 (cf. Nilsson, this volume).

Bicameral legislature replaced the old Swedish Parliament of Four Estates (*Ståndsriksdagen*) that, according to the constitution of 1809, consisted of nobility, clergy, bourgeoisie and peasants. It seems to have been the case that the introduction of bicameral legislature was discussed in Parliament as early as 1809–1810, when the new constitution was enacted, and the constitutional committee (*Konstitutionsutskottet*) was actually in favour of it (Stjernquist 1996). A proposal along those lines was put before the Parliament in 1815, but it was voted down without much discussion (Stjernquist 1996; cf. Brusewitz 1917). Obviously, the political and economic interests that upheld the Parliament of Four Estates were significant at the time, before gradually diminishing during the nineteenth century, when new groups in society, such as craftsmen and businessmen who did not formally meet the economic requirements for being seen as 'bourgeoisie', started to push for more influence. Within the aristocracy itself, more modern philosophical and political ideas from the European continent also gradually undermined the idea of a parliamentary system built on these old, old-fashioned estates (cf. Stjernquist 1996). It is worth noting that the main architect of the bicameral model, former Prime Minister Louis de Geer, was himself a member of the nobility.

The two chambers in the Swedish bicameral system were relatively equal in terms of legislative and other powers. From 1894 the upper chamber had 150 members and the lower chamber had 230 members, of whom eighty were elected by the cities and 150 came from the rural areas. The two chambers had different sizes and electoral models in order to allow equal representation for the cities and the rural areas, but the two chambers did have more or less equal powers in legislative matters, which gradually came to cause problems. This equality between the chambers was even written into a new article, §49 of the constitution of 1809. It also included a similar legal and political responsibility for the government before both chambers (*Constitution of 1809*, §107), as well as common committees and common voting in budgetary and tax matters. All these factors led to an

equalisation of the position and importance of the two chambers that seems to have had few equivalents within bicameral systems anywhere else in the world (Stjernquist 1996).

It was not until the bicameral system was introduced that the Swedish Parliament began to convene annually. Thus, parliamentary elections were organised, and both chambers were elected for a certain period of time. At the same time, the state budget was also made annual and the king was given the power to dissolve Parliament, provided that he called new elections either for both of the chambers or for just one of them (Stjernquist 1996).

What were the arguments, then, for this new parliamentary model? Arguments brought forward in the governmental bill introducing the new system included the wish for a balance of power between Parliament and government (but not for separation of power in the classical, American sense) and the idea that the upper chamber should guarantee a kind of *continuity*, preventing one-sided and hasty decisions by also taking the enlightened perspectives of wealthy and educated classes within society into account (*Proceedings from the Swedish Parliament* s.d.). Such arguments are well known from other states, where they may have led to the establishment of senates.

The members of what was, in some way, the Senate, were originally elected for nine years, while the MPs of the lower chamber served three-year terms, before the latter was changed to four years in 1919. However, in 1909 the mandate of the members of the upper chamber was reduced to six years and in 1921, finally and until its abolishment in 1970, extended to eight years. At the same, a proportional electoral system was introduced, and the number of constituencies was reduced from thirty to nineteen for the upper chamber and from fifty-six to twenty-eight for the lower. All these rules and figures remained in force until 1970. It should also be noted that the 'continuity' mentioned earlier, which the upper chamber was supposed to ensure, was maintained by dividing the nineteen constituencies into eight different groups, which meant that when elections to the upper chamber (that were partly indirect and depended on the outcome of the local and regional elections) took place every fourth year, this happened only in some of these constituencies. Here, the system had an obvious resemblance to the American bicameral system, which is still in place today (though the regular re-election element there is much clearer). And though it was possible to dissolve the Swedish Parliament, as mentioned earlier and as opposed to the American system, this happened only once (in 1958, because of an intense debate concerning the future pension system).

These and other changes within the two chambers escalated and became particularly frequent circa 1920, a development resulting from accelerating democratisation and increased voting rights for men and women. The process towards full and equal voting rights for all men and all women (i.e. one person, one vote) took place through many gradual steps from circa 1880, first reducing differences in the voting rights scale for men and then finally, in 1921, also giving women the full right to vote. Real and full democracy was thus not achieved until the early 1920s (cf. Andrén 1937; Vallinder 1962; Stjernquist 1996).

During this whole time, from the early twentieth century or even from 1866 until the 1960s, the bicameral system was very rarely questioned within public debates (Stjernquist 1996). It is very easy to identify the turning point(s) when critical voices were first heard and later taken seriously. As is often the case in Sweden, when the time was ripe, important changes could be brought about quickly.

First, after the general election for the lower chamber in 1948, dramatic events unfolded when the right-wing parties did actually win the election, but the Social Democrats managed to stay in power because of their remaining majority (together with the Communist Party) in the upper chamber. This outcome showed that there were weaknesses in the bicameral system and led to intensified demands for constitutional reform(s).

After the 1966 upper chamber election, the Social Democrats lost a significant portion of the vote, receiving some 42 per cent of the total popular vote. This was seen as a failure, though it did not lead to a loss of power and today it would have been hailed as a great success. The permanently governing Social Democratic party came to the conclusion that the criticism against the allegedly old-fashioned and unfair bicameral system was the main reason for this defeat. This criticism had been raised repeatedly by the right-wing opposition and primarily by the People's Party and its well-known leader, Prof. Bertil Ohlin. In other words, many voters now shared the People's Party's critique that the Social Democrats wanted to preserve an unfair electoral system because it was in their own best interest to do so. Suddenly, then, the governing party agreed with the opposition and decided to abolish the century-old bicameral model, obviously because of a sudden political obstacle and apparently without any real, profound constitutional analysis. It cannot, therefore, be said that this bicameral system failed, as such (cf. Nergelius 2001). We may also note that though the constitutional and political importance of the issue was evident, it did not lead to any heated general political debate. The majority of the voters had a mild interest in the issue, caring, as they often did, more about social and economic matters than constitutional issues.

Analysis of specific political matters affected by the bicameral system

The monarchy

Sweden has been a monarchy for a very long time, even before 1523, when the first real 'national' king, Gustaf Vasa, came to power (after successfully organising an uprising against Danish invaders). It may, of course, be questioned whether this hereditary regime, with all its privileges, is really adapted to a modern, secular and highly egalitarian society such as Sweden has today, but regular opinion polls show that support for the monarchy as an institution continues to be strong among the citizens (with some 70 per cent being in favour of it). Today the majority of MPs seem to be in favor of a republic, at least in their statements, but no party is actively pursuing this issue.

The rules regulating the monarchy are to be found in Chapter 5 of the *Instrument of Government* (s.d.) and in the Act of Succession from 1810. Those rules and in particular the laws established in 1974 may be seen as giving the monarch as little power as possible, while at the same time preserving the representative and dignified nature, character and tasks of the institution. This is in contrast to the old 1809 constitution, which originally stated that 'the King governs the country by himself' (though, it was added, 'in accordance with the constitution') (*Constitution of 1809*, §4). In other words, according to the letter of the constitution, Sweden was an absolute monarchy as of 1809, though it was never one in reality. According to the old constitution, the king was assisted in his exercise of the governing power by the so-called Council of State (*Statsråd*), which gradually developed into a modern government. The legislative power was shared between the Parliament and the king but gradually, during the nineteenth century, became the responsibility of Parliament. Here, it is clear that the constitution contained and was based on certain ideas of balance or even separation of powers, though, as stated earlier, this constitutional model did not include any role for the courts. Thus, Montesquieu or the American Revolution was not among the inspiring elements for the group of persons who elaborated the constitution of 1809. After the introduction of the bicameral system, the king simply stopped using his veto in legislative matters. Parliamentarianism as a constitutional model, with a government based on support from a universally elected parliament, was finally wholly accepted by the king in 1917, after a dispute concerning the defence budget and rearmament during the First World War.

In relation to the bicameral system, it may be noted that the king and the government did not always agree on the issue of when and under which circumstances one of the two chambers ought to be dissolved (cf. Stjernquist 1996). The king may have occasionally tried to put pressure on individual MPs in order to have his views supported, but there are also examples of him trying to help the government when it met resistance from Parliament (Stjernquist 1996). From 1866 to 1922, the king also appointed the speaker and vice speaker of both chambers (*Constitution of 1809*, §52). However, after the introduction of parliamentarianism and universal suffrage, it was never doubted that the formal power to dissolve one or both chambers rested with the government. By and large, then, the relationship between the king, the government and Parliament was not a significant problem during the bicameral era and, in particular, not after 1920.

Political minorities within the parliamentary system

It is thus clear that the Swedish bicameral system managed to secure representation for both urban and rural areas in a way that was appropriate for Swedish society at least in the first half of the twentieth century but maybe less so in the 1960s, when urbanisation started to be a real factor in societal development. Thus, this could have been a further argument for abolishing the bicameral system, but oddly enough, it was very rarely heard in the public debate, which focused almost entirely on the system's alleged electoral unfairness. Here, we may also find one

of the reasons why local or regional self-governance and municipal autonomy do now enjoy rather weak constitutional protection, despite constitutional reform in 2010 that aimed at strengthening them (*Instrument of government* s.d., ch.14). Though they are both generally seen as very important parts of the Swedish democracy, as clearly indicated by the constitution, they are not given very many specific powers, and the current national electoral system is not in any way related to their existence (*Instrument of government* s.d., ch.1:1,7).

The high degree of *representativity* within the electoral system was probably a positive factor, at least for a long time, but at the same time, the aftermath of the dramatic election for the lower chamber in 1948 showed that the system did not meet modern demands for electoral justice, equality between political parties and a parliamentarianism based on a proportional electoral system. Thus, we may say that, after 1966, the system was brought down by the contradiction/tension between the formally proportional electoral system of the 1920s and the 'unfair' elements of the bicameral system that enabled parliamentary minorities to remain in power after general elections.

But what about the effects of the system for different groups of political minorities while it lasted? Here, it is obvious that there were some differences if we compare the periods 1866–1920, on the one hand, and 1921–1970, on the other. Detailed studies conducted by different scholars show that although the two chambers actually managed to agree on most issues in the end, this happened after amended proposals and/or common votes in no less than 2,806 cases between 1867 and 1921, while it happened only 728 times from 1922 to 1970 (cf. Stjernquist 1996). During this period, proposals supported by the lower chamber won the final support of the majority of parliamentarians much more often than the opinion or position supported by the members of the upper chamber. Although the members of the upper chamber were often older and more experienced, political power gradually seems to have turned more and more to the lower chamber, where the more crucial and vital political debates were often held.

The main gender-related issue during the bicameral era concerned equal voting rights for women, which were finally introduced in 1921. After that, the gender issue did not become a major political matter in Sweden until the 1970s, when the unicameral system was already in force. Gradually, the representation of women within political assemblies started to grow, including in Parliament and the government. In 1994, the number of men and women within the government was equal for the first time, but it may be noted that Sweden is now the only Nordic country that has never had a female prime minister.

Conclusions – experiences of a bicameral system and its abolition

Thus, Sweden had a bicameral parliamentary system for just over a hundred years, from 1866 to 1970. During that time, the country developed from one of the poorest in Europe to one of the richest, with a well-functioning democracy.

Though the bicameral system was by no means one of the main reasons for this spectacular economic and societal development, it is clear that the model enabled it or at the very least did not prohibit it. This period in Swedish history was quite simply remarkably successful. With that in mind, it is somewhat strange that the model was so quickly abolished and that its absence is not discussed more frequently – in particular since the almost fifty years since its abolition have not been quite as peaceful and filled with harmony.

There are, of course, various reasons for this. Some of them have been identified earlier, such as the consequences for the Social Democrats of (the wide-spread criticism of) the alleged electoral injustice in 1948 and its aftermath, which made it impossible for the government to defend the system against the opposition and thus led to quick constitutional reforms, starting in 1970 but continuing throughout the 1970s. Other, quite different aspects come into play here. For instance, the period from 1920 to 1970 was beneficial for Sweden in many ways, reflecting uninterrupted peace, economic growth and a peaceful labour market. Politicians involved in introducing the new constitution in the 1970s, which was built around the unicameral Parliament as a cornerstone, may have incorrectly believed that such fortunate circumstances were going to last more or less forever, which means that a proper analysis of what the abolition of the bicameral system would mean for Sweden was neglected. In retrospect, it is, in any case, obvious that the change from one parliamentary system to a quite different system happened very quickly – perhaps, in hindsight, too quickly, since some of the advantages of the former system seem to have vanished without being replaced by anything better.

A further argument in favour of introducing a bicameral system once again – though it has so far not been on the agenda – could be the potential advantages of introducing a kind of senate or 'real' upper chamber, with a role that is clearly different from that of the lower chamber and with other competencies. Such an institution, though small, could stand freer from different interest groups than Parliament and focus instead on long-term planning, perhaps related to globalisation. Though it is perhaps an unrealistic idea, it is definitely new and interesting and deserves to be taken seriously, given the many 'pros' or virtues that the old bicameral system seems to have had.

References

Act of Succession from 1810. Available at: http://rkrattsbaser.gov.se/sfst?bet=1810:0926 (accessed 26 April 2019).

Andrén, G. (1937), *Tvåkammarsystemets tillkomst och utveckling* (Stockholm: Sveriges Riksdag).

Brusewitz, A. (1913), *Representationsfrågan vid 1809–10 års riksdag* (Uppsala: Uppsala Universitet).

Brusewitz, A. (1917), *Studier över 1809 års författningskris. Den idépolitiska motsättningen* (Uppsala: Akademiska bokhandeln).

Constitution of 1809 [transl. by Sarah V. Thorelli] and published as (1954): *The Constitution of Sweden* (Stockholm: The Royal Ministry for Foreign Affairs).

Instrument of Government (s.d.) [transl. of 1974 års regeringsform (s.l.)]. Available at: www.riksdagen.se/globalassets/07.-dokument – lagar/the-instrument-of-government-2015.pdf (accessed 2 April 2019).

Nergelius, J. (2001), 'Tvåkammarsystemets välsignelser – dags för en svensk diskussion', in: Berggren, N., Karlson, N. and Nergelius, J. (eds.), *Demokratins konstitutionella val* (Stockholm: City University Press), pp. 63–83.

Proceedings from the Swedish Parliament (s.d.), Prop 1862/63:61.

Sterzel, F. (1998), *Författning i utveckling* (Stockholm: Iustus).

Stjernquist, N. (1996), *Tvåkammartiden – Sveriges riksdag 1867–1970* (Stockholm: Sveriges Riksdag).

Vallinder, T. (1962), *I kamp för demokratin – Rösträttsrörelsen i Sverige 1866–1900* (Stockholm: Natur & kultur).

Waldron, J. (2016), *Political Political Theory. Essays on Institutions*, (Cambridge, MA: Harvard University Press).

16 Unicameralism in Denmark

Abolition of the Senate, current functioning and debate

Asbjørn Skjæveland

Introduction

The Danish Senate, the *Landsting*, not only experienced a crisis but was also abolished. This paper investigates the abolition of the Landsting and the introduction of unicameralism (Arter 1991; Eigaard 1993; Thorsen s.d.). Furthermore, it investigates how well Danish unicameral democracy is working, and it presents the current low-intensity debate on the possible introduction of an additional chamber. This chapter shows that while redundancy, which is due in part to the development of the composition of the Landsting, did play a role in its abolition, so did party tactics and even the entanglement with the matters of voting age and royal succession. Thus, the full explanation for the introduction of unicameralism cannot be found in the category of rational, national-level explanations. Yet Danish democracy is doing fine. Danish voters are satisfied and the overall diagnoses of political scientists are generally positive. Clearly, not all democracies need a senate to do well. Only rarely is a new senate proposed as a solution to problems identified by observers and actors. Per Stig Møller (former minister and MP for the conservatives [*Det Konservative Folkeparti*]) is an exception to the rule. He suggests that it would be a good idea to reintroduce something resembling the Landsting (Møller & Jensen 2010). Still, Danish democracy is not perfect, and in a recent book it has been suggested that it could be improved by introducing an additional chamber elected by lottery (Mulvad, Larsen & Ellersgaard 2017) to improve the descriptive representation of the Danish Parliament, since the new chamber would mirror the composition of the Danish voters in terms of descriptors, such as gender and education.

The demise and abolition of the Landsting

Key years on the timeline of the demise and abolition of the Landsting are 1901, when *Folketing* (Danish name for the lower house, 1849–1953, for the Danish parliament after 1953) parliamentarism was introduced; 1915, when privileged voting to the Landsting was abolished; 1936, when the conservative party and the liberal party (*Venstre*) lost their majority in the Landsting and 1953, when the Landsting was abolished through a constitutional change.

In the last decades of the nineteenth century, a constitutional battle raged between the king and conservatives on the one hand and the liberals on the other. In 1866, the 1849 constitution was replaced with a revised constitution that introduced privileged voting rights to the Landsting, allocating special voting rights to the largest taxpayers and some members selected by the king or government (Hvidt 2004; Wendel-Hansen 2016). In 1901, with the political system change (*Systemskiftet*), the king agreed to appointing governments that were considered acceptable by the Folketing. Cabinet responsibility to the Folketing was not reflected in the words of the constitution until 1953. In the years preceding the change of system, the king had appointed conservative prime ministers leading governments of the *Højre* party (i.e. the 'Right'). The people surrounding the court worked to the letter of the law, giving the king the right to appoint governments, and the appointment of conservative prime ministers could be justified by reference to the Landsting. The conservatives had a majority in the Senate, while the liberal party (or parties) had a majority in the Folketing (Hvidt 2004; Thorsen (s.d.); Haue, Olsen & Aarup-Kristensen 1981; Thorsen 1972; Elklit 1984; Eigaard 1993).

While the system change that introduced governments based on the Folketing was a major victory for the liberal party, privileged voting for the Senate still existed, and bills had to be passed by both chambers. The liberal party wanted privileged voting for the Landsting abolished, and the social democratic party had even proposed to abolish the Senate. Højre wanted to keep their power in the Landsting but wanted the electoral system for the lower chamber to change, in which both Højre and social democrats were underrepresented (Himmelstrup & Møller 1932; Hvidt 2004; Elklit 1984).

The death of J.B.S. Estrup (prime minister during the constitutional battle) on Christmas Eve, 1913, and the elections in 1914, with the supporters of reform winning a clear majority in the Senate, paved the way for constitutional reform, which was passed in 1915 (Thorsen 1972; Christiansen 2004). In 1915, equal and universal suffrage to the lower chamber was introduced (beginning the shift to a proportional system that was completed in 1920). Privileged voting to the upper chamber was abolished. Voters eligible to vote in Folketing elections were also allowed to vote in Landsting elections. However, they had to be 35 years old, compared to 25 years for elections for the Folketing. Moreover, the election determined only 75 per cent of the seats, while the remaining 25 per cent was determined by the previous Senate. Members were elected for eight years, with elections every four years and selection by the previous Senate every eight years. (Himmelstrup & Møller 1932; Elklit 1984). As Table 16.1 shows, the liberal party and the conservative party held a solid majority in the early days of the new electoral system. However, a steady and substantial increase in the representation of the social democratic party (*Socialdemokratiet*) changed this, and in 1936 social democrats and the social liberal party (*Det Radikale Venstre*) held a majority in the Landsting, as they did in the Folketing (see Table 16.1).

Still, until 1936, the conservative party and the liberal party combined held a majority in the Senate (see Table 16.1), giving them the ability to block legislation,

Table 16.1 Composition of the Danish parliament, the Rigsdag, 1920–1953, four old parties only

Year	*the Landsting*					*the Folketing*				
	Total	*S*	*SL*	*L*	*C*	*Total*	*S*	*SL*	*L*	*C*
1920	76	21	9	32	13	149	48	18	51	27
1924		25	8	30	12		55	20	44	28
1926							53	16	46	30
1928		27	8	28	12					
1929							61	16	43	24
1932		27	7	28	13		62	14	38	27
1935							68	14	28	26
1936		31	7	22	15					
1939		35	8	18	13		64	14	30	26
1943		34	8	18	14		66	13	28	31
1945		34	8	19	14		48	11	38	26
1947		33	7	21	13	150	57	10	49	17
1950						151	59	12	32	27
1951		33	6	22	12					
1953		33	6	22	13		61	13	33	26

Sources: Folketinget 2019b; Johansen 2005

Note: Only totals include Faroese members.
S: The social democratic party
SL: The social liberal party
L: The liberal party
C: The conservative party

which they did. Until its abolition, the Senate enjoyed substantial legislative powers. Bills could be proposed here and had to be passed by the Landsting to become law (Himmelstrup & Møller 1932; Wendel-Hansen 2016). This had consequences. For instance, the social democrats and the social liberals proposed substantial cuts in defence spending in the 1920s, but the majority held by the conservatives and the liberal party in the Senate allowed the two parties to block such proposals (Kaarsted & Trommer 2004). This might be used as an example to argue that the Landsting served a purpose in protecting the country from overly eager progressive forces. The purpose of the Senate, presumably, was to be moderating and reflective (Wendel-Hansen 2016; Thorsen s.d.). It limited the cuts in defence spending and made it necessary for the social democrats and social liberals, despite their majority in the lower house, to seek cooperation with the liberal party (*Kanslergadeforliget*) in 1933 to have important social and economic proposals passed (Arter 1991; Kaarsted & Trommer 2004). Unsurprisingly, the social democrats and the social liberals wanted the Danish Senate abolished (Arter 1991; Eigaard 1993).

After the 1915 reform, the electorates for the Landsting and for the Folketing were virtually identical (except for the different age limits and the 25 per cent rule, as described earlier). The electoral system for the Landsting was proportional and

indirect. In 1936, the voters and the outgoing Landsting elected thirty-seven social democrats and social liberals, as well as thirty-seven liberals and conservatives. On the island Bornholm, the voters elected twenty-three electors for the social democrats and the social liberals and twenty-three electors for the liberal party and the conservatives. It had to be decided by lottery which party was to receive the remaining seat from Denmark proper. The social democrats won (Kaarsted & Trommer 2004; Himmelstrup & Møller 1932).

After the victory of the social democrats and the social liberals in 1936, the leader of the conservative party, John Christmas Møller, looked for new conservative guarantees. He wanted constitutional reform that could also bring the conservative party closer to the social democrats, which might further the conservatives' pro-defence stance. After various proposals, the social democratic–social liberal government proposed constitutional reform, which the conservative party but not the liberal party could support. The Landsting would be replaced by a *Rigsting*, which would become the new upper house. Thirty-four members would be chosen in an election in which the entire country constituted one constituency, and thirty-five would be chosen from those elected to the Folketing. With an additional Faroese member, the Rigsting would have seventy members; the Folketing, 140 members. The Norwegian inspiration was evident (cf. Smith, E., this volume), and some even considered it a camouflaged one-chamber system. Had it been passed, it would have maintained a Danish senate. In reality, it was passed by two consecutive Parliaments with a parliamentary election in between, as stipulated in the constitution (Kaarsted & Trommer 2004). As shown in Table 16.2, it also won a huge majority among the voters in the 1939 referendum that was also necessary to change the constitution. However, only 44.5 per cent of all voters approved the reform. As the constitutional minimum threshold was 45 per cent, the attempt to reform the constitution failed. The conservative leader had threatened to resign if the reform was not passed. His party was divided on the issue, but it has been suggested that some considered his statement a promise rather than a threat (Kaarsted & Trommer 2004). Still, the fact that the liberal party had not supported the new constitution may have been more important for the low turnout.

After the Second World War and the German occupation of Denmark, a feeling of gratitude towards the young people who had participated in the resistance led to

Table 16.2 Voting results of the Danish referenda in 1939 and 1953 on constitutional reform

Year	*Number of valid votes cast*		*Percentage of voters eligible to vote*
	Yes votes	*No votes*	*Yes votes*
1939	966277	85717	44.5
1953	1183292	319135	45.8

Source: Folketinget 2017a.

a political wish to lower the voting age. This would require constitutional reform, and although a parliamentary committee was set up for that purpose in 1946, not much happened for years (Eigaard 1993).

A social democratic government had been formed after the elections in 1947 and continued after the 1950 elections but resigned after less than two months. In Denmark, this is known as the time when Prime Minister Hans Hedtoft slipped and fell in butter: Parliament had passed a resolution, against the wish of the government, to lift the rationing of butter and margarine as soon as possible. Importantly, the liberal-conservative government that took over was not the result of an electoral victory. While the conservative party had gained seats in the elections, the liberal party had lost more seats (which was only due in part to a change in the electoral system), and the government parties combined controlled the same number of seats as the social democrats by themselves. Not only was the new non-socialist government a minority government but it was also a vulnerable minority government at that, depending on the goodwill of the other side in Parliament (Nissen 2004). The dormant constitutional reform project was picked up by the non-socialist government in 1951. The social democrats and the social liberals wanted constitutional reform that included abolition of the Landsting, and by giving into this demand, the government could count on sufficient support to stay in power (Kaarsted 1977; Nissen 2004). The constitutional reform was passed by two consecutive Parliaments, and in 1953, the constitutional reform was passed in a referendum with 45.8 per cent of all voters in favour.

Party tactics played a key role in the abolition of the Danish upper house. The weak non-socialist government under Prime Minister Erik Eriksen needed to give the opposition something to be able to rule, and the new constitution abolished the Landsting. His motivation was mainly, though not purely tactical. He also wanted a revised constitution (Eigaard 1993; Arter 1991). Thorsen adds that there was a general perception that the Landsting had become redundant (Thorsen s.d.). When the social democrats and the social liberals gained a majority in the Senate, it no longer served as a conservative bulwark (Wendel-Hansen 2016). It was also difficult to see the Landsting as an additional and clearly separate arena for debate and deliberation, as the parties of the Landsting and Folketing members held their meetings together (Nissen 2004).

If the constitutional amendment had passed in the referendum in 1939, Denmark could have kept an upper house for some time. It would not have been the old Landsting, and eventually the Rigsting might also have been abolished, but an explanation of the abolition of the Danish upper house also needs to address the differences between the referenda in 1939 and in 1953. The two most striking differences are that, in 1939, the liberal party did not support the new constitution, while in 1953 all the parties in Parliament, except the communists (*Danmarks Kommunistiske Parti*), joined the agreement (Kaarsted & Trommer 2004; Kaarsted 1977; Eigaard 1993). This time, the referendum also concerned royal succession, which may have contributed to the necessary turnout (Eigaard 1993). Until then, succession had been strictly male. After the reform, the eldest of the king's daughters, provided he only had daughters, would become queen. If he had

one or more sons, the oldest son would become king. This was highly relevant, since the King had three daughters and no sons. According to Gallup polls, the percentage in favour of female succession had risen to 69 per cent by 1952. Thus, the popularity of the principle and perhaps the relative popularity of Princess Margrethe (the king's oldest daughter) compared with that of Prince Knud (the king's brother and successor under the old Constitution) might have added the necessary votes in favour of the constitutional reform (Eigaard 1993). If the king had had a son, changing the law on royal succession would have been less interesting, and this is one example of how (more or less) uncontrollable factors may have been involved in the abolition of the Landsting. On the other hand, the inclusion of the matter of royal succession into the constitutional reform was tactical and a deliberate attempt to increase voter turnout (Eigaard 1993).

The explanations presented so far have been mainly internal to Denmark, but inspiration from abroad also deserves to be discussed. Norway provided inspiration for the unsuccessful 1939 reform attempt, and David Arter has argued that the Norwegian and the Finnish cases helped pave the way for the abolition of the Landsting. The Norwegian system was studied and rejected, while, it is argued, the Finnish case helped convince non-socialists that unicameralism could have sufficient moderating elements (cf. Pekonen, this volume). The specific new main conservative element in Denmark, a new type of referendum, was not inspired by Finland, though. Swedish white papers on referenda were studied, but Sweden did not have the binding type of referendum that was introduced in Denmark (see following section) (Arter 1991; Forfatningskommissionen 1953; Sveriges Riksdag 2018).

The functioning of Danish unicameral democracy and current debates

The Danish upper house was abolished more than sixty-five years ago, which means that it is now possible to evaluate Danish unicameral democracy. Are there any functional equivalents to an upper house? What is the overall evaluation of Danish democracy – according to Danish voters and political scientists? Are there any problems in the Danish legislative system worth mentioning?

In terms of functional equivalents, one might think that the people had taken over the role of the Landsting. Although voters themselves cannot initiate a referendum, referenda are quite frequent, and there are six types of national referenda, five of which are mentioned in the constitution. One of them was explicitly introduced to compensate for the abolition of the Landsting. Section 42 of the Constitution grants a minority in the Folketing of at least one-third of its members the right to hold a referendum on a bill passed in Parliament. There are important exceptions, including the budget bill and bills on taxation. For a bill to be rejected, a majority of the participating voters and at least 30 per cent of the eligible voters must vote 'no'. Indeed, this served as a protection of the minority in the Folketing and a conservative bulwark when four bills on land usage were rejected in a referendum in 1963. However, this is also the only time this option has been used.

It is possible that the mere option that a minority in Parliament could use this type of referendum may also have had a restraining effect, protecting or supporting parliamentary minorities of some size in other cases. It should also be noted, however, that bills on land usage that were somewhat similar to those rejected were passed about five years later by the Folketing (Svensson 2003; Nissen 2004; Folketinget 2014, 2017a).

Referenda have most frequently been held on lowering of the voting age and particularly on EU integration. After 1953, referenda on lowering the voting age have always been based on the combination of two sections in the constitution. There have been three types of referenda on EU integration, with referenda on ceding power to international authorities (such as those of the EU) being the most commonly used (Folketinget 2017a). Interestingly, both this type and the rule on changing the voting age were introduced to facilitate change, not to impede it. The old constitution stipulated a particular voting age (Himmelstrup & Møller 1932) and, as indicated earlier, it was very hard to change. The 1953 constitution allowed the Folketing to lower the voting age without changing the constitution, resorting instead to a referendum that could reject the change (a majority of at least 30 per cent of all eligible voters would have to oppose the change). The new rules for ceding authority to international organisations had also been proposed to promote international cooperation rather than to make it harder for Denmark to participate. A majority of five-sixths of the Folketing can cede authority on its own, but any majority of MPs of less than five-sixths of the Folketing, however, must first check that a majority of at least 30 per cent of the eligible voters are not opposed to the decision. Since three of these referenda have led to rejection (Folketinget 2017a), this could, in effect, be considered a conservative bulwark. However, it was believed in 1953 – and it still is to this day – that without this type of referendum, constitutional reform would have been needed to cede authority to an international organisation, which would certainly have been more conservative (even though constitutional reform today 'only' requires two consecutive Parliaments and a majority of 40 per cent) (Folketinget 2017a; Nissen 2004; Kaarsted 1977; Svensson 2003; Eigaard 1993; Christensen, Jensen & Jensen 2012).

While the section 42 referendum on bills described earlier was explicitly introduced as a conservative element and minority protection, and another type of referendum (ceding authority to international organisations) might, to some degree, be considered conservative in its effects, the Danish referenda do not constitute a functional equivalent to the Landsting prior to 1936. Besides the new option for demanding a referendum on bills, the constitutional reform in 1953 provided only little with a resemblance to the old Landsting, but the Landsting did manage to get a minor new rule included that allows two-fifths of the members of the Folketing to postpone the third reading of bills (with some limitations) for twelve weekdays (Eigaard 1993; Arter 1991).

An upper house can serve other purposes than conserving the current situation. For instance, it can provide a forum for local representation. A person knowledgeable about the Danish political system might ask if the ninety-eight Danish mayors and their powerful interest organisation, 'Local Government Denmark', in

particular, could be a functional equivalent to this. 'Local Government Denmark' is involved in the legislative process as well as the ensuing execution of decisions. Thus, on a number of issues, the government asks 'Local Government Denmark' to participate in workgroups, and it is also consulted on the drafting of bills and administrative regulations. However, its powers are limited in ways that would be untypical of an influential senate: its influence is mainly restricted to areas such as primary education and child care, and it can only wield true power if all municipalities are in agreement (Blom-Hansen 2004).

The Danish political system does have conservative elements, and local interests are not only represented through the Folketing (where the electoral system is based in part on ten multimember districts). Nevertheless, neither referenda nor 'Local Government Denmark' is a functional equivalent to the pre-1936 Landsting or an influential senate with other functions. Does this mean that the Danish political system does not work well? Not according to Danish voters or most social scientists. Ninety per cent of Danes polled by Eurobarometer in 2018 were satisfied 'with the way democracy works in' Denmark (very satisfied, fairly satisfied). Here, Denmark showed the highest degree of satisfaction among all EU countries. More specifically, 63 per cent of the Danes who participated in the poll stated that they tended to trust the Danish Parliament. Only the Swedish and the Dutch scored more highly in the poll (European Commission 2018).

In 1997, the Folketing was worried that Danish democracy was deteriorating. It wanted an investigation into the state of Danish democracy and the developments in the preceding years. The abolition of the Senate was not mentioned among the reasons for the investigation, but there was a concern that the Danish Parliament might have lost power. A main report was published in 2003, and an English article based on the project was released in 2006. The title of the article revealed the overall conclusion: 'Power and Democracy in Denmark: Still a viable Democracy' (Christiansen & Togeby 2006; Togeby et al. 2003). The findings were summarised in the abstract:

> In its final report, the Danish Democracy and Power Study (1998–2004) pointed to a number of serious democratic problems such as declining political party membership, a growing gap between a competent and resourceful majority and a marginalised minority, the growing influence of the media, the transfer of power from the political to the judicial system, and the democratic deficit associated with European Union membership. However, the report also concluded that overall democratic development in the last 30–40 years has been surprisingly positive. [. . .] in the case of Denmark, democratic development has not – as the parliamentary committee initially expected – resulted in a systematic weakening of the parliamentary chain of governance.
>
> (Christiansen & Togeby 2006)

While the overall conclusion was positive, the study did express several concerns. Nevertheless, a special issue of the journal *Økonomi & Politik* in 2018 updated the analysis and found that things were still fine. Clearly, these observations do not

show that unicameralism is a necessary condition for a well-functioning democracy. Still, the Danish case does show that bicameralism is not a precondition for a well-functioning democracy either. In a review of the study's summary report, Jørgen Grønnegård Christensen argues that the positive conclusion was sound at the time and that Danish democracy is still robust and functions well. He does, however, raise concerns about package deals and executive orders. The editor of the special issue, Peter Munk Christiansen, also expressed concern that trust in politicians has dropped and that the political decision process may have become less public in recent years (Christensen 2018a, 2018b).

A senate might help ensure high-quality legislation. Prof. Jens Peter Christensen, a Supreme Court judge, has addressed the issue of the quality of legislation and concludes that it is unlikely to be as bad as people often claim (Christensen 2008). He traces the quest for high-quality legislation back to the creation of a position in the state apparatus (*generalprokurør*) at the time of the introduction of absolutism in 1660. The post was abolished in 1872, and a permanent replacement came in place as late as 1958, when a position was created in the ministry of justice. This position developed into the legislative section of the ministry of justice, which advises not only the government but also the Folketing. Christensen himself, however, does not mention the abolition of the Landsting to have caused a drop in the quality of legislation (Christensen 2008). Another observation about legislation in Denmark should also be brought up. A legislative agreement from 1933 was briefly mentioned earlier (*Kanslergadeforliget)*. Arter (1991) makes the point that, underpinned by a great many minority governments, the tradition for legislative agreements between the government and at least one opposition party has continued in Denmark after the abolition of bicameralism. Legislative agreements are often broad in terms of parties included, and the use of legislative agreements has increased. Within the duration of a legislative agreement, parties that are members of the agreement must agree if changes are to be made, and legislative agreements can easily last for years. They are not formal and thus not supported by formal sanctions in case of breaches, but it cannot be ruled out that they sometimes work in a stabilising way (Christiansen 2008; Pedersen 2005; Stokkink & Van Kersbergen 2015; Finansministeriet 2019).

The investigations mentioned earlier do not point to the abolition of the Landsting as an explanation for current problems, and only rarely is the reintroduction of a senate or something similar proposed as a solution. However, if the search is widened a bit, there are voices that might qualify as a low-intensity debate suggesting a new additional chamber as a solution to existing problems. Blaming the media for creating waves of public feeling, Per Stig Møller (then minister and MP for the conservatives) has in fact suggested the reintroduction of a second chamber that would slow down the speed of legislation in order to facilitate reflection. One idea is to have elections two years after the elections for the Folketing; another, to have equal representation of all ninety-eight municipalities. However, he does express concern that this could result in an eternal election campaign, which could make it difficult or impossible to govern and carry through reforms (Møller & Jensen 2010).

In an article in the special update issue of the Power and Democracy Study, Ellersgaard and Larsen show that the one hundred largest Danish corporations are better connected to other powerful actors than the five hundred smallest of the one thousand largest companies (Ellersgaard & Larsen 2018). More generally, they have expressed concern that Denmark has a narrow and highly influential power elite. Thus, they titled a recent book 'The Power Elite: How 423 Danes Rule the Country' (Larsen, Ellersgaard & Bernsen 2015). Following up on that analysis, they have published a book with the title 'Taming the Elite: From Power Elite to Citizen Democracy' (Mulvad, Larsen & Ellersgaard 2017). One of two proposals they make is to introduce an additional chamber, the *Borgerting*, the citizens' chamber. They propose that three hundred adult citizens residing in Denmark be selected by lottery for a three-year term. Membership should be mandatory, members would be paid, and the chamber should have far-reaching competencies: it should approve controversial bills in the Folketing, it should have the power to initiate bills and if the Folketing blocks a bill from the Borgerting, a qualified minority of the Borgerting should be able to call a referendum. It should also have the power to reject the national budget, which could result in new general elections. Finally, it should have the power to investigate ministers and top civil servants (Mulvad, Larsen & Ellersgaard 2017).

Their motivation is anti-elitist: to become a member of the Borgerting, you do not have to be wealthy, well connected to organisations, rhetorically gifted or even especially motivated and hard working. In particular, they point out that persons with a university degree constitute a far larger proportion of the Folketing than they do of the population, which would not be the case in a chamber selected by lottery (Mulvad, Larsen & Ellersgaard 2017). This is correct. According to the Folketing's own fact sheet, after the general elections in 2015, 50.3 per cent of all members of the Folketing had a master's degree or equivalent; the same is true of only 8.8 per cent of the adult population (Folketinget 2015).

Drawing on theory of representation, it is possible to expand their argument. The field of representational theory is highly complex (Pitkin 1972; Marker 1999), but through the lens of descriptive representation, we can ask if a chamber is representative of a population by comparing the composition of the chamber with that of the population. Descriptive representation theory may be subdivided into proportional representation and demographic representation (Marker 1999). From a proportional perspective, the Folketing represents the Danish voters very well. The Danish electoral system is highly proportional – the main deviation from perfect proportionality being the 2 per cent threshold generally needed for a party to get seats in Parliament (Folketinget 2011). Thus, the opinions of the voters, as reflected in their party choices, are proportionally represented in the Folketing. From a demographic perspective, the current one-chamber system leaves room for improvement. The sizes of various groups in society are not matched by the corresponding group sizes in the Folketing. As noted earlier, people without master's degrees or an equivalent are underrepresented. In addition, the female share of the adult population is 50.7 per cent, but after the 2015 election, women account for only 37.4 per cent of the Folketing (Folketinget 2015). This share has

hovered between 36.9 per cent and 39.1 per cent from 1998 to 2015, without a clear rising trend. After the introduction of female suffrage in 1915, the share of women in the Landsting was always somewhat higher than in the Folketing. In fact, in 1950 Ingeborg Hansen (social democratic party) was appointed chairperson of the Landsting. The Folketing did not see its first female speaker until 2015, when Pia Kjærsgaard of the Danish people's party (*Dansk Folkeparti*) obtained this position (Folketinget 2017b).

A new chamber, with members selected by lottery, would, as the Landsting did, improve female representation. In fact, the Borgerting's representation of demographic groups would be close to perfect in most terms (and could, with correction, be perfect in all terms on selected parameters, if wanted). Thus, Denmark would have a Parliament with near-perfect proportional representation in the Folketing and near-perfect demographic representation in the Borgerting. This would not only be an immediate improvement from the perspective of descriptive representation; the Borgerting could also serve as a training ground, allowing more women and persons with little education to acquire political skills that could lead to membership of the Folketing.

Is it conceivable that this proposal will actually be implemented? Not really. The Borgerting, as envisioned by Mulvad, Larsen and Ellersgaard (2017), would demand a reform of the constitution, and even though the threshold of favourable votes is now 'only' 40 per cent, Constitutional reform is still hard to achieve. This is perhaps particularly true after the law on royal succession was revised in 2009 to achieve full gender equality. Thus, this issue can no longer be used to create public interest and raise turnout. A substantially scaled-down version of the Borgerting that would not require constitutional reform is somewhat more realistic. Denmark has recently demonstrated a willingness for democratic innovation and experimentation. In 2017, a majority in the Parliament decided to allow voters to make proposals. If 50,000 voters support a proposal, the parties behind the arrangement will (or are supposed to) make it their decision proposal in the Folketing (Folketinget 2019a). This setup has been implemented without constitutional reform. Currently, a scaled-down version of the idea of a Borgerting selected by lottery as an additional chamber has been picked up by the political party 'the alternative' (Alternativet 2019).

Conclusion

A senate in crisis can recover or it can cease to exist. The Landsting was abolished in 1953. This chapter has pointed to several internal explanations for the abolition of the Danish Senate. For a weak non-socialist government, offering constitutional reform and abolition of the Landsting was a means to stay in power. In addition, it had become redundant because parties formed joint parliamentary party groups, with their members from both chambers, and because the majority in the Landsting in 1936 switched away from the non-socialist parties. Finally, the abolition of the Landsting was interwoven with other matters, most notably the

voting age and royal succession. Externally, the Finnish case may have provided reassurance that a unicameral system could work.

Since the abolition of the Landsting, the Danish unicameral political system has functioned for more than sixty-five years, and Danish political experience is an example that a unicameral system can function well. Most social scientists, as well as Danes in general, are satisfied with it. This is not to say that there have not been or will not be any problems. Still, the Danish political system is not in a state of crisis, even without a senate. Perhaps indicative in the current low-intensity debate on introducing an additional chamber, is that while an upper house is mentioned as a possibility, a recent proposal elaborated at some length is to introduce a chamber even more popular than the Folketing: a chamber of citizens selected by lottery.

References

Alternativet (2019), 'Det nye folkestyre'. Available at: www.alternativet.dk/der-er-et-alternativ/se-det-nye-folkestyre (accessed 21 March 2019).

Arter, D. (1991), 'One ting too many: The shift to unicameralism in Denmark', in: Longley, L.D. and Olson, D.M. (eds.), *Two into One: The Politics and Processes of National Legislative Cameral Change* (Boulder: Westview Press), pp. 77–142.

Forfatningskommissionen (1953), *Betænkning afgivet af Forfatningskommissionen af 1946* (Copenhagen: J.H. Schultz A/S).

Blom-Hansen, J. (2004), *Den fjerde statsmagt? Kommunernes Landsforening i dansk politik* (Århus: Aarhus Universitetsforlag).

Christensen, J.G. (2018), 'Magten over Danmark. Dansk folkestyre to årtier efter magtudredningen', *Økonomi & Politik* 91, pp. 106–117.

Christensen, J.P. (2008), 'Lovgivningskvalitet og enkeltsagsstyret lovgivning', in: Andersen, M.B. (ed.), *Forhandlingerne ved Det 38. nordiske Juristmøde i København, 21.-23. august 2008*, Vol. 1. Available at: www.nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_38_jens_peter_christensen.pdf_.pdf (accessed 21 March 2019).

Christensen, J.P., Jensen, J.A. and Jensen, M.H. (2012), *Dansk Statsret* (Copenhagen: Jurist- og Økonomforbundets Forlag).

Christiansen, F.J. (2008), *Politiske forlig i Folketinget: Partikonkurrence og samarbejde* (Århus: Forlaget Politica).

Christiansen, N.F. (2004), *Klassesamfundet organiseres: 1900–1925* [Vol. 12 of Olsen, O. (ed.), *Gyldendal og Politikens Danmarkshistorie*], (Copenhagen: Gyldendal & Politiken).

Christiansen, P.M. (2018a), 'Temaredaktørens forord', *Økonomi & Politik* 91, pp. 3–6.

Christiansen, P.M. (2018b), 'Mørket sænker sig: Magten over de politiske og administrative beslutningsprocesser', *Økonomi & Politik* 91, pp. 95–105.

Christiansen, P.M. and Togeby, L. (2006), 'Power and democracy in Denmark: Still a viable democracy', *Scandinavian Political Studies* 29, pp. 1–24.

Eigaard, S. (1993), *Idealer og Politik: Historien om Grundloven af 1953* (Odense: Odense Universitetsforlag).

Elklit, J. (1984), 'Det klassiske danske partisystem bliver til', in: Elklit, J. and Tonsgaard, O. (eds.), *Valg og vælgeradfærd: Studier i dansk politik* (Århus: Forlaget Politica), pp. 21–38.

Ellersgaard, C.H. and Larsen, A.G. (2018), 'Erhvervslivets spidser – forbindelser til ledere i øvrige toneangivende sektorer', *Økonomi & Politik* 91, pp. 65–74.

European Commission (2018), 'Standard Eurobarometer 89'. Available at: http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180 (accessed 21 March 2019).

Finansministeriet (2019), 'Bilag – Oversigt over gældende forlig pr. 1. April 2019'. Available at: www.ft.dk/samling/20171/almdel/fiu/spm/466/svar/1574252/2045682.pdf (accessed 29 April 2019).

Folketinget (2011), *The Parliamentary Electoral System in Denmark* (Copenhagen: Ministry of the Interior and Health). Available at: www.thedanishparliament.dk/~/media/pdf/publikationer/english/the-parliamentary-system-of-denmark_2011.ashx (accessed 21 March 2019).

Folketinget (2014), *My Constitutional act with explanations* (Copenhagen: Folketinget). Available at: www.thedanishparliament.dk/~/media/pdf/publikationer/english/my_constitutional_act_with_explanations.ashx (accessed 21 March 2019).

Folketinget (2015), 'Folketingets medlemmer i tal ved valget 2015'. Available at: www.ft.dk/~/media/pdf/publikationer/informationsark/folketingets_medlemmer/folketingets_medlemmer_i_tal.ashx (accessed 21 March 2019).

Folketinget (2017a), 'Folkeafstemninger'. Available at: www.ft.dk/~/media/sites/ft/pdf/informationsark/folkeafstemninger-13-feb-2017.ashx?la=da (accessed 21 March 2019).

Folketinget (2017b), 'Kvinder i Folketinget'. Available at: www.ft.dk/~/media/pdf/publikationer/informationsark/folketingets_medlemmer/kvinder_i_folketinget.ashx?la=da (accessed 21 March 2019).

Folketinget (2019a), 'Borgerforslag'. Available at: www.borgerforslag.dk (accessed 21 March 2019).

Folketinget (2019b), 'Folketingsvalgene 1913–1953'. Available at: www.ft.dk/~/media/sites/ft/pdf/folkestyret/valg-og-afstemninger/folketingsvalg-1913-1953.ashx?la=da (accessed 21 March 2019).

Haue, H, Olsen, J. and Aarup-Kristensen, J. (1981), *Det ny Danmark 1890–1980: Udviklingslinier og tendens* (Copenhagen: Munksgaard).

Himmelstrup, J. and Møller, J. (eds.) (1932), *Danske Forfatningslove og Forfatningsudkast* (Copenhagen: J.H. Schultz Forlag).

Hvidt, K. (2004), *Det folkelige gennembrud 1850–1900* [Vol. 11 of Olsen, O. (ed.), *Gyldendal og Politikens Danmarkshistorie*], (Copenhagen: Gyldendal & Politiken).

Johansen, H.C. (2005), *Danmark i tal: Register* [Vol. 17 of Olsen, O. (ed.), *Gyldendal og Politikens Danmarkshistorie*], (Copenhagen: Gyldendal & Politiken).

Kaarsted, T. (1977), *De Danske Ministerier 1929–1953: Et hundrede Politisk-Historiske Biografier* (Copenhagen: Pensionsforsikringsanstalten).

Kaarsted, T. and Trommer, A. (2004), *Krise og krig: 1925–50* [Vol. 13 of Olsen, O. (ed.), *Gyldendal og Politikens Danmarkshistorie*], (rev. ed. by Trommer, A.; Copenhagen: Gyldendal & Politiken).

Larsen, A.G., Ellersgaard, C. and Bernsen, M. (2015), *Magteliten: Hvordan 423 danskere styrer landet* (Copenhagen: Politikens Forlag).

Marker, P. (1999), 'Situationsbestemt politisk repræsentation i Folketinget', *Politica* 31, pp. 192–207.

Møller, P.S. and Jensen, M.B. (2010), *Samtale Fremmer Forståelsen: En mailkorrespondence om verden her og nu*, (Copenhagen: Gyldendal).

Mulvad, A.M., Larsen, A.G. and Ellersgaard, C.H. (2017), *Tæm eliten: fra magtelite til borgerdemokrati* (Copenhagen: Informations Forlag).

Nissen, H.S. (2004), *Landet blev by: 1950–70* [Vol. 14 of Olsen, O. (ed.), *Gyldendal og Politikens Danmarkshistorie*], (Copenhagen: Gyldendal & Politiken).

Pedersen, H.H. (2005), *Politiske Forlig i Dansk Politik 1850–2001: En analyse af sammenhængen mellem mindretalsparlamentarisme og forekomsten af forpligtende lovgivningskoalitioner*, Master's thesis, Department of Political Science, Aarhus University.

Pitkin, H.F. (1972), *The Concept of Representation*, (Berkeley: University of California Press).

Stokkink, I. and Van Kersbergen, K. (2015), 'Waarom en hoe de Deense senaat werd afgeschaft', in: Van Baalen, C. et al. (eds.), *Jaarboek Parlementaire Geschiedenis 2015: De Eerste Kamer*, (Amsterdam: Uitgeverij Boom), pp. 72–83.

Svensson, P. (2003), *Folkets Røst: Demokrati og Folkeafstemninger i Danmark og Andre Europæiske Lande* (Århus: Aarhus Universitetsforlag).

Sveriges Riksdag (2018), 'Referendums'. Available at: www.riksdagen.se/en/how-the-riksdag-works/democracy/referendums/ (accessed 21 March 2019).

Thorsen, S. (s.d.), *Den Tredje Junigrundlov: Et Politisk Forløb og dets Resultat* (Copenhagen).

Thorsen, S. (1972), *De Danske Ministerier 1901–1929: Et hundrede Politisk-Historiske Biografier* (Copenhagen: Pensionsforsikringsanstalten).

Togeby, L. et al. (2003), *Magt og Demokrati i Danmark: Hovedresultater fra Magtudredningen* (Århus: Aarhus Universitetsforlag).

Wendel-Hansen, J. (2016), 'Landstinget 1849–1953'. Available at: www.danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/landstinget-1849-1953/?no_cache=1 (accessed 21 March 2019).

17 Precarious bicameralism?

Senates in Ireland from the late Middle Ages to the present

Muiris MacCarthaigh and Shane Martin

Introduction

Legislatures are the cornerstone of representative democracy, and the decision to have one (unicameral) or two (bicameral) chambers within the national legislature (or parliament) is a decision of great significance. Typically, this decision is made during the design or redesign of a country's constitutional framework (Martin & Rasch 2013). Tsebilis and Money (1997), who note that the 'defining characteristic of bicameral legislatures is the requirement that legislation be deliberated in two distinct assemblies', find that approximately one-third of countries around the world have a bicameral legislature. Looking at larger democracies only (with a population of at least four million people), Martin and Strøm (forthcoming) find that just under half (thirty-three of sixty-eight) countries have a bicameral legislature. Comparatively, then, bicameralism as a form of legislative organization remains popular but not typical.

In many countries, the status of senates (sometimes referred to as upper chambers or second chambers) has been and continues to be the subject of significant attentiveness from political elites, commentators and voters. Bicameralism can be precarious. Some senates have been abolished recently (for example, in Croatia in 2001 and in Peru in 1993). Others face calls for fundamental reform, with a reduction in their powers and/or change in their mode of selection (for example, in Italy and the United Kingdom). Other countries have amended their constitutions to establish or re-establish a senate (for example, Kenya in 2010).

Some senates have faced the threat of elimination but survived. This chapter explores one such case – the nature and fate of bicameralism in the Republic of Ireland. In a national vote held on 4 October 2013, voters in the Irish Republic were given the opportunity to abolish Ireland's Senate – *Seanad Éireann* (hereafter the Seanad). The proposal to abolish the Seanad was defeated by a narrow margin, being rejected by just under 52 per cent of those voting, albeit on a turnout of less than 40 per cent of eligible voters.

The uncertain position of the second parliamentary chamber in Ireland is not, however, a new phenomenon and the 2013 referendum was in keeping with the problematic if not controversial role senates have faced in Ireland over centuries. In order to set more recent events in historical relief, this chapter briefly traces the

evolution of the upper chamber on the island of Ireland beginning with the period from the Middle Ages to pre-twentieth-century constitutional arrangements. Following this, a more detailed analysis is presented of bicameralism in post-independent Ireland until recent decades. The latter half of the chapter considers the 2013 referendum to abolish the Senate, as well as post-referendum attempts at reform of the chamber.

Senates in Ireland from the fourteenth to twentieth centuries

The Irish experience of bicameralism is heavily influenced by and a response to its colonial history and to contemporaneous English thinking about the design and function of political institutions. As Coakley (2013) identifies, in the fourteenth and fifteenth centuries the then Irish Parliament, like those elsewhere in Europe during the *ancien régime*, was in fact tricameral, with the estates of peers (Lords) and Commons conjoined to a third chamber for the 'proctors', or representatives of the clergy. This latter chamber ceased in 1536 following its opposition to Reformation-inspired legislation, and clerical representation transferred to the Lords. The resulting bicameral Parliament resembled that of the emerging British state (following the 1707 Act of Union between England and Scotland) and by 1800 the Irish House of Lords was almost equal in size to the three-hundred-member Irish House of Commons, consisting of twenty-two spiritual and 225 temporal peers.

However, although it mirrored Westminster in structure and operation and followed the emerging party-political divisions there, the Irish parliament retained what Foster called 'a different, querulous, and often impotent relationship *vis-à-vis* the apparatus of government' (Foster 1989, p. 135). Tensions between Ireland and Britain grew during the eighteenth century and culminated in a failed rebellion in 1798 inspired by those which had recently occurred in America and France. In 1800, the Acts of Union by the Parliament of Ireland and the Parliament of Great Britain respectively resulted in the United Kingdom of Great Britain and Ireland, the end of the Irish Parliament in Dublin, and the representation of Ireland in the United Kingdom's House of Lords by means of four clerical and twenty-eight secular peers and in the House of Commons by means of one hundred elected representatives (Mansergh 2005).

During the latter half of the nineteenth century, demands grew for the restoration of some form of autonomous government in Ireland – known as Home Rule – including institutional safeguards, such as senates, for the protection of Protestant interests in what was an overwhelming Catholic polity. The defeated Home Rule Bills of 1886 and 1893 both proposed some form of upper house, the former bill providing for 103 members; the latter, forty-eight. The electorate for these seats was envisaged as primarily comprising those with property qualifications, in the process excluding the majority Catholic population from the franchise for those chambers. The third Home Rule Bill of 1912 was passed into law by Westminster, this time with substantially revised proposals for a forty-member upper house

initially involving a combination of nomination and direct election (using a form of proportional representation) and later solely by means of direct election.

With the onset of the First World War, the new Act was put into suspension and never implemented. Nonetheless, the idea of a bicameral domestic parliament had taken shape and was to reappear in the 1920 Government of Ireland Act, passed by Westminster in the middle of a militant Irish nationalist uprising seeking full autonomy from Westminster rule. The new Act envisaged the partition of Ireland into two entities with devolved semi-autonomous status – Northern Ireland (which came into existence) and Southern Ireland (which did not). Each jurisdiction was to have a bicameral legislature comprising a house of commons, a senate and an umbrella 'Council of Ireland' comprising representatives from the four chambers.

The Parliament of Northern Ireland survived for a half-century, until 1972, when it was suspended and then abolished the following year. Its twenty-six-member Senate had an unusual composition and electoral system, with the Lord Mayor of Belfast and the Mayor of Londonderry (i.e. local authority positions) having *ex officio* seats and the remaining twenty-four members being elected by the house of commons for eight-year terms. In contrast, the system devised for the sixty-four-member Senate of Southern Ireland was more complex and involved a variety of corporate interests (Coakley 2013, p. 110). They included

- the lord mayors of Dublin and Cork (the two largest cities in southern Ireland) and the lord chancellor (the highest judicial office) as *ex officio* members;
- fourteen local authority representatives, elected regionally;
- seventeen members nominated by the lord lieutenant (the Crown's representative in Ireland);
- six bishops (four Catholic and two Church of Ireland) elected by their respective peers;
- sixteen peers, elected by the Irish peerage;
- eight privy councillors, elected by the Irish Privy Council (an advisory body to the Crown).

This Senate only ever met twice and was fatally undermined by the non-participation of secessionist Sinn Féin in the sister House of Commons, where it held virtually all 128 seats. But this did not mean the end of bicameralism in Ireland. Rather, a new form of senate appeared in the Anglo-Irish Treaty of December 1921, which was agreed between Irish nationalists and British constitutionalists in a bid to bring to an end the Irish War of Independence.

The Senate in independent Ireland

The Anglo-Irish Treaty, approved by Dáil Éireann by sixty-four votes to fifty-seven (as well as by the House of Commons of Southern Ireland to meet British constitutional requirements, though anti-Treaty members did not attend), created the Irish Free State and its associated Irish Free State constitution. Following an

agreement that the new state would have a senate in which the Protestant population would be represented, the bicameral *Oireachtas* was one of the central institutions to be created under this constitution. This was an uncontroversial decision. The size of the chamber was more controversial. The new government wanted a chamber of forty seats but following concessions to the unionist minority, Article 31 provided for a sixty-seat Senate – to be called Seanad Éireann – with all members required to be at least 35 years of age. The number of seats in the lower house, Dáil Éireann, was not specified but rather left to be determined by law according to certain provisions. In its initial incarnation, the Seanad was to be directly elected for a period of twelve years, with a quarter of senators being replaced every three years – a form of staggered membership commonly seen in upper chambers (Willumsen & Goetz 2015). Like the senate which had been proposed under the 1920 Government of Ireland Act, Seanad Éireann had an explicitly representative function in that it was designed to ensure Protestant parliamentary representation in the new and overwhelmingly Catholic state (Murphy forthcoming).

This Protestant minority was largely Unionist in political outlook and concerned about their place in the new political dispensation which, although still within the Commonwealth, had the ambition to further loosen its political and constitutional ties with the British Crown. In a transitional arrangement, half of the seats in the first Free State Seanad were elected by the Dáil, and half were appointed by the 'President of the Executive Council' (the prime minister). Of those appointed by that president, a large number were prominent artistic and landowning figures from within the Irish Protestant tradition, including the chamber's first chairperson. Gallagher (2018) argues that, by providing a forum for minority voices, a set of values and perspectives that might otherwise not have been heard were given a voice in the new polity.

Apart from its representative function, the new Senate became quite an active legislative chamber, achieving the withdrawal of some proposed government legislation and developing a reputation for the quality of its debates (O'Sullivan 1940). This reputation became increasingly problematic, however, following the election to office of the strongly nationalist *Fianna Fáil* party, led by Éamon de Valera in 1932, which was keen to advance an ambition of complete constitutional independence from Britain (and reunification with Northern Ireland). A series of conflicts emerged between the chambers over constitutional reform issues, and there were increased grumblings over what was perceived to be a privileged position enjoyed by the Unionist minority in the Seanad. These conflicts culminated in the government using its majority position in the lower chamber to introduce legislation to abolish the Seanad immediately following the chamber's refusal to support yet another government bill in 1934. The Seanad could only delay rather than permanently veto legislation, and a constitutional provision provided that only parliamentary rather than popular approval was necessary for constitutional amendments. Thus, after fourteen years in existence, Seanad Éireann ceased to exist in 1936.

Creation and evolution of the modern Irish Senate

De Valera had by this stage created a committee to draft a new constitution to replace the much-maligned Irish Free State constitution. In a most unusual about-turn, the new draft constitution, published in 1937, contained provision for the re-establishment of Seanad Éireann, which had been abolished the previous year. The precise reason for this change of heart on the principle of bicameralism by de Valera, who held extraordinary influence over the content of the new constitution, has never been definitively understood. We may however find some rationale for the form and role of the revised House during the debates concerning the re-establishment of the chamber, when he stated, 'The new House must never be in a position to challenge the Government as the old one had' (Dáil Debates, Vol.69: Col. 1611, 2 Dec. 1937). He also noted that 'it would pass the wit of man to devise a really satisfactory Second Chamber [senate]' (Dáil Debates, Vol. 69: Col.1607, 2 Dec. 1937). Clearly, then, the ambition was to have a senate, but a senate incapable of impeding or challenging in any significant way the work of the executive.

A *Commission on the Second House of the Oireachtas* had been established by de Valera in 1936 to examine the issues, and the three reports produced by the Commission all supported the creation of a senate. It proposed that the new senate should retain the powers it had but with a reduction in the length of time it could delay legislation. One idea that caught the particular attention of de Valera was that the composition of the House would be based around vocational principles, an idea that had come to the fore in Catholic social teaching at that time, which sought to curb the influence of Marxist ideas concerning social class. The papacy of Pope Pius XI had endorsed the idea of vocational representation in the Roman Catholic encyclical *Quadragesimo Anno*, published in 1931, which supported the incorporation of vocational interests into societal decision-making processes.

The end result was to retain the size of the new Senate at sixty seats, whose life would be co-terminus with the lower house, and comprising three different groups of senators. The first group would comprise six senators elected by the graduates of the two universities then in existence – Dublin University (which had one constituent college, Trinity College) and the National University of Ireland (NUI, which had four constituent colleges: University College Dublin, NUI Maynooth, NUI Galway and University College Cork). The second group of senators was to consist of forty-three seats, elected by an electoral college of approximately a thousand people comprising the members of Dáil Éireann (each known as a 'TD' or Teachta Dála, a member of Dáil Éireann) and the elected members of all city and county councils. These forty-three seats would be allocated among five vocational 'panels' as follows:

- an Administrative Panel (public administration and social services): seven seats;
- an Agricultural Panel (including fisheries): eleven seats;
- a Cultural and Educational Panel (education, arts, literature): five seats;

- an Industrial and Commercial Panel (including architecture and engineering): nine seats;
- a Labour Panel (primarily organised labour groups): eleven seats.

The final group of eleven senators would be chosen by the *Taoiseach* (Prime Minister), granting that office-holder extensive patronage appointment power as well as an insurance policy against any government not having a majority in the chamber. These senators, known as Taoiseach's nominees, came from a variety of quarters in Irish life, including distinguished public servants, artists, academics and even long-serving political party officials. In keeping with the profile of the Irish Free State Seanad, prominent members of the Protestant community were appointed in the early decades of the new Seanad, as well as Irish-language enthusiasts, but as these interests waned there was more focus on gender and representatives from Northern Ireland (Coakley 2013, p. 124).

In practice, despite the attempt to create a chamber representative of societal interests and values, the nature of the electorate and the government's desire to control the agenda of the Seanad ensured that it quickly became organised around, and by, parties – similar to the central role of parliamentary party groups in the lower house (Martin 2014). With society itself not structured according to vocational principles, it was largely wishful thinking to assume that Parliament could do so (Chubb 1954). In keeping with de Valera's expressed desire, the new 1937 constitution of Ireland made it clear that the Seanad would be the less important of the two chambers, giving it no role in the election or removal of government and delaying power only in respect of legislation. Even then, its proposed amendments to legislation could be rejected by Dáil Éireann. Indeed, between 1937 and 2013, only two bills were successfully voted down by the Senate. The effect of this over time was to diminish public interest in the role and performance of the upper house, with many senators also holding other forms of paid employment.

The 1937 constitution does, however, allow the Taoiseach of the day to appoint up to two Senators to the cabinet, which cannot be larger than fifteen members. Since 1937, this has only happened on two occasions, and given the Taoiseach's primary reliance on members of the lower house for his or her government to survive, the pressure to appoint members of that House is intense. Indeed, there was considerable resentment among TDs to the appointment of the senators to the cabinet in 1954 and 1981 (Manning 2010, p. 162).

As a result of its design and constitutional limitations, the Seanad came to be seen as a 'crèche' for aspiring members of the more powerful Dáil Éireann (who had perhaps failed in their most recent election attempt to that house but had ambitions to do so again), as well as a 'retirement home' for long-serving members of that House who wished to retain a parliamentary career but with less constituency pressures (the electoral system used to elect the lower chamber is highly candidate centred, requiring incumbents seeking re-election to devote significant attention to local and parochial issues). Some of the most famous senators have emerged from those elected from the six university seats, which freed them from party political constraints to pursue specific causes.

A number of reports into the electoral system and role of Seanad Éireann have taken place since 1937. The most prominent of these formed part of Constitution-wide reviews. The 1966–1967 Committee on the constitution recommended the retention of the Senate along vocational, or what it termed 'functional', lines but little guidance on how this might be achieved in practice (Committee on the constitution 1967, pp. 29–31). Three decades later the constitution Review Group gave a scathing opinion of Seanad Éireann, stating that as currently constituted, it did 'not appear to satisfy the criteria for a relevant, effective and representative second house' (1996, p. 71). A body established subsequent to this report, titled the 'All-Party Oireachtas Committee on the Constitution', produced two reports concerning the Seanad and in both cases recommended its retention – but with changes to the systems of appointing senators. These recommendations, which included such ideas as electing senators using European Parliament constituencies or a national list electoral system were, however, never acted upon.

In general, the Seanad remained the unloved institution of Irish politics for the remainder of the twentieth century, with a number of reports commissioned to try to reform it and its electoral system. A report by the chamber's own Committee on Procedures and Privileges, published in 2004, had no difficulty in defining what it saw as the key problems facing the Seanad: 1) that it has no distinctive role in the Irish political system and 2) that its arcane and outdated system of nomination and election diminished senators' public legitimacy (Seanad Éireann Committee on Procedures and Privileges Sub-Committee on Seanad Reform 2004).

The report also queried the legitimacy of the system of university representation given that it privileged some citizens with voting rights on the basis of educational achievement alone. However, no government was sufficiently motivated to act on these recommendations, and it was only with the onset of a grave economic crisis that a sustained spotlight of national attention was focused on Seanad Éireann.

The 2013 referendum

As noted earlier, the profile of Seanad Éireann from 1937 has been such that there have been relatively few occasions where it can be said to be the focus of public attention or the origin of major policy initiation or change in Ireland. Ironically, it was the occasion of the proposed referendum on its abolition that served to put a much-needed focus on the role and performance of the chamber. In a referendum held on 4 October 2013, with a turnout of 39.17 per cent, the proposal to abolish the upper chamber at the next general election was rejected by 51.7 per cent of those voting (MacCarthaigh & Martin 2015). The abolition of the Seanad was meant to have been a centrepiece of political reform for the governing coalition elected in 2011 following an economic crisis which included the need to rescue a number of banks, a fiscal crisis and ultimately an external intervention involving the International Monetary Fund (Breen 2012). The referendum result produced a surprising outcome: Irish voters, despite being heavily disillusioned with the political system and political elites in the midst of a major economic crisis, voted to retain a two-chamber legislature. The origins of the referendum and its results

raised important questions about the place of the often maligned and already once-abolished Senate in modern Ireland.

This 2008 economic crisis had resulted in much public criticism of the administrative and regulatory systems that failed to prevent it, as well as of the state's political institutions. In the lead-in to the first post-crash general election, in 2011, all political parties committed to closing the chamber following a surprise announcement by the then-leader of the main opposition party, centre-right *Fine Gael*, in 2009, that he wished to see it abolished. The coalition agreement approved by Fine Gael and the centre-left Labour Party – which held the largest-ever majority by an Irish government – pledged to hold a referendum on 'a number of urgent parliamentary reform issues', including abolition of the Seanad. As the initiators of the proposal, Fine Gael focused its referendum campaign on three major themes: the underperforming and unreformable nature of the current Seanad, its cost, and the populist argument that abolition would result in fewer politicians. Its claims that abolishing the chamber would save €20 million annually were hotly contested by its opponents, and even the politically neutral parliamentary bureaucracy (the Houses of the Oireachtas Commission) struggled to determine a sum that a switch to unicameralism would save.

Within all political parties there were problems convincing incumbent senators to campaign actively for their place of work to be closed, and those lower-chamber parliamentarians charged with leading pro-abolition campaigns subsequently noted the lack of enthusiasm on the part of their party colleagues to support the proposal. Indeed, many of the government's own senators were unhappy at the timing of the referendum, which, if passed, would leave them in a political no-person's land until the next election and the chamber's closure.

The left-wing, nationalist and anti-system Sinn Féin party decided to also campaign to abolish the upper chamber, principally on the basis of its elitist and narrow electorate, which the party viewed as inherently undemocratic. The Socialist Party also supported the chamber's abolition. The left-of-centre and historically dominant *Fianna Fáil* formally opposed abolition, instead publishing a policy document calling for complete reform of the chamber and a reduction of its membership from sixty to fifty-one. It proposed that forty Senators would be directly elected by the public and the Irish diaspora, with a further eight appointed by the Taoiseach, with the final three members coming from Northern Ireland. Its plan, titled *A Seanad for the People*, argued that a reformed Seanad could thus play a stronger role in North-South political links (though this was not elaborated on), better scrutinise EU legislation and help tackle gender inequality in public life. The party also proposed a cut in a Senator's basic salary from €65,000 to €50,000.

As is usual for referendums in Ireland, the state's independent provider of information on the matter, the Referendum Commission, was established some four months before polling day, on June 6. It estimated that abolition of the Seanad would require forty changes to the text of the constitution, ranging from simple deletions to more substantive re-engineering. Its guide identified fourteen major changes, of which all but one would result in a transfer of powers to Dáil Eireann.

The lead-in to the referendum featured prominent campaigns by academics, media commentators and former parliamentarians. Prominent on the pro-abolition side was the One House group, which included a number of prominent former cabinet ministers. The Green Party also campaigned in favour of retention, as did the Reform Alliance, a collection of former Fine Gael parliamentarians who had been expelled from the party.

For the abolitionists, much was made of the upper chamber's ineffectiveness since its re-establishment in 1937, with the 'crèche' and 'retirement home' monikers featuring prominently. The constitutional provision for university seats was deemed archaic if not illegal, given that the constitutional amendment approved in the late 1970s to extend the franchise to all third-level institutions outside the colleges of the University of Dublin and National University of Ireland had never been acted upon. Equally, the original concept of vocational representation by means of the five vocational panels in the Senate was pointed to as redundant given the reality of parliamentary party control of the chamber, supplemented by the patronage appointment of eleven members by the Taoiseach of the day. The Yes campaign also pointed to the absence of Seanad involvement in the election or dismissal of the executive and its ability to merely delay rather than stop the progress of legislation.

Those arguing for retention and reform (as no party or group argued for retention of the status quo) claimed the government was using the Seanad as a high-profile sacrificial lamb to compensate for the deep political failures that had contributed to the economic crisis. The 'Democracy Matters' group, including a number of incumbent senators who had formed the 'Seanad Reform Group' some months prior, argued that an already centralised system of parliamentary government would become even more insulated from necessary checks on power were the Seanad abolished. They argued the chamber has provided a platform for some of Ireland's most prominent public figures (and representatives of minority groups) to speak out, particularly those elected to the six university seats.

A month before the referendum, and in expectation of victory, the government hurriedly produced a list of proposals for reforming Dáil Éireann should a unicameral parliament emerge. These included proposals for external experts and members of the public to be involved in discussions preceding detailed legislative drafting. Other reforms to Dáil Éireann included longer working hours for TDs, less use of the guillotine (a control on timetabling through which the government can limit time for debate) and more effective regulation of the legislative process to avoid the rush of bills through Parliament before recesses. For a chamber that had proved largely resistant to calls for reform in how it conducted its business from the 1970s (MacCarthaigh 2005), these proposed changes were relatively dramatic.

Polls suggested that although a large portion of the electorate remained undecided as to how they would vote, the numbers in favour of abolition steadily dropped as the campaign continued. An Ipsos MRBI poll published by the *Irish Times* in June 2013 suggested 72 per cent of voters in favour of abolition (when those who were undecided were excluded), but less than a week before the ballot,

another poll by the same company suggested 44 per cent in favour of abolition against 27 per cent in favour of retention, with 21 per cent undecided (or 62 per cent in favour when excluding those undecided), with the cost savings argument being the biggest motivating factors for abolitionists.

Turnout may be the key issue in explaining the remarkable turnaround in the last few weeks of the campaign, with those wishing to retain the Seanad more motivated to vote than those who preferred unicameralism. A follow-up survey commissioned by the Referendum Commission asked respondents whether or not they voted, and if they did not vote, what the reason was. The results are reported in Figure 17.1.

The primary explanation for choosing not to vote in the Seanad referendum was lack of interest: almost 30 per cent of non-voters said they had little to no interest in the topic to warrant voting. A quarter of people responded that practical reasons, such as travel or not having the time to attend the polling station, prevented them from voting. Despite significant media coverage and the efforts of the Referendum Commission (including a booklet distributed to each household in the country), a further 25 per cent of non-voters cited a lack of understanding

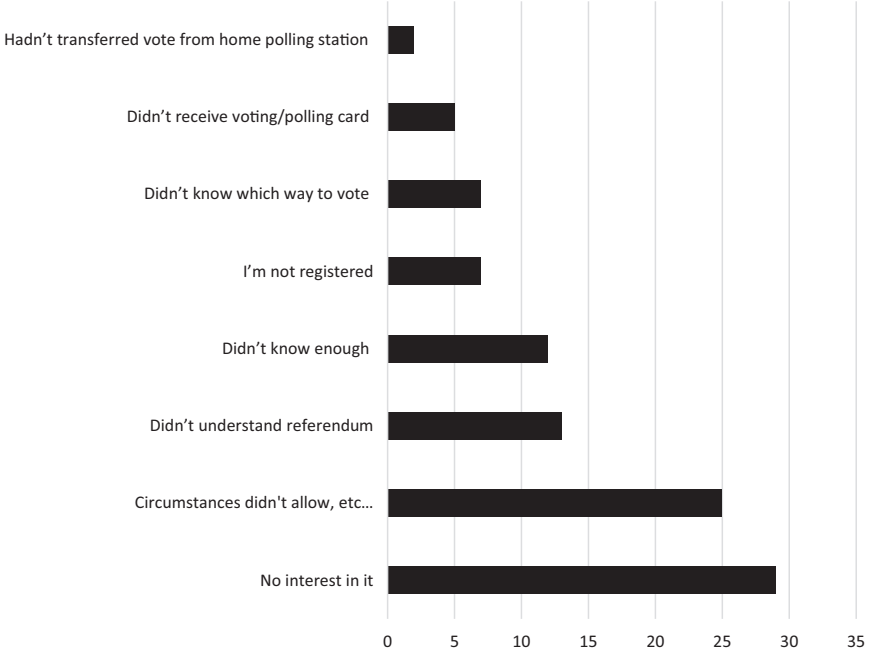


Figure 17.1 Reasons given for not voting in the Seanad referendum in Ireland

Source: Referendum Commission 2013

Notes: Based on post-referendum survey conducted on behalf of the Referendum Commission. Respondents who indicated that they had not voted were asked, 'For what specific reasons did you not vote in the Seanad Referendum?'

or not knowing enough about the topic as the reason for not participating in the referendum.

In terms of demographics, the official post-referendum report of the Referendum Commission found that voting levels among younger and less well-off voters had been lowest, with the stated proportion of the age 18–25 group who said they had voted standing at just 19 per cent (Referendum Commission 2013, p. 15). Among the over 65s, the equivalent turnout figure for the Seanad referendum was reported to be 77 per cent. Some 59 per cent of the better-off ABC1 group and 60 per cent of farmers said they voted in the referendum.

For those who voted, the same survey canvassed reasons for voting 'Yes' or 'No'. Figure 17.2 reports the reasons voters who were surveyed gave for voting to abolish the Seanad. A plurality of respondents cited the financial savings as the main reason for voting to abolish the Seanad. Despite the debate around the real savings that would arise from terminating the Senate, the argument clearly won favour with some voters. The other single most important factor encouraging a 'Yes' vote was the feeling that bicameralism was not needed in Ireland. Again, this was a central plank of the Yes campaign, based on the observation that small unitary states tend not to have bicameralism and countries which abolished bicameralism saw no obvious negative consequences.

An interesting aspect of the final results, as broken down by electoral boundaries, was a general increase in the margin in favour of abolition as one moved outside Dublin and its surrounding commuter-belt environs. The highest 'Yes'

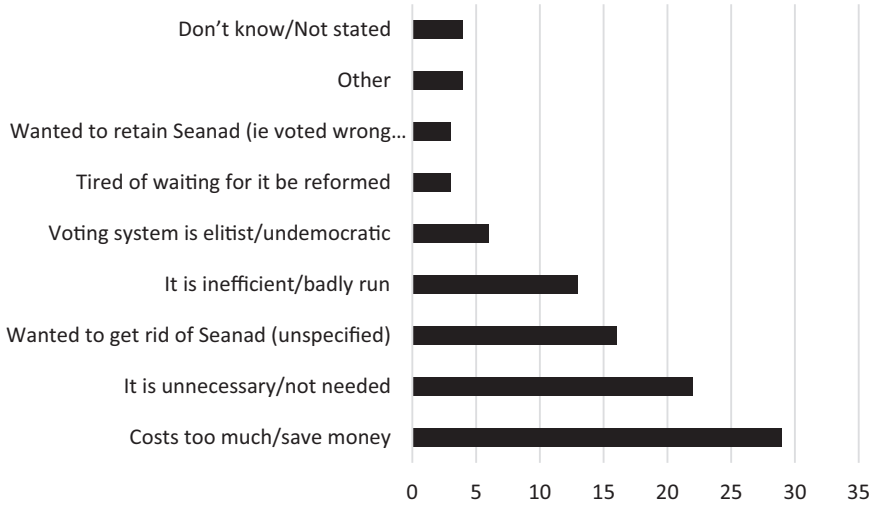


Figure 17.2 Reasons given for not voting in the Seanad referendum in Ireland

Source: Referendum Commission

Notes: Based on post-referendum survey conducted on behalf of the Referendum Commission. Respondents who indicated that they had voted yes were asked, 'Why did you vote yes?'

vote was recorded in the Taoiseach's home county of Mayo (57 per cent), while support for retention was highest in the most affluent and traditionally liberal constituencies around the capital, peaking at 61 per cent against the Senate's closure in Dublin South-East.

Figure 17.3 reports the rationales provided by those respondents who indicated that they had voted to retain the Seanad. Among those who voted 'No', the 'power grab' argument seems to have held some importance. The No campaign had argued, clearly with some level of persuasiveness, that the Irish political system was already heavily centralised, with significant legislative and executive powers concentrated in the governing executive. Thus, while almost everyone agreed that the Seanad had not been a particularly effective watchdog, the removal of a Senate would nevertheless grant too much control to the government (and the remaining chamber, which in effect is dominated by the government). This rationale may also explain the more general sentiment, reported by 21 per cent of respondents, that the Seanad was an important institution that they wanted to keep. While a positive desire to retain bicameralism dominated the reasons for voting 'No', 10 per cent of those who voted 'No' said they did so out of a dislike or distrust of the incumbent government – a common feature in midterm elections and referendums. Finally, it is worth noting that 4 per cent of 'No' voters said they did so because the Taoiseach declined to participate in live debates with other party leaders on the topic.

As can also be seen from Figures 17.2 and 17.3, there is some suggestion that the wording of the proposal on the ballot paper caused some confusion. Research

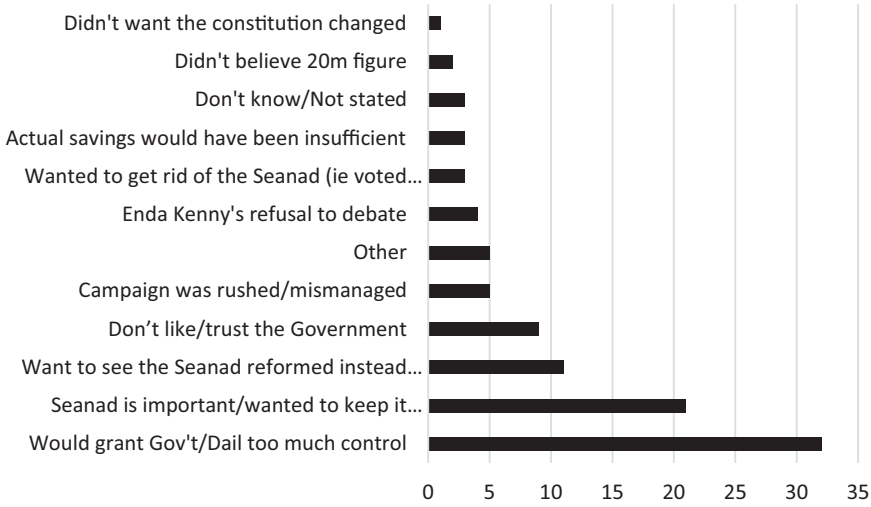


Figure 17.3 Reasons given for having voted to retain the Seanad in Ireland

Source: Referendum Commission

Notes: Based on post-referendum survey conducted on behalf of the Referendum Commission. Respondents who indicated that they had voted no were asked, 'Why did you vote no?'

by the Referendum Commission found that 13 per cent of those surveyed and who said they voted 'Yes' actually wanted to retain the Seanad. Fifty-five per cent of those surveyed agreed that it was quite difficult or very difficult to tell from the Seanad referendum ballot paper what they were being asked to vote for (Referendum Commission 2013).

Post-referendum reform proposals and the role of senates today

It is probably fair to say that Irish senators – saved from extinction – returned to work after the referendum result with a renewed desire to perform their duties and reform the Seanad. In response to the referendum result, the government established a Working Group on Seanad Reform which included politicians and academics, among others. The group's terms of reference noted that their principal focus should be on possible reforms of how the Seanad is elected, although only within the current constitutional framework. The working group was also charged with exploring the internal organization and the legislative process within the Senate. The group reported in early 2015 and made a number of arguably major suggestions for reform (Working Group on Seanad Reform 2015). The group's recommendations were prefaced by the assessment that that the current bicameral system in Ireland suffered from three fundamental problems:

1 an electoral system which was elitist and which disfranchised a majority of citizens;
2 a concept of vocational representation which had little substance in practice;
3 the absence of clear defining guidelines or public understanding of the Senate's role.

The group recommended a number of reforms, including

1 that thirty-six of the sixty seats be directly elected from five vocational panels and from the university constituency;
2 that thirteen of the sixty seats be indirectly elected from an electoral college of all elected county and city councillors, members of Dáil Éireann and outgoing Senators;
3 that citizens who are eligible to vote in the university constituency must opt to vote either in that constituency or on one of the five panels available to all citizens;
4 that the vote be extended to include Irish citizens in Northern Ireland and to holders of Irish passports living overseas.

With regard to role and function, the working group concluded that:

> a clear statement of the constitutional role of the Seanad as subordinate to the Dáil but with a very special and distinct role in the legislative and political

> process is a proper starting point for a redefinition of the role and contribution of the Seanad.
>
> (Working Group on Seanad Reform 2015, p. 10)

To date, the working group's report has been largely ignored. Six years on from the referendum, virtually no significant reforms to the Seanad have taken place. In April 2018, one prominent campaigner to retain the Seanad went on the record to suggest:

> There are a dozen other reports over the last 40 years. Lots of them have good ideas but I don't see any political will and in that context I remain deeply frustrated and disheartened. I think there is potential for the Seanad but as it exists it is not worth saving.
>
> (McMorrow 2018)

Indeed, it took until April 2018 for the government to agree to establish a group of Oireachtas members to be known as the Seanad Reform Implementation Group (SRIG). The group was charged with considering and reporting on the implementation of the recommendations of the Working Group on Seanad Reform – but again with the stipulation that it do so within the present terms of the constitution.

Conclusions

This chapter has demonstrated that Irish Senates have from the outset held an uncertain place in Irish public life that resonates with the comments of the Abbé Sieyès during the French revolution, who is alleged to have said 'if a second chamber [senate] dissents from the first, it is mischievous; if it agrees with it, it is superfluous' (quoted in Campion 1953, p. 17). Since the middle of the nineteenth century, the dominant view of the Irish Senate's role has been to give voice to regional, minority or sectional interests, with a particular emphasis on the Protestant Unionist tradition, though in practice it is hard to determine the effect of these representational arrangements on the quality of legislation and other activities by the Senate. Yet no other Irish political institution has had its role, composition, electoral system and indeed its very existence persist as matters of controversy as it has.

The 2013 referendum campaign engaged those in the media and academia quite vigorously. Despite the use of populist soundbites on both sides of the campaign, the general public seemed to lose whatever interest they had had as the campaign wore on, which concluded with one of the lowest turnouts in Irish referendum history, at just under 40 per cent of eligible voters. It seems that the cameral structure of the national legislature never became the hotly contested issue that other referendums (and particularly those on social policy issues) frequently produce in Ireland. While the governing parties were blocked in their attempt to abolish the Seanad a majority of the electorate, by declining to vote, simply chose to ignore the issue.

At time of writing, it is unlikely that a minority government will commit the necessary political capital required to engage in the major constitutional re-engineering involved in substantial reform of the chamber. Instead, it is in the hands of senators themselves to map out a future for an institution that has little profile or recognition in Irish daily life. In the context of changing demographics, Brexit and Ireland's place in the EU, as well as copious reports and recommendations for reform in recent years, there may yet be fruitful new roles found for Seanad Éireann as a parliamentary chamber. For example, alongside their traditional roles interrogating the executive's legislative agenda and providing a forum of public policy debate, new challenges now arise from the technological revolution in government, demands for more participatory forms of decision-making and the need for greater trust in democratic institutions. If this were to be addressed, it would represent a marked reverse in fortunes for senates in Ireland.

References

Breen, M. (2012), 'IMF surveillance of Ireland during the Celtic Tiger', *Irish Political Studies* 27(3), pp. 431–439.

Campion, G. (1953), 'Second chambers in theory and practice', *Parliamentary Affairs* 7(1), pp. 17–32.

Chubb, B. (1954), 'Vocational representation and the Irish senate', *Political Studies* 2, pp. 97–111.

Coakley, J. (2013), *Reforming Political Institutions* (Dublin: Institute of Public Administration).

Committee on the Constitution (1967), *Report of the Committee on the Constitution* (Dublin: Stationery Office).

Constitution Review Group (1996), *Report of the Constitution Review Group* (Dublin: Stationery Office).

Elgie, R. (2012), 'The president of Ireland in comparative perspective', *Irish Political Studies* 27(4), pp. 502–521.

Fianna Fáil (2011), *Real Plan, Better Future* (Dublin: Fianna Fáil).

Fianna Fáil (2013), *Real Political Reform* (Dublin: Fianna Fáil).

Fine Gael (2010), *New Politics* (Dublin: Fine Gael).

Foster, R.F. (1989), *The Oxford History of Ireland* (Oxford: Oxford University Press).

Gallagher, M. (2018), 'The Oireachtas: President and parliament', in: Coakley, J. and Gallagher, M. (eds.), *Politics in the Republic of Ireland* [6th edition] (London: Routledge), pp. 160–190.

Government of Ireland (2011), *Programme for Government* (Dublin: Stationery Office).

Labour Party (2011), *New Government, Better Government: Changing a Broken System* (Dublin: Parliamentary Labour Party).

Lijphart, A. (2012), *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (New Haven: Yale University Press).

Lynch, C. et al. (2017), 'Dáil reforms since 2011: Pathway to power for the "puny" parliament?', *Administration* 65(2), pp. 37–57.

MacCarthaigh, M (2005), *Accountability in Irish Parliamentary Politics* (Dublin: Institute of Public Administration).

MacCarthaigh, M. and Martin, S. (2015), 'Bicameralism in the republic of Ireland: The Seanad abolition referendum', *Irish Political Studies* 30(1), pp. 121–131.

Manning, M (2010), 'The senate', in: MacCarthaigh, M. and Manning, M. (eds.), *The Houses of the Oireachtas: Parliament in Ireland* (Dublin: Institute of Public Administration), pp. 153–166.

Mansergh, D. (2005), *Grattan's Failure: Parliamentary Opposition and the People in Ireland 1779–1800* (Dublin: Irish Academic Press).

Martin, S. (2014), 'Why electoral systems don't always matter: The impact of "megaseats" on legislative behaviour in Ireland', *Party Politics* 20(3), pp. 467–479.

Martin, S. and Rasch, B.E. (2013), 'Political parties and constitutional change', in: Müller, W.C. and Narud, H.M. (eds.), *Party Governance and Party Democracy* (New York: Springer), pp. 205–229.

Martin, S. and Strøm, K. (forthcoming), *Legislative Assemblies* (Oxford: Oxford University Press).

McMorrow, C. (2018), 'Politics professor says Seanad "is not worth saving" '. Available at: www.rte.ie/news/politics/2018/0415/954560-Seanad-reform/ (accessed 6 March 2019).

Murphy, M. (forthcoming), 'Bicameralism in a unitary state', in: Farrell, D. and Hardiman, N. (eds.), *The Oxford Handbook of Irish Politics* (Oxford: Oxford University Press).

O'Leary, E.N. (2014), 'Oireachtas inquiries referendum', *Irish Political Studies* 29(2), pp. 318–329.

O'Sullivan, D. (1940), *The Irish Free State and its senate: A Study in Contemporary Politics* (London: Faber and Faber).

Referendum Commission (2013), *Report on the Referendums on the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013 and Thirty-third Amendment of the Constitution (Court of Appeal) Bill 2013* (Dublin: Referendum Commission).

Seanad Éireann Committee on Procedures and Privileges Sub-Committee on Seanad Reform (2004), *Report on Seanad Reform* (Dublin: Houses of the Oireachtas).

Sinn Féin (2011), *There is a Better Way: Sinn Féin General Election Manifesto 2011* (Dublin: Sinn Féin).

Tsebilis, G. and Money, J. (1997), *Bicameralism* (Cambridge: Cambridge University Press).

Willumsen, D.M. and Goetz, K.H. (2015), 'Staggered political institutions: Design and effects', *Journal of European Public Policy* 22(7), pp. 1040–1051.

Working Group on Seanad Reform (2015), *Report of the Working Group on Seanad Reform* (Dublin: Department of the Taoiseach). Available at: www.taoiseach.gov.ie/eng/Work_Of_The_Department/Protocol/Working_Group_on_Seanad_Reform/2nd_version_Final_Seanad_Reform.pdf

18 Founding principles, constitutional conventions and the representation of Francophones living outside Quebec – the Canadian Senate since 1867

Linda Cardinal

Introduction

There has been a tendency throughout the twentieth century to abolish higher chambers. Portugal was one of the first countries, in 1910, to abolish its Senate, a tendency that become stronger in the second half of the twentieth century and appeared to have become the norm. Nevertheless, a new trend emerged in the course of the 1980s: a number of countries restored their senates, such as South Africa in 1994. Other countries installed new senates, such as Kazakhstan in 1995 and Bosnia-Herzegovina in 2003. Preliminary analysis of parliamentary websites internationally indicates that the number of senates has increased from forty-five in 1970 to seventy in 2000 (Delfosse & Dupont 1999; Gélard 2005–2006).

Experts on bicameralism agree there are numerous advantages to having an upper chamber (Gélard 2005–2006; Smith 2009; Watts 2009). For example, as an institution it is often viewed as a means for power sharing and the recognition of diversity in contemporary democracies (Paterson & Mulghen 1999; Uhr 1999). Canadian experts on bicameralism also underline the key role of the Canadian Senate for the representation of minorities (Watts 2009; Smith 2003, 2009). However, when experts write about minorities in Canada, they usually imply French speakers from Quebec and not those living outside Quebec – as this chapter discusses. There are exceptions. In 1963, Kunz and McKay suggested, in their classic books on Canadian institutions, that Francophones outside Quebec, in particular those living in the Western provinces, had a right to be represented in the Senate (Kunz 1963; MacKay 1963). In 1968, Orban argued in his history of the Senate in Quebec that the Senate was an institution for the representation of the province's English-speaking minority (Orban 1969). Unfortunately, recent research on senate reform in Canada has avoided discussing its role for Francophone communities (Smith 2009). Filling this void is thus important because existing research, by focusing solely on Quebec, neglects important historical practices and data.

More specifically, in 2015, with the change of government from Conservative to Liberal, an important shift in the Canadian Senate appointment process was introduced in favour of group representation. The Government of Canada

established the Independent Advisory Board for Senate Appointments to preside over senatorial nominations (Government of Canada 2019). Notably, the Committee's mandate entails recommending persons with disabilities, visible minorities or ethno-cultural minorities, linguistic minorities (i.e. Anglo-Quebeckers and Francophones living outside Quebec), indigenous peoples and women to the Prime Minister's office for him or her to choose among a list of five candidates. Between 2016 and 2018, the governor general of Canada, following a recommendation by the Prime Minister of Canada, has appointed forty-five senators from those groups, including twenty-six women, eight members of First Nations, four members of Francophone communities outside Quebec, persons belonging to a visible minority and persons with disabilities (Parliament of Canada n.d.; cf. Griffiths 2017). This is an important move for group representation in Canada. At the time of writing, of the 105 senators currently in office, women represented 46 per cent; indigenous senators, 11 per cent; Francophone senators from outside Quebec, 8 per cent.

This chapter focuses on the historical role of the Canadian Senate as a representative chamber for Francophones living outside Quebec since its inception in 1867 (cf. Cardinal & Grammond 2017). Asserting a distinct identity from Francophone Quebeckers, they represent around 4 per cent of the Canadian population outside Quebec (Statistics Canada 2018). Being appointed to the Canadian Senate is thus an important way to compensate for their lack of effective representation in the House of Commons (Cardinal & Grammond 2017). More specifically, this chapter discusses the importance of constitutional conventions for the representation of Francophones outside Quebec in the Canadian Senate. Data show that historically the appointment of Francophones outside Quebec to the Canadian Senate has been guaranteed by constitutional convention. Briefly put, the Supreme Court of Canada (SCC) determines a constitutional convention by asking three questions, which it borrows from Sir W. Ivor Jennings's *The Law and the Constitution*. Those questions are as follows: 'first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule?' (Supreme Court of Canada 1981). For the SCC,

> A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it.
> (Supreme Court of Canada 1981)

Although the new process put in place by the Canadian government in 2015 represents an important step for group representation, this chapter suggests that constitutional conventions are still relevant for discussing the representation of Francophones outside Quebec in the Canadian Senate.

This chapter does not address all types of group representation, since it is a recent phenomenon for which there is still very little available data (Massicotte 2016; Griffiths 2017). As alluded to earlier, the chapter also makes an important distinction between Quebec, where one finds the majority of Francophones

in the country, and Francophones in the other provinces. Most commentators view Francophones in Canada as synonymous with French Canadians living in Quebec. Furthermore, since the 1980s, philosophers such as Will Kymlicka and Charles Taylor have defined Quebec as a national minority or a minority nation with the understanding that its unique situation in Canada deserves to be recognised both politically and constitutionally (cf. Kymlicka 1996, 1998; Taylor 1994).

However, this emphasis put on Quebec needs to be placed in its broader context. Francophones, or French Canadians, as they were called until the 1960s, do not all live in Quebec. They also have demands of their own, most of which date back to the nineteenth century. To be sure, while Quebeckers claim their recognition as members of a nation, Francophones outside Quebec claim that they have a right to autonomy (Cardinal & Gonzales-Hildago 2012). They also call on the federal government for the protection of their rights and for better representation in Parliament, in particular in the Canadian Senate. They insist on their status as official language minority communities at both the federal and the provincial levels. Thus, their specific history makes it appropriate to treat Francophones outside Quebec as a separate category.

First, this chapter reviews, briefly, the literature on the representation of minorities in bicameral institutions and further discusses the relevance of studying Francophones living outside of Quebec. Second, it presents a historical overview of their ongoing presence in the Canadian Senate since 1867. Third, this chapter further explores the impact of constitutional conventions on the representation of Francophones outside Quebec in the Senate in the context of the new process introduced by the Canadian government in 2015.

Bicameralism and the political representation of minorities in Canada

A history of the Canadian Senate, even with a focus on Francophones living outside Quebec, needs to acknowledge the important role of Quebec in the development of the institution. At the time of Confederation (1867), the population of Canada was 3.2 million people, of which 1 million were French Canadian. As the English-speaking population of Canada was growing at a quicker pace – 4.35 per cent per year in Upper Canada (Ontario) – adopting the principle of representation by population in the new House of Commons was disadvantageous to Quebec. It was thus necessary to find a compromise in order to ensure and protect the interests of French Canadians and particularly those living in Quebec. This explains why the creation of the Canadian Senate owes so much to the debate on minorities. Because of Quebec, the new institution would be based on the principle of equal representation at the regional level in order to limit the negative effects of political representation solely based on population. Lower Canada (Quebec) would have a fixed and guaranteed representation to compensate for its growing numerical disadvantage in the Commons (cf. Grittner, this volume; Smith, D. E., this volume).

Combined with the regional principle, the principle of minority interests, including linguistic minority rights, is thus a founding principle of the Canadian Senate. At the time, in Canada, the concept of minority interests also included the representation of the wealthy few (Ajzenstat 2003). The hereditary principle of the British House of Lords could not be reproduced in Canada, but it has informed the position that the Canadian Senate should not be elected (Province du Canada 1865, p. 87).

Even though the distribution of seats in the Senate has been guided by a principle of regional equality, the *1867 Constitution Act* is not explicit to that effect – despite the fact that commentators of the Canadian Senate often describe the Senate as a regional chamber. The principle of minority rights or interests has also informed the representation of Francophones living outside Quebec in the Senate despite any specification to that effect in the *1867 Constitution Act*. As the chapter shows (see Figure 18.1), there is a tradition of representing members coming from those communities since the inception of the Senate. Furthermore, from the 1960s to the 1990s, a period well known in Canada for its constitutional debates on the status of Quebec in the federation, the federal and provincial governments were fully aware of the constitutional importance of Francophones living outside Quebec (and of indigenous peoples) for the country (Cardinal & Grammond 2017).

In the 1999 *Reference on Quebec Secession*, the Supreme Court of Canada also asserted that the Canadian constitution rests on four unwritten principles, including of the protection of minority rights (Supreme Court of Canada 1998). In 2014, in its *Reference on the Senate Reform* (2014, paragraph 16), the Supreme Court of Canada further recognised that the Canadian Senate had among its attributes the role of representing 'minority interests' (Kinsella 2014). Thus, in Canada, with the regional principle, the representation of minority interests constitutes an important compromise with the principle of representation by population. It is a guiding principle for the appointment of senators, in particular for Francophones living outside Quebec.

This is most important because Francophones living outside Quebec have not been particularly well treated historically by their governments. To be sure, in 1867, the adoption of federalism was meant to provide specific protection to Francophone culture and language, in particular in Quebec. Since the 1950s and 1960s, the Quebec government has been well known for using federalism to develop its own approach to public policy (cf. Béland & Lecours 2008). At the time of Confederation, French Canadian senators from Quebec used their voice in the Senate to argue for more protection for the French language and culture. In contrast, in the other Canadian provinces, the presence of Francophone communities was seen more often than not as a threat to the Anglo-Protestant character of those provinces (Berger 1970; Cardinal 2015).

In Canada, language is an area of ancillary jurisdiction. This means that all governments can adopt legislation pertaining to the use or recognition of languages. At the time of Confederation, provincial governments were relatively tolerant towards their Francophone communities. However, with the development of Anglo-conformist movements across the country during the nineteenth and early

twentieth century, all provincial governments adopted legislation prohibiting French as a language of schooling – even in their legislative assemblies in some cases (cf. Cardinal & Foucher 2017). Even though those policies were challenged by many actors from Francophone associations and vehemently denounced by the Quebec government at the time, those provincial governments which prohibited the French language were considered to be acting within their own sphere of competence, as constitutionally defined.

In the 1960s the situation in many provinces started to change for the better (Cardinal 2015). New Brunswick and Ontario, for example, adopted legislation and policies more favorable to their Francophone minorities. In 1968, New Brunswick became Canada's first and only officially bilingual province. In 1986, the government of Ontario adopted its first legislation on French Language Services.

At the same time, Francophone senators from outside Quebec used their position to promote their communities and the need for more language rights. For example, in 2001, while Francophones outside Quebec gained greater recognition as constitutional actors in their own right, the Senate created a permanent committee for official languages under the leadership of Franco-Ontarian Senator Jean-Robert Gauthier (cf. Senate of Canada 2002). This institutionalisation of official languages by the Senate has had an impact. Since its inception, the committee has conducted many studies, held numerous consultations on issues relevant to Francophone communities and led major initiatives to improve the *Official Languages Act*. More specifically, in 2005, the committee succeeded in amending the *Official Languages Act* in order to include the mention that the Canadian government must adopt 'positive measures' for the enhancement and development of its official language minorities. In 2017, the committee was invited to lead a major study on whether the Canadian government should modernise the *Official Languages Act*. In 2018, the Prime Minister of Canada announced that he would go ahead with the project.

To summarise, while the Senate is viewed as a chamber for regions, the principle was not written into the *1867 Constitution Act*, but it helped guarantee Quebec's presence in the Senate. The protection of minority rights is another important founding but unwritten principle which also has had its impact. It was meant to protect French Canadian culture in Quebec, but minority rights or minority interests have also informed the appointment of members from Francophone communities in the Senate. The chapter will show, successive prime ministers have felt bound or obliged to appoint senators from those communities.

Francophone representation in the Canadian Senate since 1867

In the nineteenth century, the majority of Francophones living outside Quebec were found in Ontario and in the Atlantic provinces (New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island). In Ontario at the time, there were roughly 75,000 Francophones (Bonenfant 1966). Their presence dates back from the French presence in the seventeenth century, where they

were found mostly in the southern part of the province, in particular in the areas of Toronto and Windsor. They also lived in the north, where they formed small villages around the Lake Huron and Lake Superior – with indigenous peoples; many moved further west to what would become the province of Manitoba in 1870, followed by the creation of the provinces of Saskatchewan and Alberta in 1905, where Francophones and Métis people (people of mixed indigenous and European ancestry) also emigrated. During the nineteenth century, Francophones from Quebec emigrated from their province to Upper Canada, where they formed villages and small cities on the eastern border with Quebec. Soon they formed the majority of the population in the area and have maintained their (relative) numbers ever since.

While many Francophones in Ontario and in the Western provinces, such as Manitoba, have roots in Quebec, in the Atlantic provinces, Francophones have a distinct history and identity. They call themselves Acadians and still claim this identity since their coming to New France in the sixteenth century. In contrast to other Francophones, they were found mostly in the province of Nova Scotia. However, in 1755, Acadians were deported by the British for refusing to pledge allegiance to the King. After their deportation, they could be found in other Atlantic provinces as well as in the United States – Louisiana in particular. Some also returned to France, and many moved to eastern parts of Quebec. However, Acadians are specifically identified with the Atlantic provinces of Newfoundland and Labrador, New Brunswick, Nova Scotia and Prince Edward Island. Today, in New Brunswick more specifically, they represent 32 per cent of the population.

At the time of Confederation, Acadians were more numerous than Francophones in Ontario, representing approximately 87,000 people at the end of the nineteenth century. However, as was the case for Francophones from Ontario, no representatives from the Acadian population were invited to participate in the Confederation debates. This may explain why Acadians, in particular, were quite active in opposing the new constitution (Migneault 2016). That said, once Confederation was established, Acadians lobbied actively for senatorial appointments.

Figure 18.1 provides a first overview of all appointments to the Senate since 1867, with a particular focus on Francophones living outside Quebec. It shows that appointments to the Senate of members from those groups were made as early as 1871. It also shows more explicitly the evolution of senatorial nominations of Francophones outside Quebec made by the different prime ministers.

In 1871, Prime Minister John A. Macdonald appointed the first Francophone senator from outside Quebec to represent Manitoba, followed by the first Acadian in 1885 and the first Francophone from Ontario (or Franco-Ontarian) in 1887. In 1895, Prime Minister Mackenzie Bowell appointed the first Francophone, or Acadian, from Prince Edward Island. In 1906, Prime Minister Wilfird Laurier appointed the first Francophone senator from Alberta. In 1907, he also appointed the first Francophone from Saskatchewan and the first Acadian from Nova Scotia. In 1975, Prime Minister Pierre Elliott Trudeau appointed the first Francophone from the Yukon. Some provinces and territories, such as British Columbia and

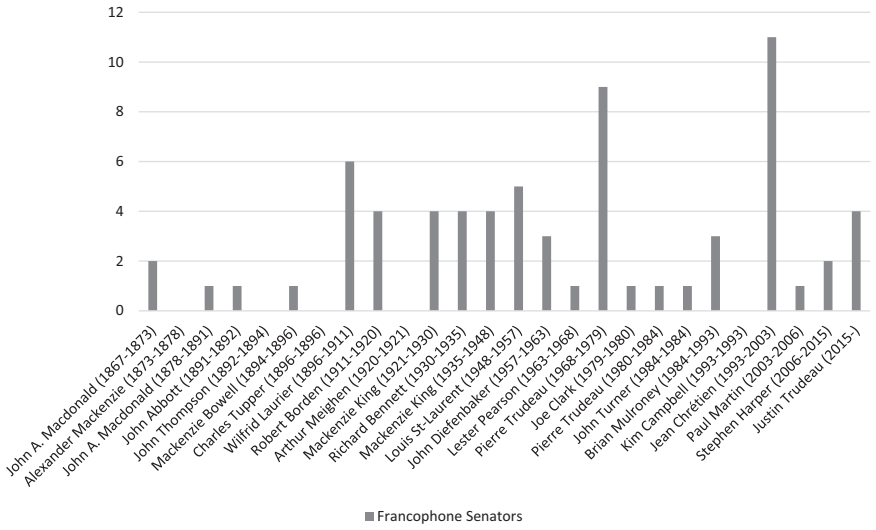


Figure 18.1 Senatorial nominations of Francophones living outside Quebec under successive Prime Ministers since 1867

Source: Library of Parliament (2018)

Newfoundland and Labrador, Nunavut and the Northwest Territories, have never had a Francophone senator.

Figure 18.1 illustrates that Canadian prime ministers have established a solid tradition of appointing Francophone members from outside Quebec to the Senate. Since its creation, a total of 958 individuals have been appointed to the Senate. The number includes sixty-six senators (fifty-six male and ten female) from Francophone communities outside Quebec.

In the succession of twenty-three Canadian prime ministers, of which twenty-one made senatorial appointments, seventeen have nominated one or more Francophone senators from outside Quebec. Representatives of Francophone communities were thus among the first cohorts of senators appointed by Prime Minister Macdonald. For example, both Manitoba's and Alberta's first senatorial nominations of Francophones were made with the creation of the two provinces. In 1884, Joseph Tassé, editor of the Montreal newspaper *La Minerve*, called for the appointment of a Franco-Ontarian senator. Interestingly, Prime Minister Macdonald responded to Tassé that he would do his best and, in 1887, appointed the first Franco-Ontarian senator. Moreover, Prime Minister Macdonald and those who followed continued to appoint Francophone senators in other provinces. In doing so, they ensured continuity and confirmed the importance of maintaining a Francophone presence in the Senate.

In 1928, a total of seven senators representing Francophone and Acadian communities sat in the Senate at the same time. Those seven senators represent a first

group with common interests as French Canadians and Acadians, of which three were from New Brunswick, two from Ontario, one from Nova Scotia and one from Manitoba. Together, they represented 7.3 per cent of the ninety-six senators. They were eight in 1931, when another senator from Saskatchewan joined the group, which means 8.4 per cent of all ninety-six senators. At the time, this percentage was the same as the proportion of Francophones living outside Quebec (Statistique Canada 2018).

In 1935, another confirmation of how prime ministers felt bounded by the convention of appointing Francophone senators came from the campaign to have an Acadian from Nova Scotia nominated to the Senate by Prime Minister Bennett. In a letter about this appointment, Bennett writes, 'The real difficulty is that the vacancy in Nova Scotia representation to the Senate belongs to the Acadian section of the population' (Cardinal & Grammond 2017, pp. 37–38). He does 'not see how it would be possible to appoint other than an Acadian as a successor to Senator Girroir'.

The convention of appointing Francophone senators from outside Quebec has continued into the twentieth and the twenty-first centuries in almost all provinces. In 1968, a total of nine senators represented Canadian Francophone communities. Figure 18.1 also shows that, from the 1980s onwards, appointments of Francophones were steady although never numerous. They were ten in 1979, 1985, and 1995. In 1996, they were eleven: six from New Brunswick, two from Ontario, one from Nova Scotia, one from Yukon and one from Manitoba. In 2010, the number decreased to nine; in 2012, to eight. In 2018, there were eight senators from Francophone communities.

The appointment of the first Francophone women from outside Quebec came from Ontario and New Brunswick and were made in 1995 by the governor general under the advice of Prime Minister Jean Chrétien. Since then, a total of nine Francophone women have been appointed from Ontario, New Brunswick, Alberta and Manitoba.

The prime ministers who appointed the most senators from Francophone communities have been Liberals. Jean Chrétien appointed the largest number: eleven during his tenure, followed by Pierre Elliott Trudeau (nine), William Lyon Mackenzie King (eight), Wilfrid Laurier (six), Louis St. Laurent (five) and Justin Trudeau (five). Conservative nominations are less frequent. But one must also remember that, historically, the Conservatives have held power less frequently than the Liberals: sixty-five years for the Conservatives in comparison with eighty-six years for the Liberals. Admittedly, the numbers of Francophones Senators from outside Quebec are very small relative to the total number of senators appointed. However, their presence is constant, which attests to the fact that there is a solid tradition of appointing senators from Francophone communities since the creation of the Senate. This presence also reflects their percentage of the general population.

Constitutional conventions and the future of Francophone representation in the Canadian Senate

As suggested earlier, the historical role of the Canadian Senate in the representation of Francophones outside Quebec depends much on an established constitutional

convention. However, in 2018, when Prime Minister Trudeau appointed new members from Nova Scotia to the Senate, Francophones from the province were disappointed to learn that for the first time since its creation, no Acadian from Nova Scotia would be representing them (Vachet 2018). This is an important turning point for Acadians in the province. It may also be viewed as a breach with the existing constitutional convention.

In the past, debates on Senate reforms have given rise to a number of proposals to guarantee the appointment of Francophones outside Quebec. In 1990, the Federation of Francophone and Acadian communities of Canada even proposed the creation of Francophone senatorial ridings. The Federation also invited the Canadian government at the time to increase senatorial representation of Acadians from New Brunswick from three to four and Francophones in Ontario from one to two and to ensure a proper representation of Francophones in British Columbia, which has never had a Francophone senator appointed. However, these recommendations were never taken up by the government (Cardinal & Grammond 2017).

With the new process put in place by the Canadian government in 2015, the requirement that the Independent Advisory Board (the Board) recommends persons from linguistic minority groups suggests that constitutional conventions are still relevant for discussing the representation of Francophones outside Quebec to the Canadian Senate. To be sure, the Board is composed of three members appointed by the federal government and two members appointed by the province from which Senators should be named, should that province wish to take part in the process. The committee assesses candidates in connection with a list of criteria that include character and ethics, experience with the legislative process, service to the community and an outstanding record of accomplishments. For each vacancy, the committee proposes a list of five names, and the prime minister takes this list into consideration. In addition, the government states that it seeks to achieve gender parity in the Senate and will give priority to indigenous candidates or those from minority linguistic and cultural communities 'with a view to ensuring representation of those communities in the Senate consistent with the Senate's role in minority representation' (www.canada.ca/en/campaign/independent-advisory-board-for-senate-appointments.html).

This more formal process constitutes a commitment by the Prime Minister to follow a predetermined process according to a set of pre-established criteria before exercising the power of appointment conferred to him by the constitution. This procedure is similar to the one used over the past three decades for the appointment of superior court judges (Cardinal & Grammond 2017). This senatorial appointment procedure does not (officially) limit the (constitutional) power of the prime minister and does not, in itself, undermine patronage and partisanship in a fundamental way. At best, the current process could lead to the establishment of a new constitutional *convention* (MacFarlane 2017; Verrelli 2017). As a new convention, it is becoming an important force in the organisation of the Senate since it structures a part of the appointment process. For the SCC, 'the requirements for establishing a convention bear some resemblance with those which apply to customary law. Precedents and usage are necessary but do not suffice. They must

be normative' (Supreme Court of Canada 1959, p. 139). In this context of creating a new convention, the existing constitutional convention accounting for past appointments of Francophones outside Quebec to the Canadian Senate should also be acknowledged, given the constant concern from past prime ministers to the effect that Francophones outside Quebec will continue to ask to be represented in the Senate. Acknowledging the normative force behind the practice of appointing members from those communities would, more generally, also confirm the important interaction between constitutional conventions and the principle of minority rights in the development of Canada's Senate.

Acknowledging the importance of constitutional convention as a step forward, any government wishing to guarantee the representation of Francophones outside Quebec in the Senate could also go another step further and adopt federal legislation that would formally constrain the discretion of the prime minister with respect to the recommendations of senators for appointment. This would institutionalise a process that is so far based only on a government's statement of intent. A law would be more difficult to modify, and it would apply to subsequent governments – at least until they chose to amend it, which would lead to public debate.

The fact that the power to appoint senators is provided through a constitutional provision does not prevent Parliament from enacting legislation to govern this discretion, provided that Canada's constitutional architecture is not modified. As an analogy, the constitution also gives the federal executive power to appoint judges, while an act of Parliament imposes conditions on the exercise of that power by requiring that the person appointed has been a member of the bar for at least ten years. It also seems possible that a law could determine how to prepare a list of candidates to be presented to the minister of justice.

It is thus possible to imagine the adoption of legislation dealing with a senatorial appointment procedure. First of all, the law would formalise the existence of the Independent Advisory Board and provide for provincial participation in that committee. For example, the law could fix a minimum number of Francophone senators for certain provinces – a proposal echoing that of the Federation in the 1990s, mentioned earlier. These numbers could be determined by taking into account the total size of the Francophone population of a province, its proportion relative to the population of a province and the number of seats the latter has in the Senate.

More ambitious reforms would require a constitutional amendment, which would protect negotiated procedures from hostile parliamentary majorities. Assuming, for the sake of argument, that such reforms are possible, which innovations would be beneficial in terms of increasing group representation in the Senate? We can conceive of both a formal distribution of seats and a selection process that better guarantees inclusion of Francophones outside Quebec.

Conclusion

To conclude, data on Francophone senators outside Quebec show that they have been appointed steadily even though they are never they are NOT numerous. This

tradition of appointing Francophone senators outside Quebec dates from the foundation of the Canadian Senate. This chapter has also insisted that this tradition constitutes a constitutional convention which should be more explicitly acknowledged. Moreover, the representation of minority interests is one of the fundamental attributes of the Senate, as pointed out by the Supreme Court of Canada in its *Senate Reference* (Cardinal & Grammond 2017).

However, the tradition of appointing members from Francophone communities to the Senate remains fragile. This is why the chapter suggests that the debate for more guarantees for their representation continues to be relevant. It also proposed the adoption of a legislation within the existing constitutional framework or, more ambitiously, that the Canadian government enshrines constitutionally minority group representation for Francophone communities. There is a compelling case for arguing that Canada's democracy is not solely based on the principle of popular representation. Canada's history of representation includes minority interests.

References

Ajzenstat, J. (2003), 'Le bicaméralisme et les architectes du Canada', in: Joyal, S. (ed.), *Protéger la démocratie canadienne* (Montreal: McGill-Queen's University Press), pp. 3–34.

Béland, D. and Lecours, A. (2008), *Nationalism and Social Policy* (Don Mills: Oxford University Press).

Berger, C. (1970), *The Sense of Power: Studies in the Ideas of Canadian Imperialism, 1867–1914* (Toronto: University of Toronto Press).

Bonenfant, J-C. (1966), *Les Canadiens Français et la naissance de la Confédération* (Ottawa: Société historique du Canada).

Cardinal, L. (2015), 'Language regime and language politics in Canada', in: Cardinal, L. and Sonntag, S. (eds.), *Language Regimes and State Traditions* (Montreal: McGill-Queen's University Press), pp. 29–43.

Cardinal, L. and Foucher, P. (2017), 'Minority languages, education and the constitution in Canada', in: Oliver, P. (ed.), *Oxford Handbook of Canadian Constitutionalism* (Don Mills: Oxford University Press), pp. 553–574.

Cardinal, L. and Grammond, S. (2017), *Une tradition et un droit. La représentation de la francophonie canadienne au Sénat* (Ottawa: Les Presses de l'Université d'Ottawa).

Cardinal, L. and Gonzales-Hildago, E. (2012), 'L'autonomie de minorités francophones hors Québec au regard du débat sur les minorités nationales et les minorités ethniques', *Minorités linguistiques et société* 1(1), pp. 51–65.

Delfosse, P. and Dupont, J-P. (1999), 'Des Sénats', *Revue internationale de politique comparée* 6(1), pp. 7–11.

Gélard, P. (2005–2006), *Rapport sur les secondes chambres en Europe: Complexité parlementaire ou nécessité démocratique ?* Study No. 335 (Strasbourg: Commission européenne pour la démocratie par le droit).

Government of Canada (2019), 'Comité consultatif independent sur les nominations au Sénat'. Available at: www.canada.ca/fr/campagne/comite-consultatif-independant-sur-les-nominations-au-senat.html (accessed 7 April 2019).

Griffiths, A. (2017), 'Diversity in the senate', *Policy Options*. Available at: http://policyoptions.irpp.org/magazines/february-2017/diversity-in-the-senate/ (accessed 4 March 2019).

Independent Advisory Board for Senate Appointments, "Assessment criteria", Ottawa, Government of Canada. Available at: www.canada.ca/en/campaign/independent-advisory-board-for-senate-appointments.html (accessed 11 Décembre 2015).

Kinsella, N.A. (2014), 'The senate – an essential house of parliament', *Canadian Parliamentary Review*. Available at: www.revparl.ca/37/1/37n1e_14_kinsella.pdf (accessed 11 April 2019).

Kunz, F.A. (1963), *The Modern Senate of Canada, 1925–1963: A Re-appraisal* (Toronto: University of Toronto Press).

Kymlicka, W. (1996), *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Don Mills: Oxford University Press).

Kymlicka, W. (1998), *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Don Mills: Oxford University Press).

Library of Parliament (2018), *PARLINFO*. Available at: www.parl.gc.ca/parlinfo (accessed 4 Nov. 2018).

Macfarlane, E. (2017), 'Senate reform: The good, the bad, and the unconstitutional', *Policy Options*. Available at: http://policyoptions.irpp.org/fr/magazines/september-2015/the-future-of-the-senate/senate-reform-the-good-thebad-and-the-unconstitutional/ (accessed 4 March 2019).

MacKay, R. (1963), *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart).

Massicotte, L. (2016), 'Le Sénat a-t-il changé depuis 1980? Quelques indicateurs statistiques', *Revue parlementaire canadienne* Spring, pp. 14–18.

Migneault, G. (2016), 'Le Canada français et la Confédération: les Acadiens du Nouveau-Brunswick', in: Caron, J., Martel, M. and Pelletier, R. (eds.), *Le Canada français et la Confédération: fondements et bilan critique* (Québec: Les Presses de l'Université Laval), pp. 9–28.

Orban, E. (1969), 'La fin du bicaméralisme au Québec', *Revue canadienne de science politique* 2(3), pp. 312–326.

Parliament of Canada (n.d.), *Parlementaires*. Available at: https://bdp.parl.ca/sites/ParlInfo/default/fr_CA/Personnes/parlementaires?refiners=4-1&refiners=4-2&refiners=5-5&refiners=1-2&refiners=1-1&refiners=1-3&projectionCode=1&q=&parlType=all&parlinfo_parliamentarians_length=25 (accessed 11 April 2019).

Paterson, S. and Mulghen, A. (eds.) (1999), *Senates. Bicameralism in the Contemporary World* (Columbus: Ohio State University Press).

Province du Canada (1865), *Assemblée législative, Débats parlementaires sur la question de la Confédération des provinces de l'Amérique britannique du Nord*, 8e parlement provincial, 3e session (s.l.).

Savoie, D. (2009), *I'm from Bouctouche, Me* (Montreal: McGill-Queen's University Press).

Senate of Canada (2002),*Comité sénatorial permanent du règlement, de la procedure et des droits du parlement. Moderniser le sénat de l'intérieur: actualisation de la structure des comités senatoriaux*. Available at: https://sencanada.ca/en/Content/Sen/chamber/371/journals/122ap_2002-06-11-f#B.%20Un%20Comit%C3%A9%20des%20langues%20officielles (accessed 11 April 2019).

Smith, D.E. (2003), 'L'adaptation possible du Sénat sans avoir à réformer la Constitution', in: Joyal, S. (ed.), *Protéger la démocratie canadienne* (Montreal: McGill-Queen's University Press), pp. 246–289.

Smith, J. (ed.) (2009), *The Democratic Dilemma: Reforming the Canadian Senate* (Montreal: McGill-Queen's University Press).

Statistics Canada (2018), *French and the Fracophonie in Canada*. Available at: https://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-314-x/98-314-x2011003_1-eng.cfm (accessed 11 April 2019).

Statistique Canada (2018), *L'évolution des populations de langue maternelle au Canada, de 1901 à 2016*. Available at: https://www150.statcan.gc.ca/n1/pub/11-630-x/11-630-x2018001-fra.htm (accessed 11 April 2019).

Supreme Court of Canada (1981), *Reference: Resolution to amend the Canadian Constitution* [5th edition; 1st edition 1959]. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2519/index.do (accessed 11 April 2019).

Supreme Court of Canada (1998), *Reference re Secession of Quebec*. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do?site_preference=normal (accessed 11 April 2019).

Taylor, C. (1994), *Multiculturalism. With commentary by K. Anthony Appiah, Jürgen Habermas, Steven C. Rockefeller, Michael Walzer, and Susan Wolf Edited and introduced by Amy Gutmann* (Princeton: Princeton University Press).

Uhr, J. (1999), *The Senate and Proportional Representation: Public Policy Justifications of Minority Representation* (Canberra: Australian National University).

Vachet, B. (2018), 'Trudeau ignore la demande des Acadiens de la Nouvelle-Écosse', *ONFR*. Available at: https://onfr.tfo.org/trudeau-ignore-la-demande-des-acadiens-de-nouvelle-ecosse/ (accessed 11 April 2019).

Verrelli, N. (2017), 'The senate: Should it stay or should it go?', *Policy Options*. Available at: http://policyoptions.irpp.org/magazines/september-2015/the-future-of-the-senate/the-senate-should-it-stay-or-should-it-go/ (accessed 4 March 2019).

Watts, R. (2009), 'Federal second chambers compared', in: Smith, J. (ed.), *The Democratic Dilemma: Reforming the Canadian Senate* (Montreal: McGill-Queen's University Press), pp. 35–48.

Appendix

Names of North Atlantic small nation in the 19th and 20th century

Country	*Name of Upper House*	*Name of Lower House*
Belgium	Dutch: Senaat, French: Sénat	Chamber of representavives
Canada	English: Senate French: Sénat	English: House of Commons French: Chambre des Communes
Denmark	Landsting (abolished 1953)	Folketing
Finland	–	Finnish: Suomen eduskunta Swedish: Finlands Riksdag
Ireland	Seanad Éireann	Dáil Éireann
Netherlands	Eerste Kamer	Tweede Kamer
Norway	Lagting	Odelsting
Sweden	Första kammaren Abolished 1970	Andra kammaren

Index

Note: Page numbers in *italics* indicate a figure and page numbers in **bold** indicate a table on the corresponding page.

abolition of the senate 41, 143, 144
absolutism 60, 62, 65, 143, 233
Acadian (communities) 263; Acadians 260
Act of Union 240
Adams, John 16 –18
Addams, Jane 190
Adler, Johan Gunder 32, 33, 38
Adler, Victor 124
Adolf, Gustav, Crown Prince, Sweden 142
Age of Revolution 2, 6, 15
American Revolution 6, 221
Anglo-Irish Treaty 154–158, 163–165, 202, 241
anti-democratic ideology 91 –101, 194, 199
Anti-Revolutionary Party (ARP), and the Netherlands 176
aristocracy 16 –17; and Canada 192; and Denmark 60, 64; and Finland 119 –123; and Ireland 159; and the Netherlands 147, 150 –152; and the Southern Netherlands 43 –48, 51–54; and Sweden 134 –136, 143, 217–218;*see also* populism
Army Comrades Association, and Ireland 165
Austria 1, 44, 48, 69, 78, 124, 174

Baltic states 124, 142
Batavian Republic 2, 5, 15 –25, 33, 45
Battle of Leipzig 31
Baxter, Patrick 209, 212
Belgium 1, 6–7, 43–58, 65, 106–115, 174, 178, 181; *see also* Southern Netherlands
Bennett, Richard Bedford 262
Bernadotte, Jean Baptiste 6, 31, 34, 39
bicameralism 1 –3, 6, 8–9; and the Batavian Republic 20 –24; and Belgium 106; and British North America 91; and Canada 77 –78, 81, 84, 255, 257–259; and Denmark 60, 64 –67, 69–70, 233; and Finland 116 –123, 125–130; and France 15 –18; and Ireland 202, 204, 239 –253; and the Netherlands 173 –174, 184; and Norway 31–41; in revolutionary Europe 15, 24 –25; and the Sister Republics 18 –20; and the Southern Netherlands 44, 46, 51; surrogates for bicameralism 127 –130; and Sweden 133 –134, 136–137, 143, 216 –223
Binchy, Daniel A. 202, 204
Bismarck, Otto 151
Boissy d'Anglas 16, 17, 18
Bolshevik coup 142
Bondevennerne see 'Friends of the Peasants'
Borden, Robert Laird 188
Borgerting 234
Bosnia Herzegovina 255
Boström, Erik Gustaf 140
bourgeoisie 218
Bowell, Mackenzie 260
Branting, Hjalmar 140, 142
British Commonwealth 157
British North America Act 1867 200
Brown, George 1, 78
Brown, Michael (Bishop) 210
Bruun, Mads Pagh 67 –68

Buys, Joannes Theodorus 146–152
Bulgaria 78, 128
bulwark (senate as) 45, 52, 129, 143, 173
burghers 117, 121–122, 134, 136; *see also* bourgeoisie

Campbell, James 159
Canada 1–2, 4–5, 7–9, 75–87, 91–101, 167, 188–201, 255–267; *see also* Quebec
Carré de Malberg, Raymond 106
Catholics: and Belgium 112; and Canada 77, 80; and Ireland 154–162, 203–204, 210–212, 240–243; and the Netherlands 150, 176, 179–180; and the Southern Netherlands 47–48, 50–52, 54
chamber(s) de réflexion, chamber of sober second thought 23, 60, 66, 81, 83, 143
Chrétien, Jean 262
Christensen, Jens Peter 233
Christian Democrats 182
Christiansen, Peter Munk 233
Church of England 196
Cisalpine Republic 18
civil war: and Ireland 154–155, 158–160, 163, 203; and the United States 1, 154–155
clergy 3, 147
Comité de Salut Public 15
Communist International 149
Communist Party: and Denmark (*Kommunistiske Parti*) 229; and Sweden 220
conservatism 3–7; and Belgium 106–108, 113–115; and British North America 91–101; and Canada 77, 84–85, 188–189, 191–193, 195–199, 262; and Denmark 60, 63–71, 225–233; and Finland 123–125, 129; and Ireland 155, 164; and the Netherlands 146, 149, 152, 175–176, 181; and Norway 30, 36, 38–39; and the Southern Netherlands 47, 51–52, 54–56; and Sweden 134–135, 138, 139–143
conservative party: and Canada 98, 99, 188, 196, 199; and Denmark (*Konservative Folkeparti*) 225–229
conservatives: and Belgium 106–107; and Canada 85, 91–101, 188, 189, 192, 195, 197, 199, 262; and Denmark 60, 63–68, 70–71, 225–228, 233; and Finland (Old Finns) 123, 125, 126, 127; and the Netherlands 146; and Sweden 138, 140, 141, 142
constituent assemblies: and the Batavian Republic 22; and Denmark 60, 63–71; and Finland 126; and Ireland 158; and the Netherlands 175; and Norway 30–32, 34–36, 38; and the Southern Netherlands 45, 51
constitutional conventions 255–265
constitutional monarchy xi–xii, 29, 60, 75, 146
constitution of Year III 15, 18, 20, 24
Cosgrave, William T. 158
Counihan, John Joseph 206, 212
Craig, James 162–163
Croatia 239
Cromie, Robert J. 198
Crown (British) 166
Cumann na nGaedheal, and Ireland 163, 203

D66 (Democrats 1966), and the Netherlands 182
Dafoe, J.W. 193
Danielson, J.R. 120, 125–126
De Coninck de Merckem, Charles, Baron 112
De Geer, Louis 119, 134–135, 218
De Mérode, C., Count 44–46
democracy 2, 5, 9, 17; and British North America 92, 100; and Canada 77, 84, 191, 195, 199, 255, 265; and Denmark 60, 64–66, 70–71, 225, 230–235; and Finland 123; and Ireland 166–167, 204–205, 210, 239, 247; and the Netherlands 152; and the Southern Netherlands 56; and Sweden 137–143, 216, 219, 222; *see also* anti-democratic ideology; democratisation
democratisation 6–7, 122, 125, 127, 128, 129, 130, 133, 142; and Belgium 108, 111–115; and Finland 120, 122, 125, 127–130; and Sweden 133, 141–142
De Nieuport, Viscount 48
Denmark 1–8, 29–31, 60–73, 78, 119, 121–122, 143–144, 225–238
De Royer de Woldre, Alexander (also known as De Royer de Dour) 109–111
despotism 21, 45, 126
De Thiennes, C., Count 44, 46, 48
De Tornaco from Huy, Camille, Baron 111
de Valera, Eamon 154, 160, 163–167, 202–212, 242–244
dictatorship 165, 203–204, 212
Directoire 18
Donker Curtius, Dirk 175
Dotrenge 46
Douglas, James 160–161, 164

Douglas, James Green 209
Dumon-Dumortier, Augustin 108–109

elective legislative councils 91–101; and conservative legislation 95–100; in historiography 92–93; in principle and in practice 100–101; and responsible government 93–95
electoral system 23; and Denmark 226–230, 228, 232, 234; and Ireland 162, 206–207, 209, 241, 244–245, 251–252; and the Netherlands 175, 177–179, 182; and Sweden 219–220, 222
eligibility 13; and Belgium 107, 112, 113–114; and Canada 76, 97–100; and Denmark 63, 65, 67, 68; and the Netherlands 176, 177, 179; and Norway 32, 33; and the Sister Republics 19; and Sweden 141, 142–143
elitism 76, 133, 143, 178–179, 234, 246, 251
England 1–2, 9, 43, 45, 75, 77, 80, 147, 151, 159, 161, 191–193, 196, 199, 232, 240
equality: and Canada 81, 258; and Denmark 64, 235; and Finland 123; and the Southern Netherlands 52–53; and Sweden 218, 222
Eriksen, Erik 229
Erkko, Eero 127
estate system: and Denmark 62; and Finland 116, 117, 120–121, 122, 130; and Norway 30; and Sweden 133–134, 136, 143
Estrup, J.B.S. 226
European parliament 254
European Union (EU) 130, 217, 231–232, 246, 253

Falsen, Christian Magnus 32, 33, 38
farmers: and Canada 188; and Denmark 71; and Ireland 159, 166, 208, 249; and the Netherlands 180; and Norway 39; and Sweden 135–140, 143
Farmers' Party: and Finland (*Lantmanna Party*) 120; and Sweden (*Lantmannapartiet*) 138–139
Fearon, William 210
February Manifesto of 1899 124
federalism 9, 76–77, 80, 83, 92–93, 258
Fennoman nationalists 120, 122–127
Ferdinand VI, King, the Two Sicilies 20
Fianna Fáil 7, 154–155, 163–166, 202–203, 208, 211, 242, 246
Fine Gael 165, 205, 208, 246–247
Finet, Théophile 113
Finland 1–3, 6–7, 29–31, 116–132, 133, 142, 230
First World War 188
Forke, Robert 197
France 1–2, 5–6, 15–25, 31, 33, 43–46, 48, 50, 52, 55, 75, 112–113, 143, 151–152, 240, 260;*see also* French Revolution
Francophones 77, 255–267
Frederik, Christian, Prince, Sweden 31
Frederik III, King, Denmark 62
Frederik VI, King, Denmark 62
Frederik VII, King, Denmark 62
Frederik VIII, King, Denmark 40
French Canadians 83, 257–259, 262
French Revolution 16–17, 44, 79, 114, 126, 147, 252
'Friends of the Peasants' (*Bondevennerne*) 63, 64, 65, 71

Gallup polls 230
Gauthier, Jean-Robert 259
Germany 1–2, 10, 44, 60–62, 68–69, 71, 78, 151, 128, 175, 139–142, 180–181, 202, 228
Gladstone, William 155
Great Britain 17, 21, 32, 22, 75–79, 82, 119, 121–123, 140, 142, 174–175, 194, 197, 200, 258–260, 263;*see also* England
Greece 78, 128
Griffith, Arthur 157
Gripenstedt, Johan August 134
Groen van Prinsterer, Guillaume 175, 176
Gustaf V, King, Sweden 142

Hayes, Michael 207, 209, 211–212
Hedtoft, Hans 229
Heikel, Felix 128
Helvetic Republic 18
Hogan, James 206
Holland 1, 146–147, 152, 175, 177–179; *see also* Netherlands, the
Holstein, duchy of 60–63, 74
Home Rule 154–157, 159, 203, 240
House of Orange 49, 51, 53
Hungary 1, 142

International Monetary Fund 245
Ireland 1, 4, 6–9, 80, 154–168, 122, 192, 202–215, 239–254

Irish Republican Army (IRA) 155, 157, 159–160, 165

Jackson, Andrew 190
Jacobinism 5, 45, 52
Jean, Charles *see* Karl Johan, Crown Prince, Sweden
Jespersen, Christian Magdalus 67

Karl Johan, Crown Prince, Sweden 31
Karnebeek, Herman Adriaan 181
Kazakhstan 255
Kenya 239
King, William Lyon Mackenzie 188–191, 193–194, 196–200, 262
Kjærsgaard, Pia 235
Koskinen, Yrjö 126
Kuyper, Abraham 176

laissez-faire 133, 136–138
Lamare 16
landowners: and Finland 123; and the Netherlands 174, 178–179; and Norway 30; and the Southern Netherlands 48, 51, 53–54; and Sweden 136–137, 140, 143
language 61, 62, 69, 79, 80, 97, 120
Lantmanna Party see Farmers' Party
Lapointe, Ernest 190
Lauenburg, duchy of 61–62
Leopold I, King, Belgium 57
Laurier, Wilfrid 188, 190, 260, 262
Leopold III King, Belgium 106
liberalism 6; and Belgium 106–109, 111, 113; and British North America 98–99; and Canada 85, 188–200, 255, 262; and Denmark 60–70, 72, 225–229; and Finland 118–121, 123, 125; and Ireland 155, 204, 211, 250; and the Netherlands 146, 148, 151, 173, 175–177, 179–182, 184; and Norway 36–37; and the Southern Netherlands 45–46, 49–52, 56; and Sweden 134–135, 137–143
liberal party: and Belgium 109; and Canada 188–200; and Denmark (*Venstre*) 225, 226, 227, 228; and Finland; and Ireland; and the Netherlands; and Norway (*Venstre*) 37, 85; and Sweden 142
(Liberal) Progressives 188
liberals: and Belgium 49, 50, 52, 103, 107–108, 111; and Canada 98, 188–200, 262; and Denmark 62–71, 226–229; and England 155; and Finland 119, 120, 121, 125; and the Netherlands 146, 175, 176, 177, 180–182; and Norway; and Sweden 134, 137–143
Lloyd George, David 192
London Protocol 68–69
Luxembourg 41, 174

MacDermot, Frank 208, 210
Macdonald, John A. 100–101, 260–261
MacEntee, Seán 206
Mackenzie, William Lyon 189
Madvig, Johan Nicolai 67
manège du Roi 46–51; *ménagerie du roi* 147
Marxist 243
McNairn, Jeffrey 92–93
Meighen, Arthur 188
meritocracy 146–152
Métis 260
Mill, John Stuart 119
minority 77, 83, 128
modernisation 133, 136–138, 143, 182, 259
Møller, John Christmas 228
Møller, Per Stig 233
monarchy 4, 6, 17; and Belgium 109; and Canada 79, 82; and Denmark 61–63, 68; and Finland 129; and Norway 29–31, 34–38, 40; and the Southern Netherlands 45–46, 51–52; and Sweden 216, 220–221; *see also* constitutional monarchy
Monrad, Ditlev Gothard 63, 65–66, 72
Montesquieu 17, 18, 45, 52

Napoleon Bonaparte, Emperor, France 6, 31, 35, 43, 55, 61, 109, 114, 116, 126
Napoleon III, Emperor, France 152
National Centre Party, and Ireland 165
national character 22, 126
National Court 34, 37, 40
nationalism 1–2, 6; and Denmark 60–62, 64–65, 68–69, 71; and Finland 118; and Ireland 154–155, 158–159, 161–164, 204, 241–242, 246; and the Netherlands 146; and Sweden 138
nation state 61, 91
Netherlands, the xi–xii, 1–8, 59, 91, 107, 112, 146–153, 173–187, 232; *see also* Batavian Republic; Holland; Southern Netherlands
Nicholas II, Tsar and Grand Duke, Finland 123–124
Nispen Van Sevenaer, C.J.H. 150
nobility 3, 9; and Denmark 61; and Finland 117, 121–123; and the Netherlands

150, 174; and Norway 30 –32; and the Southern Netherlands 43 –48, 51–56; and Sweden 134, 216 –218
Nordic countries 2, 5, 42; *see also* Denmark; Finland; Norway; Sweden
North America, British 91–101, 189; *see also* Canada; United States
Northern Ireland 156, 169, 241 –242, 244, 246, 251
Norway 1 –2, 5–6, 29–42, 61–62, 65, 120, 128, 138, 205, 228, 230
Novelle 183

O'Higgins, Kevin 159, 163
Ohlin, Bertil 220
O'Keeffe, Denis 204 –205
Old Finns 124 –128
O'Rahilly, Alfred 206
Outis (Donal O'Sullivan) 211

Paasikivi, J.K. 126
Pagano, Mario 20
parliamentarism 4, 7 –8, 50, 121–122, 225
party politics (partisan politics) 81, 83 –85, 144
patronage 47
peasantry: and Denmark 62 –65, 67, 70–71; and Finland 117, 120–122, 124; and Norway 30, 35; and Sweden 134 –137, 139, 216, 218
People's Party (*Dansk Folkeparti*) 235
Peru 239
Pius XI, Pope 243
Polak, Henri 179
Poland 1, 117, 124populism 77, 164, 246, 252; aristocratic 106–115
primogeniture 44
Protestants: and Canada 258; and Ireland 154 –157, 159–161, 203, 240, 242, 244; and the Netherlands 175, 179 –180, 182; and the Southern Netherlands 51
provincial assemblies/provincial estates 173
Prussia 30, 69

Quadragesimo Anno 243
Quebec 75, 78 –80, 91, 101, 188, 190; Francophones living outside of 255 –265
Quirke, William 209

Raepsaet, J. 44, 46
referenda 8; and Belgium 106; and Denmark 228 –232, 228, 234; and Ireland 158, 163, 166, 203, 239 –240, 245 –252,*248*, *249*; and Norway 30, 40
Reformation 147, 240
Reform Party and Canada 77
Reign of Terror 15, 17, 21, 44
Rein, Th. 120, 125
representation: and Belgium 106; and Finland 119, 121, 126 –127; national 116–117, 126–127; proportional 68, 126, 129, 157, 177 –178, 191, 206, 234, 235, 241; regional 47, 173, 179; and Sweden 133
republicanism 91 –93
Republic of the Seven United Netherlands 147
Rerum Novarum 204responsible government 77, *80*, *84*, *91 –101*
Révellière-Lépeaux, Louis Marie La 22
Revolution 1830 1, *43*, *51*, *106*
Revolution 1848 xi, *62*, *71*, *108*
Riker, William 84
Robespierre, Maximilien 15, 17, 45
Rogers, Norman McLeod 198
Roman Republic 18
Rousseau, Jean-Jacques 17, 110
Russia 1 –2, 6–7, 29, 31, 68, 123–125, 127, 129 –130, 133, 139;*see also* Russian Empire
Russian Empire 31, 116–118
Russian Revolution 7, 116, 124, 130; *see also* Bolshevik coup

Scandinavia 3, 41, 130; *see also* Denmark; Norway; Sweden
Schleswig, duchy of 10, 60 –63, 66, 68 –69, 74
Scotland 240
Second World War 227
separation of powers *see* theory
Setälä, E.N. 128
Sinn Féin 156 –157, 162–163, 241, 246
Sister Republics 2, 5, 15, 18 –20, 23–24
slaperdijk, senate as 181
social democratic party (Socialist Party, Labour Party): and Belgium 111; and Denmark 226, 227, 235; and Finland 124, 125; and Ireland 162, 163, 204, 207, 209, 210, 212, 246; and the Netherlands 148; and Sweden 139, 140, 142, 144
social democrats: and Denmark 226, 227, 228, 229; and Finland 125, 127, 128, 129; and the Netherlands 179, 181, 182; and Sweden 217, 220, 223, 139, 141 –143

socialism: and Belgium 111; and Finland 122–124; and Ireland 211, 246; and the Netherlands 148, 151, 177, 179–180; and Sweden 142
social liberal party and Norway (*Radikale Venstre*) 226
Social Majority 146, 151–152
Söderblom, Nathan 142
South Africa 96, 255
Southern Netherlands 52–56
suffrage 3, 6–7; and Belgium 106–107, 112, 114; and Canada 83; and Denmark 60, 63–68, 70–72, 226, 235; and Finland 116, 122–127, 130; and Ireland 154, 162–163; and the Netherlands 146–148, 151–152, 176–177; and Sweden 139–142, 221
Supreme Court 41, 77, 83
Sweden 1–2, 6–8, 29–33, 35–37, 39, 61, 72, 78, 92, 116–117, 119, 133–145, 151, 216–224, 230, 232
Swedish Party 123, 125, 128
Switzerland 18–19, 113

Tassé, Joseph 261
Taylor, Charles 257
theory 8–10; Catholic social theory 204; of equality 53; of mandate politics 190; of mixed government 16–18, 96; of representation 234; separation of powers 18, 38, 217, 221
Thermidor 5
Thermidorean Reaction 15–17
Thorbecke, Johan Rudolph xi–xii, 151, 175–176
Tjeenk Willink, Herman 183
t'Kint de Roodenbeke de Naeyer, Henri, Baron 112–113Torppa, Juho 126
Tory 195
trade unions 176
Treaty of Kiel 31, 35, 61
Troelstra, Pieter Jelles 180
Trudeau, Justin 262–263
Trudeau, Pierre Elliott 77, 260, 262

unicameralism 5, 15, 22; and Canada 78, 84; and Denmark 60, 63–67, 71, 225–236; and Finland 116, 118, 121–130; and Ireland 204–205, 239, 246, 248; and the Netherlands 174; and Norway 29–30, 32–34, 36–38, 40–41; and Sweden 144, 216, 222–223
Unionist 242
United Kingdom 75, 78, 82, 84, 155, 174, 239–240;*see also* England; Great Britain; Ireland; Scotland
United States 2, 17–18, 21, 92; and Belgium 113; and Canada 75, 78–79, 189–191, 260; and Finland 119, 127; and Ireland 210; and the Netherlands 151; and Norway 32
unity *see* national unity
universal suffrage *see* suffrage
Upper Canada Rebellion of 1837 189

Valvoja group 120–122, 125
Van den Dooren, Emile 113–114
Van Hogendorp, G.K. 43, 45, 147
Vasa, Gustaf, King, Sweden 220
Vatican 205, 212
Verzuiling 179
veto 18, 34, 37, 121, 133, 135, 181
vocationalism 166, 203–210, 212

war 3, 6–7, 10; and British North America 101; and Canada 77, 79, 188, 190, 192–193; and Denmark 60–61, 63, 66, 68, 71, 228; and Finland 116–117; and Ireland 156–157, 208, 210–213, 241; and the Netherlands 177, 181; and Norway 30–31; and the Southern Netherlands 56; and Sweden 139, 141–142, 221;*see also* civil war; First World War; Second World War; trade war
William I, King, Netherlands 43, 46–47, 51, 53–54, 174–175
William II, King, Netherlands 175
William IV, King, England 192
Wilson, Woodrow 190
women: and Canada 83, 256, 262; and Denmark 62, 234–235; and Finland 124; and Ireland 154, 161–163, 208; and the Netherlands 177; and the Southern Netherlands 56; and Sweden 134–135, 139–142, 219, 222

Yeats, W.B. 161–162
Young Finns (*Fennomans*) and Finland 123, 125, 127, 128