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**Het geheim van de ministeriële
verantwoordelijkheid : de verhouding tussen
koning, kabinet, kamer en kiezer, 1848-1905**
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Summary

The Secret of Ministerial Responsibility. The Relationship between Crown, Cabinet, Chamber and Constituencies.

Today, we tend to conceive of ministerial responsibility as a rule. Unquestioningly it is assumed that ministers are responsible solely to parliament for all their acts. Originally however, ministerial responsibility was a relational concept, which referred to the relationship between crown, cabinet, (Second) Chamber and constituencies; the four 'c's'. Ministerial responsibility was so to speak an instrument to keep those four constitutional powers in balance. In the period 1848 to 1905 eventually one interpretation came to the fore. In spite of this still dominant interpretation ministerial responsibility is essentially a relational concept providing for a constitutional equilibrium.

During the constitutional revision of 1848 the principle of political ministerial responsibility was incorporated into the written constitution for the first time, and ever since this provision has been largely unaffected. The revision took place under great political pressure, because everywhere in Europe revolutions had broken out or threatened to break out. In 1848 remarkably the Second Chamber (Lower House) and the press were suddenly radicalized though not so much the king. Tradition has it that the king explained to some foreign envoys that from one day to the next he had turned into a liberal, but in effect the Speaker of the Second Chamber had let him know that even the conservatives had withdrawn their support, because the submitted proposals for amendment were not far-reaching enough.

In the build-up to the constitutional revision in 1848 the Second Cham-

ber already tended to perceive ministerial responsibility as the trust it could put in a minister. The opinion in Dutch legal literature that ministerial responsibility and parliamentary confidence have to be separated from each other is not tenable in that respect. In Great Britain a comparable situation existed. There too, responsibility and confidence were two sides of the same coin. The current distinction between responsibility and the supply of information is not based on the history of the development of ministerial responsibility either; from the beginning the duty to provide information was associated with the parliamentary vote of confidence. Ministerial responsibility has always been a fiction, starting from the idea that a minister has to organise state affairs in such a way that his responsibility becomes acceptable. Subsequent developments such as the rise of the civil service as a power of its own were in fact already included in the broad definition that was inserted into the constitution of 1848.

The balancing effect of ministerial responsibility

In 1848 parliament immediately acknowledged the need for homogeneity (unanimity) among and the collective responsibility of ministers. The mutual responsibility of all ministers, just like the need for unanimity of the ministers thus became a long-standing political tradition. This explains possibly why in the Netherlands the office of Prime Minister did not develop to such a dominant position that individual ministerial responsibility was harmed. Unknown in the present literature is the fact that in 1848-1849 Dirk Donker Curtius also wielded power as prime minister (after Gerrit Schimmelpenninck). The premiership is more deeply rooted in the Dutch political tradition than has been supposed so far. Its origin lies in the practice of appointing a person charged with forming a new government ('formateur'), who was naturally considered to be the prime mover of the cabinet. That situation remained, though subsequently Johan Rudolf Thorbecke – his first cabinet lasted from 1849 until 1853 – introduced a rotating chairmanship of the council of ministers. Moreover, King William the Second had already determined to keep the cabinet at a distance from the head of state during the constitutional revisions. A Second Chamber chosen directly and a First Chamber chosen indirectly by the constituencies were to counter the powers of king and ministers. The radical changes in the constitutional balance of powers in 1848 thus did not only relate

to parliament and king, but also to the ministers and the people, who were recognized as independent constitutional powers.

It is a striking fact that in 1848 the provision about ministerial responsibility was not under discussion at all; it was merely its consequences for the other constitutional powers and constitutional bodies that were discussed. Everybody agreed with the principle of ministerial responsibility, because it was conceived as a relational concept. By this relational character it was not so much the content that was emphasized as the relationship between the constitutional powers. What this relationship would look like precisely was left open, and therefore different interpretations about ministerial responsibility could still exist. The relationship between cabinet and constituencies played a part in the April-movement in 1853, when Thorbecke's cabinet was blamed for inadequately informing the people. The king adjusted the elevated status of cabinet and Chamber by showing himself quite responsive to the emotions of the orthodox part of the nation, however without meeting its wishes. Finally, the general idea then seemed to be that the king as a distinct power still possessed autonomous competence, such as the appointment and dismissal of ministers. At the same time constituents and inhabitants became aware that they too were a constitutional power on their own right.

The relationship between liberals and conservatives became very tense, as both parties experimented with the (im)possibilities of the parliamentary system of 1848. So in the period 1866-1868 they fought for supremacy in politics by way of a verbal sword-play about the meaning of ministerial responsibility. The liberals, who held a majority in parliament, argued that ministerial responsibility applied completely and exclusively towards parliament. The conservatives, who formed the Van Zuylen cabinet (1866-1868), contended, by contrast, that the ministerial responsibility did not apply fully and did not refer to official appointments, such as the appointment of Minister of Colonies Mijer as governor-general of the East Indies. According to them ministerial responsibility became an issue only when there was a breach of the law or an infringement of the national interest. The liberals laid emphasis on the general article of the constitution about the ministerial responsibility – the king can do no wrong, the ministers are

responsible – while the conservatives argued that the countersignature of a minister only related to decisions and consequently had nothing to do with acts, whereas specific articles also prevailed about all kinds of royal privileges, such as the appointment and the dismissal of ministers, and dissolution of parliament. The conclusion reached in 1868 was that the right to dissolve the government lost out to the right of the Second Chamber to approve the budget, as each time a liberal majority in the Second Chamber was returned which finally overturned the conservative cabinet without a substantive reason. The lesson was that ministerial responsibility did not imply guilt, but did involve a strict liability.

Dualism gives way to monism

As a result of the Van Zuylen and Luxemburg issues the model of a royal cabinet – that is a cabinet with autonomous powers – was abandoned in favour of the model of a parliamentary cabinet, in which the cabinet was accountable completely and solely to parliament. In 1848 Thorbecke and most liberals had been advocates of the former model, but in the heat of the political battle they now selected the other interpretation of ministerial responsibility. It meant first of all that the existing balance between the power of the Chamber and the power of the government – dualism – was broken. This shift of power changed also the perception of the right of dissolution. In 1866 Thorbecke had argued this right to freely used by the government, but, in 1868, he suddenly was of the opinion as were all liberals, that this right ought to be used only in exceptional circumstances, for example when required by the national interest.

Because of their parliamentary majority, their dominant position in the Dutch polity and their promotion of the constitutional revision of 1848 as a liberal product, the new liberal interpretation of ministerial responsibility became dominant and achieved the character of a constitutional rule. This also proved to be the case on the issue of the succession to the throne by Emma and Wilhelmina, which occurred relatively peacefully because ministerial responsibility and the corresponding royal immunity were regarded in such a way that the actual person of the monarch no longer seemed so important. The formalisation of the office of Prime Minister by Abraham Kuyper finally confirmed this interpretation because of his more powerful position as cabinet leader with regard to the monarch. The cabi-

net became more remote from the royal family, whereas, at the same time, collective ministerial responsibility towards parliament remained unchallenged. Cabinet and ministers now established their own contacts with parliament and constituents and consequently their individual and collective responsibility became more important.

In short, the fact that the ministerial responsibility originally was relational in character, explains how the introduction of this concept at the constitutional revision of 1848 could take place rather silently. As it happens, this revision did not need an agreement on the meaning of the concept, and that is why only later after much struggle was it decided which interpretation would become dominant. This struggle involved the four 'c's' (crown, cabinet, Chamber and constituency) and in the period 1866-1868 finally the liberal majority in the Chamber successfully established its supremacy. In that contest all means were attempted to strengthen each side's argument, such as appealing to foreign authorities and in 1867 establishing the use of the motion of order for political aims as an invented tradition. Appointments, such as that of Mijer as governor of the East Indies, also became political in nature. This indicates the maturing of the parliamentary system. In the wake of this development the voters gained more influence too.

This interpretation of ministerial responsibility as a balancing mechanism between the four 'c's' offers a better explanation than the one emphasizing its character as a constitutional rule. Thus the monarchy has preserved some political influence. Furthermore, ministerial responsibility is still considered problematic, because the Chamber does not always call ministers to account, and ministers in their turn do not always seem to take their responsibility seriously. The strength of ministerial responsibility does not lie in its objectivity. As the events of 1866-1868 have shown, ministerial responsibility is not measurable or strictly logical, but is always a risk based affair. Ministerial responsibility – with the related ideas of royal immunity, the obligation to provide information, the countersigning of decrees, and the right of dissolving the Chambers – functions continuously as the starting point for the political discussion that demarcates the competences between and within the four constitutional powers in the state.

