The legal definition of election fraud in established democracies:

Comparing the Netherlands and the United Kingdom

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Abstract

There has been a considerable increase in the academic attention that is paid to election fraud in established democracies, in recent years. Electoral fraud is problematic because having clean elections is necessary for the trust of citizens in their government. However, although the term "election fraud" is often used in law, there is no agreed legal definition of what actions are and are not election fraud; legislation therefore differs from country to country. To date, there is no explanation of why these differences in legislation occur.

This thesis seeks to make both an empirical-descriptive and a theoretical contribution to how election fraud legislation is shaped. The empirical-descriptive contribution is made by providing two in-depth case studies that show the historical development of election fraud legislation in the Netherlands and the United Kingdom in the period of 1830-2020, based on parliamentary records. While some accounts have been provided on this topic for the United Kingdom, very little has been written about the Netherlands. Comparative research on election fraud rules is entirely absent.

The study aims to make a theoretical contribution to explaining why electoral laws take the form that they do, by focusing attention on the previously unnoticed role of legislatures and courts in this part of election administration. The thesis also provides a new analytical tool for comparing electoral fraud legislation in different countries. An original matrix is developed by the author to enable the comparison of the main properties and characteristics of legislation that can be used for comparative research.

This thesis provides new insights with regard to the question of what is considered election fraud and why this differs between countries, that can be useful for both country-specific policies and the practical field of electoral assistance and election observation.

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"Vote Leave broke electoral law and British democracy is shaken" (Graham-Harrison 2018)

"Dutch election: Far-right accounts are trying to spread claims of voter fraud like Donald Trump" (Holroyd 2021)

"Dubious voting fraud claims in Germany spread online ahead of elections" (Hurt 2021)

These recent headlines from different countries that are all established democracies with a long history of elections show that the topic of election fraud is one of public debate. Political elites sometimes seek to delegitimize election results using unsubstantiated claims of fraud. Whereas in the past, this used to happen mainly in countries that were not necessary seen as democratic, the use of this instrument however, now seems to spread to democratic countries as well. These unsubstantiated voter-fraud claims can undermine confidence in elections (Berlinksi et al. 2021).

But are all claims of election fraud in established democracies unsubstantiated, or is there more to the story? During the Dutch municipal elections of 2006, a case of election fraud occurred. A member of a polling station in the municipality of Landerd, who was also a candidate during these elections, was operating the electronic voting machine. In this polling station, this candidate received 181 preferential votes. In the other three polling stations, he received one, three, and seven preferential votes. The large amount of preferential votes in his own polling station raised suspicion of fraud and an investigation was conducted. When asked by the police about the curious behavior that he exhibited during the operation of the voting machine, the candidate, Te Meerman stated: This means nothing to me…If I had wanted to commit fraud, I would have awarded the votes to my party leader, not myself"(Van den Brand 2016).

In order to prove that fraud was committed, prosecutor Serge Lukowksi organized a shadow election that was unique in the history of the Netherlands. He asked all the voters that voted in that particular polling station to come in. They were then asked to secretly cast their vote again, for the same person they had voted for in the actual election. In addition, the police officers provided a list of questions about the state of affairs in polling station 6. "Did you notice anything?" "Did you see the text "you voted" on the machine's display?" "Have you been helped?" "Are you willing to make a

statement?" The results of this investigation, in which over 90% of the voters in question participated, furthered the suspicion of fraud. The candidate in question only received 13 preferential votes in the second casting of votes, a number much fewer than the 181 votes in the actual election. Then there were the questionnaires. When Lukowski took a closer look at these, he noticed that 123 people made comments about specifics. The police heard dozens of witnesses. "No name appeared [on the voting machine], but the man at the machine said it was okay," one explained. Others found Te Meerman "hurried" or "pushy". He "was remarkably close" and "watched" (Van den Brand 2016).

Based on these results, the prosecutor brought criminal charges against the candidate for committing election fraud. The court in first instance acquitted the defendant for lack of evidence. The state appealed and the appellate court convicted the defendant. When it came to sentencing however, the appellate court faced a problem. Due to the preferential votes, part of the Dutch electoral system, the candidate was entitled to a seat on the municipal board. Even though he had waived his right to this seat after the elections because of the suspicion of fraud, he could still claim this seat if another candidate would leave the board during its four year reign. The court felt that a candidate who wins a seat by using fraud should not be able to keep this seat.

However, Dutch law does not provide for a possibility to exclude an elected candidate on the basis that he committed fraud during the elections. The court could therefore only condemn the defendant to imprisonment. The Dutch constitution only allows a judge to take away a person's active and passive voting rights when this person is convicted to a jail sentence of at least a year and only for certain crimes described by law.[1] Since the Election Law limits the maximum jail sentence for a number of election fraud offences to six months, for most of these offences, the person committing them cannot lose their voting rights. This could mean that in the Netherlands, a person could in theory obtain a seat in parliament through election fraud, be convicted for this fraud and still keep the seat. For the trust of voters in the integrity of the electoral system, this would be both confusing and devastating.

The Netherlands are of course not the only democracy in the world dealing with the problem of election fraud and the question of how to deter it, as the illustrative quotes at the start of the chapter revealed. Research shows that election fraud continues to plague many political systems (Lehoucq 2002). Also, participants in fraud usually do not perceive their deeds to be assaults on the democratic process, because they feel that cheating is part of the game (Campbell 2005). When the

[1] Article 54 of the Dutch constitution.

stakes increase, so does the incentive for fraud. Because election fraud possibly decides close races, the ultimate cost of fraud could be that it undermines democratic stability. Even if fraud is not decisive, it encourages the losing party or candidates to discredit the election results (Lehoucq 2003).

Election fraud is therefore a serious threat to democracy and the integrity of the democratic process. If voters feel that the people that are in government are not there because they won the election with fair means, voters have no reason to accept that the laws that that government makes are valid.

1.2 What is election fraud?

So what is election fraud and how is it defined? There are many terms that are used to describe negative behaviour during electoral processes. Examples are “election fraud”, “electoral manipulation”, “electoral malpractice”, “corruption” or “electoral mispractice”. Even though these terms describe behaviour that is in many ways very similar, they cannot be seen as synonyms. However, they all focus on irregular processes and activities that relate to the possibility of influencing the results of elections. Because of these differences, for the purpose of this study, it is necessary to get a better understanding of what is meant with the term “election fraud”.

The rival approaches described by Birch are useful to gain that understanding (Birch 2008 and 2011). She differentiates between election fraud and electoral malpractice, where fraud is used to describe intentional acts and malpractice to describe wrongdoings that affect elections, but do not have to be intentional (Birch 2011). She then describes four different approaches that can be used in order to define election fraud. The first one is the legal approach. According to this approach, electoral malpractice is described as a violation of the legal norms of a country that deal with the election. This approach is also called the restrictive approach (Vickery and Shein 2012). The second on is the perceptual approach. It is based on the perception of what is considered a violation of the norms of a respective culture. These norms can be laid down in the law, but are not necessarily completely codified. The third approach sees electoral malpractice in light of the best practices as described in international norms such as the norms of the Organization for Security and Cooperation in Europe (OSCE) the Council of Europe (CoE) and the United Nations (UN). The final approach is normative, it is based on democratic theory and the deviations from the principles laid out by political theorists such as Robert Dahl or David Beetham (Birch 2011).

But even when using the widest of approaches, the normative approach, it is still clear that there is no universal agreement on the definition of democracy and the role of elections in such a democracy

(Boese 2019, 2-4). Some scholars claim that in order to be a democracy, having competitive elections is sufficient (Przeworski et al., 2000, Cheibub, Gandhi and Vreeland, 2010). A larger group feels that, in addition, some sort of minimum suffrage requirements is necessary to achieve democracy (Boix, Miller and Rosato, 2012, Paxton, 2000). Yet others go even further and argue that that effective guarantees for citizens' civil and political rights are a necessary condition as well (Collier and Levitsky, 1997, Dahl, 1971, Levitsky and Way, 2010). On the question of what should be considered election fraud, the picture is even less clear. Studies show that different countries define election fraud differently in their own legislation. As Alvarez et al. point out, in the 2006 Mexican presidential elections, allegations of fraud included the use of door-to-door canvassing by one of the political parties. This led to the question whether such campaigning constituted undue partisan pressure on voters (Alvarez et al. 2008). In other countries however, for example the United States, door-to-door canvassing is seen as a normal and important part of the election process as it helps to "get the vote out" (Green and Gerber 2019). There is yet no explanation why these differences between different countries in the legal definition of election fraud occur.

The aim of the study is to identify the key drivers that shape the definition of election fraud used in a country as there have been so far no comparative studies regarding this subject. In this study the approach to election fraud that is used is that of the legal approach, meaning that only *as a violation of the legal norms of a country that deal with the election* is regarded as election fraud, without looking at normative approaches. Using this limitation for this study is necessary because the research question focusses on the differences in those legal norms and thus in the definition of election fraud based on the national laws. The use of more inclusive approaches would therefore not be suitable to answer the research question, as they broaden the term "election fraud" to norms that are outside the control of the national legislature.

This leads to the main question that this study aims to answer:

- **How do different established democracies define election fraud and what factors determine the differences between these definitions?**

1.3 Importance of the study

When talking about democratic elections, it is important to realize the importance of holding elections for countries. However, equating democracy with elections is not self-evident. Many countries in the world hold elections that are not usually considered democracies, such as Turkmenistan, Iran, Congo, and even Syria. This shows that elections are not the only aspect that defines a democracy, but they do fulfil functions that are essential for a democracy. Citizens'

participation, the representation of social interests and the selection of political representatives, which are all shaped in elections, ultimately serve to legitimize the government. For citizens, elections serve two functions. First, contested electoral campaigns educate the voters as candidates seek to influence and persuade them in order to get elected. Second, elections provide accountability that legitimates the fact that the chosen representatives are given the authority of the state's institutions to make decisions for the citizens (Issacharoff 2002, 685). In addition, as Przeworski points out, elections minimize popular dissatisfaction with laws and they allow societies to regulate conflicts peacefully, to avoid bloodshed (2018, 116). In that sense, even in non-democracies, elections can contribute to civil peace.

In democracies, the trust of voters in the election process is of great importance. Elections are, as argued above, the link between citizens and their elected officials. If voters have doubts about whether their votes are counted correctly and the results that are announced match the voter's intent, then the most fundamental aspect of the democratic system, the direct election of the leaders is in danger (Alvarez, Hall, and Llewellyn 2008, Atkeson and Saunders 2007). The legitimacy of those who are elected weakens when these doubts arise. This could ultimately undermine the strength of the democratic process and institutions in a country. Birch shows that confidence in the electoral process also influenced turnout: "when voters are confident that an election will be free and fair, they are more likely to vote, all else being equal, than is the case when they have reservations about the ability (or willingness) of those conducting the election to maintain democratic standards of electoral integrity" (2010a, 1603). Most modern democracies have had times where the voters questioned the election process (Lehoucq 2002).

Electoral malpractice has become an increasing problem in the world as more and more countries try to become democracies. The optimism that came with the Third wave of democratization that started in the 1970s (Huntington 1993), has eroded as there has been a rise in the number of electoral autocracies, which do not have a level electoral playing field (Lührmann and Lindberg 2019). In these electoral autocracies, politicians have become adept at using elections as a way of maintaining and enhancing their hold on power and legitimacy (Schedler 2006). As Birch states: "violation of electoral integrity is one of the most significant forms of political manipulation, given the centrality of elections in grounding democratic processes and selecting key actors in the political system" (Birch 2007). Schedler starts from the assumption that "a coherent set of minimal democratic norms exists that any democratic regime must fulfil. To qualify as democratic, an election must comply with this set of democratic norms" (Schedler 2002).

A lot of the changes in election law considered by itself are only minor and innocuous. However, one should not forget that each part of the election law is linked to the other part. A seemingly small change in one part of the law might therefore have a large effect on the organization and possible outcome of the elections (Burden et al. 2011). Also, if a small part of the election process goes wrong during the actual elections, this could lead to serious doubts on the legitimacy of the final results. This could lead to a major constitutional crisis, if the voters feel that the elected parliamentarians should not have been elected. The goal of the election process is therefore not simply to determine the winners and losers, but also to give legitimacy to the winners, even for those voters who did not vote for them (Katz 1997, 101-102). This further stresses the need for free, fair and secret elections to legitimize the outcome (Merloe 2009).

Until recently, most attention in research concerning elections was given to campaigning, voting behaviour and electoral systems. In advanced democracies, the common belief was that elections were free and fair, mainly because of the lengthy amount of time these countries had been holding elections. It was not until the 2000 presidential election in the United States that the question of the integrity of the election process itself became a serious issue in an advanced democracy (Alvarez and Hall 2006, Montjoy 2008). Since then, the research on electoral integrity has risen to the foreground and has become a serious issue (Norris 2013). This has resulted in the development of international research groups on electoral integrity, such as the Electoral Management Research Network and the Electoral Integrity Project. Through these research groups, new studies have appeared on a large scale over the last ten years on different aspects of electoral integrity, such as the administration of elections (Clark 2017, James et al. 2019, James 2020), the use of technology (Loeber 2016, Garnett and James 2020, Pal 2020, Loeber 2020, Essex and Goodman 2020), perceptions of electoral integrity (Frank and Coma 2017, Norris et al. 2020, Mauk 2020) and the relationship between international aid and election integrity (Uberti and Jackson 2020).

Election fraud is problematic because it could cause the legitimate winner and the actual choice of the voters might not to be granted power. Also, participants in fraud usually do not perceive their deeds to be assaults on the democratic process. This is because they feel that cheating is part of the game (Campbell 2005 and Cheeseman et al. 2021). When the stakes increase, so does the incentive for fraud. Because election fraud possibly decides close races, the ultimate cost of fraud could be that it undermines democratic stability. Even if fraud is not decisive, it encourages the losing party or candidates to discredit the election results (Lehoucq 2003). History shows that election fraud is a crime that usually pays (Campbell 2005). Sutter (2003) also comes to this conclusion; the perpetrators of election fraud can subvert the judicial process and avoid punishment. Although there

is only a limited number of studies that analyze motives for fraud, the argument appears to be that incumbents, parties, and machines will try to get away with anything to retain or obtain control of the state (Lehoucq 2003).

Countries are thus under pressure to use effective measures to deter election fraud. The level of deterrence for any crime to be effective is connected to the profits a person stand to gain when committing this crime (Robertson 1989). They only way to deter people considering committing this crime is to be able to impose a sanction that is perceived as threatening. In short, the punishment has to fit the crime (Davis 1992). This also has implications for the level of deterrence necessary for crimes of election fraud. If the stakes are high, the punishment that can be imposed on the offender has to be higher, in order to be an effective deterrence, than if the stakes are low. In a winner takes all system, the gains of winning the election are higher than in a system of proportional representation coupled with coalition government. This means that when determining what would be an effective deterrence level for election fraud, the electoral system of a country has to be taken into account. Effective deterrence can be achieved by the criminal law system of a country and the sanctions that can be imposed through that system, but also by other measures. It might be possible to overturn the election results and so take away the gain a person achieved by committing the fraud. Additionally, there might be an option for other candidates in that election to bring civil claims against a person convicted of committing fraud. An accumulation of these different options could also achieve a higher level of deterrence.

In conclusion, having elections that are integer is necessary in order to ensure that citizens have trust in their government and will turn out to vote. This means that election fraud needs to be prevented and in case it does happen, needs to be punished. This is only possible when the election legislation of a country is clear about what actions are deemed to be illegal. In addition, there needs to be punishments attached to this illegal behavior that are severe enough to deter the use of fraudulent methods to win an election. This study aims to give more insight into what kind of behavior should be included in such legislation, by comparing the legislation of established democracies and how this legislation has been developed over time.

1.4 Contribution to the literature

This study aims to contribute to the literature on election administration, the design of democratic institutions and democracy, by focusing on electoral fraud. Even though election fraud can be seen as a direct threat to democracy, social scientists and historians have not written much about electoral fraud. Some books contain numerous anecdotes about cases of fraud, but in general the knowledge on the nature and dynamics of election fraud is still very limited (Lehoucq 2002).

Most literature on election fraud focuses on the United States. Campbell (2005), for example, presents a very interesting overview of the history of election fraud in the United States from 1742-2004. Some authors look at Russia (Mebane and Kalinin 2009 and Myagkov, Ordershook and Shakin 2009). Stewart (2006) describes the problems with postal voting in Great Britain. The introduction of postal voting led to allegations of fraud, mainly in the city of Birmingham. Alvarez et al. included in their book two chapters that are more comparative in nature; one on international standards for election integrity and one were elections in Iraq and Palestine are described (Alvarez, Hall and Hyde 2008). However, none of these authors use comparative methods to include fraud in different countries.

The contribution of this thesis first of all is descriptive in nature. Although there is literature describing the fight against corruption in elections in the United Kingdom, most of it focusses on the nineteenth and early twentieth century (among others O'Leary 1962, Butler 1963, Seymour 1912). As far as the author is aware, this literature is even more scarce for the Netherlands, with only small studies done in Dutch by de Jong (1999, 2008) and de Jong and Rutjes (2015) into historical development in electoral practices including election fraud. This study tries to fill these gaps and therefore add to the existing literature. It does so by providing a historical narrative of the development of electoral fraud legislation in two countries, spanning over 170 years.

It also tries to extend the literature explaining why electoral laws differ. There is a burgeoning literature which seeks to explain why electoral systems change (Renwick 2010, Boix 1999, Benoit 2007, Renwick et al. 2018) but nothing to do on why electoral fraud laws change. This is a huge gap in the literature given the important of electoral fraud legislation. The historical narratives are used to identify what factors shape electoral laws in the two cases of the Netherlands and the United Kingdom, but also provide new insights for what factors might shape fraud legislation in many other countries. In particular, the study draws attention to the role of institutions – notably legislative institutions. This may have consequences for the study of other electoral institutions. The study thus aims to make a theoretical contribution to the understanding of the role of legislatures and courts in this part of election administration.

The thesis also provides a new analytical tool for comparing electoral fraud legislation in different counties. An original matrix is developed by the author to enable the main properties and characteristics of legislation to be compared. This matrix will be beneficial to future research on electoral fraud laws of other countries since it gives a framework for comparative research in this particular area.

1.5 Practical contribution

This study also aims to contribute to the practical aspect of elections by providing some guidelines for international organisations dealing with electoral assistance and election observation. The thesis notes that differences in the legal definition of election fraud per country have implications for international observation missions. If there is no internationally agreed legal standard of election fraud, chances are that observers look at elections in another country with a biased view, stemming from their knowledge of their country of origin. This could lead to situations that could potentially undermine trust in elections, for example when an observation mission declares that elections were not free and fair and that fraud has been committed, but no-one can actually be persecuted and convicted for such fraud because it is not included in the national legislation. Therefore, the findings of this study should be taken into account when instructing election observers on the relevant legislation in the country in which they are observing.

1.6 Theoretical framework, hypotheses and research design

As stated, this study aims to answer the question why established democracies define their electoral fraud laws differently. It will do so by investigating the different definitions of election fraud in the legislation of the Netherlands and the United Kingdom. This means that the study focusses on the question which acts are considered to constitute fraud when committed during the electoral process in both these countries. In this study, thus, a narrow approach is taken to election fraud; it only looks as those acts that are considered as a violation of the legal norms of a country that deal with elections. Broader norms to integer elections that for example stem from international documents, but that are not reflected in the legislation of the countries fall outside of the scope of this study. The aim is to show how the two countries define election fraud, where there are differences in those definitions and why these differences exist. This study is grounded in the historical institutionalist tradition. Election laws could be considered part of the institutional order of a state since they regulate the way in which representatives and political leaders are chosen. Historical institutionalism is interested in how institutions change over time and why (Sanders 2006). This study focuses on the institutional and historical context for and shaping of the laws dealing with election fraud. The changes in these laws are seen as highly context-specific, with a focus on formative moments and path dependency.

Earlier research has been done on electoral institutions. This literature is used to develop three hypotheses about why the definition of election fraud might be different in different countries:

1) Countries with a civil law system will have clearer defined laws on election fraud than countries with a common law system
2) Countries with a majoritarian electoral system will define more acts as election fraud and will also have higher sanctions for those acts than countries with a proportional representation system.
3) Countries that have experienced election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries which have not experienced much election fraud.

However, since no systematical comparison of the history of election fraud legislation between different countries has yet been undertaken, an iterative approach is also used to allow for the possibility to explore new theories on this matter (Yom 2014, 626).

The study is a small n-case study that uses a long term in depth approach to the two cases. This long-term approach is necessary because any approach that focuses only on short-term effects would not be able to see and explain the slow and gradual change in this type of legislation. The current articles on election fraud in the election law were formed over time, where sometimes new crimes were added, sometimes acts were no longer considered election fraud or did not occur anymore and sometimes the wording of the articles was adapted. Therefore, the study uses process tracing to show how different developments in the countries at various moments in time let to the current outcome. The two countries that are studied, the Netherlands and the United Kingdom, are selected on the basis of a "most-different" research design. In order to test these the hypotheses, the cases have to differ in the legislative system, where one of the countries has to have a civil law system and one a common law system and their electoral system, where one has to use a system of proportional representation and one a plurality system. The Netherlands and the United Kingdom differ in their legislative system and their electoral system. Lijphart uses them as an example of two contrasting modes of democracy: "majoritarian" and "consensus" (1984). Both however are old democracies, enabling a long history of changes to be studied. The study is carried out by mainly looking at parliamentary debates on election legislation, with a focus on election fraud. Relevant previous research on these countries, especially for the United Kingdom case, court cases and newspaper articles will be used to enrich the findings from the parliamentary documents. The combination of legislative documents, other archival material and previous studies provided triangulation, which increased the validity of the findings (Lange 2013).

1.7 Summary and structure

The thinking about the proper way to run elections can and has changed over time, as will be shown by the case studies. The secret ballot is nowadays seen as one of the key components of electoral integrity, but this clearly was not always the case. Studying the historical development in this thinking about the proper way to run elections can inform us of the counter arguments against notions we tend to take for granted. It also challenges us to keep questioning rules and habits in election administration that we consider to be the best solution, not because they truly might be, but on the basis that they have been around for a long time. Comparative analysis aids that questioning mind since it forces the researcher to think outside its own countries customs.

In sum, this thesis will advance the existing literature from both a theoretical and an empirical perspective providing new insights with regard to the question what is considered election fraud and why this differs between countries. It will show that these findings can be useful for both the policies of the countries that are examined and the practical field of electoral assistance and election observation. Finally, the thesis will identify areas for future research that can use this study as a starting point. In order to enable similar research on electoral fraud legislation from other countries, the study makes a contribution to the literature in the form of an original matrix structure that is developed by the author in absence of an available academic tool.

The study is organized in the following chapters:

Chapter Two reviews the key existing literature on the importance of democratic elections, the standards for free and fair elections and the different definitions of election fraud. Next, the potential advantages and disadvantages of different theoretical approaches that are commonly used to study the determinants of electoral law and elections are discussed in light of their usefulness in answering the research question. The conclusion of this chapter is that although there is literature on election fraud and there is literature that tries to explain changes in electoral law in general, there is an absence of literature that explains changes in those parts of the electoral legislation that deal with election fraud specifically. Also, there is a lack of comparative literature that can offer an explanation as to why different established democracies have translated norms for democratic elections in different ways in their electoral legislation.

Chapter Three notes that there are a variety of different approaches or lenses through which electoral fraud legislation can be studied. It introduces the conceptual framework that is used in the study. The chapter starts off by sketching the approach that is used in this study in which only the acts that violate *the legal norms of the country that deal with elections* are considered election

fraud. The chapter argues why although broader definitions are often used, based on international norms or standards (Birch 2011), in order to answer the main question of the study, a narrow definition, based on the legal approach is necessary. The chapter then explains why the choice is made to ground this study within theory of historical institutionalism. The hypotheses that are tested in the study are introduces, but it is also noted that because no previous research has been undertaken into a historical comparison of election fraud legislation between countries, the study also uses an iterative approach, allowing for the development of new theories (Yom 2014, 626).

Chapter Four then outlines the research design for the thesis. It considers what might be a suitable way of testing the hypotheses on why differences in the legal definition of election fraud laws appear between countries. The chapter defends the use of comparative case study approaches for understanding these differences. It then justifies the choice of case studies, the Netherlands and the United Kingdom, on the basis of a "most-different" research design. The Netherlands and the United Kingdom differ in their legislative and electoral system. Both however are old democracies, providing for a long history, over 170 years, of changes. The chapter then argues why the use of parliamentary documents as the primary source for this research is chosen. It then describes the methodology of process tracing which was used to study the archival material in order to find the causes that can explain the outcome of the developments in both countries. Finally, the chapter tackles the issue of conducting comparative research which uses sources that are written in different languages.

Chapter Five provides more detailed information on the Netherlands and the United Kingdom with regard to the legislative system, the electoral system and the current legislation on election fraud. The aim of this chapter is to provide the background information that is necessary to understand the historical developments that are described in the in depth case studies that follow.

Chapters Six and Seven then provide the two historical-comparative case studies charting the historical developments of election fraud legislation in both countries. Chapter Six starts with the introduction of elections in the Netherlands in 1850 and describes the debates in parliament that took place on election fraud that form starting point of law, which lasted until 2020. In those 170 years, many relevant changes to the legislation were made. The chapter mentions those debates and includes quotes from parliamentarians and others about election fraud in the Netherlands. It also points to some relevant cases of election fraud, although their existence in the Netherlands seems rare.

Chapter Seven follows a similar outline for the United Kingdom. Although the first mentions of illegal practices in the legislation of the United Kingdom appear as early as 1677, from 1830 onwards there

is more and more mention of this issue in Parliament. These debates, which first let to the Reform Act of 1832, followed by the more encompassing Corrupt Practices Act of 1854 and the very strict Corrupt Practices Act of 1883, show that the issue of bribery of voters was an important issue during the elections in the United Kingdom. Because bribes at some point almost seemed to be expected by voters, elections became very expensive.[2] In order to level the playing-field reforms of the legislation appeared. The chapter proceeds to discuss relevant debates and changes to the law from that point onwards, ending in debates over the possibilities of fraud with mail votes, as demonstrated in Birmingham in 2005 and the advantages and disadvantages of the use of voter identification in order to combat fraud (James and Clark 2020).

Chapter Eight analyses the case studies and pulls together the key empirical findings to show how institutions shape electoral fraud laws. The evidence from the two empirical chapters shows that countries that are considered to be long-standing democracies have struggled from the moment that they first held democratic elections to the current day with the issue of election fraud. Election fraud has appeared in all shapes and forms in both countries, from people trying illegally to obtain the right to vote to vote buying and fraud with postal and proxy votes. In lieu of efforts of both legislatures to weed out election fraud, election fraud still occurs as is shown by the fairly recent case in the Netherlands mentioned in the introduction. Difficulties with the definitions of the acts that the legislator wanted to prohibit, the problems with enforcement of laws and the balance between the urge to combat fraud, but also to keep elections accessible are visible in both countries that were studied. The empirical evidence in the chapter also shows that election fraud is defined differently in the Netherlands and the United Kingdom. The legislation differs in the way it defines election fraud, but also in the way it is punished. The chapter introduces an original matrix structure that is developed by the author in absence of an available academic tool for the comparison of electoral fraud law on the basis of their main properties and characteristics.

Chapter Nine presents the empirical and theoretical conclusions of the thesis and explains their policy and practical implications. The main empirical conclusions are that electoral fraud is a difficult and persistent problem and that election fraud is defined differently in the countries that are studied. The theoretical conclusions are that institutions matter when it comes to answer the question how different established democracies define election fraud and what factors determine the differences between these definitions. Besides the legislative system of the country; common or civil law and the electoral system of the country; proportional representation or a plurality system, however, the study provides for a new theory that states that the electoral rules around the world

[2] House of Lords, Volume 283: Thursday 16 August 1883, , Column 697.

are often more the result of parliamentary process and procedure than anything else. The chapter crafts an agenda for future research on electoral fraud legislation, but also on the influence of parliamentary processes on legislation in general.

Chapter 2 Literature review

2.1 Introduction

A review of existing literature was performed to support the study undertaken in this thesis. A general survey was first performed to chronicle past research on the importance of democratic elections, the standards for free and fair elections and the different definitions of election fraud taken by the literature. Next, the potential advantages and disadvantages of different theoretical approaches commonly used to study the determinants of electoral laws elections are discussed in light of their usefulness with regard to the research question. The chapter first describes the literature with regard to why democratic elections are important. It then discusses why election fraud has to be considered problematic. The literature on the definition of free and fair elections is discussed next. Following that, the views of different authors on conflicting requirements for free and fair elections are described. The chapter continues with a discussion of the definition of election fraud as given in the existing literature. It then looks at the work of authors who have studied the detection and deterring of election fraud. Next, the literature on the relationship between electoral systems and the likelihood of election fraud is described. Finally, different views on the explanation of change in election law are discussed.

The conclusion of this chapter is that although there is literature on election fraud and there is literature that tries to explain changes in election law in general, there is no literature that explains changes in those parts of election law that deal with election fraud. Also, there seems to be a lack of comparative literature that can offer an explanation as to why different established democracies have translated the norms for democratic elections in different ways in their election legislation. This study will try to add to the existing literature on election fraud by looking at the question how different established democracies define election fraud and what factors determine the differences between these definitions.

2.2 Importance of democratic elections

When talking about democratic elections, it is important to realize their importance in a country. In democracies, the trust of voters in the election process is of great importance. Elections are the link between citizens and their elected officials. If voters have doubts whether their votes are counted correctly and the results that are announced match the voter's intent, then the most fundamental aspect of the democratic system, the direct election of the leaders is in danger (Alvarez, Hall, and Llewellyn 2008, Atkeson and Saunders 2007). The legitimacy of those who are elected weakens when these doubts arise. This could ultimately undermine the strengths of the democratic process

and institutions in a country. Most modern democracies have had times where the voters questioned the election process (Lehoucq 2002).

Electoral malpractice has become an increasing problem in the world as more and more countries try to become democracies. The Third Wave of democratization that started in the 1970s has led to a number of electoral autocracies, which do not have a level electoral playing field. In these electoral autocracies, politicians have become adept at using elections as a way of maintaining and enhancing their hold on power and legitimacy (Schedler 2006). As Birch states: "violation of electoral integrity is one of the most significant forms of political manipulation, given the centrality of elections in grounding democratic processes and selecting key actors in the political system" (Birch 2007, 1534). Schedler starts from the assumption that "a coherent set of minimal democratic norms exists that any democratic regime must fulfil. To qualify as democratic, an election must comply with this set of democratic norms (Schedler 2002).

The main focus of much research on democracy is democratic backsliding, also described as autocratization, democratization and democratic erosion (Rickett 2022). The term "democratic backsliding" is often used to describe the changes "made in formal political institutions and informal political practices that significantly reduce the capacity of citizens to make enforceable claims upon the government" (Lust and Waldner 2015, 3). Uribe Burcher and Bisarya note that political leaders increasingly manage to maintain their political power by "manipulating electoral norms, restricting dissent and freedom of speech, and altering the constitution to extend their terms in office — all within the legal framework of the democratic system" (2017, 70). In his review of the literature on this phenomenon, Anderson makes a distinction between electoral backsliding and liberal backsliding. Electoral backsliding is the process in which free and fair elections slowly and subtly lose their meaning, resulting in the breakdown of electoral contestation. Signals of this kind of backsliding are that one party monopolizes media access or even access to the ballot or the limiting of the opportunities of the opposition to hold a proper campaign. The result is often that the country ends up with competitive authoritarianism. Liberal backsliding is usually also slow and subtle, but does not immediately target the electoral core of the democracy. Instead constraints on the executive by the parliament or judiciary are relaxed or other liberal-constitutional norms slowly lose their meaning (2019). According to Anderson, this last form of backsliding is visual even in long-standing democracies such as the United States and countries in Western Europe (2019, 647, see also Rickett 2022, Mechkova et al. 2017). Anderson notes that the literature on electoral backsliding is lacking in the sense that it does not pay enough attention to both the historical origins of the institutional aspects of democracy, nor to the impact of historical junctures that may interrupt

institutional paths and install new ones (2019, 658). He then presents two models that might give better explanations, one focussing on exogenous shocks, mainly due to international circumstances, to the system and one on endogenous changes. In this latter model, the focus is on the division between different groups in society (Anderson 2019, 658).

Although fraud on election day can play a role in backsliding, several studies state that more often parties will turn to long-term "strategic" manipulation of elections, instead of blatant election-day vote fraud and obvious violations of the law, due to among other factors the increased presence of international election monitoring (Bermeo 2016, Hyde and O'Mahony 2010, Simpser and Donno 2011). Corrales comes to the same conclusion when studying backsliding in Venezuela through electoral irregularities: "In an increasing number of regimes, including Venezuela the preferred forms of electoral irregularities are not so much those that occur on voting day (such as fraud), but rather those that can occur in the period before and after voting day" (2020, 44-45). This means that although democratic backsliding is happening in multiple ways, the current literature does not doesn"t explain why countries have the electoral fraud laws they do. This could be because the assumption of this literature is that the only reason for changing electoral fraud laws would be to manipulate electoral outcomes. The backsliding literature is also very recent and thus so far has not looked specifically at historical development of legislation. In addition to the focus on democratic backsliding, new literature is emerging about the influence of new populist movements on the perception of electoral integrity (Norris et al. 2020, James and Clark 2021). These parties tend to engage in what Anderson calls liberal backsliding, questioning the independence of the media and the judiciary (Popp-Madsen 2020).

A lot of the changes in election law considered by itself are only minor and innocuous. However, one should not forget that each part of the election law is linked to the other part. A seemingly small change in one part of the law might therefore have a large effect on the organization and possible outcome of the elections (Burden et al. 2011). Also, if a small part of the election process goes wrong during the actual elections, this could lead to serious doubts on the legitimacy of the final results. This could lead to a major constitutional crisis, if the voters feel that the elected parliamentarians should not have been elected. The goal of the election process is therefore not simply to determine the winners and losers, but also to give legitimacy to the winners, even for those voters who did not vote for them (Katz 1997, 101-102). This further stresses the need for free, fair and secret elections to legitimize the outcome (Merloe 2009).

Until recently, most attention in research concerning elections was given to campaigning, voting behaviour and electoral systems. In advanced democracies, it was believed that elections were

without major issues, mainly because of the long time these countries had been holding elections. It was not until the 2000 presidential election in the United States that the question of the integrity of the election process itself became a serious issue in an advanced democracy, apart from long-time debates on voter suppression (Piven and Cloward 1988 and 2000, Alvarez and Hall 2006, Montjoy 2008, Minnite 2007). Since then, the research on electoral integrity has risen to the foreground and has become a serious issue (Norris 2013). Since then, the research on electoral integrity has risen to the foreground and has become a serious issue (Norris 2013). This has resulted in the development of international research groups on electoral integrity, such as the Electoral Management Research Network and the Electoral Integrity Project. Through these research groups, new studies have appeared on a large scale over the last ten years on different aspects of electoral integrity, such as the administration of elections (Clark 2017, James et al. 2019, James 2020), the use of technology (Loeber 2016, Garnett and James 2020, Pal 2020, Loeber 2020, Essex and Goodman 2020), perceptions of electoral integrity (Frank and Coma 2017, Norris et al. 2020, Mauk 2020) and the relationship between international aid and election integrity (Uberti and Jackson 2020).

One factor that is seen as a strong predictor of contemporary levels of electoral integrity is a country"s historical stock of democratic capital. Repeated elections give actors involved a chance to learn. The fact that parties rotate in power over a long series of contests makes it more likely that there will be acceptance of the legitimacy of the rules of the game and trust in the political system. This will mean that election losers will be more likely to accept the results. Also, experience with the organization of elections can lead to the development of more know-how and professional skills of the electoral management bodies. (Norris et al 2014).

2.3 Problems with election fraud

Election fraud is problematic because participants in fraud usually do not perceive their deeds to be assaults on the democratic process. This is because sometimes, they feel that cheating is part of the game (Campbell 2005). When the stakes increase, so does the incentive for fraud. Because election fraud possibly decides close races, the ultimate cost of fraud could be that it undermines democratic stability. Even if fraud is not decisive, it encourages the losing party or candidates to discredit the election results (Lehoucq 2003). History shows that election fraud is a crime that usually pays, since it will help those committing the fraud to be elected (Campbell 2005). Sutter (2003) also comes to this conclusion; the perpetrators of election fraud can subvert the judicial process and avoid punishment. This latter is possible because of several reasons. First, election officials must detect fraud, which can be problematic with thousands of polling places. Second, even if there is a suspicion of fraud, because of the requirement of secret ballots, it might be difficult to prove this on a level

that is necessary for a conviction. Third, prosecution of election fraud claims can be seen as highly political. Finally, it might be the case that the ruling elite has been able to influence the rules on election fraud, making it harder to convict them. Although there is only a limited number of studies that analyze motives for fraud, the argument appears to be that incumbents, parties, and machines will try to get away with anything to retain or obtain control of the state (Lehoucq 2003).

Even though election fraud can be seen as a direct threat to democracy, social scientists and historians have not written much about electoral fraud. Some books contain numerous anecdotes about cases of fraud, but in general the knowledge on the nature and dynamics of election fraud is still very limited (Lehoucq 2002).

Most literature on election fraud focuses on the United States. Campbell (2005) presents a very interesting overview of the history of election fraud in the United States from 1742-2004. Some authors look at Russia (Mebane and Kalinin 2009 and Myagkov, Ordershook and Shakin 2009). Stewart (2006) describes the problems with postal voting in Great Britain. The introduction of postal voting led to allegations of fraud, mainly in the city of Birmingham. Wilks-Heeg also looks at past cases of election fraud in Great Britain (2008). Alvarez et al. included in their book two chapters that are more comparative of nature; one on international standards for election integrity and one were elections in Iraq and Palestine are described (Alvarez, Hall and Hyde 2008). However, none of these authors use comparative methods to include fraud in different countries. Scholars looking at the definition of election fraud and at ways of detecting election fraud are discussed later on in this chapter.

2.4 Defining free and fair elections

Before looking at free and fair elections, one should first look at the literature on the concept of democracy itself. There is a minimalist approach to democracy. Schumpeter is known for the most basic idea with his statement that at its most basic level, the democratic method is “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (Schumpeter 1942) Another scholar that is considered a minimalist is Dahl. He identifies seven key criteria that are essential for democracy. These criteria are:

1. Control over governmental decisions about policy constitutionally vested in elected officials
2. Relatively frequent, fair and free elections
3. Universal adult suffrage
4. The right to run for public office

5. Freedom of expression

6. Access to alternative sources of information that are not monopolised by either the government or any other single group

7. Freedom of association (i.e. the right to form and join autonomous associations such as political parties, interest groups, etc) (Dahl 1971).

Although Dahl does include the basic civil liberties that should, in principle, guarantee that the democratic process is inclusive, free of repression and enables citizens to participate in an informed and autonomous manner, he should still be considered a minimalist because the focus of his definition of formal democracy is still on contestation, or the electoral process itself.

A substantive approach takes the populace's role in political decision making as point of departure, rather than specific institutions. One of the scholars known for this approach is Beetham (1994, 1999). He proposes that it is problematic to consider democracy merely as a matrix of various institutions, and even rights. The pressing question in his eyes is why particular institutions and rights are considered democratic? Beetham claims that the core idea of democracy is that of popular rule or popular control over collective decision making and therefore adds political equality as a second criterion for democracy. The way free and fair elections are defined depends on the view of democracy that a scholar takes as a starting point. However, regardless of this view, in order to define election fraud in a universal way, first there should be an understanding over the question which criteria elections should meet in order to be free and fair. Deviation from these norms could be considered behaviour that leads to unfair elections. Such behaviour should be labelled as election fraud.

There are a variety of approaches to this definition. The first one is to look at international documents. In most peace agreements, a reference to democratic elections can be found. For example, in 1956, the United Nation stated in a report on Togoland"s independence referendum that the votes had been free and fair. This was also the first time that the term "free and fair" achieved salience (Elklit and Svensson 1997). Since then, international consensus has emerged on the necessary elements of democratic elections. The 1948 Universal Declaration of Human Rights states in article 21 that (3) the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. The 1966 International Covenant on Civil and Political Rights declares in article 25 that every citizen shall have the right and the opportunity (...) (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free

expression of the will of the electors. The 1950 European Convention on Human Rights: Protocol 1 states that (3) The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The common factors in these articles are the use of universal and equal suffrage, the use of secret ballots and the fact that elections have to be free and periodic (Merloe 2009). However, a second approach claims that there are other standards that elections have to meet in order to be free and fair. If elections truly have to be meaningful, other civil and political freedoms have to be guaranteed so that citizens can articulate and organize their political beliefs and interests (Diamond and Morlino 2004). The 1990 Copenhagen document of the Organization for Security and Cooperation in Europe (OSCE) mentions some of these requirements explicitly. Also, the Inter-Parliamentary Union in its Declaration on Criteria for Free and Fair Elections includes this broad range of rights. However, attempts to turn these rights into an all-inclusive check-list have so far not led to universal agreement. Some authors use only the two dimensions of free and fair. Others, however use more dimensions. A study commissioned by the European Commission sets four dimensions: universal, equal, secret and free. The Norwegian Helsinki Committee also ads the requirement of transparency to the list. ODIHR uses seven principles for democratic elections: universality, equality, fairness, secrecy, freedom, transparency and accountability (Bjornlund 2004, 94-128).

Hughes uses 10 criteria for free and fair elections, set by the Canadian Election Commission (Hughes 2001). Elections are seen as successful and integer if they fulfil the following criteria:

1) Democracy: one eligible voter can cast one vote
2) Accuracy: the final vote count reflects the intent of the voter
3) Security: measures are in place to protect the integrity of the process
4) Secrecy: no vote can be traced to the voters
5) Verifiability/ auditability: the vote results can be verified after the initial count
6) Privacy/ confidentiality: information collected on electors is used for election purposes only and within the scope for which it was collected
7) Transparency: the process is open to outside scrutiny
8) Accessibility: the reasonable, specific needs of eligible electors are taken into account so that none are disenfranchised
9) Neutrality: electoral processes or materials do not favour one candidate over another
10) Simplicity: the voting process does not make voting unduly complicated.

Although this list seems to be exhaustive, the National Democratic Institute for International Affairs lists even more requirements (Bjornlund 2004, 94-128). As Bjornlund shows, although some requirements are listed in almost all of the documents describing the necessary components of free and fair elections, there is no agreement on all of the requirements (Bjornlund 2004, 94-128).

2.5 Conflicting requirements

Not only is there no agreement on an inclusive list of all the necessary requirements, certain requirements of a free and fair election process can compete with each other. The existing literature on these requirements sometimes briefly mentions this competition, but does not describe how this affects the way a country will have to weigh the different requirements when these requirements call for opposite choices in the election process (Fortier and Ornstein 2002, Birch and Watt 2004, Tokaji and Coker 2007 and Semmel 2009). However, it is very easy to find circumstances where basic requirements on which everybody agrees call for conflicting measures to be taken. For example, to achieve secret ballot elections, both anonymity and integrity of the voting process must be ensured. Anonymity requires that voters cannot be linked to the votes they cast. Integrity guarantees must ensure that all participants can verify that the final tally accurately reflects all legitimate votes cast. As James notes, some institutional reforms may have positive effects on participation, this could be at the expense of the integrity of the system (2009). Finally, to limit the possibility of vote coercion and selling, it should be impossible for voters to prove to others how they voted. One can see how these requirements can hinder each other. In order to maximize integrity, voters could be given some sort of proof of how they voted so that in case they get the impression that their vote is not counted correctly, they can make a claim based on this evidence. However, giving voters proof of their vote infringes on anonymity. It also increases the risk of vote buying or coercion (Evans and Paul 2004).

2.6 Definition of election fraud

Since there is no agreement on the requirements for free and fair elections, it is necessary to see if there is instead a universal definition of election fraud that could be used. There are many terms that are used to describe negative behaviour during electoral processes. Examples are election fraud, electoral manipulation, electoral malpractice, corruption or electoral mispractice. Even though these terms describe behaviour that is in many ways very similar, they cannot be seen as synonyms. However, they all focus on irregular processes and activities that relate to the possibility of influencing the results of elections.

Birch defines electoral malpractice as “the manipulation of electoral processes and outcomes so as to substitute personal or partisan benefit for the public interest (Birch 2008). She identifies four approaches towards electoral malpractice (Birch 2008 and 2011). The first one is the legal approach. According to this approach, electoral malpractice is limited to a violation of the legal norms of a country that deal with the election. This approach is also called the restrictive approach (Vickery and Shein 2012). The benefit of this approach is that it permits observers to stay away for difficult issues of cultural and political relativism, because the own laws of a country are used to measure fraud. This means that no “outside” norms are used to judge the election. It is also useful in practical cases where the candidates, election officials, public and law enforcement have to be informed on criminal conduct in the electoral process so that they can be aware of acts they should report or take action on. The use of legal texts provide a concrete national standard (Norris 2014, 35). The weakness of the approach is that by only focussing on the current law acts that should be considered election fraud but are not defined as such within the law might stay unnoticed (Vickery and Shein 2012). Also, elections can be perfectly legal and still violate many moral principles and internationally accepted normative standards (Norris 2014, 35).

Lehoucq (2003) defines election fraud as a “clandestine effort to shape election results”. In order for an act to be fraudulent, in his definition, it has to break the law. This points towards the use of the restrictive approach. Davalos and Dong define election fraud as “a deliberate violation of dispositions of the Electoral Law in order to change the electoral results to overtake or to harm a candidate (Davalos and Hong 2011).

The other approaches that Birch describes can be seen as inclusive approaches. These approaches aim to view election fraud, malpractice and manipulation as broad as possible (Vickery and Shein 2012). The inclusive approach does not distinguish between potential actors and it often uses terms that have no precise legal meaning. The advantage of this approach is that it does not rely on a country”s own legal definition and it therefore robust against weak legal systems or systems that are controlled by the people committing election fraud. The disadvantage is the imprecision that the inclusive approach entails, making it harder for both practitioners and technical assistance providers to identify, prevent or mitigate possible problems (Vickery and Shein 2012).

An example of an inclusive approach is Birch’s second approach which she calls perceptual. It is based on the perception of what is considered a violation of the norms of a respective culture. These norms can be laid down in the law, but are not necessarily completely codified. The third approach sees electoral malpractice in light of the best practices as described in international norms such as the norms of the Organization for Security and Cooperation in Europe (OSCE) the Council of Europe

(CoE) and the United Nations (UN). The final approach is normative, it is based on democratic definition and the deviation of that norm (Birch 2011).

Rafael Lopez-Pintor uses another definition. He states that election fraud is “any purposeful action taken to tamper with electoral activities and election-related materials in order to affect the results of an election, which may interfere with or thwart the will of the voter (Lopez-Pintor 2011). He makes a difference between outcome determinative fraud and not-outcome determinative fraud. Hirsch (2007) describes election fraud as any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. Huefner (2007) feels that fraud involves a deliberate attempt to manipulate the system unfairly, usually by candidates or their supporters.

Some authors differentiate between election fraud and voter fraud, where voter fraud is “intentional corruption of electoral processes by the voter” (Minnite 2007). However, they do not deny that voter fraud is part of election fraud. Other authors, such as Lopez-Pintor and Birch differentiate between election fraud and electoral malpractice. Electoral malpractice is any wrongdoing which affects the elections, but it does not have to be intentional (2011). Electoral malpractice can in some cases be solved during the elections (Lopez-Pintor 2011). The problem with this view is that in many cases it might be very difficult to prove that the wrongdoings were not intentional, since only the perpetrator of these acts knows if he was trying to influence the outcome or not.

The definition of election fraud can also be linked to the stage of the electoral process. Calingaert describes four stages in the electoral process and the methods that can be used in each stage to commit fraud (Calingaert 2006, 139-147). The first stage is the stage of voter registration. Fraud can involve including the names of dead people or children on the voter lists or double registration, but also the obstruction of the registration of eligible voters. The second stage is that of the electoral competition. Fraud can be committed by use of state resources to support incumbents, keeping opposition off the ballot, having a biased election administration, improper use of media control or the illegal use of campaign finances. The third stage deals with Election Day. It includes ballot stuffing, vote-buying, pressuring voters, misuse of proxy votes or multiple voting. The final stage is that of the vote count and tabulation. In this stage fraud can be committed by falsification of official records, deliberate miscounting of the ballots and inconsistency in deciding the validity of votes. Hyde also describes different stages of the electoral process when talking about electoral manipulations. She uses three stages, the preelection period, the Election Day and the stage of the announcement of the results (Hyde 2008, 201-215). Norris speaks of the cycle of electoral integrity

(Norris 2014, 33-35). The most visible types of electoral malpractice involve illegal acts on polling day or immediately afterwards, such as fraud with the vote tabulation and ballot stuffing. She points out that the more subtle forms of manipulation occur well in advance of polling day.

One should keep in mind that whether an irregularity constitutes fraud can sometimes depend on the cultural and political environment in which it takes place. As Alvarez et al. point out, in the 2006 Mexican presidential elections, allegations of fraud included the use of door-to-door canvassing by one of the political parties. This led to the question whether such campaigning constituted undue partisan pressure on voters (Alvarez et al. 2008). In other countries however, door-to-door canvassing is seen as a normal part of the election process. This cultural differences could be seen as a reason to use the legal approach, since that is the only of the four approaches that stays away from these differences while judging the quality of the elections. However, the other three approaches leave more room to judge if these cultural differences infringe on free and fair elections as defined by international documents.

2.7 Detecting and deterring fraud

Recently, more work has emerged on methods for detecting election fraud. One of the issues that has gotten attention in the past is the question of preventing election fraud by enforcing voter ID laws (Ansolabehere and Persily 2008). Other authors have tried to use statistical methods for detecting election fraud, for example by estimating the distribution of turnout, measuring the relationship between turnout and party support and testing for vote counts" second digits following the distribution implied by Benford's Law (Mebane and Kalinin 2009 and Myagkov, Ordershook and Shakin 2009). However, they do not pay attention to the question which remedies should be used when after the election it is proven that election fraud occurred. Both researchers in political science and law have so far paid little attention to the issue of correcting errors in the election process, including fraud, after the election (Huefner 2007).

The literature that does describe remedies that can be taken when a candidate has committed election fraud is limited and focuses on describing the possible sanctions. However, often sanctions alone fail to deter election fraud, making it necessary to have some additional remedies designed to rectify election fraud if this calls into question the outcome of the election (Huefner 2007). Sanctions for fraud in the United States can include both civil and criminal penalties (Huefner 2007). Some courts in the United States have reversed election outcomes even when the amount of fraud was not necessarily large enough to change the results. They did this to emphasize that even attempted election fraud could be fatal to a candidate's chances, trying to deter future fraud (Huefner 2007). In Great Britain, election courts can declare an election invalid when there are issues of fraud.

Perpetrators can be punished through the criminal system. This punishment can include the loss of the right to vote or stand for election for a number of years (Stewart 2006).

There is no literature that compares the possibilities for remedying election fraud in different countries in general. Some work has been done when it comes to voter ID laws, but most of this work still focuses on the United States (Highton 2017, Gronke et al. 2019, Kane and Wilson 2021). A broader and wider comparison would be very useful. As Lehoucq (2003) mentions, existing studies have indicated that properties of electoral law such as district size and electoral formula can increase the uncertainty of the political competition and therefore the incentives for candidates and parties to commit election fraud. He ends his article with the hypothesis that majoritarian electoral laws encourage higher levels of election fraud and election fraud accusations than more proportional systems (Lehoucq 2003). Important in combatting election fraud is the level of electoral governance in a country. Electoral governance is the process of rulemaking, rule application and rule adjudication (James 2014). This last part deals with the procedures that exist to ensure electoral justice in order to punish fraud. Recently, there have been some attempts to establish methodologies for detecting fraud. For example, Kiewiet et al. have tried to use incident reports by poll workers to detect fraud (Kiewiet et al. 2008). Alvarez and Katz have tried to use regression analysis in order to investigate cases in which the predicted results are very different from the actual results. By studying these outliers, they try to identify possible cases of fraud (Alvarez and Katz 2008).

Countries are under pressure to use effective measures to deter election fraud. The level of deterrence for any crime to be effective is connected to the profits a person stand to gain when committing this crime (Robertson 1989). Only when possible offenders perceive the sanction that can be imposed as threatening, they might be deterred from committing this crime. In short, the punishment has to fit the crime (Davis 1992). However, deterrence does not only depend on the height of the sanctions that can be received. In order to be effective possible perpetrators also have to perceive that there is a system in place that will discover crimes, investigate them and ensure that punishments will actually be given (Nagin and Paternoster 1991, Nagel 1977, Gorr and Harwood 1995). This means that the necessity to deter election fraud has implications for the level of deterrence necessary for crimes of election fraud, but also for the necessity of systems to track down and prosecute fraud. If the stakes are high, the possible chance of getting caught and receiving punishment has to be higher, in order to be an effective deterrence, then if the stakes are low.

2.8 Electoral systems and election fraud

The electoral system of a country might determine whether or not that stakes are high and are thus relevant for the level of deterrence that is necessary. There are many different electoral systems that are in use. They are usually categorized in three broad families: plurality/majority systems, proportional representation systems and mixed systems. The key characteristics of the three main electoral families are as follows:

In most plurality/majority systems, there is only one seat per electoral district and only one candidate can be elected from a given district. Under plurality, candidates can win a seat when they win the most votes without necessarily winning over 50 percent of the vote. However, majoritarian systems try to ensure that the winning candidate receives an absolute majority, essentially by making use of voters' second preferences to produce a winner.

Proportional representation systems all try to reduce the disparity between a party's share of the national vote and its share of the parliamentarian seats. Under such a system, if a party wins 30 percent of the vote, it should win approximately 30 percent of the seats. Proportionality is usually achieved through party lists of candidates in larger districts. The larger the district, the more proportional the outcome will be. Lists can be open (where voters rank the candidates in order of preference) or closed.

Mixed systems elect representatives through a combination of different elements of the PR and plurality systems (Reynolds et al. 2005).

There have been different views in the literature on the effect of the electoral system on the level of corruption and electoral misconduct. Some authors claim that PR systems are associated with higher levels of corruption than plurality systems. This has to do with the fact that it is easier to hold leaders accountable in the latter systems (Kunicova and Rose-Ackerman 2005). Myerson found that corruption should be higher under plurality rules because the high effective barriers to entry in singe member district races inhibits competition (Myerson 1993). Other studies have found ambiguous relationships (Chang 2005, Persson et al. 2003).

Birch studied the effect of the electoral system on electoral misconduct (2007). She found that the level of electoral misconduct is higher in plurality systems than in proportional representation systems. The reason for this is that in plurality systems, politicians have more reliable means of manipulating elections. In plurality systems the incentives for individual candidates and party leaders to engage in electoral misconduct are higher and the mechanical effects of turning votes into seats

are more straightforward. In PR systems, voters typically vote for parties, where in plurality systems, they select individuals. This means that in PR systems, it is important for the party to be seen as honest, as the misbehavior of one candidate will affect all the other candidates. The party will therefore have a greater incentive to enforce compliance with the electoral law in order to protect its reputation. In plurality systems, candidates tend to be more autonomous. Also, manipulation in a plurality system tends to be more efficient than under PR, because often only a small number of votes will need to be manipulated in any individual district to alter the outcome of that district. In a PR system, relatively large amounts of votes nationwide will have to be altered to change the overall balance of power in the legislature. The risk of being caught is much greater in that case (Birch 2007). Birch tested this theory again in a larger number of cases in 2010 and found the same results (Birch 2010b).

James concludes that election administration is more likely to be decisive in close elections using plurality voting systems (James 2012).

2.9 Explanations of change in election law

This study tries to answer the question how different established democracies define election fraud and what factors determine the differences between these definitions. It is therefore necessary to review the literature that tries to explain changes in election law. This literature could give an insight in why differences in election law between different countries could occur. A number of competing approaches have been developed to explain changes in electoral law. Most attention has been paid to electoral system change. Academics who try to explain electoral system reform tend to focus on the political interests of politicians. They claim that in these debates, probably more than in debates over other laws, parliamentarians and political parties look at the effect of the change on their own position (Gerken 2009, 15-18). The direct effect on a party has then to compete with the public benefits of a proposed measure. A party may reject even a measure that would be very good for society at large if it will lead to a serious diminishing or even the disappearance of that party (Shorstein 2001).

There are many different approaches that try to explain why changes in election law occur. The first approach is institutionalism. Election laws could be considered part of the institutional order of a state since they regulate the way in which parliamentarians are chosen. Institutions are important, because, as entities, they form such a large part of the political landscape, and because modern governance largely occurs in and through institutions. Institutions also matter because they (or at least actors within them) typically wield power and mobilize institutional resources in political struggles and governance relationships. Institutions are also said to matter because they are seen as

shaping and constraining political behavior and decision making and even the perceptions and powers of political actors in a wide range of ways (Bell 2002). Within the institutionalist theory, there are several different approaches to the study of institutions. The most common approach until the 1950s was old institutionalism. This approach described constitutions, legal system and government structures. The central questions are why institutions come into existence, why they develop in specific ways and what can be said about the way they function. Often an approach was used that was descriptive-inductive, formal-legal and historical-comparative (Lowndes 2002). An example of this work is that of O'Leary. He noted that literature on elections focused for the most part on the structure of electoral systems. His study aimed to examine the statutes dealing with the operations of elections (O'Leary 1962). He used an historical narrative, based on legislative acts, parliamentary speeches, newspaper report, select committee reports and ad hoc memoirs and private letters to research corrupt practices in British elections. An institutional approach is also applied to electoral reform in the *book Mixed-Member Electoral Systems: The Best of Both Worlds?* by Shugart and Wattenberg (2003), but their work provides more than just a narrative, in the sense that it is a little more conceptually informed. In line with Lijpharts conclusion (1984), change can expect to occur when the social, cultural or international environment is no longer congruent with the electoral system. The drawback of this approach is that it is not able to predict when changes or reforms will happen (Rahat 2008).

Another approach is the behavioralist approach. In this approach, theories and generalizations based on observation must be testable and falsifiable by direct experience (Sanders 2002). The approach asks for a scientific method of testing, usually found in quantification and comparison, usually cross-national. This approach has been used when studying elections, for example to examine voting behavior (Heath et al. 1994) or to measure the opinions of politicians and public on issues of electoral reform (Rahat 2008). Fitzgerald has applied behavioralist to the study of election administration reform at the state level in relation to cultural and demographic factors (Fitzgerald 2001). There are some authors that use behavioralist models of electoral system change (Lundell 2010), but so far, systematic behavioralist explanations for electoral change are lacking.

A third approach is rational choice theory, a commonly used framework for understanding and modeling social and economic behavior. The basic premise of rational choice theory is that aggregate social behavior results from the behavior of individual actors, each of whom is making their individual decisions. Rational choice theory then assumes that an individual has preferences among the available choice alternatives that allow them to state which option they prefer. These preferences are assumed to be complete (the person can always say which of two alternatives they

consider preferable or that neither is preferred to the other) and transitive (if option A is preferred over option B and option B is preferred over option C, then A is preferred over C). The rational agent is assumed to take account of available information, probabilities of events, and potential costs and benefits in determining preferences, and to act consistently in choosing the self-determined best choice of action (Ward 2002). The rational choice approach has difficulties explaining major electoral reform. The problem is that it is unclear in this approach why politicians that were elected under the current rules would change these rules, proving that they are rational actors (Katz 2005). Benoit (2004) states that:

> "a change in electoral institutions will occur when a political party or coalition of political parties supports an alternative which will bring it more seats than the status quo electoral system, and also has the power to effect through fiat that institutional alternative. Electoral systems will not change when no party or coalition of parties with the power to adopt an alternative electoral system can gain more seats by doing so."

However, this explanation is limited only to those reforms that could cause changes in seat shares. This excludes many reforms in the electoral system. Katz lists six (for the main part rational) reasons why these reforms happen sometimes (2005). These reasons are:

1) The winners may believe that their continued victory is under threat under the existing rules.
2) Parties may not be entirely in control and can have reforms imposed upon them.
3) Parties may value long-term change in the system of party competition over short-term advantage.
4) Parties fear electoral punishment if they are perceived by the voters as purely self-interested gerrymanderers.
5) Those able to adopt electoral reform misperceive its probable consequences.
6) Parties may be willing to trade electoral advantages over other goals.

Critics of the rational approach theory of institutional change also question whether politicians are truly rational. When making decisions, a wide range of emotional factors come into play and individuals will employ a wide range of heuristics, including those that exhibit a great deal of bias, generated by ideology and cultural context. Bourdieu argues that social agents do not continuously calculate according to explicit rational and economic criteria, but also depend on their experience and "feel" for the game (Bourdieu 2005).

Rahat formulates a historical comparative approach (2008). He suggests to consider electoral reform as a process with different stages. During this process, there are multiple barriers that need to be overcome. These five barriers are:

1) The procedural superiority of the status quo.
2) Political tradition.
3) The systematic balance and efficiency.
4) Actors" vested interests.
5) Coalition politics and the need to serve everyone.

This approach is in line with the path-dependency theory that Pierson describes (2004).

James uses the statecraft approach to explain certain types of electoral reform (2012). He defines this as an overall theory that states that political elites use the instruments of the state to compete for power. Because of this competition, political elites will try to maximize their own interest. One way to do this is to use elections, as well as the manipulation of election laws or rules to maintain or expand their power. Examples of this behavior are the alteration of election administration or changing the rules regarding eligibility to vote. In order to detect this kind of behavior, it is not sufficient to look at the current election administration or electoral legislation. The history of these issues has to be taken into account to see if the elite manipulation can be detected.

2.10 Actors in change

It is also interesting to look at the actors that are involved in electoral reform. As Norris states, "one major barrier to reform is that legislators are also the beneficiaries of the status quo and thus have strong incentives to block change. There are many stakeholders that can help to break this logjam of incumbent self-interest, including public disaffection, protests channeled through civil society and election reform NGOs, the mobilization of opposition forces and the use of popular referenda" (2017, 133). The international community can also influence the reform agenda. These external actors are usually independent of partisan interests within a country (Norris 2017).

2.11 Conclusion

This chapter reviewed the key existing literature on the importance of democratic elections and the dangers that election fraud can pose to the legitimacy of the outcome of elections. It looks at the new literature on democratic backsliding, both on the electoral side as on the liberal side. It notes that studies on established democracies and election fraud are relatively sparse, focusing mainly on the United States, Russia and Great Britain. Comparative research on election fraud is even rarer. The chapter then looks at different definitions of free and fair elections that can be found in the

literature. The question what should be considered free and fair is linked to the approach that is taken to democracy; a formal approach or a more substantive approach. The conclusion of this part of the chapter is that there is no universal agreed definition of free and fair elections.

Another issue that can arise when studying electoral integrity and election fraud is that certain requirements of a free and fair election process can be conflicting. The example that is most often used in the literature is that of accessibility of the vote versus the changes to commit fraud. The chapter next discusses the various approaches that have been used to define election fraud, ranging from formal or restrictive approaches which focus on the legal norms of the country in question to more inclusive approaches which also take into consideration more overarching norms, for example stemming from international soft law. Other authors differentiate between the actors committing the fraud, from candidates to voters, or between the stages of the electoral process. The main conclusion of this part of the chapter is that there is no universal agreed definition of the term "election fraud".

Other relevant literature for this study that is discussed deals with methods of detecting and deterring fraud. It notes that there is no comparative literature on how fraud, once detected should be remedied. This also links to the next part of the chapter, dealing with different electoral systems and election fraud. Remedies that can work in certain electoral systems might not be effective or usable in other systems. The literature relating the electoral system to the occurrence of election fraud is also discussed. The chapter then turns to the literature that tries to explain changes in election law. It notes that there are different approaches to this topic, but that most of the existing literature focusses on reforms in electoral systems and the way voters are translated into seat share and less into other areas of reform of the election law, including election fraud legislation. The main conclusion of this chapter is therefore that although there is literature on election fraud and there is literature that tries to explain changes in election law in general, there is no literature that explains changes in those parts of election law that deal with election fraud. Also, there seems to be a lack of comparative literature that can offer an explanation as to why different established democracies have translated the norms for democratic elections in different ways in their election legislation. This study will try to add to the existing literature on election fraud by making such a comparison while looking at the question how different established democracies define election fraud in their own legislation and what factors determine the differences between these definitions.

Chapter 3 Conceptual Framework and Hypotheses

3.1 Introduction

There are a variety of different approaches or lenses through which electoral fraud can be studied. This chapter will introduce the conceptual framework that is used in the study. This framework is based on the literature review as described in Chapter 2. In this chapter I will first introduce the main concept that is used in the study; the term "election fraud". In doing so, I discuss different approaches that can be taken when using this term and argue why for this study a legal or restricted approach is most suited. This approach means that only those acts which are a violation of the legal norms of a country that deal with the election are considered election fraud. Other, more broader approaches, which for example also look at international, soft norms, are shown not to be useful for answering the research question, posed in Chapter 1.

Then, the chapter places the study within the existing theories that can be used to explain changes in legislation. Since the object of the study, laws, can be defined as an institution, the chapter looks at different approaches to the study of institutions. It describes rational choice institutionalism, sociological institutionalism and historical institutionalism, but also notes that there are other ways of classifying different theoretical approaches. The chapter then argues why historical institutionalism was chosen as the relevant framework and explains the use of the theory of path dependency and critical junctures in the study. However, changes in legislation can also happen gradually over time. In order to explain those, the framework introduced by, amongst others Mahoney and Thelen on incremental institutional change is used as well (2010). Next, each hypothesis and the rationale behind it is presented by building of the insights of institutionalism combined with the specific literature on electoral institutions. The framework that is described will be the basis for the methodology used in the study which is described in Chapter 4.

3.2 Approach to the term "election fraud"

As mentioned in Chapter 2, there are many terms that are used to describe negative behaviour during electoral processes. Examples are "election fraud", "electoral manipulation", "electoral malpractice", "corruption" or "electoral mispractice". Even though these terms describe behaviour that is in many ways very similar, they cannot be seen as synonyms. However, they all focus on irregular processes and activities that relate to the possibility of influencing the results of elections. Because of these differences, for the purpose of this study, it is necessary to define what approach is taken when using the term "election fraud".

Birch identifies four approaches towards this definition, although she uses the term “electoral malpractice” (Birch 2008 and 2011). She differentiates between election fraud and electoral malpractice, where fraud is used to describe intentional acts and malpractice to describe wrongdoings that affect elections, but do not have to be intentional (Birch 2011).

In her approaches, the first one is the legal approach. According to this approach, electoral malpractice is described as a violation of the legal norms of a country that deal with the election. This approach is also called the restrictive approach (Vickery and Shein 2012). The benefit of this approach is that it permits observers to stay away for difficult issues of cultural and political relativism, because the own laws of a country are used to measure fraud. This means that no “outside” norms are used to judge the election. It is also useful in practical cases where the candidates, election officials, public and law enforcement have to be informed on criminal conduct in the electoral process so that they can be aware of acts they should report or take action on. The use of legal texts provide a concrete national standard (Norris 2014, 35). The weakness of the approach is that by only focussing on the current law acts that should be considered election fraud but are not defined as such within the law might stay unnoticed (Vickery and Shein 2012). Also, elections can be perfectly legal and still violate many moral principles and internationally accepted normative standards (Norris 2014, 35).

This approach coincides with the definition of election fraud used by Lehoucq (2003), who defines election fraud as a “clandestine effort to shape election results”. In his view, in order for an act to be fraudulent, it has to break the law. Davalos and Dong use a similar definition of election fraud: “a deliberate violation of dispositions of the Electoral Law in order to change the electoral results to overtake or to harm a candidate (Davalos and Hong 2011).

The other approaches that Birch describes can be seen as inclusive approaches. These approaches aim to classify election fraud, malpractice and manipulation as broad as possible (Vickery and Shein 2012). These inclusive approaches do not distinguish between potential actors and often use terms that have no precise legal meaning. The advantage of these approaches is that they does not rely on a country’s own legal definition and are therefore robust against weak legal systems or systems that are controlled by the people committing election fraud. The disadvantage is the imprecision that the inclusive approaches entail, making it harder for both practitioners and technical assistance providers to identify, prevent or mitigate possible problems (Vickery and Shein 2012).

An example of an inclusive approach is Birch’s second approach which she calls perceptual. It is based on the perception of what is considered a violation of the norms of a respective culture. These

norms can be laid down in the law, but are not necessarily completely codified. The third approach sees electoral malpractice in light of the best practices as described in international norms such as the norms of the Organization for Security and Cooperation in Europe (OSCE) the Council of Europe (CoE) and the United Nations (UN). The final approach is normative, it is based on democratic definition and the deviation of that norm.

Rafael Lopez-Pintor distinguishes between election fraud that can change the outcome of an election and not-outcome determinative fraud (Lopez-Pintor 2011). Other authors differentiate between election fraud and voter fraud, where voter fraud is “intentional corruption of electoral processes by the voter” (Minnite 2007).

In this study the approach to the term “election fraud” that is used is that of the legal approach, meaning that election fraud is limited to a violation of *the legal norms of a country that deal with the election*. Using this approach for this study is necessary because the research question focusses on the differences in those legal norms and thus in the definition of election fraud based on the national laws. The use of more inclusive approaches would therefore not be suitable to answer this question as it broadens the term “election fraud” to norms that are outside that of the national legislation and therefore also outside of control of the national legislature. The study does not use a distinction between intentional and unintentional behaviour, such as Birch suggests (2011). The reason behind this choice is that although intent can be part of the requirements in legislation to convict a person, the behaviour that is described in the legislation itself does not make a distinction between violating it intentionally or unintentionally. This would not be possible, because legislation is too generally formulated to deal with this issue. The matter of the intent of the perpetrator is an issue that has to be addressed in an individual case by the court (Binder 2002).

For the same reason, the study does not differentiate between fraud that can change the outcome of an election and fraud that cannot. For legislative purposes, this difference is almost impossible to formulate. Acts that seemingly do not affect the outcome of an election, such as breaching voter secrecy or the rules of campaign financing, could still have an effect, even if it is less direct than for example ballot-stuffing. Finally, when it comes to differentiating between the actors who commit fraud as Minnite suggests, this could be a part of the legislation (2007). It is possible for the legislature for example to include higher punishments for some actors, such as electoral management bodies or candidates for breaking the election law than for others, such as voters. This study will investigate to see if these differences are part to the legislation. However, for the purpose of the study, it is not useful to make such a distinction in the definition upfront.

In conclusion, this study approaches the term “election fraud” in a narrow sense; any act that violates the legal norms of the country that deal with elections.

3.3 Institutionalism

This study is grounded in the institutionalist tradition. Election laws could be considered part of the institutional order of a state since they regulate the way in which representatives and political leaders are chosen. Institutionalists argue that the organization of political life matters (March and Olsen 1989, 126). They often claim that the best way to develop theories that explain political life is to study the rules and practices that characterize institutions and the ways in which actors relate to them. Institutions are able to generate strategies for resistance and reform (Lowndes and Roberts 2013). As Rhodes states: “The institutional approach is a subject matter covering the rules, procedures and formal organizations of governments. It employs the tools of a lawyer and the historian to explain the constraints on both political behavior and democratic effectiveness.” (Rhodes, 1997, 68). Within institutionalism, there is a distinction between old institutionalism and new institutionalism. Old institutionalism dominated the research in political science until the 1950s. Because of that dominance, it hardly ever specified its assumptions and practices. Methodological and theoretical premises were mostly left unexamined. Critics launched at “old” institutionalism therefore focus on the limitations in terms of both scope and method. The scope was limited due to the focus on formal rules and organizations and on official structures of government (Rhodes 1997, 68). The lack of attention to theory undermines claims of objectivity of the research conducted (Lowndes 2002).

This was changed by the so-called “behavioral revolution” (Lowndes 2002). Instead of taking the functions of political institutions as a given, behavioralists wanted to explain how and why individuals acted as they did. This shifted the attention away from the formal arrangements for representations, decision-making and policy implementation. However, this did not mean that institutionalism disappeared. The “new” institutionalism is characterized by a more expansive definition of institutions and is more explicit about its theoretical frameworks. An institution is to be understood as to refer to: “a stable, recurring pattern of behavior” (Lowndes 2002, 91). As March and Olsen emphasized “the organization of political life makes a difference” (1984, 747). Along the same lines Skocpol stated that political analysis should “bring the state back in” (1985). New institutionalism defines an institution as a “stable, recurring pattern of behaviour” (Goodin 1996, 22), thus using a broader definition than that used by old institutionalists.

Hall and Taylor identify three forms of institutionalism: rational choice institutionalism, sociological institutionalism and historical institutionalism (1996). Rational choice institutionalism combines

institutionalism with rational choice theory. It uses a characteristic set of behavioral assumptions. Rational choice institutionalists claim that the relevant actors have a fixed set of preferences or tastes and will base their behavior entirely on maximizing the chances of reaching that preference. Politics are seen as a series of collective action dilemmas. Actions are calculated, where the expectations of the behavior of others plays a big role. Institutions are seen as providing structure for these interactions, because they affect the range, order and incentive of decisions that can be made. Additionally, institutions can provide information and enforcement mechanisms that reduce uncertainty about the behavior of others (Ostrom, Gardner and Walker 1994, North 1990). Rational choice institutionalists see the process of institutional creation usually as a process of voluntary agreement by the relevant actors (Hall and Taylor 1996, 10-13). Rational choice institutionalism tends to rely on the use of deductive strategies and therefore often use cross country comparisons based on quantitative data, in contrast to the case study approach which is more often used by scholars from the sociological and historical branches of institutionalism (Aspinwall and Schneider 2000). Due to the focus of rational choice institutionalism on explaining individual behavior in within the context of institutions, the existence of institutions is usually taken as a given in the model (Pollack 1996, Shepsle 2006). The model is therefore less suited for discussing institutional design and institutional change.

Sociological institutionalism focused on the role of norms and values within organizations (March and Olsen 1984). Sociological institutionalists see institutions therefore as much more than formal organizations; they also are embedded with a collection of values, norms and rules which are often normative and have the capacity to influence individuals in their choices. Institutional change is then not a result from a rational weighing of costs and benefits as with rational choice institutionalism, but based on the individuals norms and beliefs. Individuals will often have a repertoire of familiar responses that they will chose from (Cohen, March and Olsen 1972). In this theory, many of the institutional forms and procedures should be seen as culturally-specific practices that align with myths and ceremonies from that society. Sociological institutionalists typically try to explain for why organizations take on specific sets of institutional forms, procedures or symbols. Within these explanations, there is an emphasize how such practices are diffused through organizational fields or across nations. Compared to the other forms of institutionalism, sociological institutionalists tend to define institutions more broadly. They include not only formal rules, procedures or norms, but also the symbol systems, cognitive scripts, and moral templates that provide the frame that guides actions of the individual in that institution. Change in the practice of institutions will occur not because it advances the means-ends efficiency of the organization but because it enhances the social legitimacy of the organization or its participants (Hall and Taylor 1996, 13-17). The work of

March and Olsen is an example of sociological institutionalism. They claim that in the study of organizations, more priority should be given to the role of norms and values within these organizations (1996, 1989).

Historical institutionalism associates institutions with organizations and the rules or conventions promulgated by formal organization. When it comes to explaining the behavior of individuals, historical institutionalists tend to use both the calculated way of decision making from the rational choice theory and the cultural approach from the sociological theory. In historical institutionalism, much attention is paid to the way institutions distribute power unevenly across social groups. It focusses on political processes over time, rather than examining snapshots, or moments in time. In order to do this, there are two main concepts, commonly cited: stasis and change. Stasis, meaning that things stay the same, is explained with the use of "path dependence", whereby what comes after is dependent on previous events (Sewell 1996). Rixen and Viola have describe path dependence as "a specific kind of process that is set in motion by an initial choice, decision, or event, which then becomes self-reinforcing" (2016, 12). Policy decisions (or in the case of this study laws) become fixed because funds may have been invested or reputations are staked on their success; therefore, reversing the policy is more costly than continuing with it. In discussing institutional inertia and climate change, Munck et al. pinpoint five factors explaining inertia based on new institutionalism: costs, uncertainty, path dependency, power and legitimacy (2014). Changes to the system are explained by looking at events of different magnitude, that can happen both inside or outside of the institution. The relationship between statis and change can be seen as a process of "punctuated equilibrium", where a (extended) period of statis can be interrupted by either a series of series of smaller scale events (Krasner 1984), or fewer, but more significant "critical junctures", leading to more radical changes, as the mechanism that may interrupt the path dependency (Cappoccia and Kelemen 2007, 343–344).

This link with the concept of path dependency, means that historical institutionalists assume that although outside events might be the same, they will not lead to the same outcome everywhere. Instead, the contextual features of a given situation, based on decisions that were made in the past, are of great importance. The focus of the research is therefore on explaining how institutions produce such paths, meaning how they structure a nation's response to new challenges. The concept of punctuated equilibrium often leads to an explanation that divides the history of an institution into periods of relative calm continuity, punctuated by critical moments in which change can occur (Hall and Taylor 1996, 5-10). Historical institutionalists are different from rational choice institutionalists by their emphasize on how the motives and actions of actors depend on the social-

historical institutional setting. Their concerns about power at the forefront of the analysis distinguishes them from sociological institutionalists (James 2016). Historical institutionalism can be used to study very different institutions and their origins, from policy to law to the way certain institutions operate within the system. Recently, it was used for example to study the reason why China and Vietnam have very different approaches to trade unions (Chan 2019), how path dependency has locked in coastal and marine governance in Indonesia (Talib et al. 2022), to look at the responses of the Czech non-profit organizations to the Covid-19 crisis (Plaček et al 2022) and to study the impact of housing-policy responses following the Grenfell fire on the marginalisation of the social-housing resident (Carr et al 2022).

Besides the typology used by Hall and Taylor, there are others. For example, Peters identifies within new institutionalism the following forms: normative institutionalism, rational choice institutionalism, historical institutionalism, empirical institutionalism, discursive and constructivist institutionalism, sociological institutionalism, institutions of interest representation and international institutionalism (2019). He points out that although all these approaches have the same starting point; institutions, rather than individuals, there are still fundamental differences among the approaches. These deal among others with the instrument through which constraint on the individual is exercised, the degree to which institutions are assumed to be fixed and the extent to which institutions are conceptualized as concrete objects as opposed to more intangible collections of norms and values (Peters 2019).

3.4 Theoretical framework: historical institutionalism

Within the different strands of institutionalism, this study fits best within the historical institutionalism which looks at how institutions evolve *over time*. Historical institutionalism, as mentioned above, focuses on the long-term viability of institutions and their broad consequences. Historical institutionalism is interested in how ideas, interests and positions can generate preferences, how they change over time and why (Sanders 2006). As Pierson mentions: “Historical institutionalist scholarship is historical because it recognizes that political development must be understood as a process that unfolds over time. It is institutionalist because it stresses that many of the contemporary implications of these temporal processes are embedded in institutions, whether these be formal rules, policy structures, or social norms” (1994, 29). As the aim of the study is to explain why the current legislation of countries on election fraud (formal rules) is different, but since this legislation is not new but over 170 years old, the focus has to be on how and why this happened over time (the temporal process).

The study focuses therefore on the institutional and historical context for and shaping of the laws dealing with election fraud. Historical institutionalist theory claims that events or decisions that were made at certain moments in time create institutions that then limit new possible choices from that moment on (Bulmer 2007, 50). This theory then suggests that there are critical junctures in historical development of institutions where path dependency is created, meaning that once a certain choice is made, it will be virtually impossible to radically alter the chosen path from there. This means that choices made in the past constrain the behaviour of decisions of actors in the present (Pierson 2004, Thelen and Steinmo 1992).

However, not all changes over time can be explained by just looking at big events that create critical junctures. A complementary approach to studying and understanding institutional change focusses on more incremental ways in which change occurs. The theory on such incremental institutional change has been developed over the last two decades, by amongst others Mahoney and Thelen. As they point out:

"In the literature on institutional change, most scholars point to exogenous shocks that bring about radical institutional reconfigurations, overlooking shifts based on endogenous developments that often unfold incrementally. Indeed, these sorts of gradual or piecemeal changes often only "show up" or "register" as change if we consider a somewhat longer time frame than is characteristic in much of the literature" (Mahoney and Thelen 2010, 2).

They also note that these gradual changes can be of great significance and should be considered as causes of other outcomes (Mahoney and Thelen 2010). A factor according to them that could lead to the gradual change of institutions is: "the fact that rules can never be precise enough to cover the complexities of all possible real-world situations. When new developments confound rules, existing institutions may be changed to accommodate the new reality. These changes can involve rule creation, or they may simply entail creative extensions of existing rules to the new reality" (2010, 11). They then outline four possible ways institutions can change:

1. Displacement: the removal of existing rules and the introduction of new ones. Displacement differs from the other three ways in the sense that the existing rules remain in place in those situations, where as in displacement they are replaced.
2. Layering: the introduction of new rules on top of or alongside existing ones. Essential about layering is that the new rules do not replace the old ones, but are added to these. This leads to a process of gradual change in the status and structure of the rules.

3. Drift: the changed impact of existing rules due to shifts in the environment. Drift takes place when the environment changes, but the existing institution does not adjust itself. A typical example is regulatory ambiguity, which happens when rules allow for a wider interpretation by those subject to the rules than was intended by those who set them. This interpretation leads to adaptation.
4. Conversion: the changed enactment of existing rules due to their strategic redeployment. With conversion, the rules or institutions themselves are not changing, but they are used to serve new ends (2010, 15-16).

In this study, the changes in the laws on election fraud are seen as highly context-specific, with a focus on those formative moments (critical junctures), path dependence and sequencing. This latter looks at the order in which events unfold in a country and focusses on the idea that this order and not only the occurrence of events, affects the outcome of the contemporary status (Hague et. al 2016, 104-105). However, attention will also be given to the gradual changes mentioned by Mahoney and Thelen and in particular their typology of those changes as outlined above. The object of the study are national laws and the power elites, in this case the members of parliament. The time horizon for the study is long-term, going back to the past, to the emergence of modern election laws (Lowndes and Roberts 2013, 32-33).

This long-term approach is necessary because any approach that focuses only on short-term effects would not be able to see and explain the slow and gradual change in this type of legislation. Therefore, an approach is needed that is able to analyze the effects of decisions over a longer period of time. Comparative historical analysis takes notice of gradual, slow-moving and hard-to-see causal processes. This approach is suitable to develop and test alternative explanations by tracing the processes that link initial events, such as an early decision by the legislature, or the occurrence of election fraud, to subsequent outcomes. To be able to identify the necessary observations to develop and test explanations for each case, a strong knowledge of the history of that case is often essential. The use of in-depth case studies is often used within comparative historical analysis since it can identify causal processes that are not apparent in macroscopic studies. The use of case studies makes it possible to see who the key actors are that play a role in advocating or preventing change and their reasons for taking that standpoint (James 2012). Comparative historical analysis can be used for within-case observations, but also to comparing cases. The process tracing method makes it possible to build theories (Thelen and Mahoney 2015). In Chapter 4 the choice for the use of case studies and process tracing will be described in more detail.

3.5 Hypotheses

Historical institutionalism helps to show how individual behavior can be shaped by institutions. The specific literature on *electoral* institutions is now used to develop hypotheses about why the definition of election fraud might be different in different countries. I have three hypotheses that will be tested in this study, that are based on the key concepts of historical institutionalism as described above. The first two hypotheses fit with the idea of path dependency; the choice for a law system or an electoral system has a direct influence on the type of election fraud legislation that is needed and is therefore a sign of a locked-in choice. The third hypothesis, that assumes that countries that have experienced election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries with lower levels of fraud, fits with the idea of gradual change, where either new rules will displace the old ones, or new rules will be layered on top of old rules.

However, since the study is using an iteratively approach (Yom 2015), these hypotheses will be revised and developed further during the study. As Yom points out: "Qualitative scholars conducting immersive fieldwork frequently revise their causal propositions after discarding old assumptions and uncovering new mechanisms from interviews and archives" (2015, 617). Inductive iteration allows for a study to start with a seemingly complete theory that reflects an established literature, with the understanding that new insights from data and cases could well show it to be incomplete, and so in need of revision of the theory (Yom 2015, 626). Especially in the field of historical comparative studies, this can be useful. As Yom states: "These studies systematically compare cases with each other but also trace within detailed case studies how causal processes play out over time. In doing so, comparative historical analysts often begin with little more than informed hunches drawn from knowledge of different countries and time periods, as well as existing theoretical ideas (2015, 629)." Only after going through each case, it becomes clear what explanations could be useful. This study explores new ground, since no systematical comparison of the history of election fraud legislation between different countries has been undertaken at a similar scale. The use of the iterative approach can therefore be useful to develop new theory in an area where the applicability of existing theory is untested.

3.5.1 Hypothesis 1

My first hypothesis is that:

Countries with a civil law system will have clearer defined laws on election fraud than countries with a common law system.

There are different legal traditions in the world. David and Brierly distinguish the following: the Romano-Germanic law family, also known as civil law, common law, socialist law, Muslim law, Law of India, Law of the Far East and Laws of Africa and Malagasy (1996). In each of these legal systems, a different role is assigned to the different formal sources of law; legislation, custom, judicial decisions, doctrinal writings, equity etc. (David and Brierly 1996, 14). These differences also have an effect on the way legislation is written and laws are formulated.

The most used legal systems are the systems of civil law and that of common law. Civil law finds its origins in the law of ancient Rome. It is spread out over the entire world, being used in many countries in Europe, Latin America, a large part of Africa, Japan and Indonesia (David and Brierly 1996, 33). The primary source of civil law legal systems is the law. It emphasizes the importance of codification of principles of law, rights and basic legal mechanisms, in order to provide clarity to citizens and judges by establishing a written collection of laws. In most civil law systems, judicial rulings only apply to the specific case in which they were given David and Brierly 1996, 144). This means that there less of a precedent value given to judgements and case law plays a very small role in the interpretation of laws.

Most civil law systems have parliamentary form of government, in which he legislature is supreme. Within the European civil law countries, this notion of legislative supremacy is inseparable from the notion of separation of powers. When it comes to the judiciary, this means that the doctrine of legislative supremacy means that the judicial power does not extend to review the legality of legislative, executive and administrative action. Going even further, within these systems, this doctrine has been used to deny the courts a “lawmaking” functions through the interpretation of legislative texts. Therefore, courts do not have much room to interpret the existing laws in a matter that leads to another meaning than the legislator intended. Laws will therefore have to be precise, in order to give judges clear direction in how to apply them (Glendon et al. 2008, 62-64).

The common law system originated in England, as a result of the activities of the royal courts of justice after the Norman Conquest (David and Brierly 1996, 307). Besides the United Kingdom, common law is used in most Commonwealth countries and the United States of America. A common law system is based on the concept of judicial precedent. Judges take an active role in shaping the law here, since the decisions a court makes are then used as a precedent for future cases. Whilst common law systems have laws that are created by legislators, it is up to judges to rely on precedents set by previous courts to interpret those laws and apply them to individual cases. Common law is generally uncodified. This means that there is no comprehensive compilation of legal rules and statutes. The judicial precedents are maintained over time through the records of the

courts as well as historically documented in collections of case law known as yearbooks and reports. A judge determines which precedents have to be applied when deciding on a new case. As a result, judges have a big role in shaping common law (Law 2017, Glendon et al. 2008, 277-280).

When comparing the two systems, the most obvious feature of civil law compared to common law is the fact that it is codified. Codification means that the whole law is written in a coherent systematic form and that when changes are made, they are included within this codified legislation. This legislation is seen as the sole source of the law and should provide a clear answer as to which behavior is allowed and which is not. In contrast, in common law, nor formulation of a rule, both by the legislator or judge is final. A later judge can broaden or narrow the content and the reach of the rule in question. New extensions to exiting rules can be made at any time by the courts (Stein 1991).

Combining these two factors: the codification that is used in civil law systems and the fact that there is little room for judicial interpretation opposed to common law systems would make it likely that the legislator has to be more precise and extensive when making laws about election fraud. Because the judge cannot extend the applicability of the law to situations that are not explicitly covered in the law, in order to make sure that unwanted behavior can be penalized, it will have to be an integral part of the law. Therefore, I expect the legislation in a country with a civil law system to be more clearly defined than in a country with a common law system.

3.5.2 Hypothesis 2:

The second hypothesis is:

Countries with a majoritarian electoral system will mark more acts as election fraud and will also have higher sanctions for them than countries with a proportional representation system.

An electoral system is a set of rules that determine how elections are conducted and how their results are determined. There are many different electoral systems that are used in the world. Also, different researchers use different ways to qualify them (Farrell 2011). For this study, a common way for qualification is used, looking at the output of the system, that is the process of translating votes into seats (Gallagher and Mitchell 2008, 3).

In his typology, Renwick distinguished four main categories of electoral systems: Plurality/majority systems, proportional systems, mixed systems and other systems (2010, 4). Gallagher and Mitchell name five systems: Single-member constituency systems, mixed systems, closed-list systems, preferential list systems and PR-STV systems (2008, 5). Relevant for this study are the

plurality/majority systems, or single-member constituency systems and the proportional systems or PR systems.

Single-member constituency systems can be seen as quite simple: the candidate who gets the most votes in the constituency wins. He or she does not have to have an overall majority of the votes, as long as the candidate gets one vote more than the runner-up, the seat is his. This system is used in, among other countries, the United Kingdom, the United States, Canada and many former British colonies (Farrell 2011). The advantages of the system are, next to the simplicity of the rules, stability and constituency representation. The argument of simplicity not only sees to the way the votes are translated into seats, where the winner takes the seat, but also for the voter: he or she casts one vote on a list of candidates and because of the system, there is no need for strategic voting (Farrell 2011, 14). When it comes to stability, it is often argued that the system with single-member constituencies leads to stable governments. The United Kingdom hardly ever has had a coalition government, the ruling party usually had a clear majority in parliament. This has only happened a handful of times, most of them in the period before and during World War II. The only coalition government since has been the Cameron–Clegg coalition, the British government under David Cameron and Nick Clegg (2010–2015).[3] In this system, the government does not have to negotiate with smaller parties to be able to pass legislation. This also gives a fair amount of certainty to the voters, the party with the majority of the seats will be the ruling party, being able to carry out its program without have to hold coalition negotiations (Farrell 2011, 14). Finally, the system with single-member constituencies provides for a direct link between the member of parliament and its constituency. The member knows who his voters are and voters have a member of parliament that they can contact. This also means that no areas of the country will be "underrepresented" (Farrell 2011, 14).

Within single-member constituencies, the minority does not get representation. In addition, voters vote for candidates, not for political parties. Because of the plurality rule, a candidate can win with a very small margin of votes. Plurality systems tend to be centered around two parties. Sometimes a third party might be able to win some seats, but usually their seat share is lagging behind their vote share (Farrell 2011, 19-20). In some cases, the system can lead to the situation where the party that wins the most seats is not the party that had the most votes when combined at the national level. This can lead to an unjust feeling with the electorate.

[3] https://en.wikipedia.org/wiki/United_Kingdom_coalition_government, accessed last on March 29th 2022.

Proportional representation systems are on the opposite side of the spectrum of systems. In these systems, depending on the size of the districts, the aim is to strive for proportionality. This means that votes are aggregated at the level of the district. The total number of seats in the district is divided by the total number of votes that are cast. The outcome of that division determines how many votes a party or candidate has to obtain in order to get a seat. There are proportional systems with relatively small districts, but there are also countries, such as the Netherlands and Israel where the whole country is treated as one district (Lijphart 1995, 11). The main advantage of proportional representation, especially with larger districts is that it enables minority groups within society to elect representatives. This system enables a legislature that is a representative of all opinions and interests of a country. Drawbacks that are pointed out is that the system more complex for voters, due to the fact that after the election, it is often the case that coalition governments have to be formed. This means that is it less clear for a voter what happens with his vote. Also systems of proportional representation often lead to a looser bond between the voter and the representative (Lijphart and Grofman 1984, 5-7).

There have been different views in the literature on the effect of the electoral system on the level of corruption and electoral misconduct. Some authors claim that proportional representation systems are associated with higher levels of corruption than plurality systems. This has to do with the fact that it is easier to hold leaders accountable in the latter systems (Kunicova and Rose-Ackerman 2005). Myerson found that corruption should be higher under plurality rules because the high effective barriers to entry in single member district races inhibits competition (Myerson 1993). Other studies have found ambiguous relationships (Chang 2005, Persson et. all. 2003).

Sarah Birch studied the effect of the electoral system on electoral misconduct (2007). She found that the level of electoral misconduct is higher in plurality systems than in proportional representation systems. The reason for this is that in plurality systems, politicians have more reliable means of manipulating elections. In plurality systems the incentives for individual candidates and party leaders to engage in electoral misconduct are higher and the mechanical effects of turning votes into seats are more straightforward. In proportional representation systems, voters typically vote for parties, where in plurality systems, they select individuals. This means that in proportional representation systems, it is important for the party to be seen as honest, as the misbehavior of one candidate will affect all the other candidates. The party will therefore have a greater incentive to enforce compliance with the electoral law in order to protect its reputation. In plurality systems, candidates tend to be more autonomous.

Also, manipulation in a plurality system tends to be more efficient than under PR, because often only a small number of votes will need to be manipulated in any individual district to alter the outcome of that district. In a proportional representation system, relatively large amounts of votes nationwide will have to be altered to change the overall balance of power in the legislature. The risk of being caught is much greater in that case (Birch 2007). Birch tested this theory again in a larger number of cases in 2010 and found the same results (Birch 2010b). James concludes that election administration is more likely to be decisive in close elections using plurality voting systems (James 2012). Lehoucq claims that majoritarian electoral laws encourage higher levels of election fraud and election fraud accusations than more proportional systems (Lehoucq 2003). If election fraud is indeed more likely to be found in plurality systems and the gains are higher, the legislation both needs to be very inclusive on the acts that are considered election fraud, but also will need to include high sanctions in order to be effective in deterring fraud. It is important to realize that: " electoral fraud is a fairly rational thing. It is not a crime of passion. Nor is it the result of a fit of madness. In most cases the perpetrators will therefore be sensitive to punishment and chance of being caught" (de Jong 2008, 26). However, as mentioned before, deterrence does not only depend on the height of the sanctions that can be received. In order to be effective possible perpetrators also have to perceive that there is a system in place that will discover crimes, investigate them and ensure that punishments will actually be given. This means that it is important to look as well at the way the acts are enforced.

3.5.3 Hypothesis 3

My third hypothesis is:

Countries that have experienced election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries with lower levels of fraud.

Legislation grows over time. Established democracies have had election legislation for quite a number of years. The election law of a country is usually not easy to change. In debates over changes is the election law, probably more than in debates over other laws, parliamentarians and political parties look at the effect of the change on their own position (Gerken 2009, 15-18). The direct effect on a party has then to compete with the public benefits of a proposed measure. A party may reject even a measure that would be very good for society at large if it will lead to a serious diminishing or even the disappearance of that party (Shorstein 2001). This means that once choices are made concerning the election law, it is hard to reverse them (Thelen and Mahoney 2015).

This also means that there is a situation where path dependency starts to play an important role. As Mahoney describes it, there will be "causal processes that are highly sensitive to events that take place in the early stages of an overall historical sequence" (2000, 507). This means that early historical events have a great influence on the choices that are made and can still be seen today. However, it is not true that these early choices completely determine future outcomes. It is still possible that there will be events which will lead to a change in the path that is chosen. Mahoney points to two different types of situations. The first are self-reinforcing sequences, which consolidate "initial steps in a particular direction that influence further movement in the same direction such that over time it becomes difficult or impossible to reverse direction" (Mahoney 2000, 512). Path dependency can then function as a mechanism in which institutional choices from the past are locked in over time. The second type of situation Mahoney describes is a reactive sequence, where "chains of temporarily ordered and causally connected events" can lead to changes and thus to institutional development (Mahoney 2000, 526). This last kind of sequence is often also described as a situation of a punctuated equilibrium" (Baumgartner and Jones 1991). During such a punctuated equilibrium, a path dependency can be broken by sudden actions of actors or by unforeseen outside events. This can, but does not always have to lead to change in the existing situation.

This hypothesis also takes into account the existing research into policy learning. Policy learning is defined by Dunlop as: "the updating of beliefs based on lived or witnessed experiences, analysis or social interaction" (2017, 5). This could lead refer to beliefs on how to make policy more efficient legitimate or democratic. However, it can also mean learning how to better make use of the policy to promote its own interests. Policy learning therefore is about how knowledge that comes from experiences, analysis and social interaction is considered and acted upon by policy actors. Learning can happen from reflection, as a by-product of bargaining and in hierarchies (Dunlop and Radealli 2018, 256-262). Institutions can facilitate and constrain which lessons are learned from policy experience and which are ignored (Kay 2017, 91). Policy failures can be a catalyst for institutional change and thus serve as an event that can alter the outcome of earlier decisions that are locked in by means of path dependency (Kay 2017, 93-94).

When applying this to the development of legislation, this would likely mean that countries that have experienced fraud in the early years of their democracy will have felt a greater need to include strict legislation on this issue in order to combat this fraud. Once such strict legislation is in place, the workings of the legislative process and the institutional costs that accompany change in legislation will effectively ensure that this legislation remains in place, leading to path dependency. Countries that have not experienced election fraud in the early years will not have had the need to

include this kind of legislation and will therefore have less detailed rules regarding this issue. The expectancy would be that new legislation on election fraud will be introduced shortly after acts of fraud have been committed. This is due to policy learning; when fraud occurs, the policymakers will feel the need to respond. The historical sequence of events will therefore be predictive for the current outcome: the legal definition of election fraud.

3.6 Conclusion

In this chapter the key concepts for the study were introduced. Based on the concepts of previous research as described in the literature review in Chapter 2, it distinguished the concepts of electoral integrity, electoral malpractice and electoral fraud. This study is based on the legal approach, meaning that an narrow approach is taken with regard to the term "election fraud". In this study this term is used in the meaning of any act that violates the legal norms of the country that deal with elections. The chapter argues why although broader definitions are often used, based on international norms or standards (Birch 2011), in order to answer the main question of this study, a narrow definition is necessary. This is due to the fact that the national legislation is taken as the independent variable. This legislation is made and changed by the national legislative power (government and parliament) and codified in the law. Broader norms, stemming from international norms or standards are (in the field of elections) often "soft law", meaning that they do not have a binding status. Since the study aims to track the changes parliaments make in the legislation on election fraud, approaches which give a broader meaning to the term "election fraud", putting it outside the influential scope of the national legislator, are not useful to answer the research question.

The chapter then goes into detail on the theoretical framework. Since the study focuses on changes in election legislation, which can be seen as an institution, the choice was made to ground this study in the institutional theory. Within that theory, there are several strands that can be used. The chapter explains why a choice was made for historical institutionalism. Historical institutionalist theory claims that events or decisions that were made at certain moments in time create institutions that then limit new possible choices from that moment on, thus creating path dependency. The theory suggests that historical development of institutions can be divided into periods of statis, where no changes are made and periods of change. Due to the costs involved with making changes, often there will be critical junctures, or moments of a punctuated equilibrium that are the factor that drive change. In studying this development, there is also an emphasize on the order in which events unfold in a country (sequencing), since this order can also affect the outcome of the development. In this study, the changes in the laws on election fraud are seen as highly context-

specific, with a focus on those formative moments (critical junctures), path dependence and sequencing. However, attention will also be given to the gradual changes mentioned by Mahoney and Thelen and in particular their typology of those changes as outlined in this chapter. The object of the study are national laws and the power elites, in this case the members of parliament. The time horizon for the study is long-term, going back to the past, to the emergence of modern election laws.

This long-term approach is necessary because any approach that focuses only on short-term effects would not be able to see and explain the slow and gradual change in this type of legislation. Therefore, the study warrants an approach that is able to analyze the effects of decisions over a longer period of time. Comparative historical analysis takes notice of gradual, slow-moving and hard-to-see causal processes. Therefore this approach suits the study as it is able to develop and test alternative explanations by tracing the processes that link initial events, such as an early decision by the legislature, or the occurrence of election fraud, to subsequent outcomes (process tracing). To be able to identify the necessary observations to develop and test explanations for each case, a strong knowledge of the history of that case is often essential. The use of in-depth case studies is often used within comparative historical analysis since it can identify causal processes that are not apparent in macroscopic studies.

The chapter then turned to the hypotheses that will be tested in this study. From existing ideas about why legislation can differ between countries, three hypotheses were introduced. The first one states that countries with a civil law system will have clearer defined laws on election fraud than countries with a common law system. The second one is that countries with a majority electoral system will mark more acts as election fraud and will also have higher sanctions for them than countries with a proportional representation system. These two hypotheses fit with the idea of path dependency; the choice for a law system or an electoral system has a direct influence on the type of election fraud legislation that is needed and is therefore a sign of a locked-in choice. The third hypothesis is that countries that have experienced election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries with lower levels of fraud. This hypothesis fits with the idea of gradual change, where either new rules will displace the old ones, or new rules will be layered on top of old rules. However, in case of large scale fraud, there could be formative moments where large revisions of the existing rules occur. The chapter explained the reasoning behind all three hypotheses, looking at literature on different legal systems, different electoral systems, path dependency and policy learning. However, since no previous research has been done into the historical comparison of election fraud legislation between

countries, the study also uses an iterative approach. The next chapter, Chapter 4, describes how the study is operationalized by showing which research design is used.

Chapter 4 Research design and methodology

4.1 Introduction

As stated in the previous chapter, the goal of this research is to explain why different established democracies have a different legal definition of election fraud. The study is based on a small N study in which the legal systems of different countries are compared with regard to their legislation of election fraud.

There is no universal definition of election fraud (Alvarez, Hall and Hyde 2008). Actions that are considered illegal during elections in one country might be permitted in another. For this study, election fraud is therefore defined as those actions that are defined by the legal system of a country as constituting election fraud.

In order to test the hypotheses, the legislative acts that the countries have defined as election fraud have to be charted by looking at the applicable laws. The definition of election fraud is usually laid down in the laws governing the elections, the criminal law system and in some cases the civil law system. This means that the unit of analysis is the legal system of the different countries. Because not all countries have encoded their sanctions on election fraud in the election laws, the unit of analysis is chosen broader, to include all laws. This means that the unit of analysis will also include the system of enforcement of election fraud laws and the punishment of election fraud whenever necessary to understand the historical developments.

Election fraud can take place in different parts of the electoral cycle. Although often the focus seems to be on fraud committed during the voting itself, such as vote buying and fraud with mail votes or proxy votes, the study does not limit itself to this. Fraud can also occur when dealing with the question who is eligible to vote or stand as a candidate in an election. In addition, countries can have rules on financial spending by candidates or parties in order to ensure a level playing field during elections. Breaking those rules can, depending on the appropriate legislation also be deemed election fraud. Finally, fraud can also be committed by bodies that manage the elections, for example in the process of counting and tallying the votes and announcing the results. Therefore, the debates on election legislation are examined with this broad definition of election fraud in mind.

This chapter will explain the methodological approach taken in this study. It first argues why the case study approach is useful to answer the main question why different democracies have a different legal definition of election fraud. It will then outline the strengths and weaknesses of this method. After that, the chapter explains why the cases of the Netherlands and the United Kingdom are

suitable cases for this study. Then the argument is made for the use of parliamentary documents as a primary source for this research. It also notes the upcoming quantitative methods for studying parliamentary documents and explains why these are not suitable for this study. It then describes the methodology of process tracing which will be used to study the archival material in order to find the causes that can explain the outcome in both countries. Finally, the chapter deals with the issue of conducting comparative research which uses sources that are written in different languages.

4.2 Use of case studies

In order to answer the research question, case studies are used. A case study approach uses an in-depth study of one particular phenomenon. Yin gives the following definition: "A case-study investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident" (2018, 15). Case studies are used by comparative-historical researchers and in many cases this is done by using small-n comparisons (Lange 2013).

Generally, a case study can be useful when it studies a phenomenon that might have broader implications for other sets of cases, or of all the cases together. Especially when it comes to theory development case studies can be useful. Theory development or building is used when existing theories are unable to adequately explain a particular phenomenon. In the case of theory development, an inductive process can be used where the researcher used the acquired in-depth knowledge from the cases to formulate new theories about the examined phenomena (Lange 2013). According to Yin, the logic of induction can then be used to generate theories from cases (2018, 38). These can then be applied to other cases to test them for verification.

There are several advantages to the use of case studies. They allow for a detailed study of the phenomena that are examined. Because of this detail, case studies are very suitable to study complex situations (Lange 2013). The use of in-depth case studies allows for the possibility to study processes in a way that would not be possible with other methods, such as statistical methods and formal models (George and Bennett 2005). Case studies are strong in those areas where statistical methods and formal models are weak. According to George and Bennett, they have four strong advantages: "their potential for achieving high conceptual validity, their strong procedures for fostering new hypotheses, their value as a useful means to closely examine the hypothesized role of causal mechanisms in the context of individual cases and their capacity for addressing causal complexity" (2005, 19). With regard to variables, such as democracy, power and political culture, these are very difficult to measure in a way that would be useful for statistical analysis. In order to compare these variables, the researcher has to consider contextual factors, which is difficult to do in

statistical studies, but common in case studies. In addition, statistical studies run the risk of stretching concepts in order to be able to put dissimilar cases together in order to get a larger sample. In contrast, case studies allow for conceptual refinement, which can lead to a higher validity over a smaller number of cases. Also important, especially for an inductive approach is that while statistical methods can identify deviant cases, these methods lack clear means of actually identifying new hypotheses. Case studies are more suited for this inductive type of research because they allow the researcher to find new variables and explore them (George and Bennet 2005, 19-22).

There are several criticisms with regard to case studies. A common one is that case selection is particularly prone to selection bias. In statistical research, selection bias can happen when cases are self-selected or when the researcher selects cases that have similar dependent variables. However, in case study research, sometimes the deliberate choice is made to look at cases which share a particular outcome. Studies of this kind can help identify which variables are not necessary of sufficient conditions for the selected outcome (George and Bennett 2005). Another criticism is that case studies may lack in representativeness for the general population of cases. This is especially true for research that is conducted with the use of a small number of cases. This means that case studies should restrain from making claims that their findings are applicable to other cases. This means that when carrying out research, a trade-off has to be made between the rich explanation that a case study can offer and the means to make more general statements based on statistical studies (Van Evera 1997). With case studies, there is the likelihood that researchers choose countries based on their language ability (Fearon and Laitin 2008, 1171).

4.3. Country selection

For the purpose of this study, the countries chosen were established democracies with a long history of elections. This limitation of the scope stems from the fact that only in those countries where there are free, fair and secret elections, the legal system will aim to deter election fraud and will therefore include meaningful articles on election crimes. It takes free elections to foster competition between candidates and parties. This competition can lead to acts of election fraud. In countries that are not democracies, election fraud is usually committed by the sitting government in order to give their reign a feeling of legitimacy. This government has no incentive to try to deter election fraud (Case 2006). The classification of the Freedom House is used to determine which countries can be

considered free democracies.[4] The chosen countries have each been continually scored in the highest categories since the end of World War II.

The choice of cases was done on the basis of a "most-different" research design as opposed to a most similar system design (Landman and Carvalho 2017, 74). In Chapter 3 the hypotheses were introduced. In order to test them the cases have to differ in the legislative system, and the electoral system. For the hypothesis on the legislative system, one of the countries has to have a civil law system and one a common law system. For the hypothesis on the electoral system, one country should have a plurality system and one country should have a system of proportional representation. The countries that are selected also both have to be old democracies, in order to be able to test the third hypothesis, which deals with the historical experiences with election fraud and the question how this might have had an influence on the development of relevant legislation. When looking at these requirements for the cases, The Netherlands and the United Kingdom fit the bill. The Netherlands has had a common law system for a very long time. The United Kingdom is the country where the common law system was first developed. When it comes to the electoral systems, the countries are also on the different sides of the spectrum. The United Kingdom is the example of a single-member constituency system where a simple majority of the votes within the constituency determines which candidate will get the seat. The Netherlands uses proportional representation where all the votes from the whole country are added to determine which candidates on the respective party lists get elected. Both countries are established democracies which have been having elections for a long period, over 170 years. In terms of Freedom House scores, the Netherlands is currently scored at 97 out of a 100, the United Kingdom at 93, putting them both in the top 25 countries out of the 210 countries that were scored. When looking at political rights, they both are scored at 39 out of 40. Therefore, the Netherlands and the United Kingdom are suitable cases for this study.

4.4. Time frame

Because one possible explanation for differences in the legislation concerning election fraud is a historical one (differences could stem from a different history of election legislation and actual cases of election fraud), the study will not only look at the current legislation, but also at the historical development of this legislation. This means that the time frame included in the study is long. The Dutch case, described in Chapter 6, starts in 1850 with the introduction of elections for the Lower House of the Parliament. For the United Kingdom, described in Chapter 7, the starting point is the

[4] Global Freedom scores: https://freedomhouse.org/countries/freedom-world/scores, last accessed on March 28th 2022.

Reform act of 1832. These dates are chosen because they represent a comparable starting point with regard to elections for both parliaments. For both countries, the cases are described until the beginning of 2020. This end date is chosen for two reasons. Due to the Covid-crisis, in both countries emergency decisions had to be made with regard to elections during a pandemic. The debates on those changes in election law are quite exceptional and although very interesting to study, should be considered such outliers that their inclusion in this study is not warranted. Secondly, a cutoff date had to be chosen in order to be able to finish this study. Debates on elections in both countries will continue, so any end date is arbitrary. Even with the end date of 2020 however, the study covers over 170 years of historical developments in both countries, a timeframe that should be long enough to discover which patterns emerge and how they differ between the countries.

4.5 Methodology

4.5.1 Process tracing

The main method that was used to answer the research question was process tracing. Process tracing can be defined as the systematic examination of diagnostic evidence selected and analyzed in light of research questions and hypotheses posed by the investigator. It is an analytic tool that is used to make descriptive and causal inferences by looking at the temporal sequence of events or phenomena (Beach and Brun Pedersen 2019). It can be used to identify novel political phenomena, evaluating prior explanatory hypotheses and discovering new hypotheses, and gaining insight in causal mechanisms (Collier 2011). Process tracing focuses on the unfolding of situations over time. In order to capture these changes, the descriptive component has to provide information on a series of specific moments in the period that is studied. Process tracing can be used for inductive studies on phenomena on which there is little prior knowledge (Bennett and Checkel 2015). When used that way, the study starts by collecting empirical materials and uses a structured analysis of these materials to build a plausible causal mechanism where the cause is linked to the outcome in such a way that it can be generalized beyond a single case. In short, process tracing tries to answer the question how did we get here, by using the empirical material. This form of process tracing is most useful when the researcher suspects that there might be a relationship between the causes and the outcome, but does not know yet which potential mechanisms link the two (Beach and Brun Pederson 2016).

For this study, this method is useful since it can contribute decisively both to describing political and social phenomena and to evaluating causal claims (Collier 2011). The empirical chapters describe in great detail the events and debates that let to changes in the existing legislation. By doing this, the outcome of all these events; the current legislation on election fraud in both countries, can be

explained as the result of all the prior decisions made with regard to the legislation. By focusing on the way these decisions unfold over time in both countries, inferences can be made as to why the events in the countries let to different outcomes in the current legislation. Since there is no existing theory on the typology of election fraud legislation, the theory building qualities of process tracing can be used as an inductive approach, where the observations about the causes are used to explain the outcome in both countries.

4.5.2 Sources

The research consisted of two parts. First, the current legislation in both the Netherlands and the United Kingdom on election fraud was charted. This was done by looking at the relevant legislation and distilling from it the articles that deal with election fraud. An overview of those articles is given in Chapter 5. Next, archival research was conducted to provide the information that was necessary to describe the historical changes in the legislation in both countries, as laid down in Chapters 6 and 7.

For the Netherlands, my current work as a legislative lawyer and previous work as an advisor to the Electoral Council meant that I already had a pretty good insight in the historical development of election law.[5] Also, the Dutch legislative archives are digitalized in a way that it is possible to track through the system all the moments in time an article was changed by the legislator. I first looked at all those changes in the legislation and the parliamentary debates surrounding it. This gave me a starting point for the timeline, but it was not complete, since it only looked at debates that actually let to a change. To be sure that I included all relevant debates, I used certain key words in the search engine for the Dutch parliamentary archives.[6] First, those debates were selected that contained the words verkiezing or kieswet. Then the Dutch key words from table 1 were used to identify those parts of the debates that were relevant for the topic of election fraud. These debates were then read and relevant findings and key passages were translated (see 4.6) and added to Chapter 6.

For the United Kingdom a similar approach was used, but instead of being able to rely on my own knowledge of the history of the election law, I had to rely a bit more on that of others. Luckily, the

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[5] I worked as a legislative lawyer for the Ministry of the Interior on, amongst others, the topics of electoral systems, elections and referenda from 2003 to 2007. During that time, I was responsible for drafting changes in the Election law and relevant other legislation. After that, I worked at the Electoral Council as a legal advisor from 2007-2008. I wrote several advices including an advice on the requirements for free and fair elections and helped organize provincial elections and elections for the First Chamber of the Parliament. Since 2010, I have been working at the Dutch Council of State, which is the highest independent advisor on legislative affairs to the Dutch government and parliament. In this position, I prepare advices for the Council on draft legislation, including proposed changes to the Election law.

[6] https://zoek.officielebekendmakingen.nl/uitgebreidzoeken/historisch.

earlier years of debates on election fraud in the United Kingdom are covered by multiple authors, up until 1962 by O'Leary (1962), Seymour (1915) and Butler (1963). I used their texts to find the relevant debates and also to get a feel for working with the search engine of the parliament of the United Kingdom.[7] For this search engine, I used the word Election to locate the relevant debates and then proceeded with the English terms, mentioned in table 1. Findings from these debates were added to Chapter 7 in the same way as the Dutch debates in Chapter 6.

Dutch	**English**
fraude	fraud
illegaal	illegal
integriteit	integrity
misdaad	crime
crimineel/strafbaar	criminal
straffen	punish
straf	punishment/penalty
boete	fine
omkopen	bribe/bribery
kopen	buy/buying
tracteren	treating
belofte	promise
gift	gift
dreigen	threaten
gevangenisstraf	prison sentence/imprisonment

Table 1: Keywords for search

Where necessary to support the findings in the parliamentary debates, the archival research included newspaper research on incidents of election fraud in order to see if there is a link between the reporting of such incidents and subsequent changes in the relevant legislation. Sometimes, this also let to new debates that were added to the case, because I could use these reports to search the archives in more detail. The combination of the use of the current laws, earlier laws, parliamentary and legislative documents, other archival material and previous studies provides triangulation. Using different sources increases the validity of the empirical findings because it allows for rectification of inaccurate, biased of incomplete data (Lange 2013). The use of secondary literature also provides as a safeguard to ensure that all the relevant debates had been found.

Even with the use of other documents, the study primarily focuses on the parliamentary documents relating to changes in the legislation that deal with election fraud. Where the other documents were mainly used to flag moments in time a change in legislation on election fraud was being debates, the parliamentary documents were examined in order to distill the reasons that are mentioned for the

[7] https://www.parliament.uk/about/how/publications/hansard.

inclusion or exclusion of certain acts as election fraud. Parliamentary documents are a classic source in historical research. They have been used to study the past national legislative work, but also offer a broader view on the political culture and political language, as well as major societal issues of the time (Ihalainen and Palonen (2009). As Ihalainen and Palonen mention: “In parliamentary debates, we can identify the precise types of actual speaking situations in which the key political concepts of the time were used. We can easily find the responses of the other speakers and draw conclusions about what kinds of conceptual choices were generally acceptable to the participants and what aroused criticism. In that way, we can demonstrate the range of possible meanings that could be assigned to a particular concepts by the parliamentarians” (2009, 24). The use of parliamentary documents for this study is suitable because it was the source that could provide a consistent dataset of the rationale for introducing electoral fraud legislation across the hundreds of years in both countries.

The use of these sources in political science research is not as common however, since, as Burnham et. al. point out: “One reason for this neglect is that traditionally this area has been seen as the prerogative of the academic historian and the majority of researchers in political science wish to distinguish themselves from contemporary historians” (2008, 190). However, this does not mean that these sources are not useful. Parliamentary papers can give a good inside of the policymaking process and therefore can provide an essential framework for political research (Burnham et. al. 2008). They can give insight in not only what changes were made in legislation, but also in changes that were debated, but did not pass Parliament. They can thus provide a greater contextualization, allowing the researcher to understand changes over time (Burnham et al. 2008). Parliamentary debates have been used in this way to undertake research in many areas in law, history and social sciences (Vromen 2018). Key works on which this study builds, such as Butler, O’Leary and Seymour also use these documents as a starting point.

With the digitalization of parliamentary speeches, there have been new advances in the use of them in research. Recently this has let to attempts to undertake quantitative analysis of parliamentary speeches. An example is the study done by Hargrave and Blumenau into the debating style of female Members of Parliament (2022). Although such a quantitative approach can be useful, for this study this approach was not suitable. Quantitative measures require that certain words or phrases are identified beforehand to assign them scores. Then, the model has to be trained to recognize these words or phrases in the body of the text, which can lead to quantitative data (Rice and Zorn 2021). However, for this case study, the number of times a word was used in the debates or the phrase in which it was used is not suitable to answer the research question on how differences in the legal

definition of election fraud came to exist in the two countries that were studied. In order to answer that questions, a qualitative approach was necessary in which the relevant debates were read entirely to discover relevant passages and arguments (Vromen 2018).

4.6 Translation

The documents are reviewed in the language of the country. This is possible since I can read Dutch and English. I then translated the findings in the Dutch case to English. There are methodological issues with this kind of translated cross-cultural research. As studies have shown, translation is not an objective and neutral process. Language is not simply a tool that is used to communicate ideas, but also carries logic and a specific set of assumptions about our sociocultural world and precondition our understanding of particular events of social phenomena. This means that translation is not a neutral technique of replacing words of one language with words of another language, but one were meanings are assigned to words in both languages (Temple and Young 2004, Müller 2007, Wong and Poon 2010). In order to make it visible how I translated the most important words and phrases between the languages, in the table in paragraph 4.5.2 a list of the search terms that are used in each language to retrieve the relevant documents is shown.

4.7 Conclusion

This chapter has outlined the research design for the thesis. It described why the case study approach is useful to answer the main question why different democracies have a different legal definition of election fraud. A case study allows for a detailed study of the phenomenon it want to examine. As noted in Chapter 3, in order to not only find the critical junctures, but also the gradual changes that will occur in legislation over time, such a detailed study is necessary in order to answer the research question in this study. This study uses two case studies, that are research independently, but in such a way that the data that was gathered from them could then be compared. With such a small number of cases, there is a risk of non-representativeness. The aim of this study is therefore not to provide a broad applicable answer, but to build a framework that can be used to study other cases along the same lines. This limitation will be taken into consideration in the conclusions.

Based on the research question as outlined in Chapter 1 and the hypothesis described in Chapter 3, the study needed cases that are “most-different” when it comes to the legal system and the electoral system. Due to my previous work as a legislative lawyer for the Dutch election law, the use of the Netherlands as a case seemed logical. The United Kingdom then was applicable as a “most-different design” case. Therefore these cases were selected for the study. Fitting with the choice for

historical institutionalism as a theoretical framework and the use of the concept of path dependency as outlined in Chapter 3, the approach that was taken to study the cases was that of process tracing. This method for approaching cases focuses on the description of events over time in each of the cases. The Chapters 6 and 7 contain these descriptions for the Netherlands and the United Kingdom. This method allows for the outcome of all these events; the current legislation on election fraud in each of the countries that are studied, to be explained as a result of all the prior decisions that were made about this legislation.

In order to build the description of the cases, I first looked at this final result: the current legislation on election fraud. This will be described in more detail in Chapter 5. From there, I started my process tracing for each case, mapping the first debates on the relevant parts of the election law up to the present. My previous knowledge of the Dutch case let me to start there, in order to refine a methodological approach that I could then use for the case of the United Kingdom. In this latter case, I had to rely more on secondary sources, such as previous literature, to get me to find the right starting point. From there, I searched the databases of both countries for the relevant debates and used specific search terms, outlined in this chapter to find those parts of the debates that I needed to study. I then read all these debates and distilled the important sections of them into Chapters 6 and 7. For the Dutch case, I translated the information myself, justified by my knowledge of both Dutch and English. The main source for the empirical chapters is therefore parliamentary documents. In this chapter I have argued why these would be the best source in this study. Where possible, I also looked at other sources, such as secondary literature and newspaper articles to ensure that I had not overlooked important debates. Using these different sources provides triangulation and therefore increases the validity of the findings.

This thesis now turns to an overview of the selected countries. Chapter 5 describes the legislative system, electoral system and election procedures and the current legislation on election fraud for both the Netherlands and the United Kingdom.

Chapter 5: Legislative and electoral system Netherlands and UK

5.1 Introduction

This chapter gives a snapshot of the relevant legislation as of today, and provides information on the legislative and electoral system and the election procedures of the countries that are used as case studies. The aim of this chapter is to provide the necessary background information to understand the historical developments that are described in the following in-depth case chapters. The chapter describes the current situation in the countries, providing the "outcome" that was the result of the historical developments that will be described in the Chapters 6 and 7.

It starts with the description of the Dutch legislative system. It gives an overview of the way bills are introduced and discussed in Parliament and the different actors that are involved. The chapter then also provides information on the electoral system of the Netherlands and the current election procedures. The Netherlands have a system of proportional representation where the whole country is regarded as a single constituency. Voters cast a single preferential vote for a candidate on a list. They can do so in person in the polling station on Election Day, they can give a proxy vote to another voter and voters living abroad can cast their vote through mail. Voters do not have to register to vote, unless they live abroad. After that, the chapter describes the acts that are currently included in the law that are seen as election fraud. For the Dutch case, this is a very short list, in total there are only 17 specific legal clauses that deal with election fraud and punishment of election fraud. What is also clear from this description is that the possible sentences are rather limited in scope; imprisonment or a fine. There is no mention of the possibility to overturn the outcome of an election and only in very specific cases, a perpetrator can lose his or her right to vote or stand as a candidate in an election.

The chapter then turns to a description of the legislative system of the United Kingdom. In the United Kingdom, bills are introduced by a Member of Parliament or a minister. The United Kingdom uses a yearly legislative programme and all bills that have not passed through both Houses of Parliament at the end of the parliamentary year they cannot be discussed anymore; a new bill has to be introduced. The government can choose to start the discussions on a bill in the House of Commons or in the House of Lords. Both Houses have the right to propose amendments and both Houses have to agree on the final text of the bill. This means that bills can move back and forth between Houses before becoming law. The United Kingdom uses a first past the post electoral system with single member constituencies. Voters can vote in person in the polling station on Election Day, by post or by proxy. Voters living abroad have the right to vote if they have not lived outside the UK for longer than 15 years. In order to vote, voters have to register.

The current legislation on election fraud in the United Kingdom contains over 30 articles, which are very detailed. They also differentiate between the actors committing the crime, some articles relate for example to candidates or their agents, but there are also articles that deal with illegal behaviour of returning officers and members of the police force. Sentences are imprisonment or fines, but also include the possibility of declaring an election void in case of fraud by a candidate. Within the possible sentences, again the law differentiates between the perpetrators, people acting in a professional capacity, such as returning officers can receive higher punishments for the same crimes then for example voters.

The chapter ends with a conclusion in which the major differences between the cases are highlighted.

5.2 Netherlands

5.2.1 Legislative system of the Netherlands

The Netherlands is a parliamentary democracy with the King as its head of state. In the Dutch constitutional relations, the Kings actions are governed by political ministerial accountability. According to the Constitution, the government is formed by the King and the ministers together. In practice, all decisions are made by the ministers. After elections, a new cabinet of ministers is formed. The prime minister has some additional responsibilities, but he does not have a different constitutional position from the other ministers. The government has the executive power under the Dutch constitutional system (Andeweg 1991).

The Lower House and the Upper House together form the States General, also called Parliament. The Lower House is called the Second Chamber (Tweede Kamer). The Lower House has 150 members. The Upper House is called the First Chamber (Eerste Kamer). It consists of 75 members. The regular term of both Houses is four years. In case of a conflict between government and Parliament, government can dissolve one or both Houses, which leads to new elections (Andeweg and Irwin 1993).

The legislative power is shared between government and Parliament. Draft legislation is usually initiated by government, but member of the Second House also have the right of initiative. Before a bill is discussed in the Second House, different advisory bodies are consulted, based on the topic and the Council of State gives an advice on the bill. In case of the Elections Act, the Electoral Council is asked for an advice. The Second House discusses the bill first. This is usually done in two rounds, a written one, followed by an oral one. Discussions are first held in committees and then in plenary

sessions. Members can propose amendments to the bill. Finally, the Second House votes on the bill and amendments that were introduced. If the Second House passes the bill, it is entered in the First Chamber. Although the system of discussing the bill is the same as in the Second Chamber, members of the First Chamber do not have the right to propose amendments. This means that the First Chamber can decide to pass the bill as it was introduces, or to vote against it. If the First Chamber decides to pass the bill, it is send to the government for the final approval. The King signs the bill, followed by a counter sign by the minister who is responsible for the bill. It is then published, before it comes into force (Van Schagen 1997, Zijlstra 2012).

Proposals to change the Constitution follow the same procedure. However, they have to be discussed in Parliament in two rounds. In the first round, they have to pass both Chambers with a simple majority. In the second round, in both Chambers a two-third majority is necessary for passing the bill. Also, between the first and second round, the Second House has to be dissolved so that new elections will have to take place before the proposed change can be discussed again (Van der Schyff 2020).

The legislative system was introduced in the Constitution of 1848. Although the King used to have more powers than currently, the ministerial accountability was already in place, requiring the King to compromise with the cabinet members. Combined with the fact that political parties were formed relatively late in the Netherlands (the first party, ARP, was founded in 1879), given members of Parliament the freedom to vote their own way, Parliament has been a force to reckon with from 1848 onwards (Kraan 2004).

5.2.2 Dutch electoral system and election procedures

The Constitution contains some general demands for the Dutch Electoral system. It prescribes that elections should be conducted under a system of proportional representation. It also describes the requirements for standing in elections and the right to vote. The Elections Act 1989 forms the basis for Dutch elections. Elections are held for the Lower and Upper Houses of Parliament, provincial councils, municipal councils and the European Parliament. The Lower House is elected directly by all Dutch nationals aged 18 and above. Dutch nationals living outside the Netherlands are allowed to stand for the Lower House and also to vote in these elections. The electoral system is proportional representation, with the whole of the Netherlands counting as one constituency. Voters cast a single preferential vote for a candidate on a candidate list. Provincial councils, municipals councils and the Dutch members of the European Parliament are elected using the same electoral system. For provincial councils, only Dutch residents of that province can stand for election and vote. For

municipal councils, Dutch and non-Dutch residents of a municipality can participate in the election, both as a candidate and a voter. The members of the Upper House are elected indirectly by the members of the provincial councils (Blais et al. 2001).

Although political parties exist and almost all members of Parliament have been elected on a list put forward by political parties since 1917, the Constitution does not contain any articles on political parties. The same is true for the Elections Act, which still operates on the idea that groups of voters put forward candidate lists. Candidates are elected individually, even if they have obtained their seat because of votes on the candidate on top of the list. If a person is elected, the political party has no means to claim the seat, not even if this person decides to leave the party and become an independent member of Parliament.

The task of organizing elections is divided between several institutions. The Minister of the Interior oversees the preparations for Election Day. However, the logistics of running the elections is the responsibility of the municipalities. The process of determining the outcome of the elections is carried out under the responsibility of the Electoral Council. The Electoral Council, or its predecessor, the central electoral committee, has had this role since 1917. Initially, the central electoral committee only dealt with the elections to the House of Representatives, but after the electoral system for members of the Senate was changed to proportional representation in 1922, the central electoral committee has determined the results of these elections as well. After the European Elections Act entered into force in 1978, the Electoral Council was also appointed as the central electoral committee for the elections to the European Parliament.

As stated above, in the section on the legislative process, the central electoral committee also acts as an advisory body to the government. When it was established, the law also stated that the committee was to give advice, upon request, on the implementation of the Elections Act to the Minister of the Interior and Kingdom Relations. Since then, the committee did not only give advice on implementation issues, but also on more far reaching changes to the Elections Act. In 1951, the name was changed in the law to the Electoral Council. The Electoral Council consists of seven members, which are appointed by Royal Decree for a period of four years. They can be reappointed twice and are appointed on the basis of their expertise in giving advice on the Election Law and elections (De Jong 2017).

Voters do not have to register to be able to vote. Their eligibility to vote is determined by using the municipal administration. All persons living in the Netherlands are obliged to register themselves in this administration. Voters can cast their vote in polling stations. Election Day for parliamentarian

elections in on the Wednesday with polling hours from 7:30-21:00. Within a municipality a voter can go to any polling station. In order to be allowed to vote, the voter has to have his voter card (send to the voters before each Election Day) and an ID. The voting in polling stations take place by means of a paper ballot. There is no system for early voting; voters who cannot vote in person can give a proxy vote to another voter. This voter can then cast this proxy vote while casting his own vote. A person can only cast two proxy votes. In order to be allowed to cast a proxy vote, the voter has to hand over the voter card of the voter who gave him the proxy vote (signed by this voter, indication who he gave his proxy vote to) and a copy of the ID of that voter, to the polling station. After showing the documents, a voter receives a ballot paper from the polling station. He goes into a polling booth, fills out the ballot paper, folds it and puts it in the ballot box. At the end of Election Day, the ballot papers are counted in the polling station by the polling station members. They fill in the required protocols, put the ballot papers in sealed bags and deliver all the election materials to the municipal electoral committee. Depending on the type of election, the results are determined on one of several more levels. In elections for the Second House and the European Parliament, the Electoral Council calculates and announced the final results (Elzinga et al. 2012).

Voters living abroad have to register in order to be allowed to vote for each election. After their registration, they receive a ballot paper and two envelops through the mail. They fill in the ballot paper and put this in the first envelope. They seal this envelope and put it in the second envelope. On the outside of the second envelope, they write their names and signature. Finally, they have to mail the envelope back to the municipality of The Hague. There, the signature and name are checked against the voter registration. If they are found to be in order, the outer envelope is opened. The envelope with the ballot paper is put into a ballot box. At the end of Election Day, these envelopes are opened and the ballot papers are counted. They are then added to the ballot papers that were cast in the regular polling stations (Loeber 2014).

The proportional representation system was introduced in 1917. Before that, the Lower House was chosen by means of a district system with plurality. In most cases, these were single member districts, but it was possible to have a multi member district. The number of seats in the Lower House was determined by the total population of the Netherlands, for each 45.000 voters, a seat was added (Elzinga et al 2012).

5.2.3 Election fraud in current Dutch law

Offences relating to the conduct of elections can be found in the Elections Act and in the Criminal Code. In total there are only 17 specific legal clauses that deal with election fraud and punishment of

election fraud. The text of the articles can be found in Annex 1. The Election Act focusses mainly on acts related to fraud with election related materials, such as ballot papers, voting passes and postal vote certificates. Forgery of those materials can be punished with a maximum imprisonment of six years or a fine. The same punishment applies to a person who intentionally uses or makes other use election materials which are forged or falsified. Obtaining official election materials with the intention to use them unlawfully can be punished with a maximum term of two years imprisonment or a fine.

The Election Act also includes an article on bribery, which states that both the person who tries to bribe a voter to either give him a proxy vote or a declaration of support as a candidate, and the person who allows himself to be bribed, can be subjected to a maximum imprisonment of six months. The law therefore does not make a difference between the briber and the person who was bribed, nor between a candidate or a voter in terms of the severity of the punishment that can be given. Also, since, the Constitution requires a minimum sentence of a year imprisonment in order for a judge to also take away a person's right to vote or stand in elections, a conviction of bribery does not disqualify a candidate from taken his or her seat in Parliament when elected.

Other crimes included in the Election Act deal with casting a proxy vote for a person, while knowing that this person is dead, systematically approaching people in order to persuade them to hand over their voting card as a proxy vote and voting in two or more countries during the election of the European Parliament. The punishments for these crimes is imprisonment of a month maximum or a low fine. Finally, the Act makes it punishable for employers to not allow their employees to vote on Election Day and for members of electoral committees to be unnecessarily absent from their duties without organizing a replacement.

The Criminal Code also contains some election related crimes. First, it makes it punishable for a person to use force or the threat of violence in order to prevent someone else from exercising his right to vote freely. The maximum term of imprisonment for this is a year. If a person uses gifts or promises to bribe another voter to vote a specific way or to abstain, the maximum term of imprisonment is six months. Here the same penalty applies to a voter who allows himself to be bribed. Again, the law makes no distinction between the briber and the person who is bribed in terms of severity of the possible sentence. Also, as with a bribe for a proxy vote, the maximum sentence is too low to qualify for the loss of voting rights or the right to stand in an election.

Also illegal according to the Criminal Code is the committing of any fraudulent acts that render a vote invalid or to be counted for a different candidate than the voter intended. This can be punished

with a maximum imprisonment of six months. Taking part in an election while impersonating another person can be punished with a prison sentence of a year or less. Finally, committing any act that deliberately changes the result of an election can be sentenced to an imprisonment of a maximum of a year and six months. Compared to the maximum sentence of forgery of ballot papers, which is six years, this appears to be a rather low sentence, given the severity of the crime.

5.3 The United Kingdom

5.3.1 Legislative system

The United Kingdom is a unitary state with devolution that is governed within the framework of a parliamentary democracy under a constitutional monarchy in which the monarch is the head of state. The Prime Minister of the United Kingdom is the head of government. Executive power is exercised by the British government, on behalf of and by the consent of the monarch, as well as by the devolved governments of Scotland and Wales and the Northern Ireland Executive. Legislative power is vested in the two chambers of the Parliament of the United Kingdom, the House of Commons and the House of Lords, as well as in the Scottish Parliament and Welsh and Northern Ireland assemblies. The judiciary is independent of the executive and the legislature. The highest court is the Supreme Court of the United Kingdom (Leyland 2016).

The United Kingdom political system is a multi-party system. Since the 1920s, the two dominant parties have been the Conservative Party and the Labour Party. While coalition and minority governments have been an occasional feature of parliamentary politics, the first-past-the-post electoral system used for general elections tends to maintain the dominance of these two parties. Scotland, Wales and Northern Ireland each possess their own legislature and executive. There is no written constitution in the United Kingdom, it consists of constitutional conventions, statutes and other elements (Dickson 2020).

The monarch appoints a Prime Minister as the head of Her Majesty”s Government in the United Kingdom, guided by the strict convention that the Prime Minister should be the member of the House of Commons most likely to be able to form a Government with the support of that House. In practice, this means that the leader of the political party with an absolute majority of seats in the House of Commons is chosen to be the Prime Minister. If no party has an absolute majority, the leader of the largest party is given the first opportunity to form a coalition. The Prime Minister then selects the other Ministers which make up the Government and act as political heads of the various Government Departments. About twenty of the most senior government ministers make up the Cabinet and approximately 100 ministers in total comprise the government. In accordance with

constitutional convention, all ministers within the government are either Members of Parliament or peers in the House of Lords (Nice and Paun 2019).

The House of Commons is the lower house of the Parliament of the United Kingdom and is an elected chamber consisting currently of 650 members known as Members of Parliament (MPs). The House of Commons is nowadays considered to be the supreme chamber of Parliament. The House of Lords is the upper house of the Parliament of the United Kingdom. However it is an unelected chamber with all members to the House of Lords being appointed. As of August 2018, there are currently 793 members known as "Peers". The House of Lords no longer has the same powers as the House of Commons under the Parliament Acts of 1911 and 1949 especially when it comes to blocking general legislation and the passing of financial legislation (Leston-Bandeira and Thompson 2018, Besly et. al. 2018).

The United Kingdom Legislation may take the form of Acts (passed directly by Parliament) or Statutory Instruments, made under the authority of an Act of Parliament by either a government minister or by the Queen-in-Council. The latter are generally subject either to parliamentary approval (affirmative procedure) or parliamentary disallowance (negative procedure). The majority of Acts considered in the United Kingdom are defined as public general acts, or “Acts of Parliament” as they will have progressed and gained approval as a Bill through both House of Commons and House of Lords, and also have gained Royal Assent from the Monarch. Bills and acts are often referred to as primary legislation. An act may delegate power to a government minister to make regulations, orders or rules. These are known as secondary (or subordinate) legislation (Rush 2005, 167).

Bills can be introduces by any Member of Parliament. It is also possible for ministers to introduce bills into parliament, if they represent agreed government policy. The government draws up a legislative programme for each session of Parliament. This is a plan of the bills that the government wants Parliament to consider in that session. Besides from the bills included in the legislative programme, other bills may be passed each session, for example emergency bills or bills that are introduced by a member of Parliament who is not a part of the government (Rush 2005, 167).

In order to get a proposal for a bill on the legislative programme, the governmental department that is in charge of it, must submit a bid for the bill to the Parliamentary Business and Legislation (PBL) Committee of the Cabinet. This Committee considers all the bids that are made and gives a recommendation to the Cabinet on the outline of the legislative programme, and the bills that should be included. Factors that are important in this process are the need for the bill (could a

similar outcome be achieved by secondary legislation or no legislation as well), the relation of the bill to the political priorities of the government, the stage of preparation of the proposal and whether or not consultation has already taken place on the bill. About a month before the start of the Parliamentary session, the Cabinet finalizes the legislative programme. In the speech at the opening of the session, the Queen announced the major points of the programme (Russell and Gover 2017, 58-62).

Bills begin either in the House of Commons or in the House of Lords. This decision is made by the government, making sure each House has a balanced programme of legislation to consider each session. However, certain bills must start in the Commons, for example tax bills and those including major constitutional issues. Most bills go through several stages in each House. The first reading is a purely formal stage, there is no debate on the bill. The second reading in contrast includes the debate on the main principles of the bill, held in the chamber. The government explains the bill and its provision. The opposition responds after which a general debate takes place. Members cannot make amendments on the bill during this stage. This stages ends with a vote. If the majority votes against the bill, it is taken out of procedure (Rush 2005, 177, Russell and Gover 2017, 28).

Most bills proceed to the committee stage after the vote. During this stage, all aspects of the bill are considered in detail. Oral and written evidence can be collected and members can propose amendments. These amendments are then discussed in the Report stage or Considerations. This cumulates in a third reading; another general discussion of the Bill (Russell and Gover 2017, 29-37). Since both Houses must agree on the text of a bill before it can become an act, if the bill is amended in the second House, it must return to the first House for those amendments to be considered. The first House can reject the amendments, make changes to them or suggest alternatives. This could potentially lead to a “ping pong” stage where a bill may move backwards and forwards between the two Houses a number of times before agreement is reached (Russell and Gover 2017, 37-38). If both Houses agree and the bill is given Royal Ascent, it become law (Prakke 2004). Bills that have not been agreed on by both Houses at the end of the parliamentary session are discontinued and lapse (Van Schagen 1997).

5.3.2 United Kingdom electoral system and election procedures

Members of Parliament are elected using first past the post in single-member constituencies with 533 elected from England, 59 from Scotland, 40 from Wales and 18 from Northern Ireland. The country is divided into single constituencies and the candidate who receives the largest number of votes is elected to be the Member of Parliament for that constituency. Candidates can be a member

of a party or other organisation that is registered with the Electoral Commission, or run as an "Independent" if they are not represent any registered party or group. In order to be able to vote in the United Kingdom parliamentary elections, a person must be 18 years old and a British citizen or be a citizen of the Irish Republic or other Commonwealth country while being a resident in the United Kingdom. Convicted people who are still in prison are excluded from the right to vote. People that are convicted for electoral offenses are disqualified to vote for a period of five years. Also excluded are those people who are detained in mental health institutions and members of the House of Lords. British citizens who live abroad can vote in the parliamentary elections by postal vote as long as they have not lived abroad for more than fifteen years. Voting is not compulsory. Votes can be cast in person or, after applying for it, by post or proxy (Child 2001).

Elections are run by the government, on a decentralized level. In each voting constituency, the polling procedure is operated by the acting returning officer or returning officer, and the compiling and maintenance of the electoral roll by the electoral registration officer. Nationwide electoral matters and all the topics mentioned in the Political Parties, Elections and Referendums Act 2000 are coordinated by the department for Constitutional Affairs. The Electoral Commission, established in 2000 is an independent body that oversees among other issues donations to political parties and their campaign spending. The Commission also evaluates pilot schemes for new ways of voting and is responsible for the publication of the official results of elections of the Parliament. Since 2002, the Electoral Commission is also responsible for a review of the electoral boundaries (Gueorguieva and Simon 2009).

Polling stations are open from 7am to 10pm on polling day. Voters receive a poll card from the returning officer at their local authority with details of their allocated polling place. They are not required to show their poll card or any other form of identification at the polling place in order to vote. The exception on this rule is Northern Ireland, where a voter must identify himself at the polling station with a photographic identification. A ballot paper contains an official mark and an unique identifying number. Each voter has an elector number. This number is registered with the unique identifying number of the ballot paper the voter received. The court can order to review this link between a voter and his ballot paper, effectively breaching voter secrecy if the results of an election are challenged. The voter marks the ballot papers in the privacy of a voting booth (Watt 2020).

5.3.3 Election fraud in current United Kingdom legislation

There are over 30 articles on election related offences, which are very detailed, included in the Representation of the People Act 1983, but also in statutory acts. The text of the articles from the Representation of the People Act 1983 can be bound in Annex 1.

The law makes a distinction between corrupt practices, illegal practices and electoral offences (Child 2001). Within the category of corrupt practices, there are several types of behaviour that are mentioned. The first is bribery, which applies when money or the procurement of any office is given to a voter or another person in order to ensure that the voter either abstains from voting or votes a certain way. Treating is included as a different crime, where the behaviour of the voter is influenced by paying the expense of voting or providing any meat, drink or entertainment to the voter. This distinction between bribery and treating, as will be shown in Chapter 7, was established very early on in the law. A voter accepting the bribe or treat is also guilty of committing a crime.

As with the Dutch law, the Act makes a distinction between crimes by promising a voter something and crimes that are committed by the use of threat or force. The latter in the United Kingdom is the crime of undue force. Interestingly, it also specifically mentions spiritual injury. As will be shown in Chapter 7, this was included in order to prevent clergymen from threatening excommunication from the Church if a voter voted a certain way. The crime of undue force for example also includes the threat of a landlord to evict a tenant. The next corrupt practice is personation of a voter, in all aspects of election related purposes. This includes voting by post or proxy for another voter and voting for a person that is dead or fictitious.

The Act then specifies crimes that candidates and election agents can make with regard to declarations of election expenses or other official statements that a candidate has to make during the election process. The last corrupt practice was added with the introduction of early voting and makes it a corrupt practice to publish early results or exit polls.

In the category of illegal practices, included are paying for political advertising unless certain specific criteria are met, to illegally employ canvassers and to publish a false statement of withdrawal of a candidate.

Illegal practices also include voting offences, other than the above described offense of personation, such as voting by post or proxy or for another voter while knowing that they are legally incapacitated to vote. It is also illegal to vote more than once in the same constituency, to vote in person while also voting by post or when the voter had already given another voter his proxy vote, to vote by proxy twice for one other voter or to vote by proxy for a voter, knowing that that voter had already voted in person. Finally, there are some illegal practices dealing with the way candidates have to

make payments and declare expenditures. These are not included in the Act itself, but in statutory provisions.

Next, the Act contains other election offences which deal with the way election materials have to be published, offences that are related to the defacing, destruction or other fraudulent acts with regard to nomination papers, ballot papers, ballot boxes and other election materials. The Act specifically mentions that it is illegal to breach the secrecy of the vote, something that is not included in the Dutch legislation. This includes the secrecy of the names of voters who have not voted, the vote itself, both in person and of postal votes, but also the secrecy of votes by voters who have received assistance during the vote, such as blind voters.

There are a number of articles dealing with declarations that have to be made during the election process. Making those falsely, or when not authorized, also constitutes an offence. This includes providing false information to the returning offices with regard to the voter register. Finally, the Act contains provisions on specific professions. It states that if the Clerk of the Crown, any registration, returning or presiding officer, postmaster or anyone who has an official duty in the election process, is guilty of any act or omission in breach or their official duty, they commit an offence. It also mentions that members of the police force are prohibited from canvassing for any candidate for any election.

The Act then includes the possible punishments for all these offences. For corrupt practices, in general, the maximum term of imprisonment is one year, but an unlimited fine or both is also possible. For personation, the maximum sentence is two years. Within the legislation of the United Kingdom, there is no link between the possible sentence and the loss of active and passive voting rights. A candidate that is found guilty by a judge of a corrupt practice, losses his passive voting rights for five years. If he committed personation, this also includes the loss of active voting rights for five years. Other people committing personation also loss active and passive voting rights for five years. If a candidate has been elected and then found guilty of any corrupt practice, personally, or committed by his agents, his election is void.

For illegal practices, the punishment is a fine, but also the loss of passive and active voting rights for three years. Again, if an elected candidate or his agents commit these acts, the election is void. For some crimes, there are other prescribed punishments, whereby it is important to note that the punishment for tampering with election materials is higher for those people that have official roles during the election, such as poll workers, than for voters (two years imprisonment versus 6 months).

5.4 Conclusion

This aim of this chapter was to provide information of both the legislative and the electoral system of the countries that are used as case studies. In addition to the description of the legislative system, the electoral system and an overview of the election process in general in the Netherlands and the United Kingdom, it showed which articles are currently part of the legislation that deals with election fraud. It stated those articles and the punishments that are connected to the crimes described therein. The aim of this chapter was to provide the necessary background information to understand the historical developments that are described in the following in-depth case chapters. The chapter showed the differences between the countries and thus also contributed to the analysis and the arguments on the hypothesis.

From the descriptions of both countries, it becomes clear that there are major differences, within the legislative process, the electoral process and election procedures and the legislation on election fraud between both countries. When it comes to the legislative process, a main difference is that in the Netherlands, the process between both Houses of Parliament is one-directional, bills always start in the Lower House, go from there to the Upper House and cannot be send back. In the United Kingdom, a bill can start in either House and be send back and forth. Another important difference is the fact that in the Netherlands only the Lower House can propose amendments, where in the United Kingdom both Houses can propose to change the bill. A final difference is the length of time that parliament can take to discuss a bill; in the Netherlands, there is no time limit, bills can be stuck in Parliament for several years, where in the United Kingdom a bill that is not through the process at the end of the parliamentary year can no longer be taken into consideration.

When looking at the electoral system, the main difference is that the Netherlands uses proportional representation where the whole country is regarded as a single constituency and the United Kingdom uses first past the post in single-member constituencies. This difference has a big impact on the number of parties that participate in elections and manage to obtain seats in parliament. When looking at the electoral procedures, the differences seem smaller. Both countries use in person voting in the polling station as the main option of voting. However, in the Netherlands voters who reside in the country and cannot go to a polling station have to use a proxy vote, whereas in the United Kingdom, they can vote through mail. Both countries allow voters living abroad to vote, but the United Kingdom has a limit on the number of years a person can live abroad and still have the right to vote. In contrast to the United Kingdom, which does not require a voter to identify himself at the polling station, the Netherlands has adopted an ID requirement for voters. Finally, the United

Kingdom has a system where ballot papers can be traced back to voters in cases where the results of an election are challenged.

With regard to the current legislation on election fraud, there are two major differences. First, the legislation in the United Kingdom is more extensive, over 30 articles on the acts itself and 10 articles on sanctions, where the Netherlands only has 17 specific legal clauses that deal with election fraud and punishment of election fraud. The articles in the United Kingdom are also longer, more detailed and differentiate more between different perpetrators of election fraud. The other main difference lies in the possible remedies for election fraud. While both countries have the option to impose imprisonment or fines, the United Kingdom also has the option to annul an election if a candidate that was elected is found guilty of election fraud. In the United Kingdom the option of excluding a person convicted of election fraud from active and passive voting right is also applicable to more acts of election fraud than in the Netherlands.

In the next chapters the in-depth case studies of the historical developments in the election fraud legislation in both the Netherlands (Chapter 6) and the United Kingdom (Chapter 7) will be described.

Chapter 6 Historical development in the Netherlands

6.1 Introduction

This chapter describes the first case-study that is used in this thesis. It looks at the development of electoral fraud legislation in the Netherlands. Relevant parliamentary debates are described. In addition, studies from other researchers are used to support the findings, as well as relevant court cases and newspaper articles. It starts with the first Election Act of 1850, which included no articles on election fraud. With the expansion of the franchise, issues arose over the question who had the right to vote, leading to the inclusion of articles on voter personation. With the introduction of the general franchise, combined with a new electoral system of proportional representation, new crimes were added to the election law. This became more important when different means of voting were made possible, such as proxy voting in 1928 and mail voting for voters living abroad in 1983. Other relevant issues that were debated where the duty to vote, fraud with signatures to support parties and candidates and possible fraud with new technologies, such as voting computers and software for the tabulation of results. However, the number of debates on the actual articles in the Electoral and Criminal Code is limited and the issue of what punishments should be used is hardly ever raised. Another finding is that most of the changes happened gradually and that there were a number of occasions where there seemed to be momentum for change in the legislation, but in the end, Parliament made the decision not to do so.

6.2 First Election Act

The first Election Act in the Netherlands dates from 1850. In 1848 a new Constitution came into force, which limited the powers of the King and introduced a Parliament that would be formed based on elections. At that time, voting rights were only given to a very small group of upper class, white male voters. In total, there were 82.249 people who had voting rights, on a population of 3.1 million. This first Act did not contain any articles on election offences. In 1850 the first election act was debated in parliament. Although several topics were discussed in great detail, such as the formation of electoral districts and the boundaries of provinces, there was no mention of the possibility of any irregularities during the elections. In order to get voting rights, a man had to pay a certain amount of taxes, called the census. The height of the census was debated, some members of parliament argued against a lower census because this would mean that people who should not be considered capable of exercising voting rights could meet a lower census threshold.[8]

[8] Handelingen I June 27th 1850, 151-155.

The first mention in the parliamentary debate of election irregularities dates back to 1856. In a debate on the redistricting the responsible Minister stated that: “it is with emphasis that the government objects to accusations of some members of Parliament that the government has been subjective in the redistricting as to benefit specific parties”.[9] In the same debate the Minister pointed out that there were some fraudulent practices in Nijmegen and other municipalities in Gelderland and Limburg when it came to the difference between receiving a tax bill that met the height of the census and actually paying these taxes. In some cases, somebody other than the voter had paid the taxes and it was unclear from the Election Act if that meant that the voter should be eligible to vote. The government stated that the law could not be read in such a way that the voter would only be eligible if he actually paid the taxes himself; in order to gain the right to vote the only deciding factor was the height of the tax bill.[10] The Minister made the following statement: “That this abuse was confined to elections for the municipal council is no reason why the legislator should not intervene here. His task extends equally to warding off abuses in the election of the municipal council, as of the members of the Second Chamber and the Provincial Council. In addition, the fraud that has so far taken place in municipal elections, can be applied in other elections as well. I will have to point out that even with the proposed change in the wording of the law, not all abuse will be countered.”[11]

Election fraud was not a topic that was considered by the legislator when drafting the first Election Law. However, it was clear that immediately after the first couple elections, some people were committing fraud and thus the law was amended, but only in a minor way, to try to counter this fraud. This is an example of a gradual change in the form of layering.

6.3 Elections between 1860-1880

In 1864 Minister Thorbecke, Minister of Internal Affairs, pointed out to the parliament that violation of the provisions of the Elections Act would not lead to criminal prosecution, nor could it invalidate the elections. In his opinion, an election could only be declared invalid when the failure to comply with a prescription had or could have influenced the result of the vote. In the end it was all about elections determining the will of the voters and within the district system, this meant that not one candidate would have had the majority of the votes, but the other candidate. He stated that the fact that a candidate would have obtained more or fewer votes as a result of election fraud was not relevant (Maas 1869).

9 Kamerstukken II 1855/56, LII, nr. 8, 789.
10 Kamerstukken II 1855/56, LII, nr. 8, 791.
11 Kamerstukken II 1855/56, LII, nr. 8

In 1868 there were some problems during the Parliamentary elections. In one municipality, due to a snowstorm the person carrying the ballot boxes got lost and did not arrive in time for the count. Due to the storm, the boat from two of the islands could not leave on time, also causing a delay in the counting process. Also, not in all cases the required seal of the municipality was used to prove the authenticity of the votes. In some other municipalities the packages containing the ballot papers and other voting materials were not sealed properly. No irregularities were found during the elections.[12] However, in the elections after that questions were raised in Parliament on infringements on the articles concerning the census. Several voters used loopholes in order to illegally gain the right to vote.

This can be seen for example in a debate that Parliament held in 1876, triggered by incidents during elections in the year before. During this debate, they discussed some irregularities during the municipal elections in Elst in 1875. Apparently some people who did not meet the requirements for electors did manage to vote. The municipality then decided not to allow the chosen representatives to take their seats. The people in question had managed to circumvent the census by claiming to have paid taxes for patents for a company that did not exist. This was not listed as a crime in the Election law at the time.[13] During the debate, the members of the Committee: Tak, van Poortvliet, Kappeyne van de Coppello, Van Nispen to Sevenaer, Bastert and Messchert van Vollenhoven, that were discussing this issue called upon the government to change the law and include acts like this in the Election law. The government stated that they would take it into consideration, but pointed out that it would be difficult to find an accurate description of this crime to include into the legislation. They also mentioned that proving such a crime took place would be difficult.

The mentioned members of Parliament stated that it would be wrong if because some people abused the system, it would be changed in such a way that other people who should be eligible to vote would be affected by it. They said it would take a change of the Constitution to deal with this issue. They felt that the link that had been forged between the tax system and the right to be a voter was a hindrance and should be changed.[14] Notable was the fact that members of Parliament expressed that the fact that the integrity of elections has been preserved so well until now, is due to the fact that the Dutch people have behaved very well and not due to the state of the existing legislation.[15]

12 Kamerstukken II 1867/68, nr. 42, 1-2.
13 Kamerstukken II 1875/76 91, nr. 2.
14 Kamerstukken II 1875/76, 91, 5-6.
15 Kamerstukken II 1875/76, 91, 5.

The lack of penal provisions that were specific tailored to the elections became an issue when the elections became more tense and the battle at the ballot box louder. That was increasingly the case from about 1870 onwards when political parties arose who contested each other's seats. The turnout rose and the manipulations to influence the outcome increased. The polarization at the ballot box meant that in the new Criminal Code from 1886 some provisions were added on election crimes (Smidt 1891).

In the Criminal Code of 1886, five articles were added that dealt with election fraud. These articles contained a ban on the use of force or threat of force against voters, the bribery of voters, the personation of a voter, making ballot papers illegible and the opening or demolishing of the ballot box. Although some members of Parliament were in favour of adding more crimes, the Minster did not want that. He preferred to describe crimes as clearly as possible, so that no controversial lawsuits would arise. As he stated: "As much as possible, judges should remain outside of politics. Involvement of judges can be prevented by a sharp definition of the crimes" (Smidt 1891, 61-62).

Before 1896, voters would get their ballot paper two weeks in advance. This led to a number of instances where other people than the voter would fill out the ballot paper. For example, just before the elections the minister, pastor or notary would collect all the ballot papers, strike out the name that was filled in and replace it with another. In 1868, for example, liberal candidates set up camp within the municipal office of Borne where the polling station was also situated. They would intercept the voters and replace the name of the candidate if it was not the correct one in their eyes. Even the use of constables was not enough to deter these practices (De Jong 1999, 61).

This period shows examples of drift, where the rules on the census where used differently by the voters than the legislator intended. This was the case where the legislator had intended to ensure that the tax system only allowed people who actually paid certain taxes to vote, whereas in practice, the law also allowed for abuse of this system by paying taxes for a non-existing company, thus gaining the right to vote. Also, there is some layering detectable, with the addition of new crimes to the existing legislation.

6.3 Election Law of 1896

It was not until the first major revision of the Election Law in 1896 that a chapter on election crimes was added. In that year, Parliament debated the introduction of the Belgian design of the ballot paper, which has a box in front or behind the name of the candidate that the voter has to colour or mark. The reason to consider this was to find a balance between making it easy for the voter to vote, while at the same time guaranteeing the secrecy of the vote. Farncombe Sanders proposed this,

stating because he found the Belgian design easier and less prone to discussion than the proposal from the government which meant that a voter would have to put a cross or a line before the name of the candidate he wanted to vote for. He noted however, that other members had issued with the use of an invention from another country. Farncombe Sanders stated that if the proposal from the government was followed, at least a choice had to be made between the cross or the line. In order to prevent fraud in the form of vote buying, it was debated that there should be a mandatory, uniform way to mark the box. Michiels van Verduynen agreed with the proposal to use the Belgian design. The Minister, van Houten declared that he could accept the amendment to introduce the Belgian design.[16]

During the same debate, several new articles on election fraud were discussed. One article declared it illegal to file a false report, for example on the tax return or on the rent paid or salary received, leading to being placed on the voters list. Violation would be sanctioned with a prison sentence of up to a year.[17] Another article mentioned a similar offense, making it illegal for other people to file false reports on another person, so that this other person would be included as a voter. This article was aimed at employers and people renting out property. The crime would be punished with a prison sentence of up to six months.[18] To make sure this article would be effective, Hintzen proposed an amendment in order to add a new offense to be able to punish people that would not meet their obligation to provide the data that would be necessary to determine if somebody should be considered a voter or not. The amendment was accepted without a vote.[19]

Also a debate took place on the question if it was fair that all the people on the board of institutions for helping the poor would all be responsible if the institution did not meet its legal obligations to report voters that were receiving financial aid.[20] This was already an existing article in the Election Law, but Heemskerk found the article a bit harsh. He worried that if a board was large and one or two members did not meet the obligations, a members would be punished. The minister argued that the Criminal Code already explicitly mentioned which people on the board could be punished for this. In light of this, Parliament decided not to change the article.[21]

Aside from these articles on specific election crimes to be added, a new provision was proposed that stated that if somebody was found guilty of the crimes described in the new articles, he could be

16 74th Meeting of the Second Chamber, 16th June 1896, pp. 1431-1450.
17 Article 148 of the Electoral Code.
18 Article 149 of the Electoral Code.
19 Article 149 bis of the Electoral Code.
20 Receiving financial aid could mean under certain circumstances that a person would lose its right to vote.
21 Article 150 of the Electoral Code.

sentenced to the additional punishment of losing his right to vote, as mentioned in article 28, sub 3 of the Criminal Code.[22]

An important debate took place during the debate on this revision with regard to a proposal to include an article on the illegality of using signatures of support for candidates from people that are not entitled to participate in the election. At this time, candidates had to receive 40 signatures of support. The person proposing the amendment, Van Gennep, stated: "When there are 39 valid signatures, the mayor will not accept the candidature, but when there are 40 signatures, he must accept it, even if it is clear that none of the signers is authorized for that election. What is the consequence? The name of the unlawful candidate comes on the alphabetical list and from there on the voters' cards and on ballot papers, so that if the voters do not distinguish whether or not he has been endorsed by authorized persons, they might in good faith cast votes on him.

Now I am not afraid that the candidate, endorsed by unauthorized persons will be chosen. However, the law says that when there is only one candidate, there will be no vote. If there is one serious candidate and one pseudo-candidate, then an election has to be organised. Another more common case would be that there are two serious candidates and a pseudo-candidate who gets 100 votes. Now if there is a difference between the serious candidates of 40 or 50 votes , then because of the votes on the pseudo-candidate, there will have to be a re-vote. It has been pointed out that the amount of people that can vote will be extended greatly by this law, but certainly not so far, and there are always those who are not authorized, and who probably then just for fun will make a statement to take part in the election."[23]

Therefore he proposed that the punishment should be jail time and not just a fine. The minister was not in favour of adding this article. He reasoned that there was no evidence that this crime had actually occurred and therefore that there was no necessity to add it at this time. Only when there would be enough prove of this kind of misbehaviour happening there would be a reason to introduce this article. Others also pointed out the danger that because the person handing in the list of signatures would also be punishable under this provision, nobody would want to fulfil this job anymore. Especially in larger rural districts, it might be difficult for the person collecting the signatures to determine if everybody that signed had voting rights. This debate thus shows a need to find a balance between maintaining the integrity of the elections versus the need to ensure the possibility of candidates to collect enough signatures to be able to participate. After some discussion

[22] Article 155 of the Electoral Code.
[23] Handelingen II 16th June 1896, 1441.

about the wording of the article, the Parliament decided to adopt it into law.[24] The punishment would be a prison sentence of up to three months or a fine with a maximum of 120 guilders.

Although not directly related to the topic of election fraud, during this same debate an interesting statement was made by one of the members of Parliament, de Savornin Lohman. The question at hand was if the law should state that elections would take place on a Sunday. He pointed out that this might make it difficult for orthodox Christians, who had to go to church twice on a Sunday to find the time to vote. As he correctly pointed out, the Electoral Code should be written in a way that even a government with specific interests in the outcome of the elections and thus in the background of the voters, should not be able to abuse the provisions.[25]

This all led to a new law that came into force on September 7th 1896. The following acts were deemed to be election crimes: falsifying the necessary documents to be admitted as a voter on a voter list (one year imprisonment), falsifying evidence to ensure that somebody else is admitted as a voter on a voter list (six months imprisonment), falsifying the signatures that are necessary to show support for a candidate (three months or a fine of 120 guilders), signing a candidate support list while knowing that you are not a voter (three months or a fine of 120 guilders), failure to provide the necessary evidence that someone else should be admitted on a voter list when requested to do so (fine of 3 guilders) failure to give your employees the opportunity to vote or to provide them with the necessary information when they are allowed to vote (14 days imprisonment or fine of 75 guilders), members of the polling station that are absent from the polling station during voting without justified cause (fine of 100 guilders), failure of a voter to return the ballot paper when either requested to do so by the polling station or because the voter refused to put the ballot paper in the ballot box (12 days imprisonment or fine of 300 guilders). Falsifying evidence to place oneself or another voter on the voter list could also lead to exclusion of voting rights.

In part of the problems with fraud with the ballot papers that were send to the houses of the voters before the elections, a whole new Election Act was drafted, in order to use a new form of ballot paper. This change in the legislation was a major one and should be classified as a critical juncture. The choice to now use a ballot paper that voters would only receive in the polling station meant that a new path was chosen to run elections; voters would now have to show up in person to be able to vote. This choice also let to the inclusion of other articles on election fraud and was influential in later decisions that the legislator could make.

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[24] Article 50 of the Electoral Code.

[25] 74th Meeting of the Second Chamber, 16th June 1896, p. 1445.

6.4 1900-1917: the introduction of proportional representation

Around the 1900's a new way to try to influence voters was to offer them a ride to and from the polling station. First this would happen through a horse and carriage. Later, cars (which were still very rare in the Netherlands) were used (De Jong 2008). Some parties would pay voters if they went to vote, claiming that they were reimbursing the voter for the time it took to vote. Direct bribery of voters also still took place. South Limburg had a dubious reputation in this area. In 1909, during the State elections in the districts of Gulpen and Meerssen, there were many reports on money laundering and drinking. According to the information the member of parliament for this area, Ruijs de Beerenbrouck had received, in Bunde, people were paid six guilders for a vote, while in several beer houses, voters had been given free drinks. In another village close by, on election day, over 150 guilders of free beer had been given away. In Amby, according to the informant, the whole village was drunk on election night. In different municipalities, this kind of drinking had let to fights and windows being destroyed (De Jong 2008).

In 1917, the Election Act underwent a major change because of the switch to a proportional system. This change was made as part of a deal between the Christian parties and the Liberal party. In exchange for a change of the electoral system to proportional representation, with general franchise, which the Liberal party wanted, the freedom of education, including Christian education was added to the Constitution, a wish of the Christian parties.

With the introduction of a new electoral system, new electoral crimes where added to the law. The following offenses were named. It became an offence to hand in a candidate list, knowing that the signatures to support this list are false, or to sign such a support signature while knowing that you are not an eligible voter. The sentence would be an imprisonment of three months or a fine of 120 guilders. It also became an offence to not vote, since voting became mandatory. Not voting for the first time in two years could lead to a fine of 3 guilders, the second offence could be punished with a fine of 10 guilders.

After the introduction of the general franchise and the switch to a system of proportional representation, the ways that fraud was committed changed. In 1918 during a debate in Parliament, a committee with the members: De Savornin Lohman, Nolexs, Treub, Troelstra, Van der Voort and Van Zijp, mentioned complaint from voters and the social-democratic party about the previous elections. These complaints were that some candidates had given free drinks to voters. After an investigation, it turned out that this happened in six municipalities. The mayors of those municipalities did not do anything about this. Also, representatives of the social-democratic labour party were molested in certain areas, actions which were even encouraged by a priest in the

municipality of Swalmen.[26] The committee stated: "Even if this only happened in a few municipalities, it also deserves sharp condemnation as committing physical assaults against propagandists should not take place. That the clergy refused to rent out halls to socialists however to hold election rallies, some members could understand. In their view it was not surprising that the clergy, which condemns socialism with its materialistic foundation, would do everything possible to prevent the parishioners from becoming supporters of this party."[27] The incidents with alcohol did lead to an instruction from the Minister that it would be wise not to serve alcohol on election day. This instruction was pushed for by the National Commission Against Alcoholism and appears to stem more from the anti-alcohol lobby than from actual widespread problems during elections (De Jong 2008, 23).

Again, this period has to seen as a period of punctuated equilibrium, leading to a critical juncture. The introduction of a new electoral system; the change from a system of first past the post to proportional representation and with it the introduction of the general franchise meant a complete change of the institution and the electoral rules. This choice was the result of years of negotiation between the different parties in parliament and part of a deal between the Liberals and the Christian parties, which also included an article in the Constitution on the freedom of education. Therefore, it was not a choice that a later legislator could easily change back. The expansion of franchise is also a choice that, once it is made, cannot be undone realistically. This constitutional change also reshaped the party system in the years to come.

6.5 Elections between 1920-1925

In 1921 the Minister was asked about sanctions that voters could face if they did not vote. At that time, the Constitution stated that everybody was obligated to vote. Some legal scholars at the time had raised the question if this meant that members of the Royal House, including the Queen were obligated to vote as well. The Minister entered a bill in parliament to change the election law in order to clarify that the members of the Royal House were excluded from the duty to vote. This let to a debate on the penalties for other voters that refused to vote. The Minister stated that although the Constitution prescribes mandatory voting and therefore failing to vote had to be penalized by law, the intention was to not actually enforce it. This was the reason the articles in the Election Act on this matter left a lot of options to prevent a criminal procedure. This was done by allowing a mayor to decide whether or not the voter had a valid reason not to vote. An example that was

[26] Handelingen II October 26th 1918, 7.
[27] Handelingen II October 26th 1918, 7.

mentioned was that of a female voter who could not vote because she had to take care of the children.[28]

Later that year during another debate on this issue, Kolthek, member of the Lower House, states that he found it problematic that when the law says that voters who are not voting will be punished, this is not actually done. Even though he was not in favour of the duty to vote, not upholding the law undermines its value. He pointed out that: "In Amsterdam, for example, where the most voters stay away from the ballot box, no one has never been held responsible in any way for breaching the law. In my eyes, this is not favourable in order to promote respect for the law. Now, I do not worry about it too much, but those who are in favour of compulsory voting, should in the first place ensure that the law is respected, for every law that is not respected, undermines the authority to a greater extent than just due to the fact that one is not punished for that particular fact. However, it is also practically impossible in Amsterdam to have all those people persecuted. The amount of people who do not vote stayers is in the tens of thousands, and I suggest to each Minister that measures should be taken by which those tens of thousands are prosecuted during each election. I repeat, that does not bother me so much, but it bothers me excessively that it happens that people who have fundamental objections to the obligation to cast a vote, are handcuffed and transported to a prison cell. That is what I call an unheard scandal and I protest against that."[29] Interestingly, in the remainder of the debate, no reply came, neither from the Minister, nor from the parties that were in favour of the duty to vote to these remarks.[30]

In that same debate, Albarda proposed an amendment that would allow a voter who could not write to be assisted in casting his vote by the chairperson or another person in the polling station. Albarda pointed out that with the larger number of candidates on the ballot paper, this would be a necessity.[31] The members Rink and Reijmer objected against the amendment, as it could be misused. As Reijmer stated: "When Mr Albarda's amendment comes into law this means that the illiterate voter has to make it plausible that he is unable to read. The question immediately arises as to how this should be done. When someone pretends to be stupid and just says: I do not understand what is presented to me, then there undoubtedly will be several benevolent people in the polling station from many political parties that will offer help."[32] The Minister, Ruys de Beerenbrouck, had some reservations. He pointed out: "First of all, here again the chairman of the polling station is given a

[28] Handelingen II May 24th 1921, 21.
[29] Handelingen II September 8th 1921, 2935.
[30] Handelingen II September 8th 1921, 2934-2936.
[31] Handelingen II September 8th 1921, 2936-2937.
[32] Handelingen II September 8th 1921, 2937.

great deal of authority and he has to decide whether or not the person is indeed illiterate. Secondly, here again on the secret of the vote might be infringed, because it will allow a person to be accompanied in the voting booth. On the other hand, I admit that there is much to be said for maximizing the number of people that will be able to cast a vote. In this, I therefore leave it up to the House to decide if they agree with the amendment."[33] After a vote, the amendment passed with 38 votes in favour and 34 against.

An interesting debate took place on April 20th 1922. It dealt with the issue of voters who would not be in the vicinity of their assigned polling location on Election Day. There was a proposal from the member Alberda to make it possible for these voters to request to be assigned to another polling station. One of the reasons for the proposal was that wealthier people would be able to bear the cost of travel to their polling station, but poorer people usually could not. Therefore political parties often paid for certain voters to travel to their assigned polling station.[34] This meant that parties that had more money to spend could allow their voters to participate, where others could not. Besides this argument, there is only a quick reference to the fact that if political parties pay voters for their travel in order to get them to vote, this could lead to dubious practices. Although some members of the Upper House objected to the proposal because it did not contain a solution for fishermen and sailors who, under the new rules, could still not participate, the bill passed with 26 votes in favour and 4 against.[35]

During the elections of the Parliament in 1925, a newspaper, Het Volk, reported that people who wanted to become a candidate for the Plattelandersbond were told to pay money in order to be placed on the candidate list. In the article, mr. Watjen, who used to be the secretary for the Plattelandersbond stated that: "the persons to whom a place were given on the candidate list of the Plattelandersbond were told that they would have to pay for their place. The amount varied, depending on the probability that they were actually chosen and ranged from 25 to 1000 guilders. Those who would be elected would have to compensate the party each year for an amount of 500 guilders".[36] Although this would not be in breach of the Election Act, it would be in breach of the oath that representatives have to take when they are sworn into the Parliament.[37] There was a discussion in Parliament on this newspaper article when the new Members of Parliament were

[33] Handelingen II September 8th 1921, 2937
[34] Kamerstukken I 1920/21, 432, nr. 432.
[35] Handelingen I April 20th 1922, 735.
[36] Het Volk, June 10th 1925.
[37] The oath states that a person has not received nor given anybody anything in order to be elected.

sworn in. However, the conclusion was that since nobody had filed a complaint and there was no real evidence of the alleged payments, no further action was necessary.[38]

This is a period of stability in the legislation, with only minor changes being made to either expand a little bit on the existing legislation or to clarify some of the meaning of the rules. The debate on the issue of punishing people who did not vote is a clear example of drift, the obligation to vote was not altered, but because there were no consequences for voters who did not follow it, the rule lost its meaning. This issue remained an important one and was subsequently raised again in Parliament.

6.6 Compulsory voting and punishment

A reoccurring topic remained the sanctions for not voting, since voting was compulsory. In 1925 the government proposed to maintain the duty to vote, but to strike the criminal sanction for failing to do so. The Minister, Ruys de Beerenbrouck explained: "The proposal to strike the sanction has its ground in the great number of voters who do not vote. As an illustration, I point to Amsterdam, where, during the parliamentary elections in 1922, 57 810 voters did not vote and during the elections for the Provincial States in 1923, 70 677 voters stayed away. It is impossible to prosecute such high numbers of voters. The circumstance that prosecution of small numbers of non-voters in small municipalities is possible, means that people who breach the duty to vote are treated differently, depending on where they live. For this reason, I propose to strike the sanction for not voting for all voters."[39]

The Parliament voted against this proposal on the grounds that if the Election Act says that a voter has to vote, failure to do so should be punished in order for the Act to retain its meaning. By amendment of Wintermans en Van Sasse van Ysselt, the law was changed in a way that the mayor now would decide whether or not to press charges against a voter who did not vote. Also, the Act was changed in a way that the necessity to show proof of innocence was put in the hands of the voter; if he could not show a proper reason why he did not vote, the judge would have to find him guilty.[40] In 1926 the government adopted the line of reasoning that the Parliament had used and stressed that as long as the law states that it is mandatory for voters to vote, it is important that sanctions should be handed out when voters fail to do so. However, on November 27th 1925, the Minister of Justice sent out an instruction to all the public prosecutors in which he asked them not to seek prison time for failing to vote. Instead they should only punish voters with a fine.[41] After a

[38] Handelingen II September 16th 1925, 8.
[39] Kamerstukken II 1924/25, 296, nr. 3, 3.
[40] Kamerstukken II 1924/25, 296, nr. 10.
[41] Kamerstukken II 1926/27, 2 I, nr. 4, p. 2.

question of a Member, the government gave an overview of the number of people that were convicted of this crime during the elections of 1925. Out of the 284820 people who failed to vote, 16681 were convicted to pay a fine.[42]

Whereas the previous debate on the duty to vote showed signs of drift, this debate is a case of displacement; the existing rule was changed in order to give the mayor the right to press charges. The instruction to public prosecutors is an example of conversion; although the law made it possible to seek either a prison sentence or a fine, in practice, only the fine would be used.

6.7 Introduction of proxy voting in 1928

In 1928, by the law of July 21st, the legislator opened the possibility for proxy voting. The trigger for this change was the fact that there was still not a good solution for voters who could not attend the vote on election day, especially for fishermen and sailors. Van den Heuvel, member of the Lower House, had pointed out that other countries had managed to find a solution, he mentioned Norway, Germany and the United Kingdom. Ministers Kan and Donner informed the parliament about the solutions in Norway and Germany: "The Norwegian electoral law gives everyone the option by to vote by mail, a solution, which is not acceptable for our country, where a greater importance is places on guarantees against abuses which this system cannot offer and on the secrecy of the vote. The system of German law is to open the opportunity for sailors to vote on a few days before and after election day in some specific ports."[43] The ministers argued that they were not in favor of this system, since it would mean that candidate lists would have to be available earlier, which would cause other problems. They then pointed to the English system which allowed for proxy voting, under the Representation of People Act 1918. The bill they entered was designed in line with this legislation from the United Kingdom.[44]

This law also contained an article that made it a crime to vote for a person by proxy while knowing this person was dead. The sentence was imprisonment of a month or a fine of 1000 guilders.[45] During the debate on proxy voting, again the issue of the duty to vote was raised. Some Members of Parliament wanted to abolish this duty, whereas other Members wanted to keep it, but have a more uniform policy in terms of sanctions.[46] On June 15th 1928 two Member of Parliament issues a motion stating that the duty to vote should be abolished as soon as possible.[47] This motion was put to a vote

[42] Handelingen I 1926/27, April 12th 1927, 821.
[43] Kamerstukken II 1927/28, 311, nr. 3, 5.
[44] Kamerstukken II 1927/28, 311, nr. 3.
[45] Kamerstukken II 1927/28, 311, nr. 2.
[46] Kamerstukken II 1927/28, 311, nr. 4, p. 1.
[47] Kamerstukken II 1927/28, 365, nr. 1.

on March 5th 1929, 40 Members voted against it, 30 in favour.[48] During the debate on the bill that allowed proxy voting, there was no discussion at all on the sanctions proposed dealing with voting for a voter that was dead.

This change can be regarded as a major one, the choice between using proxy voting or mail voting for voters who cannot vote in person in the polling station is not one that is easily reversed after it has been made. The choice for proxy voting was thus a critical juncture.

6.8 Elections between 1930-1945

The issue of the duty to vote was again in discussion during the Parliamentary election in the early 1930's. During the discussions on a bill to change the Election Act dealing with the articles on proportional representation, Beumer proposed an amendment to strike the duty to vote and its sanctions from the Election Act. He had a very short argument for his proposal: "Although currently there seems to be an inclination to go more in the direction of coercion than that of freedom, the undersigned believes that he must make another attempt to abolish the so-called compulsory voting."[49] During the debate on the amendment he elaborated: "I may refer to the letter from the Minister of State, Minister of the Interior and Agriculture, addressed to you, Mr President, from 2 October 1930. In this letter the Minister informs us that 463 mayors have accepted conscientious objections as a reason for not voting. 83 mayors however have taken the opposite position and did not accept this as a valid reason. There is no information on how the other 532 mayors felt on this issue. This can be interpreted as good or bad. I may refer in the second place to the letter of the Minister of the Interior and Agriculture of 12 April 1927, which showed that 284 820 persons did not comply with the duty to vote and that only 171 223, that is about 113,000 less, had received a notification from the mayor to be questioned on their reason for not voting. Finally, only 16 681 persons were convicted. In these cases, the courts held hearings where a large number of defendants were tried together. In order to save time, there was hardly any option for the defendants to justify why they had not voted. One of the criminals, when convicted by the subdistrict court, later reported that he had to pay a f3 fine, the maximum penalty, because he had not gone to the polling station on June 1, 1925. And why had not the man appeared there? Because he was actually in prison during the election. This new method of adjudication undermines the authority of the State and the enforcement of the duty to vote is not worth that risk."[50]

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48 Handelingen II 1928/29, March 5th 1929, 1576.
49 Kamerstukken II 1932/33, 69, nr. 9.
50 Handelingen II February 1st 1933, 1553.

The amendment was voted down by the Parliament with 49 votes against and 39 votes in favour. Those who were against the amendment pointed out that the duty to vote was necessary. This because in order to ensure that the system of proportional representation works, it is necessary for the whole population to actively participates in the elections. They feared that striking the duty to vote would lead to a drop in participation that would also be lopsided in the sense that certain groups in society would significantly vote less.[51]

In 1933 the Parliament debated the petition from a voter to not install the newly elected Members of Parliament because the election should be annulled due to the fact that people that had not reached the voting age of 25 had voted anyway. However, since this voter could not prove his claims, the Parliament decided to certify the results and accept the new Members. During the same debate, the Parliament did suggest to ensure that ballot papers that voters refused to fill in and had been handed back to the polling place should be made unusable in order to prevent fraud.[52]

During the debates on the budget for the Ministry of the Interior in 1934, a Member asked attention to the fact that he had heard of practices in some municipalities where under the guise of helping analphabetic voters, a large number of ballot papers would be filled in by the same person. He points towards a municipality in Noord-Brabant where more than 60 ballot papers would have been filled in by somebody. The Member asks the Minister to warn majors of these practices and to ask them to have the police actively on the lookout during the next elections.[53] In 1936 Members of the Parliament again asked the Minister of the Interior to tell mayors not to punish women who decided not to vote due to morale objections against the right to vote.[54] The Minister responds by saying that because the last time mayors were reminded of this dated back until 1930, he would do so again.[55]

Although in 1928 the right to vote by proxy was introduced, in order to get that right, a voter had to personally apply to the mayor, stating the reasons why he would not be able to vote in person. This process took time and effort from the voter. This is why in 1939 the right to vote by proxy during the municipal elections in 1939 was granted to all military personnel in general, without requiring them to apply individually, due to the international tensions at that time. The government feared that otherwise, most soldiers would not be able to vote because if they were mobilized, they would not be able to go to their municipality of residence to vote in person, but they would also not have the

51 Handelingen II February 1st 1933, 1552-1558.
52 Handelingen II May 10th 1933, 6.
53 Handelingen II November 15th, 1934, 355.
54 Kamerstukken II 1936/37, 2V, nr. 6, p. 3.
55 Kamerstukken II 1936/37, 2V, nr. 7, p. 13.

time to apply for a proxy vote. The existing articles on fraud with proxy voting included in the Election Act were deemed applicable to this temporary law.[56] Members of Parliament asked whether the duty to vote would also extend to the right to vote by proxy; could a soldier who did not use his right to vote by proxy be prosecuted for failing to vote? Other Members felt that it was clear that this could not happen, the Election Act does not prescribe that a voter who cannot vote in person is obligated to vote by proxy.[57] The government confirmed this last reading of the Election Act.[58]

This was again a period with little changes to the legislation, even though some fundamental discussions took place with regard to the question whether or not to uphold the duty to vote. This shows that even when Parliament debates an issue, that is not always going to be a trigger for actual change. The inclusion of a procedure for soldiers to be able to vote by proxy is an example of layering, where a new situation was added to the legislation.

6.9 Elections after World War II

Right after World War II, the government proposed some changes in the Election Act in order to make it easier to hold elections in 1946 for a new Parliament. One of these changes was to strike the compulsory vote. The main reason for this was that the government felt that upholding the duty was no longer necessary because the events of the war would have installed enough sense of the importance of democracy in the citizens that they would vote anyway. Another reason was that there was not enough administrative capacity to uphold the duty to vote and voters who would not vote could not be prosecuted.[59] During the debate, an amendment was proposed by Ruijs de Beerenbroeck, former Minister, to only abolish the criminal sanctions, but to uphold the duty to vote.[60] Joekes proposed to only abolish the duty to vote for the elections in 1946, due to the special circumstances in which they were held. He stated: “The third argument [for abolishing the duty to vote] is based on the fact that under the current circumstances the sense of political responsibility of voters is such that participation in the elections will take place without coercion. First of all, this is speculation. If the Minister should cast it in the form of an expression of hope, then I share that hope out of the bottom of my heart. I am also convinced that there are groups of young voters for whom this argument indeed will be true, but I am not convinced that this is the case on such a large scale, as the Minister states. Moreover, this argument is only of a temporary nature. It could be that

[56] Kamerstukken II 1938/39, 410, nr. 2.
[57] Kamerstukken II 1938/39, 410, nr. 4, p. 1.
[58] Kamerstukken II 1938/39, 410, nr. 5, p. 1.
[59] Kamerstukken II 1945/46, 125, nr. 3.
[60] Kamerstukken II 1945/46, 125, nr. 11.

the current increased interest in politics allows for the abolishment of the duty to vote forever, but it is too early to make that decision now."[61] The other members of parliament felt that if the duty to vote was abolished for one election, it would not be possible to uphold it for elections afterwards. During the vote regarding the bill, the amendment to uphold the duty to vote was passed with 37 votes in favour and 36 votes against.[62]

In 1948, in the law of March 18th, a new chapter on election crimes was added to the Elections Act, as a way to both add new crimes to the Act, but also to raise the fines because of inflation. It now became illegal to forge ballot papers, punishable with an imprisonment of six years. A person using forged ballot papers or allowing others to use them, knowing that they are forged could also receive a prison term of six years. The possession of forged ballot papers with the intent to use those illegally or to have others use those, could be punished with two years imprisonment. The fine for not voting was raised from three to five guilders for the first offence and from 10 to 15 guilders for the second offence. Except for the issue of raising the fine for not voting, the Parliament did not have any discussion on the new crimes added to the Election Act.[63]

The debate on the abolishment of the duty to vote is a critical juncture, but this time, it did not lead to a change in the legislation. The vote on it was very close, but apparently, not even the World War and the sentiments that that caused with regard to the importance of civil rights, created enough momentum for a change. The later changes in the Election law on the crimes is again an example of layering, adding new articles to the existing law, causing small and gradual changes.

6.10 Consolidation of the Elections Act in 1951

In 1951 a new Elections Act was introduced. It contained many of the articles of the old Elections Act, but because of all the separate changes, the legislator found it better to consolidate this in a new Act. In addition to the election crimes that were introduced since 1917, it became an offence for members of the polling station to be absent during the session of the polling station, punishable with a fine of a 100 guilders and for a voter to not return the ballot paper. This offence could lead to imprisonment for 12 days or a fine of 300 guilders.

A major change however was also that the arrangements for proxy voting were broadened. Since then, there have been complaints about fraud with proxy voting in almost every election. These complaints usually see on the recruiting of proxy votes of people that did not have the intention to

[61] Handelingen II January 30th 1946, 494.
[62] Handelingen II January 30th 1946, 505.
[63] Handelingen II March 2nd 1948, 1493-1499.

vote. During the debates on the new Act, Parliament asked attention to the fact that there had been cases where signatures supporting candidate lists were forged. They state that it is not always easy to prove this, given the short timeframes in the Election Act. They asked the Minister if he is aware of such practices and what could be done about it. One suggestion would be to stipulate that the person who hands in the list would be criminally liable if there are forged signatures on it.[64] The Minister has indeed heard of these practices, but states that article 225 of the Penal Code already makes it possible to prosecute these kinds of actions. He therefore does not find it necessary to add a specific article about this in the Election Act.[65]

The Members of Parliament also found the proposed sentences for the articles X 9 and X 12 too high.[66] Article X 9 stated that somebody who votes by proxy for a voter that he knows is dead will be punished with imprisonment with a maximum length of a month or a fine of maximum 1000 guilders. Article X 12 stated that the voter who received a ballot paper but did not turn it in in the prescribed way (either by filling it in and dropping it in the ballot box, or by handing it unused in to the poll workers) would be punished with imprisonment of maximum of 12 days or a fine of 300 guilders.[67] The Minister responded by saying that he found voting by proxy for a voter known to be dead a serious offence against public order and that the sentence therefore fits the crime. He also pointed out that the proposed sentence is already part of the existing legislation. With regard to the new article on not handing in the ballot paper correctly, the Minister pointed out that this could disturb the order in the polling station and could therefore have serious consequences. Again, he found that the punishment would fit the crime. The proposed article was therefore not changed and became part of the law.[68]

During the debates the issue of the duty to vote and the prosecution of those voters who did not vote was yet again an issue. Even the Members who were against the continuation of the duty to vote pointed out that the fact that hardly any legal action was taken against those voters who broke the law was not good for the authority of the law. The Minister responded by pointing toward the practices that political parties used before the duty to vote was introduced. Parties would drive voters to the polling station, meaning that wealthier parties would benefit from abolishing the duty to vote. [69] In the Senate, some Members were in favour of abolishing the duty to vote, others wanted to maintain it, but proposed to strike the article that made it punishable not to vote. A third

64 Kamerstukken II 1950/51, 2090, nr. 4, p. 41-42.
65 Kamerstukken II 1950/51, 2090, nr. 5, p. 45.
66 Kamerstukken II 1950/51, 2090, nr. 4, p. 44.
67 Kamerstukken II 1950/51, 2090, nr. 2, p. 23.
68 Kamerstukken II 1950/51, 2090, nr. 5, p. 47.
69 Handelingen II May 22nd 1951, 1760.

group expressed a favour for maintaining both the duty and the punishment, stating that although criminal sanctions might not be the ideal way to get people to vote, they did not see a proper alternative. [70] In the end, the duty to vote was maintained in the law.

The consolidation of all the previous changes into a new law is an example of displacement; all the existing articles were abolished and a whole new Election Law was instituted. However, the amount of actual changes in terms of the meaning of the legislation was limited. Therefore this time period should be regarded as part of the gradual changing of the legislation.

6.11 Elections between 1960-1970

In 1965 the fines for not voting were raised from 5 guilders to 15 guilders for the first offence and from 15 to 30 guilders for the second offence. In 1968 it became illegal to forge and use forged voter cards and proxy cards. The sentences were the same as for forged ballot papers. In 1970, the mandatory vote was finally abandoned, which also meant that the crime of not voting was taken out of the Elections Act.

A new type of fraud seemed to emerge, which dealt mainly with the requirement that parties have to obtain statements of support before they could run in elections. This let to alleged fraud with these statements. This became increasingly popular in the 1970"s when small extreme right wing parties had difficulties collecting enough statement and therefore resorted to falsifying these. In all of these cases, it was however very rare that an official investigation was carried out, leading to very few convictions. It also did not lead to any direct changes in the legislation on this topic.

In 1976 it became illegal to bribe a voter through a gift or a promise to give away his proxy vote. This offense carried a maximum prison term of six months or 300 guilders. The same sentence could be given to the voter who accepted the gift or the promise. It also became punishable if a voter gave another voter his proxy vote, but participated in the election anyway. This could be punished with an imprisonment of a month or a fine of 1000 guilders. The addition of new crimes concerning the proxy votes was related to the fact that it became possible to give the proxy vote to another voter by signing the voter card. This meant it was no longer necessary to get approval from the municipality to give a proxy vote. Also, the circle of people that a voter could use as a proxy was widened. It was no longer required that the proxy vote was given to a family member or a member of the same residency. A proxy vote could now be given to any voter within the same polling station. [71] In an attempt to prevent fraud with proxy votes, it was determined that a voter could not

[70] Kamerstukken I 1950/51, 2090, p. 2.
[71] Kamerstukken II 1974/75, 13218, nr. 2.

cast more than two proxy votes and only at the same time with the casting of his own vote. The Minister did admit to the Parliament that it would be possible for voters to bribe other voters in to giving their proxy vote tom him.[72] He therefore proposed the article on the gift or promise for a proxy vote, described above. During the Parliamentary debate, the issue of possible fraud was mentioned.[73] A Member proposed to make it mandatory for the chairperson of the polling station to ask voters for ID. The Minister was not in favour of adding this requirement for voters. In his eyes, the balance between accessibility and the possibilities to commit fraud was found in the proposed change of the Election Act. Adding an ID requirement could mean that voters would have to be turned away at the polling station if they did not carry one. The Parliament agreed with him and not additional measures against fraud were introduced.[74]

During elections in Zuid-Limburg in 1981 there was a lot attention for the practice of recruiting of proxy votes. In some municipalities the amount of proxy votes was almost 10% of the cast votes. In particular, certain local parties had been very busy collecting written proxy votes. Because of these rumours, the Minister of the Interior send out a circular to all mayors to try to reduce the number of written requests for proxy votes. He encouraged the mayors to question those voters who had send in such a request. If a voter would be unable to state who he had given the proxy vote to, the request should be denied. Some mayors did follow up on these instructions, leading to the withdrawal of 67 requests in the municipality of Stein.

This was a period of small changes over time, most that should be labelled as layering. Interestingly, the attention to fraud with proxy votes did not lead to any significant changes in the legislation.

6.12 Introduction of mail votes in 1983

In 1983 the possibility to vote by mail for voters living abroad was introduced by the government, initiated by the Liberal party (VVD). The assumption was that most voters who were living abroad were either working for the government, or for big companies and that they would be likely to vote for this party. The introduction of mail voting made it necessary to add new crimes to the Elections act. The falsification of mail ballots and the use of forged mail ballots became offenses. The punishment was the same as that for the same offenses in relation to other materials used in the voting process (ballot papers and proxy vote cards).

[72] Kamerstukken II 1974/75, 13218, nr. 3, p. 16-17.
[73] Handelingen II September 28th 1976, 147.
[74] Handelingen II September 28th 1976, 147.

In the debates surrounding this reform, the possibility of buying votes was explicitly discussed. The Parliament stated that fraud had occurred in the past with proxy voting and that they feared the same for mail voting. But different members also stressed that there would be no way to make the system completely fraud proof and that the use of the criminal law to punish those who committed fraud would be extremely difficult in the case of voters living abroad.[75] With regards to voting by proxy, some members of Parliament proposed to reduce the number of proxy votes that a voter can cast with his own vote from two to one. This could also help to prevent fraud in institutions and hospitals.[76] The Minister answered to the questions by pointing out that ballot papers are sensitive materials that should be guarded closely before elections. If large numbers of ballot papers would end up in the wrong hands, this could lead to massive election fraud. He stated that: "this is why forgery or illegal possession and use of ballot papers is a felony, which can lead to severe sanctions".[77] The Minister also pointed to the risks of allowing military personnel the right to vote when being outside of the Netherlands because especially conscript soldiers who could feel pressure from their officers. He also mentioned that that the argument that some members of Parliament used that because it was possible to commit fraud with proxy voting, the chance that fraud could occur with postal voting was not a reason not to introduce it, was not a very strong argument.

In 1988 the fines in the Election Act were all standardized with the introduction of a new system of fines in the Criminal code.

The expansion of voting rights to those living abroad should be regarded as a critical juncture, leading to path dependency. Once voting rights are given to groups of voters, it will be almost impossible for future legislators to take them away. Because of the decision to allow voters outside of the Netherlands to vote, a new way to vote had to be added to the law; postal voting. This change is of significance, again, once such a system is introduced, it will be hard to abandon it again.

6.13 Codification of the Election Act in 1989

In 1989 another complete new Election Act was introduced, codifying all the previous changes. No new articles on criminal acts in the election process were added. During the debate on the new legislation the existing articles which where codified were discussed anyway. It was pointed out by a Member that the election process as a whole should be independent and resistant to fraud. An issue in this regard is the system of proxy voting. Due to the fact that the legislator has allowed more and more people to vote by proxy and made the process to do so easier, there is now reason to believe it

[75] Handelingen II September 13th 1983, 5406.
[76] Handelingen II September 13th 1983, 5416.
[77] Handelingen II September 13th 1983, 5418.

leads to fraudulent practices, for example in institutions for mental health.[78] Another Member asked if the sanctions that could be given for the canvassing of proxy votes should be increased. He compared the possible punishment with that mentioned in the article on bribing voters and wasn"t convinced there was a valid reason to punish the latter more severe than the former.[79] The government did not really respond to the question on the height of the sanctions, but only on the wording of the article in terms of the possibility to prove that fraud was committed.[80] Another issue that was mentioned was the fact that although the Election Act states that members of the polling station should not give any indication of their political affiliation or preference, this article is not enforced by any form of criminal sanctions. The Member asked if this should not be remedied, seeing that a member of the polling station who leaves the station during election day, even for a short while, can be given a fine.[81] The response from the government only mentions the question if the election results should be annulled when this happens, but doesn"t mention criminal sanctions.[82]

As in 1951, the introduction of a new consolidated Election Law should be seen as displacement of the old rules by the new rules. However, again, with regard to the articles on election fraud, very little changes of sustenance were made to the legislation.

6.14 Elections between 1990-2000

In 1990 twelve people were convicted for recruiting proxy votes. There were all fined. In 1993 it became illegal to approach voters in order to get their proxy vote in any way, not just by talking to them in person. Multiple members of Parliament pointed out the problem of people badgering voters to give them their proxy vote. A Member of Parliament mentioned the habit in some municipalities that voting cards will be sold in cafés for a pint of beer.[83] He stated that studies show that in some parts of the country the use of proxy voting is extremely high compared to the average and therefore he proposes to limit the number of proxy votes to one per voter. The Council of State in its advice on the proposed change in legislation also mentioned this as an option to reduce fraud with proxy votes. This Member then went further and mentioned the option of stripping someone who is elected but also found guilty of committing fraud of its elected position. He acknowledged that this would not be effective in the case of other party members or non-elected persons

[78] Handelingen II April 11th 1989, 5669-5670.
[79] Handelingen I September 26th 1989, 7.
[80] Handelingen I September 26th 1989, 16.
[81] Handelingen I September 26th 1989, 10.
[82] Handelingen I September 26th 1989, 17.
[83] Handelingen II June 23rd 1993, 5940.

committing the fraud. Therefore he was also of the opinion that if widespread fraud had been committed during an election, the whole election should be annulled. He found it disappointing that the government is not willing to make these options to punish fraud possible.[84]

Another Member of Parliament pointed out in the same debate that the sanctions on election fraud were too low. He stated that due to the fact that someone could get elected and thus gain the right to a pay check as a representative by committing fraud, for which he can get a fine up to 500 guilders, it would pay off to commit election fraud. He used this argument to underline the need of tougher sanctions, including the option of stripping somebody of its position as a representative. He specifically mentioned the trust in the integrity of the elected body when it came to these kinds of practices. The argument used by the government that tougher sentences are in breach of the constitution might be legally right, so he stated, but this should lead to a change in the constitution, not to maintaining lower sanctions.[85]

Another party in the debates explicitly asked attention for the balance between maintaining integrity by lowering the number of proxy votes and accessibility. They stated they found it more important that every voter would have the opportunity to vote and were therefore not in favour of reducing the number of proxy voter per voter to one. They did point out that there were other options of punishing fraud than the use of criminal sanctions, for example the loss of membership of the elected body or an annulment of the results in case of widespread fraud. They asked the government to investigate these options to see if these would be feasible. Finally, in the debate, members asked for more police involvement; if there is a suspicion of fraud, there should be at least an investigation.[86] The government responded by stating that although fraud with proxy votes was a serious problem, it was not widespread throughout the country, but limited to certain municipalities. That is why they proposed to increase the fines on fraud with proxy votes. They however were not in favour of other means of deterring and punishing fraud such as stripping someone of its seat or annulment of the election results since this would create new legal problems. The biggest problem with the annulment of the results would be that this would happen not right after the elections, but only when the investigation with regard to the fraud would be finished, which could take a while.[87] The Parliament was not completely convinced by this argument and

[84] Handelingen II June 23rd 1993, 5940.
[85] Handelingen II June 23rd 1993, 5941.
[86] Handelingen II June 23rd 1993, 5943.
[87] Handelingen II June 23rd 1993, 5945.

asked the government to investigate which options there are to make a more versatile approach to punishing election fraud possible.[88]

In 1995 the Secretary of State send a letter to Parliament on the evaluation of the municipal elections of 1994. He had approached ten municipalities in which there had been suspicions of fraud with proxy votes. Three said that there were no issues. In four other municipalities it turned out to be one person, in one municipality two and in one municipality three persons. In that last municipality the issue was not limited to fraud with proxy votes, but also with forged signatures and the abuse of voting cards of voters that were away during the elections. The public prosecutor persecuted three people in total for fraud. Two ended up with a fine, one was declared innocent.[89]

This period could be regarded as a window of opportunity to introduce more serious consequences to those who committed fraud with proxy votes. The Parliament for the first time asked the government to look into other punishments than fines and a prison sentence and specifically mentioned the possibility of annulled elections. However, nothing came from this investigation and Parliament did not made an issue out of it. Therefore although there might have been momentum for a change, the opportunity was not used.

6.15 Elections between 2000-2010

In 2001 in the article on trying to bribe voters to vote a certain way, the act of using force instead of a gift or promise was also deemed criminal. The sentence of six months in prison could also be given to a voter who accepted the gift or promise. This addition was triggered in order to discourage voters from accepting the gift and then filing a complaint. The legislator wanted to make it clear that both the person offering the gift and the person accepted it were committing election fraud.

During the municipal elections of 2002 there were a number of incidents. In the municipality of Oudewater two political parties voiced suspicions of the illegal obtaining of proxy votes by another party. The mayor filed a complaint with the public prosecutor, which led to an investigation and a conviction.[90] Also in Lith there were suspicions surrounding the proxy voting. The mayor filed a complaint, but the police investigation concluded that there wasn”t enough evidence that fraud was actually committed. In Aalten during the count, one polling station concluded that they had collected two more voting cards than there were ballot papers in the ballot box. In order to make the numbers match, they then ripped up to random voting cards and tampered with the voting

88 Kamerstukken II 1992/93, 22972, nr. 13.
89 Kamerstukken II 1994/95, 24244, nr. 1.
90 Kamerstukken II 2002/03, 38600 VII, nr. 48.

records. The mayor asked the public prosecutor to start an investigation. The conclusion was that the members of the polling station had handled irresponsibly which had let to them making false statements on official voting records. Since the public prosecutor did not find that there was an intention to commit fraud, he did not push for convictions. In Winschoten, the mayor filed a complaint for fraud after it turned out that two voters could vote because the records showed that somebody already voted for them. It turned out that the wife of one of the aldermen had falsified their signatures. The alderman resigned due to this. In Edam-Volendam a complaint was filed against a member of a polling station who was also a candidate. He was accused of voting for himself on the voting computer when asked to assist a disabled voter without being told who to vote for. After an investigation by the police the charges were dropped due to a lack of evidence. In Amsterdam there were reports of several irregularities. After an investigation by the local Ombudsman, he came to the conclusion that there was insufficient evidence of fraud.[91]

In March 2006, a candidate for the municipal elections in Landerd was also a member of the polling station. At that time, this municipality used a voting computer to vote. This candidate was operating this voting computer. After the results were published, it was noted that in this polling station he received 181 votes, where he only received 11 votes in the other six polling stations combined. This led to an investigation where all the voters in that municipality were asked to vote again, in secret, as they had voted before. Out of the 1073 people, more than 90% responded and out of those voters, only 13 people voted for this candidate. Also, voters in the polling station testified that they felt that something was "off" while they were voting on the voting computer. Eventually, this led to a trial and a conviction during the appeals phase of the trial. Although the Dutch Supreme Court found later that the sentence that was given to this person was too high, the conviction stood. What was problematic is that the Elections Act at the time only spoke of the tampering with ballot papers and not with voting computers. Therefore, the prosecutor could only use the more general articles in the Criminal Code. This meant that the maximum term of imprisonment was six months instead of six years.

Also in March 2006, a party leader of a municipal party paid homeless people in Arnhem 10 euros for statements of support. The mayor of the municipality pressed charges and the investigation revealed that fraud had taken place. The party leader received a prison term of 4 months of which 2 months were conditional. The court found the fact that the crime was committed by a political

[91] Appendix by the letter dated April 1st 2003, CZK/CZW 2003/60734.

leader, which abused vulnerable people, justified the sentence. This court case did not lead to changes in the election legislation.

During the same elections in another municipality, one person had collected over 400 proxy votes in order to help a family member to be elected. He had exchanged boxes of mushrooms for these proxy votes. He received a fine of 300 euros. Further investigation in that municipality revealed that other parties also had a habit of recruiting proxy votes, but no other charges were pressed. In another municipality, a member of the council received a fine of 1000 euros for recruiting proxy votes.

During the general elections of 2006 a national radio station asked people who were not planning to vote to hand in their proxy vote, so that these could be distributed amongst other voters. The Electoral Council pressed charges, resulting in one person receiving a fine of 450 euros. In 2009 the possibility for voters to vote in a polling station of their choice within the municipality was opened. In order to do so, they would need a different voter card. It also became an offense to forge these voter cards, or to use forged voter cards. The article on voting in person while a voter had also given another voter a proxy vote was struck from the Election Act.

In response to the allegations of fraud with proxy votes and signatures of support during the elections of 2006, the Electoral Council wrote an advice to the Minister in 2007. Besides from a number of practical solutions to make it more difficult to obtain signatures of support and proxy votes, the Electoral Council discusses the possibilities of the use of criminal sanctions to discourage fraud. They stated that it is undesirable that a chosen representative who is convicted of election fraud can still keep his or her seat. In the current system, the Constitution requires a minimum prison sentence of a year in order to also impose the additional measure of stripping someone of his voting rights, including the right to be elected. Because the maximum sentences in the Electoral Act are a lot lower, this would either mean that the sentences would have to be increased, or that the Constitution would have to been changed. The Electoral Council advised to do the latter and specify in the Constitution that a conviction of election fraud would also be grounds to take away voting rights.[92] They also pointed out that there have been many cases in which there were suspicions of recruiting of proxy votes, but nobody filed charges. And even in those cases where charges were filed, this often did not lead to an investigation or the persecution of those involved. The Electoral Council found this problematic because this hindered the effectiveness of the Election Act. If people were aware that chances of persecution are low, the preventative effects of possible criminal

[92] Advice of the Electoral Council, October 15th 2007, p. 14-15.

sanctions would be low. The Electoral Council therefore advised the Minister of the Interior to work together with police and the office of the public prosecutor to see how the investigation and persecution of people committing election fraud could be improved.[93]

In 2008, Public prosecutor Luwoski addressed several issues of the prosecution of election fraud. He was the public prosecutor of the Landard case, described above. First, he addressed the fact that the description of crimes in the Election Law had not been properly updated when introducing new forms of voting, such as voting by computer: "The other problem we ran into, [besides the problem of proving the fraud], a problem that is still current, concerned the very outdated (punishment) legislation of the Electoral Act. The penal provisions of the electoral law turned out not to be at all geared to elections per computer. It can be deduced from the Elections Act that the legislator had deemed cheating in elections as extremely punishable. The most far-reaching forms of fraud - fraud which attempt to actually change the results of the elections, is threatened with a maximum imprisonment of six years. I am talking about the articles Z 1 and Z 2 of the Elections Act. That relatively hefty threat of punishment is not surprising, given the protected interest. Our constitutional system, parliamentary democracy stands or falls with fair elections. The Netherlands sees itself as a guide country and gladly sends observers all over the world to ensure that electoral processes in countries with a shorter democratic tradition than ours are fair. The problem with Articles Z 1 and Z 2, however, is that they are very outdated. These articles are tailored to the voting with pencil and paper: to forge or imitate of ballot papers, voter passes, proxy certificates or postal ballot papers. While the suspicion against Mr. X materially came down to the fact that he had committed acts that fell under the criminal provisions of Z 1 and Z 2, in short: election fraud, we were forced to fall back on Article 127 from the Criminal Code, that deals with committing any fraudulent act during elections, because the voting took place on a computer instead of paper. Instead of a offense punishable by six years in prison, we were now just talking about an offense punishable by six months in prison."

He added: "Another problem that arose deals with the ability to deprive perpetrators of electoral fraud for a shorter or longer period of time from their active and passive voting rights. This additional penalty, formulated in Article 28, first paragraph, under 3 of the Criminal Code, however, can only be imposed in case of proven electoral fraud if someone is found guilty of violation of one of the offenses mentioned in Articles Z1 to Z3 inclusive. As mentioned, these are exactly the articles that were no longer tailored to the contemporary way of voting by computer. In addition, there in order to impose this additional penalty, the prison sentence must be for a year or longer. Since in

[93] Advice of the Electoral Council, October 15th 2007, p. 16-17.

the present case, the maximum sentence was six months, although there was every reason to deprive this person of his active and passive voting rights, this was not legally possible.". He then stressed the need to update the legislation on election fraud (Lukowski 2008).

On the question who is seen as the offender in the legislation, he stated: "Based on the assumption that the current electoral procedures make fraud by the state impossible and that (therefore) only fraud by voters requires sanctions, explains the wording of the penal provisions of the Electoral Act and the Criminal Code. All criminal provisions from the Criminal Code (Articles 125 to 129 Sr) and the Electoral Act (Z1 to Z11) are - with the exception of the articles Z 9 and Z 10 - tailored to the voter. Article Z 9 refers to the employer of the person entitled to vote, Article Z 10 is addressed to the members of the polling station. This latest article does not, however, refer to fraud committed by members of the polling station could be committed, it emphasizes rather the law enforcement and fraud prevention task of the representatives of the state" (Luwoski 2008).

These statements did not lead to any changes in the wording of the Law, nor to a debate on in Parliament on the issue of changing the Constitution in order to be able to take away ones right to vote after a conviction for an election related crime.

After the municipal elections of 2010 there was a debate in Parliament on the outcomes of the evaluation. One of the reasons for the debate was the fact that 15 out of 394 municipalities decided to hold a recount. Another issue during the elections was the identification requirements for voters. Finally, there were lots of media reports on the canvassing of proxy votes, voters who either did not get their voter cards, or got them twice and problems in polling places. In total there were 431 complaints or questions from citizens over the election process and 70 from municipalities.[94]

One of the Members of Parliament mentioned the fact that the use of voter identification could reduce election fraud, but could also lead to less accessibility and thus voter repression. Another Member pointed to a report, made by the municipality of Rotterdam on the problems they encountered during the elections. One of the suggestions in that report was to add another article in the Election Act which would open the possibility for criminal sanctions against a voter who breaches the law, for example by going into a voting booth with another person.[95] Although the report from Rotterdam qualified the Election Act as rather naïve, this Member felts that there already were are a lot of sanctions written in the Act. Another Member pointed out that if poll workers structurally allowed actions that were in breach of the Election Act, they could be found

[94] Appendix Kamerstukken II 2009/10, 31142, nr. 21.
[95] Kamerstukken II 2009/10, 31142, nr. 22, p. 9.

guilty under articles 127 and 129 of the Criminal Code, which deal with crimes against democracy. He felt that there should be more use of police during elections, for example by posting policemen inside those polling places that had experienced problems in the past.[96]

The Minister pointed out that the articles he mentioned were only relevant if the actions that were committed would lead to a different outcome of the elections or to the cancelling of elections. This is quite a high threshold to meet and therefore she did not think that they could be used in the cases he described.[97] A relevant question that arose during the debate was what the consequences should be for candidates and parties who benefitted from canvassing of proxy votes. If they did not do this themselves they were not punishable under the Criminal Code. This raised the question if there should not be another way to correct this behaviour?[98] The Minister responded by saying that the criminal prosecution of election fraud can be time-consuming and that it would be difficult to sanction anyone other than the person who actually committed the fraud. Also, after representatives have taken their seat, there would be no option to remove them, even if they benefitted from proven fraud.[99]

During this period quite a number of debates, court cases and public attention focussed on possible instances of election fraud, but none let to major changes in the legislation. There was some layering in terms of new articles on voter cards, but other than that in terms of legislation it was a period of stability. In light of the fact that there was a case of fraud with a voting computer on which the Public prosecutor made important statements, pointing out discrepancies in the legislation, this is remarkable.

6.16 Recent elections, the period between 2010-2020

In 2015 Parliament held a debate on the evaluation of the elections that where held in that year (Upper Chamber, provincial councils, island councils in the Caribbean parts of the Netherlands and waterboards). A newer issue that occurred during these elections was the use of “stemfies”, voters taking pictures of themselves in the polling station with their ballot paper. Shortly before the elections, the Minister had stated that although “stemfies” are a risk with regard to the secrecy of the vote, they were not illegal. In the evaluation of the elections it was concluded that there were

96 Kamerstukken II 2009/10, 31142, nr. 22, p. 12.
97 Kamerstukken II 2009/10, 31142, nr. 22, p. 23.
98 Kamerstukken II 2009/10, 31142, nr. 22, p. 15.
99 Kamerstukken II 2009/10, 31142, nr. 22, p. 25.

very little “stemfies” on social media which actually showed a voter and his already filled-in ballot paper. Also, there were no signs of possible vote-buying or coercion due to the use of “stemfies”.[100]

During the debate members pointed out that especially in the Caribbean parts of the Netherlands fraud with proxy voting is still very likely. The Minister responded by pointing out that although there were stories about fraud, nobody actually filed a complaint. He therefore wondered if there truly was as much fraud as mentioned. Another issue during these elections was that in the voter registry 746 people were listed as being excluded from voting, but after a quick investigation, it turned out this should only be around 169 people. The problem seemed to stem from the fact that the civil registry does not always show why people are listed as excluded. In those cases, the Minister ordered the municipalities to allow voters to vote. Members of Parliament pointed out that if a judge had ruled that someone had lost the right to vote, it should be mentioned in the civil registry and people should stay exclude. The Minister promised to send a follow-up letter to the Parliament on this issue.[101]

Since 2015, some members of parliament have raised the issue of misinformation and foreign meddling in elections. In the parliamentary year 2018/19 alone, this let to three motions being introduced by different members of parliament from different parties, that called for more investigations in this topic.[102] To date however, no clear no evidence of foreign interference or “fake news” has been found in the Netherlands (Galen and Van Holsteyn, 2021).

In 2018 and 2019 questions rose on the reliability of the software that was used to calculate the results. Even though there was a paper process in place as well as a back-up, some computer scientists stated that the software could be used for manipulation of the results. This let to some debates in parliament and changes to the procedure. Also, the Minister asked the Electoral Council, which is responsible for this part of the electoral process to update the software (Castenmiller and Young 2018, Van der Staak and Wolf 2019).

Again, the final years of the Dutch history show no significant changes to the legislation, even though several issues were raised by the media, NGO”s and members of Parliament themselves.

[100] Kamerstukken II 2014/15, 31142, nr. 51, p. 2.
[101] Kamerstukken II 2015/16, 31142, nr. 53.
[102] Asscher and Buitenweg, Kamerstukken II 2018/19, 35078, nr. 21, Asscher and Van der Molen, Kamerstukken II 2018/19, 30821, nr. 60 and Kuiken and Verhoeven, Kamerstukken II 2018/19, 32761, nr. 145.

6.17 Conclusions

This chapter has shown how electoral fraud laws were shaped and developed in the Netherlands in the 170 years between 1850 and 2020. Relevant issues were the question who had the right to vote, whether or not to have compulsory voting, fraud with proxy voting, fraud with signatures to support parties and candidates, the use of mail voting and possible fraud with new technologies, such as voting computers and software for the tabulation of results. The number of debates on the actual articles in both the Electoral Code and the Criminal Code is limited and the issue of what should be considered suitable punishments is debated even less. Finally, from the materials collected, it is clear that although there are instances of actual fraud during elections in the Netherlands, there is a very limit amount of investigation and prosecution, leading to an even smaller number of court cases.

From the chapter it is also clear that although there were some critical junctures in the development of the Dutch legislation of election fraud, most of the changes happened gradually in the form of layering or drift. The main moments that created path dependency where the introduction of the general franchise combined with a new electoral system of proportional representation in 1917, the choice to use proxy voting for voters living in the Netherlands who could not vote in person in 1928 and the expansion of the right to vote to voters living abroad, leading to the introduction of mail voting in 1983. The chapter also shows several instances where there might have been a window of opportunity for change, but in the end, no change to the laws occurred, such as the debate on the possibility to annul the result of an election if fraud with proxy votes took place.

Chapter 7 United Kingdom

7.1 Introduction

This chapter describes the second case-study that is used in this thesis. It looks at the development of electoral fraud legislation in the United Kingdom. Relevant parliamentary debates are described. In addition, studies from other researchers are used to support the findings, as well as relevant court cases and newspaper articles. Although the first mentions of illegal practices in the legislation of the United Kingdom appear as early as 1677, from 1830 onwards there is more and more mention of this issue in Parliament. This chapter shows how electoral fraud laws were shaped and developed in the United Kingdom in the 190 years between 1830 and 2020. The material shows that the United Kingdom has had a persistent problem with election fraud in its early years of holding elections. This first let to the Reform Act of 1832, followed by the more encompassing Corrupt Practices Act of 1854 and the very strict Corrupt Practices Act of 1883, a period in which the parliamentary debates show that the issue of bribery of voters was an important issue during the elections in the United Kingdom. Because bribes at some point almost seemed to be expected by voters, elections became very expensive. In order to level the playing-field reforms of the legislation were enacted.

After 1900 the amount of fraud seems to decrease. The growing number of voters per constituency made it harder for candidates to bribe enough voters in order to win. The strict limits on election spending, meant to create a level-playing field seem to have its effects. However, that did not mean that there was no longer a problem with some forms of fraud. The introduction of postal voting let to new cases of fraud, sometimes on a very large scale. Other issues that were debates range from the fear of foreign interference through radio campaigns, the question if soldiers should be able to vote during the wars and the use of technology in elections. Nowadays, new issues arise, dealing with social media and “fake news” campaigns about the integrity of the electoral system and its actors. The chapter proceeds to discuss relevant debates and changes to the law stemming from these issues, ending in a brief description of some recent cases of fraud and the debate over the advantages and disadvantages of the use of voter identification in order to combat fraud (James and Clark 2020).

7.2 Earliest legislation

The use of franchise in the United Kingdom dates back to Norman times. It started with borough and county franchise. Borough franchise was granted on a complex basis to townsmen. County franchise started out as franchise for all male freeholders in the county. However, in 1830, it was restricted to freeholders who had substantial properties, worth more than 40 shillings per annum. This restriction

continued until the 19th century. The reason for the restriction was, according to the preamble to the statute, that giving an equivalent voice in elections to people with no means and the most worthy knights and esquires would likely cause homicides riots, batteries and divisions (Watt 2020).

The United Kingdom"s legislation with regard to illegal practices in elections is equally old. Attempts to check corruption were made for the first days of parliament in an act of Edward I which stated that all elections should be held in perfect freedom (Seymour 1915, 167). Already in the Treating Resolution of 1677, there was a prohibition on "excessive entertainment of voters to be given at any other place than the giver's own dwelling house". Bribery was deemed corrupt and illegal as early as 1696, with the introduction of the Treating Act. A single case of treating could void an election. This was followed in 1726 by the Bribery Act which introduced a bribery oath for all electors. Penalties for giving or accepting bribes were steep, 500 pounds until 1854 (Seymour 1915, 168). The requirement to be a resident to obtain voting rights was introduced in 1786 to prevent elections from being corrupted by supporters of candidate who moved into an area just before an election (Watt 2020). Indirect corruption was forbidden in an act in 1809, declaring that any promise of office or employment would disqualify the candidate and void the election. (Seymour 1915, 168). However, since prosecutions were rare and convictions even rarer, these acts did not sort a lot of effect, other than voiding elections under the Treating Act (Seymour 1915, 168-169).

However, the practice of candidates treating supporters with food and drink is also very old and arose during the Elizabethan elections (Kasara and Mares 2017). When more competitive political elections started, these practices were continued. In some places, they changed into a practice where candidates paid their voters a fixed sum of money. During a debate in 1835 this came up. Mr. Grote presented a Petition, signed by 1,350 persons of Great Yarmouth, praying for the Ballot, in consequence of the scenes of drunkenness and riot which were seen at the last election, and stating that: "the corrupt voters who gave their votes for the sitting Members had been rewarded with two guineas a-piece."[103]

According to Seymour, corruption in English election dates from the time when getting elected to the House of Commons became important to men of birth and wealth. According to him: "In the small nomination boroughs the use of money was not general before 1832 since it was unnecessary; the power of the patron was so complete that the few votes cast could be secured without bribery. But in the larger boroughs, where there was something like an independent electorate, that independence was regarded merely as an opportunity for selling the vote to the highest

[103] Commons, 26 June 1835, Column 1275.

bidder"(Seymour 1915, p. 166). Next to the use of money, other means were used to influence voters. "If the freeholder of a county refused to vote according to the wishes of the local squire, his house might be blown up, and his disfranchisement thus procured"(Seymour 1915, 166).

An early mention of fraud with regard to elections in the British parliament was on February 2nd 1804, in a debate on the Middlesex election petition. The question on hand was what procedure should be followed with regard to a petition by people who claimed they were freeholders, but had not been allowed to vote. The member Fox pointed out that any petition should be investigated; if there was fraud committed by these people by using for example false names, it would be discovered.[104] The Commons decided to allow the petition and have it investigated by a committee.

On May 9th 1814, the Election Expences Bill was discussed. Mr. Martin made the following statement: "The whole measure rested on an unfounded assumption; namely, that non-resident voters, who received from a candidate the expense of their journey, and compensation for their loss of time, must necessarily be corrupt. Nothing could be more unfounded; and as for any unnecessary or collusory allowances on the part of the candidate, the statute of William 3 was sufficiently operative in that respect. He contended besides, that the Bill was much too severe by declaring certain acts, without any investigation of their nature, to be criminal; and thus depriving the present admirable jurisdictions, the election committees, of the discretion with which they were at present invested, and by which they were enabled to hear evidence as to the nature of the acts in question, that they might pronounce them, as circumstances directed, either innocent or criminal, according as they might find them attributable or non-attributable to corrupt motives."[105]

Mr. Ros countered this argument by saying: "He did not think there was one man in the House who believed the exercise of this practice of defraying the expenses of non-resident electors was attended with any one good effect. They all well knew, that non-resident voters were treated for months together before a general election; and yet it frequently happened that they were met by crimps on the road to the place of election, and the best bidder had them after all."[106] He therefore supported the bill. Mr. Lushington raised the question of the effectiveness of the bill. He was worried that: "if a certain degree of expense was not allowed to the out-voters, the Bill would give rise to more fraud than existed under the present law. If they were to give every out voter 1s., per

[104] Commons, 2 February 1804, Column 391 and 397.
[105] Commons, 9 May 1814, Column 734.
[106] Commons, 9 May 1814, Column 734.

mile for travelling expenses, much fraud would, in his opinion, be obviated."[107] The Bill passed after the debate.

Just before the passing of the reform act of 1832, there were large instances of corruption. In Liverpool during the 1830 election a hundred thousand pounds was spent in bribing voters. Duncombe admitted to the use of bribing handsomely in order to get elected in Hertford in 1826. In Evesham during the 1830 election, there was so much corruption that a motion was made to disfranchisement of the whole borough. This did not happen, mainly because the behavior was seen as not any worse than that in other boroughs (Seymour 1915, 167).

Although the United Kingdom introduced legislation on election fraud very early on, it is clear from this section that just having legislation is place is not enough to prevent fraud from happening. The debate in Parliament in 1814 also shows that there were contra dictionary views on the question whether or not a voter who received some compensation should always be considered fraudulent. The period starts with the introduction of new legislation, which is followed by layering where the existing rules are complimented with new rules.

7.3 Reform Act of 1832

The Reform Act of 1832 gave more people the right to vote. However, as Seymour notes, it did not take away the control of the aristocracy over the elections: "The most obvious and direct method by which the aristocracy controlled the votes of electors after 1832, was by corruption of various kinds. So successful were the agents of the upper classes in thus maintaining the power of the "governing families" and the new business aristocracy, that until 1854 the electoral franchise of the people often remained merely an academic definition" (Seymour 1915, 4). The Act introduced in counties three new kinds of qualification. Two were derived from ownership of property, the other was a qualification based on yearly 50 pound rent. This last addition, put in the Act by an amendment by the Marquis of Chandos was subject to a heated debate. It was presented as being in the interest of agriculture by the Tories. Althorp however argued that this franchise was not designed to benefit the farmers, but the landlords, who could force their tenants to vote as they wanted them to, under the threat of eviction. Even though the Whig leaders and the ministers opposed the amendment with the same arguments, it passed, due to support by Hume and the Radicals who favoured the extension of the suffrage in all directions (Seymour 1915, 18).

[107] Commons, 9 May 1814, Column 746.

Another area of discussing was the possibility to secure the franchise by marriage with a freeman's widow or daughter. The attempt to abolish this let to many petitions from freeman, who asked that their daughters might be allowed to bring the suffrage as a part of the dowry. Althorp refused to permit this custom, he described that this custom had let to many abuses, even to the point where ladies had been locked in a room at election time, willing to marry anybody who wanted to vote in a certain way. At one closely contested election it was even the case that the same woman married several men. After the completion of the ceremony and the casting of the vote, the two would divorce and the woman was free to qualify another husband for the vote (Seymour 1915, 35).

The retention of the ancient right voters seemed to result in a corrupt electorate. In the sixteen boroughs that had a majority of ancient right electors, 16 elections were voided for bribery between 1832 and 1854, much more than in other boroughs. Three of these boroughs (Beverly, Lancaster and Reigate) ended up being absolutely disfranchised for corrupt practices and the same penalty was given to the freemen of a fourth borough (Yarmouth) (Seymour 1915, 87).

The 1832 Act also implemented a system of voter registration. The author of this part of the Bill was Sir James Graham. His object was not necessarily to prevent fraud, but to decrease the expense of elections. The argument made was that the time it took to verify voters at the poll could be decreased by preliminary verification. This argument was repeated in the House of Commons by the Whigs. The prevention of personation was only regarded as a minor advantage. Although the reform was opposed by the Tories, it passed with only minor adjustments (Seymour 1915, 107). The system was slightly modified by an Act in 1843. However, this act did not close the loophole that allowed for the creation of so called faggot votes. These votes were achieved by splitting of freeholds and had been used since the first Stuarts. The Splitting Act of 1696 had tried to prevent this, but since the courts interpreted this act loosely, it did not prevent these fraudulence practices. Even after the Act of 1843, there were clear instances of abuse of the system. In 1846 manufacturers near Huddersfield created 35 extra votes by selling and leasing their cottages. In Buckingham, the Duke covered his property with buildings of small value, thus creating enough votes to control this borough (Seymour 1915, 122-125).

The Anti-Corn Law League used this method to attack the registers on a grand scale, starting in 1843. An officer of the League stated in 1846 that they had managed to create at least 2000 freehold votes in Yorkshire for the purpose of winning that election. And this was not a single case: in many constituencies there were numerous fraudulent registrations and cases of personation (Seymour 1915, 127). The way the register was kept made personation quite easy. Voters who had been dead for several years were often still in the register and voters could appear in the register more than

once if they had multiple qualifications for voting rights. In Wiltshire, a man was found in the register 16 times (Seymour 1915, 131). Another way to commit fraud was to challenge the qualification of voters in order to get them removed from the register. If a claimant failed to appear in court, he could lose his rights, even if they were legitimate. Parties started to use this procedure to get voters for other parties of the register (Seymour 1915, 134).

These instances let to the Parliamentary inquiry of 1846 and the recommendation that the Act should be changed. In 1847 Walpole introduced a bill to rectify the problems. The bill would make it more difficult to challenge the qualifications of another voter. It also provided for the elimination of double entries and duplicate voters by forcing each elector to choose one qualification. Even though the bill had a second reading without opposition, it never reached the committee stage and was withdrawn because the session was too near its close. It also was not reintroduced in following years (Seymour 1915, 142-143).

The Act of 1832 should be seen as the result of a critical juncture. The introduction of the chosen system for voter registration, specifically for elections, was a choice that still has an impact in British elections today. Another choice, a registration that was not only meant for elections, but for more governmental services in general, would have been possible, but was not considered.

7.4 Election Commissions Act 1852

One of the problems in fighting corruption was the fact that the committees that were charged with overseeing the elections were not able to pursue an inquiry as to the persons committing bribery. As soon as an election committee had declared the outcome of the election, their jurisdiction ended. This let to a bill being introduced in 1848 to give the House of Commons the authority to appoint select committees to investigate corruption in any borough. The House of Lords deemed this bill unconstitutional however. This did not prevent a special act being passed by both Houses in 1852 to appoint a commissioner for inquiry at St. Albans. The success of this inquiry let to the introduction of the Election Commission Act from 1852 (Seymour 1915, 224-225). This Act allowed the House of Commons to appoint Royal Commissioners to travel and investigate districts that showed signs of extensive corruption (O'Leary 1962). This increased the chance that a voter of candidate would be prosecuted for bribery.

This seems to be an example of drift. Although the House of Lords stated that the committees could not be used in this way, in practice it happened anyway. The rules were not changed but applied in a different way in order to be useful.

7.4 Corrupt Practices Act 1854

In 1854 Parliament tried to address bribery in elections with the introduction of the Corrupt Practices Prevention Act. It consolidated around 16 statutes related to bribery, treating and intimidation. The main purpose of the Act was to give exact definitions of bribery and to identified seven types of corruption. This should prevent candidates and voters from escaping judgement because the law was not clear enough on what behavior was not allowed (Seymour 1915, 226-227). The Act contained clauses as:

"Every person who shall, directly of indirectly, give, procure, agree to give, agree to procure, offer, promise, promise to produce or promise to endeavor to procure any money or valuable consideration to or for any voters, to or for any person on behalf of any voter to induce any vote or refrain from voting shall be deemed guilty of bribery."

In 1883 this definition was again included in the Corrupt Practices Act with only little modification.

It should be noted that "treating" – the provision of drinks or entertainment at times of elections – was seen as corruption, but not as vote buying. Williams, a legal historian, described the difference: "bribery is directed to obtain the adverse of fix the doubtful voters, treating is resorted to confirm the good intentions and keep up the party zeal of those believed to be already in the interest of the candidate" (Williams 1906, 332). Other forms of influencing voters, such as coercion by the use of threats of intimidation were labelled "undue influence"" in the Act of 1854. Under this Act, people were guilty of this crime if they "made use of or threatened to make use of any force, violence, or restraint or threatened to inflict any temporal or spiritual injury in order to induce such person to vote or to not vote". Examples were landlords and employers who would pressure tenants and employees to vote according to their choice. Church officials were known to put pressure on voters by threatening religious sanctions, such as excommunication or the withholding of sacraments (O"Malley & Henry 1869).

Interestingly, the Act reduced the fine for voters that accepted a bribe from 500 pounds to 10 pounds and made it a misdemeanor instead of a felony. This radical reduction of the penalty was not to encourage bribery. Commissioners and judges had been reluctant to impose the very heavy penalty and the reduction was an attempt to increase the probability of prosecution and conviction (Seymour, 1915, 229). The Act also provided for election auditors. In order to cover up bribery, the accounts of candidates from now on were to be published per item, to be checked by these auditors. The auditors were in charge of paying all the bills and claims for any candidate. This meant that no money could be paid without the approval of the auditor (Seymour 1915, 230-231).

The effects of the Act were a decrease in direct bribery,[108] but an increase in other forms of corruption, such as intimidation. However, the fact that the legislation now had exact definitions of corrupt offences was an important step towards cleaner elections (Seymour 1915, 232, 386-387).

This did not mean that illegal practices were not still common in certain boroughs. In Beverly, the royal commissioners reported that almost all elections were marred by bribery and other corrupt practices. As Seymour described: "at every election a considerable proportion of the constituency expected and received a money consideration for their vote. Of the eleven hundred electors, about eight hundred were open to bribery. More than one-third of these were without political principles, locally known as rolling stock; two hundred and fifty others on either side expected to be paid, and otherwise would not vote, although they did not cast their ballot against their own party" (Seymour 1915, 388). Reports from other bribery commissions, such as Bridgewater, Totnes, Lancaster and Reigate include similar findings (Seymour 1915, 389). The choice of candidates was even sometimes determined by his willingness to bribe voters. One candidate was even rejected after been accepted when the committee found out he was planning to conduct a pure campaign (Seymour, 1912, 390). In many boroughs, there was a very careful and continuous operation of bribery, with different people that were fulltime involved (Seymour 1915, 391-394). A question asked in the House of Commons by Sir Lawrence Palk illustrates the problems with battling election fraud:

"said, he would beg to ask the Secretary of State for the Home Department, If the Postmaster General will remove Samuel Parnell, Postmaster, Totnes, convicted of bribery and corrupt practices at the Elections of Totnes in the years 1857, 1859, 1862, 1863, and 1865; and, if the Lord Chancellor will remove from the Commission of the Peace for that borough Charles Webber, Esq., and Webber Chaster, Esq., declared guilty by the Commission of corrupt practices and bribery?"[109]

Mr. Walpole replied: "in reply to the first Question, said, he believed the Postmaster General was in communication with the Treasury, with which Department the person mentioned was connected, and that the cases were under the consideration of that Department. In answer to the second Question, he might state that the Lord Chancellor was engaged in considering all those cases which came within the scope of the Address of this House, which had recently been presented to Her Majesty on the subject of corrupt practices at elections. When the noble and learned Lord had fully considered all those cases the result of his deliberation would be communicated to the House."[110]

[108] Parliamentary Papers, 1860, no. 329 "Report form the committee appointed to inquire into the operation and effect of the Act of 1854".
[109] Commons, March 28th 1867, Column 730.
[110] Commons, March 28th 1867, Column 731.

The 1854 Act is an example of displacement, where the old rules were exchanged for new rules. Its aim was to more effectively combat election fraud. However, as can be seen from the debates after the implementation of the Act, in practice fraud was still rampant. Interestingly, the quote from Sir Palk also addresses the problems with removing somebody from an elected office, even after he was convicted multiple times for election fraud.

7.6 Parliamentary Elections Act 1868

Before 1868 Parliamentary candidates who were suspected of corruption were judged by a tribunal of other members of Parliament. Afterwards, this job went to the courts. Before 1770 petitions were heard by the Committee on Privileged and Elections or by the House as a whole. After 1770 each petition was heard by a different select committee of 11 members chosen by the litigants, from 33 randomly selected members of Parliament. In 1839, the House introduced a new procedure. They instated a General Committee on Elections, which was responsible for selecting seven members to hear each petition. This number was lowered to five after 1848. Even though the aim was to make the committees competent and impartial, there was periodical dissatisfaction with their rulings on petitions (Seymour 1915, 414).

“By 1868 it was the general opinion in the country that the committees of the House must inevitably err on the side of leniency, even if they possessed the requisite legal ability. They would never be willing to put a stigma upon a gentleman, or convict or sentence him, after he had pared freely from his money” (Seymour 1915, 422).

As the Earl of Malmesbury stated in the second reading of the bill in the House of Lords: “But it now appears that instead of boroughs being openly and shamelessly sold, since then many of them sell themselves. Such practices have naturally created great scandal, and consequently in every Session of Parliament since 1832 the House of Commons has been endeavouring to put an end to this system of corruption. I believe I shall not be saying anything offensive to the character or dignity of that House when I state that its attempts to effect that object have proved utterly futile, and it became evident that a tribunal constituted of the very men who were themselves exposed to the suspicion of being parties to these well-known electioneering tricks and corrupt practices, could not carry with it that entire confidence of the public which a tribunal that was perfectly independent in character and position, and entirely clear of any temptation to connect itself with these transactions, would secure. Well, at last the House of Commons has, I think, acted most wisely in removing that

tribunal from their own body to one perfectly impartial and disinterested—namely, to the Judges of the land."[111]

Earl Russell did agree with the bill, but questioned the choice to have rulings made by one judge, due to the severe penalties that could be awarded: "If such penalties were imposed there should be something more than the decision of a single Judge; for though that Judge might be very learned in the law, and might have devoted his whole life to the study of the theory and letter of the law, he might not be well versed in the ways of mankind and in the practices of those connected with elections, and who are conversant with bribery and corrupt practices."[112]

The 1868 Act put the responsibility for rulings on the challenges of election results in the hands of the ordinary courts. An elector who believed that an election was not conducted in the right way could go to an specially convened court and ask them to overturn the results of that election. This procedure is still used today (Watt 2020).

A common practice that arose was for candidates to offer voters "colorable" employment, that is fictitious jobs. Instead of calling this bribery, candidates stated that they paid voters for lost time. In Norwich, this system was used so much that investigators estimated that during the 1875 by-elections, one fifth of the 12.000 voters had been employed in this way. The Norwich And Boston (Corrupt Voters) Bill was debated in parliament in 1876. The attorney general proposed that these voters would be disenfranchised for seven years.[113] This bill was given a Royal Ascent on the 15th of August 1876.

The choice of Parliament to shift the responsibility for rulings on election fraud away from the Parliament and into the hands of the courts should be regarded as the result of a critical juncture, creating path dependency. Because the choice was made to allow judges to rule on election fraud, a large body of judicial decisions on election fraud developed after 1868, influencing both the wording, but also the application of the articles on election fraud. This decision has therefore been fundamental in shaping this specific legislation in the United Kingdom.

7.7 Secret Ballot Act of 1872

The secret vote already existed by that time, this practice was adopted in 1872. The debate on secret ballots was a long one, starting in 1830 (Crook and Crook 2007). Opponents claimed that secrecy could not prevent corruption. This argument was used for a long time. The Select Committee

[111] Lords, July 27th 1868, Column 1794.
[112] Lords, July 27th 1868, Column 1801.
[113] Commons, August 10th 1876, Column 1055.

on Parliamentary and Municipal Elections however pleaded for secret voting in lieu of the use of voting-papers, stating: “few witnesses have recommended the system of voting-papers. Their sole recommendation appears to be that the risk of riot on the polling day would be diminished. In our opinion, they would prevent none of the other evils of the present system, while they would tend to aggravate others by the facilities which they would give for bribery, for fraud, and for certain forms of intimidation.”[114]

The General Election of 1868 was a heavy contested one, with a lot of reports on rioting, bribery and intimidation. 34 petitions for corruption were heard and the total extent of corruption was in all likelihood much greater. Gladstone therefore did not resist the inquire into the secret ballot. This let to the establishment of a Select Committee on this topic. The committee came to the conclusion that in English counties undue influence was very common. The committee put forward four possible remedies: the abolition of public nomination, the abolition of paid canvassers and agents, an increase in the number of polling places and the introduction of the secret ballot. Their findings let to a bill that was introduced in May 1870. The bill included the secret ballot and the abolition of public nominations, among other matters. The bill did not reach the second reading before the session ended (O’Gorman 2007).

However, in 1871 the government proposed the secret ballot again. One of the reasons for the introduction of the secret ballot, as argued by Prime Minister Gladstone was that he did not believe that: “the disposition to bribe can operate with anything like its present force when the means of tracing the effect of the bribe are taken away, because men will not pay for that which they do not know they will ever receive”.[115] Again, the bill failed, due to a large amount of amendments and too little time devoted to it in the parliamentary session (O’Leary 1962, 74-81).

The government tried again and split the bill into two parts. The main bail focused on the election procedure, the other on the elimination of corrupt practices. Both bills passed without a lot of discussion and received the royal assent on 18 July 1872 (O’Gorman 2007).

The Secret Ballot Act detailed the procedure for the conduct of elections in an attempt to protect the secrecy and integrity of the vote. Ballots were to be uniform in appearance, with the candidates” names printed in alphabetical order. They were stamped by the presiding officer on the front and the back. Stamps were changed every election and could not be used again within 7 years. Ballot boxes were locked and sealed and voters voted in a private compartment (Kam 2017). However,

[114] Parliamentary Papers, 1870, 115.
[115] Commons, 29 June 1871.

there were still threats to the secrecy of the vote. Ballot papers actually had a number on them, so that they could be scrutinized and recounted in case of a petition. Secondly, voters that were blind or illiterate could ask the presiding officer to mark the ballot for them, in the presence of the candidates or their agents. This let to claims that party agents instructed voters to claim illiteracy so that they could receive assistance, breaking the secrecy (Kam 2017).

As with the decision to allow judges to rule on election fraud cases, the introduction of the secret ballot is a major change, leading to path dependency and fundamentally changing the way elections were conducted in the United Kingdom. Interestingly, there were several moments where the introduction of the secret ballot was discussed, but did not make it through, until 1872 when suddenly there was enough momentum for the proposal to make it through Parliament.

7.8 Corrupt Practices Act of 1883

Although the Secret Ballot Act helped to prevent outright vote buying, it did not eliminate other forms of electoral irregularities. In 1881 the Parliament noted that in the 1880 election: "The corruption at the late election was far more widespread and for more open than had been the case at any previous parliamentary election" (Great Britain Parliament 1881, 36). These findings let to a reform. The liberal government under Gladstone took action and in January 1881, Sir Henry James, the attorney general introduced draft legislation for the Corrupt and Illegal Practices Act. An important part of the act was to increase the punishment for several electoral crimes. It made a distinction between "corrupt" practices which were punished severely and "illegal" practices which were seen as less problematic and therefore punished less harsh. The Act also tried to regulate the electoral expenses of politicians in their constituencies.

In 1883 the Parliamentary Elections (Corrupt and Illegal Practices) Act was passed, a responds to the fraud in the 1880 election. After this election 39 election petitions were filed and 25 made it to trial. Of those, 15 were successful, leading to 18 Members of Parliament losing their seat. This meant that this election produces more successful petitions than any other election since 1832, except the election of 1852, which let to the Corrupt Practices Act and the election of 1868 during which petitions were no longer ruled upon by Parliament but by judges. After the 1880 elections, 8 Royal Commissions were appointed to investigate the worst cases of fraud. They named almost 9000 individuals guilty of fraud (Rix 2008). The media suggested that these numbers were only the tip of the iceberg. The Daily Telegraph stated that only a dozen constituencies held clean elections.[116] Problematic was that the existing legislation was useful to unseat the candidate, but not to punish

[116] Daily Telegraph, January 10th, 1881.

the perpetrators of the fraud. In society, there was a little bit of interest in reform of the elections. A number of articles and pamphlets were published after the 1880 elections (Rix 2008).

The Bill for the Corrupt Practices Act was introduced by Sir Henry James, the Liberal Attorney General in January 1881. The goal of the Bill was to tackle the problems, mentioned above, with corrupt practices during elections. It increased the penalties for bribery, treating, undue influence and personation. It also added a new category of illegal practices, such as illegal employment and illegal payment of voters. In addition, other measures were included to prevent fraud, such as limits on the number of paid agents and clerks and the prohibition of payment for transporting voters to polling stations. Finally, it placed limits on the amount of money that candidates were allowed to spend on elections (Rix 2008). This latter issue was of great importance to James. He feared that the wealth of the candidate decided the election instead of his ability to be a Member of Parliament.

This sentiment was shared by members of both houses. As the Earl of Northbrook stated: "that the General Election of 1880 had shown that, notwithstanding the introduction of the Ballot, and the legislation which had taken place to prevent them, corrupt practices had increased. This had been proved by the Reports of the Election Courts, and of the Commissioners who had been appointed to inquire into the elections for certain boroughs in which it was reported that corrupt practices extensively prevailed. Though the actual sums given by way of bribery had been smaller than formerly, it appeared, from the evidence, that a larger number of people were bribed, and that bribery was carried on by persons of higher position than formerly—as, for instance, town councillors, solicitors, and others, who ought not to have been mixed up in such practices; and the noble and learned Earl on the Woolsack had, on more than one occasion, to perform the painful duty of removing from the Bench magistrates who had been reported to be guilty of those practices. Not only could it be said that corrupt practices had increased, but the expenditure incurred at the last Election was excessive. The expenditure was not only detrimental to the public interest by deterring persons who would have been excellent representatives of constituencies in the House of Commons from standing for election, but also had the effect of accustoming those engaged in elections to consider that an election was simply an affair of money, and of thus leading to corrupt practices. He might say, without the expectation of being contradicted, that such a state of things was a scandal to the nation, required to be grappled with, and that it was necessary some stronger remedy should be applied."[117]

[117] Lords, Volume 283: Thursday 16 August 1883, Column 697.

The Marquess of Salisbury questioned the effectiveness of the bill: “But in reference to that part of the Bill, they could only say that in the past history of the country it had not been found that the increasing of penalties had usually been accompanied by any great diminution of offences. At all events, it was a plan which had been frequently tried without success. He did not quarrel with the motives which had induced the Government to this further effort; but the record of similar efforts was not encouraging as to the probability of success.”[118] He was however still in favour of the bill, but for a different reason: “It was not, however, with respect to corrupt practices, in regard to which there would hardly be any difference of opinion, that the Bill was principally important. A very remarkable characteristic of the Bill was the very wide extension it had given to illegal practices which were in no sense corrupt illegal practices, which of themselves were not morally wrong or repugnant to the most sensitive morality, and which were only made wrong by being for bidden by Act of Parliament, and in regard to which the Government could not expect any extensive assistance from public opinion. The motive of the Government was very obvious, and the noble Earl had stated it with fairness and candour; the object was not so much to prevent corrupt practices as to diminish the vast expenses attending elections. He did not quarrel with that attempt, as he thought it was desirable that elections should be made cheaper, if only for the purpose of enabling persons of limited means, who had the capacity, to aspire to a seat in Parliament.”[119]

The Earl of Feversham objected against the new punishments in the bill: “He protested also against the excessive severity and the degrading nature of some of the penalties which the Bill would inflict on certain offences connected with elections, believing, as he did, that such rigorous punishments would not meet with the general sanction and support of public opinion.”[120]

During the debates on the Bill, the problem of the definition of fraudulent behaviour was also a topic. This arose with regard to the question of the use of carriages, horses or other animals to bring voters to the polls, other than those which the voter owned or paid for. Sir Assheton Cross pointed out that: “if one elector could hire a carriage, two electors could hire it; and then they came to this absurdity—that if one elector hired a carriage and two went by it, without both of them contributing to the expense, it became an illegal practice. Three or four electors could hire a carriage, and arrange among themselves how the expense was to be paid. On the day of an election, they might find an omnibus full of electors going along the road to the poll. Someone might say—"There is an illegal practice going on;" but the answer would be—"We have hired the bus;" but if another

[118] Lords, Volume 283: Thursday 16 August 1883, Column 700.
[119] Lords, Volume 283: Thursday 16 August 1883, Column 701.
[120] Lords, Volume 283: Thursday 16 August 1883, Column 705.

omnibus came along containing the same number of men, of whom one might, have been picked up without paying his share, then that was held to be an illegal practice. He contended that they were opening the door to fraud and evasion by the manner in which the clause was drawn."[121]

The Attorney General did not see the problem put forward by the member. He stated: "Any Judge who tried such a case would pronounce the transaction illusory, and an evasive hiring as far as the Act was concerned. If one man paid 2s. and another man 2s. 6d., there would be a joint hiring; but if one man paid a sovereign, and another only a halfpenny, the Judge, as a matter common sense, would decide that there had been an evasion of the Act."[122] After debate, this part of the Bill was accepted by the Committee.

On the 22nd of August 1883, the House of Lords passed the Bill.

During the election campaign of 1885 there was some discussion over the meaning of bribery. Chamberlain promised the working-class houses, lands and other properties. The Conservatives claimed that this should be considered bribery. Lord Radnor wrote in the Times: "It seems to me to be greater bribery and worse corruption to promise portions of land which are not your own, than to offer a sum of money out of your own pocket"(O'Leary 1962, 183). The promises were still made and no prosecution followed. In general the number of election petitions dropped considerably after 1883. Even boroughs that were notorious for having a lot of election trials, such as Norwich, seemed to have cleaner elections (O'Leary 1962, 186-187). The election in Norwich in 1885 was annulled, because a member of the Conservative ward committee had given half a crown to a poor voter and was reported to the police. Since judges could not use their discretionary power when it came to bribery, they had to annul the election. They refused however to award the Liberal petitioners any costs, due to the precautionary measures that the Conservative candidate had taken to prevent bribery and to the fact that the Liberals had presented twenty-three charges of corrupt and illegal practices, but only four were found correct (O'Leary 1962, 187-188).

An effect of the 1883 Act was a drop in the influence of the traditional offences of bribery, treating and undue influence. However, the fear that was expressed by opponents of the Act that honest candidates could lose their seats due to their opponents filing many petitions on actions that the candidate was not aware off, seemed to become true. In Kennington in 1885, the Conservative candidate faced sixty charges of illegal practices, with virtually no evidence presented. The judges condemned the abuse of the powers of the 1883 Act, but it was a sign of the electioneering habit

[121] Commons, Volume 281: Tuesday 10 July 1883, Column 1015.
[122] Commons, Volume 281: Tuesday 10 July 1883, Column 1015.

that were to come (O'Leary 1962, 193). Another example of this practice were the forty-two charges of treating lodged against Arthur Balfour in 1892. No evidence was offered in thirty-seven of the cases and in the remaining cases, the evidence was very thin or confusing (O'Leary 1962, 198). In the election of St. George's-in-the East in 1895, the losing candidate, Benn, from the Progressive Party brought 352 charges against the winner, Marks, backed by the Unionist Alliance. During the trial 200 charges were withdrawn and in some of the remaining charges, no evidence was offered. The judges dismissed all charges after a hearing that took twenty-five days. Then, the Conservatives put charges against Benn, proving that he had been guilty of illegal practices. In the end, Marks retained the seat and Benn was saddled with the costs of both cases, with an entire hearing of forty days (O'Leary 1962, 199-201).

Interestingly, during the 1892 elections, two candidates successfully got the elections in their boroughs annulled due to spiritual intimidation. The Bishop of Meath turned against Parnell after his divorce and his aversion stretched to all Parnellite candidates. During the election campaign, he issued a pastoral letter condemning "Parnellism" which was ruled by the judges to lead to the spiritual intimidation (O'Leary 1962, 202).

The passing of the Corrupt Practices Act of 1883 should also be regarded as a major moment in the development of the legislation on election fraud in the United Kingdom. Not only did it add more crimes, a form of layering, but, more importantly, it started the regulation of finances in the election process. The interesting point regarding this latter issue is that the reason for regulating finances was not per se based on moral reasoning with regard to the integrity of the election, but because members of Parliament feared that without the regulation, election campaigns would become too costly. Again, this Act created path dependency; once rules on the amount of money that can be spend are in place, it might be possible to change them on certain points, such as the amount, but it will be almost impossible to discard them all together. As can be seen from the cases mentioned in this section, the choice of allowing judges to rule on election cases had a great impact, due to the large number of complaints that were lodged after each election. This procedure, meant to improve the integrity of elections, therefore had unforeseen negative consequences.

7.9 Corrupt And Illegal Practices Prevention Act (1883) Amendment Bill 1895

After 1883, few suggestions were made in the Commons for new legislation regarding the fight against corrupt practices in elections for a while (O'Leary 1962, 179). In 1895 a private member's Bill did add a new illegal practice. Bolton (Liberal-Unionist) introduced a Bill to make false statements of fact aiming to prejudice a candidate's chances during an election subject to the same penalties as

existing illegal practices. He stated: “The object of the Bill was to prevent the practice at election contests of making utterly false statements affecting the personal character and conduct of a candidate.”[123]

During the debate on his proposal, he mentioned a few examples from previous elections: “He knew the case of a candidate who heard at the last moment that one of the supporters of his opponent had concocted a carefully prepared statement of a most false, malicious and defamatory character, which was being printed in a local paper. It was only by the greatest difficulty that pressure was brought to bear on these people to prevent the paper being issued.”(…) “He knew of another case where, on the eve of the election, a statement was circulated that the candidate had been discreditably mixed up in a divorce case. The statement happened to be true of another man of the same name and of the same profession. The candidate repelled the slander, however, by inducing his wife to come on the platform and take a prominent part in the election. In another case, there happened to be a lecturer on Atheism of the same name as the candidate, and some opponents circulated a statement that the candidate was the Atheist lecturer.” (…) “In the election of 1880 a statement was circulated at the last moment in the constituency of the right hon. Member for Dartford that he had withdrawn from his candidature, and that he had behaved badly to some of his labourers; and the right hon. Gentleman was put much expense in contradicting the statement.”[124]

In the debate, Mr. O’Brien asked with regard to one of the examples whether no false statements were made respecting Mr. Wilson, the defeated candidate. Bolton responded by stating: “that he did not claim that lies never emanated from the Conservative and Liberal Unionist camps. There were no doubt in those Parties reckless and foolish persons who did wrong things, and it was to prevent such conduct, whether on the Unionist or the Ministerialist side, that, he proposed this Bill. He was sorry if the illustrations which he had given appeared to suggest that the Liberal Party were chiefly to blame. He disclaimed any idea of making party capital out of the Bill.”[125] Mr. Lees supported this by stating: “Both sides of the House were interested in this matter. No doubt similar stories might have been circulated by Conservatives against Liberal candidates; he did not know; but all of them were interested in trying to keep the profession of politics clear from this sort of thing. They were all more or less professional politicians, and it should be the interest of all Parties to try to keep the profession free from dirty tricks of that kind.”[126] Mr. Dodd agreed: “he did not think that on either

[123] Commons, Volume 33: Wednesday 1 May 1895, Column 219.
[124] Commons, Volume 33: Wednesday 1 May 1895, Column 222.
[125] Commons, Volume 33: Wednesday 1 May 1895, Column 226.
[126] Commons, Volume 33: Wednesday 1 May 1895, Column 234.

side there was a monopoly of truth, and neither side could assert that elections were always fought with freedom from misstatements which all deplored."[127]

Sir Frederick Milner addressed the necessity of the Bill: "he was sure he should be in agreement with hon. Members on both sides of the House when he said that it was most regrettable that, in a country so civilised as England, it should be necessary at this time to bring in a Bill to strengthen the law against Corrupt Practices at Elections. That such necessity existed could not be denied by anyone who had taken the trouble to study the tactics adopted at recent Elections."[128] Later, he discussed the dilemma between stricter legislation and the freedoms that are also necessary in elections: "He was well aware that in this matter they must proceed with great caution; they must not tamper with the freedom of electors. He advocated, not the forcing of truth on electors, but simply the observance of honesty in personal statements."[129]

The Bill was accepted by both Houses before the election of 1895.

This debate and the bill address an issue that is currently again relevant; the question how to deal with "fake" news during elections. Although the bill itself only let to a minor change in the legislation, the effects it had on later elections were substantial, since even in 2010 elections were overturned based on this article.

7.10 Elections between 1900-1911

During the elections of 1900 the new clause added in 1895 became topic of debate. The Unionist government systematically attacked the Liberal opposition by claiming that some opposition members were intriguing with the Boers. This let to campaign slogans such as: "Every vote given for Mr. Horobin is a Boer bullet fired at our fellow-countrymen". The Liberal party responded by alleging that the Chamberlain family had a vested interest in the war. If these statements by both parties had been made by a candidate in an individual constituency, this had been an illegal practice under the new law. However, because they were made on a national level by a party, they could be done without consequences (O'Leary 1962, 211). Interestingly, during the same elections the Unionists also used cars to convey voters to the polling station, which was also prohibited under the Act. This was surprisingly enough not raised as an important point in any election petitions (O'Leary 1962, 213).

[127] Commons, Volume 33: Wednesday 1 May 1895, Column 235.
[128] Commons, Volume 33: Wednesday 1 May 1895, Column 227.
[129] Commons, Volume 33: Wednesday 1 May 1895, Column 229.

In the 1900 election, in total only five petitions were tried, of which two succeeded. One Liberal candidate was unseated for bribery, conducted by his agent. An Unionist was found guilty of illegal practices, not only did he not provide information on his return about payment to a voter for work, but he had attacked his opponent in the Western Mail, stating that he had employed coolie labour in South Africa. The judges ruled that this was a false statement as mentioned in the Act of 1895. Two of the failed petitions dealt with technical grounds. The most interesting petition, which was tried in 1901 was against Randles. He was accused of holding a tea-party paid out of funds of the Liberal-Unionist Association, but also of his agent holding an abusive speech concerning his opponent. The judge found that the statements were a very foolish expression of opinion, but nothing more. He interpreted the Act of 1895 in a certain way, stating that it was directed against criticism of personal nature, not of political action and therefore did not apply to this case (O'Leary 1962, 217).

In 1906 there was a case where the judges differed in their interpretation of the law. The question on hand was if expenses that a person made for getting acquainted with the constituency had to be included in the official return of the candidates expenses. Judge Channell felt that they should, judge Grantham disagreed. He stated that in 1883 the practice of nursing constituencies was not considered by the parliament as being part of this requirement. Because the judges disagreed, the election result stood. The ruling was followed by a lot of criticism in the papers. It also let to a motion in the House of Commons to remove judge Grantham from office. The motion was eventually withdrawn, because there was no misconduct or corruption committed by the judge. Interestingly, while the motion was pending, the judge ruled in another election case that there was corrupt treating, even though this had been less than in the previous case (O'Leary 1962, 218-220).

The last case in 1906 dealt with Worcester. It also let to the last Royal Commission to inquire into a British election. The Commission concluded that in Worcester, there were around 500 voters who were willing to sell their votes for a small sum or a drink. If nobody offered them money or drinks, they would not vote at all. Some of the people that were charged with bribery, admitted that they had been acting this way for thirty years. The Commission came to the conclusion that before and after 1892 there had been systematic corruption at the elections in Worcester. This let to the prosecution of several people, including the Conservative party boss Caldicott. The latter claimed that this was unjust, as he was not found guilty by the election judges. The unexperienced judge Bigham agreed with him. The result of this ruling could have been that future Royal Commissions would be less effective than they had been. However, none were appointed afterwards (O'Leary 1962, 220-222).

The petitions filed in 1911 dealt with electioneering habits that were common in the beginning of this century. Not all of them were successful. One candidate had given charity to large numbers of people during a hard winter, without asking about their political ideas. The judges ruled that although the intention might have been to increase popularity for the party, this was not the governing motive and therefore dismissed the petition. In East Dorset, there were suspicious activities committed by the Liberal candidate, including expenses far above the maximum, the use of cars for canvassing and pamphlets and newspaper articles on the candidates. However, the judges gave the winning candidate, Guest, the benefit of the doubt. One petition in England was successful; at Hartlepool, the Liberal member Furness was unseated because with his knowledge his agent had created an atmosphere of intimidation. In Ireland, the Chief Whip of the Irish Parliamentary Party, Donelan was unseated by the judges for many irregularities, including extensive treating, not keeping election expense accounts and the use of cars in a fraudulent matter. The election in North Louth was also annulled due to intimidation and the spreading of false information by Redmondite Hazleton towards Healy. A novelty during these elections was betting on elections, not only at the outcome but also on the risk a candidate ran of getting an election petition filed against him (O'Leary 1962, 222-225).

This period can be considered one of stability, without major changes to either the legislation itself or to the way it was interpreted by the courts. The 1906 case is an example of the problems that can occur when a law is not completely clear and judges interpret it therefore in different ways. That in itself could have been a reason for Parliament to clarify the legislation, but in this case that did not happen.

7.11 Private members" Bills 1911-1913

The feeling that in certain towns at election time everything was seen as permissible let to some attempts by private members to amend the electoral law. Williams, supported by Baker and Havelock Allen tried to restrict charitable contributions of candidates to certain public and semi-public objects. The Bill passed the first reading, by did not make it out of the committee stage in 1911. The Government was asked if they planned to amend the Corrupt Practices Act in such a way that all expenses of a member within his constituency would be counted as part of his election expenses if it exceeded a certain limit. Prime Minister Asquith responded that the Government was carefully looking at the whole subject of election law, but did not give any more information (O'Leary 1962, 225). Williams tried to amend the act again in 1912, but the government gave precedence to the Navy and Army estimates. Finally, Viscount Wolmer, supported by Amery, Cecil and Winterton made an attempt in 1913. They proposed to amend the Act of 1895 to cover not only false

statements about the personality of an opponent, but also about his policy (O'Leary 1962, 226). This amendment did not make it into the Act.

This period did not lead to chances in the legislation.

7.12 Representation of the People Act of 1918

There was not much discussion in the earlier parliamentary stages of this Bill. In the introduction, the joint parliamentary secretary of the national service department, Viscount Peel mentioned: "There is a new punishment for electoral offences committed outside the United Kingdom, this being rendered necessary by the large number of voters who are outside the United Kingdom."[130] This statement did not lead to any questions or comments by the members of Parliament. In the latter stages, a new issue arose. In the Bill, the voting age for men was lowered to 21. During the discussions in parliament, there was a clear majority in both Houses to also extent the right to vote to those men between 18 and 21 who had fought in the war. However, they did not want this right to be given to men who pleaded conscientious objection against joining the army and therefore had not fought. The government then pointed out that there were some conscientious objectors who had done other substantial acts of national service. They moved to change the Bill in such a way that conscientious objectors might remove the disqualification by proving that they have done such acts of national service.[131]

The proposed text of the Bill on this matter thus became:

"Any person who has been exempted from all military service (including non-combatant service) on the ground of conscientious objection, or who, having been convicted by court-martial of an offence against military law, and having represented that the offence was the result of conscientious objection to military service, has been awarded imprisonment in lieu of detention, shall be disqualified during the continuance of the war and a period of five years thereafter from being, registered or voting as a Parliamentary or local government elector.

Provided that this disqualification shall not apply to any person who, before the expiration of one year after the termination of the war, proves to the central tribunal, as established for the purpose of the Military Service Act, 1916, that he had during the continuance of the war taken up either—
(1) service as a member of any of the naval, military or air forces of the Crown on full pay; or
(2) service in connection with the war of a naval or military character for which payment is made out of money provided by Parliament; or
(3) service afloat or abroad in connection with the war in any work of the British Red Gross Society, or the Order of St John of Jerusalem in England, or any other body with a similar object; or
(4) that having been exempted from military service on condition of doing work of national importance, he has done such work in accordance with the decision and to the satisfaction of the appropriate tribunal or authority or that, having obtained an absolute exemption from military

[130] Lords, Representation Of The People Bill, Volume 27: Tuesday 11 December 1917, Column 100.
[131] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 740-761.

service without any such condition, he has nevertheless taken up and, so far as reasonably practicable, continued, some work of national importance, or been incapable of doing so;"[132]

This let to a debate on how these exceptions from enfranchisement and disenfranchisement should be proven and what the consequences should be of misuse of the exception for those conscientious objectors who were disenfranchised, but still tried to vote. The Earl of Ancaster proposed to amend the Bill as follows:

at the end of subsection (2), to add the words: "A list of the names, addresses, and other particulars of all persons disqualified under the provisions of this section shall be published by the naval, military, or air service authorities, as the case may be, before the completion of the first register to be prepared under this Act, and supplemental lists shall be published by them not later than the fifteenth day of January and the fifteenth day of July in each year during the continuance of the present war and twelve months thereafter. If any person so disqualified votes or asks for a ballot or voting paper for the purpose of voting, he shall be guilty of a corrupt practice other than personation within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883; and the expression "corrupt practice" shall be construed accordingly."[133]

The Earl gave the following explanation: "I understand that this Amendment is one of some substance, because unless some such list as this is published by the Army, Navy, and Air Services, and unless from time to time a supplemental list is published, as the Tribunal is still to continue its sittings, I think it would be quite impossible for the registration officers to make out the Register properly and to keep off the Register those people whom you have decided to exclude from it. I think there are a certain number of men who have pleaded conscientious objection who will be disfranchised by this Bill, but who will not be over-scrupulous, and will try to get on the Register by change of address or other means. The second part of my Amendment deals with the penalty for a conscientious objector not on the Register trying to vote. As the Bill stands, I think a conscientious objector who infringes the law will be liable only for illegal practices, for which the penalties, I understand, are far smaller than for committing a corrupt practice. It is rather curious to note that the penalty on the wife of an absent voter who makes some mistake about voting by proxy is heavy; there is no kindness or latitude shown to her. She comes within the clutches of the Corrupt Practices Act, and is liable to a year's imprisonment and other penalties. It seems to me that a conscientious

[132] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 741.
[133] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 762.

objector who has tried to dodge national service and then tries to get a vote ought to receive at all events as great a punishment."[134]

The Viscount Peel responded to this suggestion by saying: "The Amendment of the noble Earl suggests that lists should be published of persons disqualified, under the provisions of this clause, by the naval, military, or air authorities. That really is not a duty that ought to be cast on those authorities. There is a considerable number of persons disqualified under this clause who are disqualified because of action which takes place before the Tribunals, which are under the Local Government Board, and the military authorities will not necessarily be able to furnish a list of persons dealt with by those Tribunals. Again, a number of these persons will be able to remove their disqualification by showing to this Tribunal up to a year after the war that they have done work of national importance."[135] He also stated that he did not think the proposed change from illegal to corrupt practices was necessary as, in his eyes, the current punishments would be sufficient.[136]

The debate that followed focussed solely on the first part of the amendment and the difficulties for the military authorities in making the lists. Based on a promise by Viscount Peel that the government would look into a system to ensure that no persons who should not be able to vote could still be registered as voters, the Earl of Ancaster withdrew his amendment. The issue of the severity of the crime was not mentioned again in this debate.[137]

In a later debate on the same Bill, the Lord Stuart of Wortley proposed to change the definition of some crimes from "corrupt" to "illegal", because he found the penalties too severe. The Viscount Peel agreed with these amendments. Viscount Harcourt questioned the wisdom of the amendment: "I am against excessive penalties, but the effect of this Amendment would be to reduce the penalties. There is, I think, some danger of improper voting under these proposals. It is a system which easily lends itself to improper practices, and those should be discouraged, certainly in the early days of exercising this new form of voting, by the fear of as heavy penalties as possible. Though as a general rule I am against heavy penalties, we may have a new system which lends itself undoubtedly to this possibility and I am not sure that we should be wise to reduce the penalties."[138]

Viscount Peel asked Viscount Harcourt if he knew what the penalties were. When the latter confirmed, Viscount Peel mentioned them anyway for the other Lords: "Perhaps other noble Lords

[134] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 762-763.
[135] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 763.
[136] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 764.
[137] Lords, Representation Of The People Bill, Volume 27: Thursday 17 January 1918, Column 765.
[138] Lords, Representation Of The People Bill, Volume 27: Wednesday 23 January 1918, Column 1095.

are not aware that in the case of an illegal practice the penalties run to £100 and five years disqualification. There is no imprisonment."[139] The amendment was agreed upon.

In the next debates on this Bill, the issue of fraud was not raised again. The Bill passed.

The debates in this section are examples of the issue of deterrence. The Earl of Ancaster made his amendment under the assumption that some people would only be discouraged from falsely claiming to have the right to vote if the chances of being detected and the possible punishment that they could receive were high. However, the remainder of that debate focusses more on the question which authority should be responsible for detecting the fraud. The issue of the necessary height of the sanctions was again raised by, among others Viscount Peel, who felt that some of the punishments were too high. Bases on his arguments, Parliament decided to lower those punishments. What is unclear from the parliamentary records is why the Earl of Ancaster did not raise his point on the necessity of higher sanctions again.

7.13 Equal Franchise Act of 1928

During the debate on this Bill, a very interesting observation was made by Captain Bourne. The issue at hand was whether or not the Committee on the Bill should have power to insert provisions dealing with the maximum scale of election expenses. The Captain said: "Another reason why I think the House should pass the Instruction and give the Committee power to deal with this matter is that, in all probability, no Parliament will have the opportunity of discussing election laws for many years to come. With the sole exception of the Corrupt Practices Act of 1883, which arose owing to a certain election petition in my own constituency, Parliament has always considered electoral questions conjointly with an increase of the electorate, and the reason for that is very obvious. Questions dealing with registration, election expenses, the machinery of elections, and election laws, although they are, without doubt, of very great interest to us as Members of Parliament and to those who hope one day to enter this House, because they are things that vitally affect our interests, are not so vitally interesting to others. The public care little or nothing about them. They occupy of necessity a good deal of Parliamentary time, because they are questions which are of such interest to Members of this House, but the jam which has hitherto persuaded Governments to swallow the powder of providing the necessary Parliamentary time has been the popular demand for an alteration of the franchise. When this Bill gets on the Statute Book, there will be very little jam left in the larder to persuade any future Government to give up Parliamentary time to discussing these

[139] Lords, Representation Of The People Bill, Volume 27: Wednesday 23 January 1918, Column 1096.

rather dull, if important, subjects, and I feel that this Bill is perhaps the last occasion for many years to come on which this question can be raised."[140] No response was given to this speech in particular.

Mr. Williams stated on the question of raising the maximum allowed expenses: "It seems to me that for hon. Members to plead that candidates should be permitted to spend more money upon their Election expenses in the future than they have been permitted to do in the past is lending this House to a system of bribery and corruption which ought not to be allowed to enter into Parliamentary Elections."[141] The Bill was amended and the maximum allowed expenses were even lowered. During this debate, another member, Sir Peto specifically raised the issue of spendings on posters. He stated: "here is one item of expenditure which I should like to see cut out entirely. It was considered in the Speaker's Conference and a suggestion was made that it should be made illegal to plaster constituencies with the rival posters of the candidates. I think that is a great waste of money. On one hoarding you will see a huge poster with the words: "Vote for A," and on the other side of the street you will see an exactly similar poster: "Vote for B." I do not think that is an appeal to the electorate that ought to be allowed in election expenses. I do not know whether it would be in order for me to move that it be made a corrupt practice to issue posters of that sort."[142] Although other members did agree with the point that the posters were unwanted, they pointed out that if the total allowed expenses went down, candidates would be forced to make choices on how to spend their money and this could have the same effect as a ban on posters.[143]

The statement of Captain Bourne directly addresses the legislative system in the United Kingdom, where there is only a certain timeframe in which legislation can be discussed. As he notes, the public is in general not very interested in the election procedures. Due to this lack of interest, Parliament, even when its members themselves are very much invested in the way elections are run, cannot spend too much time on this specific legislation. The other issue at hand was the question if members should be allowed to spend more money on elections. Here, the interesting point is that although the cost of elections had gone up, Parliament nevertheless voted for a lowering of the maximum spending limits, which can be regarded as layering.

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[140] Commons, Representation Of The People (Equal Franchise) Bill Volume 216: Wednesday 18 April 1928, Column 208.

[141] Commons, Representation Of The People (Equal Franchise) Bill Volume 216: Wednesday 18 April 1928, Column 317.

[142] Commons, Representation Of The People (Equal Franchise) Bill Volume 216: Monday 23 April 1928, Column 669.

[143] Commons, Representation Of The People (Equal Franchise) Bill Volume 216: Monday 23 April 1928, Columns 670-679.

7.14 Representation of the People Act of 1948

In 1948 the maximum amount of electoral spending was once again part of the Bill. The Secretary of State for the Home Department, mr. Ede, introduced this as follows: "Part III of the Bill deals with Parliamentary elections and corrupt and illegal practices, and certain other incidents of an election campaign. The most important thing here is the revision of the cost of election. A substantial reduction will be made, in accepting the recommendations of Mr. Speaker's Conference, that in future the cost of election shall be limited to £450 plus 1½d. per elector in county constituencies or 1d. per elector in boroughs."[144] The members agreed with the lowering of the amount.

Another new offense that was introduced was to make election broadcasts from abroad, with the exception that an election broadcast from abroad may be made in pursuance of arrangements with the British Broadcasting Corporation for it to be received and transmitted by that Corporation. Mr. Churchill asked the following question: "If a broadcast is made from abroad, what punishments will be inflicted on British people who listen in?" Mr. Ede answered that the crime was not in the listening, but in the speaking. Mr Churchill then asked: "This is a new law imposing pains and penalties; what punishment is to be inflicted on any person who makes a speech which is reported on the ether and is listened into by people in this country?" Mr. Ede started to answer by saying it could void the election, but was interrupted by Mr. Churchill who made the following remark: "I really must interrupt the right hon. Gentleman. If it were a general election, would the whole general election be voided because people in all parts of the country listened?" Again, mr. Ede pointed out that the crime was not in the listening, but in the speaking. He stated: "It may be that the House may have to give further consideration to the appropriate penalty that should be inflicted. After all, this House has the power of dealing with offences committed at election time."[145]

In a later debate, Mr. Marlowe came back to this issue. He asked: "Would the right hon. Gentleman give us some idea how he envisages this working as an operation of law? As the right hon. Gentleman knows, anybody doing that will be beyond jurisdiction. I cannot see how this Clause can have any meaning. The person broadcasting from abroad would be beyond jurisdiction, and I cannot see how the penalty could be enforced. I would therefore like the right hon. Gentleman to elaborate the point."[146] In addition, Mr. Macpherson stated: "I am not clear whether it can be established technically from where a broadcast is coming. Is it possible to say definitely whether a broadcast upon an unknown or irregular wavelength is coming from outside the country? If we make such

[144] Commons, Representation Of The People Bill Volume 447: Monday 16 February 1948, Column 847.
[145] Commons, Representation Of The People Bill Volume 447: Monday 16 February 1948, Column 848.
[146] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1726.

broadcasts illegal why should not we do the same for local broadcasting from within this country, experimental broadcasts upon odd wavelengths?"[147] Mr. Ede responded: "The Clause is inserted to deal with broadcasting as a result of the 28th recommendation of Mr. Speaker's Conference. As recorded in Mr. Speaker's letter of 20th July, 1944, it stated: "It should be an offence for any British subject to promote or aid in promoting any broadcast affecting a Parliamentary election from wireless stations outside the United Kingdom."

The Conference felt that, having regard to the impossibility of forecasting future developments it would be difficult for them to make any regulations with regard to the regulation of broadcasting within the United Kingdom for election purposes." (…) "Offences committed outside the jurisdiction are dealt with in Clause 67 (1) where it is laid down:

"Proceedings … in respect of an offence alleged to have been committed outside the United Kingdom by a British subject may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where the person charged is for the time being." (…) "Clause 35 (1) is to be made enforceable by proceedings under Clause 67 (1). This matter is admittedly difficult, and is one in which we are in the area of experiment. This is an effort to deal with the matter."[148]

Lieut.-Commander Braithwaite pointed out that: "May I suggest that what is really opened up by this Clause is not a domestic matter at all? Followed to its logical conclusion, this Clause opens up the whole question of the extent to which one Power should interfere with the domestic elections in another country. The Government cannot deal with this matter unless they examine it from that aspect."[149] Mr. Boyd-Carpenter agreed and added: "The Home Secretary has dealt so far with this sort of interference on the part of British subjects. I should like to know how this Clause will operate where, as is equally likely, that interference is effected by foreigners. If broadcasts are made by foreigners, deliberately designed to influence an election in this country, is it intended under this Clause to make the persons responsible for those broadcasts criminally liable if they should at some later stage put themselves within our jurisdiction? If that is so, it is a new development in our criminal law, under which foreigners are to be made answerable to British courts for crimes committed abroad. If it is not so intended, so far as foreign broadcasts are concerned this Clause is sheer bluff. It is important to know what, if foreigners undertake these broadcasts, are to be the consequences to the persons for whose benefit or apparent benefit those broadcasts are made. Are they to have the validity of their elections affected? There again important considerations arise. It

[147] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1727.
[148] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Columns 1727-1728.
[149] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1729.

may well be said that it would be grossly unfair to a candidate who has received wholly unsolicited foreign aid to be unseated because that aid was given. That might be unfair. Equally one has to consider the enormous potentialities of that foreign aid. One has to consider that all the machinery of the whole of this Bill may be made comparatively ineffective if all the wealth and resources of a great Power are released on the ether in support of a particular party or candidate in this country. The consequences are potentially enormous but this Clause simply tinkers with the subject." (…) "I ask the right hon. Gentleman, not necessarily tonight, but before we part with this Bill, fully to consider all the objections that arise from this matter and to present to the House, as I suggest is his duty, some proposals which will enable this enormously important problem to be dealt with. If he does not do so it is really making a mockery of this Bill. It is no use limiting a candidate's election expenses to a few hundred pounds if we are leaving open this enormous door of intervention from overseas."[150]

Some members objected to this reading of the clause, stating that it clearly could only regulate the behavior of British citizens and not that of foreigners in their own country. Mr. Ede explained that if a foreigner would do this and afterwards "came within the jurisdiction, he would be liable to prosecution, but it would depend upon the responsible people of the day whether the prosecution was made or not."[151] He added: "Quite clearly, we cannot pass a Bill here and make effective a statement that no broadcast shall be made to this country in the course of a general election from the United, States of America, the Union of Soviet Socialist Republics, or from Italy or any other country. This is directed at individuals. I was asked by other hon. Members opposite to deal with propaganda by foreign Governments. That, obviously, is a matter for the Foreign Office and for diplomatic representations, and, I imagine, it would have to be done on some basis of give and take."[152]

Mr. Reid raised an issue about the wording of the article on election propaganda. He pointed at the use of poll cards and stated: "There is one point on Subsection (2) of the Clause to which I should like to direct the right hon. Gentleman's attention. That is the use of poll cards to which we all agree. I think that we all agree that some sanction is necessary to make certain that this does not produce abuses. The words are fairly wide—that no person is to issue a document so closely resembling an official poll card as to be calculated to deceive. The right hon. Gentleman will be aware that it is extremely common to print on the back of one's election address, or elsewhere, something that

[150] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1730-1731.
[151] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1735.
[152] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1737.

looks something like a ballot paper or poll card. One puts one's own name on it in thick type, with a big cross against it, and the other man's name in small type. I have not the least doubt that this is a practice common to all parties. It may, of course, be that in certain parts of England this practice does not apply, but I do not think that there is any political difference in those parts of the world of which I have experience.

I do not suppose that it is the right hon. Gentleman's intention that the practice should become illegal in any way. I think that it is a very fair practice, and it draws the attention of people who do not read a great deal to what one would like them to do. They see the same of the other man, and, at least, they see where they are. I do not know whether the right hon. Gentleman wants to stop that practice. Let me assume that he does not. If he does not, I am a little nervous about the words:

"… document so closely resembling an official poll card as to be calculated to deceive."

I am inclined to think that the sort of thing I have described would not fall under those words, but it seems a rather doubtful question, and one on which it is quite possible that a court may take a different view. Therefore, I suggest that between now and the Report stage, this point might be considered, and words a little narrower in meaning to those that now occur might be substituted in order to prevent a perfectly legitimate practice of this kind being thought to be illegal, and, possibly, being followed by legal proceedings."[153]

Mr. Ede explained that it was not the intention of the Bill to make the use as described by mr. Reid illegal, but stated that he would look at the wording of the clause.[154]

Mr. Younger explained the new clause on Avoidance Of Election For General Corruption. He pointed out that: "the existing law about the avoidance of elections as a result of general corruption is somewhat confused, and in some respects anomalous. There is a difference, for which there appears to be no obvious ground, between the effect of general corruption upon a Parliamentary and a local election, and also a difference between the effect of corrupt practices and the effect of prevalent illegal practices. The new Clause seeks to make the law reasonably uniform in those respects. By the combined effect of Subsection (1) and Subsection (4) it is provided that both Parliamentary and local elections may be made void owing to the general prevalence either of corruption or of illegal practices, provided they prevail to such an extent as may reasonably be supposed to have influenced

[153] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Columns 1723-1724.
[154] Commons, Representation Of The People Bill Volume 449: Tuesday 20 April 1948, Column 1726.

the result of the election."[155] There was no debate on the Clause, it was accepted by the members as proposed.

The issue of postal voting and the possibilities of fraud with them was raised by Lord Shepherd. He noted: "The postal vote can be a grave danger to us. Before 1872, in elections in this country corruption was rife. Many attempts were made to break down those features of the electoral system, but it was only when the Ballot Act of that year was carried into effect that we began to put a stop to corruption and bribery as it had previously existed. A man who bribes an elector is anxious to buy something that the elector has. So long as his bargain can be brought home to him he will continue to bribe; but if, because of the secrecy of the ballot, he can never be certain what takes place in the polling booth, he must always be in doubt whether he has had his money's worth. Since 1872 that feature of our electoral system has been almost entirely killed.

Now we come to the matter of the postal vote. An elector receives, say, an envelope in which there is a ballot paper and a certificate of identity. Someone approaches him and offers a sum of money for the ballot paper after it has been completed and after the identity form has been filled in. They are both then enclosed in the envelope and the envelope is handed to the person who tenders the bribe. That means that the briber has not only paid his money for a vote but has the value of the vote in his own hands. I am not going to suggest that there has been a great deal of bribery in recent years, in connection with the postal vote, but I think noble Lords will realise the possibilities that exist; and, they will, I am sure, take great care not to extend absent voting with postal voting so as to bring back into British politics the bribery and corruption which were formerly known."[156]

Lord Llewellin agreed with him.[157] The other members did not address the issue.

The debates on this Bill addressed a number of important topics. First, the amount of money that could be spend during election campaigns was lowered. The second topic that was debated was that of foreign interference during elections, by means of radio messages. The members of Parliament struggled with this issue, since the law of a country has no meaning in another country, therefore making it impossible to punish a foreigner when he is contravening the laws from outside the country. Again, as seen previously, questions were raised on the wording of a clause in the Bill and the behaviour it meant to regulate. There was an angst for drift, meaning that the articles in the Bill could be interpreted in another way then was intended. Finally, Parliament decided not to introduce

[155] Commons, Representation Of The People Bill Volume 449: Wednesday 21 April 1948, Column 1920.
[156] Lords, Representation Of The People Bill Volume 157: Monday 5 July 1948, Column 313.
[157] Lords, Representation Of The People Bill Volume 157: Monday 5 July 1948, Column 321.

postal voting for absentee voting, because of the possibility of fraud. The Bill in itself is an example of layering; adding new rules on top of existing rules. The scope of the Bill was limited.

7.15 Electoral Register Act of 1949

The Bill for this Act was introduced by the government as a way to save money. It stated that the voter register would only be updated and published once a year, in spring instead of twice a year as had been done in the past. Mr. Skeffington-Lodge pointed out that it would be possible for voters who had more one residence in different constituencies to appear on the register more than once. He stated: "It might be possible for voters to be asked to take an oath that they have only voted once. There are people in the country who at all costs are determined to get rid of His Majesty's Government and for those people the arrangement I am describing would definitely present a very real temptation to break the law. I would not trust a good many of them not to take advantage of it."[158] The Deputy-Speaker warned him: "The hon. Member must not bring in political bias here. This is purely a machinery Bill and he must keep to the point about the fairness of the register."

The Under-Secretary of State for the Home Department, Mr. Younger replied to the question from Mr. Skeffington-Lodge with the following statement: "The objection of my hon. Friend the Member for Bedford (Mr. Skeffington-Lodge) that persons should not be registered as residents at more than one address is not a new matter arising out of the proposal that there should be one register instead of two. It is not connected with any particular feature of this Bill. It raises considerable administrative difficulties, particularly as regards enforcement, when one considers that if a particular person's name is put down in more than one place it may not always be that person who fills in all the forms. Therefore that makes it exceedingly difficult to check."[159]

The issue was not raised anymore during the debates on this Bill.

7.16 Representation of the People Act of 1969

In this Bill, the government proposed a new clause which would make it illegal for "any person…in managing or taking part in the management of the item or in editing it for the broadcasting" to favour "any of the candidates taking part". Mr. Lubbock pointed out that this would be a clause that could lead to a lot of discussion. He mentioned the example of an interviewer giving one candidate more time in an interview than the other candidate. Another example he gave was: "Then there are the questions which may be addressed to the candidates. Somebody may think that Mr. Robin Day has been looking up his records. Mr. Day may find that I have never spoken on agriculture; so he

[158] Commons, Volume 470: Tuesday 22 November 1949, Column 234.
[159] Commons, Volume 470: Tuesday 22 November 1949, Column 240.

asks me, "What do you think of the Price Review?" I then say, "You should not ask me that. You are guilty of an illegal practice because you are disfavouring me by asking me a question which you know that I cannot possibly answer".”[160] He asked the government to delete this subsection.

Mr Ross responded to this by stating: “On the point raised by the hon. Member for Orpington about how to adjudicate fairness in respect of a political broadcast during an election, we are trying to follow through a recommendation of Mr. Speaker’s Conference that there should be fairness and that it should be seen to be fair. This obligation is laid on those conducting these broadcasts or television programmes. If they do not meet the obligation they might be guilty of an illegal practice under the Bill. Having placed this provision in the Bill we have to rely on their good sense. I am certain that a matter of 10 seconds more for the right hon. and learned Gentleman the Member for St. Marylebone might be considered an advantage to the others on the programme rather than a disadvantage.”[161]

In a later debate on the Bill, The Minister of State, Lord Stonham made it clear that this provision was dropped from the Bill: “We had hoped that the subsection was sufficiently tightly drafted to meet the views of the broadcasting authorities on the way in which they would wish to be free to report and comment on the progress of an election campaign. We have already met them to some extent by dropping from the clause a provision which would have penalised individuals serving the broadcasting authorities for failure to be impartial between candidates in election broadcasts, but there are other points on which we are still examining their suggestion. One thing is clear: Party politician broadcasts, even at election time, would be lawful, must be lawful, as they are now.”[162]

Again, in a later debate, Lord Stonham gave a further explanation of the intent of this part of the Bill, again at the request of the broadcasting authorities: “For a candidate or potential candidate to be guilty of an illegal practice, the following prerequisites are now necessary in the subsection as it stands. This is what would have to happen in subsection (1) as it now stands without alteration; and we do not propose to alter it. First, the broadcast must be about the constituency. Secondly, it must be for the purpose of promoting or procuring the candidate’s election. Thirdly, the candidate must "take part" in it—a phrase intended to indicate an active participation. And finally, the candidate must consent to the broadcast being made. All those factors must be present for the candidate to be committing an illegal practice.”[163] Lord Windelsham responded by stating: “The noble Lord speaking

[160] Commons, Representation Of The People Bill Volume 773: Monday 18 November 1968, Column 972.
[161] Commons, Representation Of The People Bill Volume 773: Monday 18 November 1968, Column 1028.
[162] Lords, Representation Of The People Bill Volume 298: Thursday 23 January 1969, Column 1035.
[163] Lords, Representation Of The People Bill Volume 299: Thursday 6 February 1969, Column 242.

for the Government has indicated the difficulties in drafting this clause, and I know that consultations have taken place with representatives of the B.B.C. and the I.T.A. Nevertheless, ambiguities remain, and there is anxiety that this clause would be difficult to interpret in practice. I am sure the noble Lord would agree that every effort should be made to achieve as much certainty as possible in order to avoid difficulties and confusion arising in the future. If any further representations are made between now and Report stage, I hope that the noble Lord will feel able to see whether a final effort can be made to get his clause into a more clear-cut form than it is now."[164] The Minister answered that he did not think he could make it clearer, but that he would see what was possible.

This let to another amendment on the wording of the clause, but as was explained by the Minister, not to a different meaning.[165] Lord Aberdare mentioned the role of the courts in this matter: "I am very grateful to the noble Lord, Lord Stonham, for the assurances he has given on this matter. We just have to hope that the courts will take the same view when they come to interpret the Bill; and it is helpful, at any rate, that there is a precedent in the Children and Young Persons Act. But I hope I understood the noble Lord aright when he said that if he found that the courts were not interpreting these words as Parliament wishes them to be interpreted then he would come back and amend the Bill so that it would reflect what we all wish to happen."[166] The Lords agreed with the amendment.

This debate deals with the aspect of equality of arms when it came to broadcasts on candidates. It is again an example of the difficulty of drafting legislation in such a way that there is no room for misinterpretation of wrongful use of the law. Notable is that Lord Aberdare specifically mentions the possibility that the courts would apply the law differently than intended, a case of conversion. He asked the government to monitor this.

7.17 Representation of the People Act of 1981

This Bill amongst other changes made changes to the electoral register. This was necessary because an earlier change in the law which was made in an effort to help the wives and husbands of Service personnel Act to get on the electoral register had an unforeseen effect. The law, introduced in 1976 called for a special form to be used for this category of voters. If they accidentally used the regular form, the returning officer had to destroy that form and refuse to put them on the register. This was not the intention of the law and thus a repair was necessary.[167] The provisions of the first clause

[164] Lords, Representation Of The People Bill Volume 299: Thursday 6 February 1969, Column 244.
[165] Lords, Representation Of The People Bill Volume 300: Thursday 6 March 1969, Columns 282-284.
[166] Lords, Representation Of The People Bill Volume 300: Thursday 6 March 1969, Column 286.
[167] Commons, Representation Of The People Bill Volume 973: Friday 9 November 1979, Column 854.

therefore aimed at that purpose. It gave the husband or wife of a member of the Armed Forces residing in the United Kingdom the option to make or continue with a Service declaration, which attracts the advantage of Service voting facilities, or to opt to register on form A as a civilian elector and to vote as a civilian elector in the usual way.[168]

Mr. Cranley Onslow who introduced the bill did point at the possible effect that this could increase fraud: "I accept that it will be necessary to take administrative measures to prevent an abuse which might lead to duplication of registration and increase the dangers of double voting. As with much else in the Bill, this is a technical matter upon which I am sure the Minister will be able to expand."[169] Mr. Cunningham discussed possible fraudulent behaviour in voter registration: "Secondly, a householder might intentionally keep a person's name off the register. I remember that a few years ago the hon. Gentleman entertained us one Friday afternoon with an account of one of his constituents who kept his son off the register because he knew that his son intended to vote against the hon. Gentleman. That constituent was committing a criminal offence. I am not sure whether the hon. Gentleman was not committing a criminal offence by not doing anything about it.

It may be that we have gone a little far in softening the warnings on form A about the necessity to fill it in and the fact that it is a criminal offence not to fill it in or knowingly to fill it in incorrectly. I raise that only as a possibility. We had reached the stage where we did not want constantly to be bombarding the public with warnings that they were committing criminal offences, but we may now have gone too far with the electoral registration form."[170]

During the other debates on this Bill, this issue was not raised again. The Bill passed on 24 January 1980.[171]

The Bill is an example of displacement; replacing articles that did not have the desired effect by new articles. During the debate, the issue was raised that the system of voter registration could be used to commit fraud. However, this did not lead to a change in the system itself.

7.18 Amend Bill

At the same time, Mr. Griffiths introduced another Bill to change the Representation of the People Act. He wanted to extend the right to postal vote to those voters who booked a holiday before a

[168] Commons, Representation Of The People Bill Volume 973: Friday 9 November 1979, Column 857.
[169] Commons, Representation Of The People Bill Volume 973: Friday 9 November 1979, Column 857.
[170] Commons, Representation Of The People Bill Volume 973: Friday 9 November 1979, Column 862.
[171] Lords, Representation Of The People Bill Volume 404: Thursday 24 January 1980, Column 554.

general election was announced and who would therefore be away during the election.[172] During his introduction of the Bill, he mentioned the objections that some members had against postal voting: "The first is that an increase in the number of persons permitted to vote by post or by proxy might lead to an increase in the number of votes cast after undue influence had been brought to bear, to say nothing of votes cast by persons using ballot papers improperly. There is always the possibility of the misuse of postal voting facilities. However, as far as I am aware it is not a widespread abuse. The use of postal votes by the disabled and by those who are taken away from their homes by their employment has not led to any widespread abuse of which I am aware.

If the danger of undue influence is stressed, I suggest that it is less easy to influence someone who is going on holiday, and who therefore, by definition, is fit and well, than to influence someone who might be very ill and not wish to be bothered with making a decision about voting. Therefore, I do not believe that this extension will lead to an increase in impropriety."[173]

Mr. Cunningham responded to this last argument by pointing out the importance of the secret ballot to prevent vote buying: "There is a view held that the importance of the Ballot Act 1872 was that it permitted a person to keep his vote secret if he wanted to do so. No. The importance of the 1872 Act was that it forced a person to keep his vote secret whether he wanted to or not.

If I want to buy votes, I shall not pay for them if I cannot have it proved to me that the persons concerned have delivered their part of the bargain. What the Ballot Act said was not that the person could keep his vote secret if he wanted to but that he would never be able to prove how he voted, because he had to mark his ballot paper in the booth. He is not permitted to show it to the returning officer or to anyone else. If a candidate happens to be in the polling station at that time, as he is entitled to be, and goes to the polling booth with the voter in order to witness, as it were, how the voter is voting, the presiding officer will stop that, and he has to stop it under the rules as they are now. The postal vote breaches that practice. The postal vote is a witnessable vote, and a proxy vote, by definition, is the same. That is an important point. As long as the proportion of the postal votes in an election is reasonably small in relation to the total, the breach of principle in the secrecy of the

[172] Commons, Representation Of The People (Amendment) Bill Volume 975: Friday 7 December 1979, Column 856.

[173] Commons, Representation Of The People (Amendment) Bill Volume 975: Friday 7 December 1979, Column 860.

ballot is not important, and in all normal circumstances no one will go about buying the postal votes, which is theoretically possible."[174]

In answer on a question on the number of postal votes compared to the number needed to win an election, he responded: "Yes, I do, and it is significant that, while in modern times corruption in electoral practice has been virtually unknown in this country, where it has been known it has nearly always related to the postal vote. The point that I am making is that, yes, there could be the odd case where postal votes could make all the difference between candidate A or candidate B winning the election, but the risk of that is greatly extended if the number of people who can claim the absent vote is massively increased. Therefore, whenever we are considering a possible extension of the postal vote, we should take that factor into account."[175] He therefore suggested not using the postal vote, but for the voter to be able to hand in the ballot at a polling station in his holiday location, which would then have to send it to the proper constituency.

The Minister of State, Mr. Brittan was not directly opposed to the Bill. In response to the issue of secrecy he stated: "The point about secrecy raised by the hon. Member for Islington, South and Finsbury (Mr. Cunningham) is much more serious, but, as the hon. Gentleman said, it is possible to devise absent voting arrangements that protect secrecy. That is one of the matters that we shall have to consider."[176] However, the government had objections to the practical implications of the Bill and the Bill was not moved further.

This debate can be regarded as a critical juncture. The issue at hand was if the possibility to vote by mail should also be extended to voters who were away on holiday. If this had happened, the number of voters who would have been able to vote during elections would have been greatly expanded. However, after a lengthy debate, the Bill did not pass due to the fact that government saw practical problems with the Bill.

7.19 Representation of the People Act of 1985

In 1984 one of the proposals was to the franchise to British citizens resident abroad. British citizens who were not resident at an address in this country on the qualifying date, but who had been registered as electors within the previous seven years, would be eligible to vote at parliamentary

[174] Commons, Representation Of The People (Amendment) Bill Volume 975: Friday 7 December 1979, Column 867.
[175] Commons Representation Of The People (Amendment) Bill Volume 975: Friday 7 December 1979, Column 868.
[176] Commons, Representation Of The People (Amendment) Bill Volume 975: Friday 7 December 1979, Column 871.

and European Parliament elections. Additionally, the government proposed to extent absent voting to all those who could not get to the poll in person combined with an increase in the safeguards available to prevent abuse. As Mr. Britain, Home Secretary, explained: "It is not—and is not intended to be—absent voting on demand. The applicant will be required to state the reason why he or she cannot vote in person, and if the registration officer is not satisfied with the explanation the application will be refused. The Bill will make it clear that it is an offence to submit an application which is false in a material particular, and a statement to this effect will appear on the application form. In addition, we have proposed that, for the first time, a person who applies for an absent vote in respect of a particular election—for example, because he is away on holiday—should be required to have the application countersigned by another elector who will certify that the particulars given are true."[177] Absentee voters would get a choice between a postal vote and a proxy vote.

Mr. Robert Maclennan, member for Caithness and Sutherland asked: "In considering absent voting, did the Home Secretary look at the experience in Canada of allowing absent voters to register an advance vote to avoid the possibility of corruption which could flow from the vast extension of postal voting which is involved in this proposal?"[178] The Home Secretary responded: "We did look at that, but the nature of the short duration of our own election campaign and the arrangements that would have to be made to give effect to that led us to the conclusion that it was a more cumbersome and less satisfactory approach to the problem."[179]

Mr. Gerald Kaufman, member for Manchester, Gorton pointed out the criteria for legislation affecting electoral law: "First, does it protect the right of any citizen to be a candidate in an election? Secondly, does it protect the secrecy and incorruptibility of the ballot, while making it as simple and convenient as possible for the elector to use that ballot?"[180] Mr. John Hunt, member for Ravensbourne was not too impressed with arguments against postal voting, brought forward by the Labour members: "We were not, of course, given any indication of how such large-scale corruption could arise, and in my view it was really a bogus point."[181]

Mr. Wigley gave an example of abuse of postal voting: "In a county election in my area more than 20 per cent. of one ward was on a postal vote. One knows what can happen in such circumstances. Party workers know when the voting papers are posted. They can keep an eye on the postman delivering them and send carloads of supporters to follow him around. Then, as soon as the paper

[177] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1023.
[178] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1023.
[179] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1023.
[180] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1027.
[181] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1035.

has been dropped into the poor old widow's letterbox, one of the supporters can knock on the door and say, "I see that your postal vote has come, Mrs. Jones. Postal votes are very complicated and you will need a witness. Perhaps I can help you." In that way, pressure can be put on people using postal votes. That is reality. I know that it happens and the Government should be very much aware of it when considering greatly increasing the number of postal votes. I do not oppose giving the right to vote to people on holiday because they should not be disfranchised, but the safeguards against abuse must be developed."[182]

In a later debate, the point of how to punish people who were abusing the right to vote came up. Mr. Campbell-Savours asked: "Will the Home Secretary go back to the—clause that he seemed conveniently to be missing when he was running through the clauses -clause 11? It creates offences in respect of overseas electors' declarations and absent voting applications. It provides a maximum fine for offences at level five—currently £2,000—on the standard scale. How does the Secretary of State intend to enforce the penalty of a fine on a person who is resident abroad and whose intention is to stay abroad?"[183] The Secretary of State, Mr. Brittan responded: The hon. Gentleman raises an interesting point, but we are talking about people who retain a connection with this country. If there is a conviction by a court, a penalty could arise. If the hon. Gentleman wishes to raise that point during our deliberations, I am sure that we shall have the opportunity to consider it."[184]

This point was raised again in a later debate. Mr. Stanbrook stated: "The purport of subsection 3(b) "that the declarant is a British citizen" is intended, presumably, to ensure that the person who claims the right to vote in United Kingdom elections is in fact a British citizen. One presumes that he will be able to prove that he is, but there is no provision in the Bill that he should so prove, and the only sanction against someone claiming to be a British citizen and who is not is in clause 11, which is the penalty clause. The essence of giving a vote to someone living abroad lies in the fact that there is no jurisdiction in British courts overseas, and therefore clause 11 is inoperative so long as the person involved remains overseas. Apparently, therefore, a person who declares that he is a British citizen cannot be challenged and his vote must be allowed even though the local British consul may have good reason to believe that the declaration is false. How on earth do the Government intend to get over that?"[185]

[182] Commons, Representation Of The People Acts Volume 62: Wednesday 27 June 1984, Column 1073.
[183] Commons, Representation Of The People Bill Volume 69: Monday 10 December 1984, Column 762.
[184] Commons, Representation Of The People Bill Volume 69: Monday 10 December 1984, Column 762.
[185] Commons, Representation Of The People Bill Volume 72: Tuesday 29 January 1985, Column 250.

Mr. Bermingham agreed with him: “I hope that the Minister will answer that point, which I stressed earlier. If the declaration is not made in the United Kingdom before the person goes abroad, our courts will have no jurisdiction and the penalties will be unenforceable. I concede that for a person who goes abroad and stays abroad there is a semi-deterrent in the knowledge that if he makes a false declaration he can be prosecuted if he ever returns to the United Kingdom. Nevertheless, if the penalties are to bite we must ensure that our courts have jurisdiction.”[186]

Mr. Mellor responded as follows: “Extra-territoriality is created by paragraph 62 of schedule 3, so if the person returns within the jurisdiction he can be tried here as though the offence had been committed within the jurisdiction. If he does not return, that is a different matter, but that applies to a whole range of other offences. No one is under any obligation to accept a declaration if he does not believe it to be true. This applies equally to a British consul and to the electoral registration officer. If the officer believes that the assertion made is not true, he has complete discretion to refuse to enter the person’s name on the register. It will thus be a matter for both officers to do their duty as they see it.”[187] After this answer, the members agreed with the Clause as proposed.

This time, a large expansion of the electorate did happen. This means that this was not only a critical juncture, in which the choice to expand or not had to be made, but that the fact that Parliament agreed with the expansion meant that path dependency was created. As stated before, once the franchise is expanded, it is very hard to overrule this decision later on. In the debate again the question was raised how voters who committed fraud but were not living within the United Kingdom could be held responsible. The government had to admit that this was a difficult issue. However, that did not stop Parliament from accepting the proposed change.

7.20 Representation of the People Act of 2000

One of the topics of debate was the possibility of people voting twice, since it was still possible to be registered in more than one constituency, for example if a voter owned a holiday home in another part of the country. Mr. Barnes entered an amendment with the purpose to end double or multiple electoral registrations. As he stated: “A person who has more than one residence currently qualifies to appear on more than one register. However, it is illegal to use more than one vote on the same day, although there is no means of checking whether people have been dishonest and have fraudulently voted more than once.”[188] Mr. Robathan asked: “Is it not about time that the Government—I am not referring in particular to the Labour Government or the previous

[186] Commons, Representation Of The People Bill Volume 72: Tuesday 29 January 1985, Column 250.
[187] Commons, Representation Of The People Bill Volume 72: Tuesday 29 January 1985, Column 250.
[188] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December, 1999 Column 340.

Conservative Government—checked up to ensure that people have not voted more than once? I do not think that we have heard any promise on that yet."[189] Mr. Barnes responded: "Technically, people are allowed to vote only once. A system that checked the current arrangements to make sure that nobody was abusing them would be useful, but, if the method that I propose were adopted, that would become terribly unnecessary. People would be on one register at any time, it would be illegal to be on another register and there would be nothing to prevent a central system—a link between different electoral registers —from making sure of that. That can be done in connection with the purchase of lottery tickets, so we must be able to do it with franchise rights, which are far more important."[190] Many members disagreed, stating that if a person owned houses in different constituencies and paid local taxes there, they should have a vote as well.

Mr. Linton pointed out that it was not until 1970 that in the case Fox v. Stirk, the ruling was that people could register to vote in parliamentary elections in two constituencies. He continued: ""Before that, the position was uncertain. As a result, it had to be spelt out in the Representation of the People Act 1983 that it was illegal to vote in two constituencies in parliamentary elections. It was not that anyone had believed before that it was legal; the situation simply had not arisen, because it was assumed that people registered their principal residence in any one constituency." (…) "It is an anomaly that people can register in two constituencies. It was never intended by Parliament and has never been passed in a Representation of the People Bill. The anomaly emerged because people started to do it and the law held that it was not illegal."[191] He also mentioned that the proposal would not mean that voters could not register for local elections in two constituencies, but only that they could register only once for parliamentary elections.[192]

Mr. Greenway replied: "We do not want to prohibit the prospect of double registration, but we want electoral registration officers to be aware of those individuals who are on an electoral register in another constituency or who may be—this is unlikely, but technically possible—on the register twice in the same constituency in respect of the same address. The Home Affairs Committee concluded that there is no way of checking whether the law is being properly upheld; it is clearly not being enforced."[193] The Minister, Mr. Howarth, was also not in favour of removing the possibility of double registration. Mr. Simon Hughes asked: "Was the Minister's working party given evidence as to roughly the number of people who are registered in two places for parliamentary elections? What is

[189] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 342.
[190] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 342.
[191] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 347.
[192] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 351.
[193] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 356.

the procedure for random checking or any other process to ensure that there is no abuse of that system?"[194] The Minister replied: "I cannot recall whether the detailed statistics that the hon. Gentleman requests were made available to us, but the principle was considered. As I understand it, no systematic checks are carried out to establish the incidence of double voting. The responsibility lies with each returning officer and electoral registration officer to make such checks as they consider appropriate. In practice, I imagine that such checks are carried out only when there is reason for suspicion. That is probably appropriate. I do not believe that there is evidence of widespread systematic abuse. We would not want to suggest that the integrity of our electoral system was such that random checks were warranted. As my hon. Friend the Member for Battersea said, with the introduction of further technology, such checks may become simple to perform, but at present they are not."[195] Mr. Barnes concluded that there was no support for his amendment to end double registration and withdrew it.[196]

Also in debate were some pilots with new methods of voting. Mr. Evans was hesitant. He stated: "We are in favour of the pilot schemes, but we have reservations about some of the suggestions for them. We support sensible suggestions for making voting easier. However, I stress that we must be careful not to facilitate fraudulent voting."[197] He therefore wanted to ensure that the pilots were only carried out after proper consultation with local people. The Parliamentary Under-Secretary of State for Northern Ireland, Mr. Howarth, agreed with the fact that consultation was important, but did not want to include it in the Bill as was stipulated by the amendment. This because he wanted to leave room for the local authorities to decide how they wanted to carry out the consultation. With regard to possible fraudulent behaviour, he pointed out: "Local authorities already have the power to designate polling stations, and an appeals mechanism can be invoked by electors who believe that the local authority has failed to exercise that duty properly. The Bill does not change that. If there are suspicions of mischief or gerrymandering—a word that the hon. Member for Beaconsfield used, perhaps in the heat of the moment—it is open to any elector, including members of political parties who feel that the situation is disadvantaging a section of the electorate, to appeal against the siting of a polling station." Mr. Grieve asked: "How often are such complaints made or upheld under the existing rules? My experience is that the process is wholly depoliticised and I am anxious that it should remain so." Mr. Howarth responded: "I have no global statistics on the number of appeals, but I have experience of it happening. My local party once felt that a mobile polling station was

[194] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 361.
[195] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 361.
[196] Commons, Representation Of The People Bill Volume 341: Wednesday 15 December 1999, Column 365.
[197] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 479.

inappropriately sited. On one occasion, we protested about its inaccessibility for people with disabilities. I understand from the global statistics that are available that such appeals are rare, which leads me to believe that the system is probably run fairly."[198] Mr. Evans decided, based on the information provided by the Minister to withdraw the amendment.[199]

Mr. Evans proposed another amendment, making it a crime to publicise any exit poll that could affect the outcome of an election in case of a scheme that makes provision for voting in a particular election to take place on more than one day. He proposed a punishment a fine not exceeding Level 5 on the Standard Scale, or to imprisonment for a term not exceeding six months or to both.[200]

Mr. Maclean showed in his response that he was not in favor of the pilot in general. He stated: "The amendment would improve slightly what is a nonsense in the Bill."[201] Mr. Simon Hughes mentioned that he was in favor of anything that could improve turnout. With regard to the amendment he stated: "I support the idea that the process should be regulated. In America, polls close on one coast long before they do on the other coast. The influence exerted by Vermont on California—if I have got that the right way around—is always an issue."[202] He also mentioned that the same issue of early results could be raised with regard to postal votes and that it could be useful to assure that: "regardless of how early votes are cast, no counting is begun until all votes are in."[203] Mr. Forth showed himself not to be in favor of the pilots. He stated: "One of the beauties—the elegance, the simplicity—of our long-established electoral arrangements is that they are familiar. That in itself undermines the argument that somehow it is difficult to vote and that we should make it easier. However, what is perhaps even more important in the context of this amendment is that the simplicity, elegance and transparency of our existing arrangements makes them, if not foolproof, then proof against the kind of dangers that previous speakers have described. That should act as yet another warning signal that we are treading a dangerous path. We are proposing tinkering and experimenting with long-standing established arrangements in something as fundamental and crucial as our electoral process and voting procedures. That should give us pause for thought and, perhaps, should discourage us from proceeding."[204]

[198] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 488.
[199] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 490.
[200] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 490.
[201] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 491.
[202] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 491.
[203] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 492.
[204] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 492.

Mr. Howarth, the Minister, responded to the amendment by saying: "I am attracted by the arguments of the hon. Member for Ribble Valley. My colleagues at the Home Office are minded, given his agreement to withdraw the amendment, to take the issue away and look at it. There is some potential for distorting the outcome of an election in these circumstances. The amendment contains a sensible principle, and we need to address it. I also give an undertaking to address the point that the hon. Member for Southwark, North and Bermondsey (Mr. Hughes) raised about postal votes."[205] With this assurance, Mr. Evans withdrew his amendment.

A third amendment proposed by Mr. Evans dealt with the issue of voter ID. The amendment stated: "Where a scheme under this section makes provision for voting in a particular election to take place on more than one day or to take place at places other than polling stations, any person voting in the election concerned shall be required, as a condition of voting, to produce at the place of voting at least one item of documentary evidence of that person's identity."[206] It listed the documents that could be used. The purpose was: "The amendment is consequential on voting taking place over more than one day or in more than one polling station. It is a common-sense measure that will help to reduce the incidence of fraudulent voting, at a time when we want to simplify the voting system."[207]

Mr. Evans stated: "In making voting easier, we want to ensure that the integrity of the vote is preserved. Currently, anyone can stroll up to a polling station and state who they are. They need no proof; they do not need to show documentation or a polling card. Amendment No. 19 provides that voters should give some proof of identification when the vote is stretched over several days or when they are not voting in their normal polling station. We have not asked for especially onerous proofs; they would be required only at elections that are different from the norm. The amendment would allow electoral registration officers great flexibility; they could accept many different proofs of identity before giving out the ballot paper. I hope that when the Minister responds to this simple, common-sense measure, he will be able to tell the Committee that in those pilots that deviate from the norm, the rest of the electorate will be assured that there will be safeguards to ensure that personation will not increase."[208]

Mr. Hurst opposed the amendment. He noted: "All of a sudden, it will become much more difficult; one will have to produce a passport—many people do not have passports. One will have to produce a driving license that discriminates against those who do not drive."[209] He also pointed out: "If the

[205] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 493.
[206] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 493.
[207] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 494.
[208] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 494.
[209] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 495.

amendment were accepted, we should place a great burden on the registration officer or the polling clerk at the polling station. Many arguments would ensue about whether a particular document was good enough evidence, or whether the written statement of the car driver who picked up electors from a certain address was a document sufficient to justify them being able to vote at that polling station. Most pernicious of all, the documentary addition to voting is discriminatory against the poor, almost certainly discriminatory against the elderly and certainly discriminatory against those who live some distance from a polling station, in that if they leave the documents behind, they are unlikely to go back and get them."[210]

Mr. Evans was not convinced that there would be many voters who could not produce any evidence. Mr. Hurst pointed out that the intention of the Bill was to make it easier for voters to vote and that demanding an ID would contradict that. He figured that there would be other options to prevent double voting, such as digitalized voter lists that would be accessible for all poll workers. Mr. Forth hoped that there indeed would be a procedure to prevent voters from voting in different polling stations and mentioned that just demanding an ID could not do this.

The Minister, Mr. Howarth stated: "If there is more than one place at which an elector can vote, there must obviously be some link between them to ensure that, once someone has voted in one place, he cannot vote elsewhere. That is precisely the type of issue that we expect to see dealt with in the applications that are made for pilot schemes. Indeed, fraud was covered in the circular to which I drew attention earlier. If there is no provision for such linkage, it simply would not be feasible to approve a pilot scheme."[211] This could be, according to him, done with technology. With this explanation, Mr. Evans withdrew the amendment.[212]

In a later debate, there was again discussion on the issue of accessibility versus fraud. This time it dealt with the question if proxy voting should be made easier. There was an amendment which would allow proxy voting if a voter had to make a journey over land of three miles or more to get to a polling station. Also, students should get the right to vote by proxy.[213] Mr. Barnes proposed the amendments. Mr. Simon Hughes supported them by stating: "We support the hon. Gentleman's case, which is not simply about people who live in the Outer Hebrides and have to cross water to get to the polling station. People who are prevented from voting because they cannot get from A to B should be entitled to vote by proxy, as should be those who are prevented by illness, work or study. I

[210] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 495.
[211] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 497.
[212] Commons, Representation Of The People Bill Volume 342: Thursday 13 January 2000, Column 498.
[213] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1050.

hope that the Minister will be sympathetic."[214] Mr. O'Brien supported the amendment for students, but not the other one. He mentioned: "There are number of on-going investigations into alleged proxy vote fraud—the House will understand that I do not wish to comment on those—which led the working party to conclude that this is not the right time to ease the rules governing proxy votes. I cannot therefore invite the House to accept the amendment, even though we all understand the arguments for it."[215] Mr. Barnes then withdrew this amendment.

Mr. Ross, later in the debate, pointed out the following: "The Home Secretary said earlier that he was pleased that the working party had been able to proceed on a basis of consensus, and that, with a single exception, all its recommendations had been accepted by all representatives, including those of the three political parties. However, none of those three parties included a member from Northern Ireland, the one part of the United Kingdom where there is a clear understanding of the capacity for fraud in the electoral system. An opportunity was missed, and I hope that the Minister will bear that in mind in the event of any such exercise in the future."[216] He also pointed out: "I am deeply concerned about the possibility that postal voting will be made easy. When it was tried in Northern Ireland in the 1970s, or possibly the 1980s, it was a massive disaster: it led to an immense increase in the amount of fraud and, over the years, further measures had to be introduced successively in an attempt to combat the problem. The question of identification has been mentioned. We in Northern Ireland have been driven, relentlessly, to a point at which we believe that the only possible means of identification is a common identity card tied to a unique number of members of each electorate, and featuring a photograph. Nothing else will do if we come up against carefully organized fraud in the electoral system."[217]

Mr. Forth also was not in favor of the Bill. He stated: "Despite Ministers" undertakings, I am not convinced that, when the pilot schemes are launched, they will take place in a secure environment that will make us happy with the way in which our elections are proceeded with. That is particularly the case with the ludicrous local connection provision, which strikes me—it has been mentioned many times—as an open door to fraud, manipulation and misuse of our electoral system."[218] Despite this comments, the House decided to pass the Bill through its third reading. [219]

[214] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1051.
[215] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1052.
[216] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1059.
[217] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1059.
[218] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1059.
[219] Commons, Representation Of The People Bill Volume 342: Thursday 20 January 2000, Column 1062.

The Bill was also discussed in the House of Lords. The Parliamentary Under-Secretary of State, Home Office, Lord Bassam of Brighton, introduced the Bill in the second reading. He explained the contents and stated: "The second main area of electoral procedure where the working party recommended changes was postal voting. As the law stands, there are a number of restrictions on who may have a postal vote. The Bill therefore makes it easier for people to obtain and cast postal votes. Your Lordships may have noticed that I refer only to postal votes and not proxy votes. The working party was conscious that there are a number of ongoing investigations relating to allegations of proxy vote fraud and concluded that this was not the right time to relax the rules governing proxy votes. We have accepted that advice."[220]

Baroness Gould of Potternewton pointed out that: "My Lords, I welcome the Bill, which deals with the nitty-gritty and mechanics of elections—something that we do not often talk about in this Chamber. She followed with: "Therefore, I welcome the speed of introduction of this Bill, which goes some way to removing obstacles and barriers to voting and changing many of our outdated Victorian rules and procedures. That is not to decry the past. We were one of the first countries to provide a free electoral system and secret ballots, and we removed bribery and limited election expenses at constituency level. However, if we are to widen democratic participation—certainly, I do not believe that it is pious to try—we must develop not only new forms of electioneering, which all the political parties are doing, but be more open and fair, make access to voting easier and use processes that are not rooted in the pre-computer age."[221] And: "With regard to electronic voting, which without doubt is the way forward, we must ensure the resilience and effectiveness of the technology. A mechanical failure would be a disaster. Similarly, there must be safeguards against personation and hackers and, more importantly, there must be equality of access."[222] However, she was not in favor of all ways to make it easier to vote. With regard to proxy voting, she stated: "History has shown how any extension is a potential for malpractice. I was pleased to hear that there would be no extension to proxy voting in the Bill."[223]

Lord Rennard mentioned specifically the balance that has to be found between accessibility and integrity: "Election laws must protect the democratic process from any party or individual seeking to abuse it. The rules for the conduct of elections must be fair to all parties and individuals, making it easy for voters to participate. They should be based on as much consensus as is possible. Most of the provisions in the Bill are based on agreement reached by the Howarth working party, on which my

[220] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 15.
[221] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 28.
[222] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 29.
[223] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 30.

friend and colleague, David Loxton, served. It included representatives of all the main parties, and local authority electoral administration experts. It was concerned that in Great Britain we have the lowest turn-outs for local elections of any country in the European Union. So measures to make it easier to vote while ensuring safeguards against fraud are to be welcomed."[224]

The Under-Secretary, Lord Bassam of Brighton, made a statement on the integrity of elections in the United Kingdom: "It should be a source of pride to all of us that elections in Britain have been remarkably free of corruption and fraud. Not only that, but they command public confidence. Put simply, the public believes that the result declared by the returning officer reflects the votes that have been cast. Not every country can make the same boast: it is a precious asset which we must safeguard. I believe that the Bill does precisely that, not least in allowing us to pilot new electoral procedures before deciding whether they would be suitable for wider application."[225]

In the later stages of the Bill, no specific mention was made of electoral fraud or crimes. The Bill passed and got the Royal Assent on March 9th 2000.

The debate on the possibility of double voting shows the balance that has to be found between the accessibility of the vote and the integrity. By allowing double registration, it is easier for a voter to participate in the election, because he can vote there where he is actually staying during the election. However, as the Minister had to admit, this system could also allow voters to vote twice, even though that would be fraud. The debate did not lead to a change in the legislation.

With regard to the pilots that were suggested, there again the issue of balance between making voting easier versus making sure that no fraud is committed was raised by multiple members of Parliament. The supporters of the pilots pointed towards the declining turnout and the need therefore to help voters to cast their vote in a simple way. The opponents feared that the pilots would open the door for fraud. The Bill can be seen as an important piece of legislation since it made voting through new technology such as internet possible. However, since it only allowed for a limited number of pilots, it should not be seen as a critical juncture. By only experimenting with these new ways of voting, Parliament did not make a definitive choice to include them in the election process at that time. Therefore, the introduction through pilots did not lead to path dependency.

[224] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 33.
[225] Lords, Representation Of The People Bill Volume 609: Monday 31 January 2000, Column 53.

7.21 Political Parties, Elections and Referendums Act of 2000

This Bill was called important by the Secretary of State for the Home Department, Mr. Jack Straw because it regulated for the first time the conduct of political parties. It also established the Electoral Commission. During the debate, Mr. Grieve pointed out that: "he Bill creates 68 criminal offences, some of which mirror previous legislation, but many of which are entirely new. They will require evaluation, and I am certain that no prosecution will be brought without the Electoral Commission having first at least pronounced on what it believes to be irregular practice by individuals or political parties."[226] Because of this function of the Electoral Commission, an amendment was introduced to assure that some members of the Commission would be senior members of the judiciary. The Minister, Mr. O'Brien, asked the members to withdraw the amendment, as he preferred not to include too many demands in the Bill, as this would make it harder to fulfil the positions. Mr. Grieve responded: "The commission's reports will be the initiating process for penalties and/or prosecutions. Doubtless, the Crown Prosecution Service will have its own views, but I am sure that if the Electoral Commission does not identify something, the CPS will never take it up. The commission's considerable powers will be able to wreck political careers and destroy the careers of party treasurers. Those are onerous duties and they will have to be exercised judiciously."[227] However, the member trusted the minister to take this matter into account when appointments had to be made and therefore withdrew the amendment. The Act came into power on November 30th 2000.

During the period of 2000-2007 42 convictions for electoral offences were made, dealing mainly with postal fraud (Wilks-Heeg 2008). In 2004 there were two election petitions that challenged the local election results in the Aston and Bordesley Green ward of Birmingham City Council. Both petitions were done by representatives of rival parties that did not accept the election of the Labour candidates. The cases were heard by judge Richard Mawrey between February 21st and March 22nd 2005. In his ruling on these cases, the judge stated that the evidence of fraud was overwhelming, with an estimated 1500 fraudulent ballot papers that were used. It was proven that large amounts of blank postal votes had been completed by Labour representatives in Aston. Six Labour representatives were convicted for corrupt and illegal practices, although one of them was later cleared by the Court of Appeal in May 2005 (Morris and Wilks-Heeg 2019).

[226] Commons, Political Parties, Elections And Referendums Bill Volume 344: Monday 14 February 2000, Column 676.

[227] Commons, Political Parties, Elections And Referendums Bill Volume 344: Monday 14 February 2000, Column 683.

The introduction of the Electoral Commission and the regulation of the behaviour of political parties both constitute major changes to the way elections are run in the United Kingdom. The Bill consisted of parts that displaced previous legislation, but other parts should be seen as layering. The rulings in fraud cases show that even after all the changes that were made in order to combat fraud, it still exists in British elections.

7.22 Electoral Administration Act of 2006

During the debates on this Bill, the problems with the postal voting fraud were an issue. The Parliamentary Under-Secretary of State for Constitutional Affairs, Bridget Prentice, explained that certain amendments were supported that would enhance the security of postal voting by establishing a scheme that provides for the use of identifiers by postal voters at elections.[228] In the debate, she mentioned the balance between integrity and accessibility: "We have also accepted the practical value that the use of personal identifiers might have in combating fraud. However, it is also an important principle that everyone who is entitled to register to vote is registered."[229]

Mr. Heald spoke on the recent cases of election fraud: "We in this House must do everything that we can to tackle electoral fraud. Faith in our democratic process has been undermined by recent allegations. A judge has said that our system is wide open to fraud and similar to that of a "banana republic". Only last week, election results in Coventry were questioned when it was found that people who were in Pakistan on the day of the vote somehow managed to vote in person at the polling station. I understand that there are currently no fewer than eight petitions in the High Court alleging electoral fraud in the recent local elections. Parliament cannot ignore this problem, especially as we have always taken great pride in our democracy. We used to lecture the world about parliamentary democracy; now, we are in the dock, accused of complacency. Our system is criticised not only by the Electoral Commission—that is an important fact—and by judges; it was also criticised by international election observers at the last general election, including those from Ukraine and Serbia. A few years ago, we would not have expected to have to take lectures from such countries about our system. That says a lot about how our stock has fallen."[230] He then argued for individual voter registration with personal identifiers to combat this fraud.

Opponents of this, such as Chris Ruane, argued that individual voter registration would lead to a drop in registered voters. He also talked about the balance: "When I tabled parliamentary questions on the number of cases of electoral fraud at local and parliamentary level, I was told that there were

[228] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 660.
[229] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 661.
[230] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 664.

one or two a year out of an adult population of 45 million. That is one or two too many. On the other side of the balance, 4.5 million are currently not registered to vote. That is without having put in place any barriers whatsoever—no date of birth, no signature and no national insurance number. Every additional barrier that one puts in front of the registration process will result in additional people not being registered."[231]

Mr. Syms mentioned the chance of deterrence: "I agree with the hon. Member for North Southwark and Bermondsey (Simon Hughes) that these proposals are not a panacea, but they represent a small step forward. They will make those who want to commit fraud think again, because they will slightly increase the prospect of their getting caught and prosecuted. In particular, a system of registration for ordinary voters that involved the checking of a person's date of birth in the polling station would provide a much better chance of catching people who are voting when they should not be. That would add integrity to the process."[232]

The Under-Secretary responded to the comments: "I hope that every Member of the House believes in zero tolerance in response to anyone who abuses the system through fraudulent registration or voting. That is why the Bill increases the penalties for such behaviour."[233] And: "On the issue of fraud versus the register, which seemed to be a theme throughout the debate, my hon. Friend the Member for Vale of Clwyd (Chris Ruane) referred to petitions. At present, eight petitions are before the courts, four of which are about election fraud, while the other four are about other election issues. The Coventry petition relates to about 10 electors, which, as my hon. Friend the Member for Vale of Clwyd rightly pointed out, should be compared with the 3.5 million to 4 million people who are not on the register. Therefore, while we all agree that fraud is bad and dangerous, we should look at it from the perspective of the number of elections that took place this year, the number of people involved in those elections, and the fact that a huge number of people are not yet on the register. That is why we have approached the issue as we have done. We have tried to be proportionate and to strike a balance, which is why we have accepted the Lords amendments on identifiers for postal votes."[234]

The Lords wanted to add individual identifiers to the bill; voters would have to provide a signature and a date of birth. The government opposed these changes and tried to explain to the Commons why. The Under-Secretary stated: "We are also strengthening the law on the provision of false

[231] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 667.
[232] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 682.
[233] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 688.
[234] Commons, Electoral Administration Bill Volume 447: Tuesday 13 June 2006, Column 688.

registration information. Clause 14 will make it an offence to provide false information to a registration officer at any time. In addition, we are making it an offence to provide false information in connection with an application for a postal or proxy vote. At present, the maximum penalty for the existing offence of providing false information is £1,000. The maximum penalty for the new offences under clause 14 will be £5,000, together with up to 51 weeks imprisonment. I am sure the House will agree that that should act as a significant deterrent.[235] She also mentioned recent cases of fraud: "I turn to the issue of fraud in polling stations. I accept that there have been allegations in Coventry recently, and they are being investigated and dealt with in the proper way. However, we must ensure that our response is proportionate. As the Electoral Commission said in previous briefings on the Bill: "There is currently little evidence of personation in polling stations, and equally, little perception of risk attaching to voting in polling stations among voters." In addition, the Bill includes a measure to tighten the rules about polling stations, by providing that in future people must sign for their ballot paper. That provision will mean that there is a better audit trail and it should also provide additional confidence in the system. Signing in polling stations was piloted in three local authorities at the recent elections, including in my authority. Initial indications are that voters broadly welcomed the new measure, and we are aware of no allegations of fraud."[236]

Mr. Heald did not agree: "The background to our first debate in October was the widespread electoral fraud in Birmingham, which had led a judge to say that the systematic fraud there "would disgrace a banana republic".[237] The Under-Secretary interrupted him: "I am usually reluctant to intervene on the hon. Gentleman in his opening remarks, but that is the second time in this debate that he has used the banana republic example. That was the 2004 election and, after that, we put in place a number of measures to secure the system. Birmingham responded to that excellently. He ought to stop using old evidence relating to a system that no longer exists."[238] Mr. Heard stated that he felt that individual voter registration and personal identifiers were necessary, even though the government opposed them: "It is extremely worrying and sad that the Government will not accept that. Even she has to admit that it is alleged that people who were in Pakistan voted in the local elections in Coventry. That is an obvious allegation of personation. It really is not good enough for her to say complacently, "Oh well, we have solved the problem" when the fact of the matter is that the allegations continue. As I said last time we debated the issue, there are eight election petitions currently ongoing. The Electoral Commission argued in its document "Voting for Change" that it was

[235] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 294.
[236] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 296.
[237] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 297.
[238] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 297.

necessary to have individual voter registration and individual identifiers such as signatures and dates of birth. Its advice—it is an independent body, set up by the Government for that purpose—was pretty clear."[239]

Mr. Simon Hughes pointed out the balance between different requirements: "As you know from your constituency, Madam Deputy Speaker, and as we all do from ours, we have to get the balance right on maximising turnout and minimising fraud, both of which we want to do."[240] Mr. Andrew Love copied this sentiment.[241] After the debate, the House of Commons decided to disagree with the amendment proposed by the Lords on the requirement of personal identifiers.[242] On July 10th 2006, the House of Lords decided to not insist on the amendment, even though some members felt that it would reduce the chance of fraud and increase the integrity of the electoral process.[243]

The changes made with the Acts of 2006 however did not stop fraud with postal voting. New petitions were lodged in 2008 (Slough), 2012 (Woking) and 2014 (Tower Hamlets) (Morris and Wilks-Heeg 2019).

The debate on whether or not to introduce personal identifiers is another example of a debate in which the balance between the different requirements of free and fair elections can contradict each other. Parliament once again struggled with the question whether it would be better to introduce new measures to combat fraud which would make it harder for people to vote, or to ensure accessibility of the vote and accept the fact that some cases of fraud would occur. In the end, the latter was chosen and no new anti-fraud measures were introduced.

7.23 Electoral Registration and Administration Bill 2012

In 2012 an amendment was proposed to change the procedure to add voters to the register. The reasoning behind the amendment was expressed by Wayne David: "Unfortunately, if someone was so inclined, they would find it relatively straightforward to add a small number of electors to the register fraudulently over several months. The odds of such fraud being detected reduce in proportion to any reduction in the time available between the publication of the electoral register and an election. I am told that this was part of the problem in the 2007 Slough postal votes fraud.

[239] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 297.
[240] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 300.
[241] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Column 304.
[242] Commons, Electoral Administration Bill Volume 448: Wednesday 28 June 2006, Columns 309-312.
[243] Lords, Electoral Administration Bill Volume 684: Monday 10 July 2006.

The chances of detection are also reduced if the electors added mid-year are new to the register, because the situation will not be apparent from the register itself."[244]

The amendment was withdrawn after the minister promised to look into the issue and to see with the election officials if there would be a technical way to discover these kinds of changes to the register.[245] Therefore no changes were made. Interestingly, in the parliamentary documents, no evidence can be found on the follow-up of this promise to the Parliament. The issue was also not raised again.

7.24 Cases of (alleged) fraud 2010-2020

Even after all these revisions of the legislation, election fraud cases are still part of the electoral landscape of the United Kingdom. As an illustration, some recent cases of (alleged) fraud are described.

In 2010, for the first time since 1911, a person was found guilty of the illegal practice of making a false statement about a candidate under Section 106 of the Representation of the People Act 1983. Mr Woolas, the Labour candidate had made false statements in an election pamphlet during the 2010 general election in the constituency of Oldham East and Saddleworth about the Liberal Democrat candidate, Elwyn Watkins. In the pamphlet, Mr. Woolas claimed that Watkins had sought the support of extremist Muslims and had received illicit funds from a foreign donor. The election court which heard the petition declared the election void and Mr. Woolas lost his seat in parliament on November 5th 2010 (White 2012).

New questions on the interpretation of the rules of behaviour in elections rose during the 2015 General election. They dealt with the way spending limits for parties had to be read. This spending limits were part of the Political Parties, Elections and Referendums Act of 2000. This Act contains strict rules on how much money a party can spend on its national campaign and on any individual constituency. However, during the 2015 election, there was evidence that expenses that were made for activities for a specific constituency were passed off as national expenditure. The areas of concern were the use of direct mailshots, imported campaigning, telephone canvassing and social media. Because it was unclear if these techniques were covered by the legislation or not, very few prosecutions followed (Bowers 2017).

[244] Commons, Electoral Registration and Administration Bill Volume 547: Wednesday 27 June 2012, Column 326.

[245] Commons, Electoral Registration and Administration Bill Volume 547: Wednesday 27 June 2012, Column 327.

During the referendum on the Brexit in 2016 concerns were raised with regard to the integrity of the elections in the United Kingdom. Two days before the day of the referendum, a poll showed that 28% of the people thought it was probably true that the referendum would be rigged. As James and Clark describe there was a social media campaign that urged voters to take their own pens to polling stations in order to mark their ballots in a way that could not be changed by election officials. Concerns were also raised about the correctness of the electoral registry. In the end, the number of suspected cases was low, with only 291 alleged cases of electoral fraud reported to the police in the whole of Britain in 2016 across all electoral events (2020).

These examples show that fraud is still happening within elections in the United Kingdom, but that the number of actual cases seems relatively low.

7.25 Conclusions

This chapter has shown how electoral fraud laws were shaped and developed in the United Kingdom in the 190 years between 1830 and 2020. The material shows that the United Kingdom has had a persistent problem with election fraud in its early years of holding elections. Although numerous attempts were made in the period between 1830 and 1900 to change the legislation in order to prevent and combat fraud, after every election there were still large scale accusations of fraud. This has let to many convictions and overturned elections during that time. Whole cities, including Norwich, were disenfranchised at times because of widescale fraud.

After 1900 the amount of fraud seems to decrease. The growing number of voters per constituency made it harder for candidates to bribe enough voters in order to win. The strict limits on election spending, meant to create a level-playing field seem to have its effects. However, that did not mean that there was no longer a problem with some forms of fraud. The introduction of postal voting let to new cases of fraud, sometimes on a very large scale. Nowadays, new issues arise, dealing with social media and “fake news” campaigns about the integrity of the electoral system and its actors.

The chapter also shows that the development of the laws concerning election fraud in the United Kingdom show both moments of critical junctures, such as the decision to start regulating campaign finances and the decision to allow voters living abroad to vote, but also many moments of gradual change or stability in the legislation.

In the next chapter, chapter 8, the evidence that is collected in the two case studies will be compared and analysed.

Chapter 8 Analysis

8.1 Introduction

This thesis began by highlighting the importance of democratic elections. True democratic elections can only take place if there are suitable measures in place to prevent fraud from happening in the first place and to punish people who commit fraud. In order to do the latter, the legislation of a country has to be clear on what acts are considered election fraud and include punishments that are serious enough to be a deterrent against fraud. Even though there might be international norms and standards on what should be considered election fraud, this in itself is not enough to punish perpetrators in a country. More attention therefore should be given to country specific legislation.

The thesis also noted that differences in the legal definition of election fraud per country also have implications for international observation missions. If there is no internationally agreed legal standard of election fraud, chances are that observers look at elections in another country with a biased view, stemming from their knowledge of their country of origin. This could lead to situations that could potentially undermine trust in elections, for example when an observation mission declares that elections were not free and fair and that fraud has been committed, but no-one can actually be persecuted and convicted for such fraud because it is not included in the national legislation.

This study therefore sought to understand why established democracies define their electoral fraud laws differently. It did so by investigating the different definitions of election fraud in the legislation of the Netherlands and the United Kingdom. In this study, election fraud is defined as a violation of *the legal norms of a country that deal with the election.* Its aim is to show how the two countries define election fraud, where there are differences in those definitions and why these differences exist. As described in Chapter 3, this study is grounded in the historical institutionalist tradition. Election laws could be considered part of the institutional order of a state since they regulate the way in which representatives and political leaders are chosen. Historical institutionalism is interested in how institutions change over time and why (Sanders 2006). This study focuses on the institutional and historical context for and shaping of the laws dealing with election fraud. The changes in these laws are seen as highly context-specific, with a focus on formative moments and path dependency.

Earlier research has been done on electoral institutions, as is mentioned in Chapter 2. This literature is used to develop three hypotheses about why the definition of election fraud might be different in different countries:

1. Countries with a civil law system will have clearer defined laws on election fraud than countries with a common law system
2. Countries with a majoritarian electoral system will define more acts as election fraud and will also have higher sanctions for those acts than countries with a proportional representation system.
3. Countries that have experience election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries which have not experienced much election fraud.

These hypotheses will be discussed in more depth later on in this chapter. However, since no systematical comparison of the history of election fraud legislation between different countries has yet been undertaken, an iterative approach was used to allow for the possibility to explore new theories on this matter (Yom 2015, 626).

The study is a small n-case study that uses a long term approach to the two cases. This long-term approach is necessary because any approach that focuses only on short-term effects would not be able to see and explain the slow and gradual change in this type of legislation. The current articles on election fraud in the election law were formed over time, where sometimes new crimes were added, sometimes acts were no longer considered election fraud or did not occur anymore and sometimes the wording of the articles was adapted. Therefore, the study uses process tracing to show how different developments in the countries at various moments in time let to the current outcome. The two countries that were studied, the Netherlands and the United Kingdom, were selected on the basis of a "most-different" research design. In order to these the hypotheses, the cases have to differ in the legislative system, where one of the countries has to have a civil law system and one a common law system and their electoral system, where one has to use a system of proportional representation and one a plurality system. The Netherlands and the United Kingdom differ in their legislative system and their electoral system. Both however are old democracies, providing for a long history of changes. The study was carried out by mainly looking at parliamentary debates on election legislation, with a focus on election fraud. Relevant previous research on these countries, especially for the United Kingdom case, court cases and newspaper articles were used to enrich the findings from the parliamentary documents. The combination of legislative documents, other archival material and previous studies provided triangulation, which increased the validity of the findings (Lange 2013).

This study also aims to contribute to this practical aspect of elections by providing some guidelines for international organisations dealing with electoral assistance and election observation to what

could and should be included in the election law in terms of fraud. These contributions are discussed in Chapter 9.

In Chapter 6, the development of the relevant legislation of the Netherlands is described. It starts with the first Election Act of 1850, which included no articles on election fraud. With the expansion of the franchise, issues arose over the question who had the right to vote, leading to the inclusion of articles on voter personation. With the introduction of the general franchise, combined with a new electoral system of proportional representation, new crimes were added to the election law. This became more important when different means of voting were made possible, such as proxy voting in 1928 and mail voting for voters living abroad in 1983. Other relevant issues that were debated where the duty to vote, fraud with signatures to support parties and candidates and possible fraud with new technologies, such as voting computers and software for the tabulation of results. However, the number of debates on the actual articles in the Electoral and Criminal Code is limited and the issue of what punishments should be used is hardly ever raised. Another finding is that most of the changes happened gradually and that there were a number of occasions where there seemed to be momentum for change in the legislation, but in the end, Parliament made the decision not to do so.

Chapter 7 has shown how the United Kingdom shaped its legislation on election fraud between 1830 and 2020. The material shows that the United Kingdom has had a persistent problem with election fraud in its early years of holding elections. Although numerous attempts were made in the period between 1830 and 1900 to change the legislation in order to prevent and combat fraud, after every election there were still large scale accusations of fraud. This has let to many convictions and overturned elections during that time. Whole cities, including Norwich, were disenfranchised at times because of widescale fraud.

After 1900 the amount of fraud seems to decrease. The growing number of voters per constituency made it harder for candidates to bribe enough voters in order to win. The strict limits on election spending, meant to create a level-playing field seem to have its effects. However, that did not mean that there was no longer a problem with some forms of fraud. The introduction of postal voting let to new cases of fraud, sometimes on a very large scale. Nowadays, new issues arise, dealing with social media and “fake news” campaigns about the integrity of the electoral system and its actors.

The chapter also shows that the development of the laws concerning election fraud in the United Kingdom show both moments of critical junctures, such as the decision to start regulating campaign

finances and the decision to allow voters living abroad to vote, but also many moments of gradual change or stability in the legislation.

These in-depth case studies are an integral part of the contribution of this thesis to the existing literature. Although there is previous literature on election fraud in the United Kingdom, most of it focusses on the nineteenth and early twentieth century (among others O"Leary 1962, Butler 1963, Seymour 1912). For the Netherlands, existing literature is even more scarce with only small studies done in Dutch by de Jong (1999, 2008) and de Jong and Rutjes (2015) into historical development in electoral practices including election fraud. The descriptive chapters 6 and 7 try to fill these gaps by providing a historical narrative of the development of electoral fraud legislation in two countries, spanning over 170 years.

The findings of the case studies are first discussed in more detail and then summarized in the dimensions of electoral fraud law matrix, which allows for the comparison of the properties of electoral fraud laws of different countries. This matrix is a new contribution to the literature and is a result of this study. Then I will return to the hypotheses in light of the empirical evidence collected. Based on the collected empirical material, there are also some inductively discovered explanations that are discussed. The chapter ends with a conclusion.

8.2 Case study divergencies

From the description of the current articles on election fraud in the Dutch and the United Kingdom legislation in Chapter 5, it is clear that there are major differences in the law between the countries. The legislation from the United Kingdom is much more detailed than the Dutch legislation and contains many more crimes. The Dutch legislation contains in total 14 articles on electoral crimes and 3 additional ones on punishment. The United Kingdom has at least 30 articles that deal with crimes and another 10 that describe the punishments. And although the maximum punishment that can be given in the Netherlands is higher (6 years imprisonment versus 2 years in the United Kingdom), most election crimes in the Netherlands carry a lower punishment than those in the United Kingdom. In addition, in the United Kingdom part of the punishment for candidates who commit election fraud is annulment of their election, something that is not possible in the Netherlands. So, what can be learned from the historical developments that can explain these differences?

8.2.1 The origins of early election fraud legislation

The legislation in the two countries had different origins. The Dutch discussion on election fraud during the period between 1850 and 1886 focused almost solely on fraud committed by people in order to obtain the right to vote. Because a person had to pay a certain amount of tax to be able to vote, the first cases of fraud dealt with people claiming to pay more tax than they did or trying to circumvent these rules in another way. This happened for example in Nijmegen in 1856, where somebody other than the voter had paid their taxes for them, because the Election Act did not specifically state that it had to be the voter who pay the taxes in order to be eligible to vote.[246] In 1875, some people in Elst, some people had managed to vote by claiming to have paid taxes for patents for a company that did not exist.[247] In the United Kingdom, although there were issues with people trying to obtain voting rights through illegal means, such as the practice of marrying a freeman's daughter on the day of the election and divorcing her right after (Seymour 1915, 35), the focus was more on voters being *bribed* to vote, for example by treating them with drinks or giving them money. In Liverpool during the 1830 election, a hundred thousand pounds was spent in bribing voters (Seymour 1915, 167). Between 1832 and 1854, the boroughs of Beverly, Lancaster and Reigate were disenfranchised completely, due to the large amount of bribery that took place (Seymour 1915, 87).

An important finding is that the number of debates in Parliament in the United Kingdom on election fraud, especially during the period up to 1900 was a lot higher than in the Netherlands. Some of the rhetoric used in the debates was the same: the expansion of voting rights for example let to debates in both countries on the fact that this gave poorer people the chance to vote. Both parliaments felt that these voters would be more likely to be susceptible to bribes, so they felt a need to include the crime of bribing a voter into the legislation. However, already in this period of time there are significant differences in the legislation. Besides the examples mentioned above, these differences can be connected to geographical differences and different ways of running elections. An example of a geographical difference leading to different acts being mentioned in legislation is the size of the country. In the United Kingdom many parliamentary debates dealt with the issue of the use of carriages and later motor cars to bring voters to the polling station. In 1883, this issue let to a debate on the question if this was covered by the Corrupt Practices Act.[248] In 1911, The Chief Whip of the Irish Parliamentary Party, Donelan saw his election overturned by judges because of, amongst other illegal acts, the fact that he had offered rides to voters (O'Leary 1962, 222-225). Since the Netherlands is a lot smaller than the United Kingdom and voters were therefore not reliant on these

[246] Handelingen II May 26th 1856, 791.
[247] Kamerstukken II 1875/76, 91, nr. 2.
[248] House of Commons, Volume 281: Tuesday 10 July 1883, Column 1015.

forms of transportation to get to a polling station, that was not an issue that was discussed often. It was only mentioned once or twice in the period between 1900 and 1917. This did not lead to specific articles in the Election Act, but was seen as included into the act of trying to influence a voter with a gift or bribe.

When it comes to the different ways of running elections, in the Dutch system, until 1896, voters would get their ballot paper at home. This let to fraud by people collecting the ballot papers from the homes of the voters and either filling them in themselves, or crossing out the vote from the voter and changing it. In the United Kingdom, this kind of fraud did not occur, because voting was already done in polling stations.

8.2.2 Definition of election fraud

Another finding is that even when acts are found in both laws, the manner in which they are defined is different. For example, the use of drinks to influence voters can be seen in the history of both countries. However, in the Dutch law, this is not mentioned as a specific crime, where as in the United Kingdom legislation, the act of treating a voter has been a crime since the first Act on illegal behaviour in elections, the Corrupt Practices Act of 1854. Interestingly, treating, defined as "the provision of drinks of entertainment at times of elections", was defined as corruption, but not as vote buying (Williams 1906, 332). This pattern can be found in more areas, the Dutch law tends to be more general in its descriptions of unwanted behaviour than the United Kingdom legislation, as can also be seen in Chapter 5 were the legislation is cited.

In both parliaments however, there is often a struggle with the definition of certain behaviour. An example is the use of carriages, horses or other animals to bring voters to the polls, other than those which the voter owned or paid for in United Kingdom elections. As Sir Assheton Cross mentioned in the debate the way the clause was worded could be interpreted differently.[249] In the Netherlands, during the debate in 1876 about the people who had claimed to be voters based on falsified tax papers, the parliament asked the government to change the law to prevent this. However, the government pointed out that it would be very hard to find an accurate description of this crime that could be included into the legislation.[250] Another issue that was raised in the United Kingdom dealt with the nursing of a constituency. In 1906, this let to a case where the judges differed in their interpretation of the law. The question that was before the court was if the expenses that a person had made in order to get acquainted with the constituency should be included in the official return

[249] House of Commons, Volume 281: Tuesday 10 July 1883, Column 1015.
[250] Kamerstukken II 1874/75, 91, 5-6.

of the candidate's expenses. Judge Channell felt that they should, judge Grantham disagreed. The latter stated that in 1883, during the debates on the Corrupt Practices Act, the practice of nursing constituencies was not considered by the parliament as being part of this requirement. In another case during the same year however, the same judge ruled in another election case that nursing the constituency was corrupt treating, even though the amount spend had been less than in the previous case (O'Leary 1962, 218-220).

In the Dutch case, problems with definitions can be seen when electronic voting is introduces. The Election Act contained specific articles on fraud with ballot papers, but not on fraud with votes, cast on a voting computer. As mentioned in Chapter 6, Luwoski noted this, but it did not lead to changes in the legislation.

8.2.3 Changes over time

In both countries, the terms that are used in the law and the behaviour that is discussed changes over the years. As described above, in the Netherlands, there was first a lot of attention to the crime of getting on the voter list without paying the proper taxes. After the expansion of the suffrage and the introduction of the secret ballot, the debates focused more on bribery of voters, fraud with ballot papers and other forms of illegal behaviour that could take in the polling place. With the introduction of proxy voting in the 1920s, parliament held a number of debates on how to prevent fraud with proxy votes, such as the debate in 1976 where MPs proposed the introduction of voter identification to combat fraud with proxy votes[251] and the debate in 1993 on claims that in some municipalities proxy votes were sold in cafés for a pint of beer.[252]

During the period in which mandatory voting was prescribed (1917-1970), questions were often raised about whether, if people who did not vote, with special attention to women, should be punished and if so, how severe the punishment should be. The introduction of mail voting for voters living abroad in 1983 sparked interest in mail voter fraud. The Landerd case, which showed that fraud with voting computers was possible, while those voting computers were used in 95% of the polling stations led to long debates in the period of 2006-2008 on the use of electronic voting and the possibility of fraud (Loeber 2008). Since that period, the issue of election fraud in Dutch elections had more of a political nature, as mentioned in Chapter one. The latest debates have centred mainly about misinformation and foreign meddling in elections. In the parliamentary year 2018/19 alone,

[251] Handelingen II September 28th 1976, 147.
[252] Handelingen II June 23rd 1993, 5940.

this let to three motions being introduced by different members of parliament from different parties, that called for more investigations in this topic.[253]

In the United Kingdom, a similar pattern can be seen, but with different outcomes. At first there was a lot of attention to the acts of bribery, vote buying and treating. Parliament really tried to curb this kind of behaviour with the corrupt and illegal practices Acts of 1886 and 1872. However, the election held in 1880 proved that these acts had not done enough to prevent illegal practices. This led to a very strict act in 1883, the Corrupt Practices Act of 1883, which passed parliament quite easy. The way that this Act was discussed shows that members of parliament were frustrated with the fact that the previous Acts had not had the desired effect. Afterwards, the attention shifted to illegal use of finances, problems with double voting and fraud with voter registration. Similar to the Netherlands, after the introduction of mail voting, cases appeared of fraud with mail votes, which let to changes in the legislation in order to try to prevent this. Interestingly, in the current United Kingdom legislation, the crime of treating is still part of the law, even though with the increase of voters, it is very unlikely that a candidate could sway an election with that kind of behaviour. This latter example might be evidence that legislation that deals with criminal behaviour is more likely to get stricter over time, especially when it is discussed more often. Both cases show that new acts are added to the list of criminal behaviour, but there is not a lot of debate on removing acts that might no longer be relevant.

With regard to measures taken to increase turnout, fraud was also a topic in the debates. Again, however, the debates in both parliaments are often held along similar lines, but could lead to different outcomes. In both countries, in more recent years (in the Netherlands starting at 2004 and in the United Kingdom in 1997), pilots were held to vote at different places than polling places. During the debates on this pilots, in both parliaments the question was raised whether or not this could lead to fraud and if this could be prevented. In the Netherlands this let to the introduction of mandatory voter identification. In the United Kingdom, although the introduction of voter ID has been discussed many times, so far, this requirement is not included in the legislation (Alonso-Curbelo 2022, James and Clark 2020). Comparable is the issue of voters who cannot vote in a polling station on election day. In the United Kingdom the choice was made to introduce mail voting for these voters, however, proxy voting was seen as too dangerous in terms of the possibility of fraud. In the Netherlands exactly the opposite happened, proxy voting was and is still accepted as a good way

[253] Asscher and Buitenweg, Kamerstukken II 2018/19, 35078, nr. 21, Asscher and Van der Molen, Kamerstukken II 2018/19, 30821, nr. 60 and Kuiken and Verhoeven, Kamerstukken II 2018/19, 32761, nr. 145.

to include these voters, whereas mail voting is only allowed for voters living outside the country because it is deemed too easy to commit fraud with. This could be seen as evidence that customs that have been around for a long time are seen as more reliable than methods that have not been used in that country before.

8.2.4 The importance of combatting election fraud

The way the importance of combatting election fraud is discussed differs between the countries. In the Dutch parliament, the main rationale for including certain acts into the law is that these are practices which undermine the reputation of the parliament and the government. Even though this argument also is mentioned in the United Kingdom, especially in the period between 1868 and 1883, there is another argument that seems to play a role. With the expansion of the electorate, certain old practices such as treating, paying voters to go out and vote and driving them to the polling station became a financial burden that was intolerable on all but the richest candidates. The argument to include these acts as crimes in the election act therefore was not just to ensure clean elections, but also to level the playing field between the candidates.[254] The Parliament was not necessary trying to prevent corrupt practices but wanted to dimmish the vast expenses of elections.[255]

This same argument, levelling the playing-field can also be used to explain why in the United Kingdom as early as 1854 rules were introduced to monitor election expenses. Candidates and parties used this information to see whether or not their opponent might be treating voters in order to get their vote. The use of small, single member districts means that candidates have a more direct link to their voters than candidates in bigger districts would have. Therefore, within a system with smaller districts, it is easier to control the outcome of an election with the use of bribes and other forms of influencing voters. In contrast, in the Netherlands, where national elections are basically held in one nation-wide district, even now, there are very little rules on election expenses, especially when it comes to individual candidates. It has even gotten to the point where GRECO, who monitors this financial oversight of elections regularly recommends to include more detailed articles on this issue in the Dutch legislation. So far however, this has not really been implemented.

8.2.5 Who is the offender?

[254] House of Lords, Volume 283: Thursday 16 August 1883, Column 697.
[255] House of Lords, Volume 283: Thursday 16 August 1883, Column 701.

The legislation does not only has to determine which acts are criminal, but also who can be convicted for them. This last question was part of debates in both countries. In the United Kingdom before the legislation of 1883, according to the law only candidates and voters could commit election fraud. In practice, this meant that if other people acted on behalf of the candidate and exhibited behaviour that was forbidden in the law for the candidate, they could not be punished for it. This meant that it was easy for candidates to circumvent the rules, by letting their agent of some other person commit the acts they were not allowed to. In 1883 this was changed, by means of the Corrupt Practices Act of 1883. Agents were now specifically mentioned in the legislation. In the Dutch case, this issue is not as much addressed in the parliamentary debates or legislation, but can be found in the speech of Public prosecutor Luwoski, mentioned in Chapter 6.

This wording that only tailors to voters can lead to questions who is liable in case the fraud is perpetrated by candidates, parties or even governmental officials. For example in the case of the United Kingdom, the question if when the agent of a candidate commits fraud by not properly filing the financial paperwork, the candidate should be punished for this or not. For the wording of the legislation, it is not always clear how much knowledge the candidate must have had about the fraudulent behaviour in order to be at risk of prosecution. In the Dutch case, because the Constitution is based on the idea of elections of individual parliamentarians, instead of political parties, this unclarity in the legislation could be used to circumvent the rules. In such a case, the party could act fraudulent in favour of the candidate, but the candidate itself could not be punished for it. This issue of who is to blame for which behaviour is also relevant when it comes to the possible punishments that are attached to the fraudulent behaviour.

8.2.6 Punishments

As is mentioned before, just marking something as a crime in the legislation is not enough to prevent it from happening. First, if something is to be gained for the unwanted behaviour, people will most likely be willing to break the law. Therefore, there must be a punishment attached that is serious enough to act as a deterrent. In regard to election fraud, the gains can be quite high, especially if the fraud can lead to winning the election opposed to losing it. This means that possible sanctions cannot be very light. Another issue is what kind of sanctions are useful here. Usually, criminal sanctions are fines or a prison sentence. A sanction of a fine can only act as a deterrent when the height of the fine outweighs the possible financial means that can be gained from committing the crime. Prison sentences have a higher chance of being a deterrent, but come with other downsides. A government should not be too quick to lock up its citizens, this should be reserved for serious crimes that have an impact on society. Since there are different kinds of election fraud, ranging from

less to very serious, there will need to be a differentiated system of sanctions as well. From the debates in both countries, it is clear that this issue is debated to some extent in parliament. In some cases sanctions were increased in order to act as a better deterrent. In other cases sanctions were decreased since the underlying crime was seen as less serious.

Another option to deter election fraud is to use sanctions that are outside the criminal system. In the United Kingdom, it is possible to overturn the outcome of an election if fraud was committed. This can be a very effective remedy to prevent the person committing fraud for benefiting from it. In the Netherlands, this option does not exist in the same way. However good this possibility is, there is the risk of it being used in a partisan way. This is stressed by different members of parliament in the United Kingdom in debates in different eras. If by accusing your winning opponent of fraud, the election results might be overturned, steps have to be taken to prevent every losing candidate from crying fraud. If that route become too easy, the term election fraud becomes a political instrument, as mentioned in the introduction. If that happens often, it can have detrimental effects on the trust of voters in the integrity of the elections, because it will be almost impossible for the general public to distinguish between legitimate issues with an election and nonsense claims. Therefore, there should be good procedures in place that are accessible enough to raise the legitimate questions, but at the same time prevent as much as possible spurious claims.

Sanctions only however at also not enough, as was mentioned in paragraph 2.7. In order to effectively deter election fraud, more is necessary. Sanctions only work if they are actually applied in cases, meaning that after a claim of fraud, an investigation has to be launched by police or other law enforcement agencies, evidence has to be collected that is compelling enough and finally, the person that is guilty must be convicted by a court. Most cases of election are hard to prove, due to the secret nature of elections. These cases therefore require specific knowledge, both by the police officers handling the initial investigation, the prosecutor and the judges that are involved.

8.2.7 Court cases

In the United Kingdom, the courts got the mandate to review cases of alleged fraud in 1883. Before that time, it was Parliament itself who handled election petitions. In the Netherlands, election petitions regarding the outcome of elections do not exist in a same manner; the courts are only involved when it comes to criminal cases. From the history of the court cases in the United Kingdom, it is clear that rulings are a factor when Parliament discusses election fraud. Cases are often mentioned as is shown in Chapter 7. However, the effect of court cases on the legislation is notin one direction only. Sometimes they have let to an expansion of the prohibitions in the legislation,

especially when the courts ruled that behaviour might have been questionable, but not illegal. In those cases, parliament has sometimes strengthened the law. In other cases however there have been rulings that lessened the intended effect of the law. An example of such a case was the ruling in the case against Randles, where the judge interpretated the Act of 1895 in a limited way, stating that the crime included in the act was directed against criticism of personal nature, not of political action and therefore did not apply to this case.

8.2.8 Cycle of issues

What is clear from both cases is that some issues in elections tend to be discussed in many periods of history. In the present, the issue of fake news and interference by foreign powers is a hot topic, which is debated in both the parliament of the Netherlands and that of the United Kingdom. However, this discussion is not new, already in the 1900s it was reason for the United Kingdom to make laws about making false statements about other candidates and to prohibit broadcasting news dealing with the elections from other countries. In the same manner, debates about the use of some form of identification by the voter to prevent fraud have been discussed in both parliaments many times. What also is clear is that there is a constant balance that has to be struck between keeping elections accessible to legitimate voters and preventing fraud. Measures that improve the accessibility often make it easier to commit fraud, for example the use of mail ballots or proxy votes. On the other hand, measures that make elections more resistant against fraud, such as the introduction of voter ID, make it harder for voters to actually cast their vote. In both parliaments, with the historical developments as described in the Chapters 6 and 7, the struggle to find the correct balance between these goals can been seen.

8.3 Dimensions of electoral fraud law matrix

The findings that are mentioned in paragraph 8.2 can be summarized in a matrix, looking at each of the properties that were found to be relevant in the case studies. By using such a matrix, based on these two case studies, a model is provided that allows for the comparison of electoral fraud laws on the basis of properties and characteristics. The advantage of using a matrix is that it allows for a simplified representation of complex laws and practices that developed over time. By reducing the complexity by means of a division in a limited number of specific properties and characteristics, the matrix allows for constructive comparison of the countries that were studied and thus gives a frame and focus for the analysis. This model could then be used to add other cases since it gives guidelines to other researchers which properties or characteristics of election laws can be relevant to study. When used that way, the matrix provides a means to expand the findings of this study more generally.

Property/Characteristic of the legislation	Netherlands	United Kingdom
Reasons to combat fraud	Reputation of parliament, trust in institutions	Trust in institutions, level-playing field between candidates
Origins	Fraud in order to get voting rights	Bribery
Definitions	Broad general articles	Specific articles for different illegal actions
Offenders	No difference between voters, candidates, parties etc.	Differences in some articles between offenders
Punishments	Imprisonment of fourteen days up to six years depending on the crime, or a fine. Very limited possibility to lose active and passive voting rights. No possibility of overturning the election result.	Imprisonment up to two years, or a fine. Loss of passive or active voting rights for five years. Annulment of election is candidate is found personally guilty or guilty by his agents of any corrupt practice.
Role of the courts	Only for criminal convictions	Criminal convictions, but also overturning results

Table 2: Dimensions of electoral fraud law matrix

8.4 Hypotheses

The study started out with three hypotheses. I will now discuss these to see if the cases on the Netherlands and the United Kingdom provide supporting evidence for them or not. As stated, because there is no previous research that focuses on the systematical comparison of the history of election fraud legislation between different countries, an iterative approach was used to allow for the possibility to explore new theories on this matter.

8.4.1 Hypothesis 1

The first hypothesis was that *Countries with a civil law system will have clearer defined laws on election fraud than countries with a common law system.*

The evidence presented in Chapter 5 on the current legislation of election fraud in both countries contradicts this hypothesis. The Netherlands had a civil law system, the United Kingdom a common law system. The relevant legislation of the United Kingdom is more extensive and detailed than the corresponding Dutch legislation. As mentioned in the matrix above, the Dutch articles on election fraud are generally wording, encompassing different behavior that is illegal in one article. In the legislation of the United Kingdom, articles are more specifically worded, aiming to define one type of

illegal behavior per article. This means that from these two case studies there is no support for this hypothesis.

There are possible explanation why the reasoning behind this hypothesis does not work for the specific topic of election fraud. It could be that parliaments, both in civil law and in common law countries are more interested in the topic of this legislation than in other areas of the law. This because all the members of parliament were at some point a candidate and a voter and had to know which behavior was allowed and which was not. The examples given by members of the United Kingdom parliament about people they knew who committed fraud or were accused of fraud highlight this. The topic is one that is really personally close to home for parliamentarians and thus the debates and the outcome of the debates might therefore be different than that of other pieces of legislation.

Another issue is that in both countries court cases dealing with election fraud are relatively rare and usually not very successful. Because of the secret nature of the vote, it remains difficult to prove that election fraud actually has occurred. Since voters do not have to register beforehand how they think they are going to vote, proving that somebody changed their minds with bribes of treats is almost impossible. And even if fraud can be proven in a specific case, the burden to proof that that fraud actually managed to change the outcome of the election, with the high number of voters in elections is even higher.

In the United Kingdom the option to challenge the results of an election in court was introduced in 1883. This has led to a number of cases over the years, but with a focus on overturning election results and not necessarily on punishing those who committed fraud through criminal sanctions. For example, in 2019, 595 cases of alleged electoral fraud were investigated by the police. Of these, four led to a conviction and two individuals were given a police caution.[256]

As stated, in the Netherlands, there is no option to challenge the result of an election in a court case. The only remedy against election fraud is therefore to launch a criminal investigation against the person or persons who are suspected to have committed fraud. The chances of conviction are low, due to the reasons mentioned above and the punishment that can be awarded is low. As in all countries, the prosecutor has to decide which cases to pursue and which to let go. In light of the options of successfully convicting someone for election fraud, it is very likely that cases of possible

[256] https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data/2019-electoral-fraud-data.

election fraud are not high on the agenda for prosecution. Therefore, there are less cases, which could lead to less changes in the legislation.

8.4.2 Hypothesis 2

The second hypothesis is: *Countries with a majoritarian electoral system will define more acts as election fraud and will also have higher sanctions for those acts than countries with a proportional representation system.*

The countries studied provide some supporting evidence for this hypothesis. The case of the United Kingdom shows a number of acts that deal specifically with election fraud, especially in the earlier years. The Reform Act of 1832 tried to deal with the large instances of corruption that took place during the elections of 1830. This act was followed by fraudulent registrations of voters by the Anti-Corn Law League, which let to a Parliamentary Inquiry in 1846, which resulted in the recommendation that the Act should be changed (Seymour 1915, 134-243). With the Corrupt Practices Act of 1854, Parliament tried to address the issue of bribery which was still used on a grand scale (Seymore 1915, 226-227). Yet again, this did not prevent the fraud from continuing, during the General Election of 1868, there were many reports on bribery and intimidation, leading to an act in 1872 on the elimination of corrupt practices (O'Gorman 2007). This pattern was repeated after the 1880 election, on which the Parliament noted: "The corruption at the late election was far more widespread and for more open than had been the case at any previous parliamentary election" (Great Britain Parliament 1881, 36). Once again, a new bill was drafted to deal with this, resulting in the Corrupt and Illegal Practices Act of 1883.

In the Netherlands a similar pattern can not be found. During the 170 years that were studied, there were no separate bills introduced that only dealt with election fraud. Changes to the articles dealing with election fraud are rare and usually part of a bill that dealt with the introduction of a changed way of voting, such as the introduction of proxy voting or mail voting. In those cases, the articles on election fraud were changed, not as a result of committed fraud, but because the new way of voting required new definitions to be included in the articles dealing with election crimes.

These patterns of change can explain why the legislation in the United Kingdom on election fraud is more extensive than that of the Netherlands. The law contains many more acts that are deemed fraudulent and the crimes are described in a more detailed manner. Also, the sanctions that can be imposed are a in most cases higher than those in the Netherlands. First of all, the option to overturn the outcome of elections in case of fraud is a serious sanction, which can be a good deterrent against fraud. In a pluralistic system, this can be done easier than in a system of proportional

representation, due to the way elections are organized. When comparing the countries, this is clear. In the United Kingdom, with elections taking place in a single member district, if the results are overturn, one can hold new elections in that particular district. The results from the other districts where there were no issues of fraud are not effected in any way. In the Netherlands, the results of all polling-stations are combined to calculate the outcome of the elections, basically making the whole country into one giant district. Overturning results in one polling station or one municipality would mean that this could potentially affect the national result. This could be a reason that this option is not used as it has been used in the United Kingdom.

When looking at the criminal sanctions that can be applied in case of election fraud, although the maximum sentence in the Netherlands is higher (6 years, against 4 years in the United Kingdom), this only applies to two specific articles. For other crimes, in comparison, the sanctions in the United Kingdom are higher. This could be an indication that such high sanctions are seen as necessary to be a good deterrent.

8.4.3 Hypothesis 3

My third hypothesis is:

Countries that have experienced election fraud in the past are more likely to have more and stricter acts included in their legislation as election fraud than countries with lower levels of fraud.

Looking at both cases, this hypothesis seems to have merit. The United Kingdom has had many instances of election fraud from its earliest introduction of elections. This has led to many bills, with articles that are still included in the current legislation. Also, there have been many more debates in parliament on these bills. In the Netherlands, perhaps due to the lack of court cases, there has been less documented fraud and therefore less need to legislate.

8.5 Parliamentary rhythm and processes

After examining the hypotheses I stated at the beginning of this research when looking at the actual cases studies, there might be another explanation that could play a role in the differences in legislation on election fraud between the Netherlands and the United Kingdom.

One phenomenon that I noticed is that the rhythm and processes of the parliamentary debates is quite different in the two cases and this might have an influence. In the Netherlands, most of the preparation stages of debates on bills take place in writing where members of parliament ask questions and the government answers them, all done on paper. Much of this phase takes place in

committee form, with only one member of each party participating. Then even during the oral discussion of the bill in the general assembly, it is unlikely that other members of parliament play an active role, usually during these debates it is the specialist of each party that will take part. The amount of parliamentarians that actually are involved with a bill is therefore relatively small. This can been seen from the debates as well, a bill is hardly ever discussed more than two times and the total amount of time spend on it is relatively low. The procedure of a bill in parliament is also one-directional, meaning that it is always first discussed and voted on in the Lower House and then, after an affirming vote, send to the Upper House. There is no option for starting a bill at the Upper House, of sending it back and forth between the Houses.

Another aspect which seems important is the fact that bills in the Netherlands are not linked to a specific parliamentary year and can sometimes be in parliament for a number of years. This has benefits, as it enables a total overhaul and consolidation of legislation, as was done with the election act on multiple occasions. However, it can also mean that bills that are not the most political salient can keep moving down on the list of priorities. Elections and specifically election fraud are clearly not high on the list of items of political salience in the Netherlands. They are interesting right after an election, but not necessarily in between. This means that government can get away with making promises to look into an issue or to come back to a question without actually doing so. This happened for example in 1992 when the Dutch parliament asked the government to investigate which options there could be to introduce a more tailored approach to punishing election fraud, by not only using criminal sanctions, but also exploring the option of annulment of results or the loss of membership of the elected body.[257] The government never carried out this request, but parliament also never asked about it again. Also, fairly often, the government claims that an issue or question deals with a technical point that requires debate with those organisations that run elections, such as electoral management bodies, without indicating when parliament will be informed on the outcome of this debate. In both countries, this answer seems to satisfy parliament to the point where the issues is not put back on the agenda again.

However, in the United Kingdom, there are features in the parliamentary process that lead to more intense debates on the issue of election fraud. Before 1883 there were a number of bills whose main topic was election fraud. This debates were extensive and many parliamentarians took part in them. After that time, the content of the bills is less focussed and deals mostly with elections in general, on issues such as the voting age, the electoral system or the means of casting a vote. In those instances, the issue of fraud usually only surfaces in the last stages of the parliamentary process, due to

[257] Kamerstukken II 1992/93, 22972, nr. 13.

amendments or questions on specific clauses in the bill. In those stages, from the debates studies and described in chapter 7 it is clear that the structure of the parliament of the United Kingdom is more adversarial than that of the Netherlands. This stems in part from the first past the post electoral system. Because all members of parliament have to be elected on their own program and contributions to the debates, many more members participate. This is not limited to the experts of each party as in the Netherlands. This often leads to heated debates between even members of the same party. Also, the system where the Houses both can suggest amendments and a bill can move multiple times between the Houses leads to more debates, even on the finer points of the bill.

What is also interesting to note here is that in many of the debates in the United Kingdom, members of parliament explicitly mention their own experiences with election fraud. This could be due to the more direct link between a member of parliament and his or her constituency; the member will be very aware of what happened during the last elections in that constituency. Finally, in the United Kingdom, there is a deadline to bills, there is only limited time to debate them. This sometimes means that parliament has to agree with a bill, even if they are not completely happy with all its clauses, because there is no time to make any more changes. This can lead to a sense of urgency to debate a bill on elections and election fraud and gives it more salience.

The cases give some evidence for this theory. The parliamentary process in the United Kingdom only allows for a limited number of bills to be introduced each year. In the period between 2017-2019, 149 bills were discussed in parliament (House of Lords 2020). In the Netherlands, there are less limitations. In the same period, the number of bills that was introduced is estimated to be about 3 times as high, around 450, based on the requests for advice from the Council of State in that period. This means that in the United Kingdom, bills on elections have to compete with bills on other subject to be included in the legislative agenda, where as in the Netherlands this is not the case, bills on all subjects can be introduced simultaneously. This means that it will be more likely for a bill on election to be introduced in the United Kingdom only in those cases where there is a pressing need, but when that happens, the bill will encompass many changes, including those that might have been desired before, but were not urgent enough. The bills studied in this thesis from the United Kingdom confirm this, they are often long and deal with all parts of the elections. For example, the Political Parties, Elections and Referendum Act of 2000 contains 163 articles, excluding several schedules and amendments of other acts. In total, the Act is 491 pages long. The Electoral Administration Act of 2006 contains 156 articles and is 169 pages long. The Electoral Registration Act of 2013 is relatively short, with 28 articles and 5 schedules and a total length of 49 pages. In the Netherlands, there are more frequent, but smaller reforms, dealing only with a limited number of articles. Recent bills have

dealt with the electronic publication of the results of elections[258] (7 articles, 3 pages) and new procedures for voters living abroad (16 articles, 5 pages).[259] The difference in scope and in length of the bills will lead to different debates in the respective parliaments and thus in different outcomes.

This means that the electoral rules around the world might often be more the result of parliamentary process and procedure than anything else. Since there are no common standards for these processes and procedures, scholars of electoral integrity who try to explain why electoral reform happens should take into account that parliamentary processes could be a factor in shaping the laws.

8.6 Conclusion

This chapter analyzed the two cases that were studied. First some observations were made on how the cases diverged in their historical development of the relevant legislation, based on the empirical materials from Chapters 6 and 7. The evidence from the two empirical chapters shows that countries that are considered to be long-standing democracies have struggled from the moment that they first held democratic elections to the current day with the issue of election fraud. Election fraud has appeared in all shapes and forms in both countries, from people trying illegally to obtain the right to vote to vote buying and fraud with postal and proxy votes. In lieu of efforts of both legislatures to weed out election fraud, election fraud still occurs as is shown by the fairly recent case in the Netherlands mentioned in the introduction. Difficulties with the definitions of the acts that the legislator wanted to prohibit, the problems with enforcement of laws and the balance between the urge to combat fraud, but also to keep elections accessible are visible in both countries that were studied. The empirical evidence in the chapter also shows that election fraud is defined differently in the Netherlands and the United Kingdom. The legislation differs in the way it defines election fraud, but also in the way it is punished.

This findings were summarized in the dimensions of electoral fraud law matrix, which allows for the comparison of the properties of electoral fraud laws of different countries. This matrix is a new contribution to the literature and is a result of this study. The chapter then return to the hypotheses and discussed their validity in light of the empirical evidence that was collected. Based on the findings of the case study, a new explanation was introduced, claiming that election fraud laws are shaped by the parliamentary processes of their countries. Since there are no common standards for these processes and procedures, scholars of electoral integrity who try to explain why electoral

[258] Kamerstukken II 2017/18, 35011, nr. 2.
[259] Kamerstukken II 2017/18, 35012, nr. 2

reform happens should take into account that parliamentary processes could be a factor in shaping the laws.

The outcomes of the study are the result of two in-depth case studies. The richness of the cases could only be reach by limiting the number of cases. This means that one should be careful to formulate overarching answers as to the trueness of the hypothesis, based on such a small n. The conclusions of these two specific cases should therefore not be used to generalize them towards the entire population of countries with democratic elections. More similar case studies on other countries should be performed to see whether or not the findings of this study are normal or outliers. However, this does not mean that this study did not make an useful contribution to the existing literature. The historical description of the developments in both countries can be used by other studies to pinpoint specific moments in time that might be worth studying in even more depth. Also, the process tracing method used in this study could be applied to other countries. Finally, the inductively discovered findings on the influence of the rhythms of parliamentary debate on the development of legislation are most likely not only applicable to the specific topic of election law, but can be used to examine differences in legislation on many different topics.

In Chapter 9, some concluding remarks will be made.

Chapter 9 Conclusions

9.1 Introduction

This thesis began with the observation that there appeared to have been a considerable increase in the attention that is paid to election fraud in countries that are generally seen as long-time democracies. Where these countries for a long time felt that they were holding clean and integer elections, claims of fraud have increased. As the Conservative Shadow Secretary of State for Constitutional Affairs Oliver Heald argued in a debate in the House of Commons in 2006: "We in this House must do everything that we can to tackle electoral fraud. Faith in our democratic process has been undermined by recent allegations. A judge has said that our system is wide open to fraud and similar to that of a "banana" republic". He followed: "Parliament cannot ignore this problem, especially as we have always taken great pride in our democracy. We used to lecture the world about parliamentary democracy; now, we are in the dock, accused of complacency"[260] (Stewart 2006).

This study sought to understand why established democracies define their electoral fraud laws differently. It did so by investigating the different definitions of election fraud in the legislation of the Netherlands and the United Kingdom. In this study, election fraud is defined as a violation of the legal norms of a country that deal with the election. Its aim is to show how the two countries define election fraud, where there are differences in those definitions and why these differences exist.

The main question that this study aims to answer:

How do different established democracies define election fraud and what factors determine the differences between these definitions?

In order to answer this question, a small n-case study was undertaken with a long term approach. The empirical chapters 6 and 7 describe the historical developments of election fraud legislation in the Netherlands and the United Kingdom during a period of 170 years. This approach fitted with the historical institutionalist approach that was the tradition in which the thesis was premised. This approach, focusses on processes over time, rather than examining snapshots, or moments in time. In order to do this, there are two main concepts: stasis and change. Stasis, meaning that things stay the same, is explained with the use of "path dependence", meaning that previous choices (in the case of this study in the legislation) become fixed because there are barriers to reversal that are too high. Changes to the system are then explained by looking at events of different magnitude, that can

[260] House of Commons, Electoral Administration Bill, Volume 447: Tuesday 13 Juny 2006, Column 664.

happen both inside or outside of the institution. The relationship between statis and change can be seen as a process of "punctuated equilibrium", where a (extended) period of statis can be interrupted by either a series of series of smaller scale events or fewer, but more significant "critical junctures", leading to more radical changes, as the mechanism that may interrupt the path dependency. Besides this process which can be used to explain the major changes in the legislation, the study also looks at more gradual changes through the lens of the four approaches: displacement, layering, drift and conversion as described by Mahoney and Thelen (2010).

The study was carried out by mainly looking at parliamentary debates on election legislation, with a focus on election fraud. Relevant previous research on these countries, especially for the United Kingdom case, court cases and newspaper articles were used to enrich the findings from the parliamentary documents. The combination of legislative documents, other archival material and previous studies provided triangulation, which increased the validity of the findings (Lange 2013).

This chapter summarises the key findings from this study. In short, it argues that institutions such as the legal system and the electoral system, but also the rhythm and structure of parliamentary debates have an influence on the legal definition of election fraud. This means that the architecture that is in place in a country for these aspects of the legislative process shape the results of that process. This has some important consequences for the literature on electoral fraud but also policy and practice in the international community. and the chapter also outlines a further research agenda.

9.2 Empirical conclusions

There are two main empirical conclusions from this study

Electoral fraud is a difficult and a persistent problem

The evidence from the two empirical chapters shows that countries that are considered to be long-standing democracies have struggled from the moment that they first held democratic elections to the current day with the issue of election fraud. Election fraud has appeared in all shapes and forms in both countries, from people trying illegally to obtain the right to vote to vote buying and fraud with postal and proxy votes. What also can be learned from the study is that combatting election fraud is hard. Both legislatures spend quite a lot of time over the 170 years that were examined on debates on election fraud. In both countries, multiple attempts were made to change the legislation in order to prevent election fraud. However, in both countries, no failproof solution was found; election fraud still happens as is shown by the fairly recent cases that were mentioned in Chapter 1.

Difficulties with the definitions of the acts that the legislator wanted to prohibit, the problems with enforcement of laws and the balance between the urge to combat fraud, but also to keep elections accessible are visible in both countries that were studied.

Election fraud is defined differently

Although the study looked at two old democracies in Western-Europe, which are geographical neighbours and which have held elections for approximately the same period of time, the current legislation on election fraud differs. It differs in the way it defines election fraud, but also in the way it is punished. Where the Netherlands has, as shown in Chapter 5 a small number of broadly formulated articles which try to capture all acts that are defined as election fraud, the United Kingdom has opted for more specifically formulated articles that each deal with a different fraudulent act. An example is the fact that even in the current legislation of the United Kingdom the acts of bribery of a voter and treating of a voter are distinguished. Bribery applies when a voter receives money in order to vote in a certain way or refrain from voting, treating applies when a voter receives expenses or any meat, drink, entertainment of provisions in order to vote a certain way or refrain from voting.

There are also differences in the crimes that are mentioned. In the Netherlands the act of breaching the secrecy of the vote is not mentioned as a crime, where in the United Kingdom this is part of the legislation. In the United Kingdom, publication of early results is part of the criminal law, in the Netherlands, there is no such provision.

Finally, as noted in Chapter 8, there are differences in punishments that are in place. The main difference is that in the United Kingdom, if a candidate is elected, but then convicted by a court of corrupt practices, his election is annulled. This person then also loses it right to stand in elections for five years. In the Netherlands, annulment of elections is not a decision that is in the hands of the courts. Only the parliament can decide to annul the results of an election and only for a very short period of time after the elections (the new parliament has to be installed within 8 days after the election). This means that even is a person is convicted of election fraud, only in very specific cases where the sentence is an imprisonment of a year or more, the judge can rule that the person loses its active and passive voting rights. This has not happened since World War II.

9.3 Theoretical conclusions

Institutions matter

The main theoretical conclusion from this study is that institutions matter when it comes to answer the question how different established democracies define election fraud and what factors determine the differences between these definitions. Those institutions are the legislative system of the country; common or civil law and the electoral system of the country; proportional representation or a plurality system.

This study also shows that the electoral rules around the world are often more the result of parliamentary process and procedure than anything else. Parliamentary procedures determine the way in which the Parliament has set up the legislative process. The details of this legislative process vary between countries. This variance deals with the question who can introduce a bill, whether or not parliamentary committees are used and in which way, the sequence of debating a bill in bicameral legislatures and whether or not a bill that is not considered during a legislative year expires (Saiegh 2016, 483).

This importance of the procedures contrasts with the notions of rational choice theorists and elite theorists, who tend to see laws as the result of strategic action of politicians trying to win power by changing or shaping the rules of the game. The parliamentary process within a country has its own rules on the way legislation is debated. Choices within that process that can have an influence are the way the initial preparations of a debate are done; in writing or orally, in committee or within the general assembly. The time that is devoted to the debates on one specific bill also matters, are there many bills that need to be discussed in a short amount of time or not. The use of a parliamentary year with the construct that bills that have not passed at the end of the year being voided has implications for the legislative agenda as well.

As described in Chapter 8, such a system forces both the government and the parliament to keep momentum in the process and also at times to accept compromises. The parliamentary procedures between the two countries that were studied differ and those differences may be part of the reason for the different outcomes of the development of the election fraud laws. Both countries have a two chamber system, but in the Netherlands bills always enter through the Lower House and cannot be send back by the Upper House to the Lower House. In the United Kingdom, a bill can go back and forth between both Houses several times. Both Houses also have a right of amendment. As shown in Chapter 8, this has influence on the outcome of the bill. The lifetime of bills before they lapse is very different in the two countries. In the Netherlands, there is no prescribed timeline for a bill; it can sit in Parliament indefinitely. In the United Kingdom, in contrast, a bill that has not been voted on at the end of the Parliamentary session will lapse. This means that in the United Kingdom, there is more pressure both on the government and the Parliament to reach a timely compromise on a bill, to

prevent it from lapsing, whereas in the Netherlands, a bill can be parked until there is a majority for it. Finally, the composition of parliament when discussing a bill matters. In the Netherlands, the whole process is usually done by one member of each party in parliament. This means that there is debate between the parties, but not within a party. In the United Kingdom, all members of parliament can play an active role in the debates, leading to more personal statements and more interparty debates. All these differences in the parliamentary procedures concerning legislations shape the outcome of the cases.

History matters

Another theoretical finding is that history matters. The gradual process in which laws are formed is shaped to a large extent by the earlier decisions. Path dependency and the locking-in mechanisms of institutions (critical junctures) mean that once a law is in place, it is not easy to change it. An example is the use of proxy votes in the Netherlands. These were introduced in the 1920s and despite many instances of fraud with them and the fact that observation missions of OSCE/ODIHR always recommend that they should be abolished, they are seen as part of the Dutch voting tradition and therefore still not abolished. There needs to be a catalyst for such a change, which in the cases researched here, was usually the fact that fraud took place during actual elections. But even when such an event took place, not in all instances this would lead to changes. History also matters in that those acts who were added to the election fraud legislation early on, are hardly ever taken out, even if they do not appear in practice anymore. An example is the continued use of the term “treating” in the legislation of the United Kingdom. So far no attempts have been made to remove this article for the legislation. However, it is not very likely that it will ever be used in current elections.

9.4 Policy and practical consequences

In the light of the empirical research made in this thesis a number of recommendations can be made for the policies of countries. The findings also have practical consequences for amongst others, international organisations like OSCE/ODIHR and the Venice Commission of the Council of Europe that deal with electoral assistance and election observation.

9.4.1 Policy consequences

From the findings, it is clear that the current legislation on election fraud in both countries is the result of reforms and changes that happened in small steps over a long period of time. This has resulted in the Netherlands in a small number of broadly formulated articles that are hardly ever used in practice. In contrast, in the United Kingdom, it has let to a larger number of detailed articles,

whose wording is not always very clear. For both countries, it would be good to review the current legislation in order to see if all acts that should be considered election fraud nowadays are actually covered by its legal norms that deal with elections, but also, if there are no articles included that deal with actions that are no longer relevant. In terms of knowability and accessibility, it is preferable that the election fraud articles are all included in the electoral legislation and not, as is the case in the Netherlands, partly in the Electoral act and partly in the Criminal act. This is especially unwanted when it is not clear why this distinction is made.

Another policy recommendation that stems from this research is that punishments for election fraud must be severe enough to actually deter this behaviour. In the United Kingdom, the length of imprisonment for most crimes is relatively low. This is counterbalanced by the fact that an election is annulled if a candidate is found guilty of corrupt practices, but that only has consequences for that candidate, not for other persons involved in the fraudulent behavior. In the Netherlands, the punishments for election fraud are in most cases very low and the fact that it is in most cases not possible to take away the active and passive right to vote is also not helpful in being a deterrent. Both countries should see if review of the legislation in this specific area is necessary.

Finally, the case studies show that just having legislation in place is not enough to combat election fraud. Election fraud is difficult to prove and generally not very high on the agenda for police and prosecutors. This means that in many cases, even when there are suspicions, it is likely that no convictions will occur. This can have negative effects on the trust that people have in the integrity of the elections. This is especially the case if politicians, as mentioned in Chapter 1 continue to use claims of election fraud by their opponents as a political means. Therefore, the countries should have a good system in place where complaints about election fraud are taken seriously, where independent bodies can look into these claims and inform the public about the results of those investigations. Where necessary, criminal prosecution should follow. Only then can spurious claims about election fraud be easily debunked.

9.4.2 Practical consequences for electoral assistance and election observation

The case studies show that principles of election integrity can clash. Strict laws against fraud can lead to less accessible elections. A prime example of this issue is the debate on voter identification laws. Proponents claim that they can prevent fraud, opponents say that they will prevent certain voters from voting. Therefore it is always up to the legislator to find a balance. This means that there is not one answer to how this balance should be struck that will be useful for all countries.

One thing that is also clear from the case studies is that the question who this balance is found can change over time within a country. Electoral legislation, including the articles on election fraud therefore require constant upkeep. For those organisations that help countries with their electoral law through electoral assistance programs, this means that the choices that were made at one point in time need to be reviewed regularly and a system should be in place to prevent the complacency that was mentioned by Oliver Heald. In addition, an enormous amount of resources in spent on international electoral assistance, which among others include the drafting of election laws for new democracies. Often, this drafting process is done with the help of experts from established democracies. In this process, there might be a tendency to look at existing legislation from these established democracies as a basis for the laws that need to be drafted. However, from this thesis, it is clear that the rules in established democracies on election fraud could be inconsistent and not actually suitable to combat election fraud. This means that caution should be used when using existing legislation as an example for new election laws.

Organisations that focus on election observation should be aware of the fact that there is not one clear definition of election fraud. What constitutes as fraud in one country might not be fraud in another. When sending in observers, these organisations have to ensure that the observers are aware of the differences between the election law in their own country and the country in which they are observing. If not enough attention is given to these differences, there might be an issue with observer bias, where the observer does not look at the election from the perspective of the rules in place in that country, but from its own believes on what is proper behaviour in elections.

9.5 Future research

A number of further avenues for research can be identified on the basis of this study. As shown in chapter 2, research on fraud in elections tends to focus on elections in the United States and newer democracies. Further research should look to broaden the geographical reach of this type of research to a range of other democracies. This study makes a useful contribution to this future research because it developed the matrix that allows for the comparison of electoral fraud laws on the basis of properties and characteristics. This matrix as applied to the cases included in this study compares the electoral fraud laws of the Netherlands and the United Kingdom on the following properties/characteristics :

- Reasons to combat fraud
- Origins
- Definitions

- Offenders
- Punishments
- Role of the courts.

Property/Characteristic of the legislation	Netherlands	United Kingdom
Reasons to combat fraud	Reputation of parliament, trust in institutions	Trust in institutions, level-playing field between candidates
Origins	Fraud in order to get voting rights	Bribery
Definitions	Broad general articles	Specific articles for different illegal actions
Offenders	No difference between voters, candidates, parties etc.	Differences in some articles between offenders
Punishments	Imprisonment of fourteen days up to six years depending on the crime, or a fine. Very limited possibility to lose active and passive voting rights. No possibility of overturning the election result.	Imprisonment up to two years, or a fine. Loss of passive or active voting rights for five years. Annulment of election is candidate is found personally guilty or guilty by his agents of any corrupt practice.
Role of the courts	Only for criminal convictions	Criminal convictions, but also overturning results

Table 3: Dimensions of electoral fraud law matrix

The matrix can be used by other researchers to apply these same properties and characteristics of the electoral fraud laws of other countries to expand the comparative research in this particular area.

Also, if the importance of parliamentary processes can be successfully used to help to explain the changes made to legislation concerning election fraud, it should also be helpful in explaining changes to legislation on other areas of the election law, the electoral system and perhaps even beyond that, the changes of legislation in general. Subsequent research could therefore seek to apply this newly formed theory on the influence of parliamentary processes on legislation to broader empirical cases of legislative reforms.

9.6 Conclusion

The thinking about the proper way to run elections can and has changed over time, as shown by the case studies. The secret ballot is nowadays seen as one of the key components of electoral integrity, but this clearly was not always the case. Studying the historical development in this thinking can

inform us of the counter arguments and challenges us to keep questioning rules and habits in election administration that we might otherwise take for granted because they have been around for a long time. Comparative analysis aids that questioning mind since it forces the researcher to think outside its own countries customs.

In sum, this thesis has advanced the existing literature from both a theoretical and an empirical perspective providing new insights with regard to the question what is considered election fraud and why this differs between countries. It has shown that these findings can be useful for both the policies of the countries that were examined and the practical field of electoral assistance and election observation. Finally, the thesis has identified areas for future research that can use this study as a starting point.

Annex 1: Relevant legislation

Dutch Election law[261]

Section Z 1

A person who forges or falsifies ballot papers, voting passes, voters' passes, certificates of authorisation or postal vote certificates with the intention of using them or having them used by others as though they were genuine and unfalsified shall be liable to a term of imprisonment not exceeding six years or a category four fine.

Section Z 2

A person who intentionally uses or causes others to use as though they were genuine and unfalsified ballot papers, voting passes, voters' passes, certificates of authorisation or postal vote certificates which he himself has forged or falsified or whose forgery or falseness was known to him when he received them, or who has them in stock with the intention of using them or having them used by others as though they were genuine and unfalsified shall be liable to a term of imprisonment not exceeding six years or a category four fine.

Section Z 3

A person who has in his possession ballot papers, voting passes, voters' passes, certificates of authorisation or postal vote certificates with the intention of using them or causing others to use them unlawfully shall be liable to a term of imprisonment not exceeding two years or a category four fine.

Section Z 4

1. A person who, by means of a gift or promise, bribes a voter to give him a proxy authorisation to vote on his behalf shall be liable to a term of imprisonment not exceeding six months or a third- category fine.
2. A person who, by means of a gift or promise, bribes a voter or otherwise compels him to issue a declaration as referred to in section H 4, subsection 1, in support of a list, shall be liable to a term of imprisonment not exceeding six months or a third-category fine.

3. A voter who allows himself to be bribed by means of a gift or promise to grant a proxy authorisation or issue a declaration of support shall be liable to the same penalty.

Section Z 5

1. In the event of a conviction for one of the indictable offences referred to in sections Z 1 to Z 4, the offender may be deprived of the rights referred to in article 28, paragraph 1 (1o), (2o) and (4o) of the Criminal Code, or if the deprivation is handed down by a court in Bonaire, St Eustatius or Saba, of the rights referred to in article 32 (1o), (2o) and (4o) of the BES Criminal Code.
2. In the event of a sentence to a term of imprisonment of at least one year for one of the serious offences referred to in sections Z 1 to Z 3, the offender may be deprived of the rights referred to in article 28, paragraph 1 (3o) of the Criminal Code, or if the deprivation is

[261] https://wetten.overheid.nl/BWBR0004627/2022-03-24.

handed down by a court in Bonaire, St Eustatius or Saba, of the rights referred to in article 32 (3o) of the BES Criminal Code.

Section Z 6

A person who votes in an election as proxy for a person who he knows has died shall be liable to a term of detention not exceeding a month or a category two fine.

Section Z 8

A person who systematically speaks to or otherwise approaches people in person in order to induce them to sign the form on their voting pass intended for voting by proxy and to relinquish the pass shall be liable to a term of detention not exceeding a month or a category three fine.

Section Z 8a

A national of a member state of the European Union who votes in an election to the European Parliament both in the Netherlands and in another member state shall be liable to a term of detention not exceeding one month or a category two fine.

Section Z 9

An employer who does not comply with the obligation to which he is subject under section J 10 shall be liable to a term of detention not exceeding fourteen days or a category two fine.

Section Z 10

The chairperson and members of an electoral committee and alternate members who have been called up shall be liable to a category one fine if they are unnecessarily absent from the meeting without a replacement having been arranged.

Section Z 11

The offences referred to in sections Z 1 to Z 4 shall be regarded as indictable offences and the offences referred to in sections Z 6 to Z 10 as summary offences.

Dutch Criminal Code[262]

Article 125

A person who, on the occasion of an election called by law, by force or threat of violence, deliberately prevents someone from exercising his or another person"s right to vote freely and unimpeded, shall be punished with a term of imprisonment not exceeding one year or a fine of the third category.

Article 126

1. Anyone who, on the occasion of an election held pursuant to a statutory provision, bribes someone by gift or promise to exercise his or another person"s right to vote, either not or in

[262] https://wetten.overheid.nl/BWBR0001854/2022-07-01.

a specific manner, shall be punished by a term of imprisonment not exceeding six months or a fine of the third category.

2. The same penalty shall be applied to the voter or voter's agent who allows himself to be bribed into any person by gift or promise.

Article 127

Anyone who, on the occasion of an election called by law, commits any fraudulent act that renders a vote invalid or designates a person other than the person intended when the vote was cast, shall be punished by a maximum imprisonment of six months or a fine of the third category.

Article 128

Any person who deliberately takes part in an election issued by virtue of a statutory regulation, posing as another person, shall be punished by a term of imprisonment not exceeding one year or a fine of the third category.

Article 129

A person who, on the occasion of an election called by law, deliberately thwarts a vote that has taken place or commits any fraudulent act as a result of which the vote is given a different result than would have been obtained by the votes lawfully cast, shall be punished by imprisonment not exceeding one year and six months or a fine of the fourth category.

United Kingdom Representation of the People Act 1983[263]

60. Personation.
(1)A person shall be guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.
(2)A person shall be deemed to be guilty of personation at a parliamentary or local government election if he—
(a)votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or
(b)votes in person or by post as proxy—
(i)for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
(ii)when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.
(3)For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.

61. Other voting offences.
(1)A person shall be guilty of an offence if—
(a)he votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector, at a parliamentary or local government election, or at parliamentary or local government elections, knowing that he is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
(b)he applies for the appointment of a proxy to vote for him at any parliamentary or local government election or at parliamentary or local government elections knowing that he or the

[263] https://www.legislation.gov.uk/ukpga/1983/2/contents

person to be appointed is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
(c)he votes, whether in person or by post, as proxy for some other person at a parliamentary or local government election, knowing that that person is subject to a legal incapacity to vote.
For the purposes of this subsection references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include his being below voting age if he will be of voting age on that day.
(2)A person shall be guilty of an offence if—
(a)he votes as elector otherwise than by proxy either—
(i)more than once in the same constituency at any parliamentary election, or more than once in the same electoral area at any local government election; or
(ii)in more than one constituency at a general election, or in more than one electoral area at an ordinary election of councillors for a local government area which is not a single electoral area; or
(iii)in any constituency at a general election, or in any electoral area at such an ordinary election as mentioned above, when there is in force an appointment of a person to vote as his proxy at the election in some other constituency or electoral area; or
(3)A person shall be guilty of an offence if—
(a)he votes as proxy for the same elector either—
(i)more than once in the same constituency at any parliamentary election, or more than once in the same electoral area at any local government election; or
(ii)in more than one constituency at a general election, or in more than one electoral area at an ordinary election of councillors for a local government area which is not a single electoral area; or
(b)he votes in person as proxy for an elector at a parliamentary or local government election at which he is entitled to vote by post as proxy for that elector; or
(d)he votes in person as proxy for an elector at a parliamentary or local government election knowing that the elector has already voted in person at the election.
(4)A person shall also be guilty of an offence if he votes at a parliamentary election in any constituency as proxy for more than two persons of whom he is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
(5)A person shall also be guilty of an offence if he knowingly induces or procures some other person to do an act which is, or but for that other person's want of knowledge, would be, an offence by that other person under the foregoing subsections of this section.
(6)For the purposes of this section a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted, but for the purpose of determining whether an application for a ballot paper constitutes an offence under subsection (4) above, a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper shall, if he does not exercise that right, be disregarded.
(7)An offence under this section shall be an illegal practice, but—
(a)the court before whom a person is convicted of any such offence may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 below; and
(b)a candidate shall not be liable, nor shall his election be avoided, for an illegal practice under this section of any agent of his other than an offence under subsection (5) above.

62. Offences as to declarations.
(1)A person who—
(a)makes a declaration of local connection or a service declaration—
(i)when he is not authorised to do so by section 7B(1) or section 15(1) above, or
(ii)except as permitted by this Act, when he knows that he is subject to a legal incapacity to vote, or
(iii)when he knows that it contains a statement which is false, or

(b)attests a service declaration when he knows—
(i)that he is not authorised to do so, or
(ii)that it contains a false statement as to any particulars required by regulations under section 16 above,
shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(2)Where the declaration is available only for local government elections the references in subsections (1) and (1A) above to a legal incapacity to vote refer to a legal incapacity to vote at local government elections.

62A. Offences relating to applications for postal and proxy votes
(1)A person commits an offence if he—
(a)engages in an act specified in subsection (2) at a parliamentary or local government election, and
(b)intends, by doing so, to deprive another of an opportunity to vote or to make for himself or another a gain of a vote to which he or the other is not otherwise entitled or a gain of money or property.
(2)These are the acts—
(a)applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);
(b)otherwise making a false statement in, or in connection with, an application for a postal or proxy vote;
(c)inducing the registration officer or returning officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;
(d)causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.
(3)In subsection (1)(b), property includes any description of property.
(4)In subsection (2) a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or a proxy postal ballot paper (as the case may be).
(5)A person who commits an offence under subsection (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.
(6)This section does not apply to anything done at a local government election in Scotland.

63. Breach of official duty.
(1)If a person to whom this section applies is, without reasonable cause, guilty of any act or omission in breach of his official duty, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(2)No person to whom this section applies shall be liable for breach of his official duty to any penalty at common law and no action for damages shall lie in respect of the breach by such a person of his official duty.
(3)The persons to whom this section applies are—
(a)the Clerk of the Crown (or, in Northern Ireland, the Clerk of the Crown for Northern Ireland),
(b)any registration officer, returning officer or presiding officer,
(c)any other person whose duty it is to be responsible after a parliamentary or local government election for the used ballot papers and other documents (including returns and declarations as to expenses),
(d)any official designated by a universal postal service provider, and
(e)any deputy of a person mentioned in any of paragraphs (*a*) to (*d*) above or any person appointed to assist or in the course of his employment assisting a person so mentioned in connection with his official duties;

and “official duty” shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by the law relating to parliamentary or local government elections or the registration of parliamentary or local government electors.
(4)Where—
(a)a returning officer for an election to which section 46 of the Electoral Administration Act 2006 applies is guilty of an act or omission in breach of his official duty, but
(b)he remedies that act or omission in full by taking steps under subsection (1) of that section,
he shall not be guilty of an offence under subsection (1) above.
(5)Subsection (4) does not affect any conviction which takes place, or any penalty which is imposed, before the date on which the act or omission is remedied in full.

65. Tampering with nomination papers, ballot papers, etc.
(1)A person shall be guilty of an offence, if, at a parliamentary or local government election, he—
(a)fraudulently defaces or fraudulently destroys any nomination paper; or
(b)fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or declaration of identity or official envelope used in connection with voting by post; or
(c)without due authority supplies any ballot paper to any person; or
(d)fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
(e)fraudulently takes out of the polling station any ballot paper; or
(f)without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or
(g)fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.
(3)If a returning officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers is guilty of an offence under this section, he shall be liable—
(a)on conviction on indictment to a fine, or to imprisonment for a term not exceeding 2 years, or to both;
(b)on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding 6 months, or to both
(4)If any other person is guilty of an offence under this section, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.

65A. False statements in nomination papers etc.
(1)A person is guilty of a corrupt practice if, in the case of any relevant election, he causes or permits to be included in a document delivered or otherwise furnished to a returning officer for use in connection with the election—
(a)a statement of the name or home address of a candidate at the election which he knows to be false in any particular; or
(aa)(where the election is a parliamentary election) a statement under rule 6(5)(b) of Schedule 1 to this Act which he knows to be false in any particular; or
(b)anything which purports to be the signature of an elector who proposes, seconds or assents to, the nomination of such a candidate but which he knows—
(i)was not written by the elector by whom it purports to have been written, or
(ii)if written by that elector, was not written by him for the purpose of signifying that he was proposing, seconding, or (as the case may be) assenting to, that candidate’s nomination or
(c)a certificate authorising for the purposes of rule 6A of the parliamentary elections rules the use by a candidate of a description if he knows that the candidate is standing at an election in another

constituency in which the poll is to be held on the same day as the poll at the election to which the certificate relates.
(1A)A person is guilty of a corrupt practice if, in the case of any relevant election, he makes in any document in which he gives his consent to his nomination as a candidate—
(a)a statement of his date of birth,
(b)a statement as to his qualification for being elected at that election, or
(c)a statement that he is not a candidate at an election for any other constituency the poll for which is to be held on the same day as the poll at the election to which the consent relates,
which he knows to be false in any particular.
(1B)For the purposes of subsection (1A), a statement as to a candidate's qualification is a statement—
(a)that he is qualified for being elected,
(b)that he will be qualified for being elected, or
(c)that to the best of his knowledge and belief he is not disqualified for being elected.
(2)In this section "relevant election" means—
(a)any parliamentary election, or
(b)except for the purposes of subsections (1)(c) and (1A)(c), any local government election in England or Wales.

66. Requirement of secrecy.
(1)The following persons—
(a)every returning officer and every presiding officer or clerk attending at a polling station,
(b)every candidate or election agent or polling agent so attending,
(c)every person so attending by virtue of any of sections 6A to 6D of the Political Parties, Elections and Referendums Act 2000,
shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed any information as to—
(i)the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
(ii)the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
(iii)the official mark.
(2)Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not—
(a)ascertain or attempt to ascertain at the counting of the votes the number or other unique identifying mark on the back of any ballot paper;
(b)communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on any particular ballot paper.
(3)No person shall—
(a)interfere with or attempt to interfere with a voter when recording his vote;
(b)otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;
(c)communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given to a voter at that station;
(d)directly or indirectly induce a voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has or has not voted.
(4)Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not—

(a)Except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or
(b)except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of the ballot paper sent to any person; or
(c)except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper; or
(d)attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.
(5)No person having undertaken to assist a blind voter to vote shall communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given for the use of that voter.
(6)If a person acts in contravention of this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months.

66A. Prohibition on publication of exit polls.
(1)No person shall, in the case of an election to which this section applies, publish before the poll is closed—
(a)any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or
(b)any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.
(2)This section applies to—
(a)any parliamentary election; and
(b)any local government election in England or Wales.
(3)If a person acts in contravention of subsection (1) above, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months.
(4)In this section—

- "forecast" includes estimate;
- "publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means;

and any reference to the result of an election is a reference to the result of the election either as a whole or so far as any particular candidate or candidates at the election is or are concerned.

66B. Failure to comply with conditions relating to supply etc. of certain documents
(1)A person is guilty of an offence—
(a)if he fails to comply with any conditions imposed in pursuance of regulations under rule 57 of the parliamentary elections rules, or
(b)if he is an appropriate supervisor of a person (P) who fails to comply with such a condition and he failed to take appropriate steps.
(2)P is not guilty of an offence under subsection (1) if—
(a)he has an appropriate supervisor, and
(b)he has complied with all the requirements imposed on him by his appropriate supervisor.
(3)A person who is not P or an appropriate supervisor is not guilty of an offence under subsection (1) if he takes all reasonable steps to ensure that he complies with the conditions.
(4)In subsections (1)(b) and (2)—

(a)an appropriate supervisor is a person who is a director of a company or concerned in the management of an organisation in which P is employed or under whose direction or control P is;
(b)appropriate steps are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, the occurrence of a failure to comply with the conditions.
(5)A person guilty of an offence as mentioned in subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Bibliography

Alonso-Curbelo, A. (2022): The Voter ID Debate: An Analysis of Political Elite Framing in UK Parliament. Parliamentary Affairs.

Alvarez, R.M. and T.E. Hall (2006): Controlling Democracy: The Principal-Agent Problems in Election Administration. Policy Studies Journal, Vol. 34, No. 4, 491-510.

Alvarez, R.M., T.E. Hall and S.D. Hyde (eds.) (2008): Election Fraud, Detecting and Deterring Electoral Manipulation (Washington D.C.: Brookings Institution Press).

Alvarez, R.M., T.E. Hall, and M. Llewellyn (2008): Are Americans confident their ballots are counted? Journal of Politics Vol. 70, No. 3, 754–766.

Alvarez, R.M. and J.N. Katz (2008): The Case of the 2002 General Election. In: Election Fraud: Detecting and Deterring Electoral Manipulation, M. Alvarez, T. E. Hall, and S.D. Hyde (eds) Washington: the Brookings Institution Press, 149-161.

Andersen, D. (2019): Comparative Democratization and Democratic Backsliding: The Case for a Historical-Institutional Approach [Review of Conservative Parties and the Birth of Democracy; Dictator and Democrats: Masses, Elites, and Regime Change; How Democracies Die, by D. Ziblatt, S. Haggard, R. R. Kaufman, & S. Levitsky]. Comparative Politics, 51(4), 645–663.

Andeweg, R.B. (1991): The Dutch prime minister: Not just chairman, not yet chief?. West European Politics, 14(2), 116-132.

Andeweg, R.B. and G.A. Irwin (1993): Parliament. In: Dutch Government and Politics. Comparative Government and Politics. London: Palgrave Macmillan, 134-157.

Ansolabehere, S. and N. Persily (2008): Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements. Harvard Law Review Vol. 121, No. 7 (May, 2008), 1737-1774.

Aspinwall, M. D. and G. Schneider (2000): Same menu, separate tables: The institutionalist turn in political science and the study of European integration. European journal of political research, 38, 1-36.

Atkeson, L.R. and K.L. Saunders (2007): The Effect of Election Administration on Voter Confidence: A Local Matter? PS: Political Science & Politics Vol. 40, 655-660.

Baumgartner, F.R. and B.D. Jones (1991): Agenda dynamics and policy subsystems. The journal of Politics, 53(4), 1044-1074.

Beach, D. and R. Brun Pedersen (2016): Causal Case Study Methods: Foundations and Guidelines for Comparing, Matching and Tracing, Ann Arbor: University of Michigan Press.

Beach, D. and R. Brun Pedersen (2019): Process-Tracing Methods: Foundations and Guidelines, Ann Arbor: University of Michigan Press.

Beetham, D. (1994): Defining and Measuring Democracy, London: Sage Publications.

Beetham, D. (1999): Democracy and Human Rights, Cambridge: Polity press.

Bell, S. (2002): Institutionalism: Old and New. In: Government, Politics, Power and Policy in Australia, D. Woodward (ed.), Melbourne: Longman.

Bennett, A. and J.T. Checkel (2015): Process tracing: from philosophical roots to best practices. In: Process Tracing: From Metaphor to Analytical Tool, A. Bennett and J.T. Checkel (eds.) Cambridge: Cambridge University Press, 3-37.

Benoit, K. (2004): Models of electoral system change. Electoral studies, 23, 363-389.

Berlinski, N., M. Doyle, A.M. Guess, G. Levy, B. Lyons, J.M. Montgomery, and J. Reifler (2021): The effects of unsubstantiated claims of voter fraud on confidence in elections. Journal of Experimental Political Science, 1-16.

Bermeo, N. (2016): On democratic backsliding. Journal of Democracy, 27(1), 5-19.

Besly, N., T. Goldsmith, R. Rogers, and R.H. Walters (2018): How parliament works. Taylor & Francis Group.

Binder, G. (2002): The rhetoric of motive and intent. Buffalo Criminal Law Review, 6(1), 1-96.

Birch, S. (2007): Electoral systems and Electoral Misconduct. Comparative Political Studies, Vol. 40, No. 12, 1533-1556.

Birch, S. (2008): Conceptualizing Electoral Malpractice. Project on Electoral Malpractice in New and Semi-Democracies, Working Paper No. 1, University of Essex.

Birch, S. (2010a): Perceptions of electoral fairness and voter turnout. Comparative political studies, 43(12), 1601-1622.

Birch, S. (2010b): Patterns of Electoral Malpractice. Project on Electoral Malpractice in New and Semi-Democracies, Working Paper No. 4, University of Essex.

Birch, S. (2011): Electoral Malpractice, Oxford: Oxford University Press.

Birch, S. and B. Watt (2004): Remote Electronic Voting: Free, Fair and Secret?, Political Quarterly, Vol. 75, no. 1, 60-72.

Bjornlund, E.C. (2004): Beyond Free and Fair, Monitoring Elections and Building Democracy, Washington D.C.: Woodrow Wilson Center.

Blais, A., L. Massicotte and A. Yoshinaka (2001): Deciding who has the right to vote: a comparative analysis of election laws. Electoral Studies, Vol. 20, no. 1, 41-62.

Boese, V. A. (2019): How (not) to measure democracy. International Area Studies Review, 22(2), 95-127.

Boix, C. (1999): Setting the rules of the game: the choice of electoral systems in advanced democracies. American political science review, 93(3), 609-624.

Boix, C., M. Miller and S. Rosato (2012): A Complete Data Set of Political Regimes, 1800–2007. Comparative Political Studies 46(12):1523–54.

Bourdieu, P. (2005): The Social Structure of the Economy, Cambridge: Polity press.

Bowers, C. (2017): Elections for Sale? Do Current Spending Limits Prevent Parties Buying Elections? York: Joseph Rowntree Reform Trust.

Bulmer, S. (2007): Policy transfer in European Union governance: Regulating the utilities. New York: Routledge.

Burnham, P., K. Gilland Lutz, W. Grant and Z. Layton-Henry (2008): Research Methods in Politics, New York: Palgrave MacMillan.

Burden, B.C., T. Canon, R. Mayer and D.P. Moynihan (2011): Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform. University of Wisconsin-Madison, found on www.yale.edu/csap/seminars/canon.pdf.

Butler, D. (1963): The Electoral System in Britain since 1918, Oxford: Clarendon Press.

Calingaert, D. (2006): Election Rigging and How to Fight It. Journal of Democracy, Vol. 17, no. 3, 138-151

Campbell, T. (2005): Deliver the Vote, A History of Election Fraud, an American Political Tradition – 1742-2004, New York: Carroll and Graf Publishers.

Cappoccia, G. and D. Kelemen (2007): The study of critical junctures: Theory, narrative, and counterfactuals in historical institutionalism. World Politics, Vol. 59, no. 3, 341–369.

Carr, H., D. Cowan and E. Kirton-Darling (2022): Marginalisation, Grenfell Tower and the voice of the social-housing resident: A critical juncture in housing law and policy? International Journal of Law in Context, Vol. 18, no. 1, 10-24.

Case, W. (2006): Manipulative skills: How do rulers control the electoral arena? In: Electoral Authoritarianism: The dynamics of unfree competition, A. Schedler (ed.) Boulder: Lynne Rienner Publishers, 95-112.

Castenmiller, P. and P. Young (2018): Elections and IT; the challenge of making it work in a changed world. E-Vote-ID 2018, 170.

Chan, A. (2020): Vietnam's and China's Diverging Industrial Relations Systems: Cases of Path Dependency, Journal of Contemporary Asia, Vol. 50, no. 3, 321-340.

Chang, E.C.C. (2005): Electoral incentives for political corruption under open-list proportional representation. Journal of Politics, Vol. 67, no. 3, 716-730.

Cheeseman N., G. Lynch and J. Willis (2021): The Moral Economy of Elections in Africa: Democracy, Voting and Virtue. Cambridge: Cambridge University Press.

Cheibub, J.A., J. Gandhi and J.R. Vreeland (2010): Democracy and Dictatorship Revisited. Public Choice 143, 67–101.

Child, S. (2001): Politico's Guide to Election Practice & Law. Politicos Pub.

Clark, A. (2017): Identifying the determinants of electoral integrity and administration in advanced democracies: the case of Britain. European Political Science Review, Vol. 9, no. 3, 471-492.

Cohen, M.D., J.G. March, and J.P. Olsen (1972): A Garbage Can Model of Organizational Choice. Administrative Science Quarterly, Vol. 17, no. 1, 1–25.

Collier, D. (2011): Understanding Process Tracing. PS: Political Science and Politics, Vol. 44, no. 4, 823-830.

Collier, D. and S. Levitsky (1997): Democracy With Adjectives: Conceptual Innovation in Comparative Research." World Politics Vol. 49, no. 3, 430–51.

Corrales, J. (2020): Democratic backsliding through electoral irregularities. European Review of Latin American and Caribbean Studies/Revista Europea de Estudios Latinoamericanos y del Caribe, (109), 41-65.

Crook, M. and T. Crook (2007): The Advent of the Secret Ballot in Britain and France, 1789-1914: From Public Assembly to Private Compartment, History, 92, 449-471.

Dahl, R.A. (1971): Polyarchy: Participation and Opposition, New Haven: Yale University Press.

Davalos, H. and Dong, N.H. (2011): Fraud and Fraud Prevention. Paper presented at the 8th European Conference of Electoral Management Bodies, European Commission for Democracy through Law (Venice Commission), May 2011.

David, R. and J.E.C. Brierly (1996): Major Legal Systems in the World Today: an Introduction to the Comparative Study of Law. London: Stevens and Sons Ltd.

Davis, M. (1992): To Make the Punishment fit the Crime, Boulder Co.: Westview Press.

De Jong, R. (1999): Van standspolitiek naar partijloyaliteit. Verkiezingen voor de Tweede Kamer 1848-1887, Hilversum.

De Jong, R. (2008): Fraude en ongewenste beïnvloeding bij verkiezingen: Lezingen uitgesproken op het symposium ter gelegenheid van het 90-jarig bestaan van de Kiesraad.

De Jong, R. (2017): De Kiesraad 1917-2017. Honderd jaar (on)afhankelijk opereren tussen ministerie en politiek. In: H. Hörmann and R. de Jong (eds.), Honderd jaar Kiesraad, 2017.

De Jong, R. and M. Rutjes (2015): Slecht gekozen: Politieke vertegenwoordiging en electorale wanpraktijken in Nederland, 1795-1917. Tijdschrift voor Geschiedenis, Vol. 128, no. 4, 579-598.

Diamond, L. and L. Morlino (2004): The Quality of Democracy, an Overview. Journal of Democracy, Vol. 15, no. 4, 20-31.

Dickson, B. (2020): Writing the United Kingdom Constitution. Manchester: Manchester University Press.

Dunlop, C.A. (2017): Policy learning and policy failure: Definitions, dimensions and intersections. Policy & Politics, Vol. 45, no. 1, 3-18.

Dunlop, C.A. and C.M. Radaelli (2020): The lessons of policy learning: Types, triggers, hindrances and pathologies. Policy & Politics, Vol. 46, no. 2, 255-272.

Elklit, J. and P. Svensson (1997): What makes Elections Free and Fair? Journal of Democracy, Vol. 8, no.3, 32-46.

Elzinga, D.J. H.R.B.M. Kummeling and J. Schipper-Spanninga (2012): Het Nederlandse kiesrecht, Wolters Kluwer.

Essex, A. and N. Goodman (2020): Protecting electoral integrity in the digital age: developing e-voting regulations in Canada. Election Law Journal: Rules, Politics, and Policy, Vol. 19, no. 2, 162-179.

Evans, D. and N. Paul (2004): Elections Security: Perception and Reality, IEEE Security and Privacy, January/February 2004, found online at www.computer.org.

Farrell, D. M. (2011): Electoral systems: A comparative introduction. Macmillan International Higher Education.

Fearon, J.D. and D.D.Laitin (2008): Integrating qualitative and quantitative methods. In: The Oxford Handbook of Political Science, Oxford: Oxford University Press, 1166-1186.

Fitzgerald, M.K. (2001): Alternative Voting Techniques and Electoral Participation: Voting Reform in the American States, 1972-1998. Thesis, Department of Political Science, University of Maryland, Maryland.

Fortier, J.C. and N.J. Ornstein (2002): The Absentee Ballot and the Secret Ballot: Challenges for Election Reform, University of Michigan Journal of Law Review, Vol. 36, 483-516.

Frank, R.W. and F.M. i Coma (2017): How election dynamics shape perceptions of electoral integrity. Electoral Studies, 48, 153-165.

Galen A.I. and J. J.M. van Holsteyn (2021): Keeping Our Feet Dry: Impediments to Foreign Interference in Elections in the Netherlands, Election Law Journal: Rules, Politics, and Policy, 54-69.

Gallagher M. and P. Mitchell (2008): Introduction to Electoral Systems. In: The Politics of electoral systems, Gallagher, M. and P. Mitchell (eds.), Oxford: Oxford University Press.

Garnett, H. A. and T.S. James (2020): Cyber elections in the digital age: Threats and opportunities of technology for electoral integrity. Election Law Journal: Rules, Politics, and Policy, Vol. 19, no. 2, 111-126.

George, A.L. and A. Bennett (2005): Case Studies and Theory Development in the Social Sciences, Cambridge MA: The MIT Press.

Gerken, H.K. (2009): The Democracy Index: Why our Election System is Failing and How to Fix it. Princeton N.J.: Princeton University Press.

Gledon, M.A., P.G. Carozza and C.B. Picker (2008): Comparative Legal Traditions in a Nutshell. St. Paul: West Publishing Co.

Goodin, R. (ed.) (1996): The Theory of Institutional Design. Cambridge: Cambridge University Press.

Gorr, M. J. and S. Harwood (1995): Crime and punishment: Philosophic explorations. Sudbury: Jones and Bartlett Publishers.

Graham-Harrison, E. (2018): Vote Leave broke electoral law and British democracy is shaken, The Guardian, July 17th 2018, https://www.theguardian.com/politics/2018/jul/17/vote-leave-broke-electoral-law-and-british-democracy-is-shaken, last accessed on March 30th 2022.

Great Britain Parliament (1881): Report of the commissioners appointed under Her Majesty's royal sign manual to inquire into the existence of corrupt practices in the borough of Macclesfield I.

Green, D.P. and A.S. Gerber (2019): Get out the vote: How to increase voter turnout. Brookings Institution Press.

Gronke, P., W.D. Hicks, S.C. McKee, C. Stewart III and J. Dunham (2019): Voter ID laws: A view from the public. Social Science Quarterly, Vol. 100, no. 1, 215-232.

Gueorguieva V. and R.J. Simon (2009): Voting and Elections the World Over. Lanham: Lexington Books.

Hague, R., M. Harrop, J. McCormick (2016): Comparative Government and Politics, an introduction. London: Palgrave.

Hall, P.A. and R.C.R. Taylor (1996): Political Science and the Three New Institutionalisms. Political Studies, 44, 936-957.

Hargrave, L. and J. Blumenau (2022): No Longer Conforming to Stereotypes? Gender, Political Style and Parliamentary Debate in the UK. British Journal of Political Science, 1-18.

Heath, A.R. Jowell and J. Curtice (eds.) (1994): Labour's Last Chance? The 1992 General Election and Beyond, Aldershot: Dartmouth.

Highton, B. (2017): Voter identification laws and turnout in the United States. Annual Review of Political Science, 20, 149-167.

Hirsch, S. (2007): Recent Cases and Materials, Election Law Journal, Vol. 6, no. 3, 329-351.

Holroyd, M. (2021): Dutch election: Far-right accounts are trying to spread claims of voter fraud like Donald Trump, Euronews, March 18th 2021, https://www.euronews.com/my-europe/2021/03/17/dutch-election-far-right-accounts-are-trying-to-spread-claims-of-voter-fraud-like-donald-t, last accessed on March 30th 2022.

House of Lords (2020): HOUSE OF LORDS PUBLIC BILL SESSIONAL STATISTICS FOR SESSION 2017-2019, Public Bill statistics - UK Parliament, last accessed on March 31st 2022.

Huefner, S.F. (2007): Remedying Election Wrongs, Harvard Journal on Legislation, Vol. 44, 265-325.

Hughes, C.A. (2001): Institutionalizing electoral integrity. In: Elections Full, Free and Fair, M. Sawer (ed.) Leichhardt, NSW: The Federation Press, 142-157.

Huntington, S.P. (1993): The third wave: Democratization in the late twentieth century (Vol. 4). University of Oklahoma press.

Hurt, E. (2021): Dubious voting fraud claims in Germany spread online ahead of elections, The World, September 20th 2021, https://theworld.org/stories/2021-09-20/dubious-voting-fraud-claims-germany-spread-online-ahead-elections, last accessed on March 30th, 2022.

Hyde, S.D. (2008): How International Election Observers Detect and Deter Fraud. In: Election Fraud. Detecting and Deterring Electoral Manipulation, M. Alvarez, T.E. Hall and S.D. Hyde, (eds.) Washington: the Brookings Institution Press, 201-215.

Hyde, S.D. and A. O'Mahony (2010): International Scrutiny and Pre-Electoral Fiscal Manipulation in Developing Countries. SSRN Scholarly Paper ID 1128984. Rochester, NY: Social Science Research Network.

Ihalainen, P., and K. Palonen, K. (2009). Parliamentary sources in the comparative study of conceptual history: methodological aspects and illustrations of a research proposal. Parliaments, Estates and Representation, Vol. 29, no. 1, 17–34.

Issacharoff, S. (2002): Surreply-Why Elections. Harv. L. Rev., 116, 684.

James, T.S. (2009): Bending the Rules of the Game: Statecraft and Electoral Administration in Established Democracies, PhD thesis, University of York.

James, T.S. (2012): Elite statecraft and election administration, bending the rules of the game? Hampshire: Palgrave MacMillan.

James, T.S. (2014): Electoral Governance and the Quality of Democracy in the United Kingdom, paper for the International Symposium on Elections, Civic Education and the Quality of Democracy, the Korean Civic Institute for Democracy, Seoul, South Korea, September 3-4 2014.

James, T.S. (2016): Neo-Statecraft Theory, Historical Institutionalism and Institutional Change. Government and Opposition Vol. 51, no. 1, 84-110.

James, T. S. (2019): Comparative Electoral Management: Performance, Networks and Instruments. Routledge.

James, T. S. and A. Clark (2020): Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections. Policy Studies, Vol. 41, no. 2-3, 190-209.

James, T.S. and A. Clark (2021): Delivering electoral integrity under pressure: local government, electoral administration, and the 2016 Brexit referendum, Local Government Studies, Vol. 47, no. 2, 186-207.

James, T. S., H.A. Garnett, L. Loeber, and C. Van Ham (2019): Electoral management and the organisational determinants of electoral integrity: Introduction. International Political Science Review, Vol. 40, no. 3, 295-312.

Kam, C. (2017): The Secret Ballot and the Market for Votes at 19th-Century British Elections. Comparative Political Studies, Vol. 50, no. 5, 594-635.

Kane, J.V. and D.C. Wilson (2021): Controversy and Costs: Investigating the Consensus on American Voter ID Laws. Political Behavior, Vol. 43, no.1, 397-421.

Kasara, K. and I. Mares (2017): Unfinished Business: The Democratization of Electoral Practices in Britain and Germany, Comparative Political Studies, Vol 50, no. 5, 636-664.

Katz, R.S. (1997): Democracy and Elections. New York: Oxford University Press.

Katz, R.S. (2005): Why are there so many (or so few) electoral reforms? In: The Politics of Electoral Systems, Gallagher, M. and Mitchell, P. (eds.), Oxford: Oxford University Press.

Kay, A. (2017): Policy failures, policy learning and institutional change: the case of Australian health insurance policy change. Policy & Politics, Vol. 45, no. 1, 87-101.

Kiewiet, D.R., T.E. Hall, R.M. Alvarez and J.N. Katz (2008): Fraud or Failure? What Incident reports Reveal about Election Anomalies and Irregularities. In: Election Fraud. Detecting and Deterring Electoral Manipulation, M. Alvarez, T.E. Hall, and S.D. Hyde, (eds,), Washington: the Brookings Institution Press.

Kraan, K. (2004): The Kingdom of the Netherlands. In: Constitutional law of the 15 EU Member States, L. Prakke and C. Kortmann (eds.), Deventer: Kluwer, 591-650.

Krasner, S. (1984): Approaches to the state: Alternative perceptions and historical dynamics. Comparative Political Studies, 16(2), 223–246.

Kunicova, J. and S. Rose-Ackerman (2005): Electoral rules and constitutional structures as constraints on corruption. British Journal of Political Science, Vol. 35, no. 4, 573-606.

Landman, T. and E. Carvalho (2017): Issues and Methods in Comparative Politics, an introduction. Oxon: Routledge.

Lange, M. (2013): Comparative Historical Methods. London: Sage Publications.

Law, C. (2017). The common law and civil law traditions. https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf.

Lehoucq, F.E. (2002): Can Parties Police Themselves? Electoral Governance and Democratization, International Political Science Review, Vol. 23, no. 1, 29-46.

Lehoucq, F.E. (2003): Electoral Fraud: Causes, Types and Consequences. Annual Review of Political Science, Vol. 6, 233-256.

Leston-Bandeira, C., and L. Thompson (2018): Exploring parliament. Oxford: Oxford University Press.

Leyland, P. (2016): The constitution of the United Kingdom: A contextual analysis (Vol. 1). Bloomsbury Publishing.

Levitsky, S. and L. Way (2010): Competitive Authoritarianism: Hybrid Regimes After the Cold War. New York: Cambridge University Press.

Lijphart, A. (1984): Democracies: patterns of majoritarian and consensus government in twenty-one countries. New Haven: Yale University Press.

Lijphart, A. and B. Grofman, B. (1984): Choosing an electoral system: Issues and Alternatives. New York: Praeger.

Loeber, L. (2014): E-voting in the Netherlands; past, current, future. In: Proceedings of the 6th international conference on electronic voting (EVOTE). Tallinn: TUT Press, 43-46.

Loeber, L. (2016): Legislating for e-enabled elections: dilemmas and concerns for the legislator. In: International Joint Conference on Electronic Voting, Springer, 203-217.

Loeber, L. (2020): Use of technology in the election process: Who governs? Election Law Journal: Rules, Politics, and Policy, Vol. 19, no. 2, 149-161.

Lopéz-Pintor, R. (2011): Assessing Electoral Fraud in New Democracies: A Basic Conceptual Framework. Paper presented at the IPSA-ECPR Joint Conference, February 16-19 2011, Sao Paulo, Brazil.

Lowndes, V. (2002): The Institutional Approach. In: Theories and Methods in Political Science, D. Marsh and G. Stokes (eds.), Basingstoke: Palgrave MacMillan, 90-108.

Lowndes, V. and M. Roberts (2013): Why institutions matter: The new institutionalism in political science. Macmillan International Higher Education.

Lührmann, A. and S.I. Lindberg (2019): A third wave of autocratization is here: what is new about it?. Democratization, Vol. 26, no. 7, 1095-1113.

Lukowski, S. (2008): Verkiezingsfraude vanuit strafrechtelijk perspectief. In: Fraude en ongewenste beïnvloeding bij verkiezingen: Lezingen uitgesproken op het symposium ter gelegenheid van het 90-jarig bestaan van de Kiesraad, R. de Jong (ed.).

Lundell, K. (2010): The Origin of Electoral Systems in the Post-war Era, A worldwide approach, New York: Routledge.

Lust, E., and D. Waldner (2015): Theories of Democratic Change. Phase I: Theories of Democratic Backsliding. USAID.

Maas Geesteranus A.M. (1869): De Kieswet met eene aanteekening, bevattende de rechterlijke en administratieve uitspraken en voorschriften hare toepassing rakende, Den Haag, 41-42.

Mahoney, J. (2000): Path dependence in historical sociology. Theory and society, Vol. 29, no. 4, 507-548.

Mahoney, J. and K. Thelen (2010): A Gradual Theory of Institutional Change. In: Explaining Institutional Change: Ambiguity, Agency, and Power, J. Mahoney, & K. Thelen (eds.), Cambridge: Cambridge University Press, 1-37.

Mahoney, J. and K. Thelen (eds.) (2015): Advances in comparative-historical analysis. Cambridge University Press.

March, J.G. and J.P. Olsen (1984): The New Institutionalism: Organizational Factors in Political Life. The American Political Science Review, Vol. 78, no. 3, 734–749.

March, J.G. and J.P. Olsen (1989): Rediscovering institutions: The organizational basis of politics. New York: The Free Press.

March, J.G. and J.P. Olsen (1996): Institutional Perspectives on Political Institutions, Governance 9: 247-264.

Mauk, M. (2020): Electoral integrity matters: how electoral process conditions the relationship between political losing and political trust. Quality & Quantity, 1-20.

Mebane, W.R. and K. Kalinin (2009): Comparative Election Fraud Detection, Paper presented at the 2009 Annual Meeting of the American Political Science Association, Toronto, Canada, Sept 3–6, 2009.

Mechkova, V., A. Lührmann and S.I. Lindberg (2017): How Much Democratic Backsliding?. Journal of Democracy 28, no. 4, 162-69.

Merloe, P. (2009): Human Rights- The Basis for Inclusiveness, Transparency, Accountability, and Public Confidence in Elections. In: International Election Principles: Democracy and the Rule of Law, Young, J. H. (ed.) American Bar Association, 3-39.

Nice, A., and A. Paun (2019): Coalition government at Westminster. Institute for Government IfG Insight.

Minnite, L.C. (2007): The Politics of Voter Fraud, Project Vote, Washington. Available through www.projectvote.org.

Montjoy, R.S. (2008): The Public Administration of Elections. Public Administration Review, Vol. 68, no. 5, 788-799.

Morris, C. and S. Wilks-Heeg (2019): Reports of My Death Have Been Greatly Exaggerated: The Continuing Role and Relevance of Election Petitions in Challenging Election Results in the UK. Election Law Journal: Rules, Politics, and Policy, Vol. 18, no. 1, 31-46.

Mozaffar, S. and A. Schedler (2002): The comparative study of electoral governance—introduction. International political Science review, Vol. 23, no. 1, 5-27.

Müller, M. (2007): What”s in a word? Problematizing translation between languages. Area, Vol. 39, no. 2, 206-213.

Munck af Rosenschöld, J., J.G. Rozema, and L.A. Frye-Levine (2014): Institutional inertia and climate change: a review of the new institutionalist literature. WIREs Clim Change, 5: 639-648.

Myagkov, M., P.C. Ordeshook and D. Shakin (2009): The Forensics of Election Fraud, New York: Cambridge University Press.

Myerson, R.B. (1993): Effectiveness of electoral systems for reducing corruption: A game theoretic analysis. Games and Economic Behavior, Vol. 5, 118-132.

Nagel, W.H. (1977): De funkties van vrijheidsstraf. Alphen aan den Rijn: Samson.

Nagin, D.S. and R. Paternoster (1991): The preventive effects of the perceived risk of arrest. Criminology, Vol. 29, 561-585.

Norris, P. (2013): The New Research Agenda Studying Electoral Integrity. Electoral Studies, Vol. 32, no. 4, 563-575.

Norris, P. (2014): Why Electoral Integrity Matters. New York: Cambridge University Press.

Norris, P, R.W. Frank and F.M. i Coma (2014): Measuring Electoral Integrity around the World: A New Dataset. PS, October 2014, 789-798.

Norris, P. (2017): Strengthening electoral integrity. New York: Cambridge University Press.

Norris, P., H.A. Garnett, and M. Grömping (2020): The paranoid style of American elections: explaining perceptions of electoral integrity in an age of populism. Journal of Elections, Public Opinion and Parties, Vol. 30, no. 1, 105-125.

North, D.C. (1990): A Transaction Cost Theory of Politics. Journal of Theoretical Politics, Vol. 2, no. 4, 355–367.

Ostrom, E., R. Gardner and J. Walker (1994): Rules games and common-pool resources. Ann Arbor: University of Michigan Press.

O"Gorman, F. (2007): The Secret Ballot in Nineteenth-Century Britain, in: Cultures of Voting, The Hidden History of the Secret Ballot, R. Bertrand, J.L. Briquet, and P. Pels, P (eds.) London: C. Hurst & Co, 16-42.

O'Leary (1962): Elimination of Corrupt Practices in British Elections, 1868-1911. London: Clarendon Press.

O'Malley, E.L. and Henry, H. (1869). Reports of the decisions of the judges for the trial of election petitions, pursuant to the parliamentary elections act, 1868. London, England: Stevens and Haynes.

Pal, M. (2020): Social Media and Democracy: Challenges for Election Law and Administration in Canada. Election Law Journal: Rules, Politics, and Policy, Vol. 19, no. 2, 200-213.

Paxton, P. (2000): Women"s Suffrage in the Measurement of Democracy: Problems of Operationalization. Studies in Comparative International Development Vol. 35, no. 3:92–111.

Persson, T.G. Tabellini and F. Trebbi (2003): Electoral rules and corruption. European Economic Review, Vol. 1, no. 4, 958-989.

Peters, B. (2019): Institutional theory in political science: The new institutionalism. London: Edward Elgar Publishing.

Pierson, P. (1994): The path to European integration: A historical institutionalist perspective. (Program for the study of Germany and Europe working paper No. 5.2, 25 October). http://aei.pitt.edu/63633/1/PSGE_WP5_2. pdf. Accessed 25 Sep 2022.

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

Piven, F.F. and R.A. Cloward (1988): Why Americans Don't Vote. New York: Pantheon Books

Piven, F.F. and R.A. Cloward (2000): Why Americans Still Don't Vote. New York: Beacon Press

Plaček, M., G. Vaceková, V. Valentinov and F. Ochrana (2022): Historical institutionalism: a tool for researching the nonprofit sector in times of pandemic. Innovation: The European Journal of Social Science Research.

Pollack, M. (1996): The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis. Gowmance: An International Journal of Policy and Administration, Vol. 9, no. 4, 429-458.

Popp-Madsen, B.A. (2020): Should we be afraid? Liberal democracy, democratic backsliding, and contemporary populism. Contemp Polit Theory 19 (Suppl. 3), 161–168.

Prakke, L. (2004): The United Kingdom of Great Britain and Northern Ireland. In: Constitutional law of the 15 EU Member States, L. Prakke and C. Kortmann (eds.), Deventer: Kluwer, 863-927.

Przeworski, A. (2018): Why bother with elections? John Wiley & Sons.

Przeworski, A. M.E. Alvarez, J.A. Cheibub and F. Limongi (2000): Democracy and Development: Political Institutions and Well-Being in the World, 1950–1990. Cambridge: Cambridge University Press.

Rahat, G. (2008): The Politics of Electoral Reform: The State of Research. EPOP Conference, Manchester, UK.

Renwick, A. (2010): The Politics of Electoral Reform: Changing the Rules of Democracy. Cambridge: Cambridge University Press.

Renwick, A., R.J. Pekkanen, E.S. Herron, and M.S. Shugart (2018): Electoral system change. The Oxford Handbook of Electoral Systems, 113-135.

Reynolds, A.B. Reilly and A. Ellis (2005): Electoral System Design: The New International IDEA Handbook. Stockholm, International IDEA.

Rhodes, R.A. (1997): Understanding governance: Policy networks, governance, reflexivity and accountability. Open University.

Rice, D.R. and C. Zorn (2021): Corpus-based dictionaries for sentiment analysis of specialized vocabularies. Political Science Research and Methods, Vol. 9, no. 1, 20–35.

Rickett, D. (2022): Democratic Backsliding, Harvard Model Congress, Boston 2022.

Rix, K. (2008): The elimination of corrupt practices in British elections'? Reassessing the impact of the 1883 Corrupt Practices Act. The English Historical Review, Vol. 123, no. 500, 65-97.

Rixen, T., and L. Viola (2016): Towards explaining change and stability in international institutions. In: Historical institutionalism and international relations: Explaining institutional development in world politics, T. Rixen, L. A. Viola, and M. Zürn (eds.), Oxford: Oxford University Press, 3–35.

Robertson, I. (1989): Society: A Brief Introduction (New York: Worth Publishing).

Rush, M. (2005): Parliament today. Manchester: Manchester University Press.

Russell, M. and D. Gover (2017): Legislation at Westminster. Parliamentary Actors and Influence in the Making of British Law. Oxford: Oxford University Press.

Rutenberg, J., N. Corasaniti and A. Feuer (2021): Trump's Fraud Claims Died in Court, but the Myth of Stolen Elections Lives On, New York Times, 26th December 2020, https://www.nytimes.com/2020/12/26/us/politics/republicans-voter-fraud.html, accessed last on March 30th 2022.

Saiegh, S.M. (2016): Lawmaking. In: The Oxford Handbook of Legislative Studies, S. Martin, T. Saalfeld and K.W. Strøm (eds.), Oxford: Oxford University Press, 481-513.

Sanders, D. (2002): Behaviouralism. In: Theories and Methods in Political Science, D. Marsh and G. Stokes (eds.), Basingstoke: Palgrave MacMillan, 45-64.

Sanders, E. (2006): Historical Institutionalism. In: The Oxford Handbook of Political Institutions, R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds,), Oxford: Oxford University Press, 39–55.

Schedler, A. (2002): The Menu of Manipulation. Journal of Democracy, Vol. 13, no. 2, 36-50.

Schelder, A. (2006): Electoral Authoritarianism: The Dynamics of Unfree Competition. Boulder, CO: Lynne Rienner.

Schumpeter, J. (1942): Capitalism, Socialism and Democracy, New York: Harper and Brothers.

Semmel, C.L. (2009): Election Reform: Alternatives to Ensure Integrity and Increase Access, Policy Perspective, Vol. 11, 33-40.

Sewell, W. H. (1996): Three temporalities: Toward an eventful sociology. In: The historic turn in the human sciences, T. J. McDonald (ed.), Michigan: University of Michigan Press, 245–280.

Seymour, C. (1915): Electoral Reform in England and Wales, the development and operation of the parliamentary franchise 1832-1885. New Haven: Yale University Press.

Shaffer, G.C. and M.A. Pollack (2009): Hard vs. soft law: Alternatives, complements, and antagonists in international governance. Minn. L. Rev., 94, 706.

Shepsle, K.A. (2006): Rational Choice Institutionalism. In: The Oxford Handbook of Political Institutions, R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), Oxford: Oxford University Press, 23-38.

Shorstein, A. (2001) Politicizing the Election Process: “The Katherine Harris Effect”, Florida Coastal Law Journal, Vol. 2, 373-380.

Shugart, M.S. and M.P. Wattenberg (eds.) (2003): Mixed-Member Electoral Systems: The Best of Both Worlds?. Oxford: Oxford University Press.

Simpser, A. and D. Donno (2011): Can International Election Monitoring Harm Governance? SSRN Scholarly Paper ID 2047555. Rochester, NY: Social Science Research Network.

Skocpol, T., P. Evans and D. Rueschemeyer (eds.) (1985): Bringing the State Back In. New York: Cambridge University Press.

Smidt, H.J. (1891): Geschiedenis van het Wetboek van Strafrecht. Volledige verzameling van regeeringsontwerpen, gewisselde stukken, gevoerde beraadslagingen, Haarlem, I and II.

Stein, P.G. (1991): Roman law, common law, and civil law. Tul. L. Rev., 66, 1591.

Stewart, J. (2006): A Banana Republic? The Investigation into Electoral Fraud by the Birmingham Election Court, Parliamentary Affairs, Vol. 59, no. 4: 654-667.

Sutter, D. (2003): Detecting and Correcting Election Fraud, Eastern Economic Journal, Vol. 29, no. 3: 433-451.

Talib N.L., A. Utomo, J. Barnett, D.S. Adhuri (2022): Three centuries of marine governance in Indonesia: Path dependence impedes sustainability. Marine Policy, Volume 143, 105171.

Temple, B. and A. Young, A. (2004): Qualitative Research and Translation Dilemmas. Qualitative Research, Vol. 4, no. 2, 161–178.

Thelen, K. A. and S. Steinmo (1992): Historical Institutionalism in Comparative Politics. In: Structuring politics: Historical institutionalism in comparative analysis, S. Steinmo, K.A. Thelen and F.H. Longstreth (eds.), Cambridge; New York: Cambridge University Press, 1-32.

Tokaji, D.P. and R. Colker (2007): Absentee Voting by People with Disabilities: Promoting Access and Integrity, McGeorge Law Review, Vol 38, 1015-1064.

Uberti, L. J. and D. Jackson (2020): Does aid promote electoral integrity?. The Journal of Development Studies, Vol. 56, no. 6, 1067-1094.

Uribe Burcher, C. and S. Bisarya (2017): Threats from within: Democracy's Resilience to Backsliding. Chapter 3 in: The Global State of Democracy 2017. Exploring Democracy's Resilience. Stockholm: International Institute for Democracy and Electoral Assistance (International IDEA).

Van den Brand, T. (2016): Reconstructie van een verkiezingsfraude, NRC Handelsblad, March 19th 2016, https://twanvandenbrand.nl/fraude/, last accessed on March 28th 2022.

Van der Schyff, G. (2020): The prohibition on constitutional review by the judiciary in the Netherlands in critical perspective: The case and roadmap for reform. German Law Journal, Vol. 21, no. 5, 884-903.

Van der Staak, S. and P. Wolf (2019): Cybersecurity in elections: Models of interagency collaboration. International Institute for Democracy and Electoral Assistance (International IDEA).

Van Evera, S. (1997): Guide to Methods for Students of Political Science. New York: Cornell University Press.

Van Schagen, J. (1997): The principle of discontinuity and the efficiency of the legislative process, The Journal of Legislative Studies, Vol. 3, no. 4, 115-125.

Vickery, C. and Shein, E. (2012): Assessing Electoral Fraud in New Democracies: Refining the Vocabulary. IFES White Paper, May 2012.

Vromen, A. (2018): Qualitative Methods. In: Theory and methods in political science, V. Lowndes, D. Marsh and G. Stoker (eds) London: Palgrave Macmillan, 244-252.

Ward, H. (2002): Rational Choice. In: Theories and Methods in Political Science, D. Marsh and G. Stokes (eds.), Basingstoke: Palgrave MacMillan, 65-89.

Watt, B. (2020): UK Election Law: a critical examination. Routledge-Cavendish.

White, I. (2012): Postal voting and electoral fraud 2001-09. House of Commons Library, London.

Wilks-Heeg, S. (2008): Purity of Elections in the UK: Causes for Concern. York: Joseph Rowntree Reform Trust.

Williams, C.W. (1906): Parliamentary elections and petitions (Vol. 2). London, England: Stevens & Sons.

Wong, J.P. and M.K. Poon (2010): Bringing translation out of the shadows: translation as an issue of methodological significance in cross-cultural qualitative research. Journal of transcultural nursing: official journal of the Transcultural Nursing Society, Vol. 21, no. 2, 151–158.

Yin, R.K. (2018): Case Study Research and Applications: Design and Methods, London: Sage Publications.

Yom, S. (2015): From Methodology to Practice: Inductive Iteration in Comparative Research. Comparative Political Studies, Vol. 48, no. 5, 616–644.

Zijlstra, S. E. (2012): Wetgeven. Handboek voor de centrale en decentrale overheid. Kluwer.