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## We the people! Democratisation and the delineation of citizenship in the Netherlands

van den Berg, P.A.J.

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## ***We, the people!* Democratisation and the delineation of citizenship in the Netherlands, 1795-1922**

***Peter A.J. VAN DEN BERG\****

*Since the end of the eighteenth century, the principle of popular sovereignty has become the political theoretical foundation of an increasing number of states. Government was no longer legitimised by the droit divin, but by the consent of the 'nation'. Consequently, the political organisation of these states has been dominated by two different ideals, the ideal of political participation of the majority of citizens, and the ideal of a more or less homogenous nation. In the words of Habermas, the nation state and democracy are twins born out of the French Revolution. In this paper, the relation between these two phenomena is investigated more closely. It will be argued that there is a close connection between the requirements for citizenship as a means to delineate the 'nation' and the arrangements with regard to political participation, as a means of implementing democracy. The historical development of political participation and citizenship in the Netherlands between 1795 and 1922 serves as a case study to illustrate this argument. The conclusion is that if the right to participate in the political process is granted to larger numbers of citizens, the requirements for obtaining citizenship will become stricter.*

### **1. Renaissance of a republican ideal of citizenship**

Each state not only has a specified territory, but also a *demos*, or people, made up of those persons attributed to that state. International relations between states alone make this necessary, because it has to be clear which persons will benefit from the privileges and protection abroad. Consequently, all states have to describe the requirements a person has to fulfil in order to be regarded as a member of the *demos*. The boundaries of the community of subjects, or to use a more modern term 'citizens', have to be determined. In the course of this process of inclusion and

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\* Associate professor at the department of legal method and history of the University of Groningen (NL)  
Email: p.a.j.van.den.berg@rug.nl  
Visiting professor at the Graduate School of Law and Politics, Osaka University (December 2006-February 2007 and July-August 2010)

exclusion, each state has developed its own criteria that are sometimes very strict, and sometimes very generous. The reasons for the adoption of certain criteria can be of a practical nature. A sparsely populated country or a country in need of labourers for its industry might develop a liberal policy on citizenship. There can also be, however, more fundamental reasons for the specific arrangements of citizenship in a state, for example its ideological and political foundations. In this paper, it is argued that there is a connection between the requirements for citizenship and the arrangements as to political participation. The idea is, then, that if the right to participate in the political process is granted to a large number of citizens, the requirements for obtaining citizenship will be relatively strict. The historical development of citizenship and political participation in the Netherlands between 1795 and 1922 will serve here as a case study to illustrate this idea.

It should be realised that political participation of the majority of the citizens is not a matter of course. During the *Ancien Régime*, the relation between subjects and the state was mainly considered to be a passive one. Being a 'subject' of a state did not normally carry the right to participate in the political process. Bodin, Hobbes, Locke and Montesquieu all describe a subject as somebody who is primarily granted (some) security of life and of property, not the right to vote or to be eligible for public office.<sup>1)</sup> The state, in other words, provides a framework for private activities, such as family life and running a business, not for public activities. These were reserved for a small elite. To sum up, society was predominantly a 'civil society', not a 'political community'.<sup>2)</sup> In ancient Greece, however, a different ideal of citizenship had developed, which could be called a 'republican citizenship'. Membership of society was not considered to just mark the legal outlines of life, but was seen as its very essence. This Republican citizenship presupposes a tight political community, in which every citizen is actively participating in politics. The definition of 'a citizen' given by the Greek philosopher Aristotle (384-322 BC) is significant: 'a citizen is one who shares in governing and being governed'.<sup>3)</sup> At the end of the eighteenth century, this ideal of a republican citizenship was revived with the espousal of the doctrine of popular sovereignty. The appeal of the slogan 'We, the people' in the course of the American Revolution is telling in this respect. The influence of the writings of Rousseau on this revival can hardly be overestimated. After all, Rousseau emphasised the importance of creating a

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1) M. Walzer, "Citizenship", in *Political innovation and conceptual change*, ed. T. Ball, J. Farr, and R.L. Hanson, (Cambridge, 1989), 211-219 (215-216).

2) Walzer, "Citizenship", 212.

3) Aristotle, *The Politics*, ed. S. Everson, (Cambridge, 1988), 71 (lines 42-43).

sovereign people, or ‘nation’, made up of politically active citizens. In his *Contrat Social* (1762), he writes: ‘A l’égard des associés ils prennent collectivement le nom de *peuple*, et s’appellent en particulier *citoyens* comme participant à l’autorité souveraine’ [With regard to the participants in the contract, they take collectively the name ‘people’, and individually ‘citizens’ because they participate in the sovereign authority].<sup>4)</sup> It should be noted that Rousseauian citizenship was not only about promoting democratic principles. He was also looking for a way in which smaller nations could survive international competition.<sup>5)</sup> His solution was to enable all inhabitants to identify themselves with the ‘nation’ by granting them the right to participate somehow in the political process. He was convinced that citizens would then be motivated to defend their country.

There were of course some important differences between this ‘modern’ republican citizenship and the classical ideal.<sup>6)</sup> Firstly, it became connected to a theory of formal consent.<sup>7)</sup> Citizens were supposed to have concluded a social contract and thus to have agreed to the ‘constitution’. Secondly, it was no longer required that citizens were directly involved in the decision-making process. A representative democracy, in ancient Greece regarded as the opposite of democracy, became acceptable.<sup>8)</sup> Even Rousseau, who favoured direct democracy, understood that under certain circumstances a system of representative government was necessary.<sup>9)</sup> Thirdly, the principle of equality became closely associated with citizenship. Unlike in ancient Greece, the exclusion of large groups of inhabitants from citizenship was now problematic. Ideally, all inhabitants should also be citizens and as such full members of the political community with equal rights.<sup>10)</sup>

Granting the right to political participation might further the democratic principle, and it could contribute to the strength of a state, but the revival of the ideal of a republican citizenship also created a loyalty problem. During the *Ancien Régime*, the loyalty of ordinary citizens was not considered very important since the

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4) Rousseau, *Contrat social*, book 1, chapter 6. J. Merrick, “Conscience and citizenship in eighteenth-century France”, in *Eighteenth-Century Studies* 21 (1987), 48-70 (48-49).

5) Peter A.J. van den Berg, *The politics of European codification. A history of the unification of law in France, Prussia, the Austrian Monarchy and the Netherlands* (Groningen, Europa Law Publishing, 2007), 155-157.

6) Cf. B.S. Turner, “Outline of a theory of citizenship”, in *Sociology* 24 (1990), 189-217 (201-203).

7) Walzer, “Citizenship”, 212.

8) B. Manin, *The principles of representative government* (Cambridge, 1997), 1-7, 41 and 236.

9) Cf. his *Considération sur le Gouvernement de Pologne* (1772).

10) Cf. R. Bendix, *Nation-building and citizenship* (Berkeley, Los Angeles, London, 1977), 122.

majority was excluded from political participation. As a result, a positive description of citizenship was often lacking. Sahlin argues that in this period the quality of ‘French subject’ was attributed in a negative way: everybody in France who was not foreign was regarded as French.<sup>11)</sup> The problem of loyalty was solved by limiting access to political participation, not by restricting admission to citizenship. With the rise of the ideal of a republican citizenship, this solution became problematic, since according to that ideal all citizens would have the right to participate politically. If citizenship was granted to (almost) all inhabitants, allowing them to be actively involved in politics, their loyalty to the community would become an issue.

The answer of Rousseau to this problem of loyalty was simple. In his view, all members of society should be imbued with patriotism from the moment they were born. In this way, all citizens would have more or less the same opinions about things; they would, in other words, share an identity. Thus, the introduction of republican citizenship brought about the ideal of a homogeneous nation. In practice, however, it became clear that the issue of the loyalty of citizens was not so easy to deal with. Obviously, not everybody would be able to fit the pattern, especially not those from foreign origin. Consequently, membership of the nation became exclusive. It turned out, however, to be quite difficult to give positive criteria to be met for admission to citizenship. After all, the concept of identity is rather vague. What are the necessary characteristics of being French, Dutch, or Japanese? It is a question that still haunts us. This should not come as a surprise, because since the end of the eighteenth century, the political organisation of most Western states is dominated by the two closely connected ideals emanating from republican citizenship, the democratic ideal of citizens participation and the ideal of a homogenous nation.<sup>12)</sup> According to the German philosopher Jürgen Habermas, ‘The nation state and democracy are twins born out of the French Revolution’.<sup>13)</sup>

In this paper, the connection between these two ideals will be investigated in more detail, focussing on the Netherlands. Since the end of the eighteenth century, political participation of citizens has been extended in that country, culminating in the introduction of universal suffrage for all citizens in 1922.<sup>14)</sup> In the same period,

11) P. Sahlin, *Unnaturally French. Foreign citizens in the Old Regime and after* (Ithaca, London, 2004), 4-5.

12) An obvious exception with regard to the ideal of a homogenous nation is Switzerland, where four official languages are recognised.

13) J. Habermas, “Citizenship and national identity: some reflections on the future of Europe”, in *Praxis International* 12 (1992), 2.

14) Cf. for this development: C.B. Wels, “Stemmen en kiezen 1795-1922”, in *Tijdschrift voor*

the status of Dutch citizenship changed radically as well. Firstly, being a Dutch citizen became an essential requirement for political participation. Today, foreigners are not eligible for important public offices, for example in the judiciary or in Parliament.<sup>15)</sup> They are also excluded from the right to vote in provincial and national elections.<sup>16)</sup> Secondly, the leading principle in Dutch nationality law is now the *ius sanguinis*, meaning that Dutch citizenship is primarily granted to children of Dutch parents.<sup>17)</sup> The political community has in fact become closed to a large extent. New members are not easily admitted, whereas great efforts are made to retain existing members.<sup>18)</sup> The question to be answered here is how the growth of democracy and the delineation of citizenship precisely developed in the course of the nineteenth century? To fully appreciate the changes brought about by the revival of the ideal of republican citizenship, it is necessary to start with a succinct sketch of the situation of political participation and citizenship during the *Ancien Régime*.<sup>19)</sup>

## 2. ‘Citizenship’ and political participation in the Republic of the United Provinces of the Netherlands, 1648-1795

The Republic of the United Provinces was, according to the *Unie van Utrecht* (1579), the treaty that became its *de facto* constitution, a loose confederation of

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*Geschiedenis* 92 (1979), 313-332. Cf. also L. Blok, “Van eene wettelijke fictie tot eene waarheid. Beschouwingen over kiesstelsel en kiesrecht in Nederland in de eerste helft van de negentiende eeuw”, in *Tijdschrift voor Geschiedenis* 92 (1979), 391-412.

- 15) Art. 54 (1) GW (1983). It should be noted, however, that there are at present almost a million Dutch citizens with a (second) passport of another country.
- 16) Art. 56 GW (1983). Recently, the right to vote in local elections has been granted to citizens of EU-Member States if they chose domicile in another Member State. Cf. Art. 22 (1) TFEU (formerly Art. 19 (1) EC-Treaty, and before that Art. 8 B (1) EC-Treaty), further elaborated in directive 94/80/EC (19-12-1994), OJL (31-12-1994) 368/38-47. In the Netherlands, citizens of non-EU-Member States have the right to vote in these elections after a residency of five years.
- 17) Arts. 3 ff. Rijkswet op het Nederlanderschap (1984). G.R. de Groot/M. Tratnik, *Het Nederlands nationaliteitsrecht* (Deventer, 2002), 89 ff. There are, of course, other ways of acquiring Dutch citizenship. Those born on Dutch territory have a privileged position in this respect, and there is always the possibility of naturalisation.
- 18) Cf. E.J.M. Heijs, *Van Vreemdeling tot Nederlander. De verlening van het Nederlanderschap aan vreemdelingen (1813-1992)* (Amsterdam, 1995), who argues that there is a close connection between the policy regarding naturalisation and the ideal of the nation state.
- 19) Cf. Peter A.J. van den Berg, “Inboorlingschap en ingezetenschap in de Republiek der Verenigde Nederlanden, 1600-1795”, in *Tijdschrift voor Rechtsgeschiedenis* 71 (2003), 125-153.



sovereign provinces and autonomous cities.<sup>20)</sup> Each province, therefore, regarded the inhabitants of the other provinces as ‘foreigners’. Consequently, one could hardly speak of a ‘Dutch people’. Over time, however, something had developed that resembled ‘Dutch citizenship’.<sup>21)</sup> This was the result of the fact that internationally the Republic operated as one state, with a single citizenship. This ‘Dutch citizenship’ was derived from the legal status a person enjoyed on a provincial or local level. In the relation with other states, citizens of cities or provinces were automatically treated as ‘citizens of the Republic’.

In accordance with the confederal nature of the constitution, each province or city could decide on admittance to citizenship independently, but usually the *ius domicilii* was applied. This meant that the status of ‘citizen’ could be acquired after having been domiciled for a certain period, varying from five months to two years. The quality of ‘citizen’ was, in principle, lost if domicile was chosen elsewhere. In this way, it was relatively easy for an immigrant to become citizen. As long as one had certain financial means, and/or was able to prove to be a reliable person, one was usually admitted to a city or province.<sup>22)</sup>

There is a good explanation for this flexibility as to the acquisition and loss of citizenship. After all, this status was not very important, in particular not in the context of political participation. Firstly, the political system was not democratic, so there were no elections and thus no voting rights. Secondly, most of the population was *de facto* excluded from public offices. In addition, many provinces required that candidates for the more important public offices were born within the borders of their territory. Thus, immigrants were not eligible to those offices.

It should be noted that admittance to citizenship was not that easy for those not adhering to the Calvinist version of Christianity. Especially Jews, and to a lesser extent, Roman Catholics and other dissenters suffered discrimination in this respect.<sup>23)</sup> In many Dutch cities, Jews were not admitted as citizens and even in Amsterdam, a city with a large Jewish minority, their citizenship was subject to limitations. Once admitted, however, they were also treated as Dutch citizens in the

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20) J.I. Israel, *The Dutch Republic. Its rise, greatness, and fall 1477-1806* (Oxford, Clarendon Press, 1995), 276-277.

21) A.A.H. Struycken, *Het staatsrecht van het Koninkrijk der Nederlanden* (Arnhem, 1928), 243.

22) S.J. van Geuns, *Proeve eener geschiedenis van de toelating en vestiging van vreemdelingen in Nederland, tot het jaar 1795* (Utrecht, 1853), 273.

23) Van den Berg, “Inboorlingschap en ingezetenschap”, 134 (Roman-Catholics), 136-137 and 141 (Jews). In France, on the contrary, citizens were supposed to be Roman Catholic. Merrick, “Conscience and citizenship”, 52.



relation with other states.

### 3. The Batavian Republic (1795-1806)

In 1795, the Batavian Revolution was staged with help of the French. As a result, many of the ideas of the French Revolution of 1795 were adopted, among them the idea of a sovereign nation. Consequently, the concept of the ‘Batavian people’ or ‘nation’ became the theoretical foundation of the new political order. The first line of the Constitution of 1798 is significant in this respect, starting with ‘The Batavian People, constituting itself into an indivisible state (...)’.

In accordance with the newly adopted ideology, important steps were taken in the direction of democratisation. The Batavian Constitution of 1798 (*Staatsregeling 1798*) witnesses a substantial increase of the number of inhabitants that were allowed to vote in the elections for the representative bodies, even if its democratic quality is maybe a little disappointing when judged from a present-day perspective.<sup>24)</sup> In the debates preceding the adoption of this new Constitution, the influence of the process of democratisation on the concept of ‘citizenship’ is clearly visible.<sup>25)</sup> In particular the presence of a Jewish community prompted some delegates to the National Assembly to call for a more limited membership of the Batavian nation, since this membership would, in principle, imply the right to political participation. They suggested, in other words, that Batavian citizenship should only be granted if certain criteria as to loyalty and homogeneity were met. In their view, most of the Jews regarded themselves as a separate nation, wishing to return to their homeland Israel. Consequently, these Jews should not be considered Batavian citizens, despite the fact that most of them had lived in the Netherlands for centuries, unless they were willing to assimilate.

This discussion did not result, however, in more strict requirements for admittance to the membership of the ‘Batavian people’. It turned out that answering questions about the necessary characteristics of being a member of the ‘Batavian nation’ was far from easy, especially since the concept of a politically relevant ‘nation’ was completely new. After all, the elected delegates had to come up with a

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24) T. Veen, “Het volk, de leden van de maatschappij en de ingezetenen van de Republiek. Opmerkingen over het democratisch gehalte van de Bataafse Staatsregeling van 1798”, in *De Staatsregeling voor het Bataafsche Volk van 1798*, ed. O. Moorman van Kappen/E.C. Coppens, (Nijmegen, 2001), 9-33 (26-30).

25) Cf. Peter A.J. van den Berg, “The integrative function of constitutions: a historical perspective”, in *The constitutional integrity of the European Union*, ed. F. Amtenbrink/Peter A.J. van den Berg, (The Hague, T.M.C. Asser Press, 2010), 13-53 (34-37).

new Constitution in a relatively short period of time, burdened with political turmoil. They simply did not have enough time to thoroughly grasp the new concept. In the end, therefore, they decided to adhere to the old system primarily based on the flexible *ius domicilii*. The problem of loyalty was also solved in the traditional way, namely by limiting political participation, particularly of those citizens who were not born on the territory of the Batavian Republic. According to the Constitution of 1798, these citizens only had the right to vote after having been domiciled in the Republic for more than ten years.<sup>26)</sup> In addition, they had to show proficiency in the Dutch language. Their eligibility to important public offices was also limited.

In the few remaining years of the Batavian Republic, the Constitution of 1798 was replaced twice, in 1801 and in 1805. The system of admittance to citizenship and political participation was left unchanged, however. It was still relatively easy for non natives to obtain Batavian citizenship, but they were excluded from the right to vote or to exercise a public office for several years.<sup>27)</sup>

#### **4. The Netherlands under Napoleonic rule, 1806-1813**

The Batavian Republic was short lived. In 1806, Emperor Napoleon Bonaparte (1769-1821) replaced it by a monarchy, headed by his brother Louis Napoleon Bonaparte (1778-1846). It was hardly surprising that the democratic experiment was put on hold, though representative institutions remained in place. In the new Kingdom of Holland, the right to vote in elections was only granted to those who paid a substantial amount of taxes.<sup>28)</sup> Moreover, the political participation principles of the previous constitutions, using the distinction between natives and immigrants, remained in tact. Those not born within the borders of the Kingdom had to wait for twelve years before they could qualify for the right to vote. In addition, they were not eligible for important public offices.

Some substantial changes in the requirements with regard to citizenship were brought about, however, not as a corollary of democratisation, but under the influence of the French *Code civil* of 1804. It was Emperor Napoleon who ordered his brother to introduce a codification based on his own *Code civil*, which included

26) Art. 11 *Staatsregeling 1798*.

27) Arts. 24-25, 29, 54 and 89 *Staatsregeling 1801*. Arts. 19, 42 and 78 *Staatsregeling 1805*.

28) Act of April 17, 1807, in *Verzameling van wetten van Zijne Majesteit den Koning van Holland II* (Amsterdam, 1809), 14-20. This Act served as the implementation of Art. 14 *Constitution 1806*. Cf. for the requirements to be eligible to a public office: Arts. 30, 52 and 71 *Constitution 1806*.

important provisions on French citizenship.<sup>29)</sup> At first, however, the new King aimed at a codification that salvaged much of traditional Dutch law. He, therefore, ordered the lawyer Joannes van der Linden (1756-1835) to prepare a ‘Dutch’ civil code. Within a year, Van der Linden produced a draft, which included provisions on citizenship that were in accordance with the traditional Dutch system, meaning based on the *ius domicilii*.<sup>30)</sup> The proposal to adhere to this more generous system is hardly surprising. Given the lack of democratisation, there was no need for introducing stricter criteria for granting citizenship. The Emperor did not accept such a deviation from his Code Napoleon, however, and King Louis had to give in. In 1809, the ‘Code Napoleon adapted to the Kingdom of Holland’ (hereinafter *WNH*) was promulgated. This codification was not a replica of the French model in all respects, but the regulation of citizenship was copied more or less.

The newly adopted criteria were stricter, because the French system was not based on the *ius domicilii*, but on a combination of *ius sanguinis* and *ius soli*. According to the first principle, Dutch citizenship was acquired by children from Dutch parents, regardless where they were born.<sup>31)</sup> Following the second principle, children born on Dutch territory also became Dutch citizens, regardless the nationality of the parents.<sup>32)</sup> They only had to choose domicile in the Netherlands at the moment they reached the age of 23. The main difference with the traditional Dutch system was that immigrants no longer were able to acquire citizenship merely by residency.

In 1811, still not satisfied with his grip on the Netherlands, Napoleon abolished the Kingdom of Holland and annexed it to France. Consequently, the original *Code civil* was introduced in the Netherlands. Since the criteria for citizenship in the *WNH* were largely derived from the *Code civil*, nothing changed in that respect.

## 5. Independence and restoration, 1813-1848

After the defeat of Napoleon, in 1813, the Netherlands regained independence. It became a monarchy, ruled by the House of Orange. The political theoretical foundation of this monarchy was emphatically not popular sovereignty. There were some representative institutions, to be sure, but a census severely limited the

29) Cf. P.A.J. van den Berg, “La codification et la formation d’un État national sous le Roi Louis”, in *Louis Bonaparte. Roi de Hollande (1806-1810)*, ed. A. Jourdan, (Paris, Nouveau Monde éditions, 2010), 81-100 (88).

30) J. van der Linden, *Ontwerp Burgerlijk Wetboek 1807/1808* (Amsterdam, 1967), 25 (Arts. I.1.4 and I.1.7).

31) Art. 10 *WNH*, an accurate translation of Art. 10 *Cc*.

32) Art. 9 *WNH*, which was based on Art. 9 *Cc*.

elective procedures from a democratic point of view. Only after 1848, democratisation became a serious option again. The political conservatism of the new regime manifested itself also in the fact that the traditional Dutch system of admittance to political participation remained unchanged, meaning that the distinction between natives and immigrants was still crucial. According to the Constitution of 1815, those not born within the borders of the Kingdom were excluded from membership of the Estates General (or Parliament), the Council of State, the Supreme Court and some other governmental institutions.<sup>33)</sup> In addition, the period of residency required to obtain the right to vote in elections was considerably longer for non natives.<sup>34)</sup>

Given the lack of democratisation, it is hardly surprising that the criteria for obtaining citizenship were not tightened. As a matter of fact, the French *Code civil*, including the provisions on citizenship, remained in force for no less than 25 years.<sup>35)</sup> Soon after independence was declared, it is true, there was some opposition to the continuing of legislation introduced by the occupying forces. At first, King William I, who reigned from 1813 to 1840, answered these calls, ordering Joan Melchior Kemper (1776-1824) to prepare a new, truly Dutch civil code.<sup>36)</sup> Unsurprisingly, Kemper suggested in his draft of 1816 to return to the traditional Dutch criteria for citizenship, which is to the *ius domicilii*.<sup>37)</sup> This would have implied a liberalisation when compared to the requirements of the existing *Code civil*, since it would become easier for immigrants to obtain Dutch citizenship by residence. The draft was not discussed in Parliament before 1820, however, because Belgium had become part of the Kingdom of the Netherlands in 1815.<sup>38)</sup> For that reason, the Belgians had to be consulted on the draft.<sup>39)</sup> When finally in

33) Arts. 8 and 9 *Constitution 1815*. In the Constitution of 1840, these provisions were retained as Arts. 7-8. Cf. H.T. Colenbrander, *Ontstaan der Grondwet II* (The Hague, 1909), 166-167. Heijs, *Van Vreemdeling tot Nederlander*, 18-19.

34) Cf. L. Blok, *Stemmen en kiezen. Het kiesstelsel in Nederland in de periode 1814-1850* (Groningen, 1987), 52-78.

35) J.H.A. Lokin, "De receptie van de Code civil in de Noordelijke Nederlanden", in *Groninger Opmerkingen en Mededelingen* 21 (2004), 1-15 (7-8).

36) Y.M.I. Greuter-Vreeburg, *De codificatie van het erfrecht 1798-1838* (Zutphen, 1987), 13.

37) Cf. Arts. 102, 105-107, 109-110 and 113 *Ontwerp Burgerlijk Wetboek voor het Koninkrijk der Nederlanden I* (1816).

38) The political union between Belgium and the Netherlands was short lived. After a revolt in 1830, independence of Belgium was recognised by the Netherlands in 1839.

39) Cf. J. Gilissen, "De Belgische commissie van 1816 tot herziening van het Ontwerp-Burgerlijk Wetboek voor het Koninkrijk der Nederlanden", in *Tijdschrift voor Rechtsgeschiedenis* 35 (1967), 383-443.

1820 the draft was sent to Parliament, the anti-French feelings obviously had faded. A majority of delegates pleaded successfully for a code based on the *Code civil* and the *WNH*, resulting in the civil code of 1838.<sup>40)</sup>

The provisions of the civil code of 1838 regarding citizenship resembled those in the *Code civil* and the *WNH*.<sup>41)</sup> The basic principle remained the *ius sanguinis*, granting Dutch citizenship to children of Dutch parents, wherever they were born. The *ius soli* was also preserved, turning those born on the territory of the Kingdom (including its overseas colonies) into Dutch citizens. This second principle was applied more generously than in the *Code civil*, however. Firstly, these children became Dutch immediately: they did not have to wait until they reached the age of 23. Secondly, they could opt for Dutch citizenship even if their parents did not have residency in the Netherlands at the time they were born. They just had to take up residency themselves within the borders of the Kingdom. But in one respect, the new code was as stringent as its predecessors. Immigrants could still not acquire Dutch citizenship merely by residency. Like under the regime of the *Code civil* and the *WNH*, they had to turn to naturalisation.

The leniency of the civil code of 1838 as to the criteria for citizenship is significant. It was in fact some kind of compromise between the relatively strict provisions of the *Code civil* and the *WNH* on the one hand, and the very flexible system of the *Ancien Régime* on the other hand. The return to leniency can be explained by the fact that the strict requirements of the *Code civil* and the *WNH* had only been introduced in the Netherlands as a result of French influence, not to compensate for increasing political participation. With the French gone, there was no reason to retain these requirements, since democratisation was still at its infancy. In 1839, only a little over 3 % of the population had the right to vote.<sup>42)</sup>

The arrangements with regard to political participation and citizenship only started to change after 1844, when one of the most important Dutch politicians of the nineteenth century, Johan Rudolf Thorbecke (1798-1872), had entered the stage. He is generally regarded as the spiritual father of the Constitution of 1848, which laid the foundation both for the extension of suffrage, and for the heightening of the status of Dutch citizenship.

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40) Y.M.I. Greuter-Vreeburg, "De tranen van Joan Melchior Kemper, 1814-1824", in *Justitiële Verkenningen* 14/6 (1988), 15-22.

41) Cf. Arts. 5-13 *Civil code 1838*.

42) Blok, *Stemmen en kiezen*, 301.

## 6. Johan Rudolf Thorbecke and the discovery of the Dutch nation, 1848-1887

Partly for reasons of patriotism, Thorbecke was convinced that popular sovereignty was the leading principle of his time, not unlike the Batavian revolutionaries. He argued that over time Dutch society had developed into a state, based on the historical unity of the Dutch people. This state, however, would only be able to maintain its position internationally if it could rely on a ‘highly developed national force’.<sup>43)</sup> To realise that ‘force’, it was necessary to imbue citizens with a sense of being involved in the government of the state. To that end, citizens should be granted ‘true and simple representation’ in local, provincial and national government. The principle of universal suffrage was, according to Thorbecke, inherent to the historical development of the Dutch state in the nineteenth century.<sup>44)</sup>

For that reason, King William II (1792-1849) and his ministers undoubtedly considered Thorbecke to be a dangerous Jacobin. He did not, however, embrace the Rousseauian idea of unrestricted popular sovereignty, or the unbounded belief of the Enlightenment philosophers in natural law. Thorbecke was of German descent and had studied at German universities for several years. There, he got imbued by the ideas of Romanticism and of the historical school of Friedrich Carl von Savigny (1779-1861).<sup>45)</sup> He was also influenced by the political-theoretical theory of the French liberal politician and historian François Guizot (1787-1874).<sup>46)</sup> In line with his teachers, he rejected the view of the natural law philosophers that a society could be created *ex nihilo*. Instead, he emphasised the importance of the organic growth of a nation and its political system. Thus, Thorbecke designed a political system based on popular sovereignty, but embedded in tradition. Or, as Thorbecke himself formulated it, accepting popular sovereignty as the foundation of the Dutch polity was inevitable, but it had to be tamed, preferably in a constitutional monarchy.<sup>47)</sup>

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43) Report of the Commission of March 17, 1848. W. Verkade, *Overzicht der staatkundige denkbeelden van Johan Rudolph Thorbecke (1798-1872)* (Arnhem, 1935), 412-414. H. te Velde, *Gemeenschapszin en plichtsbefef. Liberalisme en nationalisme in Nederland, 1870-1918* (The Hague, 1992), 21-25.

44) J.R. Thorbecke, “Over het hedendaagsche staatsburgerschap”, in *Historische Schetsen* (The Hague, 1872), 84-96 (92).

45) J. Drentje, *Thorbecke, Nederland en Europa. Het vrijste volk der wereld* (Zwolle, 1998), 49-52.

46) L.W.G. Scholten, *Voetstappen van Thorbecke* (Assen, 1966), 101-125.

47) Scholten, *Voetstappen*, 40-42.

When Thorbecke was elected a Member of Parliament in 1844, he immediately started pressing for a revision of the Constitution. He even produced a draft for a new constitution with eight colleagues. It would take, however, four years and the threat of revolution all over Europe before the government gave in. On 17 March 1848, a committee was appointed, charged with the task of preparing the revision. Since this committee was headed by Thorbecke, it is hardly surprising that the draft was ready within a month. He had taken his own proposal of 1844 as a point of departure. As early as November 1848, the new Constitution came into effect.

As to political participation, some important changes were introduced. Firstly, the members of Lower House of Parliament were now elected directly by the voters.<sup>48)</sup> The right to vote remained, however, restricted to those who paid a considerable amount of taxes. Consequently, the percentage of citizens with the right to participate in the elections only rose slightly in the following years, from 7.3 % in 1848, to 12.1 % in 1879.<sup>49)</sup> Thorbecke favoured democratisation, but only along gradual lines. This rise mainly resulted from economic growth and changes in tax regulations, not from any change of principle. Secondly, the quality of ‘Dutch citizen’ replaced the quality of ‘native’ as the essential requirement for exercising political rights, including the eligibility to public offices.<sup>50)</sup> Thorbecke considered this a crucial provision, because ‘the right to govern should not be granted to foreigners’.<sup>51)</sup> Interestingly, in a textbook commenting on the Constitution of 1848, this new provision was described as a necessary corollary of the extension of the right to political participation.<sup>52)</sup>

The increased importance of being Dutch citizen with regard to political participation was also reflected in the legislation on citizenship itself. Firstly, Article 7 of the Constitution now demanded that the criteria for the acquisition of citizenship were laid down in an Act of Parliament. From the parliamentary debates on this provision, it becomes clear that some MPs considered citizenship so important that they proposed to describe the requirements for citizenship extensively in the Constitution itself. They argued that ‘the state is not so much

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48) Cf. Art. 76 *Constitution 1848*.

49) R. de Jong, *Van standspolitiek naar partijloyaliteit. Verkiezingen voor de Tweede Kamer 1848-1887* (Hilversum, 1999), 14. In 1850, 10.8 % of the population had the right to vote. In 1869, this had risen to 11.1 %.

50) Arts. 5-6, 76, 78-79, 123 and 139 *Constitution 1848*.

51) *Handelingen omtrent het voorstel van negen leden der Tweede Kamer van de Staten-Generaal, tot grondwets-herziening, in 1845* (The Hague, 1846), 57. Cf. also *ibid.*, 6, 28 and 219.

52) C. van Bell, *De Grondwet: met aantekeningen* (Amsterdam, 1854), 21.



defined by the size of its territory, but by the persons that legally belong to it'.<sup>53)</sup> The government did not take up this proposal. Secondly, it was stated in the same provision that for each individual naturalisation, previously a prerogative of the government, an Act of Parliament was required. According to Thorbecke, this provision was necessary since the requirement of Dutch citizenship for the admission to public offices would be pointless, if the government could turn any foreigner into a Dutch citizen.<sup>54)</sup>

The Act on Dutch Citizenship that was required by Article 7 Constitution 1848 was adopted in 1850. It did not replace the existing provisions of the civil code of 1838 on citizenship, but introduced the new status of 'political citizens' for the inhabitants of the territories of the Kingdom in Europe. The criteria for acquiring this status resembled those of the civil code, which meant that they too were relatively generous.<sup>55)</sup> Children of Dutch parents or of parents who were domiciled in the Netherlands were granted Dutch citizenship, wherever they were born. Children born within the borders of the Kingdom in Europe while their parents did not have residency could opt for Dutch citizenship by choosing domicile in the Netherlands. The leniency of the Act of 1850 is understandable given the slow pace of democratisation.

In one respect, however, the Act of 1850 brought about a major change. It excluded the inhabitants of the overseas colonies, in particular of the Dutch East Indies (present day Indonesia), from 'political' citizenship. In the explanatory memorandum to the Act, it was argued that there was no good reason to consider children born in those colonies of English, Spanish or Portuguese parents as members of the Dutch nation.<sup>56)</sup> In addition, it was stated that by no means the indigenous inhabitants of the colonies could pass for Dutchmen. There was some resistance in Parliament to this strict interpretation of the 'Dutch nation'. Some delegates were convinced that the indigenous people would regard it an honour to be Dutch. They also argued, more practically, that even if indigenous inhabitants of the colonies would come to Europe, they had to meet the requirements of the census before they could enjoy political rights. Thorbecke, who as Minister of the Interior

53) *Verslag der Handelingen van de Tweede Kamer der Staten-Generaal 1847-1848*, p. 474. J.C. Voorduyn, *Geschiedenis en beginselen der Grondwet* (Utrecht, 1848), 96-97.

54) *Handelingen omtrent het voorstel*, 58.

55) Cf. Arts. 1 and 4 *Wet betreffende het Nederlanderschap 1850*.

56) L.F.G.P. Schreuder, *Wetten van 28 Julij 1850 (Stb. no. 44), 21 December 1850 (Stb. no. 75) en 3 Mei 1851 (Stb. no. 46), betreffende het Nederlanderschap, het Ingezetenschap en de Naturalisatie* (Schiedam, 1880), 28.

was responsible for the Act of 1850, did not give in. In a lengthy reply, he emphasised that it would be very problematic to regard as Dutchmen so many persons, without any guarantee. In his view, it would create ‘a political community of name only, not a community of a nation’. It would be more plausible, he argued, ‘to assign membership of the Dutch nation to Germans and Englishmen, than to the indigenous inhabitants of Java and the Moluccas’.<sup>57)</sup>

It should be noted that because the provisions of the civil code of 1838 remained in place, the inhabitants of the overseas colonies were still regarded as Dutch citizens in the relation with other states. Obviously, since the introduction of the Act of 1850, two different categories of Dutch citizens existed parallel to each other, those with and those without the prospect of political participation.

### **7. Endgame: the Constitutions of 1887/1917/1922 and the Dutch Citizens Act of 1892**

In the first decades after 1850, the percentage of the population that was granted the right to vote in this period remained low because of strict census criteria. In the same period, the provisions on acquiring citizenship remained unchanged as well. A fundamental change, however, was brought about by the new Constitution of 1887. In this Constitution, new criteria for granting the right to vote were formulated, replacing the strict census of the Constitution of 1848. In order to qualify for the right to vote, a Dutch citizen was only required to show ‘signs of ability and wealth’. As a result of these vague criteria, the percentage of the Dutch population that was granted the right to vote rose rapidly. Within two years after the adoption of the new Constitution, this percentage had more than doubled, to 26.5 % in 1889. In 1899, it had already risen to 48.6 %. The final stage of this development was reached with the Constitutions of 1917 and 1922, when universal suffrage was introduced for men and women respectively.<sup>58)</sup>

In the Constitution of 1887, Dutch citizenship remained the essential requirement for political participation, such as the right to vote and eligibility to representative bodies.<sup>59)</sup> In Article 5 of this Constitution, it was now even explicitly stated that foreigners were barred from public offices. The Constitutions of 1917 and 1922 did not bring any changes in this respect.<sup>60)</sup>

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57) Schreuder, *Wetten van 28 Julij 1850*, 47-48.

58) Cf. Art. 81 *Constitution 1922*. Cf. also Art. 80 *Constitution 1917*.

59) Cf. Arts. 80, 84, 90, 94 and 134 *Constitution 1887*.

60) Cf. Arts. 5-6, 81, 85, 91 and 128 *Constitution 1922*. Cf. also Arts. 5-6, 80, 84, 90 and 127 *Constitution 1917*.

In accordance with the slow pace of democratisation, the arrangement of Dutch citizenship also remained largely unchanged for several decades after the adoption of the Act on Dutch Citizenship of 1850. Even when, in 1882, the question of citizenship came up for discussion again, because of the somewhat awkward situation of having two different statutory regulations on citizenship, the draft for a single Act on citizenship resembled to a large extent the Act of 1850.<sup>61)</sup> This draft was never introduced to Parliament, however. The political climate was rapidly becoming less favourable towards foreigners, since the government now considered the criteria for acquiring citizenship as proposed in the draft too generous.<sup>62)</sup> It was replaced by a much stricter bill. The result was the Act on Dutch Citizenship and Residency, which came into force in 1892, only five years after the revision of the Constitution in 1887.

The Act of 1892 replaced both the Act of 1850 and the arrangements in the civil code of 1838 with regard to citizenship. In the new Act, the *ius sanguinis* took centre stage. According to Article 1 Act 1892, only children of a Dutch father, regardless where they were born, would acquire citizenship automatically. Everybody else had to resort to the procedure of naturalisation. It is particularly striking that birth on the territory of the Kingdom (*ius soli*) was no longer sufficient for becoming a Dutch citizen.<sup>63)</sup> Obviously, it was believed that only being raised by Dutch parents would foster the patriotic feelings that were deemed necessary.

The Act of 1892 had serious consequences for the indigenous inhabitants of the Dutch colonies in the East. As mentioned earlier, these inhabitants had already been deprived of political citizenship by the Act of 1850. From an international perspective, however, they had remained Dutch subjects in accordance with the (generous) provisions of the civil code of 1838. Since the Act of 1892 also replaced these provisions, the question arose whether the indigenous inhabitants of the Dutch East Indies should still be regarded as Dutch citizens under the new Act. With an explicit reference to Thorbecke, it was argued that they should be deprived of Dutch citizenship, because otherwise ‘a political community of name only, not a community of a nation’ would be created. As a result, these inhabitants became

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61) *Bijlagen Handelingen Tweede Kamer 1888-1889*, 49, nrs. 6, 7 and 11.

62) Heijs, *Van Vreemdeling tot Nederlander*, 66-67.

63) There were, of course, some exceptions. Cf. G.R. de Groot, “De geschiedenis van het Nederlandse nationaliteitsrecht in de negentiende eeuw”, in *Wordt voor Recht gehalden. Opstellen ter gelegenheid van vijftienvintig jaar Werkgroep Limburgse Rechts geschiedenis (1980-2005)*, ed. A.M.J.A. Berkvens/Th.J. van Rensch, (Maastricht, 2005), 375-420 (411). Cf. above footnote 17.

stateless.<sup>64)</sup> In view of the relations with other states, this was, of course, an untenable situation. It eventually led to the rather strange Act on Dutch-Subjects-Not-Citizens of 1910.<sup>65)</sup> In this Act, the indigenous inhabitants of the colonies in the East were granted the status of ‘Dutch-subject-not Dutch-citizen’.

The Act of 1892 remained in force until 1985, but even today the *ius sanguinis* is the leading principle in the Dutch provisions on citizenship.

## 8. Concluding remarks

Until 1795, the relevance of Dutch citizenship was limited. It was, in particular, not decisive for the admission to political participation. To that end, the criterion of being born on the territory of one of the Dutch provinces was used. In accordance with the insignificance of Dutch citizenship, it was relatively easily acquired by choosing domicile in a province or city within the Dutch Republic. It was lost if a person choose residency elsewhere. Obviously, being a Dutch citizen did not imply membership of a semi-permanent political entity. Presently, citizenship is an essential requirement for political participation in the Netherlands. It is a necessary quality for the eligibility for important public offices and for the exercise of the right to vote in most elections. At the same time, citizenship is not acquired so easily anymore by foreigners, because the *ius sanguinis* is now the leading principle. In this paper, the hypothesis was put forward that there is a connection between the changes with regard to political participation, and the stricter requirements for citizenship. It has been argued that granting the right to participate in the political process to, in principle, all citizens, will result in stricter criteria as to the admission to citizenship.

The sketch above of the historical development of citizenship and political participation in the Netherlands between 1795 and 1922 clearly shows that this connection is plausible. With the Batavian Revolution of 1795, which was partly based on the principle of popular sovereignty, a process of democratisation started. This immediately led to attempts to arrive at a precise and strict delineation of the ‘Batavian nation’. It was suggested that, in theory, all citizens should be able to exercise political rights. In the end, however, the new concept of a sovereign ‘nation’ proved too revolutionary and the Batavian Republic too short lived for these attempts to be successful. Consequently, the traditional system of the *Ancien*

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64) The indigenous inhabitants of the overseas colonies in the West (present-day Suriname and the Dutch Antilles) remained Dutch citizens according to the Act of 1892.

65) *Wet op het Nederlands-onderdaanschap-niet-Nederlanderschap* of February 10, 1910, Stb. 55.

*Régime* was kept in place, which meant that not citizenship, but the fact of being born on the territory of the Republic was used to restrict admission to political participation.

With the fall of the Batavian Republic in 1806, the Netherlands came under Napoleonic rule, which lasted to 1813. This also put an end to the democratic experiment of the Batavian revolutionaries. Some changes with regard to the criteria for admission to citizenship were brought about, however, not so much as a corollary of democratisation, but as the result of the introduction of a civil code under French influence. The traditional *ius domicilii* was replaced by a combination of the principles of *ius sanguinis* and *ius soli*. The new provisions were less generous, though not very strict. They affected in particular immigrants, since they could no longer acquire Dutch citizenship merely by residency. They had to resort to the procedure of naturalisation.

In 1813, the Netherlands regained independence, but the process of democratisation was not resumed. The new King, a descendant from the House of Orange, was as abhorrent of democracy as his Napoleonic predecessors. Consequently, the criteria as to citizenship were not tightened either. In the first few decades of the new Kingdom, the provisions of the French *Code civil* on citizenship remained in force. In 1838, the criteria even became less strict with the introduction of a new civil code, replacing the *Code civil*.

Only after 1848, the arrangements of political participation and citizenship started to change substantially. These changes were brought about by one of the leading politicians of his time, Johann Rudolf Thorbecke. Thorbecke was convinced that the Dutch state would only be able to survive internationally, if its citizens would be actively involved in politics, because this would make them loyal to the 'Dutch nation'. For that reason, he favoured the gradual extension of the right to vote to all citizens. The Constitution of 1848, heavily influenced by the ideas of Thorbecke, clearly shows that plans for further democratisation had some consequences for the status of citizenship. In the new Constitution, Dutch citizenship was introduced as the main requirement for political participation. Thorbecke was, however, careful not to extend suffrage too rapidly. In particular the requirements of census were such that in the first decades after the adoption of the Constitution of 1848, still a small minority of citizens were allowed to vote. In accordance with this, the criteria for the acquisition of citizenship also remained generous. The only persons that were immediately affected by the new ideology were the indigenous inhabitants of the Dutch colonies in the East. These inhabitants, Thorbecke argued, could never be part of the 'Dutch nation'.

Consequently, they were excluded from political citizenship by the Act on Dutch Citizenship of 1850, although they remained Dutch subjects in the relation with other states by reason of the civil code of 1838.

In the Constitution of 1887, the strict census was replaced by the vague and flexible requirement of 'signs of ability and wealth'. As a result, the percentage of those entitled to vote rose rapidly, to 48.6 % in 1899. The Constitutions of 1917 and 1922 completed the development by establishing universal suffrage for men and women respectively. In this way, the quality of 'Dutch citizen' became the most important threshold for admission to political participation. The effect on the arrangements of citizenship is significant. Within five years after the adoption of the Constitution of 1887, a very strict Act on citizenship was adopted, granting Dutch citizenship only to children with a Dutch father. Moreover, since this Act on Citizenship and Residency of 1892 replaced both the Act of 1850 and the relevant provisions of the civil code of 1838, the indigenous inhabitants of the Dutch colonies in the East were now excluded completely from citizenship. They became stateless. Obviously, there is a close connection between expanding political participation of members of the 'nation' and excluding foreigners from membership of that 'nation'.

