The subject of this thesis is the administrative relation between the levels of authority in the Netherlands. Focus of attention within this study is the distribution of administrative tasks and legislative power between government tiers. And more particular the way it has developed since the constitutional reform in 1848; what motives have underpinned the fluctuating ways in which the diverse responsibilities and legislatorial powers were divided. The constitutional reform of 1848, of which the Dutch liberal statesman Thorbecke (1798-1872) was the main designer, has laid the foundation for the current administrative structure. A three tiers-system forms the basis of its organisation: the central state, the provinces and the municipalities. Decentralization, the transfer of functions and powers of the national government to the provinces and municipalities, gives meaning to the administrative stratification.

Reorganisation of the administration is one of the topics of constitutional and administrative reforms on which national politics seems reluctant to take a decision. From 1947 to the present time, a large number of proposals for change have been submitted in The Netherlands. Many of these proposals have been directed at changing the intermediate governmental tier: the Dutch provinces. For example there have been proposals to abolish provinces, to break them up into smaller regions and to merge them into larger administrative districts.

In scientific literature, several explanations are offered for the immutability of administrative structures in The Netherlands. In many of these analyses it is assumed that the debate focuses first and foremost on the very foundation or blueprint of government. This presupposition has, up till now, blocked any further debate. Issues of scale and the distribution of responsibilities play an important role in the proposals since 1947. In the political debate these major issues acquire a correlative dependency. Each time a reassessment of administrative responsibilities seems to be impending, issues on scale and allocation within the executive administrative realm ensue. On the other hand, if discussion about scale arises, the counter-issue will invariably be the question as to what effect change of scale will have on task execution.

Another major leitmotiv within the debate on the immutability of Dutch administration is the significance given to the nineteenth century design of
the decentralized unitary state. After the designer this model is also referred to as het Huis van Thorbecke or Thorbecke’s house; metaphor for the Dutch administration as designed by Thorbecke. An important role in modern-day debate on restructuring Dutch administration is given to this metaphor. According to some the metaphor has been emblematic for our administrative organogram for many decades. In political debate this iconic symbol is allegedly used to obstruct reform. However, this study reveals, the significance given to the metaphor seems inadequate and exaggerated. It shows that though discussion on reform has been pursued since 1947, the Thorbecke-symbolism dates from 1994. Therefore, impact and importance of it is far less than assumed. This being the case, the metaphor of Thorbecke’s house still can be seen as a tool to influence the debate on reform of the administrative structure. The use of the Thorbecke metaphor highlights the historical foundations and stability of our ship of state. But the metaphor is not developing. Furthermore it does not encourage reflection. Powerful rhetorical tool though it is, it does stifle sharp political analysis and argumentation with its truisms.

The significance given to Thorbecke’s model raises the question as to how it had been perceived in the decennia after its completion. A key-element for the assignation of legislative power is decentralization; and a diversity of motives can be identified for it. These motives provide information on the intentions of the state legislator when a transfer of tasks and legislative powers is at stake. Uncovering these motives may explain why the division of legislative powers has been moulded as it is today. The arguments and motives for decentralization are identified in this thesis. In doing so this study provides an analysis of the division of legislative power between the Dutch governmental tiers. Moreover, it describes what legal developments this division has undergone since their establishment in 1848. Finally it analyses the motives for this development.

In order to profoundly analyse Thorbecke’s design three methodological approaches are used. In the first place Dutch legal literature from 1848 till present day is analysed. Secondly fundamental Dutch legislation distributing powers between the central state, provinces and municipalities is studied, viz.: the Dutch constitution (Grondwet), the law on provinces (Provinciewet) and the municipal law (Gemeentewet). A third approach is the study of specific policy topics. Scrutinized are: jurisdiction as to spatial planning; capacity planning in primary education; the protection of species and the planning of mental welfare provisions.

In order to identify motives for decentralization, the phenomenon has been elaborately studied from the following perspectives: the historical context, the economical framework, the legislatorial perspective and a combination of public administration and political science.

The historical perspective shows that, in the history of the Netherlands, the distribution of powers has played an essential role on decisive moments in the genesis and growth of the Dutch nation state. Two instances are: the
16th century revolt against the Habsburg monarchs and the constitution of 1814. In these crucial years of Dutch state development the political contention is between a centralized government versus a decentralized one. One might say that from Dutch political history as motives for decentralization can be derived: a conservative attitude of holding on to the values of the past and a commitment to the spreading of power in order to protect acquired freedom prevail.

The economic perspective and the public administration-political science perspective on decentralization give theoretical explanations for decentralization. Central to these enunciations is the presupposition that decisions are best made at the level on which problems arise; this would lead to a more efficient and effective policy and greater political and social participation of citizens. Whether this is always the case, is a matter of debate. The inviolable effect of decentralization is the distribution of state power. The omnipotence of the central state – the Leviathan – is thus avoided and/or curtailed, while civic liberty is embedded within the system.

The legislatorial perspective on decentralization shows that the main structure of government is shaped by territorial decentralization. It is one of the normative foundations of the administrative structure in the Netherlands. From a legislatorial perspective the following motives can be perceived: on the one hand Dutch historical roots determine the legal administrative structure, on the other hand local authorities would be more responsive to local conditions and needs. A third important motive for decentralization is the distribution of power; with it the values of diversity, freedom and independence are guaranteed.

The first line of research in this study is the analysis of legislatorial literature from the days of Thorbecke until the present day. This study shows that Thorbecke, when shaping the Dutch administrative structure, was inspired by two philosophical theories. From the German idealists, he had derived his philosophy of organic development. From the French doctrinaires he had taken his ideas about balanced distribution of powers. Thorbecke’s motives for decentralization are: the evolution of the state, the development of citizenship and the protection of civil liberty.

Legislatorial literature immediately following Thorbecke’s era is primarily focused on the understanding and the explication of articles of the law on decentralization. In the nineteenth century, the interpretation of these articles shows a certain degree of development, stagnating again in the second half of the twentieth century. Motives for decentralization could hardly be traced from the legislatorial literature. However, one frequently recurring motive that could be discerned in the middle of the nineteenth century is the distribution of power. Another important motive is efficiency.

The second line of research focuses on fundamental legislation as recorded in the Dutch constitution, and in legislation with regard to provinces and municipalities. An analysis of the maturation of this type of legislation discloses
Summary

the central theme of the political debate: the precise description of the judicial competences and boundaries of the diverse decentralized authorities. These issues have never been conclusively solved.

Another important motive in the decentralization debate has always been efficiency. Initially reasons of efficiency were paraded as underpinning value for decentralization. However, in the second half of the 20th century, these self-same reasons of efficiency were promoted as an end in itself, whereas decentralizing measures were the means to accomplish them. So, in the course of time the concept of decentralization changes from value in itself to auxiliary for efficiency in administration.

A second observation is the change in meaning of the concept of centralization in the epoch studied. In the nineteenth century, an excess of centralization is rejected because of the threat it poses to a balanced distribution of power. After the Second World War, over-centralization is seen as the cause of the expansion of bureaucracy.

Another remarkable finding of this study is the fact that the constitutional legislature is reluctant to rephrase the terminology in several articles of law concerning decentralization. For instance the rephrasing of “domestic organisation” into “(public) interest” has been obstructed by parliament.

A third line of research forms a study of the legislation on specific policy topics, viz.:

- jurisdiction as to spatial planning;
- capacity planning in primary education;
- the protection of species;
- the planning of mental welfare provisions.

Study of these policies uncovers the fluctuations between centralization and decentralization in the areas described. Most striking is that they do not mutually synchronize, nor do they align with the overall premise on their flow.

An important motive that came to light here, is the tendency of the legislator to bring equilibrium between the scope of the policy-issue and the sphere of influence of the appropriate governmental tier.

However the leitmotiv for decentralization is to improve the governmental performance; efficiency, standardization and simplification are recurring objectives. Decentralization is also often used as an instrument to resolve specific policy issues.

The analysis of the combined research lines described above learns there is a discrepancy between the motives for decentralization. Both legislatorial literature and fundamental legislation show a concordance of motives; however, in the practice of specific policy-making we see a striking contrast in argumentation and underpinning. For instance, in legislatorial literature and fundamental legislation motives aimed at values connected to rule of law and democracy can be seen – such as freedom and equality. Decentralization is perceived as an instrument to
distribute powers between governmental tiers. Yet, in legislation aimed at policy topics, decentralization is perceived as an instrument to implement or improve policy. In these cases decentralization is connected to values such as efficiency and efficacy.

From 1848 till present day an important motive for decentralization is improvement of the administration and organisation of government. In the post-war era efficiency has evolved from a value supporting decentralization into an independent value. This emphasis on efficiency is rooted in the changing role of government. Before the Second World War legislation was the main instrument to affirm and regulate society. However, in the post war era, the emphasis of administrative action is not so much on legislation as on public policy as a means to restructure society. This resulted in a far greater emphasis on public policy; new disciplines such as public administration and economy acquire a role in government policy.

Unlike other European constitutions the Dutch constitution gives no clear definition of the tasks and jurisdiction of the three territorial government tiers. In Dutch parliamentary debates this issue has been discussed several times. However, ever since 1848, no clarity has been shed on this recurring political theme. The conclusion might be drawn that Dutch state legislature is reluctant to define the division of powers between government tiers.

Analysing arguments for decentralization shows there is little debate about the underlying motives for decentralization. In some occasions articles of law, even constitutional ones, are changed without any parliamentary debate whatsoever. Even if debate takes place, justifications are often unfounded or accompanied by defective reasoning. In the current political discussion on the amalgamation of three provinces into one larger region, arguments are weak and exchangeable. This contributes to the risk of failure of yet another plan to change the Dutch administrative structure.